

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

**LCB File No. R087-04**

May 27, 2004

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

AUTHORITY: §§1-15, 17, 18 and 23, NRS 645B.060; §16, NRS 645B.060 and 645B.080; §19, NRS 645B.060, 645B.185 and 645B.186; §20, NRS 645B.060 and 645B.189; §§21 and 22, NRS 645B.060 and 645B.330; §24, NRS 645B.060 and 645B.450.

A REGULATION relating to mortgage brokers and mortgage agents; establishing that continuing education courses must meet various requirements; establishing the requirements for obtaining credit for a continuing education course; providing for periodic and special audits, examinations and investigations of mortgage brokers; establishing a rating scale for the examination of mortgage brokers; prohibiting qualified employees and mortgage agents from being employed by a mortgage broker at the same time they are employed as a real estate salesman; prohibiting a mortgage broker from sharing space with another business without written approval from the Commissioner of Mortgage Lending; establishing requirements for signs of a mortgage broker; requiring applicants for a license as a mortgage broker to submit evidence that the place of business of the applicant is zoned for business or commercial activity; establishing the requirements for a mortgage broker to use more than one fictitious name; requiring certain records to be maintained by a mortgage broker; and providing other matters properly relating thereto.

**Section 1.** Chapter 645B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this regulation.

**Sec. 2.** *As used in NRS 645B.080, the Commissioner interprets “complete and suitable records” to mean:*

*1. A file that includes, but is not limited to, the following documents, if applicable to the type and purpose of the loan:*

*(a) The real estate sales contract;*

- (b) Escrow instructions;*
- (c) The preliminary title report;*
- (d) The loan application, including, but not limited to, any attachments or supplements;*
- (e) An appraisal report;*
- (f) Any verification of representations made by the consumer on the application for a mortgage;*
- (g) A credit report;*
- (h) A good faith estimate of closing costs and any disclosures required pursuant to the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq.;*
- (i) The Uniform Settlement Statement, as described pursuant to 12 U.S.C. § 2603; and*
- (j) Any commitments made by the lender to the consumer, including, but not limited to, a commitment to guarantee the consumer a certain interest rate and a commitment to fund the loan.*

*2. For loans brokered to private investors, a file that must include all the items required pursuant to subsection 1, if applicable, and any additional documents or disclosures required pursuant to this chapter, chapter 645B of NRS or federal law, including, but not limited to:*

- (a) The original documents subject to the provisions of NAC 645B.080 or 645B.215;*
- (b) All disclosures required pursuant to NRS 645B.185 and 645B.186, and NAC 645B.073, 645B.210 and 645B.220; and*
- (c) If the mortgage broker maintains any account pursuant to NRS 645B.175, the mortgage broker must include records that demonstrate compliance with the provisions of NRS 645B.115 and NAC 645B.150 and 645B.160 and any other applicable law.*

*3. For loans funded by the mortgage broker, a file that must include all the items required pursuant to subsection 1 and all closing documentation, including, but not limited to, a recorded or confirmed deed of trust, the title insurance policy, the note, the hazard insurance policy and any subsequent assignment to additional investors. Assignments to private investors must comply with all documentation requirements of this chapter and chapter 645B of NRS.*

*4. Any additional books and records that must be maintained or readily accessible at a each place of business of the mortgage broker including, but not limited to, any branch office as applicable to the operations of the mortgage broker, including:*

*(a) Any book or record that evidences compliance with applicable federal and state laws and regulations;*

*(b) A copy of each item of advertising material that was published or distributed by or on behalf of the mortgage broker in the format in which the material was published or distributed;*

*(c) A copy of any written complaint against the mortgage broker together with all correspondence, notes, responses and other documentation related to the disposition of the complaint;*

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

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

*(f) Copies of all documents evidencing a contractual relationship between the mortgage broker and any third-party provider of services related to mortgages, including, but not limited*

*to, contracts, invoices, billings and remittances to the provider by or on behalf of the mortgage broker;*

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

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

**Sec. 3. 1.** *To obtain credit for a course for continuing education, the course must be completed not more than 2 years before the date on which the license of the mortgage broker or mortgage agent would otherwise expire pursuant to NRS 645B.051 or 645B.430.*

*2. A mortgage broker or mortgage agent must complete at least 90 percent of a course to receive credit for continuing education for that course.*

**Sec. 4.** *An auditor, examiner or investigator conducting an examination, periodic or special audit, or investigation of a mortgage broker pursuant to paragraph (b), (c) or (d) of subsection 2 of NRS 645B.060 may:*

*1. Require the mortgage broker to produce, for the purposes of the audit, examination or investigation, all documents:*

*(a) Relating to business conducted by the mortgage broker pursuant to this chapter or chapter 645B of NRS;*

*(b) Required to be kept by the mortgage broker pursuant to any federal or state law or regulation; or*

*(c) Related to the operation of the business of the mortgage broker or any affiliated business.*

*2. Inspect and copy any documents which are in the possession, control or custody of the mortgage broker and which are related to business conducted pursuant to this chapter or chapter 645B of NRS.*

**Sec. 5.** *Upon completion of an examination of a mortgage broker, the examiner shall rate the mortgage broker on a scale of “1” to “5,” inclusive, as follows:*

*1. A rating of “1” indicates that the mortgage broker and the management of the mortgage broker have demonstrated a high degree of compliance with applicable laws and regulations. A rating of “1” may be given if there is a minor violation or deficiency, but only if the mortgage broker acted to correct the violation or deficiency immediately and the action taken by the mortgage broker is likely to prevent future violations or deficiencies.*

*2. A rating of “2” indicates that the mortgage broker and the management of the mortgage broker have demonstrated substantial compliance with applicable laws and regulations and any deficiencies noted in the report made by the examiner pursuant to section 6 of this regulation can be corrected by the mortgage broker with a minimum of regulatory supervision. A rating of “2” may be given if there is more than one minor violation or deficiency, but only if the mortgage broker acted to correct the violations or deficiencies immediately and the action taken by the mortgage broker is likely to prevent future violations or deficiencies.*

*3. A rating of “3” indicates that the mortgage broker and the management of the mortgage broker have demonstrated less than satisfactory compliance with applicable laws and regulations and regulatory supervision is required for the correction of the violations and deficiencies noted in the report made by the examiner pursuant to section 6 of this regulation.*

*A rating of “3” may be given if there were minor violations or deficiencies from a previous examination that were not corrected.*

*4. A rating of “4” indicates that the mortgage broker and the management of the mortgage broker have demonstrated substantial lack of compliance with applicable laws and regulations and immediate remedial action is required for the correction of the violations and deficiencies noted in the report made by the examiner pursuant to section 6 of this regulation. The mortgage broker will be subject to close regulatory supervision, and the examiner will recommend disciplinary action against the mortgage broker to the Commissioner.*

*5. A rating of “5” indicates that the mortgage broker and the management of the mortgage broker have demonstrated unsatisfactory compliance with applicable laws and regulations and immediate remedial action is required for the correction of the violations and deficiencies noted in the report made by the examiner pursuant to section 6 of this regulation and may include action by the Commissioner to take possession of the business and assets of the mortgage broker. The examiner will recommend disciplinary action against the mortgage broker to the Commissioner.*

*Sec. 6. 1. Not more than 15 days after the completion of an examination of a mortgage broker, the examiner that performed the examination shall prepare a draft report of the examination and file the draft report with the Division. The draft report must include only:*

*(a) Facts that are contained in the files, books, records or other documents of the mortgage broker that were examined by the examiner;*

*(b) Facts that are contained in statements made by officers or agents of the mortgage broker or other persons that the examiner interviewed concerning the mortgage broker; and*

*(c) Conclusions and recommendations that are reasonably supported by the facts that are included in the draft report, including, but not limited to, the rating given to the mortgage broker pursuant to section 5 of this regulation.*

*2. Not more than 15 days after the draft report of an examination is received by the Division, the Commissioner or his designee will deliver to the mortgage broker who was examined:*

*(a) A copy of the draft report; and*

*(b) Notice that the mortgage broker has not more than 15 days, unless the Commissioner, for good cause, allows a longer period, to review the draft report submit to the Commissioner in writing, any comments regarding or objections to matters contained in the draft report.*

*3. If a mortgage broker received a rating of “3,” “4” or “5” and submitted written comments or objections within the period specified in subsection 2, the Commissioner or his designee will:*

*(a) Not more than 15 days after the last day on which the mortgage broker could submit written comments or objections pursuant to subsection 2, hold an informal meeting with the mortgage broker regarding the draft report; and*

*(b) Review the draft report, together with the written submissions or objections made by the mortgage broker and any relevant portions of the working papers of the examiner, and, not more than 15 days after the date on which the informal meeting was held pursuant to paragraph (a):*

*(1) Adopt the draft report as filed;*

*(2) Adopt the draft report with modifications;*

*(3) Provide the mortgage broker with an opportunity for a formal hearing; or*

*(4) Direct the examiner to reopen the examination to obtain additional data, documents or information and, if necessary, file a new draft report pursuant to subsection 1. If the findings of the initial draft report are supported by the findings of the examiner after completion of the reopened examination, the mortgage broker is responsible for the costs attributable to the reopened examination pursuant to NRS 645B.060.*

*4. If a mortgage broker:*

*(a) Received a rating of “1” or “2” on an examination pursuant to section 5 of this regulation and submitted written comments or objections within the period specified in subsection(2); or*

*(b) Did not file a written comment or objection to a draft report within the period specified in subsection 2,*

*↳ the draft report will be deemed to be the final report of the examination.*

*5. Pursuant to NRS 645B.060, the results of an examination are not open to public inspection until the requirements set forth in subsection 3 are completed.*

*6. If the examination and report reveal that a mortgage broker is operating in violation of this chapter, chapter 645B of NRS or a previous order of the Commissioner, the Commissioner may order the mortgage broker to take any action the Commissioner deems necessary or appropriate to correct the violation. The Commissioner may also take disciplinary action pursuant to NRS 645B.670.*

*7. The Commissioner may, for good cause, extend any period specified in this section that is applicable to an examiner, the Commissioner or his designee for an additional period of not more than 15 days.*



**Sec. 7. 1.** *A mortgage agent or qualified employee who is also licensed as a real estate broker or real estate salesman shall not receive compensation for services performed as a mortgage agent or qualified employee and for services performed as a real estate salesman in a single transaction.*

**2.** *As used in this section:*

**(a)** *“Real estate broker” has the meaning ascribed to it in NRS 645.030; and*

**(b)** *“Real estate salesman” has the meaning ascribed to it in NRS 645.040.*

**Sec. 8.** *A mortgage broker shall not share office space with any other business unless the mortgage broker has obtained express written approval from the Commissioner and the sharing of office space by the mortgage broker and the other business does not violate any federal, state or local law.*

**Sec. 9.** *A mortgage broker shall maintain a sign that includes the name of the mortgage broker at each place of business of the mortgage broker, including, but not limited to, each branch office of the mortgage broker. This sign must be:*

**1.** *Visible from the nearest public sidewalk, street or highway; or*

**2.** *If the place of business of the mortgage broker is an office building, posted on the building directory of the office building or near the entrance to the office building on the exterior of the building.*

**Sec. 10.** NAC 645B.001 is hereby amended to read as follows:

645B.001 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS ~~645B.0103~~ **645B.0105** to 645B.0135, inclusive, and NAC 645B.004, 645B.006 and 645B.008 have the meanings ascribed to them in those sections.

**Sec. 11.** NAC 645B.015 is hereby amended to read as follows:

645B.015 1. A person conducts verifiable business as a mortgage broker if he ~~is~~

~~—(a) Handles~~ *is compensated on a commission or percentage basis for:*

(a) *Handling* the arrangements between a borrower and a lender for a loan which is secured by a lien on real property and is consummated as a result of such arrangements;

(b) ~~Originates~~ *Originating* a loan secured by a lien on real property in the capacity of a lender or provider; or

(c) ~~Purchases or sells~~ *Purchasing or selling* existing notes secured by liens on real property.

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

**Sec. 12.** NAC 645B.020 is hereby amended to read as follows:

645B.020 1. An applicant must submit with his application for a license pursuant to chapter 645B of NRS:

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

~~1-2~~ (b) A copy of the certificate filed by the mortgage broker pursuant to chapter 602 of NRS indicating the fictitious name of the mortgage broker, if any.

~~1-3~~ (c) If the applicant is a corporation, a copy of:

~~1-a~~ (1) Its articles of incorporation and its bylaws;

~~1-b~~ (2) Its balance sheet and a statement of the profit and loss of the corporation for the 2 years immediately preceding the year of the application; and

~~1-e~~ (3) The most recent list of its officers and resident agents that is filed with the Secretary of State.

~~{4.}~~ (d) If the applicant is a partnership or joint venture, a copy of the agreement of partnership or joint venture and the financial statements of the general partners for the 2 years immediately preceding the year of the application.

~~{5.}~~ (e) If the applicant is a corporation being organized, a copy of its proposed articles of incorporation and its bylaws.

~~{6.}~~ (f) If the applicant is a limited-liability company, a copy of:

~~{a)}~~ (1) Its articles of organization and operating agreement;

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

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

*(g) A copy of the lease of the applicant or other document which includes the address of the place of business of the applicant and which indicates that the land is zoned for commercial use by the proper zoning authority.*

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

**Sec. 13.** NAC 645B.030 is hereby amended to read as follows:

645B.030 1. An applicant must submit with his application for a branch license:

(a) The name, residence address and telephone number of the qualified employee designated to manage the branch office; and

(b) The ~~registration form required pursuant to NRS 645B.450 for~~ *name of* each mortgage agent who intends to work at the branch office.

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

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

(b) ~~The mortgage broker has registered with the Division pursuant to NRS 645B.450 any mortgage agent who intends to work at the branch office; and~~

~~—(c)~~ The Commissioner approves a qualified employee to manage the branch office. The Commissioner will not approve a qualified employee to manage a branch office if the qualified employee manages or has been designated and approved to manage another office.

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

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

~~[4.]~~ 5. Each branch office must conspicuously display its license at the branch office.

~~[5.]~~ 6. A mortgage broker is responsible for and shall supervise:

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

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

*7. Each branch office must be located on land that is zoned for commercial use by the proper zoning authority.*

**Sec. 14.** NAC 645B.035 is hereby amended to read as follows:

645B.035 1. A mortgage broker shall not conduct business using a fictitious name unless the mortgage broker:

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

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

- (a) Obtains a certified copy, issued by the appropriate county clerk, of the certificate filed by the mortgage broker pursuant to chapter 602 of NRS indicating the new fictitious name;
- (b) Files with the Division, not later than 10 calendar days after obtaining the certified copy pursuant to paragraph (a):

- (1) The certified copy obtained pursuant to paragraph (a); and
- (2) The current license or certificate of exemption of the mortgage broker; and
- (c) Receives from the Division an amended license or certificate of exemption indicating the new fictitious name.

*3. A mortgage broker may conduct business using more than one fictitious name only if the mortgage broker obtains a separate license issued pursuant to chapter 645B of NRS for*

*each fictitious name under which he intends to do business. A mortgage broker who conducts business in this State using more than one fictitious name is responsible for the conduct of each qualified employee, mortgage agent and other employee associated with the mortgage broker regardless of the license or name under which the conduct takes place.*

**Sec. 15.** NAC 645B.060 is hereby amended to read as follows:

645B.060 1. Except as otherwise provided in this subsection, the Commissioner will charge and collect a fee of ~~[\$40]~~ *\$60* per hour from each mortgage broker for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 645B of NRS. The Commissioner may charge a fee ~~[of \$125 per hour]~~ *equivalent to the estimated or actual fee charged to the Division* for the time of an attorney required in any examination, investigation or hearing conducted pursuant to chapter 645B of NRS.

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

3. Failure of a mortgage broker to pay the fee required in subsection 1 as provided in this section constitutes grounds for the imposition of any discipline authorized pursuant to NRS 645B.670, including, without limitation, the revocation of his license.

*4. Upon written request by a mortgage broker, the Division will provide an accounting of the time billed to the mortgage broker pursuant to this section.*

**Sec. 16.** NAC 645B.064 is hereby amended to read as follows:

645B.064 1. Each mortgage broker shall pay to the Division an annual assessment ~~in an amount calculated in accordance with NAC 658.030~~ *as required pursuant to NRS 645F.180* to cover the costs related to the employment of a certified public accountant and the performance of audits and examinations conducted by the Division.

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

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

**Sec. 17.** NAC 645B.077 is hereby amended to read as follows:

645B.077 **1.** The mortgage broker shall retain records of all his completed mortgage transactions for a period of at least ~~6~~ **4** years after the date of the last activity relating to the transaction. After a record has been retained 2 or more years, the mortgage broker may cause the record to be reproduced by the microphotographic process, optical disc imaging or any other equivalent technique designed to ensure an accurate reproduction of the original record. A record reproduced as authorized by this section must be considered by the Commissioner to be the same as the original record. Upon completion of the reproduction of a record as authorized by this section, the original of the record may be destroyed.

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

**3. *The mortgage broker shall maintain the records of completed mortgage transactions at the location at which the loan was made for at least 1 year after the date of closing of the loan. After the expiration of the 1-year period required pursuant to this subsection, any such record***

*may be maintained for the minimum period prescribed in subsection 1 at another location if the record can be provided not later than 24 hours after a request for the record.*

**Sec. 18.** NAC 645B.080 is hereby amended to read as follows:

645B.080 1. Before an investor who is a natural person makes a loan for which a licensed mortgage broker is acting as a broker, the mortgage broker shall provide, unless specifically waived in writing, to the investor:

(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 investor.

(b) Evidence of the history of employment of the prospective borrower and income, such as a tax return or an employer's statement of the borrower's past yearly income.

(c) A report on the history of credit of the prospective borrower issued by a credit reporting agency, 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 broker 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.

2. A mortgage broker shall retain a copy of the documents described in subsection 1 and shall retain in his files a statement from the investor, on a form provided by the Division, acknowledging that:



(a) The investor received the documents ~~§~~ or that the investor waived in writing the right to receive the documents; and

(b) The decision to make the loan was made after the investor had the opportunity to receive and review the documents.

3. If the loan is made, the mortgage broker shall retain in his files and provide to the investor:

(a) A copy of the promissory note;

(b) A recorded copy of the deed of trust securing the loan; and

(c) A copy of the policy of title insurance on the property securing the loan.

↪ The mortgage broker shall retain in his files a statement, on a form provided by the Division, acknowledging that the documents were provided to the investor.

4. If the loan is made, the mortgage broker shall retain in his files:

(a) A copy of a policy of fire insurance which is adequate to cover the replacement costs of all improvements on the property securing the loan, including an endorsement naming the investor as the insured, when applicable;

(b) If the investor is a corporation or partnership, a copy of its statement authorizing the loan; and

(c) If the borrower is a corporation or partnership, a copy of its statement authorizing the loan.

5. The mortgage broker shall store his original notes, if retained, in a fireproof container or room.

6. If the mortgage broker has obtained an appraisal on behalf of an investor, the mortgage broker shall provide a copy of the appraisal to the:

- (a) Investor, upon request; and
- (b) Borrower, upon request, if the borrower has paid for the appraisal.

**7. *An investor may not waive the provisions of this section unless:***

- (a) The investor has made a prior investment with the mortgage broker;***
- (b) The investor has a net worth that exceeds \$1,000,000; or***
- (c) The investor has invested with the mortgage broker an amount that is not more than 20 percent of the net worth of the investor excluding the residence and motor vehicle of the investor.***

**Sec. 19.** NAC 645B.215 is hereby amended to read as follows:

645B.215 1. Before a person purchases an existing note secured by a deed of trust or an interest therein for which a licensed mortgage broker is acting as a broker, the mortgage broker shall provide to the purchaser, unless specifically waived in writing by that person:

- (a) A copy of the promissory note;
- (b) A record of the history of payments on the note or a document signed by the seller and borrower stating the existing balance of the note;
- (c) The policy of title insurance for the original beneficiaries of the note; and
- (d) The original appraisal of the property securing the note, if available.

2. A mortgage broker shall retain a copy of the materials provided to the purchaser pursuant to subsection 1.

3. If the purchase is made, the mortgage broker shall retain in his files the original or a copy and ***shall*** provide to the purchaser, respectively, the copy or original of the following documents:

- (a) The promissory note and the assignment of the note.
- (b) The recorded deed of trust and recorded assignment of the beneficial interest.

(c) The endorsement to the policy of title insurance or a new policy of title insurance for the assignment.

(d) A policy of fire insurance indicating coverage in an amount sufficient to cover the replacement costs of all improvements on the property, including, if applicable, an endorsement naming the purchaser as a payee in case of loss.

(e) A statement signed by the purchaser acknowledging that the decision to purchase the note secured by a deed of trust was made after the purchaser was provided with and reviewed the material required in subsection 1.

***4. An investor may not waive the provisions of subsection 1 unless:***

***(a) The investor has made a prior investment with the mortgage broker;***

***(b) The investor has a net worth that exceeds \$1,000,000; or***

***(c) The investor has invested with the mortgage broker an amount that is not more than 20 percent of the net worth of the investor excluding the residence and motor vehicle of the investor.***

**Sec. 20.** NAC 645B.220 is hereby amended to read as follows:

645B.220 1. The Commissioner will not consider escrow instructions to have been “approved by the parties” within the meaning of subparagraph (2) of paragraph (a) of subsection 1 of NRS 645B.175 if the instructions:

(a) Are signed by the mortgage broker as attorney in fact for any investor with an interest in the loan; and

(b) Direct that all money relating to the transaction, except money for charges or fees due the mortgage broker, be paid to an owner, partner, director, officer, manager, member or employee

of the mortgage broker , or a relative of an owner, partner, director, officer, manager, member or employee of the mortgage broker.

2. The Commissioner will consider “money paid to a mortgage broker and his mortgage agents by a person in full or *in* partial payment of a loan” within the meaning of subsection 4 of NRS 645B.175 to include money paid to a mortgage broker or his mortgage agents by a person pursuant to written escrow instructions if the payment represents money paid in full or *in* partial repayment of a loan secured by a lien on real property.

3. The Commissioner will consider a mortgage broker or mortgage agent to “accept money from an investor to acquire ownership of or a beneficial interest in a loan secured by a lien on real property” within the meaning of NRS 645B.185 and 645B.300 if the mortgage broker or mortgage agent:

(a) Receives money from an investor to acquire ownership of or a beneficial interest in a loan secured by a lien on real property; or

(b) Arranges for the investor to pay money to a third party to invest in a loan secured by a lien on real property.

4. The disclosure form given to an investor pursuant to NRS 645B.185 must be in substantially the following form:

**(At least 14-point bold type)**

## **MORTGAGE INVESTMENT DISCLOSURE FORM**

(At least 10-point type)

**IMPORTANT:** Pursuant to NRS 645B.185, each investor must sign and date a disclosure form before a mortgage broker or mortgage agent accepts money for the investment. This form must be executed for each separate loan in which the investor invests money. A mortgage broker or mortgage agent may not act as the investor’s attorney in fact or agent in the signing or dating of this form and may not by agreement alter or waive these disclosure requirements.

Description of loan: \_\_\_\_\_

**(At least 14-point bold type)**

**BEFORE YOU INVEST IN A PROMISSORY NOTE SECURED BY AN INTEREST IN REAL PROPERTY, YOU SHOULD KNOW . . .**

The funding of a loan or purchase of a promissory note that is secured by a lien on real property (mortgage loan) is an investment that involves some risk.

(At least 10-point type)

An investment in a promissory note secured by a lien on real property, usually through a deed of trust (mortgage loan or mortgage loan investment), like most investments involves the risk that the investment will not perform as expected. The mortgage broker with whom you are dealing is not a depository institution, and a deed of trust investment is not secured by any depository insurance or insured or guaranteed by any agency of the State of Nevada or the Federal Government. Nevada law prohibits the mortgage broker with whom you are dealing from representing or even implying to you that he will ensure or guarantee that the investment will perform as expected. The borrower on the loan may default in required payments, and you may lose all or part of the principal amount you invested and/or the interest you expected to earn from the investment.

Some of the most significant factors that affect your risk in a mortgage loan investment include: (1) the knowledge, experience and integrity of the mortgage broker with whom you are dealing; (2) the market value and equity of the property that will secure the promissory note; (3) the borrower's financial standing and creditworthiness; (4) the escrow process involving the funding of the loan or purchase of the note; (5) the documents and instruments describing, evidencing and securing the loan; (6) the provisions regarding the collection and servicing of the loan; and (7) the provisions for enforcement of the deed of trust.

**(At least 14-point bold type)**

**You are entitled to information about the mortgage broker with whom you are investing.**

(At least 10-point bold type)

You are entitled to receive information regarding the mortgage broker with whom you are dealing from the Division of ~~Financial Institutions,~~ *Mortgage Lending*, which may be contacted at either one of the following locations:

Division of <del>Financial Institutions,</del> <i>Mortgage Lending</i>	Division of <del>Financial Institutions,</del> <i>Mortgage Lending</i>
<del>406 E. Second Street, Suite 3</del>	<del>2501 E. Sahara Avenue, Suite 300, Third Floor</del>
<del>400 W. King Street, Suite 406</del>	<del>3075 E. Flamingo Street, Suite 104A</del>
<del>Carson City, Nevada [89701-4758] 89703</del>	<del>Las Vegas, Nevada [89104</del>
<del>775.687.4259</del>	<del>702.486.4120] 89121</del>
<del>775.687.7060</del>	<del>702.486.0780</del>

You have the right to request the mortgage broker with whom you are dealing to authorize the Division of ~~Financial Institutions,~~ *Mortgage Lending* to release to you the most recent financial statement of the mortgage broker on file with the Division.

YES, I would like to review a financial statement.  NO, I would not like to review a financial statement.

Disclosures required by subparagraphs (3) and (4) of paragraph (b) of subsection 6 of NRS 645B.185:

Has any disciplinary action been taken by the Commissioner *of Mortgage Lending* against the mortgage broker or any general partner, officer or director of the mortgage broker within the preceding 12 months?  YES  NO. If yes, describe below:

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Has the mortgage broker or any general partner, officer or director of the mortgage broker 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?  YES  NO. If yes, describe below:

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You also have the right, pursuant to subsection 3 of NRS 645B.090, to ascertain from the Division of ~~Financial Institutions~~ *Mortgage Lending*:

- Whether the Division of ~~Financial Institutions~~ *Mortgage Lending* has disciplined the mortgage broker during the immediately preceding 5 years.
- The findings and results of any investigation against the mortgage broker pursuant to the provisions of chapter 645B of NRS which was completed during the immediately preceding 5 years and which resulted in a finding by the Commissioner *of Mortgage Lending* that the mortgage broker committed a violation of a provision of ~~this chapter or~~ chapter 645B of NRS , *chapter 645B of NAC* or an order of the Commissioner.

**(At least 14-point bold type)**

**You are entitled to have a written appraisal of the property that is to secure your deed of trust investment as well as other information relating to the property.**

(At least 10-point type)

The law requires the mortgage broker with whom you are dealing to obtain and make available for your inspection a written appraisal of the real property which is to secure the mortgage loan investment unless you specifically waive in writing your right to have the appraisal performed. An appraiser who is licensed or certified to perform real estate appraisals in this State must perform the appraisal if the property is located in this State. The mortgage broker with whom you are dealing is prohibited from performing the appraisal or providing any estimate or opinion of the value of the property that is to secure the mortgage loan investment, unless the mortgage broker is certified or licensed to perform the appraisal pursuant to chapter 645C of NRS. You are entitled to a copy of the appraisal upon request.

- I waive my right to an appraisal for this loan.  
 I wish to review an appraisal for this loan.

Investor: \_\_\_\_\_  
Date: \_\_\_\_\_

In addition to a written appraisal, you are entitled to know 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.

The real property that will secure this loan  is  is not encumbered by any other liens. If other liens exist, describe, for each lien:

Description: \_\_\_\_\_  
Amount encumbered: \_\_\_\_\_  
Priority: \_\_\_\_\_  
Current status: \_\_\_\_\_

**(At least 14-point type)**

**You are entitled to review information relating to the financial standing and creditworthiness of the borrower and documentation relating to the mortgage loan.**

Pursuant to NAC 645B.080, you will be asked to complete a form in which you acknowledge that you had the opportunity to receive and review that information and documentation.

You are entitled to review documentation relating to how the mortgage loan is funded and serviced.

(At least 10-point type)

Nevada law requires the mortgage broker to fund the entire amount of the loan either out of his trust account directly to the borrower or through a third-party escrow agent. In most cases, the loan will be funded through a third-party escrow agent. An escrow is opened when money, documents, instruments and written instructions regarding the transaction (escrow instructions) are conditionally delivered by the principals to a third party (escrow agent). The escrow instructions set forth the conditions that must be satisfied or waived before the escrow agent may disburse your money to the borrower or the note holder. You have the right to review the escrow instructions. The escrow instructions should be consistent with your understanding of the loan transaction and should ~~identify~~ identify a specific promissory note and deed of trust (or interest therein). Escrow “closes” when all the conditions of the escrow instructions have been waived or satisfied, the instruments have been recorded and the money ~~was~~ has been disbursed. You have the right to review a closing statement relating to the escrow describing to whom and how the money was disbursed.

In many cases, including those cases where the investments consist of “fractionalized” interests, i.e., ownership of less than 100% of the mortgage investment, the loan requires servicing by an authorized agent. Loan servicing includes collecting payments from borrowers, disbursing payments to investors or note holders, mailing of appropriate notices, monitoring the status of senior liens and encumbrances, maintaining adequate insurance coverage and coordinating foreclosure proceedings. The mortgage broker with whom you are dealing is authorized by Nevada law to act as the servicing agent for the mortgage loan he originates. It is recommended that all persons investing in a mortgage loan which will be serviced by a servicing agent execute a written servicing agreement that clearly specifies the authority granted to the servicing agent. The servicing agreement should address issues such as: (1) the fees for servicing and how they are to be paid; (2) the person who has the authority to instruct the trustee under the deed of trust to commence foreclosure proceedings in the event of a default; (3) how, in the case of a “fractionalized” note and deed of trust with multiple parties owning beneficial interests, the parties are to determine and direct the actions to be taken in the event of default or with respect to other matters that involve the enforcement of terms of the promissory note and/or deed of trust (Nevada law requires that the documentation pertaining to a note and deed of trust owned initially by more than one natural person include a provision by which record holders of 51% or a greater specified percentage of the beneficial interests in the mortgage loan may direct certain actions that require direction or approval of the holders of beneficial interests); (4) the identity of the person responsible for holding the original promissory note and deed of trust; (5) how the loan servicing agreement may be terminated by the investors in the mortgage loan; (6) the right to obtain the names, addresses and phone numbers of other persons with beneficial interests in the loan; and (7) the monitoring of any senior liens.

A mortgage broker performing loan servicing has an obligation to account to the borrower and every investor for money collected and disbursed in the exercise of that function.

(At least 14-point type)

You have the right to know whether the mortgage broker with whom you are dealing, or any relative of the mortgage broker, is acting in any capacity, or has any other interest, other than as a mortgage broker.

(At least 10-point type)

Nevada law requires the mortgage broker with whom you are dealing to disclose to you whether he, or any relative of his, has any personal interest in the mortgage loan other than as a mortgage broker. For example, if the mortgage broker owns a 50% interest in the builder applying for a construction loan, the mortgage broker is required to disclose that interest to you. In addition, if a mortgage broker or a relative of the mortgage broker is licensed as,

conducts business as or holds a controlling interest or position in (1) a construction control company, (2) an escrow agency, or (3) a title agent, a title insurer or an escrow officer of a title agent or title insurer, the mortgage broker must fully disclose that relationship to every investor, and may not require, as a condition to the acquisition or purchase of an interest in a mortgage loan, that the investor transact business with or use the services of the other business.

The mortgage broker, or a relative of the mortgage broker, has an interest in this loan in a capacity other than as a mortgage broker.  YES  NO. If yes, explain below:

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(At least 14-point type)

Collection of a promissory note and enforcement of a deed of trust involves some risk.

(At least 10-point type)

When the borrower on a mortgage loan fails to make required payments, the actions an investor can take, or that a servicing agent can take on behalf of an investor, are determined by provisions of Nevada law and the documents and instruments evidencing the mortgage loan. Frequently, the borrower who is delinquent on your loan is also delinquent on senior liens. Even though your loan may be current, the borrower may fail to maintain the payments on senior liens, such as taxes, insurance premiums or deeds of trust. A breach of or default in connection with a senior lien by the borrower most likely constitutes an event of default under your deed of trust. It is therefore important that the status of all senior liens be monitored. Before investing in a junior deed of trust, you should determine the amount of debt service (payments) required to maintain the senior lien(s). To protect your investment during any senior lien (loan) foreclosure, it may be necessary for you to maintain the payments (with your own money) on all senior liens. You may lose your interest in the property securing the loan if a senior lien forecloses on the property.

There will be other costs associated with enforcing a mortgage loan, such as attorney's fees and processing fees, and there will likely be a delay of some months before the foreclosure process is complete. Issues such as whether to commence a judicial or nonjudicial foreclosure, deficiency judgments, rents and profits if the property is income-producing, and bankruptcy may also need to be addressed.

(At least 14-point type)

If you have questions.

(At least 10-point type)

If you have any questions regarding any of the issues discussed in this disclosure form, discuss them with your mortgage broker, lawyer or financial adviser, or a trusted friend or family member. No one can guarantee that a particular investment will be risk free, but with information about the specific risks involved, you can take steps to minimize your risk.

Loan: \_\_\_\_\_  
Investor signature required: \_\_\_\_\_  
Title (if investor is a corporation, partnership or limited-liability company): \_\_\_\_\_  
Dated: \_\_\_\_\_

5. If the investor is a corporation, the disclosure form required pursuant to NRS 645B.185 may be signed by any person authorized to sign the form on behalf of the corporation, except a mortgage broker or mortgage agent.



**Sec. 21.** NAC 645B.240 is hereby amended to read as follows:

645B.240 1. A licensed mortgage broker shall not represent an activity which is not licensed pursuant to chapter 645B of NRS as being licensed pursuant to that chapter.

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

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

(a) ~~His name,~~ *The complete name of the mortgage broker or the complete name under which the mortgage broker does business.*

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

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

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

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

(b) If the material simulates the appearance of a check, the material does not contain an American Bankers Association number, microencoding or any other marks intended to create the appearance that the material is a negotiable check.

5. Provided the representation of interest rates in advertisements complies with ~~applicable provisions of federal law regarding the advertising of interest rates,~~ *Regulation Z, 12 C.F.R. Part 226, and the content will continue to comply with this chapter and chapter 645B of NRS regarding advertising,* a mortgage broker may make ~~changes in the interest rates advertised and any other~~ nonsubstantive changes to his advertisements without additional approval from the Commissioner. *For the purposes of this subsection, “nonsubstantive changes” means:*

- (a) Interest rates that are quoted in the advertisement and any corresponding annual percentage rates;*
- (b) Promoting another mortgage agent in the same format of advertisement;*
- (c) Promoting other branch locations in the same format of advertisement;*
- (d) Placing links on websites that direct the user to noncommercial or consumer education websites;*
- (e) Telephone or cellular phone numbers other than the phone number that the mortgage broker has on file with the Division; and*
- (f) Changes to words used in the advertisement that do not alter the content of the advertisement.*

6. *Approvals for advertising must be maintained at the location of the mortgage broker and must be available for inspection for at least 1 year after the last day that the advertisement is used.*

7. *For the purposes of NRS 645B.189, disclosures in advertisements and distributions to investors must include the following language:*

*Before investing, investors must be provided applicable disclosure documents for each loan in which money is invested.*

8. *The mortgage broker is not required to obtain approval from the Division for white-page listings, employment recruiting announcements, office signs, banners, magnetic car signs, business cards and letterhead which contain only the name, address and telephone number of the mortgage broker, whether together or separate, and which are used for the purpose of identification only.*

9. *An Internet link on a website of the mortgage broker that links the user to the website of another commercial enterprise must provide notification to the user that the user is leaving the website of the mortgage broker.*

10. *For the purposes of this section, “advertising” includes commercial messages that promote the availability of mortgage products or investments offered by the mortgage broker.*

*Commercial messages include, but are not limited to:*

- (a) Print media;*
- (b) Sales literature;*
- (c) Sales brochures or flyers;*
- (d) Billboards;*
- (e) Yellow-page listings if more than a line listing;*
- (f) Radio and television advertisements;*

*(g) Mass mailings distributed by the United States Postal Service or another such delivery service or by electronic mail;*

*(h) Telephone or seminar scripts; and*

*(i) Websites or other internet sites that promote or accept loan applications.*

**Sec. 22.** NAC 645B.280 is hereby amended to read as follows:

645B.280 1. Before a mortgage broker or mortgage agent engages in any act or transaction on behalf of an investor pursuant to a power of attorney, the power of attorney must first be submitted to the Commissioner for approval. The Commissioner will, within ~~[10]~~ 15 business days after receiving a request for approval of a power of attorney:

(a) Approve the power of attorney;

(b) Approve the power of attorney on the condition that the mortgage broker amend the power of attorney as directed by the Commissioner; ~~[or]~~

(c) Reject the power of *attorney; or*

*(d) Provide notice in writing to the person who requested the power of attorney that an additional period of time, not to exceed 15 business days, is needed by the Commissioner to act on the request for approval of the power of attorney.*

~~2. [If the Commissioner has not acted on a power of attorney submitted for approval pursuant to this section within 10 business days after receiving a request for approval of a power of attorney, the power of attorney shall be deemed approved.~~

~~—3.]~~ The mortgage broker shall maintain in his file all written communications relating to the request for approval of the power of attorney.

~~[4.]~~ 3. Any writing executed or issued by a person extending the term of a power of attorney must be dated, and the mortgage broker shall maintain a copy of the extension in the file of the mortgage broker.

~~[5.]~~ 4. A power of attorney approved by the Commissioner pursuant to this section must state the date that the Commissioner approved the power of attorney. If the mortgage broker materially changes the power of attorney, the mortgage broker must resubmit the power of attorney to the Commissioner for approval before the mortgage broker uses the power of attorney.

**Sec. 23.** NAC 645B.290 is hereby amended to read as follows:

645B.290 The power of attorney required pursuant to NRS 645B.330 must be in substantially the following form:

#### Special Power of Attorney

The undersigned, \_\_\_\_\_, does hereby appoint (*name of mortgage broker*) my true and lawful attorney, to perform services related to the following loan in which I own a beneficial interest: \_\_\_\_\_. The services to be performed are described below:

*(Describe services here)*

This power of attorney shall not be effective to authorize any transaction that subordinates the priority of the recorded deed of trust that secures this loan unless accompanied by a writing issued by the undersigned that consents to such subordination.

This power of attorney shall not be effective to authorize the use or release of money in which the undersigned owns a beneficial interest for any purpose except for the provision of the services described above relating to the loan described above unless accompanied by written authorization by the undersigned for the use or release of money for the other purpose.

This power of attorney is effective for a period of [not more than 6] \_\_\_\_ months after the date executed but may be extended for additional [not more than 6] \_\_\_\_ -month increments if authorized in writing by the undersigned. Only one such authorization may be given for an extension during each [not more than 6] \_\_\_\_ -month period.

I give and grant to my said attorney full power to execute in my name contracts, escrow instructions, conveyances, mortgages, deeds of trust, and all other documents necessary to carry out the services described herein as fully to all intents and purposes as the undersigned might or could do if personally present, hereby ratifying and confirming all that my said attorney shall lawfully do, or cause to be done, by virtue of these presents.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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State of \_\_\_\_\_

County of \_\_\_\_\_

This instrument was acknowledged before me on  (date) , by  (name(s) of person(s)

\_\_\_\_\_  
(Signature of notarial officer)

(Seal if any)

\_\_\_\_\_  
(Title and rank (optional))

(My commission expires (optional) \_\_\_\_\_ )

Approved by the Commissioner of ~~[Financial Institutions]~~ *Mortgage Lending* on

\_\_\_\_\_.

**Sec. 24.** NAC 645B.300 is hereby amended to read as follows:

645B.300 1. A mortgage broker and any mortgage agent must sign the ~~[registration form]~~  
*application for licensing* required pursuant to NRS ~~[645B.450.]~~ *645B.410.*

2. A mortgage agent may associate with or be employed by a mortgage broker at only one licensed office location of the mortgage broker and may not associate with or be employed by a mortgage broker who is exempt from the provisions of chapter 645B of NRS or whose office is located outside this State.

3. Upon request of a mortgage broker, the Commissioner may waive the requirement of an investigation of the credit history, criminal history and background of a mortgage agent if such an investigation has been conducted within 1 year immediately preceding the date the ~~registration form~~ *application* is submitted.

4. The ~~registration~~ *license* of a mortgage agent pursuant to this section is effective upon the date that the mortgage broker files the form with the Division, but must be invalidated by the Division if, upon investigation, the Division determines that the mortgage agent does not meet the requirements of ~~paragraphs (a) and (b) of subsection 4 of NRS 645B.450.~~ *NRS 645B.410.* The Division shall notify the mortgage broker and the mortgage agent in writing if a ~~registration~~ *license* is invalidated pursuant to this subsection.

5. The report of an investigation of the credit history, criminal history and background of a mortgage agent is confidential, and the Commissioner will release the report only pursuant to a valid subpoena or court order.

6. The written statement of the circumstances surrounding the termination of a mortgage agent required by subparagraph ~~(1)~~ (2) of paragraph (b) of subsection ~~(5)~~ 3 of NRS 645B.450 will be considered a public record.

**Sec. 25.** NAC 645B.330 is hereby amended to read as follows:

645B.330 1. The Commissioner ~~will~~ *may* refer to the appropriate federal or state agency for investigation and appropriate action each suspected violation of:



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

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

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

2. For the purposes of NRS 645B.670, a mortgage broker commits a violation if the mortgage *broker or a mortgage agent associated with the mortgage* broker:

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

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

(c) *Violates a provision of:*

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

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

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

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