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December 3, 2010

Tracie Lindeman, Clerk of the Supreme Court
201 South Carson Street
Carson City, NV 89701

DEC 06 2010
TRACIE LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CLERK DEPUTY CLERK

Re: Public Comment on ADKT 435
In the Matter of the Adoption of Rules for Foreclosure Mediation

To the Honorable Justices of the Supreme Court:

I serve as President of the Nevada Association of REALTORS®. The Nevada Association of REALTORS (NVAR) is the largest trade organization in the State of Nevada. Our mission is to protect private property rights and enhance the success and profitability of the real estate profession.

The Nevada Association of REALTORS® serves as the official voice of REALTORS® in the state of Nevada.

Please accept this letter as NVAR's support of the amendments being made to the Foreclosure Mediation Rules.

We support the amendments being made and support and adhere to the Real Estate Division Position Statement regarding "while acting under the authority of their license" as it relates to Chapter 645F, Mortgage Lending and Related Professions, which I have attached in full to this letter.

Sincerely,

Linda Rheinberger

Linda Rheinberger, NVAR President

10-31724



STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
POSITION STATEMENT

Subject: Real Estate Division Position regarding “while acting under the authority of their license” as it relates to Chapter 645F, Mortgage Lending and Related Professions	Position No.	1 of 3 pages
	Issued By:	Real Estate Division
	Amends/Supersedes	N/A
Reference(s): NRS 645.030; NRS 645F.320; NRS 645F.310, Assembly Bill 152 (2009 Legislative Session)	Effective Date:	October 15, 2009

THE QUESTION

What activities may be performed by a real estate broker and/or broker-salesman and/or salesman “while acting under the authority of their license” as it relates to Chapter 645F?

ANALYSIS OF ISSUE

Definitions

The definition of what activity requires a license under Chapter 645 – Real Estate Brokers and Salesmen is in the definition of a real estate broker and salesman:

NRS 645.030 “Real estate broker” defined.

1. “Real estate broker” means a person who, for another and for compensation or with the intention or expectation of receiving compensation:

(a) Sells, exchanges, options, purchases, rents or leases, or negotiates or offers, attempts or agrees to negotiate the sale, exchange, option, purchase, rental or lease of, or lists or solicits prospective purchasers, lessees or renters of, any real estate or the improvements thereon or any modular homes, used manufactured homes, used mobile homes or other housing offered or conveyed with any interest in real estate;

(b) Engages in or offers to engage in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of business opportunities or real estate by advance fee listing advertising or other offerings to sell, lease, exchange or rent property;

(c) Engages in or offers to engage in the business of property management; or

(d) Engages in or offers to engage in the business of business brokerage.

2. Any person who, for another and for compensation, aids, assists, solicits or negotiates the procurement, sale, purchase, rental or lease of public lands is a real estate broker within the meaning of this chapter.

NRS 645.040 “Real estate salesman” defined. Within the meaning of this chapter, a “real estate salesman” is any person who, as an employee or as an independent contractor, is associated with a licensed real estate broker

or registered owner-developer to do or to deal in any act, acts or transactions set out or comprehended by the definition of a real estate broker in NRS 645.030, for a compensation or otherwise.

Three (3) activities which require a license by Mortgage Lending Division are defined in NRS 645F:

Assembly Bill 152 (2009 Legislative Session) amended NRS 645F to add:

Sec. 2. "Loan modification consultant" means a person who, directly or indirectly, makes any solicitation, representation or offer to a homeowner to perform for compensation, or who, for compensation, performs any act that the person represents will adjust the terms of a mortgage loan in a manner not provided for in the original or previously modified mortgage loan. Such an adjustment includes, without limitation:

- 1. A change in the payment amount;**
- 2. A change in the loan amount;**
- 3. A loan forbearance;**
- 4. A change in the loan maturity; and**
- 5. A change in the interest rate.**

NRS 645F.320 "Foreclosure consultant" defined. "Foreclosure consultant" means a person who, directly or indirectly, makes any solicitation, representation or offer to a homeowner to perform for compensation, or who, for compensation, performs any covered service that the person represents will do any of the following:

1. Prevent or postpone a foreclosure sale;
2. Obtain any forbearance from any mortgagee or beneficiary of a deed of trust;
3. Assist the homeowner to exercise the right of reinstatement provided in the legal documents;
4. Obtain any extension of the period within which the homeowner may reinstate the homeowner's obligation;
5. Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a residence in foreclosure or included in the mortgage or deed of trust;
6. Assist the homeowner in foreclosure or loan default to obtain a loan or advance of money;
7. Avoid or ameliorate the impairment of the homeowner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale;
8. Save the homeowner's residence from foreclosure; or
9. Assist the homeowner to obtain a foreclosure reconveyance.

(Added to NRS by 2007, 2854)

NRS 645F.310 "Covered service" defined. "Covered service" includes, without limitation:

1. Financial counseling, including, without limitation, debt counseling and budget counseling.
2. Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a mortgage or other lien on a residence in foreclosure.
3. Contacting a creditor on behalf of a homeowner.
4. Arranging or attempting to arrange for an extension of the period within which a homeowner may cure his default and reinstate his obligation pursuant to a note, mortgage or deed of trust.
5. Arranging or attempting to arrange for any delay or postponement of the time of a foreclosure sale.
6. Advising the filing of any document or assisting in any manner in the preparation of any document for filing with a bankruptcy court.
7. Giving any advice, explanation or instruction to a homeowner which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a mortgage or other lien on the residence in foreclosure, the full satisfaction of the obligation, or the postponement or avoidance of a foreclosure sale.

DIVISION POSITION

1. Activities that by definition might include aspects of “Loan Modification Consultant,” “Foreclosure Consultant,” or “Provider of Covered Services” must be part of a real estate transaction. As such, a commission paid to a licensee through a real estate brokerage as a result of those activities defined in NRS 645.030 and/or NRS 645.040 shall serve as evidence that the activities engaged in by the real estate licensee were “acting under the authority of their license.”
2. All commission payments still go through broker in accordance with NRS 645.280.
3. Since loan modification/foreclosure consulting/providing covered services must be a part of a real estate transaction, the broker is ultimately responsible for the actions of his licensee in that regard and all documentation must be a part of the broker file.
4. There can be no advance fees paid to a real estate broker except in accordance with NRS 645.322 - 324.
5. There may be no separate or distinct payment or compensation for performance of activities defined as loan modification, foreclosure consulting or providing of covered services outside of a real estate transaction.
6. Should the transaction not close and thus no commission is paid, no separate or other payment is allowed for services that are defined as loan modification, foreclosure consulting or providing covered services.
7. Brokerage companies which offer a menu of services under a fee for service business model may not offer as an independent menu choice to provide services defined as loan modification, foreclosure consultation or providing covered services for compensation under their real estate license, whether under those specific words or other wording which has the same meaning and/or intent. Separate licensure under Chapter 645F is required for these services that are not part of a real estate transaction.
8. Nothing in this position statement is meant to prevent a licensed real estate agent from getting the appropriate credentials for loan modification and/or foreclosure consulting and/or providing covered services through the Mortgage Lending Division.