

COLDWELL BANKER PREMIER REALTY
BLUNIVERSITY

LEAVE YOUR MARK

**AGENCY
RELATIONSHIPS**

FASTSTART 30 HOUR POST LICENSING
SESSION 2

INSTRUCTOR:
DEVIN REISS

VICE PRESIDENT OF SALES AND CAREER DEVELOPMENT



COLDWELL BANKER
PREMIER REALTY

COURSE OBJECTIVES

- Explain Nevada's statutory agency (NRS 645.252 – 645.259);
- Explain how agency is created and agency relationships are disclosed
- Evaluate who a licensee represents
- Explain what a Consent to Act form is and why it is needed
- Demonstrate how an agency relationship is confirmed

AGENCY RELATIONSHIPS

NRS 645.0045 Agency defined

In 2007, the Nevada legislature defined “agency” for real estate licensees as: a 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

NRS 645.005 Brokerage Agreement Defined

An oral or written contract between a client and a broker in which the broker agrees to provide real estate related services in exchange for valuable consideration.

Creation of Agency

Historically, an agency relationship could have been created in several ways:

Based on the 2007 definition, to create an agency relationship, there must first be a brokerage agreement. However; as brokerage agreements may be oral, there is the possibility that a licensee’s conduct may lead a party to the reasonable expectation that an oral brokerage agreement exists and therefore, the licensee is that party’s agent.

Implied agency - where the licensee acts as the agent of the client with the intention of representation and the client tacitly accepts those services even though there is no expressed (oral or written) brokerage agreement.

Expressed - wherein both the client and the broker agreed to the agency

Exclusive Agency:

NRS 645.320 Requirements for exclusive agency representation.

Every brokerage agreement which includes a provision for an exclusive agency representation must:

1. Be in writing.
2. Have set forth in its terms a definite, specified and complete termination.
3. Contain no provision which requires the client who signs the brokerage agreement to notify the real estate broker of the client’s intention to cancel the exclusive features of the brokerage agreement after the termination of the brokerage agreement.
4. Be signed by both the client or his or her authorized representative and the broker or his or her authorized representative in order to be enforceable.

Exclusive Authorization and Right to Sell
Exclusive Buyer Brokerage Agreement (SEE HANDOUT)

Agency Relationships

- **Single or Sole Agency**
Single agency is where the broker represents only one party in a given transaction. The broker's duty, loyalty and responsibilities are focused on promoting the interests of that client.
- **Multiple Agency – More than One Party**
NRS 645.251 Abrogation of Common Law (SEE HANDOUT)
In 1995 NRS 645.251 abrogated the common law setting forth that “a licensee is not required to comply with any principles of common law that may otherwise apply to any of the duties of a licensee as set forth in NRS 645.252, 645.253, and 645.254 and the regulations adopted to carry out those sections.

Duties Owed Form (SEE HANDOUT)

In the event that the licensee has the consent in principle initialed as “May” in the initial box at the bottom of the “Duties Owed” form, he must still obtain the signature on the “Consent to Act” form prior to the respective client's signature being placed on the contract.

Consent to Act Form (SEE HANDOUT)

- **Assigned Agency**
To lessen the conflict of interest impact created when a broker represents more than one party in a transaction, the law provides an “Ethical Wall” wherein the broker is allowed to assign a separate agent to each client. Upon this assignment the broker does not need to use the “Consent to Act” disclosure form nor receive the approval of the clients.

NRS 645.253

Licensees affiliated with same brokerage: Additional duties when assigned to separate parties to real estate transaction. If a real estate broker assigns different licensees affiliated with his brokerage to separate parties to a real estate transaction, the licensees are not required to obtain the written consent required pursuant to paragraph (d) of subsection 1 of NRS 645.252.

Historically

- Edina – Conflict of interest
- Sub-agency

Unrepresented parties

NAC 645.637

Disclosure of relationship as agent or status as principal. (NRS 645.050, 645.190, 645.252) In each real estate transaction involving a licensee, as agent or principal, the licensee shall clearly disclose, in writing, to his or her client and to any party not represented by a licensee, the relationship of the licensee as the agent of his or her client or the status of the licensee 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 client or any party not represented by a licensee, 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 or her files relating to that transaction.

Confirmation of Agency Relationships

- In contract (SEE HANDOUT)

Article 16 of the REALTOR Code of Ethics

Realtors® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other Realtors® have with clients.

- Standard of Practice 16-2

Article 16 does not preclude Realtors® from making general announcements to prospects describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another Realtor®. A general telephone canvass, general mailing or distribution addressed to all prospects in a given geographical area or in a given profession, business, club, or organization, or other classification or group is deemed “general” for purposes of this standard.

Article 16 is intended to recognize as unethical two basic types of solicitations:

First, telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another Realtor® and

Second, mail or other forms of written solicitations of prospects whose properties are exclusively listed with another Realtor® when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, “for sale” or “for rent” signs, or other sources of information required by Article 3 and Multiple Listing Service rules to be made available to other Realtors® under offers of subagency or cooperation.

- Standard of Practice 16-3

Article 16 does not preclude Realtors® from contacting the client of another broker for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g., property management as opposed to brokerage) or from offering the same type of service for property not subject to other brokers’ exclusive agreements. However, information received through a Multiple Listing Service or any other offer of cooperation may not be used to target clients of other Realtors® to whom such offers to provide services may be made.

- Standard of Practice 16-6

When Realtors® are contacted by the client of another Realtor® regarding the creation of an exclusive relationship to provide the same type of service, and Realtors® have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement or, alternatively, may enter into an agreement which becomes effective upon expiration of any existing exclusive agreement.

- Standard of Practice 16-9

Realtors®, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service.

- Standard of Practice 16-13

All dealings concerning property exclusively listed, or with buyer/tenants who are subject to an exclusive agreement shall be carried on with the client's representative or broker, and not with the client, except with the consent of the client's representative or broker or except where such dealings are initiated by the client. Before providing substantive services (such as writing a purchase offer or presenting a CMA) to prospects, Realtors® shall ask prospects whether they are a party to any exclusive representation agreement. Realtors® shall not knowingly provide substantive services concerning a prospective transaction to prospects who are parties to exclusive representation agreements, except with the consent of the prospects' exclusive representatives or at the direction of prospects.

- Standard of Practice 16-15

In cooperative transactions Realtors® shall compensate cooperating Realtors® (principal brokers) and shall not compensate nor offer to compensate, directly or indirectly, any of the sales licensees employed by or affiliated with other Realtors® without the prior express knowledge and consent of the cooperating broker.

- Standard of Practice 16-16

Realtors®, acting as subagents or buyer/tenant representatives or brokers, shall not use the terms of an offer to purchase/lease to attempt to modify the listing broker's offer of compensation to subagents or buyer/tenant representatives or brokers nor make the submission of an executed offer to purchase/lease contingent on the listing broker's agreement to modify the offer of compensation.

- Standard of Practice 16-20

Realtors®, prior to or after their relationship with their current firm is terminated, shall not induce clients of their current firm to cancel exclusive contractual agreements between the client and that firm. This does not preclude Realtors® (principals) from establishing agreements with their associated licensees governing assignability of exclusive agreements.



BUYER BROKERAGE AGREEMENT



1 I/We, _____ (“Buyer”) hereby employs and grants
 2 _____ (“Broker”) the exclusive and irrevocable right, commencing on _____,
 3 (Company Name)

4 20____, and expiring at midnight on _____, 20 ____, to locate property and negotiate terms and
 5 conditions acceptable to Buyer for purchase, exchange, option, or lease as follows:
 6

7 **1. General Nature of Property:** Buyer intends to acquire an interest in one or more properties meeting the following
 8 general description:

9 Type: ___ Residential ___ Land ___ Commercial ___ Other: _____

10
 11 **2. Buyer Obligations:**

- 12 a. BUYER AGREES TO WORK EXCLUSIVELY with Broker and not with any other Broker.
- 13 b. BUYER AGREES TO FURNISH Broker with all relevant data, records, documents and other information
 14 including loan pre-approval letters and proof of funds to purchase upon request of Broker and authorizes Broker to furnish
 15 copies to prospective Sellers, Landlords, Optionors or Exchangors.
- 16 c. BUYER AGREES TO BE AVAILABLE to examine property(s) and responding in a timely manner to
 17 communications from Broker.
- 18 d. BUYER AGREES TO ACT IN GOOD FAITH to acquire the Property and conduct any and all
 19 inspections/investigations of the Property that Buyer deems material and/or important.
- 20 e. NEW HOMES/ LOT SALES: Some Sellers, (particularly new home subdivisions, open houses and for-
 21 sale-by-owner), will not compensate Broker unless Broker makes the first visit with Buyer. If Buyer makes a first visit
 22 without Broker, Buyer agrees to compensate Broker as stated in Brokers Compensation below.
- 23 f. BUYER AGREES that, to the fullest extent allowable under Nevada law, that Broker shall be deemed to be
 24 procuring cause for any and all successful real estate transactions which arise from or originate during the term of this
 25 agreement.
 26

27
 28 **3. Broker Representations:**

- 29 a. BROKER HOLDS a current, valid Nevada real state license
- 30 b. BROKER AGREES TO WORK DILIGENTLY to locate real property acceptable to Buyer
- 31 c. BROKER AGREES TO NEGOTIATE, as Buyer’s agent, for terms and conditions acceptable to Buyer for
 32 the purchase, exchange, option or lease of real property(s).

33 **4. Broker Compensation:** Broker’s compensation shall be paid at the time of and as a condition of closing as follows:

- 34 a. Buyer agrees to pay Broker (select all that apply):
 35 1. ___ % of the gross selling price of the Property; OR
 36 2. ___ the set amount of \$ _____. OR
 37 3. ___ whichever is greater of 1 and 2.

38 Buyer authorizes Broker to accept compensation offered by seller or seller’s broker, which compensation shall be credited
 39 against any compensation owed by Buyer to Broker.

40 b. In addition to the compensation in 4(a), Buyer agrees to pay Broker \$ _____ as and for the flat fee
 41 portion of Broker’s total compensation. This flat fee portion is assessed by Broker to its clients and customers in exchange
 42 for real estate services provided and actually performed, and is not required by any state or federal government to ensure that
 43 real estate transactions comply with federal or state laws and regulations.

44 c. Buyer agrees to compensate Broker if the Buyer or any other person acting on the Buyer’s behalf enters
 45 into an agreement to purchase, exchange, option, or lease and property of the general nature described herein.

46 d. If completion of any transaction is prevented by Buyer’s Default or with the consent of Buyer, the total
 47 compensation due under this Agreement shall be immediately due and payable by Buyer.

48 e. Buyer agrees to pay such compensation if Buyer within _____ calendar days after the termination of this
 49 Agreement enters into an agreement to purchase, exchange, option or lease any property shown to or negotiated on behalf of
 50 the Buyer by Broker during the term of this Agreement, unless Buyer enters into a subsequent agreement with another
 51 Broker.

52 f. Commissions payable for the purchase, exchange, option or lease of property are not set by the Greater Las
 53 Vegas Association of REALTORS® or any Board or Association of REALTORS® or Multiple Listing Service or in any
 54 manner other than as negotiated between Broker and Buyer.

1 **5. Disclosures:**

- 2 a. Buyer acknowledges receipt of the "DUTIES OWED" form, explaining the Duties of Agents in Nevada
- 3 b. Buyer understands that depending on the circumstances, it may be necessary or appropriate for Broker to act as an
- 4 agent of both parties for each such transaction. In such event, Broker will seek Buyers' consent to Broker's
- 5 representation of additional parties as soon as practicable and will obtain the written "CONSENT TO ACT" form
- 6 signed by all parties.
- 7 c. Buyers consents and acknowledges that OTHER POTENTIAL BUYERS represented by Broker may consider, make
- 8 offers on, or acquire interest in the same or similar properties as Buyer.
- 9

10 **6. Non Confidentiality of Offers:** Buyer is advised that Seller or Listing Agent may disclose the existence, terms or

11 conditions of a Buyer's offer unless all parties and their agent have signed a written confidentiality agreement. Whether such

12 information is actually disclosed depends upon many factors, such as current market conditions, the prevailing practice in the

13 real estate community, the Listing Agent's marketing strategy and the instructions of the Seller.

14

15 **7. Internet Advertising, Internet Blogs, Social Media:** Buyer acknowledges and agrees that (i) properties presented

16 to them may have been marketed through a "virtual tour" on the Internet, permitting potential buyers to view properties

17 online, or that the properties may be the subject of comments or opinions of value by others online, on blogs or other social

18 media sites; (ii) neither the service provider(s) or the Broker have control over who will obtain access to such services or

19 what actions such persons may take; and (iii) Broker as no control over how long the information concerning the properties

20 will be available on the internet or social media sites.

21

22 **8. Equal Housing Opportunity:** It is the policy of the Broker to abide by all local, state, and federal laws prohibiting

23 discrimination against any individual or group of individuals. The Broker has no duty to disclose the racial, ethnic, or

24 religious composition of any neighborhood, community, or building, nor whether persons with disabilities are housed in any

25 home or facility, except that the agent may identify housing facilities meeting the needs of a disabled buyer.

26

27 **9. Other Potential Buyers:** Buyer consents and acknowledges that other potential buyers represented by Broker may

28 consider, make offers on, or acquire an interest in the same or similar properties as Buyer is seeking.

29

30 **10. Mediation:** The Broker and Buyer hereby agree that any dispute concerning the terms and conditions of this

31 contract shall be resolved through mediation proceedings at the Greater Las Vegas Association of REALTORS® in

32 accordance with its standards of practice. If a lawsuit is filed by either party, that lawsuit shall be stayed until the dispute is

33 resolved or terminated in accordance with this paragraph. ____/____ (Buyer's Initials) ____/____ (Broker's Initials)

34

35 **11. Attorneys Fees:** In the event suit is brought by either party to enforce this Agreement, the prevailing party is

36 entitled to court costs and reasonable attorney's fees.

37

38 **12. Nevada Law Applies:** This Agreement is executed and intended to be performed in the State of Nevada, and the

39 laws of the Nevada shall govern its interpretation and effect. The parties agree that the State of Nevada, and the county in

40 which the Property is located, is the appropriate judicial forum for any litigation related to this Agreement.

41

42 **13. Capacity:** Buyer warrants that Buyer has the legal capacity, full power and authority to enter into this Agreement

43 and consummate the transaction contemplated hereby on Buyer's own behalf or on behalf of the party Buyer represents. All

44 Buyers executing this Agreement are jointly and severally liable for the performance of all its terms. Buyers obligation's to

45 pay Broker is binding upon Buyer and Buyer's heirs, administrators, executors, successors and assignees.

46

47 **14. Entire Contract:** All prior negotiations and agreements between the parties are incorporated in this Agreement,

48 which constitutes the entire contract. Its terms are intended by the parties as a final, complete, and exclusive expression of

49 their agreement with respect to its subject matter and may not be contradicted by evidence of any prior agreement or

50 contemporaneous oral agreement. This Agreement and any supplement, addendum, or modification, including any photocopy

51 or facsimile, may be executed manually or digitally, and may be executed in two or more counterparts, all of which shall

52 constitute one and the same writing. The terms of this Agreement may not be amended, modified or altered except through a

53 written agreement signed by all of the parties hereto.

54

55 **15. Partial Invalidity:** In the event that any provision of this Agreement shall be held to be invalid or unenforceable

56 such ruling shall not affect the validity or enforceability of the remainder of the Agreement in any respect whatsoever.

57

58 **16. Buyer Declaration: Buyer acknowledges and warrants by signature(s) below that s/he is not already in any**

59 **exclusive buyer representation agreement with any other broker in the state of Nevada. Entering into multiple**

1 **agreements could subject you to multiple fee obligations.** Buyer acknowledges that he has not relied on any statement of
2 the Broker which are not herein expressed.

3 **17. Acceptance:** Buyer hereby agrees to all of the terms and conditions herein and acknowledges receipt of a copy of
4 this Agreement.
5

6 **18. FIRPTA:** Should the provisions of the Foreign Investment in Real Property Tax Act (FIRPTA) (Internal Revenue
7 Code Section 1445) apply to the Buyers' real estate transaction, Buyer understands that if Seller is a foreign person then the
8 Buyer must withhold a tax in an amount to be determined in accordance with FIRPTA, unless an exemption applies.
9 Additional information for determining status may be found at www.irs.gov.

10 **19. Default:** If completion of any transaction is prevented by Buyer's Default or with the consent of Buyer, the total
11 compensation due under this Agreement shall be immediately due and payable by Buyer. Buyer agrees to pay such
12 compensation if Buyer within _____ calendar days after the termination of this Agreement enters into an agreement to
13 purchase any property shown to or negotiated on behalf of the Buyer by Broker during the term of this Agreement, unless
14 Buyer enters into a subsequent agreement with another Broker. If completion of any transaction is prevented by Buyer's
15 breach or with the consent of Buyer, other than as provided in the purchase contract, the total compensation shall be due and
16 payable by Buyer.
17

18 **20. Additional Terms:** _____
19 _____
20 _____
21 _____
22 _____
23

24 **THE PRE-PRINTED PORTION OF THIS AGREEMENT HAS BEEN APPROVED BY THE GREATER LAS**
25 **VEGAS ASSOCIATION OF REALTORS®. NO REPRESENTATION IS MADE AS THE LEGAL VALIDITY OF**
26 **ADEQUACY OF ANY PROVISION OR THE TAX CONSEQUENCES THEREOF. FOR LEGAL OR TAX**
27 **ADVICE, CONSULT YOUR ATTORNEY OR TAX ADVISOR.**
28

29 THE UNDERSIGNED BUYER HAS READ, UNDERSTANDS AND APPROVED EACH OF THE
30 PROVISIONS CONTAINED HEREIN AND ACKNOWLEDGES RECEIPT OF A COPY.

31 **BUYER:**

32
33 Buyer Signature: _____ Date: _____

34
35 Buyer Signature: _____ Time: _____

36
37 Address: _____ City _____ State _____ Zip _____

38
39 Telephone: _____ Fax: _____ Email: _____
40

41 **BROKER:**

42
43 Broker Signature: _____ Date: _____

44
45 Company: _____ Designated Licensee: _____

46
47 Address: _____ City _____ State _____ Zip _____

48
49 Telephone: _____ Fax: _____ Email: _____

DUTIES OWED BY A NEVADA REAL ESTATE LICENSEE

This form does not constitute a contract for services nor an agreement to pay compensation.

In Nevada, a real estate licensee is required to provide a form setting forth the duties owed by the licensee to:

- a) Each party for whom the licensee is acting as an agent in the real estate transaction, and
- b) Each unrepresented party to the real estate transaction, if any.

Licensee: The licensee in the real estate transaction is _____
 whose license number is _____. The licensee is acting for [client’s name(s)] _____
 _____ who is/are the Seller/Landlord; Buyer/Tenant.

Broker: The broker is _____, whose company is _____.

Are there additional licensees involved in this transaction? Yes No **If yes, Supplemental form 525A is required.**

Licensee’s Duties Owed to All Parties:

A Nevada real estate licensee shall:

1. Not deal with any party to a real estate transaction in a manner which is deceitful, fraudulent or dishonest.
2. Exercise reasonable skill and care with respect to all parties to the real estate transaction.
3. Disclose to each party to the real estate transaction as soon as practicable:
 - a. Any material and relevant facts, data or information which licensee knows, or with reasonable care and diligence the licensee should know, about the property.
 - b. Each source from which licensee will receive compensation.
4. Abide by all other duties, responsibilities and obligations required of the licensee in law or regulations.

Licensee’s Duties Owed to the Client:

A Nevada real estate licensee shall:

1. Exercise reasonable skill and care to carry out the terms of the brokerage agreement and the licensee’s duties in the brokerage agreement;
2. Not disclose, except to the licensee’s broker, confidential information relating to a client for 1 year after the revocation or termination of the brokerage agreement, unless licensee is required to do so by court order or the client gives written permission;
3. Seek a sale, purchase, option, rental or lease of real property at the price and terms stated in the brokerage agreement or at a price acceptable to the client;
4. Present all offers made to, or by the client as soon as practicable, unless the client chooses to waive the duty of the licensee to present all offers and signs a waiver of the duty on a form prescribed by the Division;
5. Disclose to the client material facts of which the licensee has knowledge concerning the real estate transaction;
6. Advise the client to obtain advice from an expert relating to matters which are beyond the expertise of the licensee; and
7. Account to the client for all money and property the licensee receives in which the client may have an interest.

Duties Owed By a broker who assigns different licensees affiliated with the brokerage to separate parties.

Each licensee shall not disclose, except to the real estate broker, confidential information relating to client.

Licensee Acting for Both Parties:

The Licensee

MAY [_____/_____] **OR** **MAY NOT** [_____/_____]

in the future act for two or more parties who have interests adverse to each other. In acting for these parties, the licensee has a conflict of interest. Before a licensee may act for two or more parties, the licensee must give you a “Consent to Act” form to sign.

I/We acknowledge receipt of a copy of this list of licensee duties, and have read and understand this disclosure.

Seller/Landlord: _____ *Date:* _____ *Time:* _____

Seller/Landlord: _____ *Date:* _____ *Time:* _____

OR

Buyer/Tenant: _____ *Date:* _____ *Time:* _____

Buyer/Tenant: _____ *Date:* _____ *Time:* _____

CONSENT TO ACT

This form does not constitute a contract for services nor an agreement to pay compensation.

DESCRIPTION OF TRANSACTION: The real estate transaction is the sale and purchase; or lease; of

Property Address: _____

In Nevada, a real estate licensee may act for more than one party in a real estate transaction however, before the licensee does so, he or she must obtain the written consent of each party. This form is that consent. Before you consent to having a licensee represent both yourself and the other party, you should read this form and understand it.

Licensee: The licensee in this real estate transaction is _____ (“Licensee”) whose license number is _____ and who is affiliated with _____ (“Brokerage”).

Seller/Landlord _____
Print Name

Buyer/Tenant _____
Print Name

CONFLICT OF INTEREST: A licensee in a real estate transaction may legally act for two or more parties who have interests adverse to each other. In acting for these parties, the licensee has a conflict of interest.

DISCLOSURE OF CONFIDENTIAL INFORMATION: Licensee will not disclose any confidential information for 1 year after the revocation or termination of any brokerage agreement entered into with a party to this transaction, unless Licensee is required to do so by a court of competent jurisdiction or is given written permission to do so by that party. Confidential information includes, but is not limited to, the client’s motivation to purchase, trade or sell, which if disclosed, could harm one party’s bargaining position or benefit the other.

DUTIES OF LICENSEE: Licensee shall provide you with a “Duties Owed by a Nevada Real Estate Licensee” disclosure form which lists the duties a licensee owes to all parties of a real estate transaction, and those owed to the licensee’s client. When representing both parties, the licensee owes the same duties to both seller and buyer. Licensee shall disclose to both Seller and Buyer all known defects in the property, any matter that must be disclosed by law, and any information the licensee believes may be material or might affect Seller’s/Landlord’s or Buyer’s/Tenant’s decisions with respect to this transaction.

NO REQUIREMENT TO CONSENT: You are not required to consent to this licensee acting on your behalf. You may

- Reject this consent and obtain your own agent,
- Represent yourself,
- Request that the licensee’s broker assign you your own licensee.

CONFIRMATION OF DISCLOSURE AND INFORMATION CONSENT

BY MY SIGNATURE BELOW, I UNDERSTAND AND CONSENT: I am giving my consent to have the above identified licensee act for both the other party and me. By signing below, I acknowledge that I understand the ramifications of this consent, and that I acknowledge that I am giving this consent without coercion.

I/We acknowledge receipt of a copy of this list of licensee duties, and have read and understand this disclosure.					
_____	_____	_____	_____	_____	_____
<i>Seller/Landlord</i>	<i>Date</i>	<i>Time</i>	<i>Buyer/Tenant</i>	<i>Date</i>	<i>Time</i>
_____	_____	_____	_____	_____	_____
<i>Seller/Landlord</i>	<i>Date</i>	<i>Time</i>	<i>Buyer/Tenant</i>	<i>Date</i>	<i>Time</i>



Lawsuit May Help Clarify Realty Agency Disclosure Rules

June 13, 1993 | By H. Jane Lehman.

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How much explanation does a real estate agent owe a customer about their legal relationship? That question lies at the heart of a lawsuit working its way through the U.S. District Court of Minnesota.

The litigation represents "another force for consumer reform," said Bill Wendel, president of the Massachusetts Home Buyers Club, who, along with others in the consumer activist and real estate sales communities, is watching the case carefully.

The plaintiffs, who include home buyers and sellers, claim Edina Realty, one of the largest independent realty firms in the nation, failed to explain the legal ramifications that arise when agents representing the buyer and seller on the same deal both worked for Edina.

"The company should have explained it owed conflicting duties to both parties," said attorney Rodney A. Wilson, who represents the plaintiffs. The firm should have further spelled out that "by consenting to this, you will be waiving your right to the undivided loyalty of your agent," he said.

Those suing are asking the court to refund an estimated \$250 million in sales commissions the firm earned on an average 6,000 in-house transactions a year over the six years covered by the lawsuit, Wilson said.

If the attorneys likewise prove the company violated racketeering statutes, then triple damages would be awarded, Wilson said.

Edina general counsel Arne Rovick denied the charges, saying his company complied with all Minnesota legal requirements for disclosure to consumers on relationships.

"In the deposition, the plaintiffs understood the listing agent with Edina represented the seller and the selling agent with Edina represented the buyer. There was no misunderstanding about the facts," Rovick said.

The case is before District Court Judge Donald D. Alsop, who is expected to rule soon on whether the case qualifies as a class action, which would group together in the suit all Edina customers who might have been affected by the firm's actions.

The suit was brought by Jamie D. Bokusky, who worked with an Edina agent two years ago when she bought a Minnetonka home listed for sale with another Edina agent.

Bokusky alleged in the suit her interests were not served when a garden hose spigot was misrepresented as a sprinkler system, and that she felt pressured into a hasty decision to buy, Wilson said.

"She was unhappy both agents seemed to be working together to get a midnight deal put together," Wilson said.

Bokusky was first informed in writing about her agent's legal role when it was presented as a clause in the purchase contract she signed, Wilson said.

"It said her agent was a buyer's agent when in fact she was a dual agent," he said.

JIM GIBBONS
Governor

STATE OF NEVADA



MENDY K. ELLIOTT
Director

ANN M. McDERMOTT
Administrator

**DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION**

www.red.state.nv.us

MULTIPLE REPRESENTATION IN REAL ESTATE TRANSACTIONS IN NEVADA

This statement concerns any and all reference to dual agency in courses approved for continuing education credits by the Nevada Real Estate Commission or the Education Sub-Committee of the Nevada Real Estate Commission.

Dual agency is a common law term. In 1995 NRS 645.251 abrogated the common law setting forth that "a licensee is not required to comply with any principles of common law that may otherwise apply to any of the duties of a licensee as set forth in NRS 645.252, 645.253, and 645.254 and the regulations adopted to carry out those sections."

Thus, the prevailing law in Nevada regarding agency duties of a licensee is STATUTORY. The term "dual agency" is not used anywhere in NRS 645.

NRS 645.252.1.(d) requires that the representation of more than one party in a real estate transaction may only be undertaken upon licensee's full disclosure to each party that he/she is acting for more than one party in that transaction and with each party's subsequent consent to the multiple representation in writing.

Education Section
Real Estate Division

**THE NEW *DUTIES OWED* FORMS FOR NEVADA
FREQUENTLY ASKED QUESTIONS****Why are we changing the *Duties Owed* form?**

The current forms have created some confusion within the industry and the task force formed to look at the situation determined the new forms would be more easily understood by both the public and those within the industry.

Are we required to get the *Duties Owed* form signed by all parties for our file?

The law suggests that the “appropriate form” be provided to the parties. The Real Estate Division has determined that only a single “Duties Owed” form needs to be signed by each party to the transaction. The rationale is that the disclosure form is the same whether they sign a single form or multiple forms within the same transaction. The intent is to provide and assure that each of the parties has the “Duties Owed” form, not two or three duplicates of the same disclosure. This means that the listing agent only needs the seller’s signed disclosure form in the listing and transaction files and the buyer’s agent only needs the buyer’s signed form in the buyer representative and transaction files. However, if there is an unrepresented party to the transaction, the sole agent in the transaction needs to have a disclosure form signed by both the client and unrepresented party to the transaction and have evidence of the disclosure to both parties in the licensee’s transaction file. (See unrepresented parties below).

Is the licensee responsible for providing the *Duties Owed* form to unrepresented parties?

Yes. If you are a licensee in a transaction in Nevada, you are representing someone, even if acting only as a principal. If the other party is unrepresented by a licensee, you are responsible under Nevada law to provide the *Duties Owed* form.

Why has the *Confirmation of Agency* form been eliminated?

While *Confirmation of agency* is required by regulation (NAC 645.637), the *Form* itself is not. The Real Estate Division originally created the form to assist the industry as a courtesy because none of the purchase agreements contained the required *Confirmation of agency*. Now that most of the contracts (purchase agreements) contain the *Confirmation of agency*, a separate form is not required.

What if the contract or purchase agreement I use does not contain a *Confirmation of agency*?

Then the Real Estate Division would suggest that you add such confirmation to your purchase agreement, change to an agreement which includes a confirmation section or continue to use a separate form as long as the regulation requires it.

(NOTE: you will probably see the separate forms disappear after a while).

**THE NEW *DUTIES OWED* FORMS FOR NEVADA
FREQUENTLY ASKED QUESTIONS (continued from page 1)**

What forms must I have signed at the time of taking a listing?

Each licensee must have the **completed *Duties Owed* form** signed as soon as practicable but no later than the time of taking a written listing.

NOTE:

- A. The confirmation of agency relationship with the seller is disclosed on the top of the *Duties Owed* form and no additional confirmation of agency is required at the time of listing.
- B. The acknowledgement of possibly acting as an agent representing two or more parties in the transaction is now located as the last paragraph above the client/customer's signature block. (The client will initial the **may** or **may not** block thereby providing or not providing permission for a possible dual agency).

The *Consent to Act* form would additionally have to be completed and signed by the parties in the event that agent represents more than one party to the transaction.

When must I have the *Duties Owed* form signed?

Nothing has changed with respect to when the form must be signed. It should still be signed as soon as practicable but in no event later than the time of a written contract.

NOTE: *A written contract would include any brokerage agreement including listing agreements, buyer brokerage agreements, property management agreements as well as any purchase agreements and/or conforming lease agreements.*

When must the *Consent to Act* form be signed?

In the event that the licensee has the consent in principle initialed as "May" in the initial box at the bottom of the "Duties Owed" form, he must still obtain the signature on the "Consent to Act" form prior to the respective client's signature being placed on the contract.

Where do I get the new *Duties Owed* and *Consent to Act* forms?

All Division forms are available online at www.red.state.nv.us. Position your mouse onto *Frequently Used Forms* to open the drop-down menu, then click on *disclosure*. Select the *Duties Owed* and *Consent to Act* forms by clicking on 525 and 524, respectively.

When will the new *Duties Owed* and *Consent to Act* forms become effective?

The new forms have an effective date of May 1, 2005. This means that everyone should transition into the new form on that date. All transactions initiated on or after May 1, 2005 should include these new agency disclosure forms, and all disclosures made and files of transactions initiated on or after May 1, 2005 should include these new forms. For further information please contact the Division Compliance Section in Carson City at 775- 687-4280 or Las Vegas at 702-486-4033 or e-mail realest@red.state.nv.us.

Information provided by J.C. Melvin, *Duties Owed* taskforce member



DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
www.red.state.nv.us

ADVISORY OPINION 15-01

Replaces: N/A

April 29, 2015

Duties-Owed Forms for Referring Licensees

QUESTION:

Is a licensee who is solely a referring agent required to complete a Duties Owed Form?

SHORT ANSWER:

No.

ANALYSIS OF THE ISSUE:

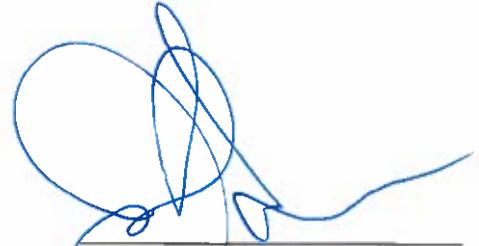
A Duties Owed form is required to be provided to each party for whom a licensee is acting as an agent in a real estate transaction, and for each unrepresented party to that real estate transaction, pursuant to NRS 645.252(3).

The purpose of Duties Owed form is to set forth the numerous duties that a licensee owes to his or her own client and those owed to all parties to a specific transaction. The Duties Owed form is only to be used when the licensee represents a party to a specific transaction.

A licensee who merely refers a party to another licensee is not acting as an agent for the party in a specific transaction. Therefore, no Duties Owed form should be provided by the referring licensee. It would be improper for a "referring" licensee to provide a Duties Owed form because none of the listed duties are actually owed to that individual, nor is it required by statute, regulation or Division policy. It would also be improper for the listing agent to demand a Duties Owed form from the referring licensee for the same reasons.

ADVISORY CONCLUSION:

The Duties Owed form is a state form and an individual may not require a licensee to execute this form where the licensee is simply referring an individual. Otherwise, it would give the false impression that the referring agent represents the individual in the transaction.



JOSEPH DECKER
Administrator
Real Estate Division

1 THIS FORM HAS BEEN APPROVED BY THE GREATER LAS VEGAS ASSOCIATION OF REALTORS®
2 (GLVAR). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY
3 PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO
4 ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN
5 APPROPRIATE PROFESSIONAL.
6

7 This form is available for use by the real estate industry. It is not intended to identify the user as a REALTOR®.
8 REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL
9 ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.
10

11 27. ADDENDUM(S) ATTACHED: _____
12 _____

13 28. ADDITIONAL TERMS: _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____

Buyer's Acknowledgement of Offer

21
22 **Confirmation of Representation:** The Buyer is represented in this transaction by:

23
24 Buyer's Broker: _____ Agent's Name: _____
25 Company Name: _____ Agent's License Number: _____
26 Broker's License Number: _____ Office Address: _____
27 Phone: _____ City, State, Zip: _____
28 Fax: _____ Email: _____
29

30 **BUYER LICENSEE DISCLOSURE OF INTEREST:** Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if
31 he/she is a principal in a transaction or has an interest in a principal to the transaction. Licensee declares that he/she:

32 ___ **DOES NOT** have an interest in a principal to the transaction. **-OR-**
33 ___ **DOES** have the following interest, direct or indirect, in this transaction: Principal (Buyer) **-OR-** family or firm
34 relationship with Buyer or ownership interest in Buyer (if Buyer is an entity): (specify relationship)
35 _____
36

37 **Seller must respond by:** _____ AMPM) on (month) _____, (day) ____, (year) _____. **Unless**
38 **this Agreement is accepted, rejected or countered below and delivered to the Buyer's Broker before the above date**
39 **and time, this offer shall lapse and be of no further force and effect. Upon Acceptance, Buyer agrees** to be bound by
40 each provision of this Agreement, and all signed addenda, disclosures, and attachments.
41

42 _____ AMPM
43 Buyer's Signature _____ Buyer's Printed Name _____ Date _____ Time _____
44
45 _____ AMPM
46 Buyer's Signature _____ Buyer's Printed Name _____ Date _____ Time _____
47
48
49

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: _____ BUYER(S) INITIALS: _____ / _____
Property Address: _____ SELLER(S) INITIALS: _____ / _____

Seller's Response

Confirmation of Representation: The Seller is represented in this transaction by:

Seller's Broker: _____ Agent's Name: _____
Company Name: _____ Agent's License Number: _____
Broker's License Number: _____ Office Address: _____
Phone: _____ City, State, Zip: _____
Fax: _____ Email: _____

SELLER LICENSEE DISCLOSURE OF INTEREST: Pursuant to NRS 645.252(1)(c), a real estate licensee must disclose if he/she is a principal in a transaction or has an interest in a principal to the transaction. Licensee declares that he/she:

___ **DOES NOT** have an interest in a principal to the transaction. **-OR-**
___ **DOES** have the following interest, direct or indirect, in this transaction: Principal (Seller) **-OR-** family or firm relationship with Seller or ownership interest in Seller (if Seller is an entity): (specify relationship) _____.

FIRPTA: If applicable (as designated in the Seller's Response herein), Seller agrees to complete, sign, and deliver to Buyer's FIRPTA Designee a certificate indicating whether Seller is a foreign person or a nonresident alien pursuant to the Foreign Investment in Real Property Tax Act (FIRPTA). A foreign person is a nonresident alien individual; a foreign corporation not treated as a domestic corporation; or a foreign partnership, trust or estate. A resident alien is not considered a foreign person under FIRPTA. Additional information for determining status may be found at www.irs.gov. Buyer and Seller understand that if Seller is a foreign person then the Buyer must withhold a tax in an amount to be determined by Buyer's FIRPTA Designee in accordance with FIRPTA, unless an exemption applies. Seller agrees to sign and deliver to the Buyer's FIRPTA Designee the necessary documents, to be provided by the Buyer's FIRPTA Designee, to determine if withholding is required. (See 26 USC Section 1445).

SELLER DECLARES that he/she ___ **is not -OR-** ___ **is** a foreign person therefore subjecting this transaction to FIRPTA withholding. **SELLER(S) INITIALS:** _____/_____

___ **ACCEPTANCE:** Seller(s) acknowledges that he/she accepts and agrees to be bound by each provision of this Agreement, and all signed addenda, disclosures, and attachments.

___ **COUNTER OFFER:** Seller accepts the terms of this Agreement subject to the attached Counter Offer #1.

___ **REJECTION:** In accordance with NAC 645.632, Seller hereby informs Buyer the offer presented herein **is not** accepted.

Seller's Signature Seller's Printed Name Date Time AM/PM

Seller's Signature Seller's Printed Name Date Time AM/PM

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: _____ BUYER(S) INITIALS: _____/_____
Property Address: _____ SELLER(S) INITIALS: _____/_____