



## **Unintentional Agency: Highway to the Danger Zone!**

*Christal Park Keegan, NVR Legal Information Line Counsel  
April 22, 2022*

Cue the Top Gun theme song *Highway to the Danger Zone* as we identify the danger zones of implied agency in this article. ***Realtors® must understand the dangers of unintentionally creating agency because once that relationship is established, all the duties, all the liabilities and all the responsibilities of agency attach!*** NRS 645.252 and NRS 645.254. To help identify implied agency danger zones, first, we can ask:

### ***What real estate acts establish agency?***

We can look to the definition of a brokerage agreement for guidance, which provides acts such as ***assisting, listing, soliciting or negotiating*** in real estate transactions. NRS 645.005. That's pretty broad and a lot of real estate activities can fit into those identified acts. So let's identify examples of when real estate licensees are approaching the danger zones to avoid unintentionally creating agency relationships!

### **Example #1 - The Unrepresented Buyer or Seller**

The listing agent is working with an unrepresented buyer and the buyer doesn't know how to prepare the offer. The buyer, in turn, asks the listing agent for help preparing the offer.

***High Danger Zone!*** To listing agents, watch out for making statements to the unrepresented buyer such as: "*Of course I'll fill it out for you!*" or "*Yes, put this answer in the blank on the document.*" or "*My advice would be to ask for these certain inspections...*" which could create the appearance of agency representation!

***Low Danger Zone!*** Less risky statements include: "*I strongly encourage you to get help from a licensed real estate agent or attorney*" or "*Please read the offer form in which I inserted the provisions as you had expressed to me in your email of today. I have filled out this document in good faith based on your email, but I am not representing you or your best interests in any capacity.*"

We can flip the script here, too. What if the buyer's agent presents an offer on a For Sale by Owner (FSBO). Inevitably, the seller, during the course of the transaction, asks the buyer's agent multiple questions (*such as about price, request for repairs, and title issues*). The buyer's agent is trying to be nice, answering some but not all of the questions posed by the seller.

***High Danger Zone!*** The buyer's agent must avoid providing advice to and otherwise assisting an unrepresented seller.



***Low Danger Zone!*** The buyer's agent should therefore provide no further assistance to the seller and should also remind the seller, in writing, that the buyer's agent is not representing the seller in the transaction, but if the seller needs help, encourage them to get help from a licensed real estate agent or attorney.

### **Example #2 - The FSBO**

A buyer's agent approaches the homeowner and asks if he can sit at the open house to assist potential buyers with preparing an offer.

***High Danger Zone!*** The real estate licensee is placing themselves in a double whammy situation:

- 1) Such acts invite potential buyers' to reasonably form expectations of agency, and
- 2) Could create the appearance and expectations of seller representation.

**A spin on Example #2**, the homeowner, wants to try a middle ground, and asks for a real estate licensee's help with things like: advertising the home, hosting an open house, and some of the paperwork.

***High Danger Zone!*** Remember Nevada doesn't recognize transactional agency (*also referred to as, limited agency representation*). A real estate licensee can't contract to waive / limit their full duties, responsibilities and liability of representation as identified in the law.

**In summary**, *every licensee must be extremely careful, and aware of the appearance of undisclosed representation*, because the assumption of the existence of agency rests with the client's reasonable expectations. To that end, **licensee's have to be critical in reviewing their statements, representations, and actions** made to parties within a real estate transaction.

### **Read This!**

- 1) Nevada Real Estate Division's Nevada Law and Reference Guide, 5th Edition (2020), Chapter I. Nevada Law on Agency: [law\\_guide.pdf \(nv.gov\)](#)
- 2) National Association of Realtors®, on Agency: [Agency \(nar.realtor\)](#)

Statements made by the Nevada REALTORS® Legal Information Line attorneys on the telephone, in emails, or in legal eNews articles are for informational purposes only. Nevada REALTORS® staff attorneys provide general legal information, not legal representation or advice regarding your real estate related questions. No attorney-client relationship is created by your use of the Legal Information Line. You should not act upon information you receive without seeking independent legal counsel. Information given over the Legal Information Line or in these articles is for your benefit only. Do not practice law or give legal advice to your clients! Inform your clients they must seek their own legal advice.