

LCB File No. R087-04

**PROPOSED REGULATION OF THE DIVISION OF
MORTGAGE LENDING OF THE DEPARTMENT
OF BUSINESS AND INDUSTRY**

**NOTICE OF HEARING TO SOLICIT COMMENTS ON
PROPOSED PERMANENT REGULATIONS
NOTICE OF INTENT TO ACT UPON PERMANENT REGULATIONS**

**Notice of Hearing for the Adoption of Permanent Regulations of the Department of
Business and Industry, Division of Mortgage Lending.**

The Department of Business and Industry, Division of Mortgage Lending (Division) will hold a public hearing at 9:00 a.m., on May 28, 2004, at the Bradley Building, 2501 E. Sahara Avenue, Manufactured Housing Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104. Interested persons may also participate through a simultaneous video-conference conducted at the hearing room of the offices of the Department of Business and Industry, 788 Fairview Drive, Carson City, Nevada 89701. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of:

REGULATION CONCERNING CHANGES IN NAC 645A (R086-04), NAC 645B (R087-04), and NAC 645E (R088-04) PERTAINING TO THE REGULATION OF ESCROW AGENCIES, MORTGAGE BROKERS AND MORTGAGE BANKERS

The following information is provided pursuant to the requirements of NRS 233B.060:

1. The need for and the purpose of the proposed regulation or amendment:

These regulations, some of which are mandated by the State Legislature, are needed to implement changes made by the 2003 Nevada Legislature when it created the Division of Mortgage Lending and required the licensure of mortgage agents. Regulations are needed to make certain changes in chapter 645A, 645B and 645E of NRS mandated by the Legislature or necessary for the Commissioner of Mortgage Lending to carry out his duties under these chapters of NRS and NAC.

2. Substance of the regulations to be adopted:

The proposed regulation (attached with changed provisions in bold) adds provisions to chapter 645A (escrow agencies), 645B (mortgage brokers) and 645E (mortgage bankers) of NAC. These regulations make changes in the following areas of law:

- A. Adds new provisions to chapter 645A of NAC relating to trust accounts and construction control.
- B. Establishes new continuing education standards and requirements for mortgage brokers.

- C. Establishes new examination, audit, rating and examination report procedures for mortgage brokers and mortgage bankers as permanent regulations.
- D. Amends NAC 645B.010, NAC 645B.015, and NAC 645B.300 and establishes new requirements for mortgage brokers and mortgage agents, who must now be licensed, and prohibits mortgage brokers from being compensated for employment in the real estate and/or financial services industry.
- E. Amends NAC 645B.030, NAC 645B.035, NAC 645E.210, NAC 645E.220 and NAC 645E.240 and establishes some new branch office requirements for mortgage brokers and mortgage bankers, requiring commercial offices, conspicuous signage and separate licenses for more than one fictitious name.
- F. Amends NAC 645B.060, NAC 645E.320 and NAC 645A.010 pertaining to examination expenses and increases the per hour rate;
- G. Books and Records; amends record keeping requirements under NAC 645B.077 for mortgage brokers.
- H. Amends the requirements for disclosure statements for mortgage brokers NAC 645B.080 and NAC 645B.215.
- I. Changes address of Division under NRS 645B.220.
- J. Addresses assessment of costs of Attorney General's Office pursuant to AB 490.
- K. Advertising requirements: amends NAC 645B.240 for mortgage brokers and NAC 645E.450 for mortgage bankers.
- L. Amends NAC 645B.280 to increase the period of time the Commissioner of Mortgage Lending has to approve a power of attorney for mortgage brokers.
- M. Amends NAC 645B.330 and NAC 645E.500 to update administrative actions to include violations of federal law.
- N. Pursuant to AB 490 (2003) – replaces mortgage 'company' with 'banker' for NAC 645E.

3. Estimated economic impact of the regulation on the business which it is to regulate and on the public:

On the business which it is to regulate:

The proposed regulation should not have either an immediate or long-term economic impact on escrow agencies, mortgage brokers or mortgage bankers.

(a) Both adverse and beneficial effects:

There are no significant adverse economic effects on escrow agencies, mortgage brokers or mortgage bankers. The regulation does raise the examination fee for escrow agencies from \$50.00 to \$60.00 per hour. The regulation also raises the examination fee for mortgage brokers and mortgage bankers from \$40.00 per hour to \$60.00 and requires that mortgage brokers and mortgage bankers be located in commercial offices and have conspicuous signage. Most mortgage brokers and mortgage bankers should already be complying with these requirements, which should not be overly burdensome in any case. There are no apparent beneficial economic effects of the regulation on these businesses.

(b) Both immediate and long term effects:

The immediate effects on these businesses are as mentioned above in section (a), and the long term effects are simply the immediate effects multiplied over the long term.

On the public:

The proposed regulation should have no significant economic impact on the public.

(a) Both adverse and beneficial effects:

The public should benefit from the requirements that mortgage brokers and mortgage bankers operate out of commercial offices and have conspicuous signage, as the offices of mortgage brokers and mortgage bankers will be easier to find. There are no other adverse or beneficial economic effects on the public.

(b) Both immediate and long term effects:

Other than as stated in paragraph (a) above, there are no apparent immediate or long term economic effects of this regulation on the public.

4. The estimated cost to the agency for enforcement of the proposed regulation:

The Division will not incur any additional expense to enforce the proposed regulation.

5. Overlap of other governmental regulations The Division is proposing to adopt as state standards certain federal laws including:

(1) The Truth in Lending Act, 15 U.S.C. §§ 1601 to 1667f, inclusive, including, without limitation, the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1639, or Regulation Z, 12 C.F.R. Part 226;

(2) The Equal Credit Opportunity Act, 15 U.S.C. §§ 1691 to 1691f, inclusive, or Regulation B, 12 C.F.R. Part 202;

(3) The Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 to 2617, inclusive, or Regulation X, 24 C.F.R. Part 3500; or

(4) Any other applicable federal code or regulation relating to mortgage transactions. The Division is not aware of any other overlap or duplication of the regulation with any state, local or federal regulation.

6. Whether the proposed regulation establishes a new fee or increases an existing fee.

As stated above, the proposed regulation does raise the fee for examinations for mortgage brokers from \$40.00 to \$60.00 per hour and for escrow agencies from \$50.00 to \$60.00 per hour. Other than that, there are no fee increases.

Persons wishing to comment upon the proposed action of the Division may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Division, 3075 E. Flamingo Rd., Ste. 104A, Las Vegas, Nevada, 89121, or 400 West King St., Ste. 406, Carson City, Nevada 89703. Written submissions must be received by the Division on or before May 21, 2004. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Division may proceed immediately to act upon any written submissions.

A copy of this notice and the proposed regulation will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, and at the offices of the Division, 3075 E. Flamingo Rd., Ste. 104A, Las Vegas, Nevada, 89121, or 400 West King St., Ste. 406, Carson City, Nevada 89703, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation will be available at the offices of the Division, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

Department of Business and Industry
Division of Mortgage Lending
400 West King St., Ste. 406
Carson City, NV 89703

Department of Business and Industry
Division of Mortgage Lending
3075 E. Flamingo Rd., Ste. 104A
Las Vegas, NV 89121

Manufactured Housing Division
2501 East Sahara Avenue, 2nd Floor
Las Vegas, NV 89104

Attorney General's Office
100 North Carson St.
Carson City, NV 89701

Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify the Deputy Commissioner, Sue Eckhardt, at the Division, 3075 E. Flamingo Rd., Ste. 104A, Las Vegas, Nevada, 89121, Las Vegas, Nevada, (702) 486-0788.

DATED this 28th day of April, 2004.

By: _____
SCOTT BICE
Commissioner of Mortgage Lending

LCB File No. R087-04

**PROPOSED REGULATION OF THE DIVISION OF
MORTGAGE LENDING OF THE DEPARTMENT
OF BUSINESS AND INDUSTRY**

**REGULATIONS CONCERNING AMENDMENTS TO
CHAPTER 645B OF THE NEVADA ADMINISTRATIVE CODE**

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

Authority: NRS 645B.060

Sec. 1. Chapter 645B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 through 22, inclusive of this regulation.

Sec. 2. NAC Chapter 645B is hereby amended by adding thereto a new section to read as follows:

- 1. The commissioner will approve any course of instruction as meeting continuing education requirements that he certifies as meeting the requirements of section 1 of these proposed regulations offered by:
 - a. Any college of the University and Community College System of Nevada.*
 - b. Any professional school or college licensed by the Nevada commission on postsecondary education.*
 - c. Any out-of-state professional school or college licensed or accredited by a governmental agency charged with regulating the business of mortgage lending, a department of education or an equivalent agency of any other state.*
 - d. Any other school offering a course in mortgage lending, business or economics if the course is:
 - 1. Approved by a governmental agency charged with regulating the business of mortgage lending;*
 - 2. Approved by the Nevada Real Estate Commission or the equivalent government agency in any other state if, in the judgment of the commissioner, the course is relevant to the business of mortgage lending; or*
 - 3. In the judgment of the commissioner, equivalent in quality to the courses offered by a school approved pursuant to this chapter or previously approved by the commissioner.***

Sec. 3. NAC Chapter 645B is hereby amended by adding thereto a new section to read as follows:

- 1. Persons licensed pursuant to NRS645B.410 and persons subject to NRS645B.051 (herein after referred to as ‘attende’) must complete courses for continuing education which must contain:
 - a. A curriculum to cover a range of topics on the mortgage loan origination and related lending industry to improve the professional knowledge of the required persons to better serve the public;*
 - b. Applicable federal and state laws and regulations; or**

- c. Law and Ethics in the mortgage industry.*
- 2. The commissioner will consider topics including but not limited to the following areas as acceptable for continuing education courses:*
- a. The Real Estate Settlement Procedures Act (RESPA) including but not limited to:*
- 1. Required disclosures;*
 - 2. Uniform Settlement Statement (HUD 1- & HUD 1A);*
 - 3. Administration of escrow accounts and servicing requirements;*
 - 4. Prohibition of compensation referrals & fee splitting;*
 - 5. Affiliated business arrangements & disclosures;*
 - 6. Good Faith Estimates.*
- b. Equal Credit Opportunity Act, Regulation B, Home Owners Protection Act, Home Owner Equity Protection Act and the US Patriot Act.*
- c. Truth in Lending Act (TILA) including but not limited to:*
- 1. Required disclosures & timing of disclosures;*
 - 2. Advertising requirements;*
 - 3. Section 32 & reverse mortgages.*
- d. The administration of real estate law and regulations as they pertain to the mortgage industry.*
- e. Closing procedures, documents and disclosures including but not limited to:*
- 1. Deed of Trust and provisions of contracts;*
 - 2. Notes terms and disclosures.*
- f. Technical knowledge and skills including but not limited to:*
- 1. Arithmetical computations common to the mortgage lending industry including the computation of annual percentage rate, finance charge, amount financed, payment and amortization;*
 - 2. Calculate, analyze and explain ratios for lending criteria including loan to value ratios, origination fees, discounts and broker compensation;*
 - 3. Assessing of property values and appraisal process;*
 - 4. Accounting and taxation as applied to real property;*
 - 5. Application process and information required and supporting documents; or*
 - 6. Processing and underwriting criteria and procedures, including automated origination or underwriting systems of any agency and/or government sponsored enterprise.*
- g. All subject areas pertaining to NRS & NAC 645B or any other section of Nevada law pertaining to the mortgage industry or mortgage transactions.*
- 3. If the course provider certifies that the course meets the requirements of subsection 1 and agrees to comply with the provisions of Section 2 of these proposed regulations, the commissioner will accept the following courses as meeting standards for continuing education without application or specific approval:*
- a. Any course in mortgage lending or a directly related subject if the course has been previously approved by the commissioner.*
 - b. Any course in mortgage lending or a directly related subject if the course is offered by an accredited university or community college.*
 - c. Any course in mortgage lending or a directly related subject if the course is offered by the National Association of Mortgage Brokers or any successor in interest to that organization.*

4. The commissioner will, upon application, approve a course conducted by any other school, professional society, or organization if the commissioner finds that the course meets the standards for continuing education.

Sec. 4. NAC Chapter 645B is hereby amended by adding thereto a new section to read as follows:

- 1. The commissioner will grant credit for a course for continuing education only if:
 - a. The course consists of at least 3 hours of distance education or instruction in a classroom.*
 - b. The course complies with the provisions of sections 1 & 2.**
- 2. If a course is approved, the course provider shall provide a certified copy of the record of attendance or record of completion to the licensee upon his completion of the course by the attendee. The division shall accept the certificate as proof of the attendance of the attendee or completion of the course by the attendee for the purpose of renewal or reinstatement of his license. If the course is taken at a university or community college, the proof of attendance must be a certified transcript. The certificate must contain the:
 - a. Name of the course provider;*
 - b. Name of the attendee;*
 - c. Number of hours of instruction;*
 - d. Dates of instruction for a course of instruction in a classroom;*
 - e. Date of completion of the course for a course of distance education;*
 - f. Title of the course or seminar;*
 - g. A statement that the course was approved by the commissioner;*
 - h. Signature of the person authorized to sign for the course provider;*
 - i. Grade received by the attendee or a statement of whether the attendee passed the class if an examination was given; and*
 - j. The number of hours of credit for continuing education.**
- 3. If a course offered by a professional organization has been approved for continuing education, the organization shall not restrict attendance at the course to members of that organization.*
- 4. For a course of instruction in a classroom, the provider of the course must maintain for 3 years a record of attendance which contains the following information with respect to each attendee who has taken the course for credit:
 - a. The name of the attendee.*
 - b. The title and number of the course.*
 - c. The hours of instruction attended and dates of attendance.*
 - d. A statement that the attendee has successfully completed the course, if applicable.**

Sec. 5. NAC Chapter 645B is hereby amended by adding thereto a new section to read as follows:

- 1. A licensee may receive credit for continuing education if he teaches an approved course. Credit will be given only once for teaching the course. The licensee must submit proof that he taught the course during the applicable period of licensing.*
- 2. A course may not be taken for credit more than once during any two consecutive periods for renewal of a license.*

3. Courses taken to satisfy requirements for renewal or reinstatement of a license must be completed within 2 years immediately before the latest date for renewing or reinstating the license. Hours applied towards renewal or reinstatement may not be utilized for subsequent renewals or reinstatements.

4. A licensee may receive credit for continuing education only upon certification by the sponsor that the licensee has attended and completed at least 90 percent of the course.

5. Every two years a licensee must complete at least 3 hours of continuing education instruction in Law and Ethics, and at least 3 hours of instruction in federal and state law.

Sec. 6. NAC Chapter 645B is hereby amended by adding thereto a new section to read as follows:

An auditor, examiner or investigator conducting a periodic or special audit of a mortgage broker pursuant to NRS chapter 645B may:

1. Require the licensee to produce for purposes of the periodic or special audit, investigation or examination, any and all documents:

*a. Relating to the business conducted under NRS chapter 645B or NAC chapter 645B; or
b. Required to be kept as part of the licensee's business by federal or state law; or
c. Kept on the business premises or business storage area of the licensee and which is related to the operation of the licensee's or affiliated business.*

2. Inspect and copy, test, or sample, any and all documents which are in the possession, control or custody of the licensee or related to the business conducted under NRS chapter 645B or NAC chapter 645B.

Sec. 7. NAC Chapter 645B is hereby amended by adding thereto a new section to read as follows:

1. An examiner or investigator conducting an examination or investigation pursuant to NRS 645B.060(2)(c), other examination pursuant to NRS 645B.060(2)(d) may:

a. Require the licensee to produce for purposes of the any examination pursuant to subsection 1 any and all documents:

*(1) Relating to the business conducted under NRS chapter 645B or NAC chapter 645B; or
(2) Required to be kept as part of the licensee's business by federal or state law; or
(3) Kept on the business premises or business storage area of the licensee and which is related to the operation of the licensee or affiliated business.*

b. Inspect and copy, test, or sample, any and all documents which are in the possession, control or custody of the licensee or related to the business conducted under NRS chapter 645B or NAC chapter 645B.

Sec. 8. NAC Chapter 645B is hereby amended by adding thereto a new section to read as follows:

1. Each licensee, upon completion of an examination, will be rated on a scale of 1 to 5, with 1 being the highest rating and 5 being the lowest rating as described herein. The ratings will be based primarily on compliance with applicable statutes and regulations and the perceived capability of management to achieve and maintain such compliance.

(a) The rating of "1" indicates the licensee and its management have demonstrated a high degree of compliance with applicable laws and regulations. Consideration of a "1" rating may

be given if corrective action to a minor violation or deficiency exception was immediate and will likely prevent future violations.

(b) The rating of "2" indicates the licensee and its management have demonstrated substantial compliance with applicable laws and regulations. The deficiencies noted in the report can be remedied with a minimum of regulatory supervision. Consideration of a "2" rating may be given if minor violations have occurred and if corrective action was immediate and will likely prevent future violations.

(c) The rating of "3" indicates the licensee and its management have demonstrated less than satisfactory compliance with applicable laws and regulations. Regulatory supervision is required to determine correction of the violations and deficiencies noted in the report. Consideration of a "3" rating may be given if minor violations had previously occurred and corrective action was not taken.

(d) The rating of "4" indicates the licensee and its management have demonstrated substantial lack of compliance with applicable laws and regulations. Immediate remedial action to correct the noted violations is required. Close regulatory supervision is also necessary and disciplinary action will be recommended to the commissioner.

(e) The rating of "5" indicates the licensee and its management have demonstrated unsatisfactory compliance with applicable laws and regulations. Remedial action must be immediate and corrective and may include action by the commissioner to take possession of the business and assets of the licensee. Disciplinary action including the suspension, revocation of the licensee will be recommended to the commissioner.

Sec. 9. NAC Chapter 645B is hereby amended by adding thereto a new section to read as follows:

1. No later than 15 days after the completion of an examination of a licensee, the examiner designated by the commissioner shall make and file a draft report thereof with the Division which must be comprised of facts appearing upon the files, books, records or other documents of the licensee examined, or as ascertained from statements of the officers or agents or other persons examined concerning the affairs of the licensee, and such conclusions and recommendations as may reasonably be supported from the facts. The format of the draft report will be consistent with the format utilized for a final report of examination.

2. No later than 15 days after receipt of the draft report of the examination, the commissioner or his designee shall deliver a copy of the report to the licensee examined, together with a notice affording the licensee 15 days, or such additional reasonable period as the commissioner for good cause may allow, within which to review the report and make any written submissions or objections to any matters contained in the report.

3. If the licensee has been given a rating of '3', '4' or '5', the licensee may prepare written submissions or objections to the Division within the time permitted by subsection 2, and the commissioner or his designee shall:

(a) Hold an informal meeting with the licensee examined regarding the report within 15 days at the end of the period allowed for the receipt of written submissions or objections.

(b) Fully consider and review the report, together with any written submissions or objections and any relevant portions of the examiner's working papers and within 15 days after the informal meeting:

(1) Adopt the report as filed or with modification or corrections; or allow for a notice and opportunity for hearing.

(2) Direct the examiner to reopen the examination for purposes of obtaining additional data, documents or information, and if warranted re-file the report pursuant to subsection 1 above. If the initial report findings are substantiated upon the further review, the license shall, pursuant to NAC 645B.060, be responsible for the costs incurred resulting from the additional review.

4. The results of the examination may not be opened to public inspection pursuant to NRS 645B.090 until any objections made by the licensee examined have been decided by the commissioner pursuant to subsection 3.

5. If the report reveals that the licensee is operating in violation of any law or regulation under this chapter, or previous order of the commissioner, the commissioner may order the licensee to take any action the commissioner considers necessary or appropriate to cure the violation. The commissioner shall also have the authority to take disciplinary action pursuant to NRS 645B.670.

6. If the licensee does not file a written submission or objection within the time permitted by subsection 2, the draft report will be deemed a final report of examination pursuant to NRS 645B.060.

7. The commissioner may extend a time period under this section applicable to the examiner, the commissioner or his designee for up to an additional 15 days for good cause.

Sec. 10. NAC Chapter 645B is hereby amended as follows:

NAC 645B.010 Qualifications of applicant for license. (NRS 645B.060) An applicant for a license as a mortgage broker must have:

1. At least 2 years of verifiable experience in lending money for real estate or mortgages; and
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.

3. A qualified employee may not be simultaneously employed by a mortgage broker and also be employed by a real estate broker as a real estate salesman in this state.

a. For the purposes of this section, “real estate broker” has the meaning as defined in NRS 645.030. “real estate salesman” has the meaning as defined in NRS 645.035.

b. The purposes of this section is to help maintain the separation between the business of real estate and the business of mortgage lending and investing and to minimize the possibility of unfair consumer steering activities by individuals who hold both a mortgage broker or mortgage agent license and are also licensed as a real estate broker or salesmen and may be compensated for both activities.

Sec. 10. NAC Chapter 645B is hereby amended as follows:

NAC 645B.015 Activity constituting verifiable business; submission of evidence of activity. (NRS 645B.060)

1. A person conducts verifiable business as a mortgage broker if he:
 - (a) Handles the arrangements between a borrower and a lender for a loan which is secured by a lien on real property and is consummated as a result of such arrangements;
 - (b) Originates a loan secured by a lien on real property in the capacity of a lender or provider;or
 - (c) Purchases or sells existing notes secured by liens on real property.

(d) Is compensated based on the activities of subsections (a), (b) or (c) as a percentage or commissionable basis.

2. Evidence of activity described in subsection 1 must be submitted to the commissioner in the monthly report of activity.

Sec. 11. NAC Chapter 645B is hereby amended as follows:

NAC 645B.020 Material to accompany application for license. (NRS 645B.060) An applicant must submit with his application for a license pursuant to chapter 645B of NRS:

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 certificate filed by the mortgage broker pursuant to chapter 602 of NRS indicating the fictitious name of the mortgage broker, if any.

3. If the applicant is a corporation, a copy of:

(a) Its articles of incorporation and its bylaws;

(b) Its 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 and resident agents that 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 general 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 of 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, that is filed with the secretary of state.

7. Before a license is issued, the licensee must provide to the Division a copy of the lease with the address of the licensee indicating a commercial business location.

8. A licensee may not share premises within another business without the express written approval of the commissioner and only then subject to local, state and federal law.

9. The licensee must have conspicuous signage, readily visible to the public and readable from the nearest public sidewalk, street or highway, at the licensed location displaying the name of the licensee. If the broker's place of business is located in an office building, the broker's sign must be posted on the building directory or on the exterior of the entrance to the business.

10. The licensee applicant, upon receipt of a conditional approval letter from the Division, which sets forth additional criteria for licensee approval, must comply with the provisions set out in the conditional approval letter within 30 days or the application will be deemed expired and the applicant will be required to reapply. The commissioner can, for good cause, extend the period for compliance.

Sec. 12. NAC Chapter 645B is hereby amended as follows:

NAC 645B.030 Application for, approval of and issuance of branch license; display of license; responsibilities of mortgage broker regarding branch office. (NRS 645B.060)

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; and

(b) The registration form required pursuant to NRS 645B.450 for each mortgage agent who intends to work at the branch office.

2. *Unless waived by the commissioner for good cause shown, ~~[The]~~ 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) The mortgage broker has registered with the division pursuant to NRS 645B.450 any mortgage agent who intends to work at the branch office; and

(c) The commissioner approves a qualified employee to manage the branch office. The commissioner will not approve a qualified employee to manage a branch office if the qualified employee manages or has been designated and approved to manage another office.

3. A license for a branch office may be issued only in the name in which the mortgage broker is licensed to conduct business at his principal office.

4. Each branch office must conspicuously display its license at the branch office.

5. *Each branch office must have conspicuous signage, readily visible to the public and readable from the nearest public sidewalk, street or highway, at the licensed location displaying the name of the licensee.*

6. *If the branch is located in an office building, the broker's sign must be posted on the building directory or on the exterior of the entrance to the business.*

7. *Each branch office must be located in an area designated as commercial business.*

8. ~~[S]~~ A mortgage broker is responsible for and shall supervise:

(a) Each branch office of the mortgage broker; and

(b) Each qualified employee and mortgage agent authorized to conduct mortgage lending activity at a branch office of the mortgage broker.

Sec. 13. NAC Chapter 645B is hereby amended as follows:

NAC 645B.035 Use of fictitious name. (NRS 645B.060)

1. A mortgage broker shall not conduct business using a fictitious name unless the mortgage broker:

(a) Complies with chapter 602 of NRS;

(b) Files with the division a certified copy, issued by the appropriate county clerk, of the certificate filed by the mortgage broker pursuant to chapter 602 of NRS; and

(c) Receives from the division a license or certificate of exemption indicating the fictitious name.

2. If a mortgage broker conducts business using a fictitious name pursuant to this section, the mortgage broker may conduct business using a new fictitious name only if the mortgage broker:

(a) Obtains a certified copy, issued by the appropriate county clerk, of the certificate filed by the mortgage broker pursuant to chapter 602 of NRS indicating the new fictitious name;

(b) Files with the division, not later than 10 calendar days after obtaining the certified copy pursuant to paragraph (a):

- (1) The certified copy obtained pursuant to paragraph (a); and
- (2) The current license or certificate of exemption of the mortgage broker; and
- (c) Receives from the division an amended license or certificate of exemption indicating the new fictitious name.

3. A mortgage broker may conduct business using more than one fictitious name only if the mortgage broker obtains a separate mortgage broker license for each fictitious name under which he intends to do business. A mortgage broker who conducts business in this state using more than one fictitious name is responsible for the conduct of each qualified employee, mortgage agent and other employee associated with the mortgage broker regardless of the license or fictitious name under which the conduct takes place.

Sec. 14. NAC Chapter 645B is hereby amended as follows:

NAC 645B.060 Fee for supervision and related activities: Amount; collection; failure to pay. (NRS 645B.060)

1. Except as otherwise provided in this subsection, the commissioner will charge and collect a fee of ~~[\$40]~~ \$60 per hour from each mortgage broker for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 645B of NRS. The commissioner may charge a fee of ~~[\$125-per-hour]~~ *equivalent to the fee assessed (estimated or actual) the Division* for the time of an attorney required in any examination, investigation or hearing conducted pursuant to chapter 645B of NRS.

2. The commissioner will bill each mortgage broker upon the completion of the activity for the fee established in subsection 1. The fee must be paid within 30 calendar 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 complete month, or portion of the last month, that the fee is not paid. The commissioner may waive the penalty for good cause.

3. Failure of a mortgage broker to pay the fee required in subsection 1 as provided in this section constitutes grounds for the imposition of any discipline authorized pursuant to NRS 645B.670, including, without limitation, the revocation of his license.

4. Upon written request by the licensee the Division will provide an accounting of time billed for the examination.

Sec. 15. NAC Chapter 645B is hereby amended as follows:

NAC 645B.077 Retention and reproduction of completed mortgage transactions. (NRS 645B.060, 645B.080)

1. The mortgage broker shall retain records of all his completed mortgage transactions for a period of at least ~~[6]~~ 4 years after the date of the last activity relating to the transaction. After a record has been retained 2 or more 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 record. A record reproduced as authorized by this section must be considered by the commissioner to be the same as the original record. Upon completion of the reproduction of a record as authorized by this section, the original of the record may be destroyed.

2. The licensee shall retain denied or withdrawn applications for a period of 1 year or as otherwise required under federal law.

3. *The mortgage broker and each branch location must maintain completed mortgage transaction records at the location at which the loan was made for one year from the date of the loan closing. Additional records subject to the provision of section 1 may be maintained offsite if records are readily accessible. Records will be considered readily accessible if they are provided within 24 hours of the request.*

4. *For purposes of NRS 645B.080, complete and suitable records shall mean:*

(a) A file, including the complete underwriting file and closing documents, as applicable to loan type and purpose, including but not limited to:

- 1. Real estate sales contract;*
- 2. Escrow instructions;*
- 3. Preliminary title report;*
- 4. Loan application including any attachments, supplements;*
- 5. Uniform Residential Appraisal Report;*
- 6. Verifications;*
- 7. Credit report;*
- 8. Good Faith Estimate(s) & Truth in Lending disclosures;*
- 9. Uniform Settlement Statement;*
- 10. Other federal and State disclosures including if applicable the disclosure required under NRS 645B.165(3); and*
- 11. Lender commitments.*

(b) For loans brokered to private investors, the file shall include at a minimum all applicable items listed in section 1 not otherwise waived and all additional documents and disclosures required under NRS & NAC 645B and federal law including but not limited to the following:

- 1. The original documents subject to the provisions of NAC 645B.080.*
- 2. The original documents subject to the provisions of NAC 645B.215.*
- 3. All disclosures required pursuant to NRS 645B.185, NRS 645B.186, and NAC 645B.220, NAC 645B.210 & NAC 645B.073.*
- 4. If the licensee maintains any accounts pursuant to NRS 645B.175 the licensee must maintain records demonstrating compliance with NRS 645B.115, NAC 645B.150, NAC 645B.160 and any other applicable law.*

(c) For loans funded by the broker, the file shall include at a minimum all applicable items listed in section 1 and all closing documentation including but not limited to a deed of trust, title policy, note and any subsequent assignments to institutional investors. Assignments to private investors must comply with all documentation requirements under NRS & NAC 645B.

(d) Additional books and records to be maintained or readily accessible at each branch location, as applicable and specific to the operations of the branch:

- 1. Such books and records as may be required to evidence compliance with applicable state and federal laws and regulations.*
- 2. Copies of each item of all advertising material in the format (recorded sound, video, print, etc.) in which they were published or distributed.*
- 3. Copies of all written complaints along with any and all correspondence, notes, responses, and documentation relating to the disposition;*
- 4. All checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and cancelled checks (or copies) or records kept otherwise that relates to the licensee business at the location;*

5. Copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all employees, independent contractors and others compensated by the licensee;

6. Copies of all contractual relationships with third party mortgage related service providers including, but not limited to, contracts, invoices/billings and remittances to the providers by the licensee or on behalf of the licensee.

7. Copies of all material correspondence related to the licensee's business, including electronic messages;

8. Copies of all reports of audits, examinations, inspections, reviews, investigations, or other similar matters performed by any third party, including any regulatory or supervisory authorities.

Sec. 16. NAC Chapter 645B is hereby amended as follows:

NAC 645B.080 Provision and retention of documents. (NRS 645B.060)

1. Before an investor who is a natural person makes a loan for which a licensed mortgage broker is acting as a broker, the mortgage 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 history of employment of the prospective borrower and income, such as a tax return or an employer's statement of the borrower's past yearly income.

(c) A report on the history of credit of the prospective borrower 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 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.

2. A mortgage broker shall retain a copy of the documents described in subsection 1 and shall retain in his files a statement from the investor, on a form provided by the division, acknowledging that:

(a) The investor received the documents, or that the investor waived in writing the right to receive the documents; and

(b) The decision to make the loan was made after the investor had the opportunity to receive and review the documents.

3. If the loan is made, the mortgage broker shall retain in his 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; and

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

The mortgage broker shall retain in his files a statement, on a form provided by the division, acknowledging that the documents were provided to the investor.

4. If the loan is made, the mortgage broker shall retain in his files:

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

(b) If the investor is a corporation or partnership, a copy of its statement authorizing the loan; and

(c) If the borrower is a corporation or partnership, a copy of its statement authorizing the loan.

5. The mortgage broker shall store his original notes, if retained, in a fireproof container or room.

6. If the mortgage broker has obtained an appraisal on behalf of an investor, the mortgage broker shall provide a copy of the appraisal to the:

(a) Investor, upon request; and

(b) Borrower, upon request, if the borrower has paid for the appraisal.

7. A person cannot waive the provisions of this section unless:

(a) The person has made a prior investment with the licensee; or

(b) The person has a net worth in excess of \$1,000,000; or

(c) The person has not invested with the licensee more than 20% of the net worth of the person, exclusive of residence and automobile.

Sec. 17. NAC Chapter 645B is hereby amended as follows:

NAC 645B.215 Disclosures to purchaser of note secured by deed of trust; retention of documents. (NRS 645B.060)

1. Before a person purchases an existing note secured by a deed of trust or an interest therein for which a licensed mortgage broker is acting as a broker, the mortgage 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.

2. A mortgage broker shall retain a copy of the materials provided to the purchaser pursuant to subsection 1.

3. If the purchase is made, the mortgage broker shall retain in his 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 the replacement costs of all improvements 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.

4. A person cannot waive the provisions of section 1 of this regulation unless:

(a) The person has made a prior investment with the licensee; or

- (b) The person has a net worth in excess of \$1,000,000; or*
- (c) The person has not invested with the licensee more than 20% of the net worth of the person, exclusive of residence and automobile.*

Sec. 18. NAC Chapter 645B is hereby amended as follows:

NAC 645B.220 Escrow instructions; disclosure form. (NRS 645B.060, 645B.185, 645B.186)

1. The commissioner will not consider escrow instructions to have been "approved by the parties" within the meaning of subparagraph (2) of paragraph (a) of subsection 1 of NRS 645B.175 if the instructions:

(a) Are signed by the mortgage broker as attorney in fact for any investor with an interest in the loan; and

(b) Direct that all money relating to the transaction, except money for charges or fees due the mortgage broker, be paid to an owner, partner, director, officer, manager, member or employee of the mortgage broker or a relative of an owner, partner, director, officer, manager, member or employee of the mortgage broker.

2. The commissioner will consider "money paid to a mortgage broker and his mortgage agents by a person in full or partial payment of a loan" within the meaning of subsection 4 of NRS 645B.175 to include money paid to a mortgage broker or his mortgage agents by a person pursuant to written escrow instructions if the payment represents money paid in full or partial repayment of a loan secured by a lien on real property.

3. The commissioner will consider a mortgage broker or mortgage agent to "accept money from an investor to acquire ownership of or a beneficial interest in a loan secured by a lien on real property" within the meaning of NRS 645B.185 and 645B.300 if the mortgage broker or mortgage agent:

(a) Receives money from an investor to acquire ownership of or a beneficial interest in a loan secured by a lien on real property; or

(b) Arranges for the investor to pay money to a third party to invest in a loan secured by a lien on real property.

4. 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 the 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 of Nevada or the Federal Government. Nevada law prohibits the mortgage broker with whom you are dealing from representing or even implying to you that he will ensure 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) the provisions regarding the collection and servicing of the loan; and (7) the 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 bold type)

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

Division of ~~Financial Institutions~~ *Mortgage Lending*
~~406 E. Second Street, Suite 3~~ *400 W. King Street, Suite 406*
~~Floor~~ *3075 E. Flamingo. Ste 104A*
Carson City, Nevada ~~89701-4758~~ *89703*
(775) ~~687-4259~~ *687-7060*

Division of ~~Financial Institutions~~
~~2501 E. Sahara Avenue, Suite 300, Third~~
Las Vegas, Nevada ~~89104~~ *89121*
(702) ~~486-4120~~ *486-0780*

You have the right to request the mortgage broker with whom you are dealing to authorize the Division of ~~Financial Institutions~~ *Mortgage Lending* 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.

Disclosures required by subparagraphs (3) and (4) of paragraph (b) of subsection 6 of NRS 645B.185:

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:

You also have the right, pursuant to subsection 3 of NRS 645B.090, to ascertain from the Division of ~~Financial Institutions~~ *Mortgage Lending*:

- Whether the Division of ~~Financial Institutions~~ *Mortgage Lending* has disciplined the mortgage broker during the immediately preceding 5 years.
- The findings and results of any investigation against the mortgage broker pursuant to the provisions of chapter 645B of NRS which was completed during the immediately preceding 5 years and which resulted in a finding by the commissioner that the mortgage broker committed a violation of a provision of this chapter or chapter 645B of NRS or an order of the commissioner.

(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 specifically waive in writing your right to have the appraisal performed. An appraiser who is licensed or certified to perform real estate appraisals in this state must perform the appraisal if the property is located in this state. The mortgage broker with whom you are dealing is prohibited from performing the appraisal or providing any estimate or opinion of the value of the property that is to secure the mortgage loan investment, unless the mortgage broker is certified or licensed to perform the appraisal pursuant to chapter 645C of NRS. You are entitled to a copy of the appraisal upon request.

I waive my right to an appraisal for this loan. Investor: _____

I wish to review an appraisal for this loan. Date: _____

In addition to a written appraisal, you are entitled to know whether the real property that will secure the loan is encumbered by any other liens and, if so, the priority of each such lien, the amount of debt secured by each such lien and the current status of that debt, including, without limitation, whether the debt is being paid or is in default.

The real property that will secure this loan is is not encumbered by any other liens. If other liens exist, describe, for each lien:

Description: _____

Amount encumbered: _____

Priority: _____

Current status: _____

(At least 14-point type)

You are entitled to review information relating to the financial standing and creditworthiness of the borrower and documentation relating to the mortgage loan. Pursuant to NAC 645B.080, you will be asked to complete a form in which you acknowledge that you had the opportunity to receive and review that information and documentation.

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 fund the entire amount of the loan either out of his 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 money to 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 money was disbursed. You have the right to review a closing statement relating to the escrow describing to whom and how the money was disbursed.

In many cases, including those cases where the investments consist of "fractionalized" interests, i.e., 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 which 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, the parties are 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 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 a greater specified percentage of the beneficial interests in the mortgage loan may direct certain actions that require direction or approval of the holders of beneficial interests); (4) the identity of 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, or any relative of the mortgage broker, 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 any relative of his, 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, the mortgage broker 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, the mortgage broker 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, or a relative of 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)

Collection of a promissory note and enforcement of a 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 that a servicing agent can take 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 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. Before 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 money) 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 attorney's 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 nonjudicial 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 or financial advisor or a 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: _____
Title (if investor is a corporation, partnership or limited-liability company): _____

Dated: _____

Licensee or agent of licensee name and signature _____
Title

Dated: _____

5. If the investor is a corporation, the disclosure form required pursuant to NRS 645B.185 may be signed by any person authorized to sign the form on behalf of the corporation, except a mortgage broker or mortgage agent.

Sec. 19. NAC Chapter 645B is hereby amended as follows:

NAC 645B.240 Advertisements. (NRS 645B.060, 645B.189)

1. A licensed mortgage broker shall not represent an activity which is not licensed pursuant to chapter 645B of NRS as being licensed pursuant to that chapter.

2. An advertisement for an activity which is licensed pursuant to chapter 645B of NRS must be separate and distinct *as defined under RESPA* from an advertisement for an activity which is not licensed pursuant to that chapter.

3. A licensed mortgage broker must include in his advertisements, including any advertising material available on the Internet:

(a) ~~His name, address and telephone number; and~~

The complete name of the licensee or complete name under which the licensee Does Business As, and the address and telephone number as filed with the Division. Direct lines or cell numbers may be included in addition to the licensed location telephone number.

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

4. A mortgage broker shall not use advertising material that simulates the appearance of a check, a communication from a government entity, or an envelope containing a check or a communication from a government entity, unless:

(a) The words "THIS IS NOT A CHECK," "NOT NEGOTIABLE" or "THIS IS NOT A GOVERNMENT ENTITY," as appropriate, appear prominently on the envelope and any material that simulates the appearance of a check or a communication from a government entity; and

(b) If the material simulates the appearance of a check, the material does not contain an American Bankers Association number, microencoding or any other marks intended to create the appearance that the material is a negotiable check.

5. ~~[Provided the representation of interest rates in advertisements complies with applicable provisions of federal law regarding the advertising of interest rates, a mortgage broker may make changes in the interest rates advertised and any other nonsubstantive changes to his advertisements without additional approval from the commissioner.]~~

5. Provided the representation of interest rates in advertisements complies with applicable provisions of Regulation Z and the content continues to comply with applicable provisions of NRS & NAC 645B regarding advertising, a mortgage broker may make non-substantive changes to his advertisements without additional approval from the commissioner. For purposes of this section, non-substantive changes for advertisements not requiring additional approvals would be changes in:

(a) Interest rates quoted, and corresponding annual percentage rates (APR);

(b) Promoting another licensed mortgage agent in the same format of advertisement;

(c) Promoting other licensed branch address locations in the same format of advertisement;

(d) Links on web sites that direct the user to non-commercial or consumer education sites;

(e) Cell phone or direct line telephone numbers;

(f) Nominal changes in verbiage which does not alter the content of the advertisement.

6. For purposes of this chapter the definition of advertising shall include:

(a) Commercial messages that promote the availability of mortgage products or investments offered by the licensee. Commercial messages include, but are not limited to, print media, sales literature, sales brochures or flyers, billboards, yellow page listings if more than a line listing, radio, and television, mass mailings distributed via postal distribution services or electronic delivery, telephone and seminar scripts and websites that promote and/or accept loan applications.

(b) White page listings, employment recruiting announcements, office signage, banners, magnetic car signs, business cards and letterhead that contains only the name, address or telephone number, together or separate, and used for identification purposes only will not require approval by the Division.

(c) Web links from the licensee website to other commercial enterprise websites must provide a notification to the user that they are leaving the licensee's website.

7. Advertising approvals must be maintained at the location of the licensee and available for inspection for one year after the last date of its use.

8. For purposes of NRS 645B.189 disclosures in advertisements and distributions to investors the following wording must be included:

Before investing, investors must be provided applicable disclosure documents for each loan in which money is invested.

Sec. 20. NAC Chapter 645B is hereby amended as follows:

NAC 645B.280 Power of attorney; Submission; approval; maintenance of written communications; extension of term. (NRS 645B.060, 645B.330)

1. Before 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]~~ 15 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 mortgage broker amend the power of attorney as directed by the commissioner; ~~[or]~~

(c) Reject the power of attorney ~~[.]~~ or

(d) Notify in writing the person requesting approval of the power of attorney that an additional period of time, not to exceed an additional 15 business days, is needed to act upon the power of attorney pursuant to this section.

~~2. [If the commissioner has not acted on a power of attorney submitted for approval pursuant to this section within 10 business days after receiving a request for approval of a power of attorney, the power of attorney shall be deemed approved.]~~

~~—3.]~~ The mortgage broker shall maintain in his file all written communications relating to the request for approval of the power of attorney.

~~[4]~~ 3. Any writing executed or issued by a person extending the term of a power of attorney must be dated, and the mortgage broker shall maintain a copy of the extension in the file of the mortgage broker.

~~[5]~~ 4. A power of attorney approved by the commissioner pursuant to this section must state the date that the commissioner approved the power of attorney. If the mortgage broker materially changes the power of attorney, the mortgage broker must resubmit the power of attorney to the commissioner for approval before the mortgage broker uses the power of attorney.

Sec. 21. NAC Chapter 645B is hereby amended as follows:

NAC 645B.300 Conditions and limitations on acting as mortgage agent. (NRS 645B.060, 645B.450)

1. A mortgage broker and any mortgage agent must sign the ~~[registration form]~~ *application for licensing* required pursuant to NRS 645B.450.

2. A mortgage agent may associate with or be employed by a mortgage broker at only one licensed office location of the mortgage broker and may not associate with or be employed by a mortgage broker who is exempt from the provisions of chapter 645B of NRS or whose office is located outside this state.

3. A mortgage agent may not be simultaneously employed by a mortgage broker and also be employed as a real estate salesman in this state.

a. For the purposes of this section, “Real Estate Broker” has the meaning as defined in NRS 645.030. “Real Estate Salesman” has the meaning as defined in NRS 645.035.

b. The purposes of this section is to help maintain the separation between the business of real estate and the business of mortgage lending and investing and to minimize the possibility of unfair consumer steering activities by individuals who hold both a mortgage agent license and are also licensed as a real estate broker or salesmen and may be compensated for both activities.

~~[3]~~ 4. Upon request of a mortgage broker, the commissioner may waive the requirement of an investigation of the credit history, criminal history and background of a mortgage agent if such an investigation has been conducted within 1 year immediately preceding the date the ~~[registration form]~~ *application* is submitted.

~~[4]~~ 5. The ~~[registration]~~ *license* of a mortgage agent pursuant to this section is effective upon the date that the mortgage broker files the form with the division, but must be invalidated

by the division if, upon investigation, the division determines that the mortgage agent does not meet the requirements of paragraphs (a) and (b) of subsection 4 of NRS 645B.450. The division shall notify the mortgage broker and the mortgage agent in writing if a ~~registration~~ *license* is invalidated pursuant to this subsection.

~~5~~. 6. The report of an investigation of the credit history, criminal history and background of a mortgage agent is confidential, and the commissioner will release the report only pursuant to a valid subpoena or court order.

~~6~~. 7. The written statement of the circumstances surrounding the termination of a mortgage agent required by subparagraph (1) of paragraph (b) of subsection 5 of NRS 645B.450 will be considered a public record.

Sec. 22. NAC Chapter 645B is hereby amended as follows:

NAC 645B.330 Referral of suspected violation for investigation and action. (NRS 645B.060)

1. The commissioner ~~will~~ *may* refer to the appropriate federal or state agency for investigation and appropriate action each suspected violation of:

(a) The Truth in Lending Act, 15 U.S.C. §§ 1601 to 1667f, inclusive, including, without limitation, the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1639, or Regulation Z, 12 C.F.R. Part 226.

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

(c) The Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 to 2617, inclusive, or Regulation X, 24 C.F.R. Part 3500.

2. For the purposes of NRS 645B.670, a ~~mortgage broker~~ *licensee* commits a violation if the mortgage broker *or a mortgage agent associated with the licensee*:

(a) Engages in 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 the mortgage broker 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 ~~or~~

(c) Fails to comply with NRS 645B.670 (2) (c) and commits a violation of:

(1) The Truth in Lending Act, 15 U.S.C. §§ 1601 to 1667f, inclusive, including, without limitation, the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1639, or Regulation Z, 12 C.F.R. Part 226;

(2) The Equal Credit Opportunity Act, 15 U.S.C. §§ 1691 to 1691f, inclusive, or Regulation B, 12 C.F.R. Part 202;

(3) The Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 to 2617, inclusive, or Regulation X, 24 C.F.R. Part 3500; or

(4) Any other applicable federal code or regulation relating to mortgage transactions.