

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

LCB File No. R135-01

December 13, 2001

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

AUTHORITY: §§1, 2, 6-8, NRS 119A.190; §3, NRS 119A.190, 119A.542; §4, NRS 119A.190, 119A.532; §5, NRS 119A.190, 119A.534.

Section 1. Chapter 119A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. 1. *Each contract or other instrument that is used in the sale of a sampler program must contain the following statement in at least 10-point bold type above the purchaser's signature line:*

“The Real Estate Division of the Department of Business and Industry does not regulate or evaluate the sale of this product. No representations to the contrary may be made.”

2. As used in this section, “sampler program” means a program that allows a prospective purchaser of a time share to buy an increment of time or occupancy of a limited duration in a time-share plan, normally to be used within 1 year after the date of purchase, for the purpose of determining whether to purchase a time share in the time-share plan.

Sec. 3. 1. *A person is qualified by training and experience to conduct a reserve study if the person proves to the satisfaction of the board that he has:*

- (a) A good reputation for honesty, trustworthiness and integrity;*
- (b) The ability to evaluate components of the common area with regard to normal and accelerated deterioration, remaining useful life, by year, and current cost to repair, replace or restore;*
- (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 board to ascertain and confirm the component inventory from such a review;*
- (e) The ability to gather and analyze financial data, including, without limitation, monthly assessment fees, 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 area to be addressed by the reserve study.*

2. A person who is selected to perform a reserve study for the 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) “Component inventory” means a list of components of the common area identified in a reserve study that may require repair, replacement or restoration.

(b) “Reserve study” means a study required pursuant to NRS 119A.542 that projects the expenses of an association for the repair, replacement and restoration of the major components of the common area and that establishes the reserves required to cover such expenses.

Sec. 4. 1. A form for registration submitted pursuant to NRS 119A.532 by a person who wishes to engage in the business of, act in the capacity of, advertise or assume to act as a manager must be:

(a) Completed personally by the person who wishes to register. A member of the commission or employee of the division may not prepare a form for registration on behalf of a person who wishes to register.

(b) Accompanied by the fees prescribed by the division.

(c) Except as otherwise provided in subsection 3, accompanied by satisfactory evidence, acceptable to the division, that the person who wishes to register and his employees have obtained fidelity bonds or an insurance policy deemed comparable by the division for the benefit of the association or, if there is no association, the owners.

2. A separate form for registration must be filed for each agreement to manage a time-share plan or project that a person wishes to enter.

3. A person who has not entered into an agreement to manage a time-share plan or a project, but who files a form for registration for the purpose of advertising his management services in this state, must indicate this purpose on the form in the space provided for the registered name of the time-share plan or the project, or both. Within 10 days after entering into an agreement to manage a time-share plan or a project, a person who has registered pursuant to this subsection must:

(a) File a separate form for registration that indicates the registered name of the time-share plan or the project, or both; and

(b) Submit satisfactory evidence, acceptable to the division, that he has complied with the provisions of paragraph (c) of subsection 1.

Sec. 5. *The disclosure statement required by NRS 119A.534 must be submitted on a form prescribed by the division and must contain:*

- 1. A schedule of fees to be paid to the manager or an affiliate of the manager for the resale of any time shares pursuant to paragraph (a) of subsection 1 of NRS 119A.534;*
- 2. A written policy concerning the procedures for billing and collecting assessments and for the foreclosure of liens pursuant to paragraph (b) of subsection 1 of NRS 119A.534;*
- 3. A description of any exchange program that is not operated by a third-party vendor of an exchange program or of a rental program offered by the manager or an affiliate of the manager and any fees to be paid to the manager or an affiliate of the manager of such a program pursuant to paragraph (c) of subsection 1 of NRS 119A.534; and*
- 4. Any use of the names of the members of the association and other information collected by the manager regarding the members for purposes that are unrelated to the duties of the association, including, without limitation, payment history, address, telephone number and social security number, pursuant to paragraph (d) of subsection 1 of NRS 119A.534.*

Sec. 6. NAC 119A.255 is hereby amended to read as follows:

119A.255 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. 7. NAC 119A.295 is hereby amended to read as follows:

119A.295 1. ~~[An]~~ ***A 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.]~~

2. Any change in ***an item of*** advertising which has been ~~[approved by]~~ ***previously filed with*** the division ***must be submitted to the division with the changes clearly marked. The modified advertisement*** voids the prior ~~[approval and the advertising must be resubmitted for approval.]~~

~~—3.—~~ ~~When the division approves an item of advertising, an approval number will be issued. The approval number and]~~ ***filing.***

3. *The* name of the developer must be ~~included~~ *clearly identified to the satisfaction of the division* in any advertising used by the developer.

4. A press release issued in good faith is exempt from this section if ~~it:~~
—(a) ~~Is~~ *it is* intended for publication without payment of any consideration . ~~;~~ *and*
—(b) ~~Is not initiated by the owner, developer or project broker or an agent thereof.~~

Sec. 8. NAC 119A.300 is hereby amended to read as follows:

119A.300 1. Each item of advertising and each modification of an item of advertising which was previously ~~approved constitute~~ *filed constitutes* 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 ~~render a decision on the application~~ *file the advertisement* 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. If a script is submitted simultaneously with the television tape or motion picture film, there is no extra charge. The developer is responsible for making the advertisement available for review by the division.