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I have decided to touch on this topic as it seems to be an increasingly confusing issue both for attorneys attempting to collect a commission, and licensees refusing to pay it. The law, NRS 645.280, governs association with or compensation to unlicensed brokers. Currently there is no case law in Nevada on point regarding this issue, so my opinion is based on the statutory interpretation available to us at this time.

NRS 645.280(1) provides, “[i]t is unlawful for any licensed real estate broker, or broker-salesperson or salesperson to offer, promise, allow, give or pay, directly or indirectly, any part or share of his or her commission, compensation or finder's fee arising or accruing from any real estate transaction to any person who is not a licensed real estate broker, broker-salesperson or salesperson, in consideration of services performed or to be performed by the unlicensed person. A licensed real estate broker may pay a commission to a licensed broker of another state.”).

Where the confusion arises, is that Chapter 7, the Chapter that governs attorneys provides for the following: NRS 7.107(3) states that (“[t]he provisions of this section do not require an attorney who performs the functions of a real estate broker in a real estate transaction to obtain a license to practice as a real estate broker pursuant to chapter 645 of NRS.”). That said, if you are performing the functions of a real estate broker in a real estate transaction you must comply with the standards of business ethics that apply to real estate brokers pursuant to NRS Chapter 645. See NRS 7.107(1).

NRS 645.0445(2)(c) further provides, “[t]he provisions of this chapter do not apply to [t]he services rendered by an attorney at law in the performance of his or her duties **as an attorney at law.**” NRS 645 is clear that this section would not apply to an attorney performing his or her duties as an attorney. However, if that attorney instead is acting as a broker the provisions of NRS 645 would apply. This interpretation is consistent with NRS 7.107(1).

It is my opinion that if the attorney is acting as a broker, NRS 645 would apply. Moreover, if that attorney is acting as an unlicensed broker (even though they are licensed as an attorney), NRS 645.280 *would prevent that attorney from collecting a commission.*

Based upon my statutory interpretation, an attorney who acts as an unlicensed broker is not allowed to receive a commission. In fact, *an attorney can only act as a broker when his services as an attorney calls for it*, (for instance when a divorcing couple must use a court to complete the sale of real property, or when in Bankruptcy a home is offered for short sale and must obtain court approval) which is why many attorneys who want to work on *all types* of real estate transactions must also obtain their real estate license.



In your representations of clients in a transaction, you may find an attorney who is demanding a commission. Here are some guidelines in how to deal with them:

1. If you are an agent, talk to your broker. Have your broker reach out to them and discuss the issue.
2. Be straightforward. Advise them that pursuant to Chapter 645, you are not allowed to pay them a commission because they are not a licensed real estate broker.
3. Keep in mind that your "offer to pay compensation" exists through MLS. Most attorneys do not have buyer clients that found the property through MLS.
4. Ask them to talk to their client. They can receive compensation for services performed as an attorney from their client.

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