



Southern Nevada  
CCIM Chapter

# PERSPECTIVE

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### PRESIDENT'S MESSAGE

"I'm reflective only in the sense that I learn to move forward. I reflect with a purpose."  
– Kobe Bryant

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# Legal Briefs

## Dangers of the Double Escrow – Part 1

**By Scott A. Marquis, Esq.**  
Marquis Aurbach Coffing

Scott A. Marquis is a shareholder with of the law firm, Marquis Aurbach Coffing. He is recognized on the Mountain States Super Lawyers list, and has an AV Rating from Martindale-Hubbell. Scott can be reached at (702) 382-0711 or by visiting the firm's website at [www.maclaw.com](http://www.maclaw.com).



Not too long ago, a potential client asked about drafting form agreements specifically designed to improve the odds at double escrowing property. The potential client was intent on purchasing real property, and either assigning the purchase rights, or selling the property outright to third parties with or without the other party's knowledge. In response, I explained my definition of a "double escrow" (also known as "simultaneous closing") to ensure we were on the same page:

a situation in which a buyer, while under contract to purchase property, enters into a subsequent agreement to either (1) assign his contract to purchase that same property to a third-party purchaser, or (2) sells the property to the third-party purchaser, while arranging for both escrow closings to occur simultaneously. In this way, the buyer can potentially earn a profit by finding another party who is willing to pay more for the property, yet avoid the risks of investing the money needed to purchase the property.

The potential client said "exactly." Due to the small investment necessary to perform a double escrow, these trans-

actions are a favorite of many "educational programs" that promise their students will "get rich quick" investing in real estate, and this potential client might have been following this path. Thus, whether or not a licensee can engage in such transactions and what disclosures must be made and to whom must be part of the analysis.

There is nothing inherently wrong with arranging a double escrow, simultaneous closing or assignment of a purchase agreement (all of which have nearly the same results). Nevertheless, the transactions have a bad reputation because neither the original seller nor the final buyer are pleased that they could have sold at a higher price, or purchased at a lower price, and that they lost thousands to some investor who may never have intended to buy the property in the first place. Moreover, transactions discussed in the news, case law or social media often involve unscrupulous real estate brokers or licensees, who misuse information gained in their

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# Legal Briefs

## Dangers of the Double Escrow – Part 1

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fiduciary capacity to buy low from one client and sell high to another. In fact, our Nevada Supreme Court has even defined the term “double escrow” as transactions involving such unscrupulous licensees:

In a “double escrow,” the broker or salesman purchases a principal’s property in the first escrow, and sells it to a third party at a profit in a second escrow without a full disclosure to both the principal and the third party. The escrows close at the same time and the broker or salesman thereby uses the proceeds from the sale in the second escrow to purchase his principal’s property. The broker or salesman receives a commission on the sale in the first escrow and a secret profit on the closing in the second escrow. *Alley v. Nevada Real Estate Division*, 94 Nev. 123, 124-125 (1978).

In the Alley case, the lower court affirmed the Nevada Real Estate Division’s decision to permanently revoke the broker’s license for secretly receiving part of a \$2,000 profit by using a “double escrow scheme.” The Nevada Supreme Court affirmed the decision focusing on a prior case where the court denounced such schemes due to the failure to make full disclosures to the principal and the third party. Specifically, the Court in the Alley case upheld the revocation of the broker’s license because:

The law does not allow the agent who also has a right to purchase to wait until someone makes an offer of an amount in excess of the agreed purchase price and then elect to purchase the property at the lesser price without informing the owner of the higher offer, and, after the agent has obtained the consent from the owner to buy the property, then immediately sell it for the higher price as his own property. *Alley v. Nevada Real Estate Division*, 94 Nev. 123,125 (1978)

Obviously, such conduct is not legal, and we all know that licensees are prohibited from engaging in similar fraudulent conduct like that discussed above. However, ***if a licensee told the truth, made the required disclosures, acted as a principal, and funneled all of their profits through their broker, would their conduct still constitute a violation of NRS Chapter 645?*** Interestingly, my friend, Steve Kitnick ([www.NevadaCE.com](http://www.NevadaCE.com)) informed me of two cases recently decided by the Nevada Real Estate Commission that might provide an answer. Although violations were found in those cases, they offered a lot of insight into the way NRED and NREC view such transactions. In part 2 of “Dangers of the Double Escrow,” I will describe what occurred in those cases and provide some analysis to help answer the question.

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Guy Chaffee  
SBA Finance Consultant  
Business Banking  
702-733-2610

Juzzeff Martinez  
Commercial Banker Associate  
Commercial Banking  
702-733-2632


Michael Woodfield  
Executive Director  
Nevada Commercial Banking  
702-733-2625

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Avece Higbee, Terry Coffing, David Alleman, Phillip Aurbach & Terry Moore

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10001 PARK RUN DRIVE, LAS VEGAS, NV 89145  
MACLAW.COM | 702.382.0711