

**ADOPTED REGULATION OF
THE DIVISION OF MORTGAGE LENDING OF
THE DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R123-08

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.021.

A REGULATION relating to mortgage lending; revising the definition of “qualified employee”; establishing qualifications for qualified employees of mortgage brokers; and providing other matters properly relating thereto.

Section 1. NAC 645B.008 is hereby amended to read as follows:

645B.008 “Qualified employee” means ~~[~~:

~~—1.— A director, officer, member, employee, manager or trustee of a partnership, corporation or limited liability company designated by the partnership, corporation or limited liability company pursuant to NAC 645B.055 to act on the behalf of the partnership, corporation or limited liability company; or~~

~~—2.— A person designated by a sole proprietorship who satisfies the requirements set forth in subsection 3 of NRS 645B.020 and NAC 645B.010 and 645B.055.]~~ *a natural person who is*

designated by a mortgage broker to act on behalf of the mortgage broker and who is approved by the Commissioner pursuant to NAC 645B.055.

Sec. 2. NAC 645B.055 is hereby amended to read as follows:

645B.055 1. Every ~~[partnership, corporation or limited liability company]~~ *person, other than a natural person,* doing business as a mortgage broker in this State shall designate a

natural person as a qualified employee who may, upon approval of the Commissioner, act on behalf of the ~~[partnership, corporation or limited liability company.]~~ *mortgage broker.*

2. The Commissioner will approve the qualified employee designated pursuant to subsection 1 if the qualified employee ~~[meets the requirements of an applicant for a license as a mortgage broker pursuant to chapter 645B of NRS.]~~ *is a natural person who:*

(a) Is licensed in good standing as a mortgage broker or mortgage agent;

(b) Is designated by a mortgage broker to act on behalf of the mortgage broker and to supervise the conduct of the business of the mortgage broker and the mortgage agents associated with or employed by the mortgage broker;

(c) Will be present at the licensed office location for which he is the qualified employee the majority of the time that the office is open to the public; and

(d) Is a resident of this State or is a border state employee.

3. ~~[The approval issued by the Commissioner entitles the qualified employee to act pursuant to the terms and conditions of the license issued to the partnership, corporation or limited liability company by the Commissioner pursuant to chapter 645B of NRS, but only as a qualified employee of the partnership, corporation or limited liability company, and not on his own behalf. —4.]~~ If the qualified employee designated pursuant to subsection 1 is not approved by the

Commissioner pursuant to subsection 2 or ceases to be a qualified employee as defined in NAC 645B.008, the ~~[partnership, corporation or limited liability company]~~ *mortgage broker* shall designate another qualified employee pursuant to subsection 1 not later than:

(a) Thirty calendar days after the date that:

(1) The Commissioner notifies the ~~[partnership, corporation or limited liability company]~~ *mortgage broker* that the initial qualified employee designated pursuant to subsection 1 is not approved; or

(2) The qualified employee ceases to be a qualified employee as defined in NAC 645B.008; or

(b) A date after the date described in paragraph (a) if agreed to by the Commissioner.

4. As used in this section, "border state employee" has the meaning ascribed to it in NRS 482.012.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R123-08**

The Commissioner of Mortgage Lending adopted regulations assigned LCB File No. R123-08 which pertain to chapter 645B of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

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

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

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

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

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

2. The number of persons who:

	<u>CC</u>	<u>LV</u>
Attended workshop: 7-17-08	25	
7-23-08	4	
Testified at workshop	0	1
Submitted written comments:	0	2
Attended hearing 2-19-09:	5	8
Testified at Hearing	1	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 to clarify the grandfathering provision.
2. Concerns that the qualified employee (QE) be present the majority of time the licensee's office is open.
3. Request that the requirement for a QE to hold a mortgage agent license not apply retroactively.
4. Request that the Division allow six months for individuals to comply with the new requirement.

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. The workshop comments were considered by the Commissioner; however, with the passage of the Federal Secure and Fair Enforcement for Mortgage Licensing act 2008, which requires licensing of all loan officers, the grandfathering provisions were removed from the version considered at the hearing. Additionally, law requires the broker or their designated qualified employee to adequately supervise the office and associated agents; the QE must be present to meet the requirements established in law. The Division will allow individuals six months to comply with the regulation as requested through 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 must include:

Business which it is to regulate & the public:

(1) Both adverse and beneficial effects:

- (a) Beneficial effects:** Establishes licensing requirements for non-owner QE's, which brings these individuals into compliance with Federal requirements. Additionally, it allows the Division to take disciplinary action against QE's for violations of law and apply the provisions allowed in law against a license holder.
- (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 Federal Housing and Economic Recovery Act of 2008, signed into law on July 30, 2008 (Public Law 110-289), includes The Secure and Fair Enforcement for Mortgage Licensing Act of 2008, (S.A.F.E. Act). The S.A.F.E. Act requires licensing of all residential mortgage loan originators. The US Department of Housing and Urban Development enforces the above Acts.

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 S.A.F.E. Act requires states to establish minimum standards for the licensing of all residential mortgage loan originators. The Act provides a 2-year period for compliance and additional costs to licensees at the federal level may result. The licensing requirements of this Proposed Regulation are not more stringent than the licensing requirements in the S.A.F.E. Act.

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; however, the provisions require additional persons to be subject to existing 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. In making this determination the Commissioner considered that the regulation will impose a \$185 application fee and a \$100 annual renewal fee upon some QE's, but the economic burden will not be significant.