



AGENT FORMULA
The Real Estate Agent's Solution!

Agency Negotiations

Do You Work *FOR* Your Client? - Prove it!

The Naladiyar

**Learning is the best of all wealth;
it is easy to carry,
thieves cannot steal it,
and tyrants cannot seize it;
neither fire nor water can destroy it;
and far from decreasing,
it increases by giving.**

Course Objectives

As a result of this course, participants will be able to articulate the difference between a “*Customer*” and a “*Client*”

Participants will complete a “Skills Assessment” exercise

Participants will be able to determine what events and conversations trigger an Agency Relationship to be established

Participants will explore the differences between a “*Fiduciary*” and a “*Functionary*”

Participants will review the NRS requirements for an “*Exclusive*” brokerage agreement

Participants will identify “*Red Flags*” when dealing with the *Other Agents Client* – what CAN you say, and what CAN’T you say.

Participants will conduct a quick exercise on NRS 40.770 and the language needed when questioned about “*stigmatized*” property – from a Listing Agents perspective, and from a Selling Agents perspective.

Course Introduction;

Congratulations, - you have just been arrested!

Your former client has filed charges that you were Grossly Incompetent and that you failed in your **fiduciary duty** – to *protect and promote* their best interest. They charge that you failed to PROTECT them as you disclosed information protected under NRS 40.770. Further, they have charged you with **Fraud** as they are maintaining that you worked as hard for the OTHER PARTY in the transaction as you did for them and that you never had them sign (nor did you even make them aware) of the NRS mandated “*Consent to Act*” form.

Now, you have been called on to testify in your own defense – on a scale of 1 to 10, how confident are you that you could explain to the Jury;

Fiduciary Duties

The distinction between a Customer and a Client

The Agency Options legal in Nevada

When a “*Consent to Act*” disclosure is necessary

Enough evidence to PROVE that you DID *Protect and Promote* your clients interests

Under cross examination, the prosecuting attorney asks you to explain to the Jury –

The difference between *Competing* interests and *Adverse* interests

The meaning of the word “*Consanguinity*”

How you determine that you followed the law and used

“Reasonable skill and care”

What is your test to determine that a fact is “*material*” (pg. 11)

Let's do a quick review – the *difference* between NRS 645 and NAC 645 is _____.

Let's look at NAC first;

NAC 645.605 Considerations in determining certain misconduct by licensee. ([NRS 645.050](#), [645.190](#), [645.633](#)) In determining whether a licensee has been guilty of gross negligence or incompetence under paragraph (h) of subsection 1 of [NRS 645.633](#) or conduct which constitutes deceitful, fraudulent or dishonest dealing under paragraph (i) of that subsection, the Commission will consider, among other things, whether the licensee:

1. Has done his or her utmost to protect the public against fraud, misrepresentation or **unethical** practices related to real estate or time shares.
2. Has ascertained all pertinent facts concerning any time share or property for which the licensee accepts an agency.
3. Has attempted to provide specialized professional services concerning a type of property or service that is outside the licensee's field of experience or competence without the assistance of a qualified authority unless the facts of such lack of experience or competence are fully disclosed to his or her client.
4. Has disclosed, in writing, his or her interest or contemplated interest in any property or time share with which the licensee is dealing. The disclosure must include, but is not limited to, a statement of:
 - (a) Whether the licensee expects to receive any direct or indirect compensation, dividend or profit from any person or company that will perform services related to the property and, if so, the identity of the person or company;
 - (b) The licensee's affiliation with or financial interest in any person or company that furnishes services related to the property;
 - (c) If the licensee is managing the property, his or her interest in or financial arrangement with any person or company that provides maintenance or other services to the property;
 - (d) If the licensee refers one of his or her clients or customers to another person or company, such as a contractor, title company, attorney, engineer or mortgage banker, the licensee's expectation of a referral fee from that person or company; and
 - (e) If the licensee receives compensation from more than one party in a real estate transaction, full disclosure to and consent from each party to the real estate transaction. A licensee shall not accept compensation from more than one party in a real estate transaction, even if otherwise permitted by law, without full disclosure to all parties.
5. Has kept informed of current statutes and regulations governing real estate, time shares and related fields in which he or she attempts to provide guidance.
6. Has breached his or her obligation of absolute fidelity to his or her principal's interest or his or her obligation to deal fairly with all parties to a real estate transaction.
7. Has ensured that each agreement for the sale, lease or management of property or time shares is contained in a written agreement that has been signed by all parties and that his or her real estate broker and each party to the real estate transaction has a copy of the written agreement.
8. Has obtained all changes of contractual terms in writing and whether such changes are signed or initialed by the parties concerned.

9. Understands and properly applies federal and state statutes relating to the protection of consumers.
10. Has acquired knowledge of all material facts that are reasonably ascertainable and are of customary or express concern and has conveyed that knowledge to the parties to the real estate transaction.
11. Has impeded or attempted to impede any investigation of the Division by:
 - (a) Failing to comply or delaying his or her compliance with a request by the Division to provide documents;
 - (b) Failing to supply a written response, including supporting documentation, if available;
 - (c) Supplying false information to an investigator, auditor or any other officer of the Division;
 - (d) Providing false, forged or altered documents; or
 - (e) Attempting to conceal any documents or facts relating to a real estate transaction.

Now let's go to NRS 645 – specifically the parts that deal with “*Reasonable care*” and “*duties*”.

No doubt, as an experienced agent (this is NOT a **Post** class after all, so you have some time ‘on the job’) you are familiar with the widely taught

O L D C A R

Mnemonic – there are some *shortcomings* with this acronym – what about “P” and “Compensation” issues?

NRS 645 Says – WHEN YOU ACT AS AN AGENT;

NRS 645.252 Duties of licensee acting as agent in real estate transaction. A licensee who acts as an agent in a real estate transaction:

1. Shall disclose to each party to the real estate transaction as soon as is practicable:
 - (a) Any material and relevant facts, data or information which the licensee knows, or which by the exercise of reasonable care and diligence should have known, relating to the property which is the subject of the transaction.
 - (b) Each source from which the licensee will receive compensation as a result of the transaction.
 - (c) That the licensee is a principal to the transaction or has an interest in a principal to the transaction.
 - (d) Except as otherwise provided in [NRS 645.253](#), that the licensee is acting for more than one party to the transaction. If a licensee makes such a disclosure, he or she must obtain the written consent of each party to the transaction for whom the licensee is acting before he or she may continue to act in his or her capacity as an agent. The written consent must include:
 - (1) A description of the real estate transaction.
 - (2) A statement that the licensee is acting for two or more parties to the transaction who have adverse interests and that in acting for these parties, the licensee has a conflict of interest.
 - (3) A statement that the licensee will not disclose any confidential information for 1 year after the revocation or termination of any brokerage agreement entered into with a party to the transaction, unless he or she is required to do so by a court of competent jurisdiction or is given written permission to do so by that party.

- (4) A statement that a party is not required to consent to the licensee acting on behalf of the party.
 - (5) A statement that the party is giving consent without coercion and understands the terms of the consent given.
 - (e) Any changes in the licensee’s relationship to a party to the transaction.
 - 2. Shall exercise reasonable skill and care with respect to all parties to the real estate transaction.
 - 3. Shall provide the appropriate form prepared by the Division pursuant to [NRS 645.193](#) to:
 - (a) Each party for whom the licensee is acting as an agent in the real estate transaction; and
 - (b) Each unrepresented party to the real estate transaction, if any.
 - 4. Unless otherwise agreed upon in writing, owes no duty to:
 - (a) Independently verify the accuracy of a statement made by an inspector certified pursuant to [chapter 645D](#) of NRS or another appropriate licensed or certified expert.
 - (b) Conduct an independent inspection of the financial condition of a party to the real estate transaction.
 - (c) Conduct an investigation of the condition of the property which is the subject of the real estate transaction.
- (Added to NRS by 1995, 2072; A [2001, 2892](#); [2005, 649](#); [2007, 1788](#))

WHEN YOU ACT AS AN AGENT “EXCLUSIVE” (NRS 645.320)

NRS 645.254 Additional duties of licensee entering into brokerage agreement to represent client in real estate transaction. A licensee who has entered into a brokerage agreement to represent a client in a real estate transaction:

- 1. Shall exercise reasonable skill and care to carry out the terms of the brokerage agreement and to carry out his or her duties pursuant to the terms of the brokerage agreement;
- 2. Shall not disclose confidential information relating to a client for 1 year after the revocation or termination of the brokerage agreement, unless he or she is required to do so pursuant to an order of a court of competent jurisdiction or is given written permission to do so by the client;
- 3. Shall seek a sale, purchase, option, rental or lease of real property at the price and terms stated in the brokerage agreement or at a price acceptable to the client;
- 4. Shall present all offers made to or by the client as soon as is practicable, unless the client chooses to waive the duty of the licensee to present all offers and signs a waiver of the duty on a form prescribed by the Division;
- 5. Shall disclose to the client material facts of which the licensee has knowledge concerning the transaction;
- 6. Shall advise the client to obtain advice from an expert relating to matters which are beyond the expertise of the licensee; and
- 7. Shall account for all money and property the licensee receives in which the client may have an interest as soon as is practicable.

Notes: _____

Lets complete the following exercise;

SKILLS SETS ASSESSMENT – “Where am I now?”

MY CURRENT SKILL LEVEL

On a scale of 1-10 (10 being the best)

Prospecting Skills (Finding Qualified Buyers and Sellers)

- Do you have set times you prospect? _____
- Do you have a Referral stream of business _____
- Do you have a clearly defined target market _____

(Question – could this be PART of your defense that you used ‘Reasonable Skill’ in ‘Promoting’ your clients interest?

Listings – The Mechanics – Forms

- How knowledgeable are you at explaining the forms? _____
- CMA – Is yours in color? _____
- Do you have Charts/Graphs? _____

The Presentation – Getting them to say “Yes”

- Do you have a Step by Step process? _____
- What does BATNA stand for?
- How many books have you read, or how many courses have you taken in “Negotiating Skills”?

Preparing a Net Sheet – Estimating Buyer and Seller costs

- Could you fill one out right now? _____

Business Planing – Are you running your business like a business?

- Real Simple – Is it in writing? Does it have short, mid and long range targets?

- Does it have strategies? _____
- Do you carry it with you? _____
- When was the last time you reviewed and updated it? _____

On a scale of 1-10 (10 being the best)

C.R.M. – Customer Relationship Management!

- Do you KNOW how many (within 20) are in your Data Base
- Do you send them a DIRECT MAIL piece and an email every month?
- A Phone call every 90 days?
- Do you have a SYSTEM to add people to your list?

Buyers – Converting an inquiry into an appointment

- I understand how to qualify leads and understand following up with leads. _____
- I listen to clients' questions and objections. _____
- I know how to overcome clients' objections. _____

Buyer Broker Presentation

- Fair Trade? How comfortable are you giving a Buyer Broker Presentation so that they want to sign an **EXCLUSIVE** Buyer's Broker Agreement with you? _____

Product Knowledge

- How much time do you spend previewing or showing property each week?

The NEW HOME market (What % of the current market is this?)

- How knowledgeable are you about CHOICES? _____
- How comfortable are you with the Paperwork? _____
- How many BUILDERS have a CONCIERGE? _____

Technology/Internet – Your site and marketing – Social Media

- Do you ever check to see your site's position in the major search engines? _____
- Do you have email groups you send to? _____
- How knowledgeable are you regarding marketing on Face Book? _____
- Are you on Face Book? _____ How many "Friends" do you have?
- Do you have a Business/Fan Page? _____
- Do you have a blog on your web site? _____

Before we leave that last exercise, what is **MISSING** from the Skill Sets? In other words – if YOU were a Broker, hiring agents, what Skill Sets would YOU want to see in your agents?

Establishing Agency!

One of the core “**proofs**” the prosecuting attorney needs to make for the Jury is that you actually WERE the agent of his client and that you DID, IN FACT, **ACT** in the capacity of Agent for the other party. Let’s first look at –

NRS 645.005 “Brokerage agreement” defined. “Brokerage agreement” means an oral or written **contract** between a client and a broker in which the broker agrees to accept valuable consideration from the client or another person for assisting, soliciting or negotiating the sale, purchase, option, rental or lease of real property, or the sale, exchange, option or purchase of a business. The term does not include a property management agreement.

(Added to NRS by 1995, 2072; A [2003, 932](#); [2005, 648](#))

Whether oral or written – in order for there to be a CONTRACT – certain criteria have to be met;

- 1) _____
 - 2) _____
 - 3) _____
 - 4) _____
 - 5) _____
- _____

It is **true** that **CERTAIN** agreements carry **ADDITIONAL LEGAL** requirements but the above – when they exist **DO** create a CONTRACT – even if it is ORAL!

Agency OPTIONS Legally Permitted in NEVADA!

We are going to “Pair Up” – pick someone smart! Write down the *Legally Recognized* allowable ‘Agency Options’ in Nevada;

How comfortable are you that you are going to ‘*get off*’ on the charges against you with what you came up with?

Here are the answers:

“Perception bears equal gravity with fact under the law:

Did the *other party* **THINK** you were **THEIR** agent, and what caused them to think that?

Did you, at ANY point – give them

_____, _____, _____?

Did you, at ANY point

_____ FOR them?

So, bottom line – your testimony for the Jury is that you work
_____ a CLIENT, and _____ a CUSTOMER!

Agency Negotiations and Relationships – Customer or Client?

Customer = Specific Task Relationship - Functionary

Client = Task and *Trust* Relationship - Fiduciary

Customer

Low responsibility
Records information
Responds to needs
Processes data
Delivers information
Other directed
Employee
Does the task
Tells and Sells
Stays out of decision making
Follows rules & Procedures
Doesn't Care

Client

High responsibility
Perceives information
Anticipates needs
Interprets data
Advises and consults
Self directed
Partner
Owns the result
Educates and guides
Involved in decision making
Uses judgment and intuition
Cares

Exercise; What CAN you say?

Scene 1) You have a listing – a Buyer comes in to your Open House, accompanied by their agent – the Buyer approaches you and asks – has anyone ever died in this property (and you do know for a fact that the Sellers parent did pass in the home)? How do you respond?

Scene 2) You get a ‘Sign Call’ on one of your listings – the caller, after asking the price says – “That seems much higher than the other properties I have called on today, where did the Seller come up with that number?”

Scene 3) You write an offer on a property that has been on the market for 5 weeks. When you arrive to present your offer to the listing agent, they tell you that there are 4 other offers pending and that you should go get your “Best and Final” offer – weren’t they obligated to tell you in the beginning that there were other offers your client would be competing with?

Bonus question – Is the fact that there **ARE** other offers pending a **“Material Fact”**? How would you determine (for the Jury) what constitutes a Material Fact?

_____’

Or

Bonus Content...

All hurt comes from _____

*Why should I use you? **More, Better, Different?***

Your friend asks you to watch their two boys so she can go for an interview.

Right after she leaves - the boys start fighting over a toy. How do you resolve the situation?

Administrator

Entrepreneur

Producer

Integrator

***Does knowing this help you deal more effectively with Clients, and, other agents?**

A PREDICTABLE need for 'give and take'.

An inherent need for "Fairness" -

Switch Cost? - Satisficing?

Sincerely, Thank You for coming!