

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

LCB File No. R070-16

NRS 645A ESCROW AGENCIES AND AGENTS

EXPLANATION: Matter in (1) *blue bold italics* is new language; (2) ~~red strikethrough~~ is deleted language.

AUTHORITY: NRS 645A.050(2)(a)

Amend Chapter 645A of the Nevada Administrative Code by adding thereto:

Section 1. *NAC 645A.____. “Qualified employee” defined. (NRS 645A.050(2)(a); NRS 645A.195)*

“Qualified employee” means a licensed escrow agent who is designated by an escrow agency, and approved by the Commissioner under section _____ of this regulation, to act on behalf of the escrow agency and to supervise and control the business of administering escrows at a licensed location.

Sec. 2. *NAC 645A.____ Qualified employee: Designation and approval. (NRS 645A.050(2)(a); NRS 645A.195)*

1. An escrow agency shall designate a separate natural person to serve as a qualified employee for each location licensed under Chapter 645A of the Nevada Revised Statutes or this chapter. An individual shall not be designated to serve as the qualified employee of an escrow agency unless such individual:

(a) Is licensed in good standing as an escrow agent under Chapter 645A of the Nevada Revised Statutes;

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

(c) Is designated by an 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 licensed location;

(d) Is designated to serve as the qualified employee at only one licensed office location and will be present at that licensed office location a majority of the time that the office is open to the public; and

(e) Is approved by the Commissioner.

3. If the qualified employee designated pursuant to subsection 1 of this regulation is not approved by the Commissioner, or is subsequently ineligible because he or she does not meet the above requirements, within 30 days of the disapproval or ineligibility, the escrow agency shall do both of the following:

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

(b) Designate a new qualified employee and request the approval of the Commissioner for that individual to serve as the qualified employee.

Sec. 3 NAC 645A.____. Investigation of background; confidentiality of certain documents. (NRS 645A.050(2)(a) & (e))

1. Any report or record prepared or received concerning the credit history, criminal history and background of a control person or an escrow agent related to an investigation conducted pursuant to NRS 645A.020 is confidential, and shall not be disclosed to the public except pursuant to a disciplinary action brought under Chapter 645A of the Nevada Revised Statutes, this chapter, or court order.

2. Information obtained during an examination or investigation conducted under this chapter shall be confidential and shall not be available for public inspection or copying, or divulged to any person, except as provided in this section. The information may be disclosed as follows:

(a) To the attorney general.

(b) To any regulatory agency.

(c) In connection with an enforcement action brought pursuant to this or another applicable act.

(d) To law enforcement officials.

(e) To persons authorized by the Clark County District court to receive the information.

Sec. 4. NAC 645A.____ Closure of principal or branch office. (NRS 645A.050(2)(a); NRS 645A.070(2))

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

(a) The escrow agency has returned its original license; and

(b) The escrow agency has submitted the request to close the office under subsection 2 and Commissioner has approved the office closure.

2. The request for approval of the closure of the principal office or a branch office of an escrow agency must contain the following information:

(a) The status of any incomplete escrow contracts 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 money in the account;

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

(d) The location within or outside of this State where records of the licensee will be maintained and the name, telephone number and mailing address of the custodian responsible for the records.

Sec. 5. NAC 645A.____ Semi-annual activity reports. (NRS 645A.050(2)(a); NRS 645A.070(2))

1. In order to determine compliance with this chapter and Chapter 645A of the NRS, each escrow agency must semi-annually file with the Commissioner, an activity report on a date and in a form prescribed by the Commissioner. The activity report shall include all of the following:

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

(b) Information concerning the trust account administration;

- (c) *A one page summary report of the completed three way reconciliation from the last month of the report period; and*
- (d) *Documents in support of the activity report as requested by the Commissioner.*
2. *The activity report must be reviewed and certified by a control person of the escrow agency.*

Sec. 6. Amend NAC 645A.070 to read as follows:

NAC 645A.070 Requirements for initial licensure. (NRS 645A.021, 645A.050)

1. A ~~natural person who is a~~n 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~~ *The required 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;~~

~~(c)~~ 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 chapters 645A *or* 627 of NRS;

~~(d)~~ (c) *Six* ~~Three~~ 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.~~

(Added to NAC by Comm’r of Mortgage Lending by R143-08, 4-20-2010, eff. 1-1-2011)

Sec. 7. Amend NAC 645A.075 to read as follows:

NAC 645A.075 Requirements for continuing education. (NRS 645A.039, 645A.050)

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~~2. 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 chapters 645A **or 627** of NRS or other Nevada **or federal** laws and regulations relating to ~~mortgages~~ **escrow**; and

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

(Added to NAC by Comm'r of Mortgage Lending by R143-08, 4-20-2010, eff. 1-1-2011)

Sec. 8. Amend NAC 645A.080 to read as follows:

NAC 645A.080 Course material for initial licensure and continuing education: Approved subjects. (NRS 645A.021, 645A.039, 645A.050) 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 **or construction control companies**. ~~foreclosure consultants and loan modification consultants.]~~

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 627 of NRS governing the disbursement of money by construction controls.

(h) Chapter 120A of NRS governing unclaimed property (uniform act).

(i) Chapter 108 of NRS governing liens.

(j) Chapter 624 of NRS governing contractors.

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**.

(Added to NAC by Comm'r of Mortgage Lending by R143-08, eff. 4-20-2010)

Sec. 9. Amend NAC 645A.085 to read as follows:

NAC 645A.085 Approval of provider; appeal of denial of approval. (NRS 645A.021, 645A.039, 645A.050)

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 *all or some of* the requirements of this section for, *and approve, any provider of* courses *that meet the requirements of NAC 645A.080 and are approved or* offered by or through a federal or state governmental agency, *or are approved or offered by or through a (quasi-governmental/self-regulatory agency) or professional organization for pre-licensing or continuing education.*

~~4~~ 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.

~~5~~ 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. (Added to NAC by Comm'r of Mortgage Lending by R143-08, eff. 4-20-2010)

Sec. 10. Amend NAC 645A.090 to read as follows:

NAC 645A.090 Approval of provider; Notice of material change in information provided in application for approval; qualification for and denial of renewal of approval. (NRS 645A.021, 645A.039, 645A.050)

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 all or some of the requirements of this section for providers that were approved under NAC 645A.085(2).

(Added to NAC by Comm'r of Mortgage Lending by R143-08, eff. 4-20-2010)

Sec. 11. Amend NAC 645A.095 to read as follows:

NAC 645A.095 Approval of individual courses; appeal of denial of approval; restricted attendance; policy of provider concerning cancellations and refunds. (NRS 645A.021, 645A.039, 645A.050)

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 approve and accept any course provided by a provider approved under NAC 645A.085(2) that meets the requirements of NAC 645A.080.

(Added to NAC by Comm'r of Mortgage Lending by R143-08, eff. 4-20-2010)

Sec. 12. Amend NAC 645A.135 to read as follows:

NAC 645A.135 Instructors: Requirements for and restrictions on approval; periodic review and evaluation; credit for continuing education. (NRS 645A.021, 645A.039, 645A.050)

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 all or some of the requirements of this section for an instructor who is employed by a provider that is approved under NAC 645A.085(2).

(Added to NAC by Comm'r of Mortgage Lending by R143-08, eff. 4-20-2010)

Sec. 13. Amend NAC 645A.220 to read as follows:

NAC 645A.220 General and miscellaneous standards of practice; noncompliance with certain provisions. (NRS 645A.050)

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.

~~10~~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.

~~11~~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.

~~12~~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.

~~13~~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.

~~14~~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.

~~15~~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.

~~16~~15. If the Commissioner determines that an escrow agency has not complied with the provisions of subsections 2 to ~~15~~ 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. *Unless a later date is set in writing by the Commissioner,* ~~Except as otherwise provided in this subsection,~~ 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.~~

(Added to NAC by Comm'r of Mortgage Lending by R086-04, eff. 8-25-2004; A by R143-08, 4-20-2010)—(Substituted in revision for NAC 645A.050)

Sec. 14. Amend NAC 645A.310 to read as follows:

NAC 645A.310 Annual financial statement. (NRS 645A.050, 645A.070)

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.

(Added to NAC by Comm'r of Mortgage Lending by R086-04, eff. 8-25-2004; A by R143-08, 4-20-2010)—(Substituted in revision for NAC 645A.040)

Sec. 15. Amend NAC 645A.400 to read as follows:

NAC 645A.400 Hearings: Burden and standard of proof. (NRS 645A.050) 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.

(Added to NAC by Comm'r of Mortgage Lending by R143-08, eff. 4-20-2010)