

Amendment No. 289

Assembly Amendment to Assembly Bill No. 392	(BDR 10-209)
Proposed by: Assembly Committee on Commerce and Labor	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.



ASSEMBLY BILL NO. 392—ASSEMBLYMEN KASAMA, JAUREGUI AND GURR

MARCH 23, 2023

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes relating to property. (BDR 10-209)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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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 property; prohibiting certain deceptive service agreements between an owner of residential property and a service provider; revising provisions governing persons who hold a permit to engage in property management; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that any provision in a written instrument relating to real property that is discriminatory, prohibits the display of the flag of the United States or prohibits or restricts an owner of property from obtaining solar or wind energy on his or her property is void and unenforceable. (NRS 111.237-111.2395) **Section 1** of this bill prohibits, with certain exceptions, a service provider from entering into or recording a service agreement with an owner of residential property that provides for the performance of the agreement more than 1 year from the date of the execution of the agreement if the service agreement: (1) purports to run with the land or bind future owners; (2) allows for the assignment of the right to provide service without requiring notice to and the agreement of the owner; or (3) purports to create a security interest in the residential property. **Section 1** provides that such a service agreement is void and unenforceable. **Section 1** also: (1) provides that a county recorder may refuse to record such an agreement; (2) provides that any person who attempts to record such an agreement is guilty of a misdemeanor; and (3) authorizes persons with an interest in a residential property subject to such a service agreement to bring a civil action for equitable relief, actual damages and actual costs and attorney's fees.

Section 1 further requires a service provider that has entered into a service agreement on or before October 1, 2023, to record a notice of the service agreement with the county ~~clerk~~ **recorder** of the county in which the real property that is subject to the service agreement is located. If the service provider fails to record the notice, **section 1** provides that the service agreement is void and unenforceable.

Existing law defines various activities involving businesses and occupations that constitute deceptive trade practices. (NRS 598.0915-598.0925) If a person knowingly engages in a deceptive trade practice, the person may be subject to restraint by injunction and the imposition of civil and criminal penalties. (NRS 598.0979, 598.0985, 598.0999) **Section 1** provides that a service provider who enters into or records such a service agreement prohibited by **section 1** is engaged in a deceptive trade practice.

Existing law authorizes a person licensed as a real estate broker, real estate broker-salesperson or real estate salesperson to apply to the Real Estate Division of the Department of Business and Industry for a permit to engage in property management. (NRS 645.6052) A real estate broker who holds a permit to engage in property management is prohibited from acting as a property manager unless the broker has first obtained a property management agreement signed by the broker and the client for whom the broker will manage the property. (NRS 645.6056) **Section 2** of this bill sets forth certain duties of a person who acts as a property manager when entering into a property management agreement and performing his or her duties pursuant to such agreement, including, without limitation, requiring the property manager to: (1) make certain disclosures to each party to the property management agreement; (2) exercise reasonable skill and care; (3) provide a form to all parties to the property management agreement disclosing the duties owed by the property manager; (4) seek a rental or lease of real property at the price set forth in the property management agreement; (5) advise the client to seek expert advice when needed; and (6) account for all money and property the property manager receives in which the client may have an interest.

Section 3 of this bill revises the definition of the term "agency" to include a relationship arising out of a property management agreement.

Section 6 of this bill prohibits a property manager from waiving any duty set forth in **section 2**. **Section 7** of this bill authorizes a person who has suffered damages as the proximate result of a property manager's failure to perform any duty set forth in **section 2** to bring an action against the property manager for the recovery of the person's actual damages.

Existing law requires the Division to prepare and distribute a form to persons licensed as real estate brokers, real estate broker-salespersons or real estate salespersons which sets forth the duties owed by a licensee. (NRS 645.193) **Section 4** of this bill also requires the Division to prepare such a form for property managers.

Existing law provides that if a real estate broker assigns different licensees affiliated with his or her brokerage to separate parties to a real estate transaction, the licensees are not required to obtain the written consent of each party to the transaction. (NRS 645.252, 645.253) **Section 5** of this bill provides that property managers affiliated with a brokerage who are assigned to separate parties to a property management agreement are also not required to obtain such written consent.

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

Section 1. Chapter 111 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A service provider shall not enter into or record a service agreement with an owner of residential property that provides for performance of the service agreement more than 1 year from the date of execution of the service agreement if the service agreement:

(a) Purports to run with the land or bind future owners of interests in the residential property;

(b) Allows for the assignment of the right to provide service without requiring notice to and agreement of the owner of the residential property; or

(c) Purports to create a security interest in the residential property, including, without limitation, a lien or encumbrance.

2. The provisions of this section do not apply to:

(a) A home warranty or similar product that covers the cost of maintenance of a major housing system, including, without limitation, a plumbing or electrical system, for a set period of time;

(b) An insurance contract;

(c) An option to purchase or right of refusal;

(d) A maintenance or repair agreement entered into by a homeowners' association in a common interest community;

1 (e) *A mechanic's lien;*

2 (f) *A mortgage loan or a commitment to make or receive a mortgage loan;*

3 (g) *A security agreement relating to the sale or rental of personal property or*
4 *fixtures;*

5 (h) *Any utility service provided by a public utility, including, without*
6 *limitation, water, sewer, electrical, telephone or cable; or*

7 (i) *A declaration created in the formation of a common-interest community*
8 *or an amendment thereto.*

9 3. *A service agreement prohibited pursuant to this section that is recorded*
10 *on or after October 1, 2023, is void and unenforceable. A county recorder may*
11 *refuse to record any written instrument that contains a service agreement that is*
12 *prohibited pursuant to this section. A person who submits a written instrument*
13 *for recordation to the county ~~clerk~~ recorder that contains such a service*
14 *agreement is guilty of a misdemeanor.*

15 4. *The recording of a service agreement prohibited pursuant to this section*
16 *does not provide actual or constructive notice to a bona fide purchaser or creditor*
17 *of residential property.*

18 5. *A violation of subsection 1 constitutes a deceptive trade practice for the*
19 *purposes of NRS 598.0903 to 598.0999, inclusive. Any person with an interest in*
20 *a residential property for which a service agreement prohibited pursuant to this*
21 *section is recorded may bring a civil action in any court of competent jurisdiction*
22 *for such a violation. If a person brings such an action, the court may award the*
23 *person:*

24 (a) *Any equitable relief that the court deems appropriate;*

25 (b) *Actual damages; and*

26 (c) *Actual costs and attorney's fees.*

27 6. *On or before July 31, 2024, a service provider that has entered into a*
28 *service agreement on or before October 1, 2023, shall record a notice of service*
29 *agreement with the county recorder of the county in which the real property that*
30 *is the subject of the service agreement is located, which must include, without*
31 *limitation:*

32 (a) *The title "Notice of Service Agreement" in not less than 14-point*
33 *boldface type;*

34 (b) *A legal description of the real property;*

35 (c) *The amount of the fee provided in the service agreement or the method by*
36 *which the fee must be calculated;*

37 (d) *The date or circumstances under which the obligation set forth in the*
38 *service agreement expires;*

39 (e) *The name, address and telephone number of the service provider; and*

40 (f) *If the service provider is:*

41 (1) *A natural person, the notarized signature of the service provider; or*

42 (2) *A business entity, the notarized signature of an authorized officer or*
43 *employee of the business entity.*

44 7. *If a service provider fails to record the notice required pursuant to*
45 *subsection 6 on or before July 31, 2024, the service agreement is hereby declared*
46 *void and unenforceable and any interest in the real property that is subject to the*
47 *service agreement may be conveyed free and clear of the service agreement.*

48 8. *As used in this section:*

49 (a) *"Residential property" means any land in this State which is primarily*
50 *used for personal, family or household purposes to which is affixed not less than*
51 *one nor more than four dwelling units.*

1 (b) *"Service agreement" means a contract under which a person agrees to*
2 *provide services in connection with the maintenance, purchase or sale of*
3 *residential property.*

4 (c) *"Service provider" means a person who provides services to another*
5 *party.*

6 **Sec. 2.** Chapter 645 of NRS is hereby amended by adding thereto a new
7 section to read as follows:

8 *A person who holds a permit to engage in property management when*
9 *entering into a property management agreement and performing his or her duties*
10 *pursuant to such property management agreement, as applicable:*

11 1. *Shall disclose to each party to the property management agreement as*
12 *soon as practicable:*

13 (a) *Any material and relevant facts, data or information which the property*
14 *manager knows, or which by the exercise of reasonable care and diligence should*
15 *have known, relating to the property which is the subject of the property*
16 *management agreement.*

17 (b) *Each source from which the property manager will receive compensation*
18 *as a result of the agreement.*

19 (c) *That the property manager is a principal to the agreement or has an*
20 *interest in a principal to the agreement.*

21 (d) *That the property manager is acting for more than one party to the*
22 *agreement. If a property manager makes such a disclosure, he or she must obtain*
23 *the written consent of each party to the agreement for whom the property*
24 *manager is acting before he or she may continue to act in his or her capacity as*
25 *an agent. The written consent must include:*

26 (1) *A description of the property management agreement.*

27 (2) *A statement that the property manager is acting for two or more*
28 *parties to the agreement who have an adverse interest and that in acting for these*
29 *parties, the property manager has a conflict of interest.*

30 (3) *A statement that the property manager will not disclose any*
31 *confidential information for 1 year after the revocation or termination of any*
32 *property management agreement entered into with a party to the agreement,*
33 *unless he or she is required to do so by a court of competent jurisdiction or is*
34 *given written permission to do so by that party.*

35 (4) *A statement that a party is not required to consent to the property*
36 *manager acting on behalf of the party.*

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

39 (6) *Any changes in the property manager's relationship to a party to the*
40 *agreement or activity.*

41 2. *Shall exercise reasonable skill and care with respect to all parties to the*
42 *property management agreement in carrying out the terms of the property*
43 *management agreement and performing his or her duties.*

44 3. *Shall provide the appropriate form prepared by the Division pursuant to*
45 *NRS 645.193 to:*

46 (a) *Each party for whom the property manager is acting as a property*
47 *manager in the property management agreement; and*

48 (b) *Each unrepresented party to the property management agreement, if any.*

49 4. *Shall seek a rental or lease of real property at the price and terms stated*
50 *in the property management agreement or at a price acceptable to the client.*

51 5. *Shall advise the client to obtain advice from an expert relating to matters*
52 *which are beyond the expertise of the property manager.*

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

7. *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 property management agreement.*

(c) *Conduct an investigation of the condition of the property which is the subject of the property management agreement.*

Sec. 3. NRS 645.0045 is hereby amended to read as follows:

645.0045 1. "Agency" means a relationship between a principal and an agent arising out of a brokerage agreement *or property management 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. 4. NRS 645.193 is hereby amended to read as follows:

645.193 The Division shall prepare and distribute to licensees ~~and~~ *and property managers:*

1. A form which sets forth the duties owed by a licensee *or property manager* who is acting for only one party to a real estate transaction ~~and~~ *or property management agreement, as applicable.*

2. A form which sets forth the duties owed by a licensee *or property manager* who is acting for more than one party to a real estate transaction ~~and~~ *or property management agreement, as applicable.*

3. A form which sets forth the duties owed by a real estate broker who assigns different licensees *or property managers* affiliated with his or her brokerage to separate parties to a real estate transaction ~~and~~ *or property management agreement, as applicable.*

Sec. 5. NRS 645.253 is hereby amended to read as follows:

645.253 If a real estate broker assigns different ~~[licensees]~~ :

1. *Licensees* affiliated with his or her brokerage to separate parties to a real estate transaction, the licensees are not required to obtain the written consent required pursuant to paragraph (d) of subsection 1 of NRS 645.252. Each licensee shall not disclose, except to the real estate broker, confidential information relating to a client in violation of NRS 645.254.

2. *Licensees affiliated with his or her brokerage who hold permits to engage in property management to separate parties to a property management agreement, the property managers are not required to obtain the written consent required pursuant to paragraph (d) of subsection 1 of section 2 of this act. Each property manager shall not disclose, except to the real estate broker, confidential information relating to a client in violation of section 2 of this act.*

Sec. 6. NRS 645.255 is hereby amended to read as follows:

645.255 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 *or a property manager set forth in section 2 of this act* may be waived.

Sec. 7. NRS 645.257 is hereby amended to read as follows:

645.257 1. A person who has suffered damages as the proximate result of a licensee's *or property manager's* failure to perform any duties required by NRS 645.252, 645.253 or 645.254 *or section 2 of this act* or the regulations adopted to

1 carry out those sections may bring an action against the licensee *or property*
2 *manager* for the recovery of the person's actual damages.

3 2. In such an action, any knowledge of the client ~~{eH}~~ :

4 (a) *Of* the licensee of material facts, data or information relating to the real
5 property which is the subject of the real estate transaction may not be imputed to
6 the licensee ~~{H}~~ ; and

7 (b) *Of the property manager of material facts, data or information relating to*
8 *the real property which is the subject of the property management agreement may*
9 *not be imputed to the property manager.*

10 3. In an action brought by a person ~~{against a licensee}~~ pursuant to subsection
11 1 ~~{, the}~~ :

12 (a) *The* standard of care owed by a licensee is the degree of care that a
13 reasonably prudent real estate licensee would exercise and is measured by the
14 degree of knowledge required to be obtained by a real estate licensee pursuant to
15 NRS 645.343 and 645.345 ~~{H}~~ ; and

16 (b) *The standard of care owed by a property manager is the degree of care*
17 *that a reasonably prudent property manager would exercise and is measured by*
18 *the degree of knowledge required to be obtained by a permit to engage in property*
19 *management pursuant to NRS 645.6052.*