

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

LCB File No. R056-08

Effective April 23, 2009

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

AUTHORITY: §§1 and 3, NRS 645B.060; §2, NRS 645B.060 and 645B.080.

A REGULATION relating to mortgage brokers; establishing provisions relating to insider loans; 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. Insider loans made or arranged by a mortgage broker are subject to the following limitations and conditions:

(a) The lending limit must not exceed 25 percent of the total dollar amount of the outstanding balances of investor-funded loans which were made or arranged by the mortgage broker or 100 percent of the mortgage broker's net worth as described in NAC 645B.095, whichever is greater.

(b) An investor, other than a financial or institutional investor, who funds an insider loan may not waive the provisions of subsection 1 of NAC 645B.080.

(c) If the investor is a company, the information required by subsection 1 of NAC 645B.080 must be provided to the investor for distribution to any person who has control of the company. For purposes of this paragraph, a person shall be deemed to have control of the company if the person:

(1) Is an executive officer or director of the company;

(2) Directly or indirectly owns or controls more than 25 percent of any voting shares; or

(3) Exercises a controlling influence over the management or policies of the company.

(d) The mortgage broker shall specifically identify on each monthly report required by NRS 645B.080 any insider loan made by the mortgage broker.

2. As used in this section:

(a) "Company" means any form of business entity other than a natural person.

(b) "Financial or institutional investor" has the meaning ascribed to it in NRS 90.240.

(c) "Insider" means a director, officer, mortgage agent or employee of a mortgage broker.

(d) "Insider loan" means an extension of credit to an insider. For purposes of this paragraph, "extension of credit" includes, without limitation, a new loan or a loan renewal, a line of credit or any other financial right structured in any manner and arranged by a mortgage broker as a means for the borrower to defer payment on an existing debt or to incur a debt and defer immediate payment.

(e) "Lending limit" means the maximum dollar amount permitted for the aggregate of insider loans arranged by a mortgage broker.

Sec. 2. NAC 645B.070 is hereby amended to read as follows:

645B.070 1. Each mortgage broker shall submit, for each month, on a form approved by the Commissioner, a report on the volume of loans arranged in that month. If the mortgage broker is performing loan servicing and maintains any accounts described in subsection 4 of NRS 645B.175, the monthly report must include the information required pursuant to subsections 2 and 3. The monthly report must be submitted to the Commissioner 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 state that fact.

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 his report to the Commissioner:

- (1) The name, address and telephone number of the debtor;
- (2) 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 pursuant to paragraph (b) of this subsection and paragraph (b) of subsection 1 of NRS 645B.260 ~~and~~; *and*
- (6) If the loan is an insider loan, a statement disclosing that fact.*

(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 each 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 notice is submitted; and

(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. 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 monthly report required pursuant to subsection 1 must state that fact.

4. The mortgage broker must comply with the provisions of subsection 2 each month until:

- (a) The debtor or his designee remedies the delinquency in payments and any default; or
- (b) The lien securing the loan is extinguished.

5. The Commissioner may refuse to renew the license of a mortgage broker who has not submitted a monthly report required by subsection 1 for 1 or more of the preceding 12 months.

6. As used in this section, “insider loan” has the meaning ascribed to it in section 1 of this regulation.

Sec. 3. NAC 645B.080 is hereby amended to read as follows:

645B.080 1. ~~{Before}~~ *Except as otherwise provided in section 1 of this regulation, 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}~~ *must* 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.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R056-08

The Commissioner of Mortgage Lending adopted regulations assigned LCB File No. R056-08 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 16, 2008, and in Carson City on July 22, 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: 7-16-08	21	
7-22-08	5	
Testified at workshop	0	2
Submitted written comments:	0	2
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 that the waiver of items in NAC 645B.080 shouldn't be limited to only licensees with trust accounts;
2. Concerns that the regulation limits investor's ability to waive items on insider loans;
3. Request that the calculation of percentages allow inclusion of defaulted loans;
4. Request that the definition of insider not include relatives; and
5. Concerns that NAC 645B.080 applies to private investors, yet regulation section establishes that non-private investors could not waive items included in subsection (1) of NAC 645B.080.

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.060(2)(a)(2), which requires the Commissioner to establish reasonable limitations and guidelines on insider loans.

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: The regulations establishing reasonable limitations and guidelines on loans made by a mortgage broker to a director, officer, mortgage agent or employee of the mortgage broker", as required in NRS 645B.060(2)(a)(2). Enactment of the guidelines safeguard investors by limiting exposure and concentration in insider loans within a mortgage broker's portfolio and by ensuring investors can make informed decisions by receipt of documentation on loans made to insiders.

(b) Adverse effects: There are no anticipated adverse effects to the industry or the public by the adoption of this regulation, however the regulation could limit the

maximum dollar amount of insider loans which a mortgage broker is permitted to arrange; however, the proposed regulation does not limit a mortgage broker insider from obtaining funding from other mortgage brokers who arrange similar loans.

(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 determined through review of the language of the Proposed Permanent Regulation, and opportunity for comment at the workshop and hearing, and written submissions, that the 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.