

**REVISED PROPOSED REGULATION OF
THE COMMISSIONER OF MORTGAGE LENDING**

LCB File No. R056-08

December 31, 2008

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.