

## **ROGER K. SHERRILL, R.E. TUTOR, ALL TRUE NEVADA LAW**

The **Division CANNOT** step in and take control of a broker's trust account without a court order. They must pursue an injunction by court action.

**Salespersons** must turn over any deposits or **earnest money** to their **brokers** or **escrow** as soon as possible or within one business day.

A broker has until the end of the **next banking day** after **ACCEPTANCE** of an earnest money offer to get the money into the Trust Account or get escrow opened.

It is **legal** to accept a **non-cash earnest money deposit**, but this **MUST BE DISCLOSED** before the seller accepts the offer and must be shown on the contract that it is non-cash.

When you have your real estate license, you may **NOT** call yourself a **Realtor®**. To use that name or logo, you must first join the board, if you so desire.

A **broker may pay a finder's fee** to an **out of state broker** properly licensed in the other state, as long as the out-of-state broker is "legal" there.

One can **NOT pay a finder's fee to an unlicensed individual** in any amount. No portion of compensation may be paid to an unlicensed individual unless they are specifically exempted by law.

**Failing to include an expiration date** in a written listing is grounds for disciplinary action. All written listings **MUST HAVE** an expiration date.

**Copies** of written **listings** must be left with the **client** at **time of listing** or a **reasonable time thereafter**.

**Promising PROFITS on RESALE** is grounds for disciplinary action.

All **brokerage agreements must be kept** by brokerage (including deals that didn't go through) for **FIVE (5) years** from last activity on deal. The real estate division must be notified in advance if records are to be moved.

A licensee may **NOT REFUSE** to write an **offer below listed price**. All offers **MUST** be written.

Brokers and Owner Developers may be **FINED up to \$5,000** for failing to supervise licensees under their employment.

If a client seeks advice from licensee in an area in which licensee lacks sufficient knowledge, licensee is to suggest client seek competent assistance. **DO NOT provide guidance outside your area of expertise**, especially don't attempt to answer questions which would be more suitable for an attorney or an accountant to answer.

A **licensee** is permitted to **represent more than one party** to a transaction with **INFORMED CONSENT by all parties**.

If a broker wants to sue for a commission, they must show they have a **license** and an **employment contract** (listing).

**Lenders** are **EXEMPT from licensing** when dealing in their own properties. **Also exempt** are **attorneys** within their scope of practice, **receivers, trustees, administrators** and **executors**.

**Experience** required to become a **broker** is **2 years out of the last 4** years, anywhere in the country, not just Nevada.

A salesperson candidate **must have** an **employing broker** or **owner-developer** sign their application showing their intent to employ the salesperson. A license cannot be activated without an employing broker or owner-developer. An owner-developer may not employ a licensed salesperson unless a licensed real estate broker-salesperson who is qualified, is associated with the owner-developer as a sales manager to oversee the activities of the real estate salesperson. To qualify as a sales manager working for the owner-developer, broker-salesperson must have at least 2 years experience during the immediately preceding 4 years as a broker salesperson or salesperson licensed in Nevada or any other state or territory of the United States, or the District of Columbia. Before becoming associated with an owner-developer as a sales manager, broker-salesperson must notify the real estate division that he will be acting in that capacity and upon termination of his association with an owner-developer as a sales manager, must notify real estate division of that fact **Non-residents** of Nevada **MAY** have **active Nevada** real estate **licenses** but must sign the **Consent to Service of Process** form so that any disgruntled client may serve papers on the division **Administrator**.

A **CO-OP certificate** does **NOT authorize out-of-state brokers** and salespersons to **work in Nevada** but they may solicit out-of-state buyers for Nevada property. If they work in Nevada, they must obtain a Nevada Real Estate license.

**Property Management permits** may be obtained by a real estate **licensee** after a **24 hour course** and a **test**. Also, to renew permit, 3 hours of continuing education in property management is required and your property management permit expires at the same time your real estate license does so must be renewed with each license renewal.

**Property Management Contracts must be in writing** showing the term, fee, extent of authority and the handling of tenant payments.

**Continuing education is required for all active renewals and also for reinstatement to active status.** Continuing education is **NOT** required for **inactive renewals**. Any broker, broker-salesperson or salesperson **first renewal requires 30 hours** and all renewals **after the first renewal** requires **24 hours**, whatever your status.

After termination of a licensee's affiliation with a brokerage, the broker must turn in the license to the division, explain the circumstances of the termination, notify the licensee (with a copy to the division) and give the broker's impression of the character, integrity and competence of the licensee.

If a corporate broker leaves the brokerage and a new corporate broker takes his/her place, no new licenses will have to be issued to licensees since they have not switched brokerages, even though the corporate broker is different. Reinstatement requires continuing education always and possibly new fingerprint cards and possibly an examination. Fingerprint cards are required after one year and an examination after two years of inactivity.

Salespeople can become one-shareholder corporations or a Limited Liability Company (LLC) to receive their commissions only and cannot represent that they own a real estate corporation or LLC.

**Owner-Developers may hire salespeople** directly. Also owner-developers are not required to have any real estate schooling or real estate license.

**Licensees working for owner-developers** can only sell or lease the developments of that registered owner-developer and cannot also engage in general real estate activity or property management. They are limited to just the developments of that owner-developer.

An **exemption** to property management licensing would be for a **secretary** in a broker's office **collecting rents** from renters while the broker is unavailable. This is a specific exemption in the statute.

A real estate license may be denied or suspended, NOT revoked, for failure to be current in child support obligations.

The definition of **real estate** is not limited to real estate **physically in Nevada** but also **real estate elsewhere** which is **marketed in Nevada**. If the marketing takes place in Nevada, a Nevada license is required.

A broker may have an office in conjunction with another business provided it complies with local zoning and is in a separate room.

All **advertising** done **must identify the brokerage** and may identify the salesperson. The **brokerage name must be prominent**. This includes on for sale or for lease signs.

The form **Duties owed by a Nevada licensee** is **ALWAYS USED**. If you represent **both** sides, you also need **Consent to Act form**.

Among disclosures you must make as a licensee are material facts, sources of compensation, and if you are a principal in the transaction, that must also be disclosed.

Duty of **confidentiality** exists for **one year** after the termination of an agency relationship.

Disclosure of your licensed status can be made by reference to yourself as agent, licensee, broker, broker-salesperson, salesperson, but not Realtor® as that is not a proper disclosure of your licensed status.

**Preparation** of the **Sellers Real Property Disclosure (SRPD)** is the responsibility of the **SELLER to prepare** and it is imperative seller be truthful in filling it out because if he knowingly misrepresents the condition of the property, he/she could be sued for **treble damages** and attorney fees. This form should be prepared by seller and given to listing agent at time of signing listing. A copy of the SRPD must be given to a purchaser or his/her agent at least **TEN (10)** days prior to close of escrow. The **SRPD is NOT A WARRANTY**, it is only a disclosure.

If a **buyer** doesn't like the defects disclosed on the SRPD form, they **may cancel the contract within four days of receiving the form** and if they do not cancel, the deal will go forward.

**Homeowners** in a Common Interest Community Association (**CICA**) must be notified of annual meetings and **must be allowed to speak** if they have been placed on the agenda in advance. There has to be time allowed for public comment from the owners. This is at annual meetings only, NOT EXECUTIVE MEETINGS.

In a **CICA**, liens for **unpaid dues or assessments** may be **foreclosed** against the units. Liens for fines may not be foreclosed.

A **resale buyer** in a **CICA** must be given the **CC&Rs, by-laws, minutes of the most recent meeting** and a **copy of the budget** of the association and **CICA must supply the requested information** for a resale **within 10 days of request**, but they may charge a reasonable fee for it.

Exclusive **Brokerage agreements** must have an **expiration date** and be in **writing** and **cannot have** any **automatic renewal** or extension clause in them.

A licensee **must deliver all offers and counteroffers promptly, or as soon as practicable.**

A consulting fee, reimbursement by client for advertising (other than newspaper) and a rental agency service fee are all examples of **advance fees** as they are fees unrelated to a successful closing. **Advance Fee agreements** must be **written.**

**Rental agencies** must have a **full refund policy** if the services are not delivered as promised in the contract.

A **broker** must have a **sign** to identify the brokerage and it must be visible from the nearest public sidewalk, street or highway or on the building directory or the entrance to the business.

**Each branch office** must have a **different branch manager** as all branches may not be supervised by one branch manager.

A **broker-salesperson** with 2 out of 4 years experience may be a **branch manager** but **never** can a **salesman** be a branch manager.

**Earnest money deposits may be** deposited in a **trust account**, **escrow may be opened** or handled any way that all parties to the transaction agree to in writing.

A **property manager** must keep **separate trust accounts** for **property management activity**. One is for security deposits and the other is for rental payments. These **cannot be commingled with the general brokerage trust account or any other account**.

**QUALIFIED INTERMEDIARIES** do not have to pass an examination or have college. They must have a \$25,000 bond, no criminal record and be current in child support obligations.

Regarding **ERRF**, this is funded from licensees paying \$40.00 with original license application and \$40.00 with every license renewal. **\$300,000** must be kept in fund at all times for potential payout to disgruntled clients who have won a judgment against licensee. Any judgment must be real estate related and no later than one year from judgment date. The maximum payout from ERRF to **one claimant is \$25,000**, most paid out on multiple claims against **one licensee is \$100,000**. If a claim is paid from ERRF, license is automatically suspended.

Nevada law requires that within **TEN BUSINESS DAYS**, every broker deliver to the seller a complete detailed closing statement and at the same time a detailed closing statement to the buyer. This requirement is **WAIVED IF AN ESCROW IS USED TO CLOSE THE TRANSACTION**.

For new real estate licensees, licensed after October 1, 2005, and desiring to handle business sales, a **Business Broker Permit** will be required and for persons licensed before October 1, 2005, beginning January 1, 2007, a **Business Broker Permit** will be required. Licensees must apply to the Real Estate Division for a permit to engage in business as a business broker. Applicants for a permit must successfully complete at least 24 hours of classroom instruction relating to business brokerage and comply with any other requirements for the issuance of a permit established by the commission. This permit, once issued, expires on the same date as the license of the holder of the permit expires. A permit may be renewed at the time that a person licensed pursuant to this regulation applies for renewal of license. An applicant for renewal of a permit must complete at least 3 hours of continuing education in an approved education course, seminar or conference relating to business brokerage and comply with any other requirements established by the real estate commission. The real estate Commission shall adopt such regulations as are necessary to carry out the provisions of this section. All licensees associated with the brokerage firm who wish to engage in the business as a business broker must hold a business broker permit and may act only on behalf of the brokerage firm and not on his own behalf.



A licensee who is initially exempt from the requirements of this new act may satisfy the educational requirements if, on or before January 1, 2007, the licensee obtains a passing score on a test on the principles of business brokerage established or adopted by the Real Estate Commission and administered by the Real Estate Division of the Department of Business and Industry. The Real Estate Commission shall, on or before July 1, 2006, establish or adopt a test on the principles of business brokerage to be administered by the Real Estate Division.

A broker shall keep complete records of transactions for at least **five years from last activity on transaction**. Brokers associates must provide any paperwork related to the transaction to the broker within **five calendar days after the paperwork is executed by all the parties**.

A licensee who receives a deposit on any transaction shall pay over the deposit to the employing broker or registered owner-developer within **one business day** after receiving the deposit or to the escrow business or company designated in the contract, within **one business day after receiving the deposit**.

The **Broker** of record **must attend the disciplinary hearing** before the Real Estate Commission concerning any licensee associated with that broker.

### **ALL TRUE 119, 119A & 119B**

The **HARD SELL** approach is what prompted these laws regarding **Subdivisions, Time Shares and Campground memberships**.

Before a subdivision, time share project or campground permit may be issued, the division both **investigates** and makes an **on-site inspection** of the project.

NRS **119, 119A and 119B** require project or subdivision to be **inspected** and all of the **documents** and **representations investigated** before issuing the approval to sell. The **division charges** for the review and inspection **expenses**.

Before approval, developer must submit a **detailed written plan of marketing** and the **contracts and specific advertisements** must also be approved by the division before proceeding.

A new **licensee** introduced under **119** laws is **Sales Agent**.

A **Time share licensee** can **NOT sell general real estate** but a **licensee** under **NRS 645 CAN** sell subdivision lots, Time Shares and Campground memberships.

A **REGISTERED REPRESENTATIVE** is one who **solicits attendance** for the sales under **119 laws** but **not sell** and **does not need a license**.

**People** who **attend Promotional Meetings must be told** that this meeting (or advertising) **“the purpose of is to attempt to sell you (land, time share, or campground membership) in Nevada (or other state).”** This must be stated verbatim at the meeting and in all written advertising.

Only **two (2) salespeople** (one takeover) are allowed to **attempt a sale**.

**Shills** (false or dummy buyers) **are not allowed** at promotional meetings.

The **warning message** on the **cover** of **Property Report** says **CONSUMER SHOULD READ THIS REPORT BEFORE SIGNING ANY PAPER**.

Any **off-site facilities** may be advertised but they must disclose if they are **public or private**.

**Public facilities** must be disclosed as open to the public and indicate the **road miles** to the facility and **whether** the **roads** are paved, gravel or dirt.

If a parcel is **advertised** as a **building site**, the property **MUST be buildable** within two (2) years.

A promotional **gift** is only given to people who last the required time at the meeting. They **get their gift even if they do not buy** a lot, time share or campground membership.

Both, Subdivisions (119) and Time Shares (119A) commonly have common interest associations (CICA) and **periodic assessments** of the owners. These assessments become **liens** if not paid and **could result in foreclosure**.

If a consumer buys a subdivision lot, time share, or campground membership at a Promotional Meeting, they have **Five (5) calendar days** to **revoke** the transaction without any reason (cancellation must be asked for in person, or by certified mail) and the developer must **refund** their **deposit** within **fifteen (15) days**.

The approval to sell is a massive disclosure document issued by the division. This is called the **Property Report or Public Offering Statement**.

Under **119 laws**, the owner of the property being sold is the developer and this owner **MUST USE a BROKER** to **SELL** the units.

The **Time Share** is a unit for a **week** or other period of time. A **unit** is the **condominium** or **room** available for separate occupancy.

Membership **camping** is **use** of a private **campground** for more than **thirty (30) days**.

A **subdivision** with **40-80 acre lots** does **NOT** have to comply with all **119 regulations**. Many of the regulations, including advertising apply, but not all of them

If all **parcels** are **over 80 acres**, purchaser **MUST INSPECT** the subdivision but there is **NO PROPERTY REPORT** issued. Purchasers **MUST**, however, **sign** a statement that they **did inspect the parcel**.

A **resale** of a **Time Share** is **NOT** required to be **registered** under **NRS 119A**, unless re-sales are the normal business of the developer.

Membership in a campground run by a **religious** or **charitable** organization is **EXEMPT** from **NRS 119B**.

In a **subdivision with homes on every lot**, a **brokerage** is **not** necessarily **required**, **developer** could **sell them himself** without a broker involved.