

**ADOPTED REGULATION OF THE
COMMISSIONER OF MORTGAGE LENDING**

LCB File No. R055-08

Effective April 23, 2009

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

AUTHORITY: §§1-3, NRS 645B.060, 645B.080, 645B.085 and 645B.175.

A REGULATION relating to mortgage brokers; revising requirements for the content and submission of financial statements; requiring semiannual submission of financial statements; and providing other matters properly relating thereto.

Section 1. Chapter 645B of NAC is hereby amended by adding thereto a new section to read as follows:

1. A licensed mortgage broker maintaining any accounts described in subsection 1 or 4 of NRS 645B.175 shall, not later than 120 days after the end of the fiscal year for the mortgage broker, provide to the Commissioner an annual financial statement of the account or accounts, which has been:

(a) Prepared from the books and records of the mortgage broker by an independent public accountant who holds an active permit to engage in the practice of public accounting in this State; and

(b) Audited in accordance with generally accepted auditing standards.

2. A financial statement of the account or accounts required pursuant to this section must include, if applicable:

(a) A statement of the balance and liabilities of each trust account;

(b) A statement of all receipts for, disbursements from and changes in cash balances of each trust account;

(c) A supplementary schedule of the liabilities of each trust account; and

(d) A reconciliation of cash balance of each trust account to the supplementary schedule of the liabilities of each trust account.

3. The Commissioner will make available an approved format and sample content for the statements required pursuant to this section. Mortgage brokers shall submit the statements in substantially the same format as the approved forms.

4. In addition to the annual financial statement of the account or accounts required pursuant to subsection 1, not later than 60 days after the last day of each fiscal year for a mortgage broker, and every 6 months thereafter, the mortgage broker shall submit to the Commissioner an unaudited financial statement of the account or accounts. The financial statement required pursuant to this subsection may be self-prepared.

5. Except as otherwise provided in this subsection, the Commissioner may grant a reasonable extension, not to exceed 30 days, for the submission of a financial statement of the account or accounts pursuant to this section if a mortgage broker requests such an extension in writing before the date on which the financial statement is due. Upon written request, the Commissioner may, for good cause, grant in writing an additional extension, not to exceed 30 days, of the period for the submission of a financial statement.

Sec. 2. NAC 645B.150 is hereby amended to read as follows:

645B.150 A licensed mortgage broker maintaining any accounts described in subsection 1 of NRS 645B.175 shall:

1. Provide to the Commissioner a financial statement of the account or accounts ~~[which has been audited in accordance with generally accepted auditing standards.]~~ *in accordance with section 1 of this regulation.*

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 broker;

(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 fiscal year of the mortgage broker.

Sec. 3. NAC 645B.160 is hereby amended to read as follows:

645B.160 A licensed mortgage broker maintaining any accounts described in subsection 4 of NRS 645B.175 shall:

1. Provide to the Commissioner a statement of the account or accounts ~~[which has been audited in accordance with generally accepted auditing standards as promulgated for special reports.]~~ *in accordance with section 1 of this regulation.*

2. Keep monthly records reconciling all payments received on loans made by investors to such accounts and any subsequent disbursement to the investors.

3. At least annually, provide to each investor:

(a) A statement indicating all money collected and disbursed; and

(b) The amortized balance of each loan in which the investor has an interest.

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

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R055-08

The Commissioner of Mortgage Lending adopted regulations assigned LCB File No. R055-08 which pertain to chapter 645B of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

- 1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.**

Copies of the proposed regulation, notice of workshop and notice of intent to act upon the regulation were e-mailed to persons who were known to have an interest in the regulations, as well as any persons who had specifically requested such notice. These documents were also made available at the Division of Mortgage Lending's Web site www.mld.nv.gov, mailed to the State Library and all county libraries in Nevada, and posted at the Division's offices.

Workshops were held in Las Vegas on July 17, 2008, and in Carson City on July 23, 2008. Minutes of those workshops are attached hereto. No public comment was offered at the workshop. Thereafter, on or about January 16, 2009, the Commissioner of the Division of Mortgage Lending (Commissioner) posted a Notice of Intent to Act Upon a Regulation, which incorporated in the proposed amendments suggestions of the parties attending the July workshops as well as the written comments received by the Division.

A public hearing on the proposed regulation was held on February 19, 2009. The hearing was video conferenced between Las Vegas and Carson City. Minutes of the hearing are attached hereto and include summaries of the public comment.

A copy of the summary of the public response to the proposed regulation may be obtained from the Division of Mortgage Lending, 7220 Bermuda Road, Suite A., Las Vegas, NV 89119, or by e-mailing a request to jwaltuch@mld.nv.gov.

- 2. The number of persons who:**

	<u>CC</u>	<u>LV</u>
Attended workshop: 7-17-08		25
7-23-08		
Testified at workshop	0	3
Submitted written comments:	0	3
Attended hearing 2-19-09:	5	8
Testified at Hearing	1	1
Submitted written comments:	0	0

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public. In addition to the e-mail notice described in question 1, which was sent to all company licensees, the Division sent an additional e-mail two days prior to the hearing as a reminder. The Summary may be obtained in the same manner as instructed in the response to question #1.

The industry comments included:

1. Request to only require reconciled bank statements in-lieu of financial statements.
2. Concerns that three audited statements a year was burdensome, and the 30 day submission requirement was too short.
3. Concerns regarding the formatting requirements.
4. Concerns that public account was used rather than certified public accountant, and permit instead of license.
5. Concerns that the new requirements would have an economic impact, although not considered significant.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation, as reviewed by the Legislative Counsel was adopted on March 5, 2008, as proposed without change. However, changes were incorporated into the language submitted to the Legislative Counsel for review pursuant to NRS 233B.063 from comments offered at the workshop and through written comment. The adopted language meets the requirement in NRS 645B.175 (11), which requires the Commissioner to adopt regulations concerning the form and content required for financial statements.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

Business which it is to regulate & the public:

(1) Both adverse and beneficial effects:

(a) Beneficial effects: NRS 645B.175 (11) requires the Commissioner to adopt regulations concerning the form and content required for financial statements. The proposed regulation requires additional detailed reporting for licensees who maintain third party trust accounts as detailed in NRS 645B.175 to be utilized for both for the annual audited report prepared by the licensee's CPA as well as the biannual reporting requirements prescribed in NRS 645B.175 (10). The additional forms will enable the Division to better scrutinize the activities related to these accounts, to better monitor investors' monies.

(b) Adverse effects: Although there will be some additional costs incurred by licensees who maintain trust accounts as a result of this regulation, there is not anticipated to be an adverse affect to the industry since less than 5% of all brokers maintain these accounts.

(2) Both immediate and long-term effects.

The immediate and long term effects are anticipated to be the same and are consistent with #5 (1) (a).

6. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of this regulation.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The Proposed Permanent Regulation does not overlap regulations of other state or governmental agencies.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The Proposed Permanent Regulation does not include provisions which are more stringent than federal regulation.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The Proposed Permanent Regulation does not include any new or increased fees.

10. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What did the agency use in determining the impact of the regulation on a small business?

The Commissioner has determined that the Proposed Regulation does not impose a direct and significant economic burden upon a small business or restrict the formation, operation or expansion of a small business. In making this determination, the Commissioner considered that the regulation requires additional submissions of financial statements by mortgage brokers who maintain trust accounts, as well as more comprehensive formatting of the reports.

To evaluate the economic burden of the Proposed Regulation on a small business, the Division contacted small businesses which may be impacted by the proposed regulation and the businesses' accountants to determine potential cost increases of having an independent public accountant prepare statements utilizing formatting prescribed by the Division. The businesses and their accountants were provided with drafts of the prescribed form and verbally indicated that the inclusion of the additional forms would not result in any significant increases in costs for preparation of financial statements.