

**REVISED PROPOSED REGULATION OF THE
COMMISSIONER OF FINANCIAL INSTITUTIONS**

LCB File No. R046-00

June 9, 2000

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

AUTHORITY: §§1-4, 6-10, 12, 15-17, 20 and 21, NRS 645E.300; §§5, 11, 13 and 14, NRS 645E.200 and 645E.300; §§18 and 19, NRS 645E.300 and 645E.350.

Section 1. Chapter 645E of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 21, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires:*

1. The words and terms defined in NRS 645E.020 to 645E.100, inclusive, have the meanings ascribed to them in those sections.

2. “Qualified employee” means:

(a) A director, officer, member, partner, employee, manager or trustee of a partnership, corporation or limited-liability company designated by the partnership, corporation or limited-liability company pursuant to section 10 of this regulation to act on behalf of the partnership, corporation or limited-liability company; or

(b) A person designated by a sole proprietorship who satisfies the requirements set forth in subsection 3 of NRS 645E.200 and section 11 of this regulation.

Sec. 3. *1. A person makes a loan secured by a lien on real property using his own money if the loan is funded from one or more of the following sources:*

(a) The person’s cash, corporate capital or warehouse credit lines at a depository financial institution or other sources that are liability items on the person’s financial statements.

(b) An affiliate's cash, corporate capital or warehouse credit lines at a depository financial institution or other sources that are liability items on the affiliate's financial statements for which the affiliate's assets are pledged. As used in this paragraph, "affiliate" means another person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the person making the loan.

2. A person does not make a loan secured by a lien on real property using his own money if, after consummation of the loan, he sells the loan, or an interest in the loan, to a person from whom he would not be authorized to accept money initially to fund the loan.

Sec. 4. A person does not hold himself out as being able to perform the services described in NRS 645E.100 if he only offers to provide money to invest in loans secured by an interest in real property to:

- 1. A mortgage company licensed pursuant to chapter 645E of NRS; or*
- 2. A person exempt from the provisions of chapter 645E of NRS.*

Sec. 5. 1. A mortgage company shall not conduct business using a fictitious name unless the mortgage company:

- (a) Complies with the provisions of chapter 602 of NRS;*
- (b) Files with the division a certified copy, issued by the appropriate county clerk, of the certificate filed by the mortgage company pursuant to chapter 602 of NRS indicating the fictitious name; and*
- (c) Receives from the division a license or certificate of exemption indicating the fictitious name.*

2. If a mortgage company conducts business using a fictitious name pursuant to this section, the mortgage company may conduct business using a new fictitious name only if the mortgage company:

(a) Obtains a certified copy, issued by the appropriate county clerk, of the certificate filed by the mortgage company pursuant to chapter 602 of NRS indicating the new fictitious name;

(b) Files with the division, not later than 10 calendar days after obtaining the certified copy pursuant to paragraph (a):

(1) The certified copy obtained pursuant to paragraph (a); and

(2) The current license or certificate of exemption of the mortgage company; and

(c) Receives from the division an amended license or certificate of exemption indicating the new fictitious name.

Sec. 6. 1. The division shall not issue a license or certificate of exemption with a name that is the same as or confusingly similar to a name on a license or certificate of exemption previously issued by the division.

2. A mortgage company shall not conduct business using a name other than the name approved by the division and indicated on the license or certificate of exemption issued by the division to the mortgage company.

Sec. 7. 1. If a person engages in an activity in violation of the provisions of chapter 645E of NRS or 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 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 or certificate of exemption as required by chapter 645E of NRS; or

(b) In a manner that violates the provisions of chapter 645E of NRS or this chapter.

3. A person who receives an order to cease and desist pursuant to this section shall not engage in any activity governed by chapter 645E of NRS after he receives the order unless the order is suspended or rescinded.

4. Not later than 30 calendar days after receiving an order pursuant to this section, the person who receives the order may file a verified petition with the commissioner to request a hearing. Upon receipt of the verified petition, 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 the hearing:

(1) Not later than 30 calendar days after the date the petition is filed; or

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

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

5. The decision of the commissioner after the hearing is a final decision of the division for the purposes of judicial review.

Sec. 8. *A person who has an unexpired certificate of exemption issued pursuant to chapter 645B of NRS shall be deemed to have an unexpired certificate of exemption issued pursuant to chapter 645E of NRS.*

Sec. 9. 1. *The commissioner will refer to 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.

2. *For the purposes of NRS 645E.670, a mortgage company commits a violation if the mortgage company:*

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

(b) Fails to refund any fees collected in excess of the actual cost the mortgage company 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.

Sec. 10. 1. *Every partnership, corporation or limited-liability company doing business as a mortgage company in this state shall designate a qualified employee who may, upon approval by the commissioner, act on behalf of the partnership, corporation or limited-liability company.*

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 company pursuant to chapter 645E of NRS.*

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 645E 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 section 2 of this regulation, the partnership, corporation or limited-liability company 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 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 section 2 of this regulation; or

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

Sec. 11. *An applicant for a license as a mortgage company must have:*

1. At least 2 years of verifiable experience in lending money for real estate or mortgages; 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.

Sec. 12. *1. A person conducts verifiable business as a mortgage company if he:*

(a) Handles the arrangements between a borrower and a lender for a loan that is secured by a lien on real property and is consummated as a result of the arrangements; or

(b) Originates a loan secured by a lien on real property in the capacity of a lender or provider.

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

Sec. 13. *An applicant must submit with his application for a license pursuant to chapter 645E of NRS:*

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

2. A copy of the certificate filed by the mortgage company pursuant to chapter 602 of NRS indicating the fictitious name of the mortgage company, if any.

3. If the applicant is a corporation, a copy of:

(a) Its articles of incorporation and its bylaws;

(b) 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

(c) The most recent list of its officers and resident agents that is filed with the secretary of state.

4. 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 partners for the 2 years immediately preceding the year of the application.

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

6. If the applicant is a limited-liability company, a copy of:

(a) Its articles of organization and operating agreement;

(b) A statement of the profit and loss of the limited-liability company for the 2 years

immediately preceding the year of the application; and

(c) The most recent list of its members or managers, and resident agents, that is filed with the secretary of state.

Sec. 14. 1. *An applicant must submit with his application for a license for a branch office the name, residence address and telephone number of a qualified employee designated to manage the branch office.*

2. The commissioner will approve an application for a license for a branch office if:

(a) The principal office of the mortgage company has been examined by the commissioner and has received at least a satisfactory rating; and

(b) The commissioner approves the qualified employee designated 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. A license for a branch office may be issued only in the name in which the mortgage company is licensed to conduct business at its principal office.

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

5. A mortgage company is responsible for and shall supervise:

(a) Each branch office of the mortgage company; and

(b) Each qualified employee authorized to conduct mortgage lending activity at a branch office of the mortgage company.

Sec. 15. 1. *Any material change in the ownership, management or principal employees of a mortgage company at its principal office or a branch office must be reported to the commissioner not later than 30 calendar days after the change.*

2. *If a person acquires stock or ownership in a mortgage company as a result of a transfer that constitutes a change of control pursuant to NRS 645E.390:*

(a) *A financial statement or personal interrogatory 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 company until the commissioner has approved the transfer; and*

(c) *The mortgage company may not change the location of its principal office or a branch office until the commissioner has approved the transfer.*

Sec. 16. 1. *Except as otherwise provided in this subsection, the commissioner will charge and collect a fee of \$40 per hour from each mortgage company for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 645E of NRS. The commissioner may charge a fee of \$125 per hour for the time of an attorney required in any examination, investigation or hearing conducted pursuant to chapter 645E of NRS.*

2. *The commissioner will bill each mortgage company upon the completion of the activity for the fee established in subsection 1. The fee must be paid not later than 30 calendar days after the date the bill is received. Except as otherwise provided in this subsection, any payment received after that date must include a penalty of 10 percent of the fee plus an additional 1 percent of the fee for each complete month, or portion of the last month, that the fee is not paid. The commissioner may waive the penalty for good cause.*

Sec. 17. 1. *Each mortgage company shall pay to the division an annual assessment in an amount calculated in accordance with NAC 658.030 to cover the costs related to the employment of a certified public accountant and the performance of audits and examinations by the division.*

2. The division shall bill each mortgage company for the assessment. The assessment must be paid within 30 calendar days after the date the bill is received.

3. A charge of 10 percent of the assessment will be imposed on any mortgage company whose assessment is received by the division after the date on which the assessment is due. The commissioner may waive the penalty for good cause.

Sec. 18. 1. *Each mortgage company shall submit, for each month, on a form approved by the commissioner, a report on the volume of loans arranged by the mortgage company in that month. The monthly report must be submitted to the commissioner by the 15th day of the month following the month for which the report was made. If no loans were arranged in that month, the report must state that fact.*

2. The commissioner may refuse to renew the license of a mortgage company that has not submitted a monthly report as required by subsection 1 for one or more of the preceding 12 months.

Sec. 19. *Each mortgage company shall retain records of all its completed mortgage transactions for a period of at least 6 years after the date of the last activity relating to the transaction. After a record has been retained for 2 or more years, the mortgage company may cause the original record to be reproduced by the microphotographic process, optical disk imaging or any other equivalent technique designed to ensure an accurate reproduction of the original record. 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 record may be destroyed.

Sec. 20. 1. *A licensed mortgage company shall not represent an activity which is not licensed pursuant to chapter 645E of NRS as being licensed pursuant to that chapter.*

2. An advertisement for an activity which is licensed pursuant to chapter 645E of NRS must be separate and distinct from an advertisement for an activity which is not licensed pursuant to that chapter.

3. A licensed mortgage company must include in its advertisements, including any advertising material available on the Internet:

(a) Its name, address and telephone number; and

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

4. A mortgage company shall not use advertising material that simulates the appearance of a check, a communication from a government entity, or an envelope containing a check or a communication from a government entity, unless:

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

Sec. 21. *An appraisal submitted to a lender by a mortgage company must not be prepared by the mortgage company and must:*

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 this 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.