

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

LCB File No. R125-16

October 4, 2016

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

AUTHORITY: §§1-4, 6, 8, 12, 16, 17, 23, 30, 32, 33, 35, 37 and 38, NRS 645B.060; §5, NRS 645B.060, 645F.255 and 645F.520; §7, NRS 645B.060 and 645B.430; §§9, 10, 34 and 36, NRS 645B.0137, 645B.0138, 645B.060, 645F.292 and 645F.293; §11, 13-15, 18-20 and 22, NRS 645B.060, 645F.292 and 645F.293; §21, NRS 645B.050, 645B.060 and 645F.280; §§24-26, NRS 645B.060 and 645B.080; §§27-29, NRS 645B.060 and 645B.185; §31, NRS 645B.060, 645B.189, 645F.292 and 645F.293.

A REGULATION relating to mortgage lending; imposing certain requirements upon a mortgage broker who acts as a mortgage servicer in certain circumstances; revising provisions relating to a change of control of a mortgage broker; requiring a mortgage broker to pay an annual fee for supervision; revising provisions relating to examinations, investigations and audits of mortgage brokers; making various changes relating to the business and oversight of mortgage brokers; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Commissioner of Mortgage Lending to adopt any regulations necessary to carry out the provisions of law relating to mortgage brokers and mortgage agents. (NRS 645B.060) Existing law also requires the Commissioner to adopt regulations to comply with and carry out the provisions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008. (NRS 645F.292, 645F.293) **Sections 3, 8, 14, 15, 17, 20 and 27** of this regulation make various revisions to incorporate the term “control person” into existing regulations relating to mortgage brokers and mortgage agents. **Sections 9-11, 22 and 34** of this regulation revise various provisions of existing regulations relating to the Nationwide Mortgage Licensing System and Registry to provide for persons who are not required to register with the Registry. **Section 7** of this regulation establishes the amount of the fee required to be paid by a mortgage agent who wishes to change the mortgage broker with whom the mortgage agent is associated. **Section 16** of this regulation requires a mortgage broker to conspicuously display its license at the address of the office location identified on the license. **Section 20** of this regulation revises provisions relating to a change of control or change of location of a mortgage broker. **Section 21** of this regulation requires certain mortgage brokers to pay an annual fee for supervision to the Commissioner and establishes the amount of the fee. **Section 23** of this

regulation revises provisions relating to the conduct of an examination, investigation or audit by the Commissioner. **Section 25** of this regulation revises provisions relating to the maintenance of records by a mortgage broker and allows a mortgage broker to maintain records in an electronic format under certain circumstances.

Existing law requires the Commissioner to adopt any regulations that are necessary to carry out the provisions of law relating to mortgage servicing. (NRS 645F.255) Existing law does not require a mortgage broker to obtain a license as a mortgage servicer in certain circumstances. (NRS 645F.500) **Sections 5 and 20** of this regulation establish provisions relating to mortgage brokers who act as a mortgage servicer in connection with one or more mortgage loans made or arranged by the mortgage broker under his or her license as a mortgage broker.

Section 1. Chapter 645B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

Sec. 2. *“Commercial property” has the meaning ascribed to it in NRS 645E.040.*

Sec. 3. *“Control person” means an executive officer, officer, general partner, partner, managing member, member, director, trustee or shareholder of a licensee or applicant. The term includes, without limitation, a chief executive officer, president, vice president, chief financial officer, chief operating officer, chief legal officer, controller or compliance officer or a natural person who holds any similar position.*

Sec. 4. *As used in this chapter and chapter 645B of NRS, the Commissioner will interpret the term “commercial loan” to have the meaning ascribed to “commercial mortgage loan” in NRS 645E.030.*

Sec. 5. 1. *In addition to any other duty imposed by this chapter or chapter 645B of NRS or any other applicable law, a mortgage broker who acts as a mortgage servicer in connection with one or more mortgage loans which the mortgage broker made or arranged under his or her license as a mortgage broker:*

(a) Has a duty of good faith and fair dealing in the communications, transactions and course of dealings of the mortgage broker with each borrower in connection with the servicing of the mortgage loan of the borrower;

(b) Shall:

(1) Safeguard and account for any money handled for the borrower and, if applicable, investor;

(2) Follow reasonable and lawful instructions from the borrower and, if applicable, investor;

(3) Act with reasonable skill, care and diligence;

(4) Comply with all applicable federal laws and regulations relating to mortgage servicing, including, without limitation, the Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 et seq., and the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., and any regulations adopted pursuant thereto;

(5) File annually with the Commissioner a complete schedule of the ranges of costs and fees charged to a borrower by the mortgage broker for the activities of the mortgage broker relating to mortgage servicing; and

(6) File quarterly, directly with the Commissioner or through the Registry to the Commissioner, on a date and in a form prescribed by the Commissioner, a report of the mortgage servicing activity that the mortgage broker performs in this State on loans that the mortgage broker made or arranged under his or her license as a mortgage broker issued pursuant to chapter 645B of NRS, which must include, without limitation:

(I) The total number of mortgage loans serviced by the mortgage broker;

(II) The total dollar amount of mortgage loans serviced by the mortgage broker;

(III) The types and characteristics of mortgage loans serviced by the mortgage broker; and

(IV) Any other information required by the Commissioner; and

(c) Shall not:

(1) Transfer the servicing of a mortgage loan to another person unless the person holds a license as a mortgage servicer or is a person exempt from licensing as a mortgage servicer pursuant to chapter 645F of NRS and chapter 645F of NAC;

(2) Directly or indirectly employ any scheme, device or artifice to defraud or mislead a borrower or investor or to defraud any person;

(3) Fail to apply mortgage loan payments in accordance with a servicing agreement or the terms of a note; or

(4) Fail to properly apply payments to an escrow account, fail to place in a trust or escrow account held by a federally insured depository financial institution all money that is received by the mortgage broker from the borrower or fail to account for all money received or disbursed for a trust or escrow account.

2. In addition to any other remedies provided by law, a violation of any applicable federal laws or regulations relating to mortgage servicing shall be deemed to be a violation of this section and a basis for the imposition of disciplinary action by the Commissioner pursuant to this chapter and chapter 645B of NRS.

3. As used in this section, “mortgage servicer” has the meaning ascribed to it in NRS 645F.063.

Sec. 6. The Commissioner may designate a hearing officer to conduct any hearing required pursuant to this chapter or chapter 645B of NRS.

Sec. 7. *A mortgage agent who wishes to change the mortgage broker with whom the mortgage agent is associated must submit a request to the Commissioner and pay a fee of \$50.*

Sec. 8. NAC 645B.002 is hereby amended to read as follows:

645B.002 1. “Affiliated business” means a business which a mortgage broker or any ~~general partner, officer, director~~ *control person* or employee of the mortgage broker:

- (a) Directly or indirectly owns or controls a controlling interest of the business;
- (b) Is a partner, officer, director or trustee of the business; or
- (c) Conducts the operation of the business.

2. As used in this section, “controlling interest” means a majority of the voting stock of a business or any other interest in a business that gives the holder of the interest the power to direct the management or to determine the policy of the business.

Sec. 9. NAC 645B.0025 is hereby amended to read as follows:

645B.0025 1. “Approved course” means *, for a mortgage broker or mortgage agent who:*
(a) Is required to register or voluntarily registers with the Registry, a course of education that has been reviewed and approved by the Registry.

(b) Pursuant to NRS 645F.267, is not required to register or renew with the Registry and who has not voluntarily registered or renewed with the Registry, any certified course of continuing education which is reviewed, approved or offered by or through a federal or state governmental agency, a self-regulatory organization or a professional organization for prelicensing or continuing education.

2. For the purposes of this section, “reviewed and approved by the Registry” includes, without limitation, the review and approval by the Registry of the provider of the course.

Sec. 10. NAC 645B.007 is hereby amended to read as follows:

645B.007 “Provider” means any person or entity ~~{approved by the Registry to provide}~~ *that provides* an approved course.

Sec. 11. NAC 645B.0115 is hereby amended to read as follows:

645B.0115 If *an applicant for the issuance or renewal of a license or* a person licensed pursuant to chapter 645B of NRS ~~{who provided an electronic mail address to the Division}~~ wishes to change ~~{that}~~ *his or her electronic mail* address ~~{}~~ *or contact information*, the *applicant or* person shall make the change and :

- 1. If the applicant or person is registered with the Registry*, notify the Division through the Registry ~~{}~~ ; *or*
- 2. If the applicant or person is not registered with the Registry*, provide written notice *directly to the Division.*

Sec. 12. NAC 645B.016 is hereby amended to read as follows:

645B.016 *1.* An applicant for a license as a mortgage broker must have, within the 5 years immediately preceding the date of his or her application, at least 2 years of verifiable experience in *the business of* lending money for real estate or mortgages.

2. As used in this section, “verifiable experience in the business of lending money for real estate or mortgages” means compensated experience engaging in:

- (a) The activities of a mortgage agent;*
- (b) Supervising the activities of one or more mortgage agents;*
- (c) Underwriting or processing mortgage loans;*
- (d) Making loans secured by real property; or*
- (e) Any other experience determined to be relevant by the Commissioner.*

Sec. 13. NAC 645B.017 is hereby amended to read as follows:

645B.017 A person does not hold himself or herself out as being able to perform the services described in NRS 645B.0127 if the person:

1. Is in compliance with the S.A.F.E. Mortgage Licensing Act and any regulations adopted pursuant thereto; and

2. Only offers to provide money *in the secondary mortgage market* to *acquire or* invest in loans secured by an interest in real property to:

(a) A mortgage broker licensed pursuant to chapter 645B of NRS; or

(b) A person exempt from the provisions of chapter 645B of NRS.

Sec. 14. NAC 645B.020 is hereby amended to read as follows:

645B.020 1. An applicant must submit with his or her application for a license *as a mortgage broker* pursuant to chapter 645B of NRS:

(a) A copy of ~~his or her~~ *the applicant's state* business ~~license~~ *registration*, when applicable, ~~for his or her~~ *the applicant's* application for such a ~~license~~ *registration* if ~~he or she~~ *the applicant* has not obtained one ~~it~~ *or evidence that the applicant is exempt from the requirement to obtain a state business registration.*

(b) ~~A~~ *If the applicant intends to operate under an assumed or fictitious name, a* copy of the certificate filed by the ~~mortgage broker~~ *applicant* pursuant to chapter 602 of NRS indicating the *assumed or* fictitious name of the ~~mortgage broker, if any~~ *applicant. An applicant may not use more than one assumed or fictitious name.*

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

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

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

~~— (3) The most recent list of its officers and registered agent that is filed with the Secretary of State.~~

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

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

~~— (f) If the applicant is a limited liability company, a copy of:~~

~~— (1) Its articles of organization and operating agreement;~~

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

~~— (3) The most recent list of its members or managers, and registered agent, that is filed with the Secretary of State.~~

~~— (g) *not a natural person, a copy of the documents that formed the applicant and its operating documents and any amendments thereto.*~~

(d) Evidence that the applicant has met the requirements imposed by the S.A.F.E. Mortgage Licensing Act.

~~{(h)}~~ (e) A current electronic mail address ~~{H}~~ *for the applicant or the person designated by the applicant for contact with regulators.*

(f) *The name of each mortgage agent who will be employed by the applicant at the location.*

2. If an applicant has received a letter of conditional approval of his or her application from the Division which imposes additional requirements that the applicant must satisfy to obtain a

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

3. An application shall be deemed abandoned if the applicant fails to respond *, within 30 calendar days after the date of the request or on or before a later date set by the Commissioner,* to any written request *by the Division* for information ~~by the Division within 30 days after the date of the request.~~ *or records required in connection with the investigation and evaluation of the qualifications and suitability for licensure of the applicant, its qualified employee or, if applicable, its control persons.*

Sec. 15. NAC 645B.030 is hereby amended to read as follows:

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

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

(b) The name of each mortgage agent who intends to work at the branch office; and

(c) Evidence that the applicant has met the requirements imposed by the S.A.F.E. Mortgage Licensing Act ~~if applicable.~~ *if applicable.*

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

~~(a) The principal office of the mortgage broker has been examined by the Commissioner and has received at least a satisfactory rating during the preceding 12 months; and~~

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

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

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

~~{5.— Each branch office must conspicuously display its license at the branch office.~~

~~—6.]~~ 3. A mortgage broker is responsible for and shall supervise:

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

(b) Each qualified employee , ~~{and}~~ mortgage agent ~~{authorized to conduct mortgage lending activity}~~ *and other staff member employed* at a branch office of the mortgage broker.

~~{7.]~~ 4. If an applicant has received from the Division a letter of conditional approval of his or her application for a ~~{branch}~~ license *for a branch office* which imposes additional requirements that the applicant must satisfy to obtain a ~~{branch}~~ license ~~{}~~ *for a branch office*, the applicant must comply with those requirements within 30 days after the date on which the Division issued the letter. If the applicant does not satisfy all additional requirements set forth in the letter within the period prescribed in this subsection, the conditional approval of the application shall be deemed to have expired and the applicant must reapply to obtain a ~~{branch}~~ license ~~{}~~ *for a branch office*. The Commissioner may, for good cause, extend the 30-day period prescribed in this subsection.

~~{8.]~~ 5. An application for a ~~{branch}~~ license *for a branch office* shall be deemed abandoned if the applicant fails to respond , *within 30 calendar days of the date after the request or on or before a later date set by the Commissioner*, to any written request *by the Division* for

information ~~{by the Division within 30 days after the date of the request.}~~ *or records required in connection with the investigation and evaluation of the qualifications and suitability for licensure of the applicant, its qualified employee or, if applicable, its control persons.*

Sec. 16. NAC 645B.037 is hereby amended to read as follows:

645B.037 1. The ~~{Division shall}~~ *Commissioner will* not issue a license or certificate of exemption with a name that is the same as or confusingly similar to a name on a license or certificate of exemption previously issued by the ~~{Division.}~~ *Commissioner.*

2. A mortgage broker shall not *advertise or* conduct business *as a mortgage broker* using a name other than the name approved by the ~~{Division}~~ *Commissioner* and indicated on the license or certificate of exemption issued by the ~~{Division}~~ *Commissioner* to the mortgage broker.

3. *Each mortgage broker shall conspicuously display each license issued to the mortgage broker pursuant to chapter 645B of NRS at the address of the office location which is identified on the license.*

Sec. 17. NAC 645B.038 is hereby amended to read as follows:

645B.038 1. Insider loans made or arranged by a mortgage broker are subject to the following limitations and conditions:

(a) The lending limit must not exceed 25 percent of the total dollar amount of the outstanding balances of investor-funded loans which were made or arranged by the mortgage broker or 100 percent of the mortgage broker's net worth as described in NAC 645B.095, whichever is greater.

(b) ~~{An}~~ *A private* investor ~~{, other than a financial or institutional investor,}~~ who ~~{funds}~~ *provides money to invest in* an insider loan may not waive the provisions of subsection 1 of NAC 645B.080.

~~(c) If the investor is a company, the information required by subsection 1 of NAC 645B.080 must be provided to the investor for distribution to any person who has control of the company. For purposes of this paragraph, a person shall be deemed to have control of the company if the person:~~

~~—(1) Is an executive officer or director of the company;~~

~~—(2) Directly or indirectly owns or controls more than 25 percent of any voting shares; or~~

~~—(3) Exercises a controlling influence over the management or policies of the company.~~

~~(d)~~ The mortgage broker shall specifically identify on each monthly report required by NRS 645B.080 any insider loan made by the mortgage broker.

2. As used in this section:

(a) ~~“Company” means any form of business entity other than a natural person.~~

~~(b) “Financial or institutional investor” has the meaning ascribed to it in NRS 90.240.~~

~~(c)~~ “Insider” means a ~~director, officer,~~ **control person**, mortgage agent or employee of a mortgage broker.

~~(d)~~ (b) “Insider loan” means an extension of credit to an insider. For purposes of this paragraph, “extension of credit” includes, without limitation, a new loan or a loan renewal, a line of credit or any other financial right structured in any manner and arranged by a mortgage broker as a means for the borrower to defer payment on an existing debt or to incur a debt and defer immediate payment.

~~(e)~~ (c) “Lending limit” means the maximum dollar amount permitted for the aggregate of insider loans arranged by a mortgage broker.

Sec. 18. NAC 645B.044 is hereby amended to read as follows:

645B.044 ~~{In addition to the requirements of subsection 1 of NRS 645B.016, a}~~ A person who claims an exemption from the provisions of chapter 645B of NRS pursuant to ~~{subsection 1 of}~~ NRS 645B.015 ~~{must ensure that the entity or agency which regulates the conduct of the person's business provides to the Commissioner written notification that:~~

- ~~— 1. The license of the person provides the right to make or broker mortgage loans;~~
- ~~— 2. The entity or agency will investigate complaints arising from or relating to consumers in this State; and~~
- ~~— 3. If the person conducts activity as a residential mortgage loan originator, the person is in compliance with the requirements of the S.A.F.E. Mortgage Licensing Act and any regulation adopted pursuant thereto.}~~ *has the burden of demonstrating that the person qualifies for such an exemption.*

Sec. 19. NAC 645B.055 is hereby amended to read as follows:

645B.055 1. Every person, other than a natural person, doing business as a mortgage broker in this State shall designate a natural person as a qualified employee who may, upon approval of the Commissioner, act on behalf of the mortgage broker.

2. The Commissioner will approve the qualified employee designated pursuant to subsection 1 if the qualified employee is a natural person who:

- (a) Is licensed in good standing as a mortgage agent;
- (b) Is designated by a mortgage broker to act on behalf of the mortgage broker and to supervise the conduct of the business of the mortgage broker and the mortgage agents ~~{associated with or}~~ *and other staff members* employed by the mortgage broker ~~{}~~ *at the licensed office location;*

- (c) Will be present at the licensed office location for which he or she is the qualified employee the majority of the time that the office is open to the public; *and*
- (d) ~~Is a resident of this State or is a border state employee; and~~
- ~~—(e) Has met the requirements of the S.A.F.E. Mortgage Licensing Act.]~~ *In the immediately preceding 5 years, has at least 2 years of verifiable experience in the business of lending money for real estate or mortgages.*

3. If the qualified employee designated pursuant to subsection 1 is not approved by the Commissioner pursuant to subsection 2 or ceases to be a qualified employee as defined in NAC 645B.008, the mortgage broker shall designate another qualified employee pursuant to subsection 1 not later than:

(a) Thirty calendar days after the date that:

(1) The Commissioner notifies the mortgage broker that the initial qualified employee designated pursuant to subsection 1 is not approved; or

(2) The qualified employee ceases to be a qualified employee as defined in NAC 645B.008; or

(b) A date after the date described in paragraph (a) if agreed to by the Commissioner.

4. As used in this section, ~~“border state employee” has the meaning ascribed to it in NRS 482.012.]~~ *“verifiable experience in the business of lending money for real estate or mortgages” has the meaning ascribed to it in NAC 645B.016.*

Sec. 20. NAC 645B.057 is hereby amended to read as follows:

645B.057 1. Any material change in the ~~management or principal employees~~ *control persons* of a mortgage broker ~~at his or her principal office or a branch office~~ must be reported to the Commissioner ~~within~~ *at least* 30 calendar days ~~after~~ *before* the change. *Each new*

control person must submit to a background investigation in the manner provided in NRS 645B.020. A new control person may not participate in the management of a mortgage broker until the person is approved by the Commissioner.

2. ~~{Any material change in the ownership or any}~~ *A change of control of a mortgage broker*
~~{at his or her principal office or a branch office must be}~~ *is not effective until the change of*
control is approved by the Commissioner. ~~{An application for approval of a change of ownership~~
~~or a change of control must be submitted to the Commissioner on a form prescribed by the~~
~~Division not later than 30 days before the proposed change.}~~ *A transfer, sale or conveyance of*
outstanding voting stock or ownership interest in a mortgage broker that will result in the
cumulative transfer, from the date upon which the license of the mortgage broker was issued,
of 25 percent or more of the outstanding voting stock or ownership interest in the mortgage
broker is deemed to constitute a change of control.

3. ~~{H}~~ *At least 15 days before* a person acquires stock or ownership in a mortgage broker as
a result of a transfer that constitutes a change of control ~~{pursuant to NRS 645B.095:}~~, *the*
mortgage broker shall make a written application to the Commissioner for approval of the
change of control. The application must include, without limitation:

(a) ~~{A financial statement or a}~~ *The name and percentage of ownership of each person who*
has obtained or is obtaining stock or ownership resulting in a cumulative transfer of 25
percent or more of the outstanding voting stock or ownership interest in the mortgage broker;
and

(b) *A personal interrogatory* ~~{, or both, of the prospective owner, partner, corporate~~
~~shareholder, manager or employee must be submitted to the Commissioner for his or her~~
~~consideration;~~

~~—(b) The person may not participate in the management of the mortgage broker until the Commissioner has approved the transfer; and~~

~~—(c) The~~ *and a complete set of fingerprints of each such person or, if the applicant is not a natural person, each control person of the applicant, in a form prescribed by the Commissioner, and written consent authorizing the Commissioner to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report in the manner provided in NRS 645B.020.*

4. The Commissioner will conduct an investigation of each application submitted pursuant to subsection 3 to determine whether the requirements necessary for licensure pursuant to this chapter and chapter 645B of NRS are met.

5. A mortgage broker who wishes to change the location of his or her principal office or branch office must file a request with the Commissioner, return his or her original license for a principal office or branch office to the Commissioner and submit any additional information required by the Commissioner. A mortgage broker may not change the location of his or her principal office or a branch office until the Commissioner has approved the transfer ~~†~~

~~—4.†~~ *and issued a new license reflecting the change in location.*

6. A mortgage broker may not surrender his or her license or close his or her principal office or a branch office until:

(a) The mortgage broker has returned his or her *original* license; and

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

~~†5.†~~ *7. The request for approval of the surrender of the license or* closure of the principal office of the mortgage broker or a branch office must contain the following information:

(a) The status of any incomplete applications for mortgage loans and the manner in which the loans will be finalized;

(b) An accounting of any trust account maintained by the mortgage broker and the plan for distribution of money in the account;

(c) *If the mortgage broker is servicing any loans made or arranged by the mortgage broker under his or her license as a mortgage broker, a listing of those loans and the plan for transferring those loans to another mortgage servicer;*

(d) If any mortgage agent associated with or employed by the mortgage broker has been terminated pursuant to subsection 3 of NRS 645B.450, evidence of the termination; and

~~(d)~~ (e) In regard to the records of the mortgage broker maintained pursuant to subsection 1 of NRS 645B.080 and subsection 5 of NAC 645B.080:

(1) The address where the records will be maintained; and

(2) The name, telephone number and mailing address of the person who will be responsible for the maintenance of the records.

~~16.1~~ 8. The Commissioner may require the person acquiring stock or ownership in a mortgage broker pursuant to subsection 2 to meet the requirements of the S.A.F.E. Mortgage Licensing Act, including, without limitation, submitting information to the Registry.

~~17.1~~ 9. As used in this section, “change of control” has the meaning ascribed to it in NRS 645B.095.

Sec. 21. NAC 645B.060 is hereby amended to read as follows:

645B.060 1. *Except as otherwise provided in subsection 2, the Commissioner will annually charge and collect a fee for supervision from each mortgage broker. The amount of the fee for supervision will be calculated pursuant to subsection 2. The Commissioner will*

annually bill each mortgage broker for the fee for supervision. The fee for supervision must be paid within 30 calendar days after the date of the invoice. Any payment received after that date must include a penalty of 10 percent of the fee plus an additional 1 percent of the fee for each complete month, or portion of the last month, that the fee is not paid.

2. A mortgage broker whose annual volume of loans reported to the Commissioner pursuant to NRS 645B.080 is:

(a) Less than \$10,000,000 will not be assessed a fee for supervision pursuant to subsection 1.

(b) At least \$10,000,000 shall pay a fee for supervision pursuant to subsection 1 at a rate of one-half cent per \$1,000 of the annual volume of loans reported to the Commissioner pursuant to NRS 645B.080.

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

~~2.~~ 4. The Commissioner will bill each mortgage broker upon the completion of the activity for the fee established in subsection ~~1.~~ 3. The fee must be paid within 30 calendar days after the date of the invoice. Except as otherwise provided in this subsection, any payment received after that date must include a penalty of 10 percent of the fee plus an additional 1 percent of the fee for each complete month, or portion of the last month, that the fee is not paid. The Commissioner may waive the penalty for good cause.

~~{3.}~~ *Upon written request by a mortgage broker, the Division will provide an accounting of the time billed to the mortgage broker pursuant to this subsection.*

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

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

Sec. 22. NAC 645B.061 is hereby amended to read as follows:

645B.061 The Commissioner will not renew the license of a mortgage broker or mortgage agent if the mortgage broker or mortgage agent:

1. Has not paid all fees, fines and assessments owed to the Division or ~~{the Registry;}~~ *this State;*
2. Is not properly registered with the Registry;
3. Fails to provide any required annual financial statements or reports of condition to the Division or Registry; or
4. Fails to provide any other item required by federal or state law or regulation . ~~{, including, without limitation, the S.A.F.E. Mortgage Licensing Act.}~~

Sec. 23. NAC 645B.066 is hereby amended to read as follows:

645B.066 ~~{An examiner, auditor or investigator}~~ *For the purposes of* conducting an examination, *investigation or* periodic or special audit ~~{, or investigation}~~ of a mortgage broker pursuant to ~~{paragraph (c), (d) or (e) of subsection 2 of NRS 645B.060}~~ *this chapter or chapter 645B of NRS:*

1. *The Commissioner or his or her designee* may:

~~111~~ (a) Require the mortgage broker to produce, for the purposes of the examination, audit or investigation, all documents:

~~1(a)~~ (1) Relating to business conducted by the mortgage broker pursuant to this chapter or chapter 645B of NRS;

~~1(b)~~ (2) Required to be kept by the mortgage broker pursuant to any federal or state law or regulation; or

~~1(e)~~ (3) Related to the operation of the business of the mortgage broker or any affiliated business that conducts business activities which are directly related to the business of the mortgage broker ~~1~~

~~21~~ ; and

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

2. The Commissioner may:

(a) Employ or retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators to conduct or assist in the conduct of examinations, audits and investigations;

(b) Enter into agreements or relationships with other governmental officials and regulatory associations to improve efficiency and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures and documents, records, information or evidence obtained pursuant to this chapter or chapter 645B of NRS;

(c) Use, hire, contract with or employ analytical systems, methods or software, whether publicly or privately available, to examine or investigate the mortgage broker or other person subject to chapter 645B of NRS;

(d) Accept and rely upon reports of examinations or investigations made by other state or federal governmental officials; and

(e) Accept an audit report prepared by an independent certified public accountant for the mortgage broker or other person subject to chapter 645B of NRS in the course of an examination or investigation covering the same general subject matter as the audit. The Commissioner will incorporate such an audit report in the report of examination, report of investigation or other writing of the Commissioner.

Sec. 24. NAC 645B.072 is hereby amended to read as follows:

645B.072 As used in NRS 645B.080, the Commissioner interprets “complete and suitable records” to mean ~~+~~ *all books, accounts, records and documents of the business conducted by the mortgage broker which enable the Commissioner to determine whether the business of the mortgage broker is conducted in compliance with this chapter, chapter 645B of NRS and any other applicable law. The term includes, without limitation:*

1. ~~+~~ *For a loan secured by a dwelling, a* file that includes, but is not limited to, the following documents, if applicable to the type and purpose of the loan:

- (a) The real estate sales contract;
- (b) Escrow instructions;
- (c) The preliminary title report;
- (d) The loan application, including, but not limited to, any attachments or supplements;

(e) An appraisal report or any other independent assessment of the value of the mortgaged property;

(f) Any verification of representations made by the consumer on the application for a mortgage;

(g) A credit report;

(h) ~~{A good faith estimate of closing costs, including any additional estimates if there is a material change to the original estimate, and any disclosures required pursuant to the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq.;~~

~~—(i) The Uniform Settlement Statement, as described pursuant to 12 U.S.C. § 2603;~~

~~—(j)~~ Any commitments made by the lender to the consumer, including, but not limited to, a commitment to guarantee the consumer a certain interest rate and a commitment to fund the loan; and

~~{(k)}~~ (i) Any ~~{additional}~~ disclosures required by state or federal law.

2. *For a loan secured by commercial property, a file that must include all the items required pursuant to subsection 1, if applicable.*

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

(a) The original documents subject to the provisions of NAC 645B.080 or 645B.215;

(b) All disclosures required pursuant to NRS 645B.185 and 645B.186, and NAC ~~{645B.073,}~~ 645B.210 and 645B.220; and

(c) If the mortgage broker maintains any account pursuant to NRS 645B.175, the mortgage broker must include records that demonstrate compliance with the provisions of NRS 645B.115 and NAC 645B.150 and 645B.160 and any other applicable law.

~~3.1~~ 4. For ~~loans~~ *a loan* funded by the mortgage broker, a file that must include all the items required pursuant to subsection 1 and all closing documentation, including, but not limited to, a recorded or confirmed deed of trust, the title insurance policy, the note, the hazard insurance policy and any subsequent assignment to additional investors. Assignments to private investors must comply with all documentation requirements of this chapter and chapter 645B of NRS.

~~4.1~~ 5. *For a mortgage loan made or arranged by the mortgage broker pursuant to chapter 645B of NRS for which the mortgage broker is acting as the mortgage servicer, a file that includes, but is not limited to, the items required pursuant to subsection 1, if applicable to the type and purpose of the loan:*

(a) A loan history for each mortgage loan upon which payments are received or made by the mortgage broker which itemizes the amount and date of each payment and the unpaid balance at all times;

(b) The original or an exact copy of each note, mortgage, deed of trust or other evidence of indebtedness and any assignment;

(c) The name and address of the mortgage broker or lender, if any, involved in the mortgage loan transaction;

(d) A copy of any servicing agreement;

(e) A copy of any disclosures or notifications provided to the borrower which are required by state or federal law or regulation;

(f) A copy of any bankruptcy plan approved in a proceeding filed by a borrower or co-owner of real property subject to a mortgage loan;

(g) A communication log which documents all verbal or written communications with a borrower or a borrower's representative; and

(h) A copy of all notices sent to the borrower relating to any foreclosure proceeding filed against the encumbered property.

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

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

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

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

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

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

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

to, contracts, invoices, billings and remittances to the *third-party* provider *of services related to mortgages*, by or on behalf of the mortgage broker;

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

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

Sec. 25. NAC 645B.077 is hereby amended to read as follows:

645B.077 1. The mortgage broker shall retain records of all his or her completed mortgage transactions for a period of at least 4 years after the date of the last activity relating to the transaction. ~~Except as otherwise provided in this subsection, after a record has been retained 1 year or longer, the mortgage broker may cause the record to be reproduced by the microphotographic process, optical disc imaging or any other equivalent technique designed to ensure an accurate reproduction of the original record. The Commissioner may, for good cause, allow the mortgage broker to reproduce and store a record by electronic means at any time so long as the mortgage broker retains a hard copy that is accessible by the Commissioner for 1 year after the closing date of the loan. A record reproduced as authorized by this section must be considered by the Commissioner to be the same as the original record. Upon completion of the reproduction of a record as authorized by this section, the original of the record may be destroyed.~~

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

3. The mortgage broker ~~{shall}~~ *may* maintain *in an electronic format* the records ~~{of~~ *completed mortgage transactions at the location at which the loan was made for at least 1 year after the date of closing of the loan. After the expiration of the 1-year period required pursuant to this subsection, any such record may be maintained for the minimum period prescribed in subsection 1 at another location if the record can be provided not later than 24 hours after a request for the record. The Commissioner may, for good cause shown, allow a longer period to provide records.}* *required to be maintained by this section if:*

(a) The records are maintained and made available to the Commissioner or his or her designee in a software format that allows the Commissioner or his or her designee complete access to all records;

(b) The mortgage broker ensures that the Commissioner or his or her designee has the ability to download and print, from all office locations of the mortgage broker, any or all of the records maintained in electronic format;

(c) The mortgage broker provides, within 24 hours after a request for a record and in printed form, any or all of the records maintained in an electronic format upon request of the Commissioner or his or her designee; and

(d) The records are maintained on a medium that:

(1) Is not erasable;

(2) Does not allow changes to a document stored on the medium;

(3) Is consistent with the minimum standards of quality approved by the National Institute of Standards and Technology of the United States Department of Commerce or the Association for Information and Image Management; and

(4) Contains written authentication identifying the electronic record as an exact, unaltered copy of the document which the record purports to be.

Sec. 26. NAC 645B.080 is hereby amended to read as follows:

645B.080 1. Except as otherwise provided in NAC 645B.038, before ~~an~~ *a private* investor ~~who is a natural person~~ makes a loan for which a licensed mortgage broker is acting as a broker, the mortgage broker must provide, unless specifically waived in writing, to the *private* investor:

(a) A written application for the loan which is signed by the prospective borrower and which contains the borrower's address, a history of his or her employment and income, details of monthly payments he or she is obliged to pay and any other information requested by the *private* investor.

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

(c) A report on the history of credit of the prospective borrower issued by a credit reporting agency, including an explanation by the borrower of any material derogatory item in the report and evidence that the report has been compared for accuracy to the borrower's application for the loan.

(d) An analysis by the mortgage broker of the ability of the prospective borrower to pay his or her monthly debts.

(e) A preliminary report on the status of the title of the property which is proposed as security for the loan.

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

(a) The *private* investor received the documents, or that the *private* investor waived in writing the right to receive the documents;

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

(c) The *private* investor continues to meet the minimum financial requirement set forth in NAC 645B.255.

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

(a) A copy of the promissory note;

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

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

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

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

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

(b) ~~If the investor is not a natural person, a copy of its statement authorizing the loan; and~~
~~(c)~~ If the borrower is not a natural person, a copy of its statement authorizing the loan.

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

6. ~~If the mortgage broker has obtained an appraisal or any other independent assessment of the value of the mortgage property, the~~ *The* mortgage broker shall provide a copy of the appraisal or independent assessment *of the value of the mortgage property required pursuant to NRS 645B.300* to the:

(a) ~~Investor,~~ *Private investor*, upon request; and

(b) Borrower, upon request, if the borrower has paid for the appraisal or independent assessment.

Sec. 27. NAC 645B.210 is hereby amended to read as follows:

645B.210 1. If ~~an owner, partner, director, officer,~~ *a control person*, manager ~~;~~ *;* ~~member~~ or employee of a licensed mortgage broker, or a relative of ~~an owner, partner, director, officer,~~ *a control person*, manager ~~;~~ *;* ~~member~~ or employee of a licensed mortgage broker:

(a) Has any personal involvement in a lending or borrowing transaction of the mortgage broker which is authorized under chapter 645B of NRS; or

(b) Is licensed as, conducts business as or holds a controlling interest or position in:

(1) A construction control;

(2) An escrow agency or escrow agent; or

(3) A title agent, a title insurer or an escrow officer of a title agent or title insurer,

↪ the involvement must be disclosed to the borrower and the investor before the date that the loan is consummated. Such a disclosure must be separate from the documents of the transaction and must clearly and concisely state the nature of the involvement. The statement of disclosure must be signed by the borrower and the investor as an acknowledgment of the involvement. The

mortgage broker shall not act as the attorney in fact or the agent of an investor with respect to signing the acknowledgment.

2. If a mortgage broker is owned by a corporation in which one ~~{owner, director,}~~ *control person*, manager or employee owns an interest of 10 percent or more, and that person has any personal involvement in a licensed transaction of the mortgage broker, the involvement must be disclosed to the borrower and the investor pursuant to subsection 1.

Sec. 28. NAC 645B.220 is hereby amended to read as follows:

645B.220 ~~{1-}~~ The disclosure form given to ~~{an}~~ *a private* investor pursuant to NRS 645B.185 must be the form prescribed by the Commissioner.

~~{2- If the investor is a corporation, the disclosure form required pursuant to NRS 645B.185 may be signed by any person authorized to sign the form on behalf of the corporation, except a mortgage broker or mortgage agent.}~~

Sec. 29. NAC 645B.230 is hereby amended to read as follows:

645B.230 1. A mortgage broker may submit to the Division a financial statement to be provided to ~~{an}~~ *a private* investor pursuant to subsection 3 of NRS 645B.185 that:

(a) Is dated not earlier than the last day of the most recently completed fiscal year; and
(b) Has been prepared from the books and records of the mortgage broker by an independent public accountant who holds a permit to engage in the practice of public accounting in this State that has not been revoked or suspended.

2. A financial statement submitted to the Division by a mortgage broker pursuant to this section:

(a) Must contain a notation indicating that it is a financial statement to be provided to *private* investors pursuant to subsection 3 of NRS 645B.185.

(b) Need not be audited, but the provisions of this section do not affect any obligation of the mortgage broker to submit an audited financial statement to the Division pursuant to subsection 3 of NRS 645B.085.

Sec. 30. NAC 645B.235 is hereby amended to read as follows:

645B.235 1. A mortgage broker ~~{}~~ *or* mortgage agent ~~{or-qualified-employee}~~ who is also licensed as a real estate broker or real estate salesperson and who acts in both capacities in a single transaction must make to the borrower the disclosures set forth on the form prescribed by the Division pursuant to subsection 2, including, but not limited to:

(a) Whether the mortgage broker ~~{}~~ *or* mortgage agent ~~{or-qualified-employee}~~ will be receiving compensation for acting as a mortgage broker ~~{}~~ *or* mortgage agent ~~{or-qualified-employee}~~ and as a real estate broker or real estate salesperson in the same transaction;

(b) That the borrower is under no obligation to allow the real estate broker or real estate salesperson to submit the loan package of the borrower to a mortgage broker ~~{}~~ *or* mortgage agent ~~{or-qualified-employee;}~~ and

(c) That the borrower may contact other mortgage brokers or mortgage agents to determine if the borrower is receiving the best services related to the loan and the best prices for those services.

2. The mortgage broker ~~{}~~ *or* mortgage agent ~~{or-qualified-employee}~~ shall provide the disclosures required pursuant to subsection 1 to the borrower at the time of application for a loan and in the following format:

(At least 14-point font)
BORROWER(S)
ACKNOWLEDGMENT AND AGREEMENT CONCERNING
DUAL CAPACITY AS REAL ESTATE SALES AGENT AND MORTGAGE
LOAN AGENT

(At least 12-point bold font)

Borrower(s) are under no obligation whatsoever to allow their real estate sales agent to initiate or submit the borrower(s) loan package to any mortgage lender, broker, banker or investor. Mortgage brokers and other loan originators cannot offer loans from all funding sources and cannot guarantee the lowest price or best terms available in the market.

There may be other mortgage loan providers available with similar services and lower rates and/or fees. You are free and encouraged to contact various lenders to determine that you are receiving the best service and rates and lowest fees for those services. A comparative analysis of providers' services, rates and fees is recommended prior to making a decision on which lender to use.

(At least 10-point font)

Borrower(s) are hereby informed and expressly acknowledge the following:

- Real estate sales agent _____, hereinafter referred to as "agent," is also associated with _____ (mortgage broker/banker) and is acting in the dual capacity as both mortgage loan agent and real estate sales agent and shall receive compensation from the real estate sales transaction and separate compensation for arranging the mortgage loan.
- Real estate company _____ (check one of the following):
_____ Does have a business relationship with the licensed mortgage broker/banker or exempt company to which your loan is referred. Because of this relationship, this referral may provide the real estate company named above a financial or other benefit.

Describe the nature of the relationship, including percentage of ownership interest, if applicable.

- _____ Does not have a business relationship with the licensed mortgage broker/banker or exempt company to which your loan is referred.

The mortgage broker/banker must provide you with a ~~good faith estimate disclosing~~ *written disclosure under applicable state or federal law of* all estimated costs of the loan, including the yield spread premium (YSP.) The YSP is income paid to a mortgage broker upon delivery of a mortgage loan to a lender at a premium interest rate.

By signing I/we confirm my/our understanding of the information provided herein.

BORROWER

BORROWER

By signing this form, the mortgage loan agent agrees that any fees paid to the mortgage broker/banker/agent as referred to above will not increase the cost of borrower(s) loan beyond the normal and customary charges typically collected by mortgage lenders, brokers or investors.

MORTGAGE BROKER/QUALIFIED EMPLOYEE/AGENT

If you have any questions regarding your mortgage loan agent or loan, please visit the Division of Mortgage Lending website at <http://www.mld.nv.gov> or call (702) ~~486-0780~~ **486-0782** in Las Vegas or (775) 684-7060 in Northern Nevada.

3. As used in this section:

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

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

Sec. 31. NAC 645B.240 is hereby amended to read as follows:

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

2. Except as otherwise provided in subsection 3, an advertisement for an activity which is licensed pursuant to chapter 645B of NRS must be separate and distinct from an advertisement for an activity which is not licensed pursuant to that chapter.

3. A mortgage broker or mortgage agent may advertise jointly with a company licensed pursuant to chapter 624 or 645 of NRS if each business is disclosed separately in the advertisement and each business incurs a pro rata share of the cost associated with the advertisement.

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

(a) The complete name of the mortgage broker or mortgage agent ~~{and the complete name under which the mortgage broker or mortgage agent does business.}~~ *that appears on the license of the mortgage broker or mortgage agent issued pursuant to this chapter and chapter 645B of NRS.* Any advertisement for a mortgage agent must also include the name of the mortgage broker or mortgage banker, with whom the mortgage agent is associated.

(b) The address, telephone number and either the license number or unique identifier that the mortgage broker ~~{or}~~ *and, if applicable,* mortgage agent has on file with the Division. Additional telephone or cellular phone numbers of the mortgage broker or mortgage agent may also be included.

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

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

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

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

6. A mortgage broker or mortgage agent shall not refer to an existing lender or financial institution, other than the mortgage broker or mortgage agent himself or herself, on any advertising material without the written consent of the lender or financial institution.

7. Provided the representation of interest rates in advertisements complies with Regulation Z, 12 C.F.R. Part 226, and the content will continue to comply with this chapter and chapter 645B of NRS regarding advertising, a mortgage broker or mortgage agent may make nonsubstantive changes to his or her advertisements without additional approval from the Commissioner. For the purposes of this subsection, “nonsubstantive changes” means:

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

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

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

Prior to investing in a loan, *private* investors must be provided applicable disclosure documents.

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

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

12. For the purposes of this section, “advertising” includes commercial messages that promote the availability of mortgage products or investments offered by the mortgage broker or mortgage agent. Commercial messages include, but are not limited to:

- (a) Print media;
- (b) Sales literature;
- (c) Sales brochures or flyers;
- (d) Billboards;
- (e) Yellow-page listings if more than a line listing;
- (f) Radio and television advertisements;
- (g) Mass mailings distributed by the United States Postal Service or another such delivery service or by electronic mail;

- (h) Telephone or seminar scripts;
- (i) Websites or other Internet sites that promote or accept loan applications; and
- (j) Business cards.

Sec. 32. NAC 645B.255 is hereby amended to read as follows:

645B.255 1. Except as otherwise provided in subsection 5, before ~~an~~ *a private* investor ~~is~~ ~~other than a financial or institutional investor,~~ enters into a transaction with a mortgage broker or mortgage agent to acquire ownership of or a beneficial interest in a loan secured by a lien on real property by investing money, the *private* investor must provide a statement on a form prescribed by the Division which verifies that the *private* investor meets one or more of the following financial requirements:

- (a) The *private* investor's household net worth is more than \$250,000, excluding any equity in any real property used as the investor's primary residence at the time of the investment; or
- (b) The *private* investor's household net annual income was more than \$70,000 for each of the previous 2 tax years, and there is a reasonable expectation of attaining or exceeding the same income for the current year.

2. Except as otherwise provided in this subsection, ~~an~~ *a private* investor must also verify on the form prescribed by the Division that the *private* investor's total investments in loans secured by a lien on real property transacted by a mortgage broker or mortgage agent are not valued at more than 50 percent of the *private* investor's household net worth or household net annual income, whichever is greater. The Division may waive this requirement in writing.

3. In the absence of knowledge to the contrary, a mortgage broker or mortgage agent is not responsible for determining the validity of ~~an~~ *a private* investor's stated financial information and may rely on such information submitted by the *private* investor.

4. ~~{An}~~ *A private* investor shall verify on a form prescribed by the Division that the *private* investor continues to meet the minimum financial requirement set forth in subsection 1 for each transaction subsequent to the first transaction.

5. The provisions of this section do not apply to transactions of a mortgage broker or mortgage agent investing on his or her own behalf.

~~{6. As used in this section, “financial or institutional investor” has the meaning ascribed to it in NRS 90.240.}~~

Sec. 33. NAC 645B.280 is hereby amended to read as follows:

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

- (a) Approve the power of attorney;
- (b) Approve the power of attorney on the condition that the mortgage broker amend the power of attorney as directed by the Commissioner;
- (c) Reject the power of attorney; or
- (d) Provide notice in writing to the person who requested the power of attorney that an additional period of time, not to exceed 15 business days, is needed by the Commissioner to act on the request for approval of the power of attorney.

2. The mortgage broker shall maintain in his or her file all written communications relating to the request for approval of the power of attorney.

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

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

Sec. 34. NAC 645B.360 is hereby amended to read as follows:

645B.360 **1.** The Commissioner hereby designates ~~the~~ :

(a) *The* Registry to certify approved courses for the purposes of an initial license or renewal of a license as a mortgage broker or mortgage agent ~~+~~ ***who is required to register or voluntarily registers with the Registry; and***

(b) *Any federal or state governmental agency, self-regulatory organization or professional organization that reviews and approves a certified course of continuing education for professional prelicensing or continuing education to certify approved courses for the purposes of an initial license or renewal of a license as a mortgage broker or mortgage agent who is not required to register or renew with the Registry and who has not voluntarily registered or renewed with the Registry.*

2. *As used in this section, “certified course of continuing education” has the meaning ascribed to it in NRS 645B.051.*

Sec. 35. NAC 645B.370 is hereby amended to read as follows:

645B.370 1. To satisfy the requirement prescribed in NRS 645B.0137, a natural person must pass, in accordance with the standards established under this section, a qualified written test pursuant to and in the manner provided for in section 1505(b)(5) of the S.A.F.E. Mortgage Licensing Act, including, without limitation, with regard to the taking of a test four times.

2. Nothing in this section prohibits a ~~provider~~ *person* approved by the Registry from providing a test at the location of the employer of the applicant, the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage agent.

3. Pursuant to section 1505(d)(3)(D) of the S.A.F.E. Mortgage Licensing Act, a licensed mortgage agent who fails to maintain a valid license for a period of 5 consecutive years or more must retake the test specified in subsection 1, not taking into account any time during which such person may be a registered loan originator, as defined in section 1503(7) of the S.A.F.E. Mortgage Licensing Act.

Sec. 36. NAC 645B.373 is hereby amended to read as follows:

645B.373 1. To satisfy the requirements for continuing education provided for in *subsection 1 of* NRS 645B.051 or *subsection 1 of NRS* 645B.430, a mortgage agent or mortgage broker must complete at least 10 hours of approved courses of continuing education during the 12 months immediately preceding the date on which the license expires. The 10 hours of approved courses must be comprised of:

- (a) Three hours of federal laws and regulations relating to mortgage lending;
- (b) Two hours of ethics, which must include, without limitation, instruction on fraud, consumer protection and fair lending issues;

(c) Two hours of training relating to lending standards for nontraditional mortgage products;
and

(d) Three hours of Nevada laws and regulations, as set forth in NAC 645B.363.

2. The Commissioner may accept any hours of training completed in fulfillment of the requirements for a license for another state as hours of training for continuing education in this State if the Commissioner determines that those hours of training meet the requirements of this State.

3. Nothing in this section precludes any approved course that is provided by the employer of the mortgage agent or mortgage broker, an entity which is affiliated with the mortgage agent or mortgage broker by an agency contract, or any subsidiary or affiliate of such employer or entity.

4. A licensed mortgage agent or mortgage broker may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

5. A licensed mortgage agent or mortgage broker who is an approved instructor of an approved course may receive credit for the licensed mortgage agent's or mortgage broker's own annual continuing education requirement at the rate of 2 hours of credit for every 1 hour taught.

Sec. 37. NAC 645B.555 is hereby amended to read as follows:

645B.555 The Division has the burden of proof in any hearing pursuant to this chapter. The standard of proof in such a hearing is ~~substantial~~ *a preponderance of the* evidence.

Sec. 38. NAC 645B.003, 645B.011, 645B.031, 645B.043, 645B.062, 645B.063, 645B.073, 645B.270, 645B.315, 645B.317, 645B.410 and 645B.500 are hereby repealed.

TEXT OF REPEALED SECTIONS

645B.003 “Loan processor or underwriter” defined. (NRS 645B.060, 645F.292, 645F.293)

1. “Loan processor or underwriter” means a natural person who performs clerical or support duties at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under chapter 645B or 645E of NRS.

2. As used in this section, “clerical or support duties” has the meaning ascribed to it in section 1503(4)(B) of the S.A.F.E. Mortgage Licensing Act.

645B.011 Qualifications of applicant for licensure: Compliance with federal and state law; licensure through Registry. (NRS 645B.060, 645F.292, 645F.293) Each applicant for a license issued pursuant to chapter 645B of NRS:

1. Shall comply with any applicable federal or state law or regulation, including, without limitation:

(a) The provisions of the S.A.F.E. Mortgage Licensing Act and any regulation adopted pursuant thereto; and

(b) Any applicable requirement pursuant to chapter 645B, 645E or 645F of NRS or any regulation adopted pursuant thereto, including, without limitation, any applicable requirement relating to:

(1) A bond; or

- (2) A license for a loan processor or underwriter who is an independent contractor; and
2. Must be licensed with the Division through the Registry.

645B.031 Corporate office: Filing of application with Office of Commissioner to fulfill requirements of S.A.F.E. Mortgage Licensing Act. (NRS 645B.060, 645F.292, 645F.293)

1. Unless otherwise specifically prohibited by federal law and pursuant to the S.A.F.E. Mortgage Licensing Act, a corporate office which is not licensed under chapter 645B of NRS, but has an office which is licensed under 645B of NRS, may file an application with the Office of the Commissioner solely for the purpose of fulfilling the requirements of the S.A.F.E. Mortgage Licensing Act, including, without limitation, for the purposes of registering with the Registry.

2. An application submitted pursuant to subsection 1:
 - (a) Does not affect the unlicensed status of the corporate office; and
 - (b) Does not allow the corporate office to conduct business within this State.

645B.043 Application for certificate of exemption for purpose of fulfilling requirements of S.A.F.E. Mortgage Licensing Act. (NRS 645B.060, 645F.292, 645F.293)

Unless otherwise specifically prohibited by federal law and pursuant to the S.A.F.E. Mortgage Licensing Act, any person exempt from licensing pursuant to the provisions of chapter 645B of NRS may file a written application for a certificate of exemption with the Office of the Commissioner for the purposes of fulfilling the requirements of the S.A.F.E. Mortgage Licensing Act, including, without limitation, for the purposes of:

1. Registering with the Registry, but such registration does not affect the exempt status of the person;
2. Sponsoring a mortgage agent;

3. Fulfilling any bonding requirements related to an associated mortgage agent; or
4. Fulfilling reports of condition requirements.

645B.062 Surety bonds. (NRS 645B.060, 645F.275, 645F.292, 645F.293)

1. Except as otherwise provided in this section, a mortgage agent or mortgage broker shall deposit with the Commissioner and keep in full force and effect a corporate surety bond payable to the State of Nevada which is in the amount set forth in this section and is executed by a corporate surety satisfactory to the Commissioner.

2. If a mortgage agent is an employee of, or is associated with, a mortgage broker subject to the provisions of chapter 645B of NRS or a mortgage banker subject to the provisions of chapter 645E of NRS, the surety bond of the mortgage broker or mortgage banker may be used to fulfill the mortgage agent's individual surety bond requirement so long as the surety bond of the mortgage broker or mortgage banker:

- (a) Expressly covers the mortgage agent as a principal; and
- (b) Names the mortgage broker or mortgage banker as a principal and names all mortgage agents employed by or associated with the mortgage broker or mortgage banker as principals, either by individual name or as a group, such as "All Employed or Associated Mortgage Agents."

3. A bond deposited pursuant to this section must be in substantially the following form:

Know All Persons by These Presents, that, as principal, and, as surety, are held and firmly bound unto the State of Nevada for the use and benefit of any person who suffers damages because of a violation of any provision of chapter 645B, 645E or 645F of NRS or any regulation adopted pursuant thereto, in the sum of, lawful money of the

United States, to be paid to the State of Nevada for such use and benefit, for which payment well and truly to be made, and that we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of that obligation is such that:

Whereas, the principal has been issued a license as a mortgage agent, mortgage broker or mortgage banker by the Commissioner of Mortgage Lending and is required to furnish a bond, which is conditioned as set forth in this bond:

Now, therefore, if the principal, and the principal's agents and employees, strictly, honestly and faithfully comply with the provisions of chapters 645B, 645E and 645F of NRS and any regulation adopted pursuant thereto, and pay all damages suffered by any person because of a violation of any provision of chapter 645B, 645E or 645F of NRS or any regulation adopted pursuant thereto or by reason of any fraud, dishonesty, misrepresentation or concealment of material facts growing out of any transaction governed by the provisions of chapter 645B, 645E or 645F of NRS or any regulation adopted pursuant thereto, then this obligation is void; otherwise it remains in full force.

This bond becomes effective on the (day) of (month) of (year), and remains in force until the surety is released from liability by the Commissioner of Mortgage Lending or until this bond is cancelled by the surety. The surety may cancel this bond and be

relieved of further liability hereunder by giving 60 days' written notice to the principal and to the Commissioner of Mortgage Lending.

In Witness Whereof, the seal and signature of the principal hereto is affixed, and the corporate seal and the name of the surety hereto is affixed and attested by its authorized officers at, Nevada, this (day) of (month) of (year).

(Seal)

Principal

(Seal)

Surety

By

Attorney-in-fact

Licensed registered agent

4. The required amount of the surety bond that complies with the provisions of this section is calculated by the Commissioner by determining the annual loan production amount for the person or persons covered under the bond, and:

(a) In the case of an initial surety bond, the expected annual loan production is determined by an estimate of the Commissioner; and

(b) After the deposit of an initial surety bond, the expected annual loan production is based upon the annual loan production in the previous year.

5. The surety bond amounts will be set and adjusted as necessary annually by the Division in accordance with the following scale:

Annual Loan Production Bond Amount Required

\$20,000,000 or less \$50,000

Greater than \$20,000,000 \$75,000

6. The procedure regarding cancellation of a bond is as follows:

(a) A surety may cancel a bond upon giving 60 days' notice to the Commissioner by certified mail;

(b) Upon receipt by the Commissioner of notice, the Commissioner will immediately notify the mortgage agent or mortgage broker who deposited the bond:

(1) Of the effective date of the cancellation; and

(2) That the license of the mortgage agent or mortgage broker will be revoked unless the mortgage agent or mortgage broker furnishes an equivalent bond before the effective date of the cancellation;

(c) The notification by the Commissioner must be sent to the mortgage agent or mortgage broker by certified mail to the last address of record filed in the office of the Division; and

(d) If the mortgage agent or mortgage broker does not comply with any requirements set out in the notification from the Commissioner, the license of the mortgage agent or mortgage broker must be revoked on the date the bond is cancelled.

7. Any person:

(a) May claim against a bond by bringing an action in a court of competent jurisdiction on the bond for damages to the extent covered by the bond, but an action may not be commenced after the expiration of 3 years following the commission of the act on which the action is based; and

(b) Who claims against a bond shall notify the Commissioner in writing by certified mail upon filing the action.

8. Upon receiving a request from a person for whose benefit a bond is required, the Commissioner will notify the person:

(a) That a bond is in effect and the amount of the bond; and

(b) If there is an action against the bond, of the title of, the court and case number of, and the amount sought in that action.

9. If a surety wishes to make payment without awaiting action by a court:

(a) The amount of the bond must be reduced to the extent of any payment made by the surety in good faith under the bond; and

(b) Any payment must be based on written claims received by the surety before any action is taken by a court.

10. A surety may bring an action for interpleader against all claimants upon the bond, and if the surety brings an action, the surety:

(a) Shall publish notice of the action at least once each week for 2 weeks in every issue of a newspaper of general circulation in the county of the principal place of business of the mortgage agent or mortgage broker; and

(b) May deduct its costs of the action, including attorney's fees and publication, from its liability under the bond.

11. Claims against a bond:

- (a) Have equal priority;
- (b) If the bond is insufficient to pay all claims in full, must be paid on a pro rata basis, but partial payment of claims is not full payment; and
- (c) Do not preclude a claimant from bringing an action against a mortgage agent or mortgage broker for an unpaid balance.

12. A bond used to fulfill the requirements of NRS 645B.042 may be used to fulfill, wholly or partially, the bond requirement of this section, provided that:

(a) If used to fulfill wholly the bond requirement of this section, the amount of the bond used pursuant to NRS 645B.042 is equal to or greater than the amount of the bond required pursuant to this section; and

(b) If used to fulfill partially the bond requirement of this section, the remaining difference is made up by another bond that meets the requirements of this section and is in an amount equal to or greater than the difference between the two bonds.

13. A substitute for a surety bond required by NRS 645B.042, as provided for in NRS 645B.044, may not be used to fulfill, wholly or partially, the bond requirement of this section.

645B.063 Submission of information or payment of fees by applicant or licensee. (NRS 645B.060, 645F.292, 645F.293) When an applicant or person licensed pursuant to chapter 645B of NRS is required to submit information or pay fees to the Division, the Commissioner may:

1. Require the applicant or person to submit the information or pay the fees directly to the Division or to the Division through the Registry; and

2. Require the applicant or person to submit extra copies of the information, including, without limitation, a set of the applicant's or person's fingerprints and written consent to an investigation of his or her credit history.

645B.073 Documentation for action on behalf of investors when beneficial interest belongs to more than one natural person. (NRS 645B.060, 645B.080)

1. Except as otherwise provided in subsection 3, if a mortgage broker acts on behalf of investors on a matter related to a mortgage loan, and if the beneficial interest in the loan belongs to more than one natural person, the documentation of the matter must include provisions to allow the holders of 51 percent or a greater specified percentage of the beneficial interests of record, calculated by dollar amount, to act on behalf of all the holders of the beneficial interests of record in the event of a default or foreclosure for matters that require the direction or approval of the holders of the beneficial interests in the loan, including, without limitation:

(a) The designation of the mortgage broker, servicing agent or other person to act on the behalf of the holders of the beneficial interests in the loan; and

(b) The sale, encumbrance or lease of real property owned by the holders resulting from a foreclosure or the receipt of a deed in lieu of a foreclosure.

2. The provisions required by this section may be included in the deed of trust, the assignment of interest or any other documentation that binds the mortgage broker and the investors.

3. The provisions of this section do not apply to a transaction involving two investors with equal interests.

645B.270 Standards for appraisals. (NRS 645B.060, 645B.300) An appraisal submitted to an investor pursuant to NAC 645B.080 must meet, at a minimum, the standards set forth in the Uniform Standards of Professional Appraisal Practice adopted pursuant to NAC 645C.400 and:

1. If the appraised property is located in this State, be prepared by an appraiser who holds the appropriate license, certificate or permit issued by the Real Estate Division of the Department of Business and Industry; or

2. If the appraised property is located outside the State, be prepared by an appraiser who is authorized to perform the appraisal by the appropriate agency of the state in which the property is located.

645B.315 Exemption from licensing requirements for certain loan processors and underwriters. (NRS 645B.060, 645F.292, 645F.293)

1. Except if the natural person is an independent contractor who complies with the requirements of NAC 645B.410, a natural person who is a loan processor or underwriter and who does not represent to the public, through advertising or other means of communicating or providing information, that the natural person can or will perform any of the activities of a loan originator is not required to be licensed as a mortgage agent.

2. For the purposes of this section, “represent to the public” means to communicate through:

- (a) Advertising, including, without limitation, a promotional item or business card; or
- (b) Other means of providing information, including, without limitation, the use of stationery, brochures, signs or rate lists.

645B.317 Requirements for reinstatement of license. (NRS 645B.060) The Commissioner may only reinstate a mortgage agent’s license pursuant to subsection 3 of NRS 645B.430 if, within 2 months after the date on which the license expired, the mortgage agent:

1. Submits the items described in subsection 3 of NRS 645B.430; and
2. Completes any unfulfilled requirements related to the license.

645B.410 Prohibited acts of independent contractor not licensed as mortgage agent.

(NRS 645B.060, 645F.292, 645F.293) Unless otherwise specifically prohibited by federal law and pursuant to section 1504(b)(2) of the S.A.F.E. Mortgage Licensing Act, an independent contractor may not engage in the activities of a residential mortgage loan originator as a loan processor or underwriter unless such independent contractor is licensed as a mortgage agent.

645B.500 Complaint alleging violation. (NRS 645B.060, 645B.600)

1. A complaint filed pursuant to NRS 645B.600 must:
 - (a) Be in writing;
 - (b) Be signed by the person filing the complaint or the authorized representative of the person filing the complaint;
 - (c) Contain the address and telephone number of the person filing the complaint or the authorized representative of the person filing the complaint;
 - (d) Describe the nature of the complaint in as much detail as possible; and
 - (e) Include as exhibits copies of any documentation supporting the complaint.
2. If the Commissioner determines that a complaint filed pursuant to subsection 1 contains an alleged action which, if true, violates a provision of this chapter or chapter 645B of NRS or an order of the Commissioner, the Commissioner will investigate each such violation alleged in the complaint, unless the Commissioner has previously investigated the alleged violation.
3. Except as otherwise provided in subsection 2 of NRS 645B.090, if the Commissioner does not conduct an investigation of an alleged violation pursuant to subsection 2 because the Commissioner determines that the alleged action, if true, does not violate a provision of this

chapter or chapter 645B of NRS or an order of the Commissioner, the Commissioner will provide to the person who filed the complaint a written summary of the reasons for his or her decision.

4. The Commissioner will provide a copy of the written complaint to the person against whom the complaint is filed pursuant to NRS 645B.600 and may order the person to respond in writing to the written complaint within a period of time specified by the Commissioner.