

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

**LCB File No. R070-16**

Effective January 27, 2017

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

AUTHORITY: §§1, 2, 4, 5 and 13-15, NRS 645A.050; §3, NRS 645A.050 and 645A.195; §6, NRS 645A.021 and 645A.050; §7, NRS 645A.039 and 645A.050; §§8-12, NRS 645A.021, 645A.039 and 645A.050.

A REGULATION relating to escrow agents; making confidential certain information prepared or received by the Division of Mortgage Lending of the Department of Business and Industry; establishing requirements for the designation of a qualified employee of an escrow agency; requiring the filing of a semiannual activity report; establishing requirements for the closure of the principal office or a branch office of an escrow agency; revising certain educational requirements for the initial licensure and continuing education of an escrow agent; revising provisions relating to the approval by the Commissioner of Mortgage Lending of providers, courses and instructors for such education; eliminating certain requirements relating to the timeliness of payments made by escrow agents performing certain services in connection with certain loans; revising requirements concerning the review of an escrow agency's annual financial statements; revising the standard of proof for certain hearings relating to escrow agents and agencies; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

**Section 2** of this regulation provides that certain information prepared or received by the Division of Mortgage Lending of the Department of Business and Industry, as that information relates to an investigation of a control person or escrow agent, is confidential and must be disclosed only under certain circumstances.

Existing law requires an escrow agency that is not a natural person to designate a natural person to serve as the qualified employee to act on behalf of the escrow agency and requires the Division to adopt regulations relating to qualified employees. (NRS 645A.195) **Section 3** of this regulation requires that a qualified employee be designated for each place of business identified in a license issued to the escrow agency and sets forth the requirements for designation as a qualified employee.

**Section 4** of this regulation requires each escrow agency to file with the Commissioner of Mortgage Lending a semiannual activity report of the operations of the escrow agency and sets forth certain requirements for that report.

**Section 5** of this regulation sets forth certain requirements which must be met before an escrow agency may close its principal office or a branch office.

Existing regulations: (1) set forth certain educational requirements for initial licensure as an escrow agent; and (2) require a certain number of hours of instruction to be completed through live instruction in a classroom. (NAC 645A.070) **Section 6** of this regulation revises those provisions to allow: (1) any number of required hours of instruction to be completed through live instruction or distance education; and (2) credit for instruction on Nevada law and regulations relating to chapter 627 of NRS which relate to construction controls.

Existing regulations set forth certain requirements for continuing education for escrow agents. (NAC 645A.075) **Section 7** of this regulation eliminates a requirement that an approved course of continuing education must focus on the practical application of an escrow transaction.

**Section 8** of this regulation revises the subjects which are approved as course material for initial licensure and continuing education for escrow agents.

Existing regulations require a provider of educational courses for licensure as an escrow agent to be licensed by the Commission on Postsecondary Education, unless otherwise exempt, and provides that the Commissioner of Mortgage Lending may waive certain requirements for courses offered by or through a federal or state governmental agency. (NAC 645A.085) **Section 9** of this regulation eliminates the requirement that a provider of educational courses for licensure as an escrow agent be licensed by the Commission. **Section 9** also revises the waiver provision to provide that the Commissioner may waive requirements for, and approve, certain providers of courses that otherwise meet requirements set forth in regulations.

Existing regulations require a provider of courses for licensure or continuing education to: (1) notify the Commissioner of any material change in the information provided in the provider's application for approval; and (2) submit a prescribed certification and statement to qualify for annual renewal of approval by the Commissioner. (NAC 645A.090) **Section 10** of this regulation provides that the Commissioner may waive some or all of these requirements for certain providers.

Existing regulations set forth certain requirements for the approval of educational courses. (NAC 645A.095) **Section 11** of this regulation provides that the Commissioner may waive some or all of these requirements for courses offered by certain providers.

Existing regulations set forth certain requirements for the approval of a person as an instructor. (NAC 645A.135) **Section 12** of this regulation provides that the Commissioner may waive some or all of these requirements for a person who is employed by certain providers.

Existing regulations set forth certain requirements relating to the timeliness of payments that must be made by an escrow agency which performs services as a third party in the collection of payments in connection with a loan secured by real property. (NAC 645A.220) **Section 13** of this regulation eliminates those requirements as applicable provisions exist elsewhere in chapter 100 of NRS, relating to special relations of debtors and creditors in commercial instruments and transactions, and chapter 645F of NRS, governing mortgage lending and related professions.

Existing regulations require an escrow agency to annually submit to the Commissioner a financial statement that is audited by a public accountant if the escrow agency maintains a trust account that has an average monthly balance in excess of \$250,000. (NAC 645A.310) **Section 14** of this regulation eliminates the requirement for an audit and requires that the financial statement be reviewed by an independent public accountant.

Existing regulations provide that the standard of proof in any hearing pursuant to chapter 645A of NRS or 645A of NAC is substantial evidence. (NAC 645A.400) **Section 15** of this regulation amends this provision to provide that the standard of proof is a preponderance of the evidence.

**Section 1.** Chapter 645A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

**Sec. 2. 1.** *Any record or report prepared or received by the Division concerning the credit history, criminal history or background of a control person or an escrow agent related to an investigation conducted pursuant to NRS 645A.020 is confidential and must not be disclosed to the public except pursuant to a court order or a disciplinary hearing conducted pursuant to this chapter or chapter 645A of NRS.*

*2. Any information obtained during the course of an examination or investigation conducted pursuant to this chapter or chapter 645A of NRS is confidential and must not be available for public inspection or copying, or divulged to any person, except:*

- (a) To the Attorney General.*
- (b) To a regulatory agency.*
- (c) To a person authorized to receive the information by a court of competent jurisdiction.*
- (d) To a law enforcement official.*
- (e) In connection with an enforcement action brought pursuant to this chapter, chapter 645A of NRS or other law or regulation.*

**Sec. 3. 1. An escrow agency shall designate a natural person to serve as the qualified employee for each office designated in a license issued to the escrow agency pursuant to chapter 645A of NRS.**

**2. A person may not be designated to serve as the qualified employee of an escrow agency unless the person:**

**(a) Is licensed in good standing as an escrow agent pursuant to chapter 645A of NRS;**

**(b) Has at least 2 years of verifiable experience in the business of administering escrows within the 5 years immediately preceding the designation;**

**(c) Is designated by the escrow agency to act on behalf of the escrow agency and to supervise and control the conduct of the business of the escrow agency and its escrow agents at the place of business;**

**(d) Is designated to serve as the qualified employee at only one place of business and will be present at that place of business for a majority of the hours that the office is open to the public; and**

**(e) Is approved by the Commissioner.**

**3. If the person designated pursuant to subsections 1 and 2 subsequently becomes ineligible or is discovered to be ineligible because the person does not meet the requirements set forth in subsection 2, or is not approved by the Commissioner, within 30 days after the discovery of ineligibility or disapproval, the escrow agency shall:**

**(a) Provide written notification to the Commissioner, in a manner prescribed by the Commissioner; and**

**(b) Pursuant to the requirements of this section, designate another natural person to serve as the qualified employee.**

*4. As used in this section and NRS 645A.195, “qualified employee” means a licensed escrow agent who is designated by an escrow agency and approved by the Commissioner pursuant to this section to act on behalf of the escrow agency and to supervise and control the business of administering escrows at an office designated in a license issued to the escrow agency.*

*Sec. 4. 1. Each escrow agency shall file with the Commissioner a semiannual activity report on a date and in a form prescribed by the Commissioner.*

*2. The semiannual activity report must include:*

*(a) Information concerning the operations of the escrow agency, including the number of escrow transactions conducted by the escrow agency and the total dollar volume of those transactions;*

*(b) Information concerning the administration of trust accounts;*

*(c) A one-page summary report of the completed three-way reconciliation from the last month of the report period; and*

*(d) Other documents in support of the activity report as required by the Commissioner.*

*3. The activity report required pursuant to this section must be reviewed and certified by a control person of the escrow agency.*

*Sec. 5. 1. An escrow agency may not close its principal office or a branch office until:*

*(a) The escrow agency has:*

*(1) Returned its original license; and*

*(2) Submitted to the Commissioner a request for approval of the closure of the office pursuant to subsection 2; and*

*(b) The Commissioner has approved the closure.*

2. *A request for approval of the closure of the principal office or a branch office of an escrow agency must include:*

*(a) The status of any incomplete escrow agreements and the manner in which they will be finalized;*

*(b) An accounting and reconciliation of any trust account maintained by the escrow agency and the plan for distribution of the money in the account;*

*(c) If any escrow agent associated with or employed by the escrow agency has been terminated from such association or employment, notice of that termination pursuant to NRS 645A.196; and*

*(d) The location where records of the office will be maintained and the name, telephone number and mailing address of the custodian who will be responsible for the maintenance of the records.*

Sec. 6. NAC 645A.070 is hereby amended to read as follows:

645A.070 1. ~~{A natural person who is an}~~ An applicant for an initial license as an escrow agent must complete at least 15 hours of instruction in the areas of instruction set forth in subsection 2. ~~{Ten of the required hours of instruction must be through live instruction in a classroom.}~~ The ~~{remaining 5 hours of}~~ instruction may be completed through live instruction in a classroom or through distance education.

2. The 15 hours of instruction required by subsection 1 must include:

(a) Three hours of professional ethics, which must include instruction on fraud and consumer protection;

(b) ~~{Three hours of federal law and regulations as described in subsection 1 of NAC 645A.080;~~

~~—(e)~~ Four hours of Nevada law and regulations relating to escrow agencies or escrow agents, at least 2 hours of which must be related to this chapter and chapter *627 or* 645A of NRS;

~~{(d) Three}~~

*(c)* Six hours of instruction relating to *applicable federal law or regulations*, the practical application of escrow processes or a specialized area of practice; and

~~{(e)}~~ *(d)* Two hours of electives.

3. An applicant for an initial license as an escrow agent must provide to the Commissioner one or more certificates of completion, in a form satisfactory to the Commissioner, indicating that the applicant has successfully completed the 15 hours of instruction required by this section. Certificates issued for all such courses must bear the name of the certifying organization.

~~{4.— An applicant who lives in a rural area or an area where live instruction in a classroom is unavailable may, with the prior written approval of the Commissioner, take any course required by this section as an interactive, correspondence, distance or televideo course that involves interaction with the instructor and other students.~~

~~—5.— As used in this section, “rural area” means a city or town:~~

~~—(a) Whose population is less than 60,000; and~~

~~—(b) That is located more than 60 miles from a city or town whose population is 60,000 or more.~~

**Sec. 7.** NAC 645A.075 is hereby amended to read as follows:

645A.075 1. A person licensed as an escrow agent shall complete, during the 12 months immediately preceding the date on which the license expires, at least 10 hours of instruction in approved courses of continuing education.

2. ~~{An approved course of continuing education must focus on the practical application of an escrow transaction.~~

~~—3.}~~ The Commissioner will consider the appropriateness of alternative subject material for specialized areas of practice.

~~{4.}~~ 3. Of the hours of instruction required by subsection 1, a person licensed as an escrow agent must complete:

(a) Two hours of professional ethics, which must include instruction on fraud and consumer protection;

(b) ~~{Two hours of federal law and regulations as described in subsection 1 of NAC 645A.080;~~

~~—(c) Two}~~ **Four** hours of Nevada law and regulations relating to this chapter and chapter **627** *or* 645A of NRS or other Nevada *or federal* laws and regulations relating to ~~{mortgages;}~~ *escrow*; and

~~{(d)}~~ (c) Four hours of electives, which may include instruction appropriate to a specialized area of practice.

**Sec. 8.** NAC 645A.080 is hereby amended to read as follows:

645A.080 The following subjects are approved as course material for initial licensure and continuing education:

1. Federal laws and regulations relating to escrow activities . ~~{including, without limitation:~~

~~—(a) The Gramm Leach Bliley Act, 15 U.S.C. §§ 6801 et seq.;~~

~~—(b) The Privacy Act of 1974, 5 U.S.C. § 552a;~~

~~—(c) The USA PATRIOT Act, Public Law 107-56;~~



~~—(d) The Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 et seq., and Regulation X, 24 C.F.R. Part 3500; and~~

~~—(e) The Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., including, without limitation:~~

~~—(1) The Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1639; and~~

~~—(2) Regulation Z, 12 C.F.R. Part 226.]~~

2. The provisions of Nevada state laws and regulations relating to mortgage lending or the activities of covered service providers ~~], foreclosure consultants and loan modification consultants.]~~ *or construction control.*

3. The provisions of Nevada state laws and regulations relating to escrow activities, including, without limitation:

(a) This chapter or chapter 645A of NRS governing escrow agencies and escrow agents;

(b) Chapter 598D of NRS governing unfair lending practices;

(c) Chapter 692A of NRS governing title insurance;

(d) Chapter 106 of NRS governing real mortgages;

(e) Chapter 107 of NRS governing deeds of trust; ~~and]~~

(f) Chapters 111, 112 and 113 of NRS and any other applicable laws governing contracts or agency ~~]~~ ;

*(g) Chapter 108 of NRS governing statutory liens;*

*(h) Chapter 120A of NRS governing unclaimed property;*

*(i) Chapter 624 of NRS governing contractors; and*

*(j) Chapter 627 of NRS governing construction controls.*

4. Practicable application, practices and information relating to the escrow , *construction control* or title industries.

5. Ethics and deceptive trade practices.
6. Any other subject approved by the ~~{Division.}~~ *Commissioner*.

↪ *As used in this section, “construction control” has the meaning ascribed to it in NRS 627.050.*

**Sec. 9.** NAC 645A.085 is hereby amended to read as follows:

645A.085 1. A provider that wishes to offer approved courses to meet the educational requirements for licensure or continuing education under this chapter and chapter 645A of NRS must apply to the Commissioner before offering any approved courses and annually thereafter on or before December 31 for approval on a form prescribed by the Commissioner. The application must include, without limitation:

- (a) The name and address of the provider;
- (b) The type of provider and a description of its facilities;
- (c) Any information requested by the Commissioner concerning the ownership of the provider, including the business organization and the names and addresses of all directors, principals, officers and others having interests as owners;
- (d) A list of the instructors;
- (e) A list of the courses to be offered and a hard copy of course materials for each course;
- (f) The allotment of time for each subject;
- (g) A tentative schedule of courses;
- (h) The titles, authors and publishers of all required textbooks;
- (i) A copy of each examination to be used and the correct answer for each question;
- (j) A statement of:
  - (1) The purpose of the provider;

(2) The fees to be charged;

(3) The days, times and locations of classes;

(4) The number of quizzes and examinations for each course;

(5) The grading systems, including the methods of testing and standards of grading for each course;

(6) The requirements for attendance; and

(7) The location of the students' records;

(k) A statement as to whether the provider or any instructor employed by the provider has been disciplined by any governmental agency in this State or any other state; and

(l) A statement that educational courses will not be provided free of charge as an inducement for students or their employers to use the services of the provider for any activities related to escrow agencies.

2. ~~A provider that wishes to offer approved courses to meet the educational requirements for licensure under this chapter and chapter 645A of NRS must be licensed by the Commission on Postsecondary Education pursuant to the provisions of chapter 394 of NRS, unless otherwise exempt.~~

~~3.~~ The Commissioner may waive *some or all of* the requirements of this section for , *and approve, a provider of* courses *which meet the requirements set forth in NAC 645A.080 and which are approved or* offered by or through ~~a~~ :

(a) A federal or state governmental agency ~~f~~;

~~4.~~ ; or

(b) A quasi-governmental agency, self-regulatory agency or professional organization, for prelicensing or continuing education.

3. If the application of the provider is denied, the provider may appeal the decision of the Commissioner to deny approval of the provider by filing an appeal with the Commissioner not later than 20 days after the date on which the denial or withdrawal of the approval of the provider becomes effective, and the provider will have a right to a hearing.

~~15.1~~ 4. The Commissioner may recover costs and attorney's fees from the provider related to a hearing in which the hearing officer affirms the denial or withdrawal of approval of a provider.

**Sec. 10.** NAC 645A.090 is hereby amended to read as follows:

645A.090 1. Within 15 days after the occurrence of any material change in the information provided by a provider in its application pursuant to NAC 645A.085 which would affect its approval by the Commissioner, the provider shall give the Commissioner written notice of that change.

2. To qualify for annual renewal of approval by the Commissioner, a provider must submit to the Commissioner on or before December 31 of each year:

(a) A written certification, in a form prescribed by the Commissioner, declaring that the provider has met all applicable requirements of this chapter and chapter 645A of NRS; and

(b) A sworn statement, in a form prescribed by the Commissioner, declaring that the information contained in the original application is current or, if it is not current, a list of all material changes.

3. The Commissioner may deny renewal of approval to any provider that does not meet the standards required by this chapter or chapter 645A of NRS.

4. Within 60 days after a decision is made to deny the renewal of approval of a provider, the Commissioner will give written notice of the decision and the basis for that decision by certified mail to the last known address of the provider.

*5. The Commissioner may waive some or all of the requirements of this section for a provider that is approved pursuant to subsection 2 of NAC 645A.085.*

**Sec. 11.** NAC 645A.095 is hereby amended to read as follows:

645A.095 1. A provider must submit an application for the approval of each course the provider intends to offer on a form provided by the Commissioner and include with the submission all applicable information prescribed by NAC 645A.085.

2. The Commissioner will not grant retroactive approval of a course.

3. If a course offered by a provider that is a professional organization has been approved for continuing education, the provider shall not restrict attendance at the course to only members of that organization.

4. Any advertising, promotional brochure or form for registration for an approved course must contain, in writing, the policy of the provider concerning cancellations and refunds.

5. If the application of the provider for a course is denied, the provider may appeal the decision of the Commissioner to deny approval of the provider's course by filing an appeal with the Commissioner not later than 20 days after the date on which the denial of the approval of the provider's course becomes effective, and the provider will have a right to a hearing.

6. The Commissioner has the right to be awarded and recover costs and attorney's fees from the provider related to a hearing in which the hearing officer affirms the denial or withdrawal of approval of a course.

*7. The Commissioner may waive some or all of the requirements of this section for a course which is offered by a provider that is approved pursuant to subsection 2 of NAC 645A.085.*

**Sec. 12.** NAC 645A.135 is hereby amended to read as follows:

645A.135 1. An instructor must have written approval from the Commissioner before teaching an approved course. No retroactive approval for instructors will be granted.

2. An applicant for approval as an instructor must apply on a form prescribed by the Commissioner.

3. The Commissioner will not approve a person as an instructor if the person:

(a) Has been disciplined by the Commissioner:

(1) Within the immediately preceding 5 years; or

(2) More than one time; or

(b) Has been determined in an administrative or judicial proceeding to have violated any statute, rule, regulation or order pertaining to mortgage lending or real estate or the practice of covered service providers, foreclosure consultants, loan modification consultants or escrow agents in this State or any other state.

4. A person may be approved as an instructor to teach an approved course relating to his or her principal occupation if the person:

(a) Has:

(1) A bachelor's degree or a more advanced degree, plus at least 2 years of full-time experience in the field in which the person will be providing instruction;

(2) Teaching experience of at least 75 hours in the field in which the person will be providing instruction within the 3 years immediately preceding the date of the application for approval plus at least 3 years of full-time experience in that field;

(3) At least 6 years of full-time experience in the field, or a closely related field, in which the person will be providing instruction; or

(4) Any combination of at least 6 years of college-level course work and full-time experience in the field in which the person will be providing instruction;

(b) Has a good reputation for honesty, integrity and trustworthiness; and

(c) Submits to the Commissioner satisfactory documentation of the person's qualifications and a resume outlining the person's experience, education and teaching experience in the field in which the person will be providing instruction.

5. The Commissioner will periodically review and evaluate each approved instructor.

6. An approved instructor who is also licensed as an escrow agent may receive credit for the instructor's own annual continuing education requirement at the rate of 2 hours of credit for every 1 hour taught.

*7. The Commissioner may waive some or all of the requirements of this section for a person who is employed to be an instructor by a provider that is approved pursuant to subsection 2 of NAC 645A.085.*

**Sec. 13.** NAC 645A.220 is hereby amended to read as follows:

645A.220 1. Each escrow agent and agency shall conduct the business of the escrow agency openly, fairly and honestly, and shall at all times conform to the accepted business ethics and practices of the escrow agency business.

2. Each escrow agent and agency shall act without partiality to any of the parties to an escrow transaction.

3. ~~If an escrow agency performs services as a third party in the collection of payments in connection with a loan secured by real property:~~

~~—(a) Unless otherwise agreed between the parties, the escrow agency must remit the payment to the person who is entitled to receive the payment not later than 30 days after the last day of the month in which the escrow agency collected the payment; and~~

~~—(b) The escrow agency shall not make payments in a manner that causes a policy of insurance to be cancelled or causes property taxes or similar payments to become delinquent.~~

~~—4.}~~ If an escrow agency maintains a trust account, the trust account must at all times contain sufficient money to pay all money due or owing to all clients. An escrow agency shall not make a disbursement from the account unless authorized to make a disbursement by:

(a) Escrow instructions; *or*

(b) ~~A servicing agreement; or~~

~~—(c)}~~ An agreement between the parties to the transaction that the escrow agency may periodically withdraw money from the account to pay for services performed for the client.

~~{5.}~~ 4. Each escrow agency that maintains a trust account shall keep a record of all money deposited in the account. These records are subject to inspection by the Commissioner or his or her authorized representative and must include, without limitation:

(a) The name of the person who sent the money to the escrow agency;

(b) The account in which the money was deposited;

(c) The name of the person to whom the money belongs;

(d) The date the money was received;



- (e) The date the money was deposited into the account;
- (f) The date of each withdrawal from the account;
- (g) The name of each person to whom money was disbursed; and
- (h) Any other pertinent information concerning the account, including, without limitation, escrow instructions . ~~and servicing agreements.~~

~~—6.†~~

5. If an escrow for the sale of real property is established, the holder of the escrow shall, on the date of establishment of the escrow, record in writing the number and the date of expiration of the license issued pursuant to chapter 624 of NRS of any contractor who will be paid from money held in the escrow. The holder of the escrow is not required to verify independently the validity of the number of the license.

~~†7.†~~ 6. An escrow agency or agent shall post in the records of the escrow any receipt or disbursement of money as of the date of that receipt or disbursement, regardless of the date of the act of posting.

~~†8.†~~ 7. Upon receipt of a request in writing from the Commissioner or from a person who deposited a document, money or property into escrow, an escrow agency shall account to the requestor for that document, money or property held in trust and shall provide a written receipt for any deposit into escrow if requested by the person making the deposit. An escrow agency may provide a receipt of deposit electronically.

~~†9.†~~ 8. All written escrow instructions and all escrow instructions transmitted electronically via the Internet must be dated.

~~110.1~~ 9. An escrow agency shall not accept any change to escrow instructions, or to amended or supplemental escrow instructions, unless the change is signed or initialed by all persons who signed or initialed the escrow instructions before the change was presented.

~~111.1~~ 10. An escrow agency shall deliver a copy of the escrow instructions or a change to the escrow instructions to the person executing the instructions or change to the instructions at the time of execution.

~~112.1~~ 11. An escrow agency shall use documents, money or other property deposited in escrow only in accordance with the written escrow instructions of the principals to the escrow or, if not otherwise directed by written or electronically executed instructions, in accordance with sound escrow practice, or pursuant to an order of a court of competent jurisdiction.

~~113.1~~ 12. An escrow agency shall not record or deliver for recording any instrument which purports to transfer a person's title to or interest in real property without first obtaining that person's written consent to the recording or delivery.

~~114.1~~ 13. Upon close of escrow, an escrow agency shall deliver to each principal in the transaction a written statement of all receipts and disbursements applicable to him or her, identifying the person to whom any such disbursement was made.

~~115.1~~ 14. An escrow agency shall file with the Commissioner a copy of any document:

- (a) Affecting the escrow agency; and
- (b) Filed by the escrow agency with the Secretary of State,

↳ which has not been previously filed with the Commissioner.

~~116.1~~ 15. If the Commissioner determines that an escrow agency has not complied with the provisions of subsections 2 to ~~115.1~~ 14, inclusive, the Commissioner may require the escrow agency to deliver an audited financial statement that is prepared, using the records of the escrow

agency, by a certified public accountant who holds a certificate to engage in the practice of public accounting in this State. ~~Except as otherwise provided in this subsection,~~ *Unless a later date is set in writing by the Commissioner,* the financial statement must be submitted to the Commissioner not later than 60 days after the Commissioner requests the financial statement from the escrow agency. ~~The Commissioner may grant a reasonable extension for the submission of the financial statement if an extension is requested not later than 60 days after the Commissioner requests the financial statement from the escrow agency.~~

**Sec. 14.** NAC 645A.310 is hereby amended to read as follows:

645A.310 1. Except as otherwise provided in this section, an escrow agency shall submit to the Commissioner, not later than 120 days after the last day of each fiscal year of the escrow agency, a financial statement that:

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

(b) Has been prepared based on the books and records of the escrow agency by an independent public accountant who has a valid permit to engage in the practice of public accounting in this State.

2. The Commissioner may grant a reasonable extension of time for the submission of a financial statement required pursuant to this section if an escrow agency requests an extension not later than ~~120~~ 90 days after the last day of the fiscal year of the escrow agency.

3. If an escrow agency maintains a trust account pursuant to NRS 645A.160, the financial statement submitted pursuant to this section must ~~+~~

~~—(a) If the trust account has an average monthly balance of \$250,000 or less,~~ be reviewed by an independent public accountant before it is submitted to the Commissioner. The review must be consistent with the standards set out in sections 400 to 408, inclusive, of the *Statements on*

*Standards for Accounting and Review Services* published by the American Institute of Certified Public Accountants.

~~{(b) If the trust account has an average monthly balance that exceeds \$250,000, be audited before it is submitted to the Commissioner. The escrow agency shall ensure that the public accountant who prepares the report of an audit submits a copy of the report to the Commissioner and the escrow agency at the same time.}~~

4. The Commissioner may make available an approved format and sample content for the financial statement required by this section. If the Commissioner makes available such an approved format, an escrow agency must submit the financial statement in substantially the same format as that made available by the Commissioner.

**Sec. 15.** NAC 645A.400 is hereby amended to read as follows:

645A.400 The Division has the burden of proof in any hearing pursuant to this chapter or chapter 645A of NRS. The standard of proof in such a hearing is ~~{substantial}~~ *a preponderance of the* evidence.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED  
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066  
Informational Statement  
LCB FILE NO. R070-16**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 645A.

**1. A clear and concise explanation of the need for the adopted regulation.**

To comply with the Division's statutory duty to ensure the effectiveness of NRS 645A and to carry out the provisions of NRS 645A; to conform with and implement revisions made to the law governing the licensing and regulation of escrow agencies and escrow agents as enacted by Assembly Bill 480 ("AB 480") of the 2015 Session of the Nevada Legislature; and to ensure that regulations are written clearly and concisely and to remove or clarify provisions that are unnecessary, duplicative or in conflict with statutory provisions.

**2. 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, small business impact statement, and notice of intent to act upon the regulation were e-mailed to Division licensees, pending applicants, and 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 Website at <http://www.mld.nv.gov> and the Nevada Public Notice Website at <http://notice.nv.gov>; posted at the Division's Las Vegas office and Office of the Department of Business and Industry in Carson City; and provided to the Nevada State Library for posting. The proposed regulation and notice of intent to act upon the regulation were additionally provided to the Nevada State Library and all county libraries in Nevada at which the Division does not maintain an office, for posting. Notice of intent to act upon the regulation was further submitted for posting on the Nevada Legislature's website.

On April 18, 2016, via e-mail, the Division notified its licensees and pending applicants concerning the proposed regulation, provided a copy of the proposed regulation, and solicited written comments concerning whether it would impose a direct and significant economic burden upon a small business that is subject to NRS 645A, or directly restrict the formation operation, or expansion of a small business that is subject to NRS 645A. The information was additionally posted on the Division's website, the State's official website, and at the Division's office. The Division had also reached out to stakeholders on several occasions, both in connection with the introduction of and amendments to AB 480 in the 2015 Nevada Legislature (the discussion, comments, suggestions and general feedback concerning its possible impact upon the industry being addressed), as well in the Division's drafting of the proposed regulations.

In response to the April 18, 2016 solicitation, the Division’s record reflects receipt of one written comment, the stated concerns of which pertained to the possible impact of the regulation relating to reporting requirements, and questioned whether replacing the requirement of filing a quarterly activity report in lieu of an audited financial statement was a prudent decision considering that transactions handled by NRS 645A licensees typically were in the hundreds of thousands of dollars, if not more. As structured, the revised regulation eliminates the submission of audited financial statements from certain licensees and expands the reviewed financial statement requirement to all licensees, with the addition of the submission of semi-annual activity reports to assist in ensuring compliance and providing appropriate supervision to protect consumers.

A duly-noticed workshop was held on May 18, 2016 in Las Vegas, Nevada as video conferenced with Carson City, Nevada. Minutes of the workshop are attached hereto as “Exhibit A.” Thereafter, on November 7, 2016, the Commissioner of the Division of Mortgage Lending (Commissioner) issued and posted a Notice of Intent to Act Upon a Regulation based upon the LCB Draft of Proposed Regulation R070-16.

A duly-noticed public hearing for adoption of the proposed regulation was held on December 12, 2016 in Las Vegas, Nevada, as video conferenced with Carson City, Nevada. Minutes of the public hearing are attached hereto as “Exhibit B.” No further comments were received.

**3. The number of persons who:**

	<u>Carson City</u>	<u>Las Vegas</u>
<b>Attended <i>May 18, 2016</i> workshop:</b>	1	0
<b>Testified at the workshop:</b>	0	0
<b>Attended <i>December 12, 2016</i> hearing:</b>	0	3
<b>Testified at the hearing:</b>	0	0
<b>Submitted written comments:</b>	1	

**4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified in #3, above, as provided to the agency.**

*Attended May 18, 2016 workshop as videoconferenced with Carson City, Nevada:*

Geneva Martinkus of Allied Loan Servicing, (775) 772-1917,  
geneva@allied1031exchange.com

*Attended December 12, 2016 hearing in Las Vegas, Nevada:*

Noah Allison of Three Lock Box, (702) 990-0119, noah@threelockbox.com

Michelle Allison of Three Lock Box, (702) 990-0119, michelle@threelockbox.com  
Anne Dwyer, of Nevada Construction Services, (702) 251-1150, adwyer@ncsnv.com

**5. 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.

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

At the conclusion of the noticed public hearing on December 12, 2016, the permanent regulation was adopted in the form as proposed and reflected in the *LCB Draft of Proposed Regulation R070-16* because there were no significant objection to the proposed language.

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

- (a) Both adverse and beneficial effects; and**
- (b) Both immediate and long-term effects.**

(a) Both adverse and beneficial effects

The Division does not foresee any major adverse effects of the adopted regulation to the business of an escrow agency or upon escrow agents.

The Division anticipates that the beneficial effects of the adopted regulation will protect the health and welfare of Nevadans without unnecessarily burdening business activity. The adopted regulation lessens the financial burden on small business by eliminating the requirement upon certain escrow agencies for the submission of audited financial statements. The adopted regulation further implements the requirement of semiannual reports and reviewed financial statements to ensure compliance and appropriate supervision to protect consumers, and amends educational requirements to provide more flexibility for course topics and provides for online instruction.

(b) Both immediate and long-term effects.

See answer to Item No 7(a), above. To reduce the impact of the proposed regulation on small businesses, the Division worked closely with stakeholders and considered their comments and suggestions.

The Division anticipates that both the immediate and long-term beneficial effects of the adopted regulation will protect the health and welfare of Nevadans without unnecessarily

burdening business activity. Eliminating the requirement for the submission of audited financial statements from certain licensees and expanding the reviewed financial statement requirement to all licensees, reduces annual costs to the industry by thousands of dollars. Members of the escrow industry concurred that the submission of semi-annual reports would not cause the industry to incur any additional expenses.

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

The Division does not anticipate incurring additional costs for the implementation and enforcement of the adopted regulation. Members of the escrow industry concurred that the submission of semi-annual reports would not cause the industry to incur any additional expenses.

**9. 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.**

There are no other state or government agencies regulations known by the Division that the proposed regulation overlaps or duplicates.

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

The adopted regulation does not include provisions which are known to be more stringent than a federal regulation which regulates the same activity.

**11. 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 adopted regulation does not provide for a new fee or an increase of any existing fee.