



Ethics and Negotiating

Did you cross the line?

Course Objectives: As a result of this session, participant will be able to deal with **all parties** to the real estate transaction in a way that is both ethical and lawful, but also in a way the demonstrates a core competency in their negotiating skill.

Through the use of questions – with an eye to answers that raise a Red Flag, the practitioner will be able to more clearly communicate with a client or customer. The more clear the communication – the less likely a member of the public will feel the agent acted unethically.

On a scale from 1 to 10 – where would you rate the Ethics of your fellow real estate agents?

WRITE IN YOUR ANSWER _____

What does the Public think of real estate agent's ethical behavior?

Do the numbers match? Why do you think that is the case?

Exercise: You will pair up. Whoever is born closest to today's date will go first.

Tell your partner three things about yourself – two of which that are true and one that is not. Make the lie believable.

See if your partner can tell which of the statements is the lie. -

Reverse roles and repeat.

What did you learn? _____

How can you tell if a customer or client is telling a lie? Further, how responsible are you for the misrepresentations of a client? How responsible are you for a misrepresentation of cooperating agent?

Does the public **think** you are responsible?

NRS and NAC standards – what can we learn by looking at them? Several statutes identify and clarify the **legal** responsibilities of an agent. Let's examine some of them.

See attached addenda for statutes

NRS 645.251 Licensee not required to comply with certain principles of common law.

This one is important because it *limits* (by Statute!) the *scope* and the *liability* of an agent for their actions.

NRS 645.252 Duties of licensee acting as agent in real estate transaction.

Probably the MOST IMPORTANT provision spelling out what the licensee **SHALL** do when acting as an agent. You should be VERY familiar with this one as it is MUCH of what is on the Duties Owed form!

Arguably – as important as what the agent **SHALL** do – (paragraph 4) also delineates what we are NOT responsible to do or know, to wit:

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](#))

Be very clear – the duties under 645.252 are owed to **all parties** – even the other agents client! This would be “Customer” level care – and it is a LEGAL REQUIREMENT!

NRS 645.253 Licensees affiliated with same brokerage: **Additional duties when assigned** to separate parties to real estate transaction.

NRS 645.254 Additional duties of licensee entering into brokerage agreement to represent **client** in real estate transaction.

Based on the description – a licensee can see that this provision moves you from a “Customer” level of care to a “Client” level of care. There are SEVEN ***“Shall’s”*** – some of which are also in 645.252 but this one clearly *raises the bar*.

NRS 645.255 Waiver of duties of licensee prohibited.

Pop Quiz – do you know ***WHICH*** duty is the ***ONLY*** one that can be legally waived?

NRS 645.257 Action to recover damages suffered as result of licensee's failure to perform certain duties; standard of care.

Sometimes called, "The Lawsuit Provision" – Under 645.257 a couple of things should be noted:

1. A person who has suffered damages as the proximate result of a licensee's failure to perform any duties required by [NRS 645.252](#), [645.253](#) or [645.254](#) or the regulations adopted to carry out those sections may bring an action against the licensee for the recovery of the person's actual damages.

Note – this says ***actual* damages** – Courts can also impose ***punitive* damages** – punitive damages ARE NOT covered under E&O insurance.

2. In such an action, any knowledge of the client of the licensee of material facts, data or information relating to the real property which is the subject of the real estate transaction may not be imputed to the licensee.

This is important as it removes the ***imputed knowledge*** issue – by actual statute!

NRS 645.259 Liability of licensee for misrepresentation made by client; failure of seller to make required disclosures is public record. A licensee may not be held liable for:

1. A misrepresentation made by his or her client unless the licensee:

(a) Knew the client made the misrepresentation; and

(b) Failed to inform the person to whom the client made the misrepresentation that the statement was false.

2. Except as otherwise provided in this subsection, the failure of the seller to make the disclosures required by [NRS 113.130](#) and [113.135](#) if the information that would have been disclosed pursuant to [NRS 113.130](#) and [113.135](#) is a public record which is readily available to the client. Notwithstanding the provisions of this subsection, a licensee is not relieved of the duties imposed by paragraph (a) of subsection 1 of [NRS 645.252](#).

So, what does this actually mean?

Let's look at two other NRS 645 provisions.

NRS 645.0045 "Agency" defined.

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

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

(Added to NRS by [2007, 1787](#))

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](#))

These two are both important in identifying your role in an interaction with the public or with the parties involved in a transaction.

What do you see as the key points in:

645.0045? _____

645.005? _____

Finally, **NRS 645.630 – .645** spell out the “Grounds for disciplinary action” and can be consulted to help determine – Did you cross the line?

NRS 40.770 – Stigmatized Property

Let’s consider a property where there has been a death. NOT a violent death – someone was taking care of an aged parent and that parent passed. Their heart just gave out – no drugs, no suicide – someone simply died.

How do you deal with a Seller when they ask you NOT to disclose this fact?

As the Listing Agent – what can you say to a Buyer or a Buyer’s Agent?

If you are a Buyer’s Agent, and you ‘heard a rumor’ (but do NOT know if it is a fact) that someone died in one of the homes you are going to show this prospect – what do you say? Does how much you disclose **change** if the prospect becomes a **client**?

Is there a way you can CLEARLY communicate to a prospect – at what point you need to “Mirandize” them? If you have an opinion – must you offer it?

Competing Interests or Adverse Interests?

You are *really good* at selling homes in the \$400,000 to \$600,000 price range. You know the inventory, do lots of Open Houses, advertise many of the properties (of course with the Listing Broker's **express** permission), and actually have 9 properties **listed** in this price range that generate significant numbers of sign calls and inquiries.

You are currently working with **8** prospective buyers in this price range – 5 of whom have signed **exclusive representation** agreements with you. How do you reconcile your actions when they ask you about your showing the same houses to 3 (or more) different prospects?

Not a Party

The **lender** *that YOU recommended* has made a false statement to the Buyer – what do you do?

The **lender** made a false statement to the Seller's Agent – what do you do?

The Home Inspector *missed* something that YOU KNOW is inoperable – as the **listing agent** what do you do?

Two types of **FRAUD** - _____ & _____.

Meeting of the Minds ?

Basic **elements** of a Contract!

_____ agreement or intent.

_____ parties

_____ - can be a promise FOR a promise!

An agreement (that is *clear* and *complete*)– also called a "Meeting of the minds" – and arguably,

Remedy for Breach.

- Your neighbor

is having their house painted – the painter is doing a great job. You have THE SAME floor plan – and actually, the same elevation...

You ask the painter how much he is charging – he says \$1,200.

You ask if he will do your house for that price – and he says he'll be done here tomorrow, how does the day after sound?

You say "great" *If you CHANGE YOUR MIND – can the painter SUE you?*

Was there a CONTRACT? Did it *have to be* in writing to be a contract?

Puffing or Lying ?

What does "**Completely Remodeled**" mean?

What does "**New Roof**" mean?

But the **flyer** said...(and I happen to have a copy right here!)

Red Flag statements and questions

We are new to the area – and we will only be in town one day – and we **have** to find a place - can you pick a good area for us?

Which Buyer is this contract from?

Is this a safe neighborhood? *How reliable are Metro crime statistics?*

Should we have a home inspection?

Your client asks you – "Do we **need** the Home Warranty – since the seller won't provide it?" ***Caveat AGENT!***

Who IS my client ?

We work FOR a client and WITH a customer

Principle – Communication is the responsibility of THE SENDER!

We've spent considerable time on differentiating between Prospect, Customer and Client – this isn't about that – it is about – **HOW** do they want to be served?

Do they **text**? How often will they check their e-mail?

Do they **ever** listen to voice mail?

Is it their nature to make quick decisions once they have the facts – or do they still like to deliberate (check their chart) and think about their options before signing anything?

How can you be **SURE** they understand what they have signed – was there *really* a 'Meeting of the minds'?

Notes on Generational differences and PERSONALITY Styles!

The other Party?

Just who *is* a party?

If you represent **Multiple Parties** in the transaction – which **duties** are **automatically impaired**?

How will a Buyer feel when they find out you've written two other offers on the house they are trying to buy from you?

When the 'Other Party' asks you a question – should you answer it –

When you represent the Seller – and the Buyer is the other party..."What is the lowest price the seller will consider?"

When you represent the Buyer – and the Seller asks you..."Will they come up?"

When the co-broke asks you about your client? "Why are they moving?"

M. U. F. PnP.

The 'But' Game

This is an exercise determined to test your powers of persuasion – your instructor will give you clear direction, but to start;

Get into groups of **THREE**. Determine who has been licensed the longest and that person stand – and then **be quiet** so the instructor can tell you are ready.

The standing licensee will be **the observer** – instructor will give you instructions away from the other two parties in your group.

The other two will be assigned ***opposing*** positions on a sensitive issue.

Their task is to **try their best** to convince the other agent to *switch positions*.

Specific strategies – *Service or Sales?*

You get a **prospect**, a sign call on your listing – is your conversation with the prospect *service* or *sales*?

You are making a **Marketing Presentation** – to a prospective seller. Is that *service* or *sales*?

When does it **change**? Answer; *when THEY think it changes! – If you provide ADVICE, GUIDANCE OR COUNSEL you ARE their AGENT!*

Bringing it all together...

Practices

- 1) Get a **partner** – it doesn't have to be someone you PAY – but it should be someone that will work **together** with you on your **critical conversations** – listening and coaching – and you return the favor.
- 2) **Study** – the resource list has books (most of which are recorded so Realtors® can read them too...) – Read one with your **partner** – then do your conversations **again** using whatever new knowledge you have. Move from ***knowing to doing*** – the definition of Practice!

Pitfalls!

#1 – Speaking without thinking – FIRST! It is true – “Something *said* can never be *unsaid*.” **Think** about – WHO you are talking to and what **relationship** exists **at this point** – and be aware a couple of statements on your part can change the perception *Instructor note; if the CLIENT’S PERCEPTION changes – you DO HAVE a change in the relationship because perception bears equal gravity as fact under the law!* – did you **say** anything that would **Cross the line?**

Thank you for being here!

Addenda - some of the statutes;

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](#))

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.

(Added to NRS by 1995, 2073; A [2007, 1788](#))

NRS 645.257 Action to recover damages suffered as result of licensee's failure to perform certain duties; standard of care.

1. A person who has suffered damages as the proximate result of a licensee's failure to perform any duties required by [NRS 645.252](#), [645.253](#) or [645.254](#) or the regulations adopted to carry out those sections may bring an action against the licensee for the recovery of the person's actual damages.
2. In such an action, any knowledge of the client of the licensee of material facts, data or information relating to the real property which is the subject of the real estate transaction may not be imputed to the licensee.
3. In an action brought by a person against a licensee pursuant to subsection 1, the standard of care owed by a licensee is the degree of care that a reasonably prudent real estate licensee would exercise and is measured by the degree of knowledge required to be obtained by a real estate licensee pursuant to [NRS 645.343](#) and [645.345](#).

(Added to NRS by 1995, 2073; A [2001, 2893](#))

NRS 645.259 Liability of licensee for misrepresentation made by client; failure of seller to make required disclosures is public record. A licensee may not be held liable for:

1. A misrepresentation made by his or her client unless the licensee:
 - (a) Knew the client made the misrepresentation; and
 - (b) Failed to inform the person to whom the client made the misrepresentation that the statement was false.

2. Except as otherwise provided in this subsection, the failure of the seller to make the disclosures required by [NRS 113.130](#) and [113.135](#) if the information that would have been disclosed pursuant to [NRS 113.130](#) and [113.135](#) is a public record which is readily available to the client. Notwithstanding the provisions of this subsection, a licensee is not relieved of the duties imposed by paragraph (a) of subsection 1 of [NRS 645.252](#).

NRS 40.770 Limitation on liability of seller, seller's agent and buyer's agent for failure to disclose certain facts concerning property.

1. Except as otherwise provided in subsection 6, in any sale, lease or rental of real property, the fact that the property is or has been:

- (a) The site of a homicide, suicide or death by any other cause, except a death that results from a condition of the property;
- (b) The site of any crime punishable as a felony other than a crime that involves the manufacturing of any material, compound, mixture or preparation which contains any quantity of methamphetamine; or
- (c) Occupied by a person exposed to the human immunodeficiency virus or suffering from acquired immune deficiency syndrome or any other disease that is not known to be transmitted through occupancy of the property,

↪ is not material to the transaction.

2. In any sale, lease or rental of real property, the fact that a sex offender, as defined in [NRS 179D.095](#), resides or is expected to reside in the community is not material to the transaction, and the seller, lessor or landlord or any agent of the seller, lessor or landlord does not have a duty to disclose such a fact to a buyer, lessee or tenant or any agent of a buyer, lessee or tenant.

3. In any sale, lease or rental of real property, the fact that a facility for transitional living for released offenders that is licensed pursuant to [chapter 449](#) of NRS is located near the property being sold, leased or rented is not material to the transaction.

4. A seller, lessor or landlord or any agent of the seller, lessor or landlord is not liable to the buyer, lessee or tenant in any action at law or in equity because of the failure to disclose any fact described in subsection 1, 2 or 3 that is not material to the transaction or of which the seller, lessor or landlord or agent of the seller, lessor or landlord had no actual knowledge.

5. Except as otherwise provided in an agreement between a buyer, lessee or tenant and that person's agent, an agent of the buyer, lessee or tenant is not liable to the buyer, lessee or tenant in any action at law or in equity because of the failure to disclose any fact described in subsection 1, 2 or 3 that is not material to the transaction or of which the agent of the buyer, lessee or tenant had no actual knowledge.

6. For purposes of this section, the fact that the property is or has been the site of a crime that involves the manufacturing of any material, compound, mixture or preparation which contains any quantity of methamphetamine is not material to the transaction if:

- (a) All materials and substances involving methamphetamine have been removed from or remediated on the property by an entity certified or licensed to do so; or
- (b) The property has been deemed safe for habitation by the board of health.

7. As used in this section:

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

(b) "Facility for transitional living for released offenders" has the meaning ascribed to it in [NRS 449.0055](#).