



“RISK REDUCTION FOR THE NEVADA LICENSEE”



**3 Hours of Risk Reduction
Continuing Education**

Approved by the Division on Behalf of the Commission

Participant Outline

JOSEPH R. FITZPATRICK

MEET DAVID “COACH” CRETE:

David “Coach” Crete has over 25 years of experience in various aspects of real estate sales, including residential and commercial real estate development, commercial and residential construction, land use/entitlement, and land acquisition. His clientele includes general residential consumers as well as commercial owners, tenants and developers.



Dave is the founder and managing broker of Aspire Realty Group. Calling himself a “Real Estate Economics Geek,” Coach conducts regular presentations on the state of the real estate market in Southern Nevada, including analyzing market conditions and trends so as to provide real estate market forecast for other businesses as well as for training agents on the future of the real estate economy. He is *the* perfect instructor for this course.

You can reach Coach at (702) 683-3815 or DCreate@aspirelasvegas.com.

HOW IT WORKS**The student participant must:**

- view all 3 hours of the video presentation (links are located on the website under the Internet course title).
- direct attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction and distracting.
- complete the “Online Video Worksheet” included in the course outline as you view the presentation, filling in the 10 Checkpoints as they are displayed throughout the videos.
- take the 10-question quiz found in the outline.
- complete the course evaluation upon the conclusion of the course.
- submit the (1) Quiz answers, (2) Online View Worksheet, and the (3) Course Evaluation using the links provided directly above the 3 videos.
- obtain score of 80% or more on the quiz and a score of 80% must be obtained on the Online Video Worksheet. A student, who tries to skip through the course and not devote the required 3 hours, will not pass. The answers for the worksheet are sprinkled throughout the presentation.
- With a passing score on the quiz and worksheet, along with the submitted evaluation, a certificate will be emailed to you promptly.

ONLINE VIDEO WORKSHEET

The Nevada Real Estate Division, on behalf of the Commission, holds CE course sponsors such as Fitzpatrick Real Estate School accountable for the following regarding online/distance learning courses:

- verify that students watch the complete three-hour presentation and spend the three hours required to earn a three-hour certificate;
- verify that students did not start the presentation and leave the presentation to run on its own without the student viewing it;
- evaluate the student mastery of the material;
- provide the student with support services and interaction;
- having a method to assess student performance during instruction.

To accomplish these goals, we have developed this “Online Video Worksheet” to accompany the videos we use to teach CE courses online. Throughout the videos, have embedded “checkpoints” that will prompt you to fill in the answers below.

In order to receive credit for the online course, you must answer the checkpoints correctly with a score of 80% and submit using the Online Video Worksheet link located above the three videos.

CHECKPOINT #1: _____

CHECKPOINT #2: _____

CHECKPOINT #3: _____

CHECKPOINT #4: _____

CHECKPOINT #5: _____

CHECKPOINT #6: _____

CHECKPOINT #7: _____

CHECKPOINT #8: _____

CHECKPOINT #9: _____

CHECKPOINT #10: _____

Student Name: _____

Date: _____

Course Title: Risk Reduction for the Nevada Licensee

WHAT IS RISK MANAGEMENT/REDUCTION?

As it pertains to a real estate practice, Risk Management, or Risk Reduction, is an ongoing process of identifying future potential threats to the licensee's earnings as a result of litigation, monetary damages, the filing of a formal complaint, or loss of license. Although the subject is mostly of concern to the broker, the concepts of risk management can be extended to all licensees to protect their individual practices.

COMMON AREAS OF RISK:

In the past, common areas where real estate practitioners have found themselves in legal jeopardy include:

- Violations of Agency Duties
- Failure to Disclose
- Misrepresentation and Fraud
- Engaging in the Unauthorized Practice of Law
- Violations of Federal Laws pertaining to Real Estate
- Violations of State Real Estate Licensing Laws/Regulations

Violations of Agency Duties

Most of Nevada's agency law lies within NRS 645.252-257. Below is a list of the most common violations of agency that often lead to disciplinary actions:

- did not disclose to all parties as soon as practicable
- did not disclose material facts known or that should have been known
- did not disclose each source of the licensee's compensation
- did not disclose license status when acting as a principal in the transaction
- did not obtain informed consent when a dual agency: Consent to Act
- did not exercise reasonable skill and care
- did not maintain obligations of confidentiality
- did not present all offers as soon as practicable
- did not advise the client to obtain advice from an expert when matters are beyond the licensee's expertise
- did not account for all money and property

These issues are addressed in NRS 645:

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) [if acting as an agent for both parties, must obtain informed, written consent using the Consent to Act form]
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: [obtain signatures and dates on the Duties Owed form]

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.

The Commission may require a licensee... to pay an administrative fine of not more than \$10,000 for each violation he or she commits or suspend, revoke, deny the renewal of or place conditions upon his or her license... if the licensee... is found guilty [of 645 provisions].

Violations of agency are one of the most common areas where licensees have been sued and/or disciplined and is therefore the reason Nevada requires so much education in agency-related topics. The Nevada pre-licensing course requires approximately 12 hours of agency-related topics which is being increased another 15 hours. Post-licensing requirements include 2 hours of agency. Continuing education requirements in Nevada include 3 hours of agency. Why so much agency education? We keep breaking the laws!

With risk reduction in mind, salespeople should be well-schooled in agency and be sure to keep agency-related duties front of mind when working with clients. Brokers should be sure to include agency matters in training offered as well as sales meetings. Test your knowledge:

1. A duty owed to the client, that is not owed to the customer is:
 - a. to not deal in a deceitful, fraudulent, or dishonest manner.
 - b. to exercise reasonable skill and care.
 - c. maintain confidential information for at least one year.
 - d. disclose any known material facts.
2. Both the Code of Ethics and NRS 645 require the salesperson or broker-salesperson accepting an earnest money deposit to turn those funds over to the broker “promptly.” NAC clarifies “promptly” as meaning:
 - a. the same day as received.
 - b. within 24 hours.
 - c. by the end of the next business day.
 - d. within 1 business day after receiving a fully executed contract.

3. REALTORS® are required to complete mandatory ethics training approved by NAR® at least every:
 - a. one year.
 - b. three years.
 - c. five years.
 - d. There is no such requirement.
4. An agent’s fiduciary duties include all of the following EXCEPT:
 - a. accountability.
 - b. confidentiality.
 - c. consideration.
 - d. loyalty.
5. Which type of agency is often used to shield the broker from the liabilities associated with a dual agency relationship?
 - a. single agency
 - b. multiple representation
 - c. transactional brokerage
 - d. designated agency

Failure to Disclose (Common Areas of Risk)

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.

We have witnessed increasing litigation regarding a licensee’s obligation to disclose material and relevant facts. Remember, “A licensee who acts as an agent in a real estate transaction shall disclose to each party to the real estate transaction as soon as is practicable 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.”

Note the wording “or which by the exercise of reasonable care and diligence should have known.” Although Nevada licensees are not expected to investigate the property with the degree of diligence and expertise of that of a home inspector or builder, we are required to notice visible signs of potential and existing problems and fulfill a duty of further inquiry. When representing the seller in a transaction, we must disclose to the buyer, or the buyer’s agent, material facts even if such a disclosure would work against the seller’s best interests. When representing a buyer, we cannot hide these matters so as to not blow the deal. We cannot remain silent. Failure to disclose (silence) is an act for which licensees may be disciplined by the Commission.

Disclosing material facts is specifically mentioned in several sections of NRS 645, NAC 645, and in several transaction documents. This is an indication of the seriousness of the matter.

Exactly what is a “material fact?” A material fact is usually a defect or circumstance that negatively affects the value or desirability of the property. A material fact might cause the buyer to pay less or choose not to purchase at all. A leaking roof that will cost \$7,000 to replace would certainly be a material fact. This is considered a patent defect as it is detectible. A latent defect, however, is not readily seen or spotted, and the licensee is usually not held responsible for such defects unless otherwise known. Even though it may hurt the seller client financially, the material fact must be disclosed. Also, the seller is required to disclose all known defects in the property by means of a property disclosure statement (SRPD). There are substantial financial

consequences the seller could face by not disclosing any known problems or defects prior to the close of escrow.

Check the items that would be considered a material fact:

- ☐ basement floods
- ☐ heating system does not work
- ☐ murder took place in the home
- ☐ toxic mold
- ☐ neighbor's fence extends over subject property line
- ☐ clothes dryer is gas
- ☐ sex offender lives in the neighborhood
- ☐ broken window pane

Misrepresentation and Fraud (Common Areas of Risk)

Misrepresentation is considered to be the innocent misstatement of a fact without knowing any better, perhaps even believing the information being communicated is accurate. Often called *negligent misrepresentation*, the licensee did not mean to deceive. As an example, the seller discloses on the Seller's Real Property Disclosure Statement that there are no problems with the roof (when in fact the roof leaks), which the licensee then communicates to the buyer in saying, "the roof is in good shape", is negligent misrepresentation. The fact the licensee was just relaying information provided by the seller does not excuse the licensee's liability in making the misrepresentation and it still a misstatement. The fact that the licensee *thought* the information was correct will not be an adequate defense either. Licensees must put forth a reasonable effort to verify the information being conveyed.

Do not be fooled by the term "innocent" misrepresentation. A real estate lawsuit for innocent misrepresentation, as well as negligent misrepresentation, may still result. An example of negligent or innocent misrepresentation might include quoting the square footage inaccurately even when the information was populated by the MLS.

Fraud involves the deliberate communication of false information or the intentional concealment of the same. *Active fraud* is a situation where the licensee affirmatively said the incorrect thing, while *passive fraud* is where the licensee remained silent such as the failure to disclose a material fact. Regardless of whether the fraud was active or passive, the licensee may still be disciplined with an administrative fine of up to \$10,000 for each violation and/or suspend, revoke, deny the renewal of, or place conditions upon the license if found guilty.

The primary distinction between misrepresentation and fraud is *intent*. Both acts equate to the communication by the licensee to a party in the transaction of inaccurate information. Both misrepresentation and fraud are subject to the penalties listed above.

With a risk management hat on, misrepresentation claims might be avoided by adopting the following practices:

- double-check key information, such as square footage
- verify any information provided by the seller
- document all disclosures, and keep records of confirming and sharing them by email
- make sure marketing materials are factual and don't exaggerate features or hide flaws

E&O insurance might be applicable to a misrepresentation claim, but not litigation based on fraud. Keep in mind, the term is “errors” and “omissions.” Misrepresentation might be due to an error or omission, but certainly fraud would not.

Unauthorized Practice of Law (Common Areas of Risk)

In each real estate transaction, it is normal for the client to ask the licensee's advice on certain matters. However, when advice becomes legal advice, many states consider this to be the unauthorized practice of law which can lead to disciplinary actions.

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... (6) Shall advise the client to obtain advice from an expert relating to matters which are beyond the expertise of the licensee...

If asked a question or opinion on a subject that is beyond the realm of selling real estate, licensees have the duty to recommend the client seek competent legal advice. There have been numerous cases where complaints were filed from such advice. Remember, you are licensed to practice real estate – nothing else.

Violation of Federal Laws (Common Areas of Risk)

Real estate licensees must adhere to the following federal laws, among others:

- Civil Rights Act of 1866
- Fair Housing Act of 1968
- Americans with Disabilities Act
- Consumer Credit Protection Act, Truth-In-Lending Act, Regulation “Z”
- Equal Credit Opportunity Act (ECOA)
- Real Estate Settlement Procedures Act (RESPA)

Test your knowledge by matching the federal law with the correct intent of the law:

____ Civil Rights Act	A. to prohibit discrimination in lending based upon certain classes
____ Fair Housing Act	B. to add additional protected classes to existing discrimination law
____ Americans with Disabilities Act	C. requires the disclosure of the APR
____ Consumer Credit Protection Act	D. to prevent discrimination on the basis of race or color in housing
____ Equal Credit Opportunity Act	E. to inform the client of closing costs and prevent kickbacks
____ Real Estate Settlement Procedures Act	F. prevents discrimination against vision impaired, confinement to wheelchair, or hearing impaired

The Civil Rights Act of 1866 provided that all persons born in the United States are declared to be citizens, regardless of race or color, and shall have the right to enter into contracts, to sue, inherit, acquire and dispose of property, and shall equally benefit from the law as do white citizens. Classes protected by this law were race and color.

The Fair Housing Act of 1968 protected four classes or classifications of Americans. Race and color from 1866 and in 1968 covered religion and national origin. Gender was added in 1974 and family status and disability were added in 1988.

The Americans with Disabilities Act primarily deals with physical workplace accommodations for disabled persons. Real estate agents are advised to have an overall understanding of the law and its requirements especially if dealing with landlords and tenants.

Please see [Influx of Business Websites Prompt Lawsuits for ADA Violations \(natlawreview.com\)](http://natlawreview.com)

The Consumer Credit Protection Act, Truth-In-Lending Act, and Regulation “Z” combined efforts to prevent the potential for the abuse of a borrower by a lender, together with actual abuses which were occurring in the market. The principal purpose of these laws is to provide the consumer with complete and understandable credit information so the consumer can make informed credit decisions. The disclosures and components required by these laws are:

- Finance charges
- Annual Percentage Rate
- Advertising Restrictions
- Three (3) business day right of rescission (on some loans)

The Equal Credit Opportunity Act provides equal access to financing needed and prohibits discrimination in lending based upon certain protected classes.

The Real Estate Settlement Procedures Act's primary purpose is to inform the parties to a covered real estate transaction what the closing costs and charges are, and which costs they pay for. The primary motive behind RESPA is to expose any *kickbacks* which may be occurring.

Violations of State Real Estate Licensing Laws and Regulations (Common Areas of Risk)

The Commission may sanction the guilty licensee as well as the supervising broker with an administrative fine of up to \$10,000 for each violation and/or suspend, revoke, deny the renewal of, or place conditions upon the license if found guilty. NRS 645 and NAC 645 are the most pertinent state laws and regulations pertaining to real estate.

- **NRS 645.630 Authorized disciplinary action; grounds for disciplinary action; orders imposing discipline deemed public records.**
 1. The Commission may require a licensee, property manager or owner-developer to pay an administrative fine of not more than \$10,000 for each violation he or she commits or suspend, revoke, deny the renewal of or place conditions upon his or her license... is found guilty of:
 - (a)) Making any material misrepresentation.
 - (b)) Making any false promises of a character likely to influence, persuade or induce.
 - (c) Accepting a commission or valuable consideration as a real estate broker-salesperson or salesperson for the performance of any of the acts specified in this chapter or chapter 119 or 119A of NRS from any person except the licensed real estate broker with whom he or she is associated or the owner-developer by whom he or she is employed.
 - (d) Representing or attempting to represent a real estate broker other than the broker with whom he or she is associated, without the express knowledge and consent of the broker with whom he or she is associated.
 - (e) Failing to maintain, for review and audit by the Division, each brokerage agreement and property management agreement governed by the provisions of this chapter and entered into by the licensee.
 - (f) Failing, within a reasonable time, to account for or to remit any money which comes into his or her possession and which belongs to others.
 - (g) If he or she is required to maintain a trust account:
 - (1) Failing to balance the trust account at least monthly; and
 - (2) Failing to submit to the Division an annual accounting of the trust account as required in NRS 645.310.
 - (h) Commingling the money or other property of his or her clients with his or her own or converting the money of others to his or her own use.
 - (i)) In the case of a broker-salesperson or salesperson, failing to place in the custody of his or her licensed broker or owner-developer, as soon as possible, any deposit...
 - (j) Accepting other than cash as earnest money unless that fact is communicated to the owner before his or her acceptance of the offer to purchase and that fact is shown in the receipt for the earnest money.
 - (k) Upon acceptance of an agreement, in the case of a broker, failing to deposit any check or cash received as earnest money before the end of the next banking day unless otherwise provided in the purchase agreement.
 - (l)) Inducing any party to a brokerage agreement, property management agreement, agreement of sale or lease to break it in order to substitute a new brokerage agreement, property management agreement, agreement of sale or lease with the same or another party if the inducement to make the substitution is offered to secure personal gain to the licensee or owner-developer.

- **NRS 645.633 Additional grounds for disciplinary action: Improper trade practices; violations of certain orders, agreements, laws and regulations; criminal offenses; other unprofessional and improper conduct; reciprocal discipline; violations relating to property management; log of complaints; reports.**
 1. The Commission may take action pursuant to NRS 645.630 against any person subject to that section who is guilty of any of the following acts:
 - (a) Willfully using any trade name, service mark or insignia of membership in any real estate organization of which the licensee is not a member, without the legal right to do so.
 - (b) Violating any order of the Commission, any agreement with the Division, any of the provisions of this chapter...
 - (c) Paying a commission, compensation or a finder's fee to any person for performing the services of a broker, broker-salesperson or salesperson who has not secured a license...
 - (d)) A conviction of, or the entry of a plea of guilty, guilty but mentally ill or nolo contendere to:
 - (1)) A felony relating to the practice of the licensee, property manager or owner-developer; or
 - (2) Any crime involving fraud, deceit, misrepresentation or moral turpitude.
 - (e)) Guaranteeing, or having authorized or permitted any person to guarantee, future profits which may result from the resale of real property.
 - (f) Failure to include a fixed date of expiration in any written brokerage agreement or failure to leave a copy of such a brokerage agreement or any property management agreement with the client.
 - (g) Accepting, giving or charging any undisclosed commission, rebate or direct profit on expenditures made for a client.
 - (h) Gross negligence or incompetence ...
 - (i) Any other conduct which constitutes deceitful, fraudulent or dishonest dealing.
 - (j) Any conduct which took place before the person became licensed which was in fact unknown to the Division and which would have been grounds for denial of a license had the Division been aware of the conduct.
 - (k) Knowingly permitting any person whose license has been revoked or suspended to act as a real estate broker, broker-salesperson or salesperson, with or on behalf of the licensee.
 - (l) Recording or causing to be recorded a claim pursuant to the provisions of NRS 645.8701 to 645.8811, inclusive, that is determined by a district court to be frivolous and made without reasonable cause pursuant to NRS 645.8791.
- **NRS 645.635 Additional grounds for disciplinary action: Unprofessional and improper conduct relating to real estate transactions. The Commission may take action pursuant to NRS 645.630 against any person subject to that section who is guilty of:**
 1. Offering real estate for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent.
 2. Negotiating a sale, exchange or lease of real estate, or communicating after such negotiations but before closing, directly with a client if the person knows that the client has a brokerage agreement in force ...

3. Failure to deliver within a reasonable time a completed copy of any purchase agreement or offer to buy or sell real estate to the purchaser or to the seller, except as otherwise provided in subsection 4 of NRS 645.254.
4. Purposely omitted (closing statement)
5. Representing to any lender, guaranteeing agency or any other interested party, verbally or through the preparation of false documents, an amount in excess of the actual sale price of the real estate or terms differing from those actually agreed upon.
6. Failure to produce any document, book or record in his or her possession or under his or her control, concerning any real estate transaction under investigation by the Division.
7. Failure to reduce a bona fide offer to writing where a proposed purchaser requests that it be submitted in writing, except as otherwise provided in subsection 4 of NRS 645.254.
8. Failure to submit all written bona fide offers to a seller when the offers are received before the seller accepts an offer in writing and until the broker has knowledge of that acceptance...
9. Refusing because of race, color, national origin, sex or ethnic group to show, sell or rent any real estate for sale or rent to qualified purchasers or renters.
10. Knowingly submitting any false or fraudulent appraisal to any financial institution or other interested person.

RECOMMENDATIONS FOR A RISK REDUCTION PLAN

Broker-owners – even salespeople – should develop a plan to address risk management and continue to implement such a plan. Components of a sound risk management plan might include:

1. Documentation
2. Policies and procedures
3. Education via training classes and sales meetings
4. Errors and omissions insurance
5. Transaction management

1. Documentation:

By the time an aggrieved consumer files a complaint with the Division, the Division investigates the matter, a hearing is held or possibly the case goes to court, many months may have passed and the licensee's memory and recollection of the facts could easily be foggy. Having excellent notes, copies of all paperwork and correspondence and emails, a phone log, and other documentation as applicable will prove to be life-saving.

In Nevada, the following executed documents should be included in every broker's transaction file at a minimum:

- Addendum for Residential Purchase Agreement (if applicable; *after* the RPA)
- CIC Disclosure: Before You Purchase Property in a CIC Community (if applicable)
- Buyer Brokerage Agreement
- Consent to Act (if applicable; when representing both parties)
- Counter Offer (if applicable; during the RPA negotiation process)
- Disclosure of Information on Lead-based Paint (if house was built prior to 1978)
- Duties Owed by a Nevada Real Estate Licensee
- Estimated Costs/Net Proceeds
- Lease Agreement
- Listing Agreement/ Property Management Agreement
- For Your Protection Get a Home Inspection (especially for FHA)

- Request for Repairs
- Residential Disclosure Guide
- Residential/Vacant Land Purchase Agreement
- Seller's Real Property Disclosure Form/Vacant Land Disclosure
- Tenant Application
- Communication Log (not required, but important)

2. Policies and Procedures Manual (Recommendations for a Risk Reduction Plan)

Not only does NAC 645.600 specifically require real estate firms to have company policies and procedures manuals in place, it just makes sense to utilize them within their brokerages. A firm will operate much more smoothly when the rules are known and in writing. Similar to any other successful business, a real estate company must have *policies* to maintain order and a professional working environment. *Procedures* must be in place to define how daily operations will be conducted.

NAC 645.600 states “The broker shall supervise the activities of those licensees, the activities of his or her employees, and the operation of his or her business. The supervision described... includes, without limitation, the establishment of policies, rules, procedures and systems that allow the real estate broker to review, oversee and manage...”

Brokers who skip the important step of developing a policy and procedures manual find themselves managing by word of mouth and unwritten rules. Salespeople often get frustrated with working in an environment which is inconsistent and unprofessional. However, with such a written document, misunderstandings and inconsistent decisions are more likely to be avoided as it presumably guides the behaviors of everyone.

The broker, perhaps with the assistance of management, should decide upon the company's philosophies, standards, ethics, and proceed to develop the policies and procedures. In so doing, leadership can turn to reference books and the internet for guidelines in drafting one. Although it might be helpful to see another firm's manual, the broker should not just stamp the company logo over the other firm's manual and use that one. The broker should take the time necessary to reflect on policies and procedures that will truly create and maintain the culture desired in the office.

The broker may also seek legal counsel to review the final draft. The firm wants to be sure there are no violations of laws and are legally ironclad for protective purposes in the event of a lawsuit.

Below are some recommended items to be addressed in a real estate brokerage firm's policies and procedures manual:

- Smoking
- Drugs and Alcohol
- Dress Code
- Housekeeping Matters
- Sexual Harassment
- Confidentiality and Fiduciary
- Advertising restrictions, especially internet and email
- Do Not Call and Anti-Spam legislation
- Office supplies
- Postage
- Yard Signs
- Advertising
- Internet Marketing
- Membership with NAR
- Payment of Dues and Office Bill
- Personal Transactions
- Keeping License Current
- Compliance with Federal, State, and Local Laws
- Termination from the Company
- Company Generated Business
- Fair Housing/Discrimination
- Company Philosophy
- Problem Resolution
- Education and Training
- Attendance at Sales Meetings
- Commissions

- Antitrust
- Social Media
- Cybersecurity Best Practices

It is highly recommended that the person who creates the policies and procedures manual review NRS and NAC 645 while drafting the document in a similar fashion we have above. By referencing the law, important issues to address will “pop out” and become apparent for inclusion in the manual. Although the entire manual will not contain purely legal issues, it is necessary these matters be addressed for risk management protection.

NAC 645.600 (2) further states that the policies and procedures manual must address:

- The real estate transactions performed by a licensee who is associated with the real estate broker;
- Documents that may have a material effect upon the rights or obligations of a party to such a real estate transaction;
- The filing, storage and maintenance of such documents;
- The handling of money received on behalf of a real estate broker;
- The advertising of any service for which a real estate license is required; and
- The familiarization by the licensee of the requirements of federal and state law governing real estate transactions, including, without limitation, prohibitions against discrimination.

The real estate broker must evaluate the number of licensees and staff associated with the firm, and the geographic span the offices cover. As an example, the broker might easily supervise five sales associates at one location regarding the advertising of services, but find it impossible to do so for 500 agents in six offices in two states. It is, however, the duty of the broker to monitor compliance regardless of the size of the organization.

Sales associates should be provided a copy of the firm’s policy and procedures manual and become familiar with its contents. Life in the brokerage will be far more simple knowing all the rules.

Sales agents may wish to form a team. Team leaders might consider a team policies and procedures manual in addition to the firm’s document. Note the manual from the firm can never be replaced with a team document, as all licensees ultimately work for the broker and are bound by the rules of the firm.

3. Education: Training and Sales Meetings (Recommendations for a Risk Reduction Plan)

Remember that “Every real estate broker shall teach the licensees associated with him or her the fundamentals of real estate or time-share practice, or both, and the ethics of the profession.” Brokers who offer training sessions and sales meetings are implementing this critical component of a risk management plan. Keeping records of what education you provided, as well as who did and did not attend, will certainly prove to be helpful in demonstrating you have fulfilled your obligations of teaching and supervision. Brokers should keep a file of all training calendars, course outlines, sales meeting dates, and sales meeting agendas.

Students commonly report to Signature Real Estate School they wish they attended the 30-hour Post-Licensing course sooner and not waited until their licenses expired. They tell us the material was so valuable and relevant that their careers would have been more successful with the education.

From the salesperson’s perspective, operating with a risk management plan would include making every effort to attend required training sessions, especially an approved 30-hour Post Licensing course within the first licensing period of one year, and continuing education requirements, soon to become 36 hours in prescribed topics, every two years. If you are in or near to a major city like Las Vegas or Reno, there are a plethora of free C.E. courses offered by title companies, lenders, and even other real

estate firms. Most classes are either free or offered at a nominal cost far below their value.

The sales associate should attend company sales meetings, too. The broker probably will not require your attendance, but weekly meetings are the very best mediums to stay current.

A word of caution about training: At first blush, one would expect everyone to say, “soak up as much education as you can. The more you know, the better the career you will have.” That advice is certainly true, just be careful you do not become a professional student who only goes to classes and never produces. A successful broker once said, “We will have the smartest, broke agents in town!” Try to find the right balance between taking classes and focusing on your real estate sales.

4. Errors and Omissions Insurance (Recommendations for a Risk Reduction Plan)

Lawsuits from Unsatisfied Clients:

Buying and selling property is a serious matter as real estate is usually the most expensive asset the client holds. And, our commissions are quite costly. Clients who believe you have not performed your duties may very well sue the licensees involved.

Professional liability insurance, known as errors and omissions insurance, may protect the licensee in such situations. If the client claims damages because of an error made, this policy may pay defense costs and potential settlements.

Errors and omissions insurance is designed to protect the brokerage, the broker, and perhaps the sales associate in the event of a substantial lawsuit due to an “error” or an “omission.” A policy can be purchased from any number of providers, and they are very expensive. When shopping for policies, read and compare them carefully as there can be huge differences in coverages. Staying with the same insurer for repeated years and maintaining a track record of no filed claims will more than likely lead to pricing advantages. Evaluate the benefits of a larger deductible. You will also want to examine what acts are excluded such as misrepresentation, fraud, or a licensee’s personal transactions.

5. Transaction Management (Recommendations for a Risk Reduction Plan)

All transactions should be reviewed by the broker, manager, or an individual employed by the firm who is qualified. Some firms manually check office files while others use transaction management software. There should be established policies and procedures pertaining to transaction management including who reviewed the file, when, and how often. What are the required documents for each listing, buyer brokerage agreement, sale, and rental? What is the procedure when a required document is missing or incomplete? Were the appropriate disclosures tendered in a timely manner? Did clients receive copies immediately upon signing or within a reasonable time thereafter? Again, if the firm can demonstrate a transaction management system is in place, that will become essential in the firm’s defense in the event of litigation. The goal for such a system is to avoid such litigation altogether.

Transaction management software can prove to be critical in addressing the documentation element of a risk management plan. Once you have it, you’ll wonder how you ever survived without it. The industry started with a checklist of all the documents needed in a file and that worked just fine for decades. As transaction management software evolved, the industry saw benefits such as the upload of documents, missing or incomplete documents, digisign/docuSign digital signatures, and more.

The true benefit is the broker, or transaction coordinator on behalf of the broker, can monitor the flow of transaction documents through the escrow process and serve as a second pair of eyes on each and every file. The broker can monitor the timeliness of when documents are submitted, missing signatures, incomplete forms,

poorly prepared documents, and more. By paying attention to these deficiencies, the broker now has content for training and supervision opportunities.

- CYBERSECURITY: [Internet Crime Complaint Center \(IC3\) | Business E-mail Compromise The 12 Billion Dollar Scam](#)

“Risk Management for Real Estate Agents: 12 Best Practices”

Courtesy of Jan O’Brien, RIS Media

Developing best practices and incorporating the recommendations outlined below into your daily real estate business will significantly reduce your liability and help manage the risk of potential litigation as well as complaints filed with the department of real estate or your local REALTOR® Association.

1. **Develop and use standard procedures with everyone.** Review fair housing rules and treat all prospects, customers and clients honestly, fairly and equally.
2. **Keep a communication log** during your transaction. Record your notes, conversations, milestones. If red flags are raised during the transaction or you encounter challenges, it is particularly important to be record the facts and events. If you are using a paperless transaction management system, scan and upload all of your notes, emails and correspondence for your transactions.
3. **Use email to confirm** conversations, verbal agreements, proof of delivering copies of contracts and addenda. If your clients don’t use email, then mail copies of all the contracts and documents they sign via certified or registered mail or use an overnight service like FedEx.
4. **Keep a record of your transaction...**including all paperwork, emails and correspondence. Create a file on your computer and your email to organize your correspondence and documents. Scan your emails and store them online, on a backup device and/or in a paper file.
5. **Rule of three** – always recommend three vendors, contractors, attorneys, lenders, home inspectors, home warranty companies, etc. Consider creating a disclosure with the companies and service providers you recommend and having your clients sign and acknowledge the choices you presented.
6. Always recommend and encourage your clients obtain a **home inspection** and a **home warranty**. Get a written waiver if they choose not to.
7. **Disclose...Don’t Diagnose.** Be the source of the source.
8. **Educate & set the proper expectations** with your clients and customers... for example:
 - a. Explain the short sale process; pros and cons of purchasing a short sale
 - b. Review Earnest Money and what happens with a cancelled sale
 - c. Conduct a seller and buyer interview/qualification with all clients
9. When working with buyers, make sure buyer is ready, willing and able to purchase. If getting a loan, have they started the approval process with a lender? If cash buyer, do they have proof of funds?
10. When working with sellers, ensure they are ready, willing and able to sell. With short sale sellers, ensure you have the sellers complete the short sale packet and all documentation before you list the property. Review and explain personal vs. real property; Arm’s Length transaction and other common issues with short sales.
11. Use a **checklist** to stay on top of all the tasks in a real estate transaction. Include any due diligence and contingency deadlines.
12. **Communicate. Communicate. Communicate.** Often and with all parties to the transaction! Return phone calls and emails promptly.

QUIZ

1. A risk management plan is designed to protect the licensee from:
 - a. loss of money.
 - b. litigation.
 - c. disciplinary action.
 - d. All of the above
2. Which Nevada form is unique to a transaction when representing both parties to a transaction?
 - a. Did You Know?
 - b. Duties Owed
 - c. Consent to Act
 - d. SRPD
3. Which Nevada form is required for every residential transaction?
 - a. Did You Know?
 - b. Duties Owed
 - c. Consent to Act
 - d. SRPD
4. The duty of confidentiality owed to a client lasts:
 - a. for 1 year.
 - b. for 5 years.
 - c. forever.
 - d. This is not specified in the law.
5. The Nevada real estate Commission may impose a fine of up to \$_____per violation of the real estate licensing law.
 - a. 500
 - b. 5,000
 - c. 10,000
 - d. There is no limit.
6. A duty owed to the client, that is not owed to the customer is:
 - a. to not deal in a deceitful, fraudulent, or dishonest manner.
 - b. to exercise reasonable skill and care.
 - c. maintain confidential information for at least one year.
 - d. disclose any known material facts.

7. An agent’s fiduciary duties include all of the following EXCEPT:
 - a. accountability.
 - b. confidentiality.
 - c. consideration.
 - d. loyalty.

8. Which of the following statements about a material fact is *false*?
 - a. It is a defect or problem with the subject property.
 - b. It negatively impacts the value or desirability of the property.
 - c. A registered sex offender is an example of a material fact.
 - d. Latent defects are hidden.

9. Remaining silent yet having knowledge of a material fact is considered:
 - a. misrepresentation.
 - b. passive fraud.
 - c. active fraud.
 - d. None of the above

10. The Fair Housing Act:
 - a. prevents discrimination *only* on the basis of race or color.
 - b. prohibits discrimination in lending based upon certain classes.
 - c. added additional protected classes to existing discrimination law.
 - d. prevented discrimination in the hiring of employees.