

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

LCB File No. R058-08

Effective April 23, 2009

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

AUTHORITY: §§1 and 2, NRS 645B.016 and 645B.060; §§3, 6, 7, 12, 19 and 20, NRS 645B.060; §4, NRS 645B.060, 645B.410 and 645B.455; §5, NRS 645B.020 and 645B.060; §8, NRS 645B.060 and 645B.095; §§9-11, NRS 645B.060 and 645B.080; §§13 and 14, NRS 645B.060 and 645B.175; §15, NRS 645B.185; §16, NRS 645B.060 and 645B.189; §17, NRS 645B.060 and 645B.300; §18, NRS 645B.060, 645B.410 and 645B.450.

A REGULATION relating to mortgage lending; requiring certain persons claiming an exemption from the requirements of existing law governing mortgage brokers and mortgage agents to ensure certain information is provided to the Commissioner of Mortgage Lending; prohibiting the renewal of a license if a mortgage broker or mortgage agent has not paid certain fees, fines and assessments; enacting requirements for a mortgage agent licensed on behalf of certain types of business entities; providing that the experience required to obtain a license as a mortgage broker must have been acquired within a certain period; providing that an application for certain licenses will be deemed abandoned in certain circumstances; providing for the conditional approval of an application for a branch license; providing for the approval by the Commissioner of a change in the ownership or control of a mortgage broker; requiring a mortgage broker to keep certain records relating to estimates of the value of mortgaged property and closing costs; providing for the electronic reproduction and storage of mortgage transaction records; requiring certain trust and escrow accounts to be kept separate from other accounts held by a mortgage broker; applying to mortgage agents certain restrictions on advertising; prohibiting certain advertising practices; adopting minimum standards for certain appraisals submitted to investors; prohibiting a mortgage agent from associating with or being employed by certain entities; requiring a mortgage broker to provide written notification of termination to a mortgage agent associated with or employed by the mortgage broker; providing for the time at which a mortgage agent is deemed to be licensed; providing that an applicant for a license as a mortgage agent must submit certain information with the application; requiring a mortgage agent to reside within a certain distance from the licensed office location for which the mortgage agent works; and providing other matters properly relating thereto.

Section 1. Chapter 645B of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *In addition to the requirements of subsection 1 of NRS 645B.016, a person who claims an exemption from the provisions of chapter 645B of NRS pursuant to subsection 1 of NRS 645B.015 must ensure that the entity or agency which regulates the conduct of his business provides to the Commissioner written notification that:*

- 1. The license of the person provides the right to make or broker mortgage loans; and*
- 2. The entity or agency will investigate complaints arising from or relating to consumers in this State.*

Sec. 3. *The Commissioner will not renew the license of a mortgage broker or mortgage agent if the mortgage broker or mortgage agent has not paid all fees, fines and assessments owed to the Division.*

Sec. 4. *1. A natural person who is seeking to become licensed as a mortgage agent on behalf of a corporation or a limited-liability company pursuant to NRS 645B.455 must:*

- (a) Form the corporation or limited-liability company in his name; and*
- (b) Include with the application for a license as a mortgage agent evidence of the formation of the corporation or limited-liability company and a list of the officers of the corporation or the members of the limited-liability company.*

2. A mortgage agent licensed on behalf of a corporation or limited-liability company pursuant to NRS 645B.455 must file the affidavit required by subsection 4 of NRS 645B.455 on a form prescribed by the Division.

3. If a mortgage agent licensed on behalf of a corporation or a limited-liability company pursuant to NRS 645B.455 dies, the mortgage broker shall notify the Division of the death not later than 3 days after the death.

4. A mortgage agent licensed on behalf of a corporation or a limited-liability company pursuant to NRS 645B.455 may not hold a license as a mortgage agent on his own behalf.

Sec. 5. NAC 645B.010 is hereby amended to read as follows:

An applicant for a license as a mortgage broker must have ~~1:~~

~~—1. At~~, *within the 5 years immediately preceding the date of his application, at* least 2 years of verifiable experience in lending money for real estate or mortgages. ~~1: 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.]~~

Sec. 6. NAC 645B.020 is hereby amended to read as follows:

645B.020 1. An applicant must submit with his application for a license pursuant to chapter 645B of NRS:

(a) A copy of his business license, when applicable, or his application for such a license if he has not obtained one.

(b) 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.

(c) If the applicant is a corporation, a copy of:

(1) Its articles of incorporation and its bylaws;

(2) 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

(3) The most recent list of its officers and ~~[resident agents]~~ *registered agent* that is filed with the Secretary of State.

(d) 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.

(e) If the applicant is a corporation being organized, a copy of its proposed articles of incorporation and its bylaws.

(f) If the applicant is a limited-liability company, a copy of:

(1) Its articles of organization and operating agreement;

(2) A statement of the profit and loss of the limited-liability company for the 2 years immediately preceding the year of the application; and

(3) The most recent list of its members or managers, and ~~[resident agents,]~~ *registered agent*, that is filed with the Secretary of State.

(g) A copy of the lease of the applicant or other document which includes the address of the place of business of the applicant.

2. If an applicant has received a letter of conditional approval of his application from the Division which imposes additional requirements that the applicant must satisfy to obtain a license, the applicant must comply with those requirements within 30 days after the date on which the letter was issued by the Division. If the applicant does not satisfy all additional requirements set forth in the letter within the period prescribed in this subsection, the conditional approval of the application will be deemed to have expired and the applicant must reapply to obtain a license. The Commissioner may, for good cause, extend the 30-day period prescribed in this subsection.

3. An application shall be deemed abandoned if the applicant fails to respond to any written request for information by the Division within 30 days after the date of the request.

Sec. 7. NAC 645B.030 is hereby amended to read as follows:

645B.030 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 name of each mortgage agent who intends to work at the branch office.

2. 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 during the preceding 12 months; and

(b) 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. The Commissioner may waive the requirements of subsection 2 upon good cause shown.

4. 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.

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

6. 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.

7. If an applicant has received from the Division a letter of conditional approval of his application for a branch license which imposes additional requirements that the applicant

must satisfy to obtain a branch license, the applicant must comply with those requirements within 30 days after the date on which the Division issued the letter. If the applicant does not satisfy all additional requirements set forth in the letter within the period prescribed in this subsection, the conditional approval of the application shall be deemed to have expired and the applicant must reapply to obtain a branch license. The Commissioner may, for good cause, extend the 30-day period prescribed in this subsection.

8. An application for a branch license shall be deemed abandoned if the applicant fails to respond to any written request for information by the Division within 30 days after the date of the request.

Sec. 8. NAC 645B.057 is hereby amended to read as follows:

645B.057 1. Any material change in the ~~ownership~~ management or principal employees of a mortgage broker at his principal office or a branch office must be reported to the Commissioner within 30 calendar days after the change.

2. Any material change in the ownership or any change of control of a mortgage broker at his principal office or a branch office must be approved by the Commissioner. An application for approval of a change of ownership or a change of control must be submitted to the Commissioner on a form prescribed by the Division not later than 30 days before the proposed change.

3. If a person acquires stock or ownership in a mortgage broker as a result of a transfer that constitutes a change of control pursuant to NRS 645B.095:

(a) A financial statement or a personal interrogatory, or both, of the prospective owner, partner, corporate shareholder, manager or employee must be submitted to the Commissioner for his consideration;

(b) The person may not participate in the management of the mortgage broker until the Commissioner has approved the transfer; and

(c) The mortgage broker may not change the location of his principal office or branch office until the Commissioner has approved the transfer.

~~[3.]~~ **4.** A mortgage broker may not close his principal office or a branch office until:

(a) The mortgage broker has returned his license; and

(b) The Commissioner has approved the closure.

~~[4.]~~ **5.** The request for approval of the closure of the principal office of the mortgage broker or a branch office must contain the following information:

(a) The status of any incomplete applications for mortgage loans and the manner in which the loans will be finalized;

(b) An accounting of any trust account maintained by the mortgage broker and the plan for distribution of money in the account;

(c) If any mortgage agent associated with or employed by the mortgage broker has been terminated pursuant to subsection 3 of NRS 645B.450, evidence of the termination; and

(d) The location in this State where records of the mortgage broker will be maintained pursuant to subsection 1 of NRS 645B.080 and subsection 5 of NAC 645B.080.

6. As used in this section, “change of control” has the meaning ascribed to it in NRS 645B.095.

Sec. 9. NAC 645B.072 is hereby amended to read as follows:

645B.072 As used in NRS 645B.080, the Commissioner interprets “complete and suitable records” to mean:

1. A file that includes, but is not limited to, the following documents, if applicable to the type and purpose of the loan:

- (a) The real estate sales contract;
- (b) Escrow instructions;
- (c) The preliminary title report;
- (d) The loan application, including, but not limited to, any attachments or supplements;
- (e) An appraisal report ~~and~~ *or any other independent assessment of the value of the mortgaged property;*
- (f) Any verification of representations made by the consumer on the application for a mortgage;
- (g) A credit report;
- (h) A good faith estimate of closing costs *, including any additional estimates if there is a material change to the original estimate,* and any disclosures required pursuant to the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq.;
- (i) The Uniform Settlement Statement, as described pursuant to 12 U.S.C. § 2603; ~~and~~
- (j) Any commitments made by the lender to the consumer, including, but not limited to, a commitment to guarantee the consumer a certain interest rate and a commitment to fund the loan ~~and~~ *;* and
- (k) *Any additional disclosures required by state or federal law.*

2. For loans brokered to private investors, a file that must include all the items required pursuant to subsection 1, if applicable, and any additional documents or disclosures required pursuant to this chapter, chapter 645B of NRS or federal law, including, but not limited to:

- (a) The original documents subject to the provisions of NAC 645B.080 or 645B.215;

(b) All disclosures required pursuant to NRS 645B.185 and 645B.186, and NAC 645B.073, 645B.210 and 645B.220; and

(c) If the mortgage broker maintains any account pursuant to NRS 645B.175, the mortgage broker must include records that demonstrate compliance with the provisions of NRS 645B.115 and NAC 645B.150 and 645B.160 and any other applicable law.

3. For loans funded by the mortgage broker, a file that must include all the items required pursuant to subsection 1 and all closing documentation, including, but not limited to, a recorded or confirmed deed of trust, the title insurance policy, the note, the hazard insurance policy and any subsequent assignment to additional investors. Assignments to private investors must comply with all documentation requirements of this chapter and chapter 645B of NRS.

4. Any additional books and records that must be maintained or readily accessible at each place of business of the mortgage broker, including, but not limited to, any branch office as applicable to the operations of the mortgage broker, including:

(a) Any book or record that evidences compliance with applicable federal and state laws and regulations;

(b) A copy of each item of advertising material that was published or distributed by or on behalf of the mortgage broker in the format in which the material was published or distributed;

(c) A copy of any written complaint against the mortgage broker, together with all correspondence, notes, responses and other documentation related to the disposition of the complaint;

(d) All checkbooks, check registers, bank statements, deposit slips, withdrawal slips, cancelled checks and other records that relate to the business of the mortgage broker;

(e) Copies of all federal tax withholding forms, reports of income for federal taxation and evidence of payments to all employees, independent contractors and other persons that worked for the mortgage broker;

(f) Copies of all documents evidencing a contractual relationship between the mortgage broker and any third-party provider of services related to mortgages, including, but not limited to, contracts, invoices, billings and remittances to the provider by or on behalf of the mortgage broker;

(g) Copies of all material correspondence related to the business of the mortgage broker, including, but not limited to, electronic messages; and

(h) Copies of all reports, audits, examinations, inspections, reviews, investigations or other similar activities relating to the business of the mortgage broker performed by any third party, including, but not limited to, any regulatory or supervisory authority.

Sec. 10. NAC 645B.073 is hereby amended to read as follows:

645B.073 1. Except as otherwise provided in subsection 3, if a mortgage broker acts on behalf of investors on a matter related to a mortgage loan, and if the beneficial interest in the loan belongs to more than one natural person, the documentation of the matter must include provisions to allow the holders of 51 percent or a greater specified percentage of the beneficial interests of record , *calculated by dollar amount*, to act on behalf of all the holders of the beneficial interests of record in the event of a default or foreclosure for matters that require the direction or approval of the holders of the beneficial interests in the loan, including, without limitation:

(a) The designation of the mortgage broker, servicing agent or other person to act on the behalf of the holders of the beneficial interests in the loan; and

(b) The sale, encumbrance or lease of real property owned by the holders resulting from a foreclosure or the receipt of a deed in lieu of a foreclosure.

2. The provisions required by this section may be included in the deed of trust, the assignment of interest or any other documentation that binds the mortgage broker and the investors.

3. The provisions of this section do not apply to a transaction involving two investors with equal interests.

Sec. 11. NAC 645B.077 is hereby amended to read as follows:

645B.077 1. The mortgage broker shall retain records of all his completed mortgage transactions for a period of at least 4 years after the date of the last activity relating to the transaction. ~~[After]~~ *Except as otherwise provided in this subsection, after* a record has been retained ~~[2 or more years,]~~ *1 year or longer*, the mortgage broker may cause the record to be reproduced by the microphotographic process, optical disc imaging or any other equivalent technique designed to ensure an accurate reproduction of the original record. *The Commissioner may, for good cause, allow the mortgage broker to reproduce and store a record by electronic means at any time so long as the mortgage broker retains a hard copy that is accessible by the Commissioner for 1 year after the closing date of the loan.* 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 mortgage broker shall retain applications for mortgages that were denied or withdrawn for a period of at least 1 year or as otherwise required by federal law.

3. The mortgage broker shall maintain the records of completed mortgage transactions at the location at which the loan was made for at least 1 year after the date of closing of the loan. After the expiration of the 1-year period required pursuant to this subsection, any such record may be maintained for the minimum period prescribed in subsection 1 at another location if the record can be provided not later than 24 hours after a request for the record. The Commissioner may, for good cause shown, allow a longer period to provide records.

Sec. 12. 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.

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,]~~ *or any other independent assessment of the value of the mortgaged property*, the mortgage broker shall provide a copy of the appraisal *or independent assessment* to the:

(a) Investor, upon request; and

(b) Borrower, upon request, if the borrower has paid for the appraisal ~~[.]~~ *or independent assessment.*

Sec. 13. 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.

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.

4. At the discretion of the Commissioner, for each loan, maintain the account or accounts separate and apart from any other money held in trust by the mortgage broker.

Sec. 14. 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.
- 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.

4. At the discretion of the Commissioner, for each loan, maintain the account or accounts separate and apart from any other money held in trust by the mortgage broker.

Sec. 15. NAC 645B.220 is hereby amended to read as follows:

645B.220 1. The disclosure form given to an investor pursuant to NRS 645B.185 must be

~~[in substantially the following]~~ *the* 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 Mortgage Lending, which may be contacted at either one of the following locations:

Division of Mortgage Lending	Division of Mortgage Lending
400 W. King Street, Suite 406	3075 E. Flamingo Street, Suite 104A
Carson City, Nevada 89703	Las Vegas, Nevada 89121
775.684.7060	702.486.0780

~~You have the right to request the mortgage broker with whom you are dealing to authorize the Division of 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 of Mortgage Lending 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 Mortgage Lending:~~

- ~~• Whether the Division of 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 of Mortgage Lending that the mortgage broker committed a violation of a provision of chapter 645B of NRS, chapter 645B of NAC 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 has been 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 adviser, 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: _____

Mortgage Broker Signature: _____

Dated: _____

prescribed by the Commissioner.

2. 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. 16. NAC 645B.240 is hereby amended to read as follows:

645B.240 1. A licensed mortgage broker *or mortgage agent* shall not represent an activity which is not licensed pursuant to chapter 645B of NRS as being licensed pursuant to that chapter.

2. Except as otherwise provided in subsection 3, an advertisement for an activity which is licensed pursuant to chapter 645B of NRS must be separate and distinct from an advertisement for an activity which is not licensed pursuant to that chapter.

3. A mortgage broker *or mortgage agent* may advertise jointly with a company licensed pursuant to chapter 624 or 645 of NRS if each business is disclosed separately in the advertisement and each business incurs a pro rata share of the cost associated with the advertisement.

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

(a) The complete name of the mortgage broker or *mortgage agent* and the complete name under which the mortgage broker *or mortgage agent* does business. *Any advertisement for a mortgage agent must also include the name of the mortgage broker with whom the mortgage agent is associated.*

(b) The *license number*, address and telephone number that the mortgage broker *or mortgage agent* has on file with the Division. Additional telephone or cellular phone numbers of the mortgage broker *or mortgage agent* may also be included.

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

5. A mortgage broker *or mortgage agent* shall not use advertising material that simulates the appearance of a check ~~[]~~ *or* a communication from a ~~[government]~~ *governmental* entity, or an envelope containing a check or a communication from a ~~[government]~~ *governmental* entity, unless:

(a) The words “THIS IS NOT A CHECK,” “NOT NEGOTIABLE” or “THIS IS NOT A ~~[GOVERNMENT]~~ *GOVERNMENTAL* ENTITY,” as appropriate, appear prominently on the envelope and any material that simulates the appearance of a check or a communication from a ~~[government]~~ *governmental* 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.

6. *A mortgage broker or mortgage agent shall not refer to an existing lender or financial institution, other than the mortgage broker or mortgage agent himself, on any advertising material without the written consent of the lender or financial institution.*

7. Provided the representation of interest rates in advertisements complies with Regulation Z, 12 C.F.R. Part 226, and the content will continue to comply with this chapter and chapter 645B of NRS regarding advertising, a mortgage broker *or mortgage agent* may make nonsubstantive changes to his advertisements without additional approval from the Commissioner. For the purposes of this subsection, “nonsubstantive changes” means:

- (a) Interest rates that are quoted in the advertisement and any corresponding annual percentage rates;
- (b) Promoting another mortgage agent in the same format of advertisement;
- (c) Promoting other branch locations in the same format of advertisement;
- (d) Placing links on websites that direct the user to noncommercial or consumer education websites;
- (e) Telephone or cellular phone numbers other than the phone number that the mortgage broker *or mortgage agent* has on file with the Division; and
- (f) Changes to words used in the advertisement that do not alter the content of the advertisement.

~~7.1~~ 8. Approvals for advertising must be maintained at the location of the mortgage broker *or mortgage agent* and must be available for inspection for at least 1 year after the last day that the advertisement is used.

~~8.1~~ 9. For the purposes of NRS 645B.189, disclosures in advertisements and distributions to investors must include the following language:

Prior to investing in a loan, investors must be provided applicable disclosure documents.

~~9.]~~ 10. The mortgage broker *or mortgage agent* is not required to obtain approval from the Division for white-page listings, employment recruiting announcements, office signs, banners, magnetic car signs, business cards and letterhead which contain only the name, address and telephone number of the mortgage broker ~~1.]~~ *or mortgage agent*, whether together or separate, and which are used for the purpose of identification only.

~~10.]~~ 11. An Internet link on a website of the mortgage broker *or mortgage agent* that links the user to the website of another commercial enterprise must provide notification to the user that the user is leaving the website of the mortgage broker ~~1.]~~

~~11.]~~ *or mortgage agent.*

12. For the purposes of this section, “advertising” includes commercial messages that promote the availability of mortgage products or investments offered by the mortgage broker ~~1.]~~ *or mortgage agent.* Commercial messages include, but are not limited to:

- (a) Print media;
- (b) Sales literature;
- (c) Sales brochures or flyers;
- (d) Billboards;
- (e) Yellow-page listings if more than a line listing;
- (f) Radio and television advertisements;
- (g) Mass mailings distributed by the United States Postal Service or another such delivery service or by electronic mail;
- (h) Telephone or seminar scripts; and
- (i) Websites or other Internet sites that promote or accept loan applications.

Sec. 17. NAC 645B.270 is hereby amended to read as follows:

645B.270 An appraisal submitted to an investor pursuant to NAC 645B.080 must ~~it~~ *meet, at a minimum, the standards set forth in the Uniform Standards of Professional Appraisal Practice adopted pursuant to NAC 645C.400 and:*

1. If the appraised property is located in this State, be prepared by an appraiser who holds the appropriate license, certificate or permit issued by the Real Estate Division of the Department of Business and Industry; or
2. If the appraised property is located outside the State, be prepared by an appraiser who is authorized to perform the appraisal by the appropriate agency of the state in which the property is located.

Sec. 18. NAC 645B.300 is hereby amended to read as follows:

645B.300 1. *In addition to the requirements set forth in NRS 645B.410, an applicant for a license as a mortgage agent must include with the application for a license:*

- (a) Evidence that the applicant is 18 years of age or older;*
- (b) Evidence that the applicant has satisfied the educational or examination requirements set forth in NRS 645B.0137 and the regulations adopted pursuant thereto; and*
- (c) A record of personal history on a form prescribed by the Division.*

2. A mortgage broker and any mortgage agent must sign the application for licensing required pursuant to NRS 645B.410.

~~2.~~ 3. A mortgage agent may associate with or be employed by a mortgage broker at only one licensed office location of the mortgage broker and *, while the mortgage agent associates with or is employed by a mortgage broker, the mortgage agent* may not associate with or be employed by ~~it~~ *another* mortgage broker ~~who~~ *, an escrow agency licensed pursuant to*

chapter 645A of NRS, a mortgage banker or any other entity that is exempt from the provisions of chapter 645B of NRS or whose office is located outside this State.

~~{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 application is submitted.

~~{4.—The 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 NRS 645B.410. The Division will notify the mortgage broker and the mortgage agent in writing if a license is invalidated pursuant to this subsection.}~~

5. *An applicant for a license as a mortgage agent shall not be deemed to be licensed as a mortgage agent until the Commissioner has verified the information submitted by the applicant pursuant to this section and NRS 645B.410.*

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 (2) of paragraph (b) of subsection 3 of NRS 645B.450 will be considered a public record.

8. *If a mortgage broker terminates the association or employment of a mortgage agent for any reason, the mortgage broker shall provide written notification of the termination to the mortgage agent not later than the third business day following the date of termination.*

9. A mortgage agent must reside within 75 miles of the licensed office location with which the mortgage agent is associated or at which the mortgage agent is employed, except that a mortgage agent who resides in a city or town with a population of 60,000 or less must reside within 150 miles of the licensed office location with which the mortgage agent is associated or at which the mortgage agent is employed.

Sec. 19. NAC 645B.330 is hereby amended to read as follows:

645B.330 1. The Commissioner may refer to *and cooperate with* 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.

(d) Any other applicable federal or state law or regulation related to mortgage transactions.

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

(a) Engages in a deceptive trade practice as defined in chapter 598 of NRS;

(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) *Improperly influences or attempts to improperly influence the proper development, reporting, result or review of a real estate appraisal with respect to the making of a mortgage loan; or*

(d) Violates a provision 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.

(4) Any other applicable federal or state law or regulation related to mortgage transactions.

3. *Nothing in this section shall be construed to prohibit a mortgage broker from requesting an appraiser of real estate to do one or more of the following:*

(a) *Consider any appropriate information relating to the property;*

(b) *Provide additional details, substantiations or explanations in support of the appraiser's valuation of the property; or*

(c) *Correct errors in the appraisal report.*

Sec. 20. NAC 645B.015 is hereby repealed.

TEXT OF REPEALED SECTION

645B.015 Activity constituting verifiable business; submission of evidence of activity.

(NRS 645B.060, 645B.080)

1. A person conducts verifiable business as a mortgage broker if he is compensated on a commission or percentage basis for:

(a) Handling 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) Originating a loan secured by a lien on real property in the capacity of a lender or provider; or

(c) Purchasing or selling existing notes secured by liens on real property.

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

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R058-08

The Commissioner of Mortgage Lending adopted regulations assigned LCB File No. R058-08 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	3
Submitted written comments:	3	6
Attended hearing 2-19-09:	5	8
Testified at Hearing	0	0
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 industry be consulted regarding the format of prescribed forms.
2. Concerns that the regulation conflict in allowing licensees 30 days to designate a new qualified employee after the QE leaves, but requires 30 days prior notice of a change ownership of the licensee.
3. Concerns that the Division would collect examination costs in addition to the examination hourly rate, which pursuant to NRS 645F.280 (2) (c) should include the expenses related to the examination.
4. Request that the term “independent assessment of value” be clarified.
5. Concerns regarding limiting storage of records in storage units
6. Concerns that 51% of beneficial interest may act on behalf of all investors in a defaulted loan and that any broker interest not be included in the calculation.
7. Concerns that mortgage agents must reside within a specific distance of their associated broker office.
8. Concerns that brokers who maintain trust accounts would be required to open separate accounts for each loan made, serviced and for each interest reserve held.

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 with the exception of changes to Sec 13 (4) and Sec. 14 (4). The words, “At the discretion of the Commissioner,” was added in front of the Legislative Counsel’s reviewed language in both sections to now read, “At the discretion of the Commissioner, for each loan maintain the account or accounts separate and apart from any other money held in trust by the mortgage broker”. Additionally, two typos in Sec. 11 (1) and Sec. 19 (3), where the word banker was used instead of broker, were corrected.

Additional 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.

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: Establishes regulations deemed necessary to carry out the provision of Chapter 645B of the Nevada Revised Statutes, including but not limited to:

- a. Revising the restrictions on advertising;
- b. Prohibiting coercion of an appraiser;
- c. Prohibiting the renewal of a license if licensees have not paid certain fees, fines or assessments;
- d. Revising the meaning of “complete and suitable records;
- e. Revising provisions related to license application or a change in the ownership, control, management or principal employee of a mortgage broker.
- f. Requiring trust and escrow accounts to be kept separate from other trust accounts; and
- g. Requiring certain person claiming an exemption from licensing to provide certain information to the Commissioner of the Division to ensure the entity is regulated.

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

(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, through review of the language of the Proposed Permanent Regulation, and opportunity for comment at the workshop and hearing, and written submissions, that the Proposed Permanent Regulation, as adopted does not impose a direct and significant economic burden upon a small business or restrict the formation, operation or expansion of a small business.

To evaluate potential impact, the Division contacted small businesses which may be impacted by proposed language to require licensees who maintain trust accounts to maintain separate accounts for each loan they arranged. The specific sections of the proposed regulation were e-mailed to the affected small businesses and it was requested that they review and respond to the same. Responses to the solicitations for comment indicated a potential significant economic impact from this new requirement. It was determined the impact could be mitigated by the inclusion of language that this would only be required if directed by the Commissioner.