Law

Title: Recent Changes to Nevada Real Estate Law

Credit Hours: 3

CE# CE.6189000-RE

Course material will NOT be handed out in the classroom.

The student may print course material from the student's dashboard and bring to class, if desired. In addition, during the class, students may access the course material from any smart device with internet access.

Discussion points of R004-16

- Changes to educational requirement
    - Prior to the passing of this regulation, it was merely the Division's policy to modify the continuing education requirements for applicants with experience and OR licensing held in other states as it pertains to first term renewal requirements.
        - The adoption of R004-16 now clarifies the renewal requirements for licensees with prior experience.
            - Licensees who were licensed in another state at the time of Nevada application or licensees who held a license in Nevada within the prior 5 years are no longer considered first term renewing licensees and thus are subject to standard subsequent education renewal requirements. The standard 24 hour renewal requirement pertains to said licensees. Prior to this regulation, experienced licensees were required to take the standard Post licensing and take a curriculum that was considered new licensee information only.
- Changes to broker qualifying applications
    - Prior to the passing of this regulation, there were many misnomers pertaining to the financial qualifications of broker application. Specifically, much of the licensee body was under the impression that a set monetary amount was required to retain in reserves to apply for the Nevada Broker license.
        - Nevada application forms 557 and 558 were required to be submitted by prospective broker applicants wherein the applicant would estimate monthly business expenses and show 6 months of reserves for said business expenses. This was rarely done correctly and applicants need to show everything from $1800 to over $180,000 depending on what information the applicant supplied on the aforementioned forms.
            - This regulation allows the applicant to submit a credit report to satisfy the financial means and financial integrity to operate the business as planned. This is done in lieu of the liquid seasoned assets.

APPROVED REGULATION OF

THE REAL ESTATE COMMISSION

LCB File No. R004-16

Effective February 27, 2018

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

AUTHORITY: §§1 and 9, NRS 645.190, 645.575, 645.630 and 645.633; §§2 and 3, NRS 645.190 and 645.400; §§4 and 14, NRS 645.190; §5, NRS 645.190, 645.343 and 645.575; §6, NRS 645.190 and 645.343; §7, NRS 645.190, 645.343, 645.575, 645.630 and 645.633; §8, NRS 645.190 and 645.575; §10, NRS 645.050, 645.190, 645.575, 645.630, 645.633, 645.635 and 645.660; §§11 and 12, NRS 645.190 and 645.6052; §13, NRS 645.190 and 645.863.

A REGULATION relating to real estate; revising provisions relating to requirements for postlicensing education and continuing education for certain licensees of the Real Estate Division of the Department of Business and Industry; revising provisions governing the Division's investigation of the financial responsibility of an applicant for a license as real estate broker; revising the period in which the Division will accept the results of an applicant's examination; revising the proof which a person must submit to the Division to renew or reinstate a license; repealing provisions requiring the Division's consideration of the financial condition of a person who wishes to apply for a license as a real estate broker; repealing provisions relating to persons who hold permits to engage in property management and who engage in the management of common-interest communities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

In 2015, the Nevada Legislature passed Assembly Bill No. 475, which reduced the period of initial licensure for a license as a real estate broker, real estate broker-salesperson or real estate salesperson from 24 to 12 consecutive months and each subsequent period of licensure for these and other licenses issued by the Real Estate Division of the Department of Business and Industry from 48 to 24 consecutive months. Assembly Bill No. 475 provided that existing licenses issued by the Division before July 1, 2015, do not need to be renewed until the expiration dates listed on those licenses. (Chapter 475, Statutes of Nevada 2015, at page 2780)

Section 1 of this regulation establishes educational requirements for certain licensees whose licenses have been placed on inactive status and who apply for reinstatement.

Existing regulations provide that the Division may investigate the financial responsibility of an applicant for a license as a real estate broker and provide that an applicant shall be deemed financially responsible if the applicant can show liquid assets sufficient to maintain an office for

at least 180 days. (NAC 645.150) **Section 3** of this regulation: (1) authorizes the Division to eliminate the presumption of financial responsibility; (2) requires that a credit report be submitted to the Division which must be dated within 30 days before the date of the application; and (3) requires that an applicant submit such other information as the Division deems necessary.

Existing regulations provide that the Division will only accept the results of an examination taken during the 12 months before the date of an application for a license. (NAC 645.225) **Section 4** of this regulation instead provides that the Division will only accept the results of an examination for 12 months after the results of the examination were issued.

Existing regulations set forth certain requirements for a course of postlicensing education for first-time licensees. (NAC 645.4442) **Section 7** of this regulation revises those requirements to require the completion of prescribed continuing education by certain first-time licensees and scales the required number of hours of continuing education to the new 1-year period of initial licensure established by Assembly Bill No. 475.

Existing regulations require a person to submit certain proof to the Division to renew an active license or reinstate an inactive license. (NAC 645.445) **Section 8** of this regulation revises the items of proof that must be submitted to renew or reinstate a license.

Existing regulations set forth certain requirements for continuing education for a real estate salesperson, real estate broker or real estate broker-salesperson who wishes to renew his or her license. (NAC 645.448) **Section 9** of this regulation revises those requirements as they relate to live instruction and distance education and scales the required number of hours of continuing education to the new 2-year periods of licensure established by Assembly Bill No. 475.

Existing regulations establish certain requirements for continuing education for the renewal of a permit to engage in property management. (NAC 645.802) **Section 12** of this regulation revises those requirements as they relate to the subject matter of the continuing education and scales the required number of hours of instruction to the new 2-year periods of licensure established by Assembly Bill No. 475.

Existing regulations establish certain requirements for continuing education for the renewal of a permit to engage in business as a business broker. (NAC 645.915) **Section 13** of this regulation revises those requirements as they relate to the subject matter of the continuing education and scales the required number of hours of instruction to the new 2-year periods of licensure established by Assembly Bill No. 475.

Existing regulations require the Division to consider the financial condition of a person who wishes to apply for a license as a real estate broker before the person files an application for the license and requires the person to submit to the Division certain financial information. (NAC 645.120) **Section 14** of this regulation repeals these requirements.

Existing regulations provide that a person who holds a permit to engage in property management and who engages in the management of a common-interest community is subject to the provisions of existing law relating to managers of common-interest communities. (NAC 645.799) **Section 14** of this regulation repeals this provision.

Section 1. Chapter 645 of NAC is hereby amended by adding thereto a new section to read as follows:

1. If an initial license has been placed on inactive status during the first year of the initial license period and the licensee applies for reinstatement during that year:

(a) If the licensee is required to take a course of postlicensing education pursuant to NAC 645.4442, the licensee must provide the Division with proof of successful completion of the course of postlicensing education.

(b) If the licensee is exempt from the requirement for postlicensing education pursuant to subsection 2 of NAC 645.4442, the licensee must provide the Division with proof of successful completion of the 24 hours of continuing education required pursuant to subsection 6 of that section.

2. If an initial license has been placed on inactive status for more than 1 year but not more than 2 years after the first renewal period and the licensee applies for reinstatement of the license:

(a) If the licensee is required to take a course of postlicensing education pursuant to NAC 645.4442, the licensee must provide the Division with proof of successful completion of the course of postlicensing education and, if applicable, the 12 hours of continuing education required pursuant to subsection 5 of that section.

(b) If the licensee is exempt from the requirement for postlicensing education pursuant to subsection 2 of NAC 645.4442, the licensee must provide the Division with proof of successful completion of the 24 hours of continuing education required pursuant to subsection 6 of that section.

3. If an initial license has been placed on inactive status for a period of 2 or more years, part of which was during the initial license period, and the licensee applies for reinstatement of the license:

(a) If the licensee is required to take a course of postlicensing education pursuant to NAC 645.4442, the licensee must provide the Division with proof of successful completion of:

(1) The course of postlicensing education; and

(2) An additional 24 hours of approved courses of continuing education pursuant to NAC 645.448, as applicable to the license for which the licensee applies for reinstatement.

(b) If the licensee is exempt from the requirement for postlicensing education pursuant to subsection 2 of NAC 645.4442, the licensee must provide the Division with proof of successful completion of:

(1) Twenty-four hours of continuing education as required by subsection 6 of NAC 645.4442; and

(2) An additional 24 hours of approved courses of continuing education as required by NAC 645.448, as applicable to the license for which the licensee applies for reinstatement.

4. If a license has been placed on inactive status after the renewal of the initial license and the licensee applies for reinstatement of the license:

(a) If the license was on inactive status for 2 years or less, no part of which was during the initial license period, the licensee must provide the Division with proof of successful completion of at least 24 hours of approved courses of continuing education. Not less than 12 or 15, as applicable, of the hours required pursuant to this paragraph must be devoted to ethics, professional conduct or the legal aspects of real estate, including 3 hours in each of the areas set forth in subparagraphs (1) to (4), inclusive, of paragraph (a) of subsection 1 of NAC

645.448 or subparagraphs (1) to (5), inclusive, of paragraph (a) of subsection 2 of NAC 645.448, as applicable to the license for which the licensee applies for reinstatement.

(b) If the license was on inactive status for more than 2 years, no part of which was during the initial license period, the licensee must provide the Division with proof of successful completion of at least 48 hours of approved courses of continuing education. Not less than 24 or 30, as applicable, of the hours required pursuant to this paragraph must be devoted to ethics, professional conduct or the legal aspects of real estate, including 6 hours in each of the areas set forth in subparagraphs (1) to (4), inclusive, of paragraph (a) of subsection 1 of NAC 645.448 or subparagraphs (1) to (5), inclusive, of paragraph (a) of subsection 2 of NAC 645.448, as applicable to the license for which the licensee applies for reinstatement.

5. Each course of continuing education and course of postlicensing education that is used to meet the requirements of this section must be completed within the 2 years immediately preceding the date of application for reinstatement of the license.

6. At least 50 percent of the total hours of continuing education required by this section must be taken through live instruction in which the licensee and the instructor are in the same room, except that a licensee who lives in a rural area may, with the submission of a prior request on a form prescribed by the Division and the approval of the Division, take the required hours of continuing education in courses of distance education.

7. A licensee who fails to comply with the requirements for postlicensing education or continuing education set forth in this section is subject to the immediate involuntary inactivation of his or her license by the Division and the imposition of an administrative fine in the amount set forth in subsection 1 of NAC 645.695.

Sec. 2. NAC 645.102 is hereby amended to read as follows:

645.102 1. Before a person who wishes to apply for a license as a real estate broker submits an application for the license pursuant to NRS 645.350, the person must obtain approval of his or her financial condition from the Division . ~~[pursuant to NAC 645.120.]~~

2. An applicant for a license as a real estate broker must satisfy the requirements for a license as a real estate salesperson as set forth in NAC 645.100 except the educational requirements set forth in paragraph (b) of subsection 2 of NAC 645.100. In lieu of providing proof that he or she has satisfied the educational requirements for a license as a real estate salesperson, the applicant must include with an application submitted to the Division pursuant to NRS 645.350 proof that he or she has satisfied the educational requirements for a license as a real estate broker as set forth in NRS 645.343.

3. In addition to satisfying the requirements set forth in subsection 2, an applicant for a license as a real estate broker must include with the application he or she submits to the Division pursuant to NRS 645.350 proof that the applicant has satisfied the experience requirements for a license as a real estate broker as set forth in subsection 4 of NRS 645.330.

Sec. 3. NAC 645.150 is hereby amended to read as follows:

645.150 1. The Division may ~~[investigate the financial responsibility of]~~ *:*

(a) Investigate each applicant for a license as a real estate broker ~~[. If the Division determines that an applicant is not financially responsible, it may require that the applicant be licensed as a real estate broker-salesperson until he or she meets the requirements of financial responsibility as determined by the Commission. The Division may require]~~ *;*

(b) Require an applicant to submit such information as the Division deems necessary to conduct the investigation; and

(c) ***Require*** an applicant ~~[for a license as a real estate broker]~~ to submit a credit report ***dated within 30 days immediately preceding the date of his or her application*** to the Division at his or her own expense.

2. ~~[An applicant for a license as a real estate broker shall be deemed financially responsible if the applicant can show liquid assets sufficient to maintain an office for at least 180 days. The applicant's cash on hand must be on deposit at least 90 days before the date of the application.]~~ Anyone denied a license ***as a real estate broker*** for lack of financial responsibility does not waive his or her right to appeal pursuant to NRS 645.440 by acceptance of a license as a real estate broker-salesperson.

3. The Administrator may require other proof of the honesty, truthfulness and good reputation of any applicant, including the officers and directors of any corporation, or the members of any partnership or association making an application, before accepting an application for a license.

~~[4. As used in this section, "liquid assets" means assets that are the equivalent of cash or easily converted into cash. The term:~~

~~(a) Includes, without limitation, money in a checking, savings or money market account and certificates of deposit.~~

~~(b) Does not include a line of credit.]~~

Sec. 4. NAC 645.225 is hereby amended to read as follows:

645.225 The Division shall only accept results of an examination ~~[taken during the]~~ ***for*** 12 months ~~[, to the day, immediately preceding]~~ ***after*** the date ~~[of application for a license.]~~ ***on which the results of the examination were issued.***

Sec. 5. NAC 645.400 is hereby amended to read as follows:

645.400 For the purposes of NAC 645.400 to 645.467, inclusive, [~~"school"~~] ***and section 1 of this regulation:***

1. "First-time licensee" means a licensee who, at the time of the issuance of his or her current license, has not held a license as a real estate broker, real estate broker-salesperson or real estate salesperson issued by this State within the immediately preceding 5 years.

2. "Initial license" means the first issuance of a license as a real estate broker, real estate broker-salesperson or real estate salesperson in this State to a first-time licensee.

3. "Rural area" means any area which is more than 100 miles from a city in this State whose population is 40,000 or more.

4. "School" includes:

[~~1.~~] ***(a)*** Any university, school or community college which is a part of the Nevada System of Higher Education, or any other university or college bearing the same or an equivalent accreditation.

[~~2.~~] ***(b)*** Any professional school or college licensed by the Nevada Commission on Postsecondary Education.

Sec. 6. NAC 645.404 is hereby amended to read as follows:

645.404 1. If a school has applied for and received the Commission's approval to offer courses to meet requirements for licensure under chapter 645 of NRS, the school shall, as a condition of the approval:

(a) Maintain a record of each student's attendance and certification in any of those courses for 7 years after the student's enrollment and shall have such records open to inspection by the Division, upon its request, during the school's business hours.

(b) Upon a transferring student's request, furnish the school to which the student is transferring a copy of his or her attendance record and certification for each of those courses which he or she has completed.

(c) Upon a student's request, furnish the Division a transcript of the record of his or her grades and attendance.

2. A school that does not meet the definition of a "school" set forth in ***paragraph (a) of*** subsection ~~[1]~~ ***4*** of NAC 645.400 must provide evidence to the Division that the school is licensed to operate by the Commission on Postsecondary Education.

Sec. 7. NAC 645.4442 is hereby amended to read as follows:

645.4442 1. Except as otherwise provided in subsection 2, each first-time licensee shall take a prescribed ~~[postlicensing]~~ course of ***postlicensing*** education that focuses on practical applications of real estate transactions. The ~~[postlicensing]~~ course:

(a) Must not repeat the content of the course work required to meet the educational requirements for an original license;

(b) Must constitute the education required to be completed by a licensee within the first year immediately after initial licensing pursuant to NRS 645.575;

(c) Must be offered in modules;

(d) Must be provided through live instruction in which the licensee and the instructor are in the same room, except that first-time licensees who live in a rural area may, with the ***submission of a*** prior ~~[written]~~ ***request on a form prescribed by the Division and the*** approval of the Division, take the ~~[postlicensing]~~ course ~~[as an interactive or televideo course]~~ ***by a method of delivery of distance education*** that involves interaction with the instructor and other students ~~[.]~~ ***if such method of delivery is available at the time of the request;*** and

(e) Must provide the Division with proof of completion within the first year immediately after initial licensing.

2. The requirement for postlicensing education set forth in subsection 1 does not apply to a first-time licensee who ~~[:]~~ ***complies with the requirements set forth in subsection 6 and who:***

(a) Holds a real estate license issued by another state or territory of the United States, or the District of Columbia, on the date on which the first-time licensee obtains a real estate license issued by the State of Nevada;

(b) Held a license as a real estate broker, real estate broker-salesperson or real estate salesperson issued by the State of Nevada within the 5 years immediately preceding the date on which the first-time licensee obtained a license as a real estate salesperson; or

(c) Is licensed as a real estate broker-salesperson and obtained the qualifications for licensure as a real estate broker-salesperson pursuant to the provisions of subsection 4 of NRS 645.343.

3. The ~~[postlicensing]~~ course ***of postlicensing education*** may include material that has not previously been approved or allowed for continuing education credit. Courses approved for postlicensing education will not be accepted or approved as a course for continuing education.

4. The curriculum for postlicensing education must contain at least 15 modules that include, without limitation:

(a) Real estate contracts, including the writing and presenting of a purchase agreement and qualifying prospects;

(b) The listing process, market analysis and inspections;

(c) Communication, technology and records management, including time management, goal setting and devising a plan of action;

(d) Buyer representation, including the buyer's brokerage contract, fiduciary duties, disclosures, cooperation between agents and new-home tracts;

(e) Professional conduct, etiquette and ethics;

(f) Advertising, including Regulation Z of the Truth in Lending Act of the Federal Trade Commission issued by the Board of Governors of the Federal Reserve System, 12 C.F.R. Part 226, fair housing, the multiple-listing service, Internet websites and electronic mail;

(g) Proceeds of sale, costs of sale and cost sheets;

(h) Agency relationships;

(i) Land;

(j) Regulatory disclosures, including disclosures required by federal, state and local governments;

(k) Property management ~~[and]~~ ***, but not*** the management of common-interest communities;

(l) Escrow, title and closing processes;

(m) Financing;

(n) Negotiation; and

(o) Tax opportunities and liabilities related to the client.

5. Each first-time licensee ***whose license was issued before July 1, 2015,*** must complete an additional 12 ***or 15*** hours ***, as applicable,*** of continuing education within the first 2 years immediately after initial licensing. The additional 12 ***or 15*** hours ***, as applicable,*** of continuing education:

(a) Must include 3 hours in each of the ~~[following]~~ areas ~~[:~~

~~(1) Agency relationships;~~

~~(2) Nevada law, with an emphasis on recent statutory and regulatory changes;~~

~~(3) Contracts; and~~

~~(4) Ethics.]~~ ***set forth in subparagraphs (1) to (4), inclusive, of paragraph (a) of subsection 1 of NAC 645.448 or subparagraphs (1) to (5), inclusive, of paragraph (a) of subsection 2 of NAC 645.448, as applicable to the license; and***

(b) Must be provided through live instruction in which the licensee and the instructor are in the same room, except that first-time licensees who live in a rural area may, with the ***submission of a*** prior ~~[written]~~ ***request on a form prescribed by the Division and the*** approval of the Division, take the additional continuing education course as ~~[an interactive or televideo]~~ ***a*** course ~~[that involves interaction with the instructor and other students.]~~ ***of distance education if such course is available.***

6. ***A first-time licensee who satisfies the conditions set forth in paragraph (a), (b) or (c) of subsection 2 must successfully complete 24 hours of continuing education within the initial license period. The continuing education required pursuant to this subsection must include:***

(a) Three hours in each of the areas set forth in subparagraphs (1) to (4), inclusive, of paragraph (a) of subsection 1 of NAC 645.448 or subparagraphs (1) to (5), inclusive, of paragraph (a) of subsection 2 of NAC 645.448, as applicable to the license; and

(b) At least 12 hours of live instruction in which the licensee and the instructor are in the same room, except that a first-time licensee who lives in a rural area may, with the prior request on a form prescribed by the Division and the approval of the Division, complete the required hours of continuing education in courses of distance education if such courses are available.

7. A first-time licensee who fails to comply with the requirements for postlicensing education set forth in this section is subject to immediate involuntary inactivation of the license

by the Division and an administrative fine in the amount set forth in subsection 1 of NAC 645.695.

~~[7. As used in this section, "rural area" means any area which is more than 100 miles from a city in this State whose population is 40,000 or more.]~~

Sec. 8. NAC 645.445 is hereby amended to read as follows:

645.445 1. To renew an active license, the licensee must provide the Division with proof that ~~[he or she]~~ ***the licensee*** has met the requirements set forth in ***:***

(a) NAC 645.4442 for the renewal of an initial license; or

(b) NAC 645.448 ~~[.]~~ ***for any renewal subsequent to the first renewal of an initial license.***

2. To reinstate a license which has been placed on inactive status, a person must provide the Division with proof that he or she has met the requirements set forth in ~~[NAC 645.448.]~~ ***section 1 of this regulation.***

3. For the purpose of compliance with this section, 50 or more minutes of actual instruction constitutes a clock hour . ~~[and initial licensing refers to the first issuance of a real estate license of any kind in Nevada.]~~

Sec. 9. NAC 645.448 is hereby amended to read as follows:

645.448 1. Except as otherwise provided in subsection 3, a real estate salesperson who wishes to renew his or her license must ***:***

(a) Successfully complete at least 12 hours of continuing education devoted to ethics, professional conduct or the legal aspects of real estate, including 3 hours in each of the following areas:

(1) Agency relationships.

(2) Nevada law.

(3) Contracts.

(4) Ethics.

(b) If the license was last renewed before July 1, 2015, successfully complete at least 48 hours of continuing education at approved educational courses, seminars or conferences during the license renewal period. Twenty-four of the hours must be completed before the end of each 2-year period ~~[.]~~ ***, at least 12 hours of which meet the requirements of paragraph (a).*** Each licensee must provide the Division with proof of completion before the end of each 2-year period. ~~[Not less than 12 of the hours in each 2-year period must be devoted to ethics, professional conduct or the legal aspects of real estate, including:~~

~~(a) Three hours in the area of agency relationships;~~

~~(b) Three hours in the area of Nevada law with an emphasis on recent statutory and regulatory changes;~~

~~(c) Three hours in the area of contracts; and~~

~~(d) Three hours in the area of ethics.]~~

(c) If the license was last renewed on or after July 1, 2015, successfully complete at least 24 hours of continuing education at approved educational courses, seminars or conferences during the license renewal period, at least 12 hours of which meet the requirements of paragraph (a).

2. Except as otherwise provided in subsection 3, a real estate broker or real estate broker-salesperson who wishes to renew his or her license must *:*

(a) Successfully complete at least 15 hours of continuing education devoted to ethics, professional conduct or the legal aspects of real estate, including 3 hours in each of the following areas:

(1) Agency relationships.

(2) Nevada law.

(3) Contracts.

(4) Ethics.

(5) Broker management.

(b) If the license was last renewed before July 1, 2015, successfully complete at least 48 hours of continuing education at approved educational courses, seminars or conferences during the license renewal period. Twenty-four of the hours must be completed before the end of each 2-year period ~~[.]~~ ***, at least 15 hours of which meet the requirements of paragraph (a).*** Each licensee must provide the Division with proof of completion before the end of each 2-year period. ~~[Not less than 15 of the hours in each 2-year period must be devoted to ethics, professional conduct or the legal aspects of real estate, including:~~

~~(a) Three hours in the area of agency relationships;~~

~~(b) Three hours in the area of Nevada law with an emphasis on recent statutory and regulatory changes;~~

~~(c) Three hours in the area of contracts;~~

~~(d) Three hours in the area of ethics; and~~

~~(e) Three hours in the area of broker management.]~~

(c) If the license was last renewed on or after July 1, 2015, successfully complete at least 24 hours of continuing education at approved educational courses, seminars or conferences during the license renewal period, at least 15 hours of which meet the requirements of paragraph (a).

3. The requirements for continuing education set forth in ~~[subsections 1 and 2]~~ ***this section*** do not apply to the renewal of a license upon the expiration of the initial license.

4. ~~[If a license has been placed on inactive status and the licensee wishes to have the license reinstated, the licensee must comply with the following requirements:~~

~~(a) If the license was on inactive status for 1 year or less, all of which was during the period of the initial license, the licensee must complete the postlicensing course described in NAC 645.4442.~~

~~(b) If the license was on inactive status for more than 1 year but less than 2 years, any part of which was during the period of the initial license, the licensee must complete at approved educational courses, seminars or conferences:~~

~~(1) The postlicensing course described in NAC 645.4442; and~~

~~(2) At least 18 hours of continuing education. Not less than 12 of the hours must be devoted to ethics, professional conduct or the legal aspects of real estate, including:~~

~~(I) Three hours in the area of agency relationships;~~

~~(II) Three hours in the area of Nevada law with an emphasis on recent statutory and regulatory changes;~~

~~(III) Three hours in the area of contracts; and~~

~~(IV) Three hours in the area of ethics.~~

~~(c) If the license was on inactive status for 2 years or less, no part of which was during the period of the initial license, the licensee must complete at least 24 hours of continuing education at approved educational courses, seminars or conferences. Not less than 12 of the hours must be devoted to ethics, professional conduct or the legal aspects of real estate, including:~~

~~(1) Three hours in the area of agency relationships;~~

~~(2) Three hours in the area of current Nevada law with an emphasis on recent statutory and regulatory changes;~~

~~(3) Three hours in the area of contracts; and~~

~~(4) Three hours in the area of ethics.~~

~~(d) If the license was on inactive status for more than 2 years, any part of which was during the period of the initial license, the licensee must complete at approved educational courses, seminars or conferences:~~

~~(1) The postlicensing course described in NAC 645.4442; and~~

~~(2) At least 24 hours of continuing education. Not less than 12 of the hours must be devoted to ethics, professional conduct or the legal aspects of real estate, including:~~

~~(I) Three hours in the area of agency relationships;~~

~~(II) Three hours in the area of current Nevada law with an emphasis on recent statutory and regulatory changes;~~

~~(III) Three hours in the area of contracts; and~~

~~(IV) Three hours in the area of ethics.~~

~~(e) If the license was on inactive status for more than 2 years, no part of which was during the period of the initial license, the licensee must complete at least 48 hours of continuing education at approved educational courses, seminars or conferences. Not less than 24 of the hours must be devoted to ethics, professional conduct or the legal aspects of real estate, including:~~

~~(1) Six hours in the area of agency relationships;~~

~~(2) Six hours in the area of current Nevada law with an emphasis on recent statutory and regulatory changes;~~

~~(3) Six hours in the area of contracts; and~~

~~(4) Six hours in the area of ethics.~~

~~5. Not more than 3 hours of any of the required hours in each 2-year period set forth in this section for continuing education may be taken in courses for personal development.~~

~~6.]~~ At least 50 percent of the total hours of required continuing education set forth in this section must be taken through live instruction ~~[by a licensee.~~

~~7.]~~ ***in which the licensee and the instructor are in the same room, except that a licensee who lives in a rural area may, with the submission of a prior request on a form prescribed by the Division and the approval of the Division, complete the required hours of continuing education in courses of distance education if such courses are available.***

5. A licensee who fails to comply with the requirements for continuing education set forth in this section is subject to immediate involuntary inactivation of the license by the Division and an administrative fine in the amount set forth in subsection 1 of NAC 645.695.

~~[8. As used in this section, "initial license" means the license of a licensee who:~~

~~(a) Did not hold a real estate license issued by another state or territory of the United States, or the District of Columbia, on the date on which the licensee obtained a real estate license issued by the State of Nevada;~~

~~(b) Had not held a license as a real estate broker, real estate broker-salesperson or real estate salesperson issued by the State of Nevada within the 5 years immediately preceding the date on which the licensee obtained a license as a real estate salesperson; or~~

~~(c) Is licensed as a real estate broker-salesperson and obtained the qualifications for licensure as a real estate broker-salesperson pursuant to the provisions of subsection 2 of NRS 645.343.]~~

Sec. 10. NAC 645.695 is hereby amended to read as follows:

645.695 1. The Administrator may require a licensee to pay an administrative fine in the amount set forth in this subsection for each violation of the following provisions:

	For each Offense
NRS 645.252	$500
Subsection 4, 5 or 6 of NRS 645.310	1,000
NRS 645.530	100 per license
NRS 645.550	500
NRS 645.560	500
Subsection 1 of NRS 645.570	250
Subsection 2 of NRS 645.570	500
Subsection 1 of NRS 645.580	250
Paragraph (a), (b), (c), (e), (f), (i), (j), (k) or (l) of subsection 1 of NRS 645.630	500
Paragraph (g) of subsection 1 of NRS 645.630	1,000
Paragraph (c), (e), (g), (h), (j), (k) or (l) of subsection 1 of NRS 645.633	500
Paragraph (a) or (f) of subsection 1 of NRS 645.633	250
Paragraph (i) of subsection 1 of NRS 645.633	1,000
Subsection 1, 2, 3, 4, 5 or 6 of NRS 645.635	500
Subsection 7 or 8 of NRS 645.635	1,000

	For each Offense
Subsection 3 of NRS 645.660	1,000
NAC 645.4442	250
NAC 645.448	250
Section 1 of this regulation	***250***
NAC 645.455	500
NAC 645.610	500
NAC 645.620	500
NAC 645.627	500
NAC 645.632	500
NAC 645.637	500
NAC 645.640	500
NAC 645.645	500
NAC 645.650	1,000
NAC 645.655	1,000
Subsection 2 of NAC 645.806	1,000
Subsection 3 of NAC 645.806	250
NAC 645.855	2,000

2. In addition to or in lieu of imposing an administrative fine pursuant to subsection 1, the Administrator may:

(a) Recommend to the Commission that the license of the licensee and any permit of the licensee be suspended or revoked;

(b) Require a licensee to complete continuing education; or

(c) Take any combination of the actions set forth in paragraphs (a) and (b).

Sec. 11. NAC 645.800 is hereby amended to read as follows:

645.800 1. A person who wishes to obtain a permit to engage in property management must submit to the Division:

(a) A completed application on a form prescribed by the Division;

(b) A fee of $40; and

(c) A certificate of completion, in a form that is satisfactory to the Division, that indicates the person's successful completion of the 24 classroom hours of instruction in property management required by paragraph (a) of subsection 2 of NRS 645.6052.

2. The 24 classroom hours of instruction in property management required pursuant to paragraph (a) of subsection 2 of NRS 645.6052 must include, without limitation:

(a) Four hours of instruction relating to:

(1) Contracts for management services;

(2) Leases of real property;

(3) Applications to rent real property;

(4) The Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq.; and

(5) The Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 ~~[to 1692o, inclusive;]~~ ***et seq.;***

(b) ~~[Two]~~ ***Three*** hours of instruction relating to the maintenance of records of money deposited in trust accounts and the requirements for reporting to the Division set forth in chapter 645 of NRS;

(c) One hour of instruction relating to the use of a computerized system for bookkeeping;

(d) Two hours of instruction relating to the laws of this State governing property management;

(e) ~~[Two]~~ ***Three*** hours of instruction relating to the disclosure of required information in real estate transactions, including, without limitation:

(1) Disclosures required pursuant to NRS 645.252; and

(2) Disclosures related to environmental issues as governed by state and federal law;

(f) Five hours of instruction relating to:

(1) The Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq.;

(2) The Residential Landlord and Tenant Act as set forth in chapter 118A of NRS;

(3) The Nevada Fair Housing Law as set forth in chapter 118 of NRS; and

(4) State and federal law governing unlawful discrimination based on sex, including, without limitation, sexual harassment;

(g) ~~[Three hours of instruction relating to property management for a common-interest community as set forth in chapter 116 of NRS;~~

~~(h)]~~ One hour of instruction relating to the duties and responsibilities of a real estate broker, including the supervision of employees and real estate salespersons and real estate broker-salespersons associated with the real estate broker;

~~[(i)]~~ ***(h)*** Two hours of instruction relating to risk management, including, without limitation:

(1) The maintenance of real property;

(2) The health and safety of a tenant;

(3) Fire insurance;

(4) Rental insurance; and

(5) Disability insurance; and

~~[(j) Two]~~

(i) Three hours relating to the management of commercial property.

3. The Division may accept a course in property management from a nationally recognized or accredited organization to fulfill the requirements set forth in paragraphs (a), (b), (c), ~~[(h),]~~ ***(g), (h) and*** (i) ~~[and (j)]~~ of subsection 2, if the successful completion of that course would qualify the applicant to engage in property management pursuant to the requirements of that organization.

4. The applicant must complete the hours of instruction set forth in paragraphs (d), (e) ~~[,]~~ ***and*** (f) ~~[and (g)]~~ of subsection 2 at an accredited educational institution in this State.

5. A permit to engage in property management initially issued by the Division is effective on the date the application for the permit is submitted to the Division or the date on which the fee for the permit is paid, whichever occurs later.

6. As used in this section and paragraph (a) of subsection 2 of NRS 645.6052, the Commission will interpret the term "successfully completed" or "successful completion" to include, without limitation, passing an examination which is prepared and administered by an organization designated by the Division, with a score of at least 75 percent that:

(a) Includes the subject matter presented in the hours of instruction required pursuant to subsection 2; and

(b) Consists of at least 50 multiple-choice questions.

➥ The fee for the examination is $75.

Sec. 12. NAC 645.802 is hereby amended to read as follows:

645.802 1. The Division may renew a permit to engage in property management if the holder of the permit submits to the Division:

(a) A request for the renewal of the permit with the holder's application to renew his or her license as a real estate broker, real estate broker-salesperson or real estate salesperson;

(b) A renewal fee of $40; and

(c) Documentation of his or her successful completion of ~~[the requirements for continuing education required by paragraph (a) of subsection 4 of NRS 645.6052.~~

~~2. The hours of continuing education used to fulfill the requirements set forth in paragraph (c) of subsection 1 must include:~~

~~(a) Instruction relating to any amendments to the laws of this State governing property management; and~~

~~(b) If the holder of the permit is a manager of a common-interest community pursuant to chapters 116 and 116A of NAC, 3 hours of instruction relating to the laws of this State that are applicable to the responsibilities and duties involved in the management of a common-interest community.~~

~~3.]~~ *:*

(1) If the license was last renewed before July 1, 2015, 6 hours of instruction in property management, with 3 of those hours completed within the 2 years immediately preceding the date on which the holder's permit expires.

(2) If the license was last renewed on or after July 1, 2015, 3 hours of instruction in property management.

2. The renewal of a permit is effective on the date on which the application for renewal of a license is submitted to the Division or on the date on which the renewal fees for the license and the permit are paid, whichever occurs later.

~~[4.]~~ *3.* A permit expires on the same date as the holder's license expires.

Sec. 13. NAC 645.915 is hereby amended to read as follows:

645.915 1. A permit expires on the same date as the license of the holder of the permit expires.

2. The Division may renew a permit if the holder of the permit submits to the Division:

(a) A request for the renewal of the permit with the application to renew his or her license;

(b) A renewal fee of $40; and

(c) Documentation indicating that the holder of the permit has successfully completed ~~[the continuing education required by paragraph (a) of subsection 4 of NRS 645.863.]~~ *:*

(1) If the license was last renewed before July 1, 2015, 6 hours of instruction in engaging in the business of a business broker, with 3 of those hours completed within the 2 years immediately preceding the date of the request for renewal of the permit.

(2) If the license was last renewed on or after July 1, 2015, 3 hours of instruction in engaging in the business of a business broker.

Sec. 14. NAC 645.120 and 645.799 are hereby repealed.

TEXT OF REPEALED SECTIONS

645.120 Financial condition of applicant for license as real estate broker. (NRS 645.190, 645.400)

1. Before a person who wishes to apply for a license as a real estate broker submits an application for the license pursuant to NRS 645.350, the Division shall consider the financial condition of the person and require the person to submit to the Division the following financial information:

(a) The person's current employer and the employer's address;

(b) The person's checking accounts with amounts;

(c) The person's savings accounts with amounts; and

(d) Such other information concerning the person's finances as the Division deems pertinent.

2. A person may not apply for a license as a real estate broker unless the person has submitted to the Division the information required by this section and the Division has approved the financial condition of the person.

645.799 Applicability of certain provisions regarding management of common-interest communities. (NRS 645.050, 645.190) A person who holds a permit and engages in the management of a common-interest community is subject to the provisions of chapter 116 of NRS and chapters 116 and 116A of NAC relating to managers of common-interest communities.

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
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INFORMATIONAL BULLETIN #010

UNLICENSED ASSISTANTS / VIRTUAL ASSISTANTS

What is an unlicensed assistant?

An unlicensed assistant is someone who performs ***administrative*** tasks indirectly related to real estate transactions. Although many of the activities which take place in a real estate brokerage office require a license, common sense dictates that many administrative support activities can be legally conducted in a real estate brokerage office that do not require licensure. There may sometimes exist only a thin line between activities that require licensure and those that do not. ***Administrative*** tasks are activities which are indirectly related to activities performed by a real estate licensee. Unlicensed assistants may perform ***administrative*** support activities.

What is a virtual assistant?

A virtual assistant is an independent person who offers business support services in a virtual environment. With the growth of the internet, changing demographics, corporate downsizing, and the evolution of telecommuting relationships, the concept of virtual assistants has flourished.

What MAY an unlicensed assistant / virtual assistant do?

The following is a list of ***administrative*** functions which may be performed by an unlicensed assistant ***under the direction of a licensee and supervising broker***:

- Answer phones, forward calls to or take messages for licensees.
- Transmit listings and changes to a multiple listing service.
- Follow up on ***administrative*** aspects of loan commitments ***after*** a contract has been negotiated by a licensee.
- Draft and assemble transaction documents, draft correspondence, do office filing, develop and maintain mailing lists, and perform other clerical duties for a licensee.
- Research, secure documents, make and deliver copies from public records.
- Have keys made for company listings.
- Act as a courier service to deliver documents, pick up keys, etc.
- Write and prepare newsletters, advertising, flyers, and promotional information and place such advertising after approval by licensee and supervising broker. ***Remember: NRS 645.315 requires that ALL advertising must be done under the direct supervision of and in the name of the brokerage.***
- Perform bookkeeping, record and deposit trust funds under direction of the broker.
- Monitor licenses and personnel files.
- Place and/or remove signs on property.
- Accept rental payments and issue receipts at the broker's place of business.
- Witness signatures.
- Schedule routine inspections and arrange for routine repairs on property.

What activities CANNOT be performed by an unlicensed assistant / virtual assistant?

An unlicensed assistant **CANNOT**:

- Meet with clients to obtain or renew brokerage agreements or property management agreements.

(continued on page 2)

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INFORMATIONAL BULLETIN #010

UNLICENSED ASSISTANTS / VIRTUAL ASSISTANTS

(continued from page 1)

What activities CANNOT be performed by an unlicensed assistant / virtual assistant?

An unlicensed assistant **CANNOT**:

- Negotiate or agree to any commission, commission split, management fee or referral fee on behalf of a licensee or receive a referral fee from a licensee.
- Provide advice or guidance to a client or consumer regarding a real estate contract, brokerage agreement, property management agreement, title, financing, closing or other real estate document.
- Show property or provide clients or consumers information on listings.
- Answer any questions about a listing, including asking price, square footage, age of structure.
- Give listing presentations, interview buyers or present or negotiate offers.
- Contact or solicit prospective sellers or buyers, landlords or tenants, including scheduling appointments as a result of a telemarketing survey asking any of those parties if they would like to speak with a licensee about their real estate questions.

May an unlicensed assistant host an open house?

Yes, but care must be taken that the unlicensed assistant does not ***show*** the property to prospective purchasers. That means an unlicensed assistant may welcome visitors, hand-out brochures prepared by the licensee and serve refreshments at an open house, but all inquiries about the listing must be referred to a licensee. The host must NOT point out features of the home or neighborhood to visitors, but may distribute flyers or brochures prepared by a licensee that describe the property. The same rules for what an unlicensed assistant can and cannot do apply to hosting an open house.

What are the broker's responsibilities regarding unlicensed assistants?

Brokers who employ unlicensed assistants or whose licensed associates are using unlicensed personal assistants, are responsible for assuring that such unlicensed persons are not involved in activities which require a license.

Brokers should establish guidelines for the use of unlicensed persons and procedures for monitoring their activities. It is the responsibility of the employing broker to assure that unlicensed assistants, either directly employed by the broker or employed by a licensee, are not acting improperly (NAC 645.600).

What actions may be taken if an unlicensed assistant conducts activities which require a license?

In addition to any other remedy or penalty, the Real Estate Commission may impose an administrative fine against any unlicensed person who knowingly engages in any activity for which a license, permit, certificate, registration or authorization is required. The Commission may also impose an administrative fine against any person who knowingly assists an unlicensed person to engage in any activity for which a license, permit, certificate, registration or authorization is required. The amount of the fine may not exceed the amount of any gain or economic benefit that the person derived from the violation or $5,000.00, whichever amount is greater (NRS 645.235).

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INFORMATIONAL BULLETIN #012

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
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PROPERTY MANAGEMENT

What is Property Management?

Property Management means the physical, administrative or financial maintenance and management of real property, or the supervision of such activities for a fee, commission or other compensation or valuable consideration, pursuant to a property management agreement. NRS 645.019.

What is a Property Management Agreement?

Property Management Agreement means a written contract between a client and a broker in which the broker agrees to accept valuable consideration from the client or another person for providing property management for the client. NRS 645.0192

What is a Property Manager?

Property Manager means a person engaged in property management who, as an employee or independent contractor, is associated with a licensed real estate broker, whether or not for compensation and has obtained a Property Manager Permit. NRS 645.0195

What activities may a licensed real estate agent perform?

A real estate licensee may rent, lease or lease option real estate and perform all activities necessary to represent their client, either the owner or the renter, leading to the conclusion of an agreement to rent, lease, or option the property involved. These activities include, but are not limited to, advertising a property, preparing the lease, rental or option agreement, having a credit check run on the prospective tenant, checking the tenant's references, doing a walk-through inspection with the tenant and negotiating the price and other terms and conditions of the agreement.

A real estate licensee may also accept an initial check for rent and deposits required by the rental , lease or option agreement. The check must be made out to the owner, property manager or escrow company. The real estate licensee's fee or commission must be made out to the broker with whom they are associated at the time of the transaction.

A real estate licensee may, during the listing and sale period, arrange for a listed property to have pool or yard maintenance, be cleaned and repaired. An agent may

also arrange for and coordinate repairs agreed to during and as a part of the sale negotiations.

What activities must be performed by one who holds a Property Manager Permit?

Once an agreement to rent, lease or option has been concluded, an unpermitted real estate licensee may not be involved in any aspect of the physical, financial, or administrative management of the real estate which has been rented, leased or optioned. Issues which arise during the term of a rental, lease or option agreement must be handled by the owner of the property or a permitted Property Manager who has agreed to manage the property. An unpermitted real estate licensee is also prohibited from engaging in the management of real estate during periods between rentals, leases or other transactions.

A permitted property manager must enter a written property management agreement with the client pursuant to NRS 645.6056 before commencing the management of any real estate. This agreement must be approved and signed by the permitted broker or designated broker salesman.

What actions may be taken if unlicensed property management activities are conducted which require a license?

It is unlawful for any person, limited-liability company, partnership, association or corporation to engage in the business of, act in the capacity of, advertise or assume to act as, a (a) Real estate broker, real estate broker-salesman or real estate salesman within the State of Nevada without first obtaining the appropriate license from the Real Estate Division as provided for in this chapter; and (b) Property manager within the State of Nevada without first obtaining from the Real Estate Division a license as a real estate broker, real estate broker-salesman or real estate salesman and a permit to engage in property management. NRS 645.230.

The Real Estate Commission may impose an administrative fine against any person who knowingly: (a) Engages or offers to engage in any activity for which a license, permit, certificate or registration or any type of authorization or any regulation if the person does not hold the required license, permit, certificate or registration or has not been given the required authorization; or (b) Assists or offers to assist another person to commit the above described violation.

The Real Estate Commission may impose an administrative fine for conducting unlicensed property management activity in an amount not to exceed the amount of any

gain or economic benefit that the person derived from the violation or $5,000, whichever amount is greater. NRS 645.235.

To view the applicable statutes and regulations in their entirety, visit our website at http://red.nv.gov/

10/15/08

INFORMATIONAL BULLETIN #13

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
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BUSINESS BROKERS

What is a Business Broker?

According to the legislative history of Senate Bill 315 from the 73rd Session of the Nevada Legislature, the proposed business broker permit was intended for real estate licensees in conjunction with the sale, lease, exchange, purchase, or option of real estate. Senate Bill 315 did not create a new licensing requirement for individuals who broker businesses which do not have a real estate component to the transaction.

"Business broker" means a person who, while acting for another and for compensation or with the intention or expectation of receiving compensation: 1. Sells, exchanges, options, purchases, rents or leases a business that is sold, exchanged, optioned, purchased, rented or leased as part of an interest or estate in real property; 2. Negotiates or offers, attempts or agrees to negotiate the sale, exchange, option, purchase, rental or lease of a business that is or is intended to be sold, exchanged, optioned, purchased, rented or leased as part of an interest or estate in real property; or 3. Lists or solicits prospective purchasers of a business if a component of the listing or solicitation is an interest or estate in real property. NRS 645.0075.

Whereas, a Real Estate Broker means a person who, for another and for compensation or with the intention or expectation of receiving compensation: (a) Sells, exchanges, options, purchases, rents or leases, or negotiates or offers, attempts or agrees to negotiate the sale, exchange, option, purchase, rental or lease of, or lists or solicits prospective purchasers, lessees or renters of, any real estate or the improvements thereon or any modular homes, used manufactured homes, used mobile homes or other housing offered or conveyed with any interest in real estate; (b) Engages in or offers to engage in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of business opportunities or real estate by advance fee listing advertising or other offerings to sell, lease, exchange or rent property; (c) Engages in or offers to engage in the business of property management; or (d) Engages in or offers to engage in the business of business brokerage.

What activities may a licensed real estate agent perform?

A real estate licensee need not obtain a Business Broker Permit to represent a party to a purchase or sale of a business within the State of Nevada if there is not a real estate component involved in the sale or purchase. A real estate component includes, but is not limited to, a building, land or a leasehold interest.

What activities must be performed by one who holds a Business Broker Permit?

If a part of the sale of a business requires the assumption of an existing lease or the purchase of a building, then that transaction requires a Real Estate License and Business Broker Permit in the State of Nevada. An example of a business sale that would not require Nevada Real Estate Licensure would be a dental practice including only dental equipment, patient files and a patient list.

What actions may be taken if unlicensed business broker activities are conducted which require a license?

It is unlawful for any person, limited-liability company, partnership, association or corporation to engage in the business of, act in the capacity of, advertise or assume to act as, a (a) Real estate broker, real estate broker-salesman or real estate salesman within the State of Nevada without first obtaining the appropriate license from the Real Estate Division as provided for in this chapter; and (d) Business broker within the State of Nevada without first obtaining from the Real Estate Division as provided for in this chapter a license as a real estate broker, real estate broker-salesman or real estate salesman and a permit to engage in business as a business broker. NRS 645.230.

The Real Estate Commission may impose an administrative fine against any person who knowingly: (a) Engages or offers to engage in any activity for which a license, permit, certificate or registration or any type of authorization or any regulation if the person does not hold the required license, permit, certificate or registration or has not been given the required authorization; or (b) Assists or offers to assist another person to commit the above described violation. The Commission may impose an administrative fine in the amount of any gain or economic benefit that the person derived from the violation or $5,000, whichever amount is greater. NRS 645.235.

To view the applicable statutes and regulations in their entirety, visit our website at http://red.nv.gov/.

12/05/08 (Revised 03/03/15)

DEPARTMENT OF BUSINESS AND INDUSTRY
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INFORMATIONAL BULLETIN #26

"TRUST ACCOUNT" IN THE TITLE OF A BANK ACCOUNT

NRS **645.310**(4) requires that when a real estate broker receives money "which belongs to others," the broker shall "promptly deposit the money in a separate checking account located in a bank or credit union in this State which must be ***designated a trust account***" (emphasis added). Further, NAC **645.655**(8) requires that "A real estate broker who is engaged in property management for one or more clients shall maintain two separate property management trust accounts."

What is a trust account and why do some banks have difficulty establishing trust accounts for real estate brokerages?

A trust account is an account that is managed by one party for the benefit of another. The person managing an account in trust is a fiduciary to the ultimate owner or beneficiary of the account. The term can be used generically for any trust account, regardless of whether there is a formal trust agreement.

A "formal trust agreement" is often where the conflict with the bank begins. It is common today for individuals performing estate management to create trusts for family or other beneficiaries so that assets will be distributed upon the individual's death according to the individual's wishes and with minimum tax impact. A written trust agreement is usually prepared by an attorney and properly defines the trust assets, management and distribution. It is this formal trust agreement that the bank will ask for if a licensee, who wishes to open a broker trust account or the property management trust accounts, approaches with a request to "open a trust account".

To avoid this miscommunication, the licensee should simply state that he or she would like to "open two business accounts" and, when completing the paperwork for the title of the accounts, make sure that the words "trust account" appear in the title. No separate trust agreement is required. The trust account provisions of NRS and NAC 645, along with the property management agreement, define the assets, management and distribution of the funds in these accounts. The main purpose for using the trust account designation is to make it clear to the bank and others that the funds in these accounts are not brokerage funds, but belong to others.

As trustee, in the broad sense of the word, of the funds which belong to others in the accounts, "The real estate broker is personally responsible and liable for such deposit at all times." NRS **645.310**(4)

06/14/12

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REAL ESTATE DIVISION
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INFORMATIONAL BULLETIN #32

OPEN RANGE DISCLOSURE

Open Range Disclosure – Form 551

The Open Range disclosure informs the buyer of property adjacent to open land that livestock grazing on the adjacent land may be permitted to enter the property. The disclosure also informs the buyer that the property may be subject to county or State rights of way. NRS 113.065.

When Is the Open Range Disclosure Required?

When improved or unimproved property for sale is adjacent to:

a) public lands;
b) pre-existing R.S. 2477 rights of ways;
c) existing easements that may be unrecorded, undocumented or unsurveyed.

Who must provide the Disclosure?

The seller of the property adjacent to open range must provide the disclosure to the prospective buyer of the property.

NRS 113.065 requires the seller to:

- 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.

When must the Disclosure be provided?

The prospective buyer must receive and sign the disclosure form acknowledging the original date of receipt of the disclosure **before the sales agreement is signed**.

What should the licensee do?

The listing agent of a property that has open range or unimproved land adjacent to the listed property should be alerted to investigate county or State records for information about the

adjoining land, or advise the seller to do so.

If records do not reveal any easements or rights of way, the licensee should counsel the seller to exercise caution by disclosing the possibility that roaming livestock, rights of way or easements could exist that would affect the prospective buyer's use and enjoyment of the property. The Open Range disclosure is recommended regardless of whether the adjoining land is fenced off or unfenced.

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INFORMATIONAL BULLETIN #34

DEPARTMENT OF BUSINESS AND INDUSTRY

REAL ESTATE DIVISION

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THE DUTIES OWED FORM 525 FREQUENTLY ASKED QUESTIONS

The *Duties Owed* form (Form 525) REVISED 11/07/16: The purpose of this form is the disclosure of the licensees' duties to both the clients and the public. Providing the form is a requirement under NRS 645.252 3. THE FORM IS A DISCLOSURE AND DOES NOT CREATE AN AGENCY RELATIONSHIP.

The *Supplemental List of Licensees* (Form 525A): This additional page was added with the 11/07/16 revision. It should be used when a team or a team's licensed assistants will be working on a transaction file.

Who should sign the *Duties Owed* form?

The Real Estate Division suggests that a single "Duties Owed" form be signed by each party to the transaction. The intent is to provide and assure that each of the parties has been provided the Duties. It is not necessary to provide two or more duplicates of the same disclosure. This means that the listing agent should have the seller's signed disclosure form in the listing and transaction files and the buyer's agent should have the buyer's signed form in the buyer transaction files. However, if there is an unrepresented party to the transaction, the sole agent in the transaction should have a disclosure form signed by both the client and unrepresented party to the transaction as evidence of the disclosure to both parties. (See unrepresented parties below.)

Is the licensee responsible for providing the *Duties Owed* form to unrepresented parties?

Yes. If you are acting as an agent in a real estate transaction in Nevada, even if you are a Nevada licensed real estate agent representing yourself as a principal in the transaction, you are required to provide the other party in the transaction with the form when the other party is not represented by a Nevada real estate licensee. It is required that you include a signed copy of the form in the broker transaction file.

When must I have the *Duties Owed* form signed?

Regulation (NAC 645.637) clearly states that the "Duties" must be disclosed "as soon as practicable but no later than the date and time on which any written document is signed by the client or any party not represented by the licensee, or both". "Any written document" would include a listing agreement, purchase agreement, lease agreement, property management agreement, letter of intent, and buyer brokerage agreements.

INFORMATIONAL BULLETIN #34

What about confirmation of representation?

NAC 645.637 also requires the disclosure to be "....confirmed in a separate provision incorporated in or attached to that document". Some written agreements, i.e., purchase agreements, listing agreements, lease agreements, buyer brokerage agreements, etc. contain the confirmation of representation. When the confirmation is not contained in a written agreement, then you will need to include a separate document for the confirmation of representation disclosure.

What if there is a possibility of an agent representing both parties in the transaction?

The acknowledgement of possibly acting as an agent representing both parties in the transaction is located in the last paragraph above the client/customer's signature block on the *Duties Owed* form.

If the agent will be representing both parties, then a *Consent to Act* form (Form 524) would have to be completed and signed by the parties prior to representing both parties in the real estate transaction.

Where do I get the current revision of the *Duties Owed* form?

All Division forms are available online at http://red.nv.gov. Position your mouse onto *Forms* to open the drop-down menu, and then click on *Disclosure*. Select the *Duties Owed* form.

For further information please contact the Division's Real Estate Enforcement Section in Carson City at 775- 684-1900 or Las Vegas at 702-486-4324 or e-mail realest@red.nv.gov.

12/01/2017

Compiled by Jan Holle, Chief Investigator, Real Estate Enforcement Section, Real Estate Division with input from Neil Schwartz, Real Estate Commissioner, and JC Melvin, Broker, Keller Williams Realty Southwest 12/01/2017

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Discussion points of SB 33

- How/can this bill prohibit foreclosure of a lien again a unit in a common interest community
    - Mimicking federal law in most instances
    - Affording the 1 year period immediately following the end of active duty
    - Only applying to residential loans

Senate Bill No. 33–Committee on Judiciary

CHAPTER.....

AN ACT relating to real property; prohibiting the foreclosure of real property owned by certain military personnel or their dependents in certain circumstances; prohibiting the foreclosure of a lien against a unit in a common-interest community owned by certain military personnel or their dependents in certain circumstances; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

The federal Servicemembers Civil Relief Act, 50 U.S.C. § 3901 et seq., generally provides for the temporary suspension of certain judicial and administrative proceedings and transactions that could adversely affect the civil rights of a servicemember during his or her military service. (50 U.S.C. § 3902) The Act provides that in any action filed during, or within 1 year after, a servicemember's period of military service to enforce an obligation on real or personal property owned by a servicemember that: (1) originated before the period of such military service and for which the servicemember is still obligated; and (2) is secured by a mortgage, trust deed or other security in the nature of a mortgage, a court is generally authorized or required, depending on the circumstances, to stay the proceedings or adjust the obligation to preserve the interests of all parties. The Act further provides that absent a court order or agreement, a sale, foreclosure or seizure of property for a breach of any such obligation is not valid if it is made during or within 1 year after the period of the servicemember's military service. Any person who knowingly makes or causes to be made a sale, foreclosure or seizure of property in violation of such a provision, or knowingly attempts to do so, is guilty of a misdemeanor. (50 U.S.C. § 3953) Additionally, the Act provides that upon application to a court, a dependent of a servicemember is entitled to the protections offered to a servicemember if the ability of the dependent to comply with certain obligations is materially affected by the servicemember's military service. (50 U.S.C. § 3959)

The provisions of the Act that grant protection from a sale, foreclosure or seizure of property for a period of 1 year after a servicemember's military service currently remain effective until December 31, 2017, and on January 1, 2018, the period of protection will decrease to 90 days. (Section 710(d) of the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, Public Law 112-154, 126 Stat. 1208; section 2 of the Foreclosure Relief and Extension for Servicemembers Act of 2015, Public Law 114-142, 130 Stat. 326)

Section 1 of this bill grants under Nevada law the period of protection currently provided under federal law. **Section 1** provides that if a mortgagor or grantor of a deed of trust under a residential mortgage loan is a servicemember or, in certain circumstances, a dependent of a servicemember, a person is generally prohibited from initiating or directing or authorizing another person to initiate a foreclosure sale during any period the servicemember is on active duty or deployment or for a period of 1 year immediately following the end of such active duty or deployment. **Section 1** also provides that in any civil action for a foreclosure sale that is filed against a servicemember or, if applicable, a dependent of a servicemember while the servicemember is on active duty or deployment or during the 1-year period immediately following the end of such active duty or deployment, the court is authorized or required, depending on the circumstances, to stay the proceedings in

the action for a certain period or adjust the obligation to preserve the interests of the parties unless the court determines that the ability of the servicemember or dependent to comply with the terms of the obligation secured by the residential mortgage loan is not materially affected by the servicemember's active duty or deployment. **Section 1** additionally provides that any such protection against foreclosure only applies to a residential mortgage loan that was secured before the servicemember was called to active duty or deployment. **Section 1** further provides that any person who knowingly initiates or directs or authorizes another person to initiate a foreclosure sale in violation of the provisions of **section 1**, other than a trustee who initiates a foreclosure sale pursuant to the direction or authorization of another person, is guilty of a misdemeanor and may be liable for actual damages, reasonable attorney's fees and costs incurred by the injured party. In imposing any such liability and determining whether to reduce such liability, a court is required to take into consideration any due diligence used by the person before he or she initiated or directed or authorized another person to initiate the foreclosure sale. Finally, **section 1** provides that any applicable statute of limitations or period within which a servicemember is required to submit proof of service that is prescribed by state law is tolled during the period of protection provided pursuant to **section 1**.

Section 5.3 of this bill applies the applicable provisions set forth in **section 1** to the foreclosure of a lien of a unit-owners' association against a unit in a common-interest community and provides that if a unit's owner or his or her successor in interest is a servicemember or, in certain circumstances, a dependent of a servicemember, an association is generally prohibited from initiating the foreclosure of a lien by sale during any period the servicemember is on active duty or deployment or for a period of 1 year immediately following the end of such active duty or deployment. **Section 5.3** also requires a unit-owners' association to: (1) inform each unit's owner or his or her successor in interest that if the person is a servicemember or a dependent of a servicemember, he or she may be entitled to certain protections pursuant to **section 5.3**; and (2) give the person the opportunity to provide any information required to enable the association to verify whether the person is entitled to the protections set forth in **section 5.3**, including, without limitation, the social security number and date of birth of the person. **Section 5.3** also requires that before an association takes certain action relating to the foreclosure of a lien by sale, the association must, if such information is provided, verify whether a unit's owner or his or her successor in interest is entitled to the protections set forth in **section 5.3** or, if such information is not provided, make a good faith effort to verify whether a unit's owner or his or her successor in interest is entitled to such protections.

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

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

Section 1. Chapter 40 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Notwithstanding any other provision of law and except as otherwise ordered by a court of competent jurisdiction, if a borrower is a servicemember or, in accordance with subsection 5,

a dependent of a servicemember, a person shall not initiate or direct or authorize another person to initiate a foreclosure sale during any period that the servicemember is on active duty or deployment or for a period of 1 year immediately following the end of such active duty or deployment.

2. Except as otherwise provided in subsection 3, in any civil action for a foreclosure sale pursuant to NRS 40.430 involving a failure to make a payment required by a residential mortgage loan that is filed against a servicemember or, in accordance with subsection 5, a dependent of a servicemember, while the servicemember is on active duty or deployment or during the 1-year period immediately following the end of such active duty or deployment, the court may, on its own motion after a hearing, or shall, on a motion or on behalf of the servicemember or dependent of the servicemember, as applicable, do one or both of the following:

(a) Stay the proceedings in the action until at least 1 year after the end of the servicemember's active duty or deployment; or

(b) Adjust the obligation to preserve the interests of the parties.

3. The provisions of subsection 2 do not apply if the court determines that the ability of the servicemember or dependent of the servicemember to comply with the terms of the obligation secured by the residential mortgage loan is not materially affected by the servicemember's active duty or deployment.

4. The provisions of this section apply only to a residential mortgage loan that was secured by a servicemember or, in accordance with subsection 5, a dependent of a servicemember, before the servicemember was called to active duty or deployment.

5. Upon application to the court, a dependent of a servicemember is entitled to the protections provided to a servicemember pursuant to this section if the ability of the dependent to make payments required by a residential mortgage loan is materially affected by the servicemember's active duty or deployment.

6. Except as otherwise provided in subsection 7, any person who knowingly initiates or directs or authorizes another person to initiate a foreclosure sale in violation of this section:

(a) Is guilty of a misdemeanor; and

(b) May be liable for actual damages, reasonable attorney's fees and costs incurred by the injured party.

7. The provisions of subsection 6 do not apply to a trustee who initiates a foreclosure sale pursuant to the direction or authorization of another person.

8. In imposing liability pursuant to paragraph (b) of subsection 6, a court shall, when determining whether to reduce such liability, take into consideration any due diligence used by the person before he or she initiated or directed or authorized another person to initiate the foreclosure sale.

9. Notwithstanding any other provision of law, any applicable statute of limitations or period within which a servicemember is required to submit proof of service that is prescribed by state law is tolled during the period of protection provided to a servicemember or dependent of a servicemember pursuant to this section.

10. As used in this section:

(a) "Active duty" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. §§ 1209 and 1211.

(b) "Borrower" has the meaning ascribed to it in NRS 107.410.

(c) "Dependent" has the meaning ascribed to it in 50 U.S.C. § 3911.

(d) "Deployment" means the movement or mobilization of a servicemember from his or her home station to another location for more than 90 days pursuant to military orders.

(e) "Initiate a foreclosure sale" means to commence a civil action for a foreclosure sale pursuant to NRS 40.430 or, in the case of the exercise of a trustee's power of sale pursuant to NRS 107.080, to execute and cause to be recorded in the office of the county recorder a notice of the breach and of the election to sell or cause to be sold the property pursuant to paragraph (c) of subsection 2 of NRS 107.080.

(f) "Military" means the Armed Forces of the United States, a reserve component thereof or the National Guard.

(g) "Residential mortgage loan" has the meaning ascribed to it in NRS 107.450.

(h) "Servicemember" means a member of the military.

(i) "Trustee" means a person described in NRS 107.028.

Sec. 2. NRS 40.426 is hereby amended to read as follows:

40.426 As used in NRS 40.426 to 40.495, inclusive, ***and section 1 of this act,*** unless the context otherwise requires, the words and terms defined in NRS 40.427, 40.428 and 40.429 have the meanings ascribed to them in those sections.

Sec. 3. NRS 40.430 is hereby amended to read as follows:

40.430 1. Except in cases where a person proceeds under subsection 2 of NRS 40.495 or subsection 1 of NRS 40.512, and

except as otherwise provided in NRS 118C.220, there may be but one action for the recovery of any debt, or for the enforcement of any right secured by a mortgage or other lien upon real estate. That action must be in accordance with the provisions of NRS 40.426 to 40.459, inclusive ~~.~~ ***, and section 1 of this act.*** In that action, the judgment must be rendered for the amount found due the plaintiff, and the court, by its decree or judgment, may direct a sale of the encumbered property, or such part thereof as is necessary, and apply the proceeds of the sale as provided in NRS 40.462.

2. This section must be construed to permit a secured creditor to realize upon the collateral for a debt or other obligation agreed upon by the debtor and creditor when the debt or other obligation was incurred.

3. At any time not later than 5 business days before the date of sale directed by the court, if the deficiency resulting in the action for the recovery of the debt has arisen by failure to make a payment required by the mortgage or other lien, the deficiency may be made good by payment of the deficient sum and by payment of any costs, fees and expenses incident to making the deficiency good. If a deficiency is made good pursuant to this subsection, the sale may not occur.

4. A sale directed by the court pursuant to subsection 1 must be conducted in the same manner as the sale of real property upon execution, by the sheriff of the county in which the encumbered land is situated, and if the encumbered land is situated in two or more counties, the court shall direct the sheriff of one of the counties to conduct the sale with like proceedings and effect as if the whole of the encumbered land were situated in that county.

5. Within 30 days after a sale of property is conducted pursuant to this section, the sheriff who conducted the sale shall record the sale of the property in the office of the county recorder of the county in which the property is located.

6. As used in this section, an "action" does not include any act or proceeding:

(a) To appoint a receiver for, or obtain possession of, any real or personal collateral for the debt or as provided in NRS 32.015.

(b) To enforce a security interest in, or the assignment of, any rents, issues, profits or other income of any real or personal property.

(c) To enforce a mortgage or other lien upon any real or personal collateral located outside of the State which does not, except as required under the laws of that jurisdiction, result in a personal judgment against the debtor.

(d) For the recovery of damages arising from the commission of a tort, including a recovery under NRS 40.750, or the recovery of any declaratory or equitable relief.

(e) For the exercise of a power of sale pursuant to NRS 107.080.

(f) For the exercise of any right or remedy authorized by chapter 104 of NRS or by the Uniform Commercial Code as enacted in any other state, including, without limitation, an action for declaratory relief pursuant to chapter 30 of NRS to ascertain the identity of the person who is entitled to enforce an instrument pursuant to NRS 104.3309.

(g) For the exercise of any right to set off, or to enforce a pledge in, a deposit account pursuant to a written agreement or pledge.

(h) To draw under a letter of credit.

(i) To enforce an agreement with a surety or guarantor if enforcement of the mortgage or other lien has been automatically stayed pursuant to 11 U.S.C. § 362 or pursuant to an order of a federal bankruptcy court under any other provision of the United States Bankruptcy Code for not less than 120 days following the mailing of notice to the surety or guarantor pursuant to subsection 1 of NRS 107.095.

(j) To collect any debt, or enforce any right, secured by a mortgage or other lien on real property if the property has been sold to a person other than the creditor to satisfy, in whole or in part, a debt or other right secured by a senior mortgage or other senior lien on the property.

(k) Relating to any proceeding in bankruptcy, including the filing of a proof of claim, seeking relief from an automatic stay and any other action to determine the amount or validity of a debt.

(l) For filing a claim pursuant to chapter 147 of NRS or to enforce such a claim which has been disallowed.

(m) Which does not include the collection of the debt or realization of the collateral securing the debt.

(n) Pursuant to NRS 40.507 or 40.508.

(o) Pursuant to an agreement entered into pursuant to NRS 361.7311 between an owner of the property and the assignee of a tax lien against the property, or an action which is authorized by NRS 361.733.

(p) Which is exempted from the provisions of this section by specific statute.

(q) To recover costs of suit, costs and expenses of sale, attorneys' fees and other incidental relief in connection with any action authorized by this subsection.

Sec. 4. NRS 107.480 is hereby amended to read as follows:

107.480 1. In addition to the requirements of NRS 107.085 and 107.086, ***and section 1 of this act,*** the exercise of a trustee's power of sale pursuant to NRS 107.080 with respect to a deed of trust securing a residential mortgage loan is subject to the provisions of NRS 107.400 to 107.560, inclusive.

2. In addition to the requirements of NRS 40.430 to 40.4639, inclusive, ***and section 1 of this act,*** a civil action for a foreclosure sale pursuant to NRS 40.430 involving a failure to make a payment required by a residential mortgage loan is subject to the requirements of NRS 107.400 to 107.560, inclusive.

Sec. 5. NRS 107.500 is hereby amended to read as follows:

107.500 1. At least 30 calendar days before recording a notice of default and election to sell pursuant to subsection 2 of NRS 107.080 or commencing a civil action for a foreclosure sale pursuant to NRS 40.430 involving a failure to make a payment required by a residential mortgage loan and at least 30 calendar days after the borrower's default, the mortgage servicer, mortgagee or beneficiary of the deed of trust shall mail, by first-class mail, a notice addressed to the borrower at the borrower's primary address as indicated in the records of the mortgage servicer, mortgagee or beneficiary of the deed of trust, which contains:

(a) A statement that if the borrower is a servicemember or a dependent of a servicemember, he or she may be entitled to certain protections under the federal Servicemembers Civil Relief Act, 50 U.S.C. ~~[Appx.]~~ §§ ~~[501]~~ ***3901*** et seq., ***and section 1 of this act,*** regarding the servicemember's interest rate and the risk of foreclosure, and counseling for covered servicemembers that is available from Military OneSource and the United States Armed Forces Legal Assistance or any other similar agency.

(b) A summary of the borrower's account which sets forth:

(1) The total amount of payment necessary to cure the default and reinstate the residential mortgage loan or to bring the residential mortgage loan into current status;

(2) The amount of the principal obligation under the residential mortgage loan;

(3) The date through which the borrower's obligation under the residential mortgage loan is paid;

(4) The date of the last payment by the borrower;

(5) The current interest rate in effect for the residential mortgage loan, if the rate is effective for at least 30 calendar days;

(6) The date on which the interest rate for the residential mortgage loan may next reset or adjust, unless the rate changes more frequently than once every 30 calendar days;

(7) The amount of the prepayment fee charged under the residential mortgage loan, if any;

(8) A description of any late payment fee charged under the residential mortgage loan;

(9) A telephone number or electronic mail address that the borrower may use to obtain information concerning the residential mortgage loan; and

(10) The names, addresses, telephone numbers and Internet website addresses of one or more counseling agencies or programs approved by the United States Department of Housing and Urban Development.

(c) A statement of the facts establishing the right of the mortgage servicer, mortgagee or beneficiary of the deed of trust to cause the trustee to exercise the trustee's power of sale pursuant to NRS 107.080 or to commence a civil action for the recovery of any debt, or for the enforcement of any right, under a residential mortgage loan that is not barred by NRS 40.430.

(d) A statement of the foreclosure prevention alternatives offered by, or through, the mortgage servicer, mortgagee or beneficiary of the deed of trust.

(e) A statement that the borrower may request:

(1) A copy of the borrower's promissory note or other evidence of indebtedness;

(2) A copy of the borrower's mortgage or deed of trust;

(3) A copy of any assignment, if applicable, of the borrower's mortgage or deed of trust required to demonstrate the right of the mortgage servicer, mortgagee or beneficiary of the deed of trust to cause the trustee to exercise the trustee's power of sale pursuant to NRS 107.080 or to commence a civil action for the recovery of any debt, or for the enforcement of any right, under a residential mortgage loan that is not barred by NRS 40.430; and

(4) A copy of the borrower's payment history since the borrower was last less than 60 calendar days past due.

2. Unless a borrower has exhausted the process described in NRS 107.520 and 107.530 for applying for a foreclosure prevention alternative offered by, or through, the mortgage servicer, mortgagee or beneficiary of the deed of the trust, not later than 5 business days after a notice of default and election to sell is recorded pursuant to subsection 2 of NRS 107.080 or a civil action for the recovery of any debt, or for the enforcement of any right, under a residential

mortgage loan that is not barred by NRS 40.430 is commenced, the mortgage servicer, mortgagee or beneficiary of the deed of trust that offers one or more foreclosure prevention alternatives must send to the borrower a written statement:

(a) That the borrower may be evaluated for a foreclosure prevention alternative or, if applicable, foreclosure prevention alternatives;

(b) Whether a complete application is required to be submitted by the borrower if the borrower wants to be considered for a foreclosure prevention alternative; and

(c) Of the means and process by which a borrower may obtain an application for a foreclosure prevention alternative.

Sec. 5.3. Chapter 116 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Notwithstanding any other provision of law and except as otherwise provided in subsection 2 or ordered by a court of competent jurisdiction, if a unit's owner or his or her successor in interest is a servicemember or, in accordance with subsection 3, a dependent of a servicemember, an association shall not initiate the foreclosure of a lien by sale during any period that the servicemember is on active duty or deployment or for a period of 1 year immediately following the end of such active duty or deployment.

2. The provisions of subsection 1 do not apply if a court determines that the ability of the servicemember or dependent of the servicemember to comply with the terms of the obligation secured by the lien of a unit-owners' association is not materially affected by the servicemember's active duty or deployment.

3. Upon application to the court, a dependent of a servicemember is entitled to the protections provided to a servicemember pursuant to this section if the ability of the dependent to make payments required by a lien of a unit-owners' association is materially affected by the servicemember's active duty or deployment.

4. An association shall:

(a) Inform each unit's owner or his or her successor in interest that if the person is a servicemember or a dependent of a servicemember, he or she may be entitled to certain protections pursuant to this section; and

(b) Give the person the opportunity to provide any information required to enable the association to verify whether he or she is entitled to the protections set forth in this section, including,

without limitation, the social security number and date of birth of the person.

5. Before an association takes any action pursuant to paragraph (a) of subsection 4 of NRS 116.31162, if information required to verify whether a unit's owner or his or her successor in interest is entitled to the protections set forth in this section:

(a) Has been provided to the association pursuant to subsection 4, the association must verify whether the person is entitled to the protections set forth in this section.

(b) Has not been provided to the association pursuant to subsection 4, the association must make a good faith effort to verify whether the person is entitled to the protections set forth in this section.

6. Any person who knowingly initiates the foreclosure of a lien by sale in violation of this section:

(a) Is guilty of a misdemeanor; and

(b) May be liable for actual damages, reasonable attorney's fees and costs incurred by the injured party.

7. In imposing liability pursuant to paragraph (b) of subsection 6, a court shall, when determining whether to reduce such liability, take into consideration any due diligence used by the person before he or she initiated the foreclosure of the lien by sale.

8. Notwithstanding any other provision of law, any applicable statute of limitations or period within which a servicemember is required to submit proof of service that is prescribed by state law is tolled during the period of protection provided to a servicemember or dependent of a servicemember pursuant to this section.

9. As used in this section:

(a) "Active duty" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. §§ 1209 and 1211.

(b) "Dependent" has the meaning ascribed to it in 50 U.S.C. § 3911.

(c) "Deployment" means the movement or mobilization of a servicemember from his or her home station to another location for more than 90 days pursuant to military orders.

(d) "Good faith effort" means that an association acts honestly and fairly when trying to verify whether a unit's owner or his or her successor in interest is entitled to the protections set forth in this section, as evidenced by the following actions:

(1) The association informs the unit's owner or his or her successor in interest of the information required pursuant to paragraph (a) of subsection 4;

(2) The association makes reasonable efforts to give the unit's owner or his or her successor in interest the opportunity to provide any information required to enable the association to verify whether the person is entitled to the protections set forth in this section pursuant to paragraph (b) of subsection 4; and

(3) The association makes reasonable efforts to utilize all resources available to the association to verify whether the unit's owner or his or her successor in interest is a servicemember, including, without limitation, the Internet website maintained by the United States Department of Defense.

(e) "Initiate the foreclosure of a lien by sale" means to take any action in furtherance of foreclosure of a lien by sale after taking the actions set forth in paragraph (a) of subsection 4 of NRS 116.31162.

(f) "Military" means the Armed Forces of the United States, a reserve component thereof or the National Guard.

(g) "Servicemember" means a member of the military.

Sec. 5.7. NRS 116.31162 is hereby amended to read as follows:

116.31162 1. Except as otherwise provided in subsection 5, 6 or 7, in a condominium, in a planned community, in a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, or in a cooperative where the owner's interest in a unit is personal property under NRS 116.1105 and the declaration provides that a lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive, ***and section 5.3 of this act,*** the association may foreclose its lien by sale after all of the following occur:

(a) The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest, at his or her address, if known, and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due in accordance with subsection 1 of NRS 116.3116, a description of the unit against which the lien is imposed and the name of the record owner of the unit.

(b) Not less than 30 days after mailing the notice of delinquent assessment pursuant to paragraph (a), the association or other person conducting the sale has executed and caused to be recorded, with the county recorder of the county in which the common-interest community or any part of it is situated, a notice of default and

election to sell the unit to satisfy the lien which must contain the same information as the notice of delinquent assessment and which must also comply with the following:

(1) Describe the deficiency in payment.

(2) State the total amount of the deficiency in payment, with a separate statement of:

(I) The amount of the association's lien that is prior to the first security interest on the unit pursuant to subsection 3 of NRS 116.3116 as of the date of the notice;

(II) The amount of the lien described in sub-subparagraph (I) that is attributable to assessments based on the periodic budget adopted by the association pursuant to NRS 116.3115 as of the date of the notice;

(III) The amount of the lien described in sub-subparagraph (I) that is attributable to amounts described in NRS 116.310312 as of the date of the notice; and

(IV) The amount of the lien described in sub-subparagraph (I) that is attributable to the costs of enforcing the association's lien as of the date of the notice.

(3) State that:

(I) If the holder of the first security interest on the unit does not satisfy the amount of the association's lien that is prior to that first security interest pursuant to subsection 3 of NRS 116.3116, the association may foreclose its lien by sale and that the sale may extinguish the first security interest as to the unit; and

(II) If, not later than 5 days before the date of the sale, the holder of the first security interest on the unit satisfies the amount of the association's lien that is prior to that first security interest pursuant to subsection 3 of NRS 116.3116 and, not later than 2 days before the date of the sale, a record of such satisfaction is recorded in the office of the recorder of the county in which the unit is located, the association may foreclose its lien by sale but the sale may not extinguish the first security interest as to the unit.

(4) State the name and address of the person authorized by the association to enforce the lien by sale.

(5) Contain, in 14-point bold type, the following warning:

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

(c) The unit's owner or his or her successor in interest has failed to pay the amount of the lien, including costs, fees and expenses

incident to its enforcement, for 90 days following the recording of the notice of default and election to sell.

(d) The unit's owner or his or her successor in interest, or the holder of a recorded security interest on the unit, has, for a period which commences in the manner and subject to the requirements described in subsection 3 and which expires 5 days before the date of sale, failed to pay the assessments and other sums that are due to the association in accordance with subsection 1 of NRS 116.3116.

(e) The association or other person conducting the sale has executed and caused to be recorded, with the county recorder of the county in which the common-interest community or any part of it is situated, an affidavit which states, based on the direct, personal knowledge of the affiant, the personal knowledge which the affiant acquired by a review of a trustee sale guarantee or a similar product or the personal knowledge which the affiant acquired by a review of the business records of the association or other person conducting the sale, which business records must meet the standards set forth in NRS 51.135, the following:

(1) The name of each holder of a security interest on the unit to which the notice of default and election to sell and the notice of sale was mailed, as required by subsection 2 of NRS 116.31163 and paragraph (d) of subsection 1 of NRS 116.311635; and

(2) The address at which the notices were mailed to each such holder of a security interest.

2. The notice of default and election to sell must be signed by the person designated in the declaration or by the association for that purpose or, if no one is designated, by the president of the association.

3. The period of 90 days described in paragraph (c) of subsection 1 begins on the first day following:

(a) The date on which the notice of default and election to sell is recorded; or

(b) The date on which a copy of the notice of default and election to sell is mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest at his or her address, if known, and at the address of the unit, [illegible] whichever date occurs later.

4. An association may not mail to a unit's owner or his or her successor in interest a letter of its intent to mail a notice of delinquent assessment pursuant to paragraph (a) of subsection 1, mail the notice of delinquent assessment or take any other action to collect a past due obligation from a unit's owner or his or her

successor in interest unless ~~[:]~~ ***the association has complied with the provisions of subsections 4 and 5 of section 5.3 of this act and:***

(a) Not earlier than 60 days after the obligation becomes past due, the association mails to the address on file for the unit's owner:

(1) A schedule of the fees that may be charged if the unit's owner fails to pay the past due obligation;

(2) A proposed repayment plan; and

(3) A notice of the right to contest the past due obligation at a hearing before the executive board and the procedures for requesting such a hearing; and

(b) Within 30 days after the date on which the information described in paragraph (a) is mailed, the past due obligation has not been paid in full or the unit's owner or his or her successor in interest has not entered into a repayment plan or requested a hearing before the executive board. If the unit's owner or his or her successor in interest requests a hearing or enters into a repayment plan within 30 days after the date on which the information described in paragraph (a) is mailed and is unsuccessful at the hearing or fails to make a payment under the repayment plan within 10 days after the due date, the association may take any lawful action pursuant to subsection 1 to enforce its lien.

5. The association may not foreclose a lien by sale if the association has not mailed a copy of the notice of default and election to sell and a copy of the notice of sale to each holder of a security interest on the unit in the manner and subject to the requirements set forth in subsection 2 of NRS 116.31163 and paragraph (d) of subsection 1 of NRS 116.311635.

6. The association may not foreclose a lien by sale based on a fine or penalty for a violation of the governing documents of the association unless:

(a) The violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community; or

(b) The penalty is imposed for failure to adhere to a schedule required pursuant to NRS 116.310305.

7. The association may not foreclose a lien by sale if the association has received notice pursuant to NRS 107.086 that the unit is subject to foreclosure mediation pursuant to that section, unless:

(a) The trustee of record has recorded the certificate provided to the trustee pursuant to subparagraph (1) or (2) of paragraph (e) of subsection 2 of NRS 107.086; or

(b) The unit's owner has failed to pay to the association any amounts enforceable as assessments pursuant to subsection 1 of NRS 116.3116 that become due during the pendency of foreclosure mediation pursuant to NRS 107.086, other than past due obligations as described in subsection 10 of NRS 107.086.

Sec. 6. This act becomes effective upon passage and approval.

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Discussion points of SB 352

- How/can this bill modify property taxes due to a disaster
    - Bill mimics former and current California legislation
    - Discuss the limits within

Senate Bill No. 352–Senator Kieckhefer

Joint Sponsors: Assemblymen Benitez-Thompson, Kramer, Krasner, Neal, Pickard and Spiegel

CHAPTER.....

AN ACT relating to taxation; authorizing the owner of a single-family residence that is replaced after a flood, fire, earthquake or other event for which the Governor has proclaimed a state of emergency or declaration of disaster to apply to the county assessor for an exemption of a portion of the assessed value of the single-family residence; revising provisions governing the calculation of the property taxes imposed on such a single-family residence; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, for the purposes of determining the amount of property tax owed by the owner of a parcel of real property, the taxable value of the real property is equal to the value of the land plus the replacement cost of the improvements, depreciated at 1.5 percent for each year of adjusted actual age, up to a maximum of 50 years. (NRS 361.227) Existing law requires that for the purpose of calculating the depreciation of an improvement, the actual age of the improvement must be adjusted when additions or replacements are made with a cumulative cost of least 10 percent of the replacement cost of the improvement. (NRS 361.229) Thus, under existing law, a new improvement which replaces an improvement that was partially or completely destroyed would lose the depreciation accrued on the partially or completely destroyed improvement. (NRS 361.229)

Section 1 of this bill sets forth the finding of the Legislature that when a single-family residence is partially or completely destroyed by a flood, fire, earthquake or other event for which the Governor proclaims a state of emergency or declaration of disaster, the resulting loss of the depreciation accrued on the partially or completely destroyed residence causes a severe economic hardship to the owner of the residence by increasing the property taxes imposed on the residence. Section 2.3 of this bill authorizes the owner of a single-family residence that replaces a single-family residence partially or completely destroyed by a flood, fire, earthquake or other event for which the Governor, on or after July 1, 2012, proclaimed a state of emergency or declaration of disaster to apply to the county assessor for an exemption of a portion of the assessed value of the single-family residence. Under section 2.3, the county assessor is required to grant an application for such an exemption if: (1) the single-family residence is occupied as the principal residence of the owner; (2) the single-family residence is located on the same parcel of real property as the single-family residence that was partially or completely destroyed; (3) the parcel on which the single-family residence was located has not been sold or transferred in a transaction to which the real property transfer tax applies; (4) a building permit was issued for the residence or, if the local government does not issue building permits, construction of the residence was commenced within a certain period after the partial or complete destruction of the previous residence; and (5) the floor area of the residence does not exceed

110 percent of the floor area of the residence that was partially or completely destroyed. If an exemption of a portion of the assessed value of a single family residence is granted pursuant to section 2.3, the amount of the exemption is equal to the difference between the assessed value of the single-family residence for which the application was granted and the assessed value that the single-family residence would have had if the single-family residence were deemed not to be a new improvement. Thus, under section 2.3, if an exemption is granted, the single-family residence would not lose the depreciation accrued on the partially or completely destroyed residence. Under section 2.3, the exemption must no longer be applied if the single-family residence granted the exemption is sold or transferred in a transaction to which the real property transfer tax applies.

The Nevada Constitution requires the Legislature to provide a specific date on which any exemption from property taxes will cease to be effective. (Nev. Const. Art. 10, § 6) To comply with this requirement, section 2.3 prohibits an application for an exemption pursuant to that section from being submitted on or after July 1, 2047. However, an exemption granted pursuant to an application submitted before July 1, 2047, would continue to be in effect until the owner of the residence no longer qualified for the exemption.

Existing law provides for a partial abatement of taxes, which has the effect of establishing an annual cap on increases in property taxes. Section 2.7 of this bill revises the calculation of the partial abatement for a single-family residence for which an exemption is granted pursuant to section 2.3 so that for the initial fiscal year for which the exemption applies, the partial abatement is calculated based on the taxes imposed on the single-family residence which was partially or completely destroyed in the fiscal year in which the residence was partially or completely destroyed. Section 2.7 also revises the formula for calculating the partial abatement for the fiscal year after the fiscal year in which a single-family residence granted an exemption pursuant to section 2.3 is sold or transferred so that in that fiscal year, the partial abatement is calculated as if the single-family residence had never obtained an exemption pursuant to section 2.3.

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

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

Section 1. The Legislature hereby finds and declares that:

1. Subsection 1 of Section 1 of Article 10 of the Nevada Constitution requires the Legislature to provide by law for a uniform and equal rate of assessment and taxation.

2. Subsection 10 of Section 1 of Article 10 of the Nevada Constitution establishes an exception to the requirement to provide by law for a uniform and equal rate of assessment and taxation by authorizing the Legislature to provide by law for an exemption of part of the assessed value of a single-family residence occupied by the owner to the extent necessary to avoid severe economic hardship to the owner of the residence.

3. When a flood, fire, earthquake or other event for which the Governor proclaims a state of emergency or declaration of disaster partially or completely destroys a single-family residence and the residence is rebuilt or replaced, existing provisions of law cause the new residence to be treated as a new improvement with an increased taxable value and, consequently, the owner of the property incurs a greater property tax liability.

4. An increase in the property taxes of the owner of a single-family residence who, after a natural disaster, rebuilds or replaces his or her residence constitutes a severe economic hardship on the owner of the residence.

Sec. 2. Chapter 361 of NRS is hereby amended by adding thereto the provisions set forth as sections 2.3 and 2.7 of this act.

Sec. 2.3. 1. Except as otherwise provided in this subsection, an owner of a single-family residence that is the primary residence of the owner and is a replacement for a single-family residence partially or completely destroyed by a flood, fire, earthquake or other event for which a state of emergency or declaration of disaster was proclaimed by the Governor pursuant to NRS 414.070 on or after July 1, 2012, may apply to the county assessor for an exemption of a portion of the assessed value of the single-family residence. An owner of a single-family residence may not apply for an exemption pursuant to this section on or after July 1, 2047.

2. The county assessor shall approve an application submitted pursuant to subsection 1 and grant an exemption of a portion of the assessed value of the single-family residence specified in the application if the application is submitted before July 1, 2047, and the county assessor determines that each of the following criteria are satisfied:

(a) The single-family residence is occupied by the primary owner of the residence.

(b) The single-family residence is a replacement for a single-family residence that:

(1) Is located in an area in which occurred a flood, fire, earthquake or other event for which a state of emergency or declaration of disaster was proclaimed by the Governor pursuant to NRS 414.070 on or after July 1, 2012, and was partially or completely destroyed as a direct result of the flood, fire, earthquake or other event for which the state of emergency or declaration of disaster was proclaimed; and

(2) Is located on the same parcel of real property as the single-family residence that was partially or completely destroyed.

(c) The parcel of real property on which was located the single-family residence which was partially or completely destroyed has not been sold or transferred in a transaction to which the provisions of chapter 375 of NRS apply at any time after the flood, fire, earthquake or other event occurred.

(d) Except as otherwise provided in this paragraph, a building permit for the single-family residence was issued or, if the local government in which the single-family residence is located does not issue building permits, construction on the single-family residence is commenced, not later than 3 years after the partial or complete destruction of the previous single-family residence. The county assessor may approve an extension of the 3-year period required by this paragraph for a period of not more than 3 additional years if the owner is not able to begin construction or obtain a building permit because of circumstances beyond the control of the owner that are related to the event that caused the partial or complete destruction of the single-family residence.

(e) The floor area of the single-family residence does not exceed 110 percent of the floor area of the single-family residence that was partially or completely destroyed.

3. If the county assessor approves an application submitted pursuant to subsection 1, the amount of the exemption must equal the difference between the assessed value of the single-family residence for which the application was granted, as determined pursuant to NRS 361.225 and 361.227, and the assessed value that the single-family residence would have had if the single-family residence were deemed not to be a new improvement.

4. If, between July 1 and June 15, the county assessor approves an application submitted pursuant to subsection 1, the owner of the single-family residence is entitled to an exemption of a portion of the assessed value of the single-family residence in the amount determined pursuant to subsection 3 beginning on July 1 of the next fiscal year and the owner of the single-family residence is not entitled to a refund of any taxes paid before that date.

5. If, after June 15 but on or before June 30, the county assessor approves an application submitted pursuant to subsection 1, the owner of the single-family residence is entitled to an exemption of a portion of the assessed value of the single-family residence in the amount determined pursuant to subsection 3 beginning on July 1 of the fiscal year immediately following the next fiscal year and the owner of the single-family residence is not entitled to a refund of any taxes paid before that date.

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6. If a single-family residence for which an exemption of a portion of the assessed value of the single-family residence is granted pursuant to this section is sold or transferred in a transaction to which the provisions of chapter 375 of NRS apply:

(a) The exemption of a portion of the assessed value of the single-family residence must no longer be applied to the single-family residence; and

(b) In determining the taxable value of the single-family residence for any fiscal year following the sale, the single-family residence must be considered a new improvement as of the date on which the single-family residence was completed.

7. As used in this section:

(a) "Primary residence of the owner" has the meaning ascribed to it in NRS 361.4723.

(b) "Single-family residence" has the meaning ascribed to it in NRS 361.4723.

Sec. 2.7. 1. Notwithstanding the provisions of NRS 361.4722, 361.4723 and 361.4724, if a single-family residence that is the primary residence of the owner is partially or completely destroyed by a flood, fire, earthquake or other event for which a state of emergency or declaration of disaster was proclaimed by the Governor pursuant to NRS 414.070 and if, pursuant to section 2.3 of this act, the owner of the single-family residence is granted an exemption of a portion of the assessed value of the single-family residence, then for the purpose of calculating the amount of any partial abatement to which the owner of the single-family residence is entitled pursuant to NRS 361.4722, 361.4723 or 361.4724 for the initial fiscal year for which the exemption applies, the amount determined for the immediately preceding fiscal year pursuant to paragraph (a) of subsection 1 of NRS 361.4722, paragraph (a) of subsection 2 of NRS 361.4722, paragraph (a) of subsection 1 of NRS 361.4723 or paragraph (a) of subsection 1 of NRS 361.4724, as applicable, must be the amount determined for the fiscal year in which the single-family residence was partially or completely destroyed.

2. Notwithstanding the provisions of NRS 361.4722, 361.4723 and 361.4724, if, pursuant to section 2.3 of this act, the owner of a single-family residence is granted an exemption of a portion of the assessed value of the single-family residence and, after the granting of the exemption, the single-family residence is sold or transferred in a transaction to which the provisions of chapter 375 of NRS apply, then for the purpose of calculating the amount of any partial abatement to which the owner of the single-family

residence is entitled pursuant to NRS 361.4722, 361.4723 or 361.4724 for the first fiscal year immediately following the sale or transfer of the single-family residence, the owner is entitled only to a partial abatement from taxation provided pursuant to NRS 361.4722, 361.4723 or 361.4724 in an amount equal to the amount of such a partial abatement to which owner would have been entitled if the exemption were not granted and the provisions of subsection 1 were not applied.

3. As used in this section:

(a) "Primary residence of the owner" has the meaning ascribed to it in NRS 361.4723.

(b) "Single-family residence" has the meaning ascribed to it in NRS 361.4723.

Sec. 3. (Deleted by amendment.)

Sec. 3.1. NRS 361.155 is hereby amended to read as follows:

361.155 1. Except as otherwise provided in this section [,] and section 2.3 of this act:

(a) All claims for personal tax exemptions on real property, the initial claim of an organization for a tax exemption on real property and the designation of any amount to be credited to the Gift Account for the Veterans Home in Southern Nevada or the Gift Account for the Veterans Home in Northern Nevada pursuant to NRS 361.0905 must be filed on or before June 15.

(b) An initial claim for a tax exemption on real property acquired after June 15 and before July 1 must be filed on or before July 5.

2. All exemptions provided for pursuant to this chapter apply on a fiscal year basis, and any exemption granted pursuant to this chapter must not be in an amount which gives the taxpayer a total exemption greater than that to which the taxpayer is entitled during any fiscal year.

3. Except as otherwise provided in this section, each claim for an exemption provided for pursuant to this chapter must be filed with the county assessor of:

(a) The county in which the claimant resides for personal tax exemptions; or

(b) Each county in which property is located for the tax exemption of an organization.

4. After the initial claim for an exemption pursuant to NRS 361.088 or 361.098 to 361.150, inclusive, and section 2.3 of this act, an organization is not required to file annual claims if the property remains exempt. If any portion of the property loses its

exemption pursuant to NRS 361.157 or for any other reason becomes taxable, the organization must notify the county assessor.

5. If an exemption is granted or renewed in error because of an incorrect claim or failure of an organization to give the notice required by subsection 4, the assessor shall assess the taxable portion of the property retroactively pursuant to NRS 361.769 and a penalty of 10 percent of the tax due for the current year and any prior years may be added.

6. If a claim for a tax exemption on real property and any required affidavit or other documentation in support of the claim is not filed within the time required by subsection 1, or if a claim for a tax exemption is denied by the county assessor, the person claiming the exemption may, on or before January 15 of the fiscal year for which the claim of exemption is made, file the claim and any required documentation in support of the claim with the county board of equalization of the county in which the claim is required to be filed pursuant to subsection 3. The county board of equalization shall review the claim of exemption and may grant or deny the claim for that fiscal year, as it determines to be appropriate. The State Board of Equalization shall establish procedures for:

(a) The review of a claim of exemption by a county board of equalization pursuant to this subsection; and

(b) The appeal to the State Board of Equalization of the denial of a claim of exemption by a county board of equalization pursuant to this subsection.

Sec. 3.3. NRS 361.471 is hereby amended to read as follows:

361.471 As used in NRS 361.471 to 361.4735, inclusive, and section 2.7 of this act, unless the context otherwise requires, the words and terms defined in NRS 361.47111 to 361.4721, inclusive, have the meanings ascribed to them in those sections.

Sec. 3.5. NRS 361.4722 is hereby amended to read as follows:

361.4722 1. Except as otherwise provided in or required to carry out the provisions of subsection 3 and NRS 361.4725 to 361.4729, inclusive, and section 2.7 of this act, the owner of any parcel or other taxable unit of property, including property entered on the central assessment roll, for which an assessed valuation was separately established for the immediately preceding fiscal year is entitled to a partial abatement of the ad valorem taxes levied in a county on that property each fiscal year equal to the amount by which the product of the combined rate of all ad valorem taxes levied in that county on the property for that fiscal year and the amount of the assessed valuation of the property which is taxable in that county for that fiscal year, excluding any increase in the

assessed valuation of the property from the immediately preceding fiscal year as a result of any improvement to or change in the actual or authorized use of the property, exceeds the sum obtained by adding:

(a) The amount of all the ad valorem taxes:

(1) Levied in that county on the property for the immediately preceding fiscal year; or

(2) Which would have been levied in that county on the property for the immediately preceding fiscal year if not for any exemptions from taxation that applied to the property for that prior fiscal year but do not apply to the property for the current fiscal year,

whichever is greater; and

(b) A percentage of the amount determined pursuant to paragraph (a) which is equal to:

(1) The greater of:

(I) The average percentage of change in the assessed valuation of all the taxable property in the county, as determined by the Department, over the fiscal year in which the levy is made and the 9 immediately preceding fiscal years;

(II) Twice the percentage of increase in the Consumer Price Index for all Urban Consumers, U.S. City Average (All Items) for the immediately preceding calendar year; or

(III) Zero; or

(2) Eight percent,

whichever is less.

2. Except as otherwise provided in or required to carry out the provisions of NRS 361.4725 to 361.4729, inclusive, and section 2.7 of this act, the owner of any remainder parcel of real property for which no assessed valuation was separately established for the immediately preceding fiscal year, is entitled to a partial abatement of the ad valorem taxes levied in a county on that property for a fiscal year equal to the amount by which the product of the combined rate of all ad valorem taxes levied in that county on the property for that fiscal year and the amount of the assessed valuation of the property which is taxable in that county for that fiscal year, excluding any amount of that assessed valuation attributable to any improvement to or change in the actual or authorized use of the property that would not have been included in the calculation of the assessed valuation of the property for the immediately preceding fiscal year if an assessed valuation had been separately established for that property for that prior fiscal year, exceeds the sum obtained by adding:

(a) The amount of all the ad valorem taxes:

(1) Which would have been levied in that county on the property for the immediately preceding fiscal year if an assessed valuation had been separately established for that property for that prior fiscal year based upon all the assumptions, costs, values, calculations and other factors and considerations that would have been used for the valuation of that property for that prior fiscal year; or

(2) Which would have been levied in that county on the property for the immediately preceding fiscal year if an assessed valuation had been separately established for that property for that prior fiscal year based upon all the assumptions, costs, values, calculations and other factors and considerations that would have been used for the valuation of that property for that prior fiscal year, and if not for any exemptions from taxation that applied to the property for that prior fiscal year but do not apply to the property for the current fiscal year,

whichever is greater; and

(b) A percentage of the amount determined pursuant to paragraph (a) which is equal to:

(1) The greater of:

(I) The average percentage of change in the assessed valuation of all the taxable property in the county, as determined by the Department, over the fiscal year in which the levy is made and the 9 immediately preceding fiscal years;

(II) Twice the percentage of increase in the Consumer Price Index for all Urban Consumers, U.S. City Average (All Items) for the immediately preceding calendar year; or

(III) Zero; or

(2) Eight percent,

whichever is less.

3. The provisions of subsection 1 do not apply to any property for which the provisions of subsection 1 of NRS 361.4723 or subsection 1 of NRS 361.4724 provide a greater abatement from taxation.

4. Except as otherwise required to carry out the provisions of NRS 361.4732 and any regulations adopted pursuant to NRS 361.4733, the amount of any reduction in the ad valorem taxes levied in a county for a fiscal year as a result of the application of the provisions of subsections 1 and 2 must be deducted from the amount of ad valorem taxes each taxing entity would otherwise be entitled to receive for that fiscal year in the same proportion as the rate of ad valorem taxes levied in the county on the property by or

on behalf of that taxing entity for that fiscal year bears to the combined rate of all ad valorem taxes levied in the county on the property by or on behalf of all taxing entities for that fiscal year.

5. The Nevada Tax Commission shall adopt such regulations as it deems appropriate to ensure that this section is carried out in a uniform and equal manner.

6. For the purposes of this section, "remainder parcel of real property" means a parcel of real property which remains after the creation of new parcels of real property for development from one or more existing parcels of real property, if the use of that remaining parcel has not changed from the immediately preceding fiscal year.

Sec. 3.7. NRS 361.4723 is hereby amended to read as follows:

361.4723 The Legislature hereby finds and declares that an increase in the tax bill of the owner of a home by more than 3 percent over the tax bill of that homeowner for the previous year constitutes a severe economic hardship within the meaning of subsection 10 of Section 1 of Article 10 of the Nevada Constitution. The Legislature therefore directs a partial abatement of taxes for such homeowners as follows:

1. Except as otherwise provided in or required to carry out the provisions of subsection 2 and NRS 361.4725 to 361.4729, inclusive, and section 2.7 of this act, the owner of a single-family residence which is the primary residence of the owner is entitled to a partial abatement of the ad valorem taxes levied in a county on that property each fiscal year equal to the amount by which the product of the combined rate of all ad valorem taxes levied in that county on the property for that fiscal year and the amount of the assessed valuation of the property which is taxable in that county for that fiscal year, excluding any increase in the assessed valuation of the property from the immediately preceding fiscal year as a result of any improvement to or change in the actual or authorized use of the property, exceeds the sum obtained by adding:

(a) The amount of all the ad valorem taxes:

(1) Levied in that county on the property for the immediately preceding fiscal year; or

(2) Which would have been levied in that county on the property for the immediately preceding fiscal year if not for any exemptions from taxation that applied to the property for that prior fiscal year but do not apply to the property for the current fiscal year,

whichever is greater; and

(b) Three percent of the amount determined pursuant to paragraph (a).

2. The provisions of subsection 1 do not apply to any property for which:

(a) No assessed valuation was separately established for the immediately preceding fiscal year; or

(b) The provisions of subsection 1 of NRS 361.4722 provide a greater abatement from taxation.

3. Except as otherwise required to carry out the provisions of NRS 361.4732 and any regulations adopted pursuant to NRS 361.4733, the amount of any reduction in the ad valorem taxes levied in a county for a fiscal year as a result of the application of the provisions of subsection 1 must be deducted from the amount of ad valorem taxes each taxing entity would otherwise be entitled to receive for that fiscal year in the same proportion as the rate of ad valorem taxes levied in the county on the property by or on behalf of that taxing entity for that fiscal year bears to the combined rate of all ad valorem taxes levied in the county on the property by or on behalf of all taxing entities for that fiscal year.

4. The Nevada Tax Commission shall adopt such regulations as it deems appropriate to carry out this section, including, without limitation, regulations providing a methodology for applying the partial abatement provided pursuant to subsection 1 to a parcel of real property of which only a portion qualifies as a single-family residence which is the primary residence of the owner and the remainder is used in another manner.

5. The owner of a single-family residence does not become ineligible for the partial abatement provided pursuant to subsection 1 as a result of:

(a) The operation of a home business out of a portion of that single-family residence; or

(b) The manner in which title is held by the owner if the owner occupies the residence, including, without limitation, if the owner has placed the title in a trust for purposes of estate planning.

6. For the purposes of this section:

(a) "Primary residence of the owner" means a residence which:

(1) Is designated by the owner as the primary residence of the owner in this State, exclusive of any other residence of the owner in this State; and

(2) Is not rented, leased or otherwise made available for exclusive occupancy by any person other than the owner of the residence and members of the family of the owner of the residence.

(b) "Single-family residence" means a parcel or other unit of real property or unit of personal property which is intended or designed to be occupied by one family with facilities for living, sleeping, cooking and eating.

(c) "Unit of personal property" includes, without limitation, any:

(1) Mobile or manufactured home, whether or not the owner thereof also owns the real property upon which it is located; or

(2) Taxable unit of a condominium, common-interest community, planned unit development or similar property,

if classified as personal property for the purposes of this chapter.

(d) "Unit of real property" includes, without limitation, any taxable unit of a condominium, common-interest community, planned unit development or similar property, if classified as real property for the purposes of this chapter.

Sec. 3.9. NRS 361.4724 is hereby amended to read as follows:

361.4724 The Legislature hereby finds and declares that many Nevadans who cannot afford to own their own homes would be adversely affected by large unanticipated increases in property taxes, as those tax increases are passed down to renters in the form of rent increases and therefore the benefits of a charitable exemption pursuant to subsection 8 of Section 1 of Article 10 of the Nevada Constitution should be afforded to those Nevadans through an abatement granted to the owners of residential rental dwellings who charge rent that does not exceed affordable housing standards for low-income housing. The Legislature therefore directs a partial abatement of taxes for such owners as follows:

1. Except as otherwise provided in or required to carry out the provisions of subsection 2 and NRS 361.4725 to 361.4729, inclusive, and section 2.7 of this act, if the amount of rent collected from each of the tenants of a residential dwelling does not exceed the fair market rent for the county in which the dwelling is located, as most recently published by the United States Department of Housing and Urban Development, the owner of the dwelling is entitled to a partial abatement of the ad valorem taxes levied in a county on that property for each fiscal year equal to the amount by which the product of the combined rate of all ad valorem taxes levied in that county on the property for that fiscal year and the amount of the assessed valuation of the property which is taxable in that county for that fiscal year, excluding any increase in the assessed valuation of the property from the immediately preceding fiscal year as a result of any improvement to or change in the actual or authorized use of the property, exceeds the sum obtained by adding:

(a) The amount of all the ad valorem taxes:

(1) Levied in that county on the property for the immediately preceding fiscal year; or

(2) Which would have been levied in that county on the property for the immediately preceding fiscal year if not for any exemptions from taxation that applied to the property for that prior fiscal year but do not apply to the property for the current fiscal year,

whichever is greater; and

(b) Three percent of the amount determined pursuant to paragraph (a).

2. The provisions of subsection 1 do not apply to:

(a) Any hotels, motels or other forms of transient lodging;

(b) Any property for which no assessed valuation was separately established for the immediately preceding fiscal year; and

(c) Any property for which the provisions of subsection 1 of NRS 361.4722 provide a greater abatement from taxation.

3. Except as otherwise required to carry out the provisions of NRS 361.4732 and any regulations adopted pursuant to NRS 361.4733, the amount of any reduction in the ad valorem taxes levied in a county for a fiscal year as a result of the application of the provisions of subsection 1 must be deducted from the amount of ad valorem taxes each taxing entity would otherwise be entitled to receive for that fiscal year in the same proportion as the rate of ad valorem taxes levied in the county on the property by or on behalf of that taxing entity for that fiscal year bears to the combined rate of all ad valorem taxes levied in the county on the property by or on behalf of all taxing entities for that fiscal year.

4. The Nevada Tax Commission shall adopt such regulations as it deems appropriate to carry out this section.

Sec. 4. (Deleted by amendment.)

Sec. 4.5. The Legislature hereby finds that the exemption provided by this act from any ad valorem tax on property:

1. Will achieve a bona fide social or economic purpose and that the benefits of the exemption are expected to exceed any adverse effect of the exemption on the provision of services to the public by the State or a local government that would otherwise receive revenue from the tax from which the exemption would be granted; and

2. Will not impair adversely the ability of the State or a local government to pay, when due, all interest and principal on any outstanding bonds or any other obligations for which revenue from the tax from which the exemption would be granted was pledged.

Sec. 5. This act becomes effective on July 1, 2017.

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Discussion points of AB 107

- Defining when summary for evictions are sealed
    - Courts deny the action of eviction
    - If the landlord or property manager fails to file the required affidavit
    - If the eviction is set aside by the Justice Court based on Civil Procedure

Assembly Bill No. 107–Assemblywoman Bilbray-Axelrod

CHAPTER.....

AN ACT relating to unlawful detainer; providing for the sealing of court records relating to eviction under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill provides that eviction case court files relating to actions for summary eviction are sealed automatically and not open to inspection: (1) upon the entry of a court order denying or dismissing the action for summary eviction; or (2) if a landlord fails to file an affidavit of complaint within 30 days after a tenant files an affidavit to contest the matter. This bill also authorizes the court to seal an eviction case court file: (1) upon a written stipulation between the landlord and the tenant; or (2) upon motion by the tenant, if the court finds that the eviction should be set aside pursuant to the Justice Court Rules of Civil Procedure or that sealing the eviction case court file is in the interests of justice.

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

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

Section 1. Chapter 40 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In any action for summary eviction pursuant to NRS 40.253 or 40.254, the eviction case court file is sealed automatically and not open to inspection:

(a) Upon the entry of a court order which denies or dismisses the action for summary eviction; or

(b) Thirty-one days after the tenant has filed an affidavit described in subsection 3 of NRS 40.253, if the landlord has failed to file an affidavit of complaint pursuant to subsection 5 of NRS 40.253 within 30 days after the tenant filed the affidavit.

2. In addition to the provisions for the automatic sealing of an eviction case court file pursuant to subsection 1, the court may order the sealing of an eviction case court file:

(a) Upon the filing of a written stipulation by the landlord and the tenant to set aside the order of eviction and seal the eviction case court file; or

(b) Upon motion of the tenant and decision by the court if the court finds that:

(1) The eviction should be set aside pursuant to Rule 60 of the Justice Court Rules of Civil Procedure; or

(2) Sealing the eviction case court file is in the interests of justice and those interests are not outweighed by the public's

interest in knowing about the contents of the eviction case court file, after considering, without limitation, the following factors:

(I) Circumstances beyond the control of the tenant that led to the eviction;

(II) Other extenuating circumstances under which the order of eviction was granted; and

(III) The amount of time that has elapsed between the granting of the order of eviction and the filing of the motion to seal the eviction case court file.

3. If the court orders the eviction case court file sealed pursuant to this section, all proceedings recounted in the eviction case court file shall be deemed never to have occurred.

4. As used in this section, "eviction case court file" means all records relating to an action for summary eviction which are maintained by the court, including, without limitation, the affidavit of complaint and any other pleadings, proof of service, findings of the court, any order made on motion as provided in Nevada Rules of Civil Procedure, Justice Court Rules of Procedure and local rules of practice and all other papers, records, proceedings and evidence, including exhibits and transcript of the testimony.

Sec. 2. NRS 40.215 is hereby amended to read as follows:

40.215 As used in NRS 40.215 to 40.425, inclusive, ***and section 1 of this act,*** unless the context requires otherwise:

1. "Dwelling" or "dwelling unit" means a structure or part thereof that is occupied, or designed or intended for occupancy, as a residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

2. "Landlord's agent" means a person who is hired or authorized by the landlord or owner of real property to manage the property or dwelling unit, to enter into a rental agreement on behalf of the landlord or owner of the property or who serves as a person within this State who is authorized to act for and on behalf of the landlord or owner for the purposes of service of process or receiving notices and demands. A landlord's agent may also include a successor landlord or a property manager as defined in NRS 645.0195.

3. "Mobile home" means every vehicle, including equipment, which is constructed, reconstructed or added to in such a way as to have an enclosed room or addition occupied by one or more persons as a residence or sleeping place and which has no foundation other than wheels, jacks, skirting or other temporary support.

4. "Mobile home lot" means a portion of land within a mobile home park which is rented or held out for rent to accommodate a mobile home.

5. "Mobile home park" or "park" means an area or tract of land where two or more mobile homes or mobile home lots are rented or held out for rent. "Mobile home park" or "park" does not include those areas or tracts of land, whether within or outside of a park, where the lots are held out for rent on a nightly basis.

6. "Premises" includes a mobile home.

7. "Recreational vehicle" means a vehicular structure primarily designed as temporary living quarters for travel, recreational or camping use, which may be self-propelled or mounted upon or drawn by a motor vehicle.

8. "Recreational vehicle lot" means a portion of land within a recreational vehicle park, or a portion of land so designated within a mobile home park, which is rented or held out for rent to accommodate a recreational vehicle overnight or for less than 3 months.

9. "Recreational vehicle park" means an area or tract of land where lots are rented or held out for rent to accommodate a recreational vehicle overnight or for less than 3 months.

10. "Short-term tenancy" means a tenancy in which rent is reserved by a period of 1 week and the tenancy has not continued for more than 45 days.

Sec. 3. The amendatory provisions of this act apply to all actions pending or filed on or after October 1, 2017.

Discussion points of AB 133

- How/can this bill protect tenants who are injured or whom may have criminal activity occur that could affect the tenants occupancy
    - Mimicking federal law in most instances
    - Affording the 1 year period immediately following the end of active duty
    - Only applying to residential loans

Assembly Bill No. 133–Assemblyman
Elliot Anderson

CHAPTER.....

AN ACT relating to real property rights; prohibiting adverse action against certain persons for requesting emergency assistance on a rental property in certain cases; specifying that a request for emergency assistance on a rental property does not constitute a nuisance in certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 1 and 2 of this bill prohibit a landlord from taking adverse action against a tenant of a dwelling or manufactured home, including, without limitation, evicting or taking certain other punitive action based solely upon a tenant or other person in the rental property of the tenant requesting emergency assistance from a provider of emergency services based on a reasonable belief that an emergency response is necessary or that criminal activity has occurred. **Sections 1 and 2** also prohibit a local government or political subdivision of this State from taking adverse action against a landlord based solely on the request of a tenant or other person for emergency assistance. **Sections 1 and 2** also specify that the provisions of this bill do not prohibit a landlord or a local government or political subdivision of this State from curing a breach of a rental agreement or abating a nuisance or a violation of a local law, ordinance or regulation which is discovered by or reported to the landlord by a peace officer as a result of a request for emergency assistance.

Existing law provides that any provision of a rental agreement for a dwelling or rental agreement or lease for a manufactured home lot that waives or limits certain rights or remedies provided by law is void and unenforceable and therefore any provision in such a rental agreement or lease that allows adverse action against a tenant in violation of the provisions of **sections 1 and 2** would be void and unenforceable. (NRS 118A.200, 118B.050)

Existing law provides that a nuisance includes conditions on a property that interfere with the free use or comfortable enjoyment of the property, including, without limitation, health hazards or the use of a property for the commission of certain crimes. (NRS 40.140, 202.450) **Sections 4-6** of this bill provide that a request for emergency assistance by a tenant or other person in the rental property of the tenant as described above does not constitute a nuisance for purposes of civil or criminal law.

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

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

Section 1. Chapter 118A of NRS is hereby amended by adding thereto a new section to read as follows:

1. A landlord shall not take any adverse action against a tenant, including, without limitation, evicting, imposing a fine or taking any other punitive action against the tenant, based solely

upon the tenant or another person in the dwelling of the tenant requesting emergency assistance if the tenant or other person had a reasonable belief that an emergency response was necessary or that criminal activity may have occurred, regardless of any other previous requests for emergency assistance by the tenant or other person.

2. A local government or other political subdivision of this State shall not deem there to be a nuisance or take any other adverse action against the landlord of a dwelling based solely upon the tenant or another person in the dwelling of the tenant requesting emergency assistance in accordance with subsection 1.

3. Any local charter, code, ordinance, regulation or other law that conflicts with this section is void and unenforceable.

4. This section does not:

(a) Prohibit a landlord from taking any action necessary to abate a nuisance on the property pursuant to NRS 40.140 or 202.450 or taking any other action which is not in conflict with the provisions of this section, including, without limitation, commencing eviction proceedings in accordance with the provisions of chapter 40 of NRS for any nuisance discovered by or reported to the landlord by a peace officer as a result of a request for emergency assistance pursuant to subsection 1;

(b) Authorize a tenant to breach any provision of a rental agreement that is not in conflict with this section or to violate any other provision of law;

(c) Prohibit a landlord from taking any action necessary to cure a breach of any provision of a rental agreement or any other provision of law by a tenant which is discovered by or reported to the landlord by a peace officer as a result of a request for emergency assistance pursuant to subsection 1; or

(d) Prohibit a local government or other political subdivision of this State from taking any action against a landlord or a tenant to abate a nuisance or a violation of any local law, ordinance or regulation which is discovered by a peace officer while responding to a request for emergency assistance pursuant to subsection 1.

5. In addition to any other remedies, a tenant, landlord or district attorney may bring a civil action in a court of competent jurisdiction for a violation of this section to seek any or all of the following relief:

(a) Declaratory and injunctive relief.

(b) Actual damages.

(c) Reasonable attorney's fees and costs.

(d) Any other legal or equitable relief that the court deems appropriate.

6. As used in this section:

(a) "Emergency assistance" means assistance provided by an agency of the State of Nevada or a political subdivision of this State that provides police, fire-fighting, rescue, emergency medical services or any other services related to public safety.

(b) "Peace officer" means any person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive.

Sec. 2. Chapter 118B of NRS is hereby amended by adding thereto a new section to read as follows:

1. A landlord shall not take any adverse action against a tenant, including, without limitation, evicting, imposing a fine or taking any other punitive action against the tenant, based solely upon the tenant or another person in the manufactured home of the tenant requesting emergency assistance if the tenant or other person had a reasonable belief that an emergency response was necessary or that criminal activity may have occurred, regardless of any other previous requests for emergency assistance by the tenant or other person.

2. A local government or other political subdivision of this State shall not deem there to be a nuisance or take any other adverse action against the landlord of a manufactured home park based solely upon the tenant or another person in the manufactured home of the tenant requesting emergency assistance in accordance with subsection 1.

3. Any local charter, code, ordinance, regulation or other law that conflicts with this section is void and unenforceable.

4. This section does not:

(a) Prohibit a landlord from taking any action necessary to abate a nuisance on the property pursuant to NRS 40.140 or 202.450 or taking any other action which is not in conflict with the provisions of this section, including, without limitation, commencing eviction proceedings in accordance with the provisions of chapter 40 of NRS for any nuisance discovered by or reported to the landlord by a peace officer as a result of a request for emergency assistance pursuant to subsection 1;

(b) Authorize a tenant to breach any provision of a rental agreement that is not in conflict with this section or to violate any other provision of law;

(c) Prohibit a landlord from taking any action necessary to cure a breach of any provision of a rental agreement or any other

provision of law by a tenant which is discovered by or reported to the landlord by a peace officer as a result of a request for emergency assistance pursuant to subsection 1; or

(d) Prohibit a local government or other political subdivision of this State from taking any action against a landlord or a tenant to abate a nuisance or a violation of any local law, ordinance or regulation which is discovered by a peace officer while responding to a request for emergency assistance pursuant to subsection 1.

5. In addition to any other remedies, a tenant, landlord or district attorney may bring a civil action in a court of competent jurisdiction for a violation of this section to seek any or all of the following relief:

(a) Declaratory and injunctive relief.

(b) Actual damages.

(c) Reasonable attorney's fees and costs.

(d) Any other legal or equitable relief that the court deems appropriate.

6. As used in this section:

(a) "Emergency assistance" means assistance provided by an agency of the State of Nevada or a political subdivision of this State that provides police, fire-fighting, rescue, emergency medical services or any other services related to public safety.

(b) "Peace officer" means any person upon whom some or all of the powers of a peace officer are conferred pursuant to NRS 289.150 to 289.360, inclusive.

Sec. 3. NRS 118B.210 is hereby amended to read as follows:

118B.210 1. The landlord shall not terminate a tenancy, refuse to renew a tenancy, increase rent or decrease services the landlord normally supplies, or bring or threaten to bring an action for possession of a manufactured home lot as retaliation upon the tenant because:

(a) The tenant has complained in good faith about a violation of a building, safety or health code or regulation pertaining to a manufactured home park to the governmental agency responsible for enforcing the code or regulation.

(b) The tenant has complained to the landlord concerning the maintenance, condition or operation of the park or a violation of any provision of NRS 118B.040 to 118B.220, inclusive, ***and section 2 of this act*** or 118B.240.

(c) The tenant has organized or become a member of a tenants' league or similar organization.

(d) The tenant has requested the reduction in rent required by:

(1) NRS 118.165 as a result of a reduction in property taxes.

(2) NRS 118B.153 when a service, utility or amenity is decreased or eliminated by the landlord.

(e) A citation has been issued to the landlord as the result of a complaint of the tenant.

(f) In a judicial proceeding or arbitration between the landlord and the tenant, an issue has been determined adversely to the landlord.

2. A landlord, manager or assistant manager of a manufactured home park shall not willfully harass a tenant.

3. A tenant shall not willfully harass a landlord, manager or assistant manager of a manufactured home park or an employee or agent of the landlord.

4. As used in this section, "harass" means to threaten or intimidate, through words or conduct, with the intent to affect the terms or conditions of a tenancy or a person's exercise of his or her rights pursuant to this chapter.

Sec. 4. NRS 40.140 is hereby amended to read as follows:

40.140 1. Except as otherwise provided in this section:

(a) Anything which is injurious to health, or indecent and offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property;

(b) A building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, using or giving away a controlled substance, immediate precursor or controlled substance analog;

(c) A building or place which was used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog and:

(1) Which has not been deemed safe for habitation by the board of health; or

(2) From which all materials or substances involving the controlled substance, immediate precursor or controlled substance analog have not been removed or remediated by an entity certified or licensed to do so within 180 days after the building or place is no longer used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog; or

(d) A building or place regularly and continuously used by the members of a criminal gang to engage in, or facilitate the commission of, crimes by the criminal gang,

is a nuisance, and the subject of an action. The action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance, and by the

judgment the nuisance may be enjoined or abated, as well as damages recovered.

2. It is presumed:

(a) That an agricultural activity conducted on farmland, consistent with good agricultural practice and established before surrounding nonagricultural activities is reasonable. Such activity does not constitute a nuisance unless the activity has a substantial adverse effect on the public health or safety.

(b) That an agricultural activity which does not violate a federal, state or local law, ordinance or regulation constitutes good agricultural practice.

3. A shooting range does not constitute a nuisance with respect to any noise attributable to the shooting range if the shooting range is in compliance with the provisions of all applicable statutes, ordinances and regulations concerning noise:

(a) As those provisions existed on October 1, 1997, for a shooting range in operation on or before October 1, 1997; or

(b) As those provisions exist on the date that the shooting range begins operation, for a shooting range that begins operation after October 1, 1997.

A shooting range is not subject to any state or local law related to the control of noise that is adopted or amended after the date set forth in paragraph (a) or (b), as applicable, and does not constitute a nuisance for failure to comply with any such law.

4. A request for emergency assistance by a tenant as described in sections 1 and 2 of this act does not constitute a nuisance.

~~[4.]~~ ***5.*** As used in this section:

(a) "Board of health" has the meaning ascribed to it in NRS 439.4797.

(b) "Controlled substance analog" has the meaning ascribed to it in NRS 453.043.

(c) "Criminal gang" has the meaning ascribed to it in NRS 193.168.

(d) "Immediate precursor" has the meaning ascribed to it in NRS 453.086.

(e) "Shooting range" means an area designed and used for archery or sport shooting, including, but not limited to, sport shooting that involves the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder or other similar items.

Sec. 5. NRS 202.450 is hereby amended to read as follows:

202.450 1. A public nuisance is a crime against the order and economy of the State.

2. Every place:

(a) Wherein any gambling, bookmaking or pool selling is conducted without a license as provided by law, or wherein any swindling game or device, or bucket shop, or any agency therefor is conducted, or any article, apparatus or device useful therefor is kept;

(b) Wherein any fighting between animals or birds is conducted;

(c) Wherein any dog races are conducted as a gaming activity;

(d) Wherein any intoxicating liquors are kept for unlawful use, sale or distribution;

(e) Wherein a controlled substance, immediate precursor or controlled substance analog is unlawfully sold, served, stored, kept, manufactured, used or given away;

(f) That is regularly and continuously used by the members of a criminal gang to engage in, or facilitate the commission of, crimes by the criminal gang; or

(g) Where vagrants resort,

is a public nuisance.

3. Every act unlawfully done and every omission to perform a duty, which act or omission:

(a) Annoys, injures or endangers the safety, health, comfort or repose of any considerable number of persons;

(b) Offends public decency;

(c) Unlawfully interferes with, befouls, obstructs or tends to obstruct, or renders dangerous for passage, a lake, navigable river, bay, stream, canal, ditch, millrace or basin, or a public park, square, street, alley, bridge, causeway or highway; or

(d) In any way renders a considerable number of persons insecure in life or the use of property,

is a public nuisance.

4. A building or place which was used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog is a public nuisance if the building or place has not been deemed safe for habitation by the board of health and:

(a) The owner of the building or place allows the building or place to be used for any purpose before all materials or substances involving the controlled substance, immediate precursor or controlled substance analog have been removed from or remediated on the building or place by an entity certified or licensed to do so; or

(b) The owner of the building or place fails to have all materials or substances involving the controlled substance, immediate precursor or controlled substance analog removed from or remediated on the building or place by an entity certified or licensed

to do so within 180 days after the building or place is no longer used for the purpose of unlawfully manufacturing a controlled substance, immediate precursor or controlled substance analog.

5. Agricultural activity conducted on farmland consistent with good agricultural practice and established before surrounding nonagricultural activities is not a public nuisance unless it has a substantial adverse effect on the public health or safety. It is presumed that an agricultural activity which does not violate a federal, state or local law, ordinance or regulation constitutes good agricultural practice.

6. A shooting range is not a public nuisance with respect to any noise attributable to the shooting range if the shooting range is in compliance with the provisions of all applicable statutes, ordinances and regulations concerning noise:

(a) As those provisions existed on October 1, 1997, for a shooting range that begins operation on or before October 1, 1997; or

(b) As those provisions exist on the date that the shooting range begins operation, for a shooting range in operation after October 1, 1997.

A shooting range is not subject to any state or local law related to the control of noise that is adopted or amended after the date set forth in paragraph (a) or (b), as applicable, and does not constitute a nuisance for failure to comply with any such law.

7. ***A request for emergency assistance by a tenant as described in sections 1 and 2 of this act is not a public nuisance.***

8. As used in this section:

(a) "Board of health" has the meaning ascribed to it in NRS 439.4797.

(b) "Controlled substance analog" has the meaning ascribed to it in NRS 453.043.

(c) "Criminal gang" has the meaning ascribed to it in NRS 193.168.

(d) "Immediate precursor" has the meaning ascribed to it in NRS 453.086.

(e) "Shooting range" has the meaning ascribed to it in NRS 40.140.

Sec. 6. NRS 266.335 is hereby amended to read as follows:

266.335 The city council may:

1. Except as otherwise provided in ~~[subsection]~~ ***subsections*** 3 ***and 4*** of NRS 40.140 and ~~[subsection]~~ ***subsections*** 6 ***and 7*** of NRS 202.450, determine by ordinance what shall be deemed nuisances.

2. Provide for the abatement, prevention and removal of the nuisances at the expense of the person creating, causing or committing the nuisances.

3. Provide that the expense of removal is a lien upon the property upon which the nuisance is located. The lien must:

(a) Be perfected by recording with the county recorder a statement by the city clerk of the amount of expenses due and unpaid and describing the property subject to the lien.

(b) Be coequal with the latest lien thereon to secure the payment of general taxes.

(c) Not be subject to extinguishment by the sale of any property because of the nonpayment of general taxes.

(d) Be prior and superior to all liens, claims, encumbrances and titles other than the liens of assessments and general taxes.

4. Provide any other penalty or punishment of persons responsible for the nuisances.

Sec. 7. This act becomes effective on July 1, 2017.

Case Studies

Case studies are supplied and provided by Arello through the Arello Recent Course Decisions Publication and prepared by the Law and Regulation Monitoring Committee.

LICENSING

Board Discretion Upheld

Muratti-Stuart v Dept. of Bus. & Prof'l. Reg.
215 Fla. App. LEXIS 12770

Court of Appeal of Florida, Fourth District

Facts: Muratti-Stuart, a civil engineer, filed an application for a certified marine specialty contractor's license. An informal hearing was conducted by the Construction Industry Licensing Board (Board). At the hearing, Board members questioned Muratti-Stuart about his prior work experience, and later denied his application for failure to demonstrate the required experience. Muratti-Stuart petitioned for review, challenging the Board's findings and submitting two affidavits which he had not included with his original application. The Board upheld the denial finding Muratti-Stuart still failed to establish he had the required experience. He appealed the Board's finding.

Issue: Whether the Board correctly interpreted the work experience requirement or exceeded its authority by imposing additional criteria.

Held: Affirmed. The Court concluded the Board did not err in interpreting the law regarding the requisite one year of experience required for a marine contracting license. The statements and questions asked by the Board at the informal hearing do not support Muratti-Stuart's claim that the Board imposed "additional criteria" to the experience requirement. There was competent, substantial evidence in support of its finding. Muratti-Stuart conceded one of his affidavits did not comply with Florida rule. It was within the Board's discretion to find the other affidavit submitted was insufficient to establish requisite experience, and it was unclear what type of marine construction related activities Murattie-Stuart was exposed to, or over what period of time.

LICENSING

Applicant for Reinstatement Must Exhaust Administrative Remedies

Riad v. Ontario Coll. of Pharmacists, 2015 ON.C. LEXIS 7616 (2015)

Ontario Superior Court of Justice

Facts: Riad was a licensed pharmacist who had his license revoked by the College in 2006 for professional misconduct and various criminal convictions. Since 2006, Riad has been involved in numerous litigation matters and been found to have provided false information to courts. Riad has also abused his hearing impairment when it benefitted him to do so, and failed to pay outstanding costs from his claims that he filed and lost. Riad was in and out of the court system so much that he had a vexatious litigant order filed

against him, meaning he must be granted permission from Superior Court to bring new claims because he had filed so many insignificant claims and abused the court system. Riad's application for reinstatement was rejected by the Executive Committee, but was pending hearing before the Discipline Committee. However, Riad asked the court for leave to appeal the Executive Committee's decision to deny his application for reinstatement.

Issue: Whether Riad's proposed proceeding is an abuse of process or if there are reasonable grounds for the proceeding.

Held: The application is an abuse of process and it is dismissed accordingly. There must be an applicable statute for the court to have jurisdiction over the case. The court would have jurisdiction over an appeal from the Health Professions Appeal and Review Board interpreting the Regulated Health Professions Act, but it does not over appeals from the Executive Committee of the College. The case is pending a full hearing before the Discipline Committee and administrative procedures must be exhausted first. Even if jurisdiction was proper, Riad's litigation history would still make it likely that any proceeding he brought would be without merit. Riad cannot seek judicial review without showing more than the fact that he simply disagrees with a discretionary decision in which all relevant factors were taken into consideration. His actions crowd out court resources that could be used for real litigants with real issues.

REAL ESTATE SETTLEMENT PROCEDURES ACT (RESPA)

Kickbacks Violating the Act and State Law

In Re the Resident Agency License of TitleSmart, Inc., Consent Cease and Desist Order E-Case # 1120 (August 2015)

State of Minnesota Commissioner of Commerce

Facts: TitleSmart is a provider of settlement services. An investigation by the Department of Commerce revealed that TitleSmart hosted two boat cruises on the St. Croix River. Around 243 mortgage brokers, loan officers, and real estate agents attended. Cruises, food, prizes and alcohol were purchased totaling over $19,000 in one year. The Department determined that 68% of TitleSmart's closed transactions between the times of two TitleSmart-sponsored cruises came from referrals involving at least one attendee of the first cruise. From the time of the second cruise and continuing for nine months, about 75% of TitleSmart's closed transactions came from referrals involving at least one attendee of the second cruise. The Department determined that TitleSmart violated the prohibition against kickbacks contained in RESPA and therefor was unworthy of licensure in Minnesota.

Issue: Whether providing a thing of value in exchange for referrals to settlements violate the kickback prohibition in RESPA.

Held: The Commissioner of Commerce concluded the boat cruises, food, drinks and door prizes constituted a payment of commissions or valuable consideration for negotiating or soliciting insurance. The Department entered into a consent cease and desist order with TitleSmart and its designated responsible party, Cynthia Koebele. The order found TitleSmart and Koebele in violation of RESPA because they gave a thing of value to real estate brokers, loan officers, and mortgage brokers by hosting cruises and giving gifts in exchange for referrals of real estate settlements of federal mortgage loans. The Commissioner instituted fines against TitleSmart and Koebele in the

amount of $45,000, with $20,000 stayed on conditions, including a payment of $5,000 in investigation costs.

RECOVERY FUND

Applicant Can Recover for both Breach and Costs

Texas Real Estate Comm'n v. Trees and Hess, 2016 Tex. App. LEXIS 2069 (2016)

Court of Appeals of Texas, Eighth District, El Paso

Facts: Trees and Hess hired Cline to inspect the property they intended to purchase. Cline produced a report, and the buyers closed on the home. They later sued Cline for breach of contract and negligence, alleging he failed to identify problems with the home they purchased. The court ordered Cline to pay them $4,304.82 plus costs and fees. They then asked the court for payment from the Fund. The lower court denied payment, but they appealed and the county court ordered payment in the amount of $3,976.00 plus costs and fees. TREC appealed.

Issue: Whether the lower court had authority to order the payment, and whether recovery is limited to reimbursement for damages suffered due to the inspector's negligence, not breach of contract or attorney fees.

Held: Affirmed. The Appellate Division found that the homeowners followed the proper procedures for payment from the Fund and the trial court did have jurisdiction to enter a judgment and to order payment of the judgment from the Fund. Further, the Appellate Division found the Occupations Code provided that an aggrieved party was entitled to attorney's fees and that the buyers did plead both breach of contract and negligence. The Appellate Division found that the allegation that the inspector breached the contract by acting in a negligent manner was adequate to establish a claim covered by the Fund.

TRUST ACCOUNTS

Failure to maintain proper trust accounts

In re: Reinecke, No. Mon-12-025 (N.J. Real Estate Comm'n, Aug 26, 2015)

New Jersey Real Estate Commission

Facts: The New Jersey Real Estate Commission (REC) initiated an Order to Show Cause (OTSC) to Reinecke, a broker of record for Pasch Realty, who performed property management services for rental properties. The OTSC alleged that Reinecke commingled her principals' money with her own, failed to maintain monies in a special account apart from personal or business accounts, and failed to record transaction information on a trust account ledger and journal. Further, Reinecke failed to reconcile and maintain records confirming that quarterly reconciliations had been made and failed to promptly deposit funds of others in a special account within five days as required by rule. Reinecke admitted to all but one of the allegations but denied that her behavior demonstrated incompetency, but was instead simply negligent.

Issue: Whether Reinecke's conduct demonstrated incompetence or negligence and what penalty should be imposed, if any.

Held: Reinecke's license was revoked for two years and she was fined $5,000.00. Reinecke admitted to all of the allegations except one. The Commission's investigation revealed that Reinecke commingled the money of her principals with her own and failed to maintain a separate account for all monies she received in her capacity as real estate broker. Reineke's conduct clearly demonstrated incompetency. She failed to protect and promote her clients' interests and failed to maintain proper bookkeeping for her trust account.

UNLICENSED ACTIVITY

Use of Cancelled Firm Name Constitutes Unlicensed Activity

Aliev v. Courtney, 2015 Cal. App. Unpub. LEXIS 8483 (2015)

California Court of Appeals

Facts: Courtney's father owned a real estate firm. After the father passed away, the California Real Estate Commission cancelled the firm name. Courtney, whose license was inactive, used the firm's name on a listing agreement he made with Aliev in July 2002. Aliev negotiated its own contract and Courtney orally agreed to accept a reduced commission and to defer the payment of the Commission until he activated his license. Courtney presented Aliev with a $60,000 promissory note, and a deed of trust encumbering Aliev's home to secure payment. Courtney actually added his name to the deed after it was notarized and then tried to sell the home. When Aliev learned what was happening, he paid the commission to save the home but sued Courtney for fraud and breach of fiduciary duty. The trial court ordered Courtney to pay back the commission plus Aliev's attorney fees, and invalidated the mortgage deed. Courtney appealed.

Issue: Whether using a defunct business name in transactions constitute unlicensed activity.

Held: Affirmed. Real estate salespersons must do business under a licensed broker. Courtney claimed there had merely been an oversight in the paperwork to activate his license and the firm's, and he should not have to repay Aliev. The Court of Appeals judge rejected Courtney's argument, holding disgorgement was the only remedy and refusing to enforce the listing contract was appropriate because Courtney breached his fiduciary duty by obtaining a commission under an unlawful listing contract and altering the deed after notarization.

UNLICENSED ACTIVITY

No Exception for Unlicensed Contractor

In the Matter of Aldana, 2015 AZ Admin. Hearings LEXIS 282 (2015)

Arizona Registrar of Contracts

Facts: Gallagher alleged that she contracted with Aldana to install a gas line to the dryer and range in her home for $1,350.00. After Aldana completed the job, Gallagher found the gas line leaked and when Aldana failed to fix it she filed a complaint with the Arizona Registrar of Contracts. Gallagher told the investigator that she smelled gas and so she had hired another contractor to review Mr. Aldana's work, and that contractor confirmed the line was leaking. Aldana was not licensed as a contractor, but he claimed he told Gallagher that he was unlicensed and that he was exempt from licensure because he was working as a "handyman." Aldana's website stated he was "licensed, bonded and insured." The investigator gave Aldana a Cease & Desist Order and fined him $1,500.00 for the unlicensed contracting and $1,000.00 for the advertising violation. The Registrar referred the case to the Office of Administrative Hearings for a full hearing.

Issue: Whether the civil penalties assessed against Aldana were appropriate when he believed he was exempt from licensure because he was working as a "handyman."

Held: Civil penalties confirmed. Aldana failed to include the required disclosure in advertising when he gave Gallagher a business card that did not disclose he was not licensed. In addition, his website indicated he was licensed, when he was not. The work he performed exceeded the maximum permitted cost for a handyman. A.R.S §32-1121 states that no person may be considered a handyman if he/she does not advertise him/herself to the public with the explicit phrase, "not a licensed contractor" in his/her advertisements or their work exceeds $1,000.00. Aldana was paid more than $1,000.00 for his services and he failed to include the phrase, "not a licensed contractor" in his advertising meaning the handyman exemption was inapplicable.