



Acceleration Clause- Is it Legal?

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In our opinion, and consistent with the Nevada Real Estate Division position, inserting an “acceleration” clause in a contract would be a violation of fair dealing. The Nevada Law and Reference Guide specifically addresses this and states that the “acceleration clause” found in general contract or financing law is different than what we are talking about here.

According to the Division, “an acceleration clause is a clause in which the offeror promises to pay a certain set amount above the highest offered sale price and usually provides for a maximum or cap amount. An example of an acceleration clause is, “I will pay \$2,000 over the highest offer up to \$300,000.” This type of clause automatically gives one offeror a stated advantage over other offerors and may not allow fair dealing for the other offerors. Though the previous two activities (disclosing offer terms and inserting an acceleration clause) are not a direct violation of any law or regulation, and there is some controversy regarding this, nevertheless, the Real Estate Commission has found these practices highly suspect.”

We have gotten many calls over the years from members asking, “Can I actually get in trouble and with who, if I put this acceleration clause in, if it benefits my client and it is not *illegal*?” So why then, if this clause is not a violation of any law or regulation, am I being told to keep these clauses out of my contract?

The answer is simple. We understand that in today’s market there are more buyer than sellers. We understand that you are working diligently to get an accepted offer on that dream home for your buyer. While we support your dedication to your clients, we are always looking for ways to keep our members out of trouble and having to appear in front of the Nevada Real Estate Commission. The Commission, in their own discretion, can fine you up to \$10,000 per VIOLATION. As the Division stated earlier, the Commission has found that these practices are highly suspect and a violation of fair dealing. That is why, unless you want to risk being brought in front of the Commission on this very issue, we caution licensees to keep in mind the laws that govern their license and their duty to deal fairly with all parties to a real estate transaction.

We always recommend you talk to your own attorney if you want to insert this clause.

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