

Amendment No. 938

Assembly Amendment to Senate Bill No. 69 First Reprint (BDR 54-457)

Proposed by: Assembly Committee on Commerce and Labor**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

JLW/BJE



Date: 5/24/2007

S.B. No. 69—Revises provisions related to real estate brokers, salesmen and qualified intermediaries. (BDR 54-457)



SENATE BILL NO. 69--SENATOR SCHNEIDER

FEBRUARY 6, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions related to real estate brokers, salesmen and qualified intermediaries. (BDR 54-457)

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

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

AN ACT relating to real estate; defining the term “agency” in the context of real estate brokers, salesmen and qualified intermediaries; **revising the duties of a real estate licensee**; allowing a client to waive certain required duties of a real estate licensee which relate to offers made to or by the client; **prohibiting the waiver of other duties of a licensee**; allowing for communications with the client of another broker under certain permissible circumstances; clarifying that such communication does not create an agency relationship with the client of the other broker; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law defines certain terms used in chapter 645 of NRS which relate to real estate brokers, salesmen and qualified intermediaries. (NRS 645.0005-645.044) ~~Sections 1 and 2~~ **Section 1.3** of this bill ~~define~~ **defines** the term “agency” for that chapter.

Existing law imposes certain duties on a licensee who acts as an agent in a real estate transaction. (NRS 645.252) Section 2.5 of this bill provides that such a licensee owes no duty to conduct an investigation of the condition of the property which is the subject of the real estate transaction.

Existing law ~~creates certain requirements for~~ **imposes certain duties on** a licensee who has entered into a brokerage agreement to provide representation in a real estate transaction. (NRS 645.254) One of those ~~requirements~~ **duties** is to present all offers made to and by the client as soon as is practicable. (NRS 645.254) **Section 3** of this bill allows a client to waive that ~~requirement~~ **duty** by signing a **waiver on a** form provided by the Real Estate Division of the Department of Business and Industry. **Section 1.7 of this bill provides that no other duty of a licensee set forth in section 2.5 or 3 may be waived.**

Existing law allows a person to negotiate a sale, exchange or lease of real estate with the exclusive client of another broker only if permission has been obtained from that other broker. (NRS 645.635) **Section 4** of this bill allows for further communications after such negotiations but before closing. ~~Section 4 also clarifies that such negotiations do not create an agency relationship between the person and the client of the other broker.~~

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

Section 1. Chapter 645 of NRS is hereby amended by adding thereto the provisions set forth as sections 1.3 and 1.7 of this act.

~~[Section 1.] Sec. 1.3. [Chapter 645 of NRS is hereby amended by adding thereto a new section to read as follows:]~~

1. "Agency" means a relationship between a principal and an agent arising out of a brokerage agreement whereby the agent is engaged to do certain acts on behalf of the principal in dealings with a third party.

2. The term does not include a relationship arising solely from negotiations or communications with a client of another broker with the written permission of the broker in accordance with the provisions of subsection 2 of NRS 645.635.

Sec. 1.7. Except as otherwise provided in subsection 4 of NRS 645.254, no duty of a licensee set forth in NRS 645.252 or 645.254 may be waived.

Sec. 2. NRS 645.0005 is hereby amended to read as follows:

645.0005 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 645.001 to 645.042, inclusive, **and section ~~1.3~~ 1.3 of this act** have the meanings ascribed to them in those sections.

Sec. 2.5. 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.

(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 to the transaction for whom he is acting before he may continue to act in his capacity as an agent. The written consent must include:

(1) A description of the real estate transaction.

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

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

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

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

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

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

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

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

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

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

(c) Conduct an investigation of the condition of the property which is the subject of the real estate transaction.

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

645.254 A licensee who has entered into a 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~~ seek a sale, purchase, option, rental or lease ~~of~~ of real property at the price and terms stated in the brokerage agreement or at a price acceptable to the client ~~;~~

~~(b) Presenting~~ ;

4. Shall present all offers made to or by the client as soon as is practicable ~~;~~ , unless the client signs a form which is provided by the Division and which waives the duty of the licensee to present all offers ~~;~~

~~(c) Disclosing~~ and signs a waiver of the duty on a form prescribed by the Division;

5. Shall disclose to the client material facts of which the licensee has knowledge concerning the transaction ~~;~~

~~(d) Advising~~ ;

6. Shall advise the client to obtain advice from an expert relating to matters which are beyond the expertise of the licensee ~~;~~

~~(e) Accounting~~ ; and

7. Shall account for all money and property he receives in which the client may have an interest as soon as is practicable.

Sec. 4. NRS 645.635 is hereby amended to read as follows:

645.635 The Commission may take action pursuant to NRS 645.630 against any person subject to that section who is guilty of:

1. Offering real estate for sale or lease without the knowledge and consent of the owner or his authorized agent or on terms other than those authorized by the owner or his authorized agent.

2. Negotiating a sale, exchange or lease of real estate , or communicating after such negotiations but before closing, directly with a client if he knows that the client has a brokerage agreement in force in connection with the property granting an exclusive agency ~~for~~ , including, without limitation, an exclusive right to sell to another broker, unless permission in writing has been obtained from the other broker. ~~[Negotiation or communication with such permission does not~~

~~create an agency relationship between the person and the client of the other broker.~~

3. Failure to deliver within a reasonable time a completed copy of any purchase agreement or offer to buy or sell real estate to the purchaser or to the seller ~~§ , except as (may be) otherwise provided (by paragraph (b) of subsection 3) in subsection 4 of NRS 645.254.~~

4. Failure to deliver to the seller in each real estate transaction, within 10 business days after the transaction is closed, a complete, detailed closing statement showing all of the receipts and disbursements handled by him for the seller, failure to deliver to the buyer a complete statement showing all money received in the transaction from the buyer and how and for what it was disbursed, or failure to retain true copies of those statements in his files. The furnishing of those statements by an escrow holder relieves the broker's, broker-salesman's or salesman's responsibility and must be deemed to be in compliance with this provision.

5. Representing to any lender, guaranteeing agency or any other interested party, verbally or through the preparation of false documents, an amount in excess of the actual sale price of the real estate or terms differing from those actually agreed upon.

6. Failure to produce any document, book or record in his possession or under his control, concerning any real estate transaction under investigation by the Division.

7. Failure to reduce a bona fide offer to writing where a proposed purchaser requests that it be submitted in writing ~~§ , except as (may be) otherwise provided (by paragraph (b) of subsection 3) in subsection 4 of NRS 645.254.~~

8. Failure to submit all written bona fide offers to a seller when the offers are received before the seller accepts an offer in writing and until the broker has knowledge of that acceptance ~~§ , except as (may be) otherwise provided (by paragraph (b) of subsection 3) in subsection 4 of NRS 645.254.~~

9. Refusing because of race, color, national origin, sex or ethnic group to show, sell or rent any real estate for sale or rent to qualified purchasers or renters.

10. Knowingly submitting any false or fraudulent appraisal to any financial institution or other interested person.

Sec. 5. This act becomes effective on July 1, 2007.