

SENATE BILL NO. 258—SENATOR CARE (BY REQUEST)

MARCH 12, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes concerning real estate brokers, real estate broker-salesmen and real estate salesmen. (BDR 54-966)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

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

AN ACT relating to real estate; providing that certain duties imposed by statute on a person licensed by the Real Estate Division of the Department of Business and Industry as a real estate broker, broker-salesman or salesman are the licensee's exclusive duties; revising certain duties owed by a licensee to a party to a real estate transaction or to a client who has entered into a brokerage agreement with a licensee; requiring that a brokerage agreement which imposes certain additional duties on a licensee be in writing; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Real estate brokers, real estate broker-salesmen and real estate salesmen are licensed and regulated by the Real Estate Division of the Department of Business and Industry. (Chapter 645 of NRS) Existing law establishes the duties that a licensee owes to a party to a real estate transaction or to a client. (NRS 645.251-645.254) **Section 1** of this bill establishes that the duties imposed on a licensee by statute are the exclusive duties owed by the licensee unless the terms of a written agreement impose additional duties.

Under existing law, a licensee who acts in a real estate transaction has the duty to disclose any material fact concerning the property that the licensee knows or should have known. (NRS 645.252) **Section 2** of this bill revises the terms of this duty so that a licensee must disclose any material fact about the property that the licensee knows or would have been required to know to satisfy the requirements to obtain his license. **Section 2** also provides that unless the parties agree otherwise in writing, a licensee does not have the duty to: (1) conduct an inspection or investigation of the property; (2) disclose any material fact concerning the transaction of which the licensee has knowledge; (3) advise a party to obtain advice



* S B 2 5 8 *

from an expert on matters which are beyond the licensee's expertise; (4) account to a party as soon as is practicable for any money or property received by the licensee in which the party may have an interest; or (5) obtain for or deliver to any party a completed seller's real property disclosure form.

Section 3 of this bill changes the provision that imposes additional duties on a licensee who enters into a brokerage agreement to represent a client in a real estate transaction so that the additional duties are imposed only if the brokerage agreement is in writing. (NRS 645.254)

Sections 2, 4 and 5 of this bill revise provisions that establish the rights and duties of a party to a real estate transaction "or his agent," so that the provisions apply only to the party.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 645.251 is hereby amended to read as follows:

645.251 **1.** A licensee is not required to comply with any principles of common law that may otherwise apply to any of the duties of the licensee as set forth in NRS 645.252, 645.253 and 645.254 and the regulations adopted to carry out those sections.

2. *The duties of a licensee set forth in NRS 645.252, 645.253 or 645.254 are the exclusive duties owed by the licensee to a party to a real estate transaction or to a client who has entered into a written brokerage agreement with the licensee unless the terms of the written agreement between the licensee and the party to a real estate transaction or client impose additional duties on the licensee.*

Sec. 2. NRS 645.252 is hereby amended to read as follows:

645.252 A licensee who acts ~~[as an agent]~~ in a real estate transaction:

1. Shall disclose to each party to the real estate transaction as soon as is practicable:

(a) Any material and relevant facts, data or information ~~[which he knows, or which by the exercise of reasonable care and diligence he should have known,]~~ relating to the property which is the subject of the transaction ~~[;]~~ ***that the licensee knows or would have been required to know to satisfy the requirements set forth in NRS 645.343 for a license as a real estate broker, broker-salesman or salesman.***

(b) Each source from which he will receive compensation as a result of the transaction.

(c) That he is a principal to the transaction or has an interest in a principal to the transaction.

(d) Except as otherwise provided in NRS 645.253, that he is acting for more than one party to the transaction. If a licensee makes such a disclosure, he must obtain the written consent of each party



* S B 2 5 8 *

1 to the transaction for whom he is acting before he may continue to
2 act ~~in his capacity as an agent.~~ *on behalf of that party.* The written
3 consent must include:

4 (1) A description of the real estate transaction.

5 (2) A statement that the licensee is acting for two or more
6 parties to the transaction who have adverse interests and that in
7 acting for these parties, the licensee has a conflict of interest.

8 (3) A statement that the licensee will not disclose any
9 confidential information for 1 year after the revocation or
10 termination of any brokerage agreement entered into with a party to
11 the transaction, unless he is required to do so by a court of
12 competent jurisdiction or he is given written permission to do so by
13 that party.

14 (4) A statement that a party is not required to consent to the
15 licensee acting on his behalf.

16 (5) A statement that the party is giving his consent without
17 coercion and understands the terms of the consent given.

18 (e) Any changes in his relationship to a party to the transaction.

19 2. Shall exercise reasonable skill and care with respect to all
20 parties to the real estate transaction.

21 3. Shall provide the appropriate form prepared by the Division
22 pursuant to NRS 645.193 to:

23 (a) Each party for whom the licensee is acting ~~as an agent~~ in
24 the real estate transaction; and

25 (b) Each unrepresented party to the real estate transaction, if
26 any.

27 4. Unless otherwise agreed upon in writing, owes no duty to:

28 (a) Independently verify the accuracy of a statement made by an
29 inspector certified pursuant to chapter 645D of NRS or another
30 appropriate licensed or certified expert.

31 (b) Conduct an independent inspection of the financial condition
32 of a party to a real estate transaction.

33 (c) *Conduct an inspection or investigation of the condition of*
34 *the property.*

35 (d) *Disclose to a party to the real estate transaction any*
36 *material fact concerning the transaction of which the licensee has*
37 *knowledge.*

38 (e) *Advise a party to the real estate transaction to obtain advice*
39 *from an expert relating to matters which are beyond the expertise*
40 *of the licensee.*

41 (f) *Account to a party to the real estate transaction as soon as*
42 *is practicable for any money or property received by the licensee in*
43 *which the party may have an interest.*



* S B 2 5 8 *

(g) *If acting on behalf of a seller, deliver to a buyer, or a licensee acting on behalf of the buyer, a completed seller's real property disclosure form.*

(h) *If acting on behalf of a buyer, obtain from a seller, or a licensee acting on behalf of the seller, or deliver to the buyer a completed seller's real property disclosure form.*

↪ *As used in this subsection, "seller's real property disclosure form" means the form for disclosing the condition of real property offered for sale required pursuant to NRS 113.130.*

Sec. 3. NRS 645.254 is hereby amended to read as follows:

645.254 A licensee who has entered into a **written** brokerage agreement to represent a client in a real estate transaction:

1. Shall exercise reasonable skill and care to carry out the terms of the brokerage agreement and to carry out his duties pursuant to the terms of the brokerage agreement;

2. 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 given written permission to do so by the client; and

3. Shall promote the interests of his client by:

(a) Seeking a sale, ***purchase, option, rental or*** lease ~~for~~ ***of real*** property at the price and terms stated in the brokerage agreement or at a price acceptable to the client.

(b) Presenting all offers made to or by the client as soon as is practicable.

(c) Disclosing to the client material facts of which the licensee has knowledge concerning the transaction.

(d) Advising the client to obtain advice from an expert relating to matters which are beyond the expertise of the licensee.

(e) Accounting for all money and property he receives in which the client may have an interest as soon as is practicable.

Sec. 4. NRS 113.130 is hereby amended to read as follows:

113.130 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 ~~for his agent~~ shall serve the purchaser ~~for 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 ~~for his agent~~ discovers a new defect in the residential property that was not identified on the completed disclosure form or discovers that a



* S B 2 5 8 *

1 defect identified on the completed disclosure form has become
2 worse than was indicated on the form, the seller ~~for his agent~~ shall
3 inform the purchaser ~~for his agent~~ of that fact, in writing, as soon as
4 practicable after the discovery of that fact but in no event later than
5 the conveyance of the property to the purchaser. If the seller does
6 not agree to repair or replace the defect, the purchaser may:

7 (1) Rescind the agreement to purchase the property; or

8 (2) Close escrow and accept the property with the defect as
9 revealed by the seller ~~for his agent~~ without further recourse.

10 2. Subsection 1 does not apply to a sale or intended sale of
11 residential property:

12 (a) By foreclosure pursuant to chapter 107 of NRS.

13 (b) Between any co-owners of the property, spouses or persons
14 related within the third degree of consanguinity.

15 (c) Which is the first sale of a residence that was constructed by
16 a licensed contractor.

17 (d) By a person who takes temporary possession or control of or
18 title to the property solely to facilitate the sale of the property on
19 behalf of a person who relocates to another county, state or country
20 before title to the property is transferred to a purchaser.

21 3. A purchaser of residential property may waive any of the
22 requirements of subsection 1. Any such waiver is effective only if it
23 is made in a written document that is signed by the purchaser and
24 notarized.

25 4. If a sale or intended sale of residential property is exempted
26 from the requirements of subsection 1 pursuant to paragraph (a) of
27 subsection 2, the trustee and the beneficiary of the deed of trust
28 shall, not later than at the time of the conveyance of the property to
29 the purchaser of the residential property, provide written notice to
30 the purchaser of any defects in the property of which the trustee or
31 beneficiary, respectively, is aware.

32 **Sec. 5.** NRS 113.150 is hereby amended to read as follows:

33 113.150 1. If a seller ~~for his agent~~ fails to serve a completed
34 disclosure form in accordance with the requirements of NRS
35 113.130, the purchaser may, at any time before the conveyance of
36 the property to the purchaser, rescind the agreement to purchase the
37 property without any penalties.

38 2. If, before the conveyance of the property to the purchaser, a
39 seller ~~for his agent~~ informs the purchaser, ~~for his agent,~~ through
40 the disclosure form or another written notice, of a defect in the
41 property of which the cost of repair or replacement was not limited
42 by provisions in the agreement to purchase the property, the
43 purchaser may:

44 (a) Rescind the agreement to purchase the property at any time
45 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 ~~for 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. ~~for 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 ~~for 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.

