

**PROPOSED REGULATION OF THE
DIVISION OF FINANCIAL INSTITUTIONS
OF THE DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R045-00

Mortgage Brokers

Explanation--Matter in italics is new, matter in brackets *#* is material to be omitted.

Purpose: To implement the provisions of Assembly Bill 64 and make other appropriate amendments to the regulation of mortgage brokers.

Authority: NRS 645B.080(2)(b) and (3); 645B.060(2); 645B.050(3); AB 64, NRS 86.555

Address of Agency: The agency promulgating this regulation is the Commissioner of Financial Institutions (Commissioner), whose address is 406 East Second Street, Carson City, Nevada 89710. The Commissioner is being advised and assisted by the Nevada Attorney General's Office in the drafting of these regulations. The contact person is Doug Walther, Senior Deputy Attorney General, Attorney General's Office, Capital Complex, Carson City, Nevada 89710, phone (775) 684-1213, FAX (775) 684-1108.

Section 1. Chapter 645B of NAC is hereby amended by adding sections 2 to 17, inclusive, of these proposed regulations.

Sec. 2. *1 A mortgage broker shall not operate under a fictitious name unless he complies with chapter 602 of NRS, files with the division a certified copy of the certificate issued by the county clerk, and the division has issued a license that reflects the fictitious name. The division shall not issue more than one license or exemption certificate under the same or a confusingly similar name.*

2. A mortgage broker shall not use more than one name, fictitious or otherwise, for each license or exemption certificate issued by the division.

3. If a mortgage broker changes or assume a fictitious name under which business is conducted, he shall file with the division a certified copy of the certificate issued by the county clerk within 10 days after the certificate is issued, return the current mortgage broker's license and request that a new license be issued that reflects the name under which business is proposed to be conducted. The mortgage broker may not use the fictitious name until he has received the amended license reflecting the fictitious name.

Sec. 3. *1. The commissioner may issue an order directing a person to cease engaging in activities for which the person has not received a license under chapter 645B of NRS or conducting activities in a manner not in compliance with the provisions of chapter 645B of NRS or the regulations adopted pursuant thereto.*

2. The order to cease must be in writing and must state that, in the opinion of the commissioner, the person has not been issued a license for the activity or the provisions of

chapter 645B of NRS or the regulations adopted pursuant thereto do not allow the person to conduct the activity in that manner. The person shall not engage in any activity regulated by this chapter after he receives such an order.

3. Within 30 days after receiving such an order, a person may file a verified petition with the commissioner for a hearing. The commissioner may, for good cause shown, suspend the order to cease pending the hearing. The commissioner shall hold a hearing within 30 days after the petition has been filed unless the parties agree to a longer period of time. If the commissioner fails to hold a hearing within 30 days or such other period of time as the parties agree, or does not render a written decision within 45 days after the final hearing, the cease and desist order is rescinded.

4. The decision of the commissioner after a hearing is a final order of the division for purposes of appeal.

Sec. 4. A certificate of exemption from the provision of chapter 645B of NRS and the regulations adopted pursuant thereto issued by the division pursuant to NRS 645B.020(5) shall be deemed to constitute a certificate of exemption issued pursuant NRS 645E.160.

Sec. 5. 1. If during the course of an examination or investigation an examiner believes that the mortgage broker has violated any of the following laws:

(a) The Truth and Lending Act, 15 U.S.C. §§ 1601 to 1667e, inclusive, Regulation Z, 12 C.F.R. Part 226, or the Official Staff Commentary thereto, including, but not limited to, the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1639;

(b) The Equal Credit Opportunity Act, 15. U.S.C. §§ 1691 to 1691f, inclusive, Regulation B, 12 C.F.R. Part 202, or the Official Staff Commentary thereto; or

(c) The Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 to § 2617, inclusive and Regulation X, 24 C.F.R Part 3500, or the Official Staff Commentary thereto, the commissioner will refer the matter to the appropriate federal and/or state agency with jurisdiction to investigate and take action in the matter.

2. The commissioner may impose any discipline authorized by NRS 645B.100 if a mortgage broker:

(a) Commits any act that constitutes a deceptive trade practice as defined in chapter 598 of NRS; or

(b) Fails to refund any fees collected in excess of the actual cost he incurs or pays for any appraisal, credit report or any other product or service provided by a third party in connection with the making of a loan.

Sec. 6. In determining whether a mortgage broker has maintained adequate supervision of a mortgage agent, the commissioner will consider whether:

1. The mortgage broker has made a reasonable effort to investigate the background and experience of a prospective mortgage agent and hire only mortgage agents whose background and experience indicate that the person is trustworthy and competent to conduct the business of a mortgage agent;

2. The mortgage broker has adopted and followed any policies and procedures, written or oral, with respect to the supervision and training of mortgage agents;

3. The mortgage agent has followed the policies and procedures of the mortgage broker, written or oral, governing his or her activities;

4. *The mortgage broker has established and followed a system of review for compliance with his or her written or oral policies and procedures;*
5. *The mortgage broker's policies and procedures require regular review of a mortgage agent's work;*
6. *The mortgage broker reviewed the mortgage agent's work in the case under examination by the commissioner;*
7. *The mortgage broker's policies and procedures include training in the requirements of chapter 645B or NRS and NAC;*
8. *The mortgage broker makes copies of chapter 645B of NRS and NAC available to mortgage agents;*
9. *The mortgage broker's policies and procedures include a provision for continuing education for mortgage agents;*
10. *The amount of time the mortgage broker is physically present in the office where the mortgage agent is working;*
11. *The mortgage agent has received or acted on previous reports of alleged misconduct by the mortgage agent;*
12. *Review of the mortgage agent's previous work would have disclosed a problem with the conduct or issue being examined by the commissioner.*

Sec. 7. A "major violation" means any violation of NRS Chapter 645B or NAC Chapter 645B:

1. *That causes a loss of \$500 or more or other substantial harm to any person, or which, in the opinion of the commissioner, could have caused a loss of \$500 or more or other substantial harm to any person; or*
2. *With respect to which the licensee has previously received disciplinary action or repeated notices or warnings to cease or correct the conduct that resulted in the previous violation or notice or warning, except that violations for late filing of required reports, financial statements, or fees may, in the commissioner's discretion, be considered minor violations.*

The commissioner will suspend or revoke the license of the person who commits a major violation. Any violation that is not a major violation is a minor violation.

Sec. 8. 1. *Any person may file with the commissioner a complaint alleging that any person has committed a violation of NRS Chapter 645B, these regulations, or an order of the commissioner. The complaint must:*

- (a) *Be in writing;*
- (b) *Be signed by the complainant or the complaint's authorized representative;*
- (c) *Contain the address and telephone number of the complainant or the complaint's authorized representative;*
- (d) *Describe the nature of the complaint in as much detail as possible;*
- (e) *Include as exhibits copies of all documentation supporting the complaint.*

2. *If the commissioner determines that a complaint filed pursuant to subsection 1 contains allegations which, if true, would constitute one or more violations of NRS Chapter 645B, these regulations or an order of the commissioner, he shall investigate the allegations unless he has previously investigated the allegations. If the commissioner does not investigate the*

allegations he shall inform the person filing the written complaint in writing of the reasons for his decision, including any information required by subsection 2 of NRS 645B.610.

3. The commissioner will provide a copy of the written complaint to the person who is alleged to have committed a violation of NRS Chapter 645B, these regulations or an order of the commissioner and may enter an order that the person respond in writing to the written complaint within a period of time specified by the commissioner.

4. If after investigation the commissioner determines that there is reasonable cause to believe that a person has committed one or more violations of NRS Chapter 645B, these regulations or an order of the commissioner, he may attempt to enter into a written consent agreement with the person alleged to have committed the violation that settles or resolves the alleged violation or violations. A copy of any consent agreement executed pursuant to this section will be provided to the person who filed the written complaint that resulted in execution of the consent agreement.

5. If the commission is unable to settle or resolve all allegations that the commissioner has determined there is reasonable cause to believe the person committed, he shall schedule a hearing concerning the allegations pursuant to subsection 5 of Section 77 of NRS 645B.610.

Sec. 9. If a mortgage broker or mortgage agent engages in any act or transaction on behalf of an investor pursuant to a power of attorney, the power of attorney must be in substantially the following form:

Special Power of Attorney

The undersigned, _____, does hereby appoint ...(name of mortgage broker) ..., my true and lawful attorney, to perform services related to the following loan in which I own a beneficial interest: _____. The services to be performed are described below:

(describe services here)

This power of attorney shall not be effective to authorize any transaction that subordinates the priority of the recorded deed of trust that secures this loan unless accompanied by a writing issued by the undersigned that consents to such subordination.

This power of attorney shall not be effective to authorize the use or release of money in which the undersigned owns a beneficial interest for any purpose except for the provision of the services described above relating to the loan described above unless accompanied by written authorization by the undersigned for the use or release of money for the other purpose.

This power of attorney shall be effective for a period of [not more than 6] ____ months from the date executed but may be extended for additional [not more than 6] ____ month increments if authorized in writing by the undersigned. Only one such authorization may be given for an extension during each [not more than 6] ____ month period.

I give and grant to my said attorney full power to execute in my name contracts, escrow instructions, conveyances, mortgages, deeds of trust, and all other documents necessary to

carry out the services described herein as fully to all intents and purposes as the undersigned might or could do if personally present, hereby ratifying and confirming all that my said attorney shall lawfully do, or cause to be done, by virtue of these presents.

Witness my hand this _____ day of _____, _____.

*State of _____
County of _____*

*This instrument was acknowledged before me on ___(date)___, by ___(name(s))
of person(s)___.*

(Signature of notarial officer)

(Seal, if any)

*(Title and rank (optional)
(My commission expires (optional) _____)*

Approved by the commissioner of financial institutions on _____.

Sec. 10. 1. If a mortgage broker or mortgage agent engages in any act or transaction on behalf of an investor pursuant to a power of attorney, the power of attorney must first be submitted to the commissioner for approval. The commissioner will within 10 business days after receiving a request for approval of a power of attorney:

- (a) Approve the power of attorney;**
- (b) Approve the power of attorney on the condition that the broker amend the power of attorney as directed by the commissioner, or**
- (b) Reject the power of attorney.**

If the commissioner has not acted on a power of attorney submitted for approval pursuant to this section within 10 business days, the power of attorney shall be deemed approved. The mortgage broker shall maintain in its file all written communications relating to the request for approval of the power of attorney.

2. Any writing executed or issued by a person authorizing the use of a power of attorney for a purpose other than for providing services related to the loan specified in the power of attorney must be dated and must refer to the loan to which the authorization relates. A copy of such a written authorization must be maintained by the mortgage broker.

3. Any writing executed or issued by a person extending the term of a power of attorney must be dated and a copy of the extension must be maintained by the mortgage broker.

4. A power of attorney approved by the commissioner pursuant to this section must state the date that the commissioner approved it. If the mortgage broker materially changes the power of attorney, it must be again submitted to the commissioner for approval prior to its use.

Sec. 11. 1. A mortgage broker or mortgage agent accepts money for an investment within the meaning of NRS 645B.185 if the mortgage broker or agent acts as a person's agent in soliciting or arranging for the person to invest in a loan secured by a lien on real property.

2. The disclosure form given to an investor pursuant to NRS 645B.185 must be in substantially the following form:

At least 14 point bold type:

MORTGAGE INVESTMENT DISCLOSURE FORM

At least 10 point type:

IMPORTANT: Pursuant to NRS 645B.185, each investor must sign and date a disclosure form before a mortgage broker or mortgage agent accepts money for the investment. This form must be executed for each separate loan in which the investor invests money. A mortgage broker or mortgage agent may not act as the investor's attorney in fact or agent in the signing or dating of this form and may not by agreement alter or waive these disclosure requirements.

Description of loan: _____

At least 14 point bold type:

BEFORE YOU INVEST IN A PROMISSORY NOTE SECURED BY AN INTEREST IN REAL PROPERTY, YOU SHOULD KNOW . . .

The funding of a loan or purchase of a promissory note that is secured by a lien on real property (mortgage loan) is an investment that involves some risk.

At least 10 point type:

An investment in a promissory note secured by a lien on real property, usually through a deed of trust (mortgage loan or mortgage loan investment), like most investments involves risk that the investment will not perform as expected. The mortgage broker with whom you are dealing is not a depository institution and a deed of trust investment is not secured by any depository insurance or insured or guaranteed by any agency of the state or federal government. Nevada law prohibits the mortgage broker with whom you are dealing from representing or even implying to you that he or she will insure or guarantee that the investment will perform as expected. The borrower on the loan may default in required payments and you may lose all or part of the principal amount you invested and/or the interest you expected to earn from the investment.

Some of the most significant factors that affect your risk in a mortgage loan investment include: (1) the knowledge, experience and integrity of the mortgage broker with whom you are dealing, (2) the market value and equity of the property that will secure the promissory note, (3) the borrower's financial standing and creditworthiness, (4) the escrow process involving the funding of the loan or purchase of the note, (5) the documents and instruments describing, evidencing and securing the loan, (6) provisions regarding the collection and servicing of the loan, and (7) provisions for enforcement of the deed of trust.

At least 14 point bold type:

You are entitled to information about the mortgage broker with whom you are investing.

At least 10 point type:

You are entitled to receive information regarding the mortgage broker with whom you are dealing from the Commissioner of Financial Institutions Division, which may be contacted at either one of the following locations:

*Financial Institutions Division
406 E. Second Street, Suite 3
Carson City, Nevada 89701-4758
(775) 687-4259*

*Financial Institutions Division
2501 E. Sahara Avenue Suite 300, Third Floor
Las Vegas, Nevada 89104
(702) 486-4120*

You may wish to ascertain:

- Whether the mortgage broker or mortgage agent with whom you are dealing is properly licensed or registered with the Financial Institutions Division.*
- How long the mortgage broker or mortgage agent has been licensed or registered.*
- Whether the Financial Institutions Division during the immediately preceding 5 years has disciplined the mortgage broker.*
- The findings and results of any investigation which has been completed during the immediately preceding 5 years against the mortgage broker pursuant to the provisions of NRS Chapter 645B and which has resulted in a finding by the commissioner that the mortgage broker committed a violation of a provision of NRS Chapter 645B, a regulation adopted pursuant to this chapter or an order of the commissioner.*

You also have the right to request the mortgage broker with whom you are dealing to authorize the Financial Institutions Division to release to you the most recent financial statement of the mortgage broker on file with the Division. YES, I would like to review a financial statement. NO, I would not like to review a financial statement.

Required Disclosures:

Has any disciplinary action been taken by the commissioner against the mortgage broker or any general partner, officer or director of the mortgage broker within the preceding 12 months? YES; NO. If yes, describe below:

Has the mortgage broker or any general partner, officer or director of the mortgage broker been convicted within the preceding 12 months for violating any law, ordinance or regulation that involves fraud, misrepresentation or a deceitful, fraudulent or dishonest business practice? YES; NO. If yes, describe below:

At least 14 point bold type:

You are entitled to have a written appraisal of the property that is to secure your deed of trust investment as well as other information relating to the property.

At least 10 point type:

The law requires the mortgage broker with whom you are dealing to obtain and make available for your inspection a written appraisal of the real property which is to secure the mortgage loan investment unless you

- A preliminary report on the status of the title of the property which is proposed as security for the loan;

Received

Investor: _____

Waived

Dated: _____

- An analysis by the mortgage broker of the ability of the prospective borrower to pay his monthly debts.

Received

Investor: _____

Waived

Dated: _____

If the loan is made, you are entitled to review the following documentation relating to the mortgage investment:

- A copy of a policy of fire insurance which is adequate to cover all liens on the property securing the loan, including an endorsement naming the investor as the insured, when applicable;

Received

Investor: _____

Waived

Dated: _____

- A copy of a statement signed by each investor acknowledging that the decision to make the loan was made after the investor was provided with the material described above;

Received

Investor: _____

Waived

Dated: _____

Not applicable

- If the investor is a corporation, partnership or limited liability company, a copy of its statement authorizing the loan;

Received

Investor: _____

Waived

Dated: _____

Not applicable

- If the borrower is a corporation, partnership or limited liability corporation, a copy of its statement authorizing the loan.

Received

Investor: _____

Waived

Dated: _____

Not applicable

If the loan is made, you must receive the following documentation relating to the mortgage investment:

- A copy of the promissory note;

Received

Investor: _____

Waived

Dated: _____

- A recorded copy of the deed of trust securing the loan;

Received

Investor: _____

Waived

Dated: _____

- A copy of the policy of title insurance on the property securing the loan.

Received

Investor: _____

Waived

Dated: _____

At least 14 point type:

You are entitled to review documentation relating to how the mortgage loan is funded and serviced.

At least 10 point type:

Nevada law requires the mortgage broker to either fund the entire amount of the loan out of his or her trust account directly to the borrower or through a third party escrow agent. In most cases, the loan will be funded through a third party escrow agent. An escrow is opened when money, documents, instruments, and written instructions regarding the transaction (escrow instructions) are conditionally delivered by the principals to a third party (escrow agent). The escrow instructions set forth the conditions that must be satisfied or waived before the escrow agent may disburse your funds to either the borrower or the note holder. You have the right to review the escrow instructions. The escrow instructions should be consistent with your understanding of the loan transaction and should identify a specific promissory note and deed of trust (or interest therein). Escrow “closes” when all the conditions of the escrow instructions have been waived or satisfied, the instruments have been recorded, and the funds have been disbursed. You have the right to review a closing statement relating to the escrow describing to whom and how the funds were disbursed.

In many cases, including those where the investments consist of “fractionalized” interests, ownership of less than 100% of the mortgage investment, the loan requires servicing by an authorized agent. Loan servicing includes collecting payments from borrowers, disbursing payments to investors or note holders, mailing of appropriate notices, monitoring the status of senior liens and encumbrances, maintaining adequate insurance coverage, and coordinating foreclosure proceedings. The mortgage broker with whom you are dealing is authorized by Nevada law to act as the servicing agent for the mortgage loan he originates. It is recommended that all persons investing in a mortgage loan that will be serviced by a servicing agent execute a written servicing agreement that clearly specifies the authority granted to the servicing agent. The servicing agreement should address issues such as (1) The fees for servicing and how they are to be paid, (2) The person who has the authority to instruct the trustee under the deed of trust to commence foreclosure proceedings in the event of a default, (3) How, in the case of a “fractionalized” note and deed of trust with multiple parties owning beneficial interests, are the parties to determine and direct the actions to be taken in the event of default or with respect to other matters that involve the enforcement of the terms of the promissory note and/or deed of trust (Nevada law requires that the documentation pertaining to a note and deed of trust owned initially by more than one natural person include a provision by which record holders of 51% (or some other percentage) or more of the beneficial interests in the mortgage loan may direct certain actions that require direction or approval of the holders of beneficial interests), (4) Who is the person responsible for holding the original promissory note and deed of trust, (5) How the loan servicing agreement may be terminated by the investors in the mortgage loan, (6) The right to obtain the names, addresses and phone numbers of other persons with beneficial interests in the loan, and (7) The monitoring of any senior liens.

A Mortgage broker performing loan servicing has an obligation to account to the borrower and every investor for money collected and disbursed in the exercise of that function.

At least 14 point type:

You have the right to know whether the mortgage broker with whom you are dealing is acting in any capacity, or has any other interest, other than as a mortgage broker.

At least 10 point type:

Nevada law requires the mortgage broker with whom you are dealing to disclose to you whether he or she has any personal interest in the mortgage loan other than as a mortgage broker. For example, if the mortgage broker owns a 50% interest in the builder applying for a construction loan, he is required to disclose that interest to you. In addition, if a mortgage broker or a relative of the mortgage broker is licensed as, conducts business as or holds a controlling interest or position in (1) a construction control company, (2) an escrow agency, or (3) a title agent,

a title insurer or an escrow officer of a title agent or title insurer, he or she must fully disclose that relationship to every investor and may not require, as a condition to the acquisition or purchase of an interest in a mortgage loan, that the investor transact business with or use the services of the other business.

The mortgage broker has an interest in this loan in a capacity other than as a mortgage broker. YES, NO. If yes, explain below:

At least 14 point type:

Enforcement of a promissory note and deed of trust involves some risk.

At least 10 point type:

When the borrower on a mortgage loan fails to make required payments, the actions an investor can take, or a servicing agent on behalf of an investor, are determined by provisions of Nevada law and the documents and instruments evidencing the mortgage loan. Frequently, the borrower who is delinquent on your loan is also delinquent on senior liens. Even though your loan may be current, the borrower may fail to maintain the payments on senior liens, such as taxes, insurance premiums, and/or deeds of trust. A breach of or default in connection with a senior lien by the borrower most likely constitutes an event of default under your deed of trust. It is therefore important that the status of all senior liens be monitored. Prior to investing in a junior deed of trust, you should determine the amount of debt service (payments) required to maintain the senior lien(s). To protect your investment during any senior lien (loan) foreclosure, it may be necessary for you to maintain the payments (with your own funds) on all senior liens. You may lose your interest in the property securing the loan if a senior lien forecloses on the property.

There will be other costs associated with enforcing a mortgage loan such as attorneys fees and processing fees, and there will likely be a delay of some months before the foreclosure process is complete. Issues such as whether to commence a judicial or non-judicial foreclosure, deficiency judgments, rents and profits if the property is income-producing, and bankruptcy may also need to be addressed.

At least 14 point type:

If you have questions.

At least 10 point type:

If you have any questions regarding any of the issues discussed in this disclosure form, discuss them with your mortgage broker, lawyer, financial advisor or trusted friend or family member. No one can guarantee that a particular investment will be risk free, but with information about the specific risks involved, you can take steps to minimize your risk.

Loan:

*Investor
signature*

required:

Dated:

Sec. 12. "Qualified Employee" means a director, officer, member, employee, manager or trustee designated by a partnership, corporation or limited liability company to act on its behalf as a mortgage broker or a person designated by a sole proprietorship to satisfy the requirements of subsection 3 of NRS 645B.020 and NAC 645B.010.

Sec. 13. *1. Every partnership, corporation or limited liability company doing business as a mortgage broker in this state shall designate a qualified employee to be approved to act on behalf of the partnership, corporation or limited liability company.*

2. The commissioner shall approve the qualified employee to act on behalf of the partnership, corporation or limited liability company, upon compliance by the qualified employee with all the requirements of subsection 3 NRS 645B.020, NAC 645B.010, and all other requirements for a mortgage broker's license.

3. Upon receipt of the approval the qualified employee is entitled to perform all the acts authorized by a license issued by the commissioner, except:

(a) That the approval issued entitles the qualified employee to act pursuant to the terms and conditions of the license issued by the commissioner only as a qualified employee of the partnership, corporation or limited liability company, and not on his own behalf; and

(b) That if the person designated by the partnership, corporation or limited liability company:

(1) Is not approved to act on behalf of the partnership, corporation or limited liability company; or

(2) Ceases to be connected with the partnership, corporation or limited liability company, the partnership, corporation or limited liability company must, within 30 days, unless additional time is granted by the commissioner for good cause shown, designate another person who shall make application and qualify as in the first instance.

Sec. 14. *1. An applicant or mortgage broker shall register with the commissioner each mortgage agent with which it associates or intends to associate on a form provided by the commissioner. The mortgage broker and the mortgage agent to whom the form pertains must sign the form. A mortgage agent may associate with only one mortgage broker at a time and at only one licensed office location of the mortgage broker and may not associate with a mortgage broker exempt from NRS chapter 645B or a mortgage broker whose office is located outside Nevada.*

2. Upon request of a mortgage broker, the commissioner may waive the requirement of an investigation of the mortgage agent's criminal history and background if such an investigation has been conducted within one year immediately preceding the date the form is submitted.

3. The registration of a mortgage agent pursuant to this section is effective upon filing the form with the Division, but shall be invalidated by the Division if upon investigation the Division determines that the mortgage agent does not meet the requirements of subsections 4 (a) and (b) of NRS 645B.450. The Division shall notify the mortgage broker and the mortgage agent in writing if a registration is invalidated pursuant to this section.

4. The report of an investigation of a mortgage agent's criminal history and background will be considered confidential and released by the Commissioner only pursuant to a valid subpoena or court order.

5. The written statement of the circumstances surrounding the termination of a mortgage agent required by Subsection (5)(b)(1) of 645B.450 will be considered a public record.

Sec. 15. *If a mortgage broker acts as agent on behalf of the investors with respect to any mortgage loan, the beneficial interest of which is assigned to more than one natural person, the documentation of the transaction shall include provisions by which 51% or another specified percentage or more of the record beneficial interests of the notes or interests may act*

on behalf of all the holders of the record beneficial interests in event of default or foreclosure for matters that require direction or approval of the holders, including designation of the mortgage broker, servicing agent, or other person action on their behalf, and the sale, encumbrance, or lease of real property owned by the holders resulting from foreclosure or receipt of a deed in lieu of foreclosure. The terms required by this section may be included in the deed of trust, the assignment of interests, or in any other documentation as is necessary or appropriate to make them binding on the parties.

Sec. 16. *“Net worth” means the amount by which a mortgage broker’s assets exceed its liabilities, calculated in accordance with generally accepted accounting principles, subject to the following:*

- (1) Intangibles and related party receivables must be excluded; and*
- (2) Subordinated shareholder debt may be excluded.*

Sec. 17. NAC 645B.010 is hereby amended to read as follows:

~~[(1)]~~ An applicant for a mortgage ~~[company's]~~ *broker’s* license must have:

~~[(a)]~~ 1. At least 2 years of verifiable experience in lending money for real estate or mortgages; and

~~[(b)]~~ 2. A knowledge of generally accepted accounting practices and bookkeeping procedures evidenced by verifiable experience in working in these areas or appropriate educational training, or both.

~~[(2. If a qualified employee of the principal office or a branch office of a mortgage company is the person who satisfies the requirement for verifiable experience set forth in paragraph (a) of subsection 1, the qualified employee must also possess the qualifications set forth in subsection 3 of NRS 645B.020.)]~~

Sec. 18. NAC 645B.015 is hereby amended to read as follows:

A person who conducts verifiable business as a mortgage *broker* ~~[company]~~ is one who:

1. Handles the arrangements between a borrower and a investor for a loan which is secured by a lien on real property and is consummated as a result of such arrangements;

2. Originates a loan secured by a lien on real property in the capacity of a investor or provider; or

3. Purchases or sells existing notes secured by liens on real property.

Evidence of such activity must be submitted to the ~~[administrator]~~ *commissioner* of financial institutions in the monthly report of activity.

Sec. 19. NAC 645B.020 is hereby amended to read as follows:

An applicant must submit with his application for a license:

1. A copy of his business license, when applicable, or his application for such a license if he has not obtained one.

2. A copy of the mortgage ~~[company's]~~ *broker’s* certificate of the fictitious name of the business, if any.

3. If the applicant is a corporation, a copy of:
 - (a) Its articles of incorporation and its bylaws;
 - (b) Its ~~most recent biennial~~ balance sheet and a statement of the profit and loss of the corporation *for the 2 years immediately preceding the year of the application*; and
 - (c) The most recent list of its officers~~, directors~~ and resident agents which is filed with the secretary of state.
4. If the applicant is a partnership or joint venture, a copy of the agreement of partnership or joint venture and the financial statements of the partners for the 2 years immediately preceding the year of the application.
5. If the applicant is a corporation being organized, a copy of its proposed articles of incorporation and its bylaws.
6. *If the applicant is a limited liability company, a copy of:*
 - (a) *Its articles or organization and operating agreement;*
 - (b) *A statement of the profit and loss of the limited liability company for the 2 years immediately preceding the year of the application; and*
 - (c) *The most recent list of its members or managers and resident agents which is filed with the secretary of state.*
7. *The registration form for mortgage agents with which it intends to associate required by Section 14 of these proposed regulations.*

Sec. 20. NAC 645B.030 is hereby amended to read as follows:

~~[The administrator of financial institutions will not approve a branch of a mortgage company until its principal office has been examined by the administrator and has received at least a satisfactory rating. An application for a license for a branch office must include evidence of adequate operating procedures and qualified personnel in order to ensure a lending quality which is equivalent to the mortgage company's principal office.]~~

1. *An applicant must submit with his application for a branch license:*
 - (a) *The name, residence address and telephone number of the qualified employee designated to manage the branch office;*
 - (b) *The registration form for mortgage agents with which it intends to associate required by Section 14 of these proposed regulations.*
2. *The commissioner will approve an application for a branch office if:*
 - (a) *The principal office of the mortgage broker has been examined by the commissioner and has received at least a satisfactory rating;*
 - (b) *He approves a qualified employee to manage the branch office; and*
 - (c) *All mortgage agents who will work or intend to work at the branch office have been registered with the division.*
3. *A mortgage broker is responsible for and shall supervise all branch offices operated by him and all qualified employees and mortgage agents authorized to conduct mortgage lending activity at that location. The license for each branch office must be conspicuously displayed at each branch office location. A license for a branch office may only be issued in the name in which the mortgage broker is licensed to conduct business at his main office.*

Sec. 22. NAC 645B.040 is hereby amended to read as follows:

1. Any material change in the ownership, management or principal employees of a mortgage ~~[company]~~ *broker at its principal office or any branch office* must be reported to the ~~[administrator]~~ *commissioner* of financial institutions within 30 days after the change. A financial statement or a personal interrogatory, or both, of the prospective owner, partner, corporate shareholder, manager or employee must be submitted to the ~~[administrator]~~ *commissioner* for his consideration *if the change constitutes a change of control pursuant to NRS 645B.095. A person who acquires stock or ownership in a mortgage broker as the result of a transfer that constitutes a change of control pursuant to NRS 645B.095 must not participate in the management of the mortgage broker until the commissioner has approved the transfer. No mortgage broker may change its principal office or branch office until the commissioner has approved the change.*

2. *A mortgage broker may not close its principal office or any branch office without first returning its license and obtaining approval from the commissioner. The request for approval must contain the following information:*

(a) The status of any incomplete applications for mortgage loans and the manner in which the loans will be finalized;

(b) An accounting of all trust accounts maintained by the mortgage broker and the plan for distribution of funds in the accounts;

(c) Evidence that any mortgage agents associated with the mortgage broker have been terminated in accordance with NRS 645B.450(5);

(d) The location in this state where records of the mortgage broker will be maintained in accordance with the requirements of subsection 6 of NAC 645B.080.

Sec. 23. NAC 645B.060 is hereby amended to read as follows:

1. The commissioner of financial institutions will charge and collect a fee of \$40 per hour from each mortgage ~~[company]~~ *broker* for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 645b of NRS *and may charge a fee of \$125 per hour for any attorney time required in any examination, investigation or hearing conducted pursuant to chapter 645B of NRS.*

2. The commissioner will bill each mortgage ~~[company]~~ *broker* upon the completion of the activity for the fee established in subsection 1. The fee must be paid within 30 days after the date the bill is received. Except as otherwise provided in this subsection, any payment received after that date must include a penalty of 10 percent of the fee plus an additional 1 percent of the fee for each month, or portion of a month, that the fee is not paid. The commissioner may waive the penalty for good cause.

3. Failure of a mortgage ~~[company]~~ *broker* to pay the fee required in subsection 1 as provided in this section constitutes grounds for *the imposition of any discipline authorized by NRS 645B.100, including the* revocation of its license.

Sec. 24. NAC 645B.064 is hereby amended to read as follows:

1. Except as otherwise provided in NAC 658.030, each mortgage **[company] broker** shall pay to the division of financial institutions of the department of business and industry an annual assessment **[of \$300] in an amount calculated in accordance with NAC 658.030** to cover the costs related to the employment of a certified public accountant and the performance of audits and examinations conducted by the division.

2. The division will bill each mortgage **[company] broker** for the assessment. The assessment must be paid within 30 days after the date the bill is received.

3. A charge of 10 percent of the assessment will be imposed on any mortgage **[company] broker** whose assessment is received by the division after the date on which the assessment is due. The commissioner may waive the penalty for good cause shown.

Sec. 25. NAC 645B.070 is hereby amended to read as follows:

1. Each mortgage **[company] broker** shall submit, on a monthly basis, a report on the volume of loans arranged in that month **on a form approved by the commissioner. If the mortgage broker is performing loan servicing and maintains any accounts described in subsection 4 of NRS 645B.175, the reports must include the information required by subsection 2.** These reports must be submitted to the **[administrator] commissioner** of financial institutions by the 15th day of the month following the month for which the report was made. If no loans were arranged in that month, the report must so state.

2. If, on the last day of any month, a debtor has failed to make two or more consecutive payments in accordance with the terms of the loan, a mortgage broker who is performing loan servicing and maintains any accounts described in subsection 4 of NRS 645B.175 shall:

(a) Include in its report to the commissioner:

- (1) The name, address and telephone number of the debtor;**
- (2) The total number of consecutive months and days that the debtor has failed to make a payment;**
- (3) The total number and amount of any payments made on the current delinquency;**
- (3) The outstanding balance of the loan and any accrued interest on the last day of the month for which the report is submitted;**
- (4) A statement of whether the loan has been declared to be in default and, if so, the nature of any actions that have been taken because of the default; and**
- (5) The date on which the mortgage broker sent the notice to investors required by NRS 645B.260(1)(b) and subsection (2)(b) of this section.**

If the mortgage broker is not servicing any loans in which a debtor has failed to make two or more consecutive payments in accordance with the terms of the loan, the report shall so state.

(b) Mail a notice containing the following information to the last known address of each investor who owns a beneficial interest in the loan not later than 15 days after the last day of any such month:

- (1) The name, address and telephone number of the debtor;**
- (2) The total number of months and days that the debtor has failed to make a payment;**

(3) The outstanding balance of the loan and any accrued interest on the last day of the month for which the report is submitted;

(4) A statement of whether the loan has been declared to be in default and, if so, the nature of any actions that have been taken because of the default.

(3) The mortgage broker must comply with the provisions of subsection 2 each month on a continuing basis until:

(a) The debtor or his designee remedies the delinquency in payments and any default; or

(b) The lien securing the loan is extinguished.

~~[2]~~ 4. The administrator ~~[will not]~~ *may refuse to* renew the license of a mortgage ~~[company]~~ *broker* which has not submitted the reports required by subsection 1 *for any of the preceding 12 months.*

Sec. 26. NAC 645B.080 is hereby amended to read as follows:

1. Before a investor who is a natural person makes a loan for which a licensed mortgage ~~[company]~~ *broker* is acting as a broker, the mortgage ~~[company]~~ *broker* shall provide, unless specifically waived in writing, to the investor:

(a) A written application for the loan which is signed by the prospective borrower and which contains the borrower's address, a history of his employment and income, details of monthly payments he is obliged to pay and any other information requested by the investor.

(b) Evidence of the prospective borrower's history of employment and income, such as a tax return or an employer's statement of the borrower's past yearly income.

(c) A report on the prospective borrower's history of credit *issued by a credit reporting agency*, including an explanation by the borrower of any material derogatory item in the report and evidence that the report has been compared for accuracy to the borrower's application for the loan.

(d) An analysis by the mortgage ~~[company]~~ *broker* of the ability of the prospective borrower to pay his monthly debts.

(e) A preliminary report on the status of the title of the property which is proposed as security for the loan.

(f) A statement of the status of prior liens against the property which is proposed as security, including the current balance of the liens and the status of payments.

(g) An appraisal of the property which is proposed as security.

2. A mortgage ~~[company]~~ *broker* shall retain a copy of the materials it has provided to a investor pursuant to subsection 1.

3. If the loan is made, the mortgage ~~[company]~~ *broker* shall retain in its files and provide to the investor:

(a) A copy of the promissory note;

(b) A recorded copy of the deed of trust securing the loan;

(c) A copy of the policy of title insurance on the property securing the loan;

4. If the loan is made, the mortgage broker shall retain in its files and provide to the investor:

~~[(d)]~~ *(a) A copy of a policy of fire insurance which is adequate to cover all liens on the property securing the loan, including an endorsement naming the investor as the insured, when applicable;*

~~[(e)]~~ (b) A copy of a statement signed by each investor acknowledging that the decision to make the loan was made after the investor was provided with the material required in subsection 1;

~~[(f)]~~ (c) If the investor is a corporation, partnership limited liability company, a copy of its statement authorizing the loan; and

~~[(g)]~~ (d) If the borrower is a corporation, partnership or limited liability company, a copy of its statement authorizing the loan.

~~[4. If the loan is made, the mortgage company shall provide the borrower with at least the items listed in paragraphs (a), (b) and (c) of subsection 3.]~~

~~[5].~~ 4. The mortgage ~~[company]~~ broker shall store its original notes, if retained, in a fireproof container *or room*.

5. If the mortgage broker has obtained an appraisal on behalf of an investor, he shall provide a copy of the appraisal to the investor upon request of the investor and to the borrower upon request of the borrower if the borrower has paid for the appraisal.

6. The mortgage broker shall retain records of all completed mortgage transactions for a period of at least 6 years after the date of the last activity relating to the transaction. After a record has been retained at least two years the mortgage broker may cause the record to be reproduced by the microphotographic process, optical disk imaging or any other equivalent technique designed to ensure an accurate reproduction of the original. Any such reproduction has the same effect as the original. Upon completion of such a duplication, the original of the record may be destroyed.

Sec. 27. NAC 645B.090 is hereby amended to read as follows:

A mortgage ~~[Company]~~ broker may solicit and accept a investor's money before there is an actual request for a loan if the money is deposited and held in the same manner required for money accepted pursuant to NRS 645B.175.

Sec. 28. NAC 645B.100 is hereby amended to read as follows:

All decisions regarding the funding of investments in mortgages must be made by the investor ~~[unless the authority to make those decisions is otherwise delegated to the mortgage company by contract].~~

Sec. 29. NAC 645B.110 is hereby amended to read as follows:

1. A licensed mortgage ~~[Company]~~ broker shall not represent an activity which is not licensed under chapter 645b of NRS as being licensed under that chapter.

2. An advertisement for an activity which is licensed pursuant to chapter 645b of NRS must be separate and distinct from an advertisement for an activity which is not licensed pursuant to that chapter.

3. A licensed mortgage ~~[Company]~~ broker must include in its advertisements, *including any advertising material available on the Internet*:

(a) Its name; and

(b) A description of any licensed activity mentioned in an advertisement, written in nontechnical terms.

4. A licensed mortgage broker must include in all advertisements intended to solicit persons to invest in loans secured by an interest in real property, including any advertising material available on the Internet:

(a) The following statement: “Money invested through a mortgage broker is not guaranteed to earn any interest or return and is not insured;” and

(b) Any information that, in the commissioner’s judgment, would be of material interest to a person considering whether to invest money with the mortgage broker.

5. Any advertising material, including an envelope containing advertising material, that simulates the appearance that a check is enclosed or is a communication from a government entity shall not be approved for use unless:

(a) The words “THIS IS NOT A CHECK,” “NOT NEGOTIABLE” and “THIS IS NOT A GOVERNMENT ENTITY”, as appropriate, appear prominently on the envelope and any other material that appears to represent a check or a communication from a government entity;

(b) In the case of material that simulates the appearance of a check, the material may not contain an ABA number or micro-encoding or any other marks intended to create the appearance that the material is actually a negotiable check.

6. A licensed mortgage broker must submit to the commissioner a hard copy of all material appearing on the Internet for approval pursuant to NRS 645B.189. Provided the representation of interest rates in such advertisements comply with applicable provisions of federal law regarding the advertising of interest rates, the mortgage broker may make changes in the interest rates advertised and any other non-substantive changes to its Internet advertisement without additional approval from the commissioner.

Sec. 30. NAC 645B.120 is hereby amended to read as follows:

1. An appraisal submitted to a investor pursuant to NAC 645B.080 must ~~be~~
 - ~~—(a) Be written in an objective manner so that a third person can follow the reasoning, logic and analysis of the appraiser in his determination of the final estimate of the market value of the property.~~
 - ~~—(b) Be dated by the appraiser before the date on which a loan which is secured by the appraised property is made.~~
 - ~~—(c) Contain an objective, concise description of the neighborhood, the site of the property and any improvements made to the property.~~
 - ~~—(d) Contain an estimate of the value of the property, formulated according to each of the approaches customarily used by appraisers (cost, market data and income), as applicable.~~
 - ~~—(e) Contain a statement from the appraiser in which he explains any difference in his estimate of the value of the property and the values formulated according to the customarily accepted approaches.~~

~~—2. An appraisal must]~~

(a) ~~[be]~~ In the case of property located in this state, be prepared by an appraiser who holds the appropriate license or certification issued by the Nevada Real Estate Division or, in the case of property located outside this state, is properly authorized by the state in which the property is located to perform the appraisal; or

(b) In the case of property located outside this state, be prepared by an appraiser who is authorized to perform the appraisal by the state in which the property is located; and

- (c) Not be prepared by the mortgage broker. [;*
~~—(a) Is professionally designated by a major, nationally recognized society of appraisers;~~
~~—(b) Is approved by the Federal National Mortgage Association; or~~
~~—(c) Has verifiable experience or training in the amount necessary to prepare an appraisal in accordance with the guidelines set forth by the association or those societies.]~~

Sec. 31. NAC 645B.130 is hereby amended to read as follows:

1. If an owner, partner, director, *officer*, manager, *member* or employee, of a licensed mortgage ~~[Company]~~ *broker, or a relative of an owner, partner, director, officer, manager, member or employee of a licensed mortgage broker:*

(a) [has] Has any personal involvement in a lending or borrowing transaction of the mortgage [company] broker which is authorized under chapter 645b of NRS; or

(b) Is licensed as, conducts business as or holds a controlling interest or position in:

(1) A construction control;

(2) An escrow agency or escrow agent; or

(3) A title agent, a title insurer or an escrow officer of a title agent or title insurer;

the involvement must be disclosed to the borrower and the investor *prior to consummation of the loan*. Such a disclosure must be separate from the documents of the transaction and must clearly and concisely state the nature of the involvement. The statement of disclosure must be signed by the borrower and the investor as an acknowledgment of the involvement. *The mortgage broker shall not act as the attorney in fact or the agent of a investor with respect to signing the acknowledgement. For purposes of this section, the term “relative” has the meaning ascribed to it in NRS 645B.1031 and the term “controlling interest” has the meaning ascribed to it in NRS 645B.186.*

2. If a mortgage ~~[company]~~ *broker* is owned by a corporation in which one owner, director, manager or employee owns an interest of 10 percent or more, and that person has any personal involvement in a licensed transaction of the mortgage company, the involvement must be disclosed to the borrower and the investor pursuant to subsection 1.

Sec. 32. NAC 645B.140 is hereby amended to read as follows:

1. Before a natural person purchases an existing note secured by a deed of trust, *or an interest therein*, for which a licensed mortgage ~~[company]~~ *broker* is acting as a broker, the mortgage ~~[company]~~ *broker* shall provide to the purchaser, unless specifically waived in writing *by that person*:

(a) A copy of the promissory note;

(b) A record of the history of payments on the note or a document signed by the seller and borrower stating the existing balance of the note;

(c) The policy of title insurance for the original beneficiaries of the note; and

(d) The original appraisal of the property securing the note, if [available] an appraisal was not waived by the investor.

2. A mortgage ~~[company]~~ *broker* shall retain a copy of the materials it provides to the purchaser pursuant to subsection 1.

3. If the purchase is made, the mortgage **[company] broker** shall retain in its files the original or a copy and provide to the purchaser, respectively, the copy or original of the following documents:

(a) The promissory note and the assignment of the note.

(b) The recorded deed of trust and recorded assignment of the beneficial interest.

(c) The endorsement to the policy of title insurance or a new policy of title insurance for the assignment.

(d) A policy of fire insurance indicating coverage in an amount sufficient to cover all liens on the property including, if applicable, an endorsement naming the purchaser as a payee in case of loss.

(e) A statement signed by the purchaser acknowledging that the decision to purchase the note secured by a deed of trust was made after the purchaser was provided with and reviewed the material required in subsection 1.

Sec. 33. NAC 645B.145 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 3, a mortgage **[company] broker and any partnership, corporation or limited liability company in which the mortgage broker, or any officer director, employee or relative of the mortgage broker, has a controlling interest** shall not act as a trustee or substitute trustee for any deed of trust for which the mortgage **[company] broker** acted at any time as a investor, mortgage broker or holder of a beneficial interest if the loan for which the deed of trust was executed was funded in whole or in part by a person other than the mortgage **[company] broker** or has been assigned in whole or in part to one or more natural persons.

2. Except as otherwise provided in subsection 3, an officer, director or employee of a mortgage **[company] broker, or a relative or any of them, and any officer, director or employee of any corporation, partnership or limited liability in which such officer, director or employee has a controlling interest** shall not act as a trustee or substitute trustee for any deed of trust for which the mortgage **[company] broker** acted at any time as a investor, mortgage broker or holder of a beneficial interest if the loan for which the deed of trust was executed was funded in whole or in part by a person other than the mortgage **[company] broker** or has been assigned in whole or in part to one or more natural persons.

3. A mortgage **[company] broker** may act as substitute trustee in a deed of trust for the purpose of reconveying title to the trustor upon payment in full of the note if the mortgage **[company] broker** receives a signed and notarized statement from each person holding a beneficial interest in the note, or that person's agent, authorizing the mortgage **[company] broker** to so act and directing the disposition of that person's share of the money received to pay the loan in full. The statement must be executed within 45 days before the execution of the deed of reconveyance. The mortgage **[company] broker** and its officers, directors and employees shall not act as the person's agent for the purpose of executing the statement required by this section.

4. For purposes of this section, the term "controlling interest" has the meaning ascribed to it in NRS 645B.186 and the term "relative" has the meaning ascribed to it NRS 645B.0131.

Sec. 34. NAC 645B.150 is hereby amended to read as follows:

A licensed mortgage ~~[company]~~ *broker* maintaining any accounts described in subsection 1 of NRS 645B.175 shall:

1. Provide to the commissioner of financial institutions a financial statement of the account or accounts which has been audited in accordance with generally accepted auditing standards.
2. Maintain a subsidiary ledger for each investor which must include:
 - (a) The name and address of the investor;
 - (b) The amount of the initial investment and the amount of any subsequent investment;
 - (c) The date of any investment placed with the licensee by the investor;
 - (d) Each specific loan invested in, including:
 - (1) The number of the loan;
 - (2) The name of the borrower;
 - (3) The closing date of the loan; and
 - (4) The percentage of the loan owned by the investor, if the loan is owned by more than one person;
 - (e) The date of the investment;
 - (f) The amount of money invested;
 - (g) The maturity date of the loan or loans made;
 - (h) Any change in the investment made on behalf of the investor; and
 - (i) The status of each loan, including whether the loan is current or delinquent, and if the loan is delinquent, the number of months it is past due.
3. At least annually, provide each investor with a statement which details:
 - (a) The total amount he has invested with the mortgage company;
 - (b) The amount he has invested in a loan or loans; and
 - (c) The current status of the loan or loans.

The statement, if annual, must be provided to the investor not later than 120 days after the end of the company's fiscal year.