

**ADOPTED REGULATION OF THE
REAL ESTATE COMMISSION**

LCB File No. R165-07

Effective April 17, 2008

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

AUTHORITY: §§1-7 and 9, NRS 645.050 and 645.190; §8, NRS 645.190.

A REGULATION relating to real estate; defining certain types of agreements; interpreting the terms “present all offers” and “exclusive agency representation” for certain purposes; allowing a broker who has the exclusive authority to represent a client to authorize another licensee to negotiate directly with the client under certain circumstances; prohibiting a licensee from engaging in certain advertising or other misleading conduct; and providing other matters properly relating thereto.

Section 1. Chapter 645 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

Sec. 2. *“Exclusive agency listing agreement” means an agreement between a broker and a seller or lessor that:*

- 1. Meets the requirements of NRS 645.320;*
- 2. Grants the broker the exclusive right to represent the seller or lessor in the sale or lease of any property; and*
- 3. Provides the broker with the expectation of receiving compensation if the broker or any other person produces a purchaser or tenant in accordance with the terms of the exclusive agency listing agreement or if the property is sold or leased during the term of the exclusive agency listing agreement, unless the property is sold or leased solely through the efforts of the*

seller or lessor or to a person who is specifically exempted under the exclusive agency listing agreement.

Sec. 3. *“Exclusive buyer’s brokerage agreement” means an agreement between a broker and a purchaser or tenant that:*

- 1. Meets the requirements of NRS 645.320;*
- 2. Grants the broker the exclusive right to represent the purchaser or tenant in the purchase or lease of any property; and*
- 3. Provides the broker with the expectation of receiving compensation in accordance with the terms specified in the exclusive buyer’s brokerage agreement or if any property is purchased or leased by the purchaser or tenant during the term of the exclusive buyer’s brokerage agreement, unless the property is specifically exempted in the exclusive buyer’s brokerage agreement.*

Sec. 4. *“Exclusive right to sell or lease listing agreement” means an agreement that:*

- 1. Meets the requirements of NRS 645.320;*
- 2. Grants the broker the exclusive right to represent the seller or lessor in the sale or lease of any property; and*
- 3. Provides the broker with the expectation of receiving compensation if the broker, the seller or any other person produces a purchaser or tenant in accordance with the terms specified in the exclusive right to sell or lease listing agreement or if the property is sold or leased during the term of the exclusive right to sell or lease listing agreement to any person other than a person who is specifically exempted under the exclusive right to sell or lease listing agreement.*

Sec. 5. 1. *As used in NRS 645.254, the Commission will interpret the term “present all offers” to include, without limitation:*

- (a) Accepting delivery of or conveying an offer or counteroffer;*
- (b) Answering a client’s questions regarding an offer or counteroffer; and*
- (c) Assisting a client in preparing, communicating or negotiating an offer or counteroffer.*

2. *As used in NRS 645.320, the Commission will interpret the term “exclusive agency representation” to mean an agency relationship that consists of one broker and one client, including, but not limited to:*

- (a) An exclusive agency listing agreement;*
- (b) An exclusive buyer’s brokerage agreement; or*
- (c) An exclusive right to sell or lease listing agreement.*

3. *The provisions of this section do not prohibit the creation of an agency relationship described in a form prepared pursuant to subsection 2 or 3 of NRS 645.193.*

Sec. 6. *An exclusive buyer’s brokerage agreement may authorize the broker specified in the agreement to receive compensation from the seller or lessor of the property or the broker of the seller or lessor and may provide that the purchaser or tenant is not required to compensate the broker if the property is purchased or leased solely through the efforts of the purchaser or tenant.*

Sec. 7. 1. *A broker who has the exclusive authority to represent a client under an exclusive agency listing agreement, exclusive buyer’s brokerage agreement or exclusive right to sell or lease listing agreement may authorize another licensee to negotiate directly with that client if written authorization is obtained from the broker pursuant to subsection 2 of NRS 645.635. The authorization must be prepared on a form prescribed by the Division. The broker*

shall, upon request, provide a copy of the authorization to any licensee cooperating with the broker.

2. Any negotiation conducted by a licensee with a seller, purchaser, lessor or tenant pursuant to the authorization described in subsection 1 does not create an express or implied agency relationship between the licensee and the client of the authorizing broker.

3. A licensee who cooperates with a broker and who negotiates an agreement pursuant to this section may communicate with the authorizing broker's client to assist in closing the agreement. Any communication engaged in pursuant to this subsection does not create an express or implied agency relationship between the licensee and the client of the authorizing broker.

4. As used in this section, "negotiate" means:

(a) To communicate, deliver, discuss or review the terms of an offer, counteroffer or proposal; or

(b) To communicate or assist in communication regarding an offer, counteroffer or proposal and preparing any response as directed.

Sec. 8. NAC 645.005 is hereby amended to read as follows:

645.005 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 645.007 to 645.055, inclusive, *and sections 2, 3 and 4 of this regulation* have the meanings ascribed to them in those sections.

Sec. 9. NAC 645.610 is hereby amended to read as follows:

645.610 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. *In addition to the provisions of paragraph (a) of subsection 1, a licensee who represents a seller or lessor under an exclusive agency listing agreement or an exclusive right to sell or lease listing agreement shall not advertise any property that is subject to the agreement as “for sale by owner” or otherwise mislead a person into believing that the licensee does not represent the seller or lessor.*

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.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R165-07**

The Real Estate Commission adopted regulations assigned LCB File No. R165-07 which pertain to chapter 645 of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

- 1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

At the April 2006 meeting of the Real Estate Commission, the Nevada Association of Realtors presented concerns regarding the state of minimum services for listings in Nevada. The Real Estate Commission appointed the Minimum Services Task Force (“Task Force”) to be comprised of licensees and legal representatives of the Real Estate Division and professional trade organizations to study actions taken in other jurisdictions and then to determine what actions, if any should be taken in Nevada. This regulation is a result of the findings of the Task Force and public comment which was originally a temporary regulation (T645-02) that expired on 11/1/07.

Notice of the proposed regulations were posted on the Real Estate Division website and in various other public locations where both the public and other interested persons would have access to that information. The Division conducted a public workshop in Carson City and Las Vegas on October 22, 2007 and in Reno on November 26, 2007. Public comment was solicited at the public adoption hearing in Las Vegas on January 29, 2008.

- 2. The number of persons who:**

	<u>LV/CC</u> <u>10/22/07</u>	<u>RENO</u> <u>11/26/07</u>	<u>LV</u> <u>1/29/08</u>
Attended Workshops:	1 - 1	4	
Attended Adoption hearing:	11		
Submitted written comments:			

- 3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

The Commission has had as a standing agenda item for their meetings to review Chapter 645 of NAC and make recommendations for proposed changes, additions, and deletions since July 2005 and through January 2008. At each meeting, the Commission considered possible changes to the Nevada Administrative Code for Chapter 645, solicited public comment, and formulated their proposals for changes. Interested persons were instructed

that they could obtain a copy of the comment summaries by contacting Joanne Gierer, Legal Administrative Officer, at 702-486-4036.

Minutes of the Commission's meetings are available by contacting Joanne Gierer, Legal Administrative Officer, at 702-486-4036.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

R165-07 began as a temporary regulation so by the time it made it through the regulation process it did not require amending.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

Business which it is to regulate:

(1) Both adverse and beneficial effects:

Beneficial effects: Establishes a clear guideline in how a licensee should deal with a seller who has listed property with a limited service brokerage. Most brokerages are looking for ways to deal with "entry only" listings in a way that complies with Nevada law and protects the buyer's licensee from unintended dual agency, while resulting in a successful transaction for both parties.

Adverse effects: There are no anticipated adverse effects to a business by the adoption of this regulation.

(2) Both immediate and long-term effects.

Immediate effects: Same as in (1).

Long-term effects: Encourages informed consumer choice and protects consumers from a licensee engaging in certain advertising or other misleading conduct.

Public:

(1) Both adverse and beneficial effects:

Beneficial effects: Consumers should have the right to select the level of service they want from a real estate licensee.

Adverse effects: There are no anticipated adverse effects to the public by the adoption of this regulation.

(2) Both immediate and long-term effects:

Immediate effects: Same as in (1).

Long-term effects: Consumer choice, the term "agency" and licensee duties are clearly defined which will create a friendlier environment for both the licensee and the seller.

6. The estimated cost to the agency for enforcement of the adopted regulation.

The regulation states that pursuant to NRS 645.635(2) a broker may authorize other licensees to negotiate directly with a client in writing on a form prescribed by the Division. The estimated cost to the agency would be for paper only.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There is no other state, federal or other governmental agency's regulations which the proposed regulations duplicate or overlap. The Department of Justice was contacted in order to research any possible litigation instituted by the DOJ.

8. If the regulation includes provisions, which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

None.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

There are no new fees and no increase to an existing fee.