

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

LCB File No. R053-08

May 20, 2008

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

AUTHORITY: §§1, 9 and 10, NRS 645E.300 and 645E.350; §§2, 6, 7, 11 and 12, NRS 645E.300; §§3-5, NRS 645E.200 and 645E.300; §8, NRS 645E.280 and 645E.300.

A REGULATION relating to mortgage banking; establishing requirements relating to insider loans; revising the definition of “qualified employee”; revising provisions relating to applications for a license as a mortgage banker; revising the restrictions on advertising by a mortgage banker; revising provisions relating to a change in ownership, control, management or principal employees of a mortgage banker; revising provisions relating to the assessment of fees for certain activities performed by the Commissioner of Mortgage Lending for a mortgage banker; revising the meaning of “complete and suitable records” as it applies to mortgage transactions; revising provisions relating to the retention and maintenance of certain records; establishing additional requirements for the preparation of appraisals submitted to a lender; revising provisions relating to certain violations involving mortgage transactions; and providing other matters properly relating thereto.

Section 1. Chapter 645E of NAC is hereby amended by adding thereto a new section to read as follows:

1. Insider loans made by a mortgage banker are subject to the following limitations and conditions:

(a) The lending limit must not exceed 25 percent of the total dollar amount of outstanding funded loans which are not in default and which were made by the mortgage banker or 100 percent of the mortgage banker’s net worth as evidenced by the mortgage banker’s most recent

financial statement submitted to the Commissioner pursuant to NRS 645E.360, whichever is greater; and

(b) The mortgage banker must specifically identify on each monthly report required by NRS 645E.350 any insider loan made by the mortgage banker.

2. As used in this section:

(a) “Insider” means a director, officer or employee of a mortgage banker or any relative or affiliated company of any of the foregoing.

(b) “Insider loan” means an extension of credit to an insider. For purposes of this paragraph, “extension of credit” includes, without limitation, a new loan or a loan renewal, a line of credit or any other financial right structured in any manner and granted by a mortgage banker as a means for the borrower to defer payment on an existing debt or to incur a debt and defer immediate payment.

(c) “Lending limit” means the maximum dollar amount permitted for the aggregate of insider loans made by the mortgage banker.

Sec. 2. NAC 645E.030 is hereby amended to read as follows:

645E.030 “Qualified employee” means ~~is~~ *a natural person who is:*

1. 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 NAC 645E.310 to act on behalf of the partnership, corporation or limited-liability company; or

2. A person designated by a sole proprietorship who ~~satisfies~~ *:*

(a) Is a resident of Nevada or a border state employee, as defined in NRS 482.012; and

(b) Satisfies the requirements set forth in subsection 3 of NRS 645E.200 and NAC 645E.200.

Sec. 3. NAC 645E.200 is hereby amended to read as follows:

645E.200 An applicant for a license as a mortgage banker must ~~have:~~ :

1. ~~At~~ *Have at* least 2 years of verifiable experience in lending money for real estate or mortgages ~~is~~ *within the last 5 years;* and
2. ~~A~~ *Have a* knowledge of generally accepted accounting practices and bookkeeping procedures evidenced by verifiable experience in working in these areas or appropriate educational training.

Sec. 4. NAC 645E.210 is hereby amended to read as follows:

645E.210 1. An applicant must submit with his application for a license pursuant to chapter 645E of NRS:

- (a) A copy of his business license, when applicable, or his application for such a license if he has not obtained one.
- (b) A copy of the certificate filed by the mortgage banker pursuant to chapter 602 of NRS indicating the fictitious name of the mortgage banker, if any.
- (c) If the applicant is a corporation, a copy of:
 - (1) Its articles of incorporation and its bylaws;
 - (2) Its balance sheet and a statement of the profit and loss of the corporation for the 2 years immediately preceding the year of the application; and
 - (3) The most recent list of its officers and ~~resident~~ *registered* agents that is filed with the Secretary of State.
- (d) If the applicant is a partnership or joint venture, a copy of the agreement of partnership or joint venture and the financial statements of the partners for the 2 years immediately preceding the year of the application.

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

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

(1) Its articles of organization and operating agreement;

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

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

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

(h) Documentation from the appropriate municipal or county authority which indicates that local ordinances allow permanent business signs to be maintained at the place of business of the applicant.

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

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

Sec. 5. NAC 645E.220 is hereby amended to read as follows:

645E.220 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 during the preceding 12 months.

(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.

(c) The applicant provides documentation from the appropriate municipal or county authority which indicates that local ordinances allow permanent business signs to be maintained at the branch office.

3. The Commissioner may waive the requirements of subsection 2 upon good cause shown.

4. A license for a branch office may be issued only in the name in which the mortgage banker is licensed to conduct business at its principal office.

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

6. A mortgage banker is responsible for and shall supervise:

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

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

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

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

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

Sec. 6. NAC 645E.285 is hereby amended to read as follows:

645E.285 1. A mortgage banker shall not represent an activity which is not licensed pursuant to chapter 645E of NRS as being licensed pursuant to that chapter.

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

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

4. A mortgage banker must include in his advertisements, including any advertising material available on the Internet:

(a) The complete name of the mortgage banker or the complete name under which the mortgage banker does business.

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

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

5. A mortgage banker 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.

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

7. In addition to the requirements of this chapter, each advertisement used in carrying on the business of a mortgage banker must comply with:

(a) NRS 598.0903 to 598.0999, inclusive, concerning deceptive trade practices; and

(b) All applicable federal statutes and regulations concerning deceptive advertising and advertising of interest rates.

Sec. 7. NAC 645E.315 is hereby amended to read as follows:

645E.315 1. Any material change in the ownership ~~[.]~~ *or control of a mortgage banker at its principal office or a branch office must be reported to the Commissioner on a form prescribed by the Division for approval at least 30 days before the change occurs.*

2. *Any material change in the* management or principal employees of a mortgage banker at its principal office or a branch office must be reported to the Commissioner not later than 30 calendar days after the change.

~~[2.]~~ 3. If a person acquires stock or ownership in a mortgage banker 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 banker until the Commissioner has approved the transfer; and

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

Sec. 8. NAC 645E.320 is hereby amended to read as follows:

645E.320 1. Except as otherwise provided in this subsection, the Commissioner will charge and collect a fee of \$60 per hour *and costs* from each mortgage banker for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 645E of NRS. The Commissioner may charge a fee equivalent to the estimated or actual fee charged to the Division 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 banker upon the completion of the activity for the fee *and costs* established in subsection 1. The fee *and costs* 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 *and costs* plus an additional 1 percent of the fee *and costs* for each complete month, or portion of the last month, that the fee ~~is~~ *and costs are* not paid. The Commissioner may waive the penalty for good cause.

3. Upon written request by a mortgage banker, the Division will provide an accounting of the time *and costs* billed to the mortgage banker pursuant to this section.

Sec. 9. NAC 645E.355 is hereby amended to read as follows:

645E.355 As used in NRS 645E.350, the Commissioner interprets “complete and suitable records” to mean:

1. For residential mortgage loans, a file that includes, but is not limited to, the following documents, if applicable to the type and purpose of the loan:

- (a) The real estate sales contract;
- (b) Escrow instructions;
- (c) The preliminary title report;
- (d) The loan application, including, but not limited to, any attachments or supplements;
- (e) An appraisal report ~~is~~ *or other independent assessment of the value of the mortgaged property;*
- (f) Any verification of representations made by the consumer on the application for the loan;
- (g) A credit report;

- (h) ~~[A]~~ *All* good faith ~~[estimate]~~ *estimates* of closing costs and any disclosures required pursuant to the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq.;
- (i) The Uniform Settlement Statement, as described pursuant to 12 U.S.C. § 2603;
- (j) Any commitments made by the lender to the consumer, including, but not limited to, a commitment to guarantee the consumer a certain interest rate and a commitment to fund the loan;
- (k) A recorded or confirmed deed of trust;
- (l) The title insurance policy;
- (m) The note;
- (n) Any subsequent assignment of the loan to institutional investors; and
- (o) The hazard insurance policy.

2. For commercial mortgage loans that are funded by the mortgage banker, a file that includes, if applicable, the items required pursuant to paragraphs (a) to (j), inclusive, of subsection 1.

3. Any additional books and records that must be maintained or readily accessible at each place of business of the mortgage banker, including, but not limited to:

- (a) Any book or record that evidences compliance with applicable federal and state laws and regulations;
- (b) A copy of each item of advertising material that was published or distributed by or on behalf of the mortgage banker, in the format in which the material was published or distributed;
- (c) A copy of any written complaint received by the mortgage banker, together with all correspondence, notes, responses and other documentation related to the disposition of the complaint;

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

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

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

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

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

Sec. 10. NAC 645E.360 is hereby amended to read as follows:

645E.360 1. Each mortgage banker shall retain records of all its completed mortgage transactions for a period of at least 4 years after the date of the last activity relating to the transaction. ~~After~~ *Except as otherwise provided in this subsection, after* a record has been retained for ~~2 or more years,~~ *1 year or longer*, the mortgage banker may cause the original record to be reproduced by the microphotographic process, optical disc imaging or any other equivalent technique designed to ensure an accurate reproduction of the original record. *The Commissioner may, for good cause, allow the mortgage banker to reproduce and store a record by electronic means at any time.* 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.

2. Each mortgage banker shall retain applications for mortgages that were denied or withdrawn for a period of at least 1 year or as otherwise required by federal law.

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

4. A mortgage banker shall not store records of mortgage transactions in a rented storage unit.

Sec. 11. NAC 645E.400 is hereby amended to read as follows:

645E.400 An appraisal submitted to a lender by a mortgage banker must ***meet, at a minimum, the standards set forth in the Uniform Standards of Professional Appraisal Practice adopted by reference pursuant to NAC 645C.400, must*** not be prepared by the mortgage banker 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.

Sec. 12. NAC 645E.500 is hereby amended to read as follows:

645E.500 1. The Commissioner may refer to *and cooperate with* the appropriate federal or state agency for investigation and appropriate action each suspected violation of:

(a) The Truth in Lending Act, 15 U.S.C. §§ 1601 to 1667f, inclusive, including, without limitation, the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1639, or Regulation Z, 12 C.F.R. Part 226.

(b) The Equal Credit Opportunity Act, 15 U.S.C. §§ 1691 to 1691f, inclusive, or Regulation B, 12 C.F.R. Part 202.

(c) The Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 to 2617, inclusive, or Regulation X, 24 C.F.R. Part 3500.

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

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

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

(b) Fails to refund any fees collected in excess of the actual cost the mortgage banker incurs or pays for any appraisal, credit report or any other product or service provided by a third party in connection with the making of a loan; or

(c) Violates a provision of:

(1) The Truth in Lending Act, 15 U.S.C. §§ 1601 to 1667f, inclusive, including, without limitation, the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1639, or Regulation Z, 12 C.F.R. Part 226.

(2) The Equal Credit Opportunity Act, 15 U.S.C. §§ 1691 to 1691f, inclusive, or Regulation B, 12 C.F.R. Part 202.

(3) The Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 to 2617, inclusive, or Regulation X, 24 C.F.R. Part 3500.

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