

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

LCB File No. R070-08

October 16, 2008

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 shall prohibit 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 shall 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 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) *Shall not be 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.