



# Open House

*A newsletter from the Nevada Real Estate Division*

Volume 27 Issue 2

Department of Business & Industry

Summer 2005

## 2005 Legislative Update!

The 73rd Session of the Nevada Legislature began on February 7, 2005 and adjourned "sine die" at 2:29 a.m. on Tuesday, June 7, 2005. Adjournment sine die literally means "adjournment without a day"; it marks the end of the legislative session, since it does not set a time for reconvening.

The next session of the Nevada Legislature will not begin until February 5, 2007. In the interim, both the Real Estate Division and industry practitioners will be assimilating the decisions made during this recent Session. For the entire text of each bill listed in the summary below, point your Internet browser to:

<http://www.leg.state.nv.us>, "Session Info," "2005 Session," click "Bill Information," then click "Senate Bills" or "Assembly Bills."

Legal Administrative Officer Tami DeVries compiled the following summary of legislation which will have an impact on real estate licensees practicing in Nevada:

**SB 153** revises provisions relating to the payment of fines by units' owners in common-interest communities; prohibits community managers from being paid compensation, fees or other remuneration in certain ways; revises the definition of "collection agency" to include community managers under certain circumstances and to exclude unit-owners' associations and other persons under certain circumstances. Effective date: June 14, 2005.

**SB 315** was brought forward by the industry and establishes the requirement that any person while acting as a real estate broker, real estate broker-salesperson or real estate salesperson and engaging in business brokerage must obtain a business brokerage

permit from the Real Estate Division.

Additionally, this bill also made a change to NRS 645.252 by requiring a real estate licensee to provide the disclosure form

regarding duties owed by a licensee only to the party in the real estate transaction whom he is representing and to each unrepresented party to the real estate transaction.

Effective dates: October 1, 2005, for the changes to NRS

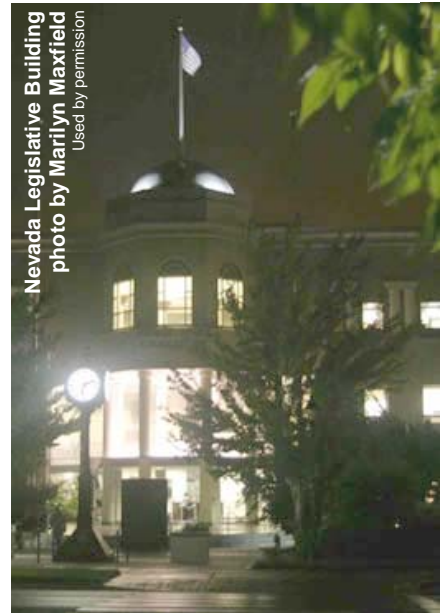
645.252. The permit to conduct business brokerage will be required beginning January 1, 2007.

**SB 325** creates a new chapter of law that will

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Nevada Legislative Building  
photo by Marilyn Maxfield  
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# Open House

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

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

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

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## From the Administrator's Desk . . .

All of you working in the real estate market in this state are very aware of the significant growth in the market values we have experienced over the past two years. The Real Estate Division is correspondingly growing and changing in what is arguably the most significant and dynamic ways in the history of its existence.

The Division has implemented the first phase of conversion to the Integrated Data System funded in the 2003 Legislative session, which we call **SOAR – Statewide Optimal Access for Real Estate**. The first phase—the conversion of the multiple licensing programs into the SOAR system—“went live” internally at the Division on May 16. It was by no means an easy conversion, considering that data was drawn from multiple mainframe computer programs (real estate licensees, timeshare sales agents, timeshare projects, registered land developers, real estate appraisers, owner/developers, property managers) and stand-alone databases (qualified intermediaries, inspectors of structures, community association managers). We will continue for many months and through the next renewal cycles, to verify all current and historical data. Several hundred - thousand records, including historical archives, were converted in this process.

The next phase of the implementation, currently underway, is the conversion and integration of disciplinary records. This conversion involves capturing discipline imposed by the Administrator or the Commission and attaching it to the licensee's data file. This public information will be available on the public search component of the system when it is completed and validated.

The online search implementation is anticipated to be available by fall. The public will be able to search for a licensee by name and will be able to access basic business contact information, to verify licensing status, and to research any discipline history.

The online license renewal phase is also currently in process to implement. This renewal component, which will be phased in by license type, is probably the most complex because it requires payment of a fee online by way of e-check transaction, responses to disclosure statements, and the verification of the required education hours, including specifically designated hours. We are targeting late fall to be able to run a voluntary test group in the online renewal process.

The Education Section is working with continuing education providers (and post-licensing education providers as they become approved) to submit electronic files to the Division of their course rosters for every CE approved class taught. These files will be uploaded into the data system to apply the educational requirements for renewal of a license into an individual licensee's file. Although this process will begin this year, it will take two years (a full renewal cycle) to completely implement the electronic submittal and verification of continuing education. In the interim, licensees will be required to submit a hard copy education summary (see article and form pages 6-7) as well as their original course certificates in order to renew a license. Electronically submitted course rosters will be used to audit and verify a licensee's online renewal.

The 2005 legislative session resulted in a total of seven new positions throughout the Division's three staff-related budget accounts. Licensees will be



## Administrator's Desk . . .

(continued from page 2)

pleased to know that three of the positions are for the Licensing Section in the Las Vegas office. New staff means changes to facility configurations, which is another project currently in process. The Division received funding approval to remodel the licensing counter in the Las Vegas office and expand from two to four work stations, with corresponding staff to work the stations. Be aware that new positions are legislatively approved for an October 1 hire date, so additional licensing staff will be in place and begin training after October 1.

One other major project for the Division is to allow electronic fingerprinting, which is submitted directly to the Nevada Central Repository for the State and federal background investigations. The Division's legislative bill, SB 332, was approved and signed by the Governor, which included the option of an applicant to submit a verification from an authorized vendor that fingerprints have been electronically submitted to the Nevada Central Repository, rather than waiting to submit the completed fingerprint cards with the application. Our goal is to allow individuals who intend to be applicants to begin the background investigation processes before all of the other licensing requirements are fulfilled (i.e., completion of pre-licensing education and passing the examination). Starting the process early will reduce the balance of "wait time" between the application being submitted to the Division and the time for the background investigation results to get back to the Division. The Division will approve vendors to provide the electronic printing service and will provide the approved vendors the required verification form, which must be submitted to the Division with the application. The contracted testing service is in the process of setting up this service at the Las Vegas and Reno testing centers, with a target of early September to have it in place.

The Division's application and renewal forms are being revised to add the request for a licensee's e-mail address. It is our intent to e-mail news bulletins, policy statements, and informational items of general interest directly to licensees. The *Open House* newsletter will eventually be e-mailed directly to licensees and the mass-produced printed publication phased out. Please note that e-mail address will **not** be sold or provided with requests for mailing lists and will **not** be public information that can be queried from the new data system.

It has taken the efforts of many people and much work to get these systems and changes developed, approved, and now implemented. Please know that we are working hard to improve our communication and response time with our licensees and our public.

## 2005 Legislative Update!

(continued from page 1)

deal with professions relating to common-interest communities, specifically the community association manager and the newly created reserve study specialist. The Commission for Common-Interest Communities is given the authority to adopt regulations relating to the qualifications, standards of practice and grounds for disciplinary action for both professions.

SB 325 also:

- Gives the Director of the Department of Business & Industry administrative supervision over the Real Estate Division;
- Provides authority for the Commission for Common-Interest Communities to adopt regulations prescribing the requirements for financial statements of associations;
- Sets forth provisions for regular audits of an association's financial records;
- Establishes limited-purpose associations and requires that those associations must still comply with certain provisions of NRS Chapter 116, and provides authority for the Commission to further define the criteria for certain associations to qualify for an exemption or a limited exemption from the provisions of Chapter 116;
- Makes various changes to the provisions in the chapter relating to the administration of common-interest communities. Some notable provisions are:
  - a) Defines major component of the common elements;
  - b) Requires a developer to adequately fund reserves on converted buildings;
  - c) Sets forth provisions allowing an association to petition the District Court to waive the supermajority requirement for amending the declaration;
  - d) Sets forth provisions that would allow unit's owners to install drought tolerant landscaping;
  - e) Sets forth provisions that would allow unit's owners to exhibit a political sign on their unit;
  - f) Sets forth requirements for the association to provide notice of and hold a meeting prior to commencement of most civil actions;
  - g) Requires the association to provide notice to an owner of a vehicle at least 48 hours before the association may direct removal of the vehicle;

(continued next page)

# 2005 Legislative Update!

(continued from page 3)

- h) Raises the maximum fine that can be assessed by an association for the same violation;
- i) Sets forth certain requirements for candidacy for an executive board member and establishes certain disclosures that are required of candidates;
- j) Makes several revisions to the provisions relating to elections, special elections and recall elections within associations;
- k) Revises the notice requirements for an association to follow when foreclosing on a unit;
- l) Establishes a maximum amount for any gift, incentive, gratuity, reward or other items of value that can be given to a community manager, employee, or board member of an association; and
- m) Revises provisions regarding the "resale package" that is provided to purchasers of pre-owned residential units within a common-interest community. These provisions also establish or allow the Commission to adopt maximum amounts that can be charged for these packages.

Effective dates: For the most part, this bill becomes effective October 1, 2005. Sections 2 — 24, which require all community association managers to obtain a certificate issued pursuant to Chapter 116 of NRS and the regulations adopted thereunder, shall become effective on October 1, 2007. Sections 25 — 35, which require all persons conducting reserve studies to obtain a permit issued pursuant to Chapter 116 of NRS and the regulations adopted thereunder, shall become effective on July 1, 2007.

**SB 332** revises several laws that fall within the jurisdiction of the Real Estate Division. The bill makes the following revisions to current law:

- Allows limited reciprocity for applicants for a salesperson's license when they hold a license in another jurisdiction which has substantially comparable licensing requirements and requires an examination;
- Authorizes the Real Estate Commission to enter into a reciprocal agreement with other jurisdictions which have substantially comparable licensing requirements for the issuance of licenses to applicants for a broker-salesman or broker license;
- Requires the Division to prepare and make available to real estate licensees a booklet describing the various disclosures in a residential

real estate transaction for distribution to buyers and sellers of residential property. The booklet must include an explanation of the required federal, State and local disclosures. The format and content of the booklet shall be approved by the Real Estate Commission;

- Authorizes the Administrator of the Real Estate Division to charge and collect from a real estate broker the actual costs and fees associated with an audit of the financial accounts of the real estate broker when the broker has failed to comply with the Division's request for that information; also includes authorization for penalties and disciplinary action for the real estate broker's failure to pay the assessed costs;
- Requires owner-developers to have a sales manager who is a licensed broker-salesman;
- Makes changes to NRS Chapters 119A, 645, 645C and 645D allowing applicants for licensure in those chapters to complete the required fingerprinting and have them forwarded electronically to the Central Repository;
- Limits the education credit given to a broker or broker-salesperson applicant for every two years of active experience to the immediately preceding 10 years;
- Allows a timeshare sales agent under chapter 119A of NRS to also act in the capacity as a registered representative; and
- Eliminates the requirement for registered timeshare representatives under chapter 119A of NRS to notify the Division when they change their location with a developer.

Effective dates: For the most part, this bill becomes effective on October 1, 2005.

Distribution of the disclosure booklet (section three) becomes effective on July 1, 2006. Owner-developers are required to have qualified broker-salespersons as sales managers (Sections 5, 6 & 8) effective January 1, 2006. Sections 12, 13, 18, 25 and 27 became effective upon passage and approval (June 10, 2005).

**AB 114** eliminates the requirement for real estate licensees licensed under Chapter 645 of NRS to obtain a limited dealer's license under Chapter 489 of NRS in order to sell a used manufactured home or mobile home when the

(continued on page 6)



## **Bob Kreller Retires after Nearly 25 Years of State Service**

For every front-line employee in State government, there are numerous folks who process, research, prepare, and compile data and information in order for the agency to perform their mission - and keep us all moving forward. Bob Kreller is one such individual who has kept the Real Estate Division moving for years.

Robert (Bob) Kreller retired April 14, 2005, with more than 24 years of service with the State of Nevada and all of those years served at the Real Estate Division.

His service started in Carson City in 1980 as an Administrative Aide. Bob was assigned to work with a computer programmer regarding the Division's conversion from manual to the then-new COBOL mainframe record system that the Division utilized and modified until our 2005 data conversion project. As Bob continued to train and develop in the newly emerging areas of computers and technology, his position was reclassified several times. He retired as the Agency Program Information Specialist for the Division.

A review of Bob's job descriptions over the years reads as a history of the Real Estate Division in Nevada. Bob was instrumental in training the licensing staff to operate a computer (remember DOS?) and input data into the Division's first computerized licensee database back in 1981. Before that first computer conversion in 1981, licensee information was kept on 3x5 index cards. When a change to licensee information occurred, a new card was made up and placed in the file box. If a licensee was inactivated (either voluntarily or involuntarily) their card was transferred from the "active" card file box to the "inactive" box. The conversion from manual records to mainframe involved staff individually entering every licensee by going through the card box card-by-card and entering the data. Bob oversaw that entire procedure and the quality control verification for the process.

Bob developed and wrote the "User's Manual" for the Division's application and licensing transactions for the original computerized system. He was also responsible for training staff for the operation of the terminals and printers, although back then, by no means did every employee have a computer at their desk. From that time forward, Bob became the Division's "computer guy." Over the years, he installed upgrades of hardware and software, assisted with the trouble-shooting to get appraisers and timeshare agents on to the mainframe system, and helped to set up the internal databases for other licensing programs as they were added. If you called to order a set of mailing labels for licensees, you spoke to Bob, who processed that request.

The Division began exploring another major data system conversion in the late 1990s, with Bob at the center of that project. He was in charge of developing the Technology Investment Request (TIR) for a new data system, which ultimately was approved and funded by the Legislature in 2003. The TIR, which fills several notebooks, took two years to develop and involved the documentation of all of the business processes of the Division as well as the goals to be accomplished by a new system. The system, which we call SOAR (Statewide Optimal Access for Real Estate) will be inextricably linked to Bob Kreller and his efforts to make it happen.

Bob truly leaves a legacy with the Real Estate Division by bringing the Division into the technology of the 20<sup>th</sup> century and then driving and facilitating the next major data conversion utilizing 21<sup>st</sup> century technology.

We wish him health and best wishes in his retirement.

## 2005 Legislative Update!

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sale is in connection with a fee simple interest in real property. This bill requires the Real Estate Division Administrator to create a disclosure form for use by licensees in transactions involving used manufactured homes or used mobile homes.

This bill amends NRS 645.842 in order to change the reserve balance maintained in the Education Research & Recovery Fund from \$50,000 to \$300,000; it also amends NRS 645.844 to change the maximum amounts to be paid from the Education Research & Recovery Fund from \$10,000 to \$25,000 per judgment and from \$20,000 to \$100,000 per licensee. Adjustments were made to the Research and Recovery Fund to reflect the change for the increased reserve balance.

Effective date: October 1, 2005.

**AB 215** provides an exception to the requirement that a seller complete and serve a disclosure form on a purchaser of residential property for certain actions for foreclosure.

Effective date: October 1, 2005.

**AB 341** creates a new subsection under NRS 645C.150, which adds to the list of individuals and entities that the provisions of Chapter 645C of NRS do not apply; thereby exempting persons from appraisal licensing who assess the value of property in connection with a judicial proceeding for eminent domain.

Effective date: October 1, 2005.

\* \* \*

## Continuing Education Designation Transition

Real Estate licensees renewing their licenses after January 1, 2006, must have 24 hours of continuing education, of which at least 12 hours must be devoted to special designated courses in the areas of agency, Nevada law update, ethics, and contracts. Brokers and broker-salespersons must additionally complete three hours in a broker management designated course. This change is pursuant to regulations adopted by the Real Estate Commission, which became effective in November 2004 (and reported in the Spring 2005 *Open House*).

In preparation for the new requirement for additional designated hours, the criteria for each required designation was defined by Division staff and reviewed by the Commission. The Commission authorized the Administrator to approve the new course designations on individual courses, with appeal rights for course sponsors before the Commission. The result is that all currently approved continuing education courses and their new designations are posted on the Division's web site at [www.red.state.nv.us](http://www.red.state.nv.us).

Real estate licensees renewing after January 1, 2006, are requested to assist in the transition of course designations by utilizing a CE Summary Form (see page 7), which is available on the Division's web site as Form 608. This form will also allow the licensee to keep track of where they are in fulfilling the requirements for renewal.

The Education Section can assist sponsors or licensees with questions regarding the designation transition.

### CONTINUING EDUCATION SUMMARY FORM REQUIRED WITH LICENSE RENEWAL APPLICATIONS EFFECTIVE JANUARY 1, 2006

*The form displayed on page 7 of this publication will be required to be submitted with your license renewal beginning January 1, 2006.*

*The form is also available on the Division website at [www.red.state.nv.us](http://www.red.state.nv.us), "Frequently Used Forms," click on "Real Estate," scroll down and click Form 608.*

*This form will assist you in verifying that you have met the new continuing education requirements for brokers and salespersons, and it will help our licensing staff to accurately process your application for license renewal.*

**NOTE:** *You will still need to submit copies of your continuing education certificates of completion with this summary form and application for renewal.*

**CONTINUING EDUCATION SUMMARY FORM  
 REAL ESTATE LICENSE RENEWAL AND NEW COURSE DESIGNATIONS  
 NON-ORIGINAL LICENSES  
 REQUIRED TO SUBMIT WITH RENEWAL APPLICATIONS  
 EFFECTIVE JANUARY 1, 2006**

24 hours minimum required as follows:

- 3 hours Agency                              3 hours Nevada Law and Legislation  
 3 hours Ethics                                3 hours Contracts

12 hours general courses (G) and/or any designated courses listed above.  
 (3 hours personal development (PD) maximum)

- 3 hours Property Management (required to renew a property management permit)  
 3 hours Broker Management (required for a broker or a broker-salesperson)

Go to the Division's website, [www.red.state.nv.us](http://www.red.state.nv.us); click on New CE Designations and locate the table. From your CE certificates, insert old CE # in **Column 1** and old CE designation in **Column 2**. From the table, insert the new CE# in **Column 3**; insert the new CE designation in **Column 4** and calculate the total CE hours and new designation in **Column 5**. (Note: If you are unable to locate your CE #, please call the Division's Education Section at 702-486-4055).

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
Old CE #	Old CE Designation	New CE #	New CE Designation	Total CE hours and New Designation
<i>Examples: CE 2598E</i>	<i>LE</i>	<i>CE 2598005-RE</i>	<i>Agency</i>	<i>3.0 Agency</i>
<i>CE 2438</i>	<i>LE</i>	<i>CE 2438000-RE</i>	<i>General</i>	<i>3.0 General</i>
CE		CE		
CE		CE		
CE		CE		
CE		CE		
CE		CE		
CE		CE		
CE		CE		
CE		CE		
CE		CE		

From *Column 5* above, check off requirements you have satisfied:

- \_\_\_\_\_ 3 hours Agency                      \_\_\_\_\_ 3 hours Nevada Law and Legislation Update  
 \_\_\_\_\_ 3 hours Ethics                      \_\_\_\_\_ 3 hours Contracts  
 \_\_\_\_\_ 12 hours General and/or any designation (3 hours personal development maximum)  
 \_\_\_\_\_ 3 hours Property Management (required to renew a property management permit)  
 \_\_\_\_\_ 3 hours Broker Management (required if you are a broker or a broker-salesperson)

# Disciplinary Actions—Hearings

**September 2004**

**MARTHA GRAJEDA  
Salesperson no. 34379**

Although present at the Hearing, Respondent Grajeda failed to provide a response to the Complaint filed by the Division. This matter had been continued from the April 2004 Hearing in order to give the Respondent time to prepare her response. A Motion for Default was granted to the Division, and all allegations and violations contained in the Complaint for Disciplinary Action were deemed proven.

**Factual Allegations:**

Respondent listed a property for sale. Approximately three months later, the seller met with the Respondent and executed an unconditional termination of the listing contract. At that same meeting, the Respondent had the seller sign a deed transferring the property to an investment group for a stated consideration. Respondent also had the seller sign a document stating that the seller was voluntarily abandoning and transferring the property to the investment group for no monetary consideration. Respondent did not explain the significance of the documents to the seller, misrepresenting that the documents were needed to cancel the listing. The seller received no copies of the documents, no money for her property, signed no written agreement for the sale of the property, and did not know she was signing away title to her property. The investment group is a Nevada corporation for which the Respondent is listed as secretary, and Respondent's daughter is the president. Respondent did not disclose in writing her relationships with the corporation and its officers.

Subsequent to the Respondent changing her employment to another broker, her investment corporation signed an exclusive listing agreement to sell the property with the Respondent. An offer was accepted by the investment corporation, but Respondent did not disclose in writing her relationships with the corporation and its officers.

The buyer's funding for the property purchase was

arranged through the Respondent's daughter acting as a loan officer for a lending company whose address was the same as the Respondent's investment corporation.

Subsequently, Respondent was contacted by the Division informing her of a complaint regarding the first transaction. Respondent produced Duties Owed forms which disclosed that the Respondent was related to the loan officer but did not disclose that the Respondent was an officer of the investment corporation selling the property or that her daughter, the buyer's loan officer, was president of the investment corporation.

Approximately two months after the Division's investigation began, the Respondent attempted to submit additional Duties Owed documents alleged to be the "original" forms. These new forms contained all the appropriate disclosures referenced above but had signatures, dates and times different from the previously produced Duties Owed forms.

Respondent was found guilty of: misrepresentation of

all documents from the first transaction; gross negligence or incompetence and acting deceitfully for failure to disclose Respondent's and daughter's relationships with the investment corporation and lending company; failure to do her utmost to protect the public against fraud, misrepresentation or unethical practices; breaching her obligation to her client; and deceitful conduct for altering documents and submitting false information to the Division.

Respondent's license was suspended for six months, and Respondent was required to pay an \$18,000.00 fine, costs of \$3,610.16 and complete the 18-hour Nevada Prelicensing Law course.

**ANDREW MICHAEL  
Broker no. 43552**

Respondent was not present at the Hearing.

Respondent was first licensed as a salesperson in 1994. In 1998, Respondent became dually licensed as a corporate and individual broker. (At the time of the Hearing, Respondent only held an individual broker license). When Respondent submitted his original

***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.*

*(continued next page)*



# Disciplinary Actions—Hearings

application for a broker license, he submitted a college transcript indicating that he had received a Bachelor of Science degree in Nursing to partially satisfy the general education requirements for a broker's license. It was subsequently discovered that Respondent submitted a falsified education transcript and had not received a degree. Additionally, prior to being issued a real estate salesperson license, Respondent was denied licensure by the Nursing Board due to his submission of fraudulent transcripts.

Respondent was found guilty of making a material misrepresentation when he submitted a falsified college transcript, obtaining a license through false or fraudulent representation, and failing to disclose the Nursing Board's license denial.

All licenses issued by the Division to the Respondent were revoked, and Respondent was ordered to pay a \$15,000.00 fine and costs of \$3,770.00 within 6 months.

## **THOMAS J. WRATH** **Broker no. 50467**

Respondent was not present at the Hearing, but counsel for the Respondent was present and represented the Respondent.

Prior to this Hearing, Respondent had been disciplined relative to periods of unlicensed activity as a result of an expired broker license as well as engaging in property management without a permit. That case was resolved through a Stipulation for Settlement wherein the Respondent agreed to pay a \$7,500.00 fine and costs of \$1,350.00 and complete 24 hours of continuing education.

Respondent entered into an agreement to manage a common-interest community. Respondent was responsible for collecting dues, fines, special assessments, and maintaining the bank accounts, including the operations and reserve fund accounts. Respondent was also responsible for providing accurate monthly financial statements to the Association Board of Directors.

The financial statements provided to the Board of Directors indicated that the Association funds were being held in five certificates of deposit totaling \$96,614.72. Complaints received by the Division alleged that the Association Board was unable to verify the existence of the certificates of deposit.

The Association Board subsequently terminated the Respondent and had the Respondent removed as a

signatory on all Association bank accounts.

Subsequent to the Division notifying the Respondent of the Division's investigation, the Respondent obtained a cashier's check in the amount of \$97,358.65 from a financial institution different from that holding the alleged certificates of deposit, and delivered the check to the Association attorney. Respondent alleged that this check represents the Association's funds.

Respondent failed to properly respond to the Division's repeated requests for information regarding the verification of the existence of the certificates of deposit, the cashier's check being issued from a financial institution different from that holding the alleged certificates of deposit, and all Association operating and bank records. Subpoenas were issued to the financial institutions in question. Bank records indicated that the Association held no certificates of deposit.

Respondent was found guilty of material misrepresentation regarding the certificates of deposit, and failure to accurately account for the Association funds. Respondent was also found to be grossly negligent and incompetent for failing to ensure that the Association Financial Statements were accurate, breaching his obligation of absolute fidelity, and failing to produce documents and bank records to the Division.

Respondent's license and permit were revoked, and Respondent was required to pay a \$30,000.00 fine and costs of \$3,930.03. Any future application by Respondent for any license, permit or certificate must be approved by the Commission.

## **ELVIS NARGI** **Corporate Broker no. 43453**

***Stipulation of Fact and Liability:*** Respondent Nargi represented a buyer on a transaction and also acted as the loan officer for the buyer. Respondent acknowledged receipt of a personal check for \$500.00 earnest money deposit in the purchase agreement; however, no such check was received by the Respondent. The next day, all parties signed and accepted a counter-offer, increasing the earnest money to \$2,000.00. Subsequently, escrow was opened, but no earnest money was deposited into escrow. The escrow instructions stated that cash in the amount of \$2,000.00 had been given to the Respondent to be deposited into escrow.

(see *Hearings*, page 14)

# Unlicensed & “Virtual” Assistants

With the extended wait time for decisions regarding a licensing application, questions regarding what an applicant-in-waiting can and cannot do relating to real estate activity have arisen.

The Real Estate Division has issued Informational Bulletin #010, “Unlicensed and ‘Virtual’ Assistants,” to clarify what constitutes unlicensed activity and what activities are allowable under a broker’s supervision.

Brokers are urged to contact the Compliance Section of the Real Estate Division with any questions. For Informational Bulletin #010, go to our website at [www.red.state.nv.us](http://www.red.state.nv.us), move your mouse to Informational Bulletins, click on “Unlicensed Assistants.”

## **The following is reprinted from Division Informational Bulletin 010:**

### **What is an unlicensed assistant?**

An unlicensed assistant is someone who performs **administrative** tasks indirectly related to real estate transactions. Although many of the activities that take place in a real estate brokerage office require a license, common sense dictates that many administrative support activities that do not require licensure can be legally conducted in a real estate brokerage office. There may sometimes exist only a thin line between activities that require licensure and those that do not. **Administrative** tasks are activities which are indirectly related to activities performed by a real estate licensee. Unlicensed assistants may perform **administrative support** activities.

### **What is a virtual assistant?**

A virtual assistant is an independent person who offers business support services in a virtual environment. With the growth of the internet, changing demographics, corporate downsizing, and the evolution of telecommuting relationships, the concept of virtual assistants has flourished.

### **What MAY an unlicensed assistant / virtual assistant do?**

The following is a list of **administrative** functions which may be performed by an unlicensed assistant **under the direction of a licensee and supervising broker**.

- Answer phones, forward calls to or take messages for licensees.
- Transmit listings and changes to a multiple listing service.
- Follow up on **administrative** aspects of loan commitments **after** a contract has been negotiated by a licensee.
- Draft and assemble transaction documents, draft correspondence, do office filing, develop and maintain mailing lists, and perform other clerical duties for a licensee.
- Research, secure documents, make and deliver copies from public records.
- Have keys made for company listings.
- Act as a courier service to deliver documents, pick up keys, etc.
- Write and prepare newsletters, advertising, flyers, and promotional information and place such advertising after approval by licensee and supervising broker. **Remember: NRS 645.315 requires that ALL advertising must be done under the direct supervision of and in the name of the brokerage.**
- Perform bookkeeping, record and deposit trust funds under direction of the broker.
- Monitor licenses and personnel files.
- Place and/or remove signs on property.
- Accept rental payments and issue receipts at the broker’s place of business.
- Witness signatures.
- Schedule routine inspections and arrange for routine repairs on property.

(continued next page)

# Unlicensed & “Virtual” Assistants

(continued from previous page)

## **What activities CANNOT be performed by an unlicensed assistant / virtual assistant?**

An unlicensed assistant **CANNOT**:

- Meet with clients to obtain or renew brokerage agreements or property management agreements.
- Negotiate or agree to any commission, commission split, management fee or referral fee on behalf of a licensee or receive a referral fee from a licensee.
- Provide advice or guidance to a client or consumer regarding a real estate contract, brokerage agreement, property management agreement, title, financing, closing or other real estate document.
- Show property or provide clients or consumers information on listings.
- Answer any questions about a listing, including asking price, square footage, age of structure.
- Give listing presentations, interview buyers or present or negotiate offers.
- Contact or solicit prospective sellers or buyers, landlords or tenants, including scheduling appointments as a result of a telemarketing survey asking any of those parties if they would like to speak with a licensee about their real estate questions.

## **May an unlicensed assistant host an open house?**

Yes, but care must be taken that the unlicensed assistant does not **show** the property to prospective purchasers. That means an unlicensed assistant may welcome visitors, hand out brochures prepared by the licensee and serve refreshments at an open house, but all inquiries about the listing must be referred to a licensee. The host must NOT point out features of the home or neighborhood to visitors, but may distribute flyers or brochures prepared by a licensee that describe the property. The same rules for what an unlicensed assistant can and cannot do apply to hosting an open house.

## **What are the broker's responsibilities regarding unlicensed assistants?**

Brokers who employ unlicensed assistants or whose licensed associates are using unlicensed personal assistants, are responsible for assuring that such unlicensed persons are not involved in activities which require a license.

Brokers should establish guidelines for the use of unlicensed persons and procedures for monitoring their activities. It is the responsibility of the employing broker to assure that unlicensed assistants, either directly employed by the broker or employed by a licensee, are not acting improperly (NAC 645.600).

## **What actions may be taken if an unlicensed assistant conducts activities that require a license?**

In addition to any other remedy or penalty, the Real Estate Commission may impose an administrative fine against any unlicensed person who knowingly engages in any activity for which a license, permit, certificate, registration or authorization is required. The Commission may also impose an administrative fine against any person who knowingly assists an unlicensed person to engage in any activity for which a license, permit, certificate, registration or authorization is required. The amount of the fine may not exceed the amount of any gain or economic benefit that the person derived from the violation or \$5,000.00, whichever amount is greater (NRS 645.235).

## **Currently Available Informational Bulletins:**

- Multiple Offers Guidelines for Licensees #001
- Student / Instructor Standards of Conduct #002
- New Continuing Education Requirements #004
- New Duties Owed Forms FAQs #005
- Unlicensed Assistants #010

**[www.red.state.nv.us](http://www.red.state.nv.us)**

# Disciplinary Actions — Stipulations

## July 2004

**MICHAEL ELMORE**  
Broker-salesperson no. 34409  
**MARK HALLENBECK**  
Individual Broker no. 22062

**Allegations:** While associated with Respondent Hallenbeck, Respondent Elmore applied for renewal of his license in 2001, but his personal check for renewal was returned for insufficient funds. The Division subsequently notified Respondent Elmore that his license was cancelled.

The Division received a complaint regarding Respondent Elmore in early 2004. Respondent Elmore had continued to act as a broker-salesperson without a license from late 2001 until early 2004. By acting as a broker-salesperson without a license, Respondent Elmore was in violation of NRS 645.235(1)(a). By failing to adequately supervise Elmore and/or monitor Elmore's licensing status, Respondent Hallenbeck was in violation for failure to supervise.

**Stipulated Settlement:** Respondent Elmore to pay a \$5,000.00 fine within six months. Respondent Hallenbeck to pay a fine of \$1,500.00 and attend a 6-hour course on broker supervision within six months.

**WALTER MOELLER**  
Individual Broker no. 40554  
**MARSHA STRAND**  
Broker-salesperson no. 28584

**Allegations:** Respondent Moeller was the supervising broker of Respondent Strand at the time of the allegations. Strand decided to purchase a property listed for sale by Moeller. Strand prepared a Duties Owed form, but failed to have the form signed by the property Sellers. Upon discovering that the purchaser was a licensee associated with Moeller, the Sellers asked Moeller whether Strand would be paid a commission as the buyer. Moeller indicated that Strand would receive a commission. Subsequently, Moeller contacted the Sellers and had them sign an addendum that included a "buyer's credit" in the exact amount of the commission due the selling agent. Strand received the "buyer's credit" paid directly to her at close of escrow in lieu of a commission.

Respondent Strand was found guilty of failing to have the Duties Owed form signed by the Seller and accepting receiving compensation from other than her employing broker.

Respondent Moeller was found guilty of failure to properly supervise Strand.

**Stipulated Settlement:** Respondent Strand to pay a \$2,500.00 fine and attend six hours of "What Every Licensee Should Know" within six months.

Respondent Moeller to pay \$1,500.00 and attend 6 hours of broker management within 6 months.

## September 2004

**VIRGIL B. BALLARD**  
Corporate Broker no. 01378  
**JAMES J. BALLARD**  
Broker-salesperson no. 19363  
**GREGORY ADAMS**  
Salesperson no. 54060

**Allegations:** Respondent Virgil Ballard was the supervising broker of both Respondent James Ballard and Respondent Adams, and Respondent James Ballard was the office

manager at the time of the allegations. Even though Adams was acting as a buyer's agent, he did not complete any agency forms disclosing his relationship to his client. Adams' client made an offer to lease with a purchase option on a property listed through a licensee also associated with Virgil Ballard.

The offer, Duties Owed and Confirmation forms had James Ballard's name as the agent for the buyer but no signatures.

Adams informed his client that he had received a counter-offer. The client was out of town, but accepted the counter-offer verbally. Upon returning to town and even though the offer had expired, Adams' client initialed under the sellers' signatures on the counter-offer and agreement contract. The client was not given a copy of the initialed counter-offer. The listing agent was told that Adams' client had verbally agreed to the counter-offer, but never received the signed document.

Subsequently, the seller received and accepted another offer from another party. Upon receipt of the new offer, the listing agent went to Broker Virgil Ballard for advice. Ballard advised the listing agent of his options, including taking the new offer. Adams' client was not informed that the property was sold to

**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.

# Disciplinary Actions — Stipulations

another party until one week after Adams' client initialed the counter-offer and two days after the property sold to another party.

Adams and the Ballards admit that they lost the copy of the initialed counter-offer.

Adams did not renew his license but continued to work as an agent for over six months, at which time he was contacted by the Division regarding this matter.

**Stipulated Settlement:** Respondent Adams failed to provide appropriate agency forms and disclosure of his relationship to his client; failed to provide a copy of the initialed counter-offer to his client and failed to deliver the initialed counter-offer to the listing agent by losing the initialed counter-offer failed to ensure that each agreement has been signed by all parties; failed to exercise reasonable care; and acted as a salesperson with an expired license. Adams to pay a fine of \$7,000.00 within 1 year and complete 18 hours of Nevada Law within 6 months.

Respondent James Ballard was guilty of doing business from other than the place where Respondent was licensed, representing on transaction documents that he was the agent representing the buyer when he was not the buyer's agent, failing to keep informed of current statutes and regulations regarding real estate. James Ballard to pay a fine of \$1,500.00 and complete 18 hours of Nevada Law within 6 months.

Respondent Virgil Ballard failed to properly supervise Adams and James Ballard and failed to properly monitor the license status of Adams. Respondent to pay a fine of \$2,500.00 and complete 18 hours of Nevada Law within 6 months.

## **HWAI-YU "LILY" LIN Salesperson no. 40544**

**Allegations:** Respondent Lin signed a lease/rental agreement as the lessor/owner of a property, even though the true owners were Respondent's brother and another individual. Respondent wrote the brokerage name on the lease/rental agreement, but did not provide a Duties Owed form or Confirmation of agency to the tenant or true owners. Respondent did not disclose in writing that her brother was the property owner. Respondent engaged in property management activities with respect to the property, held the tenant's monies in her personal checking account and wrote checks for property repairs and maintenance from her personal account. Respondent never gave her broker the transaction file. Respondent had no property management permit, but had Special Power of Attorney from the property owners.

Respondent was in violation for failure to provide a Duties Owed disclosure form and agency Confirmation, making a material misrepresentation that she was the property owner, failing to disclose in writing that her brother was the property owner, and failing to give her broker a copy of the transaction file. **Stipulated Settlement:** Respondent to pay a fine of \$1,200.00 within 12 months and complete three hours of contracts and 3 hours of law/ethics within 6 months.

## **SHAWN MARION Salesperson no. 36268**

**Allegations:** Respondent Marion represented both parties in a sale/purchase transaction. The offer indicated that Respondent received a \$500.00 earnest money deposit in the form of a personal check; however, the Respondent did not have the check at the time the offer was accepted. Escrow was not opened and earnest money was not deposited until a week later. Subsequently, the Respondent was informed that the earnest money deposit check had been returned for insufficient funds, but the Respondent never informed the seller that the check was returned. Instead, the Respondent asked the buyer to replace the check; however, the check was never replaced. Respondent failed to inquire whether the check was ever replaced, and escrow continued for over 2 months, at which time the buyer disappeared.

Respondent is guilty of making a material misrepresentation regarding his possession of the earnest money deposit, failing to ensure that escrow was opened within one business day and failing to notify the sellers that the earnest money check was returned.

**Stipulated Settlement:** Respondent to pay a fine of \$3,000.00 and complete a 6-hour course on Contracts within 6 months.

## **CARLOS VEGA Broker no. 41845**

**Allegations:** Acting as a buyer's agent, Respondent Vega submitted an offer to purchase a property. The buyer gave the Respondent \$1,000.00 earnest money which was deposited into escrow, but the escrow did not close. Respondent advised the escrow company that the earnest money should be returned to the buyer; however, the escrow company was instructed by the seller not to release the funds.

On or about the same day that the Respondent requested the earnest money to be returned to the

(see *Stipulations*, page 15)

# —Hearings

(from page 9)

Approximately two weeks later, the buyer wrote a check to escrow for \$2,000.00 and gave the check to the Respondent. No money was ever deposited into escrow, and the check was never cashed. The seller's agent contacted the Respondent each day for three days. The first two days the agent was told that there were no problems with the transaction; however, the third day the Respondent told the agent that the transaction was cancelled.

Seller's agent faxed cancellation instructions to escrow and was then informed that no earnest money had ever been deposited into escrow.

**Conclusion:** Respondent is guilty of failing to advise the seller that no earnest money was deposited into escrow and making a material misrepresentation by signing a purchase agreement indicating he had received earnest money when he had not.

**Decision:** Respondent to pay a fine of \$15,000.00 within one year and complete education courses in the following areas: 6 hours of "What Every Licensee Should Know," 18 hours of Nevada Law, and 6 hours of contracts, all within 6 months.

## FELY QUITEVIS

Broker no. 38330

## PATRICK QUITEVIS

Salesperson no. 46161

**Stipulation of Fact:** Respondent Fely Quitevis was the supervising broker of Respondent Patrick Quitevis at the time of the allegations. During the course of an investigation and Hearing of another case, the Division received from Respondent Fely Quitevis a copy of a purchase agreement where Respondent Fely Quitevis represented the sellers and Respondent Patrick Quitevis represented the buyer. The Division opened a case concerning that purchase agreement and related transaction documentation.

The purchase agreement recited a \$500.00 check for the buyer's earnest money deposit; however, no check had been received from the buyer. Patrick Quitevis stated that the buyer had promised to mail him a check. The transaction documentation was not properly completed: the sellers made a counter-offer, but the purchase agreement was signed as if the offer, as written, was accepted; the purchase agreement section concerning the commission to be paid was blank; although the buyer indicated a verbal acceptance of the counter-offer, the counter-offer was not signed by the buyer; the Duties Owed and Consent to Act forms were signed by the parties, but the top portions of both forms were blank, failing to list a licensee or a broker; and there was no confirmation of agency. Subsequent to the

Division's investigation, both Respondents met with a Division Staff person to discuss the case. The Respondents submitted the same transaction documents; however, these documents were altered in an attempt to appear to be properly completed.

**Conclusion:** Respondent Fely Quitevis was guilty of failing to complete agency disclosure forms; gross negligence or incompetence for having the seller execute the purchase agreement without reference to the counter-offer, and for leaving altered transaction documents with the Division Staff person; failure to properly supervise.

Respondent Patrick Quitevis was guilty of failing to complete agency disclosure forms; misrepresenting the earnest money; gross negligence or incompetence for failing to indicate on the purchase agreement the acceptance of the counter-offer, and for leaving altered transaction documents with the Division Staff person.

**Decision:** Respondent Fely Quitevis to pay a fine of \$15,000.00, costs of \$1,180.00 and complete the 45-hour Broker Management course within 6 months.

Respondent Patrick Quitevis to pay a fine of \$6,000.00, costs of \$1,302.50 and complete the 6-hour course "What Every Licensee Should Know," 3 hours of agency and 3 hours of contracts within 6 months.

## TIMOTHY TIEMAN

Unlicensed

**Stipulation of Fact:** Respondent Tieman was licensed from October 1991 until his license expired November 2002. He continued to conduct activity requiring a license until April 2004. During an investigation of the Respondent's unlicensed real estate activity, it was determined that the Respondent had falsified his original licensing application and subsequent license reinstatement applications. Several years prior to being licensed, the Respondent had been arrested for forgery (a felony), entered a plea of "nolo contendere" to attempted forgery, and was given a suspended sentence of five years imprisonment with two years probation. However, in response to the question on the original application asking whether or not he had ever been charged with, arrested for, or convicted of a felony, the Respondent checked "no," and in response to the question asking whether or not he had ever entered a plea of nolo contendere to a criminal action, the Respondent checked "no."

After being issued his original license, the Respondent had several occurrences in which his license was placed on inactive status for writing checks returned to the Division for insufficient funds. On each occasion, the Respondent was required to answer the same questions to reinstate his license. Each time, he responded that he had never been arrested, charged

(continued on next page)

## —Hearings

(from page 14)

with or convicted of a felony nor entered a plea of nolo contendere.

In November 1993, Respondent filed for Chapter 7 bankruptcy relief. Subsequently, the Division notified the Respondent that his license was inactive due to failure to renew his license. In March 1994, the Respondent filed an application for license reinstatement, but failed to disclose either his bankruptcy or prior criminal history.

In October 1997, the Respondent was charged in Las Vegas Justice Court with two counts of drawing and passing a check without sufficient funds. Respondent paid restitution in connection with the case and attended bad check school. In April 1999, the criminal complaint was dismissed.

In October 1999, the Respondent attempted to renew his license with a check drawn without sufficient funds. November 1999 the Respondent was notified but failed to replace the bad check. At about the same time, the Respondent made a change of business address and was issued a license to the new address in error. Respondent continued to work on the license issued in error until his next renewal date of October 2001. Respondent paid his renewal fee with a check that was not honored by the bank.

Although Respondent's license expired due to non-renewal November 1, 2002, he continued to work for his employing broker until April 2004. From

2002 — 2004, Respondent had approximately 101 transaction files for which he was paid in excess of \$50,000 in commissions during that period of unlicensed activity (see Mark Stark, Stipulations, page 15).

On or about February 2, 2004, Respondent reapplied for a real estate license. Although he answered truthfully concerning his first criminal arrest, he failed to disclose his 1997 criminal charges. Respondent's license application was denied April 2004. Respondent appealed to the Commission, but the denial was affirmed.

The Respondent was found guilty of engaging in real estate activity which requires a license, making no less than nine material misrepresentations on his license applications. The Respondent was ordered to pay a \$20,000.00 fine and costs associated with the proceeding in the amount of \$2,202.00 within 12 months.

### Recovery Fund Payment

#### CORRECTION

In the Spring 2005 issue of the *Open House*, we erroneously reported that the following claim was paid April 2004. The claim was actually paid April 2005:

<b>Gary M. Sullivan</b>	\$10,000.00
<b>Partnership Broker # 29698</b>	

## —Stipulations

(from page 13)

buyer, the Respondent submitted an offer on a second property on behalf of the buyer. In the earnest money receipt section of the new offer, the Respondent wrote that he had received \$1,000.00 from the buyer. The Respondent did not receive \$1,000.00 from the buyer, but had intended that the \$1,000.00 earnest money deposit from the first escrow would be transferred to the second escrow. Respondent represented to the seller that the funds would transfer, but the funds were never transferred due to the dispute between the buyer and the first seller. Neither escrow closed.

Respondent was guilty of gross negligence or incompetence by failing to specifically state how the earnest money was to be deposited into the new escrow, and that the earnest money from the first transaction was in dispute.

Respondent to pay a fine of \$2,000.00 and

complete six hours of education in contracts and 6 hours of law/ethics within 6 months.

#### **MARK STARK**

#### **Limited Liability Broker no. 16469**

**Allegations:** From December 1995 until April 2004, Respondent Stark was the supervising broker for licensed salesperson Timothy J. Tieman (see Tieman, Disciplinary Hearing, page 14). Although Tieman's license had expired November 2002, he continued to work for Respondent until April 2004. From 2002 — 2004, Tieman had approximately 101 transaction files for which he was paid in excess of \$50,000 in commissions during that period of unlicensed activity. Respondent was in violation for paying real estate commissions to an unlicensed individual; failing to properly supervise; and failing to establish policies, rules, procedures or systems that would have detected the unlicensed status.

**Stipulated Settlement:** Respondent to pay a fine of \$2,500.00 and attend the "What Every Broker Should Know" course within 6 months.

## New Contact Phone Numbers

The Real Estate Division – Las Vegas office – has added additional phone lines to increase capacity for incoming and outgoing calls. The primary telephone number – **702-486-4033** – remains for accessing the Licensing Section, parties whose extension you know, and the general receptionist, and the facsimile number is **702-486-4275**.

If you receive a busy signal when calling the main number, you may use the following auxiliary numbers to reach a contact person in the section. Please note that you cannot access individual extensions or the operator through the auxiliary numbers.

Compliance	702-486-4046
Education	702-486-4055
Projects Section	702-486-4023
Administration	702-486-4023
Ombudsman	702-486-4480

Statewide Toll-Free for the Office of the Ombudsman: 877-829-9907

Carson City Office: 775-687-4280      Facsimile: 775-687-4868

**Website:** <http://www.red.state.nv.us>

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