

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

**LCB File No. R086-04**

May 27, 2004

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

AUTHORITY: §§1-6, NRS 645A.050; §7, NRS 645A.050 and 645A.065.

A REGULATION relating to escrows; providing for the use of trust accounts by escrow agents and escrow agencies; requiring escrow agencies to submit financial statements to the Commissioner of Mortgage Lending; increasing the fee for supervision and other related activities conducted pursuant to chapter 645A of NRS; and providing other matters properly relating thereto.

**Section 1.** Chapter 645A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

**Sec. 2.** *As used in this chapter, unless the context otherwise requires, “trust account” means an account held by an escrow agent or agency pursuant to NRS 645A.160.*

**Sec. 3.** *Except as otherwise provided in any written escrow instructions or an escrow agreement, each escrow agent or agency shall:*

*1. Hold all money deposited in escrow with the agent or agency in trust for the person on whose behalf the deposit is made; and*

*2. Upon the request of the person on whose behalf the deposit was made, return all money deposited in escrow with the agent or agency.*

**Sec. 4.** *1. Each escrow agency shall:*

*(a) Deposit all money held in trust by the escrow agency into a trust account in a financial institution pursuant to NRS 645A.160; and*

*(b) Inform the financial institution of the purpose of the trust account.*

*2. Pursuant to NRS 645A.070, each escrow agency shall maintain, for a period of at least 6 years after final disposition of an escrow transaction:*

*(a) All records of the transaction, including, without limitation, checkbooks, cancelled checks, check stubs, vouchers, ledgers, journals, closing statements, accountings and other statements of disbursements rendered to a client or other party with regard to the trust account; and*

*(b) Any records that are related to the trust account which clearly reflect the date, amount, source and explanation for any receipt, withdrawal, delivery or disbursement of the funds or other property of a client with regard to the trust account.*

*3. The records maintained pursuant to subsection 2 must be available for inspection by the Division, upon its request.*

*4. For the purposes of this section, “financial institution” includes any federally insured bank, savings and loan association, credit union, savings bank and any other federally insured institution located in this State that accepts for deposit funds held in trust by escrow agents and agencies.*

**Sec. 5. 1.** *Except as otherwise provided in this section, an escrow agency shall submit to the Commissioner, not later than 120 days after the last day of each fiscal year of the escrow agency, a financial statement that:*

*(a) Is dated not earlier than the last day of the fiscal year of the escrow agency; and*

*(b) Has been prepared based on the books and records of the escrow agency by an independent public accountant who has a valid permit to engage in the practice of public accounting in this State.*

2. *The Commissioner may grant a reasonable extension of time for the submission of a financial statement required pursuant to this section if an escrow agency requests an extension not later than 120 days after the last day of the fiscal year of the escrow agency.*

3. *If an escrow agency maintains a trust account, the financial statement submitted pursuant to this section must be audited before it is submitted to the Commissioner. The escrow agency shall ensure that the public accountant who prepares the report of an audit submits a copy of the report to the Commissioner and the escrow agency at the same time.*

**Sec. 6.** 1. *Each escrow agent and agency shall conduct the business of the escrow agency openly, fairly and honestly, and shall at all times conform to the accepted business ethics and practices of the escrow agency business.*

2. *If an escrow agency performs services as a third party in the collection of payments in connection with a loan secured by real property, unless otherwise agreed between the parties, the escrow agency must remit the payment to the person who is entitled to receive the payment not later than 30 days after the last day of the month in which the escrow agency collected the payment.*

3. *If an escrow agency maintains a trust account, the trust account must at all times contain sufficient money to pay all money due or owing to all clients. An escrow agency shall not make a disbursement from the account unless authorized to make a disbursement by:*

*(a) Escrow instructions;*

*(b) A servicing agreement; or*

*(c) An agreement between the parties to the transaction that the escrow agency may periodically withdraw money from the account to pay for services performed for the client.*

*4. Each escrow agency that maintains a trust account shall keep a record of all money deposited in the account. These records are subject to inspection by the Commissioner or his authorized representative and must include, without limitation:*

*(a) The name of the person who sent the money to the escrow agency;*

*(b) The account in which the money was deposited;*

*(c) The name of the person to whom the money belongs;*

*(d) The date the money was received;*

*(e) The date the money was deposited into the account;*

*(f) The date of each withdrawal from the account; and*

*(g) Any other pertinent information concerning the account, including, without limitation, escrow instructions and servicing agreements.*

*5. If the Commissioner determines that an escrow agency has not complied with subsection 2, 3 or 4 of this section, he may require the escrow agency to deliver an audited financial statement that is prepared, using the records of the escrow agency, by a certified public accountant who holds a certificate to engage in the practice of public accounting in this State. Except as otherwise provided in this subsection, the financial statement must be submitted to the Commissioner not later than 60 days after the Commissioner requests the financial statement from the escrow agency. The Commissioner may grant a reasonable extension for the submission of the financial statement if an extension is requested not later than 60 days after the Commissioner requests the financial statement from the escrow agency.*

**Sec. 7.** NAC 645A.010 is hereby amended to read as follows:

645A.010 1. The Commissioner ~~[of Financial Institutions]~~ will charge and collect a fee of ~~[\$50]~~ \$60 per hour from each escrow agency for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 645A of NRS.

2. The Commissioner will bill each escrow agency upon the completion of the activity for the fee established in subsection 1. The fee must be paid within 30 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 month, or portion of a month, that the fee is not paid. The Commissioner may waive the penalty for good cause.

3. The failure of an escrow agency to pay the fee required in subsection 1 as provided in this section constitutes grounds for revocation of its license.

*4. Upon written request by an escrow agency, the Division must provide an accounting of the time billed to the escrow agency pursuant to this section.*