

LCB File No. R165-07

**PROPOSED REGULATION OF THE
REAL ESTATE COMMISSION**

(This draft replaces the one posted 10/16/2007)

COMMISSION TEMPORARY REGULATION FILE NO. T645-02

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: NRS 645.050; NRS 645.190.

Section 1. Chapter 645 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

~~[Sec. 2. —“Agency” means a fiduciary relationship between a principal and an agent arising out of a brokerage agreement whereby the agent is engaged to do certain acts on behalf of the principal in dealings with a third party.]~~

Sec. ~~3~~ 2. *1. For purposes of NRS 645.320, “exclusive agency representation” means an agency relationship that consists of one broker and one client, as exemplified through brokerage agreements including, but not limited to:*

(a) “Exclusive right to sell or lease listing agreement” means an agency agreement that meets the requirements of NRS 645.320 and does both of the following:

(1) Grants the broker the exclusive right to represent the seller or lessor in the sale or lease of the seller’s property; and

(2) Provides the broker with the expectation of receiving compensation if the broker, the seller, or any other person or entity produces a purchaser or tenant in accordance with the terms specified in the listing agreement or if the property is sold or leased during the term of the listing agreement to anyone other than to specifically exempted persons or entities.

(b) “Exclusive agency listing agreement” means an agency agreement between a seller and broker that meets the requirements of NRS 645.320 and does both of the following:

(1) Grants the broker the exclusive right to represent the seller or lessor in the sale or lease of the seller’s property; and

(2) Provides the broker with the expectation of receiving compensation if the broker or any other person or entity produces a purchaser or tenant in accordance with the terms specified in the listing agreement or if the property is sold or leased during the term of the listing agreement, unless the property is sold or leased solely through the efforts of the seller or to the specifically exempted persons or entities.

(c) “Exclusive buyer’s brokerage agreement” means an agency agreement between a purchaser or tenant and broker that meets the requirements of NRS 645.320 and does both of the following:

(1) Grants the broker the exclusive right to represent the purchaser or tenant in the purchase or lease of property; and

(2) Provides the broker with the expectation of receiving compensation in accordance with the terms specified in the exclusive agency agreement or if a property is purchased or leased by the purchaser or tenant during the term of the agency agreement unless the property is specifically exempted in the agency agreement. The agreement may authorize the broker to receive compensation from the seller or lessor or that party’s [agent] broker and may provide that the purchaser or tenant is not obligated to compensate the broker if the property is purchased or leased solely through the efforts of the purchaser or tenant.

2. Nothing contained in this section prevents agency relationships described in NRS 645.193(2) and (3), with proper disclosures.

~~Sec. [4.] 3. [1. A licensee shall neither request nor accept a waiver of any duty required by NRS 645.252.]~~

~~[2] 1. For purposes of NRS 645.254, the term “presenting all offers” includes, without limitation: accepting delivery of and conveying offers and counteroffers; answering a client’s questions regarding offers and counteroffers; and assisting a client in preparing, communicating and negotiating offers and counteroffers.~~

~~Sec. [5] 4. 1. A broker who has the exclusive authority to represent a client under a written exclusive agency agreement, exclusive right to sell or lease agreement, or exclusive buyer’s brokerage agreement may authorize other licensees to negotiate directly with that client pursuant to NRS 645.635(2). The authorization shall be in a manner prescribed by the Division. The broker shall provide a copy of the authorization to any cooperating broker upon request.~~

~~2. Negotiations conducted by a licensee with a seller, purchaser, lessor, or tenant pursuant to the authorization described in paragraph 1 of this section shall not create or imply an agency relationship between that licensee and the client of that exclusive broker.~~

~~3. As used in this section, “negotiate” means any of the following:~~

~~(a) Delivering or communicating an offer, counteroffer, or proposal;~~

~~(b) Discussing or reviewing the terms of any offer, counteroffer, or proposal; and~~

~~(c) Facilitating communication regarding an offer, counteroffer, or proposal and preparing any response as directed.~~

~~4. A cooperating broker who negotiates an agreement pursuant to this section may communicate with the authorizing broker’s client to facilitate the agreement to closing.~~

Such communication alone shall not create or imply an agency relationship between that licensee and the client of the authorizing broker.

Sec. ~~6~~5. NAC 645.610 is hereby amended to read as follows:

1. In addition to satisfying the requirements set forth in [NRS 645.315](#):

(a) An advertisement of the services of a licensee for which a license is required under [chapter 645](#) of NRS must not be false or misleading.

(b) Except as otherwise provided in this paragraph, a licensee shall not use his name or telephone number or the name or telephone number of another licensee of the brokerage firm with which he is associated in any advertisement which contains the words “for sale by owner,” “for lease by owner” or similar words. A licensee may use his name or telephone number in an advertisement for property if the licensee has an ownership interest in the advertised property and the advertisement contains:

(1) If the licensee is a real estate broker, the words “for sale by owner-broker,” “for lease by owner-broker” or substantially similar words; or

(2) If the licensee is an agent, the words “for sale by owner-agent,” “for lease by owner-agent” or substantially similar words.

(c) The name of a brokerage firm under which a real estate broker does business or with which a real estate broker-salesman or salesman is associated must be clearly identified with prominence in any advertisement. In determining whether the name of the brokerage firm is identified with prominence, the Division shall consider, without limitation, the style, size and color of the type or font used and the location of the name of the brokerage firm as it appears in the advertisement.

(d) A licensee shall not publish or cause to be published any advertisement or place any sign that makes any reference to the availability of a specific property which is exclusively listed for sale by another broker unless the licensee obtains the prior written consent of the broker with whom the property is listed. Such consent must not be given or withheld by the listing broker without the knowledge of the owner of the property.

(e) A licensee shall not advertise or otherwise conduct business under a name, including a nickname, other than the name under which he is licensed to engage in business.

2. If advertising under the name of a franchise, a broker shall incorporate in a conspicuous way in the advertisement the real, fictitious or corporate name under which he is licensed to engage in business and an acknowledgment that each office is independently owned and operated.

3. A licensee who is representing a seller or lessor under an exclusive right to sell or lease listing agreement or an exclusive agency listing agreement shall not advertise such property to the public as “for sale by owner” or otherwise mislead the public to believe that the seller or lessor is not represented by a licensee.

~~[3.]~~ 4. As used in this section, “advertisement” includes, without limitation:

(a) Any unsolicited printed material and any broadcast made by radio, television or electronic means, including, without limitation, by unsolicited electronic mail and the Internet, billboards and signs; and

(b) Business cards, stationery, forms and other documents used in a real estate transaction.