

Chapter 645 of NAC

LCB File No. T041-07

ADOPTED TEMPORARY REGULATION OF THE
REAL ESTATE COMMISSION

(Filed with the Secretary of State on July 16, 2007)

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

AUTHORITY: NRS 645.050; NRS 645.190 and NRS 645.863

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

Sec. 2. *“Existing Enterprise” as used in NRS and NAC of chapter 645 does not include the sale of real property concurrently with a related business where more than 50% of the gross income from the related business is directly derived from the use of that particular real property, including, but not limited to tenant occupancy transfers of lease and/or management agreements, storage facilities, hotels, motels, ranches and/or other businesses that would have no value without a concurrent transfer of the real property.*

Sec. 3. NAC 645.911 is hereby amended to read as follows:

As used in **chapter 645** of NRS, the Commission will interpret the term “engage in business as a business broker” to mean engaging in the business of:

1. Selling, exchanging, optioning or purchasing (*including the sale, exchange, optioning or purchasing of individual assets of the business or the sale of stock, partnership interest or membership in an LLC*) ;
2. Negotiating or offering, attempting or agreeing to negotiate the sale, exchange, option or purchase of; or
3. Listing or soliciting prospective purchasers of,
~~[the tangible assets and goodwill of an existing enterprise, if the sale or purchase of the tangible assets and goodwill of the enterprise requires the seller and purchaser to file with the Internal Revenue Service a Form 8594, Asset Acquisition Statement, or its equivalent or successor form.]~~
any business which reported in the previous tax (calendar or fiscal) year the revenues and expenses on one or more of the following forms: Schedule C (Profit or Loss from Business or Profession) or Form 1120, 1120S or 1065 unless 50% or more of reported income, excluding capital gain net income, came from rental of real estate (Form 8825).

**NOTICE OF ADOPTION OF TEMPORARY REGULATION
LCB File No. T041-07**

The DEPARTMENT OF BUSINESS & INDUSTRY, REAL ESTATE DIVISION, adopted regulations assigned Temporary File No. T041-07, which pertain to Chapter 645 of the Nevada Administrative Code on May 29, 2007.

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.

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 could have access to that information.

The purpose of the adoption of # T645-03 is to have in place a temporary regulation when Emergency Regulation # E001-07 expires June 13, 2007.

The Real Estate Commission conducted a public workshop on May 11, 2007 in Las Vegas, which was video-conferenced to Carson City. On May 29th, 2007, the Real Estate Commission conducted a public adoption hearing in Las Vegas, which was video-conferenced to Carson City. Public comment was solicited at both the workshop and the adoption hearing.

The notice of workshop and notice of adoption hearing instructed interested persons could obtain copies of the comment summaries by contacting Joanne Gierer, Legal Administrative Officer, at 702-486-4033 ext. 222.

2. The number of persons who:

	CARSON CITY <u>5/11/07</u>	LAS VEGAS <u>5/11/07</u>	CARSON CITY <u>5/29/07</u>	LAS VEGAS <u>5/29/07</u>
Attended Workshops:	7	11		
Attended Adoption hearing:			0	5
Submitted written comments:	3	3	0	0

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.

Affected businesses were invited to comment at the public workshop and adoption hearing. The notice of adoption hearing instructed persons to submit written comments to the Division on or before May 28, 2007.

Additionally, the Commission has had as a standing agenda item for their meetings to discuss and review Chapter 645 of NAC and make recommendations for proposed changes, additions, and deletions since July 2006 and through April 2007. 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 told that they could obtain a copy of the comment summaries by contacting Joanne Gierer, Legal Administrative Officer, at 702-486-4033 ext. 222. A summary of the comments from both the workshop and adoption hearing are attached hereto.

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.

There were amendments made to the regulation based upon public and written comments made at the workshop and comments made at the adoption hearing.

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 clarification of the term “Existing Enterprise” as it relates to the sale of real property.

The regulation also amends NAC 645.911 for the purpose of interpreting the term “engage in business as a business broker” to mean engaging in the business of selling, exchanging, optioning or purchasing (including the sale, exchange, optioning or purchasing of individual assets of the business or the sale of stock, partnership interest or membership in an LLC).

Adverse effects: Without this regulation, confusion will continue to exist in the real estate industry as to what real estate business transactions will require a business broker permit holder to conduct the transaction.

(2) Both immediate and long-term effects.

Immediate effects: Same as 5(1).

Long-term effects: Same as 5(1).

Public:

(1) Both adverse and beneficial effects:

Beneficial effects: The public will be assured that a real estate licensee who holds a business broker permit is qualified to assist in a transaction involving the sale of an existing enterprise.

Adverse effects: No adverse effects are anticipated with the adoption of this regulation, which clarifies when a licensee must have a business broker permit.

(2) Both immediate and long-term effects:

Immediate effects: Same as (1).

Long-term effects: Same as (1).

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

T645-03 will not have a financial impact on the Division.

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.

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.

T645-03 does not contain a new fee or increase of an existing fee.