

PROPOSED REGULATION OF THE COMMISSIONER OF MORTGAGE LENDING

LCB File No. R120-15

NRS 645F MORTGAGE LENDING AND RELATED PROFESSIONS

EXPLANATION: Matter in (1) *blue bold italics* is new language; (2) ~~red strikethrough~~ is deleted language.

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CHAPTER 645F

MORTGAGE LENDING AND RELATED PROFESSIONS

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Article 2 Mortgage Servicers

Amend Chapter 645F of the Nevada Administrative Code by adding thereto:

Article 1

Covered Service Providers

GENERAL PROVISIONS

NAC 645F.003 Short Title. Sections 003 through 920 of this chapter shall be known and may be cited as the Nevada Covered Service Provider Act.

Article 2

Mortgage Servicers

NAC 645F.1000 Title. Sections 1000 through 1803 of this chapter shall be known as and may be cited as the “Nevada Mortgage Servicer Licensing and Regulatory Act”.

DEFINITIONS

NAC 645F.1001 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in (AB 480 § 86.2 & NRS 645F.010 through NRS 645F.065) and NAC 645.100X through NAC 645F.10XX have the meanings ascribed to them in those sections.

NAC 645F.1005 “Applicant” defined. “Applicant” means a person that has made application for a license under this chapter.

NAC 645F.1007 “Borrower” defined. “Borrower” means a person that is a debtor on a mortgage loan.

NAC 645F.1009 “Branch office” defined. “Branch office” means an office location, other than a person’s principal office location, from which the person provides mortgage servicer activities related to a dwelling located in this state.

NAC 645F.1011 “Control Person” defined. “Control person” means an executive officer, director, general partner, trustee, member, qualified employee, or shareholder of a licensee, or a person, who has the authority to participate in the direction, directly or indirectly through 1 or more other persons, of the management or policies of a licensee or applicant.

NAC 645F.1013 “Depository financial institution” and “Depository institution” defined. “Depository financial institution” means a bank, savings and loan association, thrift company or credit union.

NAC 645F.1015 “Dwelling” defined. “Dwelling” means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

NAC 645F.1017 “Executive officer” defined. “Executive officer” means an officer, manager, partner or managing member of a licensee or applicant. The term includes a chief executive officer, president, vice president, chief financial officer, chief operations officer, chief legal officer, controller, or compliance officer, or an individual in any similar position.

NAC 645F.1019 “License” defined. “License” means a license or other authority granted by the Commissioner under sections 1000 through 1803 of this chapter.

NAC 645F.1021 “Licensee” defined. “Licensee” means a person who is licensed or required to be licensed under sections 1000 through 1803 of this chapter.

NAC 645F.1023 “Mortgage loan” defined. As used in (AB 480 § 86.2), “mortgage loan” is interpreted to include the following:

- 1. Any loan that is secured by a mortgage, deed of trust or other consensual security interest on a dwelling located within this state or real property located within this state upon which is constructed or intended to be constructed a dwelling; or,*
- 2. Any loan made or arranged by a mortgage broker under NRS 645B that is secured by a mortgage, deed of trust or other consensual security interest on commercial property located in this state that is funded by one or more private investors.*
 - a. As used in this section, “private investor” has the meaning ascribed to it in NRS 645B.01305.*
 - b. As used in this section, “commercial property” has the meaning ascribed to it in NRS 645E.040.*

NAC 645F.1025 “Nationwide Mortgage Licensing System and Registry” and “Registry” defined. “Nationwide Mortgage Licensing System and Registry” and “Registry” have the meaning ascribed to them in NRS 645B.0128.

NAC 645F.1027 “Person” defined. “Person”, except as otherwise required by the context, means an individual, any form of business or social organization, governmental entity or political subdivision of a governmental entity, and any other legal entity including, but not limited to, a corporation, partnership, limited liability company, association, trust or unincorporated organization.

NAC 645F.1029 “Principal office” defined. “Principal office” means a person’s corporate or main office.

NAC 645F.1031 “Shareholder” defined. “Shareholder” includes:

- 1. Any person that has the ownership of, or the power to vote directly or indirectly, any percentage of a class of voting securities or voting interests of an applicant or licensee if an applicant or licensee has 20 or fewer stockholders or owners.*
- 2. Any person that has the ownership of, the power to vote directly or indirectly, 10% or more of a class of voting securities or voting interests of an applicant or licensee if an applicant or licensee has 20 or more stockholders or owners.*

LICENSING

NAC 645F.1100 Exemptions, supplemental license, requirements.

- 1. A person claiming an exemption under NRS 645F.____ (AB 480 § 86.7) has the burden of demonstrating that they qualify for such exemption.*
- 2. A person that holds a license under NRS 645B or NRS 645E that is acting as, or offers to act as or provide the services of, a mortgage servicer on one or more mortgage loans that he or she did not make or arrange under his or her license under NRS 645B or NRS 645E shall file an application for and obtain a supplemental mortgage servicer license. An application for a supplemental mortgage servicer license must:*
 - (a) Be made to the Commissioner through the Registry and include all content and information required in the application. An applicant for a supplemental mortgage servicer license is not subject to sections 1101 through 1103 of this chapter.*
 - (b) Include the applicable fee required under section 1123 of this chapter.*
 - (c) Include the financial statement that complies with the requirements under section 1109 of this chapter and demonstrates that the applicant meets the minimum net worth required under section 1111 of this chapter.*
 - (d) Include a surety bond that meets the requirements under section 1113 of this chapter.*
 - (e) Includes a list of the location of any branch office and the name, telephone number and email address for a contact person for each branch office.*
- 3. A supplemental license expires on December 31, unless it is renewed under section 1121 of this chapter.*
- 4. A person holding or required to hold a supplemental license under this section is subject to and must comply with all other provisions of this chapter.*

NAC 645F.1101 Application for license, form, submission.

- 1. An application for a license as a mortgage servicer shall be made to the Commissioner through the registry.*
- 2. The applicant shall include in its application:*
 - (a) The applicable fee required pursuant to section 1123 of this chapter.*
 - (b) All content and information required by the Commissioner in the application.*
 - (c) Written consent authorizing the Commissioner to conduct a background investigation of the applicant and, if applicable, each of the applicant's control persons, including authorization to obtain an independent credit report from a consumer reporting agency described in section 603(b) of the Fair Credit Reporting Act, a criminal history report from the Federal Bureau of Investigation or any criminal history repository of any state, national or international governmental agency or entity, and information related to any administrative, civil or criminal findings by any governmental jurisdiction.*
 - (d) A complete set of fingerprints of the applicant if the applicant is an individual, or, if the applicant is a not an individual, a complete set of fingerprints of each of the applicant's control persons that may be submitted to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national or international criminal history background check.*
 - (e) A child support statement of the applicant if the applicant is an individual, or, if the applicant is a not an individual, of each of the applicant's control persons.*

(f) Any other information required by this chapter, the Commissioner, order of the Commissioner, or requested in connection with the evaluation and investigation of the applicant's qualifications and suitability for licensure.

NAC 645F.1103 Issuance of mortgage servicer license, investigation, findings.

1. The Commissioner may issue a license to an applicant for a mortgage servicer license if, after investigation, the Commissioner finds that the applicant and, if applicable, its control persons:

(a) Meets all requirements of this chapter.

(b) Has demonstrated experience, financial responsibility, character and general fitness so as to command the confidence of the community and warrant a determination that the applicant and, if applicable, its control persons will operate honestly, fairly and efficiently for the purposes of this chapter.

(c) Has never had a license or registration as a mortgage agent, mortgage broker, or mortgage banker, or mortgage servicer revoked in this State or any other jurisdiction or had a financial services license revoked within the immediately preceding 10 years. For purposes of this subsection, a license or registration shall not be considered revoked if the revocation was subsequently vacated.

(d) Has not been convicted of, or entered or agreed to enter a plea of guilty or no contest to, a felony in a domestic, foreign or military court within the past 7 years immediately preceding the date of application, or at any time if any such felony involved an act of fraud, dishonesty or a breach of trust, moral turpitude or money laundering. For the purposes of this subsection, a person shall not be considered to have been convicted or entered or agreed to enter a plea of guilty or no contest if the conviction or plea has been pardoned or vacated.

(e) Has designated a qualified employee for each office location making application for a license in accordance with section 1107 of this chapter and the qualified employee has been approved by the Commissioner.

(f) Has provided a surety bond that meets the requirements of section 1113 of this chapter.

(g) Has provided a financial statement that meets the requirements of sections 1109 and 1111 of this chapter.

NAC 645F.1105 Principal Office License and Branch Office Listing; Assumed Names; Use of name; Requirements.

1. An applicant for a license as a mortgage servicer shall obtain a license for its principal office location.

2. An applicant for a license as a mortgage servicer that will conduct mortgage servicer activity related to any dwelling located in this state from one or more branch offices, must include in its initial and renewal applications a list of the location of any branch office and the name, telephone number and email address for a contact person for each branch office.

3. An applicant for a mortgage servicer license that will conduct mortgage servicer activity related to any dwelling located in this state under one or more assumed names, must apply for and obtain a separate license for each assumed name.

4. A licensee may not conduct business in any name or assumed name, or from any location, other than the name approved by the Commissioner or location filed with the Commissioner..

NAC 645F.1107 Qualified employee.

1. A mortgage servicer shall designate an individual to serve as a qualified employee for each location licensed under this chapter. An individual shall not be designated to serve as a qualified employee unless such individual:

(a) Has at least 2 years of verifiable experience in the business of servicing mortgage loans, within the immediately preceding 5 years.

(b) Is designated by a mortgage servicer to act on behalf of the mortgage servicer and to supervise and control the conduct of the business of the mortgage servicer at that location.

(c) Will be employed and present at the licensed office location.

(d) Is designated to serve as the qualified employee at only one licensed office location.

(e) Has submitted to and successfully passed a background investigation under section 1103 of this chapter, or is a licensed mortgage agent in good standing under chapter 645B of the Nevada Revised Statutes.

(e) Is approved by the Commissioner to act as the qualified employee for the licensee at the licensed office location.

2. If a qualified employee is not approved by the Commissioner, or is subsequently ineligible because he or she does not meet the above requirements, or the employment relationship is terminated, within 30 days of the disapproval, ineligibility or termination the mortgage servicer shall do both of the following:

(a) Provide written notification to the Commissioner, and

(b) Designate a new qualified employee and request the approval of the Commissioner for that individual to serve as the qualified employee.

3. For purposes of subsection 1(a) of this section, “verifiable experience in the business of servicing mortgage loans” means paid experience in:

(a) servicing of mortgage loans, or

(b) accounting, receipt and processing of payments on behalf of creditors or noteholders, or

(c) supervision of such activities, or

(d) any other relevant experience as determined by the Commissioner.

4. An individual may be designated to serve as a qualified employee for a licensee that holds a mortgage broker or mortgage banker license under Chapters 645B or 645E of the Nevada Revised Statutes and a supplemental mortgage servicer license under this chapter, if the individual meets the requirements under each statute to be designated to serve as a qualified employee.

NAC 645F.1109 Initial and annual financial statement, submission, requirements.

1. At the time of application and annually thereafter, not later than 90 days after the last day of each fiscal year for a licensee, an applicant or licensed mortgage servicer shall submit to the Commissioner an independently audited financial statement that:

(a) Is dated not earlier than the last day of the fiscal year;

(b) Is prepared and computed in accordance with generally accepted accounting principles; and

(b) Demonstrates that the applicant or licensed mortgage servicer meets the minimum net worth requirement set forth in NAC 645F.1111.

2. The Commissioner may grant a reasonable extension for the submission of a financial statement pursuant to this section if a mortgage servicer requests such an extension before the date on which the financial statement is due.

NAC 645F.1111 Minimum net worth requirement.

1. An applicant for a license shall demonstrate that it has, and a licensee shall continuously maintain, a minimum net worth of \$100,000.00.

NAC 645F.1113 Surety bond requirement.

1. As a condition to doing business in this State, at the time of filing an application for a license or renewal of a license, each mortgage servicer shall deposit with the Commissioner and keep in full force and effect a corporate surety bond payable to the State of Nevada, in the amount set forth in subsection 4, which is executed by a corporate surety satisfactory to the Commissioner and which names as principals the mortgage servicer and employees or agents of the mortgage servicer.

2. The bond must be in a form prescribed by the Commissioner.

3. Each mortgage servicer shall deposit a corporate surety bond that complies with the provisions of this section in the following amounts:

(a) A mortgage servicer with an annual mortgage loan servicing volume of:

(i) Less than \$50,000,000, \$100,000.

(i) \$50,000,000 or less than \$500,000,000, \$200,000.

(ii) \$500,000,000 or more, \$300,000.

4. The annual mortgage loan servicing volume will be determined from the activity reports filed with the Commissioner by the mortgage servicer under section 1403 of this chapter.

5. The Commissioner may prescribe a single bond form under this section that will satisfy the surety bonding requirements under this chapter and chapters 645B or 645E for a supplemental mortgage servicer licensee.

NAC 645F.1115 Cancellation of Bond: Notices Required; Automatic Suspension by operation of law unless equivalent bond furnished; Revocation of license required unless equivalent bond furnished.

1. The surety may cancel a bond upon giving 60 days' notice, by certified mail, to the Commissioner and to the licensee who is the principal on the bond. Upon receipt by the Commissioner of such a notice, the Commissioner shall immediately notify the licensee who is the principal on the bond of the effective date of cancellation of the bond, and that his or her license will be summarily suspended on that date and thereafter revoked unless the licensee furnishes an equivalent bond before the effective date of the cancellation. The notice must be sent to the licensee by certified mail to his or her last address of record filed in the office of the Division.

2. If the licensee does not comply with the requirements set out in the notice from the Commissioner, the license shall be revoked in accordance with this chapter and the requirements of NRS 233B. During the pendency of the revocation proceedings, the license shall be summarily suspended in accordance with NRS 233B.

NAC 645F.1117 Transfer of license, change in ownership or control.

1. A license issued under this chapter shall not be transferred or assigned without the prior written consent and approval of the Commissioner.

2. A transfer, sale or conveyance of outstanding voting stock or ownership interest that will result in the cumulative transfer of 25 percent or more of a licensee's outstanding voting stock or ownership interest from the date upon which the original license was issued constitutes a

change of control. A licensee shall make prior written application to the Commissioner for the approval of a change of control. The application shall include:

- (a) The transfer fee required under section 1123.*
- (b) The name and percentage of ownership of each person who has obtained or is obtaining ownership resulting in a cumulative transfer of 25% or more of the licensee's outstanding voting stock or ownership interest.*
- (c) A personal interrogatory and a complete set of fingerprints of each person, or control person of such person, referred to in subsection 2(b), in a form prescribed by the Commissioner, and written consent authorizing the Commissioner to conduct an investigation of the person's background in the same manner as provided for in section 1101.*
- 4. The Commissioner shall conduct an investigation of the application to determine that all of the requirements necessary for licensure under this chapter are met.*
- 5. No change of control of a licensee shall be effective until approved by the Commissioner.*

NAC 645F.1119 Use of name, office location, amendments, approval, requirements.

- 1. A licensee shall not conduct the business of a mortgage servicer in any name other than what appears on its license or from any address that has not been filed with the Commissioner.*
- 2. To amend its name or principal office address, or to add or remove branch office locations, a licensee shall make written application to the Commissioner, in a form prescribed by the Commissioner.*
- 3. Such application must:*
 - (a) Be submitted to the Commissioner in a form and manner prescribed by the Commissioner no less than 30 days before the anticipated effective date of the proposed amendment to a licensee's name, or no more than 10 days after a change of a licensee's address.*
 - (b) Be in a form prescribed, and include all information required, by the Commissioner.*
 - (c) Include the fee required under section 1123 of this chapter.*
- 4. No amendment to a licensee's name or address shall be effective until approved by the Commissioner.*

NAC 645F.1121 Expiration and Renewal of license, requirements.

- 1. Each license issued under this chapter shall expire on December 31, unless it is renewed.*
- 2. To renew a license, the holder of the license shall submit to the Commissioner an application for renewal on or after November 1 or on or before December 31 of each year. The application for renewal shall:*
 - (a) Be in a form prescribed by the Commissioner.*
 - (b) Include the annual renewal fee required under section 1123 of this chapter.*
 - (c) Provide satisfactory proof that the applicant continues to meet each of the requirements under this Chapter to hold such a license.*
 - (d) Provide any other information required by the Commissioner.*

NAC 645F.1123 Fees and assessments.

- 1. The following fees shall be assessed and collected under this chapter:*
 - (a) To file an initial application for a mortgage servicer license, a fee of not more than \$2,500.00 for the principal office.*
 - (b) To file an initial application for a supplemental mortgage servicer license, a fee of not more than \$1,000.00 for the principal office.*

(c) To obtain a duplicate original or to amend the name or principal office address of a mortgage servicer license, a fee of not more than \$50.00.

(d) To transfer the ownership or change control of a license, a fee of not more than \$500.00, and any expenses or costs incurred to conduct the investigation.

(e) To renew a mortgage servicer license or supplemental mortgage servicer license, a fee of not more than \$1,000.00 for the principal office.

2. A licensee that fails to submit a complete renewal application by December 31, may reinstate the license if, before February 28, the licensee files its complete renewal application and pays the renewal fee, and pays a reinstatement fee of not more than \$200.00.

3. For the purposes of meeting the cost of supervision and examination under this chapter, the Division will bill each principal mortgage servicer licensee and supplemental mortgage servicer licensee a supervision and examination fee that is calculated from the following table:

<i>Nevada Servicing Dollar Volume</i>		<i>Per Thousand</i>
<i>\$1,500,000</i>	<i>to \$2,500,000</i>	<i>.07</i>
<i>\$2,500,001</i>	<i>to \$5,000,000</i>	<i>.06</i>
<i>\$5,000,001</i>	<i>to \$10,000,000</i>	<i>.05</i>
<i>\$10,000,001</i>	<i>to \$30,000,000</i>	<i>.04</i>
<i>\$30,000,001</i>	<i>to \$100,000,000</i>	<i>.03</i>
<i>\$100,000,001</i>	<i>to \$1,300,000,000</i>	<i>.02</i>
<i>More than \$1,300,000,000</i>		<i>.01</i>

4. A licensee shall pay the actual travel, lodging, and meal expenses incurred by employees or contract employees of the Division who travel out of state to conduct an examination or investigation of the licensee.

5. Each licensee shall pay an annual assessment as established by the Commissioner and levied pursuant to NRS 645F.290.

6. A licensee that fails to timely submit a financial statement as required under section 1109 of this chapter, or report as required under section 1403 of this chapter, may be subject to a late penalty of not more than \$25.00 per day that that statement or report is late up to a maximum of \$1,000.00, and may be subject to other discipline provided for under this chapter.

7. Any fee, assessment or late penalty required under this section must be paid to the Division through the Registry.

8. All fees, assessments or penalties received under this section are in addition to any fees that may be required by the Registry and are nonrefundable. All fees, assessments and penalties received under this section shall be deposited, and may only be used for purposes set forth, in the Account for Mortgage Lending created and established under NRS 645F.270.

SUPERVISION BY THE COMMISSIONER

NAC 645F.1200 Powers and duties of the Commissioner.

1. The Commissioner shall have jurisdiction over and shall exercise general supervision and control over all mortgage servicers governed by this chapter.

2. In addition to any other duty or authority assigned or granted under this chapter, the Commissioner may do any of the following:

- (a) Require that any application for an initial license or the renewal of a license or the submission of any report or filing required under this chapter be submitted directly to the Division or to the Division through the Registry.*
- (b) Require that any fee or administrative fine due or assessment levied under this chapter be submitted directly to the Division or to the Division through the Registry.*
- (c) Issue or refuse to issue a license, amendment to a license, or transfer of a license as provided in this chapter.*
- (d) Revoke, suspend, or place conditions on a license as provided in this chapter.*
- (e) Impose an administrative fine and assess administrative fees or assessments or attorney's fees as provided in this chapter or under applicable law.*
- (f) Impose any other administrative discipline as provided in this chapter.*
- (g) Bring an action in any county in this state to enforce an order or subpoena issued under this chapter.*
- (h) Advise the attorney general or prosecuting attorney of any county of this state that a mortgage servicer is conducting business or engaging in any activity that violates this chapter.*
- (i) Conduct such examinations or investigations as may be necessary to determine if any person is violating this chapter and to efficiently enforce the provisions of this chapter.*
- (j) In the conduct of any examination or investigation under this chapter, the Commissioner may:*
 - a. Issue subpoenas to compel the appearance of any person or production of any documents, books or records, administer oaths and examine any person under NRS 645F.291.*
 - b. Have free access during regular business hours to the offices, places of business, or other locations where a licensee or an affiliate of a licensee maintains business related documents, and to the books, accounts, papers, records, files, documents, safes, and vaults of a licensee.*
 - c. Assess a fee upon any mortgage servicer or other person, based upon the rate established pursuant to NRS 645F.280, for supervision and any special audit, investigation or examination conducted of that mortgage servicer under this chapter.*
 - d. By procedure, order or regulation, classify as confidential certain records and information when:*
 - i. Those records or information are obtained from a governmental agency upon the express condition that those records or information remain confidential.*
 - ii. Those records or information contain private and personal information related to a natural person, the release of which would result in an unwarranted invasion of privacy.*
- (k) Notwithstanding subsection 2(k)d.i.-ii., all records of the Commissioner may be examined by the Legislative Auditor or the Department of Taxation if necessary to carry out provisions of chapter 363A of NRS.*
- (l) For purposes of conducting any examination or investigation under this chapter, the Commissioner may do any of the following:*
 - a. Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations.*
 - b. Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section.*
 - c. Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate a licensee or other person subject to this chapter.*

- d. Accept and rely on examination or investigation reports made by other state or federal government officials.*
- e. Accept audit reports prepared by an independent certified public accountant for the licensee or other person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and incorporate the audit report in the report of the examination, report of investigation, or other writing of the Commissioner.*
- (m) Designate a hearing officer to conduct any hearing required under this chapter.*

NAC 645F.1203 Records of the Commissioner

- 1. Except as otherwise provided in this Chapter or by specific statute, all papers, documents, reports and other written instruments filed with the Commissioner pursuant to this chapter are public records and open to public inspection. Notwithstanding the foregoing, the Commissioner may withhold from public inspection or refuse to disclose to a person, for such time as the Commissioner considers necessary, any information that, in the Commissioner's judgment, would:*
 - (a) Impede or otherwise interfere with an investigation or examination that is currently pending against a mortgage servicer;*
 - (b) Have an undesirable effect on the welfare of the public or result in an unfair competitive advantage in the mortgage industry; or*
 - (c) Reveal personal information in violation of NRS 239B.030.*
- 2. Information obtained during an examination or investigation conducted under this chapter shall be confidential and shall not be available for public inspection or copying, or divulged to any person, except as provided in this section. The information may be disclosed as follows:*
 - (a) To the attorney general.*
 - (b) To any regulatory agency.*
 - (c) In connection with an enforcement action brought pursuant to this or another applicable act.*
 - (d) To law enforcement officials.*
 - (e) To persons authorized by a court of competent jurisdiction to receive the information.*
- 3. Except as otherwise provided in this section and NRS 239.0115, a complaint filed with the Commissioner, all documents and other information filed with the complaint and all documents and other information compiled as a result of an investigation conducted to determine whether to initiate disciplinary action are confidential.*
- 4. An order that imposes discipline and the findings of fact and conclusions of law supporting that order, including all documents, records, information, and testimony relied upon in the order, unless otherwise entered under protective order or confidential under this chapter, are public records.*
- 5. Notwithstanding subsections 2 and 3, except as otherwise provided by applicable law, the Commissioner may disclose any information, documents, or records in his possession or control to the public, if, in the Commissioner's discretion, the Commissioner determines that such information is in the public interest.*

REQUIRED AND PROHIBITED CONDUCT

NAC 645F.1300 Supervision of employees and agents by mortgage servicer; requirements; regulations.

- 1. A mortgage servicer shall exercise reasonable supervision and control over the activities, and be responsible for the actions or inactions, of his or her employees or agents.***
- 2. The Commissioner may prescribe standards for determining whether a mortgage servicer has exercised reasonable supervision and control over the activities of his or her employees or agents pursuant to this section.***

NAC 645F.1303 Mortgage servicer duties.

- 1. A licensee has a duty of good faith and fair dealing in its communications, transactions and course of dealings with each borrower in connection with the servicing of the borrower's mortgage loan.***
- 2. In addition to any duties imposed by other statutes or at common law, a licensee shall do all of the following:***
 - (a) Safeguard and account for any money handled for the borrower and lender.***
 - (b) Follow reasonable and lawful instructions from the borrower and lender.***
 - (c) Act with reasonable skill, care, and diligence.***
 - (d) File with the Commissioner a complete, current schedule of the ranges of costs and fees it charges borrowers for its servicing-related activities with its application and renewal and with its supplemental filings made from time to time.***
 - (e) Upon assignment of servicing rights for a mortgage loan, the mortgage servicer shall disclose to the borrower all of the following:***
 - (1) Any notice required by federal law or regulation.***
 - (2) A schedule of the ranges and categories of its costs and fees for its servicing-related activities, which shall comply with state and federal law and which shall not exceed those reported to the Commissioner under subsection (2)(d).***

NAC 645F.1305 Compliance with applicable federal servicing laws and regulations.

A mortgage servicer shall comply with all applicable federal laws and regulations relating to mortgage servicing, including, but not limited to, the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. §§ 2601 et seq., the Truth-in-Lending Act, 15 U.S.C. §§ 1601 et seq., as from time to time amended, and the regulations promulgated thereunder. In addition to any other remedies provided by law, a violation of any such law or regulation shall be deemed a violation of this section and a basis upon which the Commissioner may impose discipline under this chapter.

NAC 645F.1311 Transfer of servicing rights.

A person shall not transfer servicing rights or obligations to a person unless that person holds a mortgage servicing license or is a person otherwise exempt from holding a license under this Chapter.

NAC 645F.1313 Third – Party Servicer

A licensee that acts as a mortgage servicer for another party, or a licensee that contracts with another party to servicer mortgage loans on the licensee's behalf, shall have a written agreement with the other party specifying the terms of the mortgage servicing agreement.

NAC 645F.1315 General Violations

1. In addition to any other activity prohibited or required under provisions of this chapter, it shall be a violation for any applicant or licensee to do any of the following:

(a) Fail to conduct his or her business in accordance with any law or to violate any provision of chapter 645F of the NRS, this chapter, or an order issued under this chapter.

(b) Fail to comply with any applicable federal law and regulation relating to mortgage servicing, including, but not limited to, the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. §§ 2601 et seq., the Truth-in-Lending Act, 15 U.S.C. §§ 1601 et seq., as from time to time amended, and the regulations promulgated thereunder.

(c) Directly or indirectly employ any scheme, device or artifice to defraud or mislead a borrower or lender or to defraud any person.

(d) Engage in any unfair or deceptive practice toward any person or misrepresent or omit any material information in connection with the servicing of a mortgage loan, including, but not limited to, misrepresenting the amount, nature or terms of any fee or payment due or claimed to be due on a mortgage loan, the terms and conditions of the servicing agreement or the borrower's obligations under the mortgage loan.

(e) Fail to maintain the minimum net worth required under this chapter.

(f) Fail to maintain the minimum surety bond required under this chapter.

(g) Suppress or withhold from the Commissioner any information which the applicant or licensee possesses and which, if submitted by the applicant or licensee, may have rendered the applicant or licensee ineligible to be licensed pursuant to the provisions of this chapter.

(h) Fail to exercise reasonable supervision over the activities of the licensee's employees or agents.

(i) Fail to apply mortgage loan payments in accordance with a servicing agreement or the terms of a note.

(j) Fail to properly apply payments to escrow accounts or fail to place in a trust or escrow account held by a federally insured depository institution all money that is received by the licensee from the borrower or fail to account for all money received or disbursed for a trust or escrow account.

(k) Make payments in a manner that causes a policy of insurance to be cancelled or causes property taxes or similar payments to become delinquent.

(l) Require any amount of funds to be remitted by means more costly to the borrower than a bank or certified check or attorney's check from an attorney's account to be paid by the borrower.

(m) Refuse to permit an examination or investigation by the Commissioner of the books and affairs of a licensee, or refuse or fail, within a reasonable time, to furnish any information or make any report that may be required by the Commissioner under this chapter.

(n) Refuse or fail to pay, within a reasonable time, any fees, assessments, costs, expenses or fines that the licensee is required to pay under provisions of this chapter.

(o) Fail to satisfy a claim, related to activity conducted under this chapter, which has been reduced to a judgment.

(p) Commingle the money or property of a borrower or lender with the licensee's or convert the money or property of others to the licensee's own use.

(q) To transfer a license, or conduct the business of a mortgage servicer in a name or from an address not specified on the license, prior to obtaining the required approval of the Commissioner.

(r) To be convicted of, or entered or agreed to enter a plea of guilty or nolo contendere to, a felony in a domestic, foreign or military court within the 7 years immediately preceding the date of the application, or at any time if such felony involved an act of fraud, dishonesty or a breach of trust, moral turpitude or money laundering.

(s) Employ a control person at a time when the licensee knew or, in light of all the surrounding facts and circumstances, reasonably should have known that the control person:

(1) Had been convicted of, or entered or agreed to enter a plea of guilty or nolo contendere to, a felony in a domestic, foreign or military court within the 7 years immediately preceding the date of application, or at any time if such felony involved an act of fraud, dishonesty or a breach of trust, moral turpitude or money laundering; or

(2) Had a license or registration as a mortgage agent, mortgage broker, mortgage banker or mortgage servicer revoked in this State or any other jurisdiction or had a financial services license or registration revoked within the immediately preceding 10 years.

(t) Instruct, encourage, or aid another licensee or person in the commission of an act that is a violation of this chapter, whether or not the licensee or person commits the act.

(u) Engage in, or offer to engage in or otherwise hold himself or herself as being able to provide or conduct the activity of a mortgage broker, mortgage banker, mortgage agent, or covered service provider unless properly licensed under NRS 645B, NRS 645E, or NRS 645F, as applicable.

NAC 645F.1317 Continuing duty to report violations, disciplinary action, or bankruptcy; requirements.

1. A licensee shall report any disciplinary or enforcement action, denial of a license application, settlement agreement, or other similar action involving the licensee and another state or federal regulator. The licensee shall file a report with the Commissioner within 10 days of the action, in a manner prescribed by the Commissioner.

2. A licensee shall report any bankruptcy petitions filed by or against the licensee. The licensee shall file the report with the Commissioner within 10 days of the bankruptcy petition, in a manner prescribed by the Commissioner.

NAC 645F.1319 Surrender of license; office closure; Requirements.

1. A licensee may surrender a license by delivering to the Commissioner the original license, if applicable, with written notice that the licensee surrenders the license.

2. A licensee whose original license has been destroyed or lost may comply with this section by submitting to the Commissioner a notarized affidavit of the loss accompanied by written notice that the licensee surrenders the license.

3. A licensee may not surrender a license or close his or her principal office until:

(a) The licensee has returned his or her original license or licenses; and

(b) The Commissioner has approved the closure.

4. The request for approval of the closure of the principal office of the licensee must be in the form and contain the information prescribed by the Commissioner.

PRESERVATION OF RECORDS AND SUBMISSION OF REPORTS

NAC 645F.1400 Records of mortgage servicer; preservation and examination; retention.

1. Each licensee shall keep and maintain, and make available for examination by the Commissioner, at all times at the principal office of the mortgage servicer:

(a) Complete and suitable books, accounts, records and documents of all business conducted by the mortgage servicer to enable the Commissioner to determine whether the business of the mortgage servicer is conducted in compliance with law, chapter 645F of the Nevada Revised Statutes, or this chapter.

(b) If a mortgage servicer does not maintain the books, accounts, records and documents required in subsection (a) in this state, the mortgage servicer shall provide such records to the Commissioner within five business days of request or the mortgage servicer shall pay the reasonable travel, lodging, and meal expenses of the examiner as provided in {SECTION}.

(c) Such books, accounts, records and documents shall include, but not be limited to, the following:

(1) A loan history for mortgage loans upon which payments are received or made by the mortgage servicer, itemizing the amount and date of each payment and the unpaid balance at all times.

(2) The original or an exact copy of the note, mortgage, deed of trust, or other evidence of indebtedness and any assignment.

(3) The name and address of the lender {or lenders or investors} and mortgage broker, if any, involved in the mortgage loan transaction.

(4) Copies of any servicing agreements.

(5) Copies of any disclosures or notifications provided to the borrower required by state or federal law or regulation.

(6) A copy of any bankruptcy plan approved in a proceeding filed by the borrower or co-owner of the real property subject to the mortgage loan.

(7) A communications log that documents all verbal or written communications with the borrower or the borrower's representative.

(8) A copy of all notices sent to a borrower related to any foreclosure proceeding filed against the encumbered property.

(9) All checkbooks, check registers, bank statements, deposit and withdrawal slips, cancelled checks, and any other record that relates to the business of the mortgage servicer.

(10) All records related to escrow or trust accounts.

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

2. Each mortgage servicer shall preserve and keep available for examination by the Commissioner complete and suitable books, accounts, records and documents related to all his or her mortgage servicing activity for a period of at least 4 years after the date of the last activity relating to the transaction.

NAC 645B.1403 Report of activity in this state.

1. Upon request, a mortgage servicer shall submit to the Commissioner, on a date and in a form prescribed by the Commissioner, a report of the mortgage servicer's activity in this state. The report must specify:

- (a) The total number of mortgage loans the mortgage servicer is servicing.*
 - (b) The total dollar volume of mortgage loans the mortgage servicer is servicing.*
 - (c) The type and characteristics of the mortgage loans in this State.*
 - (d) The number of serviced loans in default, along with a breakdown of 30-, 60-, and 90-day delinquencies.*
 - (e) Information on foreclosures commenced in this State.*
 - (f) Any other information required by the Commissioner.*
- 2. The Commissioner may require a mortgage servicer to submit a report in subsection 1 on a quarterly, semi-annual, or annual basis on a date or dates set by the Commissioner.*

BOND CLAIMS

NAC 645F.1500 Claim on bond: Procedure; limitation of time; preliminary payment by surety; payment.

- 1. Subject to the requirements of this section, any person claiming against a bond may file a claim in a court of competent jurisdiction for damages to the extent covered by the bond.*
- 2. A claim may only be filed against a licensee's bond by the licensee's loan servicing customers and the Commissioner.*
- 3. Claims filed against a bond by a loan servicing customer shall involve only mortgage loans secured by a mortgage loan in this state. The amount of the claim shall not exceed the actual fees paid by the loan servicing customer, overcharges or misapplication of principal and interest, and excess escrow collections charged by the licensee and paid by the claimant to the licensee or the licensee's agent.*
- 4. A claim on a bond shall not be commenced after the expiration of 3 years following the commission or omission of the act upon which the claim is based.*
- 5. The Commissioner may file a claim against a bond for payment of fines or fees due and payable to the Commissioner. A claim filed by the Commissioner shall be subordinate to any claim filed by a licensee's loan servicing customers.*
- 6. As used in this section, "loan servicing customer" has the same meaning ascribed to borrower.*

COMPLAINTS AND INVESTIGATIONS

NAC 645F.1600 Person may file complaint alleging violation; requirements.

- 1. Any person may file with the Commissioner a complaint alleging that another person has violated a provision of NRS 645F, this chapter, or an order of the Commissioner. If the complaint is made by the Commissioner, he or she shall designate one or more employees of the Division to act as the person filing the complaint.*
- 2. A complaint filed pursuant to this section must:*
 - (a) Be in writing;*
 - (b) Be signed by the person filing the complaint or the designee of the person filing the complaint;*

- (c) Contain an address and a telephone number for the person filing the complaint or the designee of the person filing the complaint;*
- (d) Describe the nature of the alleged violation in as much detail as possible;*
- (e) Include as exhibits copies of all documentation supporting the complaint; and*
- (f) Include any other information or supporting materials required by the regulations adopted by the Commissioner or by an order of the Commissioner.*

NAC 645F.1603 Investigation of complaint filed.

- 1. If the Commissioner conducts an investigation of a complaint filed under section 1600, the Commissioner shall determine from the investigation whether there is reasonable cause to believe that the person committed the alleged violation.*
- 2. If, after investigation, the Commissioner determines that there is reasonable cause to believe that the person committed the alleged violation, the Commissioner may take any disciplinary action authorized under this chapter.*

AUTHORIZED DISCIPLINE

NAC 645F.1700 Authorized discipline If the Commissioner finds that an applicant or licensee has violated, or directly or indirectly counseled, aided, or abetted in a violation of, chapter 645F of the Nevada Revised Statutes or this chapter, the Commissioner may do 1 or more of the following:

- 1. Refuse to issue or renew an applicant's application for a license or renewal of a license under this chapter.*
- 2. Assess an administrative fine against the applicant of not more than \$25,000.00 for each violation, whether or not the applicant is issued a license.*
- 3. Assess an administrative fine against a licensee or a control person of a licensee of not more than \$25,000.00 for each violation, or not more than \$50,000.00 for each violation if the violation involved activity requiring licensure under this chapter at a time when the person did not hold a license.*
- 4. Place conditions upon or suspend or revoke a license.*
- 5. Require a licensee or control person of a licensee to make restitution to each individual injured, if the Commissioner finds that the violation resulted in an injury to 1 or more individuals. Notwithstanding the provision of paragraph (m) of subsection 1 of NRS 622A.120, payment of restitution shall be done in a manner consistent with the provision of NRS 622A of NRS.*
- 6. An order issued or administrative fine assessed under this chapter may be enforced or sued for and recovered by and in the name of the Commissioner and may be collected and enforced by summary proceedings by the attorney general.*
- 7. In determining the amount of an administrative fine under this chapter, whether to suspend or revoke a license, the amount of restitution, or to deny an application for or renewal of a license, the Commissioner shall consider, without limitation:*
 - (a) The extent to which the violation was a knowing and willful violation;*
 - (b) The extent of the injury suffered because of the violation;*
 - (c) The corrective action taken by the person to ensure the violation will not be repeated;*
 - (d) The record of the licensee in complying with this chapter; and*
 - (e) Any other factor the Commissioner considers relevant.*

NAC 645F.1703 Order to cease and desist; hearing; final order.

1. If a person engages in an activity in violation of the provisions of this chapter, the Commissioner may issue an order to the person directing the person to cease and desist from engaging in the activity.

2. The order to cease and desist must be in writing and served personally or sent by certified mail to the last known address or by other means reasonably calculated to obtain service on the person, and must state that, in the opinion of the Commissioner, the person has engaged in an activity:

(a) For which the person has not received a license as required by this chapter; or

(b) In a manner that violates the provisions of this chapter or any regulation promulgated under this chapter.

3. Not later than 30 calendar days after receiving an order pursuant to this section, the person who receives the order may file a written notice with the Commissioner to request a hearing. Upon receipt of the written notice, the Commissioner may, for good cause shown, suspend the order pending the hearing. The Commissioner will hold the hearing on a date not later than 30 calendar days after the date the petition is filed unless the Commissioner and the person agree to another date. The order to cease and desist is rescinded if the Commissioner fails to:

(a) Hold a hearing:

(1) Not later than 60 calendar days after the date the written notice is filed; or

(2) On a date agreed to by the Commissioner and the person; or

(b) Render a written decision within 45 days after the date the hearing is concluded.

4. A hearing shall be conducted under the provisions of NRS 233B and other applicable provisions of law.

5. If a person fails to file a written notice to request a hearing within 30 calendar days of receiving the order, the Commissioner shall issue a final order.

6. A final order issued under subsection 5 or the decision of the Commissioner after a hearing is a final decision of the Division for the purposes of judicial review.

NAC 645F.1705 Notice of intention to enter order of license suspension, revocation, or refusal to issue license, or assessing an administrative fine; hearing; final order.

1. The Commissioner shall give notice to a licensee of intention to enter an order suspending or revoking that person's license, or notice to an applicant of a refusal to issue a license, or notice to a licensee or applicant of intention to assess an administrative fine, in writing and served personally or sent by certified mail to the licensee or applicant or by other means reasonably calculated to obtain service.

2. Within 20 days after the notice of the intention to enter an order suspending or revoking a license, or a refusal to issue a license, or intention to assess an administrative fine, under subsection (1), the licensee or applicant may request a hearing to contest the order or refusal. If a hearing regarding suspension, revocation, refusal or fine is not requested, the Commissioner shall enter a final order regarding the suspension, revocation, refusal, or fine. A hearing shall be conducted under the provisions of NRS 233B and other applicable provisions of law.

NAC 645F.1707 Disciplinary proceedings, fines and penalties not affected by expiration, revocation or voluntary surrender of license.

1. The expiration or revocation or suspension of a license by operation of law or by order or decision of the Commissioner or a court of competent jurisdiction, or the voluntary surrender of a license, does not:

a. Prohibit the Commissioner from initiating or continuing an investigation of, or action or disciplinary proceeding against, the licensee as authorized pursuant to the provisions of this chapter or the regulations adopted pursuant thereto; or

b. Prevent the Commissioner from revoking the license or imposing or collecting any fine or penalty authorized pursuant to the provisions of this chapter or the regulations adopted pursuant thereto against the licensee.

c. Affect the licensee's administrative, civil or criminal liability for acts committed before the surrender, revocation, expiration, or suspension.

c. Impair or affect the obligation of a preexisting contract between the licensee and another person, except as otherwise provided by law.

NAC 645F.1709 Authority of Commissioner to order summary suspension of license and take other action to protect public before conducting hearing.

1. After an investigation has been conducted pursuant to this chapter and before conducting a hearing, the Commissioner may issue an order summarily suspending a license pursuant subsection 3 of NRS 233B.127, based on an affidavit by a person familiar with the facts set forth in the affidavit or, if appropriate, based upon an affidavit, on information and belief, that an imminent threat of financial loss or imminent threat to the public welfare exists.

2. Pursuant to a proceeding commenced under subsection 3 of NRS 233B.127, an administrative law hearings examiner shall grant a request to dissolve a summary suspension order unless the examiner finds that an imminent threat of financial loss or imminent threat to the public welfare exists which requires emergency action and continuation of the summary suspension order.

3. The record created at the hearing of the summary suspension shall become part of the record on the complaint at a subsequent hearing in a contested case.

NAC 645F.1711 Receiverships and conservatorships.

1. In addition to any other action that is required or permitted pursuant to this chapter, if the Commissioner has reasonable cause to believe that:

(a) The assets or capital of a licensee are impaired;

(b) A licensee is negligently failing to service mortgage loans in accordance with the terms of this chapter or the terms of the servicing contracts; or

(b) A licensee is conducting business in an unsafe and injurious manner that may result in danger to the public,

→ the Commissioner may petition for an order appointing the Commissioner or some other competent disinterested person as receiver or conservator and directing the receiver or conservator to take sole control of the affairs of the licensee and possession of the books, records, contracts and property of the licensee. A person other than the Commissioner appointed as receiver or conservator may be required to supply a bond or other security as the Commissioner considers proper.

2. The receiver or conservator shall take such action as necessary to assure that the mortgage loans are serviced in accordance with the terms of this chapter and the terms of the servicing contracts, and may cause the servicing rights to be transferred or assigned to another person approved by the Commissioner.

3. If the Commissioner is satisfied that the termination of the receivership or conservatorship may be done safely and is in the public interest, the Commissioner may petition to have the receivership or conservatorship terminated and permit the licensee to resume the servicing of mortgage loans subject to any terms, conditions, and limitations as the Commissioner may prescribe.

4. The Division shall be reimbursed out of the assets of the receivership or conservatorship for actual expenses incurred by it in connection with the receivership or conservatorship. All expenses of a receivership or conservatorship shall be paid out of the assets of the licensee, upon approval of the Commissioner or court. The expenses be a first charge upon the assets of a licensee and shall be fully paid before any final distribution or payment of dividends is made to creditors or shareholders.

5. All compensation and expenses required to be reimbursed to the Division in connection with a receivership or conservatorship and all expenses for state supervision of a receivership or conservatorship under this chapter shall be deposited in the account created under NRS 645F.270. Money in the account shall only be disbursed on proper vouchers, approved by the Commissioner, to reimburse the Division for expenses incurred by the Division in connection with the receivership or conservatorship.

NAC 645F.1713 Rules of practice.

1. The hearing procedures set forth in sections 860 through 920 shall apply to any hearing conducted under this chapter.

MISCELLANEOUS

NAC 645F.1800 Statutory and common-law rights, remedies and punishments unaffected; limitation on actions against State and its officers and employees. The provisions of this chapter do not:

1. Limit any statutory or common-law right of a person to bring a civil action against a licensee for any act or omission involved in the transaction of business by or on behalf of the licensee;

2. Limit the right of the State to punish a person for the violation of any law, ordinance or regulation; or

3. Establish a basis for a person to bring a civil action against the State or its officers or employees for any act or omission in carrying out the provisions of this chapter, including, without limitation, any act or omission relating to the disclosure of information or the failure to disclose information pursuant to the provisions of this chapter.

NAC 645F.1803 Remedies Cumulative.

A summary suspension order, cease and desist order, or injunctive relief issued or granted in relation to a license shall be in addition to and not in place of an informal conference, or proceeding to deny, revoke or suspend a license, or any other legal action.