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**MEMORANDUM**

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DATE: January 8, 2008  
TO: Assemblyman Marcus Conklin  
FROM: Dave Ziegler, Principal Research Analyst *DZ*  
Research Division  
SUBJECT: **Licensing of Mortgage Brokers and Agents**

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This memorandum responds to your request for a survey of national laws on the licensing of mortgage brokers and agents. You asked what the various states require in terms of background checks, education, experience, and related factors, and what Nevada could do to improve its requirements.

A majority of states license or register both brokers and agents. Typically, they:

- Require brokers to undergo background checks, post significant surety bonds, and have relevant education and experience; and
- Require agents to undergo background checks, have relevant education and experience, and take continuing education courses.

Nevada differs from the typical state in certain ways, discussed later in this memorandum.

**DISCUSSION**

In accordance with your request, this memorandum covers mortgage brokers and agents. It does not cover mortgage bankers, also known as "lenders," unless a given state regulates bankers and brokers under a single type of license. Also, every state exempts from licensing such persons as banks and attorneys who are already under the supervision of federal or state regulatory bodies.

Among the states, the most common regulatory framework involves the licensing of both mortgage brokers and their agents, also known as loan “originators,” “officers,” and “solicitors.” In most states, a broker may be either an individual sole proprietor or a company (e.g., partnership, limited liability company, or corporation). However, a few states license only natural persons and a few others license only business entities as brokers. Further, many states that issue licenses to business entities also require the designation of a principal officer, who may also need to have a license.

Given the wide variety in state laws covering these subjects, it is difficult to generalize. However, regarding mortgage brokers, more than half of the states:

- Require background checks;
- Require a broker to post a security bond of \$50,000 or more;
- Require brokers or their managers to meet education and experience prerequisites;
- Do not require brokers or their managers to take continuing education courses; and
- Do not require a credit check, a physical office in the state, or references.

Of the 33 states that license or register loan originators, more than half:

- Require background checks;
- Impose education and experience prerequisites; and
- Have continuing education requirements.

Nevada employs the common regulatory scheme of licensing both brokers and their agents. Nevada differs from the typical state in that it does not require a broker to post a bond but does have continuing education requirements for brokers. Also, Nevada is one of about 15 “bricks and mortar” states that require a broker to have a physical office in the State.

During the 2007 Legislative Session, Nevada enacted its first educational prerequisites for brokers and agents. Effective July 1, 2008, brokers and agents must complete educational courses or pass an examination, as determined by the Division of Mortgage Lending, Department of Business and Industry. (See *Nevada Revised Statutes* [NRS] 645B.0137.)

A table displaying the licensing and registration requirements for mortgage brokers and agents in the 50 states and the District of Columbia is enclosed. While the laws in most of the states are fairly similar, some have unique regulatory schemes. Minnesota, for example, regulates only originators. In California, three different types of licensees—including real estate brokers—may broker mortgage loans. And Colorado requires brokers to have errors and omissions insurance, effective January 1, 2008.

## METHODOLOGY

Research staff gathered this information from the actual Internet websites of the state agencies that regulate mortgage lending activities. In many cases, the research necessitated a review of the applicable state statutes, regulations, and official guidance.

The staff made every effort to provide accurate information. However, the table attached to this memorandum may contain errors, due to the large number of states and agencies; the peculiarities of their individual websites; changes in laws and regulations over time; and possible misinterpretations of the data. This office would be pleased to verify any data that you deem important for future reference.

Please note that many states have upgraded their licensing and registration laws in recent years, perhaps in response to the increase in mortgage defaults and foreclosures. Thus, the laws that were in effect when brokers negotiated today's problem mortgages may have been superseded. (The enclosed table displays the current rules.) Again, this office would be pleased to review how any given state's laws may have changed over time.

## CONCLUDING REMARKS

I hope this information is helpful and responsive to your request. Please do not hesitate to contact me at 775/684-6825 if you have any questions or need additional research.

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Enc.