

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

LCB File No. R057-08

May 20, 2008

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

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

A REGULATION relating to mortgage brokers; establishing provisions relating to investments to acquire ownership of certain interests; 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. Except as otherwise provided in subsection 6, before an investor, other than a financial or institutional investor, enters into a transaction with a mortgage broker or mortgage agent to acquire ownership of or a beneficial interest in a loan secured by a lien on real property by investing money from the investor's personal bank account, a family trust or a personal retirement account, the investor must provide a notarized statement on a form prescribed by the Division which verifies that the investor meets one or more of the following financial requirements:

(a) The investor's individual or combined net worth:

(1) Is more than \$250,000, excluding any equity in any real property used as the investor's primary residence at the time of the investment; or

(2) Is more than \$100,000, excluding any equity in any real property used as the investor's primary residence at the time of the investment and, before making the investment,

the investor has successfully completed an investment course, either in person or through distance learning, relating to trust deeds which is approved by the Division and which is at least 2 hours in duration, as evidenced by a certificate of completion;

(b) If the investor is unmarried:

(1) The investor's individual gross annual income was more than \$100,000 for each of the previous 2 tax years and there is a reasonable expectation of attaining or exceeding the same income for the current year; or

(2) The investor's individual gross annual income was more than \$50,000 for each of the previous 2 tax years, there is a reasonable expectation of attaining or exceeding the same income for the current year and, before making the investment, the investor has successfully completed an investment course, either in person or through distance learning, relating to trust deeds which is approved by the Division and which is at least 2 hours in duration, as evidenced by a certificate of completion; or

(c) If the investor is married:

(1) The investor's combined income was more than \$200,000 for each of the previous 2 tax years and there is a reasonable expectation of attaining or exceeding the same income for the current year; or

(2) The investor's combined income was more than \$70,000 for each of the previous 2 tax years, there is a reasonable expectation of attaining or exceeding the same income for the current year and, before making the investment, the investor has successfully completed an investment course, either in person or through distance learning, relating to trust deeds which is approved by the Division and which is at least 2 hours in duration, as evidenced by a certificate of completion.

2. An investor who intends to invest money by satisfying the financial requirement set forth in subparagraph (2) of paragraph (a) of subsection 1, subparagraph (2) of paragraph (b) of subsection 1 or subparagraph (2) of paragraph (c) of subsection 1, must also verify on the form prescribed by the Division that the investor's total investments in loans secured by a lien on real property transacted by a mortgage broker or mortgage agent are not valued at more than 50 percent of the investor's net worth or net annual income.

3. In the absence of knowledge to the contrary, a mortgage broker or mortgage agent is not responsible for determining the validity of an investor's stated financial information and may rely on such information submitted by the investor.

4. An investor shall verify on a form prescribed by the Division that he continues to meet the minimum financial requirement set forth in subsection 1 for each transaction subsequent to the first transaction.

5. If the investment is authorized by law and does not violate the terms of the trust, the parent of a child who is under 18 years of age may invest money held in trust for the child if the parent satisfies the minimum financial requirement set forth in subsection 1.

6. The provisions of this section do not apply to transactions between mortgage brokers or mortgage agents.

7. As used in this section, "financial or institutional investor" has the meaning ascribed to it in NRS 90.240.

Sec. 2. NAC 645B.080 is hereby amended to read as follows:

645B.080 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]~~ **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 ~~H~~; and

(c) The investor continues to meet the minimum financial requirement set forth in section 1 of this regulation.

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.

Sec. 3. NAC 645B.215 is hereby amended to read as follows:

645B.215 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 ~~[]~~ *or as an investor selling his interest*, the mortgage broker ~~[shall]~~ *must* 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]~~ :

(1) *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

; and

(2) *Verifying that the purchaser meets the minimum financial requirement set forth in section 1 of this regulation.*