Chapter 3

Key Ideas

Which Files Can the Division Make Public?

As you might expect, the Nevada Real Estate Division is required to regularly inspect any brokerage firm’s actions, files, records, and accounts. This includes trust accounts, transaction files, and financial records. The Nevada Real Estate Commission approves inspection regulations.

Regulations and statutes protect certain records as confidential except that they may disclosed to a licensing board or agency, to any governmental agency or to a law enforcement agency that is investigating a licensee. These confidential records include:

- Real estate brokers’ and real estate salesmen’s examinations,
- Complaints filed with the Division and Commission, and
- The criminal and financial records of licensees, applicants for licenses, and owner-developers.

In addition, certain items may be made public including:

- The rulings or decisions on all complaints filed with the Division.
- All investigations instituted by the Division in the first instance, upon or in connection with which any hearing has been held, or in which the licensee charged has made no defense.
- Denials of applications made to the Division for examination or licensing.

Supporting Law/Code:

NRS 645.195 Inspection of records of broker and owner-developer by division; regulations.
1. The division shall regularly inspect the transaction files, trust records and pertinent real estate business accounts of all real estate brokers and owner-developers to ensure compliance with the provisions of this chapter.
3. The commission shall adopt regulations pertaining to those inspections.

NRS 645.610 Investigation of actions of licensees and other persons. The administrator may investigate the actions of any real estate broker, broker-salesman, salesman, owner-developer or any person who acts in any such capacity within this state.

NRS 645.180 Real Estate Division: Seal; general provisions governing public inspection and confidentiality of records; admissibility of certified copies of records as evidence.
2. Except as otherwise provided in NRS 645.625, records kept in the office of the Division under authority of this chapter are open to public inspection under regulations adopted by the Division, except that the Division may refuse to make public, unless ordered to do so by a court:
NRS 645 and NAC 645

(a) Real estate brokers’ and real estate salesmen’s examinations; and
(b) The criminal and financial records of licensees, applicants for licenses and owner-developers.

NRS 645.620 Maintenance by division of record of complaints, investigations and denials of applications. The division shall maintain in each district office a public docket or other record in which it shall record from time to time as made:  (Note: Only the following is public information.)
1. The rulings or decisions upon all complaints filed with that district office.
2. All investigations instituted by that district office in the first instance, upon or in connection with which any hearing has been held, or in which the licensee charged has made no defense.
3. Denials of applications made to that district office for examination or licensing.

NRS 645.625 Certain records relating to investigation deemed confidential; certain records relating to disciplinary action deemed public records.
1. Except as otherwise provided in this section and NRS 239.0115, a complaint filed with the Division alleging a violation of this chapter, all documents and other information filed with the complaint and all documents and other information compiled as a result of an investigation conducted to determine whether to initiate disciplinary action are confidential and may be disclosed in whole or in part only as necessary in the course of administering this chapter or to a licensing board or agency or any other governmental agency, including, without limitation, a law enforcement agency, that is investigating a person who holds a license, permit or registration issued pursuant to this chapter.
2. A complaint or other document filed with the Commission to initiate disciplinary action and all documents and information considered by the Commission when determining whether to impose discipline are public records.
Commission Hearing Procedures:

A Commission meeting is a very formal legal event. Present parties often include a stenographer, attorneys, the Commissioners, Division representatives, subpoenaed guests, parties with a stake in agenda items, and spectators. Along with the multitude of regulations and laws recited in this course, the Commissioners passed a few that are more relevant to their duties such as:

- Complaints may be changed or withdrawn at any time before a hearing starts.
- Motions must be in writing, unless made during a hearing.
- Written motions must be served on the opposing party and the Commission at least 10 working days before the time set for the hearing on the motion.
- The Division must pay fees and mileage to any witnesses subpoenaed by the Commission.
- Rules for evidence are specific.
- Regulations clarifying respondent documents which are used in hearings are specific.
- The Commission must render an informal decision on any complaint within 15 days after the final hearing and must give notice in writing by certified mail of the ruling or decision to the applicant or licensee affected within 60 days after the final hearing.
- A decision in favor of a licensee is final.
- Decisions against the licensee may be petitioned to the commission within 10 days for a rehearing.
- If a party fails to appear, and a continuance has not been granted, the Commission may still consider the case and make a decision.
- The Division must have a minimum of 5 working days to review all documents, before a hearing.

Hearing Regulations Geared towards Licensees:

Most licensees will thankfully never get to have the opportunity to appear at a Commission hearing. If you do however, and you choose not to appear, the charges against you may be considered true by the Commissioner. (i.e. NAC 645.860 Failure of party to appear at hearing.) If you do appear, you may attempt to offer your license, permit, registration or certificate in place of any other disciplinary action. (i.e. NAC 645.865 Voluntary surrender of
license, permit, registration or certificate.) If the Commission decides against you, it may report their decision to

1. Any national repository which records disciplinary actions taken against licensees;
2. Any agency of another state which regulates the practice of real estate; and
3. Any other agency or board of the State of Nevada.

(i.e. NAC 645.870 Reporting of disciplinary action or denial of application.)

Am I in Trouble???

Investigations and Hearings:

- The Nevada Real Estate Commission:
  - May report disciplinary action or license denials to:
    - Any national repository which records information.
    - Any other state. (When a licensee applies for a real estate license in another state – the state usually requests a ‘certified license history’ from any states the applicant is or has been licensed in – disciplinary action usually is printed on this form.)
    - Any agency or board within Nevada.
  - Administers oaths.
  - Issues subpoenas.
  - Serves written motions to witnesses at least 10 working days before the hearing
  - May rely upon district court to uphold their motions.
  - Takes depositions of witnesses residing in Nevada and outside of Nevada.
  - Renders decision on any complaint within 15 days after the final hearing.
  - May revoke licenses, suspend licenses, downgrade licenses, grant licenses, places conditions on licenses, fine licensees and require licensees to attend courses.
  - Can continue to pursue legal action or disciplinary proceedings against a licensee even after expiration or revocation of their license.
  - May charge licensees $10,000 for every offence of the disciplinary action area and $2,500 for every offence in the remainder of this chapter. (At the last hearing the author attended, there was a $55,000
fine that needs to be paid within 18 months. If not paid, the ex-licensee will be charged the fine plus interest.)

- May charge a licensee for the cost of the investigation and trial.
- May fine a person for performing an activity that needed a license to perform.
- Shall hold a hearing against a licensee within 90 days after the complaint filing by the Administrator of the Division.
- The accused licensee, permittee, or owner-developer, are informed in writing at least 30 days before the hearing by certified mail. The accused has 30 days to answer a petition.

- The Nevada Real Estate Division:
  - May appoint an advisory committee to assist them in investigations.
  - Through courts, may pursue an injunction (next) against a licensee.

- Licensees:
  - May petition the Commission within 10 days after receipt of the negative decision for a rehearing.
  - May also be subject to civil liability and criminal prosecution initiated by the injured party, in addition to a Commission penalty.
  - Are automatically suspended if any amount is paid from the ER RF (covered next) fund on their behalf.
  - Must repay in full, plus prime rate interest plus annual increases of 2 percent until the judgment against the licensee is satisfied.
  - License may not be reinstated until full payment is made.

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**Supporting Law/Code:**

**NAC 645.840 Motions.** (NRS 645.190)

1. All motions, unless made during a hearing, must be in writing.
2. A written motion must be served on the opposing party and the Commission at least 10 working days before the time set for the hearing on the motion.
3. An opposing party may file a written response to a motion within 7 working days after the receipt of the motion by serving the written response on all parties and the Commission, except that a written response may be filed less than 3 working days before the time set for the hearing on the motion only with the permission of the Commission upon good cause shown.
4. The Commission may require oral argument or the submission of additional information or evidence to decide the motion.

**NAC 645.865 Voluntary surrender of license, permit, registration or certificate.**

The Commission may accept the voluntary surrender of a license, permit, registration or certificate in lieu of imposing any other disciplinary action set forth in chapter 645 of NRS.
NRS 645.710 Fees and mileage for witness.
1. Each witness who appears by order of the commission is entitled to receive for his attendance the same fees and mileage allowed by law to a witness in civil cases, which amount must be paid by the party at whose request the witness is subpoenaed.
2. When any witness not otherwise required to attend, is subpoenaed by the commission, his fees and mileage must be paid by the division.

NAC 645.860 Failure of party to appear at hearing.
If a party fails to appear at a hearing scheduled by the Commission and a continuance has not been requested or granted, upon an offer of proof by the Division that the absent party was given proper notice and upon a determination by the Commission that proper notice was given, the Commission may proceed to consider the case without the participation of the absent party and may dispose of the matter on the basis of the evidence before it. If the respondent fails to appear at the hearing or fails to reply to the notice, the charges specified in the complaint may be considered as true.

NAC 645.850 Submission or exclusion of documentary evidence of respondent.
1. Not less than 5 working days before a hearing before the Commission, the respondent must provide to the Division a copy of all documents that are reasonably available to the respondent which the respondent reasonably anticipates will be used in support of his position. The respondent shall promptly supplement and update any such documents.
2. The respondent shall provide, at the time of the hearing, 10 copies of each document he wishes to have admitted into evidence at the hearing.
3. If the respondent fails to provide any document required to be provided by the provisions of this section, the Commission may exclude the document.

NRS 645.8494 Disciplinary action against licensee not restricted.
Nothing contained in NRS 645.841 to 645.8494, inclusive, limits the authority of the commission to take disciplinary action against a licensee for a violation for any of the provisions of this chapter, or of the rules and regulations of the commission, nor shall the repayment in full of all obligations to the fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to the provisions of this chapter or the rules and regulations promulgated thereunder.

NRS 645.675 Disciplinary proceedings, fines and penalties not affected by expiration, revocation or voluntary surrender of license, permit or registration.
The expiration or revocation of a license, permit or registration by operation of law or by order or decision of the commission or a court of competent jurisdiction, or the voluntary surrender of a license, permit or registration by a real estate broker, real estate broker-salesman, real estate salesman, property manager or owner-developer does not:
1. Prohibit the administrator, commission or division from initiating or continuing an investigation of, or action or disciplinary proceeding against, the real estate broker, real estate broker-salesman, real estate salesman, property manager or owner-developer as authorized pursuant to the provisions of this chapter or the regulations adopted pursuant thereto; or
2. Prevent the imposition or collection of any fine or penalty authorized pursuant to the provisions of this chapter or the regulations adopted pursuant thereto against the real estate broker, real estate broker-salesman, real estate salesman, property manager or owner-developer.

NRS 645.990 Unlawful acts; penalties.
1. A person who:
   (a) Obtains or attempts to obtain a license pursuant to this chapter by means of intentional misrepresentation, deceit or fraud; or
   (b) Sells or attempts to sell in this state any interest in real property by means of intentional misrepresentation, deceit or fraud, is guilty of a category D felony and shall be punished as provided in NRS 193.130. In addition to any other penalty, the court shall order the person to pay restitution.
2. Any licensee, permittee or owner-developer who commits an act described in NRS 645.630, 645.633 or 645.635 shall be punished by a fine of not more than $5,000 for each offense.
(Note: chapter NRS 645.630, 645.633 and 645.635 was the disciplinary section).
3. A person who violates any other provision of this chapter, if a natural person, is guilty of a gross misdemeanor, and if a limited-liability company, partnership, association or corporation, shall be punished by a fine of not more than $2,500.

4. Any officer or agent of a corporation, or member or agent of a limited-liability company, partnership or association, who personally participates in or is an accessory to any violation of this chapter by the limited-liability company, partnership, association or corporation, is subject to the penalties prescribed in this section for natural persons.

5. The provisions of this section do not release a person from civil liability or criminal prosecution pursuant to the general laws of this state.

6. The administrator may prefer a complaint for violation of NRS 645.230 before any court of competent jurisdiction and may take the necessary legal steps through the proper legal officers of this state to enforce the provisions thereof.

7. Any court of competent jurisdiction may try any violation of this chapter, and upon conviction, the court may revoke or suspend the license of the person so convicted, in addition to imposing the other penalties provided in this section.

NRS 645.993 Unlawful to file documents that are false or contain willful, material misstatement of fact; penalty.

1. It is unlawful for any person to file with the Administrator, the Division or the Commission any notice, statement, complaint or other document required under the provisions of this chapter which is false or which contains any willful, material misstatement of fact.

2. A person who violates any provision of this section is guilty of a gross misdemeanor.

NRS 645.235 Administrative fine for engaging in certain conduct without license, permit, certificate, registration or authorization; procedure for imposition of fine; judicial review; exceptions.

1. In addition to any other remedy or penalty, the Commission may impose an administrative fine against any person who knowingly:
   (a) Engages or offers to engage in any activity for which a license, permit, certificate or registration or any type of authorization is required pursuant to this chapter, or any regulation adopted pursuant thereto, if the person does not hold the required license, permit, certificate or registration or has not been given the required authorization; or
   (b) Assists or offers to assist another person to commit a violation described in paragraph (a).

2. If the Commission imposes an administrative fine against a person pursuant to this section, the amount of the administrative fine may not exceed the amount of any gain or economic benefit that the person derived from the violation or $5,000, whichever amount is greater.

3. In determining the appropriate amount of the administrative fine, the Commission shall consider:
   (a) The severity of the violation and the degree of any harm that the violation caused to other persons;
   (b) The nature and amount of any gain or economic benefit that the person derived from the violation;
   (c) The person’s history or record of other violations; and
   (d) Any other facts or circumstances that the Commission deems to be relevant.

4. Before the Commission may impose the administrative fine, the Commission must provide the person with notice and an opportunity to be heard.

5. The person is entitled to judicial review of the decision of the Commission in the manner provided by chapter 233B of NRS.

6. The provisions of this section do not apply to a person who engages or offers to engage in activities within the purview of this chapter if:
   (a) A specific statute exempts the person from complying with the provisions of this chapter with regard to those activities; and
   (b) The person is acting in accordance with the exemption while engaging or offering to engage in those activities.

NRS 645.680 Revocation, suspension or denial of renewal of license, permit or registration: Complaint; notice of hearing.

1. The procedure set forth in this section and NRS 645.690 must be followed before the commission revokes, suspends or denies the renewal of any license, permit or registration of an owner-developer issued pursuant to this chapter.
NRS 645 and NAC 645

2. Upon the initiation of a complaint by the administrator, the matter must be set for a hearing by the administrator, who shall schedule a hearing before the commission, and the licensee, permittee or owner-developer is entitled to be heard thereon in person or by counsel.

3. The commission shall hold the hearing within 90 days after the filing of a complaint by the administrator. The time of the hearing may be continued upon the motion of the commission or at the discretion of the commission, upon the written request of the licensee, permittee or owner-developer or of the division for good cause shown.

4. The licensee, permittee or owner-developer must be given at least 30 days' notice in writing by the division of the date, time and place of the hearing together with a copy of the complaint and copies of all communications, reports, affidavits or depositions in possession of the division relevant to the complaint. The division may present evidence obtained after the notice only if the division shows that the evidence was not available after diligent investigation before the time notice was given to the licensee, permittee or owner-developer and that the evidence was given or communicated to the licensee, permittee or owner-developer immediately after it was obtained.

5. Notice is complete upon delivery personally to the licensee, permittee or owner-developer or by mailing by certified mail to the last known address of the licensee, permittee or owner-developer. If the licensee is a broker-salesman or salesman, the division shall also notify the broker with whom he is associated, or the owner-developer by whom he is employed, by mailing an exact statement of the charges and the date, time and place of the hearing by certified mail to the owner-developer or broker's last known address.

NAC 645.835 Amendment or withdrawal of complaint. (NRS 645.190)
1. A complaint may be amended at any time.
2. The Commission will grant a continuance if the amendment materially alters the complaint or a respondent demonstrates an inability to prepare for the case in a timely manner.
3. A complaint may be withdrawn at any time before the hearing begins.

NRS 645.685 Revocation, suspension or denial of renewal of license, permit or registration: Answer; limitations on time of commencing proceeding.
1. The licensee, permittee or owner-developer shall file an answer to the charges with the commission not later than 30 days after service of the notice and other documents described in subsection 4 of NRS 645.680. The answer must contain an admission or denial of the allegations contained in the complaint and any defenses upon which the licensee, permittee or owner-developer will rely. If no answer is filed within the time limit described in this subsection, the division may, after notice to the licensee, permittee or owner-developer served in the manner authorized in subsection 5 of NRS 645.680, move the commission for the entry of a default against the licensee, permittee or owner-developer.
2. The answer may be served by delivery to the commission, or by mailing the answer by certified mail to the principal office of the division.
3. No proceeding to suspend, revoke or deny the renewal of any license or registration of an owner-developer may be maintained unless it is commenced by the giving of notice to the licensee, permittee or owner-developer within 3 years of the time of the act charged, whether of commission or omission, except:
   (a) If the charges are based upon a misrepresentation, or failure to disclose, the period does not commence until the discovery of facts which do or should lead to the discovery of the misrepresentation or failure to disclose; and
   (b) Whenever any action or proceeding is instituted to which the division, licensee, permittee or owner-developer is a party and which involves the conduct of the licensee, permittee or owner-developer in the transaction with which the charges are related, the running of the 3-year period with respect to the institution of a proceeding pursuant to this chapter to suspend, revoke or deny the renewal of the license, permit or registration is suspended during the pendency of the action or proceeding.

NRS 645.690 Revocation, suspension or denial of renewal of license, permit or registration: Hearing; transcript.
1. The hearing on the charges must be held at such time and place as the commission prescribes. The hearing may be held by the commission or a majority thereof, and the hearing must be held, if the licensee, permittee or owner-developer so requests in writing, within the northern or southern district, as set forth in NRS 645.100, within which the principal place of business of the licensee, permittee or owner-developer is situated.
2. At the hearing, a stenographic transcript of the proceedings must be made if requested or required for judicial review. Any party to the proceedings desiring a transcript must be furnished with a copy upon payment to the division of the reasonable cost of transcription.
Key Idea

Additional disciplinary matters:

(1) Injunctions,

(2) Brokers attending Commission meetings, and

(3) The Education Research and Recovery Fund (ERRF)

are the final three disciplinary topics.

The Nevada Real Estate Division may request that the court system grant a judgment or order against a person (licensee or non-licensee), if the Division believes that a person has violated or is about to violate any of the provisions of NRS 645. The order or judgment will demand that the person ‘cease and desist’ of the illegal activity.

(1) What is an Injunction?

- An Injunction:
  - Stops a licensee from continuing an illegal violation.
  - Is issued in the name of the Real Estate Division by district court.

Supporting Law/Code:

**NRS 645.210 Injunctions.**

1. Whenever the real estate division believes from evidence satisfactory to it that any person has violated or is about to violate any of the provisions of this chapter, or any order, license, permit, decision, demand or requirement, or any part or provision thereof, it may bring an action, in the name of the real estate division, in the district court of the State of Nevada in and for the county wherein such person resides, or, if such person resides outside the State of Nevada, in any court of competent jurisdiction within or outside the State of Nevada, against such person to enjoin (Note: enjoin means stop) such person from continuing such violation or engaging therein or doing any act or acts in furtherance thereof.

2. If this action is in a district court of the State of Nevada, an order or judgment may be entered awarding such preliminary or final injunction as may be proper, but no preliminary injunction or temporary restraining order shall be granted without at least 5 days’ notice to the opposite party.

Note: This is for extreme cases. If an individual is selling real estate in Nevada without first obtaining a Nevada real estate license, or has stolen from their trust account, the Division may seek an injunction. The Division would give the individual 5 days notice that they will be going to court. The judge will issue the cease and desist order (injunction), making them stop doing the activity.
(2) BOTH Broker’s at Commission Disciplinary Hearings or $2,000 fine

A licensee’s present broker of record AND the broker that the licensee was associated with when a legislative violation occurred (if they have changed offices since the infraction) are required to attend any disciplinary hearing before the Commission concerning that licensee. This regulation can cost a broker $2,000 if they choose not to comply.

**Supporting Law/Code:**

NAC 645.855 Attendance of certain brokers required at disciplinary hearing. (NRS 645.190) If a person licensed as a real estate salesman or real estate broker-salesman is accused of violating any provision of this chapter or chapter 645 of NRS, the broker of record with whom the person licensed as a real estate salesman or real estate broker-salesman was associated at the time of the alleged violation and the broker with whom the person licensed as a real estate salesman or real estate broker-salesman is currently associated shall attend any disciplinary hearing before the Commission concerning that licensee.
(3) Real Estate Education, Research and Recovery Fund (ERRF)

Upon payment of a license fee, either for an original license or a renewal of a license; a licensee will notice an accounting for a charge called Real Estate Education, Research and Recovery Fund (ERRF). This fund is used for payment to parties possessing a judgment issued by the court system and injured by a licensee. It is also slated for use by the Division for licensee education, and real estate studies.

Nevada law and regulations dictate very specific rules with regards to its use.

Real Estate Education, Research and Recovery Fund (ERRF)
- Real Estate Education, Research and Recovery Fund (ERRF):
  - Is paid into by all new licensees and renewing licensees (not owner-developers).
  - Is a special revenue fund.
  - Is controlled by the Division Administrator.
  - Must have a minimum balance of $300,000.
  - All money in the fund in access of $300,000 at the end of a fiscal year must be set aside to be used for real estate education and research.
  - Is paid by the Division Administrator to a person with an uncollectible final judgment against a licensee for actual damages and petition filed no more than 1 year after termination of all proceedings.
  - May pay up to $25,000 per person.
  - May pay up to $100,000 for all judgments against 1 licensee, paid proportionately.

All new licensees and renewing licensees pay into this fund. It is controlled by the Real Estate Division Administrator. It must have at least $300,000 in it. It is used to pay victims of licensees’ incompetence. $25,000 for one judgment based on actual damages or $100,000 for multiple people proportionately. The injured party has to prove that the licensee is at fault and try to collect through the courts. If they can’t collect from the courts, within 1 year they can request that the Administrator pay them from the fund. It is the Administrator’s decision. If she pays, their licensee is automatically suspended and they can’t hold any other state license, until they pay it back with interest.
**Example 1:** Licensee Jay secured a real estate license from the Division. Jay listed a single family residence in Henderson. Jay failed to have his clients fill out a *Seller’s Real Property Disclosure form*. Licensee Jay noticed a wet spot on the ceiling of the property when he first examined the property, but forgot about the spot after the seller repainted the ceiling. The day after the property closed it rained and caused $30,000 damage to the structure of the property, collapsing the ceiling in the great room. The seller filed a complaint with the Nevada Real Estate Division, and represented by them and their attorney – the Nevada Attorney General’s office – proved to the Nevada Real Estate Commission that Jay was negligent. Jay’s license was suspended.

Next the seller filed a lawsuit in District Court. Armed with the Commission’s decision, he won a judgment against ex-licensee Jay. Since Jay was no longer employed as a real estate agent, he had no source of income, no assets, and could not satisfy the judgment. Next a writ of execution was issued upon the judgment and no assets of Jay’s were uncovered. Within 1 year of the proceedings, including reviews and appeals, a court order was issued requiring payment of the fund by the Division Administrator. She satisfied the judgment through the ERRF fund. By this time, Jay’s suspension had been served and he re-applied for a real estate license. The Administrator refused to issue a license because of payment from the fund and until the fund is paid with interest, Jay cannot secure a real estate license. Not counting interest, how much money does Jay owe?

Answer $25,000. Actual damages were $30,000 but the fund will only pay 1 person a maximum settlement of $25,000.

**Example 2:** Broker Dean owns a real estate brokerage specializing in property management. One of Dean’s agents, the property management designee, is a signer on the trust account along with Dean. The designee, Ted, forgot to complete continuing education, so even though he sent in the renewal fee with his renewal, he no longer has a real estate license or a property management permit. Dean failed to notice that the designee’s license expired, and allowed Ted to continue to sign on the company trust account. Today Ted is missing, a commercial building is being sold and demolished, and security deposits totally $200,000 are missing from the trust account. There are 10 tenants who are entitled to receive their deposits returned, 5 are entitled to $150,000 ($30,000 each) and 5 are entitled to $50,000 ($10,000 each). Assuming procedures are followed correctly, and they are paid from the ERRF fund, how much will each ex-tenant receive?

Answer: Maximum payout is $100,000. 5 tenants each lost 15% of the $200,000 (30,000/200,000), so each of them will receive .15 X 100,000 = $15,000. 5 tenants each lost 5% of the $200,000 (10,000/200,000), so each of them will receive .05 X 100,000 = $5,000. (5 X 15,000) + (5 X 5,000) = 75,000 + 25,000 = $100,000 split proportionately according to percentage of loss from the total amount.

(This can be calculated many different ways. As long as you can do it, it doesn’t matter how you do it.)
Supporting Law/Code:

_NRS 645.841 "Fund" defined._ As used in _NRS 645.842 to 645.8494_, inclusive, "fund" means the real estate education, research and recovery fund.

_NRS 645.842 Creation; use; balances._
1. The real estate education, research and recovery fund is hereby created as a special revenue fund.
2. A balance of not less than $300,000 must be maintained in the fund, to be used for satisfying claims against persons licensed under this chapter, as provided in _NRS 645.841 to 645.8494_, inclusive. Any balance over $300,000 remaining in the Fund at the end of any fiscal year must be set aside and used by the administrator, after approval of the commission, for real estate education and research.
3. The interest and income earned on the money in the Fund, after deducting any applicable charges, must be credited to the Fund.

_NRS 645.843 Payment of additional fee by licensee for augmentation of fund._
1. Upon application for or renewal of every real estate broker’s, broker-salesman’s and salesman’s license, every licensed broker, broker-salesman and salesman shall pay in addition to the original or renewal fee, a fee for real estate education, research and recovery. The additional fee must be deposited in the state treasury for credit to the real estate education, research and recovery fund, and must be used solely for the purposes provided in _NRS 645.841 to 645.8494_, inclusive.
2. Owner-developers need not contribute to the fund.

_NRS 645.844 Recovery from fund: Procedure; grounds; amount; hearing._
1. Except as otherwise provided in subsection 2, when any person obtains a final judgment in any court of competent jurisdiction against any licensee or licensees pursuant to this chapter, upon grounds of fraud, misrepresentation or deceit with reference to any transaction for which a license is required pursuant to this chapter, that person, upon termination of all proceedings, including appeals in connection with any judgment, may file a verified petition in the court in which the judgment was entered for an order directing payment out of the fund in the amount of the unpaid actual damages included in the judgment, but not more than $25,000 per judgment. The liability of the fund does not exceed $100,000 for any person licensed pursuant to this chapter, whether he is licensed as a limited-liability company, partnership, association or corporation or as a natural person, or both. The petition must state the grounds which entitle the person to recover from the fund.
2. A person who is licensed pursuant to this chapter may not recover from the fund for damages which are related to a transaction in which he acted in his capacity as a licensee.
3. A copy of the:
   (a) Petition;
   (b) Judgment;
   (c) Complaint upon which the judgment was entered; and
   (d) Writ of execution which was returned unsatisfied, must be served upon the administrator and the judgment debtor and affidavits of service must be filed with the court.
4. Upon the hearing on the petition, the petitioner must show that:
   (a) He is not the spouse of the debtor, or the personal representative of that spouse.
   (b) He has complied with all the requirements of _NRS 645.841 to 645.8494_, inclusive.
   (c) He has obtained a judgment of the kind described in subsection 1, stating the amount thereof, the amount owing thereon at the date of the petition, and that the action in which the judgment was obtained was based on fraud, misrepresentation or deceit of the licensee in a transaction for which a license is required pursuant to this chapter.
   (d) A writ of execution has been issued upon the judgment and that no assets of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found, or that the amount realized on the sale of assets was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due.
   (e) He has made reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment, and after reasonable efforts that no property or assets could be found or levied upon in satisfaction of the judgment.
(f) He has made reasonable efforts to recover damages from each and every judgment debtor.

(g) The petition has been filed no more than 1 year after the termination of all proceedings, including reviews and appeals, in connection with the judgment.

5. The provisions of this section do not apply to owner-developers.

**NRS 645.845 Administrator may answer petition** for recovery; effect of judgment; compromise of claim.

1. Whenever the court proceeds upon a petition as provided in **NRS 645.844**, the administrator may answer and defend any such action against the fund on behalf of the fund and may use any appropriate method of review on behalf of the fund. The judgment debtor may answer and defend any such action on his own behalf.

2. Unless the judgment was entered by default, consent or stipulation or the case was uncontested, the judgment set forth in the petition is prima facie evidence but the findings of fact therein are not conclusive for the purposes of **NRS 645.841** to **645.8494**, inclusive.

3. The administrator may, subject to court approval, compromise a claim based upon the application of a petitioner. He shall not be bound by any prior compromise of the judgment debtor.

**NRS 645.846 Court order requiring payment from fund.** If the court finds after the hearing that the claim should be levied against the portion of the fund allocated for the purpose of carrying out the provisions of **NRS 645.841** to **645.8494**, inclusive, the court shall enter an order directed to the administrator requiring payment from the fund of whatever sum it finds to be payable upon the claim pursuant to the provisions of and in accordance with the limitations contained in **NRS 645.841** to **645.8494**, inclusive.

**NRS 645.847 Automatic suspension of license upon payment from fund; conditions for reinstatement of license.**

If the administrator pays from the fund any amount in settlement of a claim or towards satisfaction of a judgment against a licensee, his license issued pursuant to chapter 119 of **NRS** and this chapter must be automatically suspended upon the effective date of an order by the court authorizing payment from the fund. The license of the broker, broker-salesman or salesman may not be reinstated and no other license may be granted to him pursuant to this chapter until he has repaid in full, plus interest at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the commissioner of financial institutions, on January 1 or July 1, as the case may be, immediately preceding the date of judgment, plus 2 percent, the amount paid from the fund on his account. Interest is computed from the date payment from the fund was made by the administrator and the rate must be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

**NRS 645.848 Distribution of payment** from fund if claims exceed maximum liability of fund; order of payment of claims if balance of fund insufficient; interest; use of certain money deposited in fund.

1. Whenever claims are filed against the fund which total more than the maximum liability for the acts of one licensee, the maximum liability of the fund for each licensee must be distributed among the claimants in a ratio that their respective claims bear to the total of all claims, or in any other manner that the court may find equitable.

2. The distribution must be made without regard to the order of priority in which claims were filed or judgments entered.

3. Upon petition of the administrator, the court may require all claimants and prospective claimants to be joined in one action so that the respective rights of all claimants may be equitably determined.

4. If, at any time, the money deposited in the fund and allotted for satisfying claims against licensees is insufficient to satisfy any authorized claim or portion thereof, the administrator shall, when sufficient money has been deposited in the fund, satisfy the unpaid claims or portions thereof, in the order that the claims or portions thereof were originally filed, plus accumulated interest at the rate of 6 percent per annum. Any sums received by the division pursuant to **NRS 645.847** and **645.8491** must be deposited in the state treasury for credit to the account for education and research in the fund.

**NRS 645.647 Additional grounds for disciplinary action: Failure to pay money to Commission or Division.** In addition to any other remedy or penalty, the Commission or the Division, as appropriate, may:

1. Refuse to issue a license, permit, certificate or registration to a person who has failed to pay money which the person owes to the Commission or the Division.

2. Refuse to renew, or suspend or revoke, the license, permit, certificate or registration of a person who has failed to pay money which the person owes to the Commission or the Division.
NRS 645.8491 Administrator subrogated to rights of judgment creditor; deposit of money recovered. When the administrator has paid from the fund any money to the judgment creditor, the administrator is subrogated to all other rights of the judgment creditor to the extent of the amount paid and any amount and interest so recovered by the administrator on the judgment must be deposited in the state treasury for credit to the fund.

NRS 645.8492 Waiver of rights. The failure of a person to comply with any of the provisions of NRS 645.841 to 645.8494, inclusive, shall constitute a waiver of any rights hereunder.

NAC 645.470 Annual financial statement and budget. (NRS 645.190)
1. Within 60 days after the close of the fiscal year, the administrator shall deliver to the commission a financial statement showing beginning balances, receipts, expenditures and ending balances of the real estate education, research and recovery fund in such detail as the commission requires.
2. Before the first meeting of each fiscal year, the commission will have a budget prepared for the yearly allocation of expenditures of the fund from money available for research and education. The budget so prepared will be presented at the first meeting of the Commission in the fiscal year.

NAC 645.475 Request for showing that judgment debtor has been examined by person who files petition against fund. For purposes of determining whether a person who has filed a petition against the real estate education, research and recovery fund has made reasonable searches and inquiries to ascertain whether the judgment debtor possesses real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment, the administrator shall request that the court require the petitioner to show that he has conducted an examination of the judgment debtor pursuant to NRS 21.270 to 21.340, inclusive, unless:
1. The judgment debtor cannot, with the exercise of due diligence, be found within the jurisdiction;
2. The judgment debtor has filed a petition in bankruptcy; or
3. There is good cause for not requiring the examination.

NAC 645.480 "Unpaid actual damages" interpreted. The administrator shall interpret the phrase "unpaid actual damages" as it is used in NRS 645.844 to exclude any attorney’s fees, prejudgment interest, or court costs related to the judgment upon which the petition is based.

NAC 645.485 Compromise of claim.
1. In compromising a claim pursuant to NRS 645.845, the administrator may prepare and enter into a stipulation with the petitioner and file a joint petition with the court.
2. Before the administrator and the petitioner file such a joint petition, the administrator shall advise the petitioner in writing that:
   (a) The division does not represent the interests of the petitioner; and
   (b) The petitioner should seek the advice of independent legal counsel regarding the proposed compromise.
3. The administrator shall compromise any claim and defend any action against the real estate education, research and recovery fund on behalf of the fund in which a settlement has been agreed upon by the petitioner or paid to the petitioner, including, without limitation, any settlement by a third party that has been agreed upon by the petitioner or paid to the petitioner.