



Open House

A newsletter from the Nevada Real Estate Division

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Department of Business & Industry

Summer 2004

MULTIPLE OFFERS

by Pam Riebe
Chief of Compliance
Real Estate Division

The current residential real estate market in Nevada has created questions and issues relating to how to handle multiple offers. The Real Estate Division recently published guidelines to deal with multiple offers, which are posted on our web site at www.red.state.nv.us. Although the guidelines do not cover all possible scenarios and situations, they do give general principles to observe.

One of the pressing issues is whether the terms of a purchase agreement can be disclosed by the listing agent. The Real Estate Commission and the Division have had discussion regarding the handling of multiple offers during public meetings over the past several months. The conclusion of the discussion was that disclosing the terms of another buyer's offer could violate NAC 645.605 (6)

which states: "Has breached his obligation of absolute fidelity to his principal's interest or his obligation to deal fairly with

all parties to a real estate transaction." Along the same lines, an "acceleration" clause in an offer could violate the same law. For example, if an offer is written to state, "I will pay \$2,000.00 over the highest offer up to \$300,000.00," how would the purchaser know what the highest offer was? It seems that the buyer would have to be shown – or at the least told – what the highest offer was. Then the question becomes: Is this fair to the buyer who submitted the highest price offer?

We recognize that in today's market there are more buyers than sellers. We

caution licensees to keep in mind the laws that govern their license, and their duty to "deal fairly with all parties to a real estate transaction."

INFORMATIONAL BULLETIN #001

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
www.red.state.nv.us www.red.state.nv.us

MULTIPLE OFFERS GUIDELINES FOR LICENSEES

When Taking the Listing

- ❖ Explain to the client that competing offers may be received.
- ❖ Discuss with the client options for handling multiple offers.
- ❖ The client decides how they want to handle multiple offers.
- ❖ Advise the client that they may wish to seek legal counsel if they do receive multiple offers.

Sellers Make the Decisions – Examples of Options

- ❖ Accept one offer in writing, and reject all other offers in writing.
- ❖ Reject all offers in writing and encourage higher offers.
- ❖ Counter one offer, reject other offers in writing.
- ❖ Delay the decision waiting for another offer informing all parties. Educate the seller that with this option the buyers may withdraw their offer.
- ❖ Alert one or more buyers that they are in a competing offer situation and need to submit their best offer. Reject other offers.
- ❖ Alert all buyers that they are in a competing offer situation.
- ❖ Counter all offers in writing.

Agent Communication

- ❖ Agents should make reasonable efforts to keep cooperating licensees informed of the decision of the client's instructions.

Presenting Offers:

- ❖ The representative of the cooperating broker has the right to be present when the offer is presented unless the seller gives written instruction to the contrary.

Confidentiality

- ❖ The cooperating licensee does not have the right to be present at any subsequent discussion or evaluation of the offer by the seller and the listing broker.

NRS 645.253: Each licensee shall not disclose, except to the real estate broker, confidential information relating to a client in violation of NRS 645.254.

NRS 645.254, paragraph 2: A licensee who has entered into a brokerage agreement to represent a client in a real estate transaction ... Shall not disclose confidential information relating to a client for 1 year after the revocation or termination of the brokerage agreement, unless he is required to do so pursuant to an order of a court of competent jurisdiction or he is given written permission to do so by the client.

Revised: 3/24/04

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The mission of the Real Estate Education Fund
is to ensure awareness of relevant laws and
practices by all licensees through proactive
education and information efforts.

Articles by outside experts express the authors'
viewpoints and should not be mistaken
for official policy of the Real Estate Division.

They are included because they address relevant
issues that may be of interest to Nevada licensees.

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Look for items of interest on our web
site at www.red.state.nv.us/

- Proposed regulations and Workshops for NAC 645
- FY 04 Licensing Statistics
- Requests for Proposals for FY 05 ERRF funding
- Calendar of approved Continuing Education courses
- Schedule and agendas of Commission meetings
- Future *Open House* newsletters
- 2005 Legislative Bill Drafts (when released)

REMINDER: Even if **INACTIVE**, a licensee
must notify the Division of a change of
residential address.

NAC 645.360 states, in part:

The Division may cancel a license if . . . a licensee, whether active or inactive, fails to inform the Division within 10 days after a change in the address of his business or residence.

DID YOU KNOW . . .

. . . ***that you can receive law/ethics continuing education credit*** by attending a meeting of the Real Estate Commission? Here's how it works:

1. Attend a meeting of the Commission which lasts at least three hours;
2. Make sure you sign-in and sign-out on the attendance roster;
3. Use up to six hours of continuing education once during any two-year period.

The Commission is scheduled to meet on the following dates:

Reno: July 20-22

Las Vegas: September 21-23; November 16-18

Credit will not be given during the time a licensee participates or is otherwise affiliated with a specific disciplinary hearing.

For meeting agenda, date, time, and location, go to our website at www.red.state.nv.us/

From the Administrator's Desk . . .

Gail J. Anderson

For those of us in State government, our “year” ended June 30th. Fiscal Year 2004 was a productive and very busy year.

It was a banner year for **technology** at the Division! Two major accomplishments came out of the 2003 Legislative Session. The Division was funded for new computers and upgraded software throughout the agency. This was the first time in the agency’s history that all employees received new equipment and upgraded software – at the same time. The new equipment was desperately needed, but was also in preparation for the new data system implementation.

The Legislature approved funding for the **Integrated Data System**, which will combine the 17 separate data base systems the Division currently utilizes. Real estate licensee data has been housed since 1981 in a Cobol mainframe program. Appraisers and timeshare agents were added to the mainframe. As other licensing and registration programs were added to the jurisdiction of the Division, internal data bases were created in Excel and Access for them. The new system will integrate all of our various data systems, and will provide **web-based access** to the public portions of the system. The **Request for Proposal** process took many months, and the Board of Examiners in June approved the selection of CAVU Corporation out of Raleigh, North Carolina, as the vendor for our system. In July, the Division begins working with CAVU to implement the system.

The Real Estate Commission conducted a **ten-year review** of the regulations of Chapter 645. The Commission began reviewing regulations at their June 2003 meeting in Reno, and continued through April 2004. As a result, there are extensive proposed changes to NAC 645. Some of the changes are minor housekeeping clean-up. Other changes are more substantive, and include the adoption of the 30 hour post-licensing curriculum and an increase in continuing education hours from 15 to 24 hours for the subsequent two-year renewal periods. Instructor qualifications for pre-licensing, post-licensing, and continuing education are made consistent. Standards for Instructors and Standards for

Students are proposed. Many of the changes in the education areas are a result of the work of an Education Task Force, which met in 2001-2002, and made

recommendations to the Real Estate Commission. The Division will conduct workshops on the proposed regulations after the draft language from the Legislative Council Bureau is returned to the Division. We anticipate one workshop in Carson City and one in Las Vegas. Please **check our web site** for the posting of the Workshop dates and locations and the draft language.

Several of my section heads have been involved with the **new Commission for Common-Interest Communities** in working with them as they draft regulations for their new jurisdiction. Myself and the Chief Investigator, and the Legal Administrative Officer for the Division will work with that Commission on an on-going basis. The Division has three Governor appointed Commissions with which we work – and that alone keeps us very busy.

I would also like to introduce you to my **new Deputy Administrator, Lisa Young**. Lisa is based in the Las Vegas office, and oversees the personnel matters, the Licensing Section, the Education Section, the Information Section, and the Fiscal Section of the Division. It has been a tremendous help to me to have Lisa literally “at my right hand” in assuming areas of administrative responsibility.

I am very pleased with the staff we have at the Division. We are working very hard to respond to inquiries and issues and to conduct our processes in a timely and professional manner. By the end of the next fiscal year, we will have fully implemented the new data system – allowing us to perform more functions electronically, to provide licensee information via the web, and to produce more efficient reports and statistics.





WHAT YOU NEED TO KNOW ABOUT NEVADA'S BUSINESS LICENSE

Effective 7/22/03, all businesses doing business in Nevada must obtain a State Business License as required by SB8 of the 20th Special Session of the Nevada Legislature.

1. Q. What is the cost of a State Business License?

A. The State Business License Fee is \$100. The license is renewable annually.

2. Q. How much is the renewal fee and when is it due?

A. The renewal fee is \$100. Taxpayers who currently have a business license shall pay the renewal fee based on their anniversary date.

Entities no longer in business in this state must submit a written statement to the Department at least 10 days before their anniversary date in order to avoid the annual fee and a penalty for non-payment.

3. Q. What is the penalty for late or non-payment?

A. A person who fails to submit the annual fee required by the due date shall pay a **penalty in the amount of \$100 in addition to the annual fee. This penalty goes into effect 07/01/04.**

4. Q. Are there any other requirements for businesses obtaining a State Business License?

A. Every business that purchases tangible personal property for storage, use or other consumption in this state must register with the Department of Taxation for a Use Tax Account.

5. Q. What constitutes a business?

A. A corporation, partnership, proprietorship, limited-liability company, business association, joint venture, limited-liability partnership, business trust and their equivalents organized under the laws of the State of Nevada or another jurisdiction shall be deemed to constitute a business for the purposes of NRS 360.760 through NRS 360.795 regardless of any purpose for which that entity is organized or operated and regardless of whether that entity conducts an activity for profit.

6. Q. Are any businesses not required to obtain a State Business License?

A. Government entities, nonprofit religious, charitable, fraternal, or other organizations that qualify as a tax-exempt organization pursuant to 26 U.S.C. § 501(c), or a business whose primary purpose is to create or produce motion pictures are not required to obtain a State Business License. A "Limited-Liability Company which consists of a single member if the limited-liability company is disregarded for the purposes of federal income taxation as an entity separate from its owner, and a natural person who is regarded as a substantial owner of any trust or portion thereof pursuant to the provisions of U.S.C. 671 to 679.

Also, a person who operates a business from his home and earns from that business (net income from the business reported on the Federal Tax Return) not more than 66 2/3 percent of the average annual wage, as computed for the preceding calendar year, pursuant to chapter 612 of NRS, is not required to obtain a State Business License for the next year. The average annual wage fluctuates, for 2003 the 66 2/3 percentage of the average annual wage is \$21,500. For 2004 the 66 2/3 percentage of the average annual wage is \$22,000.

WHAT YOU NEED TO KNOW ABOUT NEVADA'S BUSINESS LICENSE (cont.)

7. Q. What is meant by “person who operates a business from his home”?

A. A person who operates a business from his home means a **natural** person who does not own, lease, rent or license any real property, other than his personal residence, for use in furtherance of that business and does not hold any part of his personal residence open to the **general public**. A **natural** person shall **not** be deemed to own, lease, rent or license any real property that he uses strictly for the purpose of maintaining a post office box, posting a business license in accordance with requirements imposed by a county or municipal ordinance, or periodically selling or exhibiting wares at craft shows.

8. Q. Are trade show or convention participants required to obtain a State Business License?

A. A business not located in this State that takes part in a trade show or convention held in this State is not required to obtain a business license specifically for that one event.

9. Q. Are businesses selling at swap meets in this State required to apply for a State Business License?

A. Yes, they are considered to be renting space outside of their personal residence and are required to apply for a State Business License.

10. Q. Are real estate agents and brokers required to apply for a State Business License?

A. Yes, they are not considered to be working from their personal residence and are required to apply for a State Business License.

11. Q. Are a husband and wife considered one taxpayer?

A. Yes, as long as the business is not separately incorporated.

12. Q. How do I obtain a State Business License?

A. You may obtain an application by downloading one from our website at <http://tax.state.nv.us> or by contacting the Nevada Department of Taxation office nearest you. When submitted, the application must be accompanied by the \$100 license fee. A signer's signature on an application is considered a sworn statement of his or her authority to sign on behalf of the entity being registered.

13. Q. If I have several businesses, but they are all owned as sole proprietor businesses, do I have to get State Business Licenses for each one?

A. Sole proprietors may have more than one business and only be required to have one State Business License. However, if a person is a sole proprietor and also conducts business under a separate corporation or other entity, State Business Licenses will be required for each entity.

14. Q. What are some examples of businesses that are now required to apply for a business license that were not required to apply prior to the implementation of SB 8 of the 20th Special Session of the Nevada Legislature?

A. Sole proprietors without employees were not previously required to obtain a State Business License. However, employer status no longer is a factor in determining which businesses must register for a State Business License. **All** businesses are now required to obtain a State Business License unless they are exempted for one of the reasons listed above in #6. In addition, individuals who lease or rent out property and report this on a Federal Tax Return form 1040 schedule E and individual owners of farms who report on a Federal Tax Return form 1040 schedule F must also obtain a State Business License.

15. Miscellaneous—A Business is required to keep all records for four years. The same or similar provisions which exist for other Title 32 taxes regarding audits, confidentiality of information, administrative procedures, etc., are applicable to this license fee.

Real Estate Licensees: Protect Your Clients...Refer them to a Certificated Mover

by: *Byram Tichenor, Chief of Enforcement & Tim Janda, Investigator
Nevada Department of Business and Industry
Transportation Services Authority*

Byram Tichenor is the Chief of Enforcement / Manager of Transportation for the Nevada Transportation Services Authority (TSA). The TSA is responsible for providing regulatory oversight to intrastate transportation companies involved in the operation of limousines, household goods moves, tow trucks, busses and taxi cabs operating outside of Clark County. Mr. Tichenor assumed his current position with Nevada TSA following a career totaling nearly 30 years in federal law enforcement.

Special thanks to TSA Investigator Tim Janda who provides key oversight to the household goods mover initiative in Las Vegas and who contributed greatly to this article. Mr. Janda is the Authority's point of contact for matters pertaining to household goods movers. He may be contacted at (702) 486-3303, ext. 406.

The TSA receives numerous complaints from persons who have contracted for moving services with companies that are operating illegally. The majority of these complaints involve excessive property damage, stolen/missing property, or being overcharged for services. To help protect the public and get the word out on illegal movers, the TSA has asked the Real Estate Division to share this article with you to enhance your awareness regarding the regulation of household goods movers (HHG) in the State of Nevada.

Household goods movers must obtain a Certificate of Public Convenience and Necessity (CPCN) from the State of Nevada TSA before they may legally conduct intrastate transportation of household goods. If an intrastate moving company does not have a CPCN then they are operating illegally. A CPCN should not be confused with a business license from a local governmental agency. Most persons don't realize that there is a difference. The State of Nevada CPCN is a privileged license and requires the holder to meet a number of standards such as the establishment of uniform rates and the maintenance of proper insurance. A CPCN also requires moving companies to assure that annual safety inspections of their vehicles have occurred and to verify that their drivers are qualified and drug tested in accordance federal guidelines.

As licensed real estate professionals, if you are

making recommendations or referrals to moving services, it is important that you are familiar with the laws regulating HHG movers. There are two sets of Nevada law that apply. They are the Nevada Revised Statutes (NRS), chapter 706 and the Nevada Administrative Codes (NAC), chapter 706.

The TSA regulates common motor carriers which are defined by NRS 706.036 as "any person or operator who holds himself out to the public as willing to transport by vehicle from place to place, either upon fixed route or on-call operations, passengers or property, including a common motor carrier of passengers, a common motor carrier of property, and a taxicab motor carrier." Household goods (HHG) movers are included in this definition.

The transportation of household goods is defined by NRS 706.137 as "the transportation by motor vehicle of household goods between places within this state including:

The movement of household goods;
Any combination of packing, loading and unloading, incident to the movement of household goods; and
Any movement of household goods accomplished through the use of a rented or other vehicle not owned by the shipper which is driven by someone associated with an entity that has a commercial or financial interest in providing services related to the movement of household goods which are being transported."

If a person operates as a HHG mover without a certificate, then he is in violation of NRS 706.386 which states "It is unlawful, except as otherwise provided in NRS 373.117, 706.446, 706.453, and 706.745, for any fully regulated common motor carrier to operate as a carrier of intrastate commerce and any operator of a tow car to perform towing services within this state without first obtaining a certificate of public convenience and necessity from the Authority."

If a person advertises as a HHG mover without a certificate then he is in violation of NRS 706.758 which states in part that, "It is unlawful for any person to advertise services for which a certificate

(see Protect Your Clients, page 8)

Manufactured Home Dealer or Real Estate Broker?

by Jerry Holmes, Investigator
Nevada Department of Business and Industry
Manufactured Housing Division

Jerry Holmes has been an Investigator for the Manufactured Housing Division since 1999 where his expanded duties include writing regulation/legislation for the agency. He began with the State of Nevada over ten years ago for a short stint with Parole and Probation before he "escaped" to the Public Utilities Commission where he became a Compliance Investigator.

As a professional courtesy, the Manufactured Housing Division offers a limited license for the sale of used manufactured/mobile homes (personal property) in conjunction with the sale of real property. Requirements and application for this license are minimal compared to a regular dealer's license. A limited dealer's 2-year license is \$1300 including legislature-mandated Recovery Fund, and renewals are \$800 including Recovery Fund. Additionally, real estate licensees working for a real estate broker who holds a limited dealer's license may sell under the supervision of the broker without obtaining a manufactured home sales license normally required of other sales people working for other dealerships.

A real estate broker who holds a limited dealer's license with the Manufactured Housing Division pursuant to Nevada Revised Statutes (NRS) 489.331 may sell a *USED* home only in connection with the sale of a fee simple interest in real property and the *USED* manufactured / mobile home is situated on the real property sold. A Limited Dealer is **NOT LICENSED TO SELL OR OFFER TO SELL ANY NEW HOME**. Additionally, a Limited Dealer **CANNOT SELL ANY USED HOME LOCATED IN A MOBILE HOME PARK**. NRS 489.7252 charges the Division with the responsibility for providing a mandatory form of contracts to be used in sales transactions for manufactured/mobile homes.

How does this affect your sales transaction? If the manufactured/mobile home has already been converted to real property *PRIOR* to the sale, only real estate statutes and regulations

apply.

If the home has *NOT* been converted to real property at the time of the sale, manufactured housing statutes and regulations apply. You must use the "Purchase Contract Used Home Purchase" and the "Listing Agreement" pursuant to Nevada Administrative Code (NAC) 489.232 and 489.234. Copies of the contracts are available at www.mhd.state.nv.us. Even if the home is to be converted at the end of your sale, it is considered to be personal property at the time of the sale.

A limited dealer is subject to NRS 489 and NAC 489 just as are all licensees. This means that for the personal property portion of the sale, you must function as a manufactured/mobile home dealer rather than a real estate broker. The Manufactured Housing Division will take disciplinary action against unlicensed dealers and for violations of NRS/NAC 489. Additionally, all disciplinary actions will be reported to the Real Estate Division and any other applicable jurisdiction.

As a dealer under NRS 489, you have different and greater responsibilities than you have as a real estate licensee, including submission of Dealer's Reports of Sale and titling.

If you do not want to meet requirements of NRS 489, you may always elect to utilize a regularly licensed dealer to handle the sale of the personal property manufactured/mobile home.

The Manufactured Housing Division is always happy to answer questions and help you work out issues. For licensing questions call Joan Hutchings at 702-486-4590.

For other questions call Jerry Holmes at 702-486-4135 ext 269.

*The Division offices will be closed
Monday, September 6th
in observance of Labor Day.*

Protect Your Clients...Refer them to a Certificated Mover

(continued from page 6)

of public convenience and necessity or a contract carrier's permit is required pursuant to NRS 706.011 to 706.791, inclusive, unless the person has been issued such a certificate or permit."

These laws could also impact you, as a real estate professional. NRS 706.756 Subsection 1(a) through 1(i) states, "1. Except as otherwise provided in subsection 2, any person who:

Operates a vehicle or causes it to be operated in any carriage to which the provisions of NRS 706.011 to 706.861, inclusive apply without first obtaining a certificate, permit or license, or in violation of the terms thereof;

Fails to make any return or report required by the provisions of NRS 706.011 to 706.861, inclusive, or by the Authority or the Department pursuant to the provisions of NRS 706.011 to 706.861, inclusive;

Violates, or procures, aids or abets the violating of, any provision of NRS 706.011 to 706.861, inclusive;

Fails to obey any order, decision or regulation of the Authority or the Department;

Procures, aids or abets any person in his failure to obey such an order, decision or regulation of the Authority or the Department;

Advertises, solicits, proffers bids or otherwise holds himself out to perform transportation as a common or contract carrier in violation of any of the provisions of NRS 706.011 to 706.861, inclusive;

(g) Advertises as providing: (1) The services of a fully regulated carrier; or (2) Towing services, without including the number of his certificate of public convenience and necessity or contract carrier's permit in each advertisement;

(h) Knowingly offers, gives, solicits or accepts any rebate, concession or discrimination in violation of the provisions of this chapter;

(i) Knowingly, willfully and fraudulently seeks to evade or defeat the purposes of this chapter. . . is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$100 nor more than \$1,000, or by imprisonment in the county jail for not more than 6 months, or by both fine and imprisonment."

TIPS FOR HOUSEHOLD GOODS MOVES

No matter how smoothly it goes, moving can be a stressful experience. To eliminate at least some of the stress, the Nevada Transportation Services Authority offers the following suggestions:

1. Obtain a list of certified local movers from one of our offices, either Las Vegas (702-486-3303) or Sparks (775-688-2800).
2. Be sure the mover explains the various insurance options. You may need to purchase extra insurance to obtain full replacement of lost or damaged goods.
3. Get two or more estimates based upon a physical inventory of your possessions. You are entitled to a written, binding estimate.
4. Get everything in writing. Don't accept verbal price estimates or pick up and delivery commitments.
5. If possible, visit the mover's office beforehand to check out equipment and warehouse conditions.
6. Discuss when and how payment will be made. Ensure that the contract reflects your understanding.
7. Decide whether you or the mover will pack your goods. Make sure your moving contract outlines what services the mover will perform and what work you will do yourself.
8. As goods are loaded, keep track of them on an inventory sheet. Check them again as they come off the truck. Note any missing or damaged goods before the movers leave.
9. Attempt to resolve any dispute with the company. If the dispute cannot be resolved contact the TSA.
10. Make sure there are no surprises at your destination that will prevent the quick unloading of your goods.

Disciplinary Actions—Hearings

February 2002

George Stanford

Respondent failed to provide *Duties Owed* and agency *Confirmation* forms to his client and failed to adequately supervise his sales associate.

Respondent's broker license was revoked, respondent was assessed costs of \$409.44 and a \$5,000.00 fine.

Katamauri Stalsbrot

Respondent made a material misrepresentation and was found to be deceitful, fraudulent, dishonest, grossly negligent and incompetent when she signed her broker's signature, without authorization, on a termination form and submitted it to the Division. Respondent failed to appear at the hearing.

Respondent's salesperson license was suspended until such time as respondent appears before the Commission. Respondent was required to complete 18 hours of Nevada Law. Respondent was assessed costs of \$896.98; failure to pay costs within 12 months will result in automatic license revocation.

Ruth Best-Gray

Respondent made a material misrepresentation and failed to exercise reasonable skill and care when she accepted payment for "cleaning services" that she did not perform on a subject property. By accepting client trust monies as payment, respondent also failed to properly account for and remit money belonging to others, commingled client trust monies, and engaged in deceitful, fraudulent, dishonest, grossly negligent and incompetent conduct. Respondent also failed to produce and refused to provide documents requested by the Division.

Respondent's salesperson license was revoked, respondent was assessed costs of \$2,428.70 and a \$50,000.00 fine.

July 2002

Joseph Leon

Respondent failed to exercise reasonable skill and care and acted in a deceitful, fraudulent and dishonest way when he misrepresented that he had collected \$5,000.00 earnest money from his buyer-client, when, in fact, he did not receive the money. Respondent acted grossly negligent and incompetent by failing to disclose to the sellers that he opened escrow with a lesser amount of earnest money than agreed to by the sellers. Respondent failed to have buyer-client initial

Real Estate Commission

actions are not published in this newsletter until the 30-day period allowed for Commission appeal has expired, or if an appeal is taken and the disciplinary action is stayed, until the stay is dissolved. (We do not publish names of persons whose license applications are denied).

the appropriate terms on the offer as well as failed to have seller execute an addendum prior to opening escrow with a lesser amount of earnest money than originally agreed to by the parties.

Respondent was required to complete 18 hours of Nevada Law, 6 hours of *What Every Licensee Should Know*, six hours of Contracts, pay costs of \$1,414.35 and a \$4,600.00 fine within six months. Salesperson license will be automatically suspended for failure to comply with this Order.

John E. Bissett

By failing to exercise reasonable skill and care, Respondent failed to do his statutory duty to adequately supervise and train his sales agent., **Joseph Leon** (see case above).

Respondent's broker license was downgraded to that of a broker-salesperson for a period of one year. Respondent must provide to the Division a complete policy and procedure manual for his company, pay costs of \$1,414.35 and a \$5,000.00 fine. Respondent must complete 45 hours of broker management prior to reinstating his broker's license.

David J. Firestone

Respondent was the owner-builder of a property. The Respondent represented that he was the property listing agent through use of signage and business cards; however, Respondent's broker was not aware of the transaction. Respondent did not disclose that he was acting as a principal as opposed to acting as an agent for his broker's company. The purchase contract states that Respondent is the licensee representing both seller and buyer, but Respondent failed to complete a **Consent to Act** form. The *Duties Owed & Confirmation* forms state that Respondent is a licensee acting on his own behalf for the real estate brokerage, contradicting language in the purchase agreement. Respondent was found guilty of the claims alleged in the complaint based on Respondent's stipulation of facts and liability.

Respondent was fined \$2,000.00 and required to complete 24 hours of education including Nevada Law and *What Every Licensee Should Know*.

(continued next page)

Disciplinary Actions—Hearings

September 2002

Elvis Nargi

Respondent altered the terms of a purchase agreement in a manner that did not reflect the actual agreement between buyer and seller and without an addendum properly signed by the parties. Respondent caused the seller to be a party to the falsification of information on the purchase agreement.

Respondent's license was downgraded from broker to broker-salesperson for a period of six months. Respondent must complete 18 hours of Nevada Law and six hours of agency designated coursework and pay costs of \$1,464.75 and a \$7,500.00 fine. Failure to comply with the Order will result in automatic suspension of license.

November 2002

Joseph Guzman

Respondent was involved in two separate transactions. In the first transaction, Respondent located a property for a buyer. While the property was still in escrow, Respondent wrote an offer on behalf of some additional buyers and allowed them to take possession of and make improvements on the property. When the original seller discovered the buyers were in the property, the buyers vacated. Neither transaction closed escrow and the second buyers were not reimbursed for the improvements made during their occupancy. In the second transaction, Respondent entered into a sale of property owned by Respondent. An Earnest money check in the amount of \$2,000.00 was made payable to the Respondent to be placed into escrow. The check was never deposited to escrow. The buyers cancelled escrow and entered into an agreement with Respondent for the return of \$1,500.00. Respondent kept \$500.00 for work performed for the buyers.

Respondent also appeared before the Commission for failure to abide by the terms of a Stipulation for Settlement of a Disciplinary Action previously entered into with the Division.

Respondent is required to pay costs of \$1,388.00 and a \$30,000.00 fine. Respondent is currently unlicensed and must appear before the Commission prior to any license reinstatement.

Nellu Baciu

Respondent failed to furnish to the purchaser, before execution of a purchase agreement, the common-interest community documents and information required to be furnished by NRS 116.4109 and respondent failed to secure a written waiver by the purchaser of the NRS 116.4109 time requirement for providing such documents and information. Respondent also failed to secure a written prior occupancy agreement governing payment of rent prior to close of escrow.

Respondent was required to pay costs of \$1,609.16 and a \$1,500.00 fine. Respondent's salesperson license will be automatically suspended if respondent fails to comply with the Order. The State of New Mexico will be notified of this proceeding since Respondent also holds a New Mexico license.

February 2003

Jennifer L. Guinn

Without having first obtained a property management permit or community association management certificate, Respondent conducted community association management activities. Respondent failed to disclose all facts and produce documents pertinent to the Division's investigation. Subsequent to the unlicensed activity, Respondent applied for a community association management certificate, but was denied by the Division.

Respondent's salesperson license was suspended for a period of 6 months. Prior to reinstatement, Respondent must complete 6 hours of *What Every Licensee Should Know* and 18 hours of Nevada Law classroom instruction. Respondent was assessed costs in the amount of \$1,196.83.

Respondent appealed the community association management certificate Denial to the Commission which dismissed the appeal, affirming the Denial.

Cesar Stein

Respondent receipted for a \$1,200.00 earnest money deposit in the form of a money order and misrepresented that the deposit had been immediately placed into escrow. Approximately six weeks later, Respondent delivered \$1,000.00 cash to the escrow company and approximately one week later delivered \$200.00 cash to the escrow

(continued next page)

Disciplinary Actions—Hearings

company.

Respondent was found guilty based on the Stipulation of Fact and Liability entered. Respondent was required to pay a \$250.00 fine and complete 18 hours of Nevada Law and *What Every Licensee Should Know*. If Respondent fails to comply with the Order, Respondent's license will be automatically suspended.

John Ronald Faulkner

Respondent misrepresented that he owned property and entered into an agreement to sell property that he did not own and was not authorized to sell. Respondent failed to provide his broker with documentation relating to his transaction and failed to place trust funds into escrow or remit funds to his broker. Respondent guaranteed future appreciation of value and demanded a mortgage payment prior to ownership of the property. Respondent failed to provide listing documentation to his broker on four other properties and signed his broker's name without authorization on those listing agreements.

Respondent failed to appear at the hearing. Respondent's license was revoked, and he must appear before and be approved by the Commission prior to re-licensure. Respondent must complete a classroom pre-licensing course prior to re-licensure. Respondent was assessed costs of \$2,810.23 and a \$40,000.00 fine. Toronto, Canada will be notified of this proceeding in that Respondent is a licensed real estate agent and attorney in that jurisdiction.

Gregory Hartline

Respondent failed to have complete transaction files in his office for three properties, failed to review agent files, and failed to supervise his associates.

Respondent broker was found guilty based on a Stipulation of Fact and Liability relative to the "John Ronald Faulkner" case above. Respondent was required to pay a \$5,000.00 fine and complete 6 hours of classroom education. Respondent's transaction files are to be audited every two months for one year. Respondent is required to write an article for publication in the *Open House* Newsletter (see *Broker Supervision* article, page 15 of this issue). If Respondent fails to comply with this Order, his license will be automatically suspended.

June 2003

Craig C. Madsen

Respondent and Division stipulated to the following facts and liability: Respondent was operating his own property management business, as a broker-salesperson without the knowledge or permission of his broker. Respondent made deposits to his own trust account and failed to remit trust funds and written management agreements to his broker. Respondent advertised as a property management business through the Internet without including the name of his broker and represented himself as the owner. Respondent failed to provide agency forms to his clients or broker. Since the matter was brought to his attention, Respondent has complied with all statutes and regulations and no party suffered any monetary loss as a result of Respondent's conduct.

Respondent was required to pay a fine of \$5,000.00 and complete 15 hours of classroom education. Respondent's broker-salesperson license was downgraded to salesperson for two years. License will be automatically suspended if payment of fine and education are not completed within the **required time**.

Michael Fausett

Respondent misrepresented himself as a broker by signing commission instructions as the broker and received compensation on a transaction directly from escrow without the knowledge or permission of his employing broker. Respondent placed a realty company "for sale" sign on his own property with signage which read "too late" when there was no sale of the property at that time. Additionally, the realty company had no listing documentation in its file. Respondent wrote a subsequent sales agreement and misrepresented a \$500.00 earnest money check when, in fact, Respondent did not receive any earnest money. Respondent failed to fill out "Duties Owed" and "Confirmation of Relationship" forms for the subsequent transaction.

Respondent's license was suspended for a period of one year. Respondent was required to pay costs in the amount of \$1,989.90 and a \$25,000.00 fine. Respondent was also required to complete 18 hours of

(continued on page 17)

Disciplinary Actions - Stipulations

Stipulations occur when both the Respondent and Division have agreed to conditions reviewed and accepted by both sides. A stipulation may, or may not be an admission of guilt. Stipulations are presented to the Commission for review and acceptance.

Allegations: Respondent guaranteed the sale of a property by misrepresenting that he would personally purchase the property if the buyers could not complete the transaction. Buyers were to take possession prior to close of escrow but were not able to complete the transaction. Respondent failed to complete the transaction as promised.

Stipulation: Respondent agreed to pay a \$7,000.00 fine and complete 20 hours of education.

Allegations: A dispute arose between the Seller and Respondent regarding the Respondent's compensation resulting in a complaint filed to the Division. Respondent failed to obtain *Consent to Act* and *Duties Owed* forms from the parties to the transaction. During the Division's complaint investigation, Respondent submitted *Consent to Act* and *Duties Owed* forms to the Division with forged signatures of the parties to the transaction.

Stipulation: Respondent agreed to pay a \$5,000.00 fine and complete 18 hours of Nevada Law.

Allegations: Respondent made a material misrepresentation that a property could be subdivided into two single acre lots; however, such land division resulting in parcels of less than five acres was prohibited due to localized problems. Respondent also failed to disclose that he was a partial owner in the property.

Stipulation: Respondent agreed to pay a fine of \$2,500.00 and complete 15 hours of law/ethics education.

Allegations: The Respondent assisted a salesperson licensed with a separate brokerage company to represent the buyers in the purchase of a property. The Respondent knew that the purchase forms used in the transaction did not include either salesperson's last name, only their first names as buyers' agents, and the forms did not include the Respondent's broker name. Respondent failed to disclose that she was associated with a different broker and stated that she was assisting the licensee from another company in exchange for leads generated from advertisement calls.

Stipulation: Respondent agreed to pay a fine of

\$1,000.00 and complete 18 hours of education in agency, law and ethics and *What Every Licensee Should Know*.

Allegations: Respondent broker failed to adequately supervise a licensed salesperson associated with him in the following matter: A salesperson licensed with another broker assisted the licensee associated with the Respondent in representing buyers in the purchase of a property. The purchase forms used in the transaction did not include either salesperson's last name, only their first names as buyers' agents, and the forms included only the Respondent's brokerage name. The licensees failed to disclose that they were associated with different brokers.

Stipulation: Respondent agreed to pay a fine of \$1,000.00 and complete six hours of education.

Allegations: Respondent was the owner/seller as well as a buyer agent in a sales transaction. The purchase agreement required \$5,000 earnest money which was received in the form of a certified check to be deposited into escrow. The agreement also stated: "This is a one year lease option, option monies to be released to seller upon possession. No transaction documentation identified any sum of monies as or provides a definition of "option monies." Although Respondent delivered the \$5,000.00 earnest money deposit to escrow, it was treated as option money and released to Respondent without agreement from the buyer. Subsequently, the buyer discovered the earnest money had not been deposited and disputes between the parties arose. The buyer ultimately vacated the property. Respondent had not refunded the earnest money. Respondent failed to remit, commingled, or converted money belonging to another, and acted grossly negligent, incompetent and/or deceitful when he prepared documents which failed to identify the amounts and disposition of earnest and option money.

Stipulation: Respondent agreed to pay a \$1,500.00 fine.

Allegations: Respondent is a broker whose licensee associate was conducting property management without either a permit or community association management certificate. Respondent failed to adequately supervise the licensee's activities. Respondent

Disciplinary Actions - Stipulations

dent also failed to maintain the appropriate sign identifying the brokerage.

Stipulation: Respondent agreed to pay a fine of \$1,250.00 and complete 18 hours of classroom education of Nevada Law and 6 hours of broker management.

Allegations: Respondent's broker license had expired and Respondent acted without a valid property management permit. Notwithstanding, Respondent engaged in property management and sales activity.

Stipulation: Respondent agreed to pay a fine of \$7,500.00 and costs of \$1,350.00. Respondent agreed to complete 18 classroom hours of Nevada Law and 6 classroom hours of *What Every Licensee Should Know*.

Allegations: Respondent is a broker whose licensee associate was operating his own property management business, as a broker-salesperson without the knowledge of Respondent.

Stipulation: Respondent agreed to pay a fine of \$1,000.

Allegations: Respondent pled guilty to conspiracy to commit HUD fraud and use of false social security numbers in U.S. District Court. Respondent created false loan packets for low-income borrowers using false pay stubs, W-2 forms, credit reports and verifications of employment, citizenship, income, and assets. Respondent also gave false information to the Division during its investigation.

Stipulation: Respondent's salesperson license was revoked and in any subsequent application for reinstatement as a real estate licensee, Respondent must first personally appear before the Commission.

Allegations: Respondent made an offer without a clear expiration date; allowed a payment to the second trust deed holder without verifying that the first trust deed holder was aware of the payment; allowed the property to record at \$315,000 rather than the actual \$340,000 sales price; allowed client buyers to make a \$25,000.00 payment in advance of close of escrow to a party who was not the owner of the property at that time.

Stipulation: Respondent agreed to pay a \$2,500.00 fine and attend a six hour classroom course on law and ethics.

Allegations: Respondent broker failed to properly supervise by allowing a licensed salesperson associated with him to: make an offer without a clear expiration date; allow a payment to the second trust deed holder without

verifying that the first trust deed holder was aware of the payment; allow the property to record at \$315,000 rather than the actual \$340,000 sales price.

Stipulation: Respondent agreed to pay a \$10,000.00 fine and complete a 45 hour Broker Management classroom course. Respondent's license was downgraded to broker-salesman for one year during which time Respondent agrees not to supervise any licensees.

Allegations: Respondent broker failed to properly supervise by allowing a licensed salesperson associated with him to: accept a listing from someone other than the owner; accept an offer without a clear expiration date; allow a payment to the second trust deed holder without verifying that the first trust deed holder was aware of the payment; allow the property to record at \$315,000 rather than the actual \$340,000 sales price.

Stipulation: Respondent agreed to pay a \$1,000.00 fine and not supervise any licensees for a period of one year.

Allegations: Respondent listed a property owned by two individuals. Respondent failed to notify one of the owners of an offer; however, the other owner signed to accept the offer. The owner that was unaware of the pending offer subsequently sold his portion of the property to the owner who had signed acceptance to the third-party offer. Respondent acted grossly negligent and incompetent by failing to notify both owners of the offer on the property.

Stipulation: Respondent agreed to pay a \$2,500.00 fine and complete an 18 hour Nevada Law course.

Allegations: Respondent broker failed to properly supervise by allowing a licensed salesperson associated with him to do the following: salesperson listed a property owned by two individuals. The salesperson failed to notify one of the owners of an offer; however, the other owner signed to accept the offer. The owner that was unaware of the pending offer subsequently sold his portion of the property to the owner who had signed acceptance to the original offer. Respondent acted grossly negligent and incompetent by failing to notify both owners of the original

(see Stipulations on page 17)

The Toxic Mold Crisis: Will it be the Next Asbestos?

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Editors Note: This commentary is a shortened version of an article presented by Professors Robert Aalberts and Richard Hoyt to the American Real Estate Society meeting in Naples, FL. In April, 2002. The article was honored with a prize for best paper and an award of \$1,000.00

"If the priest finds greenish streaks in the walls which seem to be beneath the surface of the wall, he shall close up the house for seven days and return.... If the spots have spread in the wall then the priest shall order the removal of the spotted section of the wall.... Then he shall order the inside walls of the house scraped thoroughly, and the scraping dumped in a defiled place, without the city... But if the spots appear again... the house is defiled (and) he shall order the destruction of the house ..."
Leviticus 14, verses 37-45.

The problem of toxic mold is as old as the Bible itself. Yet today its impact on people and real property is approaching biblical proportions. A growing number of commentators have even suggested that the legal consequences of toxic mold will be as serious and extensive as the tidal wave of asbestos litigation that took place over the past several decades.

To an outsider it may seem odd that the Las Vegas Valley, one of the driest cities in the U.S., has mold problems and yet we have an increasing number of cases reported. However, our problems are not on the scale as what we're seeing from coast-to-coast. Indeed, in just the last few years, plaintiffs from Florida to California, have won an increasing number of precedent-setting, multi-million judgments and settlements due to toxic mold.

Consider the following. In May 2001 two women in Delaware, suffering from asthma

attacks and other health problems, were awarded \$1.04 million from their landlord who had failed to correct mold problems. But landlords aren't the only parties who must be concerned. There also have been a growing number of successful bad faith lawsuits against insurers when they denied their policyholders losses due to mold. In one California insurance case, the jury awarded the homeowner \$18 million, although it was later reduced to \$3 million. Moreover a similar case in Texas resulted in a 1.5 million settlement. Possibly the largest judgment to date occurred in a Florida case against an architect and builders for mold problems, which caused 15 workers to become ill. The \$11.5 million award, along with attorney's fees, actually exceeded the buildings value.

Insurers are reacting predictably to these developments. In recent Insurance Day article, industry sources claim homeowners premiums will rise by at least 10 percent due to toxic mold claims. Compounding the problem, fewer companies are now willing to insure these risks. According to a recent Wall Street Journal article, at least 35 states now allow mold exclusions in commercial and homeowners' policies,

Homebuilders and others, particularly in fast-growing Sunbelt states, are also suffering from the legal fall-out caused by mold problems, as well as by construction defect litigation in general. Many are building less and even freezing their activities. Others are going out of business due to the rising premiums. Some of the remaining builders have turned to secondary or relatively unregulated insurers that typically charge more, but provide less coverage. All of this may be causing housing shortages and have very likely increased the price of homes in some parts of the U.S., including in our valley.

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Broker Supervision

by Gregory Hartline, broker

Recently, my brokerage was threatened by the actions of an agent who was not acting ethically. Unbeknownst to me, his business decisions were solely the product of personal greed and without any regard to the public that he was charged with serving. Although sworn to uphold the highest ethical standards, he had ignored these obvious fiduciary responsibilities.

As his broker, I should have identified his transgressions early on. I did not. Though I certainly never intentionally meant to harm anyone, because of my lack of discovery an innocent party was unfortunately damaged. As the supervising broker, I must ultimately share in the blame by implication. Had I been aware of my agent's improprieties at an early stage, I would have been able to intercede and correct the situation before it grew into the significant infraction that it became. I have been asked to write these words so that others may share in my experience. Perhaps, in light of this submission, some other broker will be more vigilant and the public will ultimately be better served.

This altogether unfortunate state of affairs has brought me to reflect upon the nature of supervision, delegation and, ultimately, broker responsibility. I have learned that even the most seasoned and sophisticated agent can act in ways that are unethical and wholly unprofessional. While those actions are frequently outside of the knowledge of their broker, ultimately the broker will be held accountable. Vigilance is the keyword, and none of us are omniscient. We can never be completely aware of all of the actions of those who are operating within our companies. Our commitment to vigilance, while imperfect, must be incessant. We are charged with being as knowledgeable as possible with regard to those who hang their licenses under ours. For those of us who are involved in large companies, we are faced with a particularly daunting challenge. As company rosters grow in size, the degree to which a broker can be "hands on" is necessarily diminished.

Most brokers in larger companies will, of necessity, delegate some degree of their super-

vision and compliance operations to others. With proper training, a compliance officer in a large organization can be an essential extension of the broker's business practice. Still, that broker's supervisory effectiveness will only be as efficient as that compliance officer is on any given day. Given the complexity of many contemporary real estate operations, it is obvious that there is the potential for more and more essentially unsupervised activities by agents.

Responsible delegation begins with broker training and supervision and ends with more broker training and more and more ongoing supervision. The contemporary real estate culture is partially to blame. Profitability models which are built on ever larger rosters are, in my opinion, not in the best interest of the public. They are a business reality that will not change in the foreseeable future. Even the most responsible delegation within these business models cannot produce the kind of supervision that could ever be construed as ideal. This ultimately puts more and more responsibility on the individual agent to act as professionally and as ethically as possible – and often without someone overseeing them with any degree of regularity. The agent certainly is charged with a large degree of responsibility in the ramifications of his or her actions. They are the first line of defense. However, all of us are human and we all make mistakes. It is the intentional transgression, not the innocent oversight or error, that is the subject of this consideration.

It would be easy to suggest that by "raising the bar" in terms of pre-licensing standards we could elevate the quality of agents so that all would perform more satisfactorily. This is only a partial solution. An ethically bereft agent will always be a cancer in our industry - regardless of his or her professional sophistication. Certainly, more stringent licensing requirements could only help. Increasingly more extensive pre-licensing education coupled with better mentoring and training upon licensure would, of course, be a positive improvement. In my case, however, it was the actions of a very sophisticated agent who was acting intentionally unethically. The solution, short of the impossibility of developing a somehow more innately moral agent, is always better supervision.

We live in a less than perfect world. There will always be those agents (see *Supervision*, page 18)

The Toxic Mold Crisis

(continued from page 14)

Still, those who are victimized by mold claim their problems are far from being frivolous. Indeed, the effects of toxic mold on people and property can be devastating. Some toxic molds most notably the infamous stachybotrys or “killer fungus”. Produces a potent mycotoxin which has been linked to hundreds of illnesses and even to the alleged deaths of several infants in Cleveland from pulmonary hemosiderosis. Another destructive mold, *poria incrassate* also called the “house-eating fungus,” attacks buildings causing extensive damage to flooring and walls.

Mold thrives when three factors are present: water, warmth and a cellulose-based food source. This includes gypsum, sheet rock, wood and most other standard building material. Moreover, according to Edward Cross in a recent article in *Los Angeles Lawyer*, “...More indoor mold exists today than before. Increased moisture intrusion problems have arisen from construction defects and flaws in building design and maintenance procedures. Modern construction methods create complex temperature, ventilation and humidity relationships that never existed before.”

Water is the catalyst for toxic molds. As Cross further points out “roof leaks, window leaks, plumbing defects, drainage problems, grading problems and any other source of water intrusion can trigger a chain reaction of events that can ultimately lead to high-stakes litigation.”

A notable example of how water combined with new construction methods can result in serious mold problems is amply illustrated by the so-called “synthetic stucco lawsuits. Synthetic stucco, which is also called the Exterior Insulation and Finish System (EIFS), is a process commonly used in the early 1900’s. The technology underlying the EIFS system was viewed at the time as being innovative and cost effective. EIFS produces an exterior that offers a better form of insulation, as well as being crack resistant. The problem, however, lies in its installation. In EIFS, a Styrofoam layer is

placed alongside the stucco. If this is not done properly a barrier is created which, if water accumulates, acts to prevent drainage. If the water penetrates into any surrounding wood, such as studs and plywood, mold grows. The problems created by the EIFS system was amply demonstrated recently when owners of condominiums in Norfolk, Virginia were awarded \$2.5 million in damages from the manufacturer and distributor of the stucco.

With these health and legal problems in mind, mold is imperative. But removing it can be difficult, expensive and sometimes risky. Mold moreover thrives almost everywhere. The only possible exception may be clean well maintained rooms. This fact creates enormous challenges for those who must eliminate it.

When mold is discovered behind walls it often becomes necessary to tear them down. Bleaching simply does not eliminate the problem. Unfortunately, when certain harmful molds such as stachybotrys are present, remediation processes often cause the mold to become airborne, settling invisibly within the building. If humans breathe in the mold, serious medical problems can ensue.

Of course when mold is discovered, somebody is going to be blamed. Builders, architects, sub-contractors, landlords and building owners, for example, have all been sued under a number of theories for construction defects that plaintiffs claim creates the mold. These theories include negligence, fraud, products liability and deceptive and unfair trade practices.

One legal theory, the “economic loss doctrine” recently adopted by Nevada, and a growing number of other states, including California, Florida, Arizona, seeks to limit construction defect litigation. It may not, however help prevent suits for toxic mold. Under the doctrine only those remedies provided under a contract or warranty can be awarded in construction defect cases. The exception is when a person suffers injury as opposed to just property damage. Thus, if mold is present and a property owner, tenant or other occupant makes a claim for personal injuries, it can ripen into an action in tort. Tort damages are typically much higher than

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Disciplinary Actions

Nevada Law and re-take and pass the state portion of the pre-licensing exam. Respondent's license will be automatically revoked if he fails to comply with this Order.

July 2003

Nick Palumbo

Respondent failed to produce documents pertinent to the transaction during the Division's investigation and subsequent Real Estate Commission Hearing.

Respondent's license was revoked. Respondent must personally appear before the Commission in subsequent application for re-instatement as a real estate licensee.

Guy M. Sheets

Respondent filed a Guilty Plea Agreement in Clark County District Court to conspiracy to commit insurance fraud and obtaining money under false pretenses. Respondent received a suspended sentence and was placed on probation by District Court. Respondent has made full restitution to the insurance company and State of Nevada investigation costs.

Respondent's salesperson license was placed on probation until January 2006 and will be automatically suspended if Respondent violates his judicial probation. Respondent is prohibited from obtaining a broker's license, supervising other licensees and obtaining a property management permit prior to January 2006. Respondent was assessed costs of \$1,791.05.

hours of Nevada Law and six classroom hours of *What Every License Should Know*. If Respondent fails to comply with this Order, Respondent's license will be automatically suspended.

Allegations: For approximately one month, Respondent acted as the authorized agent for a property management company when, in fact, Respondent's salesperson license was affiliated with another real estate broker. Respondent stated that she was told by the director of the property management company that she did not need to transfer her license because she had thirty days in which to make the change. Before thirty days had expired, she returned to the broker **where** she was actually licensed.

Stipulation: Respondent agreed to pay a \$1,000.00 fine.

Allegations: Respondent broker failed to properly supervise by allowing a licensed salesperson associated with another broker do the following: For approximately one month, the salesperson acted as the authorized agent for Respondent's property management company when, in fact, the salesperson's license was affiliated with another real estate broker. The salesperson stated that she was told by the director of the property management company that she did not need to transfer her license because she had thirty days in which to make the change. Before thirty days had expired, she returned to the broker where she was actually licensed.

Stipulation: Respondent agreed to pay a \$1,000.00 fine and attend the *What Every Broker Should Know* course.

Stipulations

(continued from page 13)

offer on the property.

Stipulation: Respondent agreed to pay a \$1,000.00 fine and complete a six hour broker education course.

Allegations: Respondent facilitated conduct that was deceitful and fraudulent by converting the money of others to her own use when Respondent accepted checks from an escrow company's escrow accounts and used the funds to make loans to the escrow officer. The escrow officer was subsequently prosecuted for fraud in connection with her inappropriate handling of the escrow funds.

Stipulation: Respondent's broker license was suspended for three months. Respondent was required to pay a fine of \$20,000.00 and complete 18 classroom

*Look to this day.
Yesterday is already a dream
and tomorrow is only a vision . . .
But today, well-lived, makes
every yesterday
a dream of happiness
And every tomorrow
A vision of hope.*

The Toxic Mold Crisis

(continued from page 16)

those available under contract. As Cross points out “what would otherwise be a small defect can quickly become rather distasteful when fungus is discovered. A thousand dollars worth of water damages can create hundred dollars worth of personal injuries. What was once viewed with enormous skepticism has produced tens of millions of dollars in plaintiff’s verdicts and settlements.

Yet allegations of construction defects are not the only legal problem that has arisen due to mold. Under most states’ laws, for example, the landlord owes the tenant an implied warranty of habitability. This means that the premises must be suitable for residential use. Moreover, the property must conform not only to normal building codes requirements, but must be clean and sanitary. Since mold can cause serious illness this would likely result in a breach of the implied warranty.

Disclosure issues also are cropping up. A seller of real estate has, in most states, a duty to disclose any property defects to the buyer. California recently passed laws extending this duty to landlords and sellers I respect to mold. For example, both these parties must provide written notice to potential lessees or buyers when there is visible mold or hidden mold that they know about or have reasonable cause to believe exists in the property. Still the mold must present a health threat or must exceed the “permissible exposure limits.” (PELs) as set forth by the State Department of Health Services (DHS).

Real estate agents must be aware of the perils of mold. For example, under state laws, a buyer’s agent normally has a fiduciary duty to disclose material information to the buyer required for the buyer to make a well-informed decision. This includes a duty to disclose reasonably obtainable material information. Seller’s brokers also fear liability. In response, some real estate brokers, including a number in the Las Vegas Valley, are now requiring their clients to issue a Fungal Disclosure Waiver, which states whether their property has had any water damage whether the

damage has been repaired and what , if any measures have been taken to remove mold.

Real estate appraisers are becoming aware of heightened responsibilities as well. Various commentators have noted that under the Uniform Standards of Professional Appraisal Practices, Competency and Ethical Rules, appraisers should look for evidence of water or moisture penetration in the structure and then obtain the expertise of a trained professional to determine remediation and other costs.

The recent proliferation of toxic mold cases will spawn new challenges for real estate professionals. With the likelihood of tremendous economic burdens on builders and insurance companies we may see new laws designed to create a balance between compensating the victims while hopefully keeping housing and insurance costs from spiraling out of the reach of many home buyers and tenants. In the meantime, we will almost certainly bear witness to more litigation and hefty judgments as mold problem continue to unfold.

Supervision *(from page 15)* who act irresponsibly.

This unfortunate reality places the onus of responsibility for ethical service squarely on the shoulders of the supervising broker. It is also an unfortunate truth that a single errant agent can erode an otherwise wholly conscientious business operation. While the broker is busy supervising the newest and most neophyte agent on the roster, an unethical veteran professional can be undermining the entire integrity of the operation. Only one bad agent can blemish an otherwise stellar company.

Furthermore, the larger the brokerage, the more exposure to liability the broker is required to sustain. In these companies, it is all the more important for the broker to “grow eyes” in the back of his or her head. If those additional “eyes” are a part of a delegated team, then that team is still charged with protecting the interests of the public and, by extension, the license of the broker. Harry Truman was known to place a sign on his desk that read “The Buck Stops Here.” The president’s aphorism is a paradigm of responsibility that every broker should embrace. To do so is to serve the best interests of the public.

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LICENSE STATISTICS

(As of June 1, 2004)

COUNTY	BROKERS		BROKER/SALESMAN		SALESMAN		TOTAL ACTIVE/INACTIVE
	ACTIVE	INACTIVE	ACTIVE	INACTIVE	ACTIVE	INACTIVE	
Carson City	73	2	66	14	210	57	422
Churchill	19	0	9	7	54	16	105
Clark	1,675	117	2,052	238	11,980	1,885	17,947
Douglas	100	9	114	12	446	61	742
Elko	33	1	13	2	60	7	116
Esmeralda	--	1	--	--	--	1	2
Eureka	--	--	--	--	--	1	1
Humboldt	6	--	5	1	15	5	32
Lander	4	1	--	--	1	1	7
Lincoln	2	1	--	1	1	8	13
Lyon	29	1	16	5	77	45	173
Mineral	1	--	1	--	2	1	5
Nye	46	1	28	2	123	10	210
Pershing	4	--	3	1	2	1	11
Storey	2	1	1	--	2	1	7
Washoe	506	56	434	78	1,829	577	3,480
White Pine	4	--	2	--	7	2	15
Out-of-State	*	122	*	332	*	1,517	1,971
TOTAL	2,504	313	2,744	693	14,809	4,196	25,259

Total Licensees 25,259

Note: *Active Out-of-State licensees are added to the county where each license is active.

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State of Nevada
Department of Business & Industry
Real Estate Division
2501 E. Sahara Avenue, Suite 101
Las Vegas, NV 89104-4137

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