



Southern Nevada CCIM Chapter

# Perspective

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## President's Message

Adam Gregory, CCIM

2021 Southern Nevada CCIM Chapter President



It's hard to believe that we are in the home stretch of 2021. I look forward to finishing up the year strong as I prepare to pass the President's baton to Bobbi Miracle, CCIM, SIOR, CIPS. I would be remiss if I didn't open my message this month with a huge thank you to our Social Committee, who put together not one but two stellar events in one evening. A special thank you to Isabella Sorrentino, CCIM, who stepped up to lead this year's events. Together with Jennifer Ott, CCIM, they showcased what makes Southern Nevada CCIM so unique. I want to thank all of our sponsors once again for supporting our chapter and making such wonderful nights possible. I also want to thank all of you that supported the event via the silent auction and raffle. I hope you all join us in December for our annual end-of-year Holiday lunch, where we will donate the proceeds from this event to our local charity partners.

In my previous message, I touched on inflation and how it appeared to be "transitory." With inflation hitting the treasury market recently, it appears that there is significant work needed from the Fed to keep the economy growing into 2022. With increasing bond yields, the Fed may push its planned tapering from the 4th quarter to later in 2022. While commercial real estate continues an upward trend, we need to keep a close watch on these economic headwinds. As CCIM's we know market challenges better than anyone, and we know how to make the most out of any commercial real estate environment.

## Pro Tips

*Always work harder on yourself than your job. Invest in yourself and never stop the education process. Your highest return on investment will also come from your own personal education and development.*



Dave Bauman, CCIM

*Be humble, and be kind, everyone had to start somewhere.*



Ryan Martin, SIOR, CCIM

# Legal Brief

## TIPS FROM THE TRENCHES

by Scott A. Marquis, Esq.

Recent litigation reveals legal issues commonly encountered by licensees that can be alleviated or eliminated if licensees recognize the issues and follow a few tips for avoiding litigation and liability.

### Reliance on Contract Language

For example, one mistake that recently came to light involves licensees who rely too much upon their well-written contracts to protect them from liability for potential misrepresentations and omissions. Typically, these contracts advise both the buyer and seller to consult with their experts and professional advisers when determining whether to buy, sell or lease a particular property. The contracts also require the buyer and seller to represent and warrant that they have not relied upon any representations made by the licensees, and acknowledge that the licensees are disclaiming all liability for any statements about the property or the transaction. Oftentimes, the contracts also require the parties to waive any right to pursue the licensees for damages in excess of the commissions paid. Such contracts have provided the real estate industry with substantial protection from what are oftentimes frivolous lawsuits.

However, contract language alone will not protect licensees from all liability for representations or omissions made during the transaction. The contract is entered at the beginning of the transaction and it does little to protect licensees from allegations of misconduct between the execution and close of escrow. While a contract may indicate the parties will not rely upon a licensee's future statements or omissions, such language is often difficult to enforce because parties can always verbally amend a contract, and it is difficult to prove a party understood the rights he waived when the problem arose in the future.

Further, language in a contract will not relieve a licensee of his duty to inform each party about all known material facts about the property or to disclose to his client all known facts about the transaction. See NRS 645.252(1) and NRS 645.254(3)(c). In fact,

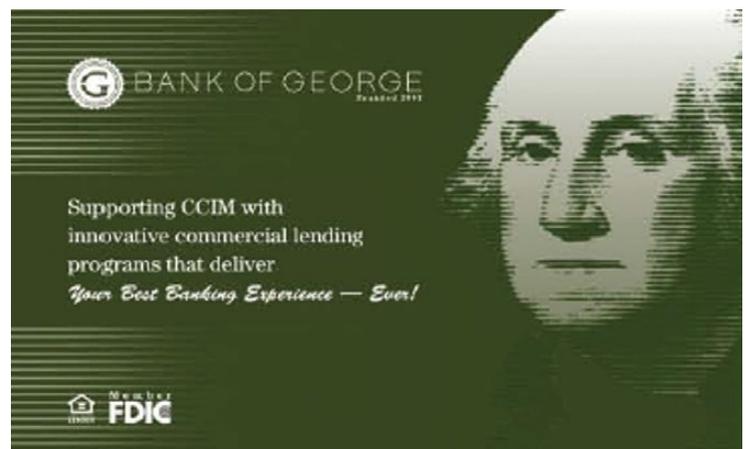
the Nevada Law and Reference Guide put out by the Nevada Real Estate Division (NRED) specifically states:

The fact is required to be disclosed by the licensee, no instruction from a client can absolve the licensee from liability for willfully withholding the information.

*The Nevada Law and Reference Guide, 4th Edition, 2014, p.10*

This reasoning also applies to a licensee's misrepresentation of information he is required to disclose,

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## Active Measures - Continued from page 7

so no contract language can replace a licensee's diligence in ensuring communications and contracts are in writing and that he has exercised reasonable care in disclosing information to the parties.

### Dual Representation

Another circumstance resulting in litigation far too often is when licensees represent both parties in a transaction. Although this is far less common in the commercial real estate industry, it still occurs and such cases are many times more likely to be involved in litigation. If a dispute arises, the agent will be blamed by at least one of the parties. Because it is nearly impossible for a licensee to keep a client's information confidential as required by NRS 645.254(2) while also fulfilling his duties to the other parties, such blame is usually warranted. See NRS 645.254(1)(2)(3)(5). If either client provides a licensee with confidential, material information, the licensee must either terminate representation of the other party or violate his statutory duties.

If a licensee nevertheless decides to represent both parties, please do not rely upon a Consent to Act form signed upon listing the property for sale. The Consent to Act form may be considered premature because there was no "transaction" for the Seller to approve at that time.

### Administrative Fines

The final tip applies to administrative fines issued by NRED under NAC 645.695 that have become common over the past couple of years and are generally paid by licensees because of the small sums involved (\$100-\$2,000 per offense). However, paying the fine may drag the licensee into litigation or increase the severity of any punishment for a future violation. Payment may convince the parties that a licensee is responsible for their problems even though a court is unlikely to impose liability on that basis. Thus, it may be more prudent to appeal the administrative fine to the Nevada Real Estate Commission despite the additional costs. A better strategy would be to take all complaints seriously and involve legal counsel early to provide the best possible response and avoid the administrative fine altogether.



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