

LCB File No. R135-01

**PROPOSED REGULATION OF THE REAL ESTATE DIVISION OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY**

**NOTICE OF WORKSHOP TO SOLICIT COMMENTS
ON PROPOSED REGULATIONS**

The Nevada Real Estate Division of the Department of Business & Industry of the State of Nevada is proposing the Adoption and/or Amendment of regulations pertaining to **Chapters 119A of the Nevada Administrative Code**. A workshop has been set for the following dates, times and locations:

**OCTOBER 15, 2001 @ 1:30 P.M.
BRADLEY BUILDING
2501 E. SAHARA AVE., 2ND FLOOR CONFERENCE ROOM
LAS VEGAS, NV 89104**

and video-linked with

**DEPT. OF BUSINESS & INDUSTRY
788 FAIRVIEW DRIVE, HEARING ROOM
CARSON CITY, NV 89701**

The purpose of the workshop is to receive comments from all interested persons regarding the adoption of regulations that pertain to **Chapter 119A of the Nevada Administrative Code**. The following general topics may be addressed in the proposed regulations:

The purpose of the workshop is to receive comments from all interested persons regarding the adoption of regulations that pertain to **Chapter 119A of the Nevada Administrative Code**. The following general topics may be addressed in the proposed regulations:

- Creation of "sampler program" or "exit program";
- Adding requirement for a disclaimer for contract for sampler program;
- Creating qualifications for a person to conduct a reserve study;
- Adding requirements for registration of managers;
- Creation of the manger's disclosure statement;
- Amending NAC 119A.255(4)(a);
- Amending NAC 119A.295; and
- Amending NAC 119A.300.

A copy of all materials relating to the proposed regulations may be obtained at the **workshop** or by contacting the Real Estate Division at:

2501 E. Sahara Avenue, Room 102
Las Vegas, NV 89104-4137
(702) 486-4033, x. 222
TAMI DEVRIES

788 Fairview Drive, Room 201
Carson City, NV 89701
(702) 687-4280.

NOTICE OF INTENT TO ACT UPON A REGULATION

**NOTICE OF HEARING FOR THE ADOPTION, AMENDMENT AND REPEAL OF
REGULATIONS OF THE NEVADA REAL ESTATE DIVISION**

The Nevada Real Estate Division of the Department of Business & Industry of the State of Nevada (the "Division") will hold a public hearing at **1:30 P.M.** on **NOVEMBER 5, 2001**, at the **BRADLEY BUILDING, 2501 E. SAHARA AVENUE, DEPT. OF BUSINESS & INDUSTRY CONFERENCE ROOM 2ND FLOOR, LAS VEGAS, NEVADA** and **DEPT. OF BUSINESS & INDUSTRY, HEARING ROOM, 788 FAIRVIEW DRIVE, CARSON CITY, NEVADA**. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of regulations that pertain to chapter 119A of the Nevada Administrative Code.

Las Vegas area:

**Department of Business & Industry
Bradley Building
2501 E. Sahara Ave.
Hearing Room, 2nd Floor
Las Vegas, NV 89104**

Carson City area:

**Department of Business & Industry
788 Fairview Drive
Hearing Room
Carson City, NV 89701**

The following information is provided pursuant to the requirements of NRS 233B.060:

Information Regarding Adoption

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall 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.

Information about Proposed Regulations

1. Purpose and need of the Proposed Regulations. The Division is the agency, which administers the licensing, education and compliance program under NRS 119A. The purpose of the regulations is to define and clarify the rights and responsibilities of persons licensed under this chapter.
2. Terms of the proposed regulations. The regulations to be adopted are stated as follows this notice.
3. Estimated Economic Effect. None known at this time.
4. Estimated Cost to the Agency. None known at this time.
5. Duplication with other Agencies: None known at this time.

6. Federal Law. None known at this time.
7. Federal Regulation. None known at this time.
8. New Fee Established. Yes, fees to be established by the Division for the registration of mangers.

Comments and Written Submissions

Persons wishing to comment on the proposed action of the Division may appear at the scheduled public hearings or may address their comments, data, views or arguments, in written form to:

Written submissions must be received by the Division by OCTOBER 25, 2001. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Division may proceed immediately to act upon any written submissions.

Copies of Proposed Regulation

A copy of this notice and the proposed regulation 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 proposed regulation will be available at the following Division offices:

Nevada Real Estate Division
788 Fairview Drive, Suite 201
Carson City, NV 89701

Nevada Real Estate Division
Bradley Building
2501 East Sahara, Suite 102
Las Vegas, NV 89104-4137

and in all counties in which an office of the Division is not maintained, at the main public library, for inspection and copying by members of the public during business hours. The text of each regulation will include the entire text of any section of the Nevada Administrative Code, which is proposed for amendment or repeal. 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 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.

Posting

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

Nevada Real Estate Division
788 Fairview Dr, Ste. 201
Carson City, NV 89701
Las Vegas, NV 89104-4137

Nevada Real Estate Division
Bradley Building
2501 East Sahara, Suite 202

Elko Conference Center
700 Moren Way (Silver Room)
Elko, Nevada

State Library
100 Stewart Street
Carson City, Nevada

Churchill County Library
553 South Maine Street
Fallon, Nevada 89406

Douglas County Library
1625 Library Lane
Minden, Nevada 89423

Elko County Library
720 Court Street
Elko, Nevada 89801

Goldfield Public Library
Fourth & Crook Street
Goldfield, Nevada 89013

Eureka Branch Library
10190 Monroe Street
Eureka, Nevada 89316

Humboldt County Library
85 East 5th Street
Winnemucca, Nevada 89445

Lincoln County Library
93 Main Street
Pioche, Nevada 89043

Storey County Library
95 South R Street
Virginia City, Nevada 89440

Lyon County Library
20 Nevin Way
Yerington, Nevada 89447

Mineral County Library
First & A Street
Hawthorne, Nevada 89415

Tonopah Public Library
171 Central Street
Tonopah, Nevada 89049

Pershing County Library
1125 Central Avenue
Lovelock, Nevada 89419

Washoe County Library
301 South Center Street
Reno, Nevada 89505

White Pine County Library
950 Campton Street
Ely, Nevada 89301

Battle Mountain Library
625 Broad Street
Battle Mountain, Nevada 89820

LCB File No. R135-01

**PROPOSED REGULATION OF THE REAL ESTATE DIVISION OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY**

Authority: Senate Bill 261

Note: Matter *italicized* is new; matter in brackets~~[-]~~ and stricken through is material to be omitted.

Section 1. Chapter 119A of NAC is hereby amended by adding thereto section(s) 2 through 6, of these proposed regulations.

Sec. 2 *“Sampler program defined” A “sampler program”, also known as an “exit program”, means a program whereby a prospective time-share purchaser can buy a small increment of time or use, typically 6 months to one-year, often coupled with an exchange right, to test the product before buying an interest pursuant to the time-share plan.*

Sec. 3. *Contract for Sampler Program. Each contract or purchase instrument to be used in the sale of the sampler program, must contain the following disclaimer directly above the purchaser’s signature(s):*

The Nevada Real Estate Division neither regulates nor evaluates the sale of this product. No representations to the contrary may be made.

Sec. 4. *Qualifications of person to conduct study; consultants.*

1. A person is qualified by training and experience to conduct a reserve study if the person proves to the satisfaction of the executive board that he has:

- (a) A good reputation for honesty, trustworthiness and integrity;*
- (b) The ability to evaluate components of the common elements with regard to normal and accelerated deterioration, remaining useful life, by year, and current cost to repair or replace;*
- (c) The ability to perform financial analysis, cost estimates and 30-year projections, as applicable;*
- (d) The ability to review documents of the association and to consult with the executive board to ascertain and confirm the component inventory from such review;*
- (e) The ability to gather and analyze financial data, including, without limitation, monthly assessment fees per unit, current balance of reserves, interest rate anticipated on reserves, anticipated inflation and maximum fee increases allowable; and*
- (f) The background and knowledge pertinent to all areas to be addressed by the reserve study and to all components of the common elements to be addressed by the reserve study.*

2. A person who is selected to perform a reserve study for the executive board may use consultants and other persons with expertise in the areas and components of the reserve study to assist in preparing the reserve study.

3. As used in this section:

- (a) “Common elements” means the common elements of a timeshare project.*

(b) “Component inventory” means a list of components of the common elements identified in a reserve study that may require repair or replacement.

(c) “Reserve study” means a study required pursuant to NRS 119A.xxx which projects the expenses of an association for the repair, replacement and restoration of the major components of the common elements and which establishes the reserves required to cover such expenses.

Sec. 5. Registration of Manager.

- 1. A manager must file a registration with the division on a form supplied by the division.*
- 2. A separate registration form shall be filed for each management agreement entered into by a manager.*
- 3. Each registration form must be accompanied by the fees prescribed by the division.*
- 4. Each registration form must be completed by the manager. A member of the commission or employee of the division shall not prepare a registration form on behalf of a manager.*
- 5. The registration form must include the manager’s social security number or, where applicable, the manager’s federal employer identification number.*
- 6. Except for a manager meeting the requirements of section 7 below, each registration form must be accompanied by evidence satisfactory to the division that manager has delivered a fidelity bond, or comparable insurance policy, for the benefit of the association of the time share plan or project, or the owners, where there is no association.*
- 7. A manager who has not entered into an agreement to manage a time-share plan or project, but files a registration form solely to enable manager to advertise manager’s services within this state, shall so indicate on the application where the registered name of the time share plan or project, or both, is to be provided. Should manager enter into an agreement to manage a time-share plan, then manager shall, within ten (10) days thereof, file a separate registration indicating the registered name of the time share plan or project, or both, and submit evidence satisfactory to the division of compliance with section 6 above.*

Sec. 6. Manager’s Disclosure Statement. *Disclosure statements required to be submitted by Senate Bill, Section 30, shall be on a form prescribed by the division and include the following disclosures:*

- a. Any arrangement between the association and the manager whereby manager undertakes to resell timeshares owned or acquired by the timeshare association and the fees to be paid to manager in connection with such resales.*
- b. A written assessment billing and collection policy defining the procedures to be followed in collecting maintenance assessments and for the foreclosure of liens on behalf of the association or its members, or the owners, where there is no association.*
- c. Any exchange program offered by the manager, or any affiliate of the manager, which is not operated by a third-party vendor of an exchange program and the fees charged by the manager for the exchange services.*
- d. Any program offered by the manager, or any affiliate of the manager, for the rental of unoccupied units either on behalf of the association, or the owners, and the fees charged by the manager for rental services.*
- e. Any use of the names of the members of the association and other information collected by manager regarding the members for purposes unrelated to the duties of the association,*

including but not limited to, a member's payment history, address, telephone number(s) and social security number.

Sec. 7. Amend NAC 119A.255 as follows:

NAC 119A.255 Contracts and other documents used in sale.

1. Each contract, agreement and other document used in the sale of the project is subject to the standards for advertising that are set forth in this chapter.

2. The following words must be printed clearly and conspicuously in a 12-point boldface type at the top of each contract for the sale of a time share:

This is a binding contract by which you agree to purchase an interest in a time-share project. You should examine the statement of your right to revoke this contract within 5 days which is contained elsewhere in this contract.

3. The following words or words of a similar import may not be used in a contract of sale for a project, time-share unit or interest in a project:

The purchaser agrees that no representation, oral or implied, has been made to the purchaser other than what is contained in this contract.

4. The following words must be printed clearly and conspicuously above the purchaser's signature line in each contract for the sale of a time share:

(a) "The purchaser of a time share may cancel, by written notice, the contract of sale until midnight of the fifth calendar day after the date of execution of the contract ~~for payment of the purchase price in cash.~~".

(b) "The right of cancellation may not be waived. Any attempt by the developer to obtain a waiver results in a contract which is voidable by the purchaser."

(c) "The notice of cancellation may be delivered personally to the developer or sent by certified mail or telegraph to the business address of the developer."

(d) "The developer shall, within 15 days after receipt of the notice of cancellation, return all payments made by the purchaser."

5. Each contract of sale of a time-share property located outside Nevada which is sold within this state must contain one of the following sentences:

(a) "This contract is to be construed according to the laws of Nevada and specifically chapter 119A of NRS"; or

(b) "This contract is to be construed according to the laws of (name of the state or country). Any purchaser solicited in Nevada retains those rights granted him under chapter 119A of NRS."

6. A developer, real estate licensee or other agent shall not make any written or oral statement which seeks to change the true nature or legal rights or obligations of any contract or legal document approved by the division.

7. Each major improvement which is promised in an offer must be stated in the contract so as to legally bind the developer to provide it. The administrator will determine which improvements are considered to be subject to this requirement. With the prior approval of the division, a major improvement which is promised in a project may be included in the contract by reference to another document.

8. The administrator will schedule an informal meeting to attempt to resolve a question regarding an advertisement or a document as provided in NAC 119A.215.

Sec. 8. Amend NAC 119A.295 as follows:

NAC 119A.295 ~~[Approval:]~~ Developer or agent to submit advertising changes; ~~[number;]~~ press releases.

1. ~~[An advertisement]~~ *A letter documenting the content of any proposed* advertisement must be submitted to the division by the developer or his employee or agent. ~~[If an employee or agent of the developer submits the advertisement., the developer must notify the division in writing that the employee has the authority to submit it and to agree to changes which may be required. The division will not deal directly with an advertiser who is not so authorized by the developer.]~~ *The division, at its discretion, may subsequently require submission of a copy of the advertisement. The proposed advertisement itself may be submitted in lieu of a letter.*

2. Any change in *filed or documented* advertising which has been ~~[approved by the division]~~ voids the prior ~~[approval]~~ *filing* and ~~the advertising]~~ *a letter documenting the changes* must be resubmitted ~~[for approval.]~~ *to the division* . The division, at its discretion, may subsequently require submission of a copy of the changed advertisement. The proposed advertisement itself may be submitted in lieu of a letter with the proposed changes clearly indicated thereon.

3. ~~[When the division approves an item of advertising, an approval number will be issued. The approval number and name of t]~~ The developer must be ~~included~~ *clearly identified* in any advertising used by the developer.

4. A press release issued in good faith is exempt from this section. *For purposes of this section, “press release” means any published material that* if it:

- (a) Is intended for publication without payment of any consideration;
- (b) Is not initiated by the owner, developer or project broker or an agent thereof.

Sec. 9. Amend NAC 119A.300 as follows:
NAC 119A.300 Fees.

1. Each item of advertising and each modification of an item of advertising which was previously ~~[approved]~~ *filed* constitute a separate ~~[application for approval]~~ *filing* and a fee will be assessed for each item submitted.

2. A fee may be paid in cash or by cashier’s check, certified check, personal check, company check or money order. If payment is made by a personal or company check, the division will not consider the ~~[render a decision on the application]~~ *advertisement filed* until the check has been honored by the bank on which it is drawn.

3. The following schedule of fees is established for ~~[applications for approval]~~ *the filing* of advertising:

(a) For each item of advertising 8 1/2 by 14 inches or less in size, the fee is \$5 per page to a maximum of \$25. If the item is a newspaper line advertisement or a classified display of 15 words or less, without any illustrations, the fee is \$2.

(b) For a full page advertisement in a newspaper, approximately 15 by 22 inches, the fee is \$20.

(c) If an advertisement contains matter on both sides of a page, the advertisement is considered to be two pages in length.

(d) If the size of the advertisement, including but not limited to a map, poster or billboard, is larger than 15 by 22 inches, or if the length of a written advertisement, including but not limited to a radio or television script, speech script, book, pamphlet or similar item, contains five or more pages, the fee is \$25.

(e) For a television or motion picture presentation, the fee is \$25 for submission of a script. Additionally, the developer may be required to submit the completed video tape or motion picture film for review by the division at the discretion of the division.