

July 2, 2018



Nevada Real Estate Commissioners
c/o Rebecca Hardin
Commission Coordinator
Nevada Real Estate Division
3300 West Sahara Avenue, Suite 350
Las Vegas, Nevada 89102

RE: Petition to amend NAC 645.610(1)(e): Use of name under which licensee is licensed.

Dear Nevada Real Estate Commissioners:

Please accept this letter as a petition to amend regulation NAC 645.610(1)(e), which governs the name under which a licensee can be licensed. As written, the regulation is unduly broad and restrictive to achieve its purpose. As applied by the Division, it is ambiguous, inconsistent, and inequitable.

To address these problems, this Petition requests the regulation be amended to remove the prohibition on “nicknames,” and instead to allow use of “common names, including shortened first names, common first name nicknames, middle names, and pre-marital surnames.” The license application form 549 can be revised to include a space for applicants to list the common name by which they are known and wish to advertise.

As Written, The Regulation Disadvantages Many Licensees and Particularly, Women.

NAC 645.610 (1)(e) provides: “A licensee shall not advertise or otherwise conduct business under a name, including a nickname, other than the name under which he or she is licensed to engage in business.” In effect, this means a licensee can only advertise using their full legal name.

To apply for a license, a licensee must use his or her full legal name. When coupled with the plain language of the regulation, this precludes any licensee from using a name other than his or her legal name, including a “nickname” (or “common name”).¹ This regulation disadvantages licensees who are familiarly known in their everyday and professional lives by “nicknames” or “common names,” such as shortened names, middle names, or pre-marital names. Potential clients who know or are referred to licensees by their everyday names are either confused or unable to find those licensees through their “legal name” advertisements.

¹ This issue is not solved by filing for a fictitious business name. Although NAC 645.620 allows a licensee to use a fictitious name that has been properly filed with the county clerk and the Division, NAC 602.017 does not allow fictitious name to be “the name of a natural person” without adding non-name terms to the fictitious name. Thus, licensees cannot obtain a fictitious business name certificate for their “common name.”



In particular, licensees who are known professionally by their pre-marital names, but must obtain licenses with their legal married names, are significantly impacted by the regulation. Studies show that nearly 90% of women in the US take their husband's name upon marriage. The number of US men taking their wives' names is so small that no studies even report a percentage. Numerous reports also show that professional women often prefer to continue using their pre-marital names in their profession because they have worked hard to build a reputation with those names and should be allowed to continue to benefit from those efforts. Thus, the regulation should be amended for the benefit of all licensees, and particularly to remove its potential and likely disproportionate impact on female licensees.²

The Division's Informal Exception to the Regulation Is Unclear and Inequitable.

The Division has effectively acknowledged the broad and restrictive nature of NAC 645.610(e)'s plain language by stating that licensees could use "common nicknames" in their advertising. In its December 2009 "Open House" newsletter, then Chief Investigator, Bruce Alit, explained, "Additionally, *common nicknames* may be used such as 'Mike' for Michael, 'Susie' for Susan or 'Bill' for William."

While we applaud the direction of this policy, its informality and the subsequent conflicting or contradictory comments by the Commission, have caused confusion among licensees as to which types of "common nicknames" are allowed. Further, the policy appears to be inequitably, or at the very least inconsistently, applied.

Conducting the most basic general search of the Nevada Real Estate Division website for violations of NAC 645.610(1)(e) showed that the regulation has had a disparate impact between men and women. Although the search did not pull up sanction reports for every quarter of every year, those that were found by the search showed that since July 2014, at least 6 women were sanctioned while only 2 men. Mary McQuattie; Stefany L Rodriguez; Maria Abraham; Candace Carrell; Alison Cardwell; Amina Marie Johns / Robert Robinson; Samuel Schwartz. Because the complaints did not come up in the search, we cannot tell what "nicknames" were being used that led to the sanctions.

The Division's Conflicting Uses of The Phrases "Common Nickname," "Nickname," and "Common Name" Has Caused Confusion.

As noted above, in 2009, the Division referenced this exception to NAC 645.610(e) using the term "common nicknames." It gave a few examples of common nicknames but did not state whether this was the full scope of the exception.

Years later, the uncertainty around the scope of the exception was raised at successive Commission meetings. On October 5, 2016, Candice Hulery, a broker at Keller Williams, raised the issue of the regulation and its disparate effect on licensees whose names change after

² Upon request, Petitioner can supply the Division with reports demonstrating that many professional women continue to use their maiden name after marriage, even though they have legally taken their husband's surname.

marriage. Ms. Hulery proposed the regulation be changed to allow licensees to use “their established business name after there has been a name change (such as marriage).” (See Nev. Real Estate Commission Minutes, Meeting Oct. 5, 2016.)

The Commission took up the issue at its December 5, 2016 meeting. Commissioner Opatik, apparently attempting to clarify the “common nickname” exception, stated: “*nicknames* should not be allowed to the extent that there’s a whole different name. . . . there [is] nothing wrong with someone named Robert using the name Bob or Rob.” (See Nev. Real Estate Commission Minutes, Meeting Dec. 5, 2016.)

At the same meeting, however, Commissioner Barrett implied there was a difference between a “common name” and a “nickname,” and asserted that only the former should be allowed. “[T]he Commission should stay within the boundaries of the Commission’s previous decision that an agent had to use their *common name* and not a *nickname*.” (See *id.*) It is unclear to what “previous decision” Commissioner Barrett was referring when the Commission’s 2009 newsletter clearly says licensees could use a “*common nickname*.” The Commission then moved that no action be taken regarding Ms. Hurley’s prior request.

Unfortunately, rather than clarify the exception, this exchange by the Commissioners only served to underscore its ambiguity. Licensees were left to guess at what was permitted: “common nicknames,” or “nicknames,” or “common names,” and further, what was the difference between these phrases, if any? What types of nicknames constitute “whole different names” in the Commission’s view? Why are pre-marital names not considered a “common name”?

The Terms “nickname” and “common name” are Indistinguishable, and Therefore Do Not Provide Licensees With Adequate Guidance.

Merriam-Webster defines “nickname” as, among other things: “2: a *familiar* form of a proper name (as of a person or a city).” (See merriam-webster.com; see also Wikipedia, Nickname page: “In Anglo-American culture, a nickname is often based on a shortening of a person’s proper name.”)

By contrast, the phrase “common name” is not defined except in the context of biology and scientific vs. common names. However, “common” means, among other things, “3a: occurring or appearing frequently,” and its synonym is “*familiar*”. Thus, both terms refer to a person’s “familiar” name.

While “nickname” can also mean “a descriptive name given instead of or in addition to” a person’s name, such as funny or affectionate names, the Division can easily avoid this meaning by providing a clear statement as to the types of “nicknames” that are allowed.

The Division has referenced a few brief examples in old newsletters and Commission meeting minutes. However, these examples do not sufficiently guide licensees as to what exceptions are allowed. Nor has the Division explained why it considers some names to be “common names” and others not. For example, the Division suggested a licensee named “William” could go by

“Bill” and a licensee named “Robert” could go by “Bob,” even though it should be noted that in both instances, the first letter of the name is changed. Yet, in 2016, the Division filed a Complaint against Mary E. McQuattie for, among other things, advertising with her common nickname “Missy.” Is the Division’s contention that “Missy” is not a common nickname for “Mary” or “McQuattie”? Or did the Division feel the nickname was too dissimilar from the first name to warrant an exception? Further questions arise such as: are initials (such as JJ or JT) in place of first names allowed? Can a licensee advertise using just their middle name and last name if their middle name is also included on their license, or must they use the full first, middle, and last name? What, or who, determines whether a nickname is sufficiently “common” to qualify for the exception?

As explained in Wikipedia, a nickname can be many things including a shortened or modified variation of a person’s real name. This can include shortening by using name portions or dropping letters (such as Walter to Walt or Elizabeth to Liz or Beth), or by contractions (such as Margaret to Greta) or variations that swap letters (such as Margaret to Maggie or Harry to Hal, or Robert to Bob, or Sarah to Sadie), initials (such as DJ for Daniel James), changing spelling for phonetics (such as Leonard to Len), or use of middle or second names. Thus, licensees need clearer guidance from the Division to understand the scope of the nickname exception.

The Need to Clearly and Formally Revise NAC 645.610(1)(e) Is Not Going Away.

The need for clarity on the “nickname” exception – and in particular to allow use of pre-marital names – is evidenced by the continual raising of the issue at Commission meetings. At the March 14, 2017 Commission meeting, the issue was raised in two ways. First, former Real Estate Commissioner Marc Sykes read a petition opposing the Division’s removal of “Nickname” from form 549 and removing licensed nicknames from licenses upon renewal . . . an action, which, notably, appears to contravene the Division’s allowance of “common nicknames” as an exception to the regulation. It would seem reasonable for the Division to want to have licensees’ nicknames listed on their license application so that it can properly track licensees’ activities under either their legal names or nicknames.

Second, Mike Perez of Dickson Realty commented that the Division should make changes to NAC 645.610 to achieve the goal of allowing licensees to comply with social media and technology as it pertains to posting their names. No action was taken by the Division at that meeting in response to these comments.

On December 5, 2017, the issue was raised by Candy Noel of Keller Williams Realty Sparks. Ms. Noel specifically requested that the Division amend NAC 645.610(1)(e) to allow the use of “common names *and maiden names*.” This is the same request that Candice Hulery made to the Division in October 2016—over a year prior—with no action being taken. Ms. Noel requested that the topic be added to the agenda for the next commission meeting. Ms. Noel included a written petition requesting the change, a copy of which is enclosed with this petition.

Unfortunately, the March 2018 meeting minutes are not available on the Division website. Therefore, Petitioner does not know if Ms. Noel’s petition was addressed. However, one can

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assume that no action was taken given that petitioner (and others) have received notification from the Division that she must stop advertising under her pre-marital name since her license was issued under her married name.

NAC 645.610(1)(e)'s plain language clearly prohibits use of "nicknames" in advertising. Yet the Division has clearly expressed and allowed the use of certain "common nicknames" despite the regulation's contrary prohibition. Thus, a formal amendment to the regulation is needed to address this inconsistency.

Conclusion – Requested Amendment.

Based on the following, we therefore ask the Division to formally amend NAC 645.610(1)(e), as well as form 549, to allow licensees to include *approved* nicknames on their license application and in their advertising. The Division can decide what constitutes an "approved nickname," provided however, that it *must at least include pre-marital names* to address the gender inequity of the regulation.

In addition to allowing use of pre-marital names in advertising, we also request and recommend that the Division allow the following as approved nicknames: shortened names (in any form as referenced in Wikipedia, such as dropping letters, contractions, etc.), middle names, initials in lieu of first names, and any other non-humorous or non-derogatory alternative first name by which the licensee has been familiarly or commonly known in their everyday and/or professional lives.

We believe that the concerns regarding advertising "nicknames" can be addressed by amending the regulation to remove the prohibition on "nicknames," and instead to allow use of "common names, including shortened first names, common first name nicknames, middle names, and pre-marital surnames." The license application form 549 can be revised to include a space for applicants to list the common name by which they are known and wish to advertise.

Sincerely,



Amy Keith-Lessinger

Enclosure

cc: Cassell von Baeyer, Esq.

Public Meeting of the Nevada Real Estate Commission October 5-7, 2016

2. Public Comment

Candice Noel, Broker for Keller Williams Realty in Sparks, NV

Requesting a regulation change to NAC 645.610 1e

NAC 645.610 1e reads: A licensee shall not advertise or otherwise conduct business under a name, including a nickname, other than the name which he or she is licensed to engage in business.

What:

I'm requesting that a licensee can advertise and market under a fictitious name or DBA.

Why:

When I started real estate in Nevada I was *Candice Noel*, which is my maiden name. I then married and my license then read as *Candice "Candy Noel" Hulery*. I have marketed my maiden name "Noel" for real estate for 5 years and that is how I am known to my clients and in the real estate community. It wasn't until 2 months ago that I was told I need to return my license and it will be re-issued as *Candice Hulery*. The reason was marketing nicknames were not being fully enforced and it's now hard to find out who is who. Re-branding myself or another over and over due to a marriage/divorce, some action that creates a name change is hard on any licensee as the time, money and recognition is lost and forced to re-start over. I was given the option to keep my current license as Hulery and would have to rebrand myself and all my material including signs, business cards, ect. In addition if I was on a team with Noel in it, it too would have to be changed, effecting others as well. Or I could legally change my name back to Noel, having to change all my personal accounts and not having the same last name as my husband or future children. This is a choice I believe no one should not have make. I have since started to process to change my legal last name back to Noel in hopes that I can change it back to Hulery in a couple years when I hope the regulation change takes place.

Additional Notes:

I have attached for reference 5 of the state's association membership applications. 2 of these associations, SNAR and Incline have a field on their application that states "Nickname (DBA)", 2 are more ambiguous stating "Name on roster" (RSAR) and "Name" (Elko) where only 1 specifically states "Print FULL legal name as it appears on your license from the State of Nevada" (Las Vegas).

A business can change its name as long as a DBA is filed in each county it does business in. A licensee should have the same opportunity and similar process of submitting to division a form that clearly states legal name and fictitious/DBA/Nickname they go by.

Outcome

By allowing licensee to market under a fictitious name or DBA allows a licensee to continue to thrive in their career for the lifetime of the career and not have to start over due to a life event.

Requestor's Contact Information

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