

Special Edition: Wild West Water Markets

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This special edition highlights Legal Hotline questions regarding our most precious real property here in the dry, arid West — Water! Understanding that northern and southern Nevada experience different water issues that impact real estate transactions, we highlight questions asked from both regions.

• The context of this particular question is for the most part geographically specific to northern Nevada, where some real property includes water rights. In those particular properties which we are concerned with, typically, water rights are appurtenant to the land, meaning they run with the land, unless expressly reserved.

Q1: Is a real estate licensee required to represent a party in the purchase or sale of water rights?

A1: The answer is inconclusive and depends on what attorney you talk to. Realizing that's not a particularly helpful answer, let's identify best practices.

Best Practice #1 — Refer the water rights holder to hire a water rights attorney! The complexities surrounding recording issues, severance and due diligence of water rights present major issues in purchase transactions that should be left to water law attorneys.

Best Practice #2 — Stay in your lane! Interestingly enough, the statutes and administrative code which primarily govern real estate licensees (NRS 645 and NAC 645), make no mention of water rights; the closest it comes is to mining claims. There are some statutes that scream "Stay In Your Lane!" which may be applicable: 1) Selling the water right itself solo and separate from the real property land is something that may exceed the scope of a real estate licensee's expertise (NRS 645.254(6)) and 2) Advertising your real estate license in such a way may be misleading as to the nature of what the license covers (NRS 645.630).

Best Practice #3 — Disclosure! If a seller of real property with land that includes water rights wants to re-



serve the water rights, that should be disclosed in writing within the contract to all parties. Then, the agent should refer the seller to hire a water law attorney to help with the recording and perfecting of that water right.

• The context of this particular question is mostly geographically specific to southern Nevada, where due to water shortages local water authorities (Southern Nevada Water Authority, SMWA) create rebate programs (Water Smart Rebate Programs) to incentivize homeowners to convert to water smart landscaping and such conversions become restrictions on the land preventing conversion back to real grass.

Q2. How can a listing agent know if the landscape has been converted if a previous owner has done that and perhaps it was not disclosed?

A2. While the law does not fault a licensee for relying in good faith on misrepresentations made by the client (NRS 645.249), there are things a real estate licensee knows and there are things a real estate licensee should know through the exercise of reasonable care and due diligence (NRS 645.252(1)(2)).

If the listing agent notices things like their client's front yard has no grass, ask the owner about whether they converted their front lawn to water smart landscaping. Maybe the

seller doesn't know because it's something they inherited — but that does not relieve the seller of the requirement to make disclosures on the Seller's Real Property Disclosure pursuant to NRS 113.130 and 113.135 that are of a public record and readily available to the client. Further, a licensee is not relieved of their duty to disclose material and relevant facts to all parties to the transaction (NRS 645.252).

So, what's the listing agent's due diligence look like here? Again ...

#1 — Ask the client if they are aware of being enrolled in the water smart rebate program and even better get such declaration in writing from the client for the agent's file. If the seller is unsure, ask them to check their yearly water statement to see if they've been receiving a rebate.

#2 — What's the prelim title report say? Does it include a recorded "Conservation Easement"? If it's not there, don't stop there.

#3 — Client can check with SMWA to find out if they are enrolled in the water smart program. Most importantly, inform the seller to

#4 — Disclose it on the SRPD which provides a line item directly addressing this type of conservation easement and the seller can use the additional explanation pages to do their best: [Form 547 - Seller's Real Property Disclosure \(nv.gov\)](https://www.nv.gov/form-547-seller-real-property-disclosure).