

**PROPOSED REGULATION OF THE
REAL ESTATE COMMISSION**

LCB File No. R165-07

November 19, 2007

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 the seller’s or lessor’s 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 the seller’s or lessor’s 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.