

LCB File No. R019-06

**PROPOSED REGULATION OF THE
REAL ESTATE COMMISSION**

(Note: The provisions in this regulation relating to business brokerages have been removed from this regulation and are now located in R123-06)

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

AUTHORITY: NRS 645.

Section 1. Chapter 645 of the NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 15, inclusive, of this regulation.

Sec. 2. 1. *A person who wishes to obtain a permit to engage in business brokerage must submit to the Division:*

(a) A completed application on a form prescribed by the Division;

(b) A fee of \$40; and

(c) A certificate of completion, in a form that is satisfactory to the Division, that indicates his successful completion of the 24 classroom or distance education hours of instruction in business brokerage required by paragraph 2 of Sec 3 of SB 315 (2005).

2. *The 24 classroom or distance education hours of instruction in business brokerage required pursuant to paragraph (a), subsection 2, Sec. 3 of SB 315 must include, without limitation:*

(a) Eight hours of instruction relating to financial statements, including, without limitation:

(1) Income statements, balance sheets, cash flow statements;

(2) Reformatting & recasting income statements and balance sheets;

(3) Financial statement terms and concepts;

(b) Six hours of instruction relating to business valuation including, without limitation:

(1) Business value and alternative purchase offers;

(2) Cash equivalent value;

(3) Business purchase price and seller carry-back notes;

(4) Investment value vs. fair market value;

(5) Goodwill value;

(6) The significance of a business's assets in creating market value;

(7) The market value of a franchised business;

(8) Introduction to business valuation rules of thumb

(c) Six hours of instruction relating to purchase offer and sale considerations including, without limitation:

(1) Structuring the transaction;

(2) Description of the business;

(3) Asset versus stock sale;

(4) Description of tangible assets being acquired;

(5) Description of goodwill being acquired;

(6) Inclusion of real property in the transaction;

(7) Description of current assets included in the purchase;

(8) Cash on hand;

(9) Description of current assets excluded from the purchase;

(10) Method and terms of payment;

(11) Buyer assumption of seller liabilities;

(12) Notification of seller's creditors;

(13) Method of purchase price calculation when buyer assumes seller's liabilities;

(14) Close of escrow adjustments to buyer assumed liabilities;

(15) Transaction structure summary

(d) Four hours of instruction relating to business brokerage and professional practices, including, without limitation:

~~*[(1) Nevada Revised Statutes and Nevada Administrative Code pertaining specifically to business brokerage;]*~~

(2) Business opportunity contracts, agreements and disclosure forms;

(3) Marketing, preparing the business for sale, advertising the business for sale;

(4) Understanding the significance of the "potential" of a business;

(5) Offering prospectus and confidentiality agreement;

(6) Business brokerage compensation issues ;

(7) Purchase offer and acceptance forms used for business opportunities;

(8) Business broker and business appraiser associations

3. The Division may accept a course in business brokerage from a nationally recognized or accredited organization to fulfill the requirements set forth in paragraph 2, if the successful completion of that course would qualify the applicant to engage in business brokerage pursuant to the requirements of that organization.

3. A permit to engage in business brokerage initially issued by the Division is effective on the date the application for the permit is submitted to the Division or the date on which the fee for the permit is paid, whichever occurs later.

4. As used in this section and paragraph (a), subsection 2, Section 3 of SB 315, the Commission will interpret the term “successfully completed” or “successful completion” to include, without limitation, passing an examination which is prepared and administered by an organization designated by the Division, with a score of at least 75 percent that:

(a) Includes the subject matter presented in the hours of instruction required pursuant to subsection 2; and

(b) Consists of at least 50 multiple-choice questions.

5. The fee for the examination is \$75.

6. Each applicant for a permit must pay a fee for the costs of an investigation of the applicant’s background. Each applicant must, as part of his application and at his own expense:

(a) Arrange to have a complete set of his fingerprints taken by a law enforcement agency or other authorized entity acceptable to the Division ; and

(b) Submit to the Division:

(1) A completed fingerprint card and written permission authorizing the Division to submit the applicant’s fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for a report on the applicant’s background and to such other law enforcement agencies as the Division deems necessary; or

(2) Written verification, on a form prescribed by the Division, stating that the fingerprints of the applicant were taken and directly forwarded electronically or by another means to the Central Repository and that the applicant has given written permission to the law enforcement agency or other authorized entity taking the fingerprints to submit the fingerprints to the Central Repository for submission to the Federal Bureau of Investigation

for a report on the applicant's background and to such other law enforcement agencies as the Division deems necessary.

7. The Division may:

(a) Unless the applicant's fingerprints are directly forwarded pursuant to subparagraph (2) of paragraph (b) of subsection 6, submit those fingerprints to the Central Repository for submission to the Federal Bureau of Investigation and to such other law enforcement agencies as the Division deems necessary; and

(b) Request from each such agency any information regarding the applicant's background as the Division deems necessary.

Sec. 3. 1. The Division may renew a permit to engage in business brokerage if the holder of the permit submits to the Division:

(a) A request for the renewal of his permit with his application to renew his license as a real estate broker, real estate broker-salesman or real estate salesman;

(b) A renewal fee of \$40; and

(c) Documentation of his successful completion of the requirements for continuing education required by paragraph (a) of subsection 4 of Sec. 3 of SB 315.

2. The renewal of a permit is effective on the date on which the application for renewal of a license is submitted to the Division or on the date on which the renewal fees for the license and the permit are paid, whichever occurs later.

3. A permit expires on the same date as the holder's license expires.

Sec. 4. 1. For an applicant to receive credit for a course of instruction in business brokerage that is designed to fulfill the educational requirements for the issuance of a permit

which are described in paragraph (a), subsection 2, Sec. 3 of SB 315, the course must be approved by the Commission.

2. An educational institution that wishes to obtain approval to offer courses that meet the educational requirements for the issuance or renewal of a permit to engage in business brokerage must apply to the Division pursuant to the applicable procedures set forth in NAC 645.400 to 645.467, inclusive.

Sec. 5. *Business enterprise is a business as defined in NRS 645.007 without real estate.*

Sec. 6. *Initial license means a license issued to:*

1. A salesman in the State of Nevada or any other state or territory who does not hold a current license in another state or who has not held a license in this State within the past five years; or

2. A broker-salesman who has met the qualifications for a license by education only.

Sec. 7. NAC 645.350 is hereby amended as follows:

1. If the license of a real estate broker is involuntarily inactivated, suspended or revoked, he shall deliver his license to the Division with the license of each licensee with whom he is associated. A licensee who is associated with the real estate broker may, upon proper application and payment of the required fee, transfer to the association of another real estate broker. No refund will be made when a license is involuntarily inactivated, suspended or revoked.

2. Upon the death of a licensee, the license held by that licensee automatically expires.

3. A currently licensed broker in the State of Nevada may submit to the Division an affidavit stating that he will act as the broker of the brokerage for not more than 60 days after the death of a broker. Notice of such an appointment must be submitted to the Division, in writing, within 7 business days after the death of a broker.

Sec. 8. NAC 645.403 is hereby amended as follows:

A school that wishes to offer courses to meet the educational requirements for licensure under chapter 645 of NRS must apply to the Commission annually for approval on a form prescribed by the Division and pay the appropriate fees. The application must include, without limitation:

1. The name and address of the school;
2. The type of school and a description of its facilities;
3. Information concerning the ownership of the school, including the business organization and the names and addresses of all directors, principals, officers and others having interests as owners;
4. A list of the instructors;
5. A list of the courses to be offered and a topical syllabus for each;
6. The allotment of time for each subject;
7. A proposed schedule of courses for 1 year;
8. The titles, authors and publishers of all required textbooks;
9. A copy of each examination to be used and the correct answer for each question;
10. A statement of:
 - (a) The purpose of the school;
 - (b) The fees to be charged;
 - (c) The days, times and locations of classes;
 - (d) The number of quizzes and examinations;
 - (e) The grading systems, including the methods of testing and standards of grading;
 - (f) The requirements for attendance; and
 - (g) The location of the students' records; and

(h) The minimum passing score shall be 75 percent.

11. A statement as to whether the school or any instructor employed by the school has been disciplined by any governmental agency in this or any other state.

Sec. 9. NAC 645.426 is hereby amended as follows:

1. An instructor must have written approval from the Division before teaching an approved course.

2. An applicant for approval as an instructor must apply on a form prescribed by the Division.

3. The Division shall not, without the approval of the Commission, approve a person as an instructor if the person:

(a) Has been disciplined by the Commission or the Division acting on behalf of the Commission:

(1) Within the immediately preceding 5 years; or

(2) More than one time; or

(b) Has been determined in an administrative or judicial proceeding to have violated any statute, rule, regulation or order pertaining to real estate in this or any other state.

4. A person may be approved as an instructor to teach an approved course relating to his principal occupation if:

(a) He has:

(1) A bachelor's degree or a more advanced degree, plus at least 2 years of full-time experience, in the field in which he will be providing instruction;

(2) Teaching experience of at least 75 hours in the field in which he will be providing instruction within the 3 years immediately preceding the date of his application for approval plus at least 3 years of full-time experience in that field;

(3) At least 6 years of full-time experience in the field in which he will be providing instruction; or

(4) Any combination of at least 6 years of college-level course work and full-time experience in the field in which he will be providing instruction;

(b) He has a good reputation for honesty, integrity and trustworthiness; and

(c) He submits to the Division satisfactory documentation of his qualifications and a resume outlining his experience, education and teaching experience in the field in which he will be providing instruction.

5. The Division shall periodically review and evaluate each approved instructor.

6. The instructor may appeal the decision of the Administrator to deny approval of an instructor by filing an appeal with the Commission not later than 30 days after the date on which the instructor was notified of the denial.

7. If the instructor files a timely appeal, the Commission will, as soon as practicable, hold a hearing concerning the denial of approval of the instructor at a regularly scheduled meeting and will:

(a) Affirm the decision of the Administrator to deny approval of the instructor;

(b) Approve the instructor for a limited period and under such conditions as the Commission deems appropriate; or

(c) Reverse the decision of the Administrator to deny approval of the instructor.

Sec. 10. NAC 645.448 is hereby amended as follows:

1. Except as otherwise provided in subsection 3, a real estate salesman who wishes to renew his license must complete at least 24 hours of continuing education at approved educational courses, seminars or conferences during the license period for the license. Not less than 12 of the hours must be devoted to ethics, professional conduct or the legal aspects of real estate, including:

(a) Three hours in the area of agency relationships;

(b) Three hours in the area of Nevada law with an emphasis on recent statutory and regulatory changes;

(c) Three hours in the area of contracts; and

(d) Three hours in the area of ethics.

2. Except as otherwise provided in subsection 3, a real estate broker or real estate broker-salesman who wishes to renew his license must complete at least 24 hours of continuing education at approved educational courses, seminars or conferences during the license period for the license. Not less than 15 of the hours must be devoted to ethics, professional conduct or the legal aspects of real estate, including:

(a) Three hours in the area of agency relationships;

(b) Three hours in the area of Nevada law with an emphasis on recent statutory and regulatory changes;

(c) Three hours in the area of contracts;

(d) Three hours in the area of ethics; and

(e) Three hours in the area of broker management.

3. The requirements for continuing education set forth in subsections 1 and 2 do not apply to the renewal of a license upon the expiration of the initial license period for the license.

4. If a license has been placed on inactive status and the licensee wishes to have the license reinstated, the licensee must comply with the following requirements:

(a) If the license was on inactive status for one year or less, all of which was during the initial license period for the license, the licensee must complete at approved educational courses, seminars or conferences the 30-hour postlicensing course described in NAC 645.4442.

~~(a)~~(b) If the license was on inactive status for *more than one year but less than* 2 years ~~or less~~, any part of which was during the initial license period for the license, the licensee must complete at approved educational courses, seminars or conferences:

(1) The 30-hour postlicensing course described in NAC 645.4442; and

(2) At least 18 hours of continuing education. Not less than 12 of the hours must be devoted to ethics, professional conduct or the legal aspects of real estate, including:

(I) Three hours in the area of agency relationships;

(II) Three hours in the area of Nevada law with an emphasis on recent statutory and regulatory changes;

(III) Three hours in the area of contracts; and

(IV) Three hours in the area of ethics.

~~(b)~~(c) If the license was on inactive status for 2 years or less, no part of which was during the initial license period for the license, the licensee must complete at least 24 hours of continuing education at approved educational courses, seminars or conferences. Not less than 12 of the hours must be devoted to ethics, professional conduct or the legal aspects of real estate, including:

(1) Three hours in the area of agency relationships;

(2) Three hours in the area of current Nevada law with an emphasis on recent statutory and regulatory changes;

(3) Three hours in the area of contracts; and

(4) Three hours in the area of ethics.

~~(e)~~ (d) If the license was on inactive status for more than 2 years, any part of which was during the initial license period for the license, the licensee must complete at approved educational courses, seminars or conferences:

(1) The 30-hour postlicensing course described in NAC 645.4442; and

(2) At least 24 hours of continuing education. Not less than 12 of the hours must be devoted to ethics, professional conduct or the legal aspects of real estate, including:

(I) Three hours in the area of agency relationships;

(II) Three hours in the area of current Nevada law with an emphasis on recent statutory and regulatory changes;

(III) Three hours in the area of contracts; and

(IV) Three hours in the area of ethics.

~~(d)~~ (e) If the license was on inactive status for more than 2 years, no part of which was during the initial license period, the licensee must complete at least 48 hours of continuing education at approved educational courses, seminars or conferences. Not less than 12 of the hours must be devoted to ethics, professional conduct or the legal aspects of real estate, including:

(1) Three hours in the area of agency relationships;

(2) Three hours in the area of current Nevada law with an emphasis on recent statutory and regulatory changes;

(3) Three hours in the area of contracts; and

(4) Three hours in the area of ethics.

5. Not more than 3 hours of any of the required hours set forth in this section for continuing education may be taken in courses for personal development

Sec. 11. NAC 645.637 is hereby amended as follows:

In each real estate transaction involving a licensee, as agent or principal, the licensee shall clearly disclose, in writing, to the ~~[buyer and seller]~~ *client* ~~[,]~~ *any party not represented by a licensee* ~~[and the lessor and lessee]~~, his relationship as the agent of the ~~[buyer or the seller]~~ *client*, or his status as a principal. The disclosure must be made as soon as practicable, but not later than the date and time on which any written document is signed by the ~~[buyer or seller, or both]~~ *client, and any party not represented by a licensee* ~~[or the lessor or lessee, or both]~~. The prior disclosure must then be confirmed in a separate provision incorporated in or attached to that document and must be maintained by the real estate broker in his files relating to that transaction.

Sec. 12. NAC 645.467 is hereby amended as follows:

1. The Commission will grant credit for continuing education, not to exceed 6 hours during a licensing period, to a licensee for attending a meeting of the Commission if:

(a) The meeting of the Commission for which credit for continuing education is being sought is not a ~~[meeting]~~ *hearing* in which the licensee was participating ~~[in or otherwise affiliated with a specific]~~ *as the result of a* disciplinary ~~[hearing]~~ *action*;

(b) The meeting of the Commission for which credit for continuing education is being sought lasts at least 3 hours; and

(c) The Commission certifies, for the purposes of providing credit for continuing education, the attendance of the licensee at the meeting.

2. If a licensee attends only part of a meeting of the Commission, the Division may determine the number of hours of credit, if any, that the licensee may receive for credit for continuing education pursuant to this section.

Sec.13. NAC 645.657 is hereby amended as follows:

A licensee who receives a deposit on any transaction in which he is engaged on behalf of a broker or owner-developer shall pay over the deposit to that broker or owner-developer, or to the escrow business or company designated in the contract, within 1 business day after receiving ~~the deposit~~ *the fully executed contract*.

Sec. 14. NAC 645.695 is hereby amended as follows:

1. The Administrator may require a licensee to pay an administrative fine in the amount set forth in this subsection for each violation of the following provisions:

	For each Offense
NRS 645.252.....	\$500
Subsection 4, 5 or 6 of NRS 645.310.....	1,000
NRS 645.530..... 100 per license
NRS 645.550.....	500
NRS 645.560.....	500
Subsection 1 of NRS 645.570.....	250
Subsection 2 of NRS 645.570.....	500
Subsection 1 of NRS 645.580.....	250

	For each Offense
Paragraph (a), (b), (c), (e), (f), (i), (j), (k) or (l) of subsection 1 of NRS 645.630.....	500
Paragraph (g) of subsection 1 of NRS 645.630.....	1,000
Paragraph (c), (e), (g), (h), (j), (k) or (l) of subsection 1 of NRS 645.633	500
Paragraph (a) or (f) of subsection 1 of NRS 645.633.....	250
Paragraph (i) of subsection 1 of NRS 645.633.....	1,000
Subsection 1, 2, 3, 4, 5 or 6 of NRS 645.635.....	500
Subsection 7 or 8 of NRS 645.635.....	1,000
<i>Subsection 3 of NRS 645.660</i>	<i>1,000</i>
NAC 645.610.....	500
NAC 645.620.....	500
NAC 645.627.....	500
NAC 645.632.....	500
NAC 645.637.....	500
NAC 645.640.....	500
NAC 645.645.....	500
NAC 645.650.....	1,000
NAC 645.655.....	1,000
<i>NAC 645.855</i>	<i>2,000</i>

2. In addition to or in lieu of imposing an administrative fine pursuant to subsection 1, the Administrator may:

(a) Recommend to the Commission that the license of the licensee ~~[or the]~~ *and any* permit of the licensee ~~[if he holds a permit to engage in property management, or both,]~~ be suspended or revoked;

(b) Require a licensee to complete continuing education; or

(c) Take any combination of the actions set forth in paragraphs (a) and (b).

Sec. 15 NAC 645.810 is hereby amended as follows:

1. The presiding officer of a hearing shall:

(a) Ascertain whether all persons commanded to appear under subpoena are present and whether all documents, books, records and other evidence under subpoena are present in the hearing room.

(b) Administer the oath to the reporter as follows:

Do you solemnly swear or affirm that you will report this hearing to the best of your stenographic ability?

(c) Administer the oath to all persons whose testimony will be taken:

Do you and each of you solemnly swear or affirm to tell the truth and nothing but the truth in these proceedings?

(d) Ascertain whether either party wishes to have a witness excluded from the hearing except during the testimony of the witness. A witness may be excluded upon the motion of the Commission or upon the motion of either party. If a witness is excluded, he will be instructed not to discuss the case during the pendency of the proceeding. The respondent will be allowed to remain present at the hearing. The Division may designate a person who is a member of the staff

of the Division and who may also be a witness to act as its representative. Such a representative will be allowed to remain present at the hearing.

(e) Ascertain whether a copy of the complaint or decision to deny has been filed and whether an answer has been filed as part of the record in the proceedings.

(f) Hear any preliminary motions, stipulations or orders upon which the parties agree and address any administrative details.

(g) *Have the discretion to limit opening and closing statements.*

(h) Request the Division to proceed with the presentation of its case.

2. The Division may not submit any evidence to the Commission before the hearing except for the complaint and answer.

3. The respondent may cross-examine witnesses in the order that the Division presents them.

4. Witnesses or counsel may be questioned by the members of the Commission at any time during the proceeding.

5. Evidence which is to be introduced:

(a) Must first be marked for identification; and

(b) May be received by the Commission at any point during the proceeding.

6. When the Division has completed its presentation, the presiding officer shall request the respondent to proceed with the introduction of evidence and calling of witnesses on his behalf.

7. The Division may cross-examine witnesses in the order that the respondent presents them.

8. When the respondent has completed his presentation, the Division may call any rebuttal witnesses.

9. When all testimony for the Division and respondent has been given and all evidence submitted, the presiding officer may request the Division and the respondent to summarize their presentations.

10. The Commission may waive any provision of this section if necessary to expedite or ensure the fairness of the hearing.

11. The date of decision for the purpose of subsection 2 of NRS 645.760 is the date the written decision is signed by a Commissioner or filed with the Commission, whichever occurs later.

12. In the absence of the President of the Commission, any matter which must be acted upon may be submitted to the Vice President or to the Secretary.

13. Upon the presentation of evidence that the respondent received notice of the hearing and has not filed an answer within the time prescribed pursuant to NRS 645.685 , his default may be entered and a decision may be issued based upon the allegations of the complaint.

Sec. 16. NAC 645.830 is hereby amended as follows:

1. The time of the hearing may be continued by the Commission upon the written petition of the licensee or upon the written petition of the Division for good cause shown, or by stipulation of the parties to the hearing.

2. ~~[A continuance will not be granted on the grounds that the licensee's attorney has not had an opportunity to review the case unless he was given the case by the licensee less than 15 days before the hearing.]~~

~~[3]~~ A continuance will not be granted unless it is made in good faith and not merely for delay.

~~[4]~~ 3. A request for a continuance made before the hearing must be served upon the Commission as set forth in subsection 4 of NRS 645.050. If the Secretary of the Commission is not available to review and rule upon the continuance before the hearing, the continuance must be reviewed and ruled upon by the:

- (a) President of the Commission; or
- (b) If the President is unavailable, the Vice President of the Commission.

Sec 17. NAC 645.855 is hereby amended as follows:

~~[1.]~~ The broker of record with whom a person licensed as a real estate salesman or real estate broker-salesman is associated *at the time of the alleged violation and the current broker* shall attend any disciplinary hearing before the Commission concerning that licensee.

~~[2. The Division shall notify the current broker of record of any complaint filed by the Attorney General's office with the Commission.]~~

Sec. 18. "Sign" means to affix a signature to a record.

Sec. 19. "Signature" means a name, word, symbol, or mark executed or otherwise adopted, or a record encrypted or similarly processed in whole or in part, by a person with the present intent to identify himself and adopt or accept a record. The term includes, without limitation, an electronic signature as defined in NRS 719.100.