



Open House

A newsletter from the Nevada Real Estate Division

Volume 27 Issue 1

Department of Business & Industry

Spring 2005

Sweeping Regulation Changes Adopted by Commission

The Real Estate Commission has completed its **mandated ten-year review** of Chapter 645 of the Nevada Administrative Code (NAC). The Commission began reviewing the regulations at its June 2003 meeting in Reno, and continued through April 2004. The Real Estate Division conducted statewide workshops on the proposed regulations culminating with the September 2004 Commission Adoption Hearing held in Las Vegas. As a result, there are extensive changes to NAC 645.

Most of the regulation amendments became effective November 30, 2004 while some of the amendments will be phased-in by January 2006. 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 Instructor and Student conduct have been adopted. 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 on-line version of this publication is interactive with direct links to the regulations. Check it out at www.red.state.nv.us: move your mouse to "Newsletters", then to "Real Estate 'Open House'", then click on "Spring, 2005".

The following is a summary of the more significant regulation amendments:

STANDARDS OF PRACTICE

645.600 Broker supervision

In establishing policies, rules, procedures and systems, brokers shall consider the number of licensees associated, employees employed, and the number and location of branch offices. Not many new words added to this section; however, highly recommended reading for all brokers regarding supervision of the activities of *licensees, employees, and operation of business*.

645.605 Gross negligence, incompetence, deceit, fraud, dishonest dealing

All licensees should review this list of conduct unbecoming of licensees. Added to the list is impeding

or attempting to impede any investigation of the Division by "failing to supply a written response, including supporting documentation".

645.610 Restrictions on advertising

Clarifying language when advertising as an *owner-licensee*; advertising exclusively listed property is prohibited without the prior written consent of the listing broker and knowledge of the property owner. A licensee may advertise only in the name under which he is licensed. Advertising includes any unsolicited printed material and any broadcast made by radio, television, or electronic means such as e-mail, the Internet, billboards and signs as well as business cards, stationery, forms and other documents used in a real estate transaction.

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Open House

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is to ensure awareness of relevant laws and
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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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Governor Appoints Curry Jameson to Real Estate Commission

Governor Kenny Guinn has appointed Curry Jameson as the newest member of the Nevada Real Estate Commission.

A native of Reno, Curry was a professional musician for over 14 years before entering the real estate business in 1977. Curry is owner and corporate broker of Realty Executives of Northern Nevada. He includes subdivisions, property management, commercial leasing, and sales in his real estate career. He has listed and sold over 150 million dollars of property and has been listed in "Who's Who" in real estate. Curry has earned numerous awards including the 1982 Salesman of the Year and 1985 REALTOR® of the Year for the Reno/Sparks Association.

Curry has given a great deal of his personal time back to the industry and his community. He served as president of the Reno/Sparks Association and Nevada Association of REALTORS® in 1985 and 1991, respectively. Curry was chairman of the Reno/Sparks Association of REALTORS® Professional Standards committee and current chair of the Political Affairs committee. He has also served as a member of the Advisory Committee to the Nevada Real Estate Commission and Division.

During his real estate career, Curry has also served in several positions at the national level with the National Association REALTORS® as National Director and chairing several of the national organization's political action and fundraising committees. He is the past chairman of the Federal Housing Policy Committee, NAR® Tax Strategy Committee, and vice chair of the Public Policy Forum. As past Chairman of the Federal Housing Policy Committee for the National Association of REALTORS®, he and the committee were responsible for interacting with HUD in the development of the Property Disposition Program.

Education has been a very important part of his career. Curry has been an instructor for the National Association of REALTORS®, a GRI® Instructor for the State Association, and has instructed many other courses in real estate.

In 1990, he earned the REALTOR® of the Year from the Nevada Association of REALTORS®, and the Joe Nolan Memorial Award in 1993, for outstanding service. He was also recognized as one of the top 50 REALTORS® in the recent historical 50th anniversary of the Nevada Association of REALTORS®.

Curry's community service also includes being a director, advisor and/or member of the Economic Development Authority of Western Nevada, Junior Achievement of Northern Nevada, Western Industrial Nevada, Nevada Easter Seals, CARE Chest of Northern Nevada, and Suicide Prevention and Crisis Call Center of Northern Nevada. He is a past president of the Executive Association of Reno and is chairman of the Board of the Greater Reno/Sparks Chamber of Commerce. and currently Board member of Big Brothers and Big Sisters.

Each member of the Real Estate Commission serves a three-year term and is eligible to be re-appointed for one additional consecutive term. The five-member Commission adopts regulations governing activities of real estate licensees in Nevada. The Commission also conducts disciplinary hearings and acts in an advisory capacity to the Real Estate Division.



Sweeping Regulation Changes Adopted by Commission

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645.611 Use of terms “team” and “group” in advertising

This is a brand new amendment to the regulations. A licensee may use these terms to advertise the services provided by the licensee under certain circumstances.

645.613 Dissemination of unsolicited information through the Internet or e-mail

This is also new — this practice is considered to be advertising, and as such, shall comply with all advertising requirements; however, no agency relationship may be established by clicking of an “acceptance box” on the Internet or through e-mail. All licensees must make *Duties Owed* disclosures, obtain appropriate, legal signatures and follow all requirements set forth in the law.

645.640 Disclosure of interest of licensee

Leasing activity was added to the list of required disclosures when a licensee has an interest in the transaction. This was the Division’s position; now it is in the regulation.

645.650 Records retention; broker and associates’ obligations

A broker shall keep complete records of transactions for at least five years. What’s new here is that brokers’ associates must provide any paperwork related to the transaction to the employing broker “within five calendar days after that paperwork is executed by all the parties”.

645.655 Trust and custodial accounts

Added to the existing requirements, a rubber stamp signature cannot be used to withdraw funds from a broker trust or custodial account (also see 645.807, next page).

Effective July 1, 2005, a broker who is engaged in property management shall maintain two separate property management trust accounts, one for activities relating to rental operations, and the other used solely for security deposits. (This requirement does not apply to custodial accounts).

645.657 Payment of deposits

A licensee who receives a deposit on any transaction shall pay over the deposit to the employing broker or registered owner-developer within one business day after receiving the deposit. (Hopefully this is not news to anyone). What is new is the wording “or to the escrow business or company designated in the contract” within one business day after receiving

the deposit. Now the regulation more closely relates to actual practice.

645.660 Disclosure of interest required before deposit of money

A licensee shall not deposit money received in any escrow business or company in which the licensee or anyone associated with the licensee has an interest without disclosing this association “to all parties to the transaction.”

645.665 Absence of broker from business

The following was added to the existing language: “If a broker will be absent from his business for 30 days or more, he must designate an office manager . . . Or make other arrangements approved by the Division in advance.”

645.675 Agreements for advance fees

The following was added to the existing language: “Provide that a full refund will be made to the customer if the services for which the advance fee is being received are not substantially or materially provided to the customer.” This has always been a requirement for advance fee rental lists (NAC 645.678) and now is required for all advance fee agreements.

645.680 Complaints, investigations, actions by Administrator

Any action of a licensee may be investigated if it appears that the action violates a provision of chapters 645, brokers and salespersons; 119, sale of subdivided land; 119A, timeshare; and 119B, campground membership. Recently added to the list are chapters 113, disclosure law relating to the sale of real property; 116, Common-interest Community law; 645C, real estate appraisers; 645D, inspectors of structures.

Language clarifying disposition of an investigation was added stating that, in addition to other options, the Administrator has the authority to “impose an administrative fine pursuant to NAC 645.695.”

Regulations of Owner-Developers

NAC 645.770 Disciplinary action; financial status of registered owner-developer

This section states that the Real Estate Commission may take disciplinary action “for any violation of chapter 113, 116, 119, 119A, 645, 645C, or 645D of NRS or the regulations adopted pursuant thereto.”

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Sweeping Regulation Changes Adopted by Commission

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Regulations of Property Managers

645.807 Trust accounts: Execution of checks by certain broker-salespersons

A broker-salesperson who holds a property management permit may sign checks on a trust account with the written permission of the broker. The following language was added to this section: "A signature applied by use of a rubber stamp does not constitute the signature of a real estate broker-salesperson for the purposes of this section" (also see 645.655, page 3).

Proceedings before the Commission

645.835 Amendment or withdrawal of complaint

A complaint may be amended at any time. The Commission will grant a continuance if the amendment materially alters the complaint. A complaint may be withdrawn at any time before the hearing begins.

645.840 Motions

This section gives procedure and timeframes for the filing of written motions.

645.845 Rules of evidence; informality of proceedings

The Commission and Division are not bound by the technical rules of evidence in conducting an investigation, inquiry or hearing. Other rules of evidence are also discussed in this section.

645.850 Documentary evidence of respondent

Not less than five working days before a hearing, the respondent must provide the Division a copy of documentation that will be used by the respondent at a hearing. At the hearing, the respondent must provide ten copies of each document that he wishes to be admitted into evidence. The Commission may exclude any document the respondent fails to provide as required by this section.

645.855 Broker of record required to attend disciplinary hearing

The broker of record must attend the disciplinary hearing concerning any licensee associated with that broker.

645.860 Failure of licensee to appear at hearing

The Commission may proceed to consider a case without the participation of the absent licensee and may dispose of the matter on the basis of the evidence presented.

645.865 Voluntary surrender of license, permit, registration or certificate

The Commission may accept voluntary surrender of a license, permit registration or certificate in lieu of imposing any other disciplinary action.

645.870 Reporting of disciplinary action or denial of application

The Commission may report any disciplinary action or license denial to any national repository which records disciplinary actions, any regulatory agency of another state, and any other State of Nevada agency or board.

645.875 Petition for regulations

Any person may petition the Commission to adopt, file, amend, or repeal any regulation. (This section is substituted in revision for NAC 645.090).

Education—General Provisions

645.403 Approval of school: Application

The application must include comprehensive information regarding the school location, facilities, ownership, instructors, directors, principals, officers and other interested parties. The application now must also include "a statement as to whether the school or any instructor employed by the school has been disciplined by any governmental agency in this or any other state."

645.407 Approval of school: Notice of material change; annual renewal; denial or renewal.

This section, with minor revisions, is substituted for NAC 645.446.

645.410 Approval of school: General requirements for certification of students

The following clarifying language was added to the section: "The entire course must be completed by the applicant or licensee to satisfy the licensing requirements."

645.426 Instructors: Requirements for and restrictions on approval; periodic review and evaluation

The instructor qualifications from 645.425 (pre-licensing) & 645.460 (continuing education) are merged into this section with revisions. These revised qualifications apply to all instructors (prelicensing, postlicensing and continuing education).

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645.427 Instructors: Withdrawal of approval

The Administrator may withdraw approval of an instructor under certain circumstances and upon following a prescribed course of action. The course sponsor has 30 days to respond and take corrective measures. The Administrator may then decide to withdraw approval or give the instructor conditional or unconditional approval. Withdrawal of approval may be appealed to the Commission not later than 30 days after the effective date of withdrawal of approval. The Commission will hold a hearing concerning the withdrawal of approval at a regularly scheduled meeting and affirm or reverse the Administrator's decision, or suspend approval of the instructor.

645.428 Instructors: Duties

This section establishes an instructor *standard of conduct* and *standards for basic teaching skills* for the classroom. It is highly recommended that all instructors thoroughly review this section.

645.443 Approval of distance education course.

"Distance education" is instruction that is delivered by video, computer, television, correspondence, Internet or other electronic means of communication in such a manner that the instructor and the student receiving the instruction are separated by distance and/or time (NAC 645.021). This section prescribes new and very specific design and delivery standards for prelicensing as well as continuing education courses. Distance education course sponsors should become familiar with these standards; courses will not be approved without meeting these new standards.

645.4432 Duties of sponsor of approved course; review and audit by Division; grounds for withdrawal of approval; disciplinary action against licensee who sponsors approved course

This section, with substantial amendments, is substituted for NAC 645.465. The grounds for withdrawal of course approval were increased from two to twelve. Additionally, "a licensee who is the sponsor of an approved course is subject to disciplinary action for any dishonest, fraudulent or improper conduct by the licensee, or an instructor of the approved course employed by the licensee, in connection with activities related to the approved course" (paragraph 7). Course sponsors will want to become especially familiar with this section.

645.4434 Courses: Withdrawal of approval

The same process for withdrawal of instructor

approval is used for withdrawal of course approval (see 645.427, this page).

645.4438 Courses: Certificate of completion

This new section establishes a student standard of conduct. A student is required to give direct attention to the instruction, refraining from distractions such as voice pagers, beepers and telephones.

An instructor may deny the issuance of a certificate to a disruptive and disorderly student, and the student may appeal such denial to the Administrator.

645.444 Courses: Evaluation by students

Effective October 1, 2005, continuing education course sponsors must provide course evaluation forms prescribed by the Division to each student. Copies of the student-completed forms must be collected by a person other than the instructor and mailed or delivered to the Division within ten working days of course completion.

645.4442 Course required for first-year licensees

Licensees who receive their licenses on or after January 1, 2006 must take a prescribed thirty hour "Postlicensing Education" curriculum that focuses on practical applications of real estate transactions. The curriculum must include modules on contracts including the writing and presenting of offers, qualifying prospects, the listing process, market analysis and inspections, communication, technology, records management, time management, goal setting, devising a business plan, buyer representation, disclosures, cooperation between agents, professional conduct, etiquette and ethics, advertising, proceeds of sale, costs of sale, cost sheets, agency relationships, escrow, title, closing processes, financing, negotiation, client tax opportunities and liabilities.

645.448 Continuing Education requirements for renewal and reinstatement of license

Effective January 1, 2006 continuing education requirements for license renewal increase from fifteen hours to twenty-four hours. Twelve hours must be devoted to ethics, professional conduct or the legal aspects of real estate, including three hours in the areas of each of the following: agency; recent statutory and regulatory changes to Nevada law; contracts; ethics. Brokers and broker-salespersons must also complete three hours in the area of broker management as part of the total twenty-four hours. (See details on page 7).

If inactive for two years or less, no part of which was during the initial license period, a (continued next page)

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license reinstatement must meet the same requirements as for renewal. If inactive for more than two years, no part of which was during the initial license period, a license reinstatement requires a minimum of forty-eight hours of continuing education including at least three hours of each of the following: agency, recent statutory and regulatory changes to Nevada law, contracts, and ethics.

If inactive for two years or less, any part of which was during the initial license period, a license reinstatement requires both *Postlicensing Education plus* eighteen hours of continuing education including at least three hours of each of the following: agency, recent statutory and regulatory changes to Nevada law, contracts, and ethics. If inactive for more than two years, any part of which was during the initial license period, a license reinstatement requires both *Postlicensing Education plus* twenty-four hours of continuing education including at least three hours of each of the following: agency, recent statutory and regulatory changes to Nevada law, contracts, and ethics.

A maximum of three hours of personal development courses may be taken for renewal or reinstatement of a license.

645.450 Continuing Education course standards

The following areas were added to the standards for acceptable continuing education courses: the use of calculators and other technologies “*as applied to the practice of real estate*”; the preparation of real estate contracts; personal development courses.

645.455 Approval and accreditation of courses

The requirement of the course sponsor to maintain records of attendance has increased to four years.

645.463 Restrictions on receipt of credit for course

Licensees will no longer receive credit for teaching an approved continuing education course. Licensees may take the same course for continuing education credit every other renewal period.

645.467 Credit for attendance at Commission meeting

A licensee may receive up to six hours of continuing education during a licensing period for attending a Commission meeting if the licensee is not participating in or otherwise affiliated with a specific disciplinary hearing, and the meeting lasts at least three hours.

Licenses, Certificates and Examinations

645.080 Investigations of background: Fee

The fee for the investigation of the background of an applicant, licensee, certificate holder, registrant or permit holder will not exceed the actual cost to conduct the investigation.

645.042 Involuntarily Inactivate

This is a transfer of a license from active status to inactive renewed status at the initiative of the Division and not at the request of a licensee.

645.085 Check or draft returned to Division

Checks returned to the Division for non-sufficient funds or stopped payment on the check will result in the involuntary inactivation of the license, certificate, registration or permit, a \$25.00 returned check fee, and any related collection fees.

645.150 Financial responsibility of broker applicant

An applicant for a license as a broker shall be deemed financially responsible if there exist liquid assets sufficient to maintain an office for at least 180 days. This requirement was increased from 120 days.

645.207 Fee for examination

The fee for an examination for an original license or the reinstatement of a license is \$100. The exam required to reinstate a license which has been in an inactive renewed status for more than two years is now administered by a professional examination service.

645.220 Passing grade on examination

To pass an examination, an applicant must achieve a grade of at least 75 percent on each section of the examination.

645.310 Termination of association or employment

It has been the policy of the Division to allow a licensee to *hand-carry* the license to the Division offices providing the licensee has written permission from the employing broker. New paragraph two of this section elevates this policy to regulation. If properly completed and appropriately signed by the broker, the *Termination Notice* (form 505) can be used as written permission to hand-carry the license to the Division.

The employing broker is required to deliver to the Division a terminated license within ten days after the termination occurs (NRS 645.580). In the event the broker does not comply, a licensee may apply for an administrative termination on a form provided by the Division.

See Regulations, page 15

Real Estate Licensee Continuing Education Requirements Changing

Effective when renewing on or before December 31, 2005:

A **first year** licensee **whose license is issued before January 1, 2006** must complete at least 30 hours of continuing education to renew a **first year** license. A minimum of six hours must be devoted to *law and ethics*.

A real estate **SALESPERSON, BROKER-SALESPERSON and BROKER** renewing a *two-year license* must complete at least 15 hours of continuing education to renew a license. A minimum of six hours must be devoted to *law and ethics*.

Effective when renewing on or after January 1, 2006:

A **first year** licensee **whose license is issued before January 1, 2006** must complete at least 30 hours of continuing education to renew a **first year** license (issued during 2005). At least twelve hours must be devoted to ethics, professional conduct or legal aspects of real estate including the courses listed below for **SALESPERSON, BROKER-SALESPERSON, or BROKER** (whichever applies).

A **first year** licensee **whose license is issued on or after January 1, 2006** must complete the prescribed 30 hour **Postlicensing Education** to renew a **first year** license.

A real estate **SALESPERSON** renewing a *two-year license* must complete at least 24 hours of continuing education to renew license. At least twelve hours must be devoted to ethics, professional conduct or legal aspects of real estate including:

3 hours	agency relationships	A
3 hours	Nevada Law—recent legislation and regulation	LL
3 hours	contracts	C
3 hours	ethics	E

Remaining 12 hours may be general courses (G) or additional designated courses. (3 hours personal development *PD* maximum)

A real estate **BROKER-SALESPERSON and BROKER** renewing a *two-year license* must complete at least 24 hours of continuing education to renew license. At least fifteen hours must be devoted to ethics, professional conduct or legal aspects of real estate including:

3 hours	agency relationships	A
3 hours	Nevada Law—recent legislation and regulation	LL
3 hours	contracts	C
3 hours	ethics	E
3 hours	broker management	B

Remaining 9 hours may be general courses (G) or additional designated courses. (3 hours personal development *PD* maximum)

Disciplinary Actions—Hearings

July 2003

Kevin Holland
Salesperson no. 44608

Respondent failed to provide a *Duties Owed* form and *Consent to Act* form to the parties of a transaction. Respondent's broker never received a transaction file or any other information regarding the transaction from Respondent. Subsequent to the Division's investigation, the Respondent did not renew his license.

A Default Judgment was granted to the Division due to the failure of the Respondent to appear before the Commission. Respondent was required to pay a \$5,000.00 fine, costs of \$1,237.38 and complete the eighteen hour Nevada Law course.

September 2003

Esther Vogt
Salesperson no. 37204

Respondent was found to be in violation relative to three separate transactions. First transaction: Respondent took a listing on a property from a party that was the second trust deed holder but not the actual owner. Respondent verbally accepted an offer without a clear expiration date and returned the \$10,000.00 deposit to the buyer without depositing it or turning it over to her broker. The acceptance was never confirmed in writing. Respondent subsequently renegotiated the transaction by reducing the sales price by \$25,000.00 and requiring the buyer to make a \$25,000.00 payment directly to the second trust deed holder without disclosing the payment to the first trust deed holder. Subsequently, the first trust deed holder agreed to a discounted payoff. The first trust deed holder would not have agreed to the discounted payoff had they known about the \$25,000.00 payment. Second transaction: Respondent represented her son in an offer on a property. The offer required earnest money to be deposited within one business day. The escrow

company did not receive the deposit check until fourteen days later. Respondent told the escrow company that the check had a "stop-payment" on it. Respondent told her broker that the escrow was to be cancelled, but the broker directed her to deposit the earnest money. Respondent represented to the Division that the check had been deposited within one business day, but the escrow company stated that an alleged receipt for the earnest money deposit provided by Respondent had been altered. Third transaction: Respondent represented that an earnest money deposit was included in an offer and was to be

deposited with escrow within one business day. The earnest money deposit check was not issued by a bank until two days after the offer was accepted and was not deposited until sixteen days after acceptance. The escrow was cancelled.

Respondent's license was revoked, and Respondent was ordered to pay a \$20,000.00 fine and costs of \$2,612.40 within one year.

Real Estate Commission actions are not published in this newsletter until the 30-day period allowed for filing for Judicial Review has expired, or if an appeal is taken and the disciplinary action is stayed, until the stay is dissolved.

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.

November 2003

Fely A. Quitevis
Broker no. 38330

Respondent represented both the buyers and sellers in the sale of a property with code violations. The violations concerned the septic system and required either the installation of a commercial septic tank or the removal of two mobile homes. The Respondent was aware of these code violations but did not provide the buyer with written notice of the violations. Respondent violated her duty to disclose material and relevant facts as soon as practicable.

Respondent was required to pay a \$5,000.00 fine and costs of \$2,846.73 and complete the eighteen hour Nevada Law course within six months.

(continued next page)

Disciplinary Actions—Hearings

Dave M. Schifano
Salesperson no. 50277

Respondent misrepresented that he was in compliance with his court ordered child support on his licensing application. Prior to the issuance of his license, Respondent was in arrears in payment of his court ordered child support and remained out of compliance during the approximately eighteen months that he held his license. This would have been grounds for denial of his license application had the Division been aware at the time the license was issued.

Respondent's license was revoked. Respondent must appear before the Commission prior to reinstatement of his license. Respondent's discipline must be reported to all appropriate real estate licensing agencies.

April 2004

Paul David Lemus
Salesperson no. 47810

Sellers contacted Respondent to sell a property that sellers owned and were being foreclosed on. Respondent informed sellers that he had an investor who would purchase and lease-back to the sellers with an option to purchase. *Duties Owed* and *Confirmation* disclosure forms was signed by the buyer and indicated that the Respondent was representing the buyer, and the sellers were representing themselves. The sellers did not sign nor receive the disclosure forms. The sellers had originally financed the property with a VA loan. The property was now being sold for less than the amount owed on the VA loan, requiring VA approval for the "short sale". Respondent made several attempts to obtain the VA approval by submitting revised purchase prices until the VA would approve the sale. Respondent failed to obtain the sellers initials to the revisions. Respondent also changed other terms by removing the lease-back with option to purchase and increasing the commission to the Respondent. Respondent provided a *Sellers Real Property Disclosure* form to the buyer, signed by the Respondent in one of the sellers' names.

Respondent was in violation for failure to give the sellers a copy of the *Duties Owed* and *Confirmation* forms, failure to have the sellers initial the changes in price and contract terms, and for signing for the sellers on the *Sellers Real Property Disclosure* form.

Respondent was required to pay a \$5,000.00 fine, costs of \$5,414.24 and complete the eighteen hour Nevada Law course.

Humberto Obregon
Salesperson no. 38195

Respondent was asked by a loan officer to help with a "for sale by owner" transaction. Respondent gathered comparables and copies of public records for the seller. Respondent was asked to review the sale documents. Respondent claims that neither the buyer nor the seller were aware that he was a real estate agent. Respondent received and cashed a check written to the Respondent and his broker for \$1,000.00 from the buyer. The buyer claims the check was an earnest money deposit for opening escrow; however, Respondent claims that check was for the service that he provided to the parties to the transaction.

Respondent was in violation for accepting compensation from someone other than his broker, for failing within a reasonable time to account for or remit any money which came into Respondent's possession and belongs to another, and for commingling the money or property of his client with his own or converting the money of others to his own use.

Respondent was required to pay a \$3,000.00 fine, costs of \$1,263.44, and complete the eighteen hour Nevada Law course.

Recovery Fund Payment

Real estate licensees pay a \$40.00 fee to the Education, Research, Recovery Fund (ERRF) at the time of original licensing and at each license renewal. Payments are made from the recovery fund upon Court Order. The judgment must be based upon a finding of fraud, misrepresentation or deceit in any transaction for which a license is required. The court must be satisfied that the licensee has no funds available to satisfy the judgment.

Licenses are automatically suspended until repayment to the fund, including interest accrued.

The following claim was paid April 2004:

Gary M. Sullivan
Partnership Broker # 29698

\$10,000.00

The New Duties Owed Forms in Nevada . . . FAQ's

by: J. C. Melvin,
Duties Owed Task Force member

May 1, 2005 the Real Estate Division will release the new agency forms for use by all licensees in the state. These revised forms are the result of the work done by the Duties Owed Task Force. Below are some questions that we think will arise:

Why are we changing the "Duties Owed" form?

The current forms have created some confusion within the industry and the task force formed to look at the situation determined the new forms would be more easily understood by both the public and those within the industry.

Are we required to get the "Duties Owed" form signed by all parties for our file?

The law suggests that the "appropriate form" be provided to the parties. The Real Estate Division has determined that only a single "Duties Owed" form needs to be signed by each party to the transaction. The rationale is that the disclosure form is the same whether they sign a single form or multiple forms within the same transaction. The intent is to provide and assure that each of the parties has the "Duties Owed" form, not two or three duplicates of the same disclosure. This means that the listing agent only needs the seller's signed disclosure form in the listing and transaction files and the buyer's agent only needs the buyer's signed form in the buyer representative and transaction files. However, if there is an unrepresented party to the transaction, the sole agent in the transaction needs to have a disclosure form signed by both the client and unrepresented party to the transaction and have evidence of the disclosure to both parties in the licensee's transaction file. (See unrepresented parties below).

Is the licensee responsible for providing the "Duties Owed" form to unrepresented parties?

Yes. If you are a licensee in a transaction in Nevada, you are representing someone, even if acting only as a principal. If the other party is unrepresented by a licensee, you are responsible under Nevada law to provide the "Duties Owed" form.

Why has the "Confirmation of Agency" form been eliminated?

While "Confirmation of Agency" is required by regulation (NAC 645.637), the "Form" itself is not. The Real Estate Division originally created the form to assist the industry as a courtesy because none of the Purchase Agreements contained the required "Confirmation of Agency." Now that most of the Contracts (Purchase Agreements) contain the confirmation of agency, a separate form is not required.

What if the Contract or Purchase Agreement I use does not contain a "Confirmation of Agency"?

Then the Real Estate Division would suggest that you add such confirmation to your purchase agreement, change to an agreement which includes a confirmation section or continue to use a separate form as long as the regulation requires it. (NOTE: you will probably see the separate forms disappear after a while).

What forms must I have signed at the time of taking a listing?

Each licensee must have the **completed "Duties Owed" form** signed as soon as practicable, but no later than the time of taking a written listing.

NOTE: The confirmation of agency relationship with the seller is disclosed on the top of the "Duties Owed" form and no additional "confirmation of Agency" is required at the time of listing. The acknowledgement of possibly acting as an agent representing two or more parties in the transaction is now located as the last paragraph above the client/customer's signature block. (The client will initial the **may** or **may not** block thereby providing or not providing permission for a possible dual agency). The "consent to act" form would additionally have to be completed and signed by the parties in the event that agent represents more than one party to the transaction.

When must I have the "Duties Owed" Form Signed?

Nothing has changed with respect to when the form must be signed. It should still be signed as soon as practicable but in no event later than the time of a written contract.

NOTE: A written contract would include any "Brokerage Agreement" including listing agreements, buyer brokerage agreements, property management agreements as well as any purchase

(continued on page 15)

ENVIRONMENTAL SITE ASSESSMENTS - MORE IMPORTANT THAN EVER AS RAW LAND IN VEGAS VALLEY DISAPPEARS

by Nick Saines, Consulting Environmental Geologist
Brandon Potts, President, Civil Works Inc., Las Vegas

Nick Saines is a Nevada Certified Environmental Manager (C.E.M.) with over 30 years of experience in hydrogeology, engineering geology, and environmental work. Formerly the head of CivilWorks' Environmental Department for almost two years, Nick managed mostly Phase I and Phase II Environmental Site Assessments and site cleanups. Nick holds a Ph.D. in geology from the University of Massachusetts. He came to Las Vegas in 1989 to work on the Yucca Mountain Project, and has been doing environmental work in the Las Vegas Valley since 1992. Nick also teaches geology part time at Nevada State College, and Regis University.

Brandon Potts is CivilWorks' Principal Engineer and a Nevada Certified Environmental Manager. Brandon holds a B.S. in Civil Engineering from Utah State University, and is a Registered Professional Engineer (P.E.) and Water Rights Surveyor, in addition to being a C.E.M. He founded CivilWorks in 1999. CivilWorks provides civil and environmental services for commercial, governmental, and residential development projects. Brandon has been doing civil and environmental engineering in the Las Vegas Valley since 1993.

As native desert parcels in the Las Vegas Valley available for new development become scarcer and more expensive we notice an increase in environmentally-marginal land being considered for development – not only for commercial developments, but for residential developments, mainly for entry-level homes. In order to avoid the risk of acquiring the liability of cleaning up soil and/or groundwater contamination, a thorough Phase I Environmental Site Assessment should be performed before purchase of the land.

According to Alan Front of the Trust for Public Land, open space in America is disappearing at a rate of three million acres per year. Las Vegas is the nation's fastest growing city. In the Las Vegas Valley over 76,000 acres of developable land has been consumed in the last 8-10 years. The *Las Vegas Housing Market Letter*, a publication of Home Builders Research, Inc. provides monthly data on the housing market in Las Vegas. Although the housing market has cooled off a little since the record-breaking first quarter of 2004, especially for higher-priced homes, prices ended the year much higher than in 2003. The median price of a new home in Las Vegas in December 2004 was \$250,000, up 38.9 percent from December 2003. The median price of an existing single-family home in August was \$250,000, up 45 percent from last year. According to Larry Murphy and Steve Bottfeld of Marketing Solutions, the primary cause of the dramatic increase in home prices is *low supply and high demand*, fueled by the booming Las Vegas economy and low interest rates. Klif Andrews, Vice President of Community Development for Pardee Homes, said that in the Las Vegas Valley, with 25,000 new homes built and sold each year at an average density of five homes per acre, 5000 acres of developable land are needed each

year. The BLM is selling only about 2,000 acres/year. According to Richard Lee, public relations director for First American Title Company, as buildable land in the Valley disappears, high-rise development will continue to increase. Other trends in the Las Vegas real estate market are the development of Brownfields for commercial/industrial projects, and the development of environmentally-marginal and geotechnically-marginal land for residential and commercial development.

Brownfields are "abandoned, idled, or under-utilized properties where expansion or redevelopment is complicated by real or perceived environmental contamination." Brownfield redevelopments are government-aided commercial or industrial developments on impacted land that has been cleaned up to a pre-approved standard. Senator Harry Reid co-authored the Brownfields Revitalization and Environmental Restoration Act of 2001 that provides up to \$200,000,000 a year of federal money for projects involving cleaning up contaminated urban land. This was signed into law by President Bush in 2002. Pilot grants had been awarded to the City of Las Vegas Redevelopment Agency prior to the 2002 legislation for an area inside the City's redevelopment area. Brownfield sites typically contain contaminants other than petroleum hydrocarbons, such as dry cleaning fluids, solvents, heavy metals, and PCBs; and there are provisions for petroleum-contaminated properties under the 2002 legislation. (The Nevada State Petroleum Fund addresses petroleum-contaminated sites, mostly from old gas stations.) For more information on Las Vegas redevelopment, contact Stoney Douglas at the City Office of Business Development (229-6469).

The State of Nevada has a Brownfields program headed by Scott Smale in Carson City (775-687-9384) that provides funding for redeveloping industrial properties outside of the City of Las Vegas Redevelopment Area. This program is applicable to properties in Henderson, North Las Vegas and Clark County.

Environmentally-marginal land is distinguished from geotechnically-marginal land. Environmentally-marginal land would include land that is formerly industrial or down-slope and down-gradient of contaminated or impacted industrial land, with a shallow water table. The soil on site may be impacted by previous site activities or from runoff from adjacent

(continued on page 14)

Disciplinary Actions - Stipulations

April 2004

ERIC ALPERT
Broker no. 34279

Respondent Alpert and the Division entered into a stipulation for settlement of disciplinary action. Four complaints were heard during previous hearings and a fifth complaint was scheduled to be heard at the April 2004 hearing. During the previous hearings, it was determined that the respondent had taken possession of various properties, offered the properties for lease and collected rent, and in one case offered a property for sale, all without verifying true ownership or obtaining the true owners' consent. The respondent was found to be in violation for misrepresentation, failure to remit rent proceeds, failure to verify true ownership, failure to obtain the consent of the owner of record, and gross negligence by leasing and selling properties that respondent purported to be his through adverse possession. Respondent filed a Petition for Judicial Review of the disciplinary action taken during the previous hearings.

Stipulated Settlement: Respondent will withdraw his Petition for Judicial Review. Respondent's license to be suspended for five years. During the license suspension, Respondent must disclose his suspended license in any real estate transactions in which he has an ownership interest. Prior to license reinstatement, Respondent must complete forty-five hours of real estate principles pre-licensing class and the eighteen hour Nevada law class. Prior to reinstating his property management permit, Respondent must complete the twenty-four hour property management permit class.

JANET LEEDHAM
Salesperson no. 07439

Allegations: Respondent acted grossly negligent or incompetent by allowing her seller-clients to sign a purchase agreement which failed to specifically state how the earnest money was to be deposited, and by failing to verify and ensure that the earnest money was transferred from the buyers' previously canceled escrow.

Stipulated Settlement: Respondent to pay \$1,500.00

in administrative fines and attend six hours of continuing education in the subject area of contracts within six months.

KEN WEST
Broker no. 36442
JACKIE VAN WIENEN
Salesperson no. 47449

Allegations: Respondent Van Wiene took a listing, only obtaining the signature of the wife. The wife/owner represented that she was granted sole ownership of the property as part of a divorce settlement. Van Wiene presented an offer for a buyer, representing both seller and buyer. The offer was accepted. Subsequently, Van Wiene was informed that the property was not solely owned by the wife but was jointly owned with the ex-husband. Van Wiene began attempts to get the ownership solely in the name of the wife and permitted the buyer to move into the property without a signed lease agreement. Unable to complete the sales transaction, the buyer

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.

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.

was advised to move out. Van Wiene was not associated with Respondent West at the time, but was planning to move her license and associate with Respondent West. Van Wiene asked West to represent the buyer in a new transaction. West signed the offer, representing that a personal check for \$1,000.00 was presented with the offer. West did not have a check nor did West deposit a check. Despite West's involvement, and while still associated with another broker, Van Wiene continued to actually represent the buyer. The deposit from the first failed escrow was transferred to the second escrow; however, the second transaction was cancelled and the deposit transferred from the first escrow was refunded to the buyer.

Van Wiene is grossly negligent by taking a listing and negotiating a sale without the knowledge, consent, and signatures of both owners; failing to ascertain all pertinent facts; allowing the buyer to move into the property without a rental agreement; and representing a broker other than her employing broker.

West is guilty of misrepresenting an earnest money deposit when there was none, and allowing a

Disciplinary Actions - Stipulations

licensee associated with another broker to work on a transaction without the knowledge and consent of that licensee's employing broker.

Stipulated Settlement: Van Wiene to pay \$2,250.00 in administrative fines and attend fifteen hours of continuing education in the area of law and ethics within six months.

West to pay \$3,000.00 in administrative fines and attend the *What Every Broker Should Know* six hour course within six months.

DIANE SMITH Broker no. 52762

Allegations: As a buyer's representative, Respondent submitted an offer to purchase to a seller. Respondent did not supply a *Duties Owed* or *Confirmation* form with the offer. The seller did not accept this offer.

Subsequently, seller entered into an Exclusive Right to Sell Listing Agreement with a Licensee and notified the Respondent that the Licensee would be representing the seller.

Respondent submitted a second offer on behalf of the same buyer. Respondent contacted the seller directly to ascertain that the seller had received the offer. Respondent attempted to negotiate directly with the seller by asking the seller to consider her offer before making a final decision and informing the seller regarding the strength of her buyer.

Respondent is in violation for failing to supply a *Duties Owed* and *Confirmation* form, attempting to negotiate directly with the client of another broker and without the exclusive broker's consent.

Stipulated Settlement: Respondent to pay \$2,000.00 in administrative fines and attend six hours of continuing education in the subject area of agency within six months.

JORGE IVAN MEJIA Salesperson no. 52762 ANA MIQUIRRAY Salesperson no. 42487

Allegations: Respondents are husband and wife. Respondent Miquirray completed an offer to purchase without the buyer's signature. However, the offer was presented with a purported signature of the buyer and accepted by the sellers. A *Duties Owed* and *Confirmation* form was completed for this transaction listing Respondent Mejia as the agent for the buyer. Miquirray's name does not appear on either form. Escrow was opened and a \$500.00 money order containing the buyer's signature was deposited. Prior

to the sellers' acceptance, the buyer notified Miquirray that the buyer was no longer interested in purchasing the property. Over the next seven days, the buyer telephoned Mejia repeatedly to get the buyer's earnest money deposit returned. The buyer contacted another Licensee to get the earnest money returned. That Licensee states that Mejia told the Licensee that Miquirray signed the buyer's name to the offer to purchase. Miquirray denies signing the document. In a written statement, Mejia asserts that the office secretary signed the offer to purchase in place of the buyer.

Respondent Miquirray is in violation for failing to supply the buyer with a *Duties Owed* and *Confirmation* form with Respondent's name listed and by acting grossly negligent or incompetent by failing to ensure that only the buyer signed the offer to purchase.

Respondent Mejia is in violation by acting grossly negligent or incompetent by failing to ensure that only his client signed the offer to purchase, by failing to respond to the buyer's numerous phone calls, and by failing to inform the buyer that someone other than the buyer had signed the offer to purchase.

Stipulated Settlement: Miquirray to pay \$1,500.00 in administrative fines and attend six hours of education in the subject of agency and three hours of education in the subject area of ethics within six months. License to be suspended if Respondent fails to comply with settlement.

Mejia to pay \$3,000.00 in administrative fines and attend six hours of education in the subject area of real estate law and six hours of education in the subject area of ethics within six months.

ALEXANDER COELHO Salesperson no. 42967

Allegations: Respondent misrepresented the earnest money deposit as \$1,000.00; however, the Respondent was only given \$500.00 by the buyer and only \$500.00 was deposited into escrow. Respondent was in violation for making a material misrepresentation and gross negligence for breaching his obligation of absolute fidelity to his principal's interest and fair dealing with all parties.

Stipulated Settlement: Respondent to pay \$2,000.00 in administrative fines and attend six hours of continuing education in the subject area of law and ethics within six months. License to be suspended if Respondent fails to comply with settlement.

sites. The groundwater beneath the site may be impacted by previous site activities or from activities on up-gradient sites. Geotechnically-marginal land would include land that might be on or close to steep slopes, in a wash, drainage, or flood zone, on or near a fault or fissure zone, or otherwise be on problem soils, such as expansive and hydrocollapsible soils, and soils high in soluble sulfate minerals.

We have noticed that in the Las Vegas Valley over the past year or two there has been an increase in the number of environmentally-marginal parcels being planned for residential development – land that only a few years ago might be passed over. These parcels include a former cement plant property west of Sunrise Landfill where soil remediation work is in progress; industrial properties in Henderson such as a former gravel pit down-gradient of the BMI complex and near the discharge area of impacted groundwater; and a former ore loading dock area. As noted by Dennis Smith in the September 10, 2004 issue of *The Las Vegas Housing Market Letter*, as the supply of land shrinks, the “quality” of the remaining land declines, even though it becomes more expensive. Many of these marginal properties are being developed as entry-level home developments. Although the market for upscale houses has softened since the first part of 2004, the supply for homes priced under \$200,000 is still tight.

In order to prevent incurring liability for environmental cleanup, lending institutions require a Phase I Environmental Site Assessment (ESA) be performed for commercial real estate transactions. The American Society of Testing and Materials (ASTM) has published standards for conducting Phase I ESAs to investigate whether or not the site is impacted by contaminants within the scope of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or by petroleum products. By performing a Phase I ESA the lending institution and the buyer have satisfied one of the requirements to qualify for innocent landowner defense to CERCLA liability: that is the practices that constitute “all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice.” In defining a standard of “good commercial and customary practice” for conducting an environmental site assessment of a property the investigator looks for *recognized environmental conditions*. These are defined as the presence of any hazardous substances

or petroleum products on a property or adjacent properties under conditions that indicate an existing release, past release, or a potential release into the structures, soil, groundwater or surface water of the property. It is not intended to include *de minimus* conditions, or small amounts of contamination, that generally do not present a risk to public health or the environment, and that would not be the subject of an enforcement action if brought to the attention of the Nevada Division of Environmental Protection (NDEP). For example, less than three cubic yards of petroleum-impacted soil found on a property would be considered *de minimus*, and not reported to the NDEP, although proper cleanup and disposal would be addressed in the Phase I ESA report.

The Phase I ESA investigation is intended to be a cost-effective procedure that evaluates whether or not the site may be contaminated through field reconnaissance and information readily available through public sources and interviews. The following tasks are performed in a Phase I ESA:

- Field reconnaissance of the site and adjacent area to find *recognized environmental conditions*,
 - Review of land ownership records which may reveal past industrial use,
 - Review of historical aerial photographs and topographic maps which provides information on past uses of the property and adjacent properties,
 - Review of reports on the site hydrogeology, including depth to groundwater and direction of groundwater flow,
 - Review of federal and state databases of environmental cases to see if there were spills or releases on site or in the vicinity that may have impacted the site, and
- Interviews with the present owner, past owner, the Clark County Health District, and the NDEP, if appropriate, to ascertain the property’s environmental history.

According to NAC 459.9704, Nevada environmental site assessments must be conducted, or supervised, by a Nevada Certified Environmental Manager (C.E.M.), and the report must be signed by the C.E.M. Marilyn Crockett at the NDEP Bureau of Corrective Actions (775-687-9375) maintains a list of current Nevada C.E.M.s, which can be accessed on the NDEP website (ndep.nv.gov).

As raw land becomes scarce and more expensive in the Las Vegas Valley and marginal land is being considered for development,

(see *Environmental*, next page)

Environmental Assessments

(from page 14)

the Phase I ESA process becomes critical in evaluating whether or not to invest in the project. The C.E.M. may not find *recognized environmental conditions*, and give the property a green light for development. The C.E.M. may recommend a Phase II ESA which typically includes sampling, to confirm or deny suspected contamination of the property. In one example at the Lake of Las Vegas, apparent evidence for mining identified in a residential Phase I ESA was revealed as the remains of an innocuous borrow pit operation in the Phase II ESA, allowing development to proceed. In a site in North Las Vegas, contaminated soil was confirmed on a portion of the property as part of a residential Phase II ESA. Had the developer not been alerted to the contamination, he may have put home buyers at risk by allowing land with contaminated soil to be purchased. Workers digging a pool or even children playing in the backyard could have been exposed to toxic chemicals. The careful Phase I ESA, and the Phase II ESA work that followed, allowed delineation and remediation of the contaminated soil. Soil remediation took place before development and home sales.

As more and more environmentally-marginal land is being developed in the Las Vegas Valley, especially for entry-level homes, a good Phase I Environmental Site Assessment protects the buyer, the seller, and the public. In order to avoid the risk of acquiring the liability of cleaning up contamination, or injuring somebody through exposure to hazardous materials or hydrocarbons, a thorough Phase I ESA should be performed by an experienced and qualified Nevada Certified Environmental Manager before purchase of the land.

Regulation Changes

(from page 6)

645.345 Failure of broker to renew license

If a real estate broker fails to renew his license, all licensees associated with that broker will immediately be placed on inactive renewed status. The licensees placed on inactive renewed status will have thirty days to transfer to another broker or, if the broker with whom the licensees were associated reinstates and renews his license within thirty calendar days, reactivate with that broker.

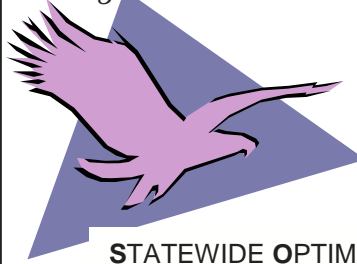
If a licensee fails to re-associate with a broker within thirty days after the license of the broker becomes inactive, the licensee may only reinstate his license by fulfilling the requirements for reinstatement (NAC 645.325). Remember, a licensee cannot conduct any activity requiring a license while the license is on inactive status.

645.350 Involuntary inactivation, suspension or revocation of broker's license; death of licensee

If a broker's license is involuntarily inactivated, suspended, or revoked, he shall deliver his license and all licenses of those associated with him to the Division.

Upon the death of a licensee, the license held by that licensee automatically expires. Upon the death of a broker, all licenses associated with that broker become inactive until transferred to another broker.

Soaring soon to a PC near you!



SOAR is the Real Estate Division's new integrated data system, which will feature a web-based interactive module for Real Estate Professionals.

STATEWIDE OPTIMAL ACCESS FOR REAL ESTATE

The New Duties Owed Forms in Nevada . . . FAQ's

(continued from page 10)

agreements and/or conforming lease agreements.

When must the "Consent to Act" form be signed?

In the event that the licensee has the consent in principle initialed as "May" in the initial box at the bottom of the "Duties Owed" form, he must still obtain the signature on the "Consent to Act" form prior to the respective client's signature being placed on the contract.

Where do I get the new "Duties Owed" and "Consent to Act" forms?

All Division forms are available online at www.red.state.nv.us. Position your mouse onto *Frequently Used Forms* to open the drop-down menu, then click on *disclosure*. Select the *Duties Owed* and *Consent to Act* forms by clicking on 525 and 524, respectively.

When will the new "Duties Owed" and "Consent to Act" forms become effective?

The new forms have an effective date of May 1, 2005. This means that everyone should transition into the new form on that date. All transactions initiated on or after May 1, 2005 should include these new agency disclosure forms, and all disclosures made and files of transactions initiated on or after May 1, 2005 should include these new forms. For further information, please contact the Division Compliance Section in either the Carson City or Las Vegas offices.

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Department of Business & Industry
Real Estate Division
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Las Vegas, NV 89104-4137

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NOTICE . . . If you are waiting for your license to be issued or are an unlicensed assistant:

Please refer to **Informational Bulletin #010** on our website for questions and answers as which activities unlicensed individuals can and cannot do.

In addition to the **do's & don'ts** mentioned in the bulletin, the following are important points to remember:

- Education taken prior to issuance of a license **cannot** be used as continuing education credit towards your renewal.
- Advertising cannot be conducted (i.e., business cards, signs, websites or newspapers).
- A commission or referral fee can not be paid to an individual who was unlicensed **at the time the referral was made**. This prohibits referral activity by an individual waiting for a license to be issued.

Referring a client for compensation or anticipated compensation requires a license.

The Real Estate Division's **Informational Bulletins** can be found on our website at:
www.red.state.nv.us