



Open House

A quarterly newsletter from the Nevada Real Estate Division

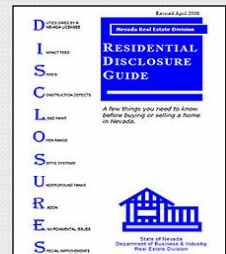
Department of Business & Industry

April 2010—SPRING

New Regulation Addresses Distribution of Residential Disclosure Guide

By Safia Anwari, Education & Information Officer

The Nevada Residential Disclosure Guide was first produced by the Real Estate Division in 2006. The booklet provides relevant information concerning disclosures that are required by federal, state and local laws and regulations in a residential real estate transaction. Real estate licensees must provide a copy of the Residential Disclosure Guide to the prospective buyers and sellers in accordance with NRS 645.194.



The Mission of the Real Estate Division Education Fund:

To ensure awareness of relevant laws and practices by all licensees through proactive education and information efforts.

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In February, the Real Estate Commission adopted regulation R090-09 to formally establish the distribution methods for the Residential Disclosure Guide. The booklet, which contains information regarding required federal, state and local disclosures in a residential real estate transaction, has been produced by the Division and provided to licensees and the public in electronic and print formats since July 2006.

R090-09, which will be codified as a new section in Chapter 645 of the Nevada Administrative Code (NAC), authorizes the use of the website and printed copies so that the Division may continue to fulfill its statutory obligation to disseminate disclosure information to the buyers and sellers of residential property by the same means. Depending on the availability of sufficient supplies, up to 10 printed copies may be obtained by licensees from the Las Vegas or Carson City offices. R090-09 also makes provision for licensees to request one printed copy of the booklet by mail.

Proposed Regulations

No other regulations affecting Chapter 645 have been recently adopted. However, several regulation amendments are in process.

R157-08

If adopted as amended at the workshop in November 2009, R157-08 will change the education provisions in NAC 645 in two ways. First, it will add a new section outlining the information concerning education courses required to obtain and maintain real estate licenses and permits that will be made available to licensees and the public via the Division's website. Secondly, in an effort to facilitate online license renewals, R157-08 will make it a requirement for approved sponsors to electronically provide to the Division, in the Division-prescribed format, the postlicensing and continuing education hours obtained by licensees and permit-holders for license and permit renewal. In addition, the term "sponsor," which exists in NAC 645 to refer to entities approved by the Commission to teach postlicensing and continuing education, will now be formally defined by R157-08.

R003-10

The intent of the proposed language is to update current regulations, specifically NAC 645.403, .4444 and .455 relating to the information required to be submitted to the Division with each application for

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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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Whatever Happened to Online License Renewal?

By Safia Anwari, Education & Information Officer

“When is license renewal going online?” has been a frequently heard question at the Division for some time now, so it is good to be able to report that the development of the system is nearing completion and Phase One of the pilot program is anticipated to go live shortly!

A major obstacle to the Division's progress was finding a way to incorporate into the technology the different amounts of transaction fees charged to the Division by credit card companies and banks for the acceptable methods of payment of license renewal fees—credit card and e-check—in a way that was also legislatively valid. The passage of Assembly Bill 548 in 2009 helped to cross that hurdle by amending NRS 354.1465 and granting state agencies the authority to aggregate the transaction or “convenience” fees over one fiscal year to establish the maximum amount that may be charged per transaction. Since then Division staff has been working diligently with

the Division's data system vendor for a smooth electronic renewal process for the licensees and the Division.

Phase One will be a user test phase for broker license renewals only. When it is activated, the first batch of broker license renewal notices will allow those licensees to log into the system; establish their password; complete the online renewal questionnaire as prompted (just as they would on paper); attest that the answers contained in the questionnaire are true and correct; and pay the fee by credit card or e-check.

The education credit upload by sponsor feature of the online renewal system is still under development at the present time, so during this phase and until further notice from the Division, licensees will continue to provide continuing education course information, which will be subject to audit and verification, during the online renewal process. ◀

Regulation...

(continued from front page)

approval of a course of prelicensing, postlicensing and continuing education; and NAC 645.450, which sets forth the suggested minimum curriculum for courses of continuing education. It proposes to amend NAC 645.4438 by adding the provision that instructors may not receive continuing education credits for the classes they teach.

R025-10

R025-10 proposes a revision of the NAC 645 licensing provisions relating to obtaining a broker's license by adding new language requiring Division approval of an applicant's financial condition *prior* to approval of

his application for a broker's license. The draft defines “liquid assets” and amends the financial information listed in NAC 645.120 that is required to be submitted with an application for a broker's license.

R003-10 and R025-10 were discussed and approved with minor changes at workshops held at the April 14, 2010, meeting of the Commission. Adoption workshops for the draft regulations will be scheduled and posted at <http://www.red.state.nv.us.htm> as soon as the Legislative Bureau Counsel provides the required draft language. ◀



Negotiating Short Sales and Foreclosures: Licensed Activity

By Safia Anwari, Education & Information Officer

The Division has recently been reliably informed that some licensees are delegating the transactional handling of short sales and REO deals, including communicating with banks, writing offers and negotiating with lenders, to unlicensed assistants. The brokers, reportedly, are either flagrantly permitting this, or “turning a blind eye” to the performance of such unlicensed activities in their offices.

Individuals who act on behalf of owners to negotiate with lenders are required to be licensed as distinct from unlicensed assistants in a brokerage office. The former, who may be known as Foreclosure or Loan Modification Consultants, must be licensed by the Mortgage Lending Division (MLD) pursuant to NRS/NAC 645F in order to legitimately perform any third-party services between a homeowner and lender.

A real estate licensee working on a short sale transaction may negotiate a short sale approval either directly with the lender or with a licensed consultant to negotiate on behalf of an owner/seller and lender if they are performing the negotiation as part of a real estate transaction. If dealing with anyone other than the owner/seller or lender, it is incumbent on the agent to ensure that the person with whom the sale is being negotiated is, in fact, licensed by the Mortgage Lending Division.

Unlicensed assistants are employees of real estate brokerage offices or teams within brokerage companies, who perform administrative tasks indirectly related to real estate transactions.

The Division’s position regarding unlicensed (and virtual) assistants and what they may not do in providing administrative support in the real estate environment has been laid out in the Division’s Informational Bulletin #10 since March 2005. The disallowed activities include, but are not limited to:

- Negotiating or agreeing to any commission, commission split, management fee or referral fee on behalf of a licensee;
- Receiving a referral fee from a licensee;
- Advising or guiding a client regarding a real estate contract, brokerage agreement, property management agreement, title, financing, closing or other real estate document;
- Showing property or providing listing information to clients or consumers;
- Giving listing presentations, or presenting or negotiating offers;
- Interviewing prospective client;
- Contacting or soliciting prospective sellers or buyers, landlords or tenants.

The handling of short sale or REO transactions by unlicensed assistants, whether as a result of direct action or inaction by the broker and/or team licensees, constitutes unlicensed activity in violation of NRS/NAC Chapters 645 and 645F and could subject the licensees and their unlicensed assistants to Division investigation and disciplinary action by the Real Estate Commission. Furthermore, the Real Estate Division will refer information to the Mortgage Lending Division.

Brokerage companies, including those that operate on a fee-for-service business model, should be mindful not to promote and provide services listed for licensure under Chapter 645F as an independent menu choice. These services must be part of a real estate transaction.

The Division cannot stress strongly enough the importance for licensees, and brokers particularly, to note and comply with the limitations on the functions of unlicensed assistants and the licensure requirements for third-party services between lender and homeowner. ◀



Disciplinary Actions/Stipulations



ACTIONS/DECISIONS

Real Estate Commission actions are not published in this newsletter until the 30-day period allowed for filing for Judicial Review has passed. If a stay on discipline is issued by the Court, the matter is not published until final outcome of the Review. A Respondent's license is automatically suspended for failure to comply with a Commission Order, and the Division may institute debt collection proceedings to recover fines and costs. We do not publish names of persons whose license applications are denied.

ALLEGATIONS/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.

Safia Anwari, Education & Information Officer

NAME	HEARING/ ORDER DATE	CONDUCT RESULTING IN VIOLATION	OUTCOME
Sheli A. Miller S.005410	9/22/09	Action: Knowingly delegated licensee responsibilities to unlicensed employee of the company—directed, through the MLS, enquiries about a listing to the unlicensed employee who also solicited buyer's offer; failed to contact prospective buyer's broker to negotiate sale of property.	Decision: Must pay fine of \$2,500 plus \$1,483.50 costs and attend 6 hours of "What Every Licensee Should Know" CE class within 6 months.
Gary Coles B.0023444 PM.0123444	9/23/09	Action: Failed to respond to request for transaction file; and disclosure of all facts and documents pertinent to Division's investigation and Notice of Hearing.	Decision: Must pay fine of \$15,000 plus \$1,285.42 costs within 6 months. License reduced to broker salesman's for 1 year.
Jimmie Morris B.0017639 S.00533442	11/3/09	Action: Allowed unlicensed activity and failed to supervise an office.	Stipulation: Must attend 3 hours during disciplinary hearings at one of the next 2 Commission meetings in the north with no CE credits towards license renewal or reinstatement.
Julie Reichardt B.0017013 PM.0117013	11/18/09	Action: Failed to: remit rental funds to owners of properties she managed; provide monthly accounting to clients; communicate with clients; maintain client files and pay contractor for services rendered. Issued checks with non-sufficient funds in account.	Stipulation: Voluntary surrender of property management permit with no reinstatement for at least 5 years. Must complete 6 hours of classroom continuing education in Broker Management within 6 months with no credits towards license renewal.



Disciplinary Actions/Stipulations



NAME	HEARING/ ORDER DATE	CONDUCT RESULTING IN VIOLATION	OUTCOME
Margaret Burgess/ Peggy C. Burgess dba Arcadia Management Group, Inc.	2/10/10	Action: Conducted unlicensed activity by entering into an agreement for the management of a commercial property. Falsely informed the Division that the business was conducted under the statutory exemption of maintaining an office at the property managed.	Stipulation: Agrees to pay fine of \$3,000 and cease any activity in Nevada requiring licensure by the Division.
Gary Lee Shaw dba Arcadia Management Group, Inc. B.00228822.CORP PM.0163304	2/10/10	Action: Conducted unlicensed activity by acting as designated broker for purposes of managing a commercial property. Later obtained a broker's license and property management permit. Falsely informed the Division that the business was conducted under the statutory exemption of maintaining an office at the property managed.	Stipulation: Agrees to pay fine of \$7,500.
Charles C.T. Lam B.0019821.INDV BS.0019821	2/10/10	Action: Continued to operate brokerage business after business license from Clark County had expired.	Stipulation: Agrees to pay fine of \$600.
Samantha Kay Weitzel S.0051534	2/10/10	Action: As salesperson, executed listing and referral fee agreements as broker or on behalf of broker without the broker's consent. Acted in the capacity of broker and materially misrepresented herself as a broker without the required broker's license; conducted licensed activities in a manner which constitute deceit, fraud or dishonest dealing.	Stipulation: Agrees to pay fine of \$10,000 within 12 months; complete 6 hours of "What Every Licensee Should Know 2010" and 6 hours of live "Ethics" designated continuing education within 6 months with no credits towards license renewal or reinstatement.
William Heath, II S.0043692	3/2/10	Action: License summarily suspended with further Administrative Order to not engage in any activity requiring a license or permit pursuant to Chapter 645.	

A Review of Broker's Property Management Trust Accounting

By Linda Chavez, Compliance/Audit Investigator



As any broker engaged in property management activities knows, the regulations mandate the maintenance of at least two trust accounts and the monthly reconciliation of those trust account bank statements. The

regulations further require, annually, the submission of trust account reconciliations to the Division on the anniversary and the renewal date of the broker's license. In its review of trust account reconciliations, staff at the Division's Carson City office has identified several areas of confusion or concern. These are discussed below to dispel ambiguity and provide clarity.

Broker Funds Held in Trust

The original intent of allowing brokers to hold \$100 of their own money in client trust was to cover administrative costs associated with the account, such as check printing charges, monthly service charges and an occasional returned check charge. If any or all of those charges occur the broker should, every month, replace the fees charged with "new" broker funds to restore the total back up to \$100. In the event the monthly bank charges exceed the \$100 of the broker funding in the account, NAC645.655 (9) allows ample time to restore the trust balance appropriately. Trust funds should always be protected because they are "funds belonging to others." Keeping excessive broker funds in a client's trust account could be viewed as commingling pursuant to NRS645.310 (3). All earned management fees should be removed monthly.

Trust Bank Accounts to be Maintained in Nevada

From time to time, the Division receives requests for permission from the Nevada brokers of national or multi-state companies to hold the funds of Nevada clients in out-of-state trust accounts if the controller's office of the company is located outside Nevada. This is not allowable pursuant to NRS645.310 (4). The Division holds the broker responsible for reviewing and assuring

that trust accounts are in balance at all times. Corporate non-licensees cannot be signers on a Nevada property management trust account.

Authorized Signers for Nevada Property Management Trust Accounts

The broker should always be the primary signer on a property management trust account in order to maintain control. A qualified designated broker-salesman may be the sole signer with the broker's written authorization filed with the Division. Such authorization, however, does not relieve the broker of his responsibility for his client's funds. Broker-salesmen and salesmen may also be a second signature on a trust account. However, a salesman may never be the sole signer. Individuals not licensed in Nevada may never sign on the trust account even if they are company owners. Signature stamps may not be used in lieu of the broker's signature. NAC645.655 (5) & (6).

Documents Submitted with Annual Reconciliation

Annual reconciliations must be prepared on Division Form, # 546, located online at www.red.state.nv.us. Information required includes trust account balance(s), outstanding client funds and ledger information only for the month preceding the license renewal anniversary month, not the entire 12-month history of trust account transactions. The completed Form 546 must be submitted with the broker's original signature, a copy of the bank statement for the month reconciled, and a copy of the broker's account ledgers (Schedule D) which identifies "whose money is in the account" either by owner name and dollar amount or the property address and the dollar amount.

Trust Fund Accounting & Record Keeping for Nevada Brokers

This Division publication can be found on the Division's web site under the link to Publications. It contains many useful insights into trust account record keeping as well as a summary of all the NRS and NAC citations that pertain to maintaining a trust account in Nevada. This booklet should be a "must have" hard copy in all property management office procedures. ◀

Trust Account Trivia

By Linda Chavez

1. When is my reconciliation due?
2. I'm late...what should I do?
3. My trust account is out of balance and my reconciliation is due...what should I do?
4. Can my bookkeeper be a signer on my trust account? Can my agents that have permits sign?
5. Why do I need 2 trust accounts?
6. What is a custodial account? Can I have one in Nevada?
7. Our current broker who has a permit is leaving the company. Does that broker have to submit a Trust Account Reconciliation?
8. My company has a designated Property Manager because the broker does not hold a Property Management Permit. When is our trust account reconciliation due?
9. What do I have to send with my trust account reconciliation?
10. Do I send in 12 months of records once a year?
11. Can I invest client monies in cash deposit accounts or U.S. Treasury bonds?

Check the answers online at <http://red.state.nv.us/publications/newsletters.htm>.

Did you forget to renew your real estate license?

As of March 1, 2010, the following number of real estate licenses had not been renewed by their expiration dates:

Brokers: 347
Broker/Salesperson: 647
Salesperson: 3,882

Total expired licenses = 4,876



A real estate license must be renewed within one year of its expiration date or it will be permanently closed.
For more information, visit <http://red.state.nv.us/FAQ/expired.htm>.

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Real Estate Statistics as of March 2010

	BROKER		BROKER/ SALESPERSON		SALESPERSON		Total	
	Active	Inactive	Active	Inactive	Active	Inactive	Active	Inactive
Unknown	74	53	70	76	628	214	772	343
Carson City	45	31	45	20	146	51	236	102
Churchill	13	14	7	2	47	13	67	29
Clark	1742	490	2237	506	12595	2712	16574	3708
Douglas	85	18	79	21	288	80	452	119
Elko	29	8	22	7	58	18	109	33
Esmeralda	0	0	0	0	0	1	0	1
Eureka	1	1	0	0	0	0	1	1
Humboldt	4	4	5	4	18	1	27	9
Lander	3	1	1	0	5	0	9	1
Lincoln	1	1	1	0	4	1	6	2
Lyon	29	13	25	10	119	51	173	74
Mineral	1	0	1	0	2	1	4	1
Nye	47	12	27	11	150	35	224	58
Out Of State	234	44	181	82	397	232	812	358
Pershing	2	0	0	1	4	0	6	1
Storey	2	0	1	1	9	3	12	4
Washoe	409	235	392	141	1843	427	2644	803
White Pine	2	0	2	2	7	3	11	5
Total	2723	925	3096	884	16320	3843	22139	5652