IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jun 25 2019 06:33 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

J.E. JOHNS & ASSOCIATES; A.J. JOHNSON;

APPELLANTS

VS.

JOHN LINDBERG; MICHAL LINDBERG, AND JUDITH LINDBERG,

RESPONDENTS.

Supreme Court Case No.:78086
Dist. Cr. Case No. CV15-00281

JOINT APPENDIX

VOLUME II

GLADE L HALL, Esq.
105 Mt. Rose St., Ste. B
Reno, Nv. 89509

(775) 324-6447

Attorney for Appellants

JOHN D. MOORE, Esq.
MOORE LAW GROUP, PC
3715 Lakeside Drive, Ste. A
Reno, NV 89509

(775) 336-1600

Attorney for Respondents

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Detail for Permit 94-1759

Permit Information

Permit Number: 94-1759 **Parcel Number:** 045-337-11
Type Description of Permit: RESIDENTIAL BLDG PERMIT
Sub-Type Description of Permit: Additions, Sunrooms & Remodels
Address: 20957 EATON RD, WCTY

Permit Description: GARAGE AND STOAGE

Permit Status: EXPIRED

Date Applied: 04/28/1994 **Date Issued:** 05/11/1994 **Date Finalized, Certificate of Occupancy, or Complete:**

Permit Fees

Total Fees $313.34 **Total Paid** $313.34 **Balance Outstanding** $0.00

Permit Parties

Name	Relationship
SAUER RONALD J & GENET W	APPLICANT
SAUER RONALD J & GENET W	OWNER

Permit Inspections

Date	Inspection ID	Description	Action Entered	Status	Comments
01/06/1995	10	ELEC ONLY AUTHORIZATION	APPR	Approved	
01/06/1995	50	UTILITY CONTACT	APPR	Approved	
05/12/1994	100	FOOTINGS/SETBACKS/REBAR	APPR	Approved	
05/13/1994	100	FOOTINGS/SETBACKS/REBAR	DN	Denied	
05/24/1994	100	FOOTINGS/SETBACKS/REBAR	APPR	Approved	
06/03/1994	110	STEMWALL/GROUT/REBAR	APPR	Approved	
06/10/1994	110	STEMWALL/GROUT/REBAR	APPR	Approved	
01/06/1995	135	PERMANENT POWER	APPR	Approved	
01/06/1995	160	ROUGH FRAMING/ELEC/PLMG/HTG	DN	Denied	

09/16/2014	260	GRADING & FINAL	CN	Correction Notice	
06/03/1994	900	MISCELLANEOUS	DN	Denied	
06/15/1994	900	MISCELLANEOUS	DN	Denied	
06/24/1994	900	MISCELLANEOUS	APPR	Approved	

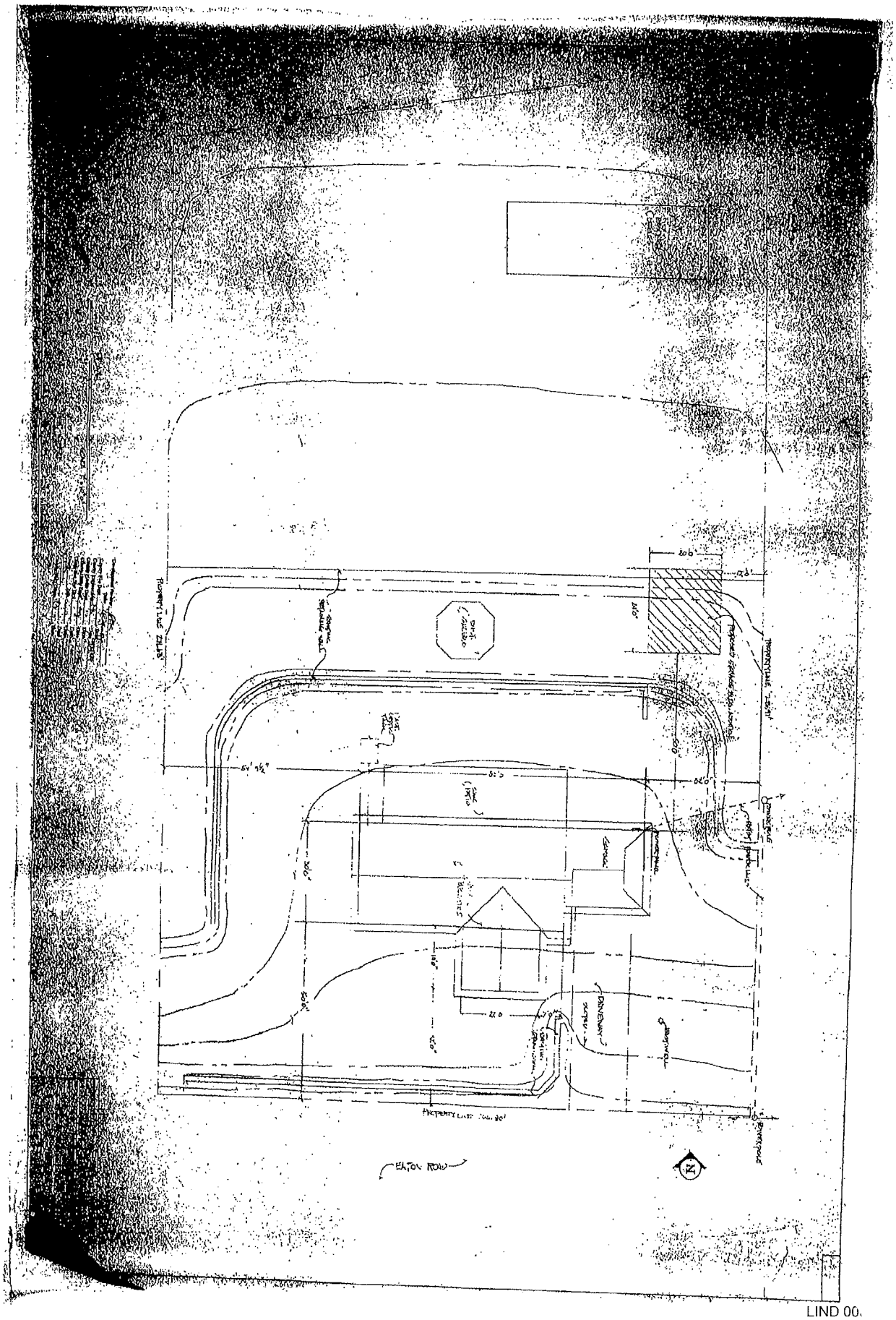
Search for permits

You may search the database by address, permit number, or parcel.

Search By: Parcel

Parcel (required): 045-337-11

Search



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HYTTINEN ENGINEERING

RETAINING WALL
(WALL)
$M = (0.035)(6.8)^2(0.127)$
$= 2.99$
USE 12" CMU
(GROUTED SOLID)
W/ #6 VOT @ 16" OC
$P_n = \frac{(0.44)(25.8)}{(16)(9.0)} = 0.09$
$f_{ck} = (2.99)(6.88) \div (9.0)^2$
$= 0.253 \approx 0.250$
$f_s = (2.99)16 \div (0.44)(0.89)(9.0)$
$= 13.57 \div 24.0$
(FT6)
$M_{DT} = (1.47)(9.17)(0.33) = 4.4$
$M_R = (8.79)(2.25) = 1.78$
$= (1.12)(3.0) = 3.36$
$= \frac{(0.89)(9.0)}{2.71} = \frac{3.20}{8.34} = (1.85)4.49$
$S_R = (2.71 + (24-1)0.05)(0.40) = 1.50$
$= (0.25)(2.0)^2(0.15) = \frac{0.80}{2.00} = (1.36)1.4$

HYTTINEN ENGINEERING

RETAINING WALL
(FT6 CONT.)
$x = \frac{8.38 - 4.49}{2.75} = 1.42$
$f = \frac{(2)(2.75)}{(3)1.42} = 1.27 \approx 1.50$
$M_T = (8.50)(2.25)^2(0.5) = 1.56$
$= (8.77)(3.0)^2(0.33) = \frac{1.57}{3.15}$
$A_s = 3.15 \div (1.76)10 = 0.18$
USE #6 @ 16" BOT.

SIDE WALLS
(WALL)
$M = (0.32)(6.6) - (0.25)(4.27)(0.67)$
$= 1.33$
USE 12" CMU
(GROUTED SOLID)
W/ #6 V@ @ 24" OC
$P_n = \frac{(0.44)(25.8)}{(24)(3.8)} = 0.082$

HYTTINEN ENGINEERING

SIDE WALLS
(WALLS LOAD)
$f_{ck} = (1.33)(6.29) \div (5.8)^2 = 0.268 \approx 0.250$
$f_s = (1.33)24 \div (0.44)(0.89)5.8 = 14.05 \approx 24.0$
(FT6)
$W = (\frac{20}{2})(\frac{0.02}{0.00}) = 0.20 \quad 0.40$
$= (\frac{20}{2})(\frac{0.01}{0.00}) = 0.10 \quad 0.60$
$= (9.33)(0.02) = 1.17 \quad 1.12$
$(1.42) \quad 7.12$
USE 16" x 24" MIN. DP. FT6
$f_{sc} = 2.2 \div 1.33 = 1.59 \approx 1.50$

NOTE:
BACKFILL WALL BEFORE ERECTING FLOOR FRAMING

TJI BLKNG @ 24" OC
2x8 R.W. PL W/ 5/8" ϕ x 10" HB @ 24" OC
12" CMU GROUTED SOLID W/ #6 V @ 16" OC
#6 H @ 24" OC
WATERPROOF MEMBRANE
#6 @ 16" OC
4" SOG
(3) #6 CONT.
SECT. X

NOTE:
BACKFILL WALL BEFORE ERECTING FLOOR FRAMING

2x8 R.W. PL W/ 5/8" ϕ x 10" HB @ 24" OC
12" CMU GROUTED SOLID W/ #6 V @ 24" OC
#6 H @ 24" OC
WATERPROOF MEMBRANE
#6 @ 16" OC
4" SOG
(3) #6 CONT.
SECT. Y

HYTTINEN ENGINEERING

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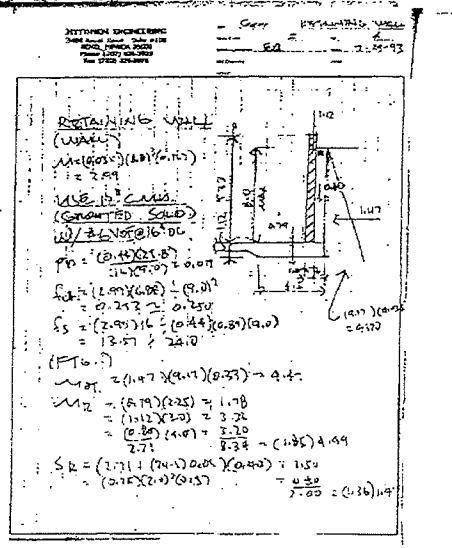

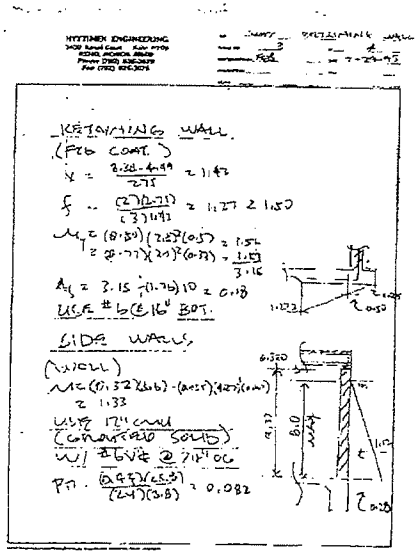

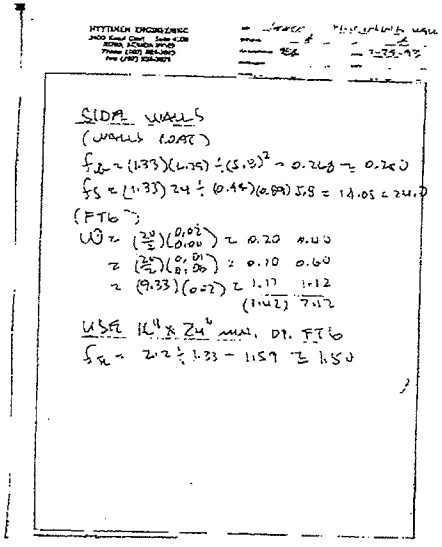

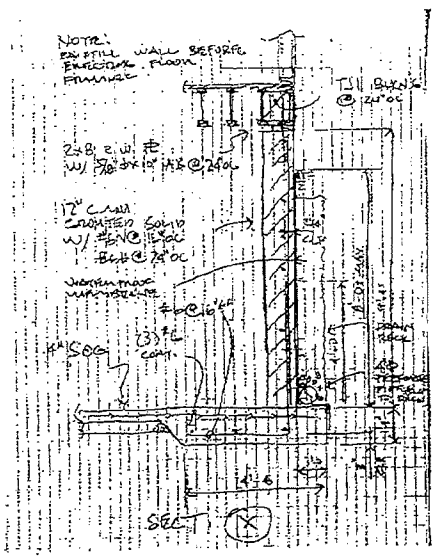

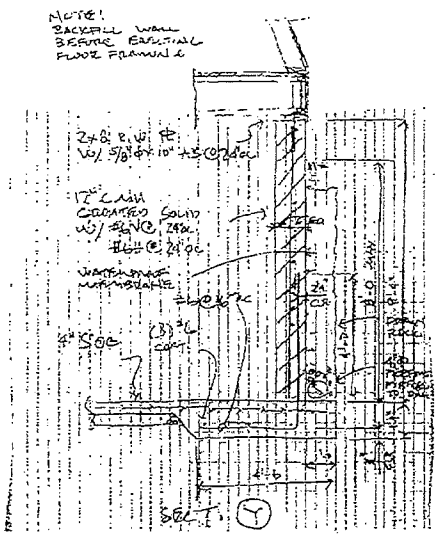

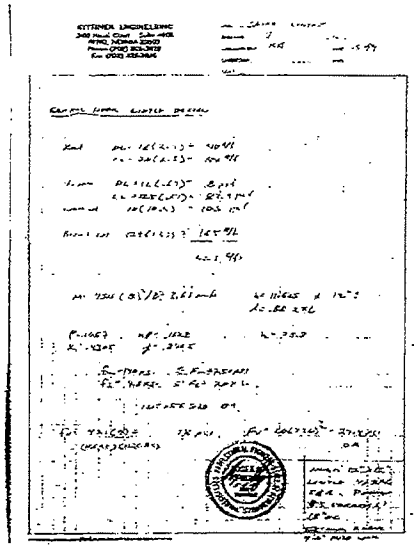

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LIND 003

LIND-0040

Complaint Number: C10-0096
cmpl

DATA SHEET
10-10-2014

Data: Process Tables

Base Information:

Parcel No: 04533711
Zoning: LDS,
Owner: REYNOLDS HARRY & DEEANN
Status: ASSIGNED
Description: LIVING AREA ABOVE DETACHED GARAGE
Location:
Type: RCMP
Inspector: CP
Inspector Area: ANY
Taken By: CP CHARLENE PARISH
Time:

Received Date: 06/15/2010
Issued Date:
Date Closed:
Outcome:

Days to Comply: 0
Abatement Due:
Citation Date: No.: 0

Data: Full Description

LIVING AREA ABOVE DETACHED GARAGE
LIVING AREA IN BUILDING AT THE REAR OF THE PROPERTY WITH A NEW PATIO COVER

Data: Conditions

Data: Holds, Notices and Comments

SRACY 08/18/2014 INSPECTOR: COMPLAINT APPEARS TO NEVER HAVE BEEN INVESTIGATED - SUBMITTAL RECEIVED FOR PANEL AND SEPARATE METER AT BUILDING - UNABLE TO ISSUE UNTIL COMPLAINT IS ADDRESSED

Data: Inspections

Item: 00700 VIOLATION
Item: 00705 INVESTIGATION
08/20/2014 By: dj Action: CN Comments:
Notice to contact & business card left as no answer at door. However, this property has two addresses (21010 Ames Ln) since I was on site back in '06 & '07 under complaint C06-0082. Property has since sold & has continued illegal use.
Item: 00710 STATUS CHECK
Item: 00720 COMPLETED

Data: People

OWNER REYNOLDS HARRY & DEEANN 06/15/2010 Phone:
20957 EATON ROAD
RENO NV
89511
License:

COMPLAINT GALENA-STEAMBOAT CAB 06/15/2010 Phone: 775-849-0951

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(c) Compliance with the setback and height standards of the regulatory zone and the lot coverage standards enumerated in Section 110.306.10(a).

(d) The attached accessory dwelling unit shall not exceed forty (40) percent of the total square footage of the main dwelling unit or one thousand (1,000) square feet, whichever is smaller. The square footage of garages, crawl spaces, cellars, attics, or basements not designed for human occupancy shall not be included when calculating the total square footage of the main dwelling unit, unless such areas have been legally converted into habitable space.

(e) An attached accessory dwelling may be created by converting part of, or adding on to, an existing single family main dwelling unit. To be considered attached, the accessory dwelling unit must abut (i.e. be on the opposite side of a wall or ceiling) the habitable space of the main dwelling, or the ceiling of a garage attached to the main dwelling. Incidental and accessory features such as trellises, decks, patios, breezeways, or tool sheds will not be considered as establishing an attached structure/dwelling. Any exterior entrance to the attached accessory dwelling shall not be located along the same wall as the main entrance to the main unit.

(f) A minimum of one (1) off-street parking space shall be added, in addition to the applicable parking requirements of the main unit. Additional parking beyond the one (1) off-street parking space added may be required pursuant to the provisions of Article 410, Parking and Loading.

(g) Only one (1) accessory dwelling unit is allowed per parcel.

[Amended by Ord. 875, provisions eff. 8/3/93; Ord. 926, provisions eff. retro to 5/31/94; Ord. 939, provisions eff. 11/1/95; Ord. 1451, provisions eff. 1/1/11; Ord. 1475, provisions eff. 1/12/12.]

Section 110.306.25 Detached Accessory Dwellings. Detached accessory dwellings are defined in Article 304, Use Classification System, under Section 110.304.15, Residential Use Types. Detached accessory dwellings are allowed in the General Rural (GR) and General Rural Agricultural (GRA) Regulatory Zones, and are permitted in the Low Density Rural (LDR), Medium Density Rural (MDR), High Density Rural (HDR), and Low Density Suburban (LDS) Regulatory Zones pursuant to the administrative review process and requirements of this section. A detached accessory dwelling is permitted in the Medium Density Suburban (MDS) Regulatory Zone subject to a special use permit reviewed by the Board of Adjustment. Any detached accessory dwelling unit must adhere to the following requirements:

(a) A main residential unit exists and no other accessory dwelling unit has been established.

(b) A minimum lot area of twelve thousand (12,000) square feet exists.

(c) Compliance with the setback and height standards of the regulatory zone and the lot coverage standards enumerated in Section 110.306.10(a).

(d) Except for in the Medium Density Suburban (MDS) Regulatory Zone, the detached accessory dwelling unit shall not exceed fifteen hundred (1,500) square feet, or fifty (50) percent of the total square footage of the main dwelling unit, whichever is smaller. In the Medium Density Suburban (MDS) Regulatory Zone, the detached accessory dwelling unit shall not exceed eight hundred (800) square feet or fifty (50) percent of the total square footage of the main dwelling



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Detail for Permit 92-0322

Permit Information

Permit Number: 92-0322 **Parcel Number:** 045-337-11
Type Description of Permit: RESIDENTIAL BLDG PERMIT
Sub-Type Description of Permit: Additions, Sunrooms & Remodels
Address: 20957 EATON RD, WCTY

Permit Description: ADDITION

Permit Status: FINAL

Date Applied: 01/29/1992 **Date Issued:** 02/11/1992 **Date Finalized, Certificate of Occupancy, or Complete:** 05/06/1992

Permit Fees

Total Fees $330.77 **Total Paid** $330.77 **Balance Outstanding** $0.00

Permit Parties

Name	Relationship
SAUER RONALD J & GENET W	APPLICANT
SAUER RONALD J & GENET W	OWNER

Permit Inspections

Date	Inspection ID	Description	Action Entered	Status	Comments
02/13/1992	100	FOOTINGS/SETBACKS/REBAR	APPR	Approved	
02/18/1992	110	STEMWALL/GROUT/REBAR	APPR	Approved	
02/20/1992	120	UNDERFLOOR-PRIOR TO SHEATHING	APPR	Approved	
03/10/1992	160	ROUGH FRAMING/ELEC/PLMG/HTG	APPR	Approved	
03/24/1992	210	INSULATION	APPR	Approved	
03/31/1992	220	WALLBOARD	APPR	Approved	
05/05/1992	260	GRADING & FINAL	APPR	Approved	

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Search for permits

You may search the database by address, permit number, or parcel.

Search By: Parcel

Parcel (required): 045-337-11

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Detail for Permit 96-3555

Permit Information

Permit Number: 96-3555 **Parcel Number:** 045-337-11
Type Description of Permit: RESIDENTIAL BLDG PERMIT
Sub-Type Description of Permit: Additions, Sunrooms & Remodels
Address: 20957 EATON RD, WCTY

Permit Description: 600 SQ FT SHOP BUILDING

Permit Status: EXPIRED

Date Applied: 06/17/1996 **Date Issued:** 07/15/1996 **Date Finalized, Certificate of Occupancy, or Complete:**

Permit Fees

Total Fees $236.25 **Total Paid** $236.25 **Balance Outstanding** $0.00

Permit Parties

Name	Relationship
MCDANIEL SCOTT	APPLICANT
REYNOLDS RICK	OWNER

Permit Inspections

Date	Inspection ID	Description	Action Entered	Status	Comments
07/19/1996	100	FOOTINGS/SETBACKS/REBAR	APPR	Approved	
07/24/1996	110	STEMWALL/GROUT/REBAR	APPR	Approved	
08/02/1996	120	UNDERFLOOR-PRIOR TO SHEATHING	APPR	Approved	
09/05/1996	160	ROUGH FRAMING/ELEC/PLMG/HTG	DN	Denied	
09/06/1996	160	ROUGH FRAMING/ELEC/PLMG/HTG	APPR	Approved	
09/06/1996	210	INSULATION	APPR	Approved	
09/12/1996	220	WALLBOARD	APPR	Approved	
09/20/1996	260	GRADING & FINAL	DN	Denied	
09/23/1996	260	GRADING & FINAL	DN	Denied	

LIND 0(

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Search for permits

You may search the database by address, permit number, or parcel.

Search By: Parcel

Parcel (required): 045-337-11

Search

LINE

Ron Cohen

From: Ron Cohen <ron@btect.com>
Sent: Wednesday, June 03, 2015 1:34 PM
To: Jeppson, Don C
Subject: FW: Plan review corrections #15-1410
Attachments: PC 15-1410.pdf

Hi Don,

Not sure if you remember this property but here's a refresher:

20957 Eaton Rd
Washoe County

New Owner bought a house with an existing structure on it that was built under BLD 94-1759 then added to under BLD 96-3555, however it was never permitted as a in-laws quarters as it exists today.

The new Owner wants to do the right thing and make the building legal. The County was missing the plans and records for the permit from 96-3555 which we provided to the County and the County has now scanned in and has on file. In one conversation out of many between yourself and I, I was under the impression that now that the County has records of the building that we would treat this as almost a T.I. of existing building. There is also an open permit for new service to an a separate existing building that has been inspected, however D.J. will not release to NV Energy.

After reviewing the Plan review corrections (attached) it appears that this is being viewed as a new building.

I am looking for a little assistance and guidance in getting this Permit settled and behind everyone. Please keep in mind that the Owners mother does currently live in the house in question, so destructive testing is a little on the tricky side.

Please do not hesitate to contact myself with any questions you may have.

Thanks Don!

Ron A. Cohen, President
4615 Aircenter Circle
Reno, NV 89502
Office: 775.358.4433
Mobile: 775.224.6375
Fax: 775.358.4435
Toll Free: 1.888.445.4111
ron@btect.com
Building Tectonics Inc - Home

BUILDING TECTONICS INC

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From: Flores, Bob [mailto:BFlores@washoecounty.us]
Sent: Wednesday, June 03, 2015 12:37 PM
To: 'ron@btect.com'
Subject: Plan review corrections #15-1410

Hello, I have completed your plan review, please view attached doc.

Thank you,

Bob Flores, M.C.P.
Building Inspection Supervisor
Washoe County Building & Safety
(775) 328-2038 Office
(775) 813-4888 Cell
(775) 328-6132Fax
bflores@washoecounty.us
1001 E. Ninth St., Bldg. A, Reno, NV 89512

LIND 0'

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Ron Cohen

From: Ron Cohen <ron@btect.com>
Sent: Monday, November 17, 2014 1:21 PM
To: Jeppson, Don C
Subject: 20957 Eaton Rd

Hi Don,

I wanted to follow up our quick meeting last week regarding the detached garage storage building that had been converted to living quarters. We are currently working with an architect on developing a new set of drawings for the residential use. As I indicated in the meeting we are hoping since the structure passed plan check and had inspections with the exception of final that we call it "good" and develop new floor plans showing the residential unit under the 2012 code.

As you indicated we will also include the existing little "barn/stable" on the upper part of the property in the new submittal to at least get in documented in the records.

Let me know if you have any comments or concerns.

Thank you for all your help!

Ron A. Cohen, President
4615 Aircenter Circle
Reno, NV 89502
Office: 775.358.4433
Mobile: 775.224.6375
Fax: 775.358.4435
Toll Free: 1.888.445.4111
ron@btect.com
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LIND 005

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Ron Cohen

From: Ron Cohen <ron@btect.com>
Sent: Monday, September 29, 2014 1:14 PM
To: Jeppson, Don C
Subject: PERMIT NO: 14-2339

Hi Don,

I am emailing to try and clear up a couple of old permits that are on an existing residence. The new owner bought the property about a year and a half ago and there was two existing permits that had expired. So we pulled a trip permit trying to get a final on them. One of them seems fine however the "Garage Storage" building appears to have been converted to living space. Sam did a walk through and there was some simple corrections that have been completed. DJ came and did the follow up on the corrections, however that is where this dies. DJ noticed that there was a complaint filed in 2010 that went unresolved.

The new Owner was unaware of these issues when they bought the house and would now like to get things cleared up. The current Owners mother lives in the "Garage Storage" unit now. It appears that whoever did the work did a fairly nice job on the unit and followed the code for the time. This is the one that is hanging in limbo, there seems to be a history on these buildings.

Now there is a second permit (also expired) that is on a smaller building on the property approximately 600 sq ft. This is the building that started this Easter egg hunt, we started this process as the new Owner wanted to have power run to this building for a little shop. We contacted NVenergy and they have no issue pulling off a pole on an adjacent property. But when I went to the counter to pull an electrical upgrade permit that's when all of this came to light. Sam looked at this building, however I'm not sure where this went. This whole mess has come to a standstill, I am basically looking for guidance on which direction to go.

We would like, if the County is ok with it to have the two existing permits closed and be able to pull a new electrical upgrade permit to the upper building.

Property info:

Permit #: 14-2339
Site Address: 20957 Eaton Rd WCTY
Parcel: 045-337-11

Thank you Don.

Ron A. Cohen, President
4615 Aircenter Circle
Reno, NV 89502
Office: 775.358.4433
Mobile: 775.224.6375
Fax: 775.358.4435
Toll Free: 1.888.445.4111
ron@btect.com
Building Tectonics Inc - Home

LINE

259

BUILDING TECTONICS INC



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Washoe County
Department of Building & Safety
P.O. Box 11130
Reno, NV 89520-0027
www.washoecounty.us/bldgsafety
(775) 328-2020

BUILDING & SAFETY
"Dedicated to Excellence In Public Service"

RECEIPT

RECEIPT NUMBER: BR-0074185

Permit #: 15-1410 TYPE: BLD-RES RESIDENTIAL BLDG PERMIT
SITE ADDRESS: 20957 EATON RD WCTY
PARCEL: 045-337-11

	TOTAL FEES DUE:	$3,329.37
TRANSACTION DATE: 07/29/2016	TOTAL PAYMENT:	2,129.23
	BALANCE DUE:	$0.00

TRANSACTION LIST:

Type	Method	Description	Amount
Payment	Check	839	2,129.23
		TOTAL:	2,129.23

ACCOUNT ITEM LIST:

Description	Account Code	Current Pmts
HTL PLN CK - RENO	172400-422511	200.00
PARK SUBDISTRICT 3C	900330-416000	560.00
ROAD IMPACT FEE - S	990043-460171	1,369.23
	TOTAL:	2,129.23

RECEIPT ISSUED BY: BSOFFIOTTO INITIALS: BS
ENTERED DATE: 07/29/2016 TIME: 01:54 PM

Permit Expires Date: 01/28/2018 As of today: 07-29-2016

RENEWAL OF A PERMIT IS PROHIBITED IF THE WORK IS NOT COMMENCED WITHIN 18 MONTHS AFTER ISSUANCE. PERMITS MAY BE RENEWED FOUR (4) TIMES.

WASHOE COUNTY
HEALTH DISTRICT
ENHANCING QUALITY OF LIFE

SWS Hearing Board Agenda Item
Meeting Date: March 10, 2016

DATE: February 28, 2016

TO: Sewage, Wastewater and Sanitation (SWS) Hearing Board

FROM: Wesley Rubio, Senior Environmental Health Specialist
wrubio@washoecounty.us 775-328-2635

RE: Variance Case #1-16S; Conversion of Existing Structure, Parcel 045-337-11
20957 Eaton Rd, Washoe County, NV

Jon Lindberg, 20~~957 Eaton~~ Rd, Reno, NV 89521

Recommendation

Staff recommends the Sewage, Wastewater and Sanitation (SWS) Hearing Board support the presented Variance Case #1-16S (Jon Lindberg) to allow the approval of the building permit BLD 15-1410 and associated septic system requirements. Upon SWS Hearing Board review, staff recommends the Variance Case #1-16S be presented to the District Board of Health for approval.

Background

Overview

During the process of obtaining building permits for the existing construction on the parcel, it was identified that this parcel has an existing Second Dwelling utilized as a living quarters. The total acreage for the parcel is 1.123 acres. The Sewage, Wastewater, and Sanitation regulations require that a parcel have a minimum of 2 acres with a Second Dwelling on a parcel served by an onsite sewage system and a domestic well, section 120.075.

The current owner of the parcel, Mr. Lindberg, is seeking to correct the construction issues on the parcel by obtaining and correcting the building permit issues on the lot. Mr. Lindberg has hired a contractor and all components of the existing septic system have been located and field verified by Health District staff. The contractor has coordinated and worked with staff to adequately evaluate the site and establish primary and repair leach line locations that meet the minimum sizing requirements for the entire proposed usage on the parcel.

The contractor has proposed to add an additional septic tank and additional leach line to meet the minimum requirements, and an equal area has been located for septic repair upon the septic failure of the primary system. All proposed septic components meet all required setbacks and will be able to serve both the existing Single Family Dwelling and the Second Dwelling.

Existing Septic System Detail

The existing septic system was located and identified by Sierra Septic Solutions. The leach line was located and found to be 54-feet in length, which would match the original plot plan submitted in May of 1986. The minimum required sizing for this parcel was a leach line trench 2' x 13' x 50 with a 1000 gallon septic tank for a 3-bed Single Family Dwelling (SFD). The leach line was required to be located to ensure all proposed work would not impact the existing

leach line location. During the location, the existing leach line location was found to differ greatly from that of the proposed plot plan that was on file from May 1986. The current location is identified on the submitted plot plan, although it states approximate, this is the actual location of the leach line as identified by Sierra Septic Solutions and verified in the field by staff.

At some point the Existing Building and Proposed In-Laws Quarters was converted without permits to a living quarters. The previous owner constructed an 85-foot 4-inch sewer line that goes to a 50-gallon lift station with a grinder pump, and then pumps the effluent through the existing house plumbing and into the existing 1000-gallon septic tank. The existing lift station was constructed 60-feet from the existing domestic well. The Building Division is not requiring this plumbing fixture to be removed, and as such the WCHD will allow the lift station to remain and considers this installation to be a part of the existing plumbing. Additionally, the relocation of this line and removal of the existing lift station was discussed at length with the contractor during the plan review. If this lift station was removed, the plumbing run to the septic tank would be approximately 120 feet. This situation will not work because the proposed plumbing would then be too deep to enter the existing septic tank elevation. A new septic tank location was also discussed, however a septic tank location that would allow for the removal of the lift station, would also result in such a long distance to the leach line, that would require a new leach line having to be constructed with the pipe depth below ground surface at an elevation that would not be advantageous for a standard leach line trench and would require a much longer trench to compensate for the loss of sidewall. Additionally, altering the existing sewer plumbing from the proposed In-Law Quarters would also require crossing the existing water line that bisects the area.

Existing 50-gallon Lift Station

This installation was inspected to be a 50-gallon unit with a grinder or macerating pump installed. This unit is a complete fixture and is installed in a carport and surrounded by cement. Due to the size, installation, and function these types of units are considered by this department to be part of the building sewer infrastructure and are only required to meet the minimum 50-foot setback to a domestic well. The existing lift station does meet the minimum setback requirement, and is not being required to be addressed during the building permit phase at this time.

Existing Septic System Sizing

Utilizing the septic system sizing calculation in the Sewage, Wastewater, and Sanitation regulations in section 100.050, staff calculated that the original septic sizing for this parcel was based on 30 Minutes per Inch (MPI). Since the existing SFD is currently utilizing a 1000-gallon septic tank, the proposed In-Law Quarters is required to have a separate septic tank according to section 120.075 of the SWS regulations. The existing SFD is 3 bedrooms, and the addition of the In-Law Quarters would add an additional bedroom and kitchen. Therefore, WCHD staff are sizing the system based upon a total of 6 bedrooms to be conservative and account for any potential fluctuating sewage flows. Utilizing this same calculation and the addition of the proposed 1000 gal septic tank to the existing septic design, staff has calculated that a minimum of 100-feet of leach line would be required to adequately size this system with the additional septic tank. The addition of the 1000 gal septic tank is required because the regulations do not allow for any septic tank to be installed that does not meet the minimum 1000 gallon sizing requirement. As identified on the plot plan, an additional 55-feet of leach line is proposed to be added to the existing 54-feet of leach line that was previously identified. This will maximize the area and account for any potential installation issues that may arise during the installation. The leach lines will be connected utilizing an approved Distribution box to ensure even distribution

to the two separate trenches. The new trench will meet the minimum 20-foot setback to the existing leach line location.

Engineering

An engineer was not required to design or provide any percolation testing for this submittal since the parcel is designed utilizing standard trenches. The standard trenches and sizing were previously determined by WCHD staff when the system and installation were originally approved and installed in May 1986, and no changes to the septic system design were proposed that would require an engineering review or design. All design calculations were made in accordance with section 100.050 of the SWS regulation, which is WCHD policy when standard leach line trenches are utilized on a site.

Repair Field Location

The proposed repair field location has been inspected by WCHD staff and meets the minimum requirements to be installed. The topography identified on the plot plan provided does not accurately reflect the current on-site conditions. The slope was field verified by staff and is less than 5% and would allow for standard leach line trench installation and meet 20-feet to daylight requirements.

The approved repair area will require a pump chamber, pump, and audio and visual alarms to be installed at the time the repair field but be utilized.

The system is approved to be sized at 2' x 13'x 100' which is the approved sizing as described above for a maximum of a 6 bedroom SFD.

Site Conditions

The plot plan provided does not accurately reflect the current and existing site conditions. There is existing grading and mature landscaping and terraces that are not represented on the plot plan. Therefore, the site was inspected by WCHD staff and areas were measured and determined to meet all minimum slop requirements in the areas where leach lines are to be installed and for the proposed repair installation.

The terracing and mature landscaping indicate that the lot topography was altered at some point in history and prior to the current owner. As inspected in the field, all areas will meet the 20-foot to daylight requirements for the proposed repair leach line since the terrace is greater than 20-feet in width.

Findings of Fact

1. Will the proposed variance result in contamination of water to the extent it cannot be used for its existing or expected use?

   Reply: There will be no contamination of water that would be a threat to the existing or expected uses. A review of the surrounding parcels and on-site evaluation does not indicate the presence of groundwater within 4-feet of the bottom of the existing leach line or the proposed leach line installation. Additionally, there does not appear to be any signs of surface water, drainages, or other potential sources of water contamination present on this parcel or in the immediate area. An inspection of this area indicates this parcel is up gradient from the valley floor and is outside of the flood plain.

2. Will the proposed variance pose a threat to public health?

   Reply: No, allowing for the existing Second Dwelling to be permitted on this parcel will not impact or pose any threat to public health. The additional septic tank and additional leach line that are required to be installed will further protect the public health and groundwater concerns. Additionally, the sizing utilized as described is conservative and will allow for fluctuations in sewage flow. The lack of sensitive receptors in the immediate vicinity of the existing septic system or the repair location will ensure the system functions properly and does not cause any potential threats to this parcel or those parcels in the immediate area.

3. Are there other reasonable alternatives?

   Reply: Since the current property owner is seeking to correct conditions that were previously present on this parcel, the Health District is requiring the installation of an additional septic tank and leach line to meet the minimum required sizing and treatment of sewage. The Health District staff believes there are no other reasonable alternatives that allow for this parcel to maintain the current buildings and meet all requirements.

Conditions of Approval

1. Complete the installation of the proposed septic tank and the additional leach line as required. The Certificate of Occupancy will be held until the installation has been inspected and meets all requirements of the Health District.
2. The plan will be approved and conditioned with the following language:
   a. This plan is approved for a 3-bed SFD and a separate Second Dwelling Unit. Any future proposals for an increase in occupancy (bedrooms) may require additional septic system installation and an engineered design.
   b. Any future proposals for additional bedrooms and increase in the septic system design may require a variance approval through the Sewage, Wastewater, and Sanitation board as described in the WCHD SWS regulations.
3. The approved plan and variance approval will be required to be recorded to the Title Documents for this parcel to ensure proper public records notification in the event the property is sold to any other party.

Possible Motion

Should the SWS Hearing Board agree with staff's recommendation, a possible motion would be "Move to support staff to present to the District Board of Health for approval Variance Case #1-16S (Jon Lindberg) to allow for the approval of a septic system to serve an existing SFD and a Second Dwelling on a parcel that is less than 2 acres."

cc: Jon Lindberg
Ron Cohen, Building Tectonics Inc.
Jim English, Environmental Health Specialist Supervisor/Program Manager

Subject: RE: variance lindberg
From: "Rubio, Wesley S" <WRubio@washoecounty.us>
Date: 5/6/16, 11:28 AM
To: Jon Lindberg <jon1@visiondesignpainting.com>
CC: Ron Cohen <ron@btect.com>

Hi Jon,

I had told Ron when he submitted the plan that it would be good to go. However, it just takes more time to get your entire packet (the Variance stuff) put together and re-scanned to be sent out to the board as well. I have not had the time to be able to finish that aspect of it.

I will have it ready for you by Monday, so you start moving on your septic installation as well. I apologize for the delay, but as I discussed with you I will get your packet completed. You will also be receiving a letter of approval as part of the Variance package that has been completed. Please keep this with your Variance packet.

Let me know if you have any questions.

Thank you,
Wes Rubio

Wesley Rubio, MPH, REHS
Senior Environmental Health Specialist | Environmental Health | Washoe County Health District
wrubio@washoecounty.us | O: (775) 328-2635 | C: (775) 240-9386 |1001 E. Ninth St., Bldg. B, Reno, NV 89512

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Public Health

Ü Please consider the environment before printing this e-mail.

From: Jon Lindberg [mailto:jon1@visiondesignpainting.com]
Sent: Friday, May 06, 2016 8:25 AM
To: Rubio, Wesley S
Subject: variance lindberg

wes this thing was approved a month and a half ago you got the drawing you needed almost 2 weeks ago what do we have to do to get me septic permit as you know i have been dealing with this for almost 2 years really like to move on with my life and get this over with.....what do I /we need to do?

--
Jon Lindberg

11 Glen Carran Circle
Sparks, NV 89431
Office: (775) 448-6162
Fax: (775) 453-2638
jonl@visiondesignpainting.com
www.visiondesignpainting.com

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RTC REGIONAL ROAD IMPACT FEE PROGRAM

RTC VMT CREDIT VOUCHER

VOID IF ALTERED

0000000133777

DATE:	07-14-2016
PERMITTING AGENCY:	Washoe County
PERMIT #:	**15-1410**
ADDRESS:	**20957 EATON RD WASHOE COUNTY 89521**
APN:	045-337-11
VMT USED ON THIS PERMIT:	**4.76**
RRIF SERVICE AREA:	South
CCFEA ACCT NO.:	**530081-T2**
CERTIFICATE HOLDER:	SRF Sparks, LLC
BENEFIT DISTRICT:	South
DEVELOPER OF RECORD:	Centex Homes of Nevada
DEVELOPMENT OF RECORD:	Bella Vista Ranch

THE APN IS OUTSIDE THE DEVELOPMENT OF RECORD
VMT CREDITS CAN BE USED TO PAY UP TO 50% OF IMPACT FEES OWED

FEE PAYER'S SIGNATURE:

Please confirm that credits used for payment of impact fees meet the following criteria:
Credits may be used to pay 100% of the impact fee if within the CCFEA development of record or if used by the original developer of record at another location within the listed benefit district.
Otherwise, credits are limited to the payment of 50% of the impact fees by a third party credit owner.

LIND 006

Subject: Re: RTC credits
From: Tiffany Roland <troland@somersett.com>
Date: 7/15/16, 7:28 AM
To: Jon Lindberg <jon1@visiondesignpainting.com>

Sounds good. Please make the check payable to SRF Sparks, LLC

Thank you,
Tiffany

Sent from my iPhone

On Jul 15, 2016, at 6:48 AM, Jon Lindberg <jon1@visiondesignpainting.com> wrote:

> thats perfect ill drop by today and bring a check who do i make it out to?
>
> thank you
>
> On 7/14/16 10:06 AM, Tiffany Roland wrote:
>
> > Jon,
> > I'm also not sure if we settled on the actual amount since we were just using round numbers of $2,700 before. It looks like the 100% fee for 9.53 VMT's is $2,787.53. You will owe 50% of the fee, or 4.77 VMT's for $1,395.23, to Washoe County and you can buy the other 50%, or 4.76 VMT's for $1,392.30, at a 70% discount for a total of $417.69. I hope that still works for you!
> >
> > Thank you,
> > Tiffany
> >
> > **From:** Lawson, Clara [mailto:CLawson@washoecounty.us]
> > **Sent:** Wednesday, July 13, 2016 5:03 PM
> > **To:** Racy-McIntyre, Stephanie <SRacy@washoecounty.us>; Tiffany Roland <troland@somersett.com>
> > **Cc:** Jon Lindberg <jon1@visiondesignpainting.com>; Julie Masterpool (juliem@rtcwashoe.com) <juliem@rtcwashoe.com>
> > **Subject:** RE: RTC credits
> >
> > *A mother-in-law unit is charged the multi-family rate. The fees and VMT's as of today's date are;*
> > *For a multi-family unit in the south benefit district the total VMT due is 9.53. The max number of VMT that can be used out of the project area is 4.76. The remaining fee due is $1395.23*
> >
> > *You should contact RTC for information on buying credits.*

4/17 69 PAID for VMT CREDITS

Subject: FW: RTC credits
From: Tiffany Roland <troland@somersett.com>
Date: 7/14/16, 10:06 AM
To: Jon Lindberg <jon1@visiondesignpainting.com>

Jon,
I'm also not sure if we settled on the actual amount since we were just using round numbers of $2,700 before. It looks like the 100% fee for 9.53 VMT's is $2,787.53. You will owe 50% of the fee, or 4.77 VMT's for $1,395.23, to Washoe County and you can buy the other 50%, or 4.76 VMT's for $1,392.30, at a 70% discount for a total of $417.69. I hope that still works for you!

Thank you,
Tiffany

From: Lawson, Clara [mailto:CLawson@washoecounty.us]
Sent: Wednesday, July 13, 2016 5:03 PM
To: Racy-McIntyre, Stephanie <SRacy@washoecounty.us>; Tiffany Roland <troland@somersett.com>
Cc: Jon Lindberg <jon1@visiondesignpainting.com>; Julie Masterpool (juliem@rtcwashoe.com) <juliem@rtcwashoe.com>
Subject: RE: RTC credits

A mother-in-law unit is charged the multi-family rate. The fees and VMT's as of today's date are;
For a multi-family unit in the south benefit district the total VMT due is 9.53. The max number of VMT that can be used out of the project area is 4.76. The remaining fee due is $1395.23

You should contact RTC for information on buying credits.

Clara Lawson, PE, PTOE, Licensed Engineer
Washoe County | Community Services Dept | **Engineering Division** 1001 E. Ninth St., Reno NV 89520
clawson@washoecounty.us | **o 775-328-3603**| fax 775-328-3699

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My apologies Tiffany. I do not normally handle this end of it, our Public Works team does. I am forwarding this email to Clara Lawson for the information.
Thanks

Stephanie Racy-McIntyre
Permit Services Coordinator
Community Services Department
Washoe County Building & Safety Division
(775) 328-2031 Office

3495.59 - 2

(775) 328-6132 Fax
sracy@washoecounty.us
1001 E Ninth St Bldg A Reno NV 89512

-----Original Message-----
From: Tiffany Roland [mailto:troland@somersett.com]
Sent: Wednesday, July 13, 2016 4:32 PM
To: Racy-McIntyre, Stephanie
Cc: Jon Lindberg; Julie Masterpool (juliem@rtcwashoe.com)
Subject: RE: RTC credits

Hi Stephanie,
We have South credits too. I just need to know the # of VMT's Jon is required to have for building permit #15-1410. I can sell him 50% of what is required.

Thank you,

Tiffany Roland
Director of Finance
Somersett Development Co.
775.323.1405 ext. 115 ~ Office
775.323.1498 ~ Fax
775.762.2739 ~ Cell
troland@somersett.com
www.somersett.com

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-----Original Message-----
From: Racy-McIntyre, Stephanie [mailto:SRacy@washoecounty.us]
Sent: Wednesday, July 13, 2016 4:27 PM

To: Tiffany Roland <troland@somersett.com>
Subject: RE: RTC credits

Hello Tiffany,
My understanding from RTC is that Mr. Lindberg cannot obtain his credits from you in the north district as he is building in the south district. I would suggest you contact RTC directly at 775-348-0171 as I am not able to supply you the information you are seeking.
Thank you

Stephanie Racy-McIntyre
Permit Services Coordinator
Community Services Department
Washoe County Building & Safety Division
(775) 328-2031 Office
(775) 328-6132 Fax
sracy@washoecounty.us
1001 E Ninth St Bldg A Reno NV 89512

-----Original Message-----
From: Tiffany Roland [mailto:troland@somersett.com]
Sent: Tuesday, July 12, 2016 1:21 PM
To: Jon Lindberg; Racy-McIntyre, Stephanie
Subject: RE: RTC credits

Hi Stephanie,
If you could please let me know the building permit number and how many credits Jon will need for 20957 Eaton Rd Reno, NV 89521 (APN# 045-337-11), I would appreciate it. I will be selling him the 50% allowed by RTC so I just need to know what the full amount is in VMT's so I can print the voucher.

Please let me know if you have any questions.

Thank you,

Tiffany Roland
Director of Finance
Somersett Development Co.
775.323.1405 ext. 115 ~ Office
775.323.1498 ~ Fax
775.762.2739 ~ Cell

troland@somersett.com
www.somersett.com

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-----Original Message-----
From: Jon Lindberg [mailto:jon1@visiondesignpainting.com]
Sent: Tuesday, July 12, 2016 1:16 PM
To: Racy-McIntyre, Stephanie <sracy@washoecounty.us>; Tiffany Roland <troland@somersett.com>
Subject: RTC credits

not sure if you received my email Tiffany need more info to sell me the credits and I have no idea what to tell her.Do you know what she needs Stephanie?

--
Jon Lindberg
11 Glen Carran Circle
Sparks, NV 89431
Office: (775) 448-6162
Fax: (775) 453-2638
jon1@visiondesignpainting.com
www.visiondesignpainting.com

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Subject: RE: variance Lindberg
From: "Ron Cohen" <ron@btect.com>
Date: 5/6/16, 11:45 AM
To: "'Rubio, Wesley S'" <WRubio@washoecounty.us>, "'Jon Lindberg'" <jon1@visiondesignpainting.com>

Wes,

Just to be clear, Planning is the department that is holding up the permit. I need you to correspond with them to release the plan check comments so Building release the permit to us.

Also there should be a refund of fee's from Planning back to Lindberg as it was Health that approved the variance and not Planning.

Please cc myself and Jon on the correspondence with Planning.

Thank you.

Ron A. Cohen, President
4615 Aircenter Circle
Reno, NV 89502
Office: 775.358.4433
Mobile: 775.224.6375
Fax: 775.358.4435
Toll Free: 1.888.445.4111
ron@btect.com
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From: Rubio, Wesley S [mailto:WRubio@washoecounty.us]
Sent: Friday, May 6, 2016 11:29 AM
To: Jon Lindberg <jon1@visiondesignpainting.com>
Cc: Ron Cohen <ron@btect.com>
Subject: RE: variance lindberg

Hi Jon,

I had told Ron when he submitted the plan that it would be good to go. However, it just takes more time to get your entire packet (the Variance stuff) put together and re-scanned to be sent out to the board as well. I have not had the time to be able to finish that aspect of it.

I will have it ready for you by Monday, so you start moving on your septic installation as well. I apologize for the delay, but as I discussed with you I will get your packet completed. You will also be receiving a letter of approval as part of the Variance package that has been completed. Please keep this with your Variance packet.

Let me know if you have any questions.

Thank you,
Wes Rubio

Wesley Rubio, MPH, REHS
Senior Environmental Health Specialist | Environmental Health | Washoe County Health District
wrubio@washoecounty.us | O: (775) 328-2635 | C: (775) 240-9386 |1001 E. Ninth St., Bldg. B, Reno, NV 89512

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Ü Please consider the environment before printing this e-mail.

From: Jon Lindberg [mailto:jon1@visiondesignpainting.com]
Sent: Friday, May 06, 2016 8:25 AM
To: Rubio, Wesley S
Subject: variance lindberg

wes this thing was approved a month and a half ago you got the drawing you needed almost 2 weeks ago what do we have to do to get me septic permit as you know i have been dealing with this for almost 2 years really like to move on with my life and get this over with.....what do I /we need to do?

--
Jon Lindberg
11 Glen Carran Circle
Sparks, NV 89431
Office: (775) 448-6162
Fax: (775) 453-2638
jon1@visiondesignpainting.com
www.visiondesignpainting.com

THIS ELECTRONIC MESSAGE, INCLUDING ANY ACCOMPANYING DOCUMENTS, IS CONFIDENTIAL, int

WASHOE COUNTY
Planning and Development
INTEGRITY COMMUNICATION SERVICE

Community Services Dept.
P.O. Box 11130
Reno, Nevada 89520-0027
Phone: (775) 328-6100
Fax: (775) 328-6133

Detached Accessory Dwelling Administrative Review Written Decision/Action Order

DADAR Case Number:	**DADAR15-01**
Subject:	Legally establish a ±934 sq. ft. detached accessory dwelling within an existing ±1,536 sq. ft. structure.
Decision:	**Approve with Conditions**
Decision Mailing Date:	June 1, 2016
Applicant/Property Owner:	Jon and Michal Lindberg
Developer:	Building Tectonics Inc., Attn: Ron Cohen
Assigned Planner:	Kelly Mullin, Planner Washoe County Community Services Department Planning and Development 775.328.3608 kmullin@washoecounty.us

---

Project Description

Detached Accessory Dwelling Administrative Review Case No. DADAR15-01 – Public notice, staff review and possible action to legally establish a ±934 sq. ft. detached accessory dwelling within an existing ±1,536 sq. ft. structure.

- Applicant/Owner: Jon and Michal Lindberg, 20957 Eaton Rd., Reno, NV 89521
- Location: 20957 Eaton Road, approximately one block north of the intersection of Ames Lane and Highway 395 in Pleasant Valley
- Assessor's Parcel No: 045-337-11
- Parcel Size: ±1.123 Acres
- Master Plan Category: Suburban Residential (SR)
- Regulatory Zone: Low Density Suburban (LDS)
- Area Plan: South Valleys
- Citizen Advisory Board: South Truckee Meadows/Washoe Valley
- Commission District: 2 – Commissioner Lucey
- Development Code: Authorized in Article 306 Accessory Uses and Structures
- Section/Township/Range: Within Section 7, T17N, R20E, MDM, Washoe County, NV

Notice is hereby given that Washoe County Planning and Development has granted approval with conditions of the above referenced case number based on compliance with Washoe County Development Code Section 110.306.25 and the conditions of approval as requested by reviewing agencies. If no appeals have been filed within 10 calendar days after the date of the Written Decision Mailing Date shown on this Action Order (appeal must be filed by June 13, 2016), the administrative approval granted by the department is final. If filed, an appeal stays any further action on the permit until final resolution of the appeal. An appeal shall be filed in accordance with the provisions found in Article 912 of the Washoe County Development Code.

This Action Order of approval is granted subject to the attached conditions and Washoe County development standards. Any business license, certificate of occupancy or final approval shall not be issued until all of the Conditions of Approval (attached) are satisfied. Additionally, compliance shall be required with all federal, state and local statutes, ordinances and regulations applicable to the approved project.

This Action Order does not authorize grading or building without issuance of the necessary permits from Washoe County Building and Safety. You must obtain a building permit to convert the structure into a legal dwelling.

William H. Whitney

William H. Whitney, Division Director
Washoe County Community Services Department
Planning and Development Division

Attachments: Conditions of Approval

Action Order xc: Nathan Edwards, District Attorney's Office; Keirsten Beck, Assessor's Office (CAAS); Josh Wilson, Assessor's Office; Leo Vesely, Engineering Division; Vahid Behmaram, Water Management Coordinator; Amy Ray, Truckee Meadows Fire Protection District; Wes Rubio, Environmental Health; Steve Shell, Nevada State Division of Water Resources; John Cella, Utility Services; Don Jeppson, Building & Safety; Southwest Truckee Meadows/Washoe Valley Citizen Advisory Board, Chair; Affected Property Owners.

EXHIBIT A

Conditions of Approval

Detached Accessory Dwelling Administrative Review
Case Number DADAR15-01

The project approved under Detached Accessory Dwelling Administrative Review Case Number DADAR15-01 shall be carried out in accordance with these Conditions of Approval. Conditions of Approval are requirements placed on a permit or development by each reviewing agency. These Conditions of Approval may require submittal of documents, applications, fees, inspections, amendments to plans, and more. These conditions do not relieve the applicant of the obligation to obtain any other approvals and licenses from relevant authorities required under any other act or to abide by all other generally applicable Codes, and neither these conditions nor the approval by the County of this project/use override or negate any other applicable restrictions on uses or development on the property.

Unless otherwise specified, all conditions related to the approval of this Administrative Review shall be met or financial assurance must be provided to satisfy the conditions of approval prior to issuance of a Certificate of Occupancy by the Building and Safety Division. The agency responsible for determining compliance with a specific condition shall determine whether the condition has been fully completed or whether the applicant shall be offered the option of providing financial assurance. All agreements, easements, or other documentation required by these conditions shall have a copy filed with Planning and Development.

Compliance with the conditions of approval related to this Administrative Review is the responsibility of the applicant, his/her successor in interest, and all owners, and occupants of the property. Failure to comply with any of the conditions imposed in the approval of the Administrative Review permit may result in the initiation of revocation procedures.

For the purpose of conditions imposed by Washoe County, "may" is permissive and "shall" or "must" is mandatory.

FOLLOWING ARE CONDITIONS OF APPROVAL REQUIRED BY THE REVIEWING AGENCIES. EACH CONDITION MUST BE MET TO THE SATISFACTION OF THE ISSUING AGENCY.

Washoe County Planning and Development

1. The following conditions are requirements of the Planning and Development Division, which shall be responsible for determining compliance with these conditions.

   Contact: Kelly Mullin, Planner, 775.328.3608, kmullin@washoecounty.us

   a. The applicant shall demonstrate substantial conformance to the plans approved as part of this Administrative Review permit.

   b. The applicant shall submit complete construction plans and building permits shall be issued within two (2) years from the date of approval by Washoe County. The applicant shall complete construction within the time specified by the building permits.

   c. The applicant shall attach a copy of the Action Order approving this project to all administrative permit applications (including building permits) applied for as part of this administrative permit.

d. A note shall be placed on all construction drawings and grading plans stating:

NOTE

Should any prehistoric or historic remains/artifacts be discovered during site development, work shall temporarily be halted at the specific site and the State Historic Preservation Office of the Department of Museums, Library and Arts shall be notified to record and photograph the site. The period of temporary delay shall be limited to a maximum of two (2) working days from the date of notification.

e. A detached accessory dwelling unit proposing to use a domestic well as its source of water shall install a water meter prior to the issuance of a Certificate of Occupancy.

f. In order to meet square footage limits for the living area of detached accessory dwellings, the lower level of the structure shall be converted from living area to storage area. As proposed by the applicant, the lower level shall be separated from the upper level by a newly constructed floor-to-ceiling wall prior to the issuance of a Certificate of Occupancy.

g. The lower level is not permitted for and shall not be used as habitable space at any time unless legally converted to living space with the appropriate permits and in accordance with the provisions of Washoe County Code Section 110.306.25.

Washoe County Utility Services

2. The following conditions are requirements of Washoe County Utility Services, which shall be responsible for determining compliance with these conditions.

Contact: John Cella, Engineering Technician, 775.954.4656, jcella@washoecounty.us

a. The combined water use from the well for the main residence and any accessory dwelling shall not exceed two (2) acre-feet per year as provided in Chapter 534.180 of the Nevada Revised Statutes (NRS).

b. A totalizing meter shall be installed near the discharge of the well that provides water to the main residence and the accessory dwelling. The State of Nevada, not Washoe County, is the responsible party in determining meter type and placement. The State's phone number is 775-684-2800. This meter shall be easily accessible for meter reading by the Nevada State Engineer staff and maintained in good working order and shall be installed to measure all water pumped from the well for the purposes of this approval.

c. Water usage measurements from the totalizing meter must be submitted by the parcel owner to Nevada State Engineer no later than January 31st of each calendar year.

d. The "Acceptance of Conditions and Approval for Domestic Water Well Use for an Accessory Dwelling" form (available from the State of Nevada Division of Water Resources website) regarding accessory dwellings shall be completed and returned to Utility Services for approval, and Utility Services will provide the request to the applicant for submittal to the Nevada State Engineer. The Nevada Division of Water Resources will determine the final agreement(s) with the owner of the property.

Washoe County Health District

3. The following conditions are requirements of the Health District, which shall be responsible for determining compliance with these conditions. The District Board of Health has jurisdiction over all public health matters in the Health District. Any conditions set by the Health District must be appealed to the District Board of Health.

Contact: Wes Rubio, Sr. Environmental Health Specialist, 775.328.2635, wrubio@washoecounty.us

a. This parcel has gone through the Sewage, Wastewater and Sanitation Variance Board and received an approved variance (16-001S) from the District Board of Health.

b. As a requirement of the approved Variance the parcel must install additional leach line and pass inspection by the Washoe County Health District.

Washoe County Building and Safety

3. The following condition is a requirement of the Building and Safety Division, which shall be responsible for determining compliance with this condition.

Contact: Don Jeppson, Building Official, 775.328.2030, dcjeppson@washoecounty.us

a. The applicant shall obtain the appropriate building permits and pass required inspections as determined by the Building and Safety Division.

Truckee Meadows Fire Protection District

4. The following condition is a requirement of Truckee Meadows Fire Protection District, which shall be responsible for determining compliance with this condition.

Contact: Amy Ray, Fire Marshal, 775.326.6005, aray@tmfpd.us

a. Plans and/or permits shall be obtained and approved prior to construction in accordance with Washoe County Code 60.

*** End of Conditions ***

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Check Number	Date Posted	Check Amount	Account Number
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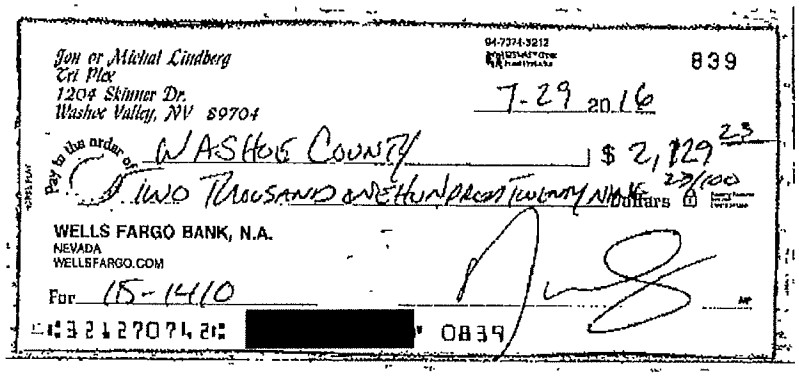

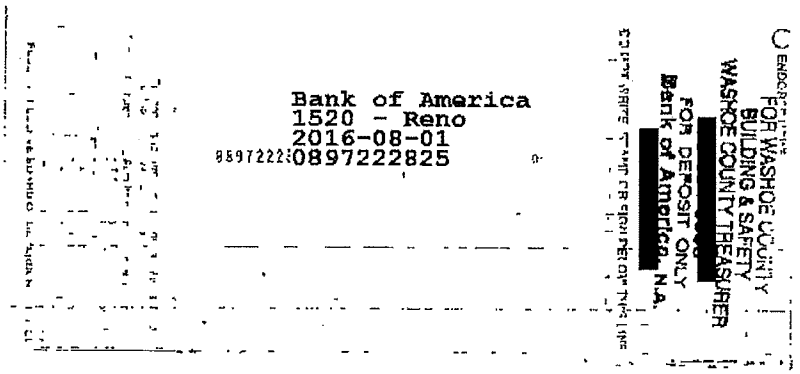

Equal Housing Lender

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A150 # 836

Sierra Septic Service

PO Box 6107
Sparks, NV 89432
775-356-3939

Estimate

Date	Estimate #
7/14/2016	237

Name / Address
Jon Linberg 20957 Eaton RD Reno, NV 89521

Project

Description	Qty	Rate	Total
Job Site: 20957 Eaton RD Reno NV 89521 install new 1000 gallon septic tank and leach field extension with D Box, Includes; septic tank, Pipe, rock equipment, labor and workmanship. Does not include, permits and landscaping.		6,500.00	6,500.00T
install new 2" ABS pipe from existing 2" pipe under house through foundation to new septic tank. includes, pipe, fittings,with Cleanout, boring, labor and workmanship.		2,000.00	2,000.00T

Thank you for your bid request

Subtotal	$8,500.00
Sales Tax (0.0%)	$0.00
Total	$8,500.00

LII..D 0082

283

FUNDIN PUMP & WELL SERVICE

4030 Eastlake Blvd.
Washoe Valley, NV 89704

NV Lic. 74720

775-849-1027 Phone/Fax
Email: vmf1027@charter.net

CA Lic. 642319

Date: April 03, 2015

Jon Lindberg
20957 Eaton Road
Reno, NV 89521
775-849-2582 Jon Cell: 775-342-7551
Email:

Property location: 20957 Eaton Rd. Reno. NV

Jon,

We are pleased to have the opportunity to submit the following estimate to furnish and install a Simple Hand Pump in your well, set at 72 Ft. as follows:

Simple Hand Pump model 125L, 5 GPM consisting of:

(1) PHA Pump Head Assembly, 125CA,
(1) 5 GPM, 125 SCA pump assembly with 1.75" O.D. cylinder.
(1) 36LA 36" lever arm
(1) C6WTCC 6" Trega well cap
(1) 109DPTBE-48: 9' top drop pipe kit with 1/16" weep at 48"with sucker rod and rod guide
(6) 109DPBE: 9' drop pipe kits with sucker rods and rod guides
Electrical at top of well: LB, Conduit and misc.
Total materials: $1974.29
Shipping $85.00
Washoe County sales tax $104.29
Labor estimated 3 hours @ $145.00 per/Hr. $435.00
Total materials, shipping, tax and labor $1,974.29

If you would like for Fundin Pump & Well Service to proceed with the work, please sign acceptance, date and return by email or fax.

Estimated by: Vonnie Fundin *Date:* 4/6/15
Vonnie Fundin

Acceptance: _____ *Date:* _____

Print Name _____

Prices are good for 30 days from Date of Estimate. Terms-Payment due upon completion or progress payments as required. Upon buyer's failure to pay in full within 10 days, buyer agrees to pay a FINANCE CHARGE OF 2% PER MONTH, 24% PER ANNUM, PLUS any other collection costs incurred including attorney fees. Due to possible changes in scope of work and unknown conditions, all work is done on a time and material or footage basis except where minimum amounts are shown.

Fundin Pump & Well Service

4030 Eastlake Blvd., Washoe Valley, Nevada 89704

775-849-1027

NV Lic. # 74720 CA Lic. # 642319

INVOICE

№ 2043

DATE OF ORDER	DATE COMPLETED
07 /18 /16	08 /18 / 16

CUSTOMER'S ORDER NO.	HOME PHONE	WORK PHONE	TECHNICIAN	TECHNICIAN
	775-849-2582	John Cell 775-342-7551	Jeff	Angel

BILL TO: John Lindberg

ADDRESS: 20957 Eaton Road

CITY / STATE / ZIP: Reno, NV 89521

JOB NAME AND LOCATION: Same

LEAVE SHOP:

ARRIVE JOB:

LEAVE JOB:

ARRIVE SHOP:

WELL SIZE/DEPTH	PUMP SETTING	PIPE SIZE	TANK SIZE	PUMP MAKE	PUMP D CODE
STATIC WATER LEVEL	**PUMPING LEVEL**	**GPM**	**WIRE #–TYPE**	**PUMP MODEL**	**MOTOR D CODE**

DESCRIPTION OF WORK:

Service to install 1" Flow Meter & Flanges, replace pressure gauge -

Per Quote $474.64

LABOR & TRAVEL:

_____ HRS. @_____ / HR.

PLEASE PAY FROM THIS INVOICE
TERMS: DUE UPON RECEIPT

Upon buyer's failure to pay in full within 10 days, buyer agrees to pay a FINANCE CHARGE OF 2% PER MONTH, 24% PER ANNUM, PLUS any other collection costs incurred including attorney fees. There is a $25 charge for returned checks.

Seller, for security purposes, retains title to described goods until PAID IN FULL. In case of Buyer's default in payment, Seller or his agents may take possession of, and remove described goods from Buyer's premises without prior notice. Buyer waives all right of action for trespass damages or other cause resulting from repossession.

LABOR		
MATERIALS		
Washoe TAX		
TOTAL AMOUNT		474.64

Signature _____

I hereby acknowledge the satisfactory completion of the above described work, and agree to the terms and conditions set forth above.

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Check Number	Date Posted	Check Amount	Account Number
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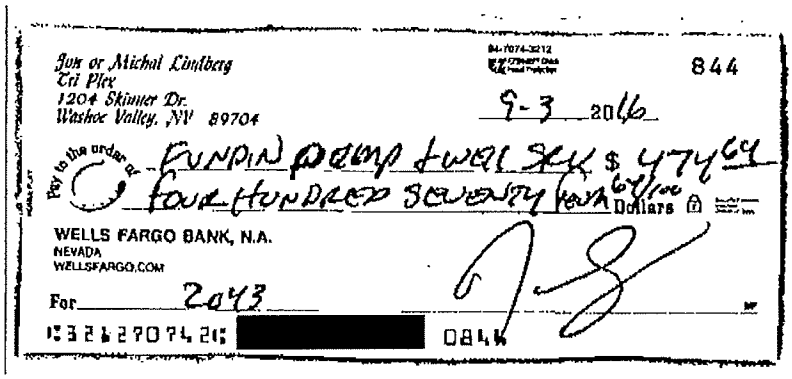

Jon or Michal Lindberg
Tri Plex
1204 Skinner Dr.
Washoe Valley, NV 89704

844

9-3 2016

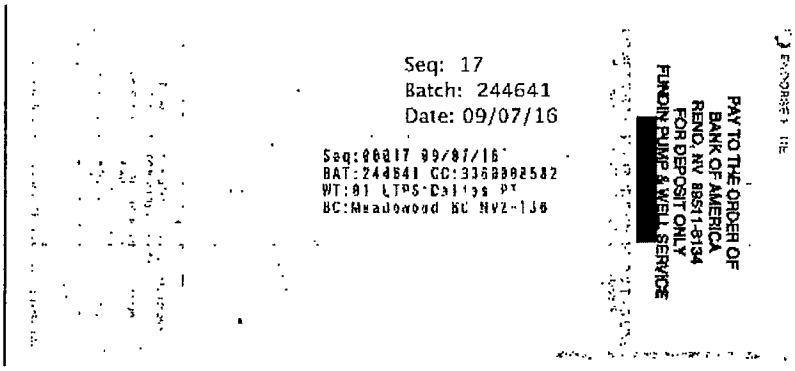
Pay to the order of FUNDIN PUMP & WELL SER $ 474 64

four HUNDRED SEVENTY four 64/100 Dollars

WELLS FARGO BANK, N.A.
NEVADA
WELLSFARGO.COM

For 2043

⑈321270742⑈ [redacted] 0844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Batch: 244641
Date: 09/07/16

Seq:00017 09/07/16
BAT:244641 CC:336B002582
WT:01 LTPS-Dallas PT
BC:Meadowood BC NVZ-136

ENDORSE HERE

PAY TO THE ORDER OF
BANK OF AMERICA
RENO, NV 89511-8134
FOR DEPOSIT ONLY
FUNDIN PUMP & WELL SERVICE [redacted]

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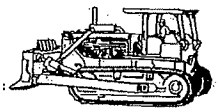

INVOICE

No. 1611

MAUTNER EXCAVATING LLC.

Backhoe, Dozing, Hauling, Snowplowing

16700 Red Rock Rd.
Reno, NV 89506

Off/Res. ~~775-969-8622~~
Cell. 775-750-3515
CoRD - 775-750-3631

SOLD TO	JOHN LINBERG.
ADDRESS	20957 EATON RD.
CITY, STATE, ZIP	RENO NV.

CUSTOMER ORDER NO.	SOLD BY	TERMS	F.O.B.	DATE SEPT 22-16

	DESCRIPTION	PRICE	UNIT	AMOUNT
	FULL SEPTIC SYSTEM INSTAL			
	TANK, DIST BOX, GRAVEL			
	PIPE & FITTINGS			$6500
	RECEIVED DEPOSIT -			$3250
	EXTRAS - COST INCREASE FOR TANK		ADDED	$250
	- HAULING & DISPOSAL COST			$550
	OF EXTRA MATERIAL			
			BALANCE	$3800
	JOB COMPLETED.			

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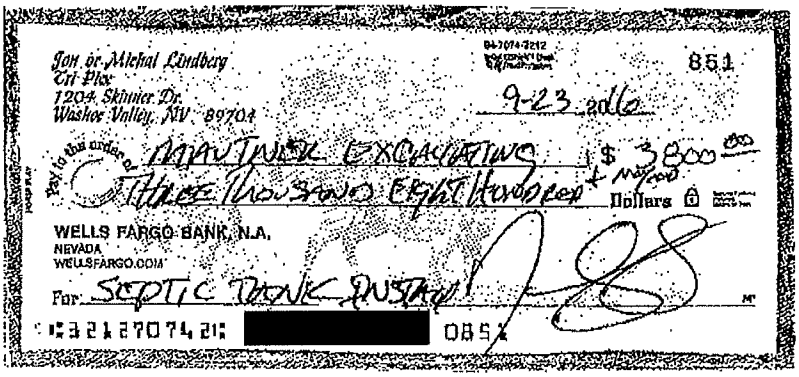

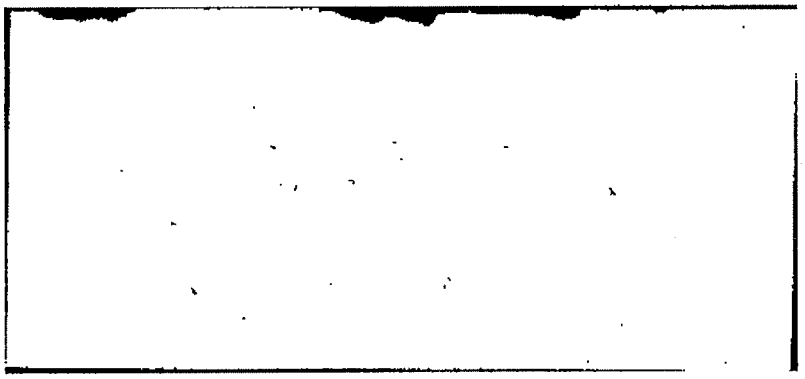

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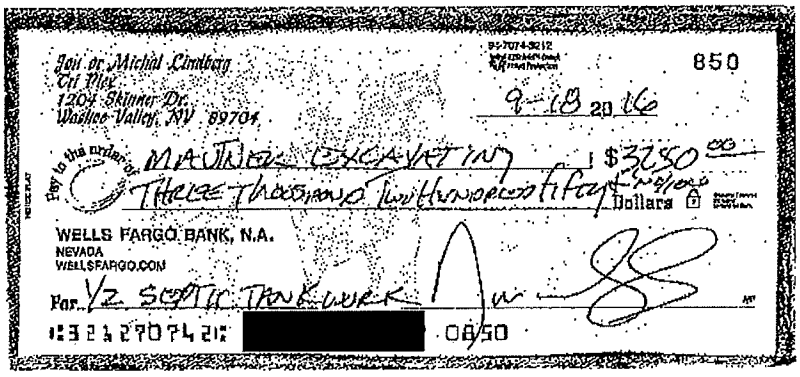

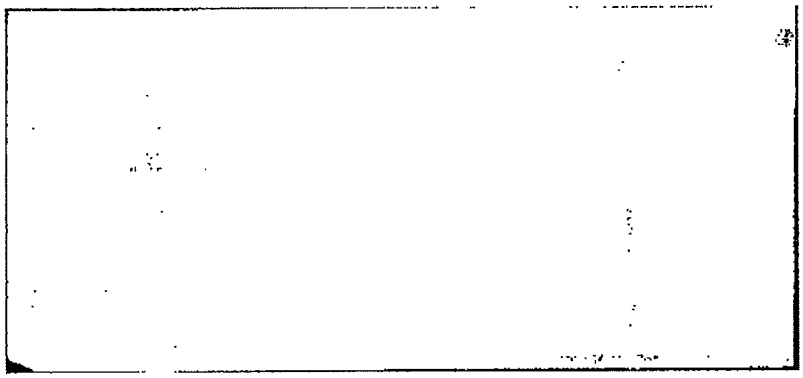

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BUILDING TECTONICS INC

4615 Aircenter Circle
Reno, NV 89502

BUILDING TECTONICS INC

Invoice

Bill To

Date	Invoice #
12/27/2016	16-040-1

Job Number	Due Date	Terms
16-040	12/27/2016	Due on receipt

Item	Description	Est Amt	Amount
	Lindberg In-Law Quarters		
22 Consulting	Preconstruction Consulting	5,000.00	5,000.00

Total	$5,000.00
Payments/Credits	-$2,341.26
Balance Due	$2,658.74

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

NV LIC 0071214

Phone # 775-858-4433 Fax # 775-858-4435 Web Site www.btect.com

LIND

290

Jon Lindberg
20957 Eaton Rd
Reno, NV 89521

August 26th, 2015

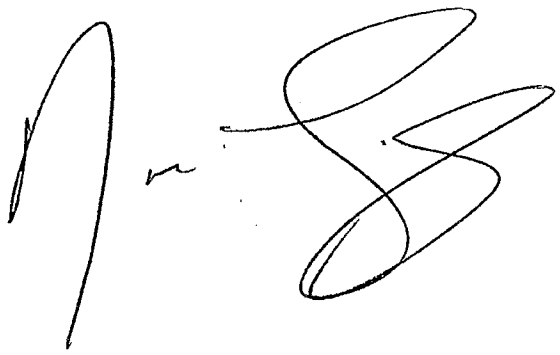
To Whom It May Concern:

It should be understood that this building has been occupied and taxed for 20 years. It is an existing structure that was permitted for a garage but never received final inspection on structure 20 years ago.

We are simply trying to bring up to code/compliance.

Sincerely,

Jon Lindberg



Community Services Department

Planning and Development

DETATCHED ACCESSORY DWELLING ADMINISTRATIVE REVIEW APPLICATION

Community Services Department
Planning and Development
1001 E. Ninth St., Bldg A
Reno, NV 89520

Telephone: 775.328.3600

Washoe County Development Application

Your entire application is a public record. If you have a concern about releasing personal information, please contact Planning and Development staff at 775.328.3600.

Project Information	**Staff Assigned Case No.:** _____
Project Name: Lindberg Residence	
Project Description:	Permit of exisitng inlaws quarters that was built by previous owner. New Owner would like to permit existing inlaws quarters. 1536 sqf of current building was converted without permits and under this proposed permit the footage will be reduced to 934 sqf.
Project Address: 20957 Eaton RD, WCTY	
Project Area (acres or square feet): 934 square feet	
Project Location (with point of reference to major cross streets **AND** area locator): Eaton Road & Ames Road. Pleasant Valley Estates.	

Assessor's Parcel No.(s):	Parcel Acreage:	Assessor's Parcel No(s):	Parcel Acreage:
045-337-11	1.01		

Section(s)/Township/Range: Portions of the northeast 1/4 of sec. 7 & northwest 1/4 of sec. 8	
Indicate any previous Washoe County approvals associated with this application: Case No.(s).	

Applicant Information (attach additional sheets if necessary)

Property Owner:		**Professional Consultant:**	
Name: Jon & Michal Lindberg		Name:	
Address: 20957 Eaton RD. WCTY		Address:	
	Zip: ~~89511~~ 89521		Zip:
Phone: 775-342-7551	Fax:	Phone:	Fax:
Email: jon@visiondesignpainting.com		Email:	
Cell:	Other:	Cell:	Other:
Contact Person: John		Contact Person:	
Applicant/Developer:		**Other Persons to be Contacted:**	
Name: Building Tectonics Inc.		Name:	
Address: 4615 Aircenter Cir		Address:	
Reno, NV	Zip: 89502		Zip:
Phone: 775-358-4433	Fax: 775-358-4435	Phone:	Fax:
Email: ron@btect.com		Email:	
Cell: 775-224-6375	Other:	Cell:	Other:
Contact Person: Ron Cohen		Contact Person:	

For Office Use Only

Date Received:	Initial:	Planning Area:	
County Commission District:		Master Plan Designation(s):	
CAB(s):		Regulatory Zoning(s):	

Property Owner Affidavit

Applicant Name: Michal K Lindberg

The receipt of this application at the time of submittal does not guarantee the application complies with all requirements of the Washoe County Development Code, the Washoe County Master Plan or the applicable area plan, the applicable regulatory zoning, or that the application is deemed complete and will be processed.

STATE OF NEVADA)
)
COUNTY OF WASHOE)

I, Michal K Lindberg
(please print name)

being duly sworn, depose and say that I am the owner* of the property or properties involved in this application as listed below and that the foregoing statements and answers herein contained and the information herewith submitted are in all respects complete, true and correct to the best of my knowledge and belief. I understand that no assurance or guarantee can be given by members of Planning and Development.

(A separate Affidavit must be provided by each property owner named in the title report.)

Assessor Parcel Number(s): 045-337-11

Printed Name Michal K. Lindberg

Signed Michal K. Lindberg

Address 20957 Eaton Rd Reno NV 89521

2180 sqf

Subscribed and sworn to before me this 20th day of August, 2015.

(Notary Stamp)

Notary Public in and for said county and state

My commission expires: 11th January 2017

STACY DOZIER
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 13-9839-2 - Expires January 11, 2017

*Owner refers to the following: (Please mark appropriate box.)

- ☒ Owner
- ☐ Corporate Officer/Partner (Provide copy of recorded document indicating authority to sign.)
- ☐ Power of Attorney (Provide copy of Power of Attorney.)
- ☐ Owner Agent (Provide notarized letter from property owner giving legal authority to agent.)
- ☐ Property Agent (Provide copy of record document indicating authority to sign.)
- ☐ Letter from Government Agency with Stewardship

Property Owner Affidavit

Applicant Name: Jon Lindberg

The receipt of this application at the time of submittal does not guarantee the application complies with all requirements of the Washoe County Development Code, the Washoe County Master Plan or the applicable area plan, the applicable regulatory zoning, or that the application is deemed complete and will be processed.

STATE OF NEVADA)
)
COUNTY OF WASHOE)

I, Jon Lindberg
(please print name)

being duly sworn, depose and say that I am the owner* of the property or properties involved in this application as listed below and that the foregoing statements and answers herein contained and the information herewith submitted are in all respects complete, true and correct to the best of my knowledge and belief. I understand that no assurance or guarantee can be given by members of Planning and Development.

(A separate Affidavit must be provided by each property owner named in the title report.)

Assessor Parcel Number(s): 045-337-11

Printed Name Jon Lindberg

Signed

Address 20957 Euton Rd Reno NV 89521

2180 sqf

Subscribed and sworn to before me this 20th day of August, 2015.

(Notary Stamp)

Notary Public in and for said county and state

My commission expires: 11th January 2017

STACY DOZIER
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 13-9839-2 - Expires January 11, 2017

*Owner refers to the following: (Please mark appropriate box.)

- ☒ Owner
- ☐ Corporate Officer/Partner (Provide copy of recorded document indicating authority to sign.)
- ☐ Power of Attorney (Provide copy of Power of Attorney.)
- ☐ Owner Agent (Provide notarized letter from property owner giving legal authority to agent.)
- ☐ Property Agent (Provide copy of record document indicating authority to sign.)
- ☐ Letter from Government Agency with Stewardship

Administrative Review Permit Application for a Detached Accessory Dwelling Supplemental Information

(All required information may be separately attached)

This application is for proposals to establish a Detached Accessory Dwelling unit in the Low Density Rural, Medium Density Rural, High Density Rural, and Low Density Suburban regulatory zones. Chapter 110 of the Washoe County Code is commonly known as the Development Code. Specific references to the administrative review permit process for Detached Accessory Dwellings may be found in Article 306, Accessory Uses and Structures, Section 25(i). A Detached Accessory Dwelling is also referred to as a "secondary dwelling" in this application. The "main dwelling" is the original or larger dwelling on the property.

1. What is the size (square footage) of the main dwelling unit or proposed main dwelling unit (exclude size of garage)?

   2180 sqf

2. What is the size of the detached accessory dwelling unit or proposed detached accessory dwelling unit (exclude size of garage)?

   Currently 1536 will reduce living area to 934 with the remainder being storage.

3. How are you planning to integrate both the main dwelling and secondary dwelling to provide architectural compatibility and a sense of project integration of the two structures?

   The building currently exists as inlaws quarters today. Both building have wood siding with wood trim. Both building are similar in construction methods.

4. How are you planning to provide water and wastewater disposal (sewer or septic) to the secondary dwelling unit?

   Water is provided to the building by local onsite well. A new proposed septic system of larger capacity is being provided under BLD Permit #15-1410. Dave Kelly from Health as reviewed the site plan and has guided for compliance.

5. What additional roadway, driveway, or access improvements are you planning?

There is a existing gravel driveway that runs from the front of the property to the rear of the property along the northeast property line. This drive way is used to access the existing building.

6. A parking space is required. How are you providing the additional parking?

There is ample parking at the front of the building and still allows access to rear of property from the front.

7. When do you plan to complete construction of the secondary dwelling and obtain a certificate of occupancy?

Completion 2015

8. What will you do to minimize any potential negative impacts (e.g. increased lighting, obstruction of views, removal of existing vegetation, etc.) your project may have on adjacent properties?

We do not anticipate any negative impacts to adjacent properties.

9. Is the subject property part of an active Home Owners Association (HOA) or Architectural Control Committee? If yes, please include the name and contact information for the applicable board.

Unkown.

10. Are there any restrictive covenants, recorded conditions, or deed restrictions (CC&Rs) that may prohibit a detached accessory dwelling on your property?

☐ Yes	■ No	If yes, please attach a copy.

11. Only one accessory dwelling unit, whether attached or detached, is allowed per parcel. Please verify that an accessory dwelling (i.e. secondary dwelling) currently does not exist on the subject property.

The secondary dwelling does exist, however does not have a permit to exist.

12. List the age and size of the unit If you plan to utilize a manufactured or modular home as the secondary dwelling. (Note: manufactured or modular homes must be permanently affixed and converted to real property.)

N/A

13. List who the service provider will be for the following utilities:

a. Sewer Service	Sierra Septic
b. Electrical Service	NVEnergy
c. Solid Waste Disposal Service	Waste Managment
d. Water Service	Well

Address: 20957 EATON RD WCTY
Location:
Parcel No: 045-337-11

Permit No: **15-1410**
Type: BLD-RES
Category: RSAD

Occupancy: 27
Zoning: LDS
Area: S
Sewer:
Special Use:
Variance No:
M.P.R. No:

Use Code:

Water:
Census:
Units: 1
Bldgs: 1

Applied: 05/20/2015
Issued:
Status: PCEXPIRE
Expire:

OWNER LINDBERG, JOHN & MICHAL
Phone:

20957 EATON ROAD
RENO NV 89521

CONTRACTOR BUILDING TECTONICS INC
COHEN, RON
4615 AIRCENTER CIRCLE
RENO NV 89502
License: 0071214
Phone: 775-358-4433
FAX 775-358-4435

CONTACT BUILDING TECTONICS INC
COHEN, RON
4615 AIRCENTER CIRCLE
RENO NV 89502
Email: RON@BTECT.COM
Phone: 775-358-4433
FAX 775-358-4435

****

Permit Description:

CONVERSION OF EXISTING STORAGE BUILDING ON WEST SIDE OF PROPERTY TO IN-LAW QUARTERS / ALL 1536 SQF OF CURRENT BUILDING WAS CONVERTED WITHOUT PERMITS AND WILL BE REDUCED TO 934 SQF

ALUATION: $56,693.76

Occupancy	Type	Factor	Sq Feet	Valuation
U-Utility	VB	36.91	1,536	$56,693.76
	Totals...		1,536	$56,693.76*

****

FEES:

Building Fee:	$800.09	Calculated Fee:	$3,329.37
Electrical Fee:	$0.00	Additional Fee:	$0.00
Plumbing Fee:	$200.00		
Mechanical Fee:	$0.00	TOTAL FEES:	$3,329.37
Reinspections:	$0.00		
Plan Check Fee:	$400.05	Payments:	$1,200.14
Park Tax Fee:	$560.00		
Violation Fee:	$0.00	BALANCE DUE:	$2,129.23
Renewal Fee:	$0.00		
Impact Fee (BLD-RES):	$1,369.23	VALIDATED BY:	BS
Grading Fee:	$0.00	ISSUED BY:	

Applications for which no permit is issued within 180 days following the date of application shall expire by limitation, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the building official. The building official may extend the time for action by the applicant for a period not exceeding 180 days on request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. No application shall be extended more than once. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee.

WASHOE COUNTY

WORKFLOW APPROVAL STATUS

Permit: 15-1410

Address: 20957 EATON RD, WCTY

Fees: $4,695.73

Paid: $1,200.14

Balance Due: $3,495.59

Applied: 5/20/2015

Issued:

Finaled:

Expires:

Work Description: CONVERSION OF EXISTING STORAGE BUILDING ON WEST SIDE OF PROPERTY TO IN -LAW QUARTERS / ALL 1536 SQF OF CURRENT BUILDING WAS CONVERTED WITHOUT PERMITS AND WILL BE REDUCED TO 934 SQF

Type: BLD-RES **Sub-Type:** RSAD

Name	Relationship	Phone	Phone Alt
LINDBERG, JOHN & MICHAL	OWNER		
BUILDING TECTONICS INC	CONTRACTOR	775-358-4433	FAX 775-358-4435
BUILDING TECTONICS INC	CONTACT	775-358-4433	FAX 775-358-4435

PLAN REVIEW STATUS

Department	Reviewing Department	Reviewer	Status	Assigned	Complete
R-COMDEV	RENO ComDev				
	1st Review (R-COMDEV)	EYOUNG	RESOLVED_G03	5/20/2015	5/22/2015
	2nd Review (R-COMDEV)	KMULLIN	APPROVED_G04	6/30/2016	7/1/2016
R-ENG	RENO Eng				
	1st Review (R-ENG)	LVESELY	APPROVED_G03	5/26/2015	5/26/2015
DWR	DWR				
	1st Review (DWR)	JFCELLA	APPROVED_G03	5/26/2015	5/26/2015
TMFD	TMFD				
	1st Review (TMFD)	PMOONEYHAN-T	APPROVED_G03	6/12/2015	6/12/2015
R-BLDGPC	RENO BLDGPC				
	1st Review (R-BLDGPC)	BFLORES	RESOLVED_G03	5/20/2015	6/3/2015
	2nd Review (R-BLDGPC)	BFLORES	APPROVED_G04	8/21/2015	9/9/2015
	3rd Review (R-BLDGPC)	BFLORES	APPROVED_G04	11/17/2015	11/19/2015
H-ENG	HLTH Eng				
	3rd Review (H-ENG)	DAKELLY	APPROVED_G04	11/18/2015	5/8/2016
	2nd Review (H-ENG)	DAKELLY	APPROVED_G02	5/20/2015	5/8/2016
	1st Review (H-ENG)	DAKELLY	APPROVED_G03	5/8/2016	5/8/2016

Permit # 15-1410

Washoe County
Department of Building & Safety

Inspections Required by Other Departments & Agencies

Items checked below require inspections in addition to the standard Building & Safety Department inspection requirements. Please contact the departments or agencies that have additional inspection requirements on your project for inspection scheduling and if you have any questions.

Required Utility Inspections

- ☐ Incline Village General Improvement District (775) 832-1224
- ☐ Sun Valley General Improvement District (775) 673-2220
- ☐ Washoe County Utilities (775) 954-4601

Required Fire Department Inspections * 48 Hour Notice Required *

- ☐ North Lake Tahoe Fire Protection District (775) 831-0351 Ext. # 8128
  - ☐ Building Final
  - ☐ Fire Rough Frame
  - ☐ Hydro Static Test
  - ☐ Line Flush
  - ☐ Defensible Space

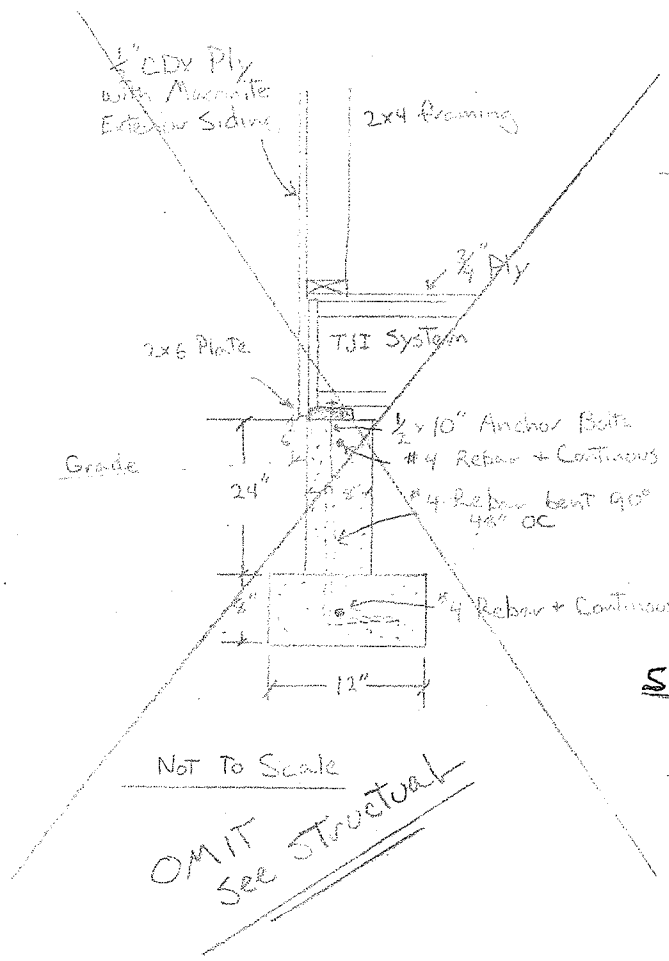
- ☐ Truckee Meadows or Sierra Fire Protection District ** 7 Days ** Notice
  - ☐ Fire Rough Frame (775) 326-6000 Ext. # 2
  - ☐ Building Final
  - ☐ Hydro Static Flush/Final
  - ☐ Rough-In, Final
  - ☐ Defensible Space

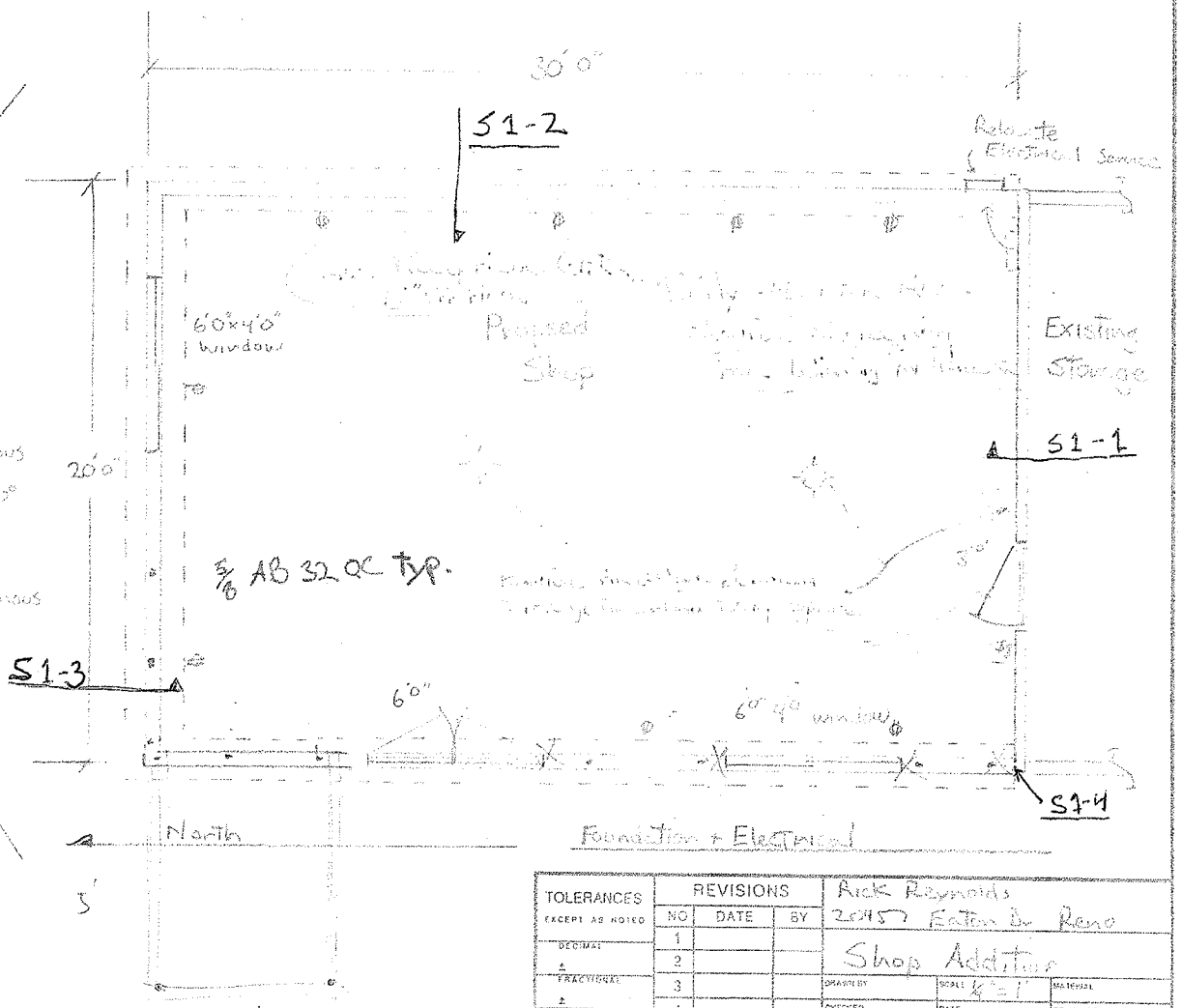
- ☐ Washoe County Engineering Division (775) 328-2180
- ☑ Washoe County Health District (775) 328-2434
- ☑ Washoe County Community Development (775) 328-6100

301

302

96-3555

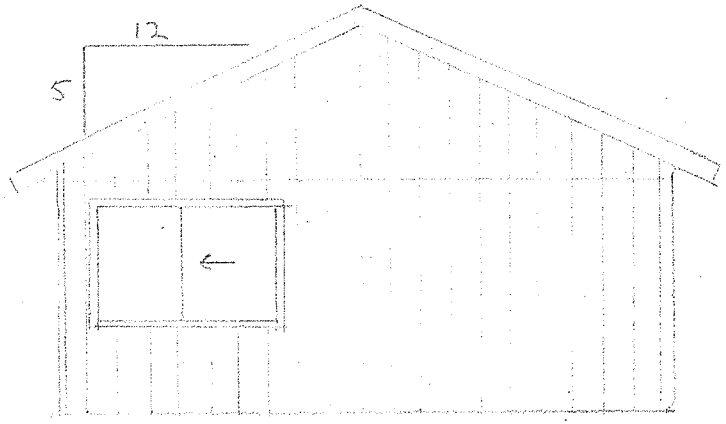




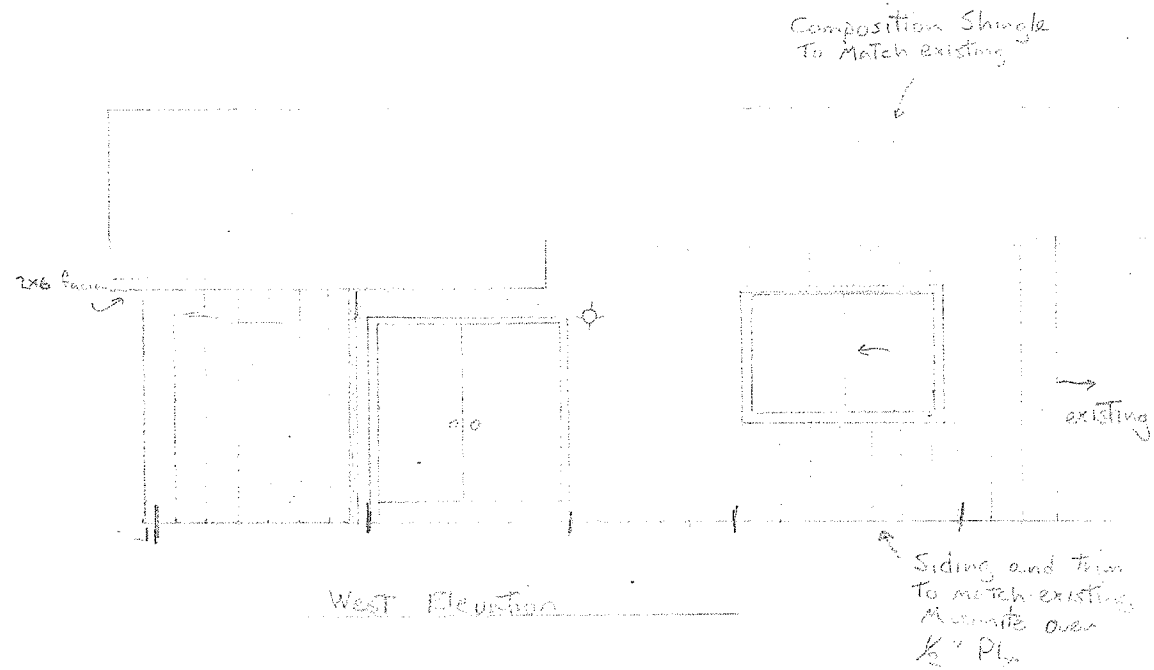
TOLERANCES	REVISIONS			Rick Reynolds		
EXCEPT AS NOTED	NO	DATE	BY	2045 Foothill Dr Reno		
DECIMAL	1			Shop Addition		
FRACTIONAL	2					
ANGULAR	3			DRAWN BY	SCALE 1/4" = 1'	MATERIAL
	4			CHECKED	DATE	DRAWING NO
	5			TRACED	APPROVED	

LIND-0176

303



North Elevation



West Elevation

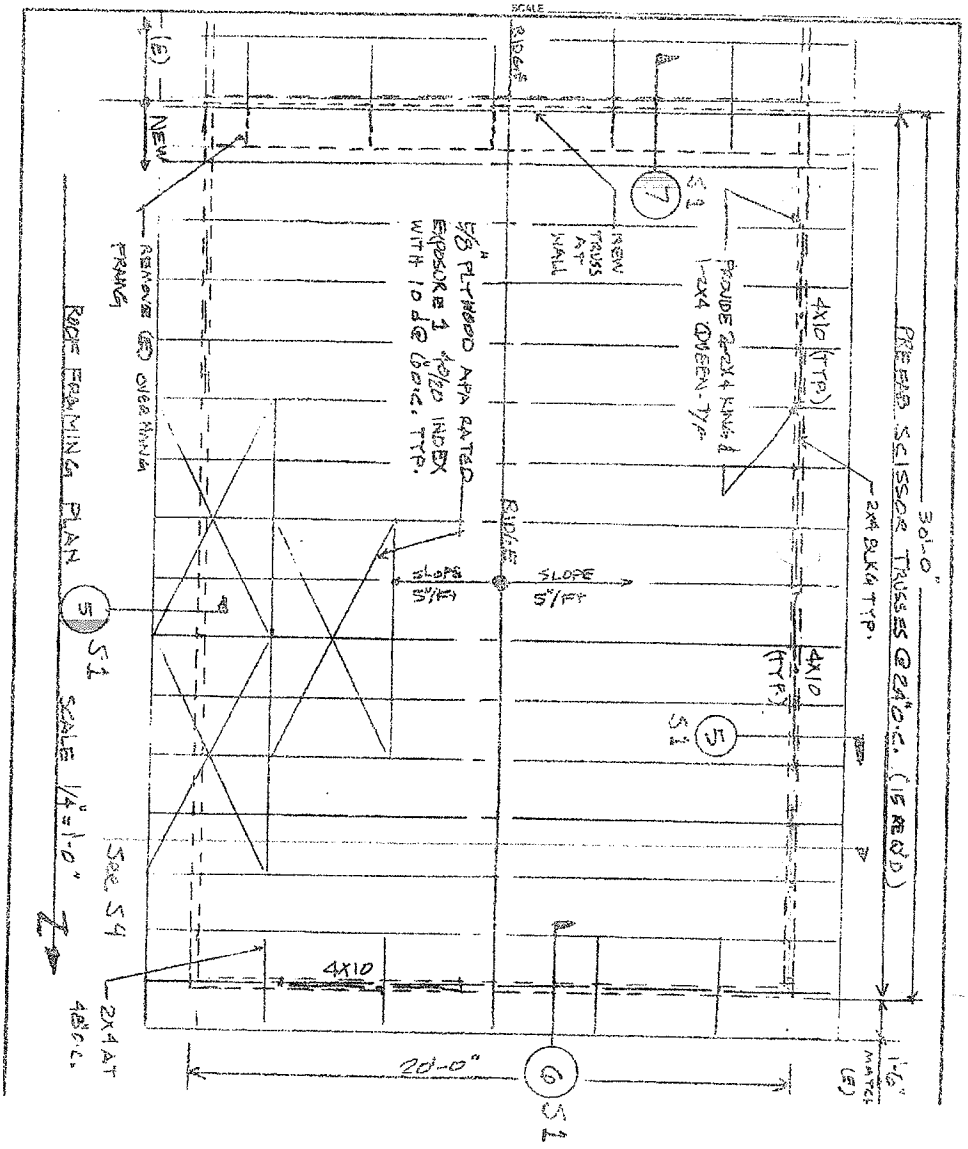
TOLERANCES EXCEPT AS NOTED	REVISIONS			Rick Reynolds 20157 Eaton Dr Ene
	NO	DATE	BY	Shop Addition
DECIMAL ±	1			
	2			
FRACTIONAL ±	3			DRAWN BY Owner · SCALE ¼" = 1' · MATERIAL
ANGULAR ±	4			CHECKED · DATE · DRAWING NO
	5			TRACED · APPROVED

STAEDTLER

LIND 0177

APEX ENGINEERING
4790 Caughlin Pkwy., Suite 184
RENO, NEVADA 89509-0907
(702) 827-3711

JOB 20957 EATON DR.
SHEET NO. D-2 OF
CALCULATED BY PAD DATE 6.96
CHECKED BY DATE
SCALE



REVISIONS			
NO	DATE	BY	
1			
2			
3			
4			
5			

UNLESS OTHERWISE SPECIFIED
DECIMAL ± EXCEPT AS NOTED
PICTORIAL ±
ANGULAR ±

DRAWN BY
CHECKED
TRACED
APPROVED
DATE
SCALE
DRAWING NO. S3
MATERIAL
JOB 0478

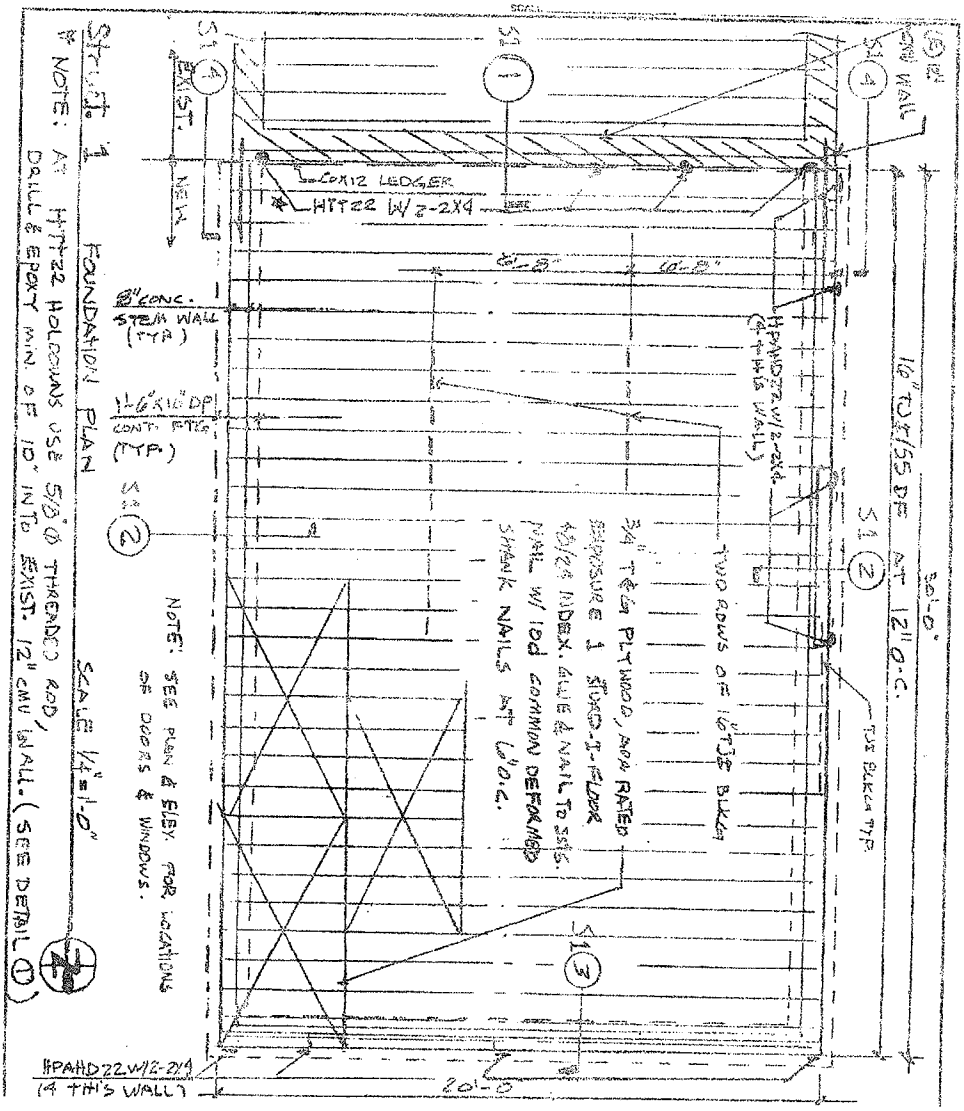
Structural

PROFESSIONAL ENGINEER - STATE OF NEVADA - No. 8129 - MAHMOUSH BARNERI - STRUCTURAL

304

APEX ENGINEERING
4790 Caughlin Pkwy., Suite 184
RENO, NEVADA 89509-0907
(702) 827-3711

JOB 2357 EATON DR.
SHEET NO. 2 of
CALCULATED BY PAD DATE 6-96
CHECKED BY DATE
SCALE



Structural 1

NOTE: AT HIT22 HOLDOWNS USE 5/8"ø THREADED ROD, DRILL & EPOXY MIN OF 10" INTO EXIST. 12" CMU WALL. (SEE DETAIL 1)

FOUNDATION PLAN

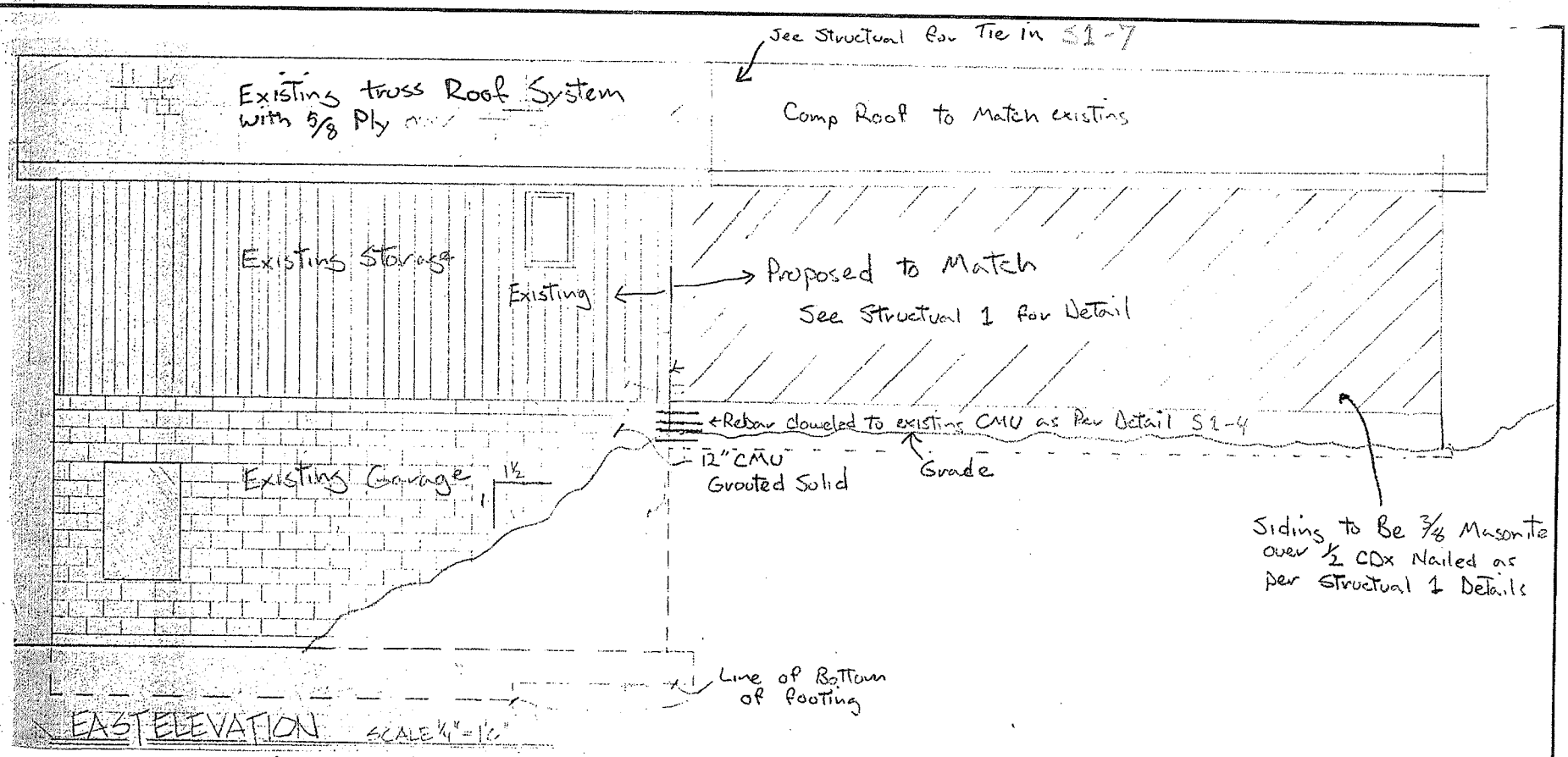
SCALE 1/4"=1'-0"

HPAHD22 W/2-2X4 (4 THIS WALL)

REVISIONS		
NO	DATE	BY
1		
2		
3		
4		
5		

DESIGNED
DRAWN
CHECKED
APPROVED
SCALE
DATE
DRAWING NO.
MATERIAL
JOB NO.

PROFESSIONAL ENGINEER
STATE OF NEVADA
MAHNOUSH BAGHERI
STRUCTURAL
No. 8128



West Elevation Similar

Note
Existing Structure framing is 2×4 Covered By ½" CDX with Nailing at 6" edge + 8" field, Covered By 3/8 Masonite Siding
North Elev. Shear wall Nailing to be upgraded as req. By Structual

TOLERANCES EXCEPT AS NOTED	REVISIONS			
DECIMAL ±	NO	DATE	BY	
FRACTIONAL ±	1			
ANGULAR ±	2			
	3			DRAWN BY / SCALE / MATERIAL
	4			CHECKED / DATE / DRAWING NO
	5			TRACED / APPROVED

STAEDTLER

LIND 0180

walls are 2x4 framing with
1/2" CDX Ply. Shear nailed as per Struct 1
covered with 7/8 Masonite Siding

S1-2

6°4° window with 4x10 header

S1-3

S1-1

S1-3

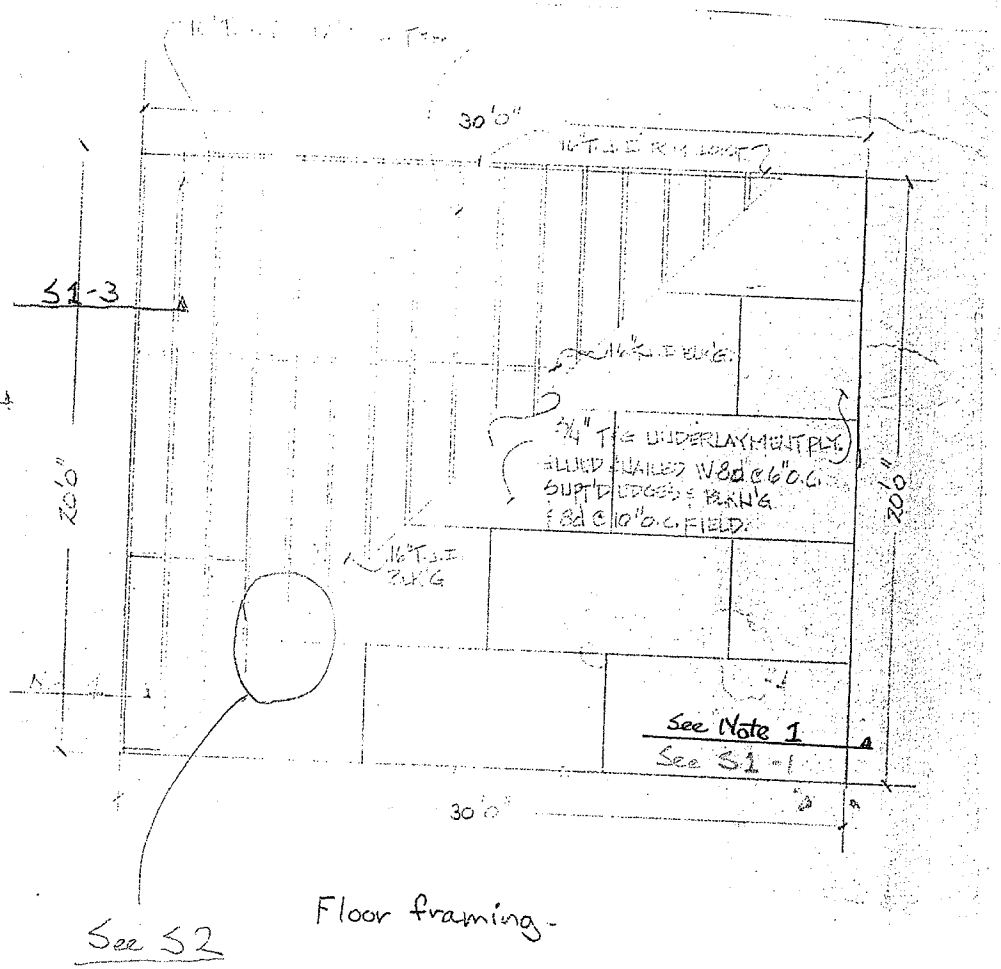
3° opening. To existing with 4x4 Head

6°x6° Door with 4x10 header

6°4° window with 4x10 header

floor Plan

Note.
1 See Structual 1 for Conection to existing

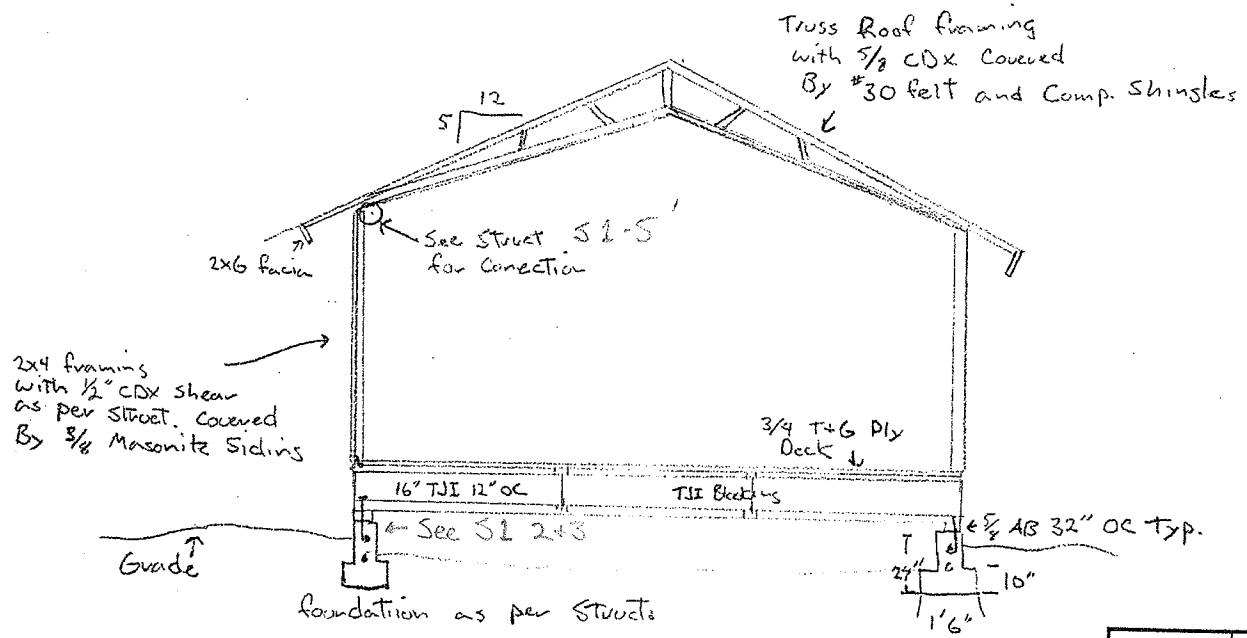


Floor framing.

TOLERANCES EXCEPT AS NOTED	REVISIONS			
DECIMAL ±	NO	DATE	BY	
FRACTIONAL ±	1			
ANGULAR ±	2			
	3			DRAWN BY / SCALE / MATERIAL
	4			CHECKED / DATE / DRAWING NO
	5			TRACED / APPROVED / LND 0181

STAEDTLER

All Nailing and fastenaer
Shall be according to
Structual Details



TOLERANCES EXCEPT AS NOTED	REVISIONS			
DECIMAL ±	NO	DATE	BY	
FRACTIONAL ±	1			
ANGULAR ±	2			
	3			DRAWN BY / SCALE / MATERIAL
	4			CHECKED / DATE / DRAWING NO 54
	5			TRACED / APPROVED

STAEDTLER

LIND 0102

Moore Law Group, PC
3715 Lakeside Drive, Suite A
Reno, NV 89509

Invoice

Date	Invoice #
3/1/2016	02-1429

PAID 02/10/2016

Bill To
John Lindberg 20957 Eaton Road Reno, Nevada 89521

Terms	Matter

Date	Description	Hours	Rate	Amount
2/10/2016	Meet with clients to [redacted]	1	250.00	250.00
2/10/2016	Multiple telephone conferences with opposing attorneys and arbitrator regarding moving this matter from arbitration and perhaps resolving this dispute.	0.5	250.00	125.00
2/10/2016	Review file documents, pleadings, and other items in the file to determine what has been done to date in this matter.	1	250.00	250.00
2/10/2016	Draft correspondence to Sean Brohawn requested his file, including discovery.	0.3	250.00	75.00
2/10/2016	Prepare substitution of counsel for main case and arbitration case [GD]	0.2	100.00	20.00
2/11/2016	Draft stipulation to remove this matter from the arbitration program.	0.3	250.00	75.00
2/15/2016	Telephone conference with Sean Brohawn regarding this matter.	0.2	250.00	50.00
2/26/2016	Draft correspondence to Sean Brohawn seeking return of remaining retention paid to his office.	0.3	250.00	75.00

Retainer funds have been applied to this invoice. No payment is necessary.

Total $920.00

Balance Due $0.00

LIND 018

309

Moore Law Group, PC
3715 Lakeside Drive, Suite A
Reno, NV 89509

Invoice

Date	Invoice #
4/1/2016	03-1461

PAID 02/10/2016

Bill To
John Lindberg 20957 Eaton Road Reno, Nevada 89521

Terms	Matter
	Reynolds

Date	Description	Hours	Rate	Amount
3/1/2016	Draft correspondence to arbitrator in this matter objecting to request for sanctions [redacted].	0.5	250.00	125.00
3/9/2016	Prepare notice of early case conference [GD]	0.2	100.00	20.00
3/17/2016	Draft initial disclosures pleading [GD]	0.3	100.00	30.00
3/17/2016	Review documents [redacted]	1	250.00	250.00
3/18/2016	Finalize initial disclosures in this matter to serve on opposing counsel.	0.5	250.00	125.00
3/18/2016	Draft joint case conference report	0.5	100.00	50.00

Retainer funds have been applied to this invoice. No payment is necessary.

Total $600.00

Balance Due $0.00

Moore Law Group, PC
3715 Lakeside Drive, Suite A
Reno, NV 89509

Invoice

Date	Invoice #
5/2/2016	04-1485

PAID 02/10/2016

Bill To
John Lindberg 20957 Eaton Road Reno, Nevada 89521

Terms	Matter
Due on receipt	

Date	Description	Hours	Rate	Amount
4/4/2016	Review and finalize early case conference report in this matter to circulate to other attorneys.	0.5	250.00	125.00
4/8/2016	Draft motion to remove Sean Brohawn as counsel [GD]	0.3	100.00	30.00
4/14/2016	Draft motion to substitute a party in the place and stead of James E. Johns following Mr. Johns' death.	1	250.00	250.00
4/14/2016	Draft stipulation to substitute Keller Williams Realty for Ken Amundson.	0.5	250.00	125.00
4/26/2016	Prepare and file request for submission of motion to remove Sean Brohawn as counsel [GD]	0.1	100.00	10.00

Retainer funds have been applied to this invoice. No payment is necessary.

Total $540.00

Balance Due $0.00

LIND 018

311

Moore Law Group, PC
3715 Lakeside Drive, Suite A
Reno, NV 89509

Invoice

Date	Invoice #
6/1/2016	05-1518

PAID
02/10/2016

Bill To
John Lindberg 20957 Eaton Road Reno, Nevada 89521

Terms	Matter
Due on receipt	

Date	Description	Hours	Rate	Amount
5/3/2016	Draft order substituting parties (for JE Johns); prepare request for submission of motion to substitute parties [GD]	0.3	100.00	30.00
5/13/2016	Draft order approving stipulation to substitute new defendants and to file second amended complaint [GD]	0.2	100.00	20.00
5/17/2016	Prepare notice of entry of order for order approving stipulation to substitute new defendants and to file second amended complaint	0.2	100.00	20.00
5/31/2016	Telephone conference with attorney for Keller Williams [redacted] .	0.2	250.00	50.00

Retainer funds have been applied to this invoice. No payment is necessary.

Total $120.00

Balance Due $0.00

LIND 0

Moore Law Group, PC
3715 Lakeside Drive, Suite A
Reno, NV 89509

Invoice

Date	Invoice #
7/5/2016	06-1543

Bill To
John Lindberg 20957 Eaton Road Reno, Nevada 89521

Terms	Matter
Due on receipt	

Date	Description	Hours	Rate	Amount
5/31/2016	Meet with client [redacted]	2	250.00	500.00
6/1/2016	Prepare notice of entry of order granting motion to substitute party (JE Johns) [GD]	0.1	100.00	10.00
6/17/2016	Review and respond t [redacted]	0.5	250.00	125.00
6/17/2016	Review correspondence from Washoe County regarding various issues and instructions to close permits.	0.3	250.00	75.00
6/17/2016	Prepare Acceptance of Service for defendants Brian Kincannon and Group One's attorney to sign for Summons and 2nd Amended Complaint [GD]	0.2	100.00	20.00
7/6/2016	[redacted]		-237.50	-237.50

We appreciate your prompt payment.

Total $492.50

Balance Due $492.50

LIND 0

313

Moore Law Group, PC
3715 Lakeside Drive, Suite A
Reno, NV 89509

Invoice

Date	Invoice #
8/1/2016	07-1580

Bill To
John Lindberg 20957 Eaton Road Reno, Nevada 89521

Terms	Matter
Due on receipt	

Date	Description	Hours	Rate	Amount
7/8/2016	Telephone conference [redacted]	0.2	250.00	50.00
7/11/2016	[redacted]	0.5	250.00	125.00
7/13/2016	Telephone conference with attorney for counsel for the buyer's agent in this matter.	0.1	250.00	25.00
7/13/2016	On-line research to determine location of broker Robert Clement.	0.2	250.00	50.00
7/28/2016	Telephone conference with attorney for buyer's realtor regarding their answer to complaint.	0.1	250.00	25.00
	Subtotal			275.00
7/14/2016	Service of Process for new defendants		95.50	95.50
	Total Reimbursable Expenses			95.50

Retainer funds have been applied to this invoice. No payment is necessary.

Total $370.50

Balance Due $0.00

LIND 01[illegible]

314

Moore Law Group, PC
3715 Lakeside Drive, Suite A
Reno, NV 89509

Invoice

Date	Invoice #
9/1/2016	08-1610

Bill To
John Lindberg 20957 Eaton Road Reno, Nevada 89521

Terms	Matter
Due on receipt	

Date	Description	Hours	Rate	Amount
8/1/2016	Meet with Judith Lindberg [redacted].	0.5	250.00	125.00
8/1/2016	Prepare 1st supplement to initial disclosures [GD]	0.1	100.00	10.00
8/9/2016	Review and respond to email [redacted].	0.2	250.00	50.00
8/10/2016	[redacted]	0.5	250.00	125.00
8/11/2016	Attend trial setting in this matter to set trial in 2017.	0.5	250.00	125.00
8/22/2016	Prepare 2nd supplement to initial disclosures [GD]	0.1	100.00	10.00
8/26/2016	[redacted]	0.3	250.00	75.00

Retainer funds have been applied to this invoice. No payment is necessary.

Total $520.00

Balance Due $0.00

LIND (

Moore Law Group, PC
3715 Lakeside Drive, Suite A
Reno, NV 89509

Invoice

Date	Invoice #
10/1/2016	09-1634

Bill To
John Lindberg 20957 Eaton Road Reno, Nevada 89521

Terms	Matter
Due on receipt	

Date	Description	Hours	Rate	Amount
9/1/2016	Meet with client [redacted]	0.3	250.00	75.00
9/1/2016	[redacted]	0.3	250.00	75.00

Retainer funds have been applied to this invoice. No payment is necessary.

Total $150.00

Balance Due $0.00

LIND 01...

316

Moore Law Group, PC
3715 Lakeside Drive, Suite A
Reno, NV 89509

Invoice

Date	Invoice #
11/1/2016	10-1654

Bill To
John Lindberg 20957 Eaton Road Reno, Nevada 89521

Terms	Matter
Due on receipt	

Date	Description	Hours	Rate	Amount
10/21/2016	Review and respond to emails from buyer's agent's attorney regarding [redacted]	0.2	250.00	50.00

Retainer funds have been applied to this invoice. No payment is necessary.

Total $50.00

Balance Due $0.00

LIND 0·

Moore Law Group, PC
3715 Lakeside Drive, Suite A
Reno, NV 89509

Invoice

Date	Invoice #
12/01/2016	11-1674

Bill To
John Lindberg 20957 Eaton Road Reno, Nevada 89521

Terms	Matter
Due on receipt	

Date	Description	Hours	Rate	Amount
11/17/2016	Telephone conferences with counsel for the opposing parties in this case to see if we can set a settlement conference.	0.3	250.00	75.00
11/18/2016	[redacted].	0.2	250.00	50.00

Retainer funds have been applied to this invoice. No payment is necessary.

Total $125.00

Balance Due $0.00

LIND 01

Moore Law Group, PC
3715 Lakeside Drive, Suite A
Reno, NV 89509

Invoice

Date	Invoice #
1/1/2017	12-1696

Bill To
John Lindberg 20957 Eaton Road Reno, Nevada 89521

Terms	Matter
Due on receipt	

Date	Description	Hours	Rate	Amount
12/29/2016	Meet with clients [redacted]	1.5	250.00	375.00

Retainer funds have been applied to this invoice. No payment is necessary.

Total $375.00

Balance Due $0.00

LIND 01

319

Brohawn Law Firm LLC
534 Lander Street
Reno, NV 89509

INVOICE

John Lindberg & Family
20957 Eaton Road
Pleasant Valley, NV 89521

Invoice 20010

Date	Mar 24, 2015
Terms	Net 15
Service Thru	Mar 24, 2015

In Reference To: Lindberg v. Reynolds et al. (Time)

Date	By	Services	Hours	Rates	Amount
09/30/2014	SLB	Reviewed on-line information and documents provided by Jon Lindberg, [redacted]	0.50	$ 0.00/hr	$ 0.00
10/16/2014	SLB	Met Jon Lindberg [redacted]	1.00	$ 300.00/hr	$ 300.00
11/17/2014	SLB	Outlined and drafted a Complaint. [redacted]	2.50	$ 300.00/hr	$ 750.00
01/21/2015	SLB	Call with [redacted]	0.40	$ 300.00/hr	$ 120.00
02/11/2015	SLB	Drafted a First Amended Complaint.	1.80	$ 300.00/hr	$ 540.00
02/11/2015	SLB	Met with John Lindberg [redacted]	0.80	$ 300.00/hr	$ 240.00
02/19/2015	SLB	Prepared for and attended a meeting with John Lindberg [redacted]	0.60	$ 300.00/hr	$ 180.00
02/27/2015	SLB	[redacted]	0.70	$ 300.00/hr	$ 210.00

02/27/2015	SLB	Call with John Lindberg [redacted]	0.20	$ 300.00/hr	$ 60.00
03/10/2015	SLB	Call to process server to discuss the status of continued service attempts. [redacted]	0.20	$ 0.00/hr	$ 0.00
03/11/2015	SLB	Call from John Lindberg [redacted]	0.10	$ 0.00/hr	$ 0.00
03/13/2015	SLB	Call from Las Vegas attorney Lori Siderman, representing Amundson and KinCannon. [redacted]	0.20	$ 300.00/hr	$ 60.00
03/17/2015	SLB	Call from attorney Lori Siderman, representing Kincannon, to discuss the case.	0.30	$ 300.00/hr	$ 90.00
03/17/2015	SLB	Call from John Lindberg [redacted]	0.10	$ 300.00/hr	$ 30.00
03/19/2015	SLB	Phone calls and several emails from and to the attorney for Kincannon, to discuss deleting Amundson from the Complaint, and adding the appropriate broker and brokerage company.	0.50	$ 300.00/hr	$ 150.00

In Reference To: Lindberg v. Reynolds et al. (Expenses)

Date	By	Expenses	Amount
11/27/2014	SLB	**Filing Fee:** Complaint filing fee.	$ 320.00

Total Hours	9.90 hrs
Total Time	$ 2,730.00
Total Expenses	$ 320.00
Total Invoice Amount	$ 3,050.00
Previous Balance	**$ 0.00**
Balance (Amount Due)	**$ 1,050.00**

Payment History:

Date	Type	Payment Description	Amount
10/16/2014	Payment - Check		($2,000.00)

Brohawn Law Firm LLC
534 Lander Street
Reno, NV 89509

INVOICE

John Lindberg & Family
20957 Eaton Road
Pleasant Valley, NV 89521

Invoice 20031

Date	Dec 08, 2015
Terms	
Service Thru	Nov 30, 2015

In Reference To: Lindberg v. Reynolds et al. (Time)

Date	By	Services	Hours	Rates	Amount
03/25/2015	SLB	Reviewed a Motion to Dismiss and an Affidavit filed by the Johns and Johnson Defendants. [redacted]	0.50	$ 250.00/hr	$ 125.00
03/27/2015	SLB	Reviewed an Answer filed by the Reynoldses, and compared certain statements to corresponding allegations in the Complaint. [redacted]	0.40	$ 250.00/hr	$ 100.00
04/10/2015	SLB	Several calls [redacted]	0.60	$ 250.00/hr	$ 150.00
04/10/2015	SLB	Call [redacted]	0.20	$ 250.00/hr	$ 50.00
04/13/2015	SLB	Drafted an Opposition to the Johns Defendants' Motion to Dismiss.	3.00	$ 250.00/hr	$ 750.00
04/30/2015	SLB	Reviewed the Johns Defendants' Reply regarding their Motion to Dismiss. Reviewed a Request for Submission.	0.30	$ 250.00/hr	$ 75.00
05/13/2015	SLB	Reviewed an Order denying the Johns Defendants' Motion to Dismiss. [redacted]	0.20	$ 250.00/hr	$ 50.00
05/25/2015	SLB	Reviewed an Order assigning the case to court-annexed arbitration.	0.20	$ 250.00/hr	$ 50.00
05/27/2015	SLB	Email from Lori Siderman, attorney for the selling agents, to request that we substitute the selling Broker named in the case to the correct Broker.	0.10	$ 250.00/hr	$ 25.00
06/02/2015	SLB	Reviewed an Answer filed by the Johns and Johnson Defendants.	0.30	$ 250.00/hr	$ 75.00

Brohawn Law Firm LLC
534 Lander Street
Reno, NV 89509

INVOICE

John Lindberg & Family
20957 Eaton Road
Pleasant Valley, NV 89521

Invoice 20031

Date	Dec 08, 2015
Terms	
Service Thru	Nov 30, 2015

06/18/2015	SLB	Email from and call to John Lindberg [redacted]	0.20	$ 250.00/hr	$ 50.00
06/18/2015	SLB	[redacted]	0.30	$ 250.00/hr	$ 75.00
06/25/2015	SLB	Reviewed an Appointment of Arbitrator notice from the Arbitration Judge.	0.20	$ 250.00/hr	$ 50.00
07/20/2015	SLB	Reviewed a letter from Arbitrator Doug Brown discussing the arbitration procedure, and related issues.	0.10	$ 250.00/hr	$ 25.00
07/20/2015	SLB	Call to an assistant to the Arbitrator to confirm my contact information, and generally to discuss the arbitration procedure.	0.20	$ 250.00/hr	$ 50.00
07/26/2015	SLB	Calls to and from John Lindberg [redacted]	0.30	$ 250.00/hr	$ 75.00
07/27/2015	SLB	Met with John Lindberg [redacted]	0.20	$ 250.00/hr	$ 50.00
07/27/2015	SLB	Spoke [redacted]	0.20	$ 250.00/hr	$ 50.00
07/27/2015	SLB	Spoke with arbitrator's assistant to request more information on possible conflict of interest.	0.20	$ 250.00/hr	$ 50.00
07/31/2015	SLB	Attended a teleconference with the Arbitrator and attorneys to set dates related to the arbitration, and to discuss certain aspects of the case.	0.40	$ 250.00/hr	$ 100.00
07/31/2015	SLB	Calls to and from [redacted]	0.20	$ 250.00/hr	$ 50.00
08/01/2015	SLB	Call to John Lindberg [redacted]	0.20	$ 250.00/hr	$ 50.00
08/06/2015	SLB	Arbitration Notice sent to Client.	0.20	$ 250.00/hr	$ 50.00

Brohawn Law Firm LLC
534 Lander Street
Reno, NV 89509

INVOICE

John Lindberg & Family
20957 Eaton Road
Pleasant Valley, NV 89521

Invoice 20031

Date	Dec 08, 2015
Terms	
Service Thru	Nov 30, 2015

08/06/2015	SLB	Reviewed the Reynolds' Early case Disclosures, including the approximately 150 attached documents.	1.60	$ 250.00/hr	$ 400.00
08/07/2015	SLB	Assembled and submitted Plaintiffs' Early Case Disclosures.	1.50	$ 250.00/hr	$ 375.00
08/07/2015	SLB	Met with [redacted]	1.00	$ 250.00/hr	$ 250.00
08/09/2015	SLB	Reviewed an Order entered by the Arbitrator, setting the date of the Arbitration, and setting certain discovery deadlines.	0.20	$ 250.00/hr	$ 50.00
08/09/2015	SLB	Reviewed an email from John Lindberg [redacted]	0.10	$ 250.00/hr	$ 25.00
08/11/2015	SLB	Reviewed the Johns & Johnson Early Case Disclosures, including attached documents.	1.20	$ 250.00/hr	$ 300.00
08/24/2015	SLB	Emails from and to John Lindberg [redacted]	0.20	$ 250.00/hr	$ 50.00
11/23/2015	SLB	Met with John Lindberg at our office [redacted]	0.60	$ 250.00/hr	$ 150.00

Total Hours	15.10 hrs
Total Time	$ 3,775.00
Total Invoice Amount	$ 3,775.00
Previous Balance	**$ 1,050.00**
Account Credit	**($ 4,935.00)**

LIND

Brohawn Law Firm LLC
534 Lander Street
Reno, NV 89509

INVOICE

John Lindberg & Family
20957 Eaton Road
Pleasant Valley, NV 89521

Invoice 20031

Date	Dec 08, 2015
Terms	
Service Thru	Nov 30, 2015

Payment History:

Date	Type	Payment Description	Amount
3/26/2015	Payment - Check		($2,500.00)
4/17/2015	Payment - Credit Card		($7,000.00)
7/27/2015	Payment - Cash		($260.00)

WASHOE COUNTY

"To Protect and To Serve"

1001 E. NINTH STREET
POST OFFICE BOX 11130
RENO, NV 89520-0027
(702) 328-2020
FAX (702) 328-6132

DEPARTMENT OF PUBLIC WORKS
BUILDING AND SAFETY DIVISION

865 TAHOE BLVD., NO. 307
POST OFFICE BOX 3940
INCLINE VILLAGE, NV 89450-3940
(702) 832-4140
FAX (702) 832-4164

BUILDING PERMIT

Address: 20957 EATON RD PLES
Location:
Parcel No: 045-337-11

Permit No: 96-3555
Type: BLD-RES
Category: RSAD

Applied: 06/17/1996
Issued: 07/15/1996
Status: ISSUED
Expire: 01/14/1998

Zoning: A1
Area: S
Sewer: SEPTIC
Water: WELL

Occupancy: 0030
Census: 328
Units: 001
Bldgs: 001

Use Code:
Variance No:
Special Use No:
Major Project No:

APPLICANT MCDANIEL SCOTT
OWNER REYNOLDS RICK
20957 EATON RD, RENO NV 89511

Phone: 425-0920

****

Permit Description:
600 SQ FT SHOP BUILDING

VALUATION:

Occupancy	Type	Factor	Sq. Feet	Valuation
RENO - Residential	Garage/Shed/Greenhouse	15.40	600	9,240.00
Table Date: 11/20/1992		Total Valuation:		9,240.00

TABLE VALUATION: 9,240.00

****

FEES: Building Fee..:	140.81	Plan Check Fee:	70.41	Road Impact Fee:	.00
Electrical Fee:	25.03	Park Tax Fee..:	.00	Additional Fees:	.00
Plumbing Fee..:	.00	Violation Fee.:	.00	TOTAL FEES.....:	236.25
Mechanical Fee:	.00	Renewal Fee...:	.00	Payments.....:	236.25
Reinspections.:	.00	Calculated Fee:	236.25	BALANCE DUE....:	.00
				VALIDATED BY...:	LN

Permission is hereby granted to do the work for the building described in this application, in accordance with the Rules, Regulations and Ordinances of the County of Washoe, along with the plans and specifications filed herewith.

I HEREBY AGREE TO SAVE, INDEMNIFY AND KEEP HARMLESS THE COUNTY OF WASHOE AND ITS OFFICERS, EMPLOYEES AND AGENTS AGAINST ALL LIABILITIES, JUDGEMENTS, COSTS AND EXPENSES WHICH ACCRUE AGAINST THE COUNTY IN CONSEQUENCE OF THE GRANTING OF THIS PERMIT, OR THE USE OR OCCUPANCY OF ANY SIDEWALK, SUB-SIDEWALK OR STREET, OR OTHERWISE BY VIRTUE THEREOF, AND WILL IN ALL THINGS STRICTLY COMPLY WITH THE CONDITIONS OF THIS PERMIT AND PROVISIONS OF THE RULES, REGULATIONS AND ORDINANCES OF THE COUNTY OF WASHOE.

IMPORTANT: FINAL INSPECTION OR RENEWAL OF THIS PERMIT MUST BE MADE PRIOR TO 18 MONTHS AFTER DATE OF ISSUANCE OR NEW PLANS MUST BE SUBMITTED AND PERMIT FEES PAID (WITH THE EXCEPTION OF THE PARKS TAX FEE) PRIOR TO FINAL INSPECTION. PERMITS EXPIRE 18 MONTHS FROM THE DATE OF ISSUE, WITH NO GRACE PERIOD. IF THE DATE OF EXPIRATION FALLS ON A WEEKEND OR HOLIDAY, THE PERMIT MUST BE RENEWED ON THE LAST BUSINESS DAY PRIOR TO THE EXPIRATION DATE.

LTNB 0228

336

260 325 8000

BUILDING INSPECTION RECORD

PLEASE READ

Failure to properly protect and maintain this card may result in job delay.

BUILDING DEPT. INSPECTIONS SHOULD BE CALLED FOR AS FOLLOWS:

1. When footing forms, reinforcing steel, UFER ground, are in place and ready to pour concrete.
1A. When stemwall forms and steel are in place and ready to pour concrete or block is ready to grout.
2. When joists are installed, plumbing & mechanical roughed in - prior to sheathing.
3. Power pole is in place, ground rod is buried and all 110V exterior outlets are wired to ground fault circuit interrupter.
4. All underslab plumbing is in place, ready to pour floor.
5. When ice dam is installed, (if required).
6. When required by Engineer - Prior to covering with siding or wallboard.
7. When plumbing is through roof, electrical boxes in and wire pulled, house framed. Complete: exterior siding, heating, air conditioning, oil tank and/or gas piping in with pressure test on line, finish roof completed.
7A. When lathing is complete but before any plastering is applied.
8. When insulation is installed.
9. When wallboard is installed prior to taping.
10. When heat is needed prior to final and installation is complete.
11. When underground utilities have been placed in trench, sanded, and ready to be covered.
12. When grading is complete, all rocks removed from lot, all debris removed from lot. Drainage and grading is proper and house ready to occupy, all interior and exterior work is complete.

POST THIS SIDE OUT

ALL INSPECTIONS MUST BE REQUESTED ONE DAY IN ADVANCE BETWEEN THE HOURS OF 8:00 AND 4:30. FOR MOBILE HOME SETUP, BUSINESS LICENSES, AND ANY INSPECTION REQUIRING ACCESS, A SECOND CALL IS REQUIRED ON THE DAY OF THE INSPECTION BETWEEN 8:00 AND 8:30 A.M.

THIS CARD MUST BE POSTED IN A CONSPICUOUS PLACE AT OR NEAR THE MAIN ENTRANCE TO THE NEW BUILDING DURING CONSTRUCTION.

POST ADDRESS OF JOB IMMEDIATELY (VISIBLE FROM STREET)

THE APPROVED SET OF BUILDING PLANS MUST BE ON THE JOB SITE AT ALL TIMES.

PROVIDE TEMPORARY TOILET FACILITIES ON SITE.

CHECK APPROVED PLANS FOR NOTATIONS AND CORRECTIONS.

ANY PROPOSED DEVIATIONS FROM PLANS MUST BE APPROVED BY THE BUILDING DEPARTMENT.

NOTICE: Your Building Inspector is available in the office between the hours of 8:00 A.M. to 8:30 A.M. M-F.

BUILDING DEPARTMENT
24 Hour Notice Required
Reno 328-2020 Incline 832-4140

REQUIRED INSPECTIONS

	Insp.	Date
1. Footing & Setbacks	JZ	7-19-96
1A. Stemwall or Grout	[illegible]	7-24-96
2. Under Floor/Prior to Sheathing	JZ	8-2-96
3. Temporary Power Pole		
4. Understab plumbing		
5. Ice Dam		
6. Shearwall A. Interior		
B. Exterior		
7. Rough: (Framing, Elec., Plumbing, Mechanical)	JZ	9-6-96
Oil Tank		
Gas High Pressure		
7A. Lath		
8. Insulation	JZ	9-6-96
8A. Walls Only		
9. Wallboard	JZ	9-12-96
10. Heating		
11. Underground Utilities: Gas		
Electric		
Water		
12. Grading & Final		
13. MOBILE HOME SET-UP		
14. BUSINESS LICENSE		

HEALTH DEPARTMENT
24 Hour Notice Required
328-2400

REQUIRED INSPECTIONS

	Insp.	Date
Well		
Septic Tank		
Rough		
Final		
Other		

FIRE DEPARTMENT
24 Hour Notice Required
Truckee Meadows Fire 328-3650
North Lake Tahoe Fire (Incline) 831-0351
Nevada Division of Forestry 849-2376

REQUIRED INSPECTIONS

	Insp.	Date
Residential:		
Temporary Hydrant		
Permanent Hydrant		
Access		
Commercial:		
Permanent		
Hydrant		
Access		
Fire Alarm System		
Rough		
Final		
Fire Sprinkler System		
Rough		
Final		
Knox Box and Other		

210

	Insp.	Date
Special Inspections at Incline Village		
Roof Deck		
Sheathing		
Driveway Approval		

ROAD DIVISION
24 Hour Notice Required
Reno 328-2180 Incline 832-4125

REQUIRED INSPECTIONS

	Insp.	Date
Mail Box		
Driveway		
Culvert		
Curb & Gutter		
Drainage		

UTILITIES DEPARTMENT
Washoe County Utilities Div. 856-7300
Incline Village Gen. Imp. Dist. 832-1209
Sun Valley Gen. Imp. Dist. 673-2220
Contact Your Utility Dept. for Required Inspection Procedure

REQUIRED INSPECTIONS

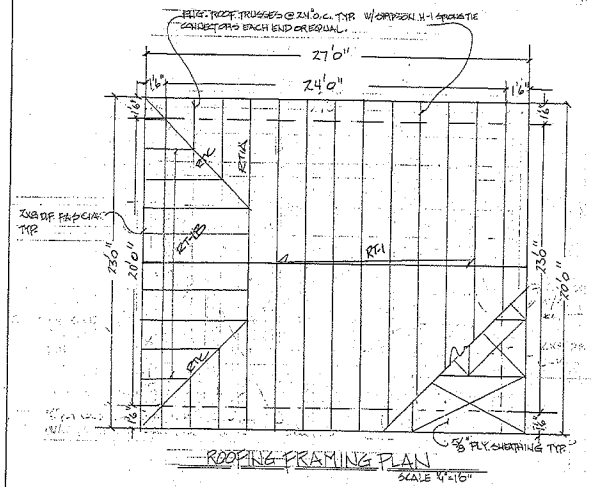
	Insp.	Date
Rough		
Final		

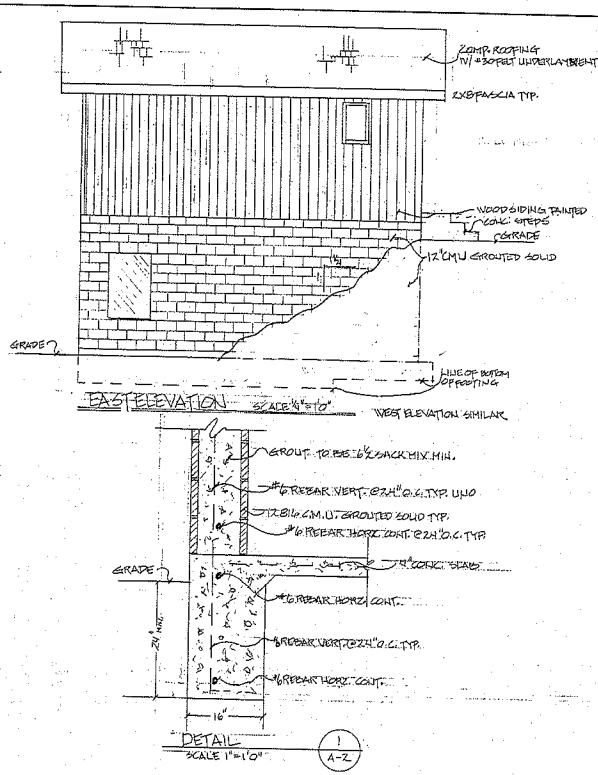
DEVELOPMENT REVIEW DEPARTMENT
328-6100

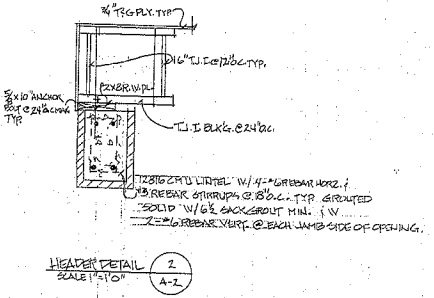
REQUIRED INSPECTIONS

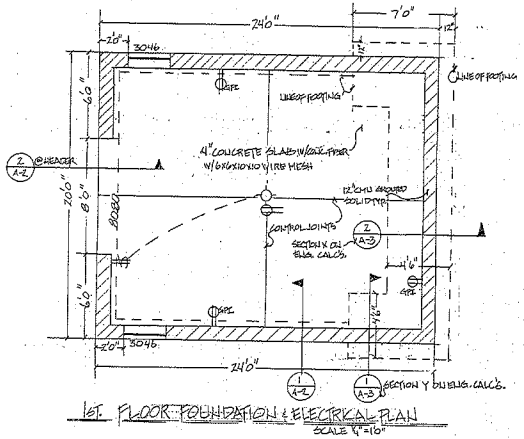
	Insp.	Date
Landscaping		
Irrigation		IND.0229
Screening		

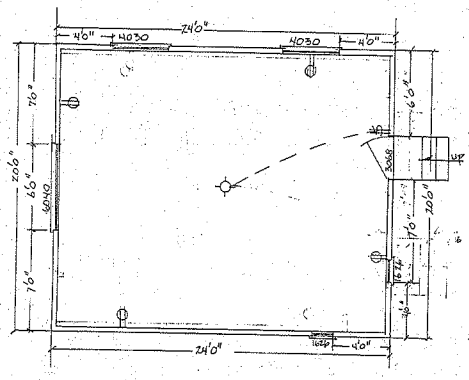
337

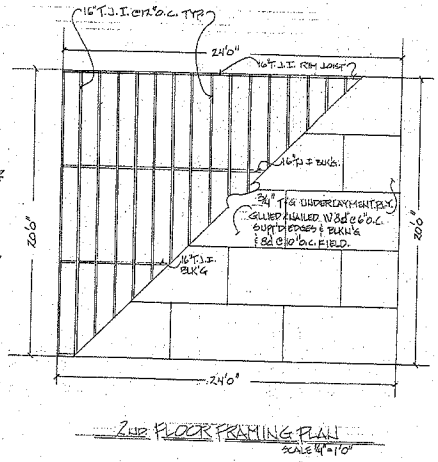


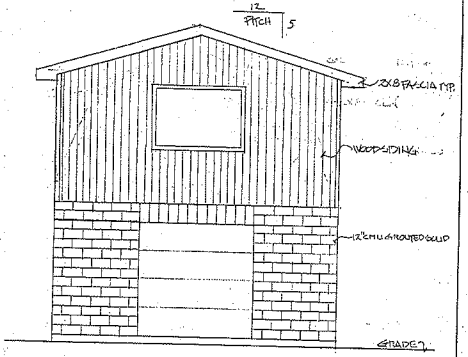










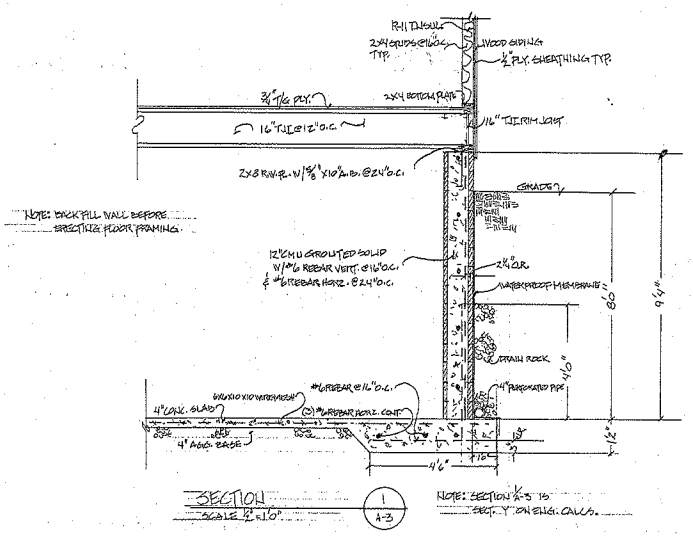


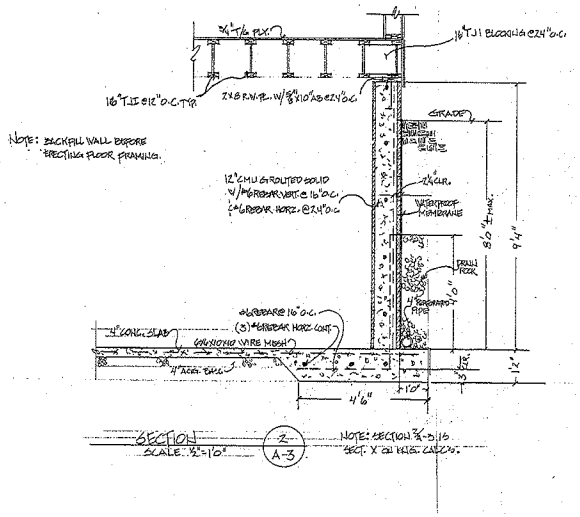
STORAGE BLDG. RONALD SAUER
20857 EATON DR. RENO, NEVADA 89511

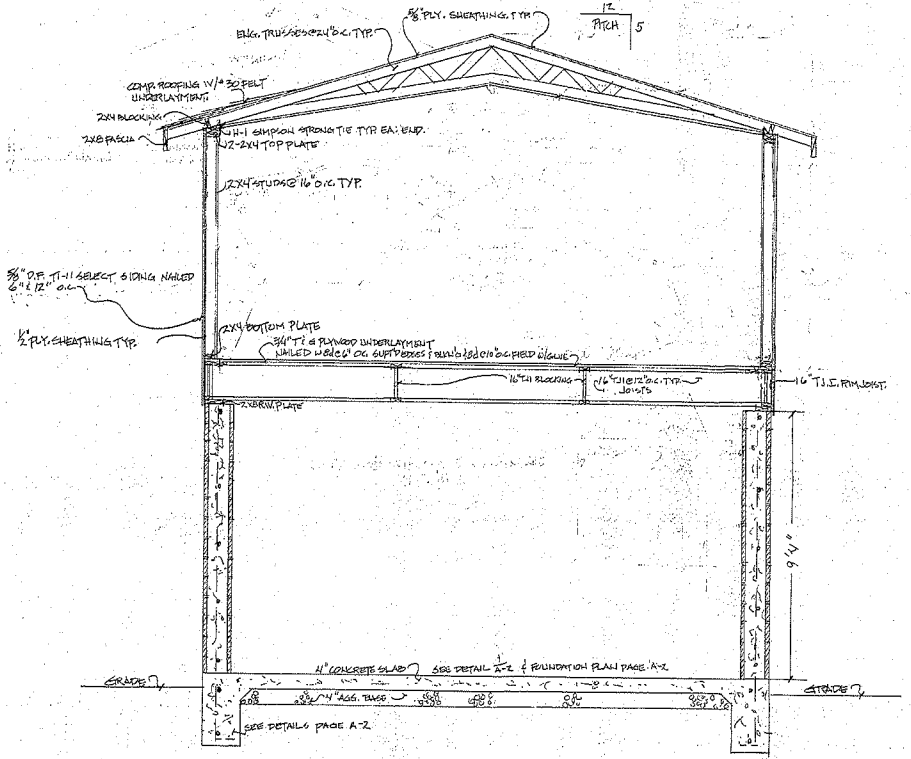
SCALE: AS NOTED	APPROVED BY	DRAWN BY
DATE:		

DRAWING NUMBER A-2

367







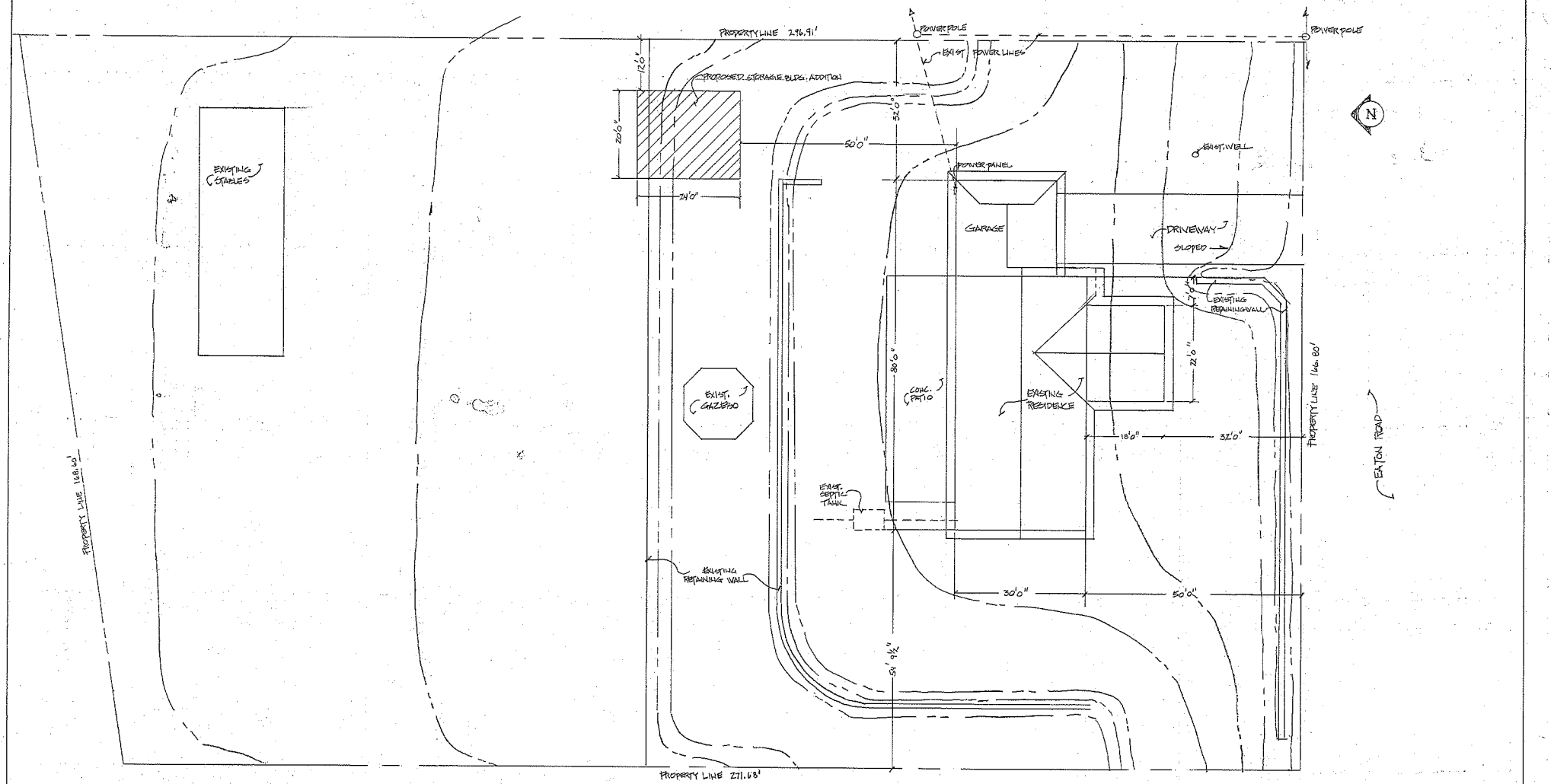
CROSS SECTION
SCALE 1/2" = 1'-0"

STORAGE BLDG., RONALD SAUER
20957 EATON PR. RENO, NEVADA 89511

SCALE	APPROVED BY	DRAWN BY
DATE:		

DRAWING NUMBER A-3

328



SITE PLAN

SCALE 1" = 10'0"

STORAGE BLDG. RONALD SAUER
2085 J. EATON DR. RENO, NEVADA 89511

SCALE: AS NOTED	APPROVED BY	DRAWN BY
DATE:		

DRAWING NUMBER A-1

LND 0222

329

THE ENGINEER'S NOTES AND CALCULATION PAGES ARE AN INTEGRAL PART OF THIS PLAN SET AND SHALL TAKE PRECEDENCE SHOULD THERE BE A DISCREPANCY BETWEEN THEM AND THE PLAN SET. NO PLAN SET IS TO BE CONSIDERED COMPLETE UNLESS THESE NOTES AND CALCULATION PAGES ARE BOUND SECURELY TOGETHER AND ALL SHEETS AND PAGES ARE SEALED AND SIGNED BY THE RESPONSIBLE ENGINEER OR DESIGNER.

THE GENERAL CONTRACTOR OR SUBCONTRACTOR ACKNOWLEDGES THAT HE HAS BEEN PROVIDED WITH A COMPLETE SET OF THESE DRAWINGS ISSUED AND SEALED BY THE DESIGNER PRIOR TO COMMENCING CONSTRUCTION AND THAT HE HAS TAKEN SUFFICIENT TIME TO REVIEW AND ENSURE THAT THE DRAWINGS ARE COMPLETE, ACCURATE AND SUFFICIENT FOR HIS PARTICULAR NEEDS AND ASSUMES ALL RESPONSIBILITY FOR ERRORS OR OMISSIONS UNLESS SPECIFICALLY NOTED IN WRITING TO THE DESIGNER AND RESOLVED PRIOR TO COMMENCEMENT OF CONSTRUCTION.

ALL CONSTRUCTION SHALL COMPLY WITH THE CURRENTLY ACCEPTED EDITION OF THE IBC AND IBC STANDARDS AS WELL AS THE UMC, UPC AND NEC UNLESS OTHERWISE STATED.

THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE SAFETY OF THE BUILDING DURING CONSTRUCTION AND SHALL PROVIDE ADEQUATE SHORING AND BRACING DURING CONSTRUCTION. CONTRACTOR SHALL COMPLY WITH ALL APPLICABLE SAFETY REGULATIONS.

THE CONTRACTOR SHALL PROPERLY SCHEDULE AND COORDINATE THE WORK OF ALL TRADES AND SHALL CHECK ALL DIMENSIONS. ANY DISCREPANCIES SHALL BE CALLED TO THE ATTENTION OF THE DESIGNER AND SHALL BE RESOLVED BEFORE PROCEEDING WITH THE WORK AFFECTED.

NO STRUCTURAL MEMBERS SHALL BE CUT, NOTCHED OR OTHERWISE PENETRATED UNLESS SPECIFICALLY APPROVED BY THE ENGINEER IN ADVANCE OR AS SHOWN ON THESE DRAWINGS.

TYPICAL DETAILS AND CUSTOMARY LOCAL BUILDING PRACTICES SHALL APPLY UNLESS SHOWN OTHERWISE ON THESE DRAWINGS. DETAILS NOT SPECIFICALLY SHOWN SHALL BE SIMILAR TO DETAILS FOR SIMILAR CONSTRUCTION SHOWN ON THESE DRAWINGS.

WHERE THESE GENERAL NOTES AND TYPICAL DETAILS ARE IN CONFLICT, THE MORE STRINGENT QUALITY OR QUANTITY SHALL BE PROVIDED.

ALL FRAMING ELEVATIONS ARE REFERENCED FROM TOP OF GROUND (MAIN) FLOOR FINISHED ELEVATION = 0'-0". SITE PLAN ELEVATIONS REFERENCED FROM MEAN SEA LEVEL ELEVATION PER SURVEYOR'S TOPO.

PROVIDE INSPECTIONS IN ACCORDANCE WITH 2006 INTERNATIONAL BUILDING CODES AND ANY ORDINANCES FROM THE CITY OF RENO, NEVADA.

DO NOT SCALE DRAWINGS. THESE DRAWINGS ARE NOT INTENDED TO BE SCALED. CONSULT THE DESIGNER FOR ANY NEEDED CLARIFICATION.

CONTRACTOR TO ENSURE THAT SETBACKS ARE IN COMPLIANCE WITH THOSE SHOWN ON PLANS AND TO VERIFY THAT THE EXACT LOCATION OF THE HOUSE, FINISH FLOOR AND MAXIMUM STRUCTURE HEIGHT COMPLY WITH GOVT ORDINANCES AND SUBDIVISION C.C.& R. REQUIRMENTS OR SPECIFICATIONS.

CONTRACTOR TO VERIFY ALL EXISTING GRADES AND CONDITIONS ON LOT PRIOR TO THE START OF CONSTRUCTION. FIELD VERIFY ALL UTILITY LOCATIONS. CONTRACTOR TO VERIFY SEWER MAIN DEPTH IN STREET AND TO CONFIRM PROPER FALL FROM RESIDENCE. SEWER LINE AND WATER LINE MAY BE IN THE TRENCH IF WATER LINE IS 12" HIGHER AND 12" TO ONE SIDE ON SOLID LEDGER OF EARTH FROM SEWER LINE. CONNECTIONS SHALL BE MADE IN ACCORDANCEWITH ALL APPLICABLE CODES AND REQUIREMENTS. LOT TO BE GRADED TO ENSURE PROPER DRAINAGE PRIOR TO FINAL INSPECTIONS. DRIVEWAY SHALL NOT EXCEED 14% MAXIMUM SLOPE GRADIENT.

ALL AREAS DESIGNATED NATURAL ARE TO BE PROTECTED BY 3' TALL ORANGE PLASTIC CONSTRUCTION FENCE AND LEFT UNDISTURBED IN THEIR NATURAL STATE. ALL DISTURBED AREAS SHALL BE RELANDSCAPED AS INDICATED ON THESE DRAWINGS.

VERIFY WITH THE OWNER: ALL PAINT COLORS, FLOOR FINISHES, CEILING TREATMENTS WALL TREATMENTS, COUNTERTOPS, APPLIANCES, TELEPHONE PRE-WIRE LOCATIONS, CABLE TV PRE-WIRE LOCATIONS, SECURITY SYSTEM TYPE AND LOCATION, STEREO SPEAKER WIRING AND LOCATIONS, HUMIDIFIER IN F.A.U. SYSTEM, CENTRAL VACUUM SYSTEM AND LANDSCAPING IRRIGATION.

THE DRAWINGS AND SPECIFICATIONS REPRESENT THE FINISH STRUCTURE, UNLESS NOTED OTHERWISE INDICATED. THEY DO NOT INDICATE THE METHOD OF CONSTRUCTION. THE CONTRACTOR AND SUB-CONTRACTORS SHALL PROVIDE ALL MEASURES NECESSARY TO PROTECT THE STRUCTURE, WORKMEN, AND OTHER PERSONS DURING CONSTRUCTION. SUCH MEASURES SHALL INCLUDE, BUT ARE NOT LIMITED TO, PREPARING AND FOLLOWING THE WRITTEN SAFETY PROGRAM FOR THE CONSTRUCTION PROJECT, BRACING, SHORING FOR CONSTRUCTION EQUIPMENT, SHORING FOR THE BUILDING FORMS AND SCAFFOLDING AND ALL RETAINING WALLS.

ALL ASTM SPECIFICATIONS NOTED ON THESE DRAWINGS SHALL BE OF THE LATEST REVISION.

THE CONTRACTOR SHALL INVESTIGATE SITE DURING CLEARING AND EARTHWORK OPERATIONS FOR FILLED EXCAVATIONS OR BURIED STRUCTURES. IF ANY SUCH STRUCTURES ARE FOUND, THE ARCHITECT SHALL BE NOTIFIED IMMEDIATELY.

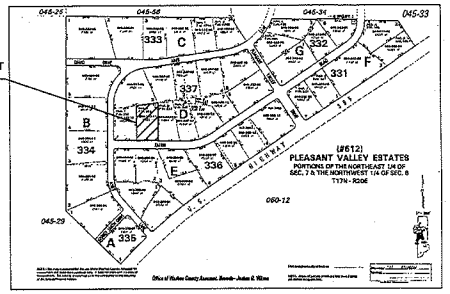
CONTRACTOR SHALL COORDINATE HOME MANAGEMENT, SECURITY, INTERCOM, CATV AND PHONE SYSTEM WITH OWNER AND PROVIDERS.

ALL NOTED DIMENSIONS SHALL TAKE PRECEDENCE OVER SCALES SHOWN ON DRAWINGS.

WASHOE COUNTY BUILDING DEPT.
FIELD COPY

LIND 0242

4 General Notes (continued)
ScaleNTS



3 Vicinity Map
ScaleNTS

POST JOB ADDRESS READABLE FROM STREET.

RETAIN THE APPROVED PLANSET AT THE JOBSITE AT ALL TIMES.

CONTRACTOR TO ENSURE THAT SETBACKS ARE IN COMPLIANCE WITH THOSE SHOWN ON PLANS AND TO VERIFY THAT THE EXACT LOCATION OF HOUSE, FINISH FLOOR AND MAXIMUM STRUCTURE HEIGHT COMPLY WITH GOVERNING ORDINANCES AND SUBDIVISION C.C.&R. REQUIREMENTS OR SPECIFICATIONS.

CONTRACTOR TO VERIFY ALL EXISTING GRADES AND CONDITIONS ON LOT PRIOR TO TO THE START OF CONSTRUCTION. FIELD VERIFY ALL UTILITY LOCATIONS.

CONNECTIONS SHALL BE MADE IN ACCORDANCE WITH ALL APPLICABLE CODES AND REQUIREMENTS.

CONSTRUCTION SHALL MEET THE CURRENT REQUIREMENTS OF THE 2012 INTERNATIONAL BUILDING CODE AND ALL OTHER APPLICABLE CODES REQUIRED BY WASHOE COUNTY COMMUNITY DEVELOPMENT DEPARTMENT AS WELL AS ANY APPLICABLE C.C.&R'S WITHIN THIS SUBDIVISION.

ALL PRE-MANUFACTURED PRODUCTS SHALL BE INSTALLED PER MANUFACTURERS SPECIFICATIONS.

THESE DRAWINGS ARE MEANT TO BE A GUIDE FOR CONSTRUCTION WORKERS IN THE FIELD AND TO MEET CERTAIN BUILDING CODE REQUIREMENTS. DUE TO A VARIETY OF CIRCUMSTANCES, THEY MAY NOT DEPICT THE EXACT LOCATION OF ALL ELEMENTS OF THE STRUCTURE AS PLACED DURING THE COURSE OF CONSTRUCTION.

OCCUPANCY GROUP:	CONSTRUCTION TYPE:	TOTAL AREA OF CONSTRUCTION	
R-3	TYPE V, NON RATED	INTERIOR REMODEL - IN-LAWS	934 s.f.
		INTERIOR REMODEL - STORAGE	602 s.f.
		TOTAL PROJECT AREA	1,536 s.f.
WATER:	TOTAL FIXTURES:	EXISTING RESIDENCE	2,180 s.f.
WELL	ADDED - 7	Lot Size	48,903 M.H.
SEWER:	WUIC ZONE:		
SEPTIC	HIGH RISK - SHALL COMPLY WITH 2012 INTERNATIONAL WUIC - SECTION 505 CLASS 2 IGNITION RESISTANT CONSTRUCTION		

2 General Notes
ScaleNTS

WASHOE COUNTY BUILDING DEPT.
FIELD COPY

ARCHITECTURAL

A1	SHEET INDEX, GENERAL NOTES, VICINITY MAP
A2	SITE PLAN
A3	FLOOR PLAN - IN-LAWS QUARTERS
A4	FLOOR PLAN - OFFICE/STORAGE
A5	PROJECT NOTES
A10	EXISTING ELEVATIONS
A11	EXISTING ELEVATIONS

E0.1 SITE
E1.0 POWER & LIGHTING

Washoe County REVIEWED FOR CODE COMPLIANCE Building Department

SEE WARNING SHEET BOTH SIDES

ACCEPTED
MAY 20 2015
Washoe County Health District Environmental Health

1 Sheet Index
ScaleNTS

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PROFESSIONAL SEAL
MARTIN VAN HARDEN REGISTERED 14506 5-8-20 ARCHITECT STATE OF NEVADA

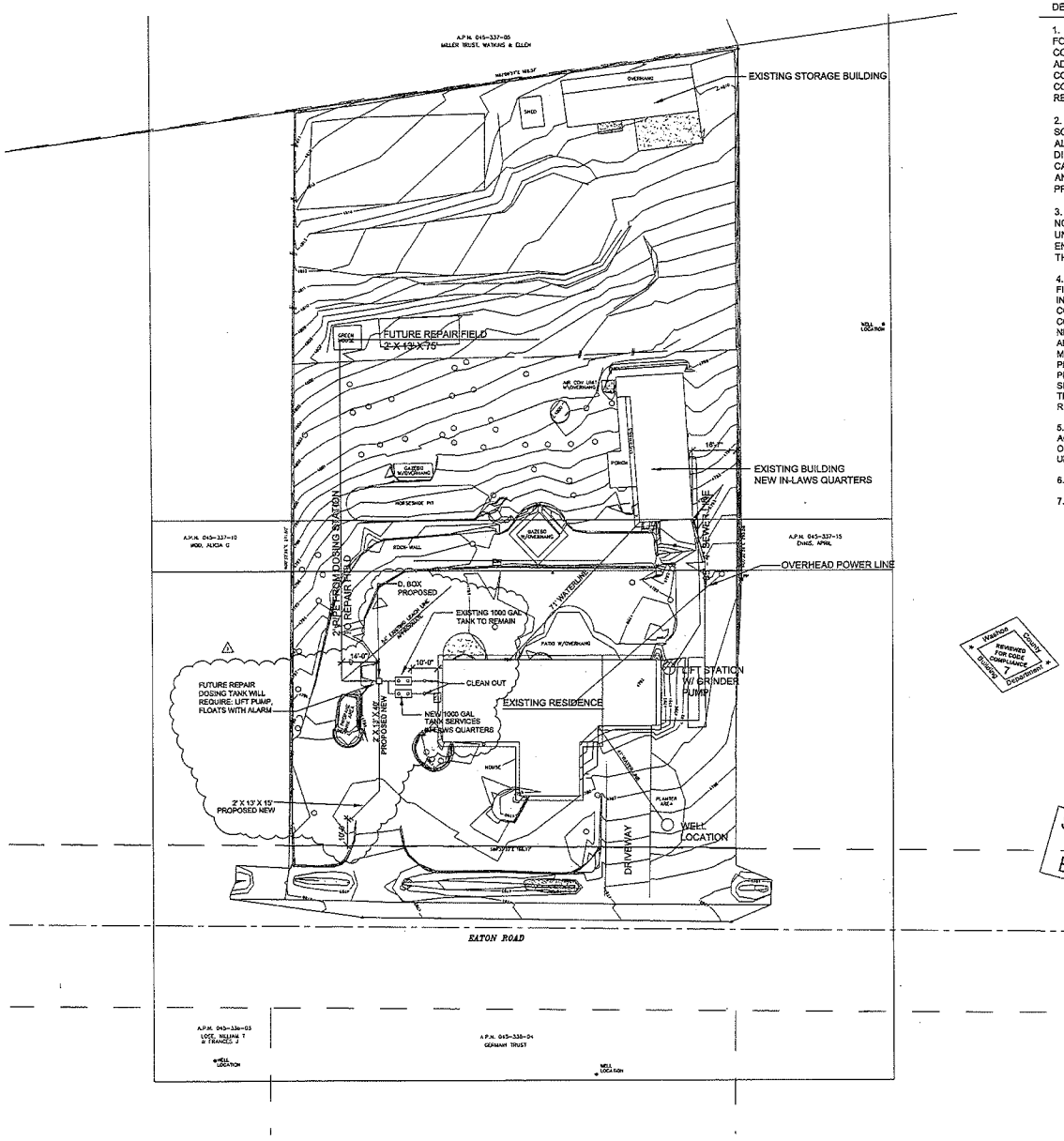
CLIENT/PROJECT
A RESIDENTIAL PROJECT FOR:
JON LINDBERG
20957 EATON ROAD
RENO, NEVADA 89511
APN: 045-337-11

REVISION AND DESCRIPTION

SHEET DESCRIPTION
GENERAL NOTES
VICINITY MAP

DRAWING SCALE: NOTED
JOB & PROJECT NUMBER: A-173
PRODUCTION PRINT DATE: 1-12-2015
SHEET NUMBER: A1

330



LIND 0243

1 SITE PLAN
Scale: 1" = 20'-0"

DEMOLITION NOTES:

1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE SAFETY OF THE BUILDING DURING CONSTRUCTION AND SHALL PROVIDE ADEQUATE SHORING AND BRACING DURING CONSTRUCTION, CONTRACTOR SHALL COMPLY WITH ALL APPLICABLE SAFETY REGULATIONS.

2. THE CONTRACTOR SHALL PROPERLY SCHEDULE AND COORDINATE THE WORK OF ALL TRADES AND SHALL CHECK ALL DIMENSIONS. ANY DISCREPANCIES SHALL BE CALLED TO THE ATTENTION OF THE DESIGNER AND SHALL BE RESOLVED BEFORE PROCEEDING WITH THE WORK AFFECTED.

3. NO STRUCTURAL MEMBERS SHALL BE CUT, NOTCHED OR OTHERWISE PENETRATED UNLESS SPECIFICALLY APPROVED BY THE ENGINEER IN ADVANCE OR AS SHOWN ON THESE DRAWINGS.

4. THE DRAWINGS AND SPECIFICATIONS REPRESENT THE FINISH STRUCTURE, UNLESS NOTED OTHERWISE INDICATED. THEY DO NOT INDICATE THE METHOD OF CONSTRUCTION. THE CONTRACTOR AND SUB-CONTRACTORS SHALL PROVIDE ALL MEASURES NECESSARY TO PROTECT THE STRUCTURE, WORKMEN, AND OTHER PERSONS DURING CONSTRUCTION. SUCH MEASURES SHALL INCLUDE, BUT ARE NOT LIMITED TO, PREPARING AND FOLLOWING THE WRITTEN SAFETY PROGRAM FOR THE CONSTRUCTION PROJECT, BRACING, SHORING FOR CONSTRUCTION EQUIPMENT, SHORING FOR THE BUILDING FORMS AND SCAFFOLDING AND ALL RETAINING WALLS.

5. REMOVAL OF EXISTING EXTERIOR FINISHES TO ACCOMODATE NEW CONSTRUCTION, SHALL BE REPAIRED OR REINSTALLED TO MATCH ADJACENT SURFACES, UNLESS NOTED OTHERWISE.

6. NO PUBLIC SEWER EXISTS WITHIN 400'

7. NO 100 YEAR FLOOD PLAIN EXISTS WITHIN 100'

SEE WARNING SHEET BOTH SIDES

Washoe County Building Department REVIEWED FOR CODE COMPLIANCE

WASHOE COUNTY BUILDING DEPT.
FIELD COPY

ACCEPTED
NOV 16 2015
Washoe County Health Dept. Environmental Health

SEE WARNING SHEET BOTH SIDES

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PROFESSIONAL SEAL:
MARTIN V. HARSIN REGISTERED ARCHITECT STATE OF NEVADA
10-27-15

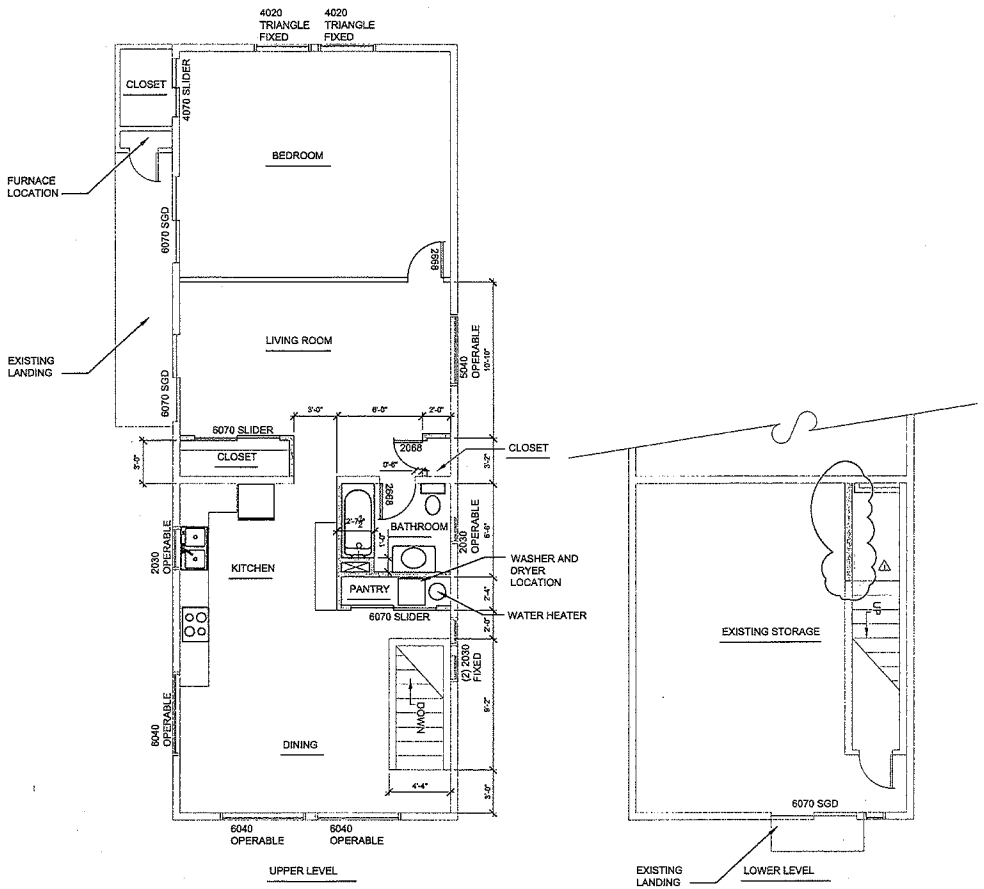
CLIENT/PROJECT:
A RESIDENTIAL PROJECT FOR:
JON LINDBERG
20957 EATON ROAD
RENO, NEVADA 89511
APN: 045-337-11

REVISION AND DESCRIPTION:
PLAN CHECK
HEALTH DEPT.

SHEET DESCRIPTION
SITE PLAN

DRAWING SCALE: NOTED
OB-A PROJECT NUMBER: A-173
PROGRESS PRINT DATE: 1-12-2015
SHEET NUMBER: A2

331



LIND 0244

1 FLOOR PLAN - IN LAWS QUARTERS

Scale: 1/4" = 1'-0"

PLAN NOTES:

1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE SAFETY OF THE BUILDING DURING CONSTRUCTION AND SHALL PROVIDE ADEQUATE SHORING AND BRACING DURING CONSTRUCTION. CONTRACTOR SHALL COMPLY WITH ALL APPLICABLE SAFETY REGULATIONS.

2. THE CONTRACTOR SHALL PROPERLY SCHEDULE AND COORDINATE THE WORK OF ALL TRADES AND SHALL CHECK ALL DIMENSIONS. ANY DISCREPANCIES SHALL BE CALLED TO THE ATTENTION OF THE DESIGNER AND SHALL BE RESOLVED BEFORE PROCEEDING WITH THE WORK AFFECTED.

3. NO STRUCTURAL MEMBERS SHALL BE CUT, NOTCHED OR OTHERWISE PENETRATED UNLESS SPECIFICALLY APPROVED BY THE ENGINEER IN ADVANCE OR AS SHOWN ON THESE DRAWINGS.

4. REFER TO SHEET AS FOR ALL FRAMING AND INSULATION NOTES. REPORT ANY DISCREPANCIES TO DESIGNER IMMEDIATELY UPON DISCOVERY AND PRIOR TO CONTINUING WITH WORK.

5. ALL WALLS SHALL HAVE GYPSUM BOARD APPLIED, TAPED TEXTURED AND FINISHED. ALL FINISHES FOR FLOOR AND WALL SHALL BE COORDINATED WITH OWNER.

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PROFESSIONAL SEAL
MARTIN V. HARRIS REGISTERED ARCHITECT STATE OF NEVADA

A RESIDENTIAL PROJECT FOR:
JON LINDBERG
20957 EATON ROAD
RENO, NEVADA 89511
APN: 045-337-11

REVISION AND DESCRIPTION:
1 PLAN CHECK

SHEET DESCRIPTION:
FLOOR PLAN

DRAWING SCALE: NOTED
SHEET NUMBER: A-1/3
PROGRESS PRINT DATE: 1-12-2015
SHEET MARKER: 1 A3

PLAN NOTES:

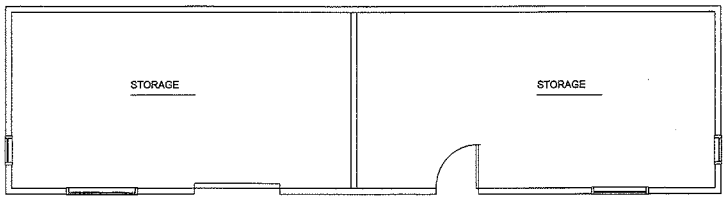
1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE SAFETY OF THE BUILDING DURING CONSTRUCTION AND SHALL PROVIDE ADEQUATE SHORING AND BRACING DURING CONSTRUCTION. CONTRACTOR SHALL COMPLY WITH ALL APPLICABLE SAFETY REGULATIONS.

2. THE CONTRACTOR SHALL PROPERLY SCHEDULE AND COORDINATE THE WORK OF ALL TRADES AND SHALL CHECK ALL DIMENSIONS. ANY DISCREPANCIES SHALL BE CALLED TO THE ATTENTION OF THE DESIGNER AND SHALL BE RESOLVED BEFORE PROCEEDING WITH THE WORK AFFECTED.

3. NO STRUCTURAL MEMBERS SHALL BE CUT, NOTCHED OR OTHERWISE PENETRATED UNLESS SPECIFICALLY APPROVED BY THE ENGINEER IN ADVANCE OR AS SHOWN ON THESE DRAWINGS.

4. REFER TO SHEET A5 FOR ALL FRAMING AND INSULATION NOTES. REPORT ANY DISCREPANCIES TO DESIGNER IMMEDIATELY UPON DISCOVERY AND PRIOR TO CONTINUING WITH WORK.

5. ALL FINISHES FOR FLOOR AND WALL SHALL BE COORDINATED WITH OWNER. PAINT EXISTING WALLS AS DIRECTED BY OWNER.



WASHOE COUNTY BUILDING DEPT.
FIELD COPY

Washoe County Building & Safety Department
REVIEWED FOR CODE COMPLIANCE

LIND 0245

1 FLOOR PLAN - STORAGE
Scale: 1/4" = 1'-0"

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MARTIN V. HARSTAD REGISTERED 13058 ARCHITECT STATE OF NEVADA

A RESIDENTIAL PROJECT FOR:
JON LINDBERG
20067 EATON ROAD
RENO, NEVADA 89511
APN: 045-337-11

REVISION AND DESCRIPTION

SHEET DESCRIPTION
FLOOR PLAN

DRAWING SCALE: NOTED
PROJECT NUMBER: A-173
PRINTING ISSUE DATE: 1-12-2015
SHEET NUMBER: A4

333

WOOD AND PLASTIC NOTES:

ROOF AND FLOOR JOISTS SHALL BE DOUGLAS FIR #2 GRADE OR BETTER U.N.O.

PLATES, BRIDGING, AND BLOCKING SHALL BE DOUGLAS FIR NO. 2 MINIMUM.

4X MATERIAL SHALL BE DOUGLAS FIR #1 GRADE OR BETTER.

6X MATERIAL SHALL BE DOUGLAS FIR #1 GRADE OR BETTER.

STUDS SHALL BE STUD GRADE FOR 2 X 4 AND #2 GRADE FOR 2 X 6

MISCELLANEOUS FRAMING LUMBER SHALL BE DOUGLAS FIR #2 GRADE OR BETTER.

NO HOLES OR CANS SHALL BE PUT IN ANY STRUCTURAL MEMBER UNLESS SPECIFICALY SHOWN ON THE DRAWINGS OR WRITTEN IS OBTAINED FROM A STRUCTURAL ENGINEER.

ALL PLYWOOD SHALL BE APA TRADEMARKED EXTERIOR PLYWOOD CONFORMING TO PRODUCT STANDARD PS 1-74. THICKNESS AND GRADE AS SHOWN ON THE DRAWINGS.

BOLT HOLES SHALL BE 1/16 INCHES MAXIMUM LARGER THAN THE BOLT SIZE. RETIGHTEN ALL NUTS PRIOR TO CLOSING IN.

STANDARD CUT WASHERS SHALL BE USED UNDER BOLT HEADS AND NUTS AGAINST WOOD.

ALL SILLS OR PLATES RESTING ON CONCRETE OR MASONRY SHALL BE PRESSURE TREATED DOUGLAS FIR. ANCHOR BOLTS SHALL BE PLACED 9 INCHES FROM THE END OF THE PLATE, OR FROM A NOTCH GREATER THAN 1/2 THE WIDTH OF THE PLATE AND SPACED AT INTERVALS INDICATED ON THE DRAWINGS.

DO NOT NOTCH JOISTS, RAFTERS OR BEAMS, EXCEPT WHERE SHOWN IN DETAILS. OBTAIN ENGINEERS' APPROVAL FOR ANY HOLES OR NOTCHES NOT DETAILED. HOLES THROUGH SILLS, PLATES, STUDS AND DOUBLE PLATES IN INTERIOR, BEARING AND SHEAR WALLS SHALL NOT 1/3 THE PLATE WIDTH. USE BORED HOLES LOCATED IN THE CENTER OF THE STUD OR PLATE.

NAILING NOT SPECIFIED ON THE DRAWINGS SHALL BE DONE IN ACCORDANCE WITH THE NAILING SCHEDULE OF THE 2012INTERNATIONAL BUILDING CODE.

FRAMING LUMBER MOISTURE CONTENT AT THE TIME OF DELIVERY TO THE JOB SHALL NOT EXCEED 19% BY WEIGHT.

ALL STANDARD FRAMING CLIPS, ANCHORS STRIPS, HANGERS AND TIMBER CONNECTORS NOTED ON THE DRAWINGS ARE AS MANUFACTURED BY THE " SIMPSON COMPANY" OF SAN LEANDRO, CALIFORNIA, OR AN APPROVED EQUAL.

FACTORY FABRICATED WOOD CHORD JOISTS SHALL BE TRUSS-JOIST CORPORATION OR APPROVED EQUAL HAVING ICBO APPROVAL OF THE SIZES AND TYPES SHOWN ON THE DRAWINGS.

THERMAL AND MOISTURE PROTECTION:

INSULATION REQUIREMENTS
ROOF (VAULTED) R-38
ROOF (FLAT) R-38
WALLS EXTERIOR R-19
FOUNDATION STEM WALLS R-11
SLABE ON GRADE R-8
FURNACE DUCTS (UNHEATED SPACE) R-35

THE ABOVE INSULATION VALUES ARE MINIMUM AND MAY BE INCREASED BY THE OWNER.

ALL EXPOSED INSULATION TO HAVE A FLAME SPREAD RATING OF LESS THAN 25 AND A SMOKE DENSITY RATING OF LESS THAN 450.

PROVIDE INSULATION BAFFLES AT EAVE VENTS BETWEEN RAFTERS..

ROOF DECK COVERING SHALL BE CERTAINTEED WINTERGUARD, OR EQUAL, AND INSTALLED PER MFR. SPECIFICATIONS FOR CLIMATIC CONDITIONS AT SITE.

PROVIDE SOUND INSULATION MATERIAL IN ALL INTERIOR WALL CAVITIES ADJOINING BATHROOMS AND LAUNDRY ROOMS.

GYPSUM BOARD:

ALL WALLS SHALL RECEIVE ½" USG TYPE 'X' GYPSUM WALL BOARD, PREPARE FOR FINISH AS SELECTED BY OWNER.

ELECTRICAL NOTES:

THE DESIGNER TAKES NO RESPONSIBILITY FOR INSURING PROPER CIRCUITRY OR IF ALL CODES ARE MET. ALSO NO RESPONSIBILITY IS TAKEN FOR INSURING PROPER VOLTAGES ARE INDICATED. ELECTRICAL CONTRACTOR IS TO INSURE ALL VOLTAGES ARE COORDINATED WITH EQUIPMENT AN APPLIANCES, ALL CIRCUITRY IS CORRECT, AND ALL CODE AND ORDINANCES ARE MET.

ELECTRICAL RECEPTICALS IN HABITABLE ROOMS SHALL BE PLACED MAXIMUM 12 FEET APART, 6 FEET MAX FROM ANY DOOR OPENINGS, ANY WALL WIDER THAN 2 FEET. IN KITCHEN AND DINNING AREA, ANY COUNTER WIDER THAN 12 INCHES, PROVIDE WITH RECEPTICALES.

EXTERIOR OUTLETS SHALL BE WEATHERPROOF, 120 CFI, RECEPTACLES.

RECESSED LIGHT FIXTURES INSTALLED IN INSULLATED CEILINGS TO BE I.C. RATED AND THERMALLEY PROTECTED. SINGLE WALL FIXTURES TO BE BOXED IN.

CONNECT ALL SMOKE DETECTORS TO HOUSE ELECTRICAL SYSTEM AND INTERCONNECT EACH ONE SO THAT IF ONE IS TRIPPED ALL WILL SOUND.

Washoe County Building Department
REVIEWED FOR CODE COMPLIANCE
7

LIND 0246

CONCRETE NOTES (CONTINUED):

SPLICES IN REINFORCEMENT BARS SHALL NOT BE MADE AT OR NEAR POINTS OF MAXIMUM STRESS. SPLICES SHALL BE LAPPED NOT LESS THAN 30 DIAMETERS. IN NO CASE SHALL A SPLICE BE LESS THAN 18".

WELDED WIRE FABRIC SHALL CONFORM TO THE REQUIREMENTS OF ASTM A-185. MESH SHALL BE PULLED UP INTO PROPER POSITION IMMEDIATELY AFTER CONCRETE PLACEMENT.

MINIMUM LAP OF WELDED WIRE FABRIC SHALL BE 6 INCHES OR ONE FULL MESH, WHICHEVER IS GREATER.

ALL WALKS, DRIVES AND PATIOS NOTED ON SITE PLANS SHALL BE 4" CONCRETE WITH FIBERMESH OVER 95% COMPACTED AGG. BASE.

FRAMING NOTES:

FRAMING PLANS SHOW SIZE AND SPACING OF MEMBERS, BUT MAY NOT SHOW ALL BLOCKING, DOUBLE JOISTS, NAILERS AND OTHER MEMBERS REQUIRED BY BUILDING CODE OR ACCEPTABLE WORKMANSHIP. REFER TO 2012 IBC FOR NAILING SCHEDULE AND FURTHER FRAMING INFORMATION.

DIMENSIONS FOR WINDOW LAYOUT ARE BASED ON MODULAR SIZES. CONSULT WINDOW PROVIDER FOR ACTUAL ROUGH OPENING DIMENSIONS AND ADJUST AS REQUIRED. DIMENSIONS FOR ALL DOOR OPENINGS ARE BASED ON NOMINAL DOOR WIDTH. CONSULT DOOR PROVIDER FOR ACTUAL DIMENSIONS FOR ROUGH OPENING SIZE.

BUILDING SECTIONS ARE SCHEMATIC. SECTIONS SHOW VERTICAL CONTROL AND REFERENCES. REFER TO STRUCTURAL DRAWINGS FOR CONSTRUCTION SPECIFICS.

ALL EXTERIOR WALLS ARE 2X6 AT 16" O.C., U.N.O., ALL

UNLESS DIRECTLY CALLED OUT ON WALL FRAMING PLAN, ALL EXTERIOR WALL HEADERS USE 6X8 DF#2 U.N.O.
SEE WALL FRAMING PLAN FOR SIZE OF LOAD BEARING HEADERS.
ALL NON-LOAD BEARING INTERIOR HEADERS USE 4X4 OR (2) 2X4 VERT. DF#2'S. USE DOUBLE TRIMMERS UNDER ALL HEADERS SPANNING 6'-0" OR GREATER.

INSTALL PRE MANUFACTURED I-JOISTS, TRUSSES OR RAFTERS PER MANUFACTURERS SPECS AND RECOMMENDATIONS. EACH TRUSS, RAFTER OR JOIST IS TO HAVE AT LEAST 1 1/2" OF BEARING SURFACE. 3" MIN. BEARING ON CONCRETE OR MASONRY. FOUNDATION SILLS, NAILERS AND LEDGERS IN DIRECT CONTACT WITH CONCRETE AND/OR WITHIN 6" OF GROUND MUST BE PTDF OR RW. DOUBLE ALL FLOOR JOISTS BELOW PARTITIONS PARALLEL TO FRAMING. SOLID BLOCK BELOW PARTITIONS PERPENDICULAR TO FRAMING UNLESS OTHERWISE INDICATED BY JOIST MANUFACTURER. PROVIDE SOLID BLOCKING AT 48" O.C. FOR ALL STUD WALLS 10'-0" OR TALLER.

STAIRS: RISE = 4" MIN. TO 8" MAX RISE. RUN = 9" MIN. HEADROOM = 6'-8" MIN. WIDTH = 36" MIN. ALL STEPS, RISERS AND TREADS IN ACCORDANCE WITH GOVERNING BUILDING CODE FOUR STEPS OR MORE REQUIRE A CONTINUOUS HANDRAIL 34" A.F.F

DOOR CASINGS AND WALL BASE SHALL BE SELECTED BY OWNER FOR SYTLE AND FINISH.

CONTRACTOR TO VERIFY ALL DIMENSIONS IN FIELD PRIOR TO START OF CONSTRUCTION.

CONTRACTOR TO VERIFY ALL STEPPED FOOTING/STEMWALL LOCATIONS IN FIELD.

FOOTINGS SHALL BE A MIN OF 2'-0" BELOW FIN. GRADE AND TO AN UNDISTURBED SOIL BEARING OF 1500 P.S.F.

AT TIME OF FOOTING INSPECTION, CONTRACTOR WILL SUPPLY A CERTIFICATION LETTER FROM QUALIFIED SOILS ENGINEER VERIFYING DESIGN CONDITIONS AS SHOWN ON THESE PLANS. IF UNSATISFACTORY CONDITIONS ARE FOUND BY ENGINEER, PLANS FOR MITIGATION OR FOUNDATION DESIGN CHANGES SHALL BE SUBMITTED TO BUILDING DEPARTMENT APPROVAL PRIOR TO COMMENCEMENT OF CONSTRUCTION.

FOOTINGS SHALL NOT BE PLACED ON FILL OR EXPANSIVE CLAY UNLESS SOIL TESTS ARE PROVIDED BY A LICENSED SOILS ENGINEER AND APPROVED BY THE BUILDING DEPARTMENT. ALL FILL MATERIAL WITHIN BUILDING LINES SHALL BE ENGINEERED FILL PLACED IN LAYERS NOT TO EXCEED 6" IN COMPACTED THICKNESS AND COMPACTED TO A MINIMUM OF 95% DRY DENSITY.

CONCRETE SHALL TEST NOT LESS THAN F'c=2500 P.S.I. AT 28 DAYS. REINFORCING SHALL BE CONTINUOUS AND CONFORM TO ASTM A615 GRADE 40. SPLICES IN CONTINUOUS REINFORCEMENT SHALL LAP 36 BAR DIAMETERS; SPLICES IN ADJACENT BARS SHALL BE NOT LESS THAN 5'-0" APART. LAP AND BEND ALL HORIZONTAL REINFORCING AROUND CORNERS A MINIMUM OF 18'.

CONCRETE SLABS ON GRADE: PLACE ALL CONCRETE SLABS ON MINIMUM 4" AGGREGATE BASE COMPACTED TO 95% RELATIVE DENSITY. SLOPE ALL SLABS AND PADS FOR PROPER DRAINAGE FROM HOUSE. PROVIDE STANDARD CRACK CONTROL JOINTS IN ALL SLABS ON GRADE USING MAXIMUM DIMENSION OF 25 FEET.

USE 1/2" ANCHOR BOLTS AT 48" O.C. EMBEDDED A MIN OF 7" INTO CONCRETE U.N.O. ON PLANS. SEE WALL FRAMING PLAN PRIOR TO POURING CONCRETE FOR HOLDOWN LOCATIONS AND ANCHOR BOLT SIZE AND SPACING.

VERIFY HOLD-BACK DIMENSIONS IN GARAGE STEMWALLS FOR GARAGE DOORS. DIMENSIONS SHOWN ARE NOMINAL FOR DOOR SIZES INDICATED. TOP OF STEMWALL AT DOOR CUTS TO MEET BOTTOM OF SLAB POUR.

PROVIDE MINIMUM OF #4 COPPER GROUNDING ELECTRODE ENCASED IN THE FOOTING.

PROVIDE MINIMUM 6 MIL VAPOR BARRIER IN CRAWL SPACE AREAS. PROVIDE 6"x16" SCREENED OPERABLE FOUNDATION VENTS AT CORNERS AND APPROXIMATELY EVERY 25 LINEAR FEET ALONG FOUNDATION WALL PER GOVERNING BUILDING CODE.

PROVIDE 3" CONDUIT FOR ELECT. AND 1" CONDUITS FOR GAS, WATER AND CATV SERVICE ENTRY. VERIFY LOCATION WITH UTILITY PROVIDER.

WINDOWS/SLIDING DOORS:

ALL WINDOWS/SLIDING DOORS ARE VINYL CLAD DOUBLE PANE WITH LOW-E GLASS. MANUFACTURER SELECTED BY OWNER.

SITE WORK:

CONTRACTOR TO VERIFY SEWER MAIN DEPTH TO SEPTIC SYSTEM AND TO CONFIRM PROPER FALL FROM RESIDENCE. EXISTING PIPING WILL REMAIN. BRING ANY DISCREPANCIES TO ATTENTION OF THE OWNER/ARCHITECT IMMEDIATELY.

CONTRACTOR TO ENSURE THAT SETBACKS ARE IN COMPLIANCE WITH THOSE SHOWN ON PLANS.

INSPECTION IS REQUIRED PRIOR TO BACKFILL OF WATER, ELECTRIC, GAS AND SEWER LINE.

EXACT LOCATION OF THE HOUSE AND THE FINISH FLOOR HEIGHT TO BE VERIFIED, BY A CERTIFIED SURVEYOR, WITH OWNER PRIOR TO THE START OF WOOD FRAMING, AND MUST COMPLY WITH COUNTY ORDINANCES AND THE ARCHITECTURAL COMMITTEE SPECIFICATIONS WHEN APPLICABLE.

SOILS ENGINEER SHALL EXAMINE SITE AFTER EXCAVATION AND PRIOR TO SETTING ANY CONCRETE FORMS. SOIL'S ENGINEER RECOMENDATIONS CONCERNING FOOTING SIZE, DEPTH COMPACTION, ETC SHALL BE FOLLOWED.

FIELD VERIFY EXISTING SITE GRADES AND CONDITIONS.

FIELD VERIFY ALL UTILITY LOCATIONS. CONNECTIONS SHALL BE MADE IN ACCORDANCE WITH ALL APPLICABLE CODES AND REQUIREMENTS.

CONCRETE NOTES:

REINFORCED CONCRETE WORK SHALL CONFORM TO APPLICABLE REQUIREMENTS OF ACI STANDARD 318 LATEST EDITION, "BUILDING CODE REQUIREMENTS FOR REINFORCED CONCRETE".

CONCRETE PLACED IN COLD WEATHER SHALL BE PERFORMED IN ACCORDANCE WITH ACI STANDARD 306 LATEST EDITION, "RECOMMENDED PRACTICE FOR COLD WEATHER CONCERNING".

CONCRETE PLACED IN HOT WEATHER SHALL BE PERFORMED IN ACCORDANCE WITH ACI STANDARD 305 LATEST EDITION, "RECOMMENDED PRACTICE FOR HOT WEATHER CONCERNING".

COMPRESSIVE STRENGTH OF REINFORCED STRUCTURAL CONCRETE SHALL BE NOT LESS THAN 2500 PSI IN 28 DAYS, UNLESS NOTED OTHERWISE.

COMPRESSIVE STRENGTH OF ALL EXTERIOR REINFORCED CONCRETE SHALL NOT BE LESS THAN 4000 PSI AT 28 DAYS, UNLESS NOTED OTHERWISE, AND HAVE A MAXIMUM WATER CEMENT RATIO OF .45 AND AN AIR CONTENT OF 4.5% - 7.3%.

CONCRETE SLUMP SHALL NOT EXCEED 4" FOR FOOTINGS AND SLABS ON GRADE. WHEN TESTED IN ACCORDANCE WITH ASTM STANDARD NUMBER C143 AND 5" FOR CAST IN PLACE WALLS AND COLUMNS.

REPLACEMENT INSPECTION: BEFORE PLACING CONCRETE, INSPECT AND COMPLETE FORMWORK INSTALLATION, REINFORCING STEEL, AND ITEMS TO BE EMBEDDED OR CAST-IN. NOTIFY OTHER CRAFTS TO PERMIT INSTALLATION OF THEIR WORK; COOPERATE WITH OTHER

IMMEDIATELY BEFORE PLACING CONCRETE WHERE FORM COATINGS ARE NOT USED.

TRADES IN SETTING SUCH WORK. MOISTEN WOOD FORMS

MINIMUM COVERAGE FOR REINFORCING SHALL BE THE CLEAR DISTANCE TO THE FACE OF BARS AS FOLLOWS:

3" WHERE CONCRETE IS POURED AGAINST EARTH.

2" FOR BARS LARGER THAN #5 FROM FORMED SURFACES TO BE EXPOSED TO GROUND OR WEATHER.

1-1/2" FOR #5 AND SMALLER BARS FROM FORMED SURFACES TO BE EXPOSED TO GROUND OR WEATHER.

ALL EXPOSED CONCRETE EDGES, CORNERS AND INTERSECTIONS SHALL BE TOOLED OR CHAMFERED NOT LESS THAN 3/4" WHETHER OR NOT SHOWN ON THE DRAWINGS.

CONSTRUCTION JOINTS WILL NOT BE PERMITTED EXCEPT AS SHOWN ON THE DRAWINGS WITHOUT WRITTEN CONSENT OF THE ARCHITECT.

REINFORCING STEEL
(FOR CONCRETE AND MASONRY)

ALL REINFORCING STEEL SHALL BE DETAILED AND PLACED IN CONFORMANCE WITH THE BUILDING CODE REQUIREMENTS FOR REINFORCED CONCRETE (ACI 318 LATEST APPROVED ISSUE), AND THE MANUAL OF STANDARD PRACTICE FOR REINFORCED CONCRETE CONSTRUCTION.

REINFORCING BARS SHALL BE DEFORMED BARS CONFORMING TO THE REQUIREMENTS OF ASTM A615 GRADE 40 FOR #4 AND SMALLER BARS, AND MIN GRADE 60 FOR BARS LARGER THAN #4. ALL REINFORCEMENT TO BE WELDED SHALL CONFORM TO ASTM A706. SUPPORTS AND ACCESSORIES SHALL BE FURNISHED AS SHOWN OR REQUIRED. CHAIRS PLACED AGAINST EXPOSED SURFACES SHALL BE GALVANIZED OR PROVIDE WITH PLASTIC FEET.

ALL REINFORCING BAR BENDS SHALL BE MADE COLD AND NOT REBENT.

ALL REINFORCING STEEL, INCLUDING WALL STEEL, SHALL BE ACCURATELY POSITIONED AND ADEQUATELY TIED, USING PROPER CHAIRS OR BOLSTERS. NAILS IN WALL FORMS WILL NOT BE ACCEPTABLE. SUPPORTS AND ACCESSORIES SHALL BE FURNISHED AS SHOWN OR REQUIRED.

REINFORCING STEEL SHALL BE LAPPED AT SPLICES A MINIMUM OF 32 DIAMETERS FOR CONCRETE, 40 DIAMETERS FOR MASONRY.

ALL REINFORCING STEEL SHALL BE ACCURATELY POSITIONED AND ADEQUATELY TIED USING PROPER CHAIRS OR BOLSTERS PRIOR TO POURING CONCRETE.

WASHOE COUNTY BUILDING DEPT.
FIELD COPY

1 Project Notes
Scale:NTS

ORIGIN 8
ARCHITECTURE

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WWW.ORIGIN8ARCHITECTURE.COM

PROFESSIONAL SEAL: MARTIN V. HARSIN REGISTERED ARCHITECT 4506 STATE OF NEVADA

CLIENT/PROJECT:
A RESIDENTIAL PROJECT FOR:
JON LINDBERG
20957 EATON ROAD
RENO, NEVADA 89511
APN: 045-337-11

REVISION AND DESCRIPTION

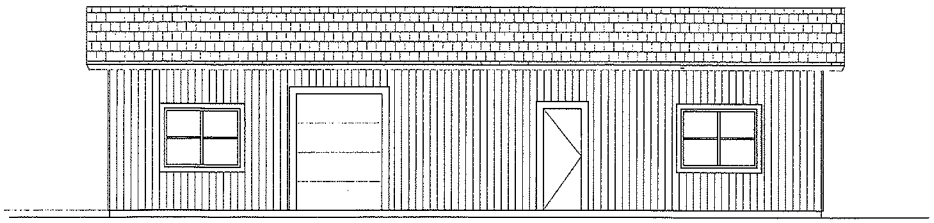
SHEET DESCRIPTION
PROJECT NOTES

DRAWING SCALE:	OR-A PROJECT NUMBER:
NOTED	A-173
PLACKAGE PRINT DATE: 1-12-2015	
SHEET NUMBER: A5	

334

PLAN NOTES:

1. THE ELEVATIONS ON THIS SHEET ARE EXISTING.



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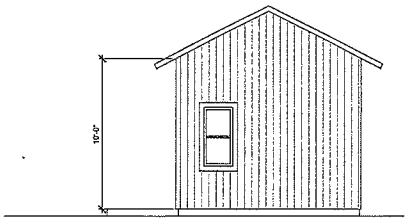

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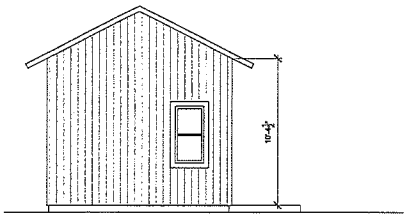

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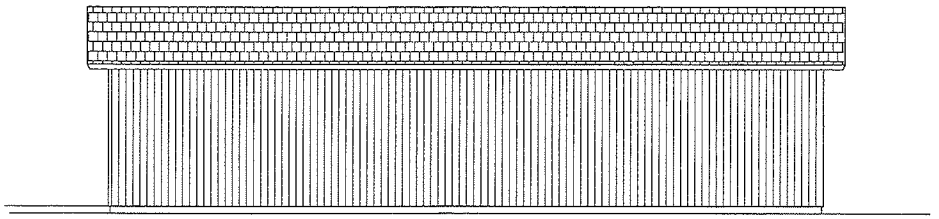

WEST

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Washoe County Building Department
REVIEWED FOR CODE COMPLIANCE
7

LIND 0247

1 EXISTING ELEVATIONS - OFFICE / STORAGE
Scale: 1/4" = 1'-0"

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4506
5-9-14
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A RESIDENTIAL PROJECT FOR:
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20957 EATON ROAD
RENO, NEVADA 89511
APN: 045-337-11

REVISION AND DESCRIPTION

SHEET DESCRIPTION
EXISTING ELEVATIONS

DRAWING SCALE: NOTED
SR-A PROJECT NUMBER: A-173
PROCESS PRINT DATE: 1-12-2015
SHEET NUMBER: A10

385

PLAN NOTES:

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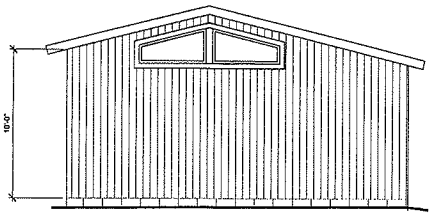

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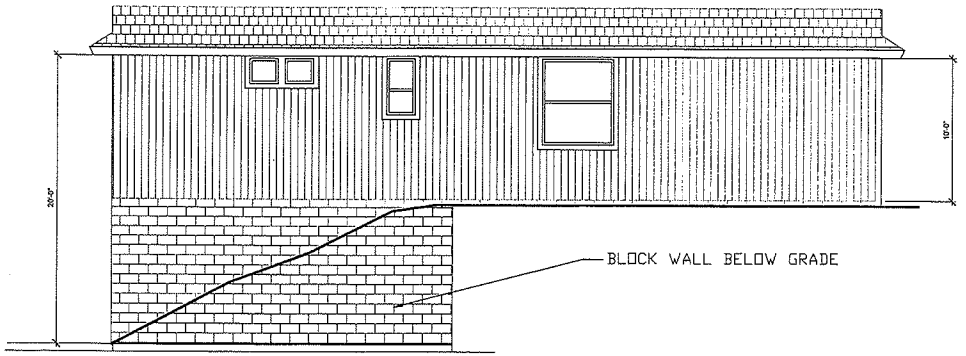

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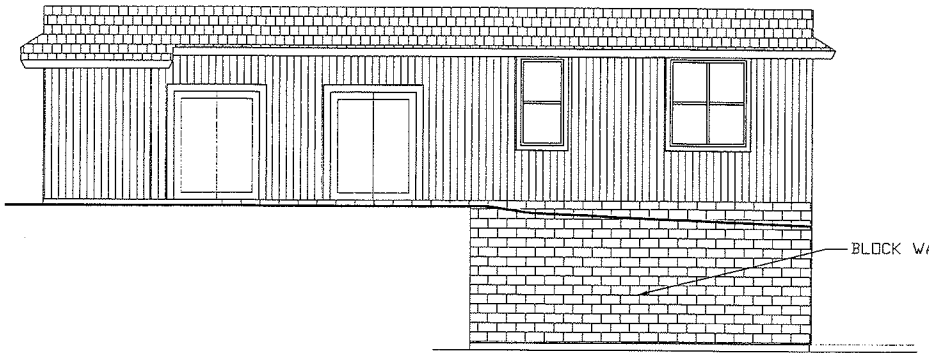

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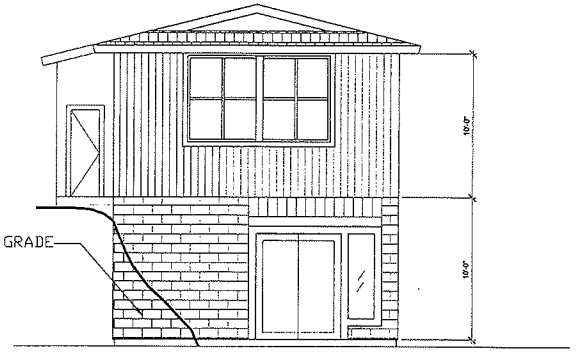

EAST

WASHOE COUNTY BUILDING DEPT.
FIELD COPY

Washoe County Building Department REVIEWED FOR CODE COMPLIANCE 7

LIND 0248

1 EXISTING ELEVATIONS -IN-LAWS QUARTERS
Scale: 1/4" = 1'-0"

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PROFESSIONAL SEAL:

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20957 EATON ROAD
RENO, NEVADA 89511
APN: 045-337-11

REVISION AND DESCRIPTION

SHEET DESCRIPTION
EXISTING ELEVATIONS

DRAWING SCALE: NOTED
DRAWING NUMBER: A-173
PROCESS PRINT DATE: 1-12-2015
SHEET NUMBER: A11

336

MASTER SYMBOL LIST

SIGNAL OUTLETS

▼	TELEPHONE: 4S BOX WITH SINGLE GANG MUD RING UON, +18" AFF UON
▼	TELEPHONE: 4S BOX WITH SINGLE GANG MUD RING UON, WALL MOUNT +54" AFF UON
▽	DATA: 4S BOX WITH SINGLE GANG MUD RING UON, +18" AFF UON
▽	VOICE/DATA: 4S BOX WITH SINGLE GANG MUD RING UON, +18" AFF UON
◈	TELEVISION: 4S BOX WITH SINGLE GANG MUD RING UON, +18" AFF UON
C	CAMERA: 4S BOX WITH SINGLE GANG MUD RING UON, CEILING MOUNTED UON
M	MICROPHONE: 4S BOX WITH SINGLE GANG MUD RING UON, +18" AFF UON
V	VOLUME CONTROL: 4S BOX WITH SINGLE GANG MUD RING UON, +48" TO TOP UON
S	CEILING MOUNTED SMOKE DETECTOR.
——3/4"C	3/4"C (UON) STUB INTO ACCESSIBLE CEILING SPACE

SWITCHES

S	SINGLE POLE: 20A, 120/277V, +48" TO TOP UON
S_2	TWO POLE 20A, 120/277V, +48" TO TOP UON
S_3	THREE WAY: 20A, 120/277V, +48" TO TOP UON
S_4	FOUR WAY: 20A, 120/277V, +48" TO TOP UON
S_x	X INDICATES EMERGENCY CIRCUIT
S_p	P INDICATES PILOT LIGHT (LIGHTED WHEN ON)
S_L	L INDICATES PILOT LOCATOR, (LIGHTED WHEN OFF)
S_K	K INDICATES KEY OPERATED SWITCH
S_M	MANUAL MOTOR STARTER: 20A, 120/277V, POLES AND HEATERS AS REQUIRED
S_{MC}	MOMENTARY CONTACT: 20A, 120/277V, SPDT CENTER NORMALLY OFF UON, +48" TO TOP UON
D	DIMMER: 600 WATT UON, ELECTRONIC SLIDER, WITH ON/OFF TOGGLE, +48" TO TOP UON (PLANS SHALL INDICATE TYPE: FLUOR, INCAND OR, LOW-VOLTAGE)
	MOTION/OCCUPANCY SENSOR, SWITCH WITH OFF/AUTO SELECTOR - WALL MOUNTED AT +18" TO TOP UON
OS = 360 / OS = 180	ULTRASONIC MOTION/OCCUPANCY SENSOR, SWITCH / CEILING MOUNTED ARROWS INDICATE DIRECTION AND COVERAGE PROVIDE WITH POWER PACK PER MANUFACTURERS REQUIREMENTS
PE	PHOTO ELECTRIC SWITCH 1600VA UON

METHODS

S_x	SHADING INDICATES: FIXTURE, OUTLET, EQUIPMENT, ETC. ON EMERGENCY 'X' OR, NIGHT LIGHT 'NL' CIRCUIT
SS	DEVICE MOUNTED IN MULTIPLE UNDER, COMMON COVER. MAXIMUM HEIGHT ON WALL SHALL BE +48" TO TOP UON
	DEVICES MOUNTED IN OR, ABOVE COUNTER/BACKSPLASH: MAXIMUM HEIGHT ON WALLS SHALL BE +48" TO TOP UON
	FLUSH FLOOR, MOUNTED WIRING DEVICES
	FLUSH FLOOR, MOUNTED WIRING DEVICES IN SINGLE MULTI-COMPARTMENT BOX
	RECEPTACLE MOUNTED IN CEILING OR, CASEWORK
	FINE DASHING INDICATES EXISTING EQUIPMENT AND DEVICES TO BE REMOVED

DESIGNATIONS

B	LIGHT FIXTURE. B = TYPE (SEE FIXTURE SCHEDULE)
2	SHEET NOTE
1	REVISION DELTA: NUMBER REPRESENTS REVISION
AC 1	MECHANICAL AND PLUMBING EQUIPMENT
A S	MISCELLANEOUS: THESE AND OTHER SYMBOLS AS INDICATED IN TABLES AND SCHEDULES ON THE PLANS.

NOTE
THIS IS A MASTER SYMBOL LIST, ALL SYMBOLS SHOWN MAY NOT BE USED WITHIN THIS SET OF PLANS

RECEPTACLES

	DUPLEX: 20A, 125V, NEMA 5-20, +18" AFF
	DOUBLE DUPLEX: 20A, 125V, NEMA 5-20, +18" AFF
	HALF SWITCHED DUPLEX: 20A, 125V, NEMA 5-20, +18" AFF (TOP HALF SWITCHED)
	DUPLEX GFCI: 20A, 125V, GFCI, NEMA 5-20 GFR, +18" AFF
	DUPLEX IG: 20A, 125V, ISO. GND, NEMA 5-20 IG +18" AFF (WHITE WITH ORANGE TRIANGLE UON)
	DOUBLE DUPLEX IG: 20A, 125V, ISO. GND, NEMA 5-20 IG +18" AFF (WHITE WITH ORANGE TRIANGLE UON)
	SPECIAL RECEPTACLE - AS INDICATED ON PLANS, +18" AFF

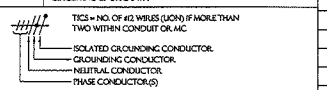
NOTE: DIAMOND SYMBOLS INDICATES DEDICATED CIRCUIT.

EQUIPMENT

	SWITCHBOARD
	PANELBOARD: SURFACE MOUNTED
	PANELBOARD: FLUSH MOUNTED
	TRANSFORMER.
	RELAY (120V COIL, STEP ON XFMR IF REQUIRED, UON)
	CONTACTOR (120V COIL, STEP ON XFMR IF REQUIRED, UON)
	COMBINATION MAGNETIC STARTER/FUSED DISCONNECT
	NON-FUSIBLE DISCONNECT SWITCH
	FUSIBLE DISCONNECT SWITCH
	PULLBOX: SIZE AS REQUIRED BY NEC
	JUNCTION BOX: SIZE AS REQUIRED BY NEC
	SURFACE RACEWAY WITH OR, WITHOUT DEVICES
	TELEPOWER POLE

CIRCUITING

	CONDUIT IN WALL OR, ABOVE CEILING
	CONDUIT IN FLOOR, OR, BELOW GRADE
	METAL CLAD CABLE (MC)
—OH—	OVERHEAD SERVICE
	PRIMARY
— S —	SECONDARY
— T —	TELEPHONE
—TV—	TELEVISION
	LOW VOLTAGE AND/OR, CONTROL CIRCUITING
	EMERGENCY CIRCUIT
	STUB OUT: MARK AND CAP (SITE)
	CIRCUITING UP OR, DOWN





MISCELLANEOUS

T	THERMOSTAT: AT +54" TO TOP UON (OR, PER MECH PLANS)
EF	EXHAUST FAN: FRACTIONAL HORSEPOWER.
M1	MOTOR: NUMBER = HORSEPOWER.
SIGN	SIGNAGE CONNECTION
	SURGE TRIP STATION: +7'-6" AFF, 12" RED TRIANGLE, UON
OH	CONTROL STATION: AT +48" TO TOP UON
a b	DUAL LEVEL LIGHTING CONTROL SWITCH 'A' = CENTER, (1) LAMP SWITCH 'B' = OUTER, (2) LAMPS

ABBREVIATIONS

℄	CENTERLINE
AFF	ABOVE FINISHED FLOOR.
AIC	AMPERES INTERRUPTING CAPACITY
AFC	ABOVE FINISH CEILING
BMS	BUILDING MANAGEMENT SYSTEM
C	CONDUIT
CB	CIRCUIT BREAKER.
CLG	CEILING
CIR	CIRCUIT
DPDT	DOUBLE POLE DOUBLE THROW
DPST	DOUBLE POLE SINGLE THROW
(E)	EXISTING TO REMAIN
ELEV	ELEVATOR.
EMT	ELECTRICAL METALLIC TUBING
EPO	EMERGENCY POWER OFF SYSTEM
FBO	FURNISHED BY OTHERS
FLUOR	FLUORESCENT
FU	FUSE: DUAL-ELEMENT, TIME DELAY
GFI/GFCI	GROUND FAULT INTERRUPTER
GND	GROUND
HOA	HAND-OFF-AUTOMATIC
HID	HIGH INTENSITY DISCHARGE
IG	ISOLATED GROUND
INCAND	INCANDESCENT
K	KCMIL (300K = 300 KCMIL)
LTG	LIGHTING
LV	LOW VOLTAGE
MCP	MOTOR, CIRCUIT PROTECTOR.
MC	MULTI-CONDUCTOR, CABLE
(N)	NEW
NC	NORMALLY CLOSED
NEUT	NEUTRAL
NL	NIGHT LIGHT
NO	NORMALLY OPEN
NTS	NOT TO SCALE
PNL	PANEL.
PVC	POLYVINYL CHLORIDE CONDUIT
(R)	EXISTING TO BE RELOCATED
RAC	RIGID ALUMINUM CONDUIT
RSC	RIGID STEEL CONDUIT
SO	SEAL OFF
SPDT	SINGLE POLE DOUBLE THROW
SPEN	SIZE PER EQUIPMENT NAMEPLATE
SPST	SINGLE POLE SINGLE THROW
TEL	TELCOM
TYP	TYPICAL
UNSW	UNSWITCHED
UON	UNLESS OTHERWISE NOTED
WP	WEATHERPROOF (NEMA 3R.)
WT	WATERTIGHT
(X)	EXISTING TO BE REMOVED
XFMR.	TRANSFORMER.
XP	EXPLOSION PROOF
FPEN	FUSE PER EQUIPMENT NAMEPLATE

SPECIFICATIONS

ITEM	DESCRIPTION
16.1	STANDARDS AND CODES: ALL ELECTRICAL WORK WILL BE PERFORMED IN ACCORDANCE WITH LATEST EDITION OF THE NATIONAL ELECTRICAL CODE (NEC), AS WELL AS ALL APPLICABLE STATE AND LOCAL CODES AND ORDINANCES.
16.2	COMPLETE INSTALLATION: ELECTRICAL CONTRACTOR, WILL PROVIDE ALL LABOR, MATERIALS, EQUIPMENT, TOOLS, ACCESSORIES, ETC. NECESSARY TO ACCOMPLISH A COMPLETE ELECTRICAL SYSTEM IN ACCORDANCE WITH CONTRACT DOCUMENTS.
16.3	LOCATIONS: ALL LOCATIONS INDICATED ON PLANS ARE SUBJECT TO CHANGE AS REQUIRED TO MEET THE ACTUAL FIELD CONDITIONS. MAKE ADJUSTMENTS TO ACCOMMODATE FIELD CONDITIONS.
16.4	TESTING: PRIOR TO PLACING THE ELECTRICAL SYSTEMS IN SERVICE, ALL SYSTEMS WILL BE TESTED FOR OPENS, GROUNDS, SHORTS, PHASE ROTATION AND PRIOR OPERATION.
16.5	GROUNDING: ALL EQUIPMENT AND SERVICE ENTRANCE NEUTRAL WILL BE GROUNDED IN ACCORDANCE WITH ARTICLE 250 OF THE NEC.
16.6	EQUIPMENT STANDARDS: ALL MATERIALS AND EQUIPMENT SHALL BE NEW AND OF THE HIGHEST QUALITY AVAILABLE ("SPECIFICATION GRADE"). SERVICE EQUIPMENT SHALL BE FACTORY-ASSEMBLED COMMERCIAL-GRADE, CONFIGURED PER SERVING UTILITY STANDARDS.
16.7	DISTRIBUTION EQUIPMENT AND PANEL BOARDS: DISTRIBUTION EQUIPMENT WILL BE DEAD-FRONT PANELBOARDS OR, SWITCHBOARD TYPE AS INDICATED ON PLANS, UL-LABELED AND ENCLOSED IN NEMA HOUSING APPROPRIATE FOR, ITS LOCATION. PANELBOARDS WILL HAVE FLUSH MOND-FLAT TRIM, HINGED COVERS AND BOLT ON CIRCUIT BREAKERS. PANELS WILL BE PROVIDED WITH TYPED DIRECTING INDICATED LOADS SERVED BY EACH CIRCUIT BREAKER.
16.8	CIRCUITING: ALL WIRING SHALL BE IN CONDUIT, CONCEALED EXCEPT WHERE NOTED. EMT WITH STEEL SET SCREW INSULATED THROAT FITTINGS MAY BE USED IN DRY, PROTECTED INTERIOR LOCATIONS. PVC SCHEDULE 40 SHALL BE USED BELOW GRADE AT MINIMUM -24". WRAPPED RIGID ELBOWS AND RISERS SHALL BE USED FOR, ALL THROUGH GRADE TRANSITIONS AND STUB-UPS.
16.9	COORDINATION OF UTILITY SERVICES: DRAWINGS INDICATE PROPOSED SERVICE LAYOUTS WHICH HAVE BEEN SUBMITTED TO THE SERVICING UTILITIES (POWER, TELEPHONE, CABLE TELEVISION OR, OTHER, PROVIDERS) AS IS NECESSARY FOR, THEIR, ENGINEERING REVIEW. WHAT IS INDICATED IS ASSUMED TO BE ACCURATE; ENGINEERED DRAWINGS WILL BE OBTAINED FROM THESE SERVING UTILITIES PRIOR, TO START OF THIS PORTION OF WORK.
16.10	GUARANTEE: THE ENTIRE ELECTRICAL SYSTEM INSTALLED UNDER, THIS CONTRACT SHALL BE LEFT IN PROPER, WORKING ORDER. REPLACE, WITHOUT ADDITIONAL CHARGE, ANY WORK OR, MATERIAL, EXCEPT LAMPS AND MATERIAL NOT FURNISHED BY THE ELECTRICAL CONTRACTOR, WHICH DEVELOPS DEFECTS FROM ORDINARY WEAR, AND TEAR, WITHIN ONE YEAR, FROM DATE OF FINAL ACCEPTANCE OF THE INSTALLATION BY THE OWNER. MATERIALS AND EQUIPMENT SHALL BE GUARANTEED AGAINST DEFECTS IN COMPOSITION, DESIGN OR, WORKMANSHIP. MANUFACTURER'S PROJECT SPECIFIC GUARANTEE CERTIFICATES SHALL BE FURNISHED ON SPECIAL EQUIPMENT AND SYSTEMS.
16.11	COORDINATION: THE CIVIL, ARCHITECTURAL, MECHANICAL, KITCHEN AND INTERIOR, DRAWINGS CONTAIN DETAIL, DESCRIPTIONS, CIRCUITING AND CONNECTION REQUIREMENTS WHICH ARE PART OF DIVISION 16 RESPONSIBILITIES. ELECTRICAL CONTRACTOR, SHOULD NOT SUBMIT BIDS ON THIS PROJECT BEFORE REVIEWING ALL PROJECT DRAWINGS, SPECIFICATIONS AND ADDENDA.

WASHOE COUNTY BUILDING DEPT.
FIELD COPY

Washoe County Building Department — Reviewed for Code Compliance

CONTRACTOR

These plans are prepared and submitted by the contractor as an exemption to NRS 623.330 for work under the contract's license category authorized under NRS 624

Baldwin Electrical Installations	Justin Baldwin
Company Name	(Please Print) Contractor Representative, OR Master or Q.I. If Plumbing...or Electrical and Number
0078888	
Contractor License Number	
Justin Baldwin	7/23/15

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REVISIONS:		
NO.	DATE	DESCRIPTION

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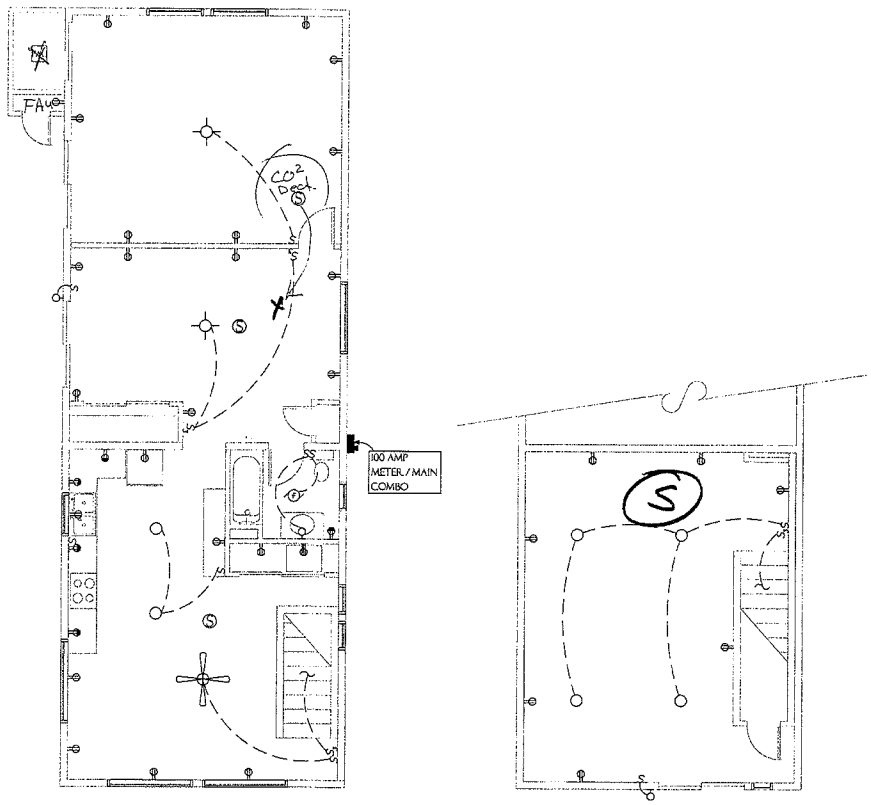
OFFICE (775) 336-1587 FAX (775) 336-1589
NCL#0078888 CCL#1002457

LINDBERG RESIDENCE
20957 EATON ROAD
RENO, NV. 89521

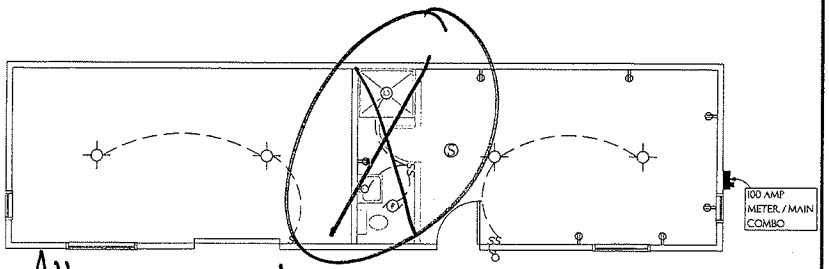
SCALE	AS NOTED
DRAWN BY	TT
CHECKED BY	JB
FILE NAME	
DATE	7/23/2015
SHEET TITLE	SYMBOL LIST & SPECIFICATIONS
SHEET NO	E0.1

687



No Bathroom Allowed !!!

Not Part of Permit.



All Receptacles GFCI

WASHOE COUNTY BUILDING DEPT.
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Washoe County Building Department
REVIEWED FOR CODE COMPLIANCE 7

POWER & LIGHTING PLAN
SCALE 1/4" = 1'

LIND 0250

CONTRACTOR
These plans are prepared and submitted by the contractor as an exemption to NRS 623.330 for work under the contract's license category authorized under NRS 624

Baldwin Electrical Installations
Company Name
0078688
Contractor License Number

Justin Baldwin
(Please Print) Contractor Representative OR Master or Q.I. If Plumbing or Electrical and Number
7/23/15

REVISIONS:

NO.	DATE	DESCRIPTION

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NCL#0078688/CCL#1002457

LINDBERG RESIDENCE
20957 EATON ROAD
RENO, NV. 89521

SCALE: AS NOTED
DRAWN BY: TT
CHECKED BY: JB
FILE NAME:
DATE: 7/23/2015
SHEET TITLE: POWER & LIGHTING PLANS
SHEET NO: E1.0

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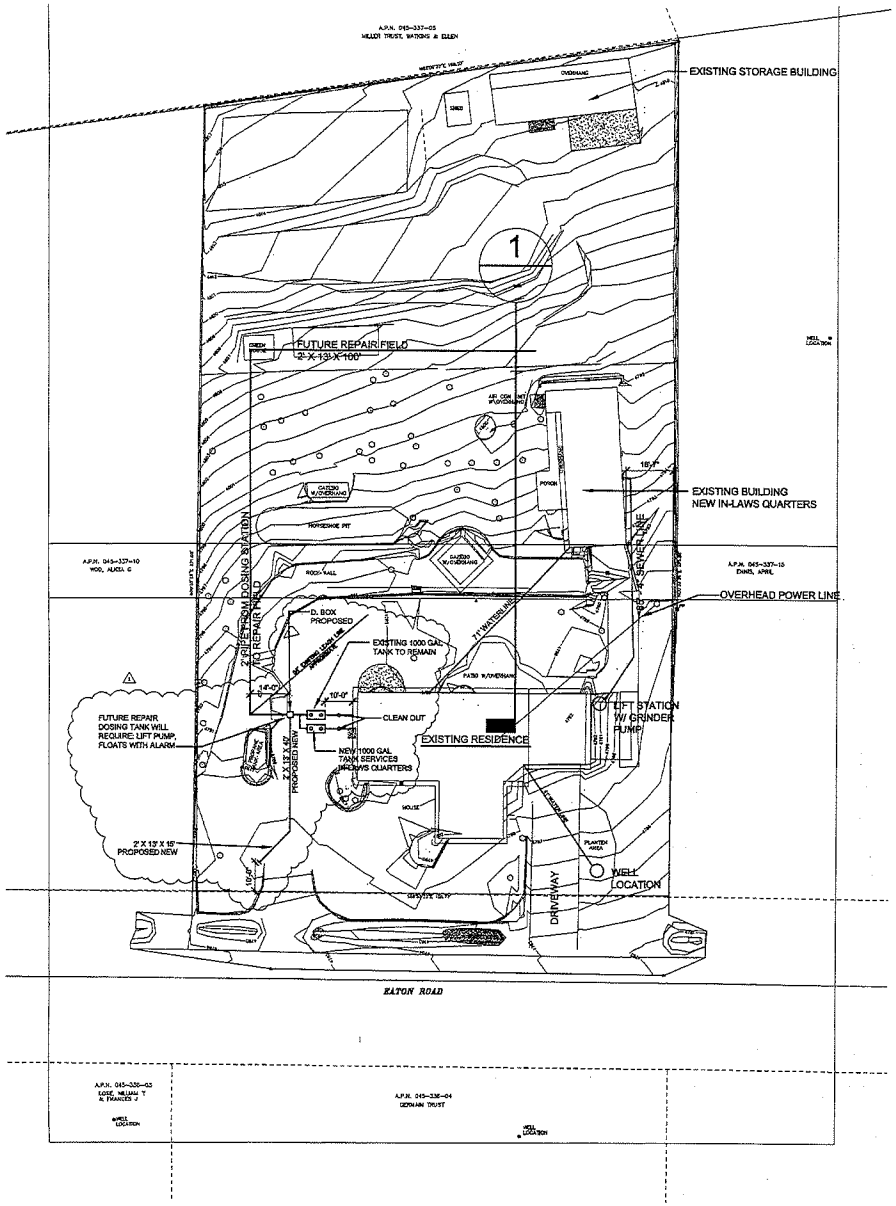


DEMOLITION NOTES:

1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE SAFETY OF THE BUILDING DURING CONSTRUCTION AND SHALL PROVIDE ADEQUATE SHORING AND BRACING DURING CONSTRUCTION, CONTRACTOR SHALL COMPLY WITH ALL APPLICABLE SAFETY REGULATIONS.

2. THE CONTRACTOR SHALL PROPERLY SCHEDULE AND COORDINATE THE WORK OF ALL TRADES AND SHALL CHECK ALL DIMENSIONS. ANY DISCREPANCIES SHALL BE CALLED TO THE ATTENTION OF THE DESIGNER AND SHALL BE RESOLVED BEFORE PROCEEDING WITH THE WORK AFFECTED.

3. NO STRUCTURAL MEMBERS SHALL BE CUT, NOTCHED OR OTHERWISE PENETRATED UNLESS SPECIFICALLY APPROVED BY THE ENGINEER IN ADVANCE OR AS SHOWN ON THESE DRAWINGS.

4. THE DRAWINGS AND SPECIFICATIONS REPRESENT THE FINISH STRUCTURE, UNLESS NOTED OTHERWISE INDICATED. THEY DO NOT INDICATE THE METHOD OF CONSTRUCTION. THE CONTRACTOR AND SUB-CONTRACTORS SHALL PROVIDE ALL MEASURES NECESSARY TO PROTECT THE STRUCTURE, WORKMEN, AND OTHER PERSONS DURING CONSTRUCTION. SUCH MEASURES SHALL INCLUDE, BUT ARE NOT LIMITED TO, PREPARING AND FOLLOWING THE WRITTEN SAFETY PROGRAM FOR THE CONSTRUCTION PROJECT, BRACING, SHORING FOR CONSTRUCTION EQUIPMENT, SHORING FOR THE BUILDING FORMS AND SCAFFOLDING AND ALL RETAINING WALLS.

5. REMOVAL OF EXISTING EXTERIOR FINISHES TO ACCOMODATE NEW CONSTRUCTION, SHALL BE REPAIRED OR REINSTALLED TO MATCH ADJACENT SURFACES, UNLESS NOTED OTHERWISE.

6. NO PUBLIC SEWER EXISTS WITHIN 400'

7. NO 100 YEAR FLOOD PLAIN EXISTS WITHIN 100'

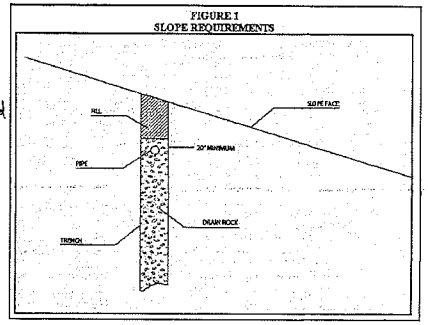
APPROVED
Washoe County Health District
MAY 08 2016
By: [signature] MPH REH 3
Print Name: Wesley Rubio RS

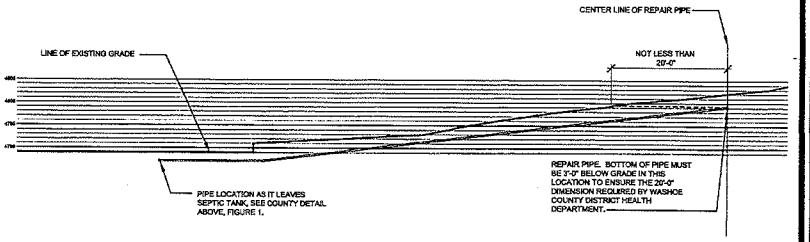
*Approved for the Additional Leach Line to be installed to meet Requirements to have the Second Dwelling Units under Variance 16-013

*As Required leach line to be installed - see plan 2' x 13' x 55' - Total of 100' Required

*Sizing based off of original Property Development.

FIGURE 1
SLOPE REQUIREMENTS





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3 SITE PLAN
Scale: 1" = 20'-0"

1 SITE SECTION
Scale: 1" = 20'-0"

ORIGIN 8
ARCHITECTURE
P.O. BOX 50522
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PH: 775-233-2247
FAX: 775-273-6020
WWW.ORIGIN8ARCHITECTURE.COM

PROFESSIONAL SEAL:
MARTIN W. HARSIN
REGISTERED
No. 4586
ARCHITECT
STATE OF NEVADA
4-27-16

CLIENT/PROJECT:
A RESIDENTIAL PROJECT FOR:
JON LINDBERG
20957 EATON ROAD
RENO, NEVADA 89511
APN: 045-337-11

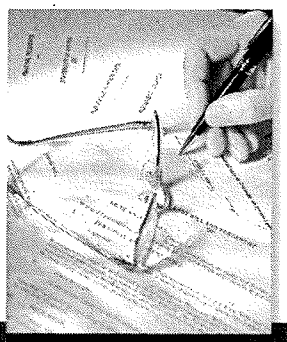
REVISION AND DESCRIPTION:

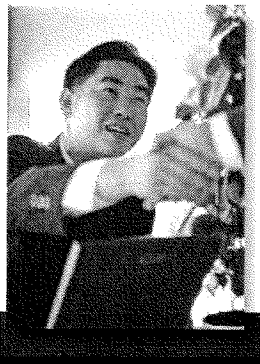
1	PLAN CHECK
2	HEALTH DEPT.
3	HEALTH DEPT.

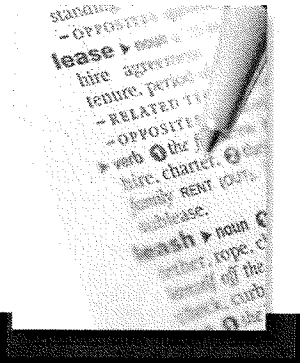
SHEET DESCRIPTION
SITE PLAN

DRAWING SCALE: NOTED
OB-A PROJECT NUMBER: A-173
PROGRESS PRINT DATE: 1-12-2015
SHEET NUMBER: A2

339







Nevada Real Estate Division

The Nevada Law and Reference Guide

A legal resource guide for Nevada real estate licensees.

THIRD EDITION, 2012

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AUTHORIZED BY THE NEVADA REAL ESTATE COMMISSION

NEVADA REAL ESTATE DIVISION, DEPT. OF BUSINESS & INDUSTRY

LIND 045

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Nevada Real Estate Division

The Nevada Law and Reference Guide

A legal resource guide for Nevada real estate licensees.

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Debra March, Executive Director of The Lied Institute of Real Estate Studies, College of Business of the University of Nevada, Las Vegas, served as administrative project manager. Her extensive background in real estate education and administration/ management kept the project moving forward.

Melody L. Luetkehans, JD, researched and wrote the Guide under contract with the Lied Institute. Previously, she was General Counsel for the Nevada Association of Realtors® and manned their Legal Hotline for years. She continues to teach real estate law and is currently with the National Judicial College on the University of Nevada, Reno campus.

Sarah Zita, of Zita Group, Inc., Las Vegas, Nevada, designed and provided the wonderful graphics, photographs, layout, formatting, technical and editorial corrections, and the artwork. The beauty and functionality of the Guide is all her.

Nothing of this scope is possible without extensive review. The written material was reviewed by the late Gail Brown Fox, long-time corporate broker in Clark County; Matt D'Orio, formerly Education/ Information Officer with the Real Estate Division; Lee Gurr, previous NV Real Estate Commissioner and broker/owner; Deanna Rymarowicz, Esq., legal counsel for the Greater Las Vegas Association of Realtors®; Ben Scheible, Esq., author and real estate educator; and Robert Aalberts, JD. professor of law at UNLV, who was also a member of the review committee. Current RED Administrator Ann M. McDermott, along with Safia Anwari, Education & Information Officer of the Real Estate Division, reviewed and edited the text to ensure its timeliness. The Real Estate Division would like to acknowledge the contribution of Bruce Alitt, Chief Investigator, in reviewing and suggesting edits

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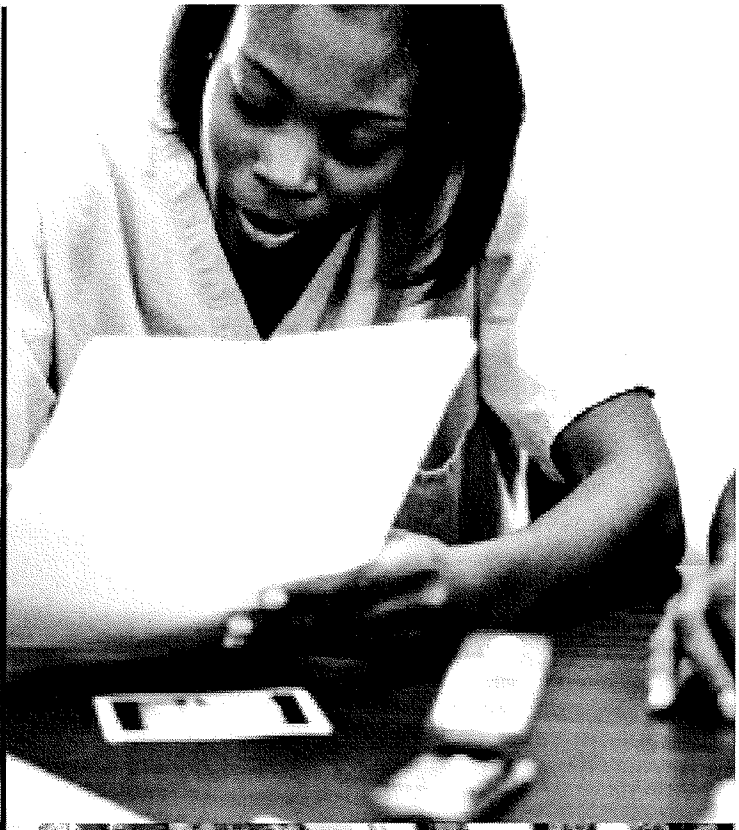

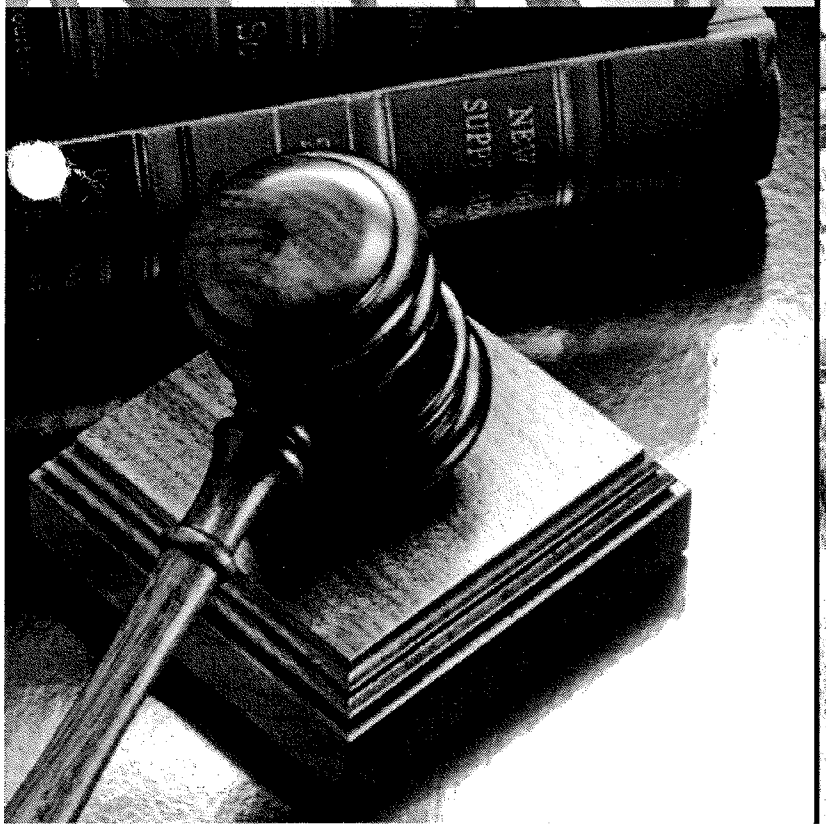

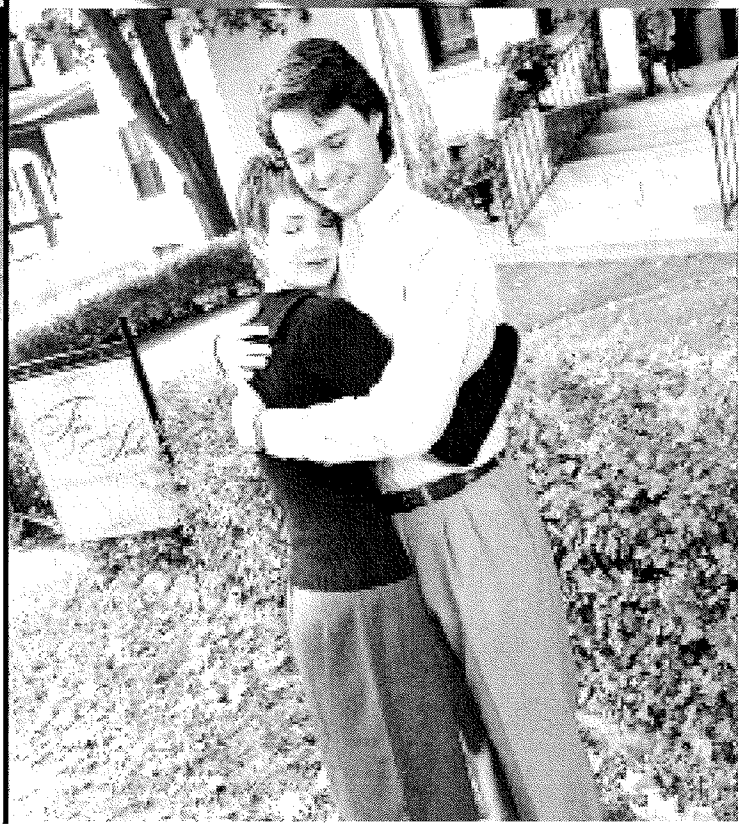

I. NEVADA LAW ON REAL ESTATE AGENCY

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Here we examine the nature of real estate agency as identified in Nevada statute, regulation, and as amplified by case law. We review Nevada's laws on real estate licensee agency and its parameters - what it is and isn't, its raison d'être. We look at how real estate agency is created, the legally recognized types of agency in Nevada, the legal sources of the licensee's agency duties, the minimum legal parameters of agency, what activities aren't included in real estate agency and what terminates an agency relationship.

A. REPRESENTING THE CLIENT

1. GENERAL AGENCY LAW

Under general agency law, agency occurs when one person (the agent), with the consent of another person (the principal), undertakes to represent and act on the principal's account with third-persons and usually in business matters. It is voluntary, consensual and as a rule - when dealing with real property - is founded upon an express or implied contract.[1]

Nevada recognizes two types of agency concerning real property: first, there is general agency in which the agent is authorized under a general power-of-attorney to perform all duties for the principal that the principal could perform to convey real property (general agency requires a written power-of-attorney with its special recording requirements);[2] second, there is special agency in which the agent is given limited authority to act for the client within certain restrictions and for specific transactions.[3] Real estate brokerage agreements create a special agency wherein the broker's authority is limited to facilitating a real estate transaction for his or her principal. Unless otherwise noted, all agency referred to in The Nevada Law and Reference Guide, is concerned with real estate agency in which the broker is the agent of the client.

Nevada's real estate brokerage statutes (NRS 645) define "agency" as the relationship between a principal (client) and an agent (broker) arising out of a brokerage agreement in which the agent agrees to do certain acts on behalf of the principal in dealings with a third party.[4] Real estate related acts are identified in the definition of "brokerage agreement" and include the broker assisting, soliciting or negotiating the sale, purchase option, rental or lease of real property, or the sale, exchange, option or purchase of a business.[5] However, by statute, an agency relationship cannot be established solely from a licensee's negotiations or communications with a client of another broker if the licensee has received written permission from that party's broker.[6]

A brokerage agreement is an employment contract wherein the broker agrees to provide real estate related services for valuable consideration or compensation. It may be either oral or written. The client does not need to be the one paying the

1. 2A Corpus Juris Secundum, Agency §4 (c), (1972).

2. NRS 111.450.

3. Seigworth v. State, 91 Nev. 536, 538 (1975).

4. NRS 645.0045.

5. NRS 645.005.

6. NRS 645.0045(2).

"The Real Estate Division specifically rejects the use of the term "dual agency". The position statement may be found at http://www.red.state.nv.us/publications/PositionStatements/MULTI%20REP%20FINAL%20SEP%2007.pdf

broker's compensation. The compensation may be paid to the broker by either the client or another person.[7] Though the brokerage agreement is an employment contract, without some type of alternative agreement, a real estate broker is an independent contractor and not the employee of the client.

Real estate related services include, but are not limited to, any of the following acts: the negotiation of, or the sale, exchange, option, purchase, rent or lease, of any interest in real estate (improved or unimproved); any modular, used manufactured or mobile home (when conveyed with any interest in the underlying real estate); public lands; or in a business. It also covers the listing or soliciting of prospective purchasers, lessees or renters, or the taking of an advance fee.[8]

Once agency is established, all the duties and responsibilities of representation attach to the broker (and through the broker, to the broker-salesperson or salesperson). Those duties are found in statute (NRS), administrative regulation (NAC), and as expanded upon in case law (Nevada Reports).

Nevada does not recognize "transactional" agency, or limited agency representation. Transactional agency is where the broker agrees that he or she is not representing either party but only is hired to facilitate the transaction. Limited agency is a truncated form of agency wherein the broker contractually limits his duties and liabilities with the client by agreeing to perform only certain acts of representation. In Nevada, with one exception, no duty of a licensee as found in NRS 645.252 or NRS 645.254, may be waived.[9] This is true even if a client and broker agree by contract to limit the broker's duties; legally, the broker is always vested with the full duties, responsibilities and liabilities of representation identified in law.
To ensure a client understands the licensee's basic duties, the licensee is required to provide the client and each unrepresented party with a state mandated form called the "Duties Owed by a Nevada Real Estate Licensee".[10]

a. Single or sole agency – Single agency is the most common form of agency and the one least likely to create liability for a broker. 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.

b. "Acting for More Than One Party to the Transaction" – Nevada law provides that a broker may represent more than one party in a real estate transaction. "The same person or entity may act as the agent for two parties interested in the same transaction when their interests do not conflict and where loyalty to one does not necessarily constitute breach of duty to the other."[11] When representing more than one party in a transaction, the broker must disclose this representation and obtain the written consent of each party before proceeding.[12]

7. NRS 645.005.

8. NRS 645.030.

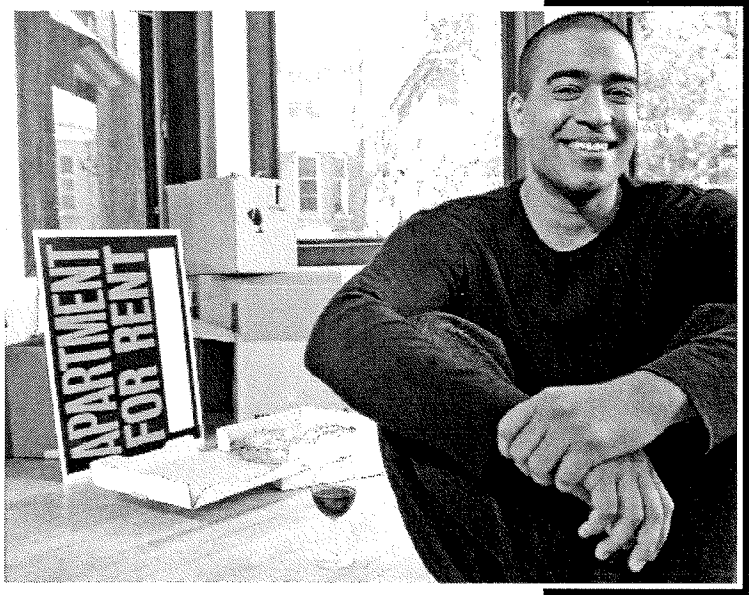
9. NRS 645.255. The exception is when a client authorizes in writing the broker to waive the duty to present all offers (NRS 645.254(4).

10. NRS 645.252(3).

11. Young v. Nevada Title Co., 103 Nev. 436, 439 (1987).

12. NRS 645.252(1)(d).

"Transactional agency" – where the broker agrees he or she is not representing either party and is only hired to facilitate the transaction.



13. Keystone Realty v. Glenn Osterhus, 107 Nev. 173, 177 (1991).

14. NRS 645.253.

15. NRS 645.252(1)(e).

There are several types of possible multiple representations. The most typical is where a broker seeks to represent both the buyer and seller. Not as prevalent but more common in sellers markets (where there are more buyers than properties), is when the broker represents two or more buyers in competition with each other for a single property. Theoretically, a broker could also simultaneously represent a seller and multiple competing buyers. Under existing law, regardless of which parties are being represented, seller and buyer or another mixture, each party must be given a Consent to Act form and the opportunity to reject this type of agency relationship.

Even though a licensee acting for more than one party to the transaction is permitted by law, the law does not provide for any modification of a broker's duties when representing multiple clients with adverse interests. The broker (and each licensee under him or her) owes to each client all of the duties provided for in law. The law does acknowledge such representation creates a conflict of interest in the licensee as the clients have interests opposed to one another.

The state mandated disclosure form, called "Consent to Act", outlines for the client the consequences of the licensee's multiple representation and requires the client's written authorization before the licensee may proceed with such representation. The Consent to Act form is designed with the seller/landlord and buyer/tenant relationship in mind but may be reasonably altered to reflect various combinations of conflicts of interests, i.e., buyer versus buyer.

Every licensee must be aware of the appearance of such undisclosed representation. For example, undisclosed representation may inadvertently occur when a licensee representing a seller provides the buyer with client services such that the buyer is under the reasonable expectation that the licensee is working for him.[13] Another scenario is when a seller's agent seeks to concurrently represent a buyer in the sale of the buyer's other properties without disclosing that relationship to the seller. Unless the licensee makes each party fully aware of the licensee's lines of representation, the licensee may be participating in an undisclosed multiple representation.

c. 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.

Black's Law Dictionary defines an "Ethical Wall" as a legal construct designed to shield (in our case) a broker from the liability of multiple party representation. It prohibits the respective assigned agents from exchanging the confidences of the clients and restricts the transfer and distribution of the clients' personal information and documents. The statute reiterates the licensee's duty of confidentiality to his or her assigned client.[14] To ensure a client's confidences are not inadvertently disclosed, the broker should assure that assigned client's files are kept apart and secured.

d. Change in Licensee's Relationship – A licensee must disclose to each party in a real estate transaction when the licensee's relationship with any party changes.[15] The disclosure must be made as soon as practicable and must be in writing. A new Duties Owed form should be provided to each client. If a client's consent is required (as in when acting for two or more parties to the transaction) consent must be obtained – disclosure alone is insufficient to ensure consent.

2. AGENCY DISCLOSURE FORMS

When an agency relationship is established the broker is required to provide the client with a state mandated disclosure form called the "Duties Owed by a Nevada Real Estate Licensee".[16] Should the broker at any point in a transaction be deemed to represent more than one party, the broker must also provide the parties with a "Consent to Act" form and receive their permission before proceeding with the representation. The appropriate agency disclosure form (Duties Owed or Consent to Act if applicable) must be used in all real estate agency relationships regardless of the type of representation, i.e., single, more than one party, and assigned; or the type of real estate transaction, e.g., purchase, property management. The Duties Owed form must also be given when a licensee is a principal in a transaction.[17]

The forms are prepared and distributed by the Real Estate Division and reflect not only the requirements of statute (NRS 645.252(1)) but also of the real estate administrative code (NAC 645.637).[18] Each form must be fully filled-in, signed and kept in the broker's transaction file for five years.[19]

It is important to note that an agency relationship is not created because a party signs either a Duties Owed or Consent to Act form. These forms are strictly disclosure documents. Each form specifically states that it does not constitute a contract for services nor an agreement to pay compensation.[20] Accordingly, it is irrelevant whether a brokerage agreement is oral or written, or whether a licensee is acting on his or her own behalf, a Duties Owed form or Consent to Act form, must be given to and signed by the licensee's client. Additionally, if a party is unrepresented the broker must keep that party's signed form with their client's transaction file.[21]

A licensee who refers a potential client to another licensee does not need to provide the Duties Owed disclosure form if the referring licensee's only activity is the referral.[22] For example, a seller contacts a broker about representing him in the sale of his Fallon ranch. The broker does not regularly deal with ranch or rural properties therefore, he refers the client to a broker who regularly works with this type of property. The first broker is not required to provide the rancher with a Duties Owed form.

a. Duties Owed By A Nevada Real Estate Licensee form – The Duties Owed By A Nevada Real Estate Licensee form (Duties Owed) is divided into three main sections and several subsections. The first section is a box for the identification of the licensee, his or her license number, the client's name, the broker's and brokerage's names, and finally, the name of client who the licensee is representing, e.g., seller, buyer, landlord, or tenant.[23]

The second section is a paraphrase of the statutes outlining the licensee's duties to all parties in the transaction and those duties specific to the licensee's representation of the client. There is a single sentence reference to a licensee's duty of confidentiality under assigned agency and a notice of the activities which require the licensee to provide the client with the Consent to Act form.

The third section is where the client signs acknowledging receipt of a copy of the form. The client, in signing the acknowledgement, also attests that he or she has read and understands the disclosure.

16. NRS 645.252(3).

17. NAC 645.637.

18. NRS 645.193.

19. NAC 645.650.

20. See Real Estate Division forms "Duties Owed by a Nevada Real Estate Licensee" and "Consent to Act".

21. NRS 645.252(3).

22. Real Estate Division Position Statement, Joan Buchanan, Administrator, March 10, 1999.

23. The Duties Owed form may be found at: http://www.red.state.nv.us/Forms/525.pdf

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 _____.

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: You understand that the licensee _____ may ***or*** _____ may not, in the future act
(Client Init) *(Client Init)*

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*	*Buyer/Tenant*	*Date*	*Time*
Seller/Landlord	*Date*	*Time*	*Buyer/Tenant*	*Date*	*Time*

b. The Consent to Act form – The Consent to Act form[24] is used when a broker (broker-salesperson or salesperson), is acting for two or more parties to a transaction. The form is divided into approximately seven parts. Parts one and three are informational giving the property address, licensee's name and license number, brokerage, seller's and buyer's names. Part two recites the legal authorization that allows a broker to act for more than one party in a real estate transaction and states the requirement for written client authorization. Part four identifies the licensee's conflict of interest, the duty of confidentiality, and the requirement for each client to have also received a Duties Owed form. Part five lets the client know he or she is not required to consent to this type of representation. Part six is the client's acknowledgment of receipt of the form and a statement that consent is being granted without coercion. Part seven is the client's signatures box.[25]

A substantial number of division disciplinary hearing cases concern agency disclosure form violations. These violations include forms not given to clients, forms not completed correctly, and those lacking required signatures or missing necessary information.[26] The Real Estate Commission, the body charged with hearing the Division's disciplinary cases, has found the incorrect execution of these forms amounts to gross negligence by the licensee, therefore, it is incumbent upon each broker to ensure the Duties Owed and Consent to Act forms are properly completed and signed. Anytime there is a change in the identity of the parties or licensees, a new form must be completed and signed.[27]

3. CREATION OF AGENCY

Historically, an agency relationship could have been created in several ways: by expressed statement, wherein both the client and the broker agreed to the agency; or by unintentional or implied agency. Unintentional agency is where the licensee did not intend to create or continue with the representation of the client, however; the client reasonably assumed the licensee was representing him or her. Implied agency is 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.[28]

In 2007, the Nevada legislature defined "agency" for real estate licensees as the relationship between a principal and an agent arising out of a brokerage agreement in which the agent is engaged to do certain acts on behalf of the principal in dealings with a third party.[29] Therefore, to create an agency relationship, there must first be a brokerage agreement.

A brokerage agreement is defined as 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.[30]

This definition of agency seems to preclude the trap of unintentional agency, 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.

The Nevada Supreme Court found agency when a licensee's representation and advice were sufficient to support a client's conclusion that the licensee impliedly agreed to the agency. In Keystone Realty v. Glenn Osterhuse (1985), the Osterhuses contacted Keystone Realty, who represented a builder/developer, about purchasing a new home lot in the Northwood Estates subdivision. The real estate agent went to the buyers' home, explained certain terms of the purchase

24. Consent to Act form

25. NRS 645.252(1)(d).

26. Real Estate Commission Disciplinary Fine Report 1-95 through 9-30-04.

27. NRS 645.252(1)(e).

28. Keystone Realty v. Glenn Osterhus, 107 Nev. 173, 177 (1991).

29. NRS 645.0045.

30. NRS 645.005.

agreement and answered the couple's questions. The agent also told them he would ensure that the developer delivered their deed to them as payment was being held outside of escrow on the advice of the agent. Additionally, the purchase agreement was contingent on the sale of the couple's current residence which the agent agreed to sell for them. At no time did the agent inform the Osterhuses he only represented the developer. When the Osterhuses did not receive their deed after they moved into their new home, they made inquiries and discovered title to their home was still in the developer's name and that the developer had declared bankruptcy. The couple filed a law suit against the developer and brokerage for breach of agency and negligence.

The broker argued there was no agency relationship with the Osterhuses as the broker only represented the developer. Without agency, there was no duty to the Osterhuses to ensure they received their title. The court rejected this argument and said,

> "[A]fter reviewing the record, we conclude that the interrelated transactions of the parties, along with the representations and advice given by [the agent], constituted substantial evidence to support the conclusion that the [brokerage] impliedly agreed to act as the [couple's] agent in their purchase of the Northwood Estates lot and home."

Furthermore, the court held the agent negligent in that representation when he failed to ensure proper title was given. The Osterhuses were awarded approximately $58,000.

The assumption of the existence of agency rests with the client's reasonable expectations. To determine whether the client's expectations are reasonable, the court will look at the licensee's statements, representations and actions.

Referral – A licensee who refers a client to another licensee does not create an agency relationship with the person being referred if the licensee's only activity was the referral. However, a referring licensee must still be careful not to create in the clients' minds the perception that the licensee continues to represent them.[31]

Authorization to Negotiate - To forestall implied agency, a licensee is prohibited from negotiating a sale, exchange or lease of real estate with another broker's client unless that licensee has received written authorization from the other broker for such direct communication. [32] By law, such direct communication does not create an agency relationship between the authorized broker and the other broker's client. [33]

To this end, the Real Estate Division has created a form authorizing a buyer's broker to negotiate directly with a seller.[34] The type of communication authorized by the RED form is limited to the delivery, communication, or facilitation of an offer, counteroffer, or proposal; discussion and review of the terms of an offer, counteroffer, or proposal; and the preparation of any responses as directed.

Even with a signed "Authorization" form, if the buyer's broker starts performing agency duties for the seller outside those authorized by statute, the broker may be held liable for creating an "implied agency". When the "Authorization" form is used, the buyer's broker still retains all the agency duties and responsibilities to his or her client, the buyer. This authorization is not a "Consent to Act" form substitute.

31. Real Estate Division Position Statement, Joan Buchanan, Administrator, March 10, 1999.

32. NRS 645.635 (2). This statute also seeks to prevent the possible tort "intentional reference with a contractual relationship."

33. NRS 645.0045 (2)

34. See RED form "Authorization to Negotiate Directly with Seller."

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 one 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.					
Seller/Landlord	*Date*	*Time*	*Buyer/Tenant*	*Date*	*Time*
Seller/Landlord	*Date*	*Time*	*Buyer/Tenant*	*Date*	*Time*

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
788 Fairview Drive, Suite 200 * **Carson City**, NV 89701-5453 * (775) 687-4280
2501 East Sahara Avenue, Suite 102 * **Las Vegas**, NV 89104-4137 * (702) 486-4033
Email: realest@red.state.nv.us http://www.red.state.nv.us

AUTHORIZATION TO NEGOTIATE DIRECTLY WITH SELLER

Nevada law permits a real estate licensee to negotiate a sale or lease directly with the seller or lessor with written permission from the listing broker. This form grants that permission with respect to the below-named Seller(s) and the listed property.

- Seller agrees, and the Seller's broker authorizes, that a Buyer's agent or broker may present offers (including subsequent counteroffers) and negotiate directly with the Seller.
- "Negotiate" means (a) delivering or communicating an offer, counteroffer, or proposal; (b) discussing or reviewing the terms of any offer, counteroffer, or proposal; and/or (c) facilitating communication regarding an offer, counteroffer, or proposal and preparing any response as directed.
- Seller understands and agrees that, after accepting an offer, additional contact from the Buyer's agent may be required to obtain disclosures and other documents related to the transaction.
- Seller acknowledges and agrees that Buyer's agent does not represent the Seller, and negotiations pursuant to this authorization do not create or imply an agency relationship between the Buyer's agent and the Seller. Seller understands that he/she should seek advice from Seller's broker and/or financial advisers or legal counsel.
- Seller acknowledges that Seller's broker will provide a copy of this authorization to the Buyer's agent or broker upon request, prior to presenting an offer.

Seller's Name(s): _____

Seller's Signature(s): _____ _____/_____ _____
Date Time

Property Address: _____

City: _____ Zip: _____ Contract Listing Date: _____

Company Name: _____

Seller's Agent Name: _____ Signature: _____
_____/_____ _____
Date Time

Seller's Broker Name: _____ Signature: _____
_____/_____ _____
Date Time

B. DUTIES — SOURCES

A real estate licensee when performing real estate related activities is subject to certain duties and legal responsibilities to the client, broker, peers, the public, and the Real Estate Division. These duties are found in statute, regulation, and expounded upon in case law.

The main sources of a licensee's duties are found in both Nevada and federal law, i.e., the Nevada Revised Statutes (NRS) and the United States Code (U.S.C.).[35] Duties may also be found in state or federal administrative regulation - Nevada Administrative Code (NAC) and the Code of Federal Regulations (C.F.R.). Nevada regulations (NAC) have the force and effect of law.[36]

Traditionally, real estate agency law originated with the common law. The common law is that body of law derived from judicial decisions rather than from statutes or constitutions.[37] Most duties emanated from the common law and though, by statute, the common law is abrogated where a duty is statutorily defined the common law may still be used today to illuminate how the statutes should be interpreted and what behavior to avoid.

The replacement of common law duties by statute is limited to those duties identified in NRS 645.252 to 645.254.[38] However, the statutes alone may not give a licensee specific direction as to what behavior a duty requires or what behavior must be avoided. For this the licensee must look to case law. For example, NRS 645.252(1) (a) requires the licensee to disclose any material fact relating to the property which he knows, or which by the exercise of reasonable care and diligence, should have known. The question remains what constitutes a material fact. We find in case law that "A fact is material... if it is one which the agent should realize would be likely to affect the judgment of the principal in giving his consent to the agent to enter into the particular transaction on the specified terms."[39]

A broker may also have duties to the client which were agreed to by contract. Some contracts extend the authority of the licensee to act for the client beyond the traditional limits of special agency. For example, a property manager is given a greater range of authority to act for the landlord than the usual authority afforded to a listing broker.[40] This extension of authority for a property manager is found in contract as authorized by statute. A breach of a contractual duty can create liability and either party (broker or client) may file a civil law suit to obtain a remedy.

A licensee's duties are divided into two types; affirmative prescriptions - "you shall", and prohibitions - "you shall not". An example of an affirmative duty would be NAC 645.605(6) that states a licensee has an "obligation to deal fairly with all parties to a real estate transaction", while a prohibition would be NRS 645.3205, "[a] licensee shall not deal with any party to a real estate transaction in a manner which is deceitful, fraudulent or dishonest."

35. For example, the federal law of RESPA, the Real Estate Settlement Procedures Act, 12 U.S.C. 2601. "U.S.C." stands for the United States Code.

36. NRS 233B.040(1).

37. Black's Law Dictionary, 7th ed. (1999).

38. NRS 645.251.

39. Holland Rlty. v. Nev. Real Est. Comm'n, 84 Nev. 91, 98 (1968), quoting the Restatement of Agency § 390.

40. NRS 645.6056.

41. Fleshman v. Hendricks, 93 Nev. 103 (1977).

Breach of NRS 645.3205 creates liability, while NAC 645.605(6) is used by the Commission to determine if a licensee is guilty of a breach.

The law recognizes three types of behavior that can create liability - not doing what one is required to do, doing what one is not supposed to do, and doing something one is supposed to do but doing it in a wrong (negligent) way. The legal terms are nonfeasance, malfeasance, and misfeasance.

Nonfeasance occurs when a licensee is supposed to act and does not. For example, NRS 645.252(1)(e) requires a licensee to disclose to each party to the real estate transaction when there is any change in his relationship to a party in that transaction. If a licensee is removed from the transaction by the broker, the parties are required to be informed that the licensee is no longer representing the client. A broker would be guilty of nonfeasance if he or she failed to inform the parties.



Malfeasance is a wrongful or unlawful act. For example, NRS 645.254(4) requires a licensee to present all offers to the client as soon as practicable. If a licensee intentionally withholds from the client another broker's offer, that is malfeasance.

Obviously, it is not malfeasance if a client has signed an appropriate waiver under NRS 645.254(4).

Misfeasance is where a licensee performs a lawful act but in an unlawful or negligent manner. In Fleshman v. M. Hendricks (1977) broker Hendricks took a listing from Fleshman.[41] The listing stated the property was subject to a non-transferable lease. The broker obtained a buyer who was ready and willing to purchase the property but who would not take it with the lease. When the transaction failed because the seller refused to break the lease (he would have been sued by the tenant), and the buyer refused to purchase with the lease in place, the broker sued the seller for his commission. The court found that in order for the broker to collect his commission he would have had to produce a ready, willing and able buyer. This buyer would not purchase because of the lease. The court stated it was the broker's misfeasance in not ensuring the buyer would purchase with the lease in place that caused the transaction to fall apart therefore, the broker should not "be permitted to recover by virtue of his own misfeasance."

Just as there are affirmative duties and prohibitions, the law specifically restricts a licensee's liability in certain areas.

C. THINGS FOR WHICH A LICENSEE IS NOT LIABLE

1. CLIENT'S MISSTATEMENT

A licensee may not be held liable for the misrepresentations made by his client unless the licensee knew of the misrepresentation and failed to inform the person to whom the misrepresentation was made.[42] In Prigge v. South Seventh Realty (1981), a purchaser sued both the seller and the listing broker for misrepresentation as to how the property was constructed. The purchaser declared that both the seller and the broker misrepresented the property as being a frame and stucco house when in fact it was not. The broker argued that he had taken the word of the seller and should not be held liable for the seller's misrepresentations. The court relying on established agency principles found for the broker and refused to find him liable. The court quoted a learned treatise in finding

> [A]n agent who makes untrue statements based upon the information given to him by the principal is not liable because of the fact that the principal knew the information to be untrue. An agent can properly rely upon statements of the principal to the same extent as upon statements from any other reputable source.[43]

This protection has its limitations. The court in the same case said it was making its findings on the limited arguments presented in the appeal. It went on to state that the buyer failed to argue that the broker "knew or should have known the true facts through the exercise of reasonable care". If the buyer had argued this level of diligence, the outcome of the case could have been different.

The "knew or should have known" criteria is found as an affirmative prescription in NRS 645.252(1) which states a licensee shall disclose any material and relevant facts, data or



42. NRS 645.259(1).

43. Prigge v. South Seventh Realty, 97 Nev. 640 (1981). The treatise was 2 Restatement (Second), Agency §348, Comment b, at 113 (1958).

44. See SB 319, Nevada's 73rd Legislative Session (2005).

45. NRS 645.259(2).

46. NRS 113.130 and NRS 113.135.

47. NRS 645.257(3).

48. Prigge v. South Seventh Realty, 97 Nev. 640, 641 (1981).

49. NRS 645.252(4)(a).

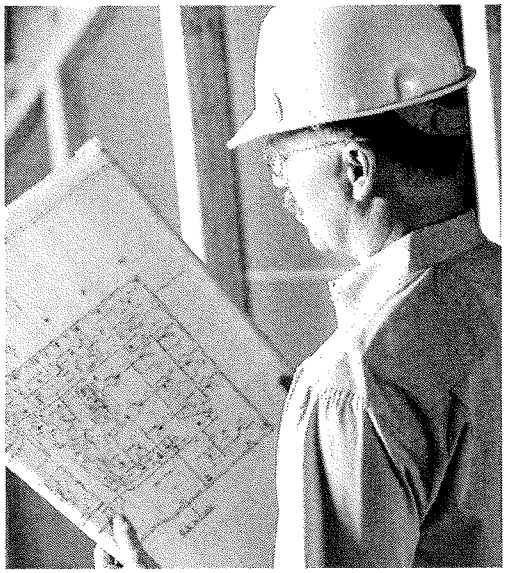
50. NRS 645D.060.

information which he knows, or which by the exercise of reasonable care and diligence he should have known, relating to the property. In Prigge the question could have been whether the broker "should have known" the house was not a frame and stucco building. This level of diligence – should have known - is so well established in law that it has withstood legislative attempts to remove it.[44]

2. ITEMS OF PUBLIC RECORD

A licensee cannot be held liable for a seller's failure to disclose information that is of public record and which is readily available to the client.[45] Under current Nevada law, a seller of a residential property is required to complete a state mandated form called the Seller's Real Property Disclosure.[46] Answers to many of the questions asked on the form would only be known by the seller who must disclose what he or she knows. Some of those items may be of public record thereby, theoretically, available to anyone. Should the seller not disclose a material fact that is of public record, this statute provides that the licensee cannot be charged with non-disclosure if the licensee reasonably had no knowledge of the item and the public record was readily available to the client. The licensee is not required to search the public records to ensure the seller told the truth.

The caveat is that the licensee must reasonably not know of the client's misstatement or concealed fact. If a material fact, data or information concerning the property is readily discernable to the licensee or, it is a fact, data or information that a reasonably prudent licensee would have knowledge of, the licensee will be held liable for the non-disclosure even if that item is of public record.[47] The Nevada Supreme Court in Prigge found that parallel courts in other jurisdictions, "have refused, in similar circumstances, to hold an agent for a disclosed seller responsible for an independent search for concealed facts, in the absence of any information which would



have put the agent on notice". (emphasis added)[48]

3. PROPERTY INSPECTIONS

Unless otherwise agreed to in writing, a licensee owes no duty to any party to the real estate transaction to independently verify the accuracy of a statement made by an inspector certified under NRS 645D, or by any other appropriate licensed or certified expert.[49]

NRS 645D is the set of statutes that require the certification of inspectors generally known as "home inspectors", who perform the physical examination of the mechanical, electrical or plumbing systems of a structure.[50] Other experts may include, but are not limited to, licensed contractors, pest inspectors, roofers, electricians, plumbers, appraisers, and any of the other licensed or certified building-trade professionals.

There is a caveat to this release from liability; it is that the professional is certified or licensed. A real estate licensee will not be released from liability if the "professional" upon whose word or inspection report the licensee is relying, is unlicensed or uncertified. For example, a licensee cannot escape liability by relying on the proclamation of a local handyman that the house's wiring is in good order. It is also incumbent upon the licensee, if the licensee has a reasonable doubt as to the

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accuracy of a material fact or an inspection report, to tell the client of that doubt and urge the client to verify the inspection. In Ewing v. Bissell (1989), Jaeger, a real estate licensee acting as a dual agent, sold the Ewing's a parcel of land in Las Vegas which reportedly contained 1.34 acres.[51] The plat map identified the parcel as having 1.34 acres and the purchase agreement stated there were approximately 1.34 acres. Jaeger testified he "inspected the property and thought there might be a question as to the total acreage of the lot; however, he could not determine the actual size of the lot by viewing it." Also, he "knew that a better legal description of the property was needed." Jaeger told the sellers, but not the buyers, they could get a survey of the property. Additionally, the buyer had informed Jaeger acreage was important to him as he wanted to place two homes on the property and the zoning law required .50 acres per home. Acreage was therefore a material fact for the buyers.

After the close of escrow, the Clark County Assessor informed the buyers they had received only .83 acres. The buyers sued the sellers, brokerage and agent for the difference between what they received and what they thought they were purchasing. The court found for the buyers allowing them an abatement of the purchase price by reducing the price by the percentage of acreage the buyers did not receive. The court reviewed Jaeger's testimony as to his concern about the size of the lot and held him liable. It said Jaeger was the individual in the best position to ensure the size of the lot was ascertained before escrow closed and Jaeger was under the duty to disclose material facts that may affect the buyer's decision to purchase.

At the same time, a licensee is not required to re-inspect or personally verify the accuracy of a valid inspection. In the Ewing case above, if a survey had been done, Jaeger would not have had to verify the accuracy of the surveyor's work.[52]

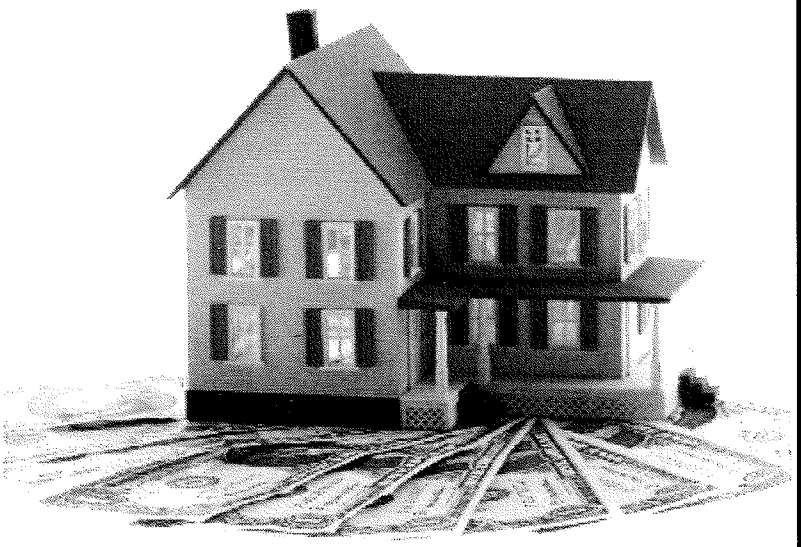
Additionally, the licensee is not required to become a property inspector by conducting the investigation of the condition of the property which is the subject of the real estate transaction.[53] However, this clause should not be used by the licensee in an attempt to remove from the licensee his or her responsibility to disclose "material and relevant facts, data or information which the licensee knows, or by the exercise of reasonable care and diligence... should have known relating to the property." (emphasis added).[54] The licensee is always charged with reasonable care and diligence. It is not reasonable that a licensee ignore patent or observable problems or questions about the property's condition because he or she "owes no duty to investigate." The level of investigation stated here is the level expected of a professional in a particular field such as a licensed property inspector. The licensee owes no duty to reach that level of investigation.

51. Ewing v. Bissell, 105 Nev. 488 (1989).

52. NRS 645.252(4).

53. NRS 645.252(4)(c).

54. NRS 645.252(1).



55. NRS 645.252(4)(b).

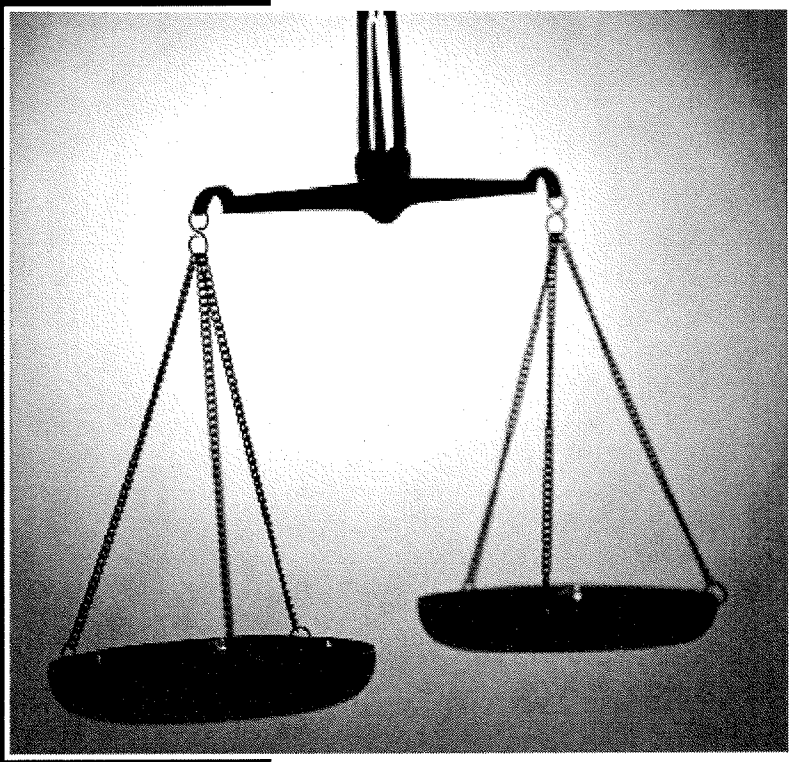
56. NRS 645.254(3)(c).

57. Charles v. Lemons & Assoc. et al., 104 Nev. 388 (1988).

4. FINANCIAL AUDIT OF A PARTY

A licensee owes no duty to conduct an independent investigation of the financial condition of a party to the real estate transaction.[55] Nevertheless, a licensee is still responsible for disclosing to his or her client all material facts of which the licensee has knowledge concerning the transaction.[56] For example, if a licensee representing a buyer has knowledge of the seller being in bankruptcy, it is incumbent upon the licensee to disclose that information to the client. However, the licensee has no duty to personally examine the financial condition of a party.

Nor does the licensee have a duty to review a principal's credit history. This may specifically come into play if the client participates in alternative forms of financing such as the seller carrying back some of the purchase price. A seller "carries back" when he or she acts as a lender to the purchaser by "carrying" some of the purchase price in the form of a promissory note which is usually secured by a deed of trust on the property.



The caveat on this limitation of liability is that the licensee can waive this protection by his or her statements or actions. If a licensee presumes to investigate a principal's financial condition, gives specific credit or financial advice or guidance, reviews a party's credit report, or designs an alternative financing plan for the parties, the licensee may have waived any protection this statute could provide.

In Charles v. Lemons & Associates, (1988) the sellers, Mr. & Mrs. Charles, sued their brokerage and agent, Century Realty and Larry Geisendorf, for misrepresentation and failure to disclose material information.[57] Geisendorf negotiated the sale of the Charles' home with some buyers wherein the buyers would assume the existing first mortgage, obtain a second in the buyers' names, and have the sellers carry back a third deed of trust. The Charles claimed Geisendorf told them the buyers were financially capable of purchasing the property and that they were qualified to make payments on the loans. What Geisendorf failed to tell his clients was that the buyers had a combined income of only $2,400 per month, that they expected to use the income from a speculative gold investment to meet their financial obligations, and that the buyer's second mortgage had an APR of 30.85%.

When the buyers did not make any payments, the Charles' sued their agent and brokerage. They stated they would not have made the deal with the buyers if it hadn't been for the statements by Geisendorf concerning the buyers' financial soundness. That, coupled with their agent's failure to disclose material facts about the transaction, i.e., the buyers' tenuous loan arrangements, breached the agent's fiduciary duty to the sellers and caused the sellers loss.

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5. PROVIDING OTHER "PROFESSIONAL" SERVICES

A licensee is not required to perform services or give advice if the service or advice requires expertise outside the realm of real estate related services or for which a separate certification or license is required.[58] Again, this protection may be waived should the licensee undertake to provide such services or advice.

A licensee who performs unauthorized services may be held liable not only to the client, but to the various licensing entities and to any third-party who acts on the licensee's representations and is damaged. In Epperson v. Roloff. Epperson, a buyer, sued the Roloffs who were the sellers, and Alexander, the sellers' agent, for fraud and breach of contract. The sellers told their agent the property had "a solar storage area for auxiliary heating". Alexander, without ensuring a solar heating system existed, told the buyers and their agent that "solar really saves on your gas bill" and proceeded to make other statements of fact about the system. Needless to say, there was no solar heating system. When the buyers sued, the court stated the agent could be held liable to the third-party buyers if they justifiably relied on the agent's statements or advice.[59]

Giving legal advice or determining the market value of a property are services a licensee is most commonly asked to provide.[60] Because these activities are so intricately woven into the fabric of a real estate transaction the licensee can easily slip into giving answers and thus providing unauthorized services. If a licensee does so, he or she not only violates NRS 645, but also the statutes regulating those professions.

Other services a licensee may be asked to provide include but are not limited to, home inspection,[61] tax and income advice (accountant),[62] and property management.[63] The fact that these activities, or some semblance of them, are performed daily by licensees does not in and of itself transform the activities from being unauthorized or illegal unless the licensee is duly certified or licensed in that profession. A licensee must be especially conscientious when asked to do any of the above activities and always refer the client to the appropriate professional.[64]

To that end, a licensee must be aware of the pitfall of relying on a client's request or permission to perform unauthorized activities. No client can authorize a licensee to perform services for which a certification or license is required and a licensee cannot escape liability just because the client requested such service or advice. The Nevada Supreme Court has stated "that one may not legitimize his otherwise unlawful practice of the law by contractually obligating himself to achieve legal effectiveness."[65] Thus, as with many areas of real estate agency law, a client's instruction does not make an illegal act legal or place it within the scope of the licensee's authority. Should a licensee be requested to perform services beyond the licensee's expertise or authorization, the licensee has an affirmative duty to advise the client the matter is beyond his or her expertise and suggest the advice or service be obtained from an appropriate certified or licensed professional. Otherwise, a licensee will be subject to Commission discipline if found guilty of attempting to provide specialized professional services or advice that are outside the licensee's licensed authority.[66]

58. NRS 645.254(3)(d).

59. Epperson v. Roloff, 102 Nev. 206 (1986).

60. NRS 7.285 (1) prohibits the unauthorized practice of law and NRS 645C.260 requires the licensure of anyone doing appraisals.

61. NRS 645D.900.

62. NRS 628.540.

63. NRS 645.6054.

64. NRS 645.254 (3)(d).

65. Pioneer Title Insurance & Trust Co., v. State Bar of Nevada, 74 Nev. 186, 192 (1958).

66. NRS 645.254 (3)(d) and see NAC 645.605 (3).

67. NRS 645.254(2).

68. NRS 645.320(2).

D. TERMINATION OF AGENCY

Nevada has no specific statute that provides which event or action terminates agency. Agency can end in various ways, such as:

- when the object of the agency is fulfilled, or
- the agency agreement terminates by contract date, or
- the broker and client mutually agree to terminate the agency, or
- the agency is abandoned, or
- the agency is terminated due to a party's breach, or
- it ends because of the death of either the broker or the client.

Here we must draw a distinction between the end of the agency and the termination of a party's rights under the brokerage agreement. An agency relationship may end but each party may continue to have certain rights stemming from that relationship. Some of those rights, such as the licensee's duty of confidentiality, are statutorily identified as extending past the revocation or termination of the brokerage agreement - in the case of confidentiality it is one year.[67] Other rights include the broker's right to compensation. The broker may have a right to collect compensation even if the agency has ended and the broker is no longer providing real estate related services to the client.

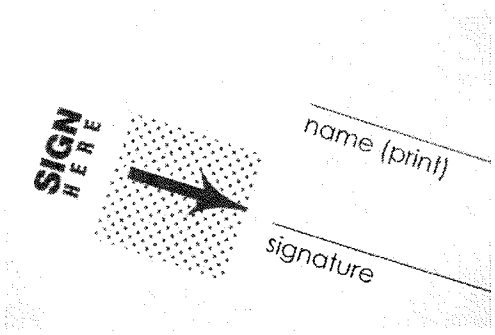
1. END OF TRANSACTION OR CONTRACT DATE

Most special agency relationships, such as real estate agency, terminate when the object of the agency ends. In real estate, this is usually when there has been a successful transaction and the object for which the agency was created, the sale or lease of real property, has been fulfilled.

Agency may also end when the brokerage agreement has an end or termination date and that date comes and goes without the broker's efforts procuring a successful transaction. Each exclusive representation brokerage agreement is required to have in writing a specified and complete termination date.[68] That date is generally read as ending the agency. A licensee should be aware that the licensee's statements or actions may extend the agency past the termination date and create an unintentional agency.

2. MUTUAL AGREEMENT

Unless there is an agreement to the contrary, a brokerage agreement may be terminated by either party.[69] Depending on the circumstances, this end of agency may be conditional or unconditional. An unconditional release is when both the broker and the client mutually agree to end the agency. At this point the broker and client walk away from their agency relationship without any obligation to the other. A conditional release is when the broker agrees to stop representing the client but holds the client to the client's obligations, such as the payment of compensation.



3. ABANDONMENT OR INVOLUNTARY TERMINATION – CLIENT OR BROKER

Another, more difficult type of termination is when the agency is abandoned or involuntarily terminated (being fired) by either the client or the broker.

Abandonment occurs when one party ceases to continue with the relationship. It may happen suddenly or through lack of contact over a period of time. There is no set time frame in which lack of communication between the broker and client creates abandonment. The courts look at whether a reasonable period of time has elapsed. What makes a "reasonable" period of time is fact specific. In one case, Reese v. Utter (1976), the broker, Utter, had an exclusive listing with Reese. During the listing period Utter submitted an offer which Reese rejected. After the rejection Utter abandoned all efforts at negotiating the sale of the property. A year after the listing expired, Reese sold the property to the original offeror on substantially different terms and without the assistance or participation of Utter. Utter then sued Reese for his commission. The court found Utter was not entitled to a commission as he had abandoned his efforts to sell the property and there was no hint of fraud or bad faith on the part of the seller.[70]

A client may abandon a broker. In Bartsas Realty v. Leverton (1966), Mary Bartsas, a broker, responded to an open listing agreement from an institutional seller, First National Bank of Nevada, to find a buyer for an estate of which First National was the executor. Mrs. Bartsas submitted an offer from Davidson, president of a construction company. Without communicating with Bartsas, Davidson then contacted broker Leverton and resubmitted a similar offer through him. When First National told Leverton of the first offer (which had not yet been

69. Kaldi v. Farmers Ins. Exch., 117 Nev. 273, 279 (2001).

70. Reese v. Utter, 92 Nev. 377, 380 (1976).

71. Bartsas Realty v. Leverton, 82 Nev. 6, 7 (1966).

72. Kaldi v. Farmers Ins. Exch., 117 Nev. 273, 279 (2001).

73. NRS 645.252(1)(e).

74. NRS 645.633(1)(b), and NAC 645.605(6).

75. Wayman v. Torreyson, 4 Nev. 124, 135 (1868).

76. NRS 148.420 and NRS 148.330.

77. NAC 645.350(2).

accepted or rejected), Leverton replied "Well, he (Davidson) has changed brokers and he has come to me now." (Italics added.)[71] Mrs. Bartsas was then told by First National of the second offer. She attempted to speak with Davidson who never again communicated with her. She attempted to communicate with Leverton without satisfaction. Leverton continued the negotiations with First National and eventually the sale was consummated. Bartsas sued Leverton and First National. The court held for Bartsas finding that a client cannot in bad faith ignore or abandon the broker or otherwise intervene so as to deprive a broker of his or her commission. The broker must be given an opportunity to consummate the sale if the broker has not abandoned the negotiations.

A client or broker can "fire" the other at any time. The Nevada Supreme Court stated "[a]bsent a contractual provision to the contrary, an independent contractor/principal agency relationship is terminable at any time at the will of the principal or the agent." [72]

Once fired, a broker is required to stop representing the client and inform the other parties in the transaction of the change in his or her agency status.[73] A client can refuse to be represented by, or work with, a broker-salesman or salesman; however, the brokerage agreement continues in force as the agency is with the broker not the salesperson. At this juncture, the broker may release the client (conditionally or unconditionally), or the parties may agree to have another licensee under the broker continue with the representation. The fact that a client does not want to continue being represented by a certain licensee does not automatically release the client from an obligation to pay compensation under the brokerage agreement.

It is important to remember that certain duties of the licensee to the client remain in full force and effect even if active agency has ended. For example, the licensee may not divulge the client's confidences for one year, nor may the licensee take any action in violation of the provisions of NRS 645 which may harm the ex-client.[74]

4. DEATH – CLIENT OR BROKER

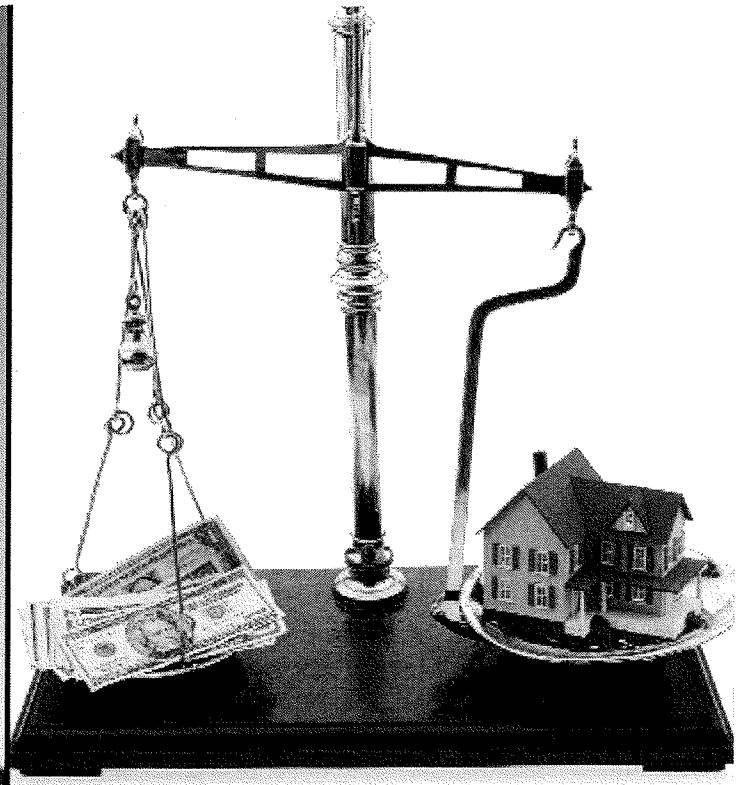
It is old law in Nevada that a client's death terminates the agency.[75] Nevertheless, the broker may still have rights under the original brokerage agreement for the collection of compensation.[76]

Upon the death of a licensee (broker, broker-salesperson, or salesperson) his or her real estate license automatically expires.[77] Without a valid real estate license, there can be no legal representation. Since the brokerage agreement is with the broker, if a broker-salesperson or salesperson dies, the brokerage agreement continues in place. It is then between the broker and client to determine if the brokerage agreement should continue with the services of a different broker-salesperson or salesperson or whether the brokerage agreement will be canceled. If the broker dies, the broker's agency representation as evidenced by the brokerage agreement ends. In either case, whether the death is of the broker or his or her broker-salesman or salesman, the client continues to be responsible for paying any compensation earned by the broker before the licensee's death.

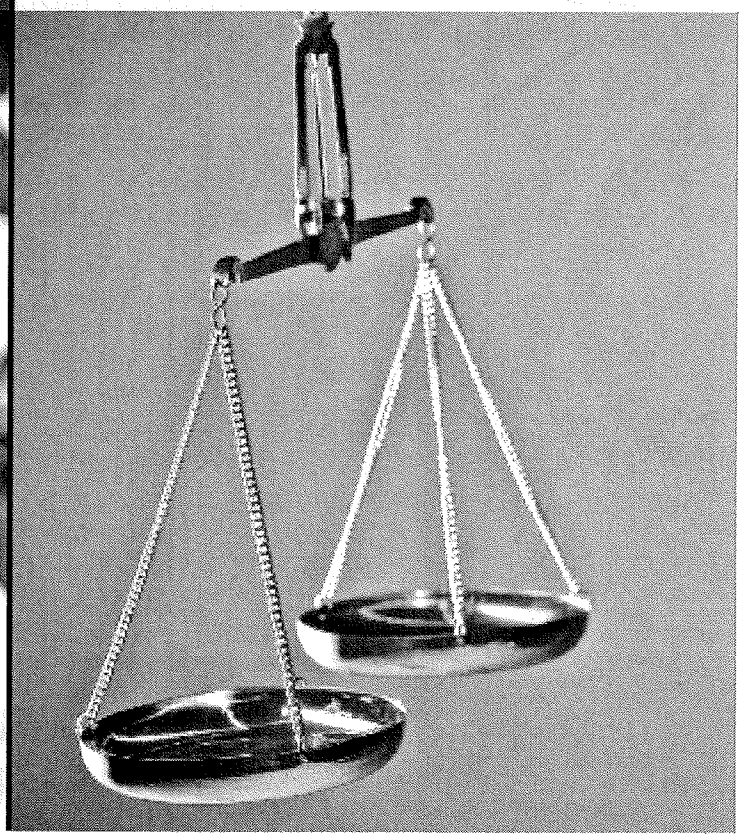
E. REVIEW

The basis of all real estate brokerage representation is founded upon agency law. This law encompasses the duties and responsibilities of the broker (and by extension all licensees under him or her). In Nevada, the broker's duties and responsibilities are codified – turned into statute and made a part of the NRS or NAC. Case law explains by example how those statutory duties (and their common law antecedents) are applied by the courts. Most agency occurs with the representation by a broker of one party to a real estate transaction. Nevertheless, Nevada law allows the broker to represent multiple parties with conflicting interests when such representation is disclosed to, and approved of, by the parties. To that end, Nevada requires each licensee to provide a written agency disclosure form called the Duties Owed by a Nevada Real Estate Licensee, and if there is multiple representation, the licensee is required to have the clients complete the Consent to Act form. The law limits the licensee's liability in certain situations with caveats and exceptions to such liability waiver. Finally, the broker's agency relationship may be terminated in various ways from fulfilling the terms of the brokerage contract to the death of the client or broker.









II. NEVADA LAW ON FIDUCIARY DUTIES

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1. NRS 1.030.

2. NRS 645.251.

The laws and regulations that govern the licensee and the real estate transaction come from various sources. The main three sources are statute, regulation, and common law. Besides state law, the licensee is governed by applicable federal statutes and regulations. The focus here is on state law and regulation as they are modified by applicable case law.

A. EVOLUTION OF THE COMMON LAW TO STATUTORY DUTIES

Federal statutes are found in the United States Code (U.S.C.). Federal regulations are in the Code of Federal Regulations (C.F.R.).

Common, or case law, is law identified through judicial decisions in lawsuit cases.

The common law has its origins in previous judicial decisions. The United States derives its common law from England. When deciding a case, a judge looks at how similar cases were previously decided. This helps the judge and the legal system to maintain consistency.

Over the years a body of law was compiled from these cases addressing common topics such as contracts, agency, and real property. Nevada has adopted this English common law. [1] It covers any legal issue not addressed by statute or regulation. Statutes or regulations control unless otherwise stated. In 1995, many of the licensee's common law duties were put into statute and for these duties (NRS 645.252, 645.253, and NRS 645.254) the common law was expressly rejected.[2] Even so, judicial decisions and traditional common law terms direct how statutes or regulations are interpreted.

Common Law Terms: The rules of agency evolved from the common law. Agency law defines the duties and responsibilities a real estate licensee has to the client. However, the legislators, when writing the statutes, often used traditional common law terms but did not define them. Without an understanding of what those common law terms mean, the licensee will not know what must be done or avoided. For example, a licensee must have absolute fidelity to the client's interest. (NAC 645.605(6)) What is

absolute fidelity? The licensee must look at case law to understand the parameters of absolute fidelity.

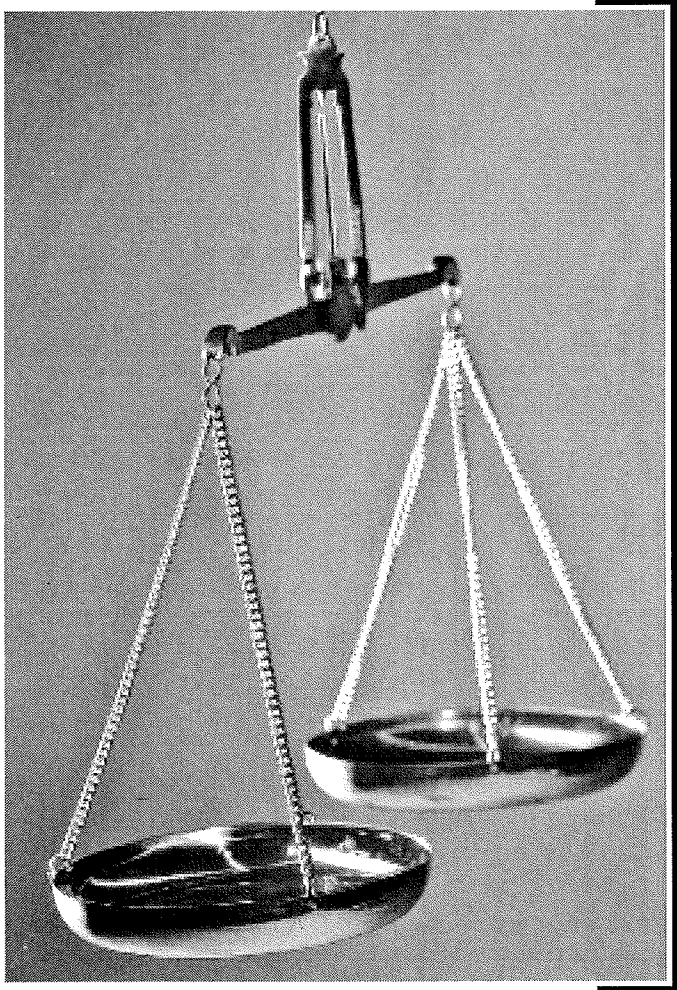
Common Law Agency: Under common law, a broker's main duty is to ensure the client's business and interests are carried out to the client's best advantage.[3] This is the broker's fiduciary duty. It includes:

1. Absolute fidelity to the client's interests;

2. Honesty;

3. The broker's use of reasonable skill and care in all aspects of the transaction, and

4. Full disclosure of all issues and facts concerning the property or the transaction.[4]



3. Lemon v. Landers, 81 Nev. 329, 332 , 462 P.2d 648 (1965).

4. Lowe v. State Dep't of Commerce, 89 Nev. 488, 494, 515 P. 2d 388 (1973), see also Jory v. Bennight, 91 Nev. 763, 542 P.2d 1400, 1404, (1975).

B. CLIENT BEFORE SELF– ABSOLUTE FIDELITY

A licensee has the duty of absolute fidelity to the client's interests.[5] Absolute fidelity means a licensee must put the client's interests ahead of the licensee's interest. A licensee "will not be permitted to pervert his authority to his own personal gain in severe hostility to the interest of his principal."[6]

For example, absolute fidelity is breached when a licensee withholds an offer from the client in order to purchase the property himself. In Holland Realty v. Nevada Real Estate Commission (1968)[7] Grant Holland, a Las Vegas broker, sued the Real Estate Division when it revoked his license. The Real Estate Commission had found him guilty of violating NRS 645 for misrepresentation, making false promises to induce performance, and receiving a secret and undisclosed profit.

Holland had double escrowed a property without disclosure to either party and kept the profit. In that transaction, he misrepresented who was taking title, his agency status, and who were the real parties. He then sold the property a third time as an undisclosed buyer's agent while acting as the seller's agent under a net listing agreement. He did not disclose to the seller the property's true sale price. Again, he kept the difference.

After the Commission revoked his license, Holland sued the Division. The court upheld the Division's discipline and found Holland's behavior breached his basic fiduciary duty of absolute fidelity to his clients. The court stated:

> [a] broker when pursuing his own interest cannot ignore those of his principal and will not be permitted to enjoy the fruits of an advantage taken of a fiduciary relationship, whose dominant characteristic is the confidence reposed by one in another.'[8]

There are two prongs to the duty of absolute fidelity. First, the duty to disclose the licensee's interest and, secondly, the prohibition against taking advantage of any situation, even if disclosed, that would harm the client's interests.

1. DISCLOSURE OF LICENSEE'S INTEREST

A licensee must disclose in writing to the parties whenever the licensee has a personal interest in either the transaction or the property. Such disclosure ensures everyone is aware of the licensee's potential conflicting loyalties.[9]

The licensee should be aware that some laws prohibit certain acts even if the licensee's interest is disclosed. As an example, a salesperson may not receive compensation from anyone other than his or her broker: taking such payment is illegal whether or not it is disclosed.[10]

a. Interest in the Transaction – Any time the licensee has an interest in the transaction, that interest must be disclosed in writing. An "interest in the transaction" occurs when:

5. NAC 645.605 (6).

6. Lemon v. Landers, 81 Nev. 329, 332, 462 P.2d 648 (1965).

7 & 8. Holland Realty v. NV Real Estate Comm., 84 Nev. 91, 98, 436 P.2d 422 (1968).

9. NRS 645.252 (1)(b) & (c); NRS 645.633 (1)(g); NAC 645.605 (4); NAC 645.610 (1)(b)(1-2); NAC 645.637 and NAC 645.640.

10. NRS 645.280.

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1. The licensee receives, or expects to receive, compensation from more than one party;[11]

2. Is a party in the transaction, or

3. Has a personal relationship with one of the principals.

Compensation: The licensee is under an affirmative duty to disclose to each party to the real estate transaction each "source" from which the licensee will receive compensation.[12] The statute does not require the licensee to disclose the amount of the compensation, only its source - the identity of the person or company giving the compensation.[13]

Compensation includes referral fees and other payment such as fees received from vendors to be on a broker's list of service providers. Even though the broker may give a service provider list to a client without charge, the broker must disclose if a vendor paid to be on that list.[14]

Compensation includes money the broker may accept, give or charge as a rebate or direct profit on expenditures made for the client.[15] For example, a buyer asked the broker to have a new air conditioning unit installed. The buyer paid for the unit in escrow. The air conditioning manufacturer offered a $200 rebate. The broker, when he purchased the unit, applied for and kept the rebate without disclosing it to his buyer. This is a violation of the broker's absolute fidelity to the client.

Party to the Transaction: When a licensee is acting as a principal, it is a material fact and must be disclosed.[16] This ensures all parties to the transaction are fully aware of where the licensee's loyalties may lie. Moreover, the licensee may not acquire (purchase), lease or dispose of (sell), any time-share or real property without revealing the licensee's licensed status.[17]

Relationship with a Principal: The licensee must disclose whenever he or she has a personal relationship with a principal to the transaction.[18] A licensee (including permitted property managers) must disclose the licensee's affiliation with, or financial interest in, any person or entity that furnishes maintenance or other services related to the property.[19]

RESPA: RESPA (Real Estate Settlement Procedures Act) prohibits referrals from one business to another business when owned by the same company unless there is full disclosure. These are affiliated business arrangements.[20] If a licensee has an ownership interest in a business and refers clients to that business, the licensee must disclose that ownership interest.

b. Interest in the Property – A licensee, whether acting as an agent or a principal, has an "interest in the property" whenever the licensee has, or anticipates, an ownership interest.[21] Failure to disclose the licensee's interest is an element in the Real Estate Commission's determination of whether the licensee was deceitful or dishonest.[22]

Any anticipated interest must be disclosed even if it is only a pass-through interest. For example, a licensee must disclose when the licensee takes title, however briefly, during a "double escrow."[23] Engaging in an undisclosed double escrow transaction is a breach of the licensee's absolute fidelity to the client. The Nevada Supreme Court has found it illegal when,

> [t]he broker or salesman purchases a principal's property in the first escrow, and sells it to a third party at a profit in a second escrow without a full disclosure to both the principal and the third party. The broker or salesman receives a commission on the sale in the first escrow and a secret profit on the closing in the second escrow. [24]

11. NAC 645.605 (4)(e).

12. NRS 645.252 (1)(b).

13. NAC 645.605 (4).

14. Judy Bendure, "Preferred Vendor Lists," Real Estate Division Open House, vol. 25, issue 1, Winter 2000, at p. 4. The Open House is the Real Estate Division's information bulletin.

15. NRS 645.633 (1)(g).

16. NRS 645.252 (1)(c); NAC 645.637.

17 & 18. NAC 645.640 (1).

19. NAC 645.605 (4)(b).

20. 12 U.S.C. § 2607.

21. NRS 645.252 (1)(c) and NAC 645.640.

22. NAC 645.605 (4).

23. Alley v. NV Real Estate Div., 94 Nev. 123, 125, 575 P.2d 1334 (1978).

24. Tahoe Village Realty v. DeSmit, 95 Nev. 131, 134, 590 P.2d 1158 (1979).

The Real Estate Settlement Procedures Act (RESPA), federal law, prohibits a licensee from receiving or giving kickbacks and unearned fees even if such kickbacks or fees are disclosed. (RESPA, 12 U.S.C. § 2607).

The relationships that must be disclosed are when a principal is a member of the licensee's immediate family, or a member of the licensee's firm, or an entity (such as a corporation) in which the licensee has an ownership interest.

A licensee may not take an undisclosed profit at the expense of another party, nor may the licensee purchase or sell the property of a client through the use of a third person without full disclosure and the client's consent.[25]

2. DISCLOSURE IN WRITING

Whether the licensee's interest is in the transaction or in the property, the disclosure must be in writing - an oral disclosure does not satisfy the regulations.[26] When disclosing the licensee's interest in the property, the disclosure must state the licensee is acquiring or selling the property for him or herself and that the licensee is a broker, broker-salesperson, or salesperson. The Real Estate Division will recognize the disclosure if the licensee includes the term "agent," "licensee," or "broker, broker-salesperson, salesperson," whichever designation is appropriate.[27]

Timing: 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 parties. The Nevada Supreme Court has defined "as soon as practicable" to mean "promptly" or "within a reasonable length of time" considering the facts and circumstances of each particular case.[28]

Advertising: If the licensee advertises a property, the advertisement must identify the licensee's licensed status. This disclosure must be made whether the licensee is acting as an agent or as a principal.[29] Accordingly, the licensee must state "for sale by owner-broker" (agent, salesperson, etc.)[30] or substantially similar words in any advertisement for the property in which the licensee is a principal.

3. CONFIDENTIALITY

A licensee may obtain confidential information during the course of the brokerage relationship when the licensee is told, or inadvertently discovers, information harmful to the client's interests.

What constitutes a client's confidential information varies from transaction to transaction and from client to client. The Real Estate Division has previously identified confidential information as "the client's motivation to purchase, trade or sell, which if disclosed, could harm one party's bargaining position or benefit the other."[31] It includes any information that a reasonable person would expect, or request, to be kept confidential. The licensee should consider confidential any information that, if disclosed to the other party, would harm the client's position. A licensee is under the duty not to disclose the client's confidential information for one year after the revocation or termination of the brokerage agreement.[32]

Disclosure Duty: At no time does a client's request for confidentiality control the licensee's disclosure duty. A licensee must disclose to all parties any material and relevant facts relating to the property.[33] This affirmative duty overrides a client's request that the licensee not disclose relevant property facts such as defects. What facts are material and relevant? Any fact about the property that is likely to influence a principal about the property's desirability.[34]

Confidential Material Facts: By law, certain facts that a party may consider material, are deemed not material. Since the law says those facts are not material, the seller and licensee may consider them confidential. The licensee is not liable for their non-disclosure.[35]

25. Lemon v. Landers, 81 Nev. 329, 332, 462 P.2d 648 (1965).

26. NAC 645.637.

27. NAC 645.640 (1).

28. American Fidelity Fire Ins. v. Adams, 97 Nev. 106, 108, 635 P.2d 88 (1981).

29. NAC 645.640 (2).

30. NAC 645.610 (1)(b) (1-2).

31. Real Estate Division form, Consent to Act, 05/01/05..

32. NRS 645.254 (2).

33. NRS 645.252 (1)(a).

34. Holland Realty v. NV Real Estate Comm., 84 Nev. 91, 98, 436 P.2d 422 (1968).

35. NRS 40.770.

A defect is "a condition that materially affects the value or use of property in an adverse manner." NRS 113.100(1).

In Nevada, it is not material if the property was the site of a homicide, suicide or death. The exception is if the property caused the death, for example, someone was electrocuted by the home's bad wiring.

It is not material if the property was occupied by a person with AIDS or any other disease not transmitted through occupancy of the property.

With one exception, it is not material if the property was the site of a felony. The exception is if the property was used to manufacture methamphetamine and the property was not rehabilitated.

It is not material if the property is located near a licensed facility under NRS 449.0055, transitional living for released offenders. (This does not include a halfway house for recovering alcohol and drug abusers.)

Finally, by law it is not material if a sex offender lives, or is expected to live, in the community. This information does not need to be disclosed unless the broker and a buyer have agreed otherwise.

The licensee may not be held liable to the other party for non-disclosure of any of the above items. However, a buyer-client and licensee may agree the licensee will disclose the information if the licensee knows the answer. Any such agreement should be in writing and cleared with the broker.

No Misinformation: A licensee is not allowed to lie or give misinformation. If asked a direct question regarding a confidential matter, the licensee should state the information is confidential and refuse to answer. The client may authorize the licensee to direct the individual to a reliable source.

Required Disclosure: When may a licensee disclose confidential information? The law provides protection for disclosure of confidential information under any one of four circumstances: first, when a court of competent jurisdiction orders disclosure; second, when the client authorizes disclosure;[36] third, when the licensee discloses information to the broker;[37] and fourth, when the information is required to be disclosed by law. The courts will not allow the licensee to hide behind a client's instruction to keep information confidential that the licensee is obligated by law to disclose.

The right of confidentiality is held by the client, not the licensee. That means it is the client's decision on whether confidential information may be disclosed. If there is any question whether a fact or information is confidential, the licensee must clear it with the client before disclosure.



36. NRS 645.254 (2).

37. NRS 645.253.

AIDS stands for acquired immune deficiency syndrome, a deadly disease caused by infection and transmitted through blood or bodily secretions.

Methamphetamine (meth) is an illegal street drug. During the making of meth toxic fumes seep into the walls, floors, sinks and counters. General cleaning or painting does not remove the residue. The property must be "rehabilitated" (made habitable again). Only the government (for example, a health department) or a certified entity can legally rehabilitate a meth property NRS 40.770(6).

NRS 179D.400 defines a "Sex Offender" as a person who is: (a) Convicted of a sexual offense listed in NRS 179D.410; or (b) Found guilty by a court of a sexual offense, such as: (1) A sexually violent predator, or (2) A nonresident sex offender who is a student or worker within this state.

NRS 209.081 "Offender" means any person convicted of a crime under the laws of this state and sentenced to imprisonment in the state prison.

38. NRS 645.3205.

39. NRS 645.633 (1).

40. Holland Realty v. NV Real Estate Comm., 84 Nev. 91, 98, 436 P.2d 422 (1968).

41. NRS 645.630 (1)(a) & (b).

42. NRS 645.633 (1)(e).

43. NRS 645.635 (10).

44. NAC 645.525.

45. NRS 645.993.

46. NRS 645.645.

47. NAC 645.650.

48. Letter to Licensees, from Gail Anderson, Real Estate Division Administrator, "Disclosure of fees and what they are labeled". December, 2002, as a violation of NRS 645.3205.

49. NAC 645.605 (6).

"Moral turpitude" is conduct contrary to justice, honesty, or morality and includes offenses involving fraud, breach of trust, perjury and intentional dishonesty for personal gain. State Bar of Nevada v. Claiborne, 104 Nev. 115, 756 P.2d 464 (1988). See also RED Open House, Fall 2007, page 3.

C. DUTY OF HONESTY

1. NO DECEIT, FRAUD OR DISHONESTY

Whether acting as a principal or an agent, a licensee has a duty to all parties not to be deceitful, fraudulent or dishonest.[38] Deceit is the act of intentionally or recklessly giving a false impression or statement, so that another person will rely on it. It includes any conviction involving bad faith, dishonesty, a lack of integrity, or moral turpitude.[39] Dishonesty is the act of not telling the truth. In other words, the licensee must at all times be honest. Webster's defines honesty as "adherence to the facts."

Licensee's Personal Affairs: The duty of honesty extends past the licensee's business activities and into his or her personal affairs. Nevada's Supreme Court found,

> [t]here can be no justification of an interpretation of the licensing act which would allow a broker to be honest as a broker and dishonest as a property owner. A broker who is dishonest or incompetent in the real estate activities in which he is involved as owner, is not likely to be honest or competent in his activities which are purely brokerage in nature. The purpose of real estate licensure is to bar the dishonest or incompetent from entry into this occupation. 'We believe that a single standard of honesty and competency should guide a broker's real estate activities whether performing as broker or owner.'[40]

Dishonest Activities: Activities that constitute deceitful, fraudulent or dishonest behavior include, but are not limited to, any material misrepresentation or false promises of a character likely to influence, persuade or induce the listener's reliance on the misrepresentation;[41] guaranteeing future profits on the resale of property;[42] submitting any false or fraudulent appraisal to a financial institution or other interested person;[43] naming false consideration in a document;[44] filing with the Division any false documents with willful, material misstatements of fact,[45] and misrepresentation in the sale of home protection insurance.[46]

How certain brokerage fees are labeled may cause RED concern. Calling a charge a name that implies the fee is required by law when it is not, will subject the broker to RED discipline. For instance, regulations require a broker to maintain brokerage transaction files for five years.[47] Some brokers have charged their clients for this file storage by calling the charge, among other terms, a "regulatory compliance fee." The Division has stated this is misleading "conduct which constitutes deceitful, fraudulent or dishonest dealing... ."[48]

The licensee's duty of honesty includes the duty to deal fairly with all parties to a transaction, not just the client.[49]

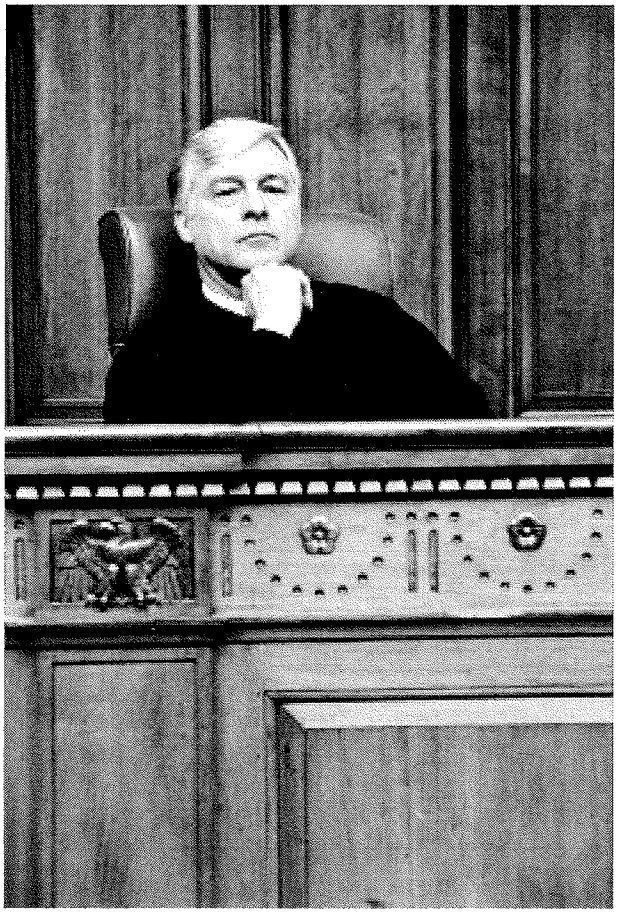
Discipline: The Real Estate Commission may discipline any licensee convicted of any crime involving fraud, deceit, misrepresentation or moral turpitude. It may discipline whether or not the licensee pled nolo contendere (no contest) or guilty. The Division may file criminal charges against any person, licensee or not, who sells real property by intentional misrepresentation, deceit or fraud.[50]

2. SILENCE AS DECEIT

A corollary to the duty to be honest is the duty to speak the whole truth and not be misleading by silence.[51] Generally, mere silence is not a misrepresentation unless there is a duty to speak. Licensees have such a duty. Nevada's agency laws impose upon the licensee the duty to disclose to each party all known material facts about the property.[52] Additionally, the licensee must disclose to the client all known facts about the transaction.[53]

Nevada's Supreme Court has said a licensee's willful silence in the face of a client's expressed misunderstanding is "more deceit than any other category that the court can find... ."[54] A party may have a mistaken belief about the property, elements of the transaction, or be ignorant of a material aspect or defect. If the licensee knows of the mistaken impression, the licensee has the duty to correct the misunderstanding. If the licensee remains silent, this is deceit as much as an affirmative lie.

If a fact is required to be disclosed by the licensee, no instruction from a client can absolve the licensee from liability for willfully withholding the information.



50. NRS 645.990 (1)(b).

51. Northern NV Mobile Home Brokers v. Penrod, 96 Nev. 394, 398, 610 Nev. 724 (1980).

52. NRS 645.252 (1).

53. NRS 645.254 (3)(c).

54. Holland Realty v. NV Real Estate Comm., 84 Nev. 91, 97, 436 P.2d 422 (1968).

55. NRS 645.254 (1).

56. NRS 645.257 (3).

57. NRS 645.633 (1)(h).

58 & 59. NRS 645.252 (2) and NAC 645.605 (5).

60. NAC 645.600 (3) & (4).

61. NRS 645.633 (1)(h) and NAC 645.605.

62. Doud v. Las Vegas Hilton Corp., 109 Nev. 1096, 1100, 864 P.2d 1272 (1993).

63. Turney v. Sullivan, 89 Nev. 554, 555, 516 P.2d 672 (1973).

64. Hammerstein v. Jean Dev. West, 111 Nev. 1471, 1476, 907 P.2d 975 (1995).

D. REASONABLE SKILL AND CARE: COMPETENCY

1. STANDARD OF CARE

In any transaction, the licensee is required to exercise reasonable skill and care.[55] What is "reasonable skill and care?" It is the degree of care that a reasonably prudent real estate licensee would exercise in similar circumstances.[56] In other words, the licensee must not act incompetently or with gross negligence.[57]

At a minimum, a licensee is expected to have the knowledge required to obtain a then current real estate license and to act on that knowledge.[58] The minimum is just that, a minimum. A licensee may be held to a higher level of competency and skill if a licensee has, or claims to have, greater knowledge, expertise, or a specialization.

The licensee must keep informed of the current laws and regulations that impact the licensee's real estate practice.[59] Brokers who have agents are required to familiarize their licensees with all relevant current federal and state laws. Additionally, the broker must ensure there is a system in place for monitoring the licensee's compliance with this regulation.[60]

Black's Law Dictionary defines negligence as "culpable carelessness".

2. NEGLIGENCE

The licensee will have liability if the licensee's gross negligence causes harm.[61] What is negligence? Negligence is a legal term used to identify unreasonable, but generally unintentional behavior that causes another damage or harm.

Elements of Negligence: Briefly, there are four elements to negligence. All four must exist before there is a legal cause of action. Those elements are duty, breach, cause and harm.[62]

To have liability there must first be a duty.[63] The licensee's duties are found in statute, regulation, common law, and contract. Those sources outline what must be done and avoided in the licensee's relationship with his or her client, other parties in the transaction, the public, the licensee's peers and broker, and the Real Estate Division.

The second element is a breach of that duty. A licensee may breach a duty by not doing something one is obligated to do ("nonfeasance"); by doing something one is not supposed to do ("malfeasance"); or by doing something in a careless or haphazard manner ("misfeasance"). For example, it is nonfeasance if the licensee does not provide a copy of the brokerage agreement to the client (NRS 645.300); malfeasance if the licensee discloses a client's confidences (NRS 645.254(2)); and misfeasance when a licensee overlooks some material term of the purchase agreement (NRS 645.254(4)).

The third element requires the breach of duty to have caused the harm.[64] For instance, a listing agent inadvertently tells the buyers that the sellers are divorcing and need to sell quickly. This is an unauthorized disclosure of a seller confidence. Several weeks later

the buyers, unhappy with the property condition, terminate the escrow. The sellers have lost the sale. In this scenario the listing agent breached his duty to the sellers when he disclosed the sellers' confidential information; however, the sellers' loss was not a result of the agent's breach. There is no causal link between the licensee's breach and the sellers' harm. The agent's negligent act of disclosing the divorce was not the cause of the buyers rejecting the property.

Nevertheless, this does not mean the sellers are without recourse for the agent's breach. The sellers may file a complaint with the Division and the licensee may be subject to regulatory discipline.[65]

Finally, there must be damages or harm. Harm occurs when the licensee breaches a duty and that breach causes an injury, loss or detriment to the client. Often, a client's loss may be remedied by money (damages).[66] There are various legal restrictions on the amount and type of damages a person may claim under negligence. At no time should a licensee discuss negligence damages with a client.

Strict Liability: Under certain circumstances the law may impose liability strictly for violating a statute or regulation without anyone being harmed.[67] For example, failing to put a definite termination date on an exclusive brokerage agreement eliminates the broker's right to collect a commission regardless of whether the client was harmed.[68]

"Gross negligence" is negligent behavior with a reckless disregard for the consequences of one's actions. It requires the licensee to have understood and ignored the potential harm.[69] The statutes generally impose regulatory liability on the licensee for the licensee's gross negligence.

NAC 645.605 lists a series of actions that if not followed, the Commission may consider the lack of doing those things, gross negligence.

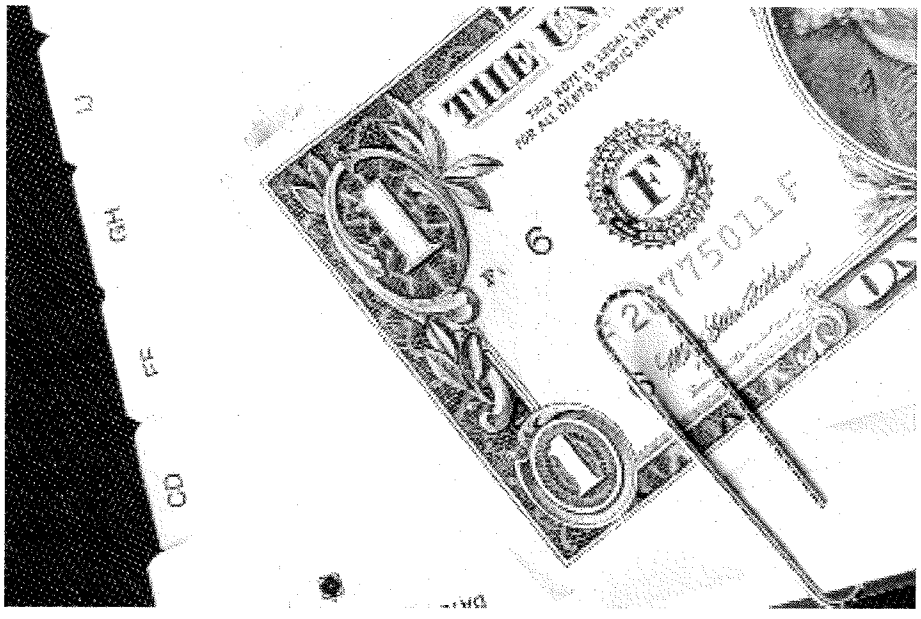
65. NRS 645.633 (1)(b).

66. Arnesano v. State, Dep't Trans., 113 Nev. 815, 821, 942 P.2d 139 (1997).

67. NRS 645.630, 645.633 and 645.635.

68. Bangle v. Holland Realty Inv. Co., 80 Nev. 331, 393 P.2d 138 (1964).

69. Hart v. Kline, 61 Nev. 96, 116 P.2d 672 (1941). See also NAC 645.605



70. NRS 645.252 (1)(a).

71. NRS 645.257 (3).

72. NRS 645.252.

73. Garff v. J.R. Bradley Co., 84 Nev. 79, 85, 436 P.2d 428 (1968).

74. Woods v. Label Investment Corp., 107 Nev. 419, 812 P.2d 1293 (1991) and Collins v. Burns, 103 Nev. 394, 741 P.2d 819 (1987).

75. NRS 645.252 (1)(a).

76. Lowe v. Real Estate Division, 89 Nev. 488, 490, 515 P.2d 388 (1973).

E. DISCLOSURE: "SHOULD HAVE KNOWN" – DUTY TO INVESTIGATE

1. SOURCE

The licensee has a duty to disclose to each party to the transaction any material and relevant facts, data, or information which he or she knows, or which, by the exercise of reasonable care and diligence, should have known, relating to the property.[70]

Standard of Care: The standard of care is the legal level against which a person's behavior is judged. It stems from the idea that a "reasonable person" will act in a certain way - usually with prudence, diligence, and care not to harm anyone or anything. This is the general standard of care.

A real estate licensee is assumed to have a superior knowledge of real estate transactions. With that superior knowledge there is a heightened standard of care. For a real estate licensee, the minimum standard of care is the knowledge to pass a then current real estate license exam.[71]

This heightened standard of care requires a licensee to know and follow all the duties imposed by law. Disclosure is a core duty. A licensee must disclose any material facts relating to the property of which the licensee has actual knowledge.[72]

Actual Knowledge: What is actual knowledge? The court has found,

> [a]ctual knowledge consists not only of what one certainly knows, but also consists in information which he might obtain by investigating facts which he does know and which impose upon him a duty to investigate.[73]

The law will not allow a licensee to ignore "danger signals" or "red lights,"[74] to gloss over conflicting information, or to act carelessly in obtaining material facts about the property under the excuse that the licensee did not "know for certain" relevant facts.

The question becomes what facts, data or information must the licensee investigate and how thoroughly? A licensee is required to investigate "any material and relevant facts, data or information relating to the property" using "reasonable care and diligence."[75]

2. RELATING TO THE PROPERTY

The duty to investigate covers those facts relating to the property. "Relating to the property" normally means items specific to the individual property, but may include the investigation of some information which may impact the property or its use such as a proposed highway, shopping center, or school.[76]

a. When Must A Licensee Investigate – Generally, a licensee is responsible for the reasonable investigation of information, data or facts if: 1) the information concerns an item that directly impacts the property; 2) the licensee has volunteered, or claims an expertise in, any relevant information; 3) the information is required to be disclosed by law; or 4) the broker has explicitly contracted with the client to be responsible for obtaining certain information.

Impacts the Property: The licensee must investigate any item directly related to, or that impacts, the physical condition of

the property. For example, in Epperson v. Roloff, (1986),[77] the listing agent was told by the seller the home had a "solar implication." The agent did not ask the client to explain what a solar implication might be. Nevertheless, he told potential buyers the house had a solar feature which really saves on winter heating costs. The feature turned out to be a hole in the roof covered with corrugated sheet metal painted black. The buyers sued the broker and sellers for misrepresentation. The listing agent had a duty to the buyers to disclose all relevant facts about the property. He breached that duty by not investigating and disclosing what the "solar feature" really was.

The level of investigation imposed by the law does not require the licensee to become a "property inspector," NRS 645.252(4)(c) but it does require reasonable and common sense inquiry into the physical condition of the property.

Volunteered Information: When the licensee has volunteered specific information or claims an expertise in a certain topic, the licensee will be held responsible for its reasonable accuracy. This does not mean the licensee guarantees the information; however, the licensee must take reasonable steps to insure the information is up-to-date and sufficiently correct. For example, a property fronts an extensive tract of undeveloped land. If the licensee states the land is controlled by the Bureau of Land Management and won't be developed, that volunteered statement must be accurate and current. Before the licensee volunteers facts, he or she has a duty to investigate the truthfulness of any statement.

Disclosure Required by Law: A licensee has a duty to investigate property facts that may require certain disclosures obligatory by law. For example, Washoe County, Nevada, has a Solid-Fuel Burning Device (wood stove) regulation.[78]

The real estate licensee has a duty to investigate whether or not a unit has a fireplace or wood burning stove and then to provide the seller with the required disclosure form.[79] However, the licensee would not be required to determine if an existing wood stove was in compliance with Code. (That type of inspection requires a county certificate.)

Contracted Investigation: Finally, the broker may, by contract, assume a duty to investigate and disclose facts that are beyond those required by law. For example, the broker and client may agree that the broker will investigate whether the property can be zoned for a particular future use. At all times the broker must be careful not to provide services requiring a license, permit or certification which the broker does not have.

Remember, the purpose of the duty to investigate is to find and disclose material and relevant facts about the property so that a principal may make an informed decision.

b. What Must Be Investigated – When a fact relates to the property, the licensee is required to investigate if it is "material and relevant." The Nevada Supreme Court, quoting the Restatement of Agency §390, stated,

> A fact is material... if it is one which the agent should realize would be likely to affect the judgment of the principal ...which he should realize [is] likely to have a bearing upon the desirability of the transaction...[80]

Anything impacting the physical condition of the property is material and relevant. Anything that affects the property's value or use is material and relevant.

77. Epperson v. Roloff, 102 Nev. 206, 719 P.2d 799 (1986).

78. Washoe County, District Board of Health Regulation Governing Air Quality Management, Section 040.051§A(2)(b).

79. NRS 645.252 (4)(b).

80. Holland Realty v. NV Real Estate Comm., 84 Nev. 91, 98, 436 P.2d 422 (1968).

Professional property inspectors are licensed by the state and regulated by the Real Estate Division under NRS 645D.

81. NRS 40.770.

82. NRS 40.770 (4).

83. NRS 645.252.

84. Prigge v. South Seventh Realty, 97 Nev. 640, 641, 637 P.2d 1222 (1981).

85. NRS 645.257 (2).

86. NRS 645.259 (2).

87. NRS 645.259 (1).

88. NRS 645.259 (2) referring to NRS 645.252.

89. Woods v. Label Investment Corp.107 Nev. 419, 426, 812 P.2d 1293 (1991).

90. NRS 645.254 (3)(c).

91. NRS 645.252 (4)(b).

A "material fact" is one that is significant or essential to the issue or matter at hand.

See "Confidential Material Facts" on page II - 7.

c. Exemptions – Certain material facts that may be relevant to the client are by law not considered material to the transaction. With certain restrictions, these facts are exempted from the licensee's duty of disclosure and investigation. Thus, the licensee does not have any liability if those facts are not disclosed.[81]

There are restrictions to each of these that the licensee must know. For example, a seller does not need to disclose if the property was a site of a felony. The restriction is if the property was the site of a meth lab and not "rehabilitated," then the seller, and licensee, must disclose. These exemptions may be waived if the broker has an agreement with the client to investigate or disclose any of the above.[82]

Statements by Experts: A licensee is not responsible for investigating or verifying any statements of, or work performed by, a licensed or certified professional, expert, or property inspector licensed under NRS 645D.[83] For example, if a licensed roofer has given the buyer a report that the roof is sufficient, the licensee is not responsible for climbing on the roof to verify the roofer's professional opinion.

d. Representations of the Client – The licensee has the right to rely on the client's representations about the property unless the licensee knows, or should know, the information is false. The Nevada Supreme Court has said it will not "hold an agent... responsible for an independent search for concealed facts, in the absence of any information which would have put the agent on notice."[84]

By law, it cannot be assumed that the licensee has the client's knowledge about the property.[85] Furthermore, a licensee cannot be held liable for the Seller's non-disclosure of information on the Seller's Real Property Disclosure Statement, if:

1. The licensee did not know of the non-disclosure, and

2. The information is of public record.[86]

The licensee will be held liable for non-disclosure if the licensee knows the client made a misrepresentation and did not tell the recipient that the statement was false.[87] As with absolute fidelity, the courts will not allow a licensee who knew better to hide behind a client's misrepresentation.[88] The bottom line? The licensee may rely on information provided by the client unless such reliance is unreasonable. If a licensee,

> has information which would serve as a "red light" to any normal person of her intelligence and experience [or]... is aware of facts from which a reasonable person would be alerted to make further inquiry, then he or she has a duty to investigate further and is not justified in relying on the seller's description of the property.[89]

3. CONCERNING THE TRANSACTION

Facts that concern the transaction must be disclosed to the licensee's client.[90] This disclosure may require the licensee to reasonably investigate certain aspects of the transaction. These may include, but are not limited to, facts about the escrow, relevant loan information, or the status of other transactions (for example, contingency sale property).

However, a licensee is not required and has no duty to conduct an independent inspection of the financial condition of a party to a real estate transaction. The licensee should not be acting as a loan officer, financial or tax consultant.[91] A licensee should not request, investigate, or review a party's credit report.

A licensee may reasonably rely on financial information provided by the client. In Collins v. Burns (1987),[92] Golanty was the listing agent of a small liquor store owned by Burns. He prepared a sales-and-expense fact sheet and a profit chart using financial figures provided by his client. Relying on the chart and the licensee's fact sheet, Collins purchased the store. She later defaulted on the note and Burns sued for the unpaid principal. Collins countersued and claimed she was defrauded as the information on the fact sheet and chart were grossly inaccurate. The court found for Collins. Although Golanty drafted the chart and fact sheet, he was not a party to the Supreme Court case. He had reasonably relied on the information provided by his client and there was nothing in that information that would have alerted Golanty to his client's misrepresentation.

92. Collins v. Burns, 103 Nev. 394, 741 P.2d 819 (1987).

93. NRS 645.252 (1)(a).

4. LEVEL OF INVESTIGATION

A licensee is not required to conduct an investigation of the condition of the property which is the subject of the real estate transaction. (NRS 645.252(4)(c)) This statute relieves the licensee of the duty to act as a property inspector. Property inspectors are licensed individuals and are experts in their field. Under this statute, a licensee is not required to perform acts that should be done by licensed property inspectors. However, this does not relieve the licensee from his or her duty to exercise reasonable care and diligence. If a question arises as to the condition of the property, the licensee must address that issue by referring the client to a qualified expert. A licensee will not escape liability for not exercising reasonable care and diligence by using the argument that he or she has no duty to investigate.

Once a licensee is required to investigate, how detailed should that investigation be? The statute says the licensee must investigate using reasonable care and diligence.[93] Reasonable care is taking the time and effort necessary to gather the required paperwork and review it for "red lights". It means looking at the property and comparing it with the seller's statements to ensure the property is what is represented. During this review, the licensee is looking for something out of the ordinary that either contradicts what has been stated, differs from what the licensee knows, or is otherwise amiss.

This reasonable level of investigation does not mean a licensee should interpret documents, determine their legal consequences, or act as an appraiser, property inspector, loan officer, lawyer, or private investigator. As discussed elsewhere, the licensee should not attempt to perform any service not specific to the real estate transaction.

The duty to investigate does require the licensee to have sufficient knowledge to identify any warning signs and to point out these warning signs to the client. Once a concern is identified, the licensee should suggest the client obtain further professional services.

"Statement" refers not just to what is said, but to all the various representations of the seller such as the multiple listing service property profile print-out, the Seller's Real Property Disclosure Form, and relevant advertising.



94. NRS 645.254 (3)(d).

95. NAC 645.605 (3).

F. SUPPLEMENTARY SERVICES

1. BEYOND THE LICENSEE'S EXPERTISE

If a licensee is asked by a client to perform services outside the licensee's expertise, the client must be told the matter is beyond the licensee's current proficiency and advise the client to obtain guidance from an expert.[94]

This does not mean the licensee cannot expand into new areas. It does mean if the licensee is unfamiliar with a property type or service, the licensee is required to disclose that fact to the client and obtain the assistance of a qualified authority before proceeding.

2. BEYOND THE LICENSEE'S AUTHORITY

A licensee may be disciplined for providing specialized professional services outside the licensee's authority.[95] It does not matter if the advice is accurate or the service well done. Liability lies in doing the thing, not in its result. "Matters beyond the expertise of the licensee" include, but are not limited to, activities that requires a license, permit or professional certification. If the licensee does not have such a license, permit or certification, the activity is automatically beyond the licensee's authority.



A licensee must be aware of the boundary between authorized real estate services and unauthorized services. Often a licensee is requested by a client to advise or act on a matter for which the licensee is not authorized. Sometimes however, the licensee, willingly and without instruction, crosses this boundary.

In Goldstein v. Hanna (1981),[96] Callahan was the listing agent for a condominium owned by Hanna. Goldstein and Hanna signed a lease with option to purchase to close by December 9, "unless exercised prior thereto." During the lease period, Goldstein exercised the option and signed a purchase agreement with another buyer using a double escrow. Both closing dates were set for August 29. Prior to the closing, the ultimate buyer backed out. Goldstein contacted Callahan who advised him the option was still good until December 9. This was both a misstatement of the law and beyond Callahan's authority. Goldstein, justifiably relying on Callahan's statement, did not close on August 29. The seller then cancelled the escrow and attempted to get the property back. Goldstein sued Hanna for specific performance citing his reliance on Callahan's statement. Though the court's decision was split, Hanna eventually lost the property.

The two areas in which a licensee is most likely to provide unauthorized services are with legal and appraisal activities.[97] Clients will ask a licensee to tell them their rights under a contract, or ask what their legal options are. Additionally, clients often ask the licensee what a property is worth or the value of a business. Because these activities are so intricately woven into the fabric of a real estate transaction, the licensee can easily slip into providing unauthorized answers and services. If he or she does so, it is a violation of not only NRS 645, but of the statutes regulating those professions.

Unauthorized Practice of Law: The unauthorized practice of law is strictly prohibited in Nevada.[98] It is monitored by the State Bar of Nevada under the control of the Nevada Supreme Court.[99] Unfortunately, there is no statute or regulation which defines what activities constitute the practice of law. Through case law, the courts have provided a list of some activities that are considered "practicing law." These include discussing with a client the legal effect of an act; interpreting legal provisions in a document; discussing the rights or responsibilities of the parties; selecting and providing pre-printed legal documents; or determining the legal sufficiency of any action or document.[100]

Many of the actions done daily by real estate licensees come close to those listed above. Some of these are found in the very definition of a real estate broker.[101] Some are required by the broker's statutory duties.[102] Other activities are inherent in the nature of the broker/client relationship.[103] Nevertheless, the unauthorized practice of law is a very fine line which the licensee must stringently guard against stepping over. As with any question of unauthorized professional counsel, the licensee should suggest the client obtain advice from an expert.[104]

Appraisal and the BPO: An "appraisal" is "an analysis, opinion or conclusion, written or oral, relating to the nature, quality, value... of, identified real estate for or with the expectation of receiving compensation." [105] In Nevada, only appraisers are authorized to prepare an appraisal. [106] Appraisers are licensed and regulated by the Real Estate Division. [107]

96. Goldstein v. Hanna, 97 Nev. 559, 635 P.2d 290 (1981), Justices Mowbray and Manoukian dissenting.

97. Real Estate Commission Disciplinary Fine Report, 1/95 through 9/30/04.

98. NRS 7.285 (1).

99. NRS 7.725.

100. Pioneer Title Insurance & Trust Co., v. State Bar of Nevada, 74 Nev. 186, 326 P.2d 408 (1958).

101. NRS 645.035.

102. NRS 645.252(3).

103. NRS 645.252(2).

104. NRS 645.254(3)(d).

105. NRS 645C.030.

106. NRS 645C.040.

107. NRS 645C.260.

An option once exercised, even if before the option's ultimate cut-off date, terminates the option and the contract becomes a bilateral purchase agreement. Once the option is exercised, if the sale isn't completed, the option cannot be resurrected.

Ubiquity does not remove illegality.

108. SB 184, sec 8

109. NRS 645C.150 (4).

110. SB 184, sec. 1, NAC 645.05 (3) and NRS 645C.260.

111. SB 184, sec. 1

112 NRS 645.254 (3)(d).

One common real estate activity is often confused with an appraisal. A broker's price opinion (BPO) is a compilation of recent sales of similar properties in the general location of the target property. Real estate agents may prepare a BPO for prospective clients to help establish an estimated sale price. [108] A real estate licensee is exempt from the appraisal statutes only when providing limited services within the scope of a real estate license. [109]

Often lenders and other interested entities will request a licensee to give them an estimate of value for a fee without intending to utilize the licensee's real estate services. A licensee providing this service would be in breach of appraisal and real estate brokerage laws, and subject to discipline from both the Real Estate Commission and the Appraisal Commission.[110]

To avoid crossing into appraisal services, the law (NRS 645) now defines the BPO, and sets forth the persons for whom and the purposes for which a BPO may be prepared for a fee by a real estate licensee whose "license is in good standing." It creates limitations on the uses to which opinions prepared for specified clients may be put and requires the inclusion of a disclaimer in all BPOs stating that it is "not an appraisal of the market value of the property" for which the "services of a licensed or certified appraiser must be obtained." [111]

Other Services: Even though client requests for legal and appraisal services are most common, those are not the only professional services a client may ask for – or an enthusiastic licensee may attempt to provide. Other services include, but are not limited to, home inspection, tax and income advice, and property management. When asked to do any unauthorized activity, the licensee must either have the appropriate license, permit or certification, or refer the client to the appropriate professional.[112]

The licensee must be aware of the pitfall of relying on a client's authorization to perform any unauthorized activity. As with many areas of real estate agency law, a client's instruction does not make an illegal act legal.

G. REVIEW

The licensee's duties are found in statute, regulation, and in the common law. Most codified duties evolved from the common law using common law terms such as "fiduciary," "absolute fidelity," "negligence," and "should have known." Generally, these terms are not defined in statute or regulation.

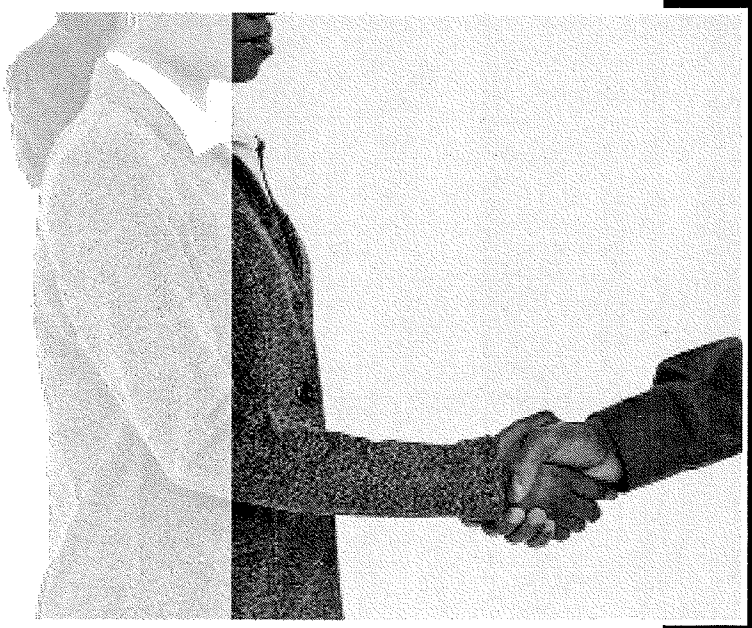
Absolute fidelity means putting the client's interests before the licensee's interest. A licensee may have an interest in the property or in the transaction. This interest must be disclosed in writing. Sometimes, even if an interest is disclosed, a licensee may not act on that interest if it would harm the client.

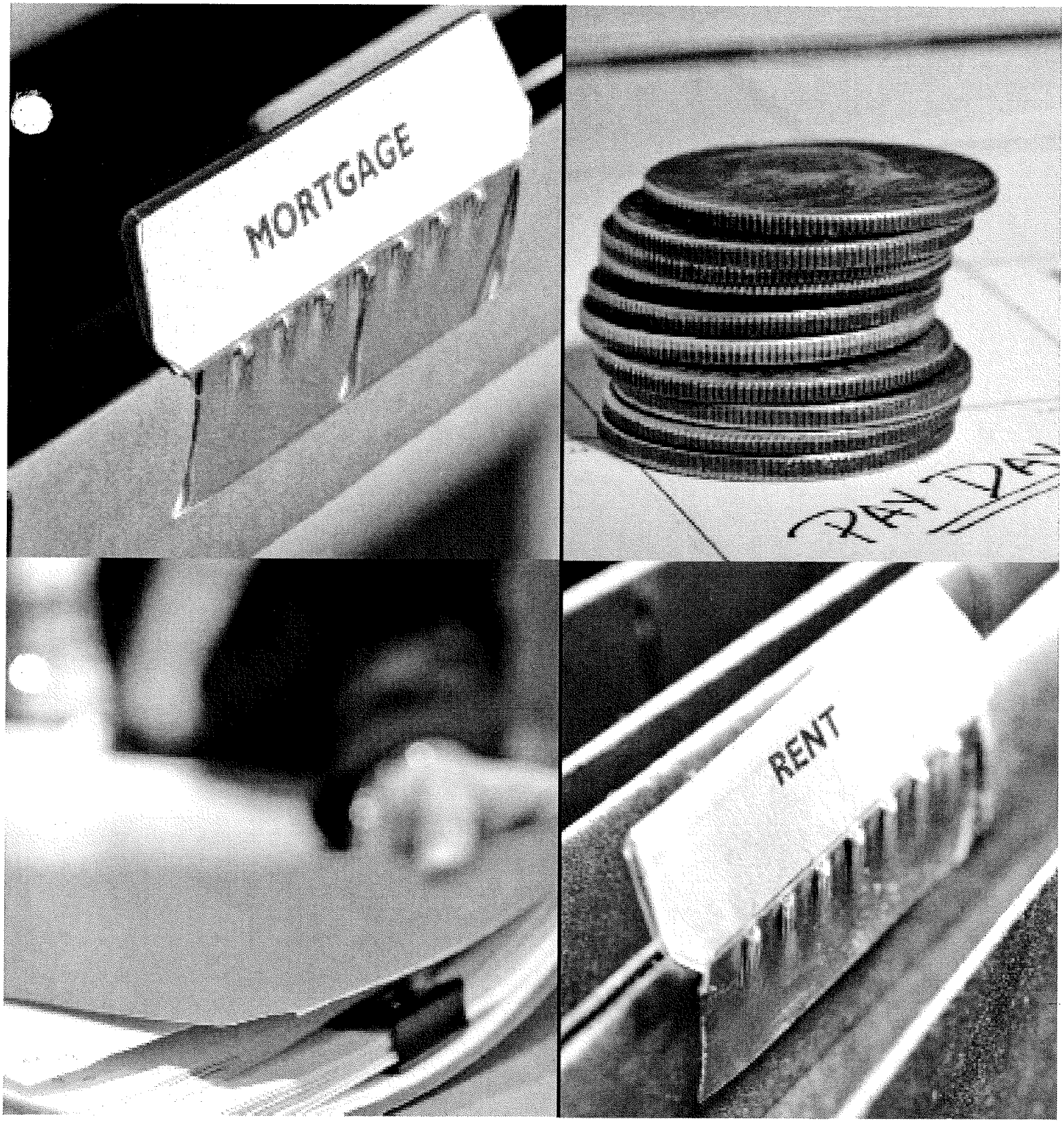
A licensee must be honest and not act in a deceitful, fraudulent or dishonest manner in either the licensee's personal or professional Life. Silence, when there is a duty to speak, is deceit.

The licensee must exercise reasonable skill and care toward all parties in the transaction. This includes not acting in a negligent manner. Negligence is unreasonable, but generally unintentional, behavior that causes harm.

The term "should have known" creates the duty to investigate. The licensee must reasonably investigate material and relevant information relating to the property and the transaction. This duty has limitations and restrictions, but those restrictions do not allow the licensee to ignore obvious warning signs that something is amiss.

Lastly, the licensee should be cautious of activities outside the licensee's expertise or authority, especially legal or appraisal services.





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5. NRS 645.630 (1)(c) & NRS 645.633 (1)(c).

6. NRS 645.035 & NRS 645.040.

The brokerage agreement is one of the most important contracts with which a licensee must deal. It defines the relationship between the client and the broker. Discussed in this chapter are the legal parameters to the creation and termination of the brokerage agreement, the two types of representation found in Nevada (open or exclusive), legal aspects to compensation, and some characteristics of specialized brokerage agreements.

A. CREATION AND TERMINATION

1. EMPLOYMENT AGREEMENT

A broker's legal relationship with the client starts with an employment contract called a brokerage agreement. In the brokerage agreement, the broker promises to provide real estate related services for valuable consideration. Real estate related services include the broker assisting, soliciting, or negotiating on behalf of the client for the sale, purchase, option, rental or lease of real property. The consideration may be paid either by the client or another person.[1]

A listing contract is a seller's brokerage agreement; a buyer's brokerage agreement is with a buyer. Specialized brokerage agreements such as commercial, advance fee, manufactured home, and listing with option to purchase, as well as property management agreements, are discussed in their own sections.

A "client" is a person who has entered into a brokerage agreement with a broker. NRS 645.009

"Actual knowledge" means the broker personally knows of the client. In larger brokerage houses, the broker may have scores of agents making it difficult, if not impossible, for the broker to know each individual client.

2. BROKER REPRESENTS CLIENT

There are only two parties to a brokerage agreement, the client and the broker. Though a licensed broker-salesperson or salesperson may represent the brokerage,[2] the legal relationship is between the broker and the client regardless of whether or not the broker knows the individual client. The broker always retains overall responsibility for the brokerage relationship.[3]

Only a broker may collect compensation for real estate related services. No broker-salesperson or salesperson may accept compensation from, or pay compensation to, any person other than a broker (or owner-developer) with whom, at the time of the transaction, he or she is licensed.[4] If a non-broker licensee does accept or pay compensation to anyone other than the broker, that licensee is subject to a fine up to $10,000, and may have conditions placed on his or her license, such as suspension, revocation, or denied renewal.[5]

a. Independent Contractor – Most non-broker licensees (salesperson and broker-salesperson) are independent contractors; nevertheless, by law they cannot enter into their own brokerage agreements with clients. NRS 645 restricts a non-broker licensee from being hired independent of a broker. For example, broker-salespersons or salespersons:

1. May not perform real estate related services without being associated with a licensed broker;[6]

2. May not accept compensation from anyone other than the broker;[7]

3. May not advertise without the broker's supervision;[8] and

4. May not hold a client's funds, but must "promptly" turn over any money to the broker.[9]

The broker is the entity that represents the client. This is true even if the person dealing with the client is a salesperson or broker-salesperson. The broker's salesperson actually represents the broker and all of the salesperson's activities are done through, and in the name of, the brokerage. Thus, in a technical sense, when a salesperson is referred to as the "client's agent" the wording is incorrect - it is the broker who is the client's agent.

b. Broker Liability – The broker gives the salesperson, or broker-salesperson, authority to act for the broker. For example, a broker may give an agent the authority to sign a brokerage contract, to negotiate compensation, and to set the level of services or representation.[10] However, at no time does this transfer of authority transfer the broker's liability. The broker must always supervise any agents and is ultimately responsible for the agents' actions.[11]

This does not remove the salesperson's individual responsibilities. Each broker-salesperson or salesperson has legal duties toward the client, the broker, professional peers, and the public, and may be held personally liable if those duties are breached.[12]

c. Who Pays – For a valid brokerage agreement, the client does not need to be the one who pays the broker. Legally binding agreements may occur regardless of whether the broker's compensation is paid by the client, the other party's broker, or some agreed upon third person.[13]

3. FORM OF BROKERAGE AGREEMENT

Brokerage Agreements are employment contracts and like other contracts, they have the same formation requirements. There must be a "meeting of the minds"; the contract must have definite terms as to: subject matter, parties, compensation (payment), and time of performance, and there must be consideration. At a minimum, there must be the mutual understanding that the broker will accept valuable consideration from the client or a third person for the performance of real estate related services.[14]

Brokerage agreements may be oral or written.[15] Nevada has no mandatory brokerage agreement form. Though there is no required form, Nevada's Attorney General has stated the Real Estate Division is within its authority to adopt regulations governing the content of brokerage agreements.[16] Since there is no mandatory form, with a few exceptions, all of the terms of the contract depend on the agreement of the parties.

Oral Contracts: Oral brokerage agreements are legal contracts in which a broker agrees to represent a client with the intention or expectation of compensation and there is no written contract. No oral brokerage agreement may be exclusive.[17]

With an oral listing contract, the seller is only obligated to compensate the broker if the broker's services were the procuring cause of a successful transaction.[18] Regardless of the amount of time, energy or money a listing broker expends representing a client, if the broker is not the procuring cause the client is not obligated to pay.[19]

7. NRS 645.280.

8. NRS 645.315 (2).

9. NRS 645.310 (2), NRS 645.630 (1)(i) & NAC 645.657.

10. NRS 645.300, recognizes a non-broker licensee may prepare a written brokerage agreement, and NRS 645.320 (4).

11. NAC 645.600 (1).

12. NAC 645.605 (6), NRS 645.252, 645.254, 645.630, 645.633, 645.635.

13, 14, 15. NRS 645.005.

16. AGO 97-28 (12-31-1997).

17. NRS 645.320.

18. Morrow v. Barger, 104 Nev. 247, 250, 737 P.2d 1153 (1987).

19. Sahara Realty Corp. v. Adelson, 89 Nev. 147, 508 P.2d 1210 (1973).

The term "independent contractor" as applied to real estate licensees is most often used as a federal tax income designation. 26 USC §3508, also see (AGO) 1956-160 (1956). But Nevada law provides for various other designations (See NRS 612.133 and NRS 616A.220).

20. NRS 645.320.

21. NRS 645.300.

22. NRS 645.633 (1)(f).

23. NAC 645.650.

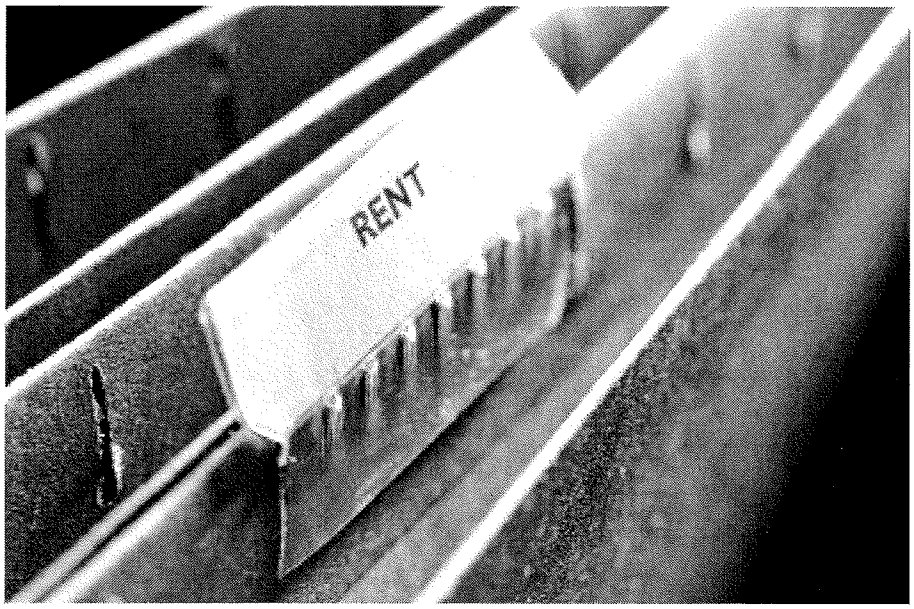
As with most oral agreements, should a dispute arise the broker would have to satisfactorily establish to the court the existence and terms of the contract. Additionally, in order to collect a commission, the broker will have to prove he or she was the procuring cause of the transaction.

Written Contracts: Though it is legal to have oral brokerage agreements, all exclusive agency brokerage agreements must be in writing. Under Nevada law, written brokerage contracts have certain statutory requirements regarding terms, form, and distribution.[20]

Client Must Receive a Copy: If the brokerage agreement is in writing, once it is signed by the broker and the client, the client must receive a copy.[21] The copy should be given to the client when it is signed or as soon thereafter as possible. To verify that the client received the copy, the broker may have a "receipt acknowledgment" incorporated into the form.

Should the broker fail to leave a copy of the agreement with the client, the broker is subject to a disciplinary fine of up to $10,000, and administrative action.[22] To verify compliance with these laws, the Real Estate Division requires each brokerage agreement be kept by the broker for five years from the date of closing or last activity on the transaction.[23]

"Valuable consideration" includes any type of compensation: the commission, finder's fee, referral fee, advanced fee, payment, or gift if given in exchange for services. It can be anything of value, not just money.



4. A WORD ABOUT ELECTRONIC BROKERAGE AGREEMENTS

Generally, Nevada law authorizes an electronic format for any transaction or contract in which the parties agree to conduct their business electronically.[24] By law, an electronic record satisfies any statute that requires the contract to be in writing. An electronic signature satisfies any statute requiring a signature.[25]

There is a difference between an electronic signature and a digital signature. An electronic signature is an electronic sound, symbol or process attached to, or logically associated with, an electronic record and executed or adopted by a person with the intent to sign the record.[26] No particular type of electronic signature is required. A digital signature is an electronic signature that uses an asymmetric cryptosystem to verify to the reader the identity of the signer.[27]

Some software packages, such as Microsoft Office, use certain technology to enable the writer to digitally sign a file by using a preset certificate. This internal certificate is a piece of technology that confirms the file or document originated from the signer and that it has not been altered by unauthorized third persons. The internal or self-signed certificates are considered unauthenticated when the document is sent to another computer unless the certificate was issued by a formal certification authority. A person must apply to a commercial certification authority to obtain an authenticated digital certificate. As with all modern technology, electronic formats are changing rapidly. What is cutting edge today will be passé tomorrow.

Intend to be Bound: Before entering into any electronically created brokerage agreement, the licensee should be aware of an issue concerning NRS 719, the statutes regulating electronic contracts, and NAC 645, the administrative code regulating real estate licensees. NRS 719 allows for the creation of a valid contract purely electronically. NAC 645.613 requires the licensee to "obtain appropriate signatures before entering into a relationship as the agent of a client." The regulation goes on to state that " 'appropriate signature' means the legal signature of the client." NRS 719 allows for a legal signature to be created electronically.

The intent of the Real Estate Commission in NAC 645.613 was to require proof a client agreed to sign the brokerage agreement. Specifically, the Commissioners did not want only "the clicking of an acceptance box,"[28] either on the internet or in an e-mail, to create a binding brokerage agreement. The prospective client must know he or she is signing a contract and must intend to be bound by it – regardless of whether the contract is created orally, in writing, or electronically.

5. TERMINATION

a. Events Causing Termination – As with all contracts, certain events will terminate the contract. Generally, and unless the contract provides otherwise, these events are:

- Completion of the contract's purpose;
- Termination by contract term;
- Mutual agreement;
- Impossibility of performance;
- Breach;
- Operation of law; or
- A party's death.

24. NRS 719.220 (2).

25. NRS 719.240.

26. NRS 719.100.

27. NRS 720.060.

28. NAC 645.613.

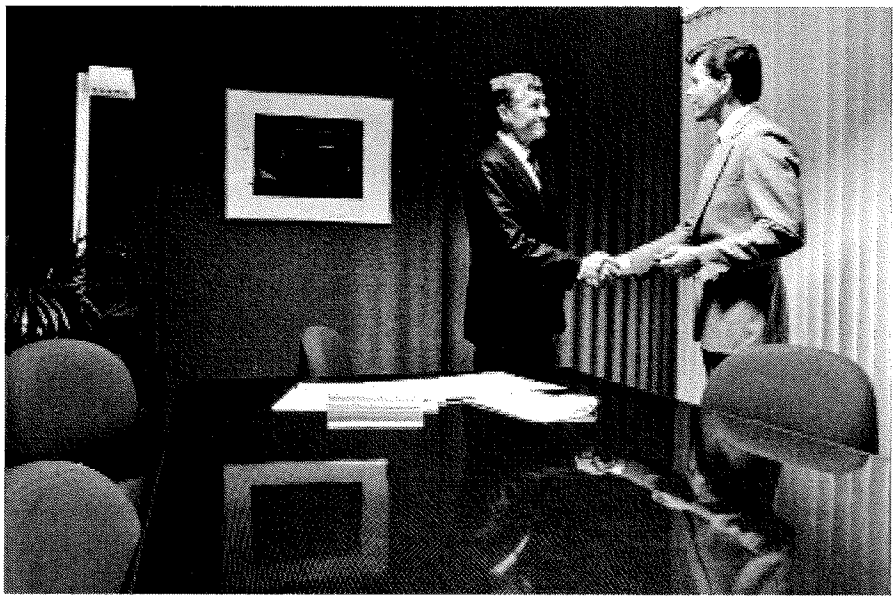
29. NRS 645.254 (2).

30. Humphrey v. Knobel, 78 Nev. 137, 147, 369 P.2d 872 (1962).

31. NRS 645.633 (1)(f).

32. NRS 645.320(2).

33. Kaldi v. Farmers Ins. Exch, 117 Nev. 273, 279, 21 P.3d 16 (2001).



Completion of the contract's purpose: The purpose of any brokerage agreement is the employment of a broker by a client to perform real estate related services for compensation. Once the contract is fully performed, the purpose of the contract is ended and the contract terminates.

Though a brokerage agreement ends, each party may continue to have certain responsibilities stemming from the contract. Some of these, such as the licensee's duty of confidentiality, are statutorily identified as extending past the revocation or termination of the brokerage agreement - in the case of confidentiality, it is one year.[29]

Termination by contract term: The contract may state it will terminate upon a certain event. Usually, that event is a certain date, but it may be any agreed upon event. With an oral brokerage agreement, if the contract does not have a termination date it will remain effective for a "reasonable time."[30] How long is a reasonable time? It is subject to the court's determination and decided case by case.

All written brokerage agreements must have a set termination date.[31] Each exclusive representation brokerage agreement is required to be in writing and have a definite, specified and complete termination date.[32] That date legally ends the representation, but not necessarily the right to compensation or other statutory obligations.

A brokerage agreement may end upon the occurrence of a specific event. For example, a seller may be attempting to sell a home due to a job transfer. The listing contract has both a specific termination date and alternatively, a clause that provides the brokerage agreement will terminate 24 hours after the seller gives the broker proof of her transfer date. The idea being if the home is not sold by either the contract's termination date or the transfer date, then, the client's employer's relocation company will acquire the home.

Termination by mutual agreement: A brokerage agreement may be terminated by either party.[33] Depending on the circumstances, the termination may be conditional or unconditional.

An unconditional release is when both the broker and the client mutually agree to terminate the brokerage agreement and end the relationship. At this point the broker and client part without any further

Some professional associations, such as the National Association of Realtors®, have more stringent behavior guidelines. For example, NAR's Code of Ethics, Article 2, has no time limit on keeping the client's confidences.

A word about dates: when the contract calls for a date, each licensee should have access to a calendar that identifies nonjudicial days and holidays. Nonjudicial days are days when the courts are closed. Often these are the major national and state holidays. NRS 1.130

contractual obligation to the other. The termination of the brokerage agreement does not release the broker from certain statutory duties such as confidentiality.

A conditional release is when the broker stops representing the client but holds the client to the payment of compensation. This type of termination usually occurs when the client or broker "fires" the other.

The Nevada Supreme Court stated

> "[a]bsent a contractual provision to the contrary, an independent contractor/principal agency relationship is terminable at any time at the will of the principal or the agent."[34]

A client has the right to refuse to work with any specific broker-salesman or salesman; however, as the brokerage agreement is with the broker, the brokerage agreement continues in force. When this happens, the broker may transfer the client to another agent or release the client from the brokerage agreement. The broker has no right to force a client to work with a particular agent. However, if the client refuses to work with the brokerage without cause, the client has breached the employment agreement.

Impossibility of performance: A contract will terminate if, through no fault of either party, the contract becomes impossible to perform. For example, the seller's property burns down - now there is nothing to sell. The seller could terminate the brokerage agreement based on the impossibility of performance. The performance need not be totally impossible, only highly impractical. The act creating the impossibility must have been reasonably unforeseeable.[35]

Breach: The brokerage agreement may be terminated when either party breaches it. A breach occurs when the client or the broker does not perform obligations under the contract.

If the client is claiming the broker breached the contract, the broker may not be entitled to any compensation. The client may sue for any actual damages the client suffered due to the broker's breach.[36]

If the broker believes the client has breached the contract, the broker is entitled to any compensation originally agreed to and earned before the breach, or may sue for any alternative remedies provided in the contract.

Recording a Lis Pendens: The brokerage agreement is a contract for services. The only way to enforce its terms is either through ADR or court action. Unfortunately, some licensees believe they can record a lis pendens to stop the ex-client's escrow when there is a dispute about compensation or the brokerage agreement.

A lis pendens is a notice recorded in the county Recorder's Office that lets the world know there is litigation pending about the title to, or possession of, real property. It may only be recorded after a legal complaint is filed with the court (NRS 14.010).

As an employment contract, the brokerage agreement is not a claim for title to, or possession of, real property. Therefore, no authorization or right is given to the broker to record a lis pendens against a seller's property. Should a broker inappropriately record a lis pendens, the broker is subject to a counter-suit for slander of title.

"Operation of Law": Most contracts will terminate when the parties cannot perform their obligations under the contract because of a legal change in the status of a party. Usually, the parties do not intend for the law to change their rights or liabilities, but it happens anyway. For example, by "operation of law" a duly executed brokerage agreement may be avoided by a client who is a minor.

34. Kaldi v. Farmers Ins. Exch, 117 Nev. 273, 279, 21 P.3d 16 (2001).

35. Nebaco, Inc. v. Riverview Realty Co, Inc., 87 Nev. 55, 482 P.2d 305 (1971).

36. NRS 645.257 (1).

"ADR" stands for "alternative dispute resolution" and includes mediation, arbitration, or conciliation.

A broker, broker-salesman, or salesman may be a corporation. The corporate legal entity may be dissolved, but unless legally dissolved, the corporation does not die.

37. NRS 62A.030 (1)(a) & NRS 129.010.

38. Wayman v. Torreyson, 4 Nev. 124, 135 (1868).

39. NRS 148.420 & NRS 148.330.

40. NAC 645.350 (2).

41. NAC 645.350 (3).

42. NRS 645.350 (2)(a).

43. NRS 78.060 (1)(d).

44. NRS 645.370.

45. NRS 645.252 (1)(e), NRS 645.310 (1), NRS 645.254 (2).

46. Nollner v. Thomas, 91 Nev. 203, 533 P.2d 478 (1975).

In Nevada, anyone under eighteen years old is a child and cannot legally enter into a contract.[37] Therefore, any contract signed by the minor is not enforced by the other party. The contract is voidable by the minor by "operation of law".

A Party's Death: It is old law in Nevada that a client's death terminates the agency.[38] Nevertheless, the broker may still have rights under the original brokerage agreement for the collection of compensation.[39] For example, a broker has a listing contract with a client. The broker finds a buyer for the client's property and the parties sign a purchase agreement. Toward the end of the escrow the seller dies; however, the client's estate chooses to proceed with the escrow. The broker does not automatically represent the estate since her client, the seller, has died. Nevertheless, the broker has fulfilled her contractual obligations by procuring a ready, willing and able buyer, and is entitled to the agreed upon compensation. The broker has rights under the original brokerage agreement and could sue the estate should it not pay her.

A Licensee's Death: Upon the death of a licensee, his or her real estate license automatically expires.[40] Without a valid real estate license, there can be no legal representation. If the broker-salesperson or salesperson dies, the brokerage agreement continues in place because the brokerage agreement is with the broker. If the broker dies, historically, the brokerage agreement automatically ends; however, by regulation, another licensed broker may act in the deceased's broker's place for up to sixty (60) days after the original broker's death. The new broker must submit an affidavit to the Division within 7 business days from the date of death.[41] In either case, the client or the client's estate is responsible for paying any compensation earned by the broker before death.

When the Broker is a Corporation: A broker may be a corporation.[42] Corporations have perpetual existence.[43] Every corporation that files for a broker's license must designate one of its officers its corporate broker. That officer must have a broker's license.[44] If the designated corporate broker dies, the broker corporation still exists, but its officers must immediately designate another corporate officer, who is licensed as a broker, as the corporation's broker.

b. After Termination - When the brokerage agreement terminates, the broker must stop representing the client, remove any personal property from the seller's property (such as signs), account to the client for all funds, keep the client's confidences, and do nothing to harm the ex-client or interfere with the transaction even if the broker believes he or she is still owed a commission.[45]

Broker Protection Period: Most exclusive representation agreements have a "broker protection period." This is a contract clause that gives the broker the right to collect a commission for a set time after the brokerage agreement ends. To collect a commission, the broker must have introduced the property or buyer to the client during the brokerage agreement period. Unless the brokerage agreement allows for the broker to collect if the broker is the procuring cause, upon the end of the broker protection period, the seller may sell the property to a buyer procured by the broker and not owe the broker a commission.[46]

The broker protection period does not allow the broker to continue marketing the property, nor is the broker entitled to a commission if he or she negotiates with a new buyer.

The Broker Protection Period is also known as a "grace period."

Not all brokerage agreements are created equal. There are two types of representation recognized in Nevada — open or exclusive. Open contracts allow the client to hire several brokers. Exclusive contracts require the seller to work with just one broker. Other forms of brokerage agreements focus not on the type of representation but on how the broker is to be paid, such as in net listings or option listings.

B. TYPES OF REPRESENTATION

1. "OPEN" BROKERAGE AGREEMENT

An open brokerage agreement is where the broker has no exclusive representation of the client – the client may hire any number of other brokers. An open brokerage agreement allows the seller to sell the property without owing a commission. The courts favor the client in determining the level of representation. The more "open" the contract, the better for the client.

Open brokerage agreements may be oral or written. All oral brokerage contracts are considered "open." All written brokerage agreements are also presumed to be open unless the contract's terms or title state it is exclusive.

Unless otherwise specified in contract, a broker earns a commission with an open agreement only if the broker is the "procuring cause" of the transaction - that is, the broker finds a buyer ready, willing and able to purchase on the seller's precise terms. "Precise terms" does not mean the property must be sold at list price: it may be sold at any price the seller agrees to accept.[47]

The court will usually find the other brokers' open agreements terminated as soon as the client accepts one broker's offer. This is the case even if another broker subsequently produces a ready, willing and able prospective buyer. If the other agreements did not automatically terminate, the client could be liable for several commissions.

Implied Brokerage Agreements:
Though not favored by the courts, under some circumstances, a court will find a broker is owed compensation under an implied brokerage agreement.

In Morrow v. Barger, (1987),[48] the court found an implied brokerage agreement after the written listing ended. Claire Morrow was a broker who had a written open listing with the Bargers to sell their ranch. During the listing period, Morrow showed the property to three potential buyers. When the written brokerage agreement ended, the sellers instructed Morrow to continue marketing the property – which she did. After a while, the sellers stopped communicating with Morrow. Eventually, Morrow learned that the Bargers personally sold the property to all three buyers in a complicated escrow. Morrow sued for her commission and won. The court said Morrow had an implied open listing; therefore, she was entitled to a commission.

47. Humphrey v. Knobel, 78 Nev. 137, 144, 369 P.2d 872 (1962).

48. Morrow v. Barger, 103 Nev. 247, 252, 737 P.2d 1153 (1987).

If a seller is aware of the broker's continuing efforts to secure a buyer and the seller does not affirmatively stop the broker, the seller cannot deprive the broker of a commission by ignoring (or firing) the broker and conducting the final negotiations.

2. "EXCLUSIVE" REPRESENTATION AGREEMENTS

a. General – Exclusive agency representation occurs when the broker is the client's sole real estate agent. Generally, there are two types of exclusive agreements; those in which the broker will get paid regardless of who is the procuring cause (with listings, commonly known as an Exclusive Right To Sell), and those in which the client hires the broker as an exclusive agent, but retains the right to sell or find a property without paying a commission (commonly known as an Exclusive Agency).[49]

Exclusive representation protects the broker from interference by other licensees with the client-broker relationship. A licensee, property manager or owner-developer may not negotiate the sale, exchange or lease of real estate with a principal if the client has an exclusive agency agreement in force with another broker.[50] (An exception is made if the broker has given written permission to a requesting licensee to negotiate directly with the client. Nevada has a state mandated authorization form.)[51]
A broker who holds an exclusive agency agreement must cooperate with other brokers whenever it is in the client's best interest.[52]

b. Specific Terms - The law identifies only four provisions that must be included in an enforceable exclusive brokerage agreement. These are:

1. The agreement must be in writing;
2. It must be signed by both the broker and the client or their authorized representatives;
3. The contract must have a definite termination date; and
4. The agreement may not require the client to notify the broker of the client's intention to cancel the exclusive features of the brokerage agreement once the agreement is terminated.[53]

By and large, other than certain requirements for specialized brokerage agreements, all other contract terms are negotiable.

c. Buyer's Brokerage Agreements – In a written buyer's brokerage agreement, all the required terms of the exclusive listing agreement apply. [54] Additionally, though not law, the Real Estate Division has identified various elements that, at a minimum, should be in a buyer's brokerage agreement. These include:

> "specified terms, duration, compensation, services agreed upon, and the ability of a client to cancel for non-performance. ... Any special services, circumstances and/or conditions should be spelled out in the agreement."[54a]

49. Morrow v. Barger, 103 Nev. 247, 250, 737 P.2d 1153 (1987). See footnote 2 of the case. See also R165-07, sections 2 and 4 for definitions of exclusive agency and exclusive right to sell or lease listing agreements.

50. NRS 645.635 (2) & NAC 645.535(3).

51. NRS 645.635 (2), NAC 645.535(3) & NRS 645.0045 (2).

52. NAC 645.535 (4).

53. NRS 645.320.

54. R-165-07, section 3.

54a. Joan Buchanan, "Duties Owed Mandates 'Reasonable Skill and Care' ", Real Estate Division Open House, vol. 22, issue 1, Winter 1997, at p. 9.

d. Missing Elements = No Compensation – If an exclusive brokerage agreement is not in writing or if it is missing a necessary legal provision, the broker will be unable to collect a commission.[55] A faulty exclusive brokerage agreement cannot become an open brokerage agreement. Failure to include a fixed termination date makes the agreement voidable by the client and removes the broker's ability to claim payment under alternative legal theories of compensation.[56]

In Bangle v. Holland Realty Inv., Co., (1964),[57] Nevada's Supreme Court found that Holland, a licensed real estate broker, could not collect $38,800 for commissions earned from selling Bangle's houses. Holland had not followed the statute requiring a definite termination date in the exclusive agency brokerage agreement. The court found NRS 645.320 had specific statutory elements for a valid exclusive contract. If those elements were missing, the contract failed and could not be converted to an open contract. Therefore, Holland's listing contract, by not having a definite termination date as required by statute, was unenforceable. The court held "the purpose of NRS 645.320 is best served by denying any relief to a broker or salesman, who claims an exclusive agency to sell, unless the requirements of the statute are complied with."

3. LIMITED SERVICE CONTRACTS AND LIABILITY

a. No Transactional Agency – Nevada does not recognize "transactional" agency. Transactional agency is a limited form of agency in which the broker does not represent either party but is hired to facilitate the transaction. A transactional "agent" is more similar to an escrow officer than to a traditional real estate agent. At this time, with the exception of one duty, a broker may not limit the broker's liability to, or representation of, a client. If a broker provides any real estate related services to anyone for any compensation, the broker takes on all legal duties and their related liability.[58]

b. Limited Service Contracts – There is a difference between the right of the parties to contract for certain services and the broker's level of legal liability. Some services are dictated by statutory duties whether or not stated in the contract.

By law, a licensee cannot "contract away" or a client "waive" the statutory duties of NRS 645.252 or NRS 645.254. The public has the right to expect the licensee will adhere to the law and abide by all of the licensee's legal duties. A broker can be held responsible for not performing all of the stated duties whether or not the client and broker have agreed otherwise.

The sole exception concerns NRS 645.254 (4), which states a licensee has the duty to present all offers made to or by the client as soon as practicable unless the client signs a written waiver. The waiver must be on a state mandated form (Waiver Form) and signed by both the client and the broker.

A licensee and client cannot agree by contract to do an illegal thing – such a contract is automatically void. For example, the broker cannot agree with the client to discriminate against a protected class.[59] The RED may bring a complaint against a licensee who breaks the law regardless of the terms of any brokerage agreement.

Non-statutory services may be contractually limited. For example, the broker and client may agree that the broker does not have to hold an open house or personally show the property. The broker may have a menu of discretionary services and charge the client piece-meal for those services.

55. Bangle v. Holland Realty Inv. Co, 80 Nev. 331, 393 P.2d 138 (1964).

56. Morrow v. Barger, 103 Nev. 247, 252, 737 P.2d 1153 (1987).

57. Bangle v. Holland Realty Inv. Co, 80 Nev. 331, 393 P.2d 138 (1964).

58. NRS 645.030 & NRS 645.260. See also NRS 645.255, no duty in NRS 645.252 or NRS 645.254 may be waived.

59. NRS 645.321.

A "void" contract never had legal sufficiency or effect – it is as if the contract never existed.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
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WAIVER FORM

In representing any client in an agency relationship, a real estate licensee has specific statutory duties to that client. Under Nevada law only one of these duties can be waived. NRS 645.254 requires a licensee to "present all offers made to or by the client as soon as practicable." This duty may be waived by the client.

"Presenting all offers" includes without limitation: accepting delivery of and conveying offers and counteroffers; answering a client's questions regarding offers and counteroffers; and assisting a client in preparing, communicating and negotiating offers and counteroffers.

In order to waive the duty, the client must enter into a written agreement waiving the licensee's obligation to perform the duty to present all offers. **By signing below you are agreeing that the licensee who is representing you will not perform the duty of presenting all offers made to or by you with regard to the property located at:**

_____.

Property Address City

AGREEMENT TO WAIVER

By signing below I agree that the licensee who represents me shall not present any offers made to or by me, as defined above. I understand that a real estate transaction has significant legal and financial consequences. I further understand that in any proposed transaction, the other licensee(s) involved represents the interests of the other party, does not represent me and cannot perform the waived duty on my behalf. I further understand that I should seek the assistance of other professionals such as an attorney. I further understand that it is my responsibility to inform myself of the steps necessary to fulfill the terms of any purchase agreement that I may execute. I further understand that this waiver may be revoked in writing by mutual agreement between client and broker.

WAIVER NOT VALID UNTIL SIGNED BY BROKER.

Client	Date	Licensee	Date
Client	Date	Broker	Date

4. INTERFERENCE WITH BROKERAGE AGREEMENT

a. By Other Brokers – Once a valid exclusive brokerage agreement is in place, a licensee may not, for personal gain, induce any party to break that contract in order to substitute a new agreement. A licensee who violates this statute may be subject not only to civil action from the harmed broker, but the Real Estate Commission may impose a $10,000 fine and other administrative sanctions.[60]

b. By the Client – A client cannot in bad faith ignore the broker or intervene in the transaction so as to deprive a broker of earned compensation. Nevada's Supreme Court determined that a seller must give the broker an opportunity to finish the transaction with the ultimate buyer if the broker initially produced the buyer and has not abandoned negotiations. The seller, in order not to be liable for a commission, must notify the procuring broker of any subsequent offers by such buyers and give the broker a reasonable time to protect the broker's commission – or the seller must decline the sale.[61]

The brokerage agreement is an employment contract between the client and the broker. A seller and buyer cannot, in their purchase agreement or through escrow instructions, attempt to modify the terms of the brokerage agreement without the consent of the broker.



60. NRS 645.630 (1)(l).

61. Bartsas Realty, Inc. v. Leverton, 82 Nev. 6, 9, 409 P.2d 627 (1966).

62. NRS 645.280 (2).

63. Ramezzano v. Avansino, 44 Nev. 72, 81, 189 Pac. 681 (1920).

64. Close v. Redelius, 67 Nev. 158, 166, 215 P.2d 659 (1950).

NRS 645 covers those real estate related services that are provided by a broker with the intention or expectation of receiving compensation. "Compensation" is anything of value. It may be cash, property (real or personal), a promise to pay (promissory note), or the exchange of services with a cash value. For example, a broker who helps a carpenter sell his house in exchange for the carpenter converting the broker's garage, is receiving compensation. Compensation includes any commission, finder's fee, referral fee, advanced fee, payment, thing of value, or gift if given in exchange for services.

C. COMPENSATION

1. ONLY THE BROKER IS PAID

Under Nevada law, only a broker is authorized to collect compensation for real estate related services, whether preformed by the broker or by the broker's agent.[62] A broker-salesperson or salesperson cannot accept compensation from any person other than the broker (or owner-developer) with whom he or she is licensed at the time of the transaction. Therefore, only a broker may be employed by a client.

2. RIGHT TO COMPENSATION

In purchase transactions, the listing broker earns compensation by securing a buyer within the time specified in the contract. The buyer must be ready, willing, and able to purchase at the price designated by the seller.[63] "Able" means financially able. The money does not have to be immediately available as long as funds are available to close the deal within the time required.[64] The "price designated by the principal," includes any sale price to which the seller agrees regardless of the initial list price.



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A subsequent default by buyer will not limit the broker's right to commission. Some purchase agreements require the parties to have an on-going relationship; for example, a Lease with Option to Purchase or where the seller is carrying a portion of the purchase price. Should the buyer default, unless otherwise agreed between the broker and seller, the seller cannot refuse to pay, nor require the broker to refund, the broker's earned commission. If a buyer defaults after closing a transaction, it is the buyer who is liable to the seller for all of the damages caused by the default including any broker's commission already paid. The seller's remedy is against the buyer.

In Chicago Title v. Schwartz, (1993),[65] Schwartz sold a property to the Wrights. Chicago Title was the escrow holder. Chenin was the seller's listing agent. Originally, the transaction was a straight purchase and Chenin's commission was to be paid at the close of escrow. Because the Wrights had financial difficulties, Schwartz agreed to an installment contract and unilaterally instructed Chicago Title to alter the commission order to pay Chenin at the end of the installment period. However, Chicago Title paid the commission at the close of escrow.

When the Wrights defaulted on the installment contract, Schwartz sued Chicago Title for the early release of the commission. The court held that regardless of the buyers' later default, Chenin was owed her compensation when she earned her commission per the listing contract. Therefore, even if Chicago Title had mistakenly released the commission, Schwartz was not harmed because Schwartz already owed the money to Chenin. If Schwartz was harmed, he had to look to the defaulting buyer for reimbursement.

a. When Earned and When Due – In a purchase transaction, unless the broker and client contract otherwise, the broker's commission is earned when the broker fulfills the terms of the brokerage agreement. In an open listing, the broker earns the commission when he or she finds a buyer ready, willing and able to purchase on the agreed terms. For purchase transactions, payment is typically due upon close of escrow. The Nevada Supreme Court has stated, "[t]he law supports the theory that the broker's commission was owed at the close of escrow… ."[66] For non-purchase transactions, payment is due after the services are tendered. Nevertheless, the parties may agree to defer the payment until a specific time or event.

In exclusive agency agreements, compensation is generally owed when the broker fulfills the terms of the agreement. The payment terms must be clear and unambiguous.[67] In an exclusive agency agreement, the broker's commission is not dependent upon the broker being the "procuring cause" of the buyer. Alternatively, the seller and broker may agree the property must sell only at a certain price or under specific conditions before the broker gets paid.

Advanced fee: An advance fee is compensation collected by a broker from a client before services are rendered.[68] It may be collected in advance for listing or advertising a property or a business for sale or lease.[69] Most advanced fees are for the sale of prospecting lists. Any broker who charges an advance fee must give the client an accounting of that fee within three months after collecting it, whether or not the property was actually sold or leased.[70]

b. Procuring Cause – When there is an open listing, in order to be entitled to a real estate commission, a broker must show an employment contract existed and that the broker was the procuring cause of the sale. If a real estate broker has been the "procuring" or "inducing" cause of a sale, he or she is entitled to the agreed commission regardless of who eventually closes the transaction.

65, 66. Chicago Title Agency v. Schwartz, 109 Nev. 415, 418, 419, 851 P.2d 419 (1993).

67. Nollner v. Thomas, 91 Nev. 203, 533 P.2d 478 (1975).

68. NRS 645.323.

69. NRS 645.002.

70. NRS 645.322.

"Procuring cause" is also known as the "inducing cause," "efficient cause," or "proximate cause."

71, 72, 73. Bartsas Realty, Inc. v. Leverton, 82 Nev. 6, 9 - 10, 409 P.2d 627 (1966).

74. Humphrey v. Knobel, 78 Nev. 137, 369 P.2d 872 (1962).

What actions must a broker take to show he or she was the procuring cause? The court has said it is impossible to specify which acts must be present to show "procuring cause," but those acts require the broker to demonstrate "conduct that is more than merely trifling."[71] To be the procuring cause of the sale, the broker must do more than contribute indirectly or incidentally to the sale. Merely introducing the buyer to the seller is not enough. Just imparting information about the property is insufficient. The broker must set in motion a chain of events which, without break in their continuity, cause the buyer and seller to come to terms.

If a broker is the procuring cause of the sale, the broker has a "vested" right to the commission.[72] The right continues even if a seller includes a compensation clause in the purchase agreement that provides the commission will go to another broker. Such a clause is only the client's personal promise to pay a commission to another broker. It does not affect the procuring broker's right to payment.

If a broker is the procuring cause of a sale, it does not matter whom the clients choose to be their final agent. In Bartsas Realty v. Leverton, (1966),[73] Mary Bartsas, a broker, had an open listing agreement with First National Bank of Nevada. She submitted an offer from Davidson to First National. Without communicating with Bartsas, Davidson hired Leverton as his broker who resubmitted a similar offer to First National. When First National told Leverton of the Bartsas's previous offer, Leverton replied, "Well, he (Davidson) has changed brokers and he has come to me now." Eventually, Davidson purchased the property. Bartsas sued Leverton and First National under a claim of procuring cause. The court ruled in favor of Bartsas.

Whether a broker's efforts constitute the procuring cause of a sale is a complicated question based on the particular facts of the matter. Davidson had the right to be represented by any broker of his choice. He was not required to hire Bartsas as his exclusive agent; however, that did not eliminate Bartsas's right to a commission as the procuring cause of the transaction. In this case, both Bartsas and Leverton may have earned a commission - Bartsas as the procuring cause and Leverton as Davidson's agent.

Unless specifically agreed to in the brokerage agreement, a seller cannot refuse to pay a broker because the property was listed at one price but the seller accepted a lower price. A seller may not refuse an offer from a buyer, wait until the brokerage agreement has expired, and then sell the property to that buyer in order to not pay the broker's commission. [74]

3. SOURCE AND AMOUNT

Since compensation may only be paid to a broker, only the broker has the right to determine who to accept compensation from and the value of services. This right is modified by legal restrictions and regulations concerning a broker's compensation. Most of these deal with the amount of the compensation and disclosure.

Generally, the source and amount of compensation is determined by agreement between the broker and the client. They should agree on the source of compensation up-front. For example, they should agree on whether the client will pay the broker, or whether the broker will seek his or her compensation from a third party (such as a seller). A broker may rebate the client of a particular transaction a portion of the broker's commission on that transaction without violating the statute (AGO 97-28, 1997).

The amount of compensation is negotiable between the broker and the client. It may be determined as a percentage of the value of the property's sale price, a flat fee (allocated in various ways), or by law. For example, in a probate where the broker is selling a deceased's unimproved real property, Nevada law provides the maximum commission is 10% of the property's sale price.[75]

It is unlawful for any licensee to offer, promise, allow, give or pay, directly or indirectly, any part or share of his or her commission, compensation or finder's fee to any person who is not a real estate licensee, in consideration for services.[76] No broker-salesperson or salesperson may accept compensation from, or pay compensation to, any person other than a broker (or owner-developer) with whom he or she is licensed at the time of the transaction.[77]

a. Source and MLS – There are only two sources of compensation, from the client or from a third party. Most listing agreements have the compensation paid directly by the client. Most buyer brokerage agreements are oral and have the compensation paid by a third party, usually the listing broker. Other third party compensation sources include referral fees from other brokers or compensation paid by relocation companies.

Multiple Listing Service: A multiple listing service is a member-only information dissemination service and a forum for the unilateral offer of compensation. Member brokers place descriptions of listed properties with the MLS so that other members may see what is available for sale. Along with the property description there is a unilateral offer for compensation from the listing broker to any cooperating broker. To earn the stated compensation, the cooperating broker must be the procuring cause of the buyer in a successful transaction. In this instance, the source of the buyer's broker's commission is the listing broker, not the seller.

b. Determining Amount – The most common way of determining a broker's commission is as a percentage of the property's sale price. Nevertheless, there are other ways of calculating the broker's compensation. These include flat fee arrangements, net listings, and a "fee for services" arrangement where the client selects from a menu of services and selectively pays for each service chosen. Each broker and client may mix and match how the broker's compensation will be calculated.

Flat Fee: The broker may charge a client a set or flat fee regardless of the value of the property or the type of service rendered

75. NRS 148.110.

76. NRS 645.280 (1).

77. NRS 645.280.

Many written buyer brokerage agreements require payment from the buyer-client, with the broker crediting the buyer for any amounts the broker receives from other sources (such as the seller or listing broker).

The cooperating broker is the other party's broker. The term usually refers to the buyer's broker. The buyer's broker may also be known as the "selling" broker.

78. Flamingo Realty, Inc. v. Midwest Development, 110 Nev. 984, 994, 879 P. 2d 69 (1994), Justice J. Young in his dissent sites "net listing' formulas for alternative compensation themes. See also, Shell Oil Co. v. Ed Hoppe Realty Inc., 91 Nev. 576, 581, 540 P.2d 107 (1975).

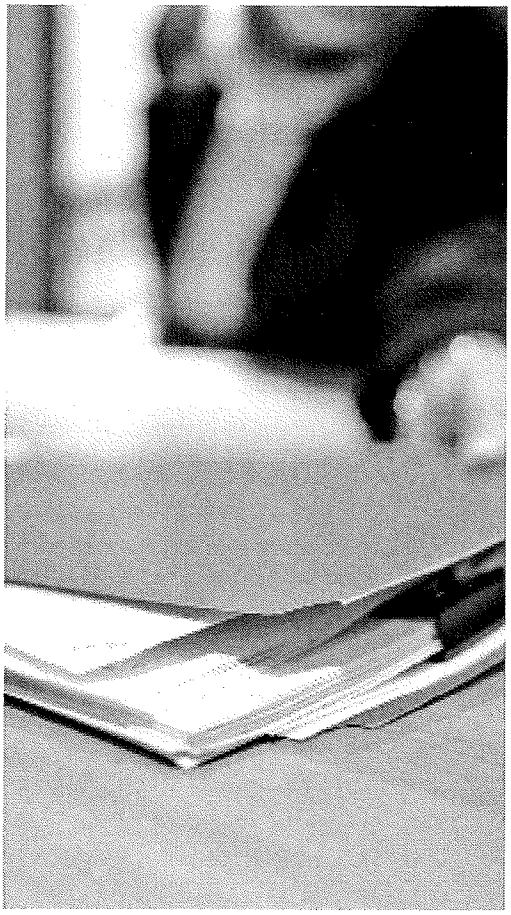
79. Humphrey v. Knobel, 78 Nev. 137, 369 P.2d 872 (1962).

80. Close v. Redelius, 67 Nev. 158, 167, 215 P.2d 659 (1950).

Some brokers charge a flat fee to the client for their portion of the commission with the client agreeing to pay a percentage of the sale price to any cooperating broker. Most advance fee arrangements are flat fees.

Menu (unbundled services): Recently, the idea of menu services has become popular. Menu services are distinct services, each offered for a fee. The client chooses from the menu what services the broker will provide and the broker's compensation is based on the set value of those services. Regardless of the services chosen, the broker cannot refuse to perform a statutory duty because the client did not pay for it.

Net Listings: In a broker's net listing contract, a fixed or net amount must be paid to the seller and the broker's compensation is limited to the excess of the sale price over the net amount specified. Some states prohibit net listings; however, in Nevada they have been allowed by the courts.[78]



Normally, whoever drafts or provides a contract is held responsible for any deficiencies of that contract. With most brokerage agreements, the broker provides the written agreement and often any dispute over contract terms is decided in the client's favor. However, with a net listing, the courts may construe the construction of the contract against the seller since it is the seller who usually dictates the terms of the net listing.[79]

With a net listing, the client must give the broker a fair chance to earn a commission. The client cannot refuse to accept offers above the net price waiting for the brokerage agreement to terminate and then accept a lower offer. In Close v. Redelius, (1950),[80] Hazel Close hired Redelius, a broker, under an open oral net listing to sell her Reno beauty salon. Redelius, introduced and worked with Wygant to purchase the salon for $1,200 over the net list price. The $1,200 would have been Redelius' commission. Close then told Redelius she decided not to sell at that time. Eventually, Wygant and Close, without including Redelius, agreed to purchase the property at the net amount, thereby cutting Redelius from the deal. The court found for Redelius and stated that a seller with a net listing cannot interfere with the transaction until the broker has had a reasonable opportunity to sell the property at a profit.

The net listing brokerage agreement is also known as a "special contract."

The brokerage agreement will not be considered a net listing if the broker's compensation is stated as a percentage of the sales price.

On the other side, net listings are considered by prominent real estate professional organizations to be ripe for potential unethical conduct by the broker. The concern is that with a net listing, the broker becomes a speculator in the client's property.[81] Additionally, many multiple listing services refuse to take net listings as the co-operating broker's commission, if any, cannot be reasonably determined.

Net listings are still used with hard to sell properties, such as rural land and environmentally damaged property. They are more popular when there is a buyer's market.

c. Quantum Meruit – Quantum meruit is a legal theory used to establish the compensation rate when there is no express agreement or when the agreement fails but the court finds it would be inequitable not to give the broker a commission. Quantum meruit allows the broker to be paid the reasonable value of his or her services.[82] The court will look at "established customs" when determining the worth of the broker's services. [83]

Quantum meruit cannot be used to collect compensation when there is a faulty exclusive brokerage agreement.

4. RESPA AND ANTI-TRUST

Two important sets of laws impact a broker's compensation: RESPA and the anti-trust laws.

a. RESPA – RESPA stands for the Real Estate Settlement Procedures Act.[84] RESPA is federal law passed in 1974 and it is periodically amended. It regulates the behavior of settlement service providers who deal with federally related loans in residential real estate transactions. Real estate licensees are specifically identified as being settlement service providers.[85] A "settlement service provider" is anyone who provides services in connection with a real estate transaction.

Among other items, RESPA regulates who can give and receive compensation for settlement services. No person may give or accept any fee, kickback, or thing of value strictly for a referral to a settlement service provider.[86] RESPA does not review whether the commission is reasonable, nor does it cover broker-to-broker referral fees.

b. Anti-trust - There are two sources for anti-trust laws for Nevada brokers – state law (NRS 598A) and federal law (Sherman Act[87] and the Clayton Act[88]). The object of these laws is to regulate trade to ensure a competitive market for the protection of the consumer. The United States Supreme Court, when defining "trade", said the term included all occupations in which men are engaged for a livelihood.[89] That includes real estate licensees. There are certain jurisdictional issues in applying the federal anti-trust laws to local (Nevada) brokerage services. Nevertheless, some activities dealing with the broker's commission may still fall under the law's shadow.

The main area of regulation concerning a broker's compensation is price fixing. This is where a group of brokers determine a fixed rate of compensation, thereby eliminating competition. Also, it applies to any activity that would tend to establish a uniform practice, for example, setting the length of listing periods.

A broker may set the commission rate in his or her brokerage without being in violation of price fixing. The problem arises when two or more brokers from various firms act in concert to establish industry wide fixed commissions. To avoid even the appearance of price fixing, brokers should have written policies stating their commission rates and establishing their independent business justification for those rates.

81. National Association of Realtors®, Code of Ethics and Arbitration Manual, 2006, case interpretation #1-3.

82. Morrow v. Barger, 103 Nev. 247, 252, 737 P.2d 1153 (1987).

83. Flamingo Realty v. Midwest Devel., 110 Nev. 984, 988, 879 P.2d 69 (1994).

84. 12 U.S.C. § 2600 et seq.

85. 12 U.S.C. § 2602 (3), and Reg. X § 3500.2(b).

86. 12 U.S.C. § 2606, RESPA § 8 (a), and Reg. X § 3500.14.

87. 15 U.S.C. § 1 (1973).

88. 15 U.S.C. § 17 (1973).

89. United States v. National Association of Real Estate Boards, 339 U.S. 485 (1950). NAREB was the precursor to NAR.

A "buyer's market" is when there are more properties on the market than there are buyers. Therefore, the seller has a harder time selling the property and the buyer can get a better deal.

"Quantum Meruit" is Latin. Literally it means "as much as he deserves." It refers to the reasonable value of a person's services.

90. NRS 598A.060.

91. AGO 97-28 (12-31-1997).

General price uniformity within a profession for a specific locale is not, in and of itself, illegal. However, if it can be shown the players acted in unison to establish a fixed commission, the possibility of an anti-trust violation increases dramatically.

Additionally, brokers should not have set listing periods. It may be problematic if two or more independent brokers require the same, set listing time frames (ex: all listings are 6 months). Listing periods or broker protection periods should be individually set between a broker and the client.

Nevada's anti-trust law: Nevada has its own anti-trust law that covers the sale of any commodity or the performance of any service. Nevada's law makes it an unlawful restraint of trade to price fix. Additionally, agreements between competitors to divide territories, allocate customers, or monopolize an area, are illegal.[90]

c. Rebates to Clients – Both Nevada law and federal law (RESPA) allow a broker to rebate or refund part of the commission to the client.[91] There is a caveat to this type of refund. The broker must acknowledge receipt of the full amount of the commission before refunding a portion back to the client. This is to ensure complete and accurate income accounting. For example, a buyer's broker promises to rebate $1,000 of his commission to the client on the close of escrow. The commission is $5,000. The broker should, even if only on paper, receive the $5,000, and then pay the rebate; otherwise, it may appear the broker is receiving only $4,000, which would be an inaccurate and potentially illegal accounting of the broker's income.

A federally related loan is any loan that is either insured by, or subject to, federal regulation or made for the purchase of a residence. It includes conventional as well as FHA or VA loans.

"Commodity" is defined as any tangible property including real property. "Service" is any activity performed for economic gain. (NRS 598A.020



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5. DISCLOSURE

A licensee must disclose to each party to a transaction (client or not), each source from which he or she will receive compensation.[92] The Real Estate Commission can discipline any licensee found guilty of accepting, giving, or charging, any undisclosed commission by a fine of up to $10,000 per charge, and they may suspend or revoke the licensee's license.[93]

A licensee may also be charged with deceitful, fraudulent or dishonest dealing.[94] The Commission may discipline a licensee if it finds the licensee has not disclosed, in writing, that the licensee:

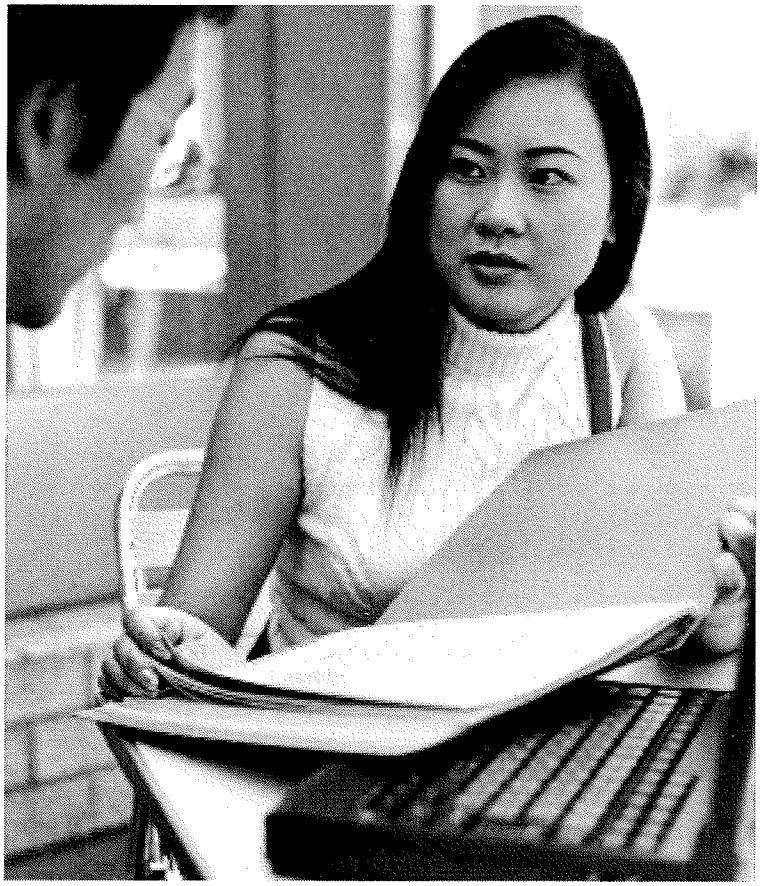
• expects to receive any direct or indirect compensation from any person who will perform services related to the property,[95]

or

• received compensation from more than one party.

If a broker anticipates receiving compensation from more than one party, the broker must obtain each party's consent.[96] The amount of the compensation does not need to be disclosed, only its source.

The licensee should note that disclosure alone does not make the receipt of certain compensation legal. For example, a salesperson or broker-salesperson may not accept compensation directly from a client under NRS 645.280, even if that compensation is fully disclosed to all parties.



92. NRS 645.252 (1)(b).

93. NRS 645.633 (1)(g).

94. NRS 645.3205.

95. NAC 645.605 (4)(a).

96. NRS 645.252 (1)(b) & NAC 645.605 (4)(e).

97. NRS 645.8711.

98. NRS 645.8705.

99, 100. NRS 645.8761.

101. NRS 645.002 & NRS 645.004.

102. NRS 645.323.

Some brokerage agreements concern specialized property or services and are subject to specific laws.

D. SPECIALIZED BROKERAGE AGREEMENTS

1. COMMERCIAL BROKERAGE AGREEMENTS

Nevada law allows a broker to collect the broker's commission from a commercial real estate transaction by recording a special type of claim called the Broker's Commercial Claim. This claim is not a lien on real property.

Commercial real estate is any real estate in Nevada except:

1. Improved property with four or less residential units (condominiums, houses, townhouses);

2. Improved property with more than four residential units, but where each unit is sold individually (such as condominiums); and

3. Unimproved property upon which no more than four residential units may be developed or zoned.[97]

To be protected by the commercial claim law, the brokerage agreement must be in writing and state what services the broker will provide and what disposition the client desires: for example, sale, purchase, exchange or lease of the commercial real estate.[98] By definition the "owner" has an existing interest in the property, therefore the client will be either the seller or the landlord. The broker representing a buyer or tenant is not afforded claim rights under this section of the law.

"Disposition" is the voluntary conveyance of any interest an owner has in the property. An "owner" is any person who holds any existing legal interest in the property and includes an assignee-in-interest. "Owner" does not include a mortgagee, trustee under a deed of trust, or an owner of a claim against the property. NRS 645.872-.8735.

"Net proceeds" are the owner's gross receipts from the disposition of the property minus existing encumbrances, claims or liens and escrow costs. NRS 645.8741.

Since a brokerage agreement is an employment agreement, it is a contract for services and not a claim on the real property. If the owner breaches the brokerage agreement, the broker's remedy is a claim upon the owner's net proceeds - in other words, a claim over the owner's personal property. The claim is not a claim or lien upon the seller's real estate and does not attach to the real property.[99]

The right to enforce a claim under this section belongs only to the broker. As such, the broker may waive the claim right. An agent for the broker may not waive the broker's claim right even if that agent is otherwise authorized to bind the broker to the brokerage agreement.[100] Any waiver of the broker's right must be done by the broker on or before the date the brokerage agreement is signed.

2. ADVANCE FEE AGREEMENTS

Another specialized brokerage agreement is the advance fee agreement. Any brokerage agreement that requires a client to provide money up-front for brokerage services qualifies as an advance fee agreement.[101] Any person requiring money up-front for real estate related services must have a real estate license.[102] An advance fee is a fee asked for, or given to, a broker for listing or advertising properties, lists of real estate service providers, or for the referral of potential

customers (buyers, sellers, landlords, tenants, etc.). Often it involves providing lists of rentals.

Though no specific forms are currently required, the Real Estate Commission is authorized to establish forms for advance fee brokerage agreements. It may also require reports and forms for the review and audit of advance fee agreements.[103]

An advance fee brokerage agreement must be in writing with a detailed description of the broker's services and a date of performance. The broker must identify the total amount of the advance fee and when payment is due.[104]

Full Refund: A special provision includes a statement that the broker will provide a full refund if the services are not substantially or materially provided.[105] For example, if a broker collects advertising costs in advance from a client and the broker does not provide the advertising as stated, the client is entitled to a refund. This provision does not require the property to have been actually sold or leased.

No Guarantee: Additionally, the brokerage agreement cannot imply or guarantee there are tenants or buyers immediately or soon to be available, nor that the property will be purchased, sold, exchanged or leased due to the broker's services.[106]

Oral Promises: Any oral representations or promises made by the broker to induce potential clients into paying an advance fee are by law incorporated into the agreement. Unlike many contracts, there can be no provision in the brokerage agreement that relieves or exempts the broker from those oral representations or promises.[107]

3. BROKERAGE AGREEMENTS IN PROBATE AND GUARDIANSHIP

If a person dies with or without a will and owns real estate in Nevada, the personal representative (court approved/appointed executor or administrator) of the estate may enter into a listing agreement with one or more brokers. The brokerage agreement may be an Exclusive Right to Sell and provide for the payment of compensation to the broker out of the proceeds of the property's sale.

The maximum broker's compensation is set by Nevada law: 10% for the sale of unimproved real property and 7% for improved real property.[108] The payment of any commission must be confirmed by the court contingent upon the sale of the property through the broker's efforts. Even with a brokerage agreement, the court may determine which broker is the procuring cause of the sale and award that broker the commission.[109] The listing broker's commission must be divided between the listing broker and any cooperating broker.[110]

When an estate's personal representative signs the brokerage agreement, the representative has no personal liability to the broker and the estate itself is not liable to the broker unless a sale is made and confirmed by the court.

Similarly, a court-appointed guardian may enter into a brokerage agreement to sell a ward's real property. The requirements and commission restrictions are the same as for those properties being sold from probate. [111]

103. NRS 645.324.

104, 105, 106, 107. NAC 645.675.

108. NRS 148.110.

109. Bartsas Realty, Inc. v. Leverton, 82 Nev. 6, 409 P.2d 627 (1966).

110. NRS 148.120.

111. NRS 159.1385.

112. 11 U.S.C. § 327.

4. BANKRUPTCY

Bankruptcy is federal law that can have a profound effect on the sale of real property and any brokerage agreement.[112] There are various bankruptcy chapters a person may file under. Depending on the chapter, each debtor, and any contractor with that debtor, has certain rights and responsibilities. Considered here are general rules regarding the brokerage agreement when a party files for bankruptcy under Chapter 7 - liquidation or "straight" bankruptcy. Property management agreements and leases have other requirements not discussed here.

There are three major instances in which a broker may be confronted with a brokerage agreement subject to the bankruptcy law:

1. When the broker has an existing, valid listing agreement and the seller files for bankruptcy;

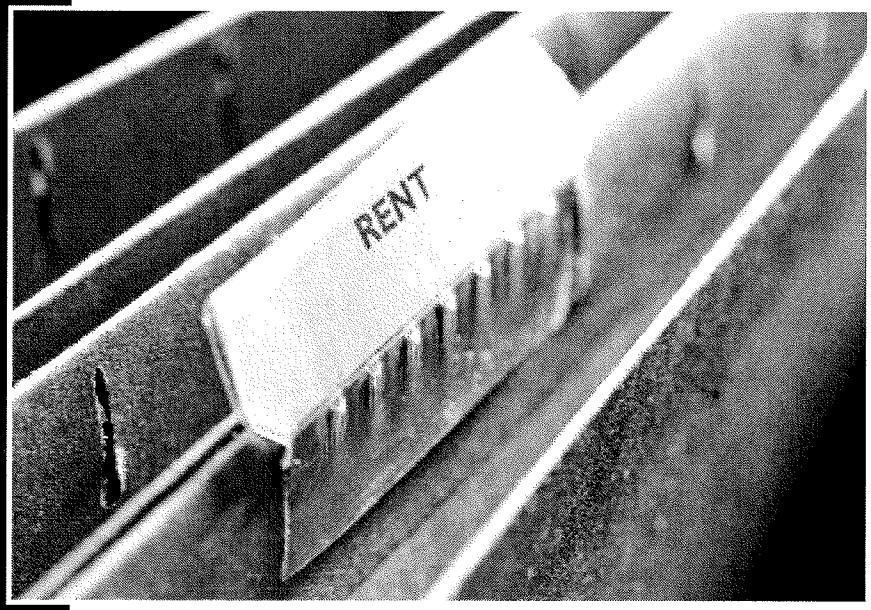
2. When the broker's buyer-client files for bankruptcy; and

3. When the broker is hired by the bankruptcy trustee to sell the bankrupt estate's real property.

CAUTION! Bankruptcy law is highly technical and no broker should attempt to make a determination on the status of the brokerage agreement without consulting a bankruptcy attorney.

Existing Listing Agreement: Usually, an existing listing agreement becomes an "executory contract" once the seller files for bankruptcy. As such, the bankruptcy trustee or the court (they are not the same) can either accept or reject the brokerage agreement. Even if the trustee accepts the contract, the court may reject it. If the trustee and court accept the existing brokerage agreement, the court may modify the compensation. If the contract is rejected, there is little recourse against the court or the trustee.

Buyer Files for Bankruptcy: As soon as the buyer files for bankruptcy, all of the buyer's assets (with certain exclusions) are subject to the control of the bankruptcy trustee. If the buyer has not executed a purchase agreement, any brokerage agreement the buyer has may be terminated since the debtor no longer has control over the assets necessary to purchase any property. If there is an executed purchase agreement, the court may set aside the purchase agreement. At this point the seller, or the buyer's broker, would have to file a Proof of Claim against the buyer's bankruptcy estate for any loss they suffer.



Trustee Hires Broker: Many times the bankruptcy court or trustee will sell the debtor's real property assets. The trustee is authorized to hire professionals to help settle or distribute the bankruptcy estate. Under the Bankruptcy Code, a broker is considered a "professional" and therefore, compensation under the brokerage agreement must be approved by the bankruptcy court. The trustee may hire several brokers under an open listing agreement.

The broker may file a motion with the court to have the court appoint the broker and establish the commission. Once the court approves the broker, the commission becomes an administrative expense and is paid out of the assets of the estate before it is distributed to the debtor's creditors.

5. PROPERTY MANAGEMENT AGREEMENTS

Before a broker can engage in property management, the broker must obtain a permit or hire a designated property manager.[113] Every property manager must have a written property management agreement with each client.[114] By definition, a property manager's employment agreement is not a brokerage agreement;[115] it is a written employment contract between a client and broker in which the broker accepts compensation to manage the client's property.[116]

A property management agreement must be in writing - no oral agreements are enforceable. It must include the term of the employment; however, unlike general brokerage agreements that require a specific termination date, a property management agreement may contain an automatic renewal (roll-over) provision. If it does have a roll-over provision, the circumstances on how the agreement will be renewed must be clearly laid out as well as the term for each renewal.[117]

A property management agreement must state the broker's fee or compensation and whether it is calculated as a percentage of the rent, a flat fee, or by some other formula. There must be a provision on how the broker is to handle the retention and disposition of tenant rents and deposits during each term of the agreement. The agreement must outline the broker's authority to act as agent for the client, for example, whether or not the property manager may initiate eviction proceedings. Finally, it must state what conditions must occur if the agreement is cancelled during its term. The statute provides that a property management agreement may have a no-cause cancellation clause.[118]

6. MANUFACTURED HOUSING

A manufactured home, also known as a mobile home, is a residential structure which is built on a permanent chassis and designed to be transportable.[119] Manufactured homes are considered personal property unless legally converted to real property.[120] The laws dealing with their sale are administered by the Manufactured Housing Division of the Department of Business and Industry for the State of Nevada.[121] Manufactured housing may be located either in a mobile home park in which the home sits on rented space, or on a lot privately owned or rented.

113. NRS 645.230 (1)(b) & (c); NRS 645.013 & NRS 645.0195.

114. NRS 645.6056 (1).

115. NRS 645.005.

116. NRS 645.0192.

117, 118. NRS 645.6056.

119. NRS 489.113 & NRS 489.120.

120. NRS 361.244

121. NRS 489.091 & NRS 489.201.

122. NRS 645.042

123. NRS 645.258

124. Per Joan Hutchings, Licensing Officer, Manufactured Housing Division, Business and Industry Department, State of Nevada, Dec. 26, 2007.

Real estate brokers, unless they have a dealer's permit, are only authorized to sell manufactured homes when:

1. The manufactured house is used and sits on private property (not in a mobile home park or rented space. NRS 645.030 (1)(a)) and

2. Both the real property and the home are being sold.

Manufactured Housing – A "used" manufactured or mobile home is one which has been sold, rented or leased and occupied before or after the sale or rental or its title of ownership has been previously registered with a state government entity. [122]

If the manufactured home has been converted to real property, any legal brokerage agreement may be used. If the manufactured home has not been converted, the broker must make certain disclosures; [123] however, as long as the broker is also selling the underlying real property, any legal brokerage agreement may be used. [124]

7. LISTING WITH OPTION TO PURCHASE AGREEMENT

More popular in slow real estate markets is the Listing with Option to Purchase Agreement. This option agreement provides that the broker will use his or her best efforts to sell the property, but should he or she be unable to do so, the broker will purchase the property from the client.

Obviously, this type of agreement is fraught with potential claims of broker abuse and conflict of interest. The concern is that with a Listing with Option to Purchase, the broker becomes a speculator in the client's property. Thus, for potential personal profit, the broker may not exercise his or her best efforts in selling the property. Nevada has no specific law restricting or prohibiting option contracts, but extensive disclosure is necessary.

A "slow market" occurs when there are more properties for sale than there are buyers, therefore listed homes stay on the market longer.

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E. REVIEW

A broker's employment contract with a client is called a brokerage agreement. All brokerage agreements, being contracts, must have the general contract elements. Other than Nevada laws, certain laws, such as the federal Real Estate Settlement Procedures Act and anti-trust laws, affect what the licensee must do or disclose in a real estate transaction.

Special types of brokerage agreements require specific clauses or wording. Commercial brokerage, advanced fee, probate and guardianship, manufactured housing, and listing with option agreements are all specialized brokerage agreements. Property management agreements, though not technically brokerage agreements, are also specialized employment agreements between a client and a broker.

Brokerage agreements may be oral or written. Certain types of brokerage agreements must be in writing. For example, any brokerage agreement that authorized the broker to be the client's sole broker, called an exclusive agreement, must be in writing. Written contracts may be created with pen and paper, or electronically.

Exclusive brokerage agreements have several requirements. The agreement must contain a definite termination date; be signed by the broker and client or their authorized representatives; and must not require the client to notify the broker of the termination of the exclusive contract feature.

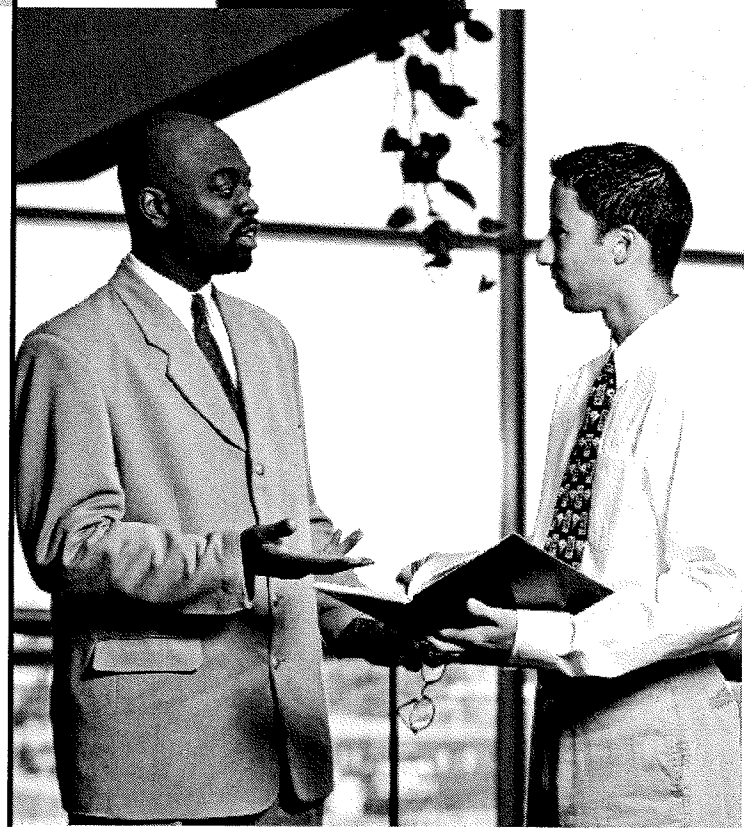
In the brokerage agreement, the broker may limit his or her services; however, at no time may the broker limit the liability for statutorily required duties or services.

Under Nevada law, only a broker is allowed to collect compensation. The salesperson or broker-salesperson may not receive or give compensation from or to, any person for real estate services other than the broker with whom he or she is licensed at the time of the transaction. The receipt of all compensation must be disclosed to the parties in the transaction.









IV. NEVADA LAW
ON OFFERS AND PURCHASE AGREEMENTS

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1. Frantz v. Johnson, 116 Nev. 455, 465, n.4. (2000).

2. McCall v. Carlson, 63 Nev. 390, 419, 172 P.2d 171 (1946).

3. NAC 645.630.

4. NAC 645.632.

An offer is the first step toward a legally binding purchase contract. Its terms will create the initial rights and responsibilities of the parties. Since the licensee will often help draft or review an offer, understanding its legal parameters is crucial.

A. OFFERS AND COUNTEROFFERS – GENERAL LAW

In typical real estate transactions, the buyer presents the offer to the seller who either accepts, modifies, or rejects it. The person who gives the offer is the offeror; the person receiving the offer is the offeree. Unless there are unusual circumstances, the brokers or principals' agents are not a party to the offer or purchase agreement. A counteroffer occurs when the offeree rejects the offer and proposes new, or modified, terms.

GOOD FAITH
is a state of mind encompassing honesty; faithfulness to one's duty or obligation; the desire to observe the reasonable commercial standards of fair dealing; and made without the intent to defraud or to seek an unconscionableadvantage.

Intent: Under general contract law, the offer must express the parties' present intent to contract. Even if performance takes place in the future, at the time of contracting the parties must intend to be bound by their words or acts. In Nevada, all contracts are assumed to have an implied covenant of good faith.[1] However, good faith does not mean the parties have equal or balanced responsibilities, obligations, rights or benefits.

Clear Terms: When the client uses a broker, the broker is responsible for ensuring the offer is complete with clear and definite terms. Ambiguous words or contradicting terms can make the offer unenforceable or void. There must be no built-in vagueness. An example of an offer with vague or uncertain terms would be "close of escrow to be at the end of the month", or "seller accepts but retains the right to increase the purchase price." In those clauses, the close of escrow date is uncertain; the purchase price can be changed at the whim of seller - both conditions defeat the requirement for clear and definite terms.

Agreement: Both parties must agree to all the terms of the offer – there must be a "meeting of the minds".[2] A qualified or conditional acceptance turns the offer into a counteroffer which must, in turn, be accepted. Thus, a counteroffer is a modified rejection of the original offer and creates a new offer which must be accepted by both parties. The new offer will include those unchanged terms in the original offer if the old offer is incorporated by reference into the new one. If there are subsequent counteroffers, each must reference the previous offer/ counteroffer. This ensures that those terms not in dispute are part of the final document.

Delivery: The offer or counteroffer, must be promptly delivered to the offeree (seller or buyer) who will then accept, counter, or reject it.[3] If it is rejected, the licensee is responsible for obtaining a written notice of the rejection from the client and providing that notice to the offeror within a reasonable time.[4] Once an offer (or counteroffer) is accepted and that acceptance it delivered to the offeror, the parties have a legal contract.

1. CREATING THE OFFER

An offer need not be in writing. Though verbal offers are legal, a verbal acceptance by the seller cannot create a legally binding contract for the sale of real property. Nevada's statute of frauds requires all purchase contracts for real property to be in writing. Therefore, to turn a verbal offer into an enforceable purchase agreement the contract must be in writing, state the consideration and be signed by the seller.[5]

In Nevada, most residential purchase offers are prepared using preprinted forms. There is no state mandated purchase form for real property.

Drafting an Offer for the Non-client:
A listing broker is to promote the sale or lease of the seller's/landlord's property and one way of doing this is by putting all bona fide offers in writing and presenting them. The licensee has a duty, when requested, to reduce to writing a bona fide offer made in good faith.[6] Consequently, if a listing broker is requested by a non-represented party to write an bona fide offer, he or she must do so; however, drafting an offer does not automatically make the listing broker the buyer's agent, nor does it create multiple representation necessitating the use of a Consent to Act form.

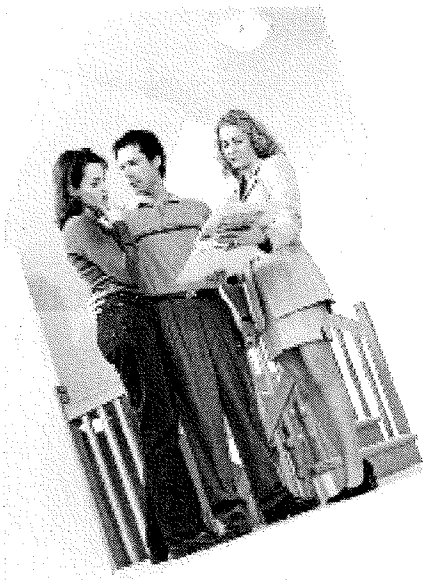
If an unrepresented buyer requests a non-listing broker to draft an offer, the broker may require the buyer to enter into a brokerage agreement. No broker is required to work for free.

The licensee should be careful about unilaterally deciding an offer is not bona fide and refusing to present it. The licensee must present all offers to the client and let the client decide which offers are bona fide.[7] Obviously, this is not applicable if the licensee has a waiver from the client of the duty to present all offers.

2. WITHDRAWAL OF AN OFFER

Most written offers contain an expiration date and time. However, setting an expiration time does not require the offeror to hold the offer open until that time ends. In contract law, any offer, whether oral or written, may be withdrawn (revoked) by the offeror any time before it is accepted. A seller cannot demand the offeror keep the offer open until it expires.

After the expiration date the offer is no longer viable. Thus, an offer cannot be accepted by the offeree after the expiration date without the offeror agreeing to accept it. The parties may mutually agree to extend the expiration date. A licensee should verify any extension is in writing and signed by both parties. If no expiration time is stated in an offer, a court will impose a "reasonable" time for acceptance based on the facts of each case.



5. NRS 111.210.

6. NRS 645.635(7).

7. NRS 645.254 (4).

BONA FIDE
means an offer made in good faith, without fraud or deceit, where the offeror is sincere and genuine.

8. NRS 645.254 (4).

9. NRS 645.635 (8).

10. & 14. RED Informational Bulletin #001, Multiple Offers Guidelines of Licensees", revised 3/24/04.

11. NRS 645.254 (4).

12. NAC 645.630.

13. NRS 645.635 (8).

14. See sidenote #10.

15. See your local Realtor® Association.

16. Fannie Mae, Multiple Offers Notification form.

17. For example, ZipForm™, by RE FormsNet, LLC, Michigan.

CAUTION!
When a seller issues multiple counteroffers, unless those counteroffers are carefully drafted, the seller may become obligated to more than one buyer.

3. PRESENTING THE OFFER

a. Time in Submitting Offer – Unless a client has signed a waiver, the licensee must present all offers made to or by the client as soon as practicable.[8] The listing broker is further required to present all written bona fide offers to the seller.[9] The issues of when, how and by whom offers are presented are determined by the client, not the licensee. There is no law or regulation stating how an offer is to be presented – whether the seller sees the offers in their submission order, all at once, the highest price first, or so forth. There is no law or regulation requiring the seller to reject one offer before seeing the next one. Clients have various desires on how they want to review any offers. A licensee must honor within the limits of the law, those desires.

Though not required by law, the Real Estate Division has stated in its Multiple Offers Guidelines for Licensees that a

> "representative of the cooperating broker has the right to be present when the offer is presented unless the seller gives written instruction to the contrary."[10]

If a seller does restrict the presentation of offers, the listing broker should get the instruction in writing, signed and dated by the seller. Regardless of whether the seller allows a buyer's agent to personally present his or her client's offer, the listing agent must still present all offers.

All offers must be submitted to the client as soon as practicable.[11] There is no statute defining "as soon as practicable". The Administrative Code requires a licensee to deliver all offers "promptly."[12] The Real Estate Commission may take action against any licensee who is found guilty of failing to submit all offers to a seller when the offers are "received".[13] Once the seller has accepted an offer in writing, the licensee may have some



leeway in presenting subsequent offers; however, all offers must still be presented.

Obviously, these laws are violated if a licensee "pockets" an offer. Pocketing an offer is when a licensee intentionally withholds presenting an offer. This is usually done when the licensee is waiting for another, preferred offer.

b. Multiple Offers - The Real Estate Division has issued guidelines for licensees should they receive multiple offers.[14] The guidelines list several alternatives for dealing with multiple offers, from the simple - "accept one offer in writing, and reject all other offers in writing", to the legally complex and technically hazardous – "counter all offers in writing." Individual brokerages, professional associations,[15] government sponsored entities[16] and stationery/ forms publishers[17] have designed various multiple offer forms. Regardless of the form used, the licensee should discuss with the seller how multiple offers will be handled. In a multiple offer situation, a client may mistakenly accept or become liable for two contracts on the sale of a single property. If there is ever a concern, the licensee should refer the client to appropriate legal counsel.

INFORMATIONAL BULLETIN #001

DEPARTMENT OF BUSINESS AND INDUSTRY

REAL ESTATE DIVISION

realest@red.state.nv.us www.red.state.nv.us

MULTIPLE OFFERS GUIDELINES FOR LICENSEES

When Taking the Listing

- Explain to the client that competing offers may be received.
- Discuss with the client options for handling multiple offers.
- The client decides how they want to handle multiple offers.
- Advise the client that they may wish to seek legal counsel if they do receive multiple offers.

Sellers Make the Decisions – Examples of Options

- Accept one offer in writing, and reject all other offers in writing.
- Reject all offers in writing and encourage higher offers.
- Counter one offer, reject other offers in writing.
- Delay the decision waiting for another offer informing all parties. Educate the seller that with this option the buyers may withdraw their offer.
- Alert one or more buyers that they are in a competing offer situation and need to submit their best offer. Reject other offers.
- Alert all buyers that they are in a competing offer situation.
- Counter all offers in writing.

Agent Communication

- Agents should make reasonable efforts to keep cooperating licensees informed of the decision of the client's instructions.

Presenting Offers

- The representative of the cooperating broker has the right to be present when the offer is presented unless the seller gives written instruction to the contrary.

Confidentiality

- The cooperating licensee does not have the right to be present at any subsequent discussion or evaluation of the offer by the seller and the listing broker.

NRS 645.253: Each licensee shall not disclose, except to the real estate broker, confidential information relating to a client in violation of NRS 645.254.

NRS 645.254, paragraph 2: A licensee who has entered into a brokerage agreement to represent a client in a real estate transaction ... Shall not disclose confidential information relating to a client for 1 year after the revocation or termination of the brokerage agreement, unless he is required to do so pursuant to an order of a court of competent jurisdiction or he is

SOURCE: REAL ESTATE DIVISION.

c. Delivery - "Delivery" is the act of presenting to the other party the offeree's acceptance, rejection, or counteroffer. Delivery is important because it gives notice. The offeror cannot be bound by a contract until the accepted contract has been delivered to him or her.

Delivery to the other party's agent is considered delivery to the principal. Unless the offer specifically states a limited delivery method (for example, only by hand), delivery is accomplished when the signed offer is presented to the offeror's broker's office in any reasonable manner. This includes personal delivery (face-to-face), mail, facsimile, or e-mail (if an electronic format was previously agreed to). Once a signed offer is delivered, there is a binding purchase agreement.

4. EXCEPTIONS AND RESTRICTIONS

a. Waiver – A client may elect to waive the broker's duty to present all offers by signing a Waiver Form authorized by statute and created by the Real Estate Division.[18] The form restates the regulatory (NAC 645) definition of what "presenting all offers" encompasses to reflect the licensee's activities which often accompany the presentation of offers to the client.[18a] It provides that the broker is not obligated to accept delivery of or convey offers or counteroffers to the client; the broker is not required to answer the client's questions regarding the offers or counteroffers; and the broker is not require to assist the client in preparing, communicating or negotiating offers or counteroffers.

The waiver form must be signed by the client and the broker as the brokerage relationship is between the client and the broker, not the representing salesperson or broker-salesperson.

b. Disclosure of Offer Terms - Since a broker is hired to facilitate the sale or lease of the client's property, common thought is the broker should be able to maximize his or her client's profit by having offerors bid against each other. To have an effective bidding process, the various offerors would need to know the terms of the competing offers. This would require the listing broker to disclose the terms and price of all other offers. The Real Estate Commission has identified this type of disclosure as a potential violation of NAC 645.605(6) - dealing fairly with all parties to a transaction.[19]

c. "Acceleration" Clauses (not what you think!) – The Division has stated it is a violation of fair dealing to insert what it identifies as an "acceleration" clause. This is not the "acceleration clause" found in general contract or financing law.[20] According to the Division, an acceleration clause is a clause in which the offeror promises to pay a certain set amount above the highest offered sale price and usually provides for a maximum or cap amount. The Division's example is, "I will pay $2,000 over the highest offer up to $300,000."[21] This type of clause automatically gives one offeror a stated advantage over other offerors and may not allow fair dealing for the other offerors.

18. NRS 645.254 (4). See RED: Waiver Form 636 and Authorization to negotiate Directly with Seller Form 637.

18a. NAC 645.254 as amended by R165-07, sec. 5

19. RED "Open House", Multiple Offers, p. 1, Vol. 26, Issue 1, Summer, 2004.

20. An "acceleration clause" in general contract or financing terms allows a lender to "accelerate" the terms of the loan should a borrower default, thereby making the loan immediately due and payable.

21. See #19 above.

Though the previous two activities (disclosing offer terms and inserting an acceleration clause) are not a direct violation of any law or regulation, and there is some controversy regarding this, nevertheless, the Real Estate Commission has found these practices to be highly suspect.

d. Discrimination – Regardless of any instruction or preference of the licensee's client, a licensee may never reject or modify an offer because the offeror is a member of a protected class. It is illegal to discriminate by denying a person an opportunity to engage in a real estate transaction because of that person's race, religious creed, color, national origin, disability, ancestry, familial status or sex (gender). A licensee cannot modify the terms and conditions of an offer to discriminate against, or provide a preference for, a person based on his or her protected class status.[22]

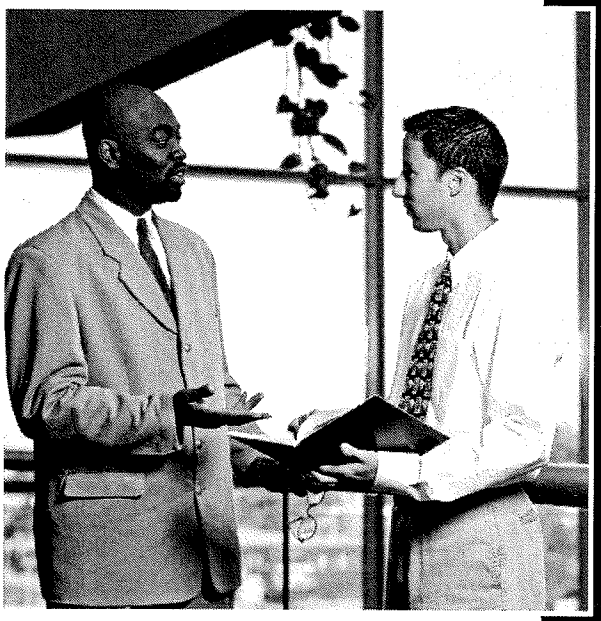
The licensee must be aware that a client seeking a preference for a person based on their protected class is also a violation of the law. For example, a licensee cannot follow a client's instruction to accept only offers from persons of a certain religious or racial background.

Nevada's protected classes are race, religious creed, color, national origin, disability, ancestry, familial status and sex.[23] Sexual orientation is not a protected class for housing in either Nevada or federal law.

5. REJECTION OF OFFER

Once an offer has been reviewed by the offeree, if it is rejected, the licensee must obtain a written notice signed by the offeree informing the offeror of the rejection.[24] There is no requirement that the notice explain why the offer is being rejected. The purpose of this regulation is to satisfy the offeror that his or her offer was actually presented, reviewed and rejected by the other party. Most Nevada preprinted purchase agreement forms contain a rejection clause with a place for the rejecting party to sign.
The rejection notice should be given to the offeror within a "reasonable" time. When there is no time frame specified, the courts will determine a "reasonable" time from the facts of each case. Once the rejection has been delivered, the offer is dead.

The Administrative Code requirement that the licensee have the offeree sign a rejection notice is only binding on the licensee, not on the client. There are times when a client, having rejected an offer, may refuse to sign a rejection notice. In these cases, the licensee is still charged with providing the offeror with a written rejection notice that states the client refused to sign the rejection.



22. NRS 645.321 (1)b).

23. The 1968 Fair Housing Act, as amended 1988, 42 U.S.C. § 3601 et seq. and NRS 118.

24. NAC 645.632.

25. Morrison v. Rayen Investments, Inc., 97 Nev. 58, 624 P.2d 11 (1981).

26. E. Allan Fransworth, Contracts, (3rd ed.) §§ 3.11, 3.18, Aspen Publishers, NY, 1999.

6. TERMINATION – LAPSE BY TIME

Most written offers contain an expiration clause which identifies a date and time after which the offer is invalid. This time frame is for the benefit of the offeror to allow him or her to move on to other transactions after a stated time and not be hampered by an outstanding, but unanswered, offer. The offer automatically lapses after the expiration time frame unless the date is extended by both parties. A late or defective acceptance becomes a counteroffer which must in turn be accepted by the original offeror.

In Morrison v. Rayen Investments, Inc. (1981),[25] Morrison, the buyer, offered to purchase Rayen Investments, Inc.'s property. The offer had a 15-day expiration period.

On the 16th day Rayen's president telegraphed the corporation's acceptance and instructed its agent to open escrow. The court found that since the telegraphed acceptance was outside the offer's required 15-day acceptance period, the offer had lapsed. Any attempt by the offeree to revive the offer became a counteroffer and Morrison, the original offeror, was required to accept that counteroffer before there was a binding contract. The court found that Morrison never accepted the counteroffer, therefore, there was never a legal purchase contract.

7. TERMINATION BY DEATH

There is no specific Nevada law saying what happens to an outstanding offer when either the seller or buyer dies. However, general contract law provides that if an offeree dies before accepting an offer, the offer immediately terminates.[26] If there is more than one offeree, the surviving offeree may accept the offer. If an offeror dies before the offer is accepted, the offer immediately terminates regardless of whether or not the offeree has notice of the offeror's death. If there is more than one offeror, the surviving offeror may reinstate the offer, but is not legally obligated to do so.



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B. PURCHASE AGREEMENTS

Once an offer is accepted and delivered, it becomes a binding purchase agreement. A purchase agreement is a contract between a buyer and seller for the sale of real property. A purchase agreement contract may also be known as an O & A (offer and acceptance), contract of sale, or simply a sales contract. An installment contract (also known as a contract for sale) and an option contract are discussed separately.

At a minimum, general contract law requires what is called the four "P's" – parties, property, price and proof. The contract must identify the parties (the buyer and seller); what property is being sold; the price being paid; and proof the parties intend to be bound, i.e., consideration.

The majority of the conditions or terms found in real property purchase agreements are covered by general contract law. Reviewed here are only the legal requirements in Nevada statute and case law. These laws include public policy considerations and prohibited terms for purchase agreements; the licensee's duties when dealing with purchase agreements; and, a review of the legal requirements for specialized purchase agreements such as those for unimproved property and homes in common-interest communities.

1. GENERAL LEGAL REQUIREMENTS

To have an enforceable contract, each party signing the contract must be over the age of majority and legally competent.

In Nevada, the age of majority is 18 years old.[27] Contracts with minors are enforceable or voidable by the minor, but not enforceable by the other party if the minor chooses to rescind or disaffirm the contract. A minor may have legal emancipation giving him or her full majority rights.[28] Marriage alone does not give a minor legal emancipation.

A person must be legally competent to contract. A party's insanity, intoxication or lack of authority can make the contract void. It is old law in Nevada[29] that an intoxicated party (drugs or alcohol) cannot rescind or avoid a signed contract, unless the party was so inebriated as to be devoid of all reason and understanding. If the contract was notarized, that is prima facie evidence of legally sufficient signing, regardless of the signer's intoxication.[30] However, most purchase agreements are not notarized. If a licensee has any concern as to the signer's capacity, it is best to wait and have the contract signed at a different time.

27. NRS 129.010.

28. NRS 129.080.

29. 1916.

30. Seeley v. Goodwin, 39 Nev. 315, 156 P. 934 (1916).

See page IV-25 regarding the legal difference between a "contract of sale" and a "contract for sale".

A void contract was never legal, whereas a voidable contract, though legal on its face, is 'avoidable' by a party.

PRIMA FACIE
"Prima facie" evidence means evidence presumed by the court to be legally sufficient unless otherwise disproved or rebutted.

31. NRS 111.210.

32. NRS 111.450.

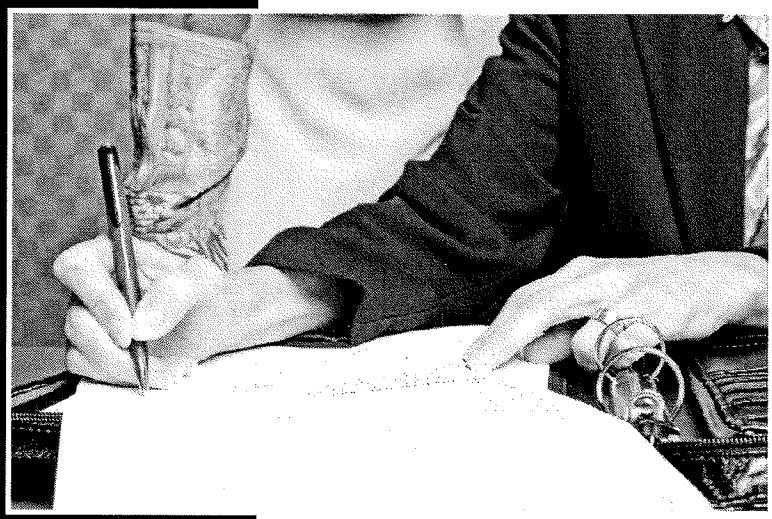
33. Zhang v. Dist. Court, 120 Nev. Adv. Op. 104 (2004).

34. Tomiyasu v. Golden, 81 Nev. 140, 141, 400 P.2d 415 (1965).

Statute of Frauds: Every purchase contract in Nevada must comply with the statute of frauds. It: 1) Must be in writing, 2) State the consideration given by the parties for the contract, and 3) Be signed by the owner (seller) or his or her lawfully authorized agent.[31] Unless the licensee has a separate, notarized and recorded, power-of-attorney from the client,[32] a client is not bound when a licensee signs the purchase agreement.

a. "Writing" Required – The "writing" clause required by Nevada's statute of frauds is intended to prove a contract exists; thereby preventing fraud and perjury. The writing may consist of a standard contract form, letter, or other written document and may consist of one or several related instruments that when read together, contain the legal requirements for a purchase contract. Emails may be sufficient to create a legal purchase agreement.

b. Consideration – All contracts require consideration. Consideration may be either the mutuality of obligation, or the receipt of a thing of value exchanged between the parties - from money to love and affection. If each party has some right (benefit) and responsibility (burden) there is mutuality of obligation and this is sufficient consideration, as is a promise given for a promise received.



Earnest money is not consideration - it is an inducement to negotiate. Earnest money is presented with an offer to indicate the genuineness of the offer. If the offer is accepted, the earnest money is usually incorporated into the purchase agreement as part of the buyer's down payment. If the offer is rejected, the earnest money is returned to the offeror.

Since each contract requires consideration, a contract without consideration is void. In Zhang v. Dist. Court (2004),[33] the seller defaulted on an existing purchase agreement. He then stated he would sell the property to the same buyer but at a higher price. To proceed with the transaction, the buyer agreed and signed the new purchase agreement. The buyer then sued to enforce the original contract. The court found for the buyer stating the seller was already obligated to sell to the buyer under the first contract when he required the buyer to sign the new contract. It found there was no consideration for the second contract. Without consideration, the second contract failed. Therefore, the buyer could enforce the first purchase agreement.

Inadequate consideration will not undo a contract. The Nevada Supreme Court has stated,

"mere inadequacy of price without proof of some element of fraud, unfairness, or oppression that could account for and bring about the inadequacy of price was not sufficient to warrant the setting aside of the [contract]."[34]

It is not up to the licensee to determine if the consideration is sufficient – that is the client's decision.

c. Who Signs and Various Entities – Legally, only the seller or the seller's lawfully authorized agent is required to sign the purchase agreement.[35] However, since most modern purchase agreements require obligations from both parties, seller and buyer, each must accept those terms. That acceptance is proved by the parties' signatures on the purchase agreement.

A licensee must be aware of who has the signing authority for a given entity. When there is a question regarding a party's authority to sign, the licensee should request proof or verification at the onset of the transaction. If there is any question, the broker should require the party's legal counsel to provide written verification of authority. If the closing is through an escrow company or title insurance is being purchased, then the escrow or title officer will determine who is the appropriate legal entity. However, that may not occur until well into the transaction. If the licensee has been dealing with an unauthorized principal, the whole transaction may unravel at the end. It is better to ensure upfront, who-is-who and who has signing capacity.

Married Parties: Since Nevada is a community property state, if a buyer is married both spouses must sign the purchase contract.[36] If a seller is selling community property, the spouse does not have to sign the purchase agreement but will be required to execute the deed transferring title.[37] Should the non-signing spouse choose not to sign the deed, the buyer may only sue the signing spouse for breach of contract and could bring an action against the broker for negligence. A licensee should obtain both spouses' signatures on any purchase agreement, whether buyer or seller.

Co-ownership: If there are multiple owners, each person on title will have to sign the deed if the entire property is being sold. If all owners do not sign the purchase agreement, and the contract is breached, the buyer will have recourse only against the owners who signed. Again, the licensee should be aware of a possible negligence lawsuit against the broker if the licensee fails to obtain all necessary signatures.

Trusts and Guardianships: A trust is created by an individual, called the settlor, who allows the legal title to specific property to be held in the name of the trust for the benefit of others or the settlor. A trust is controlled by one or more trustees. Individuals named to benefit by the trust's property are the beneficiaries. Commonly, the trustee has the authority, as granted by the trust document, to sell or purchase real property in the trust's name.[38] The beneficiaries of the trust do not have the authority to sell trust property. A trustee's rights are outlined in law; however, trust documents may modify the trustee's responsibilities. A licensee should have some written verification that the trustee is solely authorized to sign the purchase agreement.

The licensee should be aware that a trustee who is not the settlor, usually needs the approval of a court if the trustee is personally purchasing property from, or selling property to, the trust estate.[39]

A legally appointed guardian of an incompetent ward may sign a brokerage agreement to sell or to purchase real property from the ward's estate.[40] However, this authority also requires court approval.[41]

Corporations: In Nevada, the statutes Controlling most corporations are found in NRS 78. Briefly, a corporation is owned by the stockholders but managed by a board of directors,[42] which has control over the affairs of the corporation.[43] Each corporation must have a president, secretary and treasurer who are accountable to the board of directors.

35. NRS 111.210.

36. NRS 123.230 (4).

37. NRS 123.220 (3).

38. NRS 163.023.

39. NRS 163.050.

40. NRS 159.1385.

41. NRS 159.134.

42. NRS 78.115.

43. NRS 78.120.

44. NRS 78.130.

Title does not show all ownership interests in a property. A married man may hold title as "sole and separate" but his wife may still have a community property interest.

45. General partnerships NRS 87, limited partnerships NRS 88.

46. NRS 87.120.

47. NRS 87.090.

48. NRS 88.455.

49. NRS 86.301.

50. NRS 148.110.

51. NRS 148.060.

52. NRS 244.282 & NRS 244A.619.

53. NRS 266.267.

54. NRS 279.470.

55. NRS 361.595.

56. NRS 393.245 & University System NRS 396.430.

57. NRS 547.090.

58. NRS 111.160.

DEVISEE
A devisee is the person who gets property, usually real property, under a will.

All three positions may be held by the same person. The corporation's articles of incorporation, bylaws, or both, usually state the directors' and officers' authority to purchase or sell real property in the corporation's name. Therefore, each corporation may have different rules as to who is authorized to sign a purchase agreement. Often, but not always, the president of the corporation is authorized to sign. Nevertheless, when the corporation is selling its real property, the president may need a statement of ratification by the board of directors to strip the corporation of its assets.

Partnerships: Like other legal entities, partnerships are governed by Nevada law.[45] A general partnership may be composed of several individuals, each sharing the benefits and liabilities of the partnership. Unless otherwise provided in the partnership agreement, any partner in a duly formed general partnership may execute a purchase agreement in the partnership's name[46] and the partnership will be bound by the acts of that partner.[47]

Limited partnerships have both general and limited partners. The limited partners are liable only up to the amount they have invested in the partnership. The general partners share full liability. In limited partnerships, usually only a general partner has the right to execute a purchase agreement.

Limited Liability Company: A limited liability company is organized under NRS 86. It may acquire, own, and dispose of real property in its own name. Often, it is composed of a manager, or managers, charged with overseeing the company's affairs. It has members (similar to stockholders) and it may have agents, officers, or employees. Generally, the manager has the legal authority to execute documents for the acquisition or disposition of the company's property. A member may have the authority if the company is managed by its members, or the company's articles of organization or operating agreement may provide that an agent, officer or employee can sign.[49]

Probate Executors or Administrators: Nevada law provides specific procedures on the sale of real property in probate. During probate, the court will grant authority over the deceased's estate to either an executor or court appointed administrator. The executor or administrator may sign brokerage agreements[50] and sell or purchase real property with court approval.[51] A devisee under a will, or an heir to an estate, does not have the right to sell real property still in the deceased's name.

Governments: Almost every government entity (e.g., state, county,[52] or city[53]) or quasi-government entity (e.g., Redevelopment agency,[54] abatement of pests' district,[55] school district,[56] or agricultural associations[57]) is given the statutory authority to purchase or sell real property. Each of these entities will have allocated a specific position that is authorized to execute purchase agreements and deeds for that entity. This position is not always the director, administrator, or chairman of the board or commission.

d. After-Acquired Title – A licensee should be aware that some sellers may attempt to sell property that they do not yet legally own. The majority of the time, the seller has a future interest in the property. For example, a devisee may attempt to sell his or her interest in a property that is still in the deceased's name. Or, a person may attempt to sell property he or she does not have title to but is in contract to purchase. These actions are not always illegal under Nevada's After-Acquired Title statute;[58] however, it is very unwise to participate in this type of transaction unless an attorney representing the proposed seller is willing to take responsibility for any liability the licensee and broker may incur.

Nevada's After-Acquired Title statute provides that if a person sells the fee simple absolute title to a property, which title is not yet in the seller's name, and afterwards acquires title to the property, the title immediately passes to the buyer. This is applicable only in very narrow, specific situations. It cannot be used to avoid transfer taxes – generally, the transfer tax can be assessed on each transaction. No broker should ever rely on this statute when taking a listing or when representing a buyer. If there is a question on ownership or title, the broker should consult with an attorney to establish the validity of the seller's authority.

e. "Signing" by Electronic Signature - Nevada law authorizes an electronic format for any transaction or contract in which the parties agree to conduct their business electronically.[59] An electronic record satisfies any statute that requires a writing and an electronic signature satisfies any statute requiring a sigNature.[60] If the signature must be notarized, it may be electronically notarized by the electronic signature of a notary together with all the information required to be included under other applicable law. That information must be attached to, or associated with, the electronic signature or record.[61]

f. Broker's Rights Under the Purchase Agreement – The parties to a purchase agreement are the buyer and seller – the parties' brokers are agents of the principals and not a party to the sale of the real property. The brokers' authority and contractual rights are found in the brokerage agreements, not the purchase agreement.[62] Since the brokers (or other licensees) are not a party to the contract, they lack standing (legal status) to sue on a breach of the purchase contract's terms. When a purchase agreement includes terms which indemnify the brokers, waive or disclaim their liability, state their compensation, or disclose their agency relationship, the licensee must understand those clauses may not be recognized as enforceable in a court of law.

59. NRS 719.220(2).

60. NRS 719.240.

61. NRS 719.280.

62. Seigworth v. State, 91 Nev. 536, 539, 539 P.2d 464 (1975).

63. J.A. Jones Constr. v. Lehrer McGovern Bovis, 120 Nev. Ad. Op. 32, p. 7 (2000).

64. J.A. Jones, Constr. at p. 8, citing Hilton Hotels v. Butch Lewis Productions, 107 Nev. 226, 232, 808 P.2d 919, 922-23 (1991).

65. NRS 40.453.

66. NRS 107.080-.100.

67. NRS 118.020.

68. NRS 645.321 (1).

69. NRS 111.237.

70. NRS 118.100.

71. NRS 207.300.

72. NRS 645.635 (9).

73. 42 U.S.C. §§ 3601 et seq.

74. NRS 113.040.

2. SPECIAL CLAUSES AND PROHIBITIONS

Along with the statutes outlining the minimum legal requirements for a purchase agreement, the law also provides for clauses or contract terms which affect the parties' various responsibilities or rights. These include public policy provisions which are automatically read into each contract, to prohibitions against certain restrictions or covenants.

a. Public Policy Provisions - All contracts contain some public policy clauses that are automatically considered part of the contract. For example, all contracts are presumed to have a clause requiring the parties to act in good faith. The Nevada Supreme Court has held that the

> "implied covenant of good faith and fair dealing exists in every Nevada contract ... [it] essentially forbids arbitrary, unfair acts by one party that disadvantage the other."[63]

No term in the contract can abrogate that implied covenant. The court stated,

> "We have held that when 'the terms of a contract are literally complied with but one party to the contract deliberately countervenes the intention and spirit . . ., that party can incur liability for breach of the implied covenant of good faith and fair dealing.'"[64]

Other public policy provisions include a prohibition against any clause which eliminates the statutory rights of a borrower (mortgagor or deed of trust grantor).[65] A borrower's rights include the right to receive default notices and the right to rely upon the statutory time-frames before foreclosure commences.[66]

Discrimination: It is against public policy for any seller or licensee to discriminate against any person because of that person's race, religious creed, color, national origin, disability, ancestry, familial status or sex (gender), by denying that person access to any opportunity to engage in a residential real estate transaction.[67] The prohibition includes any discriminatory wording or intent in the terms or conditions of a real estate transaction,[68] the addition of racial covenants or restrictions in a deed,[69] and the refusal to sell or make a residential property available to any person based on that person's status as a member of a protected class.[70] Such discriminatory behavior is not only a crime,[71] but will subject the licensee to discipline by the Real Estate Commission.[72] Nevada's protected classes echo the federal classes[73] and a licensee is subject to both laws.

b. If the Property is Destroyed – By statute, if the property is destroyed or taken by eminent domain while in escrow, the rights of the principals are predetermined unless the parties have contracted differently.[74]

When a property is substantially destroyed, if the buyer has not taken legal title or possession of the property and the buyer is not at fault in the property's destruction, then the seller cannot enforce the contract. The buyer may recover any portion of the price already paid. If the buyer has taken possession or legal title, and the seller is not at fault in the property's destruction, the seller may enforce the terms of the contract.

Likewise, while the property is in escrow, if it is taken by a government under eminent domain and the buyer has not taken possession or legal title, the seller is entitled to receive the value of the property from the taking entity, but he or she must refund any money the seller received from the buyer. If the buyer has taken possession or legal title, he or she

may receive the value of the property from the taking entity, but must pay to the seller the contract price.

c. If A Principal Dies – Should a principal die while in contract, his or her interest in the purchase agreement is determined by statute. Should the buyer die, the court appointed personal representative of the deceased (the executor or administrator) has several options. He or she may terminate the contract, continue with the purchase, or sell the deceased's rights under the contract.[75] The right to continue with the sale belongs to the buyer's estate, a seller cannot enforce the contract. If the seller dies while in contract, the buyers can require, with court approval, the seller's estate to continue with the sale.[76]

d. Solar Energy and the Flag – No purchase contract may have any clause restricting the buyer's right to obtain solar energy.[77] No contract may have any clause restricting the display of the American flag.[78] This includes restrictions in common-interest communities and CC & Rs (covenants, conditions and restrictions). There are some limitations on how the flag may be displayed.

e. Property Title & RESPA – Title is the legal evidence of ownership of a property. One of the basic assumptions when buying a property is that the buyer will receive clear title. When a property is subject to a financial obligation or use constraint, the title is encumbered. No property is completely free and clear of all title restrictions. All property may be subject to public restrictions (e.g., taxes, zoning) or private restrictions (e.g., C C & Rs, easements, financing obligations). Many purchase agreements have clauses disclosing these to the buyer. Often these clauses state the buyer will take title to the property in spite of the restriction if the restriction is common and reasonable, for example, property taxes.

The contract may or may not contain a time-frame which allows the seller to clear title defects or encumbrances. The right to extend the contract's time frame for the seller to clear title is not automatic and will only be granted if provided for in the contract or by agreement.[79]

Unmerchantable Title: An encumbrance, lien, restriction or claim can make the title unmarketable (e.g., unmerchantable). A real estate licensee may not offer or attempt to sell any property with an unmerchantable title unless the licensee notifies the prospective buyer of the title impairment before the buyer pays any part of the purchase price.[80]

Federal law (Real Estate Settlement Procedures Act – RESPA)[81] prohibits a seller from requiring a buyer to obtain title insurance from a specific title company. However, a seller may mandate a specific escrow company or lender.

This separation between escrow and title often confuses the new licensee. In the western United States, most title insurance companies are intimately associated with escrow companies where the purchase of title insurance and the purchase of escrow services seem seamless - both services and product coming as a package. In reality, title and escrow are separate and distinct services and entities. There are independent escrow companies that are not associated with a title insurance company and title insurance companies from which a buyer may purchase title insurance without using any escrow service.

75. NRS 148.330.

76. NRS 148.420.

77. NRS 111.239 and NRS 278.0208.

78. NRS 111.238.

79. Denison v. Ladd, 54 Nev. 186, 187-88, 10 P.2d 637 (1932).

80. NAC 645.635.

81. 12 U.S.C. § 2608.

An unmerchantable title is title that a reasonable buyer would refuse to accept because of use constraints, conflicting interests, or the possibility of litigation.

82. Epperson v. Roloff, 103 Nev. 206, 719 P.2d 799 (1986).

83. NRS 113.100-.150.

84. Mackintosh v. Jack Matthews., 109 Nev. 628, 855 P.l2d 549 (1993) (Justices Springer and Young, dissenting).

f. The Integration Clause – An integration clause provides that the written contract represents the parties' complete and final agreement – that no verbal claims made by any party prior to the signing of the contract can be relied on or are a part of the contract. However, relying on the contract's integration clause will not shield a seller or licensee from their misrepresentations.

In one case, Epperson v. Roloff (1986),[82] the sellers attempted to claim that the contract's integration clause stopped the buyer from bringing a misrepresentation claim. In this case, the sellers and their agent, while showing the potential buyers the sellers' home, made reference to and gestured toward a "solar feature" in the house. After the buyers moved in, they discovered that the solar feature was a hole in the roof covered with corrugated metal painted black. When the buyers sued for misrepresentation, the sellers claimed they had made no affirmative statements about there being a solar panel. They then argued that the contract's integration clause prevented the buyers from relying on anything they had said unless it was in writing or in the contract. The court found that an integration clause does not bar a claim of misrepresentation when there is a duty to speak.

g. "As Is" Clause – Some laws concerning real property purchase contracts are found in statute, others are found in case law. The law concerning the "as is" clause is a common law creation. An "as is" clause requires the buyer to take the property with no warranties of fitness or condition and with all existing defects. Generally, if the property has a defect that is patent (exposed, accessible) the seller does not need to point out the defect unless there is a "special relationship" between the seller and buyer. If there is a special relationship, the seller is obligated to identify even patent defects.

The "as is" clause has its limitations. It cannot be used to force a buyer to purchase a property with a defect hidden by the seller. If the defect is latent (not readily discernable, hidden) and the seller knows of the defect, the seller must disclose it to the buyer regardless of any "as is" clause. The court found the seller has an affirmative duty to disclose to a potential buyer those adverse facts known only to the seller and which could not be reasonably discovered by the buyer. Since 1995 in Nevada, a residential property seller is required to complete the mandated Sellers Real Property Disclosure form identifying all property defects of which the seller is aware.[83]

Additionally, if a seller (or the agent) has fraudulently and affirmatively misrepresented the condition of the property (false representation) or has intentionally concealed known defects, the "as is" clause will not shield the seller from liability.

The most important Nevada case dealing with the "as is" clause is Mackintosh v. Jack Matthews and Company (1993).[84] Jack Matthews's brokerage was hired by California Federal Savings and Loan (Cal Fed) to sell a Carson City foreclosed property. Clark, an employee of Cal Fed, hired a local contractor to clean and paint the home. The contractor pointed out to Clark basement water leakage and other construction defects (cracked beam, broken water pipe, etc.). Clark told the contractor not to mention the water problem to anyone. Cal Fed then listed the property "as is."

The Mackintoshes were interested in purchasing the property. When they looked at it, the electricity was turned off and they had to use a flashlight while inspecting the basement. They noticed water in the basement but thought it was due to a recent repair of faulty plumbing. In the pest inspection report, the inspector noted "interior walls in

basement area are damaged and sheet rock is moldy from excessive moisture". The Mackintoshes reviewed and signed this report. They obtained their home loan from Cal Fed and closed escrow soon thereafter. After the close of escrow, the Mackintoshes became aware of the extensive water seepage problem and the other major construction defects.

The Mackintoshes sued Cal Fed, the brokerage and others for failure to disclose and for breach of fiduciary duty. Cal Fed argued the Mackintoshes were aware of a water problem but accepted the property, with this visible defect, "as is." It argued that as the seller, under general contract law, it owed no special duty to the buyers to disclose patent defects. The lower court granted summary judgment for Cal Fed and the other defendants. The Mackintoshes appealed.

The Nevada Supreme Court extensively reviewed the history of the "as is" clause from cases across the nation. It found generally, that when a property was sold "as is," the seller's nondisclosure of adverse information (e.g., defects) will not allow the buyer to rescind the contract or sue for damages. When a defect is patent, the buyer will only be able to rescind or get damages if the seller made actual false statements, not just remained silent.

Moreover, since the buyer was put on notice of a possible defect, the buyer had an affirmative duty to reasonably inquire as to the nature of the problem or defect— the traditional "should have known" rule. This principle provides that if a buyer knew, or should have known using reasonable diligence, of a defect, yet accepted the property anyway, the buyer waives any right to seek damages for that defect.[85] The court found that since the Mackintoshes were aware of some water damage, they were required to investigate further the potential water problem. Since they did not do this, under traditional legal rules, they would lose their lawsuit. However, the court said in this case there was a "special relationship" between the parties thereby making the seller obligated to disclose even patent defects.

A special relationship occurs when one party confides in and relies on, the other party because of the nature of their relationship. In Mackintosh, the court found that Cal Fed was not only the seller but the lender as well. As their lender, the Mackintoshes confided personal and confidential information to Cal Fed - information a buyer would not normally share with a seller, and Cal Fed took the property as security for their loan - thereby reasonably leading the Mackintoshes to believe that there was a "special relationship" between themselves and Cal Fed. This special relationship invested Cal Fed with the requirement of full disclosure which nullified the onerous effects of the "as is" clause. Based on its finding of a special relationship, the court reversed the lower court's ruling and found for the Mackintoshes.

A licensee should never rely on an "as is" clause to shield him or her from non-disclosure liability. A licensee must always disclose, as soon as practicable and to each party to the transaction, all material and relevant facts, data or information relating to the property. This disclosure is required whether the licensee had actual knowledge of the information, or "should have known" of it using reasonable diligence.[86]

h. Unconscionability – No purchase agreement may have unconscionable clauses. The Nevada Supreme Court stated

> "[a] contract is unconscionable only when the clauses of that contract and the circumstances existing at the time of the execution of the contract are so one-sided as to oppress or unfairly surprise an innocent party."[87]

85. Thornton v. Agassiz, 106 Nev. 676, 799 P.2d 1106 (1990).

86. NRS 645.252 (1)(a).

87. Bill Stremmel Motors v. IDS Leasing Corp., 89 Nev. 414, 418, 514 P.2d 654 (1973).

An unconscionable clause is one that requires a party to do an act which affronts the sense of justice, decency,orreasonableness, or which requires a party to give-up a vested right.

88. NRS 645.633 (1)(h).

89. NRS 645.635 (3).

90. NRS 645.252 (2).

91. NRS 645.257 (3).

92. NAC 645.605 (5).

93. NAC 645.605 (9).

94. NAC 645.605 (2) and (10).

95. NRS 645.635 (1)(h).

96. Real Estate Division v. Soeller, 98 Nev. 579, 656 P.2d 224 (1982).

For example, a contract provision that provides for only one principal to pay the other principal's attorney fees regardless who is at fault, is unconscionable. As is a clause that allows one party to unilaterally alter the terms of the contract while still holding the other party accountable. For instance, an unconscionable seller's clause would be

> "seller reserves the right to increase the sale price or cancel this contract without penalty. Should seller exercise this right, buyer agrees to give up his right to mediate, arbitrate or seek damages or specific performance against seller."

The courts reserve to themselves the right to determine if various clauses are unconscionable. If they find a clause unconscionable, it may be stricken from the contract or the whole contract may be unenforceable.



3. LICENSEE DUTIES

A licensee has specific statutory duties to the client and other principals when handling a purchase agreement. These include general duties such as the requirement not to be negligent,[88] to specific duties such as ensuring a copy of the contract has been given to the client.[89]

a. Reasonable Skill and Care – A licensee has the duty to use reasonable skill and care with respect to all parties to the real estate transaction.[90] What is reasonable skill and care? It is the skill and care that a reasonably prudent licensee brings to any transaction by applying the licensee's knowledge of the law, the profession, and the property. The licensee, at a minimum, must have the degree of knowledge required to obtain a then current real estate license.[91] This requires the licensee to keep current with all real estate related laws[92] and to understand and properly adhere to those laws.[93] Additionally, reasonable skill and care includes the licensee reasonably obtaining knowledge of the material and pertinent facts about the property and the transaction.[94]

Reasonable care requires the licensee not to act in an irresponsible, careless or negligent manner.[95] Not being negligent entails understanding all the terms of the purchase agreement and completing the contract to ensure each term is lawful and represents the client's wishes. In Real Estate Division v. Soeller (1982),[96] Soeller was the listing broker for the Bennetts who were selling their Lake Tahoe property. Lund, a licensee with another brokerage, made a personal offer on the property. Soeller never reviewed Lund's offer before presenting it to his clients. He missed that Lund had not included a close of escrow date.

After the contract was signed, he did not verify if Lund had deposited the earnest money when she opened escrow. When a question arose, he instructed Lund

to negotiate directly with the Bennetts because he was going on vacation.

Eventually, Lund was unable to perform on the contract and verbally agreed with the Bennetts to cancel escrow. Nevertheless, she did not cancel the escrow nor did Soeller, the Bennett's broker, ever verify escrow was cancelled. Lund later found a buyer for the property (Howarth) and agreed to sell the Bennetts' property to Howarth in a double escrow for several thousands of dollars over the Bennetts' asking price. Because there was no close of escrow date on the purchase agreement and the escrow had not been cancelled, Lund proceeded to force the Bennetts to sell the property to her which she, in turn, immediately sold to Howarth. The profit was identified as "commission" to Lund's brokerage. Soeller received his full commission. When Soeller was sued, he claimed both the Bennetts and Howarth had full disclosure of the transaction as it was laid out in the escrow instructions. However, the court found there were at least three different sets of escrow instructions and there may have been more.

The Real Estate Commissioners found Lund, his brokers, and Soeller, in violation of NRS 645 for misconduct, negligence, lack of supervision, lack of honest dealing, and failure to protect the interests of their clients. Lund's license was revoked, Soeller's and the brokers' licenses were suspended. None of the licensees had used the reasonable skill or care necessary to protect the interests of their clients.

b. Writing Reviewed - A licensee must ensure all the terms and conditions of the purchase agreement are in writing and that it is properly signed by all parties.[97] The licensee must make certain each change or modification of the agreement is incorporated into the contract and signed or initialed by the appropriate parties.[98]

c. Authentic Terms - The purchase agreement must accurately reflect the authentic terms of the parties' agreement. For example, a licensee may not represent (either verbally or in writing) to any lender or other interested party, an amount in excess of the actual sale price, terms differing from those actually agreed upon,[99] or name any false consideration.[100] Any misstatement or concealment of a material fact to a lender is fraud and will subject that person to criminal and civil lawsuits as well as regulatory discipline.[101] A licensee who supplies false terms is in breach of NRS 645.3205[102] which states:

> "A licensee shall not deal with any party to a real estate transaction in a manner which is deceitful, fraudulent or dishonest."

Including a false term or fact or excluding any material term or fact from the purchase agreement in order to deceive anyone is fraud and such behavior is illegal. Anyone attempting to obtain anything of value using false pretense with the intent to deceive may be found guilty of a category B felony.[103] This prohibition includes submitting a false or fraudulent appraisal to any financial institution or other interested party.[104]

d. No Inducement to Breach - A licensee should not for personal gain, induce any party to the purchase agreement to breach it in order to substitute a new agreement.[105] The question becomes, what is the liability if the licensee presents an offer and the client breaks an existing contract in order to accept the new offer? The answer is, the licensee should not be liable as long as the licensee did not actively persuade the client to break the current contract.

Whenever a contract is breached, there is the potential for damage claims or a specific performance lawsuit from the non-breaching party. A licensee who encourages the breach of a contract may

97. NAC 645.605 (7).

98. NAC 645.605 (8).

99. NRS 645.635 (5).

100. NAC 645.525.

101. NRS 40.750 (2).

102. See also, NRS 645.633(1)(i).

103. NRS 205.380.

104. NRS 645.635 (10).

105. NRS 645.630 (1)(l).

A category B felony is one to six years in prison and/or a fine of $10,000 per charge.

In a specific performance lawsuit, the non-breaching party asks the court to enforce the terms of the contract – in other words to force the seller to sell the property.

106. Nolan v. State Dep't of Commerce-Real Estate Division, 85 Nev. 611, 460 P.2d 153 (1969) stricken as decisive of an incorrect issue, 86 Nev. 428, 470 P.2d 124 (1970).

107. NRS 645.254 (3)(b).

108. NAC 645.600 (2)(a).

109. NRS 645.635 (3).

110. NAC 645.605 (7).

111. NAC 645.650 (2).

112. NAC 645.650.

113. NRS 645.635 (4).

be liable in tort to both the seller and buyer and face disciplinary charges from the Real Estate Division.

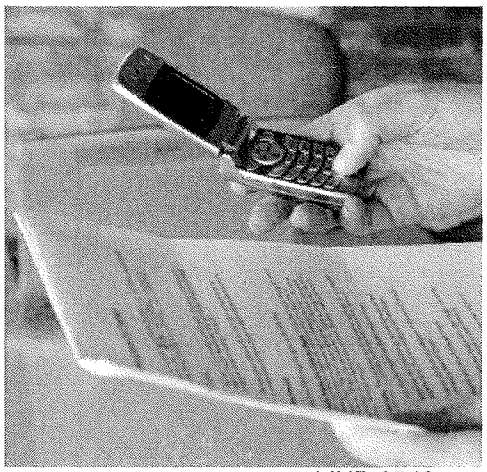
In Nolan v. Real Estate Division (1969),[106] Joe Nolan, a broker, took a listing from the Wests. After his exclusive listing expired, the Wests gave him and another licensee, Stevens, open listings. Stevens eventually presented an offer to the Wests, which they accepted. Later that evening, Nolan presented another offer and he urged the Wests to disregard the Stevens' offer, stating that, in his opinion, the Wests would net a larger amount with his offer. When Mr. West expressed his concern about being sued, Nolan said he would pay the costs of any lawsuit and personally purchase the property if it didn't sell. The Wests then breached their contract with Stevens' client. Eventually, Stevens' client sued the Wests in district court for specific performance. They also filed a complaint with the Division. The Real Estate Commission held a hearing in which they found Nolan violated various provisions of the NRS and ordered his license suspended for three months. After several appeals, the case was sent back to the Commissioners to determine if Nolan's actions were motivated by the opportunity for his personal gain.

A licensee must be careful not to encourage a client to breach a contract otherwise the licensee, and his or her broker, may be liable under NRS 645, and in tort to the non-breaching party. In any situation in which the client is tempted to breach an existing contract, the licensee must advise the client to seek legal counsel before acting.[107] Brokers should always keep in mind they are ultimately responsible for their licensees' actions, including the drafting and handling of offers and the client's purchase agreement.[108]

A tort is a civil wrong for which a remedy is available - usually it is money.

e. Copies – Once an offer has been accepted and there is a completed and signed purchase agreement, the licensee must deliver a copy to the principals within a reasonable time.[109] The licensee also is required to provide the broker with a copy of the agreement[110] within five days after the paperwork is signed.[111] The broker must keep a copy of the purchase agreement (and all related records whether or not the transaction ever closed) for five years.[112]

f. Closing Documents – In Nevada, the majority of licensees and clients use escrow companies to coordinate and close the transaction. Other states and regions have different practices. In the Eastern half of the United States, most real estate transactions are settled in attorneys' offices. In other regions, closings may occur in a broker's office. However, even in Nevada, not all real estate transactions involve escrow companies. Because a closing may not occur in an escrow office, the licensee has a duty to ensure that within 10 business days after the transaction has closed, a complete, detailed closing statement is delivered to the principals. The seller's closing statement must show all the receipts and disbursements made by the broker for the seller. The buyer's closing statement must show all money received in the transaction, how and for what it was disbursed. A true copy of the closing statements must be kept in the broker's file.[113] The licensee is relieved of this duty if an escrow holder furnishes those statements.



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4. REQUIREMENTS FOR SPECIALIZED PURCHASE AGREEMENTS

Not all real estate purchase agreements are created equal. Depending on the type of real estate being sold, there are specific clauses or provisions that must be incorporated into the purchase agreement before it is enforceable.

a. Common-Interest-Community Contracts – A residential common-interest-community property (CIC – also known as a homeowners' association) is "real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate other than that unit."[114] In a CIC, a unit's owner must pay for the upkeep of common property, usually through a monthly assessment, fee or dues. The law governing CICs is found in NRS 116, which is administered by the Real Estate Division.[115] By statute, the common law supplements the CIC statutes.[116] However, no agreement or contract may modify or waive any homeowners' rights granted by statute.[117]

As with all contracts, no clause in the CIC purchase agreement may be unconscionable.[118] Additionally, each CIC purchase contract imposes the duty of good faith performance on each party.[119]

Sales of homes with a CIC are divided into the unit's first sale (where the seller is the "declarant") and resales. In a first sale, the declarant is required to provide the buyer with a copy of the Public Offering Statement.[120] This extensive disclosure document outlines the buyer's rights, including the right to cancel the purchase contract within five days after signing the contract. To exercise this right, the buyer (or his or her agent), must not have personally inspected the unit.[121] If they have inspected it, there is no right of cancellation. This right must also be stated in the purchase agreement.[122]

On resales, a buyer must be given a resale disclosure package at the unit owner's expense.[122a] The buyer may cancel the contract without penalty five days after he or she receives the package whether or not the unit was inspected.[123] The cancellation provision must also be in the purchase agreement.

In either cancellation case – new or resale - all payments made by the buyer before cancellation must be promptly refunded.

b. Unimproved Lots and Subdivisions – Both federal law and the NRS regulate the sale of unimproved and subdivided property.[124] The federal law is the Interstate Land Sales Full Disclosure Act[125] (ILSFDA), which regulates unimproved subdivided lots. Nevada's subdivided land law is found in NRS 119. Regardless of which law is used, the developer must provide the Nevada Real Estate Division with extensive information on the subdivision.[126] The information required includes a copy of the purchase agreement form the developer will be using.[127]

The developer/owner is ultimately responsible for the business acts of the brokers, salespeople, or representatives he or she has employed.[128] However, the broker of record, or the authorized salesperson, is required to sign the purchase contract. Therefore, the broker should be satisfied that the contract meets the minimum legal requirements.[129] The broker or salesman must understand the terms of the contract as he or she is required to review each document and disclosure with the prospective buyer.[130] If a question arises as to the meaning of a clause, the licensee should refer the buyers to their lawyer before getting into too much detail.

The broker must obtain a signed receipt from the buyer stating the buyer received the required documents. This receipt and a copy of the contract must be kept by the

114. NRS 116.021.

115. NRS 116.615.

116. NRS 116.1108.

117. NRS 116.1104.

118. NRS 116.1112.

119. NRS 116.1113.

120. NRS 116.4102.

121. NRS 116.4103 (1)(i).

122. NRS 116.4108.

122a. NRS 116.4109 as amended by SB 253.

123. NRS 116.4109 (2).

124. See also NRS 599A, Trade Regulations and Practices, Solicitation to Purchase Land, for further restrictions on sales practices.

125. 15 U.S.C. §§ 1701 to 1720.

126. NRS 119.119.

127. NRS 119.180 (1)(d) and NAC 119.150(9), NAC 119.220(5).

128. NRS 119.175.

129. NAC 119.330.

130. NRS 119.182 (1) and NAC 119.160(1).

In transactions governed by the ILSFDA, each purchase agreement has specific wording, disclosure, and revocation requirements.

broker for three years or until one year after the final payment on a contract of sale, which ever is longer.[131]

Nevada requires specific wording and clauses in all subdivision purchase contracts. The regulations identify not only the wording but the format and size of print type that must be used.[132] Timing is important. Many of the required subdivision disclosures must be given to prospective buyers before the buyer signs any contract.

Each contract must contain the following statement in 12-point boldface type at the top of the contract:[133]

> This is a binding contract by which you agree to purchase an interest in real property. You should examine your rights of revocation contained elsewhere in this contract.

Also, the following wording must be clearly and conspicuously placed just above the buyer's signatures:

> The purchaser of any subdivision or any lot, parcel, unit or interest in any subdivision not exempted pursuant to the provisions of NRS 119.120 or 119.122 may cancel the contract of sale, by written notice, until midnight of the fifth calendar day following the date of execution of the contract, unless the contract prescribes a longer period for cancellation. The right of cancellation may not be waived. Any attempt by the developer to obtain such a waiver results in a contract which is voidable by the purchaser.

The notice of cancellation must be delivered personally to the developer or sent by certified mail or telegraph to the business address of the developer.

The developer shall, within 15 days after receipt of the notice of cancellation, return all payments made by the purchaser.[134] Whether the property being sold is located in Nevada or elsewhere, if the buyer is procured in Nevada, the contract must also contain the following statement:

> This contract is to be construed according to the laws of the State of Nevada and specifically chapter 119 of NRS, or
>
> This contract is to be construed according to the laws of _____. Any purchaser solicited in the State of Nevada retains those rights granted him under chapter 119 of NRS.[135]

The contract must list all major improvements in the subdivision. If a separate document contains the description of the major improvements, that document must be incorporated into the purchase agreement by reference. The Division will decide which improvements are considered major.[136]

If the deed won't be delivered to the buyer until 180 days after the close of escrow, the contract must say so. The buyer must be advised at signing that the contract should be recorded in the county where the property is located to give public notice of the buyer's interest in that property.[137]

The purchase contract may not contain any wording similar to: "[P]urchaser agrees that no representations, oral or implied, have been made to purchaser other than what is contained in this contract."[138]

Neither the developer, broker nor salesperson may make any written or oral statements, which change the true nature or legal significance of any document approved by the RED,[139] nor can they state that the subdivision was approved by the RED.[140]

The broker, salesperson, or developer may be sued by the buyer for any violation of NRS or NAC 119. The Division

131. NRS 119.182.

132. NAC 119.530, see also NAC 119.160.

133. NAC 119.530 (2).

134. NRS 119.182.

135. NAC 119.530(4).

136. NAC 119.530 (7).

137. NAC 119.530 (8).

138. NAC 119.530 (3).

139. NAC 119.530 (6).

140. NRS 119.170.

may press criminal charges, as well as hold administrative hearings, against violators.[141]

c. Purchase Contracts Requiring Court Approval – Certain purchase agreements require court approval or confirmation. These may include contracts executed by an executor or administrator for a decease's estate; those where the owner is legally incompetent and under a guardianship; certain trust purchase agreements; or those contracts where the seller has filed for bankruptcy.

Trusts: A trustee is a fiduciary to the trust and, by extension, to the beneficiaries. The trustee cannot take personal advantage of his or her position. Therefore, a trustee must have the approval of a court when the trustee is personally purchasing property from, or selling property to, the trust estate.[142]

Probate: In a probate situation where an executor or administrator is selling the deceased's real property, public notice must be given, there must be a court hearing, and the court must review the purchase contract prior to confirming the sale. When an offer has been presented to the court for confirmation at a hearing, any would-be buyer may bid on it. If the second bid is within certain statutory guidelines, the court may accept that offer, order a new sale, or conduct a public auction in open court.[143] The licensee must be aware that no purchase contract for the sale of real property in probate is binding on the deceased's estate until confirmed by the court. [143]

Guardianship: In a guardianship, there is a court appointed guardian who administers the estate of the ward. A ward is a legally declared incompetent who is, by reason of mental or other incapacity, unable to properly manage and care for his or her property. A guardian may also be appointed for a minor. There are various types of guardians, e.g., guardian of the estate, guardian of the person, special guardian, and guardian ad litem, each with their own restrictions and authority.

Once a guardian is court appointed, all of the ward's property is put into a trust held for the ward's benefit. Generally, the guardian is given the authority to purchase or sell real property for the ward's estate. Each contract must be confirmed by the court before title passes. Much like probate, the sale of a ward's real property requires public notice, a court hearing, and confirmation. At the public hearing, other persons may bid against an existing purchase agreement. The court may confirm a higher bid, thereby setting aside the original purchase contract. [144]

Bankruptcy: When a person files for bankruptcy[145] all of the property which the debtor owns, and the debtor's interests in other property, becomes part of the bankruptcy estate.[146] Depending on the bankruptcy chapter, the estate is under the control of a bankruptcy trustee[147] who may sell the estate's real property with court approval.[148]

If the debtor is in contract to purchase or sell real property prior to filing bankruptcy, the trustee has the authority to set aside that contract and cancel the transaction.[149] Also, under certain conditions, the trustee may undo a closed transaction if it was done within the recent past and was consummated to defraud creditors or strip the estate of value before the debtor filed bankruptcy.[150]

All purchase contracts accepted by the bankruptcy trustee must be approved at a court hearing.[151] Once approved, the property can be sold and the proceeds distributed to the debtor's creditors.

141. NRS 119.330.

142. NRS 163.050.

143. NRS 148.080 and NRS 148.220-270.

144. NRS 159.134-1415.

145. 11 U.S.C. §§ 101 et seq.

146. 11 U.S.C. § 541.

147. 11 U.S.C. § 704.

148. 11 U.S.C. §§ 327, 704.

149. 11 U.S.C. § 544.

150. 11 U.S.C. § 547.

151. 11 U.S.C. § 363.

152. In Title Insurance and Trust Co. v. Chicago Title Insurance Co., 97 Nev. 523, 634 P.2d 1216 (1981) the court used both "contract for sale" and "contract of sale" for the same document – an installment contract, while in Mackintosh v. Jack Matthews, 109 Nev. 628, 855 P.2d 549 (1993), the court used "contract for sale" for a traditional purchase agreement, compare with Goldston v. AMI Investments, Inc., 98 Nev. 567, 655 P.2d 521, where the court used "contract of sale" for a traditional purchase agreement.

C. ALTERNATIVE CONTRACTS

There are other types of purchase contracts with which the licensee should be familiar—the installment contract and the option contract. Ordinary real property purchase contracts do not anticipate a long-term relationship between the buyer and the seller. However, the drafter of an installment contract needs to anticipate just such a relationship. These contracts act as financing instruments as well as purchase contracts.

The option contract does not in and of itself provide for the purchase of real estate. It is a distinct, separate agreement in which the seller agrees to hold available for a buyer the option to purchase the property at a certain price on some future date. Some option agreements are mated with lease agreements creating the hybrid "lease with option to purchase." That contract, depending on its wording, may have all the characteristics of a potential purchase agreement, a lease, an option and a mortgage.

1. INSTALLMENT CONTRACT

An installment contract may be called a land sale contract, land contract, contract for deed, bond for title, or articles of agreement for warranty deed. There is some confusion when referring to an installment contract as a "contract of sale" or a "contract for sale;" the Nevada courts have used both terms when referring to installment contracts and ordinary purchase agreements.[152]

In an installment contract, the buyer makes periodic payments to the seller, in return the buyer receives equitable title and often takes immediate possession of the property. Legal title is retained by the seller. Upon the successful conclusion of all the buyer's payments, the seller is obligated to transfer legal title to the buyer.

The licensee should not confuse an installment contract in which the seller retains legal title, with a contract in which the buyer gets legal title but pays the seller the purchase price in installments. The latter arrangement is a traditional mortgage, the buyer is the mortgagor and the seller is the mortgagee.

Some installment contracts "wrap" an existing loan into the buyer's installment payments. An example of a wrap situation is where the amount of the seller's existing mortgage payment is wrapped (included) in the buyer's payment to the seller.

A carefully drafted installment contract must ensure each party's rights. It should, at a minimum, address the party's obligations; assignment rights; payment of existing loans or liens; creation and payment of future loans or liens; identify tax obligations and deductions; allocate maintenance; address insurance rights and responsibilities; state default conditions and remedies; and establish final title transfer requirements and procedures. An installment contract is a legally complex document and should only be drafted by a licensed attorney.

Don't confuse "land contract" or "land sale contract" with a purchase agreement for unimproved or "raw" land.

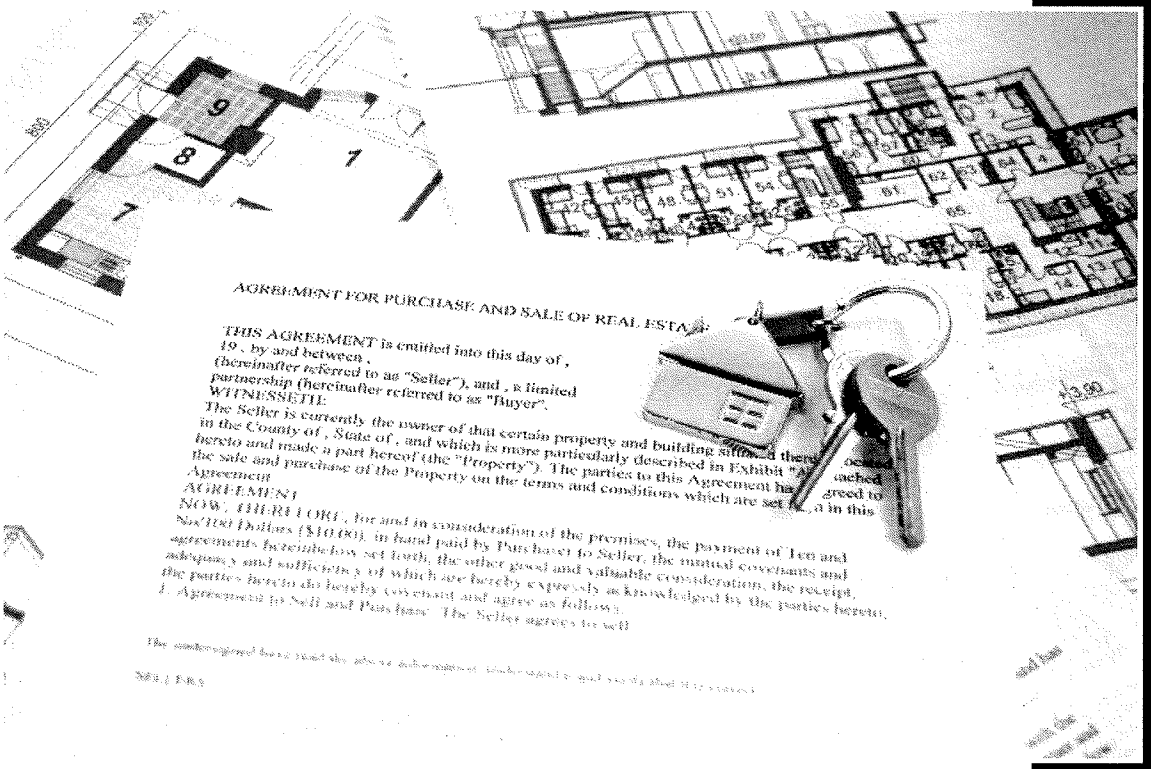
CAUTION!
Drafting an installment contract is practicing law!

Liability: Both buyer and seller need to be made aware of the potential liability inherent in an installment contract. For example, a seller may have a buyer that does not meet all the obligations under the installment contract, damages the property, or encumbers it with liens. Depending on the contract's wording, the seller may have to file for a judicial foreclosure to evict the buyer and then sue for damages.

On the other hand, keeping legal title in the seller's name can be a problem for the buyer. The seller may default on an existing loan; sell the property; further encumber it; or have a judgment or lien attach to the property; each of which could effect or terminate any rights of the buyer. The buyer could sue the seller for breach of contract, but may still lose the property.

One way to protect the buyer's rights is to record the installment contract. In Title Ins. and Trust Co. v. Chicago Title Ins. Co. (1981),[153] Moser lent Fullmer money secured by a deed of trust on Fullmer's property. Title Insurance Co. was the trustee. Fullmer then sold the property to Suleman under an installment contract, which was recorded. Suleman took possession and immediately constructed the Peter Pan Motel. Suleman later assigned his interest under the installment contract to Nazarali. Fullmer eventually defaulted on the note to Moser, who foreclosed under the deed of trust.

153. Title Insurance and Trust Co. v. Chicago Title Insurance Co., 97 Nev. 523, 634 P.2d 1216 (1981).



154: NRS 40.430.

155: NRS.40.050.

156: NRS 40.250 et seq.

At the trustee's foreclosure sale the property was sold to a third-party. Soon thereafter, the trustee, Title Insurance Co., discovered it had missed the recorded installment contract. The law requires a trustee to give notice of the trustee's sale to anyone who has an interest in the property. Under the installment contract Suleman, and through him Nazarali, his assignee, had an equitable title interest in the property. Therefore, Suleman was entitled to receive the foreclosure notice.

Neither Suleman nor Nazarali ever received a Notice of Default or a Notice of Trustee's Sale. In response to the lawsuit, the court voided the trustee's sale and Nazarali was given the opportunity to cure the default with Moser. "But for" the recorded installment contract, Suleman and Nazarali would have lost the property and their investments.

As a Financing Instrument: Depending on the contract's wording, the contract may be considered an executory contract for money owed, or a mortgage. This is significant. If the contract is breached, the remedies are different depending on how the installment contract is classified.

The law requires a mortgagee to foreclose before he or she can sue for damages under a breach of contract.[154] Thus, if the installment contract is classified as a mortgage, the seller will have to go through a judicial foreclosure before he or she can regain possession of the property.[155] One reason many sellers opt for an installment contract is to avoid this very situation.

If the installment contract is a contract for money owed, then the seller can use the unlawful detainer and eviction rules to remove the buyer, and immediately sue for damages.[156]



Historically, an installment contract would only be considered a mortgage if a deed was executed by the seller to the buyer and the seller reserved to him or herself a security interest.[157] However, depending on the contract's wording, today's courts may find an installment contract is a mortgage without the reservation right or a signed deed. It is more likely to be considered a mortgage if the contract contains onerous terms of forfeiture, or when the buyer has paid a considerable portion of the purchase price, or where the buyer has substantially improved the property, or when it would be inequitable not to allow the buyer more time to cure his or her default. The Court has said:

> [e]quity will relieve from forfeiture for default in payment of money under contract for sale of land if caused by accident, fraud, surprise, mistake, inadvertence, ignorance, or if default is unintentional and due to neglect which is not willful.[158]

It should be evident that installment contracts should not be drafted by real estate licensees nor should the licensee advise his or her client on offering or accepting an installment contract without also advising the client to seek legal advice.

2. OPTION TO PURCHASE AND LEASE WITH OPTION

An option contract is a separate, independent contract even though it may contain the necessary terms of the purchase agreement. An option requires the seller to hold open to the buyer, for a set time and with set terms, the right to purchase the property. Depending on its wording, the option's consideration may be independent of the purchase agreement and non-refundable, or it may be incorporated into the property's purchase price once the option is exercised. The seller is the optionor, the buyer is the optionee.

Unlike a purchase agreement, an option confers no interest in the property; it is merely a contractual right to acquire the property in the future. An option is a unilateral contract that becomes a bilateral contract once the option is exercised. It is unilateral in that only one party is required to perform. The buyer may or may not choose to exercise the option, but the seller must sell to the buyer if the buyer does exercise it. The exercise of the option must be unequivocally performed on its original terms to be binding.

As option contracts are distinct from the offer and purchase agreement, they need different types of terms. The parties should identify in the option contract what rights each one has regarding a party's death, the property's destruction, the option's assignability, and the eventual disposition of the consideration. Time to perform must be stated. Nevada's Supreme Court has said that all option contracts, by their very nature, are time sensitive and will be read as having a "time is of the essence" clause.[159]

157. Southern Pacific Co. v. Miller, 39 Nev. 169, 176, 154 P. 929 (1916).

158. Mosso v. Lee, 53 Nev. 176, 178, 295 P. 776 (1931).

159. McCall v. Carlson, 63 Nev. 390, 420, 172 P.2d 171 (1946).

A time is of the essence clause requires the parties to perform certain acts within the time frames set in the contract. Failure to perform by the stated time is a breach of the contract.

CAUTION!
A lease with option agreement should not be drafted using a common boiler plate purchase agreement form. No licensee should suggest, or attempt to draft, a lease with option but should advise the client to obtain legal advice.

Unlike purchase contracts or offers, the death of a party does not terminate the option contract; however, rejection of the option does. The buyer's rejection of the option before the option's end-date ends the option and the seller is free to sell to another party.

Lease with Option to Purchase - Because the option is a separate, distinct contract, there is some confusion as to the nature of the hybrid "Lease with Option to Purchase." This document claims to be a rental agreement, thereby establishing a landlord and tenant relationship; an option contract, giving the tenant an option to purchase on set terms and conditions; and, depending on the contract's wording, an installment contract if a portion of the rent is used to build-up the tenant's equity.

A tenant may build equity depending on how the option's consideration or the rental security is applied and how the rental payments are apportioned. The buyer's payment may be solely rent or some of it may be applied to the down payment. Each choice has consequences as to how the contract will be interpreted by a court. Again, depending on the lease's wording, a breach of the lease terms will not always terminate the option. If the lease with option contract is not carefully drafted, the court may find the tenant has an equitable interest in the property. Once an equitable interest is established, eviction of a defaulting tenant/buyer requires a judicial foreclosure and the landlord/seller may have to refund money to the tenant/buyer.

D. REVIEW

An offer is only the first step toward a legally binding purchase contract. In Nevada, most residential purchase offers are prepared using preprinted forms even though there is no state mandated purchase form. When a broker is used, the licensee is responsible for ensuring the form is complete with clear and definite terms. The licensee has a duty, when requested, to put into writing all bona fide offers made in good faith. The licensee must always present all offers made to, or by, the client as soon as practicable. Regardless of any instruction or preference of the licensee's client, at no time may a broker reject or modify an offer because the offeror is of a protected class. Once an offer has been reviewed by the offeree, if it is rejected, the licensee is charged with obtaining a written notice, signed by the offeree, informing the offeror of the rejection.

Once an offer has been accepted, it turns into a purchase agreement. Every purchase agreement must comply with the statute of frauds. It 1) must be in writing, 2) state the consideration given by the parties for the contract, and 3) be signed by the owner (seller), or his or her lawfully authorized agent. Unless the licensee has a separate notarized and recorded power-of-attorney, the licensee is not authorized to sign the purchase agreement for the client. Nevada law authorizes an electronic format for any transaction or contract in which the parties agree to conduct their business electronically.

The law requires specific contract clauses which affect the parties' various responsibilities or rights. These include public policy provisions which are automatically read into each contract and prohibitions against certain restrictions or covenants. Additionally, the purchase agreement must accurately reflect the authentic terms of the parties' agreement. It cannot contain any discriminatory language indicating a preference for, or a bias against, anyone of a protected class.

Some purchase agreements must have certain clauses or provisions before they are enforceable. Others require court approval such as probate, guardianship, or bankruptcy contracts. Finally, the licensee should be aware of installment contracts and option contracts (including the lease with option to purchase).

A licensee has statutory duties when dealing with purchase agreements. These include general duties - not being negligent, and specific duties - ensuring a copy of the contract was given to the client. First among these is the duty to use reasonable skill and care with respect to all parties to the real estate transaction. A licensee may not induce any party to the purchase agreement to breach that agreement in order to substitute a new one if the licensee will secure personal gain from the breach.

Purchase contracts should not be drafted by real estate licensees nor should the licensee advise his or her client to accept an unknown or complicated contract type without also advising the client to seek legal advice.



V. NEVADA LAW ON DISCLOSURES

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This chapter identifies the why, when, who, how and what of disclosure for the licensee. Discussed are generalized disclosure information and specific disclosure requirements broken down into the topics of agency, transaction, and property disclosures. Mandatory disclosure forms and summary disclosure tables are found in the Appendices.

A. GENERAL DISCLOSURE INFORMATION

There is an old saying in real estate that when in doubt – disclose, disclose, disclose. Because the licensee helps to facilitate most real estate transactions, the burden of disclosure falls heaviest on the agent. Over the years, extensive law and regulation has evolved requiring a host of disclosures by the licensee. Many disclosures concern the property, but the licensee must also disclose certain specifics about the licensee's agency and the transaction.

1. WHY DISCLOSE?

The purpose for full and honest disclosure is to ensure all parties to the transaction have sufficient information on key issues to make informed decisions.[1] These disclosures may be as broad as demanding the licensee disclose "any material and relevant facts, data or information ... relating to the property,"[2] to as narrow as requiring the licensee to disclose the possibility of lead-based paint on the property. [3]

The duty of disclosure varies with the licensee's relationship to a party. For example, the licensee owes to all parties the obligation of disclosing all material facts concerning the property as well as certain facts regarding the licensee's status and source of compensation.[4] In addition, the licensee owes to the client not only the above, but full and honest disclosure of all material facts concerning the transaction.[5]

2. SOURCES OF DISCLOSURE LAW

The laws requiring disclosure have a variety of sources – statute, regulation, common law, and contract. Statutes and regulations are found in federal, state and local laws, codes and ordinances. By contract, the licensee and client may agree to have the licensee make disclosures he or she would otherwise not be required by law to make.

Nevada statutes and regulations: Nevada's laws are codified in the Nevada Revised Statutes (NRS). Most real estate licensees are familiar with NRS Chapter 645, the laws governing real estate licensees; however, disclosure requirements are found throughout the NRS.[6]

NAC stands for the Nevada Administrative Code. Each state agency that licenses a profession has a set of regulations which govern that profession. These regulations are found in the NAC. Like the NRS, other sections of the NAC have disclosure requirements that are applicable to the real estate licensee, property or transaction.[7]

Federal laws and regulations: The federal government has applicable real estate disclosure laws. Some of these disclosures deal with the same topics as state law,[8] while others are specific to federal law.[9]

1. Holland Realty v. NV Real Estate Comm., 84 Nev. 91, 98, 436 P.2d 422 (1968).

2. NRS 645.252 (1).

3. 42 USC §4852d (a)(4). The disclosure requirement is made applicable to licensees by statute.

4. NRS 645.252.

5. NRS 645.252, NRS 645.254. For a fuller discussion, see II. Nevada Law on Fiduciary Duties.

6. For example, NRS 119.182 deals with subdivisions and requires the licensee to disclose certain facts about the subdivision.

7. For example, NAC 119A.285 requires a licensee selling a time share to disclose if the licensee has an interest in the unit.

8. Federal Interstate Land Sales Full Disclosure Act (15 USC § 1701) and Nevada's Sale of Subdivided Land (NRS 119.119).

9. The federal department of Housing and Urban Development (HUD) requires the disclosure of the opportunity for a home inspection. (For Your Protection, Get a Home Inspection, form) HUD mortgage letter 99-18.

Like Nevada, federal law has its statutes known as the United States Code (USC). These are the laws passed by Congress. Corresponding federal regulations are found in the Code of Federal Regulation (CFR). Additionally, various federal agencies, such as HUD, have their own statements of policy that are applicable to the real estate transaction.

Local laws: Some disclosures are required by local government entities such as counties and cities. These may be found in the respective government codes or ordinances.[10] Moreover, there are "hybrid" governing entities that take their authority from various federal and state laws. For example, the Tahoe Regional Planning Authority (TRPA) that controls and monitors development and land use practices in the Lake Tahoe basin, is a federally related agency with interstate jurisdiction.[11] The TRPA has its own Code of Ordinances that regulate land use. Any licensee dealing with Lake Tahoe properties must be aware of restrictions imposed by the TRPA and disclose relevant TRPA issues.

Common law: Historically, case law provided that a licensee was responsible for disclosing the condition of the property,[12] the condition of the neighborhood,[13] and conditions of the transaction that affected the client.[14]

Today, most common law disclosures have been codified into statute. However, sometimes the statute is not specific as to how or when a disclosure is to be made. At those times, a review of the original case law may bring into focus the edges of the disclosure's boundaries.

Contract: By contract, the broker may agree to disclose to the client items which the broker is otherwise exempt from disclosing. For example, a buyer's agent is not required by law to disclose if the property was the site of a death; however, the buyer and licensee may agree that the agent will disclose if the licensee is aware of someone dying on the property.[15]

The licensee and client may not contract to do an illegal thing. For example, no agreement between a seller and the listing agent will relieve the licensee of liability for the nondisclosure of a material defect of the property.

3. DUTY OF INQUIRY AND "SHOULD HAVE KNOWN"

Disclosure is a core duty to agency. The licensee has a duty to disclose to each party to the transaction any material and relevant facts, data, or information which he or she knows, or which, by the exercise of reasonable care and diligence, should have known, relating to the property.[16] This includes information of which the licensee has actual knowledge as well as facts about which licensee must inquire.

The licensee should note that material "facts", not just problems or defects, must be disclosed. A "material fact" is any fact that is likely to influence a principal about the desirability of the property or the transaction.[17] Such facts include the licensee's agency status and loyalty, facts about the real estate transaction, certain facts about the property.

A licensee must disclose facts of which the licensee has actual knowledge.[18] What is actual knowledge? The Nevada Supreme Court has found,

> [a]ctual knowledge consists not only of what one certainly knows, but also consists in information which he might obtain by investigating facts which he does know and which impose upon him a duty to investigate.[19]

The law requires the licensee to inquire about facts or situations that would cause a reasonable person to question an item. A licensee will not be allowed to ignore

10. For example, the presence and compliance certification of a wood burning stove. Washoe County Health Department Regulation 040.051§§ A & D.

11. Federal Public Law 96-551 (12-19-80) [94 Stat. 3234], wherein the U.S. Congress established the Tahoe Regional Planning Agency (TRPA), administered in cooperation between the states of California and Nevada (see NRS 321.595 et seq., NRS 268.098).

12. Mackintosh v. Jack Matthews & Co, 109 Nev. 628, 855 P.2d 549 (1993).

13. Lowe v. Real Estate Division, 89 Nev. 488, 490, 515 P.2d 388 (1973).

14. Charles v. Lemons & Assoc., 104 Nev. 388, 760 P.2d 118 (1988).

15. NRS 40.770 (5).

16. NRS 645.252 (1)(a).

17. Holland Realty v. NV Real Estate Comm., 84 Nev. 91, 98, 436 P.2d 422 (1968).

18. NRS 645.252.

19. Garff v. J.R. Bradley Co., 84 Nev. 79, 85, 436 P.2d 428 (1968).

"danger signals" or "red lights";[20] to gloss over conflicting information; or to act carelessly in obtaining material facts about the property, under the excuse that the licensee did not "know for certain" or did not have "actual knowledge" of relevant facts.

This does not mean the licensee must become a property inspector, private eye or lawyer. It does mean the licensee is required to use "reasonable care and diligence" to investigate "any material and relevant facts, data or information relating to the property."[21]

4. EXEMPTIONS AND EXCEPTIONS

When reviewing any disclosure law, the licensee should identify the statute's exemptions or exceptions to ensure the law is properly followed.

a. Stigmatized property - Nevada's stigmatized property law contains a list of certain facts that a licensee does not need to disclose.[22]

These exempted facts include:
1. Whether the property was the site of a homicide, suicide or a death by any other means, except deaths caused by a condition of the property (for example, faulty wiring);

2. Whether the property was occupied by a person with human immunodeficiency virus or HIV, or any other disease that is not known to be transmitted by living in the property;

3. Whether the property was the site of a felony or any other crime, except if the crime was the manufacture of methamphetamine and the property has not been rehabilitated;

4. Whether a sex offender resides or is expected to reside in the community; and

5. Whether the property is located near a licensed facility for transitional living for released offenders.

Waiver Can Create Broker Liability: If the licensee is exempt from disclosing certain facts, the broker may waive the exemption by contract. NRS 40.770 (5) provides that a buyer's broker can agree to be liable to the buyer for not disclosing the property was the site:

1. Of a homicide, suicide or death;

2. Of a crime punishable as a felony; or

3. Occupied by a person with AIDS.[23]

Additionally, the broker and buyer may agree to have the broker disclose:

4. The fact that a sex offender resides in the community; or

5. That the property is located near a facility for transitional living for released offenders.

The statute only states a buyer's broker may agree to make these disclosures; however, there is no statute stopping a seller and listing broker from agreeing to disclose to a buyer information the broker is not otherwise required to disclose. For example, the seller may allow the listing broker to disclose that the seller has received a notice from the local law enforcement agency that a sex offender is living in the neighborhood.

Should a broker consent to take on such liability to make those disclosures, the parties' contract controls the how, when and to whom the disclosure will be made.

20. Woods v. Label Investment Corp., 107 Nev. 419, 812 P.2d 1293 (1991) and Collins v. Burns, 103 Nev. 394, 741 P.2d 819 (1987).

21. NRS 645.252 (1)(a).

22. NRS 40.770.

23. There remains an issue within HUD (US Dept. of Housing and Urban Development) whether, even if allowed by law, a licensee can disclose this under Fair Housing laws.

A "stigmatized" property is a property considered "damaged" because of an event that occurred there; for example, a murder. Generally, it does not refer to actual physical damage or a property defect.

NRS 179D.400 defines a "Sex Offender" as a person who is: (a) Convicted of a sexual offense listed in NRS 179D.410; or (b) Found guilty by a court of a sexual offense, such as: (1) A sexually violent predator, or (2) A nonresident sex offender who is a student or worker within this state.

"RELEASED OFFENDERS" are persons who have been released from prison and who require assistance with reintegration into the community. NRS 449.0055

b. Client Misrepresentations - By law, it cannot be assumed that the licensee has the client's knowledge about the property.[24] In Prigge v. South Seventh Realty, (1981)[25] Prigge purchased a property and then sued South Seventh Realty for falsely representing in the listing that the home was frame and stucco, which it was not. Prigge argued that the brokerage should be liable for all facts, false or not, contained in a listing. South Seventh Realty argued it had simply relied upon the statements of the sellers and it did not know, nor did it have reason to know, the seller's statements were false. The court, in finding for the brokerage, stated an agent had the right to rely on the statements of the client, unless there was contradicting information.

Interestingly, in the Prigge case, the court opined that Prigge did not argue that South Seventh Realty should have known the true facts if it had exercised reasonable care. Had Prigge argued the agent should have known whether a building was frame and stucco or otherwise, the court's finding may have been different.

A licensee cannot be held liable for the Seller's nondisclosure of information on the Seller's Real Property Disclosure Statement, if:

1. The licensee did not know of the nondisclosure, or

2. The information is of public record readily available to the public.[26]

The licensee will be held liable for nondisclosure if the licensee knows the client made a misrepresentation and did not tell the recipient that the statement was false.[27] The courts will not allow a licensee who knew better to avoid liability by hiding behind a client's misrepresentation.[28]

c. No Duty to Investigate: Professional Inspections or Financial Condition - A licensee does not need to independently verify the accuracy of a statement concerning the property made by a duly licensed or certified professional.[29] A licensee should disclose to the client that a professional report exists if the licensee is aware of such a report; however, the licensee is exempted from any duty to independently verify the accuracy of that report.

A licensee is not required to independently investigate the financial condition of a party to the real estate transaction.[30] For example, a seller cannot claim it was the licensee's responsibility to investigate and disclose the buyer's credit; nor can a buyer claim it was the licensee's responsibility to investigate and disclose the seller's financial condition.

There is a caveat to these exemptions – should a licensee independently verify the accuracy of an inspection or investigate the financial condition of a party, the licensee then assumes the liability for any inaccuracies in the disclosure. A licensee cannot escape responsibility for misinformation or inaccuracy by claiming he or she was not legally obligated to disclose it in the first place and therefore, should not be held liable for the inadequate or inaccurate disclosure.

24. NRS 645.257 (2).

25. Prigge v. South Seventh Realty, 97 Nev. 640, 637 P.2d 1222 (1981).

26. & 27. NRS 645.259 (2).

28. NRS 645.259 (2) referring to NRS 645.252.

29. & 30. NRS 645.252 (4).

At no time does an "as is" clause allow the seller or licensee to conceal or not disclose known defects.

31. NRS 113.100, NRS 113.150.

32. NRS 645.254 (2).

33. See the National Association of Realtors® Code of Ethics, (2006) Article 2, does not give a limit to keeping a client's confidences.

34. Real Estate Division form, Consent to Act, 05/01/05.

35. NRS 645.252 (1)(a).

36. NRS 645.254 (2).

d. Disclosure and the "As Is" Clause - An "as is" clause in a purchase agreement requires the buyer to take the property with no warranties of fitness or condition and with all existing defects. Since 1995, Nevada residential sellers are required to complete the mandated Sellers Real Property Disclosure form identifying all defects in the property of which they are aware.[31] A seller cannot escape this disclosure duty by inserting an "as is" clause in the purchase agreement.

A licensee should never rely on an "as is" clause to shield him or her from nondisclosure liability. A licensee must always disclose, as soon as practicable and to each party to the transaction, all material and relevant facts, data or information relating to the property. If the licensee is aware of a defect that the seller does not disclose, the licensee is bound by law to disclose the defect.

5. CLIENT CONFIDENCES AND CONSUMER PRIVACY

A licensee may not disclose the client's confidential information for one year after the revocation or termination of the brokerage agreement.[32] Some professional trade organizations require extended time frames for keeping client confidences.[33]

What constitutes a client's confidential information varies from transaction to transaction and from client to client. The Real Estate Division defines confidential information as "the client's motivation to purchase, trade or sell, which if disclosed, could harm one party's bargaining position or benefit the other."[34]

Confidential information does include any information which a reasonable person would expect, or that a client requests, to be kept confidential.

No Misinformation: The client's right to confidentiality does not allow the licensee to lie or give misinformation. If asked a direct question regarding a confidential matter, the licensee should state the information is confidential and refuse to answer.

Confidentiality is a statutory duty the licensee owes to the client. Nevertheless, at no time does a client's request for confidentiality control the licensee's disclosure duty. A licensee must disclose to all parties material and relevant facts relating to the property.[35] This affirmative duty overrides a client's instruction that the licensee not disclose relevant property facts such as defects.

Right Held by Client: The right of confidentiality is held by the client, not the licensee. That means it is the client's decision on whether confidential information may be disclosed. If there is any question, the licensee must clear it with the client before disclosure. The client may authorize the licensee to disclose information that would otherwise be confidential. Any such authorization must be in writing.[36]

Required Disclosure: When may a licensee disclose confidential information? The law authorizes the disclosure of confidential information in any one of five circumstances:

1. When a court of competent jurisdiction orders disclosure;

2. When the client authorizes in writing the disclosure;

3. When the licensee discloses information to his or her broker;[37]

4. When the information is required to be disclosed by law; and

5. When a year has passed since the termination of the brokerage agreement.

A licensee is not bound to a client's instruction to keep information confidential that the licensee is obligated by law to disclose.

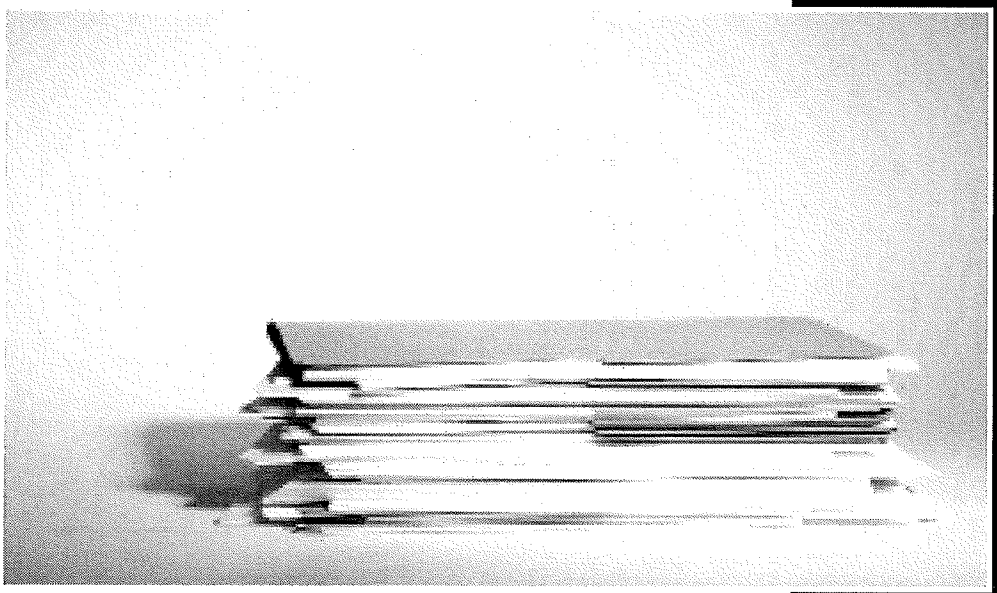
Gramm-Leach-Bliley Privacy Disclosure Statement: In July 2001, the privacy disclosure provisions of the Gramm-Leach-Bliley Act (GLB Act) became effective.[38] These provisions require certain disclosures to a client when handling the client's personal financial information. The GLB Act is not relevant to most real estate transactions; however, if the broker collects the client's personal financial information for use in any mortgage loan process or other financial acquisition procedure, the GLB Act becomes applicable.

Briefly, the GLB Act applies to all businesses engaging in a "financial activity" as defined by the Act. Generally, real estate brokerage and property management services are exempt. If the licensee is involved in ancillary financial services (such as lending or various appraisal services), then the licensee is required to provide the consumer with certain disclosure information.

There is no specific GLB disclosure form; however, the Act states what information must be included in the disclosure. If a licensee believes he or she may be subject to the GLB Act, an attorney familiar with that federal law should be consulted.

37. NRS 645.253.

38. 15 USC §6801 et seq. and 12 CFR Sec. 225.



39. Hesiod, Greek didactic poet, (800 BCE) in his Works and Days.

40. NRS 113.130 (1)(a).

41. NRS 645.252 (1)(e).

B. THE WHEN, WHO, AND HOW OF DISCLOSURE

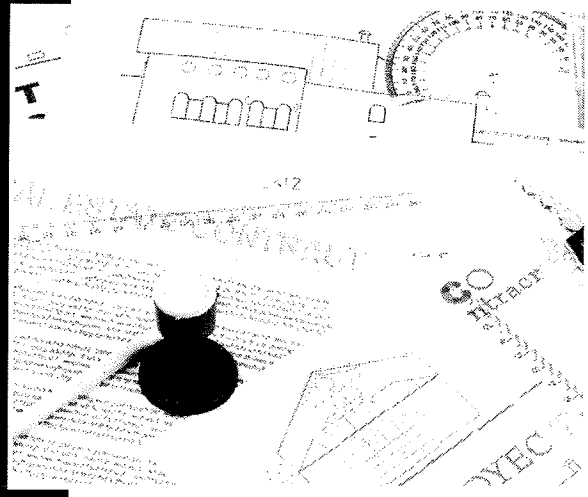
When reading disclosure laws, it is important to ask:

1. When must the disclosure be made? When is the last permissible time before licensee liability? When is the best time to disclose?

2. Who is responsible for making the disclosure and to Whom must the disclosure be made? Various statutes may make different persons responsible for disclosure. For example, NRS 113.130 requires the seller to disclose what he or she knows about the property. NRS 645.252(1) requires the licensee to disclose what the licensee knows or should reasonably know about the property.

3. How should the disclosure be made? Does the disclosure require a specific form? Is a verbal disclosure sufficient?

4. Finally, What needs to be disclosed - is it a matter concerning the property, the transaction, or the licensee's agency?



1. WHEN MUST A DISCLOSURE BE MADE

An ancient Greek once said "timing is everything."[39] Legally, this is certainly true. When a disclosure is made can be as important as making the disclosure itself. Timing is dictated by statute, contract, or general common law principles.

a. When Required by Statute - When a statute requires a disclosure it usually indicates when that disclosure must be made. Often, it will state the last permissible time for the disclosure. For example, Nevada's Seller's Real Property Disclosure Statement (SRPD) must be provided by the seller to a buyer "at least 10 days before residential property is conveyed to a purchaser."[40] Because the SRPD form is important in ensuring the buyer is aware of what the seller knows about the property, most buyer's agents require the seller to provide the SRPD within a set time frame after signing the purchase agreement.

Alternatively, a statute may identify an event that creates the disclosure requirement. When and if the event occurs, the disclosure must be made. For example, if there is a change in the licensee's relationship to a party, the licensee must disclose that change to all parties to the transaction.[41]

Finally, some statutes require a disclosure be made within a relative time frame. For example, the licensee is required to disclose to each party "as soon as practicable" each source from which he or she will receive compensation.[42] When is "as soon as practicable"? Nevada's Supreme Court has stated,

> clauses ... calling for notice of a liability creating event "as soon as practicable" or "promptly" or "within a reasonable time" all essentially mean the same thing. '. . . "[S]uch clauses do not require instantaneous notice of an [event], but rather call for notice within a reasonable length of time under all the facts and circumstances of each particular case." (cites omitted)[43]

b. When Required in Common Law - Most disclosure requirements that stem from the common law have been codified (put into statute). Nevertheless, the common law provides the licensee has a duty to speak (disclose) if the information affects the desirability of the transaction from the viewpoint of the principal.[44] Common sense dictates that the disclosure should be made before the client is legally obligated, or if already obligated, as soon as possible to forestall further harm to the client.

Duty to Speak: No legal discussion of disclosures could be complete without an introduction to the licensee's legal "duty to speak" (i.e., duty to disclose) and its corresponding doctrine of equitable estoppel.

There are two ways to breach the duty to speak; first, by not telling the truth, and second, by remaining silent.[45]

It is easy to see a breach of duty when the licensee tells a lie. The more difficult issue is when a licensee is silent by either not volunteering required disclosure information, or by keeping silent when the licensee knows a party is under a mistaken belief.

When the licensee has a duty to speak, the licensee cannot remain silent or allow a party to continue under a misapprehension regarding a material fact – the licensee must affirmatively disclose and correct any misunderstanding a party has. Obviously, the licensee will only be charged with the duty to disclose if the licensee is aware of a party's misunderstanding.

Equitable Estoppel: The doctrine of equitable estoppel, very simply put, states that the law will not allow a person who has intentionally misled another to take advantage of that person's ignorance or misunderstanding. Equitable estoppel is applicable to cases of affirmative lying or silence - "silence can raise an estoppel quite as effectively as can words."[46]

In Goldstein v. Hanna, (1981)[47] Hanna sold a condominium to the Goldsteins under an option to purchase. Callahan Realty was Hanna's broker. Hanna knew Callahan gave the Goldsteins inaccurate advice about the expiration date of the option. Hanna never attempted to correct the inaccurate information. The Goldsteins, relying on that information, proceeded past the actual time frame on the option. When the Goldsteins attempted to close, Hanna refused to honor the expired option. The court held for the Goldsteins under the doctrine of equitable estoppel. It stated because Hanna was silent when he knew the Goldsteins were operating under inaccurate information, he was estopped from declaring the Goldsteins in default and he had to honor the option.

42. NRS 645.252 (1)(b).

43. American Fidelity Fire Ins. v. Adams, 97 Nev. 106, 108, 625 P.2d 88 (1981).

44. Lowe v. State Dep't of Commerce, 89 Nev. 488, 515 P.2d 388 (1973) (Justices Mowbray, J. and Thompson. C.J., dissenting).

45. Holland Realty v. NV Real Estate Comm., 84 Nev. 91, 98, 436 P.2d 422 (1968) and Goldstein v. Hanna, 97 Nev. 559, 635 P.2d 290 (1981).

46. NGA #2 Ltd. Liab. Co. v. Rains, 113 Nev. 1151, 1160, 946 P.2d 163 (1997).

47. Goldstein v. Hanna, 97 Nev. 559, 635 P.2d 290 (1981).

"Equitable" refers to just action conforming to the principles of justice and right. "Estoppel" means stopping the speaker from taking unfair advantage of another person, such as when a person relies on the speaker's false statements. The Doctrine of Equitable Estoppel means the court, in the name of justice, will not allow a speaker who has concealed facts by silence or has lied, to take advantage of a person who relied on the silence or lie. Paraphrased - Black's Law Dictionary, 7th ed. (1999).

48. Webster's New Collegiate Dictionary, 11th edition, 2004.

49. NRS 645.315, NAC 645.610 (1)(b).

50. NAC 645.610.

51. NRS 645.613.

52. NRS 645.252 (1).

53. NRS 645.257 (2).

54. NRS 645.252.

55. NRS 645.005.

56. NRS 645.254.

c. When Advertising - Advertising is the calling of public attention to a product or service by emphasizing desirable qualities so as to arouse a desire to buy or to patronize.[48] Nevada law provides that the licensee must make certain disclosures when advertising the licensee's services or property.[49] These disclosures include:

1. The identification of the licensee's licensed status;

2. Disclosing when the licensee is a principal;[50] and

3. Identifying the licensee's brokerage.[51]

d. When a Party Does Not Disclose - A licensee must disclose what the licensee knows about a property regardless of a seller's similar responsibility to disclose.[52] Even though a licensee cannot be held liable for knowing what the seller knows about a property,[53] the licensee is responsible if the licensee knew, or reasonably should have known, of a material defect or relevant fact that a seller did not include on the Seller's Real Property Disclosure (SRPD) form. The licensee will not be allowed to avoid this disclosure duty by relying upon the seller's duty to disclose.

Does this mean the licensee has to verify everything on the SRPD? No, but it could be considered licensee negligence not to review the form before providing it to the buyer.

RISK REDUCTION TIP!
The prudent licensee will review the Seller's Real Property Disclosure form, completed by the seller, in order to ensure the seller has not forgotten to list a known material fact. Should a seller refuse to disclose a relevant item, the licensee should inform the seller that under the law, the licensee is required to disclose to all parties all material and relevant property facts.

2. WHO MUST DISCLOSE AND TO WHOM?

The corollary to "when" a disclosure must be made is "who" must disclose and to "whom."

a. Disclosure to Each Party to the Transaction – There are four major issues that must be disclosed to each party to the transaction. These are:

1. Material facts about the property;

2. The licensee's agency status;

3. The licensee's compensation sources; and

4. The licensee's interest in the transaction or property (if any).[54]

Each party is entitled to know certain facts about the licensee's agency and about the licensee's sources of compensation. Additionally, the licensee must disclose any interest the licensee has in the transaction or the property. Disclosing this information to all parties ensures everyone has sufficient facts to reasonably and intelligently proceed with the transaction with full knowledge of any conflict of interest by the licensee.

b. Disclosures Only to the Client - Traditionally, all licensees worked for the seller. As times changed, the law allowed buyers to have their own agents and to demand the undivided loyalty of that agent regardless of the agent's source of compensation.[55]

In addition to the issues above, the licensee is required to disclose to the client all material facts about the transaction.[56] When it comes to disclosing to the client facts about the transaction, the licensee is only required to disclose facts about which the licensee has actual knowledge - there is no "should have known," therefore, the licensee is not required to investigate transaction facts.

c. Required Disclosure to Other Parties - There are potentially four other entities to whom a licensee has a disclosure duty. These are:

- The licensee's broker;
- The Nevada Real Estate Division;
- The public (by way of advertising); and
- Applicable law enforcement agencies.

The licensee's broker: The real estate salesperson or broker-salesperson performs all real estate activities through the authority of the broker. Legally, the broker represents the client and the salesperson or broker-salesperson represents the broker in all dealings with the client.[57] Since the broker ultimately represents the client, the broker is assumed to be vested with the client's confidences. Thus, the licensee is authorized to make all disclosures concerning the transaction or property to his or her broker.

The Nevada Real Estate Division (RED), as Nevada's licensing entity, has the right to require certain disclosures from the licensee. These disclosures often concern the licensee's real estate related practices and business issues, but may include specific disclosures about a transaction or property if it is the subject of a RED proceeding.[58] The RED's authority includes the ability to compel disclosure of a licensee's books and papers.[59] Failure to disclose information when validly requested by the RED, subjects the licensee to RED discipline and the possibility of criminal action.[60]

Advertising: If the licensee has a brokerage agreement in place and advertises a property, the advertisement must identify the licensee's licensed status. This disclosure must be made whether the licensee is acting as an agent or as a principal.[61] If the licensee has an ownership interest in the property, the advertisement must disclose "for sale by owner-broker" (owner-licensee, owner-salesperson, etc.).[62]

Law Enforcement: No one wants criminals loose and doing harm. The natural inclination is to cooperate with law enforcement officials when asked to provide information on a client or client's property. Should the licensee be requested to provide a client's personal information to law enforcement, the licensee should immediately direct the officer to the broker. Certain client information may be confidential and, unless the client has authorized the disclosure of that information, the broker may be liable for its unauthorized release.[63] The broker should consult with his or her legal counsel before making such disclosure to law enforcement. The broker's attorney may very reasonably and appropriately request the law enforcement officer to provide a duly court executed subpoena duces tecum (subpoena of documents) before releasing client information.

57. NRS 645.035, NRS 645.040.

58. NRS 645.195. NRS 645.400, NRS 645.580, NRS 645.610 et seq. and NRS 645.635 (5).

59. NRS 645.690 (1), NRS 645.720.

60. NAC 645.605 (11), NRS 645.990 and NRS 645.993.

61. NAC 645.637.

62. NAC 645.610.

63. NRS 645.252.

64. NRS 645.252 (3).

65. 15 USC §1843.

66. NAC 645.637.

67. NAC 645.635.

68. NRS 645.252 (1)(a).

69. Nevada Real Estate Division, Compliance Division, report for cases opened in 2004.

70. Calloway v. City of Reno, 113 Nev. 564, 577, 939 P.2d 1020 (1997).

"A disclosure made verbally is as good as the paper it is written on."
— M. Luetkehans, 2004

Only government mandated forms are presented in the Appendixes.

An indemnity clause requires the other party to answer for any liability or harm that the broker might incur.

3. HOW MUST YOU DISCLOSE?

a. Written vs. Verbal – Some disclosures require the use of a specific form, for example, the Duties Owed by a Nevada Licensee (agency disclosure form).[64] Other disclosures may not have a specific form, but the disclosure content is determined by law, for example, the Truth-in-Lending disclosures.[65] Other statutes only direct that a disclosure must be made in writing with no specific wording dictated; for example, when a licensee is acting as agent or principal.[66]

Some statutes require a disclosure, but do not indicate whether the disclosure must be in writing.[67] Finally, some disclosures fall under a generalized disclosure requirement which does not identify specifically what item must be disclosed or how the disclosure is to be made; for example, the statute that requires the licensee to disclose all material and relevant facts relating to the property.[68]

RISK REDUCTION TIP!
If a disclosure is required to be made, it should be in writing. People forget or misinterpret verbal statements. If a statute does not require a written disclosure and a question arises as to whether the disclose was made, the burden of proof falls on the individual who claims to have made the disclosure - most often, the licensee.

Failure to disclose is one of the Real Estate Division's most frequently received complaints against licensees.[69] Most licensees understand the importance of having something in writing to prove they made a disclosure. Interestingly however, unless there is a form, many licensees are hesitant about requiring a written disclosure acknowledgment. To that end, brokerages, educators, trade associations, and individual licensees have created various disclosure forms.

b. "Homemade" Disclosure Forms - Any broker providing his or her licensees with a disclosure form that is not mandated by law should have a licensed Nevada attorney review the form and give a written opinion as to the form's legal sufficiency.

Some "homemade" disclosure forms stop being disclosure forms and attempt to become indemnification forms. Indemnification (and hold harmless) forms are an attempt to remove liability from the broker and make another party responsible. Some forms provide that should the broker be sued, the other party agrees to be responsible for any loss the broker may suffer. Even though such clauses may be legal in many contexts, they are strictly construed by the courts and any ambiguity is found against the drafter, in this case, the broker. [70]

RISK REDUCTION TIP!
If a broker hires an attorney to draft a disclosure form, the broker should require the attorney to provide a separate letter stating the form complies with all current laws. Such homemade forms should be periodically reviewed and the legal opinion updated every several years to ensure the form's compliance with then current law. An additional suggestion is to submit the form to the broker's errors and omissions insurance carrier for an opinion letter from the carrier (if it will provide one) approving coverage for the use of the form.

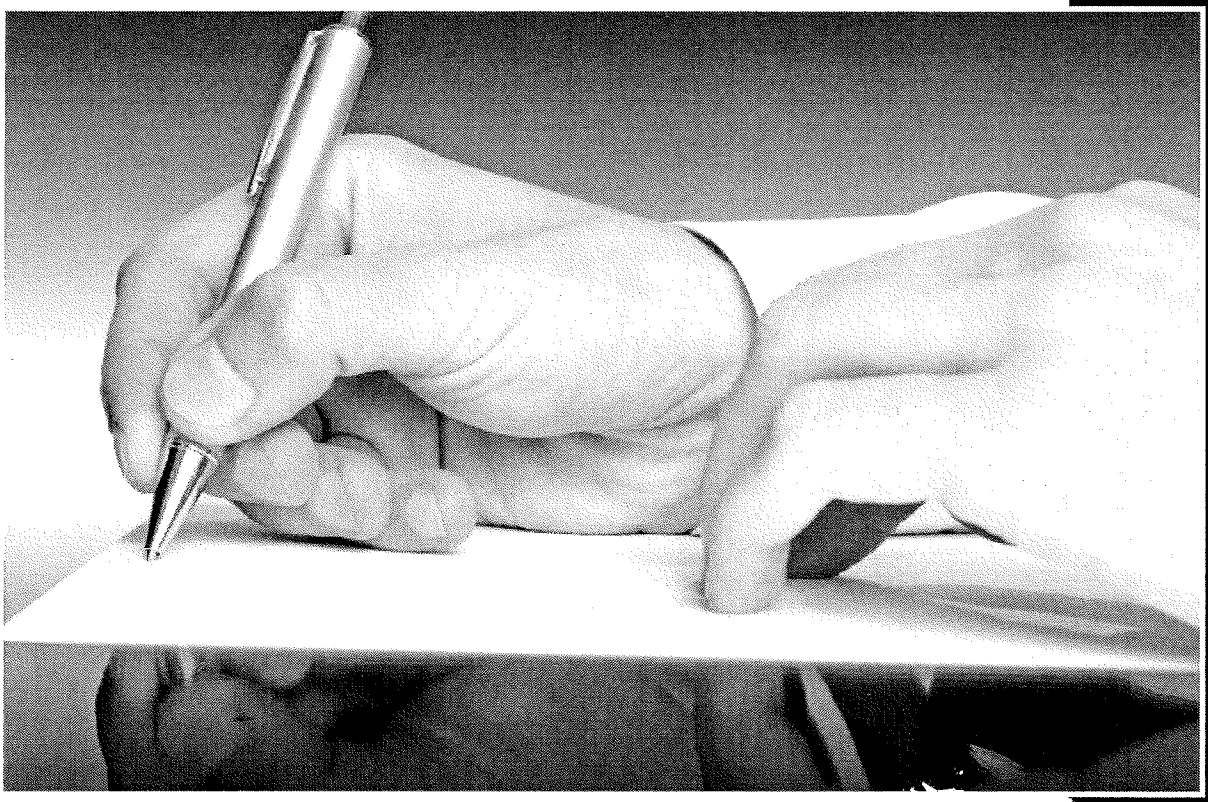
c. Delivery and Acknowledgment – Any disclosure is ineffective unless it is delivered to the person to whom it is meant to inform. Some disclosure forms, such as the Duties Owed by a Nevada Licensee, incorporate a signature line for the recipient. Some forms only require the recipient's initials.[71] Once signed and dated, this acknowledgment serves as evidence that the disclosure was made and delivered.

It is old law in Nevada that notice to a party's agent is considered notice to the principal.[72] Delivery of a written disclosure to a party's agent is delivery to that party. Thus, unless a statute requires delivery only to a specific person, delivery to the party's agent is legally sufficient delivery.

The licensee should review everything that is delivered to him or her to ensure that no disclosure is delivered unnoticed. This helps remove liability to the client for non-disclosure.

71. NRS 116.41095.

72. Hornsilver Cases, 35 Nev. 464, 467 (1913).



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C. WHAT MUST BE DISCLOSED

The three main areas of disclosure for a licensee are disclosures dealing with the licensee's agency, those concerning the transaction, and those relating to the property.

In all Nevada residential sales, a licensee is required to provide the client with the state mandated form Residential Disclosure Guide.[73] The Guide summarizes various disclosures, their purpose, who must provide them and when they are due. The licensee must have the client sign (acknowledge) the back page stating they received the Guide. That acknowledgement page must be retained by the broker as part of the transaction file.

1. DISCLOSURES REGARDING AGENCY

Disclosures concerning a licensee's agency status must be made to all parties to the transaction as soon as practicable.[74] Nevada requires each licensee to disclose to each client and any unrepresented party the parameters of the licensee's agency relationship on a state mandated form.[75] The forms are prepared and distributed by the Real Estate Division (RED).[76] Each form must be completed, signed and kept in the broker's transaction file for five years.[77]

Historically, all brokers worked for the seller under either a direct or sub-agency status. The broker dealing with the buyer was a sub-agent for the seller. Often, this caused confusion in the mind of buyers as they assumed that the broker working with them was representing them. Since the licensee's duties to the parties differ depending on whether the licensee is representing a client or dealing with a non-client, the statement of agency is important. It lets each party know who is representing them and what duties an agent owes to that party.

a. Agency Disclosure Forms – A substantial number of RED disciplinary hearing cases concern agency disclosure form violations. These violations include: forms not given to clients; forms missing necessary information; forms not completed correctly; and forms lacking required signatures.[78] The Real Estate Commission, the body charged with hearing the RED's disciplinary cases, has found the incorrect execution of these forms amounts to gross negligence by the licensee. It is incumbent upon each broker to ensure the Duties Owed and Consent to Act (when applicable) forms are properly completed and signed.[79]

Before an agency relationship is established the broker is required to provide the client with a state mandated form called the "Duties Owed by a Nevada Real Estate Licensee" (Duties Owed).[80] Should the broker at any point in a transaction represent more than one party, the broker must also provide the parties with a "Consent to Act" form and receive both parties' permission before proceeding with the representation. The appropriate agency disclosure forms (Duties Owed and Consent to Act, if applicable) must be used in all real estate agency relationships regardless of the type of representation (single, multiple, or assigned) or the type of real estate transaction (purchase, lease or property management). The Duties Owed form

73. NRS 645.194. The Guide may be found at www.Red.state.nv.us/forms/622.pdf. Copies may be reproduced as needed; however, it may not be modified or altered in any way.

74. NRS 645.252.

75. NRS 645.252 (3).

76. NRS 645.193, NRS 645.252(1) and NAC 645.637.

77. NAC 645.650.

78. Real Estate Commission Disciplinary Fine Report 1-95 through 9-30-04.

79. For an elaboration of negligence, see II. Nevada Law on Fiduciary Duties.

80. NRS 645.252 (3).

CAUTION! Giving the Residential Disclosure Guide does not absolve the licensee from liability for not disclosing. The licensee continues to be responsible for all disclosure requirements!

Agency forms, along with many other real estate mandated forms, may be found on the internet in printable format at www.red.state.nv.us/forms/formsbytype.htm

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must also be given when the licensee is a principal in the transaction.[81]

b. Changes in Agency Status - A licensee must disclose to all parties any change in the licensee's relationship with a party to the transaction.[82] This disclosure must be made as soon as practicable and must be in writing. If a client's consent is required, for example, when the broker represents two or more parties to the transaction that have conflicting interests (multiple representation), permission must be obtained before representation occurs – disclosure alone is insufficient to ensure consent! Any time there is a change in the identity of the parties or licensees, a new form must be completed and signed.[83]

Form Does Not Create Agency: The agency relationship is not created because a party signs either the Duties Owed or Consent to Act forms. These forms are strictly disclosure documents. Each form specifically states that it does not constitute a contract for services or an agreement to pay compensation.[84]

c. Not Required on a Referral - A licensee who refers a potential client to another licensee does not need to provide the Duties Owed disclosure form if the referring licensee's only activity is the referral.[85] For example, a seller contacts a broker about representing him in the sale of his Fallon ranch. The broker does not Regularly deal with ranch properties; therefore, he refers the client to a broker who does. The first broker is not required to provide the seller with the Duties Owed form.

2. DISCLOSURES CONCERNING THE TRANSACTION

a. Disclosure Situations - There are three main situations for disclosure regarding the real estate transaction. These are:

- Disclosure to the client of all material facts concerning the transaction of which the licensee has knowledge;[86]
- Disclosure to all parties of the licensee's compensation sources; and [87]
- Disclosure to all parties of the licensee's anticipated or present interest in either the transaction or the property.[88]

b. The Client and the Transaction – The law requires the licensee to disclose to the client "material facts of which the licensee has knowledge concerning the transaction."[89] What is a material fact? It is a fact that is significant or essential to the issue or matter at hand. The Nevada Supreme Court has stated,

> A fact is material ... if it is one which the agent should realize would be likely to affect the judgment of the principal ... [or is] likely to have a bearing upon the desirability of the transaction... .[90]

Anything impacting the physical condition, value or use of the property is material and relevant. These include facts about the escrow, title, the status of the other party's agency (ex: if there has been a change), financing and issues related to financing (ex: IRS 1031 exchanges), contingency issues (ex: sale of another property or double escrow) and any interest the licensee may have in the transaction. It also includes the disclosure of the known development of adjacent parcels.

81. NAC 645.637.

82. & 83. NRS 645.252 (1)(e).

84. See Real Estate Division forms "Duties Owed by a Nevada Real Estate Licensee" and "Consent to Act", ed.

85. Real Estate Division Position Statement, Joan Buchanan, Administrator, March 10, 1999.

86. NRS 645.254 (5).

87. NRS 645.252 (1)(b), NRS 645.633 (1)(g) and NAC 645.605 (4)(e).

88. NRS 645.252 (1)(c), NAC 645.605 (4), NAC 645.637 and NAC 645.640.

89. NRS 645.254 (5).

90. Holland Realty v. NV Real Estate Comm., 84 Nev. 91, 98, 436 P.2d 422 (1968), quoting the Restatement (Second) of Agency §390.

A new Duties Owed form should be provided to each client when there is any licensee change.

Other Party's Ability to Perform: The licensee should disclose to the client any information of which the licensee is aware concerning the financial condition of the other party if it impacts the transaction. Nevertheless, a licensee is not required to investigate the financial condition of a party to the real estate transaction.[91] For example, if the buyer's agent learns that the seller is in bankruptcy, the agent must disclose that information to the buyer as it may impact the buyer's purchase of the property. However, the licensee is not required to investigate or discover if the seller is in bankruptcy.

c. Licensee's Compensation - A licensee must disclose to each party to a transaction (client or not), each source from which the licensee will receive compensation.[92] The statute does not require the licensee to disclose the amount of the compensation, only its source - the identity of the entity giving the compensation.[93]

The statute does not dictate when the disclosure should be made, but common law would require it be made before the transaction ends. This would ensure each party is aware of any potential conflicts of interest the licensee may have. Since the other party usually does not see the broker's employment agreement (the brokerage agreement) where both the source and amount of compensation are usually identified, compensation sources are often identified in the parties' purchase agreement. Since the purchase agreement is a contract between a seller and buyer, a better business practice is to have the licensees' sources of compensation identified in the common escrow instructions or on a separate disclosure form.

What is Compensation? Compensation is anything of value. It includes money, Goods or services.[94] It includes referral fees and other payments such as fees received from vendors to be on a broker's list of service providers.[95] Even though the broker may give a service provider list to a client without charge, the broker must disclose if a vendor paid to be on that list.[96] Compensation includes money the broker may accept or charge as a rebate or direct profit on expenditures made for the client.[97]

The Real Estate Commission may discipline any licensee found guilty of accepting, giving, or charging any undisclosed commission. This discipline can be a fine of up to $10,000 per violation and the suspension or revocation of the licensee's license.[98] A licensee may also be charged with deceitful, fraudulent or dishonest dealing if the Commission finds the licensee has not disclosed, in writing, that the licensee: [99]

- Expects to receive any direct or indirect compensation from any person for services related to the property,[100] or
- Has received compensation from more than one party.

Consent Required: If a broker anticipates receiving compensation from more than one party, the broker must disclose this to each party and obtain each party's consent.[101] Should a party refuse consent, the licensee cannot accept the compensation.

A licensee may not take an undisclosed profit at the expense of another party nor may the licensee purchase or sell the property of a client through the use of a third person without full disclosure and the client's consent.[102]

The licensee should note that disclosure alone does not make the receipt of certain compensation legal. For example, a salesperson may not accept compensation directly from a client even if that compensation is fully disclosed to all parties.[103]

91. NRS 645.252 (4)(b).

92. NRS 645.252 (1)(b).

93. NAC 645.605 (1)(a).

94. RESPA, Real Estate Settlement Procedures Act, 12 USC §2602 (2).

95. NAC 645.605 (4)(d).

96. Judy Bendure, "Preferred Vendor Lists", Real Estate Division Open House, vol. 25, issue 1, Winter 2000, at p. 4.

97. & 98. NRS 645.633 (1)(g)

99. NRS 645.3205.

100. & 101. NAC 645.605 (4).

102. Lemon v. Landers, 81 Nev. 329, 332, 462 P.2d 648 (1965).

103. NRS 645.280.

The federal Real Estate Settlement Procedures Act (RESPA), prohibits a licensee from receiving or giving kickbacks and unearned fees even if such kickbacks or fees are disclosed. (RESPA, 12 U.S.C. § 2607)

d. Licensee's Interest - A licensee must disclose to the parties in writing whenever the licensee has a personal interest in either the transaction or the property. Such disclosure ensures everyone is aware of the licensee's potential conflicting loyalties.[104]

A licensee (including permitted property managers) must disclose the licensee's affiliation with, or financial interest in, any person or entity that furnishes maintenance or other services related to the property.[105] If a licensee has an ownership interest in a business and refers clients to that business, the licensee must disclose that ownership interest.

Party to the Transaction: When a licensee is a principal, it is a material fact and must be disclosed.[106] The licensee may not acquire (purchase), lease or dispose of (sell), any time-share or real property without revealing the licensee's licensed status.[107]

Relationship with a Principal: The licensee must disclose whenever he or she has a personal relationship with a principal to the transaction.[108] The relationships that must be disclosed are when a principal is a member of the licensee's immediate family, a member of the licensee's firm, or an entity (such as a corporation, LLC, etc.) in which the licensee has an ownership interest.

Affiliated Business Relationships: Licensees are subject to federal as well as Nevada law. One federal law that addresses licensee disclosure is RESPA (Real Estate Settlement Procedures Act). It prohibits referrals from one business to another business when the businesses have joint ownership unless there is full disclosure. These intertwined businesses are Affiliated Business Arrangements.[109] A broker who has any Affiliated Business Arrangement with other real estate settlement service providers should review the RESPA statutes to determine the specifics of disclosure.

Interest in the Property: A licensee, whether acting as an agent or a principal, has an "interest in the property" whenever the licensee has or anticipates an ownership interest.[110] Failure to disclose the licensee's interest is an element in the Real Estate Commission's determination of whether the licensee is deceitful or dishonest.[111]

Any anticipated interest must be disclosed even if it is only a pass-through interest. For example, a licensee must disclose if the licensee takes title, however briefly, during a "double escrow."[112]

Disclosure in Writing: Whether the licensee's interest is in the transaction or in the property, the disclosure must be in writing – an oral disclosure does not satisfy the regulations.[113] When disclosing the licensee's interest in the property, the disclosure must state the licensee is acquiring or selling the property for him or herself and that the licensee is a broker, broker-salesperson, or salesperson. The Real Estate Division will recognize the disclosure if the licensee includes the term "agent," "licensee," or "broker, broker-salesperson, salesperson," whichever designation is appropriate.[114]

Timing: These disclosures must be made "as soon as practicable" but not later than the date and time on which any written document is signed by the parties. The Nevada Supreme Court has defined "as soon as practicable" to mean "promptly" or "within a reasonable length of time" considering the facts and circumstances of each particular case.[115]

104. NRS 645.252 (1)(b) & (c), NRS 645.633 (1)(g), NAC 645.605 (4), NAC 645.610 (1)(b), NAC 645.637 and NAC 645.640.

105. NAC 645.605 (4)(b) & (c).

106. NRS 645.252 (1)(c), NAC 645.637.

107. & 108. NAC 645.640 (1).

109. RESPA, Real Estate Settlement Procedures Act. 12 USC. § 2607.

110. NRS 645.252 (1)(c), NAC 645.637.

111. NAC 645.605 (4).

112. Alley v. NV Real Estate Div., 94 Nev. 123, 125, 575 P.2d 1334 (1978).

113. NAC 645.637.

114. NAC 645.640 (1).

115. American Fidelity Fire Ins. v. Adams, 97 Nev. 106, 108, 635 P.2d 88 (1981).

An Affiliated Business Arrangement is when two or more businesses providing various settlement services to a client are owned (in whole or part) by the same company or entity.

116. Lowe v. State Dep't of Commerce, 89 Nev. 488, 490, 515 P.2d 388 (1973) and NRS 645.252 (1)(a).

117. NRS 113.100 (1).

3. PROPERTY DISCLOSURES

Most individuals when they first think about real estate disclosure think of issues concerning the property. Property disclosures can be divided into two main areas, issues concerning the property itself, such as physical defects, and issues concerning the property's use or value. The latter would include neighborhood issues and physical components of the property that may not be a defect, but that nevertheless impact the property's use, such as out-of-code wiring in an older home. Some disclosures are mandated regardless of whether the information impacts the property. For example, buyers of residential properties built before 1978 must be given a lead-based paint disclosure without regard to the actual presence of lead-based paint.

a. Impacts the Property – What does "impacts the property" mean? Anything that affects the property's value or use in a material and relevant way impacts the property and must be disclosed.[116] All defects impact the property, but all items that impact the property may not be defects. For example, an elementary school that backs up to the property may impact it, but the presence of the school would not, in and of itself, be considered a property defect.

b. Defects: Latent and Patent – A "defect" is a condition of the property that affects its value or use in an adverse manner.[117] A patent defect is a defect that is readily observable using reasonable diligence, for example, a broken window. A licensee is independently (independent of the property owner) required to disclose patent defects of which he or she is aware. A latent defect is one that cannot be readily observed or discovered without some extraordinary activity. For example, discovery of a termite infestation behind a garage wallboard would require the wall to be removed.

The term "defect" has broad application. It contains items that are damaged (broken window, termite infestation) to items that are not damaged, but affect the property in an adverse manner. For example, an asbestos ceiling covering in an older home is a "defect" in that it affects the property's value in an adverse manner.

c. Disclosing "Everything" - It seems every few years there is a new environmental hazard that catches the public's attention. Recently, mold issues have been the front runner. Previously, it was asbestos, lead-based paint, high-Powered electric transmission lines, and radon. This is not to dismiss as a fad the very real health hazards these items may pose. Rather, it is a warning not to allow the current hazard du jour to blind the licensee from other bona fide disclosure issues.

d. Various Non-Mandated Disclosures - Listed here are various environmental items that should be disclosed if applicable. Obviously, no list can be comprehensive. Items that have specific statutory disclosure requirements are not listed.

- Mold (hazardous)
- Agricultural uses, and those with noxious odors
- Airport flight path (see individual regional requirements)
- Encroachments
- Underground tanks (active and abandoned)
- Urea-formaldehyde
- Foam insulation (UFFI)
- Radon
- Waste Processing
- Mercury
- Earthquake Zone
- Dump (present/past)
- Arsenic
- Slide area (zone)
- Asbestos
- Landfills
- Forest fire (zone)
- Flood (zone)
- Pest Infestation
- Extensive dust (natural/construction)
- Mining (historical and present)
- Groundwater contamination

Gone are the days of "Buyer Beware" Licensee liability lies in inadequate disclosure. The fear of many licensees is that they will not catch all the potential issues, defects and hazards that should be disclosed. To address this fear, some brokers have developed "homemade" disclosure forms that attempt to disclose every possible hazard regardless of whether a particular item affects the property. As previously discussed, if used, these forms should be drafted by a licensed Nevada attorney.

Also, as previously discussed, the Nevada Real Estate Division has developed for the consumer a basic "Residential Disclosure Guide" for residential properties.[118] This is the Nevada Legislature's attempt to inform the consumer of potential disclosure issues. This booklet contains information for the consumer - it is not designed to relieve the licensee or seller of any of his or her disclosure duties.

Because no form or booklet can be all inclusive of every possible disclosure, the licensee must continually be alert to those disclosures required by law, those required when they impact the property, and those that address the concerns of the client.

e. Disclosing the Human Condition - In any discussion of disclosure, certain issues continue to be of concern to the client. These include noisy neighbors and dogs, crime, and neighborhood demographics (racial, ethnic, religious).

Noisy neighbors and dogs can be disclosed if the seller has given permission since these are things that are based in individual perception. They are also conditions that can change overnight – the dog dies, the neighbor moves. A potential buyer may not have the same experience as the current seller.

A neighborhood's crime statistics should be disclosed by an authority other than the licensee. If the client is concerned about crime in a particular neighborhood, the licensee should refer the client to the local law enforcement unit. Perception of criminal activity is too often erroneously linked with the racial or ethnic composition of an area. The licensee should always refer the client who asks about criminal activity in a neighborhood to a knowledgeable authority such as law enforcement. Repeating media reports is dangerous - even the media sometimes gets it wrong.

118. NRS 645.194.

A licensee may answer the client's questions about the demographic composition of a neighborhood, but the licensee must be very careful when doing so.

There is a fine line between giving information and "steering." "Steering" occurs when a broker attempts to guide purchasers toward certain regions or neighborhoods using a protected class status.[119]

There are two types of steering: active and passive. Active steering occurs when the licensee actually attempts to persuade persons away from or toward certain neighborhoods based on a protected class status. Passive steering involves the licensee not showing or making available otherwise appropriate housing.

"Disclosures" made with the intent of steering a client to or from a neighborhood based on either the client's protected class status, or the neighborhood's protected class demographic composition, is illegal. [120]

Remember, liability is not based on the licensee's perception of whether the licensee is steering the client, but on the client's perception.

Group Homes: A common question among licensees is should they disclose a group home in the neighborhood. Disclosure depends on whether the individuals in the group home are of a Fair Housing protected class.[121] Group homes are "congregate living arrangement among non-related persons with disabilities."[122] If the disability is covered under the Fair Housing Act,[123] then the home has a protected class status and should not be disclosed - just as a licensee would not disclose that the neighbors were of a particular race, color or religion.

Various protected group homes (not to be disclosed) include homes for recovering drug and alcohol users (handicap), those with a mental illness (handicap), those with physical disabilities (handicap), pregnant teens or single mothers (familial status), and others of similar protected class status.

The disclosure rules vary for senior housing or homes for the elderly. If the housing is for individuals with mental impairment due to age, it is protected (handicap) and should not be disclosed. If the housing is for seniors only - no mental or physical impairment (age alone is not an impairment), then it can be disclosed. Age is not a protected class - at most, senior housing is an exception to the protected class of familial status.

Nevada law provides that the fact a property is located near a facility for transitional living for released offenders is not material to the transaction and does not need to be disclosed.[124]

Released offenders are persons who have been released from prison and who require assistance with reintegration into the community (NRS 449.0055).

119. 42 USA § 3604 (a), (d), (1991), & NRS 118.100

120. NRS 118.100.

121. The federal protected classes are race, color, religion, sex, national origin, handicap and familial status. 42 USC §3604 et seq., Nevada's protected classes are race, religious creed, color, national origin, disability, ancestry, familial status and sex. NRS 118.100. "Sex" does not mean sexual orientation, it refers to gender (male, female). Sexual orientation is not a protected class for housing under both federal and Nevada state law.

122. U.S. House of Representatives, Committee on the Judiciary, Report 110-711: the Fair Housing Amendments Act of 1988 at p. 24, 100th Cong., 2nd Sess. (1988).

123. The Fair Housing Act, also known as Title VIII of the Civil Rights Act of 1968. 42 USC §§3601-3619. Nevada's fair housing law is found in NRS 118.

124. NRS 40.770 (3).

Professional trade associations may have their own guidelines regarding demographic disclosure. The National Association of Realtors®, Standard of Practice 10-1 (2006), provides that its members "shall not volunteer information regarding the racial, religious or ethnic composition of any neighborhood..."

D. REVIEW

The licensee's duty for full and honest disclosure is an important and significant duty. Disclosure laws can be found throughout federal, state and local laws and regulations. Inadequate disclosure is a major source of liability for the licensee; therefore, it is necessary to ensure a working familiarity with the various disclosure laws and regulations. The licensee must not only be aware of what needs to be disclosed, but the when, who and how of the disclosure.

There are three main areas for disclosure, these constitute the "what" of disclosure. They are disclosures concerning the property, those concerning the licensee's agency, and those dealing with the parties' transaction.

For each disclosure the licensee must be aware of "when" the disclosure must be made, "how" the disclosure is to be made, and lastly, to "whom" the disclosure is to be made. When using non-government created disclosure forms, the broker should insure such forms will provide the brokerage with appropriate liability protection.

In addition to knowing the various disclosures, the licensee should be aware of any exceptions or exemptions to the disclosure laws and how they affect the client's confidences and general consumer privacy.

Finally, the licensee should review the following tables and forms to familiarize him or her self with the most common disclosures and their requirements, limitations and sources.

APPENDIX I

1. Agency and Transaction Disclosures 1
2. Property Management Disclosures 4
3. Property Disclosures 5

AGENCY AND TRANSACTION DISCLOSURES

EVENT REQUIRING DISCLOSURE	DISCLOSURE FORM NAME	WHAT IS BEING DISCLOSED	LEGAL CITE	RESPONSIBLE PERSON	GIVEN TO	LAST POSSIBLE TIME FOR DISCLOSURE
Creation of agency with Client.	Duties Owed to by A Nevada Licensee RED form # 525	Given to, and acknowledged by, a Client. Lists the statutory duties of a Licensee and the various levels of representation.	NRS 645.252 (3)	Licensee	Client and any unrepresented party	"As soon as practicable" but before any documents are signed by Client.
Agency for Clients with conflicting interests.	Consent to Act RED form # 524	Acknowledges authorization of Licensee from all parties for Licensee to act in a "dual agency" position. Dual agency occurs when the Licensee is acting in an agency capacity for two or more clients who have interests adverse to one other. Should either party refuse to sign, the Licensee cannot act as a dual agent.	NRS 645.252 (1)(d)	Licensee	All parties, Clients	"As soon as practicable" See text for various signing time frames.
When the Licensee's relationship to a party changes.	No Mandatory Form	Licensee must disclose any changes in his or her relationship to a party to the transaction.	NRS 645.252 (1)(e)	Licensee	All parties	"As soon as practicable."
When Licensee is acting as agent or principal.	No Mandatory Form – must be in writing.	Disclose to all parties Licensee's relationship as agent of a party, or Licensee's status as a principal.	NAC 645.637	Licensee	All parties to the transaction	Not later than the time any document is signed by parties.
When the Licensee has an interest in the transaction or the property.	No Mandatory Form	Licensee must disclose that the Licensee is a principal to the transaction or has an interest in a principal to the transaction.	NRS 645.252 (1)(c) NAC 645.640	Licensee	All parties to the transaction	"As soon as practicable."
Licensee has an interest in any escrow business or company.	No Mandatory Form	Must disclose that Licensee (or anyone associated with Licensee) has an interest in any escrow business before Licensee can deposit any money received in a real estate transaction, into such escrow company.	NAC 645.660	Licensee	All parties to the transaction	Before money is deposited.
Referral to certain settlement services providers.	Affiliated Business Arrangement Disclosure Statement	Affiliated Business Arrangement (ABA) - RESPA restricts a Licensee/ Broker from receiving a referral fee from a settlement service provider unless the Broker has an ABA with the provider. IF there is an ABA, the Broker must disclose in writing the nature of the ABA relationship, a written estimate of the fees, and a notice that the consumer does not need to utilize the provider.	RESPA, 12 USC § 2607, 24 CFR Part 3500.15(d) and Reg. X	Broker/Licensee	Client/consumer	When referral is made.

AGENCY AND TRANSACTION DISCLOSURES

EVENT REQUIRING DISCLOSURE	DISCLOSURE FORM NAME	WHAT IS BEING DISCLOSED	LEGAL CITE	RESPONSIBLE PERSON	GIVEN TO	LAST POSSIBLE TIME FOR DISCLOSURE
Licensee is Inexperienced in type of transaction.	No Mandatory Form	Provides that the Real Estate Division may discipline a Licensee if there is no disclosure to Client that Licensee is providing specialized professional services outside the Licensee's field or experience or competence.	NAC 645.605 (3)	Licensee	Client	Before services are rendered.
When Licensee has a financial relationship with any entity servicing the property.	No Mandatory Form	Licensee must disclose, in writing, any interest, or contemplated interest, in any property or time share, including, but not limited to, an affiliation with or financial interest in, any person or company that furnishes services related to the property, whether Licensee is managing the property, has an interest in, or financial arrangement with such entity; or expects to receive a referral fee for referring a Client to a service provider.	NAC 645.605 (4)	Licensee	All Parties to transaction	"As soon as is practicable."
Any agency relationship.	No Mandatory Form	A Licensee who represents a Client shall disclose to the Client material facts of which the Licensee has knowledge concerning the transaction.	NRS 645.254 (3)(c)	Licensee	Client	As soon as known.
When a Broker or Brokerage engages in any "financial activity."	No Mandatory Form	Gramm-Leach-Bliley Act (Financial Privacy) – If Broker engages in any "financial activity", Broker must inform Client how the Client's "nonpublic personally identifiable information" will be used. "Financial activity" are activities involving mortgage lending or mortgage Brokering. "Non public information" is any information collected about the Client by the Broker providing the financial product or service. Most Brokerage services are not affected by this disclosure requirement.	12 USC § 1843 12 CFR § 225	Broker	Client	Before any documents are signed by Client.
When Broker includes any credit terms in **advertisement**.	No Mandatory Form – specific information must be presented when TIL "trigger terms" used	Truth in Lending – requires a Broker to provide specific information when certain credit "trigger terms" are used in advertising. Trigger terms include the amount of the down payment, amount of monthly payment, number of payments or payment period, interest rate, Annual Percentage Rate, or the amount of the finance charge.	15 USC § 1601 12 CFR part 202.2(1) (1990)	Broker	All persons	When placing advertisment.
Licensee's unsolicited **Advertising on Internet** for any service or property.	No Mandatory Form	Licensee must adhere to all disclosure requirements found in law or regulation.	NAC 645.613	Licensee Broker	All persons	When placing advertisment.

AGENCY AND TRANSACTION DISCLOSURES

EVENT REQUIRING DISCLOSURE	DISCLOSURE FORM NAME	WHAT IS BEING DISCLOSED	LEGAL CITE	RESPONSIBLE PERSON	GIVEN TO	LAST POSSIBLE TIME FOR DISCLOSURE
Advertising property when Licensee is an owner.	No Mandatory Form	A Licensee must disclose in advertisement his or her status as a Licensee and may not use "for sale (lease) by owner" without qualifying wording such as "by Broker/agent owner".	NAC 645.610	Licensee	All persons	In advertisement.
When **Advertising** the Licensee's services.	No Mandatory Form	A Licensee, (a Broker, Broker-salesperson, or salesperson) must disclose the name of the Licensee's Brokerage in any advertisement for real estate services.	NRS 645.315	Licensee	All persons	In advertisement.
When Listing Broker Accepts "other than cash" earnest money.	No Mandatory Form	A Licensee must disclose to a seller that a buyer is offering something "other than cash" as an earnest money deposit. Once disclosed, the seller may refuse to accept that type of "earnest money."	NRS 645.630 (1)(j)	Licensee	Seller	Before seller accepts Offer to Purchase.
When any deposits are accepted by Broker.	No Mandatory Form	Broker must disclose the disposition of all deposits accepted and retained by the Broker pending consummation or termination of the transaction.	NRS 645.310 (1)	Broker or owner - developer	All persons	At termination of transaction.
Close of transaction when there is no escrow holder.	No State Mandatory Form – the federal form is a HUD-1	Unless there is a escrow holder who performs these duties, Broker is responsible for disclosing to the parties in a complete, detailed closing statement all the receipts and disbursements handled by the Broker for the parties.	NRS 645.635 (4)	Broker	Seller and Buyer	Within 10 business days after the transaction is closed.
Offer or counteroffer rejected by client.	No Mandatory Form must be in writing	Licensee must disclose to other party or agent, that the licensee's client has rejected the offer or counteroffer. Licensee must attempt to have client sign notice; however, the regulation is only binding on the licensee.	NAC 645.632	Licensee	Other party or their agent.	Within reasonable time.
Sale of Residential property.	Residential Disclosure Guide	A 15-page disclosure booklet produced by the Nevada Real Estate Division for consumers of residential properties. Contains discussions on the most commonly-required state, federal and local disclosures. Last page is an acknowledgment receipt which must be filled out and held in the broker's file.	NRS 645.194	Licensee	Seller and Buyer	Not stated, but made to.

PROPERTY MANAGEMENT DISCLOSURES

EVENT Requiring DISCLOSURE	DISCLOSURE FORM NAME	WHAT IS BEING DISCLOSED	LEGAL CITE	RESPONSIBLE PERSON	GIVEN TO	LAST POSSIBLE TIME FOR Disclosure
Property tax disclosure.	No Mandatory Form	Amount of annual property taxes landlord pays for unit and the 1980 amount of property taxes for the unit.	NRS 118.165	Landlord/ property manager	Tenant/Lessee	Every July or when rent changes.
New Tenant/Lessee or new landlord.	No Mandatory Form, given to Tenant/Lessee or posted in conspicuous place.	Name and address of: 1. person managing premises, 2. person authorized to receive legal notices and demands, 3. principal or corporate owner. Additionally, the telephone number of a responsible person within the county to be called in emergencies. Information must be kept current.	NRS 118A.260 NRS 118A.270	Landlord/ property manager	Tenant/Lessee	Whenever there is a new Tenant/Lessee, new landlord, or information changes.
Termination of landlord's interest in property.	No Mandatory Form	Termination of landlord's interest in rental property by either sale, assignment, death, appointment of receiver or otherwise. Notice of new successor in interest (owner, etc.) name, address, telephone number, and statement that the Tenant/ Lessee's security deposit is being transferred.	NRS 118A.244	Landlord/ property manager	Tenant/Lessee	Before transfer of deed.
Residential Property built before 1978 – lease or sale.	No Mandatory Form, but required wording and information. **Lead Paint**	Seller or landlord must provide buyer/Tenant/Lessee with the EPA disclosure booklet "Protect Your Family From Lead in Your Home" (EPA747-K-94-001), and give notice that buyer/Tenant/Lessee is allowed to perform a lead-based paint risk assessment/inspection. Buyer/Tenant/Lessee may cancel.	42 USC § 4852 (d)	Seller or Landlord	Buyer or Tenant/ Lessee	As a condition of the sale or lease agreement.
Increase in rent.	No Mandatory Form	Increase in rent, amount of increase.	NRS 118A.300	Landlord/property manager	Tenant/Lessee	45 days before increase due.
Adoption or change of tenancy rules or regulations.	No Mandatory Form	Adoption of Tenant/Lessee rules and regulations. Timing may be waived by Tenant/Lessee if consents in writing.	NRS 118A.320	Landlord/property manager	Tenant/Lessee	30 days before enforcement.
Required in any written rental agreement.	No Mandatory Form but required statutes	Defines public nuisance under NRS 202.450 - .470.	NRS 118A.200 (1)	Landlord, agent, property manager	Tenant/Lessee	With any written rental agreement.

PROPERTY DISCLOSURES

EVENT DISCLOSURE	DISCLOSURE REQUIRING NAME	FORM WHAT IS BEING DISCLOSED	LEGAL CITE	RESPONSIBLE PERSON	GIVEN TO	LAST POSSIBLE TIME FOR DISCLOSURE
New Unit in CIC - Common Interest Community.	Public Offering Statement	Identifies type of CIC (condo, cooperative, planned community), construction schedule, the CIC's bylaws, rules, regulations, C,C & Rs, financial statement, budget, service, initial or special fee, warranties, cancellation notice, judgments or lawsuits, monthly fees, CIC Information statement, date of information. Development rights of contractor. Location and description of proposed improvements. Buyer cancellation rights NRS 116.4108.	NRS 116.4102 116.4103 116.4104	Declarant or Dealer (seller)	Initial Buyer	Date offer becomes binding on buyer.
New Unit which may become Time Share.	Public Offering Statement	Same as above + number & identity of units. Total number of shares with minimum duration.	NRS 116.4105	Declarant or Dealer (seller)	Initial Buyer	Date offer becomes binding on buyer.
New Unit – Converted Building.	Public Offering Statement	Same as above + description of present condition of all structural components and mechanical, electrical installations. Useful Life of each item. Outstanding uncured building code or other municipal violations and cost to repair. (Applicable to buildings with 13+ units)	NRS 116.4106	Declarant or Dealer (seller)	Initial Buyer	Date offer becomes binding on buyer.
New Unit – Converted Building in CIC.	Notice of Conversion	Notice of conversion, public offering statement, and right of Tenant/Lessee and subtenant/Lessees to acquire that unit on same or better terms than declarant offers to public.	NRS 116.4112	Declarant or seller	Existing Tenant/ Lessee/ renter	120 days before Tenant/ Lessees required to vacate.
Sale of any **Subdivision**,* lot, parcel, unit or interest in subdivision. *see NRS 119.110 for definition of subdivision.	Property Report As prepared by the Nevada RED	Name & address of each person owning a 10%+ interest in the subdivision. Name, occupation, address of every officer, director or owner of the subdivision. Legal description and area of lands, condition of title, public utilities, conditions of disposition of land with copies of related documents, use of land, maximum depth of fill, soil condition (with engineering reports), statement of liens for improvements, agricultural activities in area adversely affecting property. Notice of right of buyer to cancel contract.	NRS 119.182	Broker or salesman	Buyer	Before signing of any purchase contract.
Subdivision Sale of any lot, parcel, unit or interest in a subdivision.	No Mandatory Form	Location in subdivision of rights-of-way and easements for transmission lines of public utility electric lines and in all lands contiguous to it.	NRS 119.1835	Developer	Buyer	Before signing any binding agreement.
Subdivision Sale of any lot, parcel, unit or interest in a subdivision.	No Mandatory Form	Location in subdivision of rights-of-way and easements for transmission lines of public utility electric lines and in all lands contiguous to it.	NRS 119.1835	Developer	Buyer	Before signing any binding agreement.

PROPERTY DISCLOSURES

EVENT REQUIRING DISCLOSURE	DISCLOSURE FORM NAME	WHAT IS BEING DISCLOSED	LEGAL CITE	RESPONSIBLE PERSON	GIVEN TO	LAST POSSIBLE TIME FOR DISCLOSURE
When licensee becomes an Agent in a real estate transaction.	No Mandatory Form	Licensee must disclose any material and relevant facts, data or information which licensee knows, or by the exercise of reasonable care and diligence, should have known, relating to the property.	NRS 645.252 (1)(a)	Licensee	All Parties to transaction	"As soon as is practicable."
Previously unsold home + any improved lot.	No Mandatory Form	Water & sewage rates of a public utility servicing 25 to 2,000 customers. Notice must contain name, address, and telephone numbers of public utility and Div. Consumer Complaint for the Public Utilities Comm. of NV.	NRS 113.060	Seller	Buyer	Before the home is sold.
New construction – subdivided land.	No Mandatory Form - separate written document	Zoning classification & master plan designation of subdivision or parcel map. Designated land use of parcel and general land uses of adjoining parcels. Notice that the designations are subject to change. Provide instructions on how to obtain current zoning information.	NRS 113.070, Clark Co. Code 7.65.010, or 30.36.040	Seller or any person who sells land that was subdivided.	Initial Buyer	Before signing sales agreement or opening escrow, whichever is first.
Unit not occupied by buyer more than 120 days before completion.	No Mandatory Form	Provide copies of certain statutes (NRS 11.202 - .206, and NRS 40.600 - .695). These statutes deal with construction defect claims.	NRS 113.135	Seller	Initial Buyer	Upon signing sales agreement.
Unit not occupied by buyer more than 120 days before completion.	No Mandatory Form	Notice of "soil report" prepared for the property or for the subdivision in which the property is located. After receipt of notice, buyer has 5 days to request copy of the actual report and 20 days to rescind the sales agreement. Rescission right may be waived.	NRS 113.135	Seller	Initial Buyer	Upon signing sales agreement.
Sale of any land.	No Mandatory Form	Any conditions or obligations connected with any gift or other free benefit offered to potential buyers.	NRS 599A.060 (1)(d)	Seller	Customer	Not stated, but made to "prospective" customer.
Offering for sale or lease across state borders, undeveloped "subdivided" (25+ parcels) land not larger than 20 acres each.	Statement of Record, and Property Report.	Interstate Land Sales Full Disclosure Act, (ILSFDA). Administered by HUD through the Office of Interstate Land Sales Registration. Extensive and detailed requirements for disclosure items are included in the Statement of Record and Property Report. These include, but are not limited to, title condition, soil condition, availability of recreation facilities, utilities and their fees, number & type of buildings currently on site, etc. If disclosure does not adhere to all guidelines, buyer has two (2) years to rescind the contract.	15 USC § 1701-1720, 24 CFR Parts 1700-1730.100, NRS 119.119	Developer & agents.	Buyer or Lessee / Tenant/Lessee	Before any sales agreement or lease, is signed.

PROPERTY DISCLOSURES

EVENT REQUIRING DISCLOSURE	DISCLOSURE FORM NAME	WHAT IS BEING DISCLOSED	LEGAL CITE	RESPONSIBLE PERSON	GIVEN TO	LAST POSSIBLE TIME FOR DISCLOSURE
Sale of property by "seller of more than one lot created by a map of division into large parcels."	No Mandatory Form	Notice that city, county, school district and special districts are not obligated to furnish any service (specifically mentioning fire and roads), and that public utilities may not be obligated to service parcel.	NRS 119.183	Seller	Buyer	Before signing any binding agreement.
Property being sold before the final subdivision map is recorded.	No Mandatory Form	All that is required to be stated is that the final subdivision map has not been recorded.	NRS 278.350	Seller or agent	Buyer	Not stated, but made to "potential buyer."
Property subject to impact fee.	No Mandatory Form	Actual or pending impact fees. Amount of impact fee not yet paid and the name of the local government which imposed (or will impose) the fee.	NRS 278B.320	Seller	Buyer	Before property is conveyed.
HUD – FHA loan insurance, appraisal Hazard and Nuisance disclosures.	HUD adopted Fannie Mae appraisal (Form 1004)	Licensees should be aware of the various Hazards and Nuisances required to be listed on FHA appraisal Forms. These include: Airport Runway Clear Zones; Railroad tracks & other high noise sources; Flood zones (as determined under FEMA maps); Radon, Overhead high voltage transmission towers & lines; Operating & Abandoned oil & gas wells, tanks, and pressure lines; presence of asbestos, foam plastic/core materials; lead based paint; and avalanche hazard. A licensee must always disclose to all parties any condition affecting the property of which the licensee is aware, whether or not disclosed under an FHA insured appraisal (NRS 645.252.)	24 CFR part 200	Appraiser	Lender/insurer	At time of appraisal inspection or when licensee becomes aware of a H & N.
Property subject to deferred taxes.	No Mandatory Form	Lien for deferred taxes. Interestingly, the amount of lien nor the entity creating the lien is required to be disclosed. Deferred taxes statutes - NRS 361A.265, 361A.280 or 361A.283.	NRS 361A.290	Seller	Buyer	When property is sold or transferred.
After any construction by any contractor.	No Mandatory Form	Disclosure of construction defects. Written disclosure must be in understandable language, underlined and in boldfaced capital letters.	NRS 40.640 (5)	Contractor & agents	Buyer	Before purchase.

PROPERTY DISCLOSURES

EVENT REQUIRING DISCLOSURE	DISCLOSURE FORM NAME	WHAT IS BEING DISCLOSED	LEGAL CITE	RESPONSIBLE PERSON	GIVEN TO	LAST POSSIBLE TIME FOR DISCLOSURE
Any construction, remodeling, repair or other improvements on a Single-family residence (SFR).	No Mandatory Form; however, NRS 624.520 has suggested wording for Notice.	Informs owner of the Nevada "Recovery Fund" available to the property owner when a residential contractor fails to perform qualified services adequately. Notice must identify NRS 624.400 to NRS 624.560. Real Estate Licensee should be aware of this notice when representing a seller or buyer and there has been construction or contractor services on the property.	NRS 624.520	Contractor	Owner	At time of signing contract.
Whenever a general building contractor contracts with a SFR owner.	No Mandatory Form	Requires a general building contractor to provide specific information to a SFR owner about material men and subcontractors and their right to lien the property under NRS 108, Mechanics Lien laws. Real Estate Licensee should be aware of this notice when representing a seller or buyer and there has been construction or contractor services on the property.	NRS 624.600	General Building contractor	Owner	No time specified.
Title to property is unmerchantable.	No Mandatory Form	Property's title is unmerchantable. "Unmerchantable" = unmarketable, "bad title", or nonmerchantable. Property title a reasonable buyer would refuse to accept because of possible conflicting interest in or litigation over the property.	NAC 645.635	Licensee	Buyer	Before any part of purchase price is paid.
Property subject to a construction defect claim under NRS 40.600 - .695.	No Mandatory Form	Provide copies of all notices of construction defect given to contractor(s), all opinions of experts; terms of any settlement, order or judgment of defect claim; detailed report of all repairs made. ** Note ** Timing of disclosure is complicated – 30 days before COE; or if complaint is made while in escrow, w/i 24 hours of complaint; or if escrow is less then 30 days, immediately upon signing.	NRS 40.688	Claimant, Owner or Seller	Buyer	Generally, immediately upon signing sales agreement. See ** note.
Resale – Residential.	Seller's Real Property Disclosure – RED Form #547	An evaluation by the seller of the condition of property systems (plumbing, electrical, etc.) and the condition of any other aspect of the property which may effect its use or value. Information is based on what seller is aware of and is not a warranty. Includes statutes NRS 113.140 - .150(5). Non-disclosure allows buyer to rescind sales agreement. Buyer may waive all rights.	NRS 113.120 to NRS 113.150	Seller	Buyer	10 days before property conveyance or as agreed between the parties.
Resale – Home in **CIC** – Common Interest **Community**.	Required disclosures, plus Form - Before You Purchase Property . . . RED Form #584	Required disclosures: Resale Package Copy of declaration, rules or regulations of association, statement of monthly assessment, unpaid assessments, current operating budget, financial statement of association, summary of financial components of Reserve Study, unsatisfied judgments, status of any pending legal actions. Buyer may cancel within 5 days after receipt of resale package. Before You Purchase Property in a Common-Interest Community Did You Know. . .	NRS 116.4109 NRS 116.41095	Unit's owner - seller	Buyer	By parties' agreement, but before close of escrow.

PROPERTY DISCLOSURES

EVENT REQUIRING DISCLOSURE	DISCLOSURE FORM NAME	WHAT IS BEING DISCLOSED	LEGAL CITE	RESPONSIBLE PERSON	GIVEN TO	LAST POSSIBLE TIME FOR DISCLOSURE
Residential Property built before 1978 - lease or sale.	No Mandatory Form, but required wording and booklet. www.hud.gov/offices/lead/1018/selr_eng.pdf	Seller or landlord must provide buyer/Tenant/Lessee with the EPA disclosure booklet "Protect Your Family From **Lead in Your Home**" (EPA747-K-94-001), and give notice that buyer/Tenant/Lessee is allowed to perform a lead-based paint risk assessment/inspection. Buyer/Tenant/Lessee may cancel if lead is found.	42 USC § 4852 (d) 24 CFR part 35, subpart A	Seller or Landlord	Buyer or Tenant/ Lessee	As a condition of the sale or lease agreement.
Revision Effective: July 1, 2009 Home or Improved or Unimproved Lot adjacent to open range.	Open Range Disclosure RED Form 551	Property is adjacent to open range on which livestock are permitted to graze or roam. Property may also be subject to county or state claims of rights-of-way granted by Congress over public lands (commonly referred to as R.S. 2477), detailed in Form 551. Identifies fencing requirements and warns about harming livestock. Open range is all unenclosed land outside cities or towns.	NRS 113.065	Seller	Buyer	Before signing sales agreement.
Buyer obtaining an FHA insured home loan.	For Your Protection Get a Home Inspection Form is HUD-92564-CN	Informs buyer about the limits of the Federal Housing Administration and suggests buyers obtain a home inspection to evaluate the physical condition of the property prior to purchase.	HUD mortgage letter 99-18	Lender or licensee	Buyer/Borrower	Before or on signing sales agreement.
Purchase of HUD-owned SFD property.	Radon Gas and Mold Notice and Release Agreement. HUD Form 9548-E(6/04)	PURCHASERS ARE HEREBY NOTIFIED AND UNDERSTAND THAT RADON GAS AND SOME MOLDS HAVE THE POTENTIAL TO CAUSE SERIOUS HEALTH PROBLEMS. Outlines HUD responsibility for home being sold "as-is" by HUD. Encourages buyers to obtain inspections.	HUD Notice 2004-8 (released may 28, 2004)	HUD-licensee	Buyer	At presentation of sales agreement.
Property in Road Maintenance District	No Mandatory Form	Notice property is within Road Maintenance District. The amount of assessments for the last two (2) years.	NRS 320.130	Seller	Buyer	Before property is sold.
Selling Used Manugactured (Mobile) Home with underly real property.	Used Manufactured/ Mobile Home Disclosure RED Form #610	Informs consumer that a manufactured home is personal property and is subject to personal property taxes unless converted. Also, instructs consumer to submit certain documents to Nevada's Manufactured Housing Division pursuant to NRS 489.521 and NRS 489.531.	NRS 645.258	Broker/Licensee	Buyer	Before property is sold.
Property was Meth Lab.	No Mandatory Form	If the property was the site of the manufacture or preparation of methamphetamine (meth). No disclosure is necessary if the property has been declared safe for habitation by a governmental agency.	NRS 40.770(6)	Licensee or seller	Buyer or tenant	Before sale or rental.
Effective: January 1, 2011	Energy Consumption Evaluation Disclosure Form to be prepared and published by the Nevada Energy Commissioner.	An evaluation of the energy consumption of property based on State-prescribed standards and information about State programs for improving energy consesrvation and efficiency in residential properties. Evaluation served to buyer must have been completed 5 years or less from date parties enter into an agreement to purchase. Includes statues NRS 113.115. Buyer may waive rights.	NRS 113.115	Seller	Buyer	Before close of escrow for the conveyance of property.

V 1.4 (REVISED 2008)

PROPERTY DISCLOSURES

COUNTY SPECIFIC DISCLOSURES AS OF FEBRUARY 2006

EVENT REQUIRING DISCLOSURE	DISCLOSURE FORM NAME	WHAT IS BEING DISCLOSED	LEGAL CITE	RESPONSIBLE PERSON	GIVEN TO	LAST POSSIBLE TIME FOR DISCLOSURE
Property in a subdivision subject to deed restrictions. in **Washoe County** .	No Mandatory Form	Copy of deed restrictions IF property is located in a county with a Population between 100,000 and 400,000. As of February, 2006, this is only applicable to **Washoe County**.	NRS 278.565	Seller	Buyer	Not stated, but presented to "prospective" buyer.
When the Property has a Wood Burning Stove or solid fuel burning device in **Washoe County.**		Presented at sale of any residence, or change of title of any residence in Washoe County.	Washoe Co. Health Dist. Regulation 040.051§§ A & D	Seller or agent	Buyer	Before escrow is complete or title is changed.
New construction. Currently, only **Clark County.**	No Mandatory Form	Gaming Enterprise District – (for NV counties with a Population over 400,000. As of Feb. 2006, this is only applicable to Clark County). Copy of most recent gaming enterprise district map, the location of the nearest gaming enterprise district and notice that map is subject to change.	NRS 113.080	Seller	Initial Buyer	24 hrs before signing sales agreement, time may be waived.
Selling Residential Property in **Churchill County.**	No Mandatory Form	Information sheet presented to real estate licensees titled "What Every Realtor Should Know About Water in Churchill County". Provided by the City of Fallon, 2001. Local professional associations, such as the Sierra Nevada Association of Realtors®, may have other consumer disclosure pamphlets.	Information sheet only, not required by code or statute.	Licensees	Clients	Information sheet only.
Any property subject to Lake Tahoe Regional Planning Authority.	No Mandatory Form	Lake Tahoe – Best Management Practices – Residential property at Lake Tahoe is subject to multi-jurisdictional environmental controls that regulate ground, water and air quality in the Tahoe area. Licensees need to be aware of these restrictions, called Best Management Practices, when dealing with Tahoe property.	TRPA Code of Ordinances §25.5.A	Licensees	Clients and consumers	Various.

APPENDIX II

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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 _____.

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: You understand that the licensee _____ may ***or*** _____ may not, in the future act
(Client Initials) *(Client Initials)*

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*	*Buyer/Tenant*	*Date*	*Time*
Seller/Landlord	*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 one 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.

Seller/Landlord	*Date*	*Time*	*Buyer/Tenant*	*Date*	*Time*
Seller/Landlord	*Date*	*Time*	*Buyer/Tenant*	*Date*	*Time*

SELLER'S REAL PROPERTY DISCLOSURE FORM

In accordance with Nevada Law, a seller of residential real property in Nevada must disclose any and all known conditions and aspects of the property which materially affect the value or use of residential property in an adverse manner *(see NRS 113.130 and 113.140).*

Date _____ Do you currently occupy or have you ever occupied this property? YES ❑ NO ❑

Property address _____

❑ Check here if the Seller is exempt from the completion of this form pursuant to NRS 113.130(2).

Purpose of Statement: (1) This statement is a disclosure of the condition of the property in compliance with the Seller Real Property Disclosure Act, effective January 1, 1996. (2) This statement is a disclosure of the condition and information concerning the property known by the Seller which materially affects the value of the property. Unless otherwise advised, the Seller does not possess any expertise in construction, architecture, engineering or any other specific area related to the construction or condition of the improvements on the property or the land. Also, unless otherwise advised, the Seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. This statement is not a warranty of any kind by the Seller or by any Agent representing the Seller in this transaction and is not a substitute for any inspections or warranties the Buyer may wish to obtain.

Instructions to the Seller: (1) ANSWER ALL QUESTIONS. (2) REPORT KNOWN CONDITIONS AFFECTING THE PROPERTY. (3) ATTACH ADDITIONAL PAGES WITH YOUR SIGNATURE IF ADDITIONAL SPACE IS REQUIRED. (4) COMPLETE THIS FORM YOURSELF. (5) IF SOME ITEMS DO NOT APPLY TO YOUR PROPERTY, CHECK N/A (NOT APPLICABLE). EFFECTIVE JANUARY 1, 1996, FAILURE TO PROVIDE A PURCHASER WITH A SIGNED DISCLOSURE STATEMENT WILL ENABLE THE PURCHASER TO TERMINATE AN OTHERWISE BINDING PURCHASE AGREEMENT AND SEEK OTHER REMEDIES AS PROVIDED BY THE LAW *(see NRS 113.150).*

Systems / Appliances: Are you aware of any problems and/or defects with any of the following:

	YES	NO	N/A
Electrical System	❑	❑	❑
Plumbing	❑	❑	❑
Sewer System & line	❑	❑	❑
Septic tank & leach field	❑	❑	❑
Well & pump	❑	❑	❑
Yard sprinkler system(s)	❑	❑	❑
Fountain(s)	❑	❑	❑
Heating system	❑	❑	❑
Cooling system	❑	❑	❑
Solar heating system	❑	❑	❑
Fireplace & chimney	❑	❑	❑
Wood burning system	❑	❑	❑
Garage door opener	❑	❑	❑
Water treatment system(s)	❑	❑	❑
owned.. ❑ leased.. ❑			
Water heater	❑	❑	❑
Toilet(s)	❑	❑	❑
Bathtub(s)	❑	❑	❑

	YES	NO	N/A
Shower(s)	❑	❑	❑
Sink(s)	❑	❑	❑
Sauna / hot tub(s)	❑	❑	❑
Built-in microwave	❑	❑	❑
Range / oven / hood-fan	❑	❑	❑
Dishwasher	❑	❑	❑
Garbage disposal	❑	❑	❑
Trash compactor	❑	❑	❑
Central vacuum	❑	❑	❑
Alarm system	❑	❑	❑
owned.. ❑ leased.. ❑			
Smoke detector	❑	❑	❑
Intercom	❑	❑	❑
Data Communication line(s)	❑	❑	❑
Satellite dish(es)	❑	❑	❑
owned.. ❑ leased.. ❑			
Other	❑	❑	❑

EXPLANATIONS: Any "Yes" must be fully explained. Attach explanations to form.

Seller(s) Initials *Buyer(s) Initials*

Property conditions, improvements and additional information:	YES	NO	N/A
Are you aware of any of the following?:			
1. Structure:			
(a) Previous or current moisture conditions and/or water damage?	❑	❑	
(b) Any structural defect?	❑	❑	
(c) Any construction, modification, alterations, or repairs made without required state, city or county building permits?	❑	❑	
(d) Whether the property is or has been the subject of a claim governed by NRS 40.600 to 40.695 (construction defect claims)? (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED)	❑	❑	
2. Land / Foundation:			
(a) Any of the improvements being located on unstable or expansive soil?	❑	❑	
(b) Any foundation sliding, settling, movement, upheaval, or earth stability problems that have occurred on the property?	❑	❑	
(c) Any drainage, flooding, water seepage, or high water table?	❑	❑	
(d) The property being located in a designated flood plain?	❑	❑	
(e) Whether the property is located next to or near any known future development?	❑	❑	
(f) Any encroachments, easements, zoning violations or nonconforming uses?	❑	❑	
(g) Is the property adjacent to "open range" land? (If seller answers yes, FURTHER DISCLOSURE IS REQUIRED under NRS 113.065)	❑	❑	
3. Roof: Any problems with the roof?	❑	❑	
4. Pool/spa: Any problems with structure, wall, liner, or equipment?	❑	❑	❑
5. Infestation: Any history of infestation (termites, carpenter ants, etc.)?	❑	❑	
6. Environmental: Any substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, radon gas, urea formaldehyde, fuel or chemical storage tanks, contaminated water or soil on the property?	❑	❑	
7. Fungi / Mold: Any previous or current fungus or mold?	❑	❑	
8. Any features of the property shared in common with adjoining landowners such as walls, fences, road, driveways or other features whose use or responsibility for maintenance may have an effect on the property?	❑	❑	
9. Common Interest Communities: Any "common areas" (facilities like pools, tennis courts, walkways or other areas co-owned with others) or a homeowner association which has any authority over the property?	❑	❑	
(a) Common Interest Community Declaration and Bylaws available?	❑	❑	
(b) Any periodic or recurring association fees?	❑	❑	
(c) Any unpaid assessments, fines or liens, and any warnings or notices that may give rise to an assessment, fine or lien?	❑	❑	
(d) Any litigation, arbitration, or mediation related to property or common area?	❑	❑	
(e) Any assessments associated with the property (excluding property taxes)?	❑	❑	
(f) Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee?	❑	❑	
10. Any problems with water quality or water supply?	❑	❑	
11. **Any other conditions or aspects of the property which materially affect its value or use in an adverse manner?**	❑	❑	
12. **Lead-Based Paint:** Was the property constructed on or before 12/31/77? (If yes, additional Federal EPA notification and disclosure documents are required)	❑	❑	

13. **Water source:** Municipal ❑ Community Well ❑ Domestic Well ❑ Other ❑
If Community Well: State Engineer Well Permit # _____ Revocable ❑ Permanent ❑ Cancelled ❑
Use of community and domestic wells may be subject to change. Contact the Nevada Division of Water Resources for more information regarding the future use of this well.

14. **Wastewater disposal:** Municipal Sewer ❑ Septic System ❑ Other ❑

EXPLANATIONS: Any "Yes" must be fully explained. Attach explanations to form.

_____ _____
Seller(s) Initials

_____ _____
Buyer(s) Initials

Buyers and sellers of residential property are advised to seek the advice of an attorney concerning their rights and obligations as set forth in Chapter 113 of the Nevada Revised Statutes regarding the seller's obligation to execute the Nevada Real Estate Division's approved "Seller's Real Property Disclosure Form". For your convenience, Chapter 113 of the Nevada Revised Statutes provides as follows:

CONDITION OF RESIDENTIAL PROPERTY OFFERED FOR SALE

NRS 113.100 Definitions. As used in NRS 113.100 to 113.150, inclusive, unless the context otherwise requires:

1. "Defect" means a condition that materially affects the value or use of residential property in an adverse manner.
2. "Disclosure form" means a form that complies with the regulations adopted pursuant to NRS 113.120.
3. "Dwelling unit" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one person who maintains a household or by two or more persons who maintain a common household.
4. "Residential property" means any land in this state to which is affixed not less than one nor more than four dwelling units.
5. "Seller" means a person who sells or intends to sell any residential property.

(Added to NRS by 1995, 842; A 1999, 1446)

NRS 113.110 Conditions required for "conveyance of property" and to complete service of document. For the purposes of NRS 113.100 to 113.150, inclusive:

1. A "conveyance of property" occurs:
(a) Upon the closure of any escrow opened for the conveyance; or
(b) If an escrow has not been opened for the conveyance, when the purchaser of the property receives the deed of conveyance.
2. Service of a document is complete:
(a) Upon personal delivery of the document to the person being served; or
(b) Three days after the document is mailed, postage prepaid, to the person being served at his last known address.

(Added to NRS by 1995, 844)

NRS 113.120 Regulations prescribing format and contents of form for disclosing condition of property. The Real Estate Division of the Department of Business and Industry shall adopt regulations prescribing the format and contents of a form for disclosing the condition of residential property offered for sale. The regulations must ensure that the form:

1. Provides for an evaluation of the condition of any electrical, heating, cooling, plumbing and sewer systems on the property, and of the condition of any other aspects of the property which affect its use or value, and allows the seller of the property to indicate whether or not each of those systems and other aspects of the property has a defect of which the seller is aware.
2. Provides notice:
(a) Of the provisions of NRS 113.140 and subsection 3 of NRS 113.150.
(b) That the disclosures set forth in the form are made by the seller and not by his agent.
(c) That the seller's agent, and the agent of the purchaser or potential purchaser of the residential property, may reveal the completed form and its contents to any purchaser or potential purchaser of the residential property.

(Added to NRS by 1995, 842)

NRS 113.130 Completion and service of disclosure form before conveyance of property; discovery or worsening of defect after service of form; exceptions; waiver.

1. Except as otherwise provided in subsections 2 and 3:
(a) At least 10 days before residential property is conveyed to a purchaser:
(1) The seller shall complete a disclosure form regarding the residential property; and
(2) The seller or his agent shall serve the purchaser or his agent with the completed disclosure form.
(b) If, after service of the completed disclosure form but before conveyance of the property to the purchaser, a seller or his agent discovers a new defect in the residential property that was not identified on the completed disclosure form or discovers that a defect identified on the completed disclosure form has become worse than was indicated on the form, the seller or his agent shall inform the purchaser or his agent of that fact, in writing, as soon as practicable after the discovery of that fact but in no event later than the conveyance of the property to the purchaser. If the seller does not agree to repair or replace the defect, the purchaser may:
(1) Rescind the agreement to purchase the property; or
(2) Close escrow and accept the property with the defect as revealed by the seller or his agent without further recourse.
2. Subsection 1 does not apply to a sale or intended sale of residential property:
(a) By foreclosure pursuant to chapter 107 of NRS.
(b) Between any co-owners of the property, spouses or persons related within the third degree of consanguinity.
(c) Which is the first sale of a residence that was constructed by a licensed contractor.
(d) By a person who takes temporary possession or control of or title to the property solely to facilitate the sale of the property on behalf of a person who relocates to another county, state or country or whose title to the property is transferred to a purchaser.
3. A purchaser of residential property may waive any of the requirements of subsection 1. Any such waiver is effective only if it is made in a written document that is signed by the purchaser and notarized.
4. If a sale or intended sale of residential property is exempted from the requirements of subsection 1 pursuant to paragraph (a) of subsection 2, the trustee and the beneficiary of the deed of trust shall, not later than at the time of the conveyance of the property to the purchaser of the residential property, provide written notice to the purchaser of any defects in the property of which the trustee or beneficiary, respectively, is aware.

(Added to NRS by 1995, 842; A 1997, 549; 2003, 1330; 2005, 508)

_____ _____
Seller's Initials

_____ _____
Buyer's Initials

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NRS 113.135 Certain sellers to provide copies of certain provisions of NRS and give notice of certain soil reports; initial purchaser entitled to rescind sales agreement in certain circumstances; waiver of right to rescind.

1. Upon signing a sales agreement with the initial purchaser of residential property that was not occupied by the purchaser for more than 120 days after substantial completion of the construction of the residential property, the seller shall:

(a) Provide to the initial purchaser a copy of NRS 11.202 to 11.206, inclusive, and 40.630 to 40.695, inclusive;

(b) Notify the initial purchaser of any soil report prepared for the residential property or for the subdivision in which the residential property is located; and

(c) If requested in writing by the initial purchaser not later than 5 days after signing the sales agreement, provide to the purchaser without cost each report described in paragraph (b) not later than 5 days after the seller receives the written request.

2. Not later than 20 days after receipt of all reports pursuant to paragraph (c) of subsection 1, the initial purchaser may rescind the sales agreement.

3. The initial purchaser may waive his right to rescind the sales agreement pursuant to subsection 2. Such a waiver is effective only if it is made in a written document that is signed by the purchaser.

(Added to NRS by 1999, 1446)

NRS 113.140 Disclosure of unknown defect not required; form does not constitute warranty; duty of buyer and prospective buyer to exercise reasonable care.

1. NRS 113.130 does not require a seller to disclose a defect in residential property of which he is not aware.

2. A completed disclosure form does not constitute an express or implied warranty regarding any condition of residential property.

3. Neither this chapter nor chapter 645 of NRS relieves a buyer or prospective buyer of the duty to exercise reasonable care to protect himself.

(Added to NRS by 1995, 843; A 2001, 2896)

NRS 113.150 Remedies for seller's delayed disclosure or nondisclosure of defects in property; waiver.

1. If a seller or his agent fails to serve a completed disclosure form in accordance with the requirements of NRS 113.130, the purchaser may, at any time before the conveyance of the property to the purchaser, rescind the agreement to purchase the property without any penalties.

2. If, before the conveyance of the property to the purchaser, a seller or his agent informs the purchaser or his agent, through the disclosure form or another written notice, of a defect in the property of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser may:

(a) Rescind the agreement to purchase the property at any time before the conveyance of the property to the purchaser; or

(b) Close escrow and accept the property with the defect as revealed by the seller or his agent without further recourse.

3. Rescission of an agreement pursuant to subsection 2 is effective only if made in writing, notarized and served not later than 4 working days after the date on which the purchaser is informed of the defect:

(a) On the holder of any escrow opened for the conveyance; or

(b) If an escrow has not been opened for the conveyance, on the seller or his agent.

4. Except as otherwise provided in subsection 5, if a seller conveys residential property to a purchaser without complying with the requirements of NRS 113.130 or otherwise providing the purchaser or his agent with written notice of all defects in the property of which the seller is aware, and there is a defect in the property of which the seller was aware before the property was conveyed to the purchaser and of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser is entitled to recover from the seller treble the amount necessary to repair or replace the defective part of the property, together with court costs and reasonable attorney's fees. An action to enforce the provisions of this subsection must be commenced not later than 1 year after the purchaser discovers or reasonably should have discovered the defect or 2 years after the conveyance of the property to the purchaser, whichever occurs later.

5. A purchaser may not recover damages from a seller pursuant to subsection 4 on the basis of an error or omission in the disclosure form that was caused by the seller's reliance upon information provided to the seller by:

(a) An officer or employee of this state or any political subdivision of this state in the ordinary course of his duties; or

(b) A contractor, engineer, land surveyor, certified inspector as defined in NRS 645D.040 or pesticide applicator, who was authorized to practice that profession in this state at the time the information was provided.

6. A purchaser of residential property may waive any of his rights under this section. Any such waiver is effective only if it is made in a written document that is signed by the purchaser and notarized.

(Added to NRS by 1995, 843; A 1997, 356, 1797)

The above information provided on pages one (1) and two (2) of this disclosure form is true and correct to the best of seller's knowledge as of the date set forth on page one (1). **SELLER HAS DUTY TO DISCLOSE TO BUYER AS NEW DEFECTS ARE DISCOVERED AND/OR KNOWN DEFECTS BECOME WORSE** ***(See NRS 113.130(1)(b)).***

Seller(s): _____ Date: _____

Seller(s): _____ Date: _____

BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO MORE FULLY DETERMINE THE CONDITION OF THE PROPERTY AND ITS ENVIRONMENTAL STATUS. Buyer(s) has/have read and acknowledge(s) receipt of a copy of this Seller's Real Property Disclosure Form and copy of NRS Chapter 113.100-150, inclusive, attached hereto as pages three (3) and four (4).

Buyer(s): _____ Date: _____

Buyer(s): _____ Date: _____

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Seller's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) _____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain)

(ii) _____ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the seller (check (i) or (ii) below):

(i) _____ Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

(ii) _____ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Purchaser's Acknowledgment (initial)

(c) _____ Purchaser has received copies of all information listed above.

(d) _____ Purchaser has received the pamphlet *Protect Your Family from Lead in Your Home.*

(e) Purchaser has (check (i) or (ii) below):

(i) received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or

(ii) _____ waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Agent's Acknowledgment (initial)

(f) _____ Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852(d) and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Seller	Date	Seller	Date
Purchaser	Date	Purchaser	Date
Agent	Date	Agent	Date

US Department of Housing
and Urban Development (HUD)
Federal Housing Administration

OMB Approval No: 2502-0538
(exp. 08/31/2008)

For Your Protection: Get a Home Inspection

Name of Buyer (s)

Property Address

Why a Buyer Needs a Home Inspection

A home inspection gives the buyer more detailed information about the overall condition of the home prior to purchase. In a home inspection, a qualified inspector takes an in-depth, unbiased look at your potential new home to:

- evaluate the physical condition: structure, construction, and mechanical systems
- identify items that need to be repaired or replaced
- estimate the remaining useful life of the major systems, equipment, structure, and finishes

Appraisals are Different from Home Inspections

An appraisal is different from a home inspection. Appraisals are for lenders; home inspections are for buyers. An appraisal is required for three reasons:

- to estimate the market value of a house
- to make sure that the house meets FHA minimum property standards/requirements
- to make sure that the house is marketable

FHA Does Not Guarantee the Value or Condition of your Potential New Home

If you find problems with your new home after closing, FHA can not give or lend you money for repairs, and FHA can not buy the home back from you.

Radon Gas Testing

The United States Environmental Protection Agency and the Surgeon General of the United States have recommended that all houses should be tested for radon. For more information on radon testing, call the National Radon Information Line at 1-800-SOS-Radon or 1-800-767-7236. As with a home inspection, if you decide to test for radon, you may do so before signing your contract, or you may do so after signing the contract, as long as your contract states the sale of the home depends on your satisfaction with the results of the radon test.

Be an Informed Buyer

It is your responsibility to be an informed buyer. Be sure that what you buy is satisfactory in every respect. You have the right to carefully examine your potential new home with a qualified home inspector. You may arrange to do so before signing your contract, or may do so after signing the contract as long as your contract states that the sale of the home depends on the inspection.

I/we understand the importance of getting an independent home inspection. I/we have considered this before signing a contract with the seller for a home. Furthermore, I/we have carefully read this notice and fully understand that FHA will not perform a home inspection nor guarantee the price or condition of the property.

_____ **I/We choose to have a home inspection performed.**

_____ **I/We choose not to have a home inspection performed.**

X _____ X _____

Signature & Date Signature & Date

form HUD-92564-CN (12/03)

LIND 0699 APPENDIX II

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OPEN RANGE DISCLOSURE

Assessor Parcel Number: _____

OR

Assessor's Manufactured Home ID Number: _____

Disclosure: This property is adjacent to "Open Range"

This property is adjacent to open range on which livestock are permitted to graze or roam. Unless you construct a fence that will prevent livestock from entering this property, livestock may enter the property and you will not be entitled to collect damages because livestock entered the property. ***Regardless of whether you construct a fence, it is unlawful to kill, maim or injure livestock that have entered this property.***

The parcel may be subject to claims made by a county or this State of rights-of-way granted by Congress over public lands of the United States not reserved for public uses in chapter 262, section 8, 14 Statutes 253 (former 43 U.S.C. § 932, commonly referred to as R.S. 2477), and accepted by general public use and enjoyment before, on or after July 1, 1979, or other rights-of-way. Such rights-of-way may be:

(1) Unrecorded, undocumented or unsurveyed, and
(2) Used by persons, including, without limitation miners, ranchers or hunters, for access or recreational use, in a manner which interferes with the use and enjoyment of the parcel.

SELLERS: The law (NRS 113.065) requires that the seller shall:

- Disclose to the purchaser information regarding grazing on open range;
- Retain a copy of the disclosure document signed by the purchaser acknowledging the date of receipt by the purchaser of the original document;
- Provide a copy of the signed disclosure document to the purchaser; and
- Record, in the office of the county recorder in the county where the property is located, the original disclosure document that has been signed by the purchaser.

I, the below signed purchaser, acknowledge that I have received this disclosure on this date: _____, *20*____

_____	_____
Buyer Signature	*Buyer Signature*
_____	_____
Print or type name here	*Print or type name here*

In Witness, Whereof, I/we have hereunto set my hand/our hands this _____ day of _____, 20_____.

_____	_____
Seller Signature	*Seller Signature*
_____	_____
Print or type name here	*Print or type name here*

STATE OF NEVADA, COUNTY OF _____

This instrument was acknowledged before me on _____
(date)

by _____
Person(s) appearing before notary

by _____
Person(s) appearing before notary

_____
Signature of notarial officer

Notary Seal

CONSULT AN ATTORNEY IF YOU DOUBT THIS FORM'S FITNESS FOR YOUR PURPOSE.

NOTE: Leave space within 1-inch margin blank on all sides.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION

788 Fairview Drive, Suite 200* **Carson City**, NV 89701-5453 * (775) 687-4280
2501 East Sahara Avenue, Suite 102 * **Las Vegas**, NV 89104-4137 * (702) 486-4033
e-mail: realest@red.state.nv.us http://www.red.state.nv.us

USED MANUFACTURED/MOBILE HOME DISCLOSURE

Personal Property Taxes and Required Documents

Pursuant to Section 6, AB 114 (2005), a Real Estate Licensee is required to provide to the purchaser of a Used Manufactured or Used Mobile Home that has NOT been converted to real property the following information:

MANUFACTURER:	YEAR:
SERIAL #:	SIZE:

NOTICE: The used manufactured/used mobile home you are purchasing is PERSONAL PROPERTY and is subject to personal property taxes. Personal property taxes are paid through your county assessor's office.

Personal property taxes on used manufactured/used mobile homes are required by law to be paid in full before title (certificate of ownership) is transferred and an Assessor's endorsement must be placed on the face of the title verifying the payment. Title to the manufactured/mobile home will not transfer until the assessor's endorsement is received (NRS 489.531). You may contact the county assessor to verify if the taxes on this manufactured/mobile home have been paid in full.

In this transaction, you are purchasing both personal property (the used manufactured/used mobile home) and real property (the land the used manufactured/used mobile home is located on). **As a result, you will be paying both real property taxes and personal property taxes.**

REQUIREMENT TO SUBMIT DOCUMENTS (NRS 489.521): Within 45 days after the sale of the used manufactured/used mobile home is completed, you must submit the following documents to the Manufactured Housing Division and a copy to the County Assessor of the county in which the used manufactured/used mobile home is located:

- A properly endorsed Certificate of Ownership (if the certificate of ownership has been issued in this state) or
- A properly endorsed certificate of title or other document of title issued by another state (if the certificate of ownership has not been issued in this state) and a statement with the following information (if it is not contained on the certificate or document of title):
  - the description of the used manufactured/used mobile home;
  - the names and addresses of the buyer and seller;
  - the name and address of any person who takes or retains a purchase money security interest.

  THE STATEMENT MUST BE SIGNED AND ACKNOWLEDGED BY THE BUYER AND SELLER.

If a used manufactured/used mobile home is sold pursuant to an installment contract or other agreement whereby the certificate of title or certificate of ownership does not pass immediately to the buyer upon the sale, the seller, buyer or both shall submit to the Manufactured Housing Division any information required by the regulations adopted pursuant to NRS 489.272.

NOTICE PURSUANT TO NRS 489.531: The Manufactured Housing Division shall not issue a certificate of ownership on a used manufactured/used mobile home unless the county assessor of the county in which the used manufactured/used mobile home was situated at the time of the sale has endorsed on the certificate that all personal property taxes for the fiscal year have been paid. Additionally, the certificate of ownership must contain a warning, printed or stamped on its face, to the effect that the title does not pass until the county assessor endorses on the certificate of title that all personal property taxes have been paid.

RESPONSIBILITY OF BROKER: A real estate broker who represents a client in this transaction shall take such actions as necessary to ensure that the client complies with the requirements of NRS 489.521 and NRS 489.531.

The disclosures provided above do not constitute a warranty as to title or condition of the used manufactured/mobile home information.

Purchaser	*Date*	*Time*	*Real Estate Broker*	*Date*	*Time*
Purchaser	*Date*	*Time*	*Real Estate Licensee*	*Date*	*Time*

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
788 Fairview Drive, Suite 200 * **Carson City**, NV 89701-5453 * (775) 687-4280
2501 East Sahara Avenue, Suite 102 * **Las Vegas**, NV 89104-4137 * (702) 486-4033
Email: realest@red.state.nv.us http://www.red.state.nv.us

WAIVER FORM

In representing any client in an agency relationship, a real estate licensee has specific statutory duties to that client. Under Nevada law only one of these duties can be waived. NRS 645.254 requires a licensee to "present all offers made to or by the client as soon as practicable." This duty may be waived by the client.

"Presenting all offers" includes without limitation: accepting delivery of and conveying offers and counteroffers; answering a client's questions regarding offers and counteroffers; and assisting a client in preparing, communicating and negotiating offers and counteroffers.

In order to waive the duty, the client must enter into a written agreement waiving the licensee's obligation to perform the duty to present all offers. **By signing below you are agreeing that the licensee who is representing you will not perform the duty of presenting all offers made to or by you with regard to the property located at:**

_____.

Property Address City

AGREEMENT TO WAIVER

By signing below I agree that the licensee who represents me shall not present any offers made to or by me, as defined above. I understand that a real estate transaction has significant legal and financial consequences. I further understand that in any proposed transaction, the other licensee(s) involved represents the interests of the other party, does not represent me and cannot perform the waived duty on my behalf. I further understand that I should seek the assistance of other professionals such as an attorney. I further understand that it is my responsibility to inform myself of the steps necessary to fulfill the terms of any purchase agreement that I may execute. I further understand that this waiver may be revoked in writing by mutual agreement between client and broker.

WAIVER NOT VALID UNTIL SIGNED BY BROKER.

Client	Date	Licensee	Date
Client	Date	Broker	Date

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
788 Fairview Drive, Suite 200 * **Carson City**, NV 89701-5453 * (775) 687-4280
2501 East Sahara Avenue, Suite 102 * **Las Vegas**, NV 89104-4137 * (702) 486-4033
Email: realest@red.state.nv.us http://www.red.state.nv.us

AUTHORIZATION TO NEGOTIATE DIRECTLY WITH SELLER

Nevada law permits a real estate licensee to negotiate a sale or lease directly with the seller or lessor with written permission from the listing broker. This form grants that permission with respect to the below-named Seller(s) and the listed property.

- Seller agrees, and the Seller's broker authorizes, that a Buyer's agent or broker may present offers (including subsequent counteroffers) and negotiate directly with the Seller.
- "Negotiate" means (a) delivering or communicating an offer, counteroffer, or proposal; (b) discussing or reviewing the terms of any offer, counteroffer, or proposal; and/or (c) facilitating communication regarding an offer, counteroffer, or proposal and preparing any response as directed.
- Seller understands and agrees that, after accepting an offer, additional contact from the Buyer's agent may be required to obtain disclosures and other documents related to the transaction.
- Seller acknowledges and agrees that Buyer's agent does not represent the Seller, and negotiations pursuant to this authorization do not create or imply an agency relationship between the Buyer's agent and the Seller. Seller understands that he/she should seek advice from Seller's broker and/or financial advisers or legal counsel.
- Seller acknowledges that Seller's broker will provide a copy of this authorization to the Buyer's agent or broker upon request, prior to presenting an offer.

Seller's Name(s): _____

Seller's Signature(s): _____ _____/_____
Date Time

Property Address: _____

City: _____ Zip: _____ Contract Listing Date: _____

Company Name: _____

Seller's Agent Name: _____ Signature: _____
_____/_____
Date Time

Seller's Broker Name: _____ Signature: _____
_____/_____
Date Time



VI. NEVADA LAW ON ADVERTISING

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A core duty of the real estate licensee is to promote the interests of the client by seeking "a sale, purchase, option, rental or lease of real property ... at the price ... acceptable to the client."[1] Most licensees advertise to promote either the client's property or to market the licensee's services. The public has a societal interest in promoting accurate and fair representations of the things or services being advertised. To this end, various laws regulate real estate advertising. Here, we explore the advertising laws that impact the licensee's marketing plan, whether marketing the licensee's services or the client's property.

A. ADVERTISING: WHAT IT IS AND ISN'T

"Advertisement" means the attempt by publication, dissemination, solicitation or circulation to induce, directly or indirectly, any person to enter into any obligation to lease or to acquire any title or interest in any property.[2]

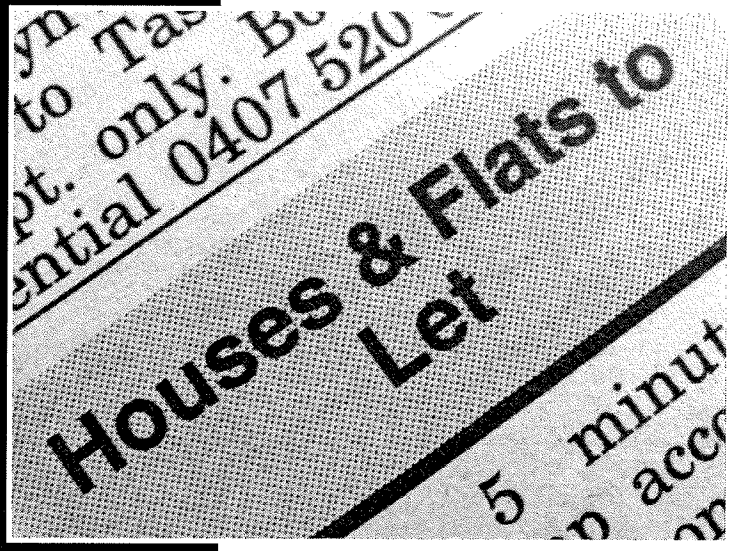
Advertising includes printed materials such as business cards, stationery, signs, billboards, pre-printed forms and other documents used in a real estate transaction.[3] Advertising laws are applicable in face-to-face solicitations such as door-to-door canvassing, listing and other presentations; any live or recorded presentations; "selling" seminars; and open houses.

Advertising includes all "electronic" formats such as broadcasts made by radio, television or other electronic means, including, without limitation, unsolicited electronic mail (email) and the internet. Nevada law defines advertising by email to mean material that advertises for commercial purposes the availability or the quality of real property, goods or services, made with the intent to solicit a person to purchase such real property, goods or services.[4]

"Advertorials" are paid-for news articles and are subject to the advertising laws. It is an advertisement in the form of an editorial or feature story and is often found in the Sunday newspaper real estate section. Advertorials may focus on a specific licensee, a real estate team, a brokerage firm, or the features of a property or subdivision.

Advertising laws are applicable regardless of the type of media used. In addition, there may be specific laws for the use of certain media such as email or the internet.

What It Isn't - Not all information disseminated about a property or a licensee's services is advertising. For example, legitimate news articles and non-purchased media interviews, a licensee's or brokerage's reputation, statements made in restricted members – only multiple listing service, are not considered advertising. Though not subject to advertising laws, there may be other laws or rules that control the content of those items. For example, a multiple listing service may have rules regarding what comments may be placed on the service.



B. PURPOSE AND SOURCES OF ADVERTISING LAWS

Why are there advertising laws - what is their purpose? What types of laws control the licensee's advertising?

1. PRESENTING A TRUE PICTURE

The main reason advertising laws exist is to control commerce for the public good by requiring merchants to present a true picture of what is being sold. Truth in advertising is such an integral concept to our free market economy that the law provides for civil penalties for a violation[5] and has made intentional false advertising a crime.[6] A court has the authority to order such false advertising stopped through an injunctive action.[7] Interestingly, actual deception of a consumer is unnecessary (in other words, the consumer doesn't need to have been actually deceived); any statement with the tendency to deceive is subject to the law.[8]

Other laws that fall under the True Picture purpose include the federal Truth-in-Lending laws[9] and Nevada's Deceptive Trade Practices statutes.[10] Various real estate statutes require licensees to advertise in an honest and truthful manner.[11] Intentional misrepresentation, deceit or fraud by a real estate licensee is a felony criminal act subjecting the licensee to imprisonment.[12]

2. PROMOTING FAIR TRADE

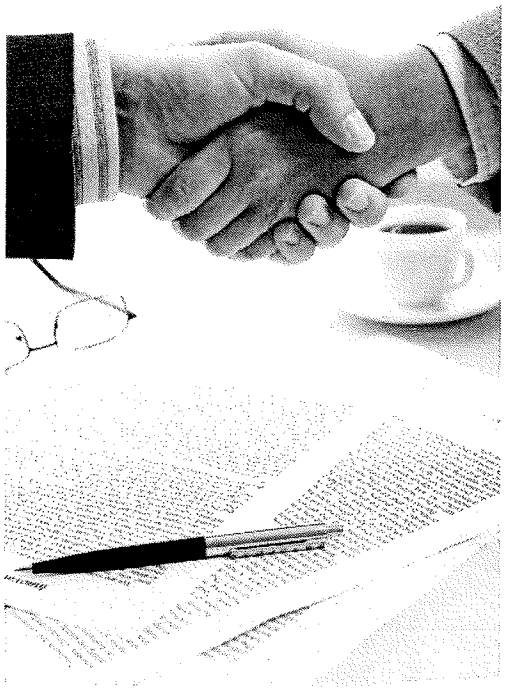
Some advertising laws are designed to ensure fair trade and competition in the open market. These are the state and federal anti-trust laws. The real estate licensee is subject to both sets of laws.[13]

3. CONTROLLING UNWANTED INTRUSIONS

Recently, a number of advertising laws and restrictions were passed to protect the public against aggressive or unwanted intrusions into the public's privacy. The telemarketing laws, solicitation rules are examples of such laws.[14]

4. FOSTERING EQUAL ACCESS

Finally, many advertising laws are designed to ensure that members of various protected classes have equal access to advertised services and properties. These rules are found in the fair housing laws.[15]



5. NRS 207.174

6. NRS 207.171 "It is unlawful for any person,... to use, publish, disseminate, display or make ... directly or indirectly ... by any radio, television or other advertising medium, ... any statement which is known or through the exercise of reasonable care should be known to be false, deceptive or misleading in order to induce any person to purchase, sell, lease, dispose of, utilize or acquire any title or interest in any real or personal property or any personal or professional services ... ."

7. NRS 207.176 – An injunction is where the court orders a person to do, or to stop doing, a specific action.

8. NRS 207.173

9. 15 U.S.C. §1601 et seq.

10. NRS 598 – Deceptive Trade Practices.

11. NRS 645.630 (1)(b) A licensee shall not make false promises to influence, persuade or induce; NRS 645.633 (1)(8), a licensee shall not participate in any deceitful, fraudulent or dishonest conduct.

12. NRS 645.990 (1)(b) a person who sells or attempts to sell any interest in real property by means of intentional misrepresentation, deceit or fraud is guilty of a category D felony. A category D felony is 1-4 years in prison and a fine of not less than $5,000.

13. Federal Sherman Act, 15 U.S.C. §3 et seq. and Nevada's Unfair Trade Practices chapter NRS 598A.

14. Federal "Do Not Call" Act, 47 U.S.C.§227; and 15 U.S.C. §1601, as well as Nevada's Do Not Call laws found in NRS 228.590 and NRS 598.0918.

15. Federal Fair Housing laws 42 U.S.C. § 3604(c) (1991) and 42 U.S.C. §1982, and NRS 118, specifically made applicable to real estate licensees under NRS 645.321.

16. NRS 228.590 & NRS 598.0918.

17. Clark County Code 30.72.040.

18. Las Vegas Municipal Code 6.42.140-145.

19. Henderson Municipal Code 4.72.200.

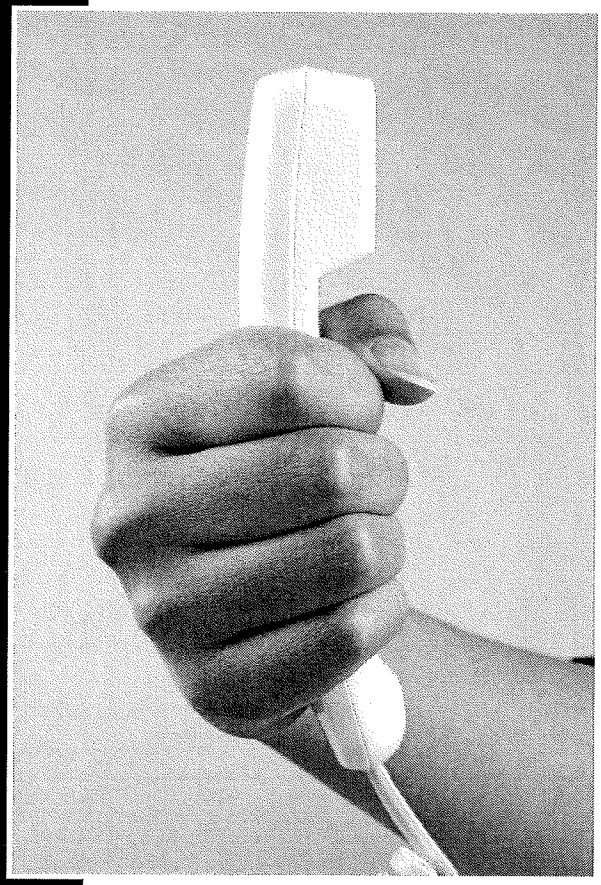
20. NRS 233B.040 (1)

21. NAC 645.690

5. SOURCES OF ADVERTISING LAW

Advertising laws are found in federal, state, county, city, and local laws, statutes, codes, and ordinances. Many of the state statutes echo federal law. For example, anti-discrimination housing laws are found in both federal and state law.

Generally, federal law is the controlling law and any state law in conflict with federal law will not be enforced. However, at times, federal law allows state law to take precedence if that law is within certain parameters. For example, the federal "Do Not Call" laws provided that a state may make "Do Not Call" laws that are more restrictive than the federal law, but it will not allow state laws that are more lenient than the federal law. Nevada's "Do Not Call" laws are more restrictive and thus are the controlling law in Nevada. Nevada real estate licensees who are "cold calling" are required to follow the stricter Nevada "Do Not Call" laws.[16]



In addition to federal and state laws and regulations, a real estate licensee may be subject to various local advertising restrictions. These restrictions range from controlling the size and placement of signs, to door-to-door solicitation hours, to the permitting and placement of handbills. For example, Clark County has a "sign" code which establishes parameters regarding the location of signs;[17] the Las Vegas Municipal Code addresses the distribution of handbills;[18] and the City of Henderson's Municipal Code restricts the hours a solicitor may knock on a residential door.[19]

There are various administrative regulations that impact a licensee's advertising. When applicable, these regulations have the force and effect of law.[20] In Nevada, the regulations are codified in the Nevada Administrative Code and the cites have the designation of NAC. The Nevada Real Estate Commission, and the Real Estate Division with Commission approval, promulgates regulations. (NRS 645.190). The Real Estate Division oversees enforcement of those regulations. If a licensee is found in violation of an advertising regulation, the RED may grant a licensee up to 10 days to correct any deficiency. After a hearing it may suspend or revoke a real estate license if the licensee fails to timely correct the noticed deficiency.[21]

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C. LAWS APPLICABLE TO ALL ADVERTISING

1. GENERAL RESTRICTIONS

All advertising, whether for a licensee's services or a client's property, must not be false or misleading and must provide a true and accurate picture of what is being sold.[22]

All advertising, whether for services or a client's property, and whether paid for by the licensee, the client, or the broker, is done under the auspices and supervision of the broker who retains ultimate legal control and liability for the advertising.[23]

As all real estate transactions occur under the auspices of a broker, any advertisement, whether about a licensee's services or a client's property, must indicate the brokerage firm's name in prominence to the licensee's name. In determining whether the brokerage name is "in prominence", the Real Estate Division (RED) will consider 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.[24]

In any advertisement, the licensee must use the name under which he or she is licensed. The use of nicknames is discouraged.

The purpose of this regulation is to provide accurate identification of the licensee to a consumer and the Real Estate Division.[25]

2. ANTI-TRUST/UNFAIR TRADE PRACTICES

The anti-trust laws cover four main areas of activity: monopolies, tying arrangements, boycotting and price fixing. The two areas that are most subject to advertising restrictions are boycotting and price fixing. The majority of anti-trust violations in advertising occur verbally with face-to-face presentations.

Boycotting occurs when the government finds there is a consensus among members of a trade or profession to isolate or limit a specific competitor's access to the market. In real estate, this has occurred when "traditional" brokerages advertised against "discount" brokerages; however, it can occur whenever two or more brokerages agree to not cooperate with a specific brokerage or other real estate related service provider.[26] Activities considered by the federal government that may indicate boycotting are when licensees or brokers publish disparaging remarks against other agents, brokerages, or a competitor's services.

22. NAC 645.610 (1)(a), NRS 207.171.

23. NAC 645.600 (2)(e)

24. NAC 645.610 (1)(c)

25. NAC 645.610 (1)(e)

26. One national case involved an appraiser who was expelled from board membership and therefore could not obtain lender business. McDonnell v. Michigan Chap. No. 10, Am. Inst. of Real Estate Appraisers of the Natl. Assn. of Realtors, 587 F.2d 7 (6th Cir. 1978).

Changes at the RED have modified the current advertising practice to remove the use of any nickname in advertising. This is a change from the RED position as stated in the RED Open House, Summer 2007, which stated in part that "common nicknames may be used". NAC 645.610(1)(e) states a licensee shall not advertise under a name, including a nickname, other than his or her licensed name.

27. 15 U.S.C. §1

28. See United States v. National Association of Real Estate Boards, 339 U.S. 485 (1950).

29. NRS 598

30. NRS 645.002

31. NRS 645.004

32. NAC 645.675

33. NAC 645.678

33a. In re Montgomery County Real Estate Antitrust Litigation, 452 F. Supp. 54 (D. Md. 1978).

Price fixing occurs when two or more competitors agree to a common marketing price and subsequently modify their prices to conform to that agreement.[27] Price fixing among real estate brokerages based on their association within the Realtor® boards has been an issue since the 1950s.[28]

Claims of price fixing occur when various brokers advertise their rates are the "prevailing", "common", "fixed" or "standard" rates in the area, thereby implying there is a common scheme for price fixing among competitors. Having common market rates is not, in and of itself, illegal unless two or more brokers from different brokerages have appeared to have agreed to charge the same rate.

Brokers should establish in their office policies and procedures, an independent justification for the prices the broker charges based on the broker's cost of doing business and required profit.

The licensee must be careful as an anti-trust violation can occur not only when prices are similar, but when competitors set the same terms as one another. For example, brokers agreeing to take only six-month listings and informing sellers that no broker accepts less than a six-month listing can be a violation.

The conspiracy part (two or more brokers) of an anti-trust violation claim need not be based on a formal agreement between competitors to price fix. A general casual conversation between competitors that results in common terms or prices is sufficient to warrant the charge of anti-trust.



3. DECEPTIVE TRADE PRACTICES

Licensee advertising is also covered under Nevada's Deceptive Trade Practices statutes.[29] These statutes provide that a person engages in a "deceptive trade practice" if he or she knowingly makes a false representation as to:

- the source of goods or services for sale or lease;
- the affiliation, association or certification by another entity;
- the characteristics, uses, alterations or quantities of goods or services;
- advertising goods or services without the intent to sell them as advertised;
- advertising "free" services with the intent to receive payment in undisclosed costs;
- making false or misleading statements of fact; and
- fraudulently altering any contract; or knowingly making any other false representation.

4. ADVANCED FEE AGREEMENTS

An "advanced fee" is when the broker charges a client a fee in advance of performing services.[30] In the advertising realm, most advance fee agreements occur when a broker advertises that he or she has a list of potential properties, clients or rentals available and will provide that list for a fee.[31] When a licensee takes an advanced fee, the licensee cannot advertise and imply that a buyer for the property is immediately or soon available.[32]

If a broker advertises lists of available rentals for an advance fee, the broker must have the rental property owner's permission before advertising the rental[33]

A licensee taking available property information from the internet and selling that information is a violation of this regulation unless the licensee has the owner's permission.

5. THE INTERNET

The law concerning what constitutes appropriate advertising on the internet continues to evolve. Nevada statutes and regulations provide that the dissemination of unsolicited information concerning real property or the marketing of real property is "advertising" and all advertising laws are applicable.[34]

When advertising on the internet, each internet "page" should be considered a distinct advertisement and should comply with all advertising laws. For example, identifying the brokerage only on the first page of the website and not on each subsequent webpage may violate the regulation requiring each advertisement to prominently display the brokerage name.[35]

There are additional rules whenever a licensee attempts to enter into an agency relationship with a client by internet. Though not specific to advertising, these rules should be reviewed to ensure the licensee includes the necessary disclosures and adheres to the appropriate signature requirements.[36]

6. ELECTRONIC MAIL (EMAIL)

For the last several years, federal law has attempted to address the "spam" situations. The Federal Trade Commission (FTC) issued its final rules which were effective March, 2005. Those rules required the FTC to develop criteria to determine which emails are commercial. If an email is commercial, it is subject to the federal Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act).[37] The federal rules require a commercial email to contain: a legitimate return email and physical postal address; a clear and conspicuous "opt-out" provision which must be honored by the sender within 30 days; and a notice "clear and conspicuous" that the email is an advertisement or solicitation. There is no prior or existing business relationship exemption.

If a licensee is found in violation of the FTC rules, he or she may be fined up to $250 per violation (that is per email that went out), with a maximum award of $2 million dollars. There is also the possibility of five years imprisonment if the emails were sent for the furtherance of any felony.

Nevada has its own statutes regarding advertising by email.[38] For emails, an "advertisement" is defined as an email transmittal, for commercial purpose, stating the availability of real property, goods or services. The federal law specifically preempts all state laws that expressly regulate commercial emails, even if such state's laws are more stringent than the federal law (this is unlike the federal "Do Not Call" law which allows states to have laws that are more stringent, but not less strict, than the federal law).

For all email advertisements generated by a licensee, each of the advertising rules regarding brokerage name, etc. are applicable.

7. FACSIMILE (FAX)

The federal law governing the transmittal of advertisements by facsimile (fax) is part of the Telephone Consumer Protection Act of 1991.[39] These rules prohibit the sending of unsolicited fax advertisements. "Unsolicited advertisement" is defined as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission."

34. NAC 645.613

35. NAC 645.610

36. NAC 645.613 (2)

37. 16 C.F.R. Part 316

38. NRS 41.705 et seq.

39. 47 U.S.C. §227 et seq.

40. NRS 207.325

41. For example, Clark County has a code addressing handbills (Clark County Code 12.46.010). See also Las Vegas Code 6.42.140.

42. U.S. Postal regulations are found in the Domestic Mail Manual 1.3 which provides that mail boxes may only be used for matter bearing U.S. postage. Any other use is a violation and subject to fines.

43. For example, Henderson Code 4.72.200 provides that it is unlawful for any person to knock on the door, or ring the bell, of any residence before 8:00 am or after 7 pm.

Before sending an unsolicited advertisement the sender must have the written consent or an "established business relationship" with the recipient. The written consent requirement requires the sender to have voluntarily received the recipient's fax number. In other words, purchasing the fax number from a third party would not be voluntary. An "established business relationship" is formed by the voluntary two-way communication between the recipient and fax sender based on a prior inquiry, application, purchase or transaction regarding products or services offered by the fax sender.

When a fax falls under the Act, it must have an opt-out provision allowing the recipient to stop future unsolicited advertising faxes whether an established business relationship exists or not. Finally, if the recipients does opt-out, the sender has 30 days to honor the request. The remedy for violations is $500 per fax with treble damages if the violation is willful.

The law provides that the "sender" is the individual or entity requesting the fax be sent. Therefore, if a licensee hires a third-party entity to broadcast an advertising fax, the licensee remains liable for any violations.

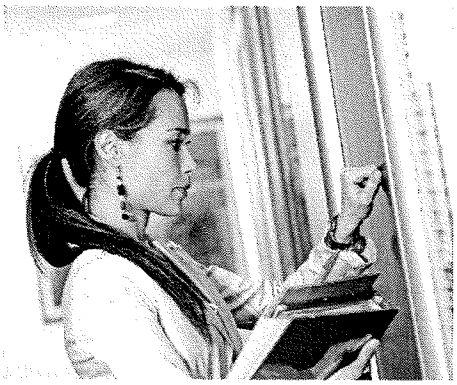
Nevada's statue provides that a person shall not make any unsolicited electronic or telephonic transmissions to a facsimile machine to solicit a person to purchase real property, goods or services.[40] Under Nevada law, the single exception is if there is a preexisting business relationship. This law is applicable to both business-to-individual and business-to-business transactions and real estate transactions are covered under this law. Again, for a Nevada licensee using faxes to advertise, all advertising laws apply.

8. HANDBILLS, TIME AND MAILBOX RESTRICTIONS

Licensees should be aware of some restrictions dealing with various methods of advertising. Two time tested advertising methods include the distribution of handbills and door-to-door canvassing. Many local governments have municipal codes or ordinances regarding these advertising activities.

Handbills: Sometimes, brokers and licensees will have printed handbills to pass out or put on automobiles. Many local governments have restrictions on the distribution of handbills.[41] These restrictions include filing the handbill with the local government, paying a fee, and receiving a permit number which often must be on the handbill itself. If a licensee distributes the handbills on private property, e.g., a grocery store parking lot, the prior permission of the property owner must be obtained. Neither handbills, nor any other advertising that has not gone through the U.S. mails, may be placed in mailboxes.[42]

Door-to-door canvassing: The licensee should be aware that when canvassing a neighborhood, the local government may have time restrictions as to when a residence may be solicited by either knocking on doors or hanging door bills.[43]



D. ADVERTISING BROKERAGE AND LICENSEE SERVICES

The majority of laws regarding the advertisement of a licensee's services concern providing the consumer with sufficient information in the advertisement to trace the licensee and brokerage.

1. BROKERAGE SIGNS

Each broker is required to erect a sign in a conspicuous place identifying the brokerage at the broker's place of business. The brokerage name, or the name under which the broker does business, must be clearly identified. If the broker has more than one office, each office must have a similar sign.[44] The sign must be readable from the nearest public sidewalk, street or highway. If the business is located in an office building, Hotel or apartment house, the sign must be posted on the building directory or on the exterior of the entrance to the business.[45]

2. FRANCHISES & FICTITIOUS NAMES

If a broker is advertising under the name of a franchise, the broker must incorporate in a conspicuous way the real, fictitious or corporate name under which the brokerage is licensed. If applicable, there must also be an acknowledgement that each office is independently owned and operated.[46]

A broker may not operate or advertise under a fictitious name without first registering the fictitious name and obtaining a certificate from the county clerk.[47] This name must then be filed with the Nevada Real Estate Division and the broker may not use more than one name for each license under which the broker operates.[48]

3. TEAMS

The last decade has seen the growth of a business model in which several licensees come together as a "team" or "group" to provide real estate related services. Currently, the Real Estate Division does not require teams to register with the Division; however, the Real Estate Commissioners have established regulations regarding the formation and identification of teams, including regulations about team advertising. These are:

1. A team must have two or more members. A single person cannot be, nor advertise, as a team.

2. Team members must be employed by the same broker. A team may not be composed of members who work for different brokerages.

3. The team name must incorporate the last name of one of the team members. For example, Sally Young and Mary Smith may form "The Young Team".

4. Team names must not use a trade name nor may the team name be deceptively similar to a name under which another person or entity is lawfully doing business. The test of whether a name is

44. NRS 645.560

45. NAC 645.615. Additionally, the Division may require the broker to provide it with a photograph of the sign as proof of compliance.

46. NAC 645.610 (2)

47. NRS 602.010 et seq.

48. NAC 645.620

"deceptively similar" is whether a person of average intelligence would be misled by the name. It does not require actual deception or intent to deceive.[49]

The purposes of the regulation prohibiting deceptively similar names are: (1) the protection of vested rights to corporate names; (2) the protection of the public from deception and confusion; (3) the prevention of unnecessary litigation.[50]

In addition to these rules, any team advertising must comply with all other applicable advertising laws and regulations.[51]

4. LICENSEE STATUS

Some advertising rules require the licensee to disclose upfront the licensee's status as a real estate licensee.[52] The regulation states the licensee must provide a statement of the licensee's licensed status in any advertisement which contains the words "for sale by owner" or "for lease by owner" or similar words. The licensee who advertises to acquire, lease or dispose of any interest in a time share or real property is required to disclose in the advertisement if the licensee has an active or inactive license and his or her status as a salesperson, broker or broker-salesperson.

This restriction applies to the use of a licensee's telephone number, (or the name or telephone number of another licensee in the brokerage firm with which the licensee is associated) in any advertisement for the sale or lease of property if that sign or advertisement indicates the property is for sale or lease by an owner.[53]

If the licensee has an actual ownership interest in the property, the licensee may state the property is for sale or lease by "owner-broker" or "owner-agent", which ever is applicable.[54] This requirement to disclose the licensee's status in the advertisement is applicable if the purchaser or seller is a member of the licensee's immediate family, the licensee's firm or any member of the firm, or any entity in which the licensee has an interest as owner.[55]

49. NRS 78.039. AGO 94-11 (5-25-1994)

50. AGO 42 (4-14-1955)

51. NAC 645.611

52. NAC 645.610 (1)(b)

53. NAC 645.610 (1)(b) Can't use "for sale by owner" nor "for lease by owner".

54. NAC 645.610 (1)(b) (2).

55. NAC 645.640 (2)

5. COLD CALLING AND THE "DO NOT CALL" LAWS

Cold calling is a common real estate marketing technique. Licensees "cold call" when they solicit previously unknown individuals by telephone in order to sell their real estate services. This type of telephone solicitation is currently regulated by both the federal and state "Do Not Call" laws.[56]

Briefly, the cold calling procedure requires a person to gather a list of telephone numbers of potential customers. The licensee or broker must then register with the Federal Trade Commission (FTC). Once registered, the licensee will receive a list of restricted telephone numbers filed with the FTC. The licensee then "scrubs" (compares) his or her list against the restricted list removing any matching numbers. The remaining telephone numbers may be called. Once called, if the recipient expresses a desire not to be disturbed or called again, the licensee must put that telephone number on an internal "do not call" list. All brokers should have an office policy regarding using cold calling by their agents.

Nevada's Do Not Call laws are more restrictive than the federal law and are found in Nevada's Deceptive Trade Practices NRS 598 statutes. Nevada's Do Not Call rules include:

- No calling between 8 p.m. and 9 a.m.;
- No annoying, abusive or harassing language;
- No fair housing violations – blockbusting;
- No claiming to be information gathering when the intent is to induce a sale;
- The caller must inform the person who answers the telephone of the sales nature of the call within 30 seconds after beginning the conversation and must provide the name, address and telephone number of the business or organization.[57]

56. Federal "Do Not Call" Act, 47 U.S.C. §227; and 15 U.S.C. §1601, as well as Nevada's Do Not Call laws found in NRS 228.590 and NRS 598.0918.

57. NRS 598.0915 through NRS 598.0953.

"Block-busting"
This is the practice by which a person frightens a homeowner into selling his property at less than market value by spreading rumors that certain racial groups will move into the neighborhood. AGO 1972-71, March 24, 1972.



58. NAC 645.600 (2)(f)

59. NRS 118

60. Federal Fair Housing law 42 U.S.C. §3604(c) (1991) and 42 U.S.C. §1982; and Nevada's NRS 118, specially made applicable to real estate licensees under NRS 645.321.

61. Though not required under federal or state law, using – and abiding by – the fair housing disclaimer is a good business practice. "We list, sell and rent any property without any preference, limitation or discrimination based on race, color, religion, sex or national origin or any intention to make such a preference, limitation or discrimination."

E. THE CLIENT'S PROPERTY

Advertising a client's property encompasses laws and entities not previously dealt with when a licensee or broker advertises their services. Often, the property owner will want to share in how the property is advertised or in the very least, review what the broker proposes. When advertising a client's property the broker needs to retain control over the advertised content and process as it is the broker who retains the most liability for errors, misleading or fraudulent advertising.

In this chapter, the fair housing rules are reviewed along with the laws regarding Truth-in-Lending, Regulation Z, property signs, land, subdivisions and owner/ developer regulations as they relate to advertising.

1. FAIR HOUSING

Fair housing laws, both federal and state, are often the first set of restrictions people think of when it comes to real estate advertising.

Most advertising violations by a licensee are reported to a governing entity by another licensee or real estate professional. However, the majority of fair housing violations are brought to the attention of a governing entity by a member of the public as the laws are well known to the public.

The broker always retains the ultimate liability for his or her agent's breach of advertising laws. Specifically, the Nevada Administrative Code requires the broker to supervise his or her licensees and familiarize them with the requirements of federal and state law prohibitions against discrimination.[58]

Protected Classes: There are seven federally identified protected classes. Nevada fair housing law echoes those protected classes but includes an eighth class, that of ancestry.[59] The federal protected classes are race, color, religion, sex, handicap (disability in Nevada), familial status, and national origin.[60] Most fair housing advertising violations arise from indicating, either directly or indirectly, a preference for, or a bias against, a protected class.[61]

Though each protected class may be violated in an advertising forum, the three protected classes which tend to have the greatest advertising violations are religion, familial status, and sex.

Religion: Potential violations occur when a licensee advertises only in a religious venue, or when in an advertisement, the licensee or client expresses a preference for, or bias against, certain buyers, sellers, or renters of a specific religion or belief system.

Many times the fair housing advertising violation in religion is not one of identifying a bias against a particular religion (e.g., no Muslims), but occurs when expressing a preference for a

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particular religion (e.g., Christians preferred).

Brokers have been found in violation of the fair housing laws when they placed signs, symbols or other indices of religion in their advertising.[62] Additionally, violations can occur when references are made in the advertising to a local religious site, e.g., "house within walking distance of Beth Shalom". An exception may be granted when the religious institution mentioned is of such national recognition that it becomes a landmark, such as the National Cathedral in Washington, D.C.

Familial Status: Familial Status refers to any adult (over 18 years of age) who is the parent, legal custodian, or other person with custody of a child or person under 18 years of age. It encompasses a wide range of relationships and is not dependant on blood or traditional parent/child legal status and includes women who may be pregnant. The term "family" includes single adults with minors.[63]

Familial status is probably the most unintentionally violated fair housing class in advertising because violations often stem from the advertiser's good intentions. For example, a Reno newspaper advertisement for a rental recently read 'house on busy street, not suitable for small children'. Regardless of the advertiser's intention, this wording is a violation of the fair housing laws. More than at any time does the old saw "describe the property, not the people", hold true. Regardless of the advertiser's intentions, the licensee should not identify people for whom the property would be perfect based on their status in a protected class.

Age is commonly assumed to be a protected class; however, it is not a protected class for housing. It is an exemption to the familial status class and is only applicable when the housing meets certain restriction guidelines for either 55 or 65 year old or older persons. Advertising for "mature", "retired", or "settled" persons is a violation unless an exemption applies.

The licensee should be careful about allowing the client to express a fair housing violation in an indirect manner by advertising that certain properties have "children only" sections, or that children will require an additional deposit or fee. No real property advertisement should include any reference to a bias against children or a preference for childless persons.

Sex: A fair housing violation occurs when a licensee advertises a preference for a preferred gender. The term "sex" in the fair housing laws does not refer to sexual orientation; it is a reference to gender. Sexual orientation is not a protected class for residential housing federally or in Nevada.[64] An exception is made when advertising for a "shared living" arrangement. A person may advertise for a same sex roommate and certain religious/non-profit institutions may advertise accommodations for a specific gender, i.e., YMCA.

2. TRUTH-IN-LENDING/REGULATION Z

Of the myriad of federal laws that impact real estate advertising, the Truth-in-Lending laws are probably the least well known.[65] This law addresses how lenders advertise their loan information and includes what information is required to be disclosed to the public so that a consumer can intelligently compare lenders and loan programs.

Regulation Z is the federal regulation that sets forth the specifics of the Truth-in-Lending Act.[66] Its rules are applicable to all media advertising that refers to mortgage financing terms and is generally applicable in all residential credit transactions. It applies to any advertisement for any loan that is regulated by the Truth-in-Lending laws.[67]

62. Though not a Nevada case but illustrative of the point, is Commonwealth of Virginia v. Lotz Realty Company, Inc., 376 S.E.2d 54 (Va., 1989), in which the broker Paul Lotz was found in violation of Virginia's fair housing laws when he placed signs, symbols and wording on his advertisements indicating a religious preference for clients based on a specific religion.

63. 24 C.F.R. §109.15 (i) (4-1-94)

64. Discrimination based on sexual orientation is illegal in Nevada in public accommodations (NRS 233.010) and employment (NRS 281.370, NRS 338.125, NRS 610.020, NRS 613.310).

65. 15 U.S.C. §§1601 et seq. federal Truth-in-Lending Act.

66. 12 C.F.R. §226 et seq.

67. 15 U.S.C. §1664

68. 12 C.F.R. Part 226 Known as Regulation Z.

69. The APR calculates the interest rate plus all charges. Therefore, the APR can never be less than the interest rate but is often higher than the stated interest rate.

70. A quick down-and-dirty rule of thumb is if the advertisement contains any numbers referring to credit or payment terms, it probably triggers Regulation Z; therefore, it must contain all the required information.

71. 15 U.S.C. §1640

72. NAC 645.535 (2)

73. NAC 645.610 (1)(d)

74. NAC 645.215

Thus, Regulation Z impacts any real estate advertising that includes certain credit or financing "trigger" terms. The trigger terms include any reference to an amount of down payment, monthly payment, the number of payments, a specific payment period (ex: 30 years, etc.), an interest rate, an annual percentage rate (APR), or a finance charge amount.[68]

Once Regulation Z is triggered by the use of any one of the "trigger" terms, all of the following information must be contained in the advertisement: the cash price, the amount or percentage of any down payment, the term of the repayment (number of payments, amount of each payment, and the due date of each payment), the annual percentage rate and whether the APR may change.[69]

Certain statements do not trigger Regulation Z, for example, it is permissible to make such statements as "no down payment", "easy monthly payments", "pay weekly", "terms to fit your budget", "financing available", or "liberal financing terms available".[70]

The Truth-in-Lending Act, and by extension Regulation Z, is enforced by the Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission. If an advertisement violates the Truth-in-Lending laws, a court may require an injunction, i.e., stop the problem advertising; impose a fine of not more than $5,000 per violation up to $10,000 per day for each violation; and if the advertiser is found guilty of criminal behavior, prison, for not more than 1 year. Additionally, any individuals harmed may receive their actual damages, with civil penalties of not less than $100 or more than $1,000, plus court costs and attorney fees (the government's and any harmed individual).[71]

3. "FOR SALE" SIGNS

As the real estate market slows down, competition for listings becomes more aggressive. Some assertive licensees intent on capturing any business available have placed their signs on properties not listed by their brokerage firm. The Nevada Administrative Code provides only one licensee may place a "for sale" sign on a property unless otherwise authorized by owner.[72]

A licensee may not advertise or place any sign on a property when that property 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. Additionally, the listing broker cannot give or withhold such consent without the knowledge of the property's owner.[73]

4. LAND, SUBDIVISIONS, OWNER/ DEVELOPERS

There are special laws and regulations regarding the advertising of vacant or unimproved land or subdivisions. Because of the tainted history of licensees and developers selling unimproved parcels of land using fraudulent advertising, these laws have been strictly enforced.

The Real Estate Division (RED) has the authority to investigate any circumstances surrounding its suspicion that fraud, deceit or false advertising is occurring in connection with the sale, purchase, rental, lease or exchange of any vacant or unimproved land or subdivision outside the corporate limits of any city.[74] Not only may the RED investigate, but Nevada's Attorney General may take all appropriate legal action under any applicable Nevada law.

Any advertising in Nevada of a subdivision, whether that subdivision is in Nevada or another state, must be pre-approved by the Nevada Real Estate Division.[75] Advertising under the subdivision regulations additionally includes any advertisement for the retention of purchasers after the sale.[76] In advertising subdivisions, all advertising rules apply when using traditional advertising media as well as when the licensee uses any telephone solicitation,[77] promotional meetings,[78] or the offering of vacation or other gift certificates.[79]

Whenever a licensee is hired by a developer to sell subdivisions, the licensee must ensure that the advertising was submitted to and approved by the Real Estate Division.[80] Nothing in the subdivision laws of Nevada excuses a person licensed under NRS 645 from the obligations imposed in NRS and NAC 645.[81]

There are very specific laws and regulations regarding sales presentations. For example, all oral and written advertising designed to induce any attendance at or participation in a sales presentation must conspicuously include the following statement: "The purpose of (the event or activity) is to attempt to sell you property in (name of state in which property is located)."[82]

75. NRS 119.184

76. NAC 119.015

77. NAC 119.035

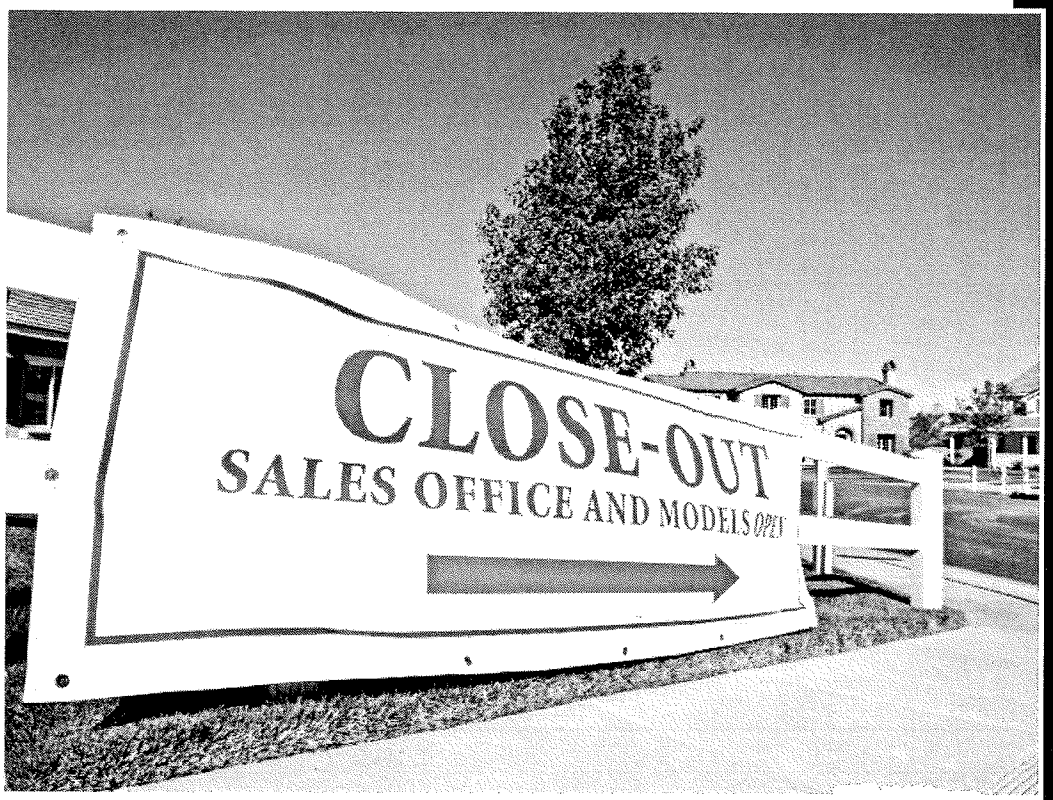
78. NAC 119.040

79. NAC 119.050. Under NAC 119.080 a vacation certificate is a written promise which offers accommodations in or transportation to any location as part of a program to solicit prospective purchasers to attend a sales presentation for a subdivision.

80. NAC 119.400

81. NAC 119.330 (2)

82. NAC 119.455, see also NAC 119.500 to 119.520.



F. REVIEW

If real property is the heart of real estate, advertising is its life blood. Because of the potential influence advertising has on the public and industry, various laws have been promulgated to address issues of public concern. These include the requirement that advertising presents a true picture of the thing being offered; the promotion of fair trade; control unwanted intrusions into a consumer's privacy; and fostering equal access to housing and real estate services.

