

*Legislative Commission's Subcommittee to  
Investigate Regulation of  
Mortgage Investments*



*Legislative Counsel  
Bureau*

*Bulletin No.  
99-16*

*January 1999*



**STUDY OF THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE  
TO INVESTIGATE REGULATION OF  
MORTGAGE INVESTMENTS**

**BULLETIN NO. 99-16**

**JANUARY 1999**



DAVID GOLDWATER  
ASSEMBLYMAN  
District No. 10



COMMITTEES:  
*Chairman*  
Infrastructure  
  
*Member*  
Labor and Management  
Taxation  
Ways and Means

# Nevada Assembly

CARSON CITY

DISTRICT OFFICE:  
230 E. Flamingo, No. 114  
Las Vegas, Nevada 89109  
(702) 796-5644

LEGISLATIVE BUILDING:  
401 S. Carson Street  
Carson City, Nevada 89701-4747  
Office: (702) 684-8541 or 687-5739  
Fax No.: (702) 684-8881 or 687-4007

January 29, 1999

Legislative Commission  
Assemblyman Richard Perkins, Chairman  
401 S. Carson St.  
Carson City, NV 89701

Dear Chairman Perkins:

It is my pleasure to present you with the report entitled "Study of the Legislative Commission's Subcommittee to Investigate Regulation of Mortgage Investments." It was an honor to serve you as the Chairman of your Subcommittee. It was an honor to serve with the members of the Subcommittee; they were diligent and thoughtful. After many hours of meetings and a great deal of hard work by the members of the Subcommittee, I am proud to present the Commission with a report that fulfils the directive you set for us.

The tragic failure of the Harley Harmon Mortgage Company left investors—many of who were senior citizens—with catastrophic financial losses. This financial institution failed, as you will see from the report, for a number of reasons. The Subcommittee report recommends several changes not only of the policies of the State of Nevada regarding this kind of business, but also several changes to the process by which the State of Nevada regulates the mortgage investment industry.

This report emphasizes consumer protection while recognizing the value of the mortgage investment industry. It recommends changes that would bring Nevada Law up to current standards and, indeed, perhaps serve as a model for the rest of the nation. I look forward to working with you, the rest of the Legislative Commission, and the members of the Subcommittee as we work through the 70th Session of the Legislature.

Again, thank you for confidence. It was an honor to serve you.

Respectfully,

A handwritten signature in dark ink, appearing to read "David Goldwater", written over a horizontal line.

Assemblyman David Goldwater  
Chairman, Subcommittee to Investigate Regulation of  
Mortgage Investments



## TABLE OF CONTENTS

	<u>Page</u>
Summary of Recommendations . . . . .	iii
Report to the 70th Session of the Nevada Legislature by the Legislative Commission’s Subcommittee to Investigate Regulation of Mortgage Investments . . . . .	1
I. Introduction . . . . .	1
II. Background Information Regarding the Case of the Harley L. Harmon Mortgage Company . . . . .	4
III. Findings and Recommendations . . . . .	8
Registration of Certain Mortgage Company Transactions . . . . .	8
Administrative Sanctions and Criminal Penalties . . . . .	9
Powers of Attorney . . . . .	11
Disclosure . . . . .	12
Advertising Disclosures . . . . .	15
Licensing and Capital Requirements . . . . .	16
Staffing of Regulatory Agencies . . . . .	19
IV. Conclusion . . . . .	21
V. Appendices . . . . .	23
Appendix A	
Chapter 645B of <i>Nevada Revised Statutes</i> . . . . .	25
Appendix B	
Newspaper Articles Regarding Problems in the Mortgage Investment Industry . . . . .	49

	<u>Page</u>
Appendix C	
Letter dated December 11, 1998, to Assemblyman David Goldwater from Douglas E. Walther, Senior Deputy Attorney General, Commerce Section, Office of the Attorney General, Regarding “Fiscal Impact of Creating Primary Criminal Jurisdiction in Attorney General’s Office to Enforce the Mortgage Company Act” . . . . .	71
Appendix D	
Suggested Legislation . . . . .	75

## SUMMARY OF RECOMMENDATIONS

### LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO INVESTIGATE REGULATION OF MORTGAGE INVESTMENTS

Following are the recommendations approved by the Legislative Commission's Subcommittee to Investigate Regulation of Mortgage Investments.

### RECOMMENDATIONS FOR LEGISLATION

The Subcommittee recommends that the 70th Session of the Nevada Legislature take the following actions:

#### **Registration of Certain Mortgage Company Transactions**

1. Repeal subsection 21 of *Nevada Revised Statutes* (NRS) 90.530. This subsection currently exempts from registration with the Securities Division of the Office of the Secretary of State transactions involving promissory notes or fractional interests in such notes that are secured by a lien on real estate if the issuer is a mortgage company licensed by the Division of Financial Institutions, Department of Business and Industry. Include in the bill a provision that directs the administrator of the Securities Division to adopt regulations that will allow certain mortgage companies to be exempt from the registration requirements of NRS 90.460 and NRS 90.560. **(BDR 7-1203)**

#### **Administrative Sanctions and Criminal Penalties**

2. Amend Chapter 645B of NRS to revise provisions that relate to the suspension and revocation of licenses of certain mortgage companies and that provide for administrative sanctions and criminal penalties against certain mortgage companies. Specifically, establish a process by which a complaint against a mortgage company may be filed with the Commissioner of Financial Institutions. Require that the Commissioner investigate alleged violations unless the violation previously has been investigated. If, upon investigation, the Commissioner determines that there are reasonable grounds to believe that a violation has occurred, the Commissioner shall schedule a hearing concerning the alleged violation. In addition, the Commissioner may investigate and conduct a hearing concerning any alleged violation whether or not a complaint has been filed. Require that a Federal National Mortgage Association approved mortgage company that engages in private fund solicitations be subject to administrative penalties if it violates any provision of Chapter 645B of NRS. Increase the maximum fine that may be imposed for certain violations of Chapter 645B of NRS, from \$500 to \$10,000. Make the imposition of a fine mandatory under certain circumstances, such as conducting business as a mortgage company without a license, failing to maintain records as required by NRS 645B.080, and violating the money handling provisions of NRS 645B.175. Require that the Commissioner adopt by

regulation a schedule of major and minor violations and specify the disciplinary action to be taken by the Commissioner against a person who commits certain violations. Give to the Commissioner authority to order a summary suspension of a license if such a suspension is necessary to protect the public health, safety, or welfare. Give to the Attorney General primary criminal and civil jurisdiction to investigate and prosecute a person who violates a provision of Chapter 645B of NRS or regulations adopted pursuant to Chapter 645B of NRS. Prohibit a payment preference by a mortgage company of one investor over another when each of those investors has the same beneficial interest in a property. Prohibit mortgage companies from guaranteeing the payment of interest or principal amounts of a loan. **(BDR 54-1204)**

### **Powers of Attorney**

3. Amend Chapter 645B of NRS to permit a mortgage company to act on behalf of an investor pursuant to a power of attorney only if **(BDR 54-1204)**:
  - a. The power of attorney is executed for the sole purpose of servicing a single note in which the investor owns a beneficial interest; and
  - b. The provisions of the power of attorney:
    - (1) Have been approved by the Commissioner of Financial Institutions; and
    - (2) Expressly prohibit the mortgage company from using money that the investor has loaned to or is entitled to receive from the borrower pursuant to the terms of the note for any purpose which is not directly related to servicing the note.

### **Disclosure**

4. Amend NRS 645B.185 to add the following provisions **(BDR 54-1204)**:
  - a. The Commissioner of Financial Institutions shall adopt by regulation standardized disclosure forms for investors.
  - b. The mortgage company must give the disclosure form to each investor before each investment, and the investor may not waive receipt of the disclosure form.
  - c. The disclosure form must be signed by the investor and a representative of the mortgage company, and a copy of the signed disclosure form must be retained by the mortgage company.
  - d. The disclosure form must include a statement explaining the risks of investing through the mortgage company, including, without limitation:

- (1) The possibility that the borrower may default on the loan;
  - (2) The nature of the losses that may result through foreclosure;
  - (3) The fact that payments of principal and interest are not guaranteed and that the investor may lose the entire amount of principal that he has invested;
  - (4) The fact that the mortgage company is not a depository financial institution and that the investment is not insured by any depository insurance; and
  - (5) Any other information required by the Commissioner of Financial Institutions.
- e. The disclosure form must inform the investor whether the mortgage company has any direct or indirect interest in the borrower.
  - f. The disclosure form must inform the investor of whether the mortgage company is currently being investigated for any alleged violation of the provisions of Chapter 645B of NRS and must include a statement of the nature of any disciplinary action that has been taken against the mortgage company within the preceding 12 months.
5. Amend Chapter 645B of NRS to require a mortgage company that maintains trust accounts for the payment of investors to **(BDR 54-1204)**:
    - a. Identify each nonperforming loan that the mortgage company is administering when the mortgage company submits its monthly report to the Commissioner of Financial Institutions pursuant to NRS 645B.080; and
    - b. Report the status of each such nonperforming loan, on a monthly basis, to each investor who owns a beneficial interest in the loan.
  6. Amend NRS 645B.090 to **(BDR 54-1204)**:
    - a. Require the Commissioner of Financial Institutions to disclose any information concerning a pending investigation against a mortgage company to any person who requests such information, unless the Commissioner determines that the release of such information would impede or otherwise interfere with the investigation.
    - b. Require the Commissioner of Financial Institutions to disclose the results of any completed investigations of a mortgage company that have been conducted within the preceding five years and to disclose the nature of any disciplinary action that has been taken against a mortgage company within the preceding five years to any person who requests such information, except that the Commissioner may withhold from public inspection for such time as he considers necessary any information which in his

judgment the public welfare or the welfare of any mortgage company requires to be so withheld.

7. Require that an escrow company or title company provide the lender at the time of closing of a loan an insured-closing letter, which guarantees that title insurance has been obtained. **(BDR 54-1204)**
8. Amend Chapter 645B of NRS to require that a mortgage company must provide, prior to closing, a written disclosure, which must be signed by the lender, of the exact priority of each loan. Further, every trust deed must clearly indicate the priority of the loan in which the investor's funds must be placed. In the event a mortgage company might want to subordinate an investor's priority, the mortgage company must obtain the lender's written approval and provide a copy of that approval to the investor and the Division of Financial Institutions. **(BDR 54-1204)**
9. Amend Chapter 645B of NRS by adding the following new provisions **(BDR 54-1204)**:
  - a. A mortgage company must disclose to persons considering the purchase of a beneficial interest in any loan secured by a deed of trust, a mortgage, or other instrument creating a lien on real property at the time of or in connection with the making or renewing of a loan whether the mortgage company, or any officers or directors of the mortgage company, is known by the mortgage company, or any of its officers or directors, to be under investigation by the Commissioner or any other law enforcement agency for any allegation which, if true, would materially affect the risk associated with making the investment.
  - b. If the Commissioner is conducting an investigation involving an alleged violation of the provisions of this chapter or regulations adopted thereunder, or is aware of an investigation by any other law enforcement agency, which, in his judgment, involves allegations which, if true, would materially affect the risk of an investment in a beneficial interest in a loan with the mortgage company, he may require the mortgage company subject to an investigation to make the disclosure required by subsection a. No right of action exists in favor of any person by any reason of any action or failure to act on the part of the Commissioner or any of his officers, employees, or attorneys in carrying out the provisions of this section, or in giving or failing to give any information concerning an investigation conducted by the Commissioner or any other law enforcement agency.

### **Advertising Disclosures**

10. Amend NRS 645B.189 to provide that **(BDR 54-1204)**:
  - a. If a mortgage company maintains any accounts described in NRS 645B.175, the mortgage company shall include in each advertisement:

- (1) The following statement: “Money invested through a mortgage company is not insured or guaranteed by the federal or state government. An investor is not guaranteed to recover or to be repaid any of the money he invests, an investor is not guaranteed to earn or to be paid any interest or other return on the money he invests, and an investor may lose some or all of the money he invests”; and
  - (2) Any other statement or information that is required by a regulation adopted pursuant to this chapter or an order of the Commissioner.
- b. If conveyed in printed form, including, without limitation, if displayed in printed form on a television or any other video screen, monitor, or device, the statement or information which is required pursuant to paragraph (1) must be printed in a size that is approved by the Commissioner; and (2) if displayed in printed form on a television or any other video screen, monitor, or device, displayed for a period that is approved by the Commissioner.
- c. The Commissioner may adopt any other regulations that are necessary to carry out the provisions of this section.

### **Licensing and Capital Requirements**

11. Create licensing requirements for loan officers and other persons who arrange mortgage loans for a mortgage company (similar to existing licensing requirements for real estate agents). **(BDR 54-1204)**
12. Amend Chapter 645B of NRS to revise the requirements for a mortgage company license to include the following provisions **(BDR 54-1204)**:
  - a. A mortgage company that does not handle trust account funds must demonstrate a minimum net worth according to the following schedule:

As of October 1, 1999, \$25,000;  
As of October 1, 2000, \$50,000;  
As of October 1, 2001, \$75,000; and  
On or after October 1, 2002, \$100,000.

If a mortgage company handles trust account funds, the mortgage company must demonstrate a minimum net worth of \$250,000.

In lieu of meeting a net worth requirement, a mortgage company may provide the Division of Financial Institutions with a cash deposit, a bond, or an irrevocable letter of credit in the required amount. This net worth requirement applies to an application for a new license or a renewal of an existing license;

- b. Amend Chapter 645B of NRS to provide that, for each loan, a mortgage company shall not release any amount of money to a borrower or his designee unless the amount of money released is equal to the total amount of money that is being loaned to the borrower for such loan less any amount of money due to the mortgage company for the payment of any fee or service charge;
  - c. Amend NRS to provide that:
    - (1) A person may not be licensed as or, if exempt from licensing, may not conduct business as a construction control company, an escrow agency, a mortgage company, a title agent, or a title insurer if the person, the person's spouse, or any other person related to him within the second degree by blood or marriage owns or controls a majority of the voting stock or a controlling interest, directly or indirectly, in:
      - (a) A construction control company, an escrow agency, a mortgage company, a title agent, or a title insurer; or
      - (b) Any company that owns or controls a majority of the voting stock or a controlling interest, directly or indirectly, in a construction control company, an escrow agency, a mortgage company, a title agent, or a title insurer.
    - (2) The provisions of this section do not prohibit a person, the person's spouse, or any other person related to him within the second degree by blood or marriage from being licensed as, conducting business as, or owning or controlling the same construction control company, escrow agency, or mortgage company, title agent, or title insurer, so long as such joint licensing, operation, ownership, or control extends to only one of these types of businesses; and
  - d. Amend Chapter 645B of NRS to expand the application process for a mortgage company license to include a basic business plan, a company policy and procedure manual, a collection policy, loan servicing procedures and restrictions, and underwriting standards.
13. Amend NRS to provide that a person who is subject to the provisions of Chapter 627 of NRS as a construction control company, Chapter 645A of NRS as an escrow agency, or Chapter 692A of NRS as a title agent or a title insurer, must file a bond of not less than \$250,000. **(BDR 54-1204)**

14. Amend Chapter 645B of NRS to provide that **(BDR 54-1204)**:
- a. A mortgage company shall not charge a person a late fee, an additional amount of interest, or any other penalty if the payment is personally delivered to the mortgage company before 5 p.m. on the day that the payment is due;
  - b. If no offices of the mortgage company are open to customers on the day that the payment is due, the mortgage company shall not charge a person a late fee, an additional amount of interest, or any other penalty if the payment is personally delivered to the mortgage company before 5 p.m. on the next day that an office of the mortgage company is open to customers;
  - c. A mortgage company or a person may not agree to alter the foregoing provisions by contract or other agreement, unless the contract or other agreement:
    - (1) Is executed before the effective date of the bill;
    - (2) Is in writing; and
    - (3) Includes a provision that expressly establishes a specific time of day before which a person must deliver a payment to the mortgage company to avoid a late fee, an additional amount of interest, or any other penalty.

#### **Staffing of Regulatory Agencies**

15. Include in the Subcommittee's final report a statement in support of additional funding for regulatory agencies of the mortgage investment industry for the purpose of increasing enforcement staff.



**REPORT TO THE 70TH SESSION OF THE NEVADA LEGISLATURE  
BY THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE  
TO INVESTIGATE REGULATION OF  
MORTGAGE INVESTMENTS**

**I. INTRODUCTION**

Subsection 4 of *Nevada Revised Statutes* (NRS) 645B.010 defines a mortgage company as any person who, directly or indirectly:

- (a) Holds himself out for hire to serve as an agent for any person in an attempt to obtain a loan which will be secured by a lien on real property;
- (b) Holds himself out for hire to serve as an agent for any person who has money to lend, if the loan is or will be secured by a lien on real property;
- (c) Holds himself out as being able to make loans secured by liens on real property, unless the loans are made pursuant to subsection 8 or 10 of NRS 645B.015;<sup>1</sup>
- (d) Holds himself out as being able to buy or sell notes secured by liens on real property;  
or
- (e) Offers for sale in this state any security which is exempt from registration under state or federal law and purports to make investments in promissory notes secured by liens on real property.

In other words, a mortgage company is an entity that receives money from an investor and makes that money available to a borrower where the loan is secured by a lien on real property. In return for providing funds to a borrower through a mortgage company, the investor receives a beneficial interest in a property and expects to receive interest payments, and eventually, a return of his or her principal amount as the borrower repays the loan.

During the winter of 1997-1998, various newspapers in Nevada reported that people who had invested funds with the Harley L. Harmon Mortgage Company were not receiving payments of interest and principal to which they were entitled pursuant to their contracts with the company.<sup>2</sup>

---

<sup>1</sup> Subsection 8 of NRS 645B.015 states that the provisions of Chapter 645B do not apply to any one natural person, or husband and wife, who provides money for investment in loans secured by a lien on real property, on his own account. Subsection 10 of NRS 645B.015 states that the provisions of Chapter 645B do not apply to a seller of real property who offers credit secured by a mortgage of the property sold. A copy of Chapter 645B of NRS is included in this report as Appendix A.

<sup>2</sup> See Appendix B for copies of a representative sample of newspaper articles regarding this topic.

Many of these investors made allegations of criminal wrongdoing on the part of Harley L. Harmon, owner of Harley L. Harmon Mortgage Company, with respect to his handling of their invested funds. Many of these investors also complained that the Division of Financial Institutions, Department of Business and Industry, was not acting with sufficient diligence to protect their interests and to prevent a continuation of the alleged offenses.

On April 17, 1998, Assemblyman David E. Goldwater went before the Legislative Commission to explain the nature and extent of the problems facing the mortgage investment industry and to request that the Commission create a subcommittee to investigate regulation of mortgage investments. He explained that investors lost more than \$22 million before the Harley L. Harmon Mortgage Company was shut down by the Division of Financial Institutions. According to Mr. Goldwater, many of the investors were senior citizens. In urging establishment of a subcommittee, he noted that "one of the things this case highlighted was a weakness in the statutory regulation of state financial institutions," and suggested that the state needs to apply greater scrutiny to the mortgage investment industry.

The Legislative Commission established the Subcommittee to Investigate Regulation of Mortgage Investments and directed that the Subcommittee review the facts surrounding problems involving the failure of the Harley L. Harmon Mortgage Company, investigate the regulatory role of the Division of Financial Institutions with respect to mortgage investments, and make recommendations to the 70th Session of the Nevada Legislature regarding how to improve regulation of mortgage investments.

The Legislative Commission appointed six legislators (three Senators and three Assemblymen) to conduct the study. The members of the Subcommittee were:

Assemblyman David E. Goldwater, Chairman  
Senator Bill R. O'Donnell  
Senator Raymond C. Shaffer  
Senator Randolph J. Townsend  
Assemblywoman Barbara K. Cegavske  
Assemblyman Tom Collins

Support for the Subcommittee was provided by the following Legislative Counsel Bureau staff members:

Vance A. Hughey, Principal Research Analyst  
Kimberly A. Morgan, Chief Deputy Legislative Counsel  
Kevin C. Powers, Senior Deputy Legislative Counsel  
Ricka Benum, Senior Research Secretary  
Nenita Wasserman, Senior Research Secretary

The Subcommittee held four public hearings in Las Vegas (with video conference links to Carson City) and received testimony from investors, mortgage brokers, representatives of the Federal National Mortgage Association, and representatives of the Office of the Attorney General, the Division of Financial Institutions, and the Office of the Secretary of State.

## **II. BACKGROUND INFORMATION REGARDING THE CASE OF THE HARLEY L. HARMON MORTGAGE COMPANY**

According to records maintained by the Division of Financial Institutions, the Division began investigating Harley L. Harmon Mortgage Company early in 1997 after problems turned up during its November 1996 annual examination of the company.<sup>3</sup> During the course of its investigation, the Division examined four of the construction projects that involved funds provided by the Harley L. Harmon Mortgage Co. and concluded that the company:

- Placed money from investors in construction loans without their consent;
- Made decisions regarding their investments without their consent;
- Controlled the disbursement of loans instead of placing them with a construction control or escrow agent for disbursement based on written instructions approved by parties to the loan;
- Disbursed construction loans for purposes other than those for which the loans were made and represented to the investors; and
- Disbursed money from loan payments to certain investors in amounts disproportionate to their interest in the loan, and failed to make payments to other investors in the same loan.

Section 645B.185 of NRS requires that before a person invests money through a mortgage company, he must sign a written statement received from the company acknowledging that:

- (a) The company has explained to him the nature and risks of investing through the company, including the possibility of default in payment, the fact that payments are not guaranteed, the resulting foreclosure and the losses that may result; and
- (b) He is aware that the company is not a depository financial institution.

Records maintained by the Division of Financial Institutions indicated that many investors signed such statements.

In addition, Section 645B.080 of *Nevada Administrative Code* (NAC) requires that before a lender makes a loan for which a licensed mortgage company is acting as a broker, the mortgage company shall provide, unless specifically waived in writing, to the lender certain information and reports including the following items:

---

<sup>3</sup> Subsection 2(c) of NRS 645B.060 requires that the Commissioner of Financial Institutions conduct an annual examination of each mortgage company doing business in this state. See Appendix A.

- (a) A written application for the loan which is signed by the prospective borrower and which contains the borrower's address, a history of his employment and income, details of monthly payments he is obliged to pay and any other information requested by the lender;
- (b) Evidence of the prospective borrower's history of employment and income, such as a tax return or an employer's statement of the borrower's past yearly income;
- (c) A report on the prospective borrower's history of credit, including an explanation by the borrower of any material derogatory item in the report and evidence that the report has been compared for accuracy to the borrower's application for the loan;
- (d) An analysis by the mortgage company of the ability of the prospective borrower to pay his monthly debts;
- (e) A preliminary report on the status of the title of the property which is proposed as security for the loan;
- (f) A statement of the status of prior liens against the property which is proposed as security, including the current balance of the liens and the status of payments; and
- (g) An appraisal of the property which is proposed as security.

These provisions were designed to help protect investors but records indicated that many investors waived their rights to this information.

On November 3, 1997, after conducting an extensive review of this case, the Division filed a proposed order revoking Mr. Harmon's license to operate the mortgage company. On December 5, 1997, the Division filed a Final Order of Revocation and gave the company until December 16, 1997, to cease its operations. On December 19, 1997, District Judge Stephen Huffaker filed an order naming Bernie Chipoletti, a partner in Terra West Realty and Development, as a receiver to liquidate the assets of Harley L. Harmon Mortgage Company.

According to Judge Huffaker's order, Mr. Chipoletti is required to provide certain information to investors and other persons regarding the pendency of the receivership. That information is to include notice of future proceedings and an opportunity to comment on any plan or action that he proposes that will directly affect the interests of those persons. Also, Mr. Chipoletti is to notify investors and other persons that they may wish to consult with an attorney of their choosing to determine how best to protect their legal rights.

L. Scott Walshaw, Commissioner, Division of Financial Institutions, defended the Division's actions regarding the Harley L. Harmon Mortgage Company case including the time frame associated with the investigation and subsequent actions filed against the Harley L. Harmon Mortgage Company. He informed the Subcommittee that:

- The Division performed an examination of Harley L. Harmon Mortgage Company as of November 30, 1996, and a report was issued in January of 1997;
- The report was reviewed by Burns Baker, Deputy Commissioner, Division of Financial Institutions, and Mr. Baker subsequently wrote an interoffice memorandum dated February 21, 1997, in which he cited numerous problems with operations of the mortgage company and recommended that the company's license be revoked immediately;
- A subsequent meeting was held to develop a course of action to address the issues of concern and occurrences documented within the Harley L. Harmon Mortgage Company. Attending that meeting were Mr. Baker; Douglas E. Walther, Deputy Attorney General; and Mr. Walshaw. They mutually agreed that: (1) there was a lack of substantiating evidence; (2) there was need for further investigation of the Harley L. Harmon Mortgage Company; and (3) further review would determine whether the nonperformance of loans was a result of misconduct on the part of representatives of the mortgage company; and
- Following an investigative hearing on March 6, 1997, during which Mr. Harmon was questioned under oath, representatives of the Division determined that: (1) Mr. Harmon's father, the previous owner and operator of the mortgage company, should be approached for the purpose of obtaining additional documentation and information; (2) there should be voluntary removal of Mr. Harmon as operator of the mortgage company; and (3) there was evidence of need for a voluntary receivership to replace Mr. Harmon to conduct the operations of the mortgage company.

Mr. Walshaw explained that in late March 1997, the Deputy Attorney General of the Division presented the above suggestions by telephone conference call, to both Mr. Harmon and his legal counsel. A written rejection of the proposal for a voluntary receivership proposal was subsequently received along with a suggestion that an employee of the Harley L. Harmon Mortgage Company be made responsible for the problem loans referenced in the Division's report. Mr. Walshaw stated that, based on the rejection of the proposal, the representatives of the Division:

- Concluded that the licensee would resist any attempt to remove or revoke the mortgage company's license;
- Determined the necessity for a full investigation to determine whether or not the actions of Mr. Harmon contributed to the problems with the loans documented in the examination of the company;

- Prepared and served subpoenas during the months of May and June 1997, for construction-control account records, requested further records of specific loan transactions, and scheduled a second investigative hearing in late July 1997, at which Mr. Harmon was to produce the requested documentation;
- Held discussions during July and August 1997, regarding the results of the second hearing, the status of the investigation, and outlined the failure of Mr. Harmon to comply with the request for records; and
- During the same approximate time, completed a summary of results of the investigation, and made the determination to provide the licensee an opportunity to produce missing documentation to address the concerns and avoid revocation action.

According to Mr. Walshaw the following actions were taken against the Harley L. Harmon Mortgage Company:

- In the period between August and October 1997 a review of the documentation produced by Mr. Harmon was conducted. It was determined by the Division to proceed with administrative action and the Office of the Attorney General was to prepare: (1) a Complaint for Revocation of the License; (2) a Complaint for Injunctive Relief; and (3) a Motion for Preliminary Injunction against the licensee, in that order;
- Discussions were held in early November 1997 with the legal counsel representing the licensee regarding the surrender of the actual license and a Stipulation for a Preliminary Injunction; and
- In December 1997 a Revocation Action was filed and subsequently a receiver was appointed for the Harley L. Harmon Mortgage Company.

In spite of the actions taken against the Harley L. Harmon Mortgage Company by the Division, many investors remained dissatisfied.<sup>4</sup> They criticized the Division for not acting quickly enough. They noted that the internal memorandum from the Deputy Commissioner of the Division dated February 21, 1997, cited "serious conditions" within the Harley L. Harmon Mortgage Company and recommended immediate suspension of the mortgage company license. As noted above, the license was not revoked until December 5, 1997.

---

<sup>4</sup> "State Panel to Probe Mortgage Firm Failure," *Reno Gazette-Journal*, April 21, 1998, Page 1E. See Appendix B.

### **III. FINDINGS AND RECOMMENDATIONS**

The Subcommittee began its deliberations on the topic of regulation of mortgage investments by reviewing two previous interim legislative studies that were conducted in 1984 and 1986. The 1984 study<sup>5</sup> revealed that the primary cause of mortgage investment losses was the misuse of trust funds, that is, money held in escrow pending completion of a loan, and money collected from borrowers which was to be paid to lenders. The 1986 study<sup>6</sup> revealed that while some mortgage company failures resulted from poor investments or vagaries of the business cycle, the principal cause of those failures was fraud. The 1986 report noted that a law may require honesty, but it cannot ensure that people will comply.

Testimony provided to the Subcommittee during the 1998 study suggested that many of the same problems associated with investments in mortgage companies still exist in spite of efforts by the Legislature and by regulators to protect the public interest. Some of these problems were highlighted in testimony specifically regarding the case of the Harley L. Harmon Mortgage Company.

#### **Registration of Certain Mortgage Company Transactions**

Dean Heller, Secretary of State, testified that subsection 21 of NRS 90.530 exempts from registration under the Nevada Securities Act (Chapter 90 of NRS) a promissory note or fractional interest in such a note if the note is secured by a lien on real property and is issued by a mortgage company licensed by the Division of Financial Institutions. He explained that this exemption is not found in the Uniform Securities Act, nor in the statutes of most other states. He suggested removal of this exemption from Nevada's securities law and explained that if this exemption was removed, such notes and fractional interests in such notes would be required to be registered and the persons selling them licensed with the Securities Division of the Office of the Secretary of State.

Mr. Heller explained that a person subject to this registration requirement must file a registration statement with the Securities Division. The statement includes a consent to service of process, and a prospectus that discloses all material facts about the investment, including the amount of money to be raised, the use of the funds, the risks of the enterprise, the form of the security, the identity and background (including criminal records) of all the principals in the venture, any recent or pending litigation, the amount of compensation paid to any party, and independently audited financial statements. With this information, investors could avoid investments in risky ventures that are inappropriate for their financial circumstances.

---

<sup>5</sup> *Study of Laws, Regulations and Policies Which Affect Depository Financial Institutions*, Bulletin No. 85-18, Legislative Commission of the Legislative Counsel Bureau, August 1984.

<sup>6</sup> *Study of Laws, Regulations and Policies Which Affect Financial Institutions*, Bulletin No. 87-28, Legislative Commission of the Legislative Counsel Bureau, August 1986.

Mr. Heller further explained that his proposal would not require the Securities Division to monitor the day-to-day operations of mortgage companies. Instead, the Securities Division would have jurisdiction only over the offer and sale of securities. The financial soundness of mortgage companies and mortgage company operations would remain the province of the Division of Financial Institutions. However, removing the statutory enforcement preference for the Division of Financial Institutions would enable the Securities Division to respond directly to complaints from investors. Working closely with the Division of Financial Institutions, investigations by the Securities Division could lead to administrative, civil, or criminal actions as appropriate. Mr. Heller explained that if a violation occurs during the sale of securities, the administrator of the Securities Division may take summary action to halt the sale. If an investigation reveals fraud or misrepresentation, severe penalties may be imposed through litigation brought through the Office of the Attorney General.

Under his proposal, the general public might be informed more quickly of problems in the operation of mortgage companies. Mr. Heller explained that if facts are developed that indicate that funds of potential investors are being put in jeopardy, the administrator could issue a Cease and Desist Order which would become public information. He argued that a Securities Division investigation in the Harmon case would have led to earlier disclosure in the prospectus the existence of a Cease and Desist Order, if such an order had been issued.

The Subcommittee considered a proposal by Mr. Goldwater to provide an exemption from the registration requirements for mortgage companies that only do business with “sophisticated” investors. Mr. Heller indicated that if his proposal was adopted, he would develop regulations designed to accommodate Mr. Goldwater’s preference.

In consideration of the arguments put forth by Mr. Heller, the Subcommittee adopted the following recommendation:

1. Repeal subsection 21 of NRS 90.530. This subsection currently exempts from registration with the Securities Division of the Office of the Secretary of State transactions involving promissory notes or fractional interests in such notes that are secured by a lien on real estate if the issuer is a mortgage company licensed by the Division of Financial Institutions, Department of Business and Industry. Include in the bill a provision that directs the administrator of the Securities Division to adopt regulations that will allow certain mortgage companies to be exempt from the registration requirements of NRS 90.460 and NRS 90.560. **(BDR 7-1203)**

### **Administrative Sanctions and Criminal Penalties**

The Subcommittee received testimony from the Office of the Attorney General indicating that the Attorney General does not have direct enforcement authority and cannot impose fines for regulatory violations of Chapter 645B. The Attorney General cannot independently conduct investigations or take action against a financial institution, but works in the capacity to act as counsel and legal advisor of the Division. Only the Division of Financial Institutions has the authority to impose fines for regulatory violations of mortgage industry laws or regulations. The

Attorney General is given authority, at the request of the Division of Financial Institutions, to seek court injunctions against a mortgage company thought to have committed either regulatory or statutory violations. When evidence is received regarding a criminal act that is not within the jurisdiction of the Attorney General, the information is referred to the local district attorney. If it is a matter where the Attorney General has been advised that local authorities are already involved, no referral would be processed.

Much of the testimony provided to the Subcommittee suggested that the Division of Financial Institutions rarely imposes fines on mortgage companies that violate provisions of Chapter 645B, and that even if a fine is imposed, the amount of the fine specified in the statute is too small to be an effective deterrent to inappropriate behavior by mortgage companies. Additionally, many investors complained that the statutes are too permissive regarding whether a fine should be imposed. They suggested that the statutes be amended to require that the Division of Financial Institutions impose fines under certain circumstances. Investors also complained to the Subcommittee that the Division of Financial Institutions failed to take seriously their complaints and were reluctant to vigorously investigate their complaints.

Testimony was provided to the Subcommittee by both investors and the Division of Financial Institutions which indicated that in the Harley L. Harmon Mortgage Company case, investors were paid in proportions that were not consistent with their interests in certain properties. In addition, many investors testified that they were led to believe that they were guaranteed a certain return on investment. In fact, advertisements placed by the Harley L. Harmon Mortgage Company during the time the company was being investigated included statements that may have led many investors to conclude that they were guaranteed to earn a return of 15 percent on first mortgages.

Concluding that the concerns raised by investors were meritorious, the Subcommittee discussed a proposed bill draft that included various provisions designed to establish a process by which a complaint against a mortgage company may be filed with the Commissioner of Financial Institutions, clarify jurisdiction to prosecute a person who violates a provision of Chapter 645B of NRS, and increase the maximum fine that may be imposed for certain violations of Chapter 645B of NRS, from \$500 to \$10,000. The Subcommittee concluded that in order to enhance the ability of regulatory authorities to address possible violations of mortgage company laws, it would adopt the following recommendation:

2. Amend Chapter 645B of NRS to revise provisions that relate to the suspension and revocation of licenses of certain mortgage companies and that provide for administrative sanctions and criminal penalties against certain mortgage companies. Specifically, establish a process by which a complaint against a mortgage company may be filed with the Commissioner of Financial Institutions. Require that the Commissioner investigate alleged violations unless the violation previously has been investigated. If, upon investigation, the Commissioner determines that there are reasonable grounds to believe that a violation has occurred, the Commissioner shall schedule a hearing concerning the alleged violation. In addition, the Commissioner may investigate and conduct a hearing concerning any alleged violation whether or not a complaint has been filed. Require that a Federal National

Mortgage Association approved mortgage company that engages in private fund solicitations be subject to administrative penalties if it violates any provision of Chapter 645B of NRS. Increase the maximum fine that may be imposed for certain violations of Chapter 645B of NRS, from \$500 to \$10,000. Make the imposition of a fine mandatory under certain circumstances, such as conducting business as a mortgage company without a license, failing to maintain records as required by NRS 645B.080, and violating the money handling provisions of NRS 645B.175. Require that the Commissioner adopt by regulation a schedule of major and minor violations and specify the disciplinary action to be taken by the Commissioner against a person who commits certain violations. Give to the Commissioner authority to order a summary suspension of a license if such a suspension is necessary to protect the public health, safety, or welfare. Give to the Attorney General primary criminal and civil jurisdiction to investigate and prosecute a person who violates a provision of Chapter 645B of NRS or regulations adopted pursuant to Chapter 645B of NRS. Prohibit a payment preference by a mortgage company of one investor over another when each of those investors has the same beneficial interest in a property. Prohibit mortgage companies from guaranteeing the payment of interest or principal amounts of a loan. **(BDR 54-1204)**

### **Powers of Attorney**

The Subcommittee was advised that the investigation of the Harley L. Harmon Mortgage Company brought forth instances where investors executed broadly written Powers of Attorney, granting the company wide discretion to make decisions regarding the loan funds belonging to investors. The Division of Financial Institutions felt that the existence of the legally questionable and broadly written limited powers of attorney served to frustrate its investigation and may have contributed to keeping some investors ignorant of some of the actions taken by the Harley L. Harmon Mortgage Company. Therefore, the Subcommittee adopted the following recommendation:

3. Amend Chapter 645B of NRS to permit a mortgage company to act on behalf of an investor pursuant to a power of attorney only if **(BDR 54-1204)**:
  - a. The power of attorney is executed for the sole purpose of servicing a single note in which the investor owns a beneficial interest; and
  - b. The provisions of the power of attorney:
    - (1) Have been approved by the Commissioner of Financial Institutions; and
    - (2) Expressly prohibit the mortgage company from using money that the investor has loaned to or is entitled to receive from the borrower pursuant to the terms of the note for any purpose which is not directly related to servicing the note.

## Disclosure

Many investors complained that they were not aware of some of the practices that led to their financial losses. They argued that their ignorance of Mr. Harmon's actions could be attributed to several factors. First, while Nevada law includes a provision that requires certain disclosures be given to investors, the disclosure requirement applies only to the initial investment.<sup>7</sup> Some investors apparently failed to recall the disclosure provisions to which they originally agreed and may have thought that those provisions did not apply to subsequent investments.

Second, records kept by the Harley L. Harmon Mortgage Company were in such poor condition that the Division of Financial Institutions found it difficult to establish whether the required forms were provided to all investors. In some instances, investors did not have copies of the forms.

Third, NAC 645B.080 requires that before a lender makes a loan for which a licensed mortgage company is acting as a broker, the mortgage company shall provide, unless specifically waived in writing, to the lender certain information. However, many investors waived their rights to this information which may have contributed to some investors being unaware of some of the questionable actions taken by the Harley L. Harmon Mortgage Company.

In addition, investors complained that the Harley L. Harmon Mortgage Company continued to solicit new funds during the period of the investigation of the company by the Division of Financial Institutions, jeopardizing funds of even more investors. They argued that had some of these new investors been aware of the investigation, they might have placed their funds in less risky investments.

The Division of Financial Institutions contended that release of information about a pending investigation is problematic. An argument was offered that a company's business could be irreparably damaged by public release of information regarding an allegation that later proved to be without merit.

In order to prevent fraudulent assignment of the beneficial interest to more than one party or person, NRS 645B.193 requires that a mortgage company record assignments of its interest in a mortgage and obtain title insurance for the mortgaged property.<sup>8</sup> Some investors complained that some mortgage companies advertise first trust deeds, then place unsuspecting investors in lower priority loans. In addition, testimony revealed that some brokers are not securing title insurance as required by law.

In order to help ensure that investors and regulators are provided with needed information without placing unreasonable disclosure requirements on mortgage companies, the Subcommittee adopted the following recommendations:

---

<sup>7</sup> See NRS 645B.185 in Appendix A.

<sup>8</sup> See Appendix A.

4. Amend NRS 645B.185 to add the following provisions **(BDR 54-1204)**:
  - a. The Commissioner of Financial Institutions shall adopt by regulation standardized disclosure forms for investors.
  - b. The mortgage company must give the disclosure form to each investor before each investment, and the investor may not waive receipt of the disclosure form.
  - c. The disclosure form must be signed by the investor and a representative of the mortgage company, and a copy of the signed disclosure form must be retained by the mortgage company.
  - d. The disclosure form must include a statement explaining the risks of investing through the mortgage company, including, without limitation:
    - (1) The possibility that the borrower may default on the loan;
    - (2) The nature of the losses that may result through foreclosure;
    - (3) The fact that payments of principal and interest are not guaranteed and that the investor may lose the entire amount of principal that he has invested;
    - (4) The fact that the mortgage company is not a depository financial institution and that the investment is not insured by any depository insurance; and
    - (5) Any other information required by the Commissioner of Financial Institutions.
  - e. The disclosure form must inform the investor whether the mortgage company has any direct or indirect interest in the borrower.
  - f. The disclosure form must inform the investor of whether the mortgage company is currently being investigated for any alleged violation of the provisions of Chapter 645B of NRS and must include a statement of the nature of any disciplinary action that has been taken against the mortgage company within the preceding 12 months.
5. Amend Chapter 645B of NRS to require a mortgage company that maintains trust accounts for the payment of investors to **(BDR 54-1204)**
  - a. Identify each nonperforming loan that the mortgage company is administering when the mortgage company submits its monthly report to the Commissioner of Financial Institutions pursuant to NRS 645B.080; and
  - b. Report the status of each such nonperforming loan, on a monthly basis, to each investor who owns a beneficial interest in the loan.

6. Amend NRS 645B.090 to **(BDR 54-1204)**:
  - a. Require the Commissioner of Financial Institutions to disclose any information concerning a pending investigation against a mortgage company to any person who requests such information, unless the Commissioner determines that the release of such information would impede or otherwise interfere with the investigation.
  - b. Require the Commissioner of Financial Institutions to disclose the results of any completed investigations of a mortgage company that have been conducted within the preceding five years and to disclose the nature of any disciplinary action that has been taken against a mortgage company within the preceding five years to any person who requests such information, except that the Commissioner may withhold from public inspection for such time as he considers necessary any information which in his judgment the public welfare or the welfare of any mortgage company requires to be so withheld.
7. Require that an escrow company or title company provide the lender at the time of closing of a loan an insured-closing letter, which guarantees that title insurance has been obtained. **(BDR 54-1204)**
8. Amend Chapter 645B of NRS to require that a mortgage company must provide, prior to closing, a written disclosure, which must be signed by the lender, of the exact priority of each loan. Further, every trust deed must clearly indicate the priority of the loan in which the investor's funds must be placed. In the event a mortgage company might want to subordinate an investor's priority, the mortgage company must obtain the lender's written approval and provide a copy of that approval to the investor and the Division of Financial Institutions. **(BDR 54-1204)**

The Subcommittee discussed ways in which a mortgage company that fails to maintain certain financial responsibility requirements might be prevented from continuing to advertise for new business, possibly jeopardizing funds of additional investors. Due to constitutional concerns involving freedom of speech, the Subcommittee decided not to impose a limitation on advertising. Instead, the Subcommittee adopted a proposal presented by the Office of the Attorney General that was designed to ensure that potential investors are aware of any pending investigations regarding allegations that, if true, would materially affect the risk associated with making the investment. In addition, the proposal provides that if the Commissioner is conducting an investigation involving an alleged violation of the provisions of Chapter 645B of NRS, or is aware of an investigation by any other law enforcement agency, which, in his judgment, involves allegations which, if true, would materially affect the risk of an investment in a beneficial interest in a loan with the mortgage company, he may require the mortgage company to disclose that information to its investors.

The Subcommittee adopted the following proposal:

9. Amend Chapter 645B of NRS by adding the following new provisions (**BDR 54-1204**):
  - a. A mortgage company must disclose to persons considering the purchase of a beneficial interest in any loan secured by a deed of trust, a mortgage, or other instrument creating a lien on real property at the time of or in connection with the making or renewing of a loan whether the mortgage company, or any officers or directors of the mortgage company, is known by the mortgage company, or any of its officers or directors, to be under investigation by the Commissioner or any other law enforcement agency for any allegation which, if true, would materially affect the risk associated with making the investment.
  - b. If the Commissioner is conducting an investigation involving an alleged violation of the provisions of this chapter or regulations adopted thereunder, or is aware of an investigation by any other law enforcement agency, which, in his judgment, involves allegations which, if true, would materially affect the risk of an investment in a beneficial interest in a loan with the mortgage company, he may require the mortgage company subject to an investigation to make the disclosure required by subsection a. No right of action exists in favor of any person by any reason of any action or failure to act on the part of the Commissioner or any of his officers, employees, or attorneys in carrying out the provisions of this section, or in giving or failing to give any information concerning an investigation conducted by the Commissioner or any other law enforcement agency.

### **Advertising Disclosures**

The Subcommittee received considerable testimony regarding the risky nature of mortgage investments. Borrowers who utilize the services of a mortgage broker typically include builders, developers, and home or land owners. Corporations, defined benefit plans, individuals looking for high returns, pension or profit-sharing plans, and self-directed individual retirement accounts are examples of the types of investors who may employ a mortgage broker. Economic decline and market conditions may affect the stability of all trust deed loans, not just those arranged by a mortgage broker. The risk of bankruptcies, defaults, and foreclosure proceedings also are potential factors that may affect the certainty of investments. The high rates of return are evidence of the riskiness of this type of investment. Many prospective investors are lured by promises of rates of return that may be considerably higher than interest rates for conventional investments (such as savings accounts, certificates of deposits, or U.S. government securities). Evidence was provided to the Subcommittee that many Nevada mortgage companies are creating attractive advertisements to lure potential investors. These ads imply that investments in mortgages are not risky.

In order to help ensure that prospective investors in mortgages are fully aware of the risks involved in such investments, the Subcommittee recommended that substantial disclosure of risks be included in any advertising materials used by mortgage companies. The following

recommendation includes the advertising requirements to be placed on mortgage companies that handle investors' funds:

10. Amend NRS 645B.189 to provide that **(BDR 54-1204)**:

- a. If a mortgage company maintains any accounts described in NRS 645B.175, the mortgage company shall include in each advertisement:
  - (1) The following statement: "Money invested through a mortgage company is not insured or guaranteed by the federal or state government. An investor is not guaranteed to recover or to be repaid any of the money he invests, an investor is not guaranteed to earn or to be paid any interest or other return on the money he invests, and an investor may lose some or all of the money he invests"; and
  - (2) Any other statement or information that is required by a regulation adopted pursuant to this chapter or an order of the Commissioner.
- b. If conveyed in printed form, including, without limitation, if displayed in printed form on a television or any other video screen, monitor, or device, the statement or information which is required pursuant to paragraph (1) must be printed in a size that is approved by the Commissioner; and (2) if displayed in printed form on a television or any other video screen, monitor, or device, displayed for a period that is approved by the Commissioner.
- c. The Commissioner may adopt any other regulations that are necessary to carry out the provisions of this section.

### **Licensing and Capital Requirements**

Many investors and mortgage companies testified to the existence of unethical mortgage companies in Nevada. The Subcommittee considered various proposals for ensuring that unscrupulous mortgage companies not be allowed to operate in this state and for holding to account mortgage companies that employ dishonest individuals. The Subcommittee was told that while mortgage companies are regulated, their agents are not required to be licensed. The Subcommittee wanted to ensure that loan officers and other persons with similar responsibilities who work for mortgage companies be subjected to licensing requirements including background checks similar to requirements imposed on real estate agents. To that end, the Subcommittee adopted the following recommendation.

- 11. Create licensing requirements for loan officers and other persons who arrange mortgage loans for a mortgage company (similar to existing licensing requirements for real estate agents). **(BDR 54-1204)**

The Subcommittee also received testimony from investors and mortgage companies which suggested that unscrupulous mortgage brokers would be less likely to establish an operation in Nevada if they were required to subject their own assets to risk. A net worth requirement was discussed as a method to help ensure that only persons who are serious about providing legitimate mortgage brokerage services would be willing to form a mortgage company.<sup>9</sup> However, it was noted that many mortgage company owners, including owners of legitimate companies, have very little net worth. The Subcommittee agreed that alternatives to net worth (such as cash deposits, bonds, or letters of credit) should be allowed. In addition, some of these owners may not be able to meet the net worth requirement on short notice. Therefore, the Subcommittee agreed to provide a phased-in net worth requirement for mortgage companies that do not handle trust account funds. All other mortgage companies would be required to meet the requirement effective October 1, 1999. The Subcommittee also felt that a person who is subject to the provisions of Chapter 627 of NRS as a construction control company, Chapter 645A of NRS as an escrow agency, or Chapter 692A of NRS as a title agent or a title insurer, should file a bond of not less than \$250,000. The following recommendations reflect the Subcommittee's will:

12. Amend Chapter 645B of NRS to revise the requirements for a mortgage company license to include the following provisions **(BDR 54-1204)**:

- a. A mortgage company that does not handle trust account funds must demonstrate a minimum net worth according to the following schedule:

As of October 1, 1999, \$25,000;  
As of October 1, 2000, \$50,000;  
As of October 1, 2001, \$75,000; and  
On or after October 1, 2002, \$100,000.

If a mortgage company handles trust account funds, the mortgage company must demonstrate a minimum net worth of \$250,000.

In lieu of meeting a net worth requirement, a mortgage company may provide the Division of Financial Institutions with a cash deposit, a bond, or an irrevocable letter of credit in the required amount. This net worth requirement applies to an application for a new license or a renewal of an existing license;

- b. Amend Chapter 645B of NRS to provide that, for each loan, a mortgage company shall not release any amount of money to a borrower or his designee unless the amount of money released is equal to the total amount of money that is being loaned to the borrower for such loan less any amount of money due to the mortgage company for the payment of any fee or service charge;

---

<sup>9</sup> Net worth is an accounting concept that reflects the difference between total assets and total liabilities.

c. Amend NRS to provide that:

- (1) A person may not be licensed as or, if exempt from licensing, may not conduct business as a construction control company, an escrow agency, a mortgage company, a title agent, or a title insurer if the person, the person's spouse, or any other person related to him within the second degree by blood or marriage owns or controls a majority of the voting stock or a controlling interest, directly or indirectly, in:
  - (a) A construction control company, an escrow agency, a mortgage company, a title agent, or a title insurer; or
  - (b) Any company that owns or controls a majority of the voting stock or a controlling interest, directly or indirectly, in a construction control company, an escrow agency, a mortgage company, a title agent, or a title insurer.
- (2) The provisions of this section do not prohibit a person, the person's spouse, or any other person related to him within the second degree by blood or marriage from being licensed as, conducting business as, or owning or controlling the same construction control company, escrow agency, or mortgage company, title agent, or title insurer, so long as such joint licensing, operation, ownership, or control extends to only one of these types of businesses; and

d. Amend Chapter 645B of NRS to expand the application process for a mortgage company license to include a basic business plan, a company policy and procedure manual, a collection policy, loan servicing procedures and restrictions, and underwriting standards.

13. Amend NRS to provide that a person who is subject to the provisions of Chapter 627 of NRS as a construction control company, Chapter 645A of NRS as an escrow agency, or Chapter 692A of NRS as a title agent or a title insurer, must file a bond of not less than \$250,000. **(BDR 54-1204)**

Testimony indicated that, in some cases, mortgage companies charge a late fee, an additional amount of interest, or some other penalty if the payment is not made by a certain time on the day that the payment is due. These additional fees are sometimes charged even if the payment is made prior to the close of business on the day the payment is due. The Subcommittee felt that a late fee should not be charged as long as the payment is personally delivered to the mortgage company before 5 p.m. on the day that the payment is due. The Subcommittee also decided that if no offices of the mortgage company are open to customers on the day that the payment is due, the mortgage company shall not charge a late fee if the payment is personally delivered to the mortgage company before 5 p.m. on the next business day. Accordingly, the Subcommittee approved the following recommendation:

14. Amend Chapter 645B of NRS to provide that **(BDR 54-1204)**:

- a. A mortgage company shall not charge a person a late fee, an additional amount of interest, or any other penalty if the payment is personally delivered to the mortgage company before 5 p.m. on the day that the payment is due;
- b. If no offices of the mortgage company are open to customers on the day that the payment is due, the mortgage company shall not charge a person a late fee, an additional amount of interest, or any other penalty if the payment is personally delivered to the mortgage company before 5 p.m. on the next day that an office of the mortgage company is open to customers;
- c. A mortgage company or a person may not agree to alter the foregoing provisions by contract or other agreement, unless the contract or other agreement:
  - (1) Is executed before the effective date of the bill;
  - (2) Is in writing; and
  - (3) Includes a provision that expressly establishes a specific time of day before which a person must deliver a payment to the mortgage company to avoid a late fee, an additional amount of interest, or any other penalty.

### **Staffing of Regulatory Agencies**

The Subcommittee received a substantial amount of testimony from investors and representatives of the mortgage investment industry which suggested that the Division of Financial Institutions does not have adequate resources to vigorously investigate and enforce the mortgage company laws and regulations of this state. In addition, several of the recommendations approved by the Subcommittee will place additional responsibilities on the Office of the Secretary of State, the Office of the Attorney General, and the Division of Financial Institutions. For example, the Secretary of State testified that additional duties would accrue to his office as a result of implementing his proposal (Recommendation No. 1), but that they would not be very costly. He suggested that two new positions within the Securities Division might be required to handle the additional responsibilities that would result from eliminating the exemption from registration requirements for certain mortgage companies.

The recommendation to provide the Office of the Attorney General with primary criminal jurisdiction to enforce violations of provisions of Chapter 645B of NRS (Recommendation No. 2) will impose additional duties on the Office of the Attorney General. The Office of the Attorney General estimated that the fiscal impact of this recommendation for the next biennium would be \$335,379 (see Appendix C). This estimate does not include consideration of any additional resources that might be required by the Division of Financial Institutions.

The members of the Subcommittee acknowledged that regulatory agencies generally were not in a position to develop fiscal notes during the course of this study, and that fiscal notes will be required when these matters are brought before the 1999 Legislature. In addition, members are aware of the difficult funding decisions that will face the 1999 Legislature. Nevertheless, they were clear in expressing support for consideration of ways to enhance the ability of regulatory agencies to more effectively protect the public interest. The Subcommittee indicated its support for either (1) additional funding or (2) redirecting existing budgetary resources of the affected agencies by adopting the following recommendation:

15. Include in the Subcommittee's final report a statement in support of additional funding for regulatory agencies of the mortgage investment industry for the purpose of increasing enforcement staff.

#### **IV. CONCLUSION**

This report presents a summary of the deliberations of the Subcommittee for presentation to the 70th Session of the Nevada Legislature. The recommendations contained in this report are designed to provide more effective and more timely regulation of mortgage companies and to enhance the ability of the Office of the Attorney General to prosecute offenders and impose substantial penalties on persons who attempt to take advantage of Nevada's citizens who choose to invest in mortgages.

Members of the Subcommittee wish to thank all of the individuals and organizations who participated in the interim hearings. The Subcommittee's meetings were significantly enhanced by the assistance provided by all of the individuals who unselfishly contributed their time and expertise by providing both verbal and written testimony on this complex topic.



## V. APPENDICES

	<u>Page</u>
Appendix A	
Chapter 645B of <i>Nevada Revised Statutes</i> . . . . .	25
Appendix B	
Newspaper Articles Regarding Problems in the Mortgage Investment Industry . . .	49
Appendix C	
Letter dated December 11, 1998, to Assemblyman David Goldwater from Douglas E. Walther, Senior Deputy Attorney General, Commerce Section, Office of the Attorney General, Regarding “Fiscal Impact of Creating Primary Criminal Jurisdiction in Attorney General’s Office to Enforce the Mortgage Company Act” . . . . .	71
Appendix D	
Suggested Legislation . . . . .	75



## APPENDIX A

### Chapter 645B of *Nevada Revised Statutes*



**GENERAL PROVISIONS**

WEST PUBLISHING CO.  
Banks and Banking  $\Leftrightarrow$  310 to 317(6).

WESTLAW Topic No. 52.  
C.J.S. Banks and Banking §§ 1044 to 1073.

**NRS 645B.010 Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Commissioner" means the commissioner of financial institutions.
2. "Division" means the division of financial institutions of the department of business and industry.
3. "Depository financial institution" means a bank, savings and loan association, thrift company or credit union.
4. "Mortgage company" means any person who, directly or indirectly:

(a) Holds himself out for hire to serve as an agent for any person in an attempt to obtain a loan which will be secured by a lien on real property;

(b) Holds himself out for hire to serve as an agent for any person who has money to lend, if the loan is or will be secured by a lien on real property;

(c) Holds himself out as being able to make loans secured by liens on real property, unless the loans are made pursuant to subsection 8 or 10 of NRS 645B.015;

(d) Holds himself out as being able to buy or sell notes secured by liens on real property; or

(e) Offers for sale in this state any security which is exempt from registration under state or federal law and purports to make investments in promissory notes secured by liens on real property.

(Added to NRS by 1973, 1536; A 1975, 961; 1977, 1635; 1981, 1785; 1983, 1378, 1700; 1985, 2186; 1987, 498, 1876; 1989, 965; 1995, 1097)

#### NEVADA CASES.

**Mortgage broker dual agent of borrower and lender.** Where mortgage broker failed to give lenders payoffs from individual borrowers' loans, lenders foreclosed and borrowers sued for declaratory and injunctive relief. Court held that mortgage broker was dual agent of borrower and lender pursuant to NRS 645B.010, since principal may be bound by acts of its agent as to third par-

ties who have no reason to know of agent's improper conduct, even where agent acts for his own motives and without benefit to principal. Judgment in favor of borrowers was affirmed on appeal. *Young v. Nevada Title Co.*, 103 Nev. 436, 744 P.2d 902 (1987), cited, *Bubecker v. R.B. Petersen & Sons Constr. Co.*, 112 Nev. 1498, at 1501, 929 P.2d 937 (1996)

**NRS 645B.015 Applicability.** Except as otherwise provided in subsection 5 of NRS 645B.020, the provisions of this chapter do not apply to:

1. Any person doing business under the laws of this state, any other state or the United States relating to banks, savings banks, trust companies, savings and loan associations, consumer finance companies, industrial loan companies, credit unions, thrift companies or insurance companies, unless the business conducted in this state is not subject to supervision by the regulatory authority of the other jurisdiction, in which case licensing pursuant to this chapter is required.

2. A real estate investment trust, as defined in 26 U.S.C. § 856, unless the business conducted in this state is not subject to supervision by the regulatory authority of the other jurisdiction, in which case licensing pursuant to this chapter is required.

3. An employee benefit plan, as defined in 29 U.S.C. § 1002(3), if the loan is made directly from money in the plan by the plan's trustee.

4. An attorney at law rendering services in the performance of his duties as an attorney at law.

5. A real estate broker rendering services in the performance of his duties as a real estate broker.

6. Except as otherwise provided in this subsection, any firm or corporation:

(a) Whose principal purpose or activity is lending money on real property which is secured by a mortgage;

(b) Approved by the Federal National Mortgage Association as a seller and servicer; and

(c) Approved by the Department of Housing and Urban Development and the Department of Veterans Affairs.

A firm or corporation is not exempt from the provisions of this chapter pursuant to this subsection if it maintains any accounts described in subsection 1 of NRS 645B.175 or offers for sale in this state any unregistered security under state or federal law and purports to make investments in promissory notes secured by liens

on real property. A firm or corporation which is exempted pursuant to this subsection must submit annually as a condition of its continued exemption a certified statement by an independent certified public accountant that the firm or corporation does not maintain any such accounts. This subsection does not prohibit an exempt firm or corporation from maintaining accounts described in NRS 645B.170 and subsection 3 of NRS 645B.175.

7. Any person doing any act under an order of any court.

8. Any one natural person, or husband and wife, who provides money for investment in loans secured by a lien on real property, on his own account.

9. Agencies of the United States and of this state and its political subdivisions, including the public employees' retirement system.

10. A seller of real property who offers credit secured by a mortgage of the property sold.

(Added to NRS by 1973, 1542; A 1975, 962; 1977, 618; 1981, 1791; 1983, 1314, 1381; 1985, 2190; 1987, 499; 1989, 966, 1762; 1993, 494; 1995, 1098)

## LICENSES

WEST PUBLISHING CO.  
Licenses ⇌ 21 to 25.

WESTLAW Topic No. 238.  
C.J.S. Licenses §§ 37 to 46.

**NRS 645B.020 Application; issuance; effect; certificate of exemption.**  
[Effective until the date of the repeal of the federal law requiring each state to establish procedures for withholding, suspending and restricting the professional, occupational and recreational licenses for child support arrearages and for noncompliance with certain processes relating to paternity or child support proceedings.]

1. A license as a mortgage company may be obtained by filing a written application in the office of the commissioner.

2. The application must:

(a) Be verified.

(b) State the location of the applicant's principal office and branch offices in the state.

(c) State the name under which the applicant will conduct business.

(d) List the names, residence and business addresses of all persons having an interest in the business as principals, partners, officers, trustees and directors, specifying the capacity and title of each.

(e) If the applicant is a natural person, include the social security number of the applicant.

(f) Indicate the general plan and character of the business.

(g) State the length of time the applicant has been engaged in the mortgage company business.

(h) Include a financial statement of the applicant.

(i) Include such other information as the commissioner determines necessary.

3. The commissioner shall issue a license to an applicant as a mortgage company if:

(a) The application complies with the requirements of subsection 2;

(b) The applicant submits the statement required pursuant to NRS 645B.023, if the applicant is required to do so; and

(c) The applicant and each general partner, officer or director of the applicant, if the applicant is a partnership, corporation or unincorporated association:

(1) Has a good reputation for honesty, trustworthiness, integrity and displays competence to transact the business of a mortgage company in a manner which safeguards the interests of the general public. The applicant must submit satisfactory proof of these qualifications to the commissioner.

(2) Has not been convicted of, or entered a plea of nolo contendere to, a felony or any crime involving fraud, misrepresentation or moral turpitude.

(3) Has not made a false statement of material fact on his application.

(4) Has not had a license that was issued pursuant to the provisions of this chapter suspended or revoked within the 10 years immediately preceding the date of his application.

(5) Has not had a license that was issued in any other state, district or territory of the United States or any foreign country suspended or revoked within the 10 years immediately preceding the date of his application.

(6) Has not violated any of the provisions of this chapter or any regulation adopted pursuant thereto.

4. A license entitles the holder to engage only in the activities authorized by this chapter.

5. A person who claims an exemption from the provisions of this chapter must apply to the commissioner for a certificate of exemption and pay the fee for application.

(Added to NRS by 1973, 1536; A 1981, 1786; 1983, 1701; 1985, 2186; 1987, 1877; 1989, 1763; 1993, 495; 1997, 2171)

#### REVISER'S NOTE.

Ch. 483, Stats. 1997, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of sections 1 to 4, inclusive, and 6 to 516, inclusive, of this act expire by limitation on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

1. Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

2. Are in arrears in the payment for the support of one or more children, are repealed by the Congress of the United States."

#### ADMINISTRATIVE REGULATIONS.

Material to accompany application, NAC 645B.020

Submission of fingerprints with applications, NAC 657.010

**NRS 645B.020 Application; issuance; effect; certificate of exemption.**  
[Effective on the date of the repeal of the federal law requiring each state to establish procedures for withholding, suspending and restricting the professional, occupational and recreational licenses for child support arrearages and for noncompliance with certain processes relating to paternity or child support proceedings.]

1. A license as a mortgage company may be obtained by filing a written application in the office of the commissioner.

2. The application must:

(a) Be verified.

(b) State the location of the applicant's principal office and branch offices in the state.

(c) State the name under which the applicant will conduct business.

(d) List the names, residence and business addresses of all persons having an interest in the business as principals, partners, officers, trustees and directors, specifying the capacity and title of each.

(e) Indicate the general plan and character of the business.

(f) State the length of time the applicant has been engaged in the mortgage company business.

(g) Include a financial statement of the applicant.

(h) Include such other information as the commissioner determines necessary.

3. The commissioner shall issue a license to an applicant as a mortgage company if the application complies with the requirements of subsection 2, and the applicant and each general partner, officer or director of the applicant if the applicant is a partnership, corporation or unincorporated association:

(a) Has a good reputation for honesty, trustworthiness, integrity and displays competence to transact the business of a mortgage company in a manner which safeguards the interests of the general public. The applicant must submit satisfactory proof of these qualifications to the commissioner.

(b) Has not been convicted of, or entered a plea of nolo contendere to, a felony or any crime involving fraud, misrepresentation or moral turpitude.

(c) Has not made a false statement of material fact on his application.

(d) Has not had a license that was issued pursuant to the provisions of this chapter suspended or revoked within the 10 years immediately preceding the date of his application.

(e) Has not had a license that was issued in any other state, district or territory of the United States or any foreign country suspended or revoked within the 10 years immediately preceding the date of his application.

(f) Has not violated any of the provisions of this chapter or any regulation adopted pursuant thereto.

4. A license entitles the holder to engage only in the activities authorized by this chapter.

5. A person who claims an exemption from the provisions of this chapter must apply to the commissioner for a certificate of exemption and pay the fee for application.

(Added to NRS by 1973, 1536; A 1981, 1786; 1983, 1701; 1985, 2186; 1987, 1877; 1989, 1763; 1993, 495; 1997, 2171, effective on the date of the repeal of the federal law requiring each state to establish procedures for withholding, suspending and restricting the professional, occupational and recreational licenses for child support arrearages and for noncompliance with certain processes relating to paternity or child support proceedings)

**NRS 645B.023 Payment of child support: Statement by applicant for license; grounds for denial of license; duty of commissioner. [Expires by limitation on the date of the repeal of the federal law requiring each state to establish procedures for withholding, suspending and restricting the professional, occupational and recreational licenses for child support arrearages and for noncompliance with certain processes relating to paternity or child support proceedings.]**

1. A natural person who applies for the issuance or renewal of a license as a mortgage company shall submit to the commissioner the statement prescribed by the welfare division of the department of human resources pursuant to NRS 425.520. The statement must be completed and signed by the applicant.

2. The commissioner shall include the statement required pursuant to subsection 1 in:

(a) The application or any other forms that must be submitted for the issuance or renewal of the license; or

(b) A separate form prescribed by the commissioner.

3. A license as a mortgage company may not be issued or renewed by the commissioner if the applicant is a natural person who:

(a) Fails to submit the statement required pursuant to subsection 1; or

(b) Indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

4. If an applicant indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the commissioner shall advise the applicant to contact the district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.

(Added to NRS by 1997, 2170)

**REVISER'S NOTE.**

Ch. 483, Stats. 1997, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of sections 1 to 4, inclusive, and 6 to 516, inclusive, of this act expire by limitation on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict

the use of professional, occupational and recreational licenses of persons who:

1. Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

2. Are in arrears in the payment for the support of one or more children, are repealed by the Congress of the United States."

**NRS 645B.025 Posting of license; transfer or assignment prohibited without written approval of commissioner.**

1. A licensee shall post each license in a conspicuous place in the office to which it pertains.

2. A license may not be transferred or assigned unless the commissioner gives his written approval.

(Added to NRS by 1983, 1376; A 1983, 1843; 1987, 1877)

**NRS 645B.050 Expiration and renewal of license; financial statement required; audits; expiration, renewal, cancellation and reinstatement of certificate of exemption; filing fees.** [Effective until the date of the repeal of the federal law requiring each state to establish procedures for withholding, suspending and restricting the professional, occupational and recreational licenses for child support arrearages and for noncompliance with certain processes relating to paternity or child support proceedings.]

1. A mortgage company's license expires June 30 next after the date of issuance if it is not renewed. A license may be renewed by filing an application for renewal, paying the annual fee for a license for the succeeding year and, if the licensee is a natural person, submitting the statement required pursuant to NRS 645B.023. The application, statement and payment must be received by the commissioner on or before June 30 next preceding the expiration date. If the application, statement, if required, or payment is not received by June 30, the license is canceled. The commissioner may reinstate the license if the licensee files an application, submits the statement, if required, pays the filing fee and pays a reinstatement fee of \$200.

2. The commissioner shall require a licensee to deliver a financial statement prepared from his books and records by an independent public accountant who

holds a permit to engage in the practice of public accounting in this state which has not been revoked or suspended. The financial statement must be dated not earlier than the close of the latest fiscal year of the company and must be submitted within 60 days thereafter. The commissioner may grant a reasonable extension for the submission of the financial statement if requested before the statement is due.

3. If a licensee maintains any accounts described in subsection 1 of NRS 645B.175, the financial statement submitted pursuant to this section must be audited. If the licensee maintains any accounts described in subsection 3 of NRS 645B.175, those accounts must be audited. The public accountant who prepares the report of an audit shall submit a copy of the report to the commissioner at the same time as he submits the report to the company. The commissioner shall, by regulation, prescribe the scope of audits conducted pursuant to this subsection.

4. A certificate of exemption issued pursuant to subsection 5 of NRS 645B.020 expires December 31 next after the date of issuance if it is not renewed. A certificate of exemption may be renewed by filing an application for renewal and paying the annual fee for renewal of a certificate of exemption for the succeeding year. The application and payment must be received by the commissioner on or before December 31 next preceding the expiration date. If the application or payment is not received by December 31, the certificate of exemption is canceled. The commissioner may reinstate the certificate if the applicant pays the filing fee and a reinstatement fee of \$100.

5. The filing fees are:

(a) For filing an original application, \$1,500 for the principal office and \$40 for each branch office. The applicant shall also pay such additional expenses incurred in the process of investigation as the commissioner deems necessary. All money received by the commissioner pursuant to this paragraph must be placed in the investigative account created by NRS 232.545.

(b) If the license is approved for issuance, \$1,000 for the principal office and \$60 for each branch office before issuance.

(c) For filing an application for renewal, \$500 for the principal office and \$100 for each branch office.

(d) For filing an application for a certificate of exemption, \$200.

(e) For filing an application for renewal of a certificate of exemption, \$100.

(f) For filing an application for a duplicate copy of any license, upon satisfactory showing of its loss, \$10.

6. Except as otherwise provided in this chapter, all fees received pursuant to this chapter must be deposited in the state treasury for credit to the state general fund.

(Added to NRS by 1973, 1538; A 1975, 814; 1977, 1636; 1979, 120, 1094; 1981, 1788; 1983, 1320, 1379, 1702; 1985, 2187; 1987, 86, 1878; 1989, 1764; 1991, 177, 1803, 1825; 1993, 496; 1997, 2172)

#### REVISER'S NOTE.

Ch. 483, Stats. 1997, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of sections 1 to 4, inclusive, and 6 to 516, inclusive, of this act expire by limitation on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

1. Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

2. Are in arrears in the payment for the support of one or more children, are repealed by the Congress of the United States."

#### ADMINISTRATIVE REGULATIONS.

Statements and records, NAC 645B.150-645B.170

NRS 645B.050 Expiration and renewal of license; financial statement required; audits; expiration, renewal, cancellation and reinstatement of certificate of exemption; filing fees. [Effective on the date of the repeal of the federal law requiring each state to establish procedures for withholding, suspending and restricting the professional, occupational and recreational licenses for child support arrearages and for noncompliance with certain processes relating to paternity or child support proceedings.]

1. A mortgage company's license expires June 30 next after the date of issuance if it is not renewed. A license may be renewed by filing an application for renewal and paying the annual fee for a license for the succeeding year. The application and payment must be received by the commissioner on or before June 30 next preceding the expiration date. If the application or payment is not received by June 30, the license is canceled. The commissioner may reinstate the license if the licensee pays the filing fee and a reinstatement fee of \$200.

2. The commissioner shall require a licensee to deliver a financial statement prepared from his books and records by an independent public accountant who holds a permit to engage in the practice of public accounting in this state which has not been revoked or suspended. The financial statement must be dated not earlier than the close of the latest fiscal year of the company and must be submitted within 60 days thereafter. The commissioner may grant a reasonable extension for the submission of the financial statement if requested before the statement is due.

3. If a licensee maintains any accounts described in subsection 1 of NRS 645B.175, the financial statement submitted pursuant to this section must be audited. If the licensee maintains any accounts described in subsection 3 of NRS 645B.175, those accounts must be audited. The public accountant who prepares the report of an audit shall submit a copy of the report to the commissioner at the same time as he submits the report to the company. The commissioner shall by regulation prescribe the scope of audits conducted pursuant to this subsection.

4. A certificate of exemption issued pursuant to subsection 5 of NRS 645B.020 expires December 31 next after the date of issuance if it is not renewed. A certificate of exemption may be renewed by filing an application for renewal and paying the annual fee for renewal of a certificate of exemption for the succeeding year. The application and payment must be received by the commissioner on or before December 31 next preceding the expiration date. If the application or payment is not received by December 31, the certificate of exemption is canceled. The commissioner may reinstate the certificate if the applicant pays the filing fee and a reinstatement fee of \$100.

5. The filing fees are:

(a) For filing an original application, \$1,500 for the principal office and \$40 for each branch office. The applicant shall also pay such additional expenses incurred in the process of investigation as the commissioner deems necessary. All money received by the commissioner pursuant to this paragraph must be placed in the investigative account created by NRS 232.545.

(b) If the license is approved for issuance, \$1,000 for the principal office and \$60 for each branch office before issuance.

(c) For filing an application for renewal, \$500 for the principal office and \$100 for each branch office.

(d) For filing an application for a certificate of exemption, \$200.

(e) For filing an application for renewal of a certificate of exemption, \$100.

(f) For filing an application for a duplicate copy of any license, upon satisfactory showing of its loss, \$10.

6. Except as otherwise provided in this chapter, all fees received pursuant to this chapter must be deposited in the state treasury for credit to the state general fund.

(Added to NRS by 1973, 1538; A 1975, 814; 1977, 1636; 1979, 120, 1094; 1981, 1788; 1983, 1320, 1379, 1702; 1985, 2187; 1987, 86, 1878; 1989, 1764; 1991, 177, 1803, 1825; 1993, 496; 1997, 2172, effective on the date of the repeal of the federal law requiring each state to establish procedures for withholding, suspending and restricting the professional, occupational and recreational licenses for child support arrearages and for noncompliance with certain processes relating to paternity or child support proceedings)

### SUPERVISION; DISCIPLINARY ACTION

#### NRS 645B.060 Duties of commissioner.

1. Subject to the administrative control of the director of the department of business and industry, the commissioner shall exercise general supervision and control over mortgage companies doing business in this state.

2. In addition to the other duties imposed upon him by law, the commissioner shall:

(a) Adopt reasonable regulations as may be necessary for making effective this chapter, except as to loan brokerage fees.

(b) Conduct such investigations as may be necessary to determine whether any person has violated any provision of this chapter.

(c) Conduct an annual examination of each mortgage company doing business in this state.

(d) Conduct such other examinations, periodic or special audits, investigations and hearings as may be necessary and proper for the efficient administration of the laws of this state regarding mortgage companies.

(e) Classify as confidential certain records and information obtained by the division when those matters are obtained from a governmental agency upon the express condition that they remain confidential. This paragraph does not limit examination by the legislative auditor.

(f) Conduct such examinations and investigations as are necessary to ensure that mortgage companies meet the requirements of this chapter for obtaining a license, both at the time of the application for a license and thereafter on a continuing basis.

3. For each special audit, investigation or examination a mortgage company shall pay a fee based on the rate established pursuant to NRS 658.101.

(Added to NRS by 1973, 1538; A 1973, 1669; 1981, 1789; 1983, 1380, 1703; 1987, 1878, 2224; 1993, 497, 1893; 1995, 526; 1995, 526)

#### ADMINISTRATIVE REGULATIONS.

Mortgage companies, NAC ch. 645B

#### NEVADA CASES.

Commissioner's functions are discretionary. Appellant's contention that state, upon being informed that mortgage company was falsely and fraudulently representing itself as solvent, had duty pursuant to NRS 645B.060 to investigate and ensure that mortgage company operated only if

eligible for licensing pursuant to NRS 645B.100 was rejected because although use of word "shall" in subsection 2 of NRS 645B.060 indicates mandatory requirement that regulatory program be implemented, commissioner retains considerable discretion in administration of program. Scott v. Dep't of Commerce, 104 Nev. 580, 763 P.2d 341 (1988)

**NRS 645B.070 Powers of commissioner: Subpoena; oaths; examination of witnesses; penalty.**

1. In the conduct of any examination, periodic or special audit, investigation or hearing, the commissioner may:

(a) Compel the attendance of any person by subpoena.

(b) Administer oaths.

(c) Examine any person under oath concerning the business and conduct of affairs of any person subject to the provisions of this chapter and in connection therewith require the production of any books, records or papers relevant to the inquiry.

2. Every person subpoenaed under the provisions of this section who willfully refuses or willfully neglects to appear at the time and place named in the subpoena or to produce books, records or papers required by the commissioner, or who refuses to be sworn or answer as a witness, is guilty of a misdemeanor.

3. The cost of any examination, periodic or special audit, investigation or hearing conducted under this chapter may be assessed to and collected from the mortgage company in question by the commissioner.

(Added to NRS by 1973, 1538; A 1981, 1789; 1983, 1703; 1987, 1879)

**NRS 645B.080 Records of financial condition; monthly report of company's activity; regulations concerning trust accounts.**

1. All mortgage companies shall keep and maintain at all times in their places of business in this state complete and suitable records of all mortgage transactions made by them at that location, together with all original books, papers and data, or copies thereof, clearly reflecting the financial condition of the business of such companies.

2. Each mortgage company shall submit to the commissioner each month a report of the company's activity for the previous month. The report must:

(a) Specify the volume of loans arranged by the company for the month or state that no loans were arranged in that month;

(b) Include such other information as the commissioner by regulation requires; and

(c) Be submitted to the commissioner by the 15th day of the month following the month for which the report is made.

3. The commissioner may adopt regulations prescribing accounting procedures for mortgage companies handling trust accounts and the requirements for keeping records relating thereto.

(Added to NRS by 1973, 1538; A 1981, 1789; 1985, 2187; 1987, 1879; 1989, 1765; 1995, 136)

#### **ADMINISTRATIVE REGULATIONS.**

Reports, NAC 645B.070

Statements and records, NAC 645B.150-645B.170

**NRS 645B.090 Information open to public inspection; exception.** Except as otherwise provided by law, all papers, documents, reports and other written instruments filed with the commissioner under this chapter are open to public inspection, except that the commissioner may withhold from public inspection for such time as he considers necessary any information which in his judgment the public welfare or the welfare of any mortgage company requires to be so withheld.

(Added to NRS by 1973, 1543; A 1983, 1704; 1987, 1880)

**NRS 645B.095 Notification of transfer of voting stock; approval of change of control of mortgage company; application; investigation; waiver.**

1. As used in this section, "change of control" means:
  - (a) A transfer of voting stock which results in giving a person, directly or indirectly, the power to direct the management and policy of a mortgage company; or
  - (b) A transfer of at least 25 percent of the outstanding voting stock of a mortgage company.

2. The commissioner must be notified of a transfer of 5 percent or more of the outstanding voting stock of a mortgage company and must approve a transfer of voting stock of a mortgage company which constitutes a change of control.

3. The person who acquires stock resulting in a change of control of the mortgage company shall apply to the commissioner for approval of the transfer. The application must contain information which shows that the requirements of this chapter for obtaining a license will be satisfied after the change of control. Except as provided in subsection 4, the commissioner shall conduct an investigation to determine whether those requirements will be satisfied. If, after the investigation, the commissioner denies the application, he may forbid the applicant from participating in the business of the mortgage company.

4. A mortgage company may submit a written request to the commissioner to waive an investigation pursuant to subsection 3. The commissioner may grant a waiver if the applicant has undergone a similar investigation by a state or federal agency in connection with the licensing of or his employment with a financial institution.

(Added to NRS by 1983, 1376; A 1983, 1843; 1985, 1344; 1987, 1880)

**ADMINISTRATIVE REGULATIONS.**  
Change in ownership, NAC 645B.040

Submission of fingerprints with applications,  
NAC 657.010

**NRS 645B.100 Authorized disciplinary action; grounds.**

1. The commissioner may require a licensee to pay an administrative fine of not more than \$500 for each violation he commits or suspend, revoke or place conditions upon his license, or do both, at any time if the licensee, whether or not acting as such:

- (a) Is insolvent;
- (b) Is grossly negligent or incompetent in performing any act for which he is required to be licensed pursuant to the provisions of this chapter;
- (c) Does not conduct his business in accordance with law or has violated any provisions of this chapter;
- (d) Is in such financial condition that he cannot continue in business with safety to his customers;
- (e) Has made a material misrepresentation in connection with any transaction governed by this chapter;
- (f) Has suppressed or withheld from a client any material facts, data or other information relating to any transaction governed by the provisions of this chapter which he knew, or by the exercise of reasonable diligence, should have known;
- (g) Has knowingly made or caused to be made to the commissioner any false representation of material fact or has suppressed or withheld from the commissioner any information which the applicant or licensee possesses, and which if submitted by him would have rendered the applicant or licensee ineligible to be licensed pursuant to the provisions of this chapter;
- (h) Has failed to account to persons interested for all money received for the impound trust account;

(i) Has refused to permit an examination by the commissioner of his books and affairs or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the commissioner pursuant to the provisions of this chapter;

(j) Has been convicted of, or entered a plea of nolo contendere to, a felony or any crime involving fraud, misrepresentation or moral turpitude;

(k) Has refused or failed to pay, within a reasonable time, those expenses assessed to the mortgage company pursuant to NRS 645B.050 or 645B.070;

(l) Has failed to satisfy a claim made by a client which has been reduced to judgment;

(m) Has failed to account for or to remit any money of a client within a reasonable time after a request for an accounting or remittal;

(n) Has commingled the money or other property of a client with his own or has converted the money or property of others to his own use;

(o) Has engaged in any other conduct constituting a deceitful, fraudulent or dishonest business practice; or

(p) Has not conducted verifiable business as a mortgage company for 12 consecutive months, except in the case of a new applicant. The commissioner shall determine whether a company is conducting business by examining the monthly reports of activity submitted by the licensee or by conducting an examination of the licensee.

2. It is sufficient cause for refusal or revocation of a license in the case of a partnership or corporation or any unincorporated association that any member of the partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be cause for refusing or revoking the registration of a natural person.

(Added to NRS by 1973, 1539; A 1977, 93; 1981, 1790; 1983, 1380, 1704; 1985, 2188; 1987, 1880; 1993, 498)

#### NEVADA CASES.

Only party to loan with mortgage company may be informed as to nature of terms and conditions of agreement. NRS 645B.100, which requires mortgage companies to refrain from misrepresenting or concealing material facts from any person in course of its business, imposed no duty upon mortgage company to inform owner of real property being sold of terms and conditions of agreement for secondary financing entered into by mortgage company and purchaser of property because owner was not party to that loan and was not, therefore, person in course of mortgage company's business. *Morris v. Imperial Mortgage Co.*, 101 Nev. 266, 701 P.2d 741 (1985)

Commissioner's functions are discretionary. Appellant's contention that state, upon being informed that mortgage company was falsely and fraudulently representing itself as solvent, had duty pursuant to NRS 645B.060 to investigate and ensure that mortgage company operated only if eligible for licensing pursuant to NRS 645B.100 was rejected because although use of word "shall" in subsection 2 of NRS 645B.060 indicates mandatory requirement that regulatory program be implemented, commissioner retains considerable discretion in administration of program. *Scott v. Dep't of Commerce*, 104 Nev. 580, 763 P.2d 341 (1988)

**NRS 645B.105** Suspension of license for failure to pay child support or comply with certain subpoenas or warrants; reinstatement of license. [Expires by limitation on the date of the repeal of the federal law requiring each state to establish procedures for withholding, suspending and restricting the professional, occupational and recreational licenses for child support arrearages and for noncompliance with certain processes relating to paternity or child support proceedings.]

1. If the commissioner receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional, occupational and recreational licenses, certificates and permits issued to a person who is the holder

of a license as a mortgage company, the commissioner shall deem the license issued to that person to be suspended at the end of the 30th day after the date on which the court order was issued unless the commissioner receives a letter issued to the holder of the license by the district attorney or other public agency pursuant to NRS 425.550 stating that the holder of the license has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

2. The commissioner shall reinstate a license as a mortgage company that has been suspended by a district court pursuant to NRS 425.540 if the commissioner receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose license was suspended stating that the person whose license was suspended has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

(Added to NRS by 1997, 2171)

**REVISER'S NOTE.**

Ch. 483, Stats. 1997, the source of this section, contains the following provision not included in NRS:

"The amendatory provisions of sections 1 to 4, inclusive, and 6 to 516, inclusive, of this act expire by limitation on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict

the use of professional, occupational and recreational licenses of persons who:

1. Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

2. Are in arrears in the payment for the support of one or more children, are repealed by the Congress of the United States."

**NRS 645B.110 Refusal or suspension of license: Notice; hearing.**

1. Notice of the entry of any order of suspension or of refusing a license to any mortgage company must be given in writing, served personally or sent by certified mail or by telegraph to the company affected.

2. The company, upon application, is entitled to a hearing; but if no such application is made within 20 days after the entry of an order of suspension or of refusing a license of any company, the commissioner shall enter a final order in either case.

(Added to NRS by 1973, 1539; A 1983, 1705; 1987, 1881)

The next page is 645B-19

**NRS 645B.120 Investigation by commissioner; powers of commissioner; injunctive relief; enforcement of subpoenas.**

1. The commissioner may investigate either upon complaint or otherwise when it appears that a mortgage company is conducting its business in an unsafe and injurious manner or in violation of this chapter or the regulations promulgated thereunder by the commissioner, or when it appears that any person is engaging in the mortgage company business without being licensed under the provisions of those sections.

2. If upon investigation it appears that such company is so conducting its business or an unlicensed person is engaged in the mortgage company business, the commissioner may:

(a) Advise the district attorney of the county in which the business is conducted, and the district attorney shall cause the appropriate legal action to be taken to enjoin the operation of the business or prosecute the violations of this chapter; and

(b) Bring suit in the name and on behalf of the State of Nevada against such person and any other person concerned in or in any way participating in or about to participate in such unsafe or injurious practices or action in violation of this chapter or regulations thereunder to enjoin any such person from continuing such practices or engaging therein or doing any such act.

3. If the commissioner brings suit, the district court of any county of this state is hereby vested with the jurisdiction in equity to restrain unsafe, injurious or illegal practices or transactions and may grant injunctions to prevent and restrain such practices or transactions. The court may, during the pendency of the proceedings before it, issue such temporary restraining orders as may appear to be just and proper; and the findings of the commissioner shall be deemed to be prima facie evidence and sufficient grounds, in the discretion of the court, for the issue ex parte of a temporary restraining order. In any such court proceedings the commissioner may apply for and on due showing is entitled to have issued the court's subpoena requiring forthwith the appearance of any defendant and his employees and the production of documents, books and records as may appear necessary for the hearing of the petition, to testify and give evidence concerning the acts or conduct or things complained of in the application for injunction.

(Added to NRS by 1973, 1540; A 1983, 1705; 1987, 1882)

**NRS 645B.130 Procedure for appeal of final orders.**

1. An appeal may be taken by any person interested from any final decision of the commissioner to the district court in the county in which the party adversely affected by the decision resides or has his place of business by serving upon the commissioner within 10 days after notice of the entry of the order a written notice of the appeal, stating the grounds upon which a reversal of the final order is sought and accompanied by a demand in writing for a certified transcript of the record and of all papers on file in the office of the commissioner affecting or relating to the decision, and all the evidence taken on the hearing, and paying not more than 25 cents for each folio of the transcript and \$1 for the certification thereof. The commissioner shall within 30 days make and certify the transcript.

2. The appellant shall, within 5 days after receiving the transcript, file with the clerk of the court:

(a) The transcript and the notice of appeal; and

(b) A petition for review of the commissioner's decision, setting forth in specific detail the grounds for the appeal, including any errors which the appellant contends were made by the commissioner at the administrative hearing.

3. An appeal from an order of the commissioner must be treated as a proceeding in equity. In the proceeding before the court, the appellant has the burden of proof.

4. Any order of the commissioner which finally limits or adversely determines the rights of any interested person is a final administrative decision as to that person.

(Added to NRS by 1973, 1540; A 1981, 1313; 1983, 1706; 1987, 1882)

**~~NRS 645B.140~~ Procedures following decision on appeal.**

1. If the order of the commissioner is reversed, the court shall by its mandate specifically direct the commissioner as to his further action in the matter including the making and entering of any order in connection therewith and the conditions, limitations or restrictions to be therein contained; but the commissioner is not thereby barred from thereafter revoking or altering the order for any proper cause which may thereafter accrue or be discovered.

2. If the order is affirmed, the appellant is not barred after 30 days from filing a new application if the application is not otherwise barred or limited.

3. The appeal does not suspend the operation of the order appealed from during the pendency of the appeal except upon proper order of the court.

4. An appeal may be taken from the judgment of the district court on the same terms and conditions as an appeal is taken in civil actions.

(Added to NRS by 1973, 1541; A 1983, 1706; 1987, 1883)

**NRS 645B.150 Powers of commissioner when company's affairs in unsafe condition.**

1. When the commissioner ascertains by examination or otherwise that the assets or capital of any mortgage company are impaired or that a mortgage company's affairs are in an unsafe condition which may result in danger to the public, he may immediately take possession of all the property, business and assets of the company which are located in this state and retain possession of them pending further proceedings provided for in this chapter.

2. If the board of directors or any officer or person in charge of the offices of the company refuses to permit the commissioner to take possession of its property, the commissioner shall communicate that fact to the attorney general. Thereupon the attorney general shall immediately institute such proceedings as may be necessary to place the commissioner in immediate possession of the property of the company. The commissioner thereupon shall make or have made an inventory of the assets and known liabilities of the company.

3. The commissioner shall file one copy of the inventory in his office and one copy in the office of the clerk of the district court of the county in which the principal office of the company is located and shall mail one copy to each stockholder, partner, officer or associate of the mortgage company at his last known address.

4. The clerk of the court with which the copy of the inventory is filed shall file it as any other case or proceeding pending in the court and shall give it a docket number.

(Added to NRS by 1973, 1541; A 1981, 1790; 1983, 1707; 1987, 1883)

**NRS 645B.160 Receivership.**

1. The officers, directors, partners, associates or stockholders of the mortgage company may, within 60 days from the date when the commissioner takes possession of the property, business and assets, make good any deficit which may exist or remedy the unsafe condition of its affairs.

2. At the expiration of such time, if the deficiency in assets or capital has not been made good or the unsafe condition remedied, the commissioner may apply to the court to be appointed receiver and proceed to liquidate the assets of the company which are located in this state in the same manner as now provided by law for liquidation of a private corporation in receivership.

3. No other person may be appointed receiver by any court without first giving the commissioner ample notice of his application.

4. The inventory made by the commissioner and all claims filed by creditors are open at all reasonable times for inspection and any action taken by the receiver upon any of the claims is subject to the approval of the court before which the cause is pending.

5. The expenses of the receiver and compensation of counsel, as well as all expenditures required in the liquidation proceedings, must be fixed by the commissioner subject to the approval of the court, and, upon certification of the commissioner, must be paid out of the money in his hands as the receiver.

(Added to NRS by 1973, 1542; A 1983, 1707; 1987, 1884)

### ESCROWS; IMPOUND TRUST ACCOUNTS

WEST PUBLISHING CO.

Deposits and Escrows ⇐ 11 to 13.

WESTLAW Topic No. 122A.

C.J.S. Depositaries §§ 2 to 8.

**NRS 645B.165 Advance payments: Placement in and release from escrow; estimated costs; penalties.**

1. The amount of any advance fee, salary, deposit or money paid to any mortgage company or other person to obtain a loan which will be secured by a lien on real property must be placed in escrow pending completion of the loan or a commitment for the loan.

2. The amount held in escrow must be released:

(a) Upon completion of the loan or commitment for the loan, to the mortgage company or other person to whom the advance fee, salary, deposit or money was paid.

(b) If the loan or commitment for the loan fails, to the person who made the payment.

3. Advance payments to cover reasonably estimated costs paid to third persons are excluded from the provisions of subsections 1 and 2 if the person making them first signs a written agreement which specifies the estimated costs by item and the estimated aggregate cost, and which recites that money advanced for costs will not be refunded. If an itemized service is not performed and the estimated cost thereof is not refunded, the recipient of the advance payment is subject to the penalties provided in subsection 4.

4. A person who violates the provisions of subsection 1:

(a) Is guilty of a misdemeanor if the amount is less than \$250;

(b) Is guilty of a gross misdemeanor if the amount is \$250 or more but less than \$1,000; or

(c) Is guilty of a category D felony if the amount is \$1,000 or more, and shall be punished as provided in NRS 193.130.

(Added to NRS by 1977, 618; A 1979, 1397; 1989, 1442; 1991, 178; 1995, 1313)

**NRS 645B.170 Money for payment of taxes or insurance premiums: Deposit in designated accounts required; duties concerning impound trust accounts.**

1. All money paid to the mortgage company for payment of taxes or insurance premiums on property which secures any loan made by the mortgage company must be deposited in a bank and kept separate, distinct and apart from money belonging to the mortgage company. Such money, when deposited, is to be designated as an "impound trust account" or under some other appropriate name indicating that the accounts are not the money of the mortgage company.

2. The mortgage company has a fiduciary duty to its debtors with respect to the money in its impound trust account.

3. The mortgage company shall, upon reasonable notice, account to any debtor whose property secures a loan made by the mortgage company for any money which that person has paid to the mortgage company for the payment of taxes or insurance premiums on the property in question.

4. The mortgage company shall, upon reasonable notice, account to the commissioner for all money in the company's impound trust account.

5. A mortgage company shall:

(a) Require contributions to an impound trust account in an amount reasonably necessary to pay the obligations as they become due.

(b) Within 30 days after the completion of its annual review of an impound trust account, notify the debtor:

(1) Of the amount by which the contributions exceed the amount reasonably necessary to pay the annual obligations due from the account; and

(2) That he may specify the disposition of the excess money within 20 days after receipt of the notice. If the debtor fails to specify such a disposition within that time, the mortgage company shall maintain the excess money in the account. This subsection does not prohibit a mortgage company from requiring additional amounts to be paid into an impound trust account to recover a deficiency that exists in the account.

6. A mortgage company shall not make payments from an impound trust account in a manner that causes a policy of insurance to be canceled or causes property taxes or similar payments to become delinquent.

(Added to NRS by 1973, 1543; A 1983, 1708; 1987, 1884; 1989, 1765)

WEST PUBLISHING CO.

Banks and Banking ⇐ 315(3).

WESTLAW Topic No. 52.

C.J.S. Banks and Banking § 1057.

**NRS 645B.175 Money used to acquire or repay loans: Placement in and release from escrow or separate account; accounting; limitations.**

1. All money received by a mortgage company from a person to acquire ownership of or a beneficial interest in a loan secured by a lien on real property, must:

(a) Be deposited in:

(1) An insured depository financial institution; or

(2) An escrow account which is controlled by a person who is independent of the parties and subject to instructions regarding the account which are approved by the parties.

(b) Be kept separate from money:

(1) Belonging to the mortgage company in an account appropriately named to indicate that the money does not belong to the mortgage company.

(2) Received pursuant to subsection 3.

2. The amount held in trust pursuant to subsection 1 must be released:

(a) Upon completion of the loan, including proper recordation of the respective interests or release, or upon completion of the transfer of the ownership or beneficial interest therein, to the debtor or his designee less that amount due the mortgage company for the payment of any fee or service charge;

(b) If the loan or the transfer thereof is not consummated, to the person who furnished the money held in trust; or

(c) Pursuant to any instructions regarding the escrow account.

3. All money paid to a mortgage company by a person in full or in partial payment of a loan secured by a lien on real property, must:

(a) Be deposited in:

(1) An insured depository financial institution; or

(2) An escrow account which is controlled by a person who is subject to instructions regarding the account which are approved by the parties.

(b) Be kept separate from money:

(1) Belonging to the mortgage company in an account appropriately named to indicate that it does not belong to the mortgage company.

(2) Received pursuant to subsection 1.

4. The amount held in trust pursuant to subsection 3 must be released, upon the deduction and payment of any fees or service charge due the mortgage company, to the owner of or the person having the beneficial interest in the note.

5. Upon reasonable notice, any mortgage company described in this section shall:

(a) Account to any debtor or creditor upon whose behalf money has been paid to the mortgage company and deposited in the trust accounts as set forth in this section; and

(b) Account to the commissioner for all money in the mortgage company's loan proceeds or loan payments trust account.

6. Money received by a mortgage company pursuant to this section from a person who is not associated with the company may be held in trust for no more than 45 days before an escrow account must be opened in connection with the loan. If, within this 45-day period, the loan or the transfer therefor is not consummated, the money must be returned within 24 hours. If the money is so returned, it may not be reinvested with the mortgage company for at least 15 days.

(Added to NRS by 1981, 1784; A 1983, 1708; 1985, 2189; 1987, 1885)

#### ADMINISTRATIVE REGULATIONS.

Statements and records, NAC 645B.150-645B.170

which are subject of completed construction loan. (See NRS 645B.175 and chs. 627 and 645A.) AGO 89-6 (5-15-89)

#### ATTORNEY GENERAL'S OPINIONS.

Mortgage company may not act as escrow agent or control funds which are subject of construction loan. Mortgage company may not act as escrow agent or otherwise control funds

Mortgage company may not act as debtor's designee to receive loan proceeds. Mortgage company may not act as debtor's designated recipient of loan proceeds pursuant to subsection 2(a) of NRS 645B.175. AGO 89-6 (5-15-1989)

#### NRS 645B.180 Exemption from execution or attachment; commingling prohibited.

1. Money in an impound trust account is not subject to execution or attachment on any claim against the mortgage company.

2. It is unlawful for any mortgage company knowingly to keep or cause to be kept any money in any bank under the heading of "impound trust account" or any other name designating such money as belonging to the debtors of the mortgage

company, except money paid to the mortgage company for the payment of taxes and insurance premiums on property securing loans made by the company, and money held in trust pursuant to NRS 645B.175.

(Added to NRS by 1973, 1543; A 1989, 1766)

### MISCELLANEOUS PROVISIONS

#### **NRS 645B.185 Acknowledgment by investor of certain facts.**

1. Before a person invests money through a mortgage company licensed pursuant to this chapter, he must sign a written statement received from the company, acknowledging that:

(a) The company has explained to him the nature and risks of investing through the company, including the possibility of default in payment, the fact that payments are not guaranteed, the resulting foreclosure and the losses that may result; and

(b) He is aware that the company is not a depository financial institution.

2. The investor must sign such a statement upon his initial investment only, and not before each subsequent investment.

3. The statement must be made on a form prescribed by the commissioner.

(Added to NRS by 1985, 2185; A 1987, 1886)

#### **NRS 645B.187 Payment of premium interest by mortgage company.**

1. If premium interest is paid by a mortgage company on money it receives from a person to acquire ownership of or a beneficial interest in a loan secured by a lien on real property or in full or partial payment of such a loan, that interest must be paid from the assets or income of the mortgage company and may not be guaranteed.

2. For the purposes of this section, "premium interest" means that amount of interest a mortgage company pays to a person which exceeds the amount which is being obtained from the insured depository financial institution.

(Added to NRS by 1985, 2185)

**NRS 645B.188 Payment of assessments; cooperation with audits and examinations.** Each mortgage company shall pay the assessment levied pursuant to NRS 658.055 and cooperate fully with the audits and examinations performed pursuant thereto.

(Added to NRS by 1987, 826)

**NRS 645B.189 Administrator's approval of advertisement required.** Each mortgage company shall submit any proposed advertisement it intends to use to the commissioner for approval. The commissioner shall, within 5 working days after receiving the advertisement, approve or disapprove its use and notify the company of that decision.

(Added to NRS by 1985, 2185; A 1987, 1886)

#### **ADMINISTRATIVE REGULATIONS.**

Advertisements, NAC 645B.110

**NRS 645B.191 Advance of defaulted payments prohibited; exceptions.** Except pursuant to a contract for the collection or servicing of a loan which is governed by the requirements established by the Government National Mortgage Association, Federal Home Loan Mortgage Corporation or Federal National

Mortgage Association, no mortgage company may advance payments to an investor on behalf of a person who has obtained a loan secured by a lien on real property and who has defaulted in his payments.

(Added to NRS by 1985, 2185; A 1989, 966)

**NRS 645B.193 Requirements for assignment of mortgage company's interest in mortgage.** A mortgage company shall not assign all or a part of its interest in a mortgage unless the company:

1. Obtains title insurance for the mortgaged property; and
2. Records the assignment in the office of the county recorder of the county in which the property is located.

(Added to NRS by 1985, 2185)

**NRS 645B.197 Exemption from provisions governing loans: Application; grounds; powers and duties of commissioner.**

1. A person may apply to the commissioner for an exemption from the provisions of this chapter governing the making of a loan of money.

2. The commissioner may grant the exemption if he finds that:

(a) The making of the loan would not be detrimental to the financial condition of the lender, borrower or person who is providing the money for the loan;

(b) The lender, borrower or person who is providing the money for the loan has established a record of sound performance, efficient management, financial responsibility and integrity;

(c) The making of the loan is likely to increase the availability of capital for a sector of the state economy; and

(d) The making of the loan is not detrimental to the public interest.

3. The commissioner:

(a) May revoke an exemption unless the loan for which the exemption was granted has been made; and

(b) Shall issue a written statement setting forth the reasons for his decision to grant, deny or revoke an exemption.

(Added to NRS by 1989, 965)

**NRS 645B.200 Statutory and common law rights unaffected.** This chapter does not limit any statutory or common law right of any person to bring an action in any court for any act involved in the transaction of the mortgage company business or the right of the state to punish any person for any violation of any law.

(Added to NRS by 1973, 1543)

### UNLAWFUL ACTS; PENALTIES

**NRS 645B.210 Unlawful to engage in business of mortgage company without license.** It is unlawful for any person to provide any of the services of a mortgage company, unless he is exempted under NRS 645B.015, to engage in or carry on, or hold himself out as engaging in or carrying on, the business of a mortgage company without first obtaining a license as a mortgage company.

(Added to NRS by 1973, 1536; A 1981, 1792)

**NRS 645B.220 Transactions by foreign corporations.** It is unlawful for any foreign corporation, association or business trust to transact any mortgage business in this state unless it:

1. Qualifies under chapter 80 of NRS; and
2. Complies with the provisions of this chapter unless exempted by NRS 645B.015.

(Added to NRS by 1973, 1542)

**NRS 645B.225 Penalties for violations relating to escrows or impound trust accounts.** A person who violates any provision of NRS 645B.170, 645B.175 or 645B.180:

1. Is guilty of a misdemeanor if the amount involved is less than \$250;
2. Is guilty of a gross misdemeanor if the amount involved is \$250 or more but less than \$1,000; or
3. Is guilty of a category D felony if the amount involved is \$1,000 or more, and shall be punished as provided in NRS 193.130.

(Added to NRS by 1981, 1785; A 1985, 2191; 1989, 1442; 1995, 1313)

**NRS 645B.230 Penalty for other violations of chapter.** Except as provided in NRS 645B.225, any person, or any director, officer, agent or employee of a person, who violates any of the provisions of this chapter is guilty of a misdemeanor.

(Added to NRS by 1973, 1543; A 1981, 1792)



## APPENDIX B

### Newspaper Articles Regarding Problems in the Mortgage Investment Industry





Wednesday, November 05, 1997

## State acts against brokerage

A financial agency moves to revoke the license of a former lawmaker's mortgage company.

By John G. Edwards  
Review-Journal

State officials on Tuesday started license revocation proceedings against a multi-million-dollar mortgage brokerage operated by former state legislative leader Harley L. *Harmon*.

The Nevada Financial Institutions Division said it will revoke the license of Harley L. *Harmon* Mortgage Co. if *Harmon* fails to contest allegations within 20 days.

The division also sought a District Court order restricting the way *Harmon* Mortgage conducts business, but the state didn't use its powers to take over *Harmon* Mortgage.

*Harmon*, speaker pro tem of the Nevada Assembly in 1977 and the Democratic majority leader in 1979, didn't return calls for comment Tuesday.

The state action follows a yearlong investigation into some 49 loans totaling \$22 million outstanding on November 1996 at Harley L. *Harmon* Mortgage, according to the state.

About 350 private investors, many of them unsophisticated retirees and individuals saving for retirement, were involved in the loans, said Burns Baker, deputy commissioner of financial institutions.

Records were voluminous, and the state narrowed its focus to four projects with \$9 million in loans, Baker said.

The ability of investors to recover their funds may be hindered, because many of the loans were for construction projects that weren't completed, Baker said.

The notice of revocation mentions loans to Canyon Development Inc. for single-family homes at Decatur Pointe. Others were made to Rosewood Patio Homes Inc., of which A.G. Robbins is president, and to the Briarwood Patio Homes partnership, of which Robbins was general partner.

News

Sports

Business

Lifestyles

Neon

Opinion

in-depth

Help/About

Search

Classifieds

Real Estate

TV

Weather

Columnists

Archive

Feedback

Headlines

Home

one city. one life.

Also funded was the Green Point mobile home project, in which *Harmon* was the general partner. Later, Green Point Inc. was formed with El Allen as president, but *Harmon* held 42.5 percent of the stock.

Many investors signed a power of attorney document, authorizing *Harmon* to act on their behalf, but *Harmon* Mortgage took action without investor consent in other instances, the state said. Some of the funds were used to pay off investors in other loans, the state alleged.

*Harmon* Mortgage also allowed "loan proceeds to be dissipated" for unauthorized purposes, the state contends. Records don't show investors consented to funds being diverted from one loan to unrelated loans.

*Harmon* Mortgage is the second mortgage investment arrangement firm to face allegations in Las Vegas this year. The state investigated Del Mar Mortgage after an anonymous letter writer alleged wrongdoing by the company. But investigators found no evidence to support the most serious allegations, L. Scott Walshaw, financial institutions commissioner, said earlier.

State banking officials dealt with a rash of problem mortgage brokerage firms in the late 1970s and early 1980s. The Legislature adopted some safeguards in 1985 but refused to require mortgage brokers to put investor money in independently controlled escrow accounts, Walshaw said.

"Unfortunately, if people are determined to do something, they're going to find a way to do it, regardless of what you put in the statutes," Walshaw said.

---

Give us your FEEDBACK on this or any story.

Fill out our Online Readers' Poll

[\[News\]](#) [\[Sports\]](#) [\[Business\]](#) [\[Lifestyles\]](#) [\[Neon\]](#) [\[Opinion\]](#) [\[in-depth\]](#)  
[\[Columnists\]](#) [\[Help/About\]](#) [\[Archive\]](#) [\[Community Link\]](#) [\[Current](#)  
[Edition\]](#)

[\[Classifieds\]](#) [\[Real Estate\]](#) [\[TV\]](#) [\[Weather\]](#)  
[\[EMAIL\]](#) [\[SEARCH\]](#) [\[HOME\]](#) [\[INDEX\]](#)

Brought to you by the Las Vegas-Review Journal. Nevada's largest daily newspaper.

Sunday, November 23, 1997

Online

## Investor, regulators disagree about mortgage investigation

By John G. Edwards  
Review-Journal

Dan Gray, a retired barber living in Henderson, believes he triggered the state's investigation that culminated in regulators' efforts to revoke the license of Harley L. *Harmon* Mortgage.

"If they had been doing their job, then their routine audits should have uncovered this," Gray said.

L. Scott Walshaw, the state banking commissioner, disagreed. His examiners "did uncover it before he started complaining," Walshaw said.

The Nevada Financial Institutions Division, which Walshaw runs, earlier this month started license revocation proceedings against the mortgage company and sought an injunction barring the mortgage brokerage from using allegedly risky and improper practices. The agency said it only had the resources to investigate some of the 49 loans totaling \$22 million that were outstanding in November 1996 at the mortgage company.

The state alleged that the mortgage company allowed investor loans "to be dissipated" for unauthorized purposes. In some cases, investors gave the company power of attorney to act for them but the firm acted without authorization in other cases. In some cases, investor funds were used to pay off investors in other loans, the state contended. The state alleged "gross negligence and incompetence."

David Rivers, an attorney for *Harmon* and his mortgage company, said the mortgage company was a prudent manager and could have done little more to safeguard investors' money except appoint a construction management team, which would have wiped out profits. "We thought we had accounted for every dime," Rivers said. "Harley's got a lot of loans out there. For the most part, the loans are paying just like they ought to be."

Rivers said the state made no claims that *Harmon* did anything unethical.

Gray wanted more. He argued the state

News

Sports

Business

Lifestyles

Neon

Opinion

in-depth

Help/About

Search

Classifieds

Real Estate

TV

Weather

Columnists

Archive

Feedback

Headlines

Home

Wire AP News  
& Info.

one city. one site.

should have closed the mortgage brokerage.

"I'm not going to be satisfied with the state doing any less than employing a receiver" for the mortgage company, Gray said. Otherwise, investors will never be able to track down and recover assets owed to them, he said.

"We have the ability under the statute to do that," Walshaw said. "But the attorney general's office did not think we had that kind of evidence to pursue that kind of a pre-emptive approach."

Gray worried that the brokerage could be shredding documents that could be used against it in a court or administrative hearings.

Replied Walshaw: "I think it's a little late now. We've already gotten the information that we need to base our charges on."

"If you don't proceed in the right way, you end up shooting yourself in the foot," Walshaw noted.

The banking commissioner expects opposition from *Harmon*. "He's not just going to throw us the keys and say, 'It's all yours.'"

Gray believes the division was reluctant to investigate the mortgage.

"If I had not instigated this and been persistent," Gray commented, "I don't think they would ever have pursued it." The allegedly questionable practices date from 1993 or earlier, Gray said.

"Everybody wants to be an armchair quarterback," Walshaw said. He said he is more concerned about complying with procedural requirements.

"We don't even know whether the revocation is going to be successful," Walshaw said.

"Usually if the revocation is successful, we're likely to ask the court to appoint a receiver."

Gray conceded that Walshaw's division appears to have done its homework.

"Apparently, the state has not been asleep all this time," Gray said. "They have been working.."

Gray said he called the financial institutions division to complain about the mortgage company in late 1996 and filed a written and signed complaint before the new year.

In January, he met with Las Vegas officials of the division and allowed them to copy many of the documents he uncovered in his research.

During the months that followed, Walshaw said his department subpoenaed "reams of information."

Gray conceded that he could have sued the *Harmon* brokerage as investors have in at least

two different cases. "I just simply can't afford the attorneys," Gray explained.

In one of the cases, attorneys have filed a 23-page motion for summary judgment against the mortgage brokerage, alleging breach of fiduciary duty to the investors and seeking an unspecified amount of punitive damages from the brokerage. Rivers said *Harmon* opposes the motion for summary judgment.

Rivers, *Harmon's* attorney, said his client hasn't decided whether to oppose the state's efforts to revoke his license but continues to operate the business.

---

Give us your FEEDBACK on this or any story.

Fill out our Online Readers' Poll

[\[News\]](#) [\[Sports\]](#) [\[Business\]](#) [\[Lifestyles\]](#) [\[Neon\]](#) [\[Opinion\]](#) [\[in-depth\]](#)  
[\[Columnists\]](#) [\[Help/About\]](#) [\[Archive\]](#) [\[Community Link\]](#) [\[Current](#)  
[Edition\]](#)

[\[Classifieds\]](#) [\[Real Estate\]](#) [\[TV\]](#) [\[Weather\]](#)  
[\[EMAIL\]](#) [\[SEARCH\]](#) [\[HOME\]](#) [\[INDEX\]](#)

Brought to you by the Las Vegas-Review Journal. Nevada's largest daily newspaper.



Sunday, January 11, 1998



## COLUMN: John L. Smith

In *Harmon* they trusted, in *Harmon* they lost millions

As the losses go, Loretta Eichelberger knows her \$30,000 is a pittance compared to some of the investments that have disappeared into the financial quagmire at Harley *Harmon* Mortgage.

Her money doesn't amount to a vast fortune, but it represents most of her life savings. Now, at 67, the retired state employee and 40-year Nevada resident says she must return to work to pay her bills and care for her disabled husband. Her dreams of financial security have vanished along with her investment.

Eichelberger is one of dozens of investors who count their combined losses in the millions in what threatens to be one of the biggest financial debacles in state history. The estimates are staggering: 350 investors may be out in excess of \$22 million with millions more unaccounted.

Canyon Development. Rosewood Patio Homes. Greenpoint. Briarwood Patio Homes, Heather Ridge, Breckenridge, Walker 10, Rainbow, Fifth and Washburn. As the list is read at a meeting of disgruntled investors, the crowd winces with each successive name.

Each person came to *Harmon* Mortgage to invest money in the acquisition of first-trust deeds on construction loans, which typically generate 15 percent interest. With Southern Nevada booming, and construction at an all-time high, investors were eager. Many of those interviewed say they were reassured by the good name of the *Harmon* family, which has been a part of the community since 1907.

Two years ago, the monthly interest checks started to trickle. By November 1996, \$22 million in loans were outstanding. Following up customer complaints, a year ago the state financial division began investigating. In December, *Harmon's* license was revoked after he "allowed loan proceeds to be dissipated" without authorization. Now, the Securities and Exchange Commission is investigating the company's collapse.

A receiver has been appointed to settle the company's affairs. But unless he has a license to



JOHN L.  
SMITH

MORE  
COLUMNS

News

Sports

Business

Lifestyles

Neon

Opinion

in-depth

Help/About

Search

Classifieds

Real Estate

TV

Weather

Columnists

Archive

Feedback

Headlines

Home

Win AP News  
& Info.

one click one site

WORKS

print money, these investors are out a fortune.

To date, *Harmon* faces only a civil inquiry from the Financial Institutions Division of the state Department of Business and Industry. He is out of business, but many disgruntled investors are, in fact, hoping for a fraud investigation by either local or federal law enforcement.

The losses mount as the room fills up. There's Ellen Rozario, who says she is out \$335,000. There's Dan Gray with his \$350,000. There's the family of the late Emmett Campbell, a life-long *Harmon* friend, with losses in excess of \$300,000.

And on it goes.

Many of the investors are retired. Some were well diversified when they approached *Harmon* Mortgage, others trusted him with all their cash.

Now it's gone.

Rozario, a 35-year resident, recalls spotting a *Harmon* Mortgage newspaper ad. She trusted the *Harmon* name, and, after three \$25,000 investments paid dividends quickly, she confidently increased her risk.

"Now God knows what I'll get back on this when the receiver is done," she says.

Dan Gray says: "He's the ultimate con man under the guise of respectability. He says to me, 'Dan, I don't like you worrying. Let me do the worrying. You're in good shape. Don't worry. You're going to get all your money, and your relatives, the ones you brought into the investment, are going to get all their money.' "

Now there is no money.

*Harmon* traces his trouble to a single bad loan associated with the Decatur Pointe project. Other losses he blames on bad luck.

"Everything kind of hit me at once," *Harmon* says.

He does not dispute the figures invested, but insists that much of the money eventually will be recovered by the receiver.

"For the most part, these are the only loans that Harley had go bad," David Rivers, *Harmon*'s attorney, says. "The problem is, they went bad all at once.

"The state never accused him of bilking these people out of their money. I grant you that the people feel he bilked them out of their money. (State investigators) never once alleged that Harley took anything wrongfully."

True enough, but investigators also uncovered evidence that *Harmon* put millions of investor dollars in projects and companies in which he "had a substantial personal interest."

Some of those loans have defaulted, which further infuriates the jilted investors.

Many have lost not only their money, but their confidence in the system, too.

Her voice cracking with emotion, one elderly investor says, "I went in because I trusted you, Harley."

John L. Smith's column appears Wednesday, Thursday, Friday and Sunday. He may be reached at [John\\_L\\_Smith@lvvj.com](mailto:John_L_Smith@lvvj.com).

---

Give us your **FEEDBACK** on this or any story.

---

Fill out our Online Readers' Poll

[\[News\]](#) [\[Sports\]](#) [\[Business\]](#) [\[Lifestyles\]](#) [\[Neon\]](#) [\[Opinion\]](#) [\[in-depth\]](#)  
[\[Columnists\]](#) [\[Help/About\]](#) [\[Archive\]](#) [\[Community Link\]](#) [\[Current](#)  
[Edition\]](#)  
[\[Classifieds\]](#) [\[Real Estate\]](#) [\[TV\]](#) [\[Weather\]](#)  
[\[EMAIL\]](#) [\[SEARCH\]](#) [\[HOME\]](#) [\[INDEX\]](#)

Brought to you by the Las Vegas Review-Journal. Nevada's largest daily newspaper.



LAS VEGAS REVIEW JOURNAL



Sunday, January 25, 1998

## COLUMN: John L. Smith



JOHN L. SMITH

MORE  
COLUMNS

Widow finds her nest egg cracked by investment company

Marge Lorenzo isn't an accountant, but then it doesn't take a financial expert to appreciate her predicament.

She receives \$481 each month in Social Security benefits and pays \$300 per month to lease a space for her double-wide trailer at the Sand Creek mobile home park on Lamb Boulevard.

Add utilities and expenses for such extravagances as food, and Lorenzo exists below the poverty line. In truth, she is nearly destitute. There's something else.

Marge Lorenzo is 88 years old.

Born in Dexter, Mo., in 1909, she moved to Las Vegas in 1937. Long before Southern Nevada had supermarkets, Marge's husband, Dick Lorenzo, once owned the Fifth Street, Hyde Park and L Bar L grocery stores.

Her late husband left her \$40,000, which she invested with Harley L. *Harmon* Mortgage in a first-trust deed for a construction loan.

She was promised a 15 percent interest return.

Beginning in 1995, she began receiving monthly \$500 checks from her friend, Harley *Harmon*, whose family she had known for more than 40 years. That four-decade relationship was a primary reason she trusted *Harmon* with all her money.

Late last year, those checks stopped coming.

In December, *Harmon's* license was suspended by the state Financial Institutions Division in the wake of what threatens to become one of the biggest mortgage scandals in Nevada history. *Harmon* is alleged to have allowed millions in investments to be "dissipated" from the company without authorization. As of November 1996, \$22 million in *Harmon* Mortgage loans were outstanding.

Today, a court-appointed receiver is working in what investors fear is a vain attempt to recover their millions. Investor complaints also have led to a Securities and Exchange Commission investigation into the business practices at *Harmon* Mortgage.

In a recent interview, *Harmon* was confident the vast majority of the company's 350 investors eventually would recover their money. He also said

Online

News

Sports

Business

Lifestyles

Neon

Opinion

in-depth

Help/About

Search

Classifieds

Real Estate

TV

Weather

Columnists

Archive

Feedback

Headlines

Home

Wire AP News &amp; Info.

One click one site.

WORKS

he has experienced some bad luck but has done nothing criminal. Time will reveal his sincere role in protecting the assets of the company's many investors.

Such promises instill little confidence in Marge Lorenzo, who has neither time nor money to waste.

"I've been sick since this happened," she says, sitting in her mobile home surrounded by knickknacks. "It's like I can't move anymore. I can't sleep. And when I do, it's the first thing I think about when I wake up in the morning. I need my money. It's not for special things. It's a matter of survival."

Although the effects of a recent heart attack prevent her from working, Lorenzo is unaccustomed to sitting idle. She held a job as a store clerk until she was 82.

"But I'm too old now," she says. "I hurt my right hand a few years ago. I can't go back to work. It's sad what he's done, and it has taken a lot out of me."

Lorenzo's \$40,000 was invested in the ill-fated Greenpoint mobile home park, which brochures touted as a luxury community for active seniors. In all, "250 extra-wide lots" as well as a pool and spa were to be created on land at 5252 N. Fifth St. not far from Craig Road.

Today, Greenpoint is silent. And Lorenzo is near poverty.

She recently received a form letter from state-appointed receiver Bernie Chippoletti of Terra West Realty/Development Corp., in essence stating that "sufficient time" will be required before any action can be taken. The extent of the liabilities of **Harmon** Mortgage are not yet fully known. Meanwhile, she has been advised to consult an attorney.

Not that she has been entirely out of contact with **Harmon**, whose family has been a part of the Las Vegas valley since 1907. She drove to his office each day for a week in an attempt to discuss her investment with him. She has been told repeatedly that her check is in the mail and her investment is secure.

"He looked me right in the face and told me, 'Don't worry, you're taken care of,'" Lorenzo recalls. "I'm taken care of, all right. thank God I have my trailer paid for. I may have to sell it. You don't know how this has affected me. When I think about it I can feel my heart beat faster."

**Harmon** has blamed disgruntled investors for his troubles, arguing that, given sufficient time, he would have stabilized his company and made good on the investments.

Time is something Marge Lorenzo has precious little of.

John L. Smith's column appears Wednesday, Thursday, Friday and Sunday. He can be reached at [John\\_L.\\_Smith@lvvj.com](mailto:John_L._Smith@lvvj.com).

---

[1998 Best of Las Vegas ballot](#)

Give us your [FEEDBACK](#) on this or any story.

---

Fill out our [Online Readers' Poll](#)

[\[News\]](#) [\[Sports\]](#) [\[Business\]](#) [\[Lifestyles\]](#) [\[Neon\]](#) [\[Opinion\]](#) [\[in-depth\]](#)  
[\[Columnists\]](#) [\[Help/About\]](#) [\[Archive\]](#) [\[Community Link\]](#) [\[Current](#)  
[Edition\]](#)

[\[Classifieds\]](#) [\[Real Estate\]](#) [\[TV\]](#) [\[Weather\]](#)

[\[EMAIL\]](#) [\[SEARCH\]](#) [\[HOME\]](#) [\[INDEX\]](#)

Brought to you by the Las Vegas Review-Journal. Nevada's largest daily newspaper.



LAS VEGAS REVIEW-JOURNAL



Sunday, March 22, 1998

Online

News

Sports

Business

Lifestyles

Neon

Opinion

in-depth

Help/About

Search

Classifieds

Real Estate

TV

Weather

Columnists

Archive

Feedback

Headlines

Home

WIRE AP News  
& Info.

one city one site.

## COLUMN: John L. Smith



JOHN L. SMITH

MORE  
COLUMNS

For country club's stunned investors, trust in *Harmon* is gone

Life at Las Vegas Country Club hasn't changed much through the decades.

Apart from the occasional membership uprising, through the years there have been more arguments over golf scores than anything else.

The environment would have provided rich material for the pen of John O'Hara, the novelist who chronicled the lives of America's upper crust a half century ago. But with the exception of a few cutthroat games of gin rummy, business at the country club has been conducted in a civilized manner befitting such an idyllic setting.

That has changed now.

Clubbers irate over their business dealings with fellow member Harley L. *Harmon* are circulating a petition to oust him from their association. Some members carry newspaper articles detailing *Harmon's* staggering financial woes and have cursed his name following the public disclosure of a \$22.7 million collapse at *Harmon Mortgage*.

His company advertised heavily its ability to generate 15 percent interest for investors, who put their faith and their millions in *Harmon's* expertise with first-trust deed loans on construction projects. Some of those projects, state Financial Institutions Division investigators have determined, have folded. Investors will lose millions, but state-appointed receiver Bernie Chippoletti still is determining how much money is missing.

Some investors fear they will recover as little as 10 cents on a dollar. Through his attorney, *Harmon* has called his company's financial crisis salvageable and blames his misfortune on bad luck and the vindictiveness of a few investors.

At the country club, *Harmon's* trouble is simple. Many of his best customers are fellow members, which as you might imagine makes things pretty uncomfortable in the clubhouse and out on the first tee. It's unclear, and unimportant, really, whether the move to toss *Harmon* might have the desired effect.

Until now, *Harmon's* name has been well-regarded in the community and is especially

well-known at the country club, where his father is a founding member.

Why should you care whether the well-heeled set loses a few million in a mortgage scandal?

It's a fair question. After all, you say, such investments are inherently risky and the wealthy investors won't miss a meal any time soon.

But Las Vegas Country Club is different from similar associations in more established communities. Most of its members weren't born wealthy, but earned their money through a lifetime of hard work. For many Jewish members, the Las Vegas association represented the first time they were welcome at a private club.

"Like everyone else, I believed I had all first mortgages," club member Irv Bronstein says. "I wouldn't invest in seconds. I wouldn't invest in thirds for a 500 percent return."

Born in Canada, the 70-year-old Bronstein is a 40-year resident who began his business career hawking newspapers at age 6. He spent most of his working life wholesaling souvenirs to local casino gift shops.

He is out more than \$300,000.

"I busted my tail to get everything I have," Bronstein says. "I hustled all my life, but it was a legitimate hustle. Now I feel like I've been hustled."

He is not alone.

There is Abe Fox, who opened Foxy's deli nearly half a century ago. Fox, his friends say, is out \$1 million.

And there is the 89-year-old matriarch of a respected Las Vegas family. Devastated by the mortgage scandal, in which she and family members invested approximately \$1 million, she wishes to remain anonymous.

Although she is legally blind, she says she can see clearly enough to spot the problem.

"I do feel that we were taken advantage of," she says. "I've known his parents all these years. I worked hard for that money, worked all my life for it. But I sure made a mistake trusting him."

"I'd never received any indication of them being anything but perfectly honest, but I feel like I've been lied to."

Even after it became clear there was serious trouble at *Harmon* Mortgage, she received repeated assurances from the owners that her investment was safe and even dumped \$60,000 more into the deal.

Now she knows she's out at least a sizable percentage of it after discovering that her first-trust deeds were put in second and third position.

She still goes to the country club regularly, but she knows that life there will never be the same.

John L. Smith's column appears Sunday, Wednesday, Thursday and Friday. His Las Vegas Boulevard Web site column appears Tuesday at [lasvegas.com](http://lasvegas.com). Reach him at [John\\_L\\_Smith@lvvj.com](mailto:John_L_Smith@lvvj.com) or 383-0295.

---

Give us your FEEDBACK on this or any story.

---

Fill out our Online Readers' Poll

[\[News\]](#) [\[Sports\]](#) [\[Business\]](#) [\[Lifestyles\]](#) [\[Neon\]](#) [\[Opinion\]](#) [\[in-depth\]](#)  
[\[Columnists\]](#) [\[Help/About\]](#) [\[Archive\]](#) [\[Community Link\]](#) [\[Current Edition\]](#)  
[\[Classifieds\]](#) [\[Real Estate\]](#) [\[TV\]](#) [\[Weather\]](#)  
[\[EMAIL\]](#) [\[SEARCH\]](#) [\[HOME\]](#) [\[INDEX\]](#)

Brought to you by the Las Vegas Review-Journal. Nevada's largest daily newspaper.



# State panel to probe mortgage firm failure

4-21-98  
By Ken Alltucker  
RENO GAZETTE-JOURNAL

A legislative panel plans to investigate whether an absence of state regulations contributed to a potential \$22.7 million loss for investors in a failed mortgage company run by former Assemblyman Harley Harmon.

The Legislative Commission has agreed to form a six-member panel to study the failure of the Las Vegas-based Harley L. Harmon Mortgage Co. and whether the state Financial Institutions Division acted quickly enough to stop it.

Harmon, who served as the Democrat majority leader in 1979

and speaker from 1977, had his mortgage license revoked in December after a state probe uncovered misconduct on four loans his firm brokered. Officials said one improper loan was used to fund a mobile home project that Harmon, who did not return phone calls Monday, partially owned.

"I think one of the things this case highlighted was a weakness in the statutory regulation of state financial institutions," said Assemblyman David Goldwater (D-Las Vegas), who urged the committee be formed with an eye toward legislative changes in 1999.

"I hope to accomplish comprehensive regulation that would

restore investors' faith in the mortgage investment industry."

Goldwater, a financial adviser, said Harmon and previous cases involving substantial mortgage investment losses show the state needs to apply greater scrutiny to the industry.

Nevada adopted stricter regulations in 1985 after mortgage investment problems were uncovered in the late 1970s and early 1980s, according to Scott Walshaw, Nevada Financial Institutions Division commissioner.

But Walshaw said the Legislature failed to adopt a law that state regulators thought essential: mandating a licensed mortgage broker put

money into an independently controlled escrow account.

If such a provision had been in place, it may have trimmed potential losses for Harmon investors, said Doug Walther, a senior deputy attorney general who aided Walshaw's office in the Harmon investigation.

Walther said existing laws "just provide another opportunity for someone to touch the money. It is an opportunity to divert funds, or reinvest funds."

Walshaw said he also favors a law requiring brokers offer full disclosure of potential risks to investors.

The Nevada Financial Institu-

tions Division revoked Harmon's license after discovering misconduct on four loans. The state alleged Harmon acted without investors consent and allowed loan proceeds to be used for unauthorized purposes. One of four improper loans was to the Green Point mobile homes, of which Harmon owned a "fairly substantial" share, Walther said.

Harmon's firm has since been placed in receivership and a district court judge ordered its assets liquidated. Bernie Chipoletti, a principal for the Las Vegas firm Terra West Realty & Development, is overseeing the liquidation.

See **MORTGAGE** on page 3E

## Mortgage

From page 1E

Any funds gleaned from the liquidation will be returned to investors.

Because many loans involved construction projects that never got off the ground, it is unknown how much investors stand to recoup.

A worst-case loss for Harmon investors in Nevada and throughout the Western United States is \$22.7 million, Walther said. He expects some money will be returned to investors through the sale of property.

Although the state financial institutions division investigation is finished, Harmon is the subject of an ongoing criminal probe by the Las Vegas metro police.

Detectives are trying to discern whether Harmon's actions were bad business practice or had criminal intent, said Lt. Steve Franks of the financial crimes division.

Franks said investigators must

wade through hundreds of documents and he does not anticipate the investigation will conclude soon.

Goldwater, who represents clients who stand to lose from investments, said many elderly people poured their life savings in Harmon's firm.

"There are risks in any investment, but in this particular case, the risks were not disclosed," Goldwater said.

"The ability for this company to defraud investigators was great. It was easily done."

Goldwater said the panel won't automatically suggest new legislation. He said the panel may recommend "consolidating some regulatory function."

Some investors have criticized the state Financial Institutions Division for not acting quickly enough — an allegation the panel plans to review, Goldwater said. The outstanding loans date back to 1996.

Walshaw said he thought his agency acted appropriately.

"Our record speaks for itself," he said.



## APPENDIX C

Letter dated December 11, 1998, to Assemblyman David Goldwater from  
Douglas E. Walther, Senior Deputy Attorney General,  
Commerce Section, Office of the Attorney General,  
Regarding "Fiscal Impact of Creating Primary  
Criminal Jurisdiction in Attorney General's  
Office to Enforce the Mortgage  
Company Act"





STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798

WEBSITE: <http://www.state.nv.us/ag/>  
E-Mail: [aginfo@govmail.state.nv.us](mailto:aginfo@govmail.state.nv.us)  
Writer's Direct Dial (702) 687-6421

FRANKIE SUE DEL PAPA  
Attorney General

THOMAS M. PATTON  
First Assistant Attorney General

December 11, 1998

Assemblyman David Goldwater, Chairman  
Legislative Commission's Subcommittee to  
Investigate Regulation of Mortgage Investments  
Legislative Building  
401 S. Carson Street  
Carson City, Nevada 89701-4747

Re: Fiscal Impact of Creating Primary Criminal Jurisdiction in Attorney General's  
Office to Enforce the Mortgage Company Act

Dear Assemblyman Goldwater:

At the recent hearing of the Legislative Commission Subcommittee to Investigate the Regulation of Mortgage Investments, you requested that our office provide an estimate of the cost of assuming primary criminal jurisdiction to enforce the Mortgage Company Act, NRS Chapter 645B (Act).

As you may know, ethical concerns require that criminal investigations and prosecutions take place apart from civil enforcement of the Act, and thus must be handled by different deputies. Criminal cases involving the type of conduct alleged in the case of Harley L. Harmon Mortgage Company are very complex and preparing proof that will meet criminal burdens of proof is typically labor and time intensive. We therefore estimate that assumption of these additional duties will require, at a minimum, one deputy attorney general, one investigator, and one legal secretary, at a total cost of \$335,379 for the biennium. This estimate does not take into consideration the fiscal impact of other potential changes to the Mortgage Company Act.

PROTECTING CITIZENS. SOLVING PROBLEMS. MAKING GOVERNMENT WORK


David Goldwater, Chairman  
December 11, 1998  
Page 2

The creation of additional duties for the Financial Institutions Division and this office in the regulatory enforcement of the Act would require augmentation of staff and resources currently assigned to the Division.

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Frankie Sue Del Papa  
Attorney General

By:   
DOUGLAS E. WALTHER  
Senior Deputy Attorney General  
Commerce Section  
(702) 687-6421

c: Frankie Sue Del Papa  
Thomas M. Patton  
Jonathan Andrews  
Anne Cathcart  
L. Scott Walshaw

CRIMJUR1.DOC

## APPENDIX D

### Suggested Legislation

		<u>Page</u>
BDR 7-1203	Subjects certain transactions involving mortgage companies and notes secured by liens on real property to laws regulating securities . . . . .	77
BDR 54-1204	Revises provisions relating to mortgage companies and loans secured by liens on real property . . . . .	89



SUMMARY—Subjects certain transactions involving mortgage companies and notes secured by liens on real property to laws regulating securities.  
(BDR 7-1203)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to real property; subjecting certain transactions involving mortgage companies and notes secured by liens on real property to laws regulating securities; authorizing the administrator of the securities division of the office of the secretary of state to adopt regulations to exempt from the laws regulating securities certain transactions involving mortgage companies and notes secured by liens on real property; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** NRS 90.372 is hereby amended to read as follows:

90.372 1. The administrator shall grant to a bona fide officer or director of an issuer a waiver from the examination required for licensure as a sales representative or broker-dealer if:

(a) The securities of the issuer:

(1) Are registered under the Securities Exchange Act of 1934; or

(2) Comply with the ~~requirements~~ *provisions* of Regulation D of the Securities and Exchange Commission, 17 C.F.R. §§ 230.501 to ~~230.506,~~ *230.508*, inclusive, except for *the provisions of* 17 C.F.R. § 230.504 ~~[,]~~ *and any provision of 17 C.F.R. § 230.507 or § 230.508 that the administrator waives by regulation*, and *the securities* are exempt from registration by regulation of the administrator;

(b) The officer or director does not receive a commission or other compensation for the sale of the issuer's securities; and

(c) The officer or director files with the administrator an affidavit which states that he:

(1) Is an officer or director of the issuer;

(2) Will not be receiving a commission or other compensation for the sale of the issuer's securities;

(3) Understands that the waiver applies only to the sale of the issuer's securities; and

(4) Agrees to provide to prospective purchasers of the issuer's securities such pamphlets, circulars, literature or other information as may be required by regulation or order of the administrator.

2. If the officer or director sells or offers to sell any securities other than the securities of the issuer, he must pass the examination for licensure as a sales representative or broker-dealer unless the examination is otherwise waived by the administrator pursuant to NRS 90.370.

**Sec. 2.** NRS 90.530 is hereby amended to read as follows:

90.530 The following transactions are exempt from NRS 90.460 and 90.560:

1. An isolated nonissuer transaction, whether or not effected through a broker-dealer.

2. A nonissuer transaction in an outstanding security if the issuer of the security has a class of securities subject to registration under section 12 of the Securities Exchange Act of 1934 and has been subject to the reporting requirements of section 13 or ~~15(d)~~ **15(c)** of the Securities Exchange Act of 1934 for not less than 90 days next preceding the transaction, or has filed and maintained with the administrator for not less than 90 days preceding the transaction information, in such form as the administrator, by regulation, specifies, substantially comparable to the information the issuer would be required to file under section 12(b) or 12(g) of the Securities Exchange Act of 1934 were the issuer to have a class of its securities registered under section 12 of the Securities Exchange Act of 1934 and paid a fee with the filing of \$150.

3. A nonissuer transaction by a sales representative licensed in this state, in an outstanding security if:

(a) The security is sold at a price reasonably related to the current market price of the security at the time of the transaction;

(b) The security does not constitute all or part of an unsold allotment to, or subscription or participation by, a broker-dealer as an underwriter of the security;

(c) At the time of the transaction, a recognized securities manual designated by the administrator by regulation or order contains the names of the issuer's officers and directors, a statement of the financial condition of the issuer as of a date within the preceding 18 months, and a statement of income or operations for each of the last 2 years next preceding the date of the statement of financial condition, or for the period as of the date of the statement of financial condition if the period of existence is less than 2 years;

(d) The issuer of the security has not undergone a major reorganization, merger or acquisition within the preceding 30 days which is not reflected in the information contained in the manual; and

(e) At the time of the transaction, the issuer of the security has a class of equity security listed on the New York Stock Exchange, American Stock Exchange or other exchange designated by the administrator, or on the National Market System of the National Association of Securities Dealers Automated Quotation System. The requirements of this paragraph do not apply if:

- (1) The security has been outstanding for at least 180 days;
  - (2) The issuer of the security is actually engaged in business and is not developing his business, in bankruptcy or in receivership; and
  - (3) The issuer of the security has been in continuous operation for at least 5 years.
4. A nonissuer transaction in a security that has a fixed maturity or a fixed interest or dividend provision if there has been no default during the current fiscal year or within the 3 preceding years, or during the existence of the issuer, and any predecessors if less than 3 years, in the payment of principal, interest or dividends on the security.
  5. A nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to purchase.
  6. A transaction between the issuer or other person on whose behalf the offering of a security is made and an underwriter, or a transaction among underwriters.
  7. A transaction in a bond or other evidence of indebtedness secured by a real estate mortgage, deed of trust, personal property security agreement, or by an agreement for the sale of real estate or personal property, if the entire mortgage, deed of trust or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit.
  8. A transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator.
  9. A transaction executed by a bona fide secured party without the purpose of evading this chapter.

10. An offer to sell or sale of a security to a financial or institutional investor or to a broker-dealer.

11. Except as otherwise provided in this subsection, a transaction pursuant to an offer to sell securities of an issuer if:

(a) The transaction is part of an issue in which there are no more than 25 purchasers in this state, other than those designated in subsection 10, during any 12 consecutive months;

(b) No general solicitation or general advertising is used in connection with the offer to sell or sale of the securities;

(c) No commission or other similar compensation is paid or given, directly or indirectly, to a person, other than a broker-dealer licensed or not required to be licensed under this chapter, for soliciting a prospective purchaser in this state; and

(d) One of the following conditions is satisfied:

(1) The seller reasonably believes that all the purchasers in this state, other than those designated in subsection 10, are purchasing for investment; or

(2) Immediately before and immediately after the transaction, the issuer reasonably believes that the securities of the issuer are held by 50 or fewer beneficial owners, other than those designated in subsection 10, and the transaction is part of an aggregate offering that does not exceed \$500,000 during any 12 consecutive months.

The administrator by rule or order as to a security or transaction or a type of security or transaction, may withdraw or further condition the exemption set forth in this subsection or waive one or more of the conditions of the exemption.

12. An offer to sell or sale of a preorganization certificate or subscription if:

(a) No commission or other similar compensation is paid or given, directly or indirectly, for soliciting a prospective subscriber;

(b) No public advertising or general solicitation is used in connection with the offer to sell or sale;

(c) The number of offers does not exceed 50;

(d) The number of subscribers does not exceed 10; and

(e) No payment is made by a subscriber.

13. An offer to sell or sale of a preorganization certificate or subscription issued in connection with the organization of a depository institution if that organization is under the supervision of an official or agency of a state or of the United States which has and exercises the authority to regulate and supervise the organization of the depository institution. For the purpose of this subsection, [~~“supervision of the organization by”~~] ***“under the supervision of an official or agency”*** means that the official or agency by law has authority to require disclosures to prospective investors similar to those required under NRS 90.490, impound proceeds from the sale of a preorganization certificate or subscription until organization of the depository institution is completed, and require

refund to investors if the depository institution does not obtain a grant of authority from the appropriate official or agency.

14. A transaction pursuant to an offer to sell to existing security holders of the issuer, including persons who at the time of the transaction are holders of transferable warrants exercisable within not more than 90 days after their issuance, convertible securities or nontransferable warrants, if:

(a) No commission or other similar compensation, other than a standby commission, is paid or given, directly or indirectly, for soliciting a security holder in this state; or

(b) The issuer first files a notice specifying the terms of the offer to sell, together with a nonrefundable fee of \$150, and the administrator does not by order disallow the exemption within the next 5 full business days.

15. A transaction involving an offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(a) A registration or offering statement or similar document as required under the Securities Act of 1933 has been filed, but is not effective;

(b) A registration statement, if required, has been filed under this chapter, but is not effective; and

(c) No order denying, suspending or revoking the effectiveness of registration, of which the offeror is aware, has been entered by the administrator or the Securities and Exchange Commission, and no examination or public proceeding that may culminate in that kind of order is known by the offeror to be pending.

16. A transaction involving an offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:

(a) A registration statement has been filed under this chapter, but is not effective; and

(b) No order denying, suspending or revoking the effectiveness of registration, of which the offeror is aware, has been entered by the administrator and no examination or public proceeding that may culminate in that kind of order is known by the offeror to be pending.

17. A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets or other reorganization to which the issuer, or its parent or subsidiary, and the other person, or its parent or subsidiary, are parties, if:

(a) The securities to be distributed are registered under the Securities Act of 1933 before the consummation of the transaction; or

(b) The securities to be distributed are not required to be registered under the Securities Act of 1933, written notice of the transaction and a copy of the materials, if any, by which approval of the transaction will be solicited, together with a nonrefundable fee of \$150, are given to the administrator at least 10 days before the consummation of the transaction and the administrator does not, by order, disallow the exemption within the next 10 days.

18. A transaction involving the offer to sell or sale of one or more promissory notes each of which is directly secured by a first lien on a single parcel of real estate, or a

transaction involving the offer to sell or sale of participation interests in the notes if the notes and participation interests are originated by a depository institution and are offered and sold subject to the following conditions:

- (a) The minimum aggregate sales price paid by each purchaser may not be less than \$250,000;

- (b) Each purchaser must pay cash either at the time of the sale or within 60 days after the sale; and

- (c) Each purchaser may buy for his own account only.

19. A transaction involving the offer to sell or sale of one or more promissory notes directly secured by a first lien on a single parcel of real estate or participating interests in the notes, if the notes and interests are originated by a mortgagee approved by the Secretary of Housing and Urban Development under sections 203 and 211 of the National Housing Act and are offered or sold, subject to the conditions specified in subsection 18, to a depository institution or insurance company, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the Government National Mortgage Association.

20. A transaction between any of the persons described in subsection 19 involving a nonassignable contract to buy or sell the securities described in subsection 18 if the contract is to be completed within 2 years and if:

- (a) The seller of the securities pursuant to the contract is one of the parties described in subsection 18 or 19 who may originate securities;

(b) The purchaser of securities pursuant to a contract is any other person described in subsection 19; and

(c) The conditions described in subsection 18 are fulfilled.

~~{21. A transaction involving one or more promissory notes secured by a lien on real estate, or participating interests in those notes, by a mortgage company licensed pursuant to chapter 645B of NRS to engage in those transactions.}~~

**Sec. 3.** NRS 90.540 is hereby amended to read as follows:

90.540 The administrator by regulation or order may:

1. *Exempt from NRS 90.460 and 90.560 a transaction involving one or more promissory notes secured by a lien on real estate, or participating interests in those notes, by a mortgage company licensed pursuant to chapter 645B of NRS to engage in such a transaction, if the transaction complies with:*

*(a) The provisions of Regulation D of the Securities and Exchange Commission, 17 C.F.R. §§ 230.501 to 230.508, inclusive, except for the provisions of 17 C.F.R. § 230.504 and any provision of 17 C.F.R. § 230.507 or § 230.508 that the administrator waives by regulation; and*

*(b) Any other requirements imposed by the administrator by regulation or order.*

2. Exempt any other security or transaction or class of securities or transactions from NRS 90.460 and 90.560.

~~{2-}~~ 3. Adopt a transactional exemption for limited offerings that will further the objectives of compatibility with the exemptions from securities registration authorized by the Securities Act of 1933 and uniformity among the states.

~~{3-}~~ 4. Require the filing of a notice and the payment of a fee not greater than \$250 for an exemption adopted pursuant to this section.

**Sec. 4.** This act becomes effective on July 1, 1999.

SUMMARY—Revises provisions relating to mortgage companies and loans secured by liens on real property. (BDR 54-1204)

FISCAL NOTE: Effect on Local Government: Yes.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to real property; revising the provisions relating to the licensing and the operation of certain mortgage companies; requiring certain mortgage companies to maintain a minimum net worth; establishing licensing requirements for mortgage agents and requiring such agents to pay certain fees; prohibiting various acts by mortgage companies and mortgage agents; providing for administrative sanctions and criminal penalties; revising the provisions relating to the licensing and the operation of certain construction controls, escrow agencies, escrow agents, title agents, title insurers and escrow officers; requiring certain construction controls, escrow agencies, title agents and title insurers to maintain a surety bond; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN

SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 627 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. A person may not conduct business as or hold a controlling interest or position in a construction control if the person or a relative of the person is licensed as, conducts business as or holds a controlling interest or position in:*

*(a) A mortgage company or mortgage agent that is subject to the provisions of chapter 645B of NRS; or*

*(b) Any other legal entity, regardless of its purpose, if the legal entity holds a controlling interest or position in a mortgage company or mortgage agent that is subject to the provisions of chapter 645B of NRS.*

*2. For the purposes of this section, a person shall be deemed to hold a controlling interest or position if the person:*

*(a) Owns or controls a majority of the voting stock or holds any other controlling interest, directly or indirectly, that gives him the power to direct management or determine policy; or*

*(b) Is a partner, officer, director or trustee.*

*3. As used in this section, "relative" means a spouse or any other person who is related within the second degree by blood or marriage.*

**Sec. 2.** NRS 627.180 is hereby amended to read as follows:

627.180 1. Except for savings and loan associations, state banks and national banking associations, licensed to do business in the State of Nevada, under the laws of the State of Nevada or under the laws of the United States, title insurers or underwritten title insurance companies authorized to do business in the State of Nevada, or lenders of construction loan money for dwelling units who are approved by the Federal Housing Administration or Department of Veterans Affairs and who have been licensed and authorized to do business in the State of Nevada, every construction control , *before* doing business in the State of Nevada , shall ~~[, within 30 days immediately following July 1, 1965,]~~ file with the state contractors' board a bond, executed by some corporation authorized to issue surety bonds in this state, in ~~[a penal sum equal to 1 1/4 times]~~ the amount of ~~[capital in the business but in no event less than \$20,000, and such]~~ **\$250,000.** *The* bond must be kept in full force and effect or replaced by a like bond as a condition to continuing to do business as a construction control in the State of Nevada.

2. The form of the bond required is as follows:

BOND NO.

#### CONSTRUCTION CONTROL BOND

KNOW ALL MEN BY THESE PRESENTS:

That I, ....., having a principal place of business in  
....., Nevada, as principal, and  
....., a corporation licensed to execute surety bonds under the  
provisions of the Nevada Insurance Code, as surety, are held and firmly bound to the  
State of Nevada, for the use of any person by whom funds are entrusted to the principal  
or to whom funds are payable by the principal, in the sum of ..... Dollars,  
lawful money of the United States of America, to be paid to the State of Nevada, for  
which payment well and truly to be made we bind ourselves, our heirs, executors and  
successors, jointly and severally, firmly by these presents:

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

WHEREAS, Under the Construction Control Law, certain duties, obligations and  
requirements are imposed upon all persons, copartnerships, associations or corporations  
acting as construction controls;

NOW, THEREFORE, If the principal and its agents and employees shall faithfully and in  
all respects conduct business as a construction control in accordance with the provisions  
of the Construction Control Law, this obligation shall be void, otherwise to remain in full  
force and effect;

PROVIDED, HOWEVER, That the surety or sureties may cancel this bond and be relieved  
of further liability hereunder by delivering 30 days' written notice of cancellation to the  
principal; however, such cancellation shall not affect any liability incurred or accrued  
hereunder prior to the termination of such 30-day period;

PROVIDED FURTHER, That the total aggregate liability of the surety or sureties herein for all claims which may arise under this bond shall be limited to the payment of ..... Dollars.

IN WITNESS WHEREOF, The principal and surety have hereunto set their hands this ..... day of ....., 19.....

.....  
By .....

Principal

(SURETY)

By .....

Attorney

Sec. 3. NRS 627.210 is hereby amended to read as follows:

627.210 The ~~following shall not be a construction control or subject to the~~ provisions of this chapter ~~[-]~~ *do not apply to:*

1. A contractor licensed under the laws of the State of Nevada, paying a subcontractor, supplier of material, laborer, or other person for bills incurred in construction, repair, alteration or improvement of any premises.

2. A subcontractor licensed to do business under the laws of the State of Nevada, paying a subcontractor, supplier of material, laborer or other person for bills incurred in construction, repair, alteration or improvement of any premises.

3. An owner-contractor paying a contractor, subcontractor, supplier of material, laborer or other person for bills incurred in construction, repair, alteration or improvement of any premises.

4. A lender of construction loan ~~{moneys, provided that}~~ *money, other than a mortgage company that is subject to the provisions of chapter 645B of NRS, if* he disburses the ~~{funds}~~ *money* directly to a contractor authorized by the borrower to do the work, or disburses the ~~{funds}~~ *money* directly to the owner of the premises.

5. A lender of construction loan ~~{moneys,}~~ *money*, to an owner of a residential property or to an owner of not more than four units if the loan is made to repair or improve such property and the construction costs are \$10,000 or less, or 35 percent of the appraised value of the improvements and repairs, whichever is greater.

Sec. 4. Chapter 645A of NRS is hereby amended by adding thereto a new section to read as follows:

*1. A person may not be licensed as, conduct business as or hold a controlling interest or position in an escrow agency or escrow agent if the person or a relative of the person is licensed as, conducts business as or holds a controlling interest or position in:*

*(a) A mortgage company or mortgage agent that is subject to the provisions of chapter 645B of NRS; or*

*(b) Any other legal entity, regardless of its purpose, if the legal entity holds a controlling interest or position in a mortgage company or mortgage agent that is subject to the provisions of chapter 645B of NRS.*

*2. For the purposes of this section, a person shall be deemed to hold a controlling interest or position if the person:*

*(a) Owns or controls a majority of the voting stock or holds any other controlling interest, directly or indirectly, that gives him the power to direct management or determine policy; or*

*(b) Is a partner, officer, director or trustee.*

*3. As used in this section, "relative" means a spouse or any other person who is related within the second degree by blood or marriage.*

**Sec. 5.** NRS 645A.020 is hereby amended to read as follows:

645A.020 1. A person who wishes to be licensed as an escrow agent or agency must file a written application in the office of the commissioner.

2. The application must:

(a) Be verified.

(b) Be accompanied by the appropriate fee prescribed in NRS 645A.040.

(c) State the location of the applicant's principal office and branch offices in ~~[the]~~ *this* state and residence address.

- (d) State the name under which the applicant will conduct business.
- (e) List the names, residence and business addresses of all persons having an interest in the business as principals, partners, officers, trustees or directors, specifying the capacity and title of each.
- (f) If the applicant is a natural person, include the social security number of the applicant.
- (g) Indicate the general plan and character of the business.
- (h) State the length of time the applicant has been engaged in the escrow business.
- (i) Require a financial statement of the applicant.
- (j) Require such other information as the commissioner determines necessary.
- (k) If for an escrow agency, designate a natural person to receive service of process in this state for the agency.

3. ~~¶¶~~ *Except as otherwise provided by specific statute, if* the commissioner determines, after investigation, that the experience, character, financial condition, business reputation and general fitness of the applicant are such as to command the confidence of the public and to warrant the belief that the business conducted will protect and safeguard the public, he shall issue a license to the applicant as an escrow agent or agency.

4. The commissioner may waive the investigation required by subsection 3 if the applicant submits with his application satisfactory proof that he, in good standing,

currently holds a license, or held a license, within 1 year before the date he submits his application, which was issued pursuant to the provisions of NRS 692A.103.

5. An escrow agent or agency shall immediately notify the division of any material change in the information contained in the application.

6. A person may not be licensed as an escrow agent or agency or be a principal officer, director or trustee of an escrow agency if he is the holder of an active license issued pursuant to chapter 645 of NRS.

**Sec. 6.** NRS 645A.030 is hereby amended to read as follows:

645A.030 1. Except as otherwise authorized by NRS 645A.031, at the time of filing an application for a license as an escrow agency, the applicant shall deposit with the commissioner a corporate surety bond payable to the State of Nevada, in the amount of ~~of [\$50,000,]~~ **\$250,000**, executed by a corporate surety satisfactory to the commissioner, and naming as principals the applicant and all escrow agents employed by or associated with the applicant.

2. At the time of filing an application for a license as an escrow agent, the applicant shall file with the commissioner proof that the applicant is named as a principal on the corporate surety bond deposited with the commissioner by the escrow agency with whom he is associated or employed.

3. The bond must be in substantially the following form:

Know All Men by These Presents, that ....., as principal, and ....., as surety, are held and firmly bound unto the State of Nevada for the use and benefit of any person who suffers damages because of a violation of any of the provisions of chapter 645A of NRS, in the sum of ....., lawful money of the United States, to be paid to the State of Nevada for such use and benefit, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of that obligation is such that: Whereas, the principal has made an application to the commissioner of financial institutions of the department of business and industry of the State of Nevada for a license as an escrow agent or agency and is required to furnish a bond in the amount of ~~[\$50,000]~~ **\$250,000** conditioned as set forth in this bond:

Now, therefore, if the principal, his agents and employees, strictly, honestly and faithfully comply with the provisions of chapter 645A of NRS, and pay all damages suffered by any person because of a violation of any of the provisions of chapter 645A of NRS, or by reason of any fraud, dishonesty, misrepresentation or concealment of material facts growing out of any transaction governed by the provisions of chapter 645A of NRS, then this obligation is void; otherwise it remains in full force.

This bond becomes effective on the ..... day of ....., 19....., and remains in force until the surety is released from liability by the commissioner of financial institutions or until this bond is canceled by the surety. The surety may cancel

this bond and be relieved of further liability hereunder by giving 60 days' written notice to the principal and to the commissioner of financial institutions of the department of business and industry of the State of Nevada.

In Witness Whereof, the seal and signature of the principal hereto is affixed, and the corporate seal and the name of the surety hereto is affixed and attested by its authorized officers at ....., Nevada, this ..... day of ....., 19.....

..... (Seal)

Principal

..... (Seal)

Surety

By .....

Attorney in fact

.....

Licensed resident agent

**Sec. 7.** NRS 645A.037 is hereby amended to read as follows:

645A.037 ~~{1. Except as otherwise provided in subsection 2, no licensee may}~~ **A licensee shall not** conduct the business of administering escrows for compensation within any office, suite, room or place of business in which any other business is solicited or

engaged in, except a notary public, or in association or conjunction with any other business, unless authority to do so is given by the commissioner.

~~[2. A licensee may conduct the business of administering escrows pursuant to this chapter in the same office or place of business as a mortgage company if:~~

~~— (a) The licensee and the mortgage company:~~

~~—— (1) Operate as separate legal entities;~~

~~—— (2) Maintain separate accounts, books and records;~~

~~—— (3) Are subsidiaries of the same parent corporation; and~~

~~—— (4) Maintain separate licenses; and~~

~~— (b) The mortgage company is licensed by this state and does not receive money to acquire or repay loans or maintain trust accounts as provided by NRS 645B.175.]~~

Sec. 8. Chapter 645B of NRS is hereby amended by adding thereto the provisions set forth as sections 9 to 25, inclusive, of this act.

Sec. 9. *1. A person may not be licensed as, conduct business as or hold a controlling interest or position in a mortgage company or mortgage agent if the person or a relative of the person is licensed as, conducts business as or holds a controlling interest or position in:*

*(a) A construction control, as defined in NRS 627.050;*

*(b) An escrow agency or escrow agent, as defined in NRS 645A.010;*

*(c) An escrow officer, title agent or title insurer, as defined in NRS 692A.028, 692A.060 and 692A.070; or*

*(d) Any other legal entity, regardless of its purpose, if the legal entity holds a controlling interest or position in a legal entity described in paragraph (a), (b) or (c).*

*2. For the purposes of this section, a person shall be deemed to hold a controlling interest or position if the person:*

*(a) Owns or controls a majority of the voting stock or holds any other controlling interest, directly or indirectly, that gives him the power to direct management or determine policy; or*

*(b) Is a partner, officer, director or trustee.*

*3. As used in this section, "relative" means a spouse or any other person who is related within the second degree by blood or marriage.*

**Sec. 10.** *Except as otherwise provided in this chapter:*

*1. A person who claims an exemption from the provisions of this chapter pursuant to NRS 645B.015 must file a written application for a certificate of exemption with the office of the commissioner and pay the fee required pursuant to NRS 645B.050.*

*2. An application for a certificate of exemption must include sufficient evidence to establish that the person meets the requirements of at least one exemption set forth in the provisions of NRS 645B.015.*

*3. The commissioner shall issue a certificate of exemption to a person who:*

*(a) Meets the requirements of at least one exemption set forth in the provisions of NRS 645B.015; and*

*(b) Complies with the provisions of this section and NRS 645B.050.*

*4. A certificate of exemption expires automatically if, at any time, the person who claims the exemption no longer meets the requirements of at least one exemption set forth in the provisions of NRS 645B.015.*

*5. If a certificate of exemption expires automatically pursuant to this section, the person shall not provide any services of a mortgage company or mortgage agent or otherwise engage in, carry on or hold himself out as engaging in or carrying on the business of a mortgage company or mortgage agent, unless the person applies for and is issued:*

*(a) A license as a mortgage company or mortgage agent pursuant to this chapter; or*

*(b) Another certificate of exemption.*

*6. The commissioner may impose upon a person who is required to apply for a certificate of exemption or who holds a certificate of exemption an administrative fine of not more than \$10,000 for each violation that he commits, if the person:*

*(a) Has knowingly made or caused to be made to the commissioner any false representation of material fact;*

*(b) Has suppressed or withheld from the commissioner any information which the person possesses and which, if submitted by him, would have rendered the person ineligible to hold a certificate of exemption; or*

*(c) Has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner that applies to a person who is required to apply for a certificate of exemption or who holds a certificate of exemption.*

*Sec. 11. 1. Except as otherwise provided in this section, if a mortgage company:*

*(a) Is required to maintain any accounts described in NRS 645B.175, the mortgage company and its mortgage agents shall not engage in any activity that is authorized pursuant to this chapter, unless the mortgage company maintains continuously a net worth of at least \$250,000.*

*(b) Is not required to maintain any accounts described in NRS 645B.175, the mortgage company and its mortgage agents shall not engage in any activity that is authorized pursuant to this chapter, unless the mortgage company maintains continuously:*

*(1) Beginning on October 1, 1999, through September 30, 2000, inclusive, a net worth of at least \$25,000;*

*(2) Beginning on October 1, 2000, through September 30, 2001, inclusive, a net worth of at least \$50,000;*

*(3) Beginning on October 1, 2001, through September 30, 2002, inclusive, a net worth of at least \$75,000; and*

*(4) On or after October 1, 2002, a net worth of at least \$100,000.*

*2. If a mortgage company cannot maintain continuously the net worth required pursuant to subsection 1, the commissioner may allow the mortgage company and its*

*mortgage agents to engage in activities that are authorized pursuant to this chapter, if the mortgage company remedies the deficiency in its net worth by depositing with the commissioner cash, a corporate surety bond or an irrevocable letter of credit, or any combination thereof, in an aggregate amount that is equal to or exceeds the deficiency in the net worth of the mortgage company.*

*3. If requested by the commissioner, a mortgage company and its mortgage agents shall submit to the commissioner or allow the commissioner to examine any documentation or other evidence that is related to determining the net worth of the mortgage company.*

*4. The commissioner:*

*(a) Shall adopt regulations prescribing standards for determining the net worth of a mortgage company; and*

*(b) May adopt any other regulations that are necessary to carry out the provisions of this section.*

*Sec. 12. 1. If a mortgage agent terminates his association or employment with a mortgage company for any reason, the mortgage company shall, not later than the end of the next business day following the date of termination:*

*(a) Deliver to the mortgage agent or send by certified mail to the last known residence address of the mortgage agent a written statement which advises him that his license is being delivered or mailed to the division; and*

*(b) Deliver or send by certified mail to the division:*

*(1) The license of the mortgage agent;*

*(2) A written statement of the circumstances surrounding the termination; and*

*(3) A copy of the written statement that the mortgage company delivers or mails to the mortgage agent pursuant to paragraph (a).*

*2. A mortgage agent who terminates his association or employment with a mortgage company shall not, on or after the date on which the division receives his license from the mortgage company, engage in any activity, directly or indirectly, for which a license as a mortgage agent is required pursuant to this chapter, unless the mortgage agent is specifically authorized by the commissioner to transfer his license to another mortgage company or he otherwise obtains a new license pursuant to this chapter.*

*Sec. 13. 1. Except as otherwise provided in this section, not later than 60 days after the last day of each fiscal year for a mortgage company, the mortgage company shall submit to the commissioner a financial statement that:*

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

*(b) Has been prepared from the books and records of the mortgage company by an independent public accountant who holds a permit to engage in the practice of public accounting in this state that has not been revoked or suspended.*

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

3. *If a mortgage company maintains any accounts described in subsection 1 of NRS 645B.175, the financial statement submitted pursuant to this section must be audited. If a mortgage company maintains any accounts described in subsection 4 of NRS 645B.175, those accounts must be audited. The public accountant who prepares the report of an audit shall submit a copy of the report to the commissioner at the same time that he submits the report to the mortgage company.*

4. *The commissioner shall adopt regulations prescribing the scope of an audit conducted pursuant to subsection 3.*

Sec. 14. 1. *If money from an investor is released to a debtor or his designee pursuant to subsection 2 of NRS 645B.175 upon completion of a loan secured by a lien on real property, the mortgage company that arranged the loan shall, not later than 5 p.m. on the next business day following the date on which the deed of trust for the real property is recorded, mail to the last known address of each investor who owns a beneficial interest in the loan a copy of the recorded deed of trust that includes, in bold-faced and conspicuous print:*

(a) *The date on which the deed of trust was recorded; and*

(b) *The priority of the deed of trust on that date with regard to any other liens encumbering the real property.*

*2. If a deed of trust is recorded in connection with a loan that has been funded, in whole or in part, by money from an investor, the mortgage company that arranged the loan and its mortgage agents shall not engage in any act or transaction that subordinates the priority of the deed of trust, as recorded, unless the mortgage company, before such an act or transaction:*

*(a) Obtains written approval for the subordination from each investor who owns a beneficial interest in the loan; and*

*(b) Submits a copy of each such written approval to the commissioner.*

*Sec. 15. If a mortgage company maintains any accounts described in subsection 4 of NRS 645B.175 in which it deposits payments from a debtor on a loan secured by a lien on real property and, on the last day of any month, the debtor has failed to make two or more consecutive payments in accordance with the terms of the loan, the mortgage company shall:*

*1. Include in the report that the mortgage company submits to the commissioner pursuant to subsection 2 of NRS 645B.080:*

*(a) The name, address and telephone number of the debtor;*

*(b) The total number of months and days that the debtor has failed to make a payment;*

*(c) The outstanding balance of the loan and any accrued interest on the last day of the month for which the report is submitted;*

*(d) A statement of whether the loan has been declared to be in default and, if so, the nature of any actions that have been taken because of the default; and*

*(e) Any other information required pursuant to the regulations adopted by the commissioner;*

*2. Not later than 15 days after the last day of each such month, mail a notice containing the information set forth in subsection 1 to the last known address of each investor who owns a beneficial interest in the loan; and*

*3. Comply with the provisions of this section each month on a continuing basis until:*

*(a) The debtor or his designee remedies the delinquency in payments and any default; or*

*(b) The lien securing the loan is extinguished.*

*Sec. 16. 1. If a person is required to make a payment to a mortgage company pursuant to the terms of a loan secured by a lien on real property, the mortgage company may not charge the person a late fee, an additional amount of interest or any other penalty in connection with that payment if the payment is delivered to the mortgage company before 5 p.m. on:*

*(a) The day that the payment is due pursuant to the terms of the loan, if an office of the mortgage company is open to customers until 5 p.m. on that day; or*

*(b) The next day that an office of the mortgage company is open to customers until 5 p.m., if the provisions of paragraph (a) do not otherwise apply.*

*2. A mortgage company or a person may not agree to alter or waive the provisions of this section by contract or other agreement, and any such contract or agreement is void and must not be given effect to the extent that it violates the provisions of this section.*

*Sec. 17. 1. A mortgage company or mortgage agent shall not engage in any act or transaction on behalf of an investor pursuant to a power of attorney unless:*

*(a) The power of attorney is executed for the sole purpose of providing services for not more than one loan in which the investor owns a beneficial interest; and*

*(b) The provisions of the power of attorney:*

*(1) Have been approved by the commissioner; and*

*(2) Expressly prohibit the mortgage company and its mortgage agents from using or releasing any money in which the investor owns a beneficial interest with regard to that loan for a purpose that is not directly related to providing services for the loan or in any manner that violates the provisions of NRS 645B.175.*

*2. A power of attorney which designates a mortgage company or mortgage agent as the attorney in fact or the agent of an investor and which violates the provisions of this section is void and must not be given effect with regard to any act or transaction that occurs on or after October 1, 1999, whether or not the power of attorney is or has been executed by the investor before, on or after October 1, 1999.*

*Sec. 18. 1. A person may, in accordance with the regulations adopted pursuant to subsection 2, file a complaint with the commissioner, alleging that another person*

*has violated a provision of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner.*

*2. The commissioner shall adopt regulations prescribing:*

*(a) The form that such a complaint must take;*

*(b) The information that must be included in such a complaint; and*

*(c) The procedures that a person must follow to file such a complaint.*

*Sec. 19. 1. If a person properly files a complaint with the commissioner pursuant to section 18 of this act, the commissioner shall investigate each violation alleged in the complaint, unless the commissioner has previously investigated the alleged violation.*

*2. Except as otherwise provided in subsection 2 of NRS 645B.090, if the commissioner does not conduct an investigation of an alleged violation pursuant to subsection 1 because he previously has investigated the alleged violation, the commissioner shall provide to the person who filed the complaint a written summary of the previous investigation and the nature of any disciplinary action that was taken as a result of the previous investigation.*

*3. If the commissioner conducts an investigation of an alleged violation pursuant to subsection 1, the commissioner shall determine from the investigation whether there is reasonable cause to believe that the person committed the alleged violation.*

*4. If, upon investigation, the commissioner determines that there is not reasonable cause to believe that the person committed the alleged violation, the commissioner shall*

*provide the reason for his determination, in writing, to the person who filed the complaint and to the person alleged to have committed the violation.*

*5. If, upon investigation, the commissioner determines that there is reasonable cause to believe that the person committed the alleged violation, the commissioner shall:*

*(a) Schedule a hearing concerning the alleged violation;*

*(b) Mail to the last known address of the person who filed the complaint written notice that must include, without limitation:*

*(1) The date, time and place of the hearing; and*

*(2) A statement of each alleged violation that will be considered at the hearing;*

*and*

*(c) By personal service in accordance with the Nevada Rules of Civil Procedure and any applicable provision of NRS, serve written notice of the hearing to the person alleged to have committed the violation. The written notice that is served pursuant to this paragraph must include, without limitation:*

*(1) The date, time and place of the hearing;*

*(2) A copy of the complaint and a statement of each alleged violation that will be considered at the hearing; and*

*(3) A statement informing the person that, pursuant to section 23 of this act, if he fails to appear, without reasonable cause, at the hearing:*

*(I) He is guilty of a misdemeanor;*

*(II) A warrant will be issued for his arrest; and*

*(III) The commissioner is authorized to conduct the hearing in his absence, draw any conclusions that the commissioner deems appropriate from his failure to appear and render a decision concerning each alleged violation.*

*6. The commissioner may investigate and conduct a hearing concerning any alleged violation, whether or not a complaint has been filed.*

*7. The commissioner may hear and consider more than one alleged violation against a person at the same hearing.*

*8. Except as otherwise provided by specific statute, if the commissioner conducts a hearing concerning an alleged violation without a complaint having been filed, the commissioner shall serve written notice of the hearing, pursuant to paragraph (c) of subsection 5, to the person alleged to have committed the violation.*

*Sec. 20. 1. If a person offers or provides any services of a mortgage company or mortgage agent or otherwise engages in, carries on or holds himself out as engaging in or carrying on the business of a mortgage company or mortgage agent and, at the time:*

*(a) The person was required to have a license pursuant to this chapter and the person did not have such a license; or*

*(b) The person's license was suspended or revoked pursuant to this chapter,*

*the commissioner shall impose upon the person an administrative fine of not more than \$10,000 for each violation and, if the person has a license, the commissioner shall revoke it.*

*2. If a person is exempt from the provisions of this chapter pursuant to subsection 6 of NRS 645B.015 and the person, while exempt, maintains, offers to maintain or holds himself out as maintaining any accounts described in subsection 1 of NRS 645B.175 or otherwise engages in, offers to engage in or holds himself out as engaging in any activity that would remove the person from the exemption set forth in subsection 6 of NRS 645B.015, the commissioner shall impose upon the person an administrative fine of not more than \$10,000 for each violation and the commissioner shall revoke the person's exemption. If the commissioner revokes an exemption pursuant to this subsection, the person may not again be granted the same or a similar exemption from the provisions of this chapter. The person may apply for a license pursuant to this chapter unless otherwise prohibited by specific statute.*

*3. If a mortgage company or mortgage agent violates any provision of NRS 645B.175, the commissioner shall impose upon the mortgage company or mortgage agent, or both, an administrative fine of not more than \$10,000 for each violation and the commissioner shall revoke the license of the mortgage company or mortgage agent, or both.*

*4. If a mortgage company or mortgage agent violates any provision of subsection 1 of NRS 645B.080 and the mortgage company or mortgage agent fails, without*

*reasonable cause, to remedy the violation within 10 days after being ordered by the commissioner to do so, or if the commissioner orders a mortgage company or mortgage agent to provide information, make a report or permit an examination of his books or affairs pursuant to this chapter and the mortgage company or mortgage agent fails, without reasonable cause, to comply with the order within 10 days:*

*(a) The commissioner shall impose upon the mortgage company or mortgage agent, or both, an administrative fine of not more than \$10,000 for each violation and the commissioner shall suspend or revoke the license of the mortgage company or mortgage agent, or both; and*

*(b) If the violation is committed by a mortgage company, the mortgage company shall be deemed to be conducting its business in an unsafe and injurious manner that may result in danger to the public, and the commissioner shall immediately take possession of the property of the mortgage company pursuant to NRS 645B.150.*

*5. For each violation that may be committed by a person pursuant to this chapter or the regulations adopted pursuant to this chapter, other than a violation described in this section, the commissioner shall adopt regulations:*

*(a) Categorizing the violation as a major violation or a minor violation; and*

*(b) Specifying the disciplinary action that will be taken by the commissioner pursuant to this chapter against a person who commits:*

*(1) A major violation. The disciplinary action taken by the commissioner for a major violation must include, without limitation, suspension or revocation of the person's license.*

*(2) More than two minor violations. The commissioner may establish graduated sanctions for a person who commits more than two minor violations based upon the number, the frequency and the severity of the minor violations and whether the person previously has committed any major violations.*

*Sec. 21. If a person or licensee is a partnership, corporation or unincorporated association, the commissioner shall take the disciplinary action set forth in section 20 of this act and may take any other disciplinary action set forth in this chapter against the person or licensee if any member of the partnership or any officer or director of the corporation or unincorporated association has committed any act or omission that would be cause for taking such disciplinary action against a natural person.*

*Sec. 22. Before conducting a hearing, the commissioner may, to the fullest extent permitted by the Constitution of the United States and the constitution of this state:*

*1. Order a summary suspension of a license pursuant to subsection 3 of NRS 233B.127; and*

*2. Take any other action against a licensee or other person that is necessary to protect the health, safety or welfare of the public.*

*Sec. 23. If a person is alleged to have engaged in any conduct or committed any violation that is described in NRS 645B.100, 645B.120 or 645B.150 or section 20 of*

*this act or is alleged to have committed a violation of any other provision of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner, and the person fails to appear, without reasonable cause, at a hearing before the commissioner concerning the alleged conduct or violation:*

*1. The commissioner shall notify the attorney general that the person failed to appear;*

*2. The attorney general shall request from the appropriate court a warrant for the arrest of the person;*

*3. The court shall issue a warrant for the arrest of the person if there is probable cause to believe that the person failed to appear without reasonable cause;*

*4. The person is guilty of a misdemeanor; and*

*5. The commissioner may conduct the hearing in the person's absence, draw any conclusions that the commissioner deems appropriate from his failure to appear and render a decision concerning the alleged conduct or violation.*

*Sec. 24. 1. The attorney general has primary jurisdiction for the enforcement of this chapter. The attorney general shall investigate and, if appropriate, prosecute a person who violates:*

*(a) Any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner, including, without limitation, a violation of any provision of NRS 645B.100 or 645B.120 or section 20 of this act; or*

*(b) Any other law or regulation if the person commits the violation in the course of offering or providing any services of a mortgage company or mortgage agent or while otherwise engaging in, carrying on or holding himself out as engaging in or carrying on the business of a mortgage company or mortgage agent.*

*2. The attorney general shall investigate and, if appropriate, prosecute a person who is alleged to have committed a violation described in subsection 1 whether or not:*

*(a) The commissioner notifies the attorney general of the alleged violation;*

*(b) The commissioner takes any disciplinary action against the person alleged to have committed the violation;*

*(c) Any other person files a complaint against the person alleged to have committed the violation; or*

*(d) A civil action is commenced against the person alleged to have committed the violation.*

*3. When acting pursuant to this section, the attorney general may commence his investigation and file a criminal action without leave of court, and the attorney general has exclusive charge of the conduct of the prosecution.*

*4. Except as otherwise provided by the Constitution of the United States, the constitution of this state or a specific statute, a person shall, if requested, provide the attorney general with information that would assist in the prosecution of any other person who is alleged to have committed a violation described in subsection 1. If a*

*person fails, without reasonable cause, to provide the attorney general with such information upon request, the person is guilty of a misdemeanor.*

*Sec. 25. 1. The attorney general may bring any appropriate civil action against a person to enforce any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner, including, without limitation, an order of the commissioner:*

*(a) Imposing an administrative fine; or*

*(b) Suspending, revoking or placing conditions upon a license.*

*2. Whether or not the attorney general brings a civil action against a person pursuant to this chapter, the attorney general may prosecute the person for a criminal violation pursuant to this chapter.*

*Sec. 26. NRS 645B.010 is hereby amended to read as follows:*

*645B.010 As used in this chapter, unless the context otherwise requires:*

*1. "Applicant" means a person who applies for licensure as a mortgage company or mortgage agent pursuant to this chapter.*

*2. "Commissioner" means the commissioner of financial institutions.*

*{2-} 3. "Division" means the division of financial institutions of the department of business and industry.*

*{3-} 4. "Depository financial institution" means a bank, savings and loan association, thrift company or credit union.*

~~[4.]~~ 5. *“Investor” means a person who wants to acquire or who acquires ownership of or a beneficial interest in a loan secured by a lien on real property.*

6. *“Licensee” means a person who is licensed as a mortgage company or mortgage agent pursuant to this chapter.*

7. *“Mortgage agent” means a person who is as an employee or independent contractor of a mortgage company that is subject to the provisions of this chapter and who is authorized by the mortgage company to engage in, on its behalf, any activity that would require the person, if he were not an employee or independent contractor of the mortgage company, to be licensed as a mortgage company pursuant to this chapter.*

*The term does not include a person who:*

*(a) Is licensed as a mortgage company;*

*(b) Is a partner, officer, director or trustee of a mortgage company; or*

*(c) Performs only clerical or ministerial tasks for a mortgage company.*

8. *“Mortgage company” means any person who, directly or indirectly:*

*(a) Holds himself out for hire to serve as an agent for any person in an attempt to obtain a loan which will be secured by a lien on real property;*

*(b) Holds himself out for hire to serve as an agent for any person who has money to lend, if the loan is or will be secured by a lien on real property;*

*(c) Holds himself out as being able to make loans secured by liens on real property, unless the loans are made pursuant to subsection 8 or 10 of NRS 645B.015;*

(d) Holds himself out as being able to buy or sell notes secured by liens on real property; or

(e) Offers for sale in this state any security which is exempt from registration under state or federal law and purports to make investments in promissory notes secured by liens on real property.

**Sec. 27.** NRS 645B.015 is hereby amended to read as follows:

645B.015 Except as otherwise provided in ~~[subsection 5 of NRS 645B.020,]~~ ***section 10 of this act***, the provisions of this chapter do not apply to:

1. Any person doing business under the laws of this state, any other state or the United States relating to banks, savings banks, trust companies, savings and loan associations, consumer finance companies, industrial loan companies, credit unions, thrift companies or insurance companies, unless the business conducted in this state is not subject to supervision by the regulatory authority of the other jurisdiction, in which case licensing pursuant to this chapter is required.

2. A real estate investment trust, as defined in 26 U.S.C. § 856, unless the business conducted in this state is not subject to supervision by the regulatory authority of the other jurisdiction, in which case licensing pursuant to this chapter is required.

3. An employee benefit plan, as defined in 29 U.S.C. § 1002(3), if the loan is made directly from money in the plan by the plan's trustee.

4. An attorney at law rendering services in the performance of his duties as an attorney at law.

5. A real estate broker rendering services in the performance of his duties as a real estate broker.

6. Except as otherwise provided in this subsection ~~[,]~~ *and section 20 of this act*, any firm or corporation:

(a) Whose principal purpose or activity is lending money on real property which is secured by a mortgage;

(b) Approved by the Federal National Mortgage Association as a seller and servicer; and

(c) Approved by the Department of Housing and Urban Development and the Department of Veterans Affairs.

A firm or corporation is not exempt from the provisions of this chapter pursuant to this subsection if it maintains any accounts described in subsection 1 of NRS 645B.175 or offers for sale in this state any unregistered security under state or federal law and purports to make investments in promissory notes secured by liens on real property. A firm or corporation which is exempted pursuant to this subsection must submit annually as a condition of its continued exemption a certified statement by an independent certified public accountant that the firm or corporation does not maintain any such accounts. This subsection does not prohibit an exempt firm or corporation from maintaining accounts described in NRS 645B.170 and subsection ~~[3]~~ 4 of NRS 645B.175.

7. Any person doing any act under an order of any court.

8. Any one natural person, or husband and wife, who provides money for investment in loans secured by a lien on real property, on his own account.

9. Agencies of the United States and of this state and its political subdivisions, including the public employees' retirement system.

10. A seller of real property who offers credit secured by a mortgage of the property sold.

Sec. 28. NRS 645B.020 is hereby amended to read as follows:

645B.020 1. A ~~[license]~~ *person who wishes to be licensed* as a mortgage company ~~[may be obtained by filing]~~ *or mortgage agent must file* a written application ~~[in]~~ *for a license with* the office of the commissioner ~~[~~

~~—2.—The]~~ *and pay the fee required pursuant to NRS 645B.050.*

2. *An application for a license as a mortgage company must:*

(a) Be verified.

(b) State the *name, residence address and business address of the applicant and the* location of ~~[the applicant's]~~ *each* principal office and branch ~~[offices in the]~~ *office at which the mortgage company will conduct business within this* state.

(c) State the name under which the applicant will conduct business ~~[~~ *as a mortgage company.*

(d) List the ~~[names,]~~ *name, residence address and business* ~~[addresses of all persons having]~~ *address of each person who will:*

*(1) If the applicant is not a natural person, have an interest in the ~~[business as principals, partners, officers, trustees and directors,]~~ mortgage company as a principal, partner, officer, director or trustee, specifying the capacity and title of each ~~[-]~~ such person.*

*(2) Be associated with or employed by the mortgage company as a mortgage agent, specifying whether the person has applied for a license or is presently licensed as a mortgage agent.*

(e) If the applicant is a natural person, include the social security number of the applicant.

(f) ~~[Indicate the]~~ *Include a general business plan and ~~[character of the business.]~~ a manual of policies and procedures for the mortgage company and its mortgage agents that includes, without limitation, the underwriting standards, restrictions and other policies and procedures that the mortgage company and its mortgage agents will follow to arrange and service loans and to conduct business pursuant to this chapter.*

(g) State the length of time the applicant has been engaged in the mortgage company business.

(h) Include a financial statement of the applicant ~~[-~~  
~~—(i) Include such]~~ *and sufficient evidence to establish that the applicant will be able to maintain continuously the net worth required pursuant to section 11 of this act.*

*(i) Include any other information ~~[as]~~ required pursuant to the regulations adopted by the commissioner or an order of the commissioner . ~~[determines necessary.]~~*

~~—3.—The]~~

*3. An application for a license as a mortgage agent must:*

*(a) Be verified.*

*(b) State the name, residence address and business address of the applicant and the name under which the applicant will conduct business as a mortgage agent.*

*(c) State the name of the mortgage company with whom the applicant will be associated or employed and whether the mortgage company has applied for a license or is presently licensed.*

*(d) State the location of each office of the mortgage company at which the applicant will conduct business.*

*(e) If the applicant is not a natural person, list the name, residence address and business address of each person who will have an interest in the mortgage agent as a principal, partner, officer, director or trustee, specifying the capacity and title of each such person.*

*(f) If the applicant is a natural person, include the social security number of the applicant.*

*(g) Include a financial statement of the applicant.*

*(h) Include any other information required pursuant to the regulations adopted by the commissioner or an order of the commissioner.*

*4. If a mortgage company will conduct business at one or more branch offices within this state, the mortgage company must apply for a license for each such branch*

*office. If a mortgage agent will conduct business from more than one office of the mortgage company with whom he is associated or employed, the mortgage agent must apply for a license for each such office.*

5. *Except as otherwise provided in this chapter, the* commissioner shall issue a license to an applicant as a mortgage company *or mortgage agent* if:

(a) The application complies with the requirements of ~~[subsection 2:]~~ *this chapter*;

(b) The applicant submits the statement required pursuant to NRS 645B.023, if the applicant is required to do so; and

(c) The applicant and each general partner, officer or director of the applicant, if the applicant is a partnership, corporation or unincorporated association:

(1) Has a good reputation for honesty, trustworthiness, integrity and displays competence to transact the business of a mortgage company *or mortgage agent* in a manner which safeguards the interests of the general public. The applicant must submit satisfactory proof of these qualifications to the commissioner.

(2) Has not been convicted of, or entered a plea of nolo contendere to, a felony or any crime involving fraud, misrepresentation or moral turpitude.

(3) Has not made a false statement of material fact on his application.

(4) Has not had a license that was issued pursuant to the provisions of this chapter suspended or revoked within the 10 years immediately preceding the date of his application.

(5) Has not had a license that was issued in any other state, district or territory of the United States or any foreign country suspended or revoked within the 10 years immediately preceding the date of his application.

(6) Has not violated any ~~{of the provisions}~~ *provision* of this chapter ~~{or any}~~ , a regulation adopted pursuant ~~{thereto}~~.

~~—4.] to this chapter or an order of the commissioner.~~

*6. If an applicant is a partnership, corporation or unincorporated association, the commissioner may refuse to issue a license to the applicant if any member of the partnership or any officer or director of the corporation or unincorporated association has committed any act or omission that would be cause for refusing to issue a license to a natural person.*

7. A license entitles the ~~{holder}~~ *licensee* to engage only in the activities authorized by this chapter.

~~{5.—A person who claims an exemption from the provisions of this chapter must apply to the commissioner for a certificate of exemption and pay the fee for application.}~~

**Sec. 29.** NRS 645B.023 is hereby amended to read as follows:

645B.023 1. A natural person who applies for the issuance or renewal of a license as a mortgage company *or mortgage agent* shall submit to the commissioner the statement prescribed by the welfare division of the department of human resources pursuant to NRS 425.520. The statement must be completed and signed by the applicant.

2. The commissioner shall include the statement required pursuant to subsection 1 in:

(a) The application or any other forms that must be submitted for the issuance or renewal of the license; or

(b) A separate form prescribed by the commissioner.

3. A license as a mortgage company *or mortgage agent* may not be issued or renewed by the commissioner if the applicant is a natural person who:

(a) Fails to submit the statement required pursuant to subsection 1; or

(b) Indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

4. If an applicant indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the commissioner shall advise the applicant to contact the district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.

**Sec. 30.** NRS 645B.025 is hereby amended to read as follows:

645B.025 1. A [licensee] *mortgage agent may not be associated with or employed by more than one mortgage company at the same time.*

2. *The license of a mortgage agent must be delivered or mailed to the mortgage company with whom he is associated or employed and kept in the custody and control of the mortgage company.*

3. *The license of a mortgage company or mortgage agent must:*

(a) *Show the name of the licensee, the address of the office for which the license has been issued and, if the licensee is a mortgage agent, the name of the mortgage company with whom he is associated or employed;*

(b) *Be imprinted with the seal of the division; and*

(c) *Include any other information required pursuant to the regulations adopted by the commissioner or an order of the commissioner.*

4. *A mortgage company shall post ~~[each]~~ its license and the license of each of its mortgage agents in a conspicuous place in the office ~~[to which it pertains.~~*

~~—2.—A license]~~ *for which each license has been issued.*

5. *A mortgage company may not ~~[be transferred or assigned]~~ transfer or assign a license to another person, unless the commissioner gives his written approval.*

6. *A mortgage agent may not change the mortgage company with whom he is associated or employed, unless the commissioner gives his written approval and the mortgage agent pays the fee required pursuant to NRS 645B.050.*

Sec. 31. NRS 645B.050 is hereby amended to read as follows:

645B.050 1. A ~~[mortgage company's]~~ license *issued pursuant to this chapter expires each year on June 30 ~~[next after the date of issuance if it is not renewed. A~~*

~~license may be renewed by filing an~~ , *unless it is renewed. To renew a license, the licensee must submit to the commissioner on or before June 30 of each year:*

(a) *An application for renewal* ~~[, paying the annual fee for a license for the succeeding year and, if]~~ ;

(b) *The fee required to renew the license pursuant to this section; and*

(c) *If the licensee is a natural person, [submitting] the statement required pursuant to NRS 645B.023. [The application, statement and payment must be received by the commissioner on or before June 30 next preceding the expiration date.]*

2. *If the [application, statement, if required, or payment is not received by] licensee fails to submit any item required pursuant to subsection 1 to the commissioner on or before June 30 [,] of any year, the license is canceled. The commissioner may reinstate [the] a canceled license if the licensee [files an application, submits the statement, if required, pays the filing fee and pays a] submits to the commissioner:*

(a) *An application for renewal;*

(b) *The fee required to renew the license pursuant to this section;*

(c) *If the licensee is a natural person, the statement required pursuant to NRS 645B.023; and*

(d) *A reinstatement fee of \$200.*

~~[2. The commissioner shall require a licensee to deliver a financial statement prepared from his books and records by an independent public accountant who holds a permit to engage in the practice of public accounting in this state which has not been~~

~~revoked or suspended. The financial statement must be dated not earlier than the close of the latest fiscal year of the company and must be submitted within 60 days thereafter. The commissioner may grant a reasonable extension for the submission of the financial statement if requested before the statement is due.~~

~~—3.— If a licensee maintains any accounts described in subsection 1 of NRS 645B.175, the financial statement submitted pursuant to this section must be audited. If the licensee maintains any accounts described in subsection 3 of NRS 645B.175, those accounts must be audited. The public accountant who prepares the report of an audit shall submit a copy of the report to the commissioner at the same time as he submits the report to the company. The commissioner shall, by regulation, prescribe the scope of audits conducted pursuant to this subsection.~~

~~—4.— A]~~

*3. Except as otherwise provided in section 10 of this act, a certificate of exemption issued pursuant to [subsection 5 of NRS 645B.020] this chapter expires each year on December 31 [next after the date of issuance if it is not renewed. A] , unless it is renewed. To renew a certificate of exemption [may be renewed by filing an] , a person must submit to the commissioner on or before December 31 of each year:*

*(a) An application for renewal [and paying the annual fee for renewal of a] that includes sufficient evidence to establish that the person meets the requirements of at least one exemption set forth in the provisions of NRS 645B.015; and*

*(b) The fee required to renew the certificate of exemption . ~~[for the succeeding year.~~*  
~~The application and payment must be received by the commissioner on or before~~  
~~December 31 next preceding the expiration date.]~~

4. If the ~~[application or payment is not received by]~~ *person fails to submit any item required pursuant to subsection 3 to the commissioner on or before* December 31 ~~[,]~~ *of any year, the certificate of exemption is canceled. ~~[The]~~ Except as otherwise provided in section 10 of this act, the commissioner may reinstate ~~[the]~~ a canceled certificate of exemption if the ~~[applicant pays the filing fee and a]~~ person submits to the commissioner:*

*(a) An application for renewal that includes sufficient evidence to establish that the person meets the requirements of at least one exemption set forth in the provisions of NRS 645B.015;*

*(b) The fee required to renew the certificate of exemption; and*

*(c) A reinstatement fee of \$100.*

5. ~~[The filing fees are:~~

~~—(a) For filing]~~ *A person must pay the following fees to apply for, to be issued or to renew a license as a mortgage company pursuant to this chapter:*

*(a) To file an original application ~~[,]~~ for a license, \$1,500 for the principal office and \$40 for each branch office. The ~~[applicant shall]~~ person must also pay such additional expenses incurred in the process of investigation as the commissioner deems necessary.*

All money received by the commissioner pursuant to this paragraph must be placed in the investigative account created by NRS 232.545.

(b) ~~[(If the license is approved for issuance,)]~~ *To be issued a license*, \$1,000 for the principal office and \$60 for each branch office . ~~[(before issuance.~~

~~—(c) For filing an application for renewal,]~~

(c) *To renew a license*, \$500 for the principal office and \$100 for each branch office.

~~[(d) For filing]~~

6. *A person must pay the following fees to apply for, to be issued or to renew a license as a mortgage agent pursuant to this chapter or to change the mortgage company with whom the person is associated or employed as a mortgage agent:*

(a) *To file an original application for a license, \$500 for the primary office at which the person will conduct business as a mortgage agent and \$40 for each additional office at which the person will conduct business as a mortgage agent. The person must also pay such additional expenses incurred in the process of investigation as the commissioner deems necessary. All money received by the commissioner pursuant to this paragraph must be placed in the investigative account created by NRS 232.545.*

(b) *To be issued a license, \$250 for the primary office at which the person will conduct business as a mortgage agent and \$40 for each additional office at which the person will conduct business as a mortgage agent.*

*(c) To renew a license, \$150 for the primary office at which the person will conduct business as a mortgage agent and \$40 for each additional office at which the person will conduct business as a mortgage agent.*

*(d) To change the mortgage company with whom the person is associated or employed as a mortgage agent, \$25 for the primary office at which the person will conduct business as a mortgage agent and \$10 for each additional office at which the person will conduct business as a mortgage agent.*

*7. A person must pay the following fees to apply for or to renew a certificate of exemption pursuant to this chapter:*

*(a) To file an application for a certificate of exemption, \$200.*

~~*{(e) For filing an application for renewal of}*~~

*(b) To renew a certificate of exemption, \$100.*

~~*{(f) For filing an application for}*~~

*8. To be issued a duplicate copy of any license ~~[, upon]~~ or certificate of exemption, a person must make a satisfactory showing of its loss ~~[, \$10-~~  
~~—6.]~~ and pay a fee of \$10.*

*9. Except as otherwise provided in this chapter, all fees received pursuant to this chapter must be deposited in the state treasury for credit to the state general fund.*

**Sec. 32.** NRS 645B.060 is hereby amended to read as follows:

645B.060 1. Subject to the administrative control of the director of the department of business and industry, the commissioner shall exercise general supervision and control over mortgage companies *and mortgage agents* doing business in this state.

2. In addition to the other duties imposed upon him by law, the commissioner shall:

(a) Adopt ~~{reasonable regulations as may be necessary for making effective}~~ *regulations prescribing standards for determining whether a mortgage company has maintained adequate supervision of a mortgage agent pursuant to this chapter.*

*(b) Adopt any other regulations that are necessary to carry out the provisions of this chapter, except as to loan brokerage fees.*

~~{(b)}~~ *(c) Conduct such investigations as may be necessary to determine whether any person has violated any provision of this chapter {*

~~—(e)}~~ *, a regulation adopted pursuant to this chapter or an order of the commissioner.*

*(d) Conduct an annual examination of each mortgage company doing business in this state.*

~~{(d)}~~ *(e) Conduct such other examinations, periodic or special audits, investigations and hearings as may be necessary and proper for the efficient administration of the laws of this state regarding mortgage companies {*

~~—(e)}~~ *and mortgage agents.*

*(f) Classify as confidential certain records and information obtained by the division when those matters are obtained from a governmental agency upon the express condition*

that they remain confidential. This paragraph does not limit examination by the legislative auditor.

~~[(f)]~~ (g) Conduct such examinations and investigations as are necessary to ensure that mortgage companies *and mortgage agents* meet the requirements of this chapter for obtaining a license, both at the time of the application for a license and thereafter on a continuing basis.

3. For each special audit, investigation or examination a mortgage company shall pay a fee based on the rate established pursuant to NRS 658.101.

**Sec. 33.** NRS 645B.070 is hereby amended to read as follows:

645B.070 1. In the conduct of any examination, periodic or special audit, investigation or hearing, the commissioner may:

- (a) Compel the attendance of any person by subpoena.
- (b) Administer oaths.
- (c) Examine any person under oath concerning the business and conduct of affairs of any person subject to the provisions of this chapter and in connection therewith require the production of any books, records or papers relevant to the inquiry.

2. Every person subpoenaed under the provisions of this section who willfully refuses or willfully neglects to appear at the time and place named in the subpoena or to produce books, records or papers required by the commissioner, or who refuses to be sworn or answer as a witness, is guilty of a misdemeanor.

3. The *commissioner may assess against and collect from a person the* cost of any examination, periodic or special audit, investigation or hearing *that is conducted* ~~[under]~~ *to examine or investigate the conduct, activities or business of the person pursuant to* this chapter . ~~[may be assessed to and collected from the mortgage company in question by the commissioner.]~~

Sec. 34. NRS 645B.080 is hereby amended to read as follows:

645B.080 1. ~~[All mortgage companies]~~ *Each mortgage company and mortgage agent* shall keep and maintain at all times ~~[in their places of]~~ *at each location where the mortgage company or mortgage agent conducts* business in this state complete and suitable records of all mortgage transactions made by ~~[them]~~ *the mortgage company or mortgage agent* at that location . ~~[, together with]~~ *Each mortgage company shall also keep and maintain at all times at each such location* all original books, papers and data, or copies thereof, clearly reflecting the financial condition of the business of ~~[such companies.]~~ *the mortgage company.*

2. Each mortgage company shall submit to the commissioner each month a report of the *mortgage* company's activity for the previous month. The report must:

(a) Specify the volume of loans arranged by the *mortgage* company for the month or state that no loans were arranged in that month;

(b) Include ~~[such other information as]~~ *any information required pursuant to section 15 of this act or pursuant to the regulations adopted by the commissioner ;* ~~[by regulation requires;]~~ and

(c) Be submitted to the commissioner by the 15th day of the month following the month for which the report is made.

3. The commissioner may adopt regulations prescribing accounting procedures for mortgage companies handling trust accounts and the requirements for keeping records relating thereto.

Sec. 35. NRS 645B.090 is hereby amended to read as follows:

645B.090 1. Except as otherwise provided *in this section or* by ~~law, all~~ *specific statute:*

(a) *All* papers, documents, reports and other written instruments filed with the commissioner ~~under~~ *pursuant to* this chapter are open to public inspection . ~~except that the~~

(b) *The commissioner shall disclose the following information concerning a mortgage company or mortgage agent to any person who requests it:*

(1) *Information concerning any investigation that is currently pending against the mortgage company or mortgage agent pursuant to the provisions of this chapter;*

(2) *The findings and results of any investigation that has been completed during the immediately preceding 5 years against the mortgage company or mortgage agent pursuant to the provisions of this chapter; and*

(3) *The nature of any disciplinary action that has been taken during the immediately preceding 5 years against the mortgage company or mortgage agent pursuant to the provisions of this chapter.*

2. *The commissioner may withhold from public inspection or refuse to disclose to a person, for such time as ~~he~~ the commissioner considers necessary , any information ~~which~~ that, in his judgment , would:*

*(a) Impede or otherwise interfere with an investigation that is currently pending against a mortgage company or mortgage agent; or*

*(b) Have an undesirable effect on the ~~public~~ welfare of the public or the welfare of any mortgage company . ~~[requires to be so withheld.]~~*

Sec. 36. NRS 645B.100 is hereby amended to read as follows:

645B.100 ~~[1.]~~ *Except as otherwise provided in section 20 of this act:*

*1. For each violation committed by an applicant, whether or not he is issued a license, the commissioner may impose upon the applicant an administrative fine of not more than \$10,000 if the applicant:*

*(a) Has knowingly made or caused to be made to the commissioner any false representation of material fact;*

*(b) Has suppressed or withheld from the commissioner any information which the applicant possesses and which, if submitted by him, would have rendered the applicant ineligible to be licensed pursuant to the provisions of this chapter; or*

*(c) Has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner in completing and filing his application for a license or during the course of the investigation of his application for a license.*

2. The commissioner may ~~[require]~~ ***impose upon*** a licensee ~~[to pay]~~ ***who is licensed as a mortgage company*** an administrative fine of not more than ~~[\$500]~~ ***\$10,000*** for each violation ***that*** he commits or suspend, revoke or place conditions upon his license, or do both, ~~[at any time]~~ if the licensee, whether or not acting as such:

- (a) Is insolvent;
- (b) Is grossly negligent or incompetent in performing any act for which he is required to be licensed pursuant to the provisions of this chapter;
- (c) Does not conduct his business in accordance with law or has violated any ~~[provisions]~~ ***provision*** of this chapter ~~[;]~~ , ***a regulation adopted pursuant to this chapter or an order of the commissioner;***
- (d) Is in such financial condition that he cannot continue in business with safety to his customers;
- (e) Has made a material misrepresentation in connection with any transaction governed by this chapter;
- (f) Has suppressed or withheld from a client any material facts, data or other information relating to any transaction governed by the provisions of this chapter which ~~[he knew,]~~ ***the licensee knew*** or , by the exercise of reasonable diligence, should have known;
- (g) Has knowingly made or caused to be made to the commissioner any false representation of material fact or has suppressed or withheld from the commissioner any information which the ~~[applicant or]~~ licensee possesses ~~[;]~~ and which , if submitted by

him , would have rendered the ~~[applicant or]~~ licensee ineligible to be licensed pursuant to the provisions of this chapter;

(h) Has failed to account to persons interested for all money received for the impound trust account;

(i) Has refused to permit an examination by the commissioner of his books and affairs or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the commissioner pursuant to the provisions of this *chapter or a regulation adopted pursuant to this* chapter;

(j) Has been convicted of, or entered a plea of nolo contendere to, a felony or any crime involving fraud, misrepresentation or moral turpitude;

(k) Has refused or failed to pay, within a reasonable time, those expenses assessed to the mortgage company pursuant to NRS 645B.050 or 645B.070;

(l) Has failed to satisfy a claim made by a client which has been reduced to judgment;

(m) Has failed to account for or to remit any money of a client within a reasonable time after a request for an accounting or remittal;

(n) Has commingled the money or other property of a client with his own or has converted the money or property of others to his own use;

(o) Has engaged in any other conduct constituting a deceitful, fraudulent or dishonest business practice; ~~[or]~~

(p) *Has failed to maintain adequate supervision of a mortgage agent;*

*(q) Has instructed a mortgage agent to commit an act that would be cause for the revocation of the license of the mortgage company or mortgage agent, whether or not the mortgage agent commits the act; or*

*(r) Has not conducted verifiable business as a mortgage company for 12 consecutive months, except in the case of a new applicant. The commissioner shall determine whether a mortgage company is conducting business by examining the monthly reports of activity submitted by the licensee or by conducting an examination of the licensee.*

~~[2. It is sufficient cause for refusal or revocation of a license in the case of a partnership or corporation or any unincorporated association that any member of the partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be cause for refusing or revoking the registration of a natural person.]~~

*3. The commissioner may impose upon a licensee who is licensed as a mortgage agent an administrative fine of not more than \$10,000 for each violation that he commits or suspend, revoke or place conditions upon his license, or do both, if the licensee, whether or not acting as such:*

*(a) Is grossly negligent or incompetent in performing any act for which he is required to be licensed pursuant to the provisions of this chapter;*

*(b) Has violated any provision of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner;*

*(c) Has made a material misrepresentation in connection with any transaction governed by this chapter;*

*(d) Has suppressed or withheld from a client any material facts, data or other information relating to any transaction governed by the provisions of this chapter which the licensee knew or, by the exercise of reasonable diligence, should have known;*

*(e) Has knowingly made or caused to be made to the commissioner any false representation of material fact or has suppressed or withheld from the commissioner any information which the licensee possesses and which, if submitted by him, would have rendered the licensee ineligible to be licensed pursuant to the provisions of this chapter;*

*(f) Has refused to permit an examination by the commissioner of his books and affairs or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the commissioner pursuant to the provisions of this chapter or a regulation adopted pursuant to this chapter;*

*(g) Has been convicted of, or entered a plea of nolo contendere to, a felony or any crime involving fraud, misrepresentation or moral turpitude;*

*(h) Has refused or failed to pay, within a reasonable time, those expenses assessed to the licensee pursuant to NRS 645B.050 or 645B.070;*

*(i) Has failed to satisfy a claim made by a client which has been reduced to judgment;*

*(j) Has failed to account for or to remit any money of a client within a reasonable time after a request for an accounting or remittal;*

*(k) Has commingled the money or other property of a client with his own or has converted the money or property of others to his own use; or*

*(l) Has engaged in any other conduct constituting a deceitful, fraudulent or dishonest business practice.*

Sec. 37. NRS 645B.105 is hereby amended to read as follows:

645B.105 1. If the commissioner receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional, occupational and recreational licenses, certificates and permits issued to a person who is the holder of a license as a mortgage company ~~[-]~~ *or mortgage agent*, the commissioner shall deem the license issued to that person to be suspended at the end of the 30th day after the date on which the court order was issued unless the commissioner receives a letter issued to the holder of the license by the district attorney or other public agency pursuant to NRS 425.550 stating that the holder of the license has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

2. The commissioner shall reinstate a license as a mortgage company *or mortgage agent* that has been suspended by a district court pursuant to NRS 425.540 if the commissioner receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose license was suspended stating that the

person whose license was suspended has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

Sec. 38. NRS 645B.110 is hereby amended to read as follows:

645B.110 1. ~~[Notice of the entry of any order of suspension or of refusing a license to any mortgage company must be given in writing,]~~ *If the commissioner enters an order suspending or revoking a license or denying an application for a license, the commissioner shall cause written notice of the order to be served personally or sent by certified mail or by telegraph to the* ~~[company affected.~~

~~—2.—The company,]~~ *licensee or applicant.*

2. *Unless a hearing has already been conducted concerning the matter, the licensee or applicant, upon application, is entitled to a hearing .* ~~[; but if no]~~ *If the licensee or applicant does not make such an application* ~~[is made]~~ *within 20 days after the* ~~[entry of an order of suspension or of refusing a license of any company,]~~ *date of the initial order, the commissioner shall enter a final order* ~~[in either case.]~~ *concerning the matter.*

Sec. 39. NRS 645B.120 is hereby amended to read as follows:

645B.120 1. ~~[The commissioner may investigate either upon complaint or otherwise when]~~ *Whether or not a complaint has been filed, the commissioner shall investigate a mortgage company, mortgage agent or other person if, for any reason, it appears that* ~~[a]~~ :

*(a) The mortgage company or mortgage agent is conducting [its] business in an unsafe and injurious manner or in violation of any provision of this chapter [or the regulations promulgated thereunder by the commissioner, or when it appears that any] , a regulation adopted pursuant to this chapter or an order of the commissioner;*

*(b) The person is offering or providing any services of a mortgage company or mortgage agent or otherwise engaging in [the] , carrying on or holding himself out as engaging in or carrying on the business of a mortgage company [business] or mortgage agent without being licensed [under] or exempt from licensing pursuant to the provisions of [these sections.] this chapter; or*

*(c) The person is violating any other provision of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner.*

2. If , upon investigation ~~[it appears that such company is so conducting its business or an unlicensed person is engaged in the mortgage company business, the commissioner may:~~

~~—(a) Advise the district attorney of the county in which the business is conducted, and the district attorney shall cause the appropriate legal action to be taken to enjoin the operation of the business or prosecute the violations of this chapter; and~~

~~—(b) Bring suit in the name and on behalf of the State of Nevada against such person and any other person concerned in or in any way participating in or about to participate in such unsafe or injurious practices or action in violation of this chapter or regulations~~

~~thereunder to enjoin any such person from continuing such practices or engaging therein or doing any such act.~~

~~3. If the commissioner brings suit,]~~ *, the commissioner has reasonable cause to believe that the mortgage company, mortgage agent or other person has engaged in any conduct or committed any violation described in subsection 1:*

*(a) The commissioner shall notify the attorney general of the conduct or violation and, if applicable, the commissioner shall immediately take possession of the property of the mortgage company pursuant to NRS 645B.150; and*

*(b) The attorney general shall:*

*(1) Investigate and, if appropriate, prosecute the mortgage company, mortgage agent or other person pursuant to section 24 of this act; and*

*(2) Bring a civil action to enjoin the mortgage company, mortgage agent or other person from engaging in the conduct or committing the violation and to enjoin any other person who has encouraged, facilitated, aided or participated in the conduct or the commission of the violation, or who is likely to engage in such acts, from engaging in or continuing to engage in such acts.*

*3. If the attorney general brings a civil action pursuant to subsection 2, the district court of any county of this state is hereby vested with the jurisdiction in equity to [restrain unsafe, injurious or illegal practices or transactions] enjoin the conduct or the commission of the violation and may grant any injunctions that are necessary to prevent and restrain [such practices or transactions. The court may, during] the conduct or the*

*commission of the violation. During the pendency of the proceedings before ~~it, issue~~  
such] the district court:*

*(a) The court may issue any temporary restraining orders as may appear to be just and proper; ~~and the]~~*

*(b) The findings of the commissioner shall be deemed to be prima facie evidence and sufficient grounds, in the discretion of the court, for the ~~[issue]~~ ex parte issuance of a temporary restraining order ~~[. In any such court proceedings the commissioner]~~ ; and*

*(c) The attorney general may apply for and on due showing is entitled to have issued the court's subpoena requiring forthwith the appearance of any ~~[defendant and his employees and the production of]~~ person to:*

*(1) Produce any documents, books and records as may appear necessary for the hearing of the petition ; ~~[, to testify]~~ and*

*(2) Testify and give evidence concerning the ~~[acts or conduct or things]~~ conduct complained of in the ~~[application for injunction.]~~ petition.*

Sec. 40. NRS 645B.150 is hereby amended to read as follows:

645B.150 1. ~~[When]~~ *In addition to any other action that is required or permitted pursuant to this chapter, if the commissioner ~~[ascertains by examination or otherwise that]~~ has reasonable cause to believe:*

*(a) That the assets or capital of ~~[any]~~ a mortgage company are impaired ; or ~~[that a mortgage company's affairs are in an unsafe condition which]~~*

*(b) That a mortgage company is conducting its business in an unsafe and injurious manner that may result in danger to the public, ~~he may~~ the commissioner shall immediately take possession of all the property, business and assets of the mortgage company ~~which~~ that are located in this state and shall retain possession of them pending further proceedings provided for in this chapter.*

2. If the *licensee, the* board of directors or any officer or person in charge of the offices of the *mortgage* company refuses to permit the commissioner to take possession of ~~its property,~~ the *property of the mortgage company pursuant to subsection 1:*

*(a) The* commissioner shall ~~communicate that fact to~~ *notify* the attorney general ~~[- Thereupon the]~~ ; and

*(b) The* attorney general shall immediately ~~institute~~ *bring* such proceedings as may be necessary to place the commissioner in immediate possession of the property of the *mortgage* company. ~~[The commissioner thereupon shall make]~~

3. *If the commissioner takes possession of the property of the mortgage company, the commissioner shall:*

*(a) Make* or have made an inventory of the assets and known liabilities of the *mortgage* company ~~[-~~

~~—3.—The commissioner shall file]~~ ;

*(b) File* one copy of the inventory in his office and one copy in the office of the clerk of the district court of the county in which the principal office of the *mortgage* company

is located and shall mail one copy to each stockholder, partner, officer or associate of the mortgage company at his last known address ~~[-]~~ ; and

*(c) If the mortgage company maintains any accounts described in NRS 645B.175, not later than 5 business days after the date on which the commissioner takes possession of the property of the mortgage company, mail notice of his possession to the last known address of each person whose money is deposited in such an account or whose money was or should have been deposited in such an account during the preceding 12 months.*

4. The clerk of the court with which the copy of the inventory is filed shall file it as any other case or proceeding pending in the court and shall give it a docket number.

Sec. 41. NRS 645B.160 is hereby amended to read as follows:

645B.160 1. ~~[The]~~ *If the commissioner takes possession of the property of a mortgage company pursuant to NRS 645B.150, the licensee, officers, directors, partners, associates or stockholders of the mortgage company may, within 60 days ~~[from the date when]~~ after the date on which the commissioner takes possession of the property, ~~[business and assets,]~~ make good any deficit ~~[which may exist]~~ in the assets or capital of the mortgage company or remedy ~~[the unsafe condition of its affairs.]~~ any unsafe and injurious conditions or practices of the mortgage company.*

2. At the expiration of ~~[such time,]~~ *the 60-day period*, if the deficiency in assets or capital has not been made good or the unsafe ~~[condition]~~ *and injurious conditions or practices* remedied, the commissioner may apply to the court to be appointed receiver

and proceed to liquidate the assets of the *mortgage* company which are located in this state in the same manner as now provided by law for liquidation of a private corporation in receivership.

3. No other person may be appointed receiver by any court without first giving the commissioner ample notice of his application.

4. The inventory made by the commissioner and all claims filed by creditors are open at all reasonable times for inspection , and any action taken by the receiver upon any of the claims is subject to the approval of the court before which the cause is pending.

5. The expenses of the receiver and compensation of counsel, as well as all expenditures required in the liquidation proceedings, must be fixed by the commissioner subject to the approval of the court, and, upon certification of the commissioner, must be paid out of the money in his hands as the receiver.

Sec. 42. NRS 645B.165 is hereby amended to read as follows:

645B.165 1. ~~{The}~~ *Except as otherwise provided in subsection 3, the* amount of any advance fee, salary, deposit or money paid to any mortgage company or other person to obtain a loan which will be secured by a lien on real property must be placed in escrow pending completion of the loan or a commitment for the loan.

2. The amount held in escrow *pursuant to subsection 1* must be released:

(a) Upon completion of the loan or commitment for the loan, to the mortgage company or other person to whom the advance fee, salary, deposit or money was paid.

(b) If the loan or commitment for the loan fails, to the person who made the payment.

3. Advance payments to cover reasonably estimated costs paid to third persons are excluded from the provisions of subsections 1 and 2 if the person making them first signs a written agreement which specifies the estimated costs by item and the estimated aggregate cost, and which recites that money advanced for costs will not be refunded. If an itemized service is not performed and the estimated cost thereof is not refunded, the recipient of the advance payment is subject to the penalties provided in subsection 4.

4. A person who violates the provisions of ~~[subsection 1:]~~ *this section*:

(a) Is guilty of a misdemeanor if the amount is less than \$250;

(b) Is guilty of a gross misdemeanor if the amount is \$250 or more but less than \$1,000; or

(c) Is guilty of a category D felony if the amount is \$1,000 or more, and shall be punished as provided in NRS 193.130.

**Sec. 43.** NRS 645B.175 is hereby amended to read as follows:

645B.175 1. ~~[AH]~~ *Except as otherwise provided in this section, all* money received by a mortgage company *and its mortgage agents* from ~~[a person to acquire ownership of or a beneficial interest in a loan secured by a lien on real property,]~~ *an investor* must:

(a) Be deposited in:

(1) An insured depository financial institution; or

(2) An escrow account which is controlled by a person who is independent of the parties and subject to instructions regarding the account which are approved by the parties.

(b) Be kept separate from money:

(1) Belonging to the mortgage company in an account appropriately named to indicate that the money does not belong to the mortgage company.

(2) Received pursuant to subsection ~~3-~~  
~~—2.—The~~ 4.

**2. *Except as otherwise provided in this section, the amount held in trust pursuant to subsection 1 must be released:***

(a) Upon completion of the loan, including proper recordation of the respective interests or release, or upon completion of the transfer of the ownership or beneficial interest therein, to the debtor or his designee less ~~that~~ *the* amount due the mortgage company for the payment of any fee or service charge;

(b) If the loan or the transfer thereof is not consummated, to ~~the person~~ *each investor* who furnished the money held in trust; or

(c) Pursuant to any instructions regarding the escrow account.

**3. ~~At~~ *The amount held in trust pursuant to subsection 1 must not be released to the debtor or his designee unless:***

*(a) The amount released is equal to the total amount of money which is being loaned to the debtor for that loan, less the amount due the mortgage company for the payment of any fee or service charge; and*

*(b) A policy of title insurance that names as an insured each investor who owns a beneficial interest in the loan has been issued for the real property securing the loan.*

*4. Except as otherwise provided in this section, all* money paid to a mortgage company *and its mortgage agents* by a person in full or in partial payment of a loan secured by a lien on real property, must:

(a) Be deposited in:

(1) An insured depository financial institution; or

(2) An escrow account which is controlled by a person who is subject to instructions regarding the account which are approved by the parties.

(b) Be kept separate from money:

(1) Belonging to the mortgage company in an account appropriately named to indicate that it does not belong to the mortgage company.

(2) Received pursuant to subsection 1.

~~[4.—The]~~

*5. Except as otherwise provided in this section, the* amount held in trust pursuant to subsection ~~[3—must]~~ 4:

(a) *Must* be released, upon the deduction and payment of any ~~{fees}~~ *fee* or service charge due the mortgage company, to ~~{the owner of or the person having the}~~ *each investor who owns a* beneficial interest in the ~~{note-~~

~~—5.}~~ *loan in exact proportion to the beneficial interest that he owns in the loan; and*

(b) *Must not be released, in any proportion, to an investor who owns a beneficial interest in the loan, unless the amount described in paragraph (a) is also released to every other investor who owns a beneficial interest in the loan.*

6. Upon reasonable notice, any mortgage company described in this section shall:

(a) Account to any *investor or* debtor ~~{or creditor upon whose behalf money has been}~~ *who has* paid to the mortgage company ~~{and}~~ *or its mortgage agents money that is required to be* deposited in ~~{the trust accounts as set forth in}~~ *a trust account pursuant to* this section; and

(b) Account to the commissioner for all money ~~{in}~~ *which* the mortgage ~~{company's loan proceeds or loan payments}~~ *company and its mortgage agents have received from each investor or debtor and which the mortgage company is required to deposit in a* trust account ~~{-~~

~~—6.}~~ *pursuant to this section.*

7. Money received by a mortgage company *and its mortgage agents* pursuant to this section from a person who is not associated with the *mortgage* company may be held in trust for ~~{no}~~ *not* more than 45 days before an escrow account must be opened in connection with the loan. If, within this 45-day period, the loan or the transfer therefor is

not consummated, the money must be returned within 24 hours. If the money is so returned, it may not be reinvested with the mortgage company for at least 15 days.

*8. If a mortgage company or its mortgage agents receive any money pursuant to this section, the mortgage company and its mortgage agents, after the deduction and payment of any fee or service charge due the mortgage company, shall not release the money to:*

*(a) Any person who does not have a contractual or legal right to receive the money;*

*or*

*(b) Any person who has a contractual right to receive the money, if the mortgage company or mortgage agent knows, or in light of all the surrounding facts and circumstances, reasonably should know, that the person's contractual right to receive the money violates public policy, any provision of this chapter, a regulation adopted pursuant to this chapter, an order of the commissioner or any other law, regulation or order.*

Sec. 44. NRS 645B.180 is hereby amended to read as follows:

645B.180 1. Money in an impound trust account is not subject to execution or attachment on any claim against the mortgage company ~~[-]~~ *or a mortgage agent.*

2. It is unlawful for ~~[any]~~ *a mortgage company or its mortgage agents* knowingly to keep or cause to be kept any money in any bank under the heading of "impound trust account" or any other name designating such money as belonging to the *investors or* debtors of the mortgage company, ~~[except]~~ *unless the money has been* paid to the

mortgage company ~~[for the payment of taxes and insurance premiums on property securing loans made by the company, and money]~~ *or its mortgage agents by an investor or debtor and is being held in trust by the mortgage company pursuant to NRS 645B.170 or 645B.175.*

Sec. 45. NRS 645B.185 is hereby amended to read as follows:

645B.185 1. ~~[Before a person invests money through a]~~ A mortgage company ~~[licensed pursuant to this chapter, he must sign a written statement received from the company, acknowledging that:~~

~~—(a) The company has explained to him the nature and risks of investing through the company, including the possibility of default in payment, the fact that payments are not guaranteed, the resulting foreclosure and the losses that may result; and~~

~~—(b) He is aware that the company is not a depository financial institution.]~~ *or mortgage agent shall not accept money from an investor to acquire ownership of or a beneficial interest in a loan secured by a lien on real property unless:*

*(a) The investor and a mortgage agent or other licensee of the mortgage company sign and date a disclosure form that complies with the provisions of subsection 4; and*

*(b) The mortgage agent or other licensee of the mortgage company gives the investor the original disclosure form that has been signed and dated.*

2. The investor ~~[must sign such a statement upon his initial investment only, and not before each subsequent investment.]~~ *and a mortgage agent or other licensee of the mortgage company:*

*(a) Must sign and date a separate disclosure form pursuant to subsection 1 for each loan in which the investor invests his money; and*

*(b) May not agree to alter or waive the provisions of this section by contract or other agreement. Any such contract or agreement is void and must not be given effect to the extent that it violates the provisions of this section.*

*3. The ~~[statement must be made on a form prescribed]~~ mortgage company shall retain a copy of each disclosure form that is signed and dated pursuant to this section for the period that is prescribed in the regulations adopted by the commissioner ~~[-]~~ pursuant to subsection 7.*

*4. The commissioner shall adopt regulations prescribing the standard provisions that must be included in each such disclosure form. The standard provisions must include, without limitation, statements:*

*(a) Explaining the risks of investing through the mortgage company, including, without limitation:*

*(1) The possibility that the debtor may default on the loan;*

*(2) The nature of the losses that may result through foreclosure;*

*(3) The fact that payments of principal and interest are not guaranteed and that the investor may lose the entire amount of principal that he has invested;*

*(4) The fact that the mortgage company is not a depository financial institution and that the investment is not insured by any depository insurance and is not otherwise insured or guaranteed by the federal or state government; and*

*(5) Any other information required pursuant to the regulations adopted by the commissioner; and*

*(b) Disclosing to the investor the following information, if the information is known or, in light of all the surrounding facts and circumstances, reasonably should be known to the mortgage company:*

*(1) Whether the real property that will secure the loan is encumbered by any other liens and, if so, the priority of each such lien, the amount of debt secured by each such lien and the current status of that debt, including, without limitation, whether the debt is being paid or is in default;*

*(2) Whether the mortgage company or any of its licensees or mortgage agents have any direct or indirect interest in the debtor;*

*(3) Whether the mortgage company or any of its licensees or mortgage agents are currently being investigated by the commissioner, the attorney general or any other law enforcement agency for an alleged violation of:*

*(I) The provisions of this chapter, a regulation adopted pursuant to this chapter or an order of the commissioner; or*

*(II) Any other law, ordinance or regulation that involves fraud, misrepresentation or a deceitful, fraudulent or dishonest business practice;*

*(4) Whether any disciplinary action has been taken by the commissioner against the mortgage company or any of its licensees or mortgage agents within the preceding 12 months, and the nature of any such disciplinary action;*

*(5) Whether the mortgage company or any of its licensees or mortgage agents have been convicted within the preceding 12 months for violating any law, ordinance or regulation that involves fraud, misrepresentation or a deceitful, fraudulent or dishonest business practice; and*

*(6) Any other information required pursuant to the regulations adopted by the commissioner.*

*5. Whether or not a mortgage company is required to disclose any information to investors through a disclosure form that complies with the provisions of subsection 4, the commissioner may order the mortgage company to disclose to investors or to the general public any information concerning the mortgage company, its licensees or mortgage agents, or any loan in which the mortgage company is or has been involved, if the commissioner, in his judgment, believes that the information:*

*(a) Would be of material interest to a reasonable investor who is deciding whether to invest money with the mortgage company; or*

*(b) Is necessary to protect the welfare of the public.*

*6. In carrying out the provisions of subsection 5, the commissioner may, without limitation, order a mortgage company to include statements of disclosure prescribed by the commissioner:*

*(a) In the disclosure form that the mortgage company gives to investors pursuant to subsection 1;*

*(b) In additional disclosure forms that must be given to investors before or after they have invested money through the mortgage company; or*

*(c) In any advertisement that the mortgage company uses in carrying on its business.*

*7. The commissioner:*

*(a) Shall adopt regulations prescribing the period for which a mortgage company must retain a copy of each disclosure form that it gives to investors; and*

*(b) May adopt any other regulations that are necessary to carry out the provisions of this section, including, without limitation, regulations specifying the size of print and any required formatting or typesetting that a mortgage company must use in any disclosure form that it gives to investors.*

Sec. 46. NRS 645B.187 is hereby amended to read as follows:

645B.187 1. *If a mortgage company or mortgage agent solicits or receives money from an investor, the mortgage company or mortgage agent shall not:*

*(a) In any advertisement; or*

*(b) Before, during or after solicitation or receipt of money from the investor, make, or cause or encourage to be made, any explicit or implicit statement, representation or promise, oral or written, which a reasonable person would construe as a guarantee that the investor will be repaid the principal amount of money he invests or will earn a specific rate of return or a specific rate of interest on the principal amount of money he invests.*

2. *If a mortgage company offers to pay or pays premium interest* ~~is paid by a mortgage company~~ on money *that* it receives from a person to acquire ownership of or a beneficial interest in a loan secured by a lien on real property or in full or partial payment of such a loan ~~[, that]~~ :

(a) *The premium* interest must be paid from the assets or income of the mortgage company ; and ~~[may not be guaranteed]~~.

~~—2. For the purposes of~~

(b) *The mortgage company or a mortgage agent shall not, in any advertisement or before, during or after receipt of money from such a person, make, or cause or encourage to be made, any explicit or implicit statement, representation or promise, oral or written, which a reasonable person would construe as a guarantee that the mortgage company will pay the premium interest.*

3. *A person who violates any provision of this section is guilty of a misdemeanor.*

4. *As used in* this section, “premium interest” means that amount of interest a mortgage company pays to a person which exceeds the amount which is being obtained from the insured depository financial institution.

Sec. 47. NRS 645B.188 is hereby amended to read as follows:

645B.188 Each mortgage company shall pay the assessment levied pursuant to NRS 658.055 . ~~[and]~~ *Each mortgage company and mortgage agent shall* cooperate fully with the audits and examinations performed pursuant thereto.

Sec. 48. NRS 645B.189 is hereby amended to read as follows:

645B.189 1. *If a mortgage company maintains any accounts described in NRS 645B.175, the mortgage company shall include in each advertisement that the mortgage company uses in carrying on its business:*

*(a) A statement of disclosure in substantially the following form: “Money invested through a mortgage company is not insured or guaranteed by the federal or state government. An investor is not guaranteed to recover or to be repaid any of the money he invests. An investor is not guaranteed to earn or to be paid any interest or other return on the money he invests. An investor may lose some or all of the money he invests.”*

*(b) Any other statements of disclosure required pursuant to the regulations adopted by the commissioner or required pursuant to an order of the commissioner entered in accordance with subsections 5 and 6 of NRS 645B.185.*

2. Each mortgage company shall submit any proposed advertisement *that* it intends to use *in carrying on its business* to the commissioner for approval. *If the mortgage company is required to include any statements of disclosure in such an advertisement pursuant to subsection 1 and the statements of disclosure will be displayed in printed form:*

*(a) The size of the print must be approved by the commissioner; and*

*(b) If displayed on television or any other video screen, monitor or device, the length of time that the statements are displayed must be approved by the commissioner.*

3. The commissioner shall, within 5 working days after receiving ~~[the]~~ *a proposed* advertisement, approve or disapprove its use and notify the *mortgage* company of that decision.

4. *The commissioner may adopt any regulations that are necessary to carry out the provisions of this section.*

**Sec. 49.** NRS 645B.191 is hereby amended to read as follows:

645B.191 Except pursuant to a contract for the collection or servicing of a loan which is governed by the requirements established by the Government National Mortgage Association, Federal Home Loan Mortgage Corporation or Federal National Mortgage Association, ~~[no]~~ *a mortgage company* ~~[may]~~ *or mortgage agent shall not* advance payments to an investor on behalf of a person who has obtained a loan secured by a lien on real property and who has defaulted in his payments.

**Sec. 50.** NRS 645B.197 is hereby amended to read as follows:

645B.197 1. A person may apply to the commissioner for an exemption from the provisions of this chapter governing the making of a loan of money.

2. The commissioner may grant the exemption if he finds that:

(a) The making of the loan would not be detrimental to the financial condition of the lender, ~~[borrower]~~ *the debtor* or *the* person who is providing the money for the loan;

(b) The lender, ~~[borrower]~~ *the debtor* or *the* person who is providing the money for the loan has established a record of sound performance, efficient management, financial responsibility and integrity;

(c) The making of the loan is likely to increase the availability of capital for a sector of the state economy; and

(d) The making of the loan is not detrimental to the public interest.

3. The commissioner:

(a) May revoke an exemption unless the loan for which the exemption was granted has been made; and

(b) Shall issue a written statement setting forth the reasons for his decision to grant, deny or revoke an exemption.

Sec. 51. NRS 645B.200 is hereby amended to read as follows:

645B.200 ~~[This chapter does not limit]~~ *The provisions of this chapter do not:*

1. *Limit* any statutory or common law right of ~~[any]~~ *a* person to bring ~~[an action in any court]~~ *a civil action against a mortgage company or mortgage agent* for any act or omission involved in the transaction of *business by or on behalf of* the mortgage company ~~[business or the]~~ *or mortgage agent;*

2. *Limit the* right of the state to punish ~~[any]~~ *a* person for ~~[any]~~ *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.*

**Sec. 52.** NRS 645B.210 is hereby amended to read as follows:

645B.210 It is unlawful for any person to *offer or* provide any of the services of a mortgage company ~~[, unless he is exempted under NRS 645B.015,]~~ *or mortgage agent or otherwise* to engage in , ~~[or]~~ carry on ~~[,]~~ or hold himself out as engaging in or carrying on ~~[,]~~ the business of a mortgage company *or mortgage agent* without first obtaining a license as a mortgage company ~~[,]~~ *or mortgage agent pursuant to this chapter, unless the person:*

- 1. Is exempt from the provisions of this chapter pursuant to NRS 645B.015; and*
- 2. Complies with the provisions of section 10 of this act.*

**Sec. 53.** NRS 645B.220 is hereby amended to read as follows:

645B.220 It is unlawful for any foreign corporation, association or business trust to transact any mortgage business in this state unless it:

1. Qualifies under chapter 80 of NRS; and
2. Complies with the provisions of this chapter ~~[unless exempted by]~~ *or, if it claims an exemption from the provisions of this chapter pursuant to NRS 645B.015 [,] , complies with the provisions of section 10 of this act.*

**Sec. 54.** NRS 645B.230 is hereby amended to read as follows:

645B.230 ~~[Except as provided in NRS 645B.225, any]~~ *Unless a specific criminal penalty is set forth in another provision of this chapter, a person, or any director, officer, agent or employee of a person, who violates any [of the provisions] provision of*

this chapter , *a regulation adopted pursuant to this chapter or an order of the commissioner* is guilty of a misdemeanor.

**Sec. 55.** NRS 232.545 is hereby amended to read as follows:

232.545 1. An investigative account for financial institutions is hereby created in the state general fund. The account consists of money which is:

(a) Received by the department of business and industry in connection with the licensing of financial *institutions and persons associated with those* institutions; and

(b) Required by law to be placed therein.

2. The director of the department of business and industry or his designee may authorize expenditures from the investigative account to pay the expenses incurred ~~in~~ :

(a) *In* investigating applications for licensing of financial institutions and ~~in~~ *persons associated with those institutions;*

(b) *In* conducting special investigations relating to ~~those institutions, and expenses incurred in~~ *financial institutions and persons associated with those institutions; and*

(c) *In* connection with mergers, consolidations, conversions, receiverships and liquidations ~~of~~ *of financial institutions.*

3. As used in this section, “financial institution” means an institution for which licensing is required by the provisions of Titles 55 and 56 and chapters 645B and 649 of NRS.

**Sec. 56.** Chapter 692A of NRS is hereby amended by adding thereto the provisions set forth as sections 57 to 62, inclusive, of this act.

*Sec. 57. 1. A person may not be licensed as, conduct business as or hold a controlling interest or position in a title agent, title insurer or escrow officer if the person or a relative of the person is licensed as, conducts business as or holds a controlling interest or position in:*

*(a) A mortgage company or mortgage agent that is subject to the provisions of chapter 645B of NRS; or*

*(b) Any other legal entity, regardless of its purpose, if the legal entity holds a controlling interest or position in a mortgage company or mortgage agent that is subject to the provisions of chapter 645B of NRS.*

*2. For the purposes of this section, a person shall be deemed to hold a controlling interest or position if the person:*

*(a) Owns or controls a majority of the voting stock or holds any other controlling interest, directly or indirectly, that gives him the power to direct management or determine policy; or*

*(b) Is a partner, officer, director or trustee.*

*3. As used in this section, "relative" means a spouse or any other person who is related within the second degree by blood or marriage.*

*Sec. 58. 1. In addition to all other requirements set forth in this Title and except as otherwise provided in section 59 of this act, a title agent or title insurer shall deposit with the commissioner a corporate surety bond payable to the State of Nevada, in the amount of \$250,000, which is executed by a corporate surety satisfactory to the*

*commissioner and which names as principals the title agency or title insurer and all escrow officers employed by or associated with the title agent or title insurer.*

*2. The bond must be in substantially the following form:*

*Know All Men by These Presents, that ....., as principal, and ....., as surety, are held and firmly bound unto the State of Nevada for the use and benefit of any person who suffers damages because of a violation of any of the provisions of chapter 692A of NRS, in the sum of ....., lawful money of the United States, to be paid to the State of Nevada for such use and benefit, for which payment well and truly to be made, and that we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.*

*The condition of that obligation is such that: Whereas, the commissioner of insurance of the department of business and industry of the State of Nevada has issued the principal a license or certificate of authority as a title agent or title insurer, and the principal is required to furnish a bond, in the amount of \$250,000, which is conditioned as set forth in this bond:*

*Now, therefore, if the principal, his agents and employees, strictly, honestly and faithfully comply with the provisions of chapter 692A of NRS, and pay all damages suffered by any person because of a violation of any of the provisions of chapter 692A of NRS, or by reason of any fraud, dishonesty, misrepresentation or concealment of*

*material facts growing out of any transaction governed by the provisions of chapter 692A of NRS, then this obligation is void; otherwise it remains in full force.*

*This bond becomes effective on the .....(day) of .....(month) of.....(year), and remains in force until the surety is released from liability by the commissioner of insurance or until this bond is canceled by the surety. The surety may cancel this bond and be relieved of further liability hereunder by giving 60 days' written notice to the principal and to the commissioner of insurance of the department of business and industry of the State of Nevada.*

*In Witness Whereof, the seal and signature of the principal hereto is affixed, and the corporate seal and the name of the surety hereto is affixed and attested by its authorized officers at ....., Nevada, this .....(day) of .....(month) of .....(year).*

.....(Seal)

*Principal*

.....(Seal)

*Surety*

*By* .....

*Attorney in fact*

.....

*Licensed resident agent*

*Sec. 59. 1. As a substitute for the surety bond required by section 58 of this act, a title agent or title insurer may, in accordance with the provisions of this section, deposit with any bank or trust company authorized to do business in this state, in a form approved by the commissioner:*

*(a) An obligation of a bank, savings and loan association, thrift company or credit union licensed to do business in this state;*

*(b) Bills, bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States; or*

*(c) Any obligation of this state or any city, county, town, township, school district or other instrumentality of this state, or guaranteed by this state.*

*2. The obligations of a bank, savings and loan association, thrift company or credit union must be held to secure the same obligation as would the surety bond. With the approval of the commissioner, the depositor may substitute other suitable obligations for those deposited which must be assigned to the State of Nevada and are negotiable only upon approval by the commissioner.*

*3. Any interest or dividends earned on the deposit accrue to the account of the depositor.*

*4. The deposit must be in an amount at least equal to the required surety bond and must state that the amount may not be withdrawn except by direct and sole order of the*

*commissioner. The value of any item deposited pursuant to this section must be based upon principal amount or market value, whichever is lower.*

*Sec. 60. 1. The surety may cancel a bond upon giving 60 days' notice to the commissioner by certified mail. Upon receipt by the commissioner of such a notice, the commissioner immediately shall notify the title agent or title insurer who is the principal on the bond of the effective date of cancellation of the bond, and that his license or certificate of authority will be revoked unless he furnishes an equivalent bond or a substitute form of security authorized by section 59 of this act before the effective date of the cancellation. The notice must be sent to the title agent or title insurer by certified mail to his last address of record filed in the office of the division.*

*2. If the title agent or title insurer does not comply with the requirements set out in the notice from the commissioner, his license or certificate of authority must be revoked on the date the bond is canceled.*

*Sec. 61. 1. Any person claiming against a bond may bring an action in a court of competent jurisdiction on the bond for damages to the extent covered by the bond. A person who brings an action on a bond shall notify the commissioner in writing upon filing the action. An action may not be commenced after the expiration of 3 years following the commission of the act on which the action is based.*

*2. Upon receiving a request from a person for whose benefit a bond is required, the commissioner shall notify him:*

- (a) That a bond is in effect and the amount of the bond; and*
- (b) If there is an action against the bond, the title, court and case number of the action and the amount sought by the plaintiff.*

*3. If a surety wishes to make payment without awaiting action by a court, the amount of the bond must be reduced to the extent of any payment made by the surety in good faith under the bond. Any payment must be based on written claims received by the surety before any action is taken by a court.*

*4. The surety may bring an action for interpleader against all claimants upon the bond. If it does so, it shall publish notice of the action at least once each week for 2 weeks in every issue of a newspaper of general circulation in the county where the title agent or title insurer has its principal place of business. The surety may deduct its costs of the action, including attorney's fees and publication, from its liability under the bond.*

*5. Claims against a bond have equal priority, and if the bond is insufficient to pay all claims in full, they must be paid on a pro rata basis. Partial payment of claims is not full payment, and any claimant may bring an action against the title agent or title insurer for the unpaid balance.*

*Sec. 62. If a title agent or title insurer issues a policy of title insurance in connection with a loan for which a mortgage company has received money from an investor pursuant to subsection 1 of NRS 645B.175, the title agent or title insurer shall give to each investor who owns a beneficial interest in the loan a closing letter which*

*guarantees that a policy of title insurance has been issued for the real property securing the loan.*

**Sec. 63.** NRS 692A.103 is hereby amended to read as follows:

692A.103 1. A person who wishes to obtain a license as an escrow officer must:

(a) File a written application in the office of the commissioner;

(b) Except as otherwise provided in subsection 3, demonstrate competency in matters relating to escrows by:

(1) Having at least 1 year of recent experience with respect to escrows of a sufficient nature to allow him to fulfill the responsibilities of an escrow officer; or

(2) Passing a written examination concerning escrows as prescribed by the commissioner;

(c) Submit the name and business address of the title agent who will supervise the escrow officer;

(d) Submit the statement required pursuant to NRS 692A.1033; and

(e) Pay the fees required by NRS 680B.010.

2. ~~[The]~~ *Except as otherwise provided in this chapter, the* commissioner shall issue a license as an escrow officer to any person who satisfies the requirements of subsection 1.

3. The commissioner may waive the requirements of paragraph (b) of subsection 1 if the applicant submits with his application satisfactory proof that he, in good standing,

currently holds a license, or held a license within 1 year before the date he submits his application, which was issued pursuant to the provisions of NRS 645A.020.

4. A license issued pursuant to this chapter continues in force for 3 years unless it is suspended, revoked or otherwise terminated. The license may be renewed upon submission of the statement required pursuant to NRS 692A.1033 and payment of the applicable fee for renewal to the commissioner on or before the last day of the month in which the license is renewable.

5. A license which is not renewed expires at midnight on the last day specified for its renewal. The commissioner may accept a request for renewal received by him within 30 days after the expiration of the license if the request is accompanied by the statement required pursuant to NRS 692A.1033 and a fee for renewal of 150 percent of the fee otherwise required.

6. The commissioner shall adopt regulations to carry out the provisions of this section.

**Sec. 64.** The amendatory provisions of section 16 of this act do not apply to a written contract or agreement that is executed before October 1, 1999, if the contract or agreement includes a provision that expressly establishes a specific time before which a payment must be delivered to the mortgage company on the day that it is due to avoid being charged a late fee, an additional amount of interest or any other penalty.

**Sec. 65.** The amendatory provisions of this act do not apply to offenses that are committed before October 1, 1999.