

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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The Division's Perspective on Real Estate Advertising

By Bruce Alitt, Chief Investigator

The purpose of this article is to give the professional real estate community some of the advertising basics as regulated by the Nevada Revised Statutes (NRS) and Administrative Code (NAC) 645, as well as a Division perspective. It is not meant to be all-inclusive, or to include information about other state or federal laws regarding advertising.

First of all, why is real estate licensee advertising regulated? It is regulated to ensure that the advertising is honest and does not mislead the consumer. It is regulated to ensure that the public is aware that they are dealing with a licensed real estate agent and with what company that person is associated.

NRS/NAC 645 covers all advertising, including, but not be limited to, newspapers, magazines, signs, television, radio, flyers, business cards and the internet, which includes blogs, Craigslist, and other electronic formats.

NAC 645.610 requires that, in any advertising, an agent must advertise under the name with which he is licensed to engage in business by the Division. The only exception to this is defined in NAC 645.611. It only allows for the use of the terms "team" or "group" under certain conditions. The team or group name must contain at least the last name of one of the members. The brokerage firm name must



be displayed with prominence. Style, size, color, location, etc. of the brokerage firm name will determine prominence. The purpose is to make sure that the public is aware that the licensee is associated with a brokerage firm and that firm's name. If the broker agrees, the licensee may use his/her own private phone number. Additionally, common nicknames may be used such as "Mike" for Michael, "Susie" for Susan or "Bill" for William.

A licensee may use descriptive terms such as "specialist," "expert," or "top producer" as long as there is empirical data or facts to substantiate such a claim. Earned designations, such as GRI, may be used in any advertising. Specific licensing status designation of broker, broker-salesman or salesman may also be used, although not required. The words "woman" or "person" may be substituted for "man" in any of the licensing status designations.

If a licensee is advertising his own property, he must disclose in all advertising that he is a licensee. This disclosure may be accomplished with a reference to the

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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.

REAL ESTATE COMMISSION

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RICHARD JOHNSON
Commissioner
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Commission Welcomes Newest Member

By Teresa Rice, Publications Writer

On November 18, 2009, Richard K. Johnson was sworn in as the newest member of the Nevada Real Estate Commission. He will be filling the position vacated by ex-Commissioner Janice Copple, whose term expired in October. Johnson's appointment will run from November 1, 2009, through October 20, 2012.

Commissioner Johnson is the owner/broker of Johnson Group, a full-service commercial real estate brokerage firm in Reno, Nevada. With twenty years of experience in all aspects of the commercial industry, he is known for his broad knowledge of commercial real estate, as well as his new business development and strategic planning skills.

In 1991, Johnson left the corporate world of Fortune 500 companies, where his main area of expertise was the development of new business ventures and the reorganization of existing corporations. He joined the commercial division of Myers Realty (now Prudential) as a real estate salesman. In his second year, he became the top-producing agent, and subsequently a member of the Chairman's Circle, which is the top one percent of all Prudential realtors in North America. He began participating in the training and education of other agents, and is now an instructor approved by the Division. Johnson is a developer of several continuing education classes, as well as commercial purchase and lease agreements.

In addition to his individual broker license, Commissioner Johnson holds a corporate broker license and a property manager permit. He belongs to several committees at the Reno-Sparks Association of Realtors, including the Risk Reduction, the Teaching of Continuing Education and the Professional Standards Committees. He is also an honorary chairman of the Business Advisory Council and a member of the National Association of Realtors.

As a member of the Real Estate Commission, Johnson will serve alongside Commissioners Bert Gurr (President), Mark Sykes (Vice President), Soozie Jones Walker (Secretary) and David Boyer. The five-member panel acts in an advisory capacity to the Nevada Real Estate Division, adopts regulations governing activities of real estate licensees in Nevada and conducts disciplinary hearings. The commission members are appointed by the Governor based upon a statutory residency requirement (NRS 645.100). Each member is appointed a three-year term and may be reappointed to serve for a second term, not to exceed 6-years consecutively.

For a meeting agenda, visit the Division's website at www.red.state.nv.us/meetings/meetings.htm. ◀



Richard Johnson has been appointed to the Real Estate Commission by Governor Jim Gibbons.

Advertising...

(continued from front page)

licensee as a licensed real estate agent, licensee, agent, or broker, broker-salesman or salesman, as appropriate.

If the brokerage firm is a franchise, the broker must include in a conspicuous way in all advertisements the real, fictitious or corporate name under which he is licensed, as well as an acknowledgement that each office is independently owned and operated.

In order to advertise any property for sale or lease, the licensee must have the knowledge and written consent of the owner or his agent. A licensee cannot advertise as "for sale by owner," "for lease by owner," or similar words. Once a property is sold and escrow is closed, the sign must be removed and all advertising must cease. The same holds true for an expired listing. If the new owner gives the licensee permission to leave the sign, since the property is no longer available, there must be a clear rider or sticker with the word "sold," or something similar on the sign. If not, it would be considered misleading advertising.

Recent advertising issues that the Division has been involved in concern agents not disclosing that they are licensees in advertising, the company name not being displayed with prominence in internet advertising, advertising in which an agent advertised that his listings could be cancelled at any time but did not disclose that there would be a cancellation fee and groups of agents using terms such as "Smith and Associates." In all cases the agent(s) was contacted and the issue was resolved.

The Division is continually asked about advertising that includes offers of reduced commissions and rebates to the buyer or seller. Commissions are negotiable; therefore, an offer of a reduced commission is perfectly acceptable so long as the reduction and any and all restrictions or conditions are disclosed in writing. The same holds true for rebates to the buyer or seller as principals to the transaction. However, a licensee

"The team or group name must contain at least the last name of one of the members."

cannot advertise or give any type of referral fee or gift to an unlicensed third party under any condition. If a licensee does advertise a gift to a principal, he should be clear and specific. A "large-screen TV" may mean a 27-inch from Joe's Discount to the licensee, while it may mean a 52-inch HDTV to the principal.

Lastly, the Division feels it necessary to remind all licensees of their obligation to completely disclose all fees they will receive. While the Division does not govern what fees may be charged or the amount of any fee, licensees have a duty of disclosure and protection of the public from misrepresentation and unethical practices. Further, the principal must agree to and acknowledge any fee in advance with informed consent. Placing a fee on an "Estimated Closing Costs" sheet and getting the principal to sign or initial that sheet is not informed consent.

The Division does not pre-approve licensee advertising; however, we are always available to answer questions to help you make sure that you stay in compliance. ◀

NRED Wins Second ARELLO Award



The Nevada Law and Reference Guide, published by the Nevada Real Estate Division, has received a Communication and Education Award from ARELLO, the Association of Real Estate License Law Officials. A framed plaque representing the award was presented to Administrator Gail Anderson and Real Estate Commissioners Bert Gurr and David Boyer at ARELLO's annual conference held in Miami, Florida, in October 2009 (see picture).

ARELLO works with real estate regulatory agencies to promote & protect public interest. The core values of ARELLO's mission include the exchange of information and the creation of knowledge which it supports by setting and certifying standards for distance education in real estate that are recognized globally. Its current U.S. membership includes 45 states.

This is the second Division project to receive recognition from ARELLO within the last 3 years. In 2007, the Division's website www.red.state.nv.us won the Communication award for design and informative content. ◀

- Safia Anwari



Disciplinary Actions/Stipulations



ACTIONS/DECISIONS

By Teresa Rice
Publications Writer

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.

NAME	HEARING DATE	VIOLATION	ACTION
Roger Baldwin S.0044327	07/15/2009	Allegation: Secured estimate for client from vendor and altered invoice amount. Accepted checks made payable to him directly from client for window treatments and yard cleanup.	Stipulation: Must pay a fine of \$2,000 and attend 6 hours of WELSK, 6 hours of Contracts and 6 hours of disciplinary hearings within 6 months.
John Bissett B.0001597	07/15/2009	Allegation: Failed to obtain Duties Owed form when selling real property in which the estate had a legal interest; failed to provide the purchaser with information that an estate had a legal interest in the subject property.	Stipulation: Voluntarily surrendered license in lieu of other disciplinary action.
Cynthia Duffy B.0052356	07/15/2009	Allegation: Allowed her name and brokerage to be used to conduct a transaction with a client for an agent that was not licensed under her agency.	Stipulation: Must pay a fine of \$1,500 and attend 6 hours of WELSK and 6 hours of disciplinary hearings within 12 months.
Karen Givani S.0044349	07/15/2009	Action: Signed broker's name on commission instructions directing the title company to alter commission so that a portion would apply to buyer's closing costs.	Decision: Must pay a fine of \$1,000 and hearing costs of \$518 within 30 days. License was not active at the time; must appear before Commission before new license or permit may be issued.
Chad Smittkamp B.0031508 PM.0131508	07/15/2009	Allegation: Issued check from trust account without sufficient funds; failed to return security deposits; failed to provide yearly trust account reconciliations to the Division for a period of 2 years; failed to respond to the Division when information was requested concerning cases	Stipulation: Voluntarily surrendered license in lieu of other disciplinary action.



Disciplinary Actions/Stipulations



NAME	HEARING DATE	VIOLATION	ACTION
Barry Floyd B.0022854 PM.0122854	09/22/09	Action: Commingled and converted money of others for his own personal use. Made unauthorized cash withdrawals from bank accounts not belonging to him; failed to respond to Complaint, Notice of Hearing and Notice of Documents from Division.	Decision: License and property manager permit revoked. Must pay a fine of \$270,000 and hearing costs of \$1,028.50 within 6 months.
Bruce Williams Unlicensed activity	09/22/09	Action: Unlicensed activity; failed to respond to Complaint, Notice of Hearing and Notice of Documents.	Decision: Must pay a fine of \$5,000 within 60 days.
Frank Allen Unlicensed activity	09/22/09	Action: Unlicensed activity; failed to respond to Complaint, Notice of Hearing and Notice of Documents.	Decision: Must pay a fine of \$5,000 within 60 days.
Brenda Ho Le Unlicensed activity	09/23/09	Action: Transported bus loads of investors to view condo conversion project for the purpose of purchasing units; advertised flyers specializing in pre-development real estate services without a LV license.	Decision: Must pay a fine of \$5,000 within 90 days.
Thomas Power S.0045498	09/23/09	Action: Power was listing agent, buyer's agent and purchaser in a transaction. He failed to provide proper forms, failed to provide broker with documentation and acted negligent during the transaction.	Decision: Must pay a fine of \$5,000 and attend 6 hours of Ethics and 6 hours of Agency within 6 months.
Kathy Moreno Unlicensed activity	09/22/09	Action: Acted as a real estate broker and/or salesperson without a license.	Decision: Must pay a fine of \$2,500.02 within 6 months.
Sharon Wilson B.0043730 PM.0143730	09/22/09	Allegation: Failed to provide clients with proper accounting and receipts for numerous expenses that were deducted from clients' proceeds while acting as a property manager; provided false documentation to the Division.	Stipulation: Voluntarily surrendered license in lieu of other disciplinary action.
Steven Nohrden S. 0075590	09/23/09	Allegation: After a property listed at \$1,350,000 was transferred to him, he reduced the listing in the MLS 5 times without the seller's knowledge until the price was reduced to \$649,126.	Stipulation: Must pay a fine of \$7,000 and attend 6 hours of WELSK 2010 and 6 hours of Contracts within 6 months.

Acting on the Authority of a Real Estate License

By Teresa Rice, Publications Writer



The Question:

What activities may be performed by a real estate broker and/or broker-salesperson and/or salesperson “while acting under the authority of their license” as it relates to Chapter 645? —>

Real Estate Trivia...

By Safia Anwari

Agent is a licensed salesman and property manager associated with a licensed Broker. All other licensees at the brokerage are salespersons. Agent closes transaction with client to purchase a residential property and goes on to manage it as a rental. Agent is thorough in her dealings with clients and other parties to the extent that when she finds Tenant she has him execute the Duties Owed and Consent to Act disclosures.

What is the violation?

Find the answer on our website at www.red.state.nv.us/publications/newsletters.htm.

The Nevada Real Estate Division has published its position regarding “while acting under the authority of their license” as it relates to Chapter 645F, which governs Mortgage Lending and Related Professions.

According to Chapter 645F, there are three activities which require a license by the Mortgage Lending Division:

- 1) *Foreclosure Consultant*—a person who, for compensation, makes any solicitation, representation or offer to a homeowner to perform a “covered service” that will prevent or postpone a foreclosure sale.
- 2) *Loan Modification Consultant*—a person who, for compensation, makes any solicitation, representation or offer to a homeowner to perform any act that will adjust the terms of a mortgage loan.
- 3) *Provider of Covered Services*—Includes financial counseling; receiving money for the purpose of distributing it to creditors on the homeowner’s behalf; contacting creditors and/or arranging extensions on the homeowner’s behalf; and giving any advice or instruction to the homeowner which relates to the cure of a default or reinstatement of obligation.

It is the Division’s position that these activities must be part of the real estate transaction. As such, a commission paid to a licensee through a real estate brokerage as a result of these activities shall serve as evidence that the activities engaged in by the real estate licensee were “acting under the authority of their license.” There may be no separate

or distinct payment or compensation for performance of any of these activities, even if the transaction does not close and no commission is paid.

Since loan modification, foreclosure consulting and providing covered services must be part of the real estate transaction, the broker is ultimately responsible for the actions of the licensee in that regard, and all documentation must be a part of the broker file.

Brokerage companies which offer a menu of services under a fee-for-service business model may not offer as an independent menu choice to provide any of the services listed above for compensation under their real estate license. Separate licensure under Chapter 645F is required for these services that are not part of a real estate transaction.

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The above only summarizes the official position statement issued by the Real Estate Division. To view the statement in its entirety, visit our website at [www.red.state.nv.us](http://www.red.state.nv.us) and click on the [Publications](#) link. Nothing in the position statement is meant to prevent a licensed real estate agent from getting the appropriate credentials for providing loan modification, foreclosure consulting or covered services through the Mortgage Lending Division. ◀

# The Selling of REOs: The Answers to Recurring Questions

By Bruce Alitt, Chief Investigator



Current market conditions have resulted in the sale of many bank- or lender-owned properties (REO) being attempted and executed by real estate licensees. The Division has received multiple inquiries regarding the

applicability of several requirements of a licensee in a real estate transaction involving an REO sale.

The Division seeks to clarify the licensee's duties and responsibilities in REO transactions in key areas for which we have received recurring questions:

- It is the Division's position that an REO sale is a sale between a buyer and a seller, usually represented by 2 different real estate licensees, and it is no different from any other real estate transaction in regard to compliance with Nevada real estate law. The Division expects that all applicable Nevada Revised Statutes (NRS) and all Nevada Administrative Codes (NAC) will be adhered to by all licensees. Applicable statutes and codes will be enforced by the Division.
- As discussed and concluded by the Nevada Real Estate Commission at their July 2009 meeting, until a seller accepts an offer in writing and until the broker has knowledge of that acceptance, all offers submitted by buyers must be presented to the seller by the listing agent, regardless of any restrictions or requests by the seller. The only exception to this is the limited service agreement, as provided in subsection 4 of NRS 645.254, in which a seller may choose to have all offers or no offers presented by their listing agent.
- The listing agent must provide the buyer or the representative/agent of the buyer written notice of a rejection of an offer (NAC 645.632). The Division does accept that some sellers will not sign a rejection to the buyer. That circumstance then places a burden on the listing agent to note the rejection method and date, sign the rejected offer, and provide it to the buyer or buyer's agent. Example: "Offer rejected per telephone conversation with [seller/seller rep name] on 8/24/09. Signed Agent Jones/date."
- All offers on a property, as well as other transactional documentation, must be kept for a period of 5 years after the closing date or last activity involving the property (NAC 645.650). This includes offers and counter offers that have been rejected. These files can be kept electronically as long as they can be reproduced in hard copy, if requested by the Division or other appropriate authority.
- The buyer may waive his or her rights under NRS 113 by signing a notarized waiver form. NRS 113 includes the Seller's Real Property Disclosure (SRPD).
- No waiver is allowed or acceptable for the seller's requirement to provide the resale package to be supplied and paid for by the seller and submitted to the buyer if the property is in a Common Interest Community/ Homeowners Association. (NRS 116.4109)

Although these areas address the most commonly-asked questions regarding REO transactions, licensees must act accordingly to ensure that all other applicable statutes and codes are adhered to by both agents as they would in any real estate transaction, whether or not the property is for sale as an REO. ◀

Welcome

## NEW STAFF

**Rochelle Russum** joined the Real Estate Division on October 19, 2009, as the new licensing agent in the Carson City office.

**Marisol Rivas** joined the Real Estate Division on October 27, 2009, as the new administrative assistant for the Appraisal section in Carson City.

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 Department of Business & Industry  
 Real Estate Division  
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### Real Estate Statistics as of NOVEMBER 2009

|              | Brokers     |            | Broker/Salespersons |            | Salespersons |             | TOTAL        |             |
|--------------|-------------|------------|---------------------|------------|--------------|-------------|--------------|-------------|
|              | Active      | Inactive   | Active              | Inactive   | Active       | Inactive    | Active       | Inactive    |
| Unknown      | 80          | 53         | 82                  | 78         | 709          | 224         | 871          | 355         |
| Carson City  | 48          | 32         | 43                  | 23         | 146          | 59          | 237          | 114         |
| Churchill    | 14          | 15         | 7                   | 3          | 48           | 12          | 69           | 30          |
| Clark        | 1760        | 510        | 2200                | 542        | 12880        | 2789        | 16840        | 3841        |
| Douglas      | 90          | 20         | 75                  | 25         | 288          | 90          | 453          | 135         |
| Elko         | 31          | 8          | 21                  | 8          | 59           | 18          | 111          | 34          |
| Esmeralda    | 0           | 0          | 0                   | 0          | 1            | 0           | 1            | 0           |
| Eureka       | 1           | 1          | 0                   | 0          | 0            | 0           | 1            | 1           |
| Humboldt     | 4           | 4          | 6                   | 4          | 18           | 1           | 28           | 9           |
| Lander       | 3           | 1          | 1                   | 0          | 5            | 0           | 9            | 1           |
| Lincoln      | 1           | 1          | 0                   | 1          | 3            | 1           | 4            | 3           |
| Lyon         | 31          | 14         | 22                  | 12         | 126          | 50          | 179          | 76          |
| Mineral      | 1           | 0          | 1                   | 0          | 3            | 1           | 5            | 1           |
| Nye          | 46          | 12         | 30                  | 13         | 151          | 36          | 227          | 61          |
| Out Of State | 238         | 45         | 181                 | 80         | 393          | 229         | 812          | 354         |
| Pershing     | 2           | 0          | 0                   | 1          | 4            | 0           | 6            | 1           |
| Storey       | 2           | 0          | 2                   | 0          | 7            | 3           | 11           | 3           |
| Washoe       | 416         | 244        | 401                 | 143        | 1920         | 392         | 2737         | 779         |
| White Pine   | 2           | 0          | 2                   | 2          | 7            | 2           | 11           | 4           |
| <b>Total</b> | <b>2770</b> | <b>960</b> | <b>3074</b>         | <b>935</b> | <b>16768</b> | <b>3907</b> | <b>22612</b> | <b>5802</b> |