

**ADOPTED REGULATION OF THE
COMMISSIONER OF MORTGAGE LENDING**

LCB File No. R070-08

Effective April 23, 2009

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

AUTHORITY: §§1-13, NRS 645E.300.

A REGULATION relating to mortgage bankers; adopting procedures for hearings; and providing other matters properly relating thereto.

Section 1. Chapter 645E of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 13, inclusive, of this regulation.

Sec. 2. 1. *If a hearing has been requested pursuant to NRS 645E.750 in a timely manner, each party must provide to the opposing party, not less than 10 days before a hearing, a copy of all papers, records, data or documents expected to be used as exhibits at the hearing and a list of witnesses expected to testify at the hearing. Nothing herein prohibits a party from calling a rebuttal witness or offering other rebuttal evidence which has not been disclosed if allowed by the hearing officer. The filing of a motion does not toll the time for providing information to an opposing party.*

2. Not less than 5 days before a hearing, each party must provide to the hearing officer a copy of all papers, records, data or documents expected to be used as exhibits at the hearing and a list of witnesses expected to testify at the hearing.

3. If a party fails to provide any document required to be provided by the provisions of this section, the hearing officer may exclude the document.

4. Neither party may serve interrogatories on the other party or conduct depositions, and neither party may engage in any other discovery unless otherwise required by law and permitted by the hearing officer.

Sec. 3. 1. *All motions, unless made to exclude a witness, must be in writing.*

2. A written motion must be served on the opposing party and the hearing officer at least 15 days before the time set for the hearing on the motion unless good cause is shown to the hearing officer.

3. An opposing party may file a written response to a motion at least 7 days before the time set for the hearing on the motion by serving the written response on all parties and the hearing officer.

4. No motion for summary judgment will be allowed.

Sec. 4. 1. *The time of a hearing may be continued by the hearing officer upon the written petition of a party only for good cause shown.*

2. The party requesting a continuance must serve the written petition upon the opposing party at the time that the request is made, and the opposing party may file an objection to the request for a continuance within 3 days after receipt of the written petition.

Sec. 5. 1. *In conducting any hearing, the hearing officer is not bound by the technical rules of evidence, and any informality in any proceeding or in the manner of taking testimony does not invalidate any order or decision of the hearing officer. The rules of evidence of courts of this State will be followed generally but may be relaxed at the discretion of the hearing officer if deviation from the technical rules of evidence will aid in determining the facts.*

2. Any evidence offered at a hearing must be material and relevant to the issues of the hearing.

3. *Sworn declarations may be introduced in lieu of testimony if a witness resides outside the State of Nevada.*

4. *The hearing officer may exclude inadmissible, incompetent, repetitious or irrelevant evidence or order that the presentation of that evidence be discontinued.*

5. *A party who objects to the introduction of evidence shall briefly state the grounds of the objection at the time the evidence is offered. The party who offers the evidence may present a rebuttal argument to the objection.*

Sec. 6. 1. The hearing officer shall:

(a) *Ascertain whether all persons ordered to appear under subpoena are present and whether all documents, books, records and other evidence under subpoena are present in the hearing room.*

(b) *Administer the oath to the reporter as follows:*

Do you solemnly swear or affirm that you will report this hearing to the best of your stenographic ability?

(c) *Administer the oath to all persons whose testimony will be taken as follows:*

Do you and each of you solemnly swear or affirm to tell the truth and nothing but the truth in these proceedings?

(d) *Ascertain whether either party desires to have a witness excluded from the hearing room until he is called. A witness may be excluded upon the motion of the hearing officer or*

upon the motion of either party. If a witness is excluded, he will be instructed not to discuss the case during the pendency of the proceeding. The respondent will be allowed to remain present at the hearing. The Division may designate a person who is a member of the staff of the Division and who may also be a witness to act as its representative. Such a representative will be allowed to remain present at the hearing.

(e) Ascertain whether a copy of the complaint or decision to deny has been filed and whether an answer has been filed as part of the record in the proceedings.

(f) Hear any preliminary motions, stipulations or orders upon which the parties agree and address any administrative details.

(g) Request the Division to proceed with the presentation of its case.

2. Parties may waive opening and closing statements.

3. The respondent may cross-examine witnesses in the order that the Division presents them.

4. Witnesses or counsel may be questioned by the hearing officer at any time during the proceeding.

5. Evidence which will be introduced or which is used by a witness:

(a) Must first be marked for identification; and

(b) May be received by the hearing officer at any point during the proceeding.

6. When the Division has completed its presentation, the hearing officer shall request the respondent to proceed with the introduction of evidence and calling of witnesses on his behalf.

7. The Division may cross-examine witnesses in the order that the respondent presents them.

8. *When the respondent has completed his presentation, the Division may call any rebuttal witnesses.*

9. *When all testimony for the Division and respondent has been given and all evidence has been submitted, the hearing officer may request the Division and the respondent to summarize their presentations.*

10. *The hearing officer may, in his discretion, waive or modify any provision of this section if necessary to expedite or ensure the fairness of the hearing.*

Sec. 7. *The Division has the burden of proof in any hearing pursuant to this chapter. The standard of proof in such a hearing is substantial evidence.*

Sec. 8. *A respondent may represent himself at the hearing or be represented by an attorney.*

Sec. 9. *The hearing officer shall:*

1. *Attempt to coordinate the time and location of the hearing with the parties before setting the matter; and*

2. *Advise the Commissioner or his designee in writing of the time and location of the hearing in such a manner as to allow the Division to comply with the notice requirements of NRS 233B.121.*

Sec. 10. 1. *The provisions of this chapter do not affect or limit the authority of the Commissioner or his designee, at any stage of a contested case, to make an informal disposition of the contested case pursuant to subsection 5 of NRS 233B.121 or to enter into a consent or settlement agreement pursuant to NRS 622.330.*

2. *Any action taken by the Commissioner or his designee pursuant to subsection 1:*

(a) *Is not subject to approval by the hearing officer; and*

(b) May have its terms placed into the record at the discretion of the Commissioner or his designee.

Sec. 11. *The hearing officer shall issue and serve upon all parties a written decision meeting the requirements of NRS 233B.125 within 30 days after the close of the hearing.*

Sec. 12. *1. A party may file a post-hearing motion only to request a rehearing or to request a modification of the discipline, fine, costs or attorney's fees imposed against a respondent.*

2. Any post-hearing motion must be filed within 15 days after service of the decision by the hearing officer.

3. The opposing party may file an opposition within 10 days after a post-hearing motion is filed, and the moving party may file a final reply within 5 days after an opposition is filed.

4. The hearing officer shall issue and serve upon all parties a written decision on any post-hearing motion within 30 days after the post-hearing motion is filed.

Sec. 13. *1. A person who provides a governmental entity, officer or employee with any information relating to a contested case is immune from any civil liability for providing that information if the person acted in good faith and without malicious intent.*

2. A governmental entity, officer or employee is immune from any civil liability for:

(a) Any decision or action taken in good faith and without malicious intent in carrying out the provisions of this chapter or any law or regulation governing occupational licensing; or

(b) Communicating or cooperating with or providing any documents or other information to any other governmental entity, officer or employee conducting an investigation, disciplinary proceeding or civil or criminal prosecution.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R070-08

The Commissioner of Mortgage Lending adopted regulations assigned LCB File No. R070-08 which pertain to chapter 645E of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

Copies of the proposed regulation, notice of workshop and notice of intent to act upon the regulation were e-mailed to persons who were known to have an interest in the regulations, as well as any persons who had specifically requested such notice. These documents were also made available at the Division of Mortgage Lending's Web site www.mld.nv.gov, mailed to the State Library and all county libraries in Nevada, and posted at the Division's offices.

Workshops were held in Las Vegas on July 16, 2008, and in Carson City on July 22, 2008. Minutes of those workshops are attached hereto. No public comment was offered at the workshop. Thereafter, on or about January 16, 2009, the Commissioner of the Division of Mortgage Lending (Commissioner) posted a Notice of Intent to Act Upon a Regulation, which incorporated in the proposed amendments suggestions of the parties attending the July workshops as well as the written comments received by the Division.

A public hearing on the proposed regulation was held on February 19, 2009. The hearing was video conferenced between Las Vegas and Carson City. Minutes of the hearing are attached hereto and include summaries of the public comment.

A copy of the summary of the public response to the proposed regulation may be obtained from the Division of Mortgage Lending, 7220 Bermuda Road, Suite A., Las Vegas, NV 89119, or by e-mailing a request to jwaltuch@mld.nv.gov.

2. The number of persons who:

	<u>CC</u>	<u>LV</u>
Attended workshop: 7-16-08	21	
7-22-08	5	
Testified at workshop	0	0
Submitted written comments:	0	2
Attended hearing 2-19-09:	5	8
Testified at Hearing	1	0
Submitted written comments:	0	0

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public. In addition to the e-mail notice described in question 1, which was sent to all company licensees, the Division sent an additional e-mail two days prior to the hearing as a reminder. The Summary may be obtained in the same manner as instructed in the response to question #1.

The industry comments were submitted for R-069-08, which adds rules of practice into NAC 645B. The language in this regulation is identical to the language in R-069-08. The comments submitted for R-069-08 included:

1. Request to clarify if hearing procedures affected all actions brought by the Division or only affected license denial matters.
2. Concerns that the Division could have someone present throughout the hearing, who may also serve as a witness, whereas other witnesses could be removed from the hearing room except for when providing testimony.
3. Request that the standard of proof by the Division be consistent with the standard held in criminal matters, rather than the one applied in civil or administrative matters.
4. Request that the Respondent not be required to provide documentation the Respondent intended to introduce into evidence at the hearing to the Division in advance of the hearing.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation, as reviewed by the Legislative Counsel was adopted on March 5, 2008 as proposed without change. The comments were considered by the Commissioner; however, Deputy Attorney General, Robert Bryant, explained during the hearing that both Nevada law and Nevada Supreme Court decisions supported the proposed language.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

Business which it is to regulate & the public:

(1) Both adverse and beneficial effects:

(a) Beneficial effects: Establishes rules of practice for administrative matters brought by the Division. The rules provide specific guidelines regarding the hearing processes and enactment brings the Division into compliance with the provisions of NRS 233B.050(1)(a) which requires each agency to, "Adopt rules of practice, setting forth the nature and requirements of all formal and informal procedures available".

(b) Adverse effects: There are no anticipated adverse effects to the industry or the public by the adoption of this regulation.

(2) Both immediate and long-term effects.

The immediate and long term effects are anticipated to be the same and are consistent with #5 (1) (a).

6. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of this regulation.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The Proposed Permanent Regulation does not overlap regulations of other state or governmental agencies. The Division is specifically exempted from NRS 622A, the general administrative procedure chapter of the Nevada Revised Statute, but pursuant to NRS 233B is required to adopt rules of practice.

8. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

The Proposed Permanent Regulation does not include provisions which are more stringent than federal regulation.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The Proposed Permanent Regulation does not include any new or increased fees.

10. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What did the agency use in determining the impact of the regulation on a small business?

The Commissioner determined through review of the language of the Proposed Permanent Regulation, and opportunity for comment at the workshop and hearing, and written submissions, that the regulation does not impose a direct and significant economic burden upon a small business or restrict the formation, operation or expansion of a small business.