

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

LCB File No. R126-16

Effective January 27, 2017

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

AUTHORITY: §§1, 2, 4, 5, 7, 8, 11, 19, 23 and 24, NRS 645E.300; §3, NRS 645E.300, 645F.255 and 645F.520; §§6, 9, 10, 12, 13, 15, 16 and 18, NRS 645E.300, 645F.292 and 645F.293; §§14 and 20-22, NRS 645E.300 and 645E.350; §17, NRS 645E.300, 645E.310 and 645F.280.

A REGULATION relating to mortgage lending; imposing certain requirements upon a mortgage banker who acts as a mortgage servicer in certain circumstances; revising provisions relating to a change of control of a mortgage banker; requiring a mortgage banker to pay an annual fee for supervision; revising provisions relating to examinations, investigations and audits of mortgage bankers; making various changes relating to the business and oversight of mortgage bankers; 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 bankers. (NRS 645E.300) 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 2, 5, 8, 9, 14 and 16** of this regulation make various revisions to incorporate the term “control person” into existing regulations relating to mortgage bankers. **Sections 10 and 18** 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 16** revises provisions relating to a change of control or change of location of a mortgage banker. **Section 17** of this regulation requires certain mortgage bankers to pay an annual fee for supervision to the Commissioner and establishes the amount of the fee. **Section 19** of this regulation revises provisions relating to the conduct of an examination, investigation or audit by the Commissioner. **Section 22** of this regulation revises provisions relating to the maintenance of records by a mortgage banker and allows a mortgage banker 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 banker to obtain a license as a mortgage servicer in certain circumstances. (NRS 645F.500) **Sections 3 and 16** of this regulation establish provisions relating to mortgage bankers who act as a mortgage servicer in connection with one or more mortgage loans made or arranged by the mortgage banker under his or her license as a mortgage banker.

Section 1. Chapter 645E of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *“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. 3. 1. *In addition to any other duty imposed by this chapter or chapter 645E of NRS or any other applicable law, a mortgage banker who acts as a mortgage servicer in connection with one or more mortgage loans which the mortgage banker made or arranged under his or her license as a mortgage banker:*

(a) Has a duty of good faith and fair dealing in the communications, transactions and course of dealings of the mortgage banker 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 banker for the activities of the mortgage banker 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 banker performs in this State on loans that the mortgage banker made or arranged under his or her license as a mortgage banker issued pursuant to chapter 645E of NRS, which must include, without limitation:

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

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

(III) The types and characteristics of mortgage loans serviced by the mortgage banker; 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 banker 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 645E of NRS.

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

Sec. 4. *The Commissioner may designate a hearing officer to conduct any hearing required pursuant to this chapter or chapter 645E of NRS.*

Sec. 5. NAC 645E.015 is hereby amended to read as follows:

645E.015 1. “Affiliated business” means a business which a mortgage banker or any ~~general partner, officer, director~~ **control person** or employee of the mortgage banker:

- (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. 6. NAC 645E.090 is hereby amended to read as follows:

645E.090 ~~1.—In addition to the requirements of subsection 1 of NRS 645E.160, a] A~~
person who claims an exemption from the provisions of chapter 645E of NRS pursuant to
~~[subsection 1 of] NRS 645E.150 [must ensure that the entity or agency which regulates the~~
~~conduct of the person’s business provides to the Commissioner written notification that:~~
~~—(a) The license of the person provides the right to make mortgage loans;~~
~~—(b) The entity or agency will investigate complaints arising from or relating to consumers in~~
~~this State; and~~
~~—(c) 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.~~
~~—2.—As used in this section, “residential mortgage loan originator” has the meaning ascribed~~
~~to it in NRS 645B.01325.] *has the burden of demonstrating that the person qualifies for such*~~
an exemption.

Sec. 7. NAC 645E.200 is hereby amended to read as follows:

645E.200 *1.* An applicant for a license as a mortgage banker 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. 8. NAC 645E.210 is hereby amended to read as follows:

645E.210 1. An applicant must submit with his or her application for a license pursuant to chapter 645E of NRS:

(a) A copy of 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 ~~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 banker~~ *applicant* pursuant to chapter 602 of NRS indicating the *assumed or* fictitious name of the ~~mortgage banker, 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 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 ~~{}~~ *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. 9. NAC 645E.220 is hereby amended to read as follows:

645E.220 1. An applicant must submit with his or her application for a license for a branch office:

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

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

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

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

~~—(b) The Commissioner approves the qualified employee designated 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 banker is licensed to conduct business at its principal office.

~~{5.}~~ 3. Each branch office must conspicuously display its license at the branch office.

~~{6.}~~ 4. A mortgage banker is responsible for and shall supervise:

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

(b) Each qualified employee and mortgage agent authorized to conduct mortgage lending activity at a branch office of the mortgage banker.

~~{7.}~~ 5. The Commissioner may require that an applicant meet the requirements of the S.A.F.E. Mortgage Licensing Act.

~~{8.}~~ 6. If an applicant has received *from the Division* a letter of conditional approval of his or her application for a license for a branch office ~~{from the Division}~~ which imposes additional requirements that the applicant must satisfy to obtain a license ~~{}~~ *for a branch office*, the applicant must comply with those requirements within 30 days after the date on which the ~~{letter was}~~ *Division* issued ~~{by}~~ the ~~{Division.}~~ *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 license ~~{}~~ *for a branch office*. The Commissioner may, for good cause, extend the 30-day period prescribed in this subsection.

~~{9.}~~ 7. An application *for a license for a branch office* 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. 10. NAC 645E.235 is hereby amended to read as follows:

645E.235 If *an applicant or* a licensee ~~{who provided an electronic mail address to the Division}~~ wishes to change ~~{that}~~ *his or her electronic mail* address ~~{}~~ *or contact information*, the ~~{licensee}~~ *person* shall make the change and :

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

Sec. 11. NAC 645E.250 is hereby amended to read as follows:

645E.250 1. The ~~{Division}~~ *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 banker shall not *advertise or* conduct business *as a mortgage banker* 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 banker.

Sec. 12. NAC 645E.270 is hereby amended to read as follows:

645E.270 A person does not hold himself or herself out as being able to perform the services described in NRS 645E.100 if the person:

1. Is in compliance with the S.A.F.E. Mortgage Licensing Act and any regulation 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 banker licensed pursuant to chapter 645E of NRS; or
 - (b) A person exempt from the provisions of chapter 645E of NRS.

Sec. 13. NAC 645E.285 is hereby amended to read as follows:

645E.285 1. A mortgage banker shall not represent an activity which is not licensed pursuant to chapter 645E 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 645E of NRS must be separate and distinct from an advertisement for an activity which is not licensed pursuant to that chapter.

3. A mortgage banker 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 mortgage banker must include in his or her advertisements, including any advertising material available on the Internet:

(a) The complete name of the mortgage banker ~~for the complete name under which the mortgage banker does business.~~ *that appears on the license of the mortgage banker issued pursuant to this chapter and chapter 645E of NRS.*

(b) The address, telephone number and either the license number or unique identifier that the mortgage banker has on file with the Division. Additional telephone or cellular phone numbers of the mortgage banker may also be included.

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

5. A mortgage banker 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 banker shall not refer to an existing lender or financial institution, other than the mortgage banker himself or herself or any affiliate or subsidiary of the mortgage banker, on any advertising material without the written consent of the lender or financial institution.

7. In addition to the requirements of this chapter, each advertisement used in carrying on the business of a mortgage banker must comply with:

(a) NRS 598.0903 to 598.0999, inclusive, concerning deceptive trade practices; and

(b) All applicable federal statutes and regulations concerning deceptive advertising and advertising of interest rates.

8. An Internet link on a website of the mortgage banker 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 banker.

9. For the purposes of this section, “advertisement”:

(a) Does not include white-page listings, employment recruiting announcements, office signs, banners, magnetic car signs and letterhead which contain only the name, address and telephone number of the mortgage banker, whether together or separate, and which are used for the purpose of identification only.

(b) Includes commercial messages that promote the availability of mortgage products or investments offered by the mortgage banker. Commercial messages include, without limitation:

- (1) Print media;
- (2) Sales literature;
- (3) Sales brochures or flyers;
- (4) Billboards;
- (5) Yellow-page listings if more than a line listing;
- (6) Radio and television advertisements;
- (7) Mass mailings distributed by the United States Postal Service or another such delivery service or by electronic mail;
- (8) Telephone or seminar scripts;
- (9) Websites or other Internet sites that promote or accept loan applications; and
- (10) Business cards.

10. As used in this section, “unique identifier” means a number or other identifier assigned by protocols established by the Registry.

Sec. 14. NAC 645E.295 is hereby amended to read as follows:

645E.295 1. Insider loans made or arranged by a mortgage banker 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 funded loans which were made or arranged by the mortgage banker or 100 percent of the mortgage banker’s net worth as evidenced by the mortgage banker’s most recent financial statement submitted to the Commissioner pursuant to NRS 645E.360, whichever is greater; and

(b) The mortgage banker shall specifically identify on each monthly report required by NRS 645E.350 any insider loan made by the mortgage banker.

2. As used in this section:

(a) “Insider” means a ~~{director, officer}~~ *control person* or employee of a mortgage banker.

(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 granted by a mortgage banker as a means for the borrower to defer payment on an existing debt or to incur a debt and defer immediate payment.

(c) “Lending limit” means the maximum dollar amount permitted for the aggregate of insider loans made by a mortgage banker.

Sec. 15. NAC 645E.310 is hereby amended to read as follows:

645E.310 1. Every person, other than a natural person, doing business as a mortgage banker in this State shall designate a natural person as a qualified employee who may, upon approval by the Commissioner, act on behalf of the mortgage banker.

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 pursuant to NRS 645B.410;

(b) Is designated by a mortgage banker to act on behalf of the mortgage banker and to supervise the conduct of the business of the mortgage banker and the mortgage agents ~~{associated with or}~~ *and other staff members* employed by the mortgage banker ~~{}~~ *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) Has met the requirements of the S.A.F.E. Mortgage Licensing Act ~~+~~; *and*

(e) 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, the mortgage banker 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 banker that the initial qualified employee designated pursuant to subsection 1 is not approved; or

(2) The qualified employee ceases to be a qualified employee pursuant to this section; or

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

4. As used in this section, “verifiable experience in the business of lending money for real estate or mortgages” has the meaning ascribed to that term in NAC 645E.200.

Sec. 16. NAC 645E.315 is hereby amended to read as follows:

645E.315 1. Any ~~material~~ change in the ~~management or principal employees~~ *control persons* of a mortgage banker ~~at its principal office or a branch office~~ must be reported to the Commissioner ~~not later than~~ *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 645E.200. A new control person may not participate in the management of a mortgage banker 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}~~ **banker 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 licensee that will result in the cumulative transfer, from the date upon which the license was issued, of 25 percent or more of the outstanding voting stock or ownership interest in the licensee is deemed to constitute a change of control.**

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

(a) ~~{A financial statement or}~~ *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 banker; and*

(b) *A personal interrogatory ~~{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 banker 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 645E.200.

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 645E of NRS are met.

5. A mortgage banker 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 banker may not change the location of its 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 banker may not **surrender his or her license or** close his or her principal office or a branch office until:*

- (a) The mortgage banker has returned his or her **original** license ; ~~{to the Division;}~~ 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 banker 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 banker and the plan for distribution of money in the account;*

(c) *If the mortgage banker is servicing any loans made or arranged by the mortgage banker under his or her license as a mortgage banker, 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 banker terminates his or her association pursuant to NRS ~~645E.292,~~ **645B.450**, evidence of the termination; and

~~(d)~~ (e) In regard to the records of the mortgage banker maintained pursuant to subsection 1 of NRS 645E.350:

- (1) The address where the records will be maintained; and
- (2) The telephone number and mailing address of the person who will be responsible for the maintenance of the records.

~~16.~~ **8.** The Commissioner may require the person acquiring stock or ownership in a mortgage banker pursuant to subsection 3 to meet the requirements of the S.A.F.E. Mortgage Licensing Act, including, without limitation, submitting information to the Registry.

~~17.~~ **9.** As used in this section, “change of control” has the meaning ascribed to it in NRS 645E.390.

Sec. 17. NAC 645E.320 is hereby amended to read as follows:

645E.320 1. *Except as otherwise provided in subsection 2, the Commissioner will annually charge and collect a fee for supervision from each mortgage banker. The amount of the fee for supervision will be calculated pursuant to subsection 2. The Commissioner will annually bill each mortgage banker 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 banker whose annual volume of loans reported to the Commissioner pursuant to NRS 645E.350 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 645E.350.

3. Except as otherwise provided in this subsection, the Commissioner will charge and collect a fee of \$60 per hour from each mortgage banker for any ~~supervision~~ examination, audit, investigation or hearing conducted pursuant to chapter 645E 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 645E of NRS.

~~2.~~ 4. The Commissioner will bill each mortgage banker upon the completion of the activity for the fee established in subsection ~~H.~~ 3. The fee must be paid not later than 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 banker, the Division will provide an accounting of the time billed to the mortgage banker pursuant to this ~~section.~~ *subsection.*

Sec. 18. NAC 645E.321 is hereby amended to read as follows:

645E.321 As regards the renewal of a license pursuant to subsection 1 of NRS 645E.280, the Commissioner will not renew the license of a mortgage banker if the mortgage banker:

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. 19. NAC 645E.335 is hereby amended to read as follows:

645E.335 ~~An examiner, auditor or investigator~~ *For the purposes of* conducting an examination, *investigation or* periodic or special audit ~~, or investigation pursuant to paragraph (b), (c) or (d) of subsection 2 of NRS 645E.300~~ *pursuant to this chapter or chapter 645E of NRS:*

1. The Commissioner or his or her designee may:

~~H.~~ *(a)* Require the mortgage banker to produce, for the purposes of the examination, audit or investigation, all documents:

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

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

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

~~—2.† ; and~~

(b) Inspect and copy any documents that are in the possession, control or custody of the mortgage banker and related to business conducted by the mortgage banker pursuant to this chapter or chapter 645E 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 645E of NRS;

(c) Use, hire, contract with or employ analytical systems, methods or software, whether publicly or privately available, to examine or investigate a licensee or other person subject to chapter 645E 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 licensee or other person subject to chapter 645E 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. 20. NAC 645E.350 is hereby amended to read as follows:

645E.350 1. Each mortgage banker shall submit, for each month, on a form approved by the Commissioner, a report on the volume of loans ~~arranged~~ made by the mortgage banker in that month. The monthly report must be submitted to the Commissioner by the 15th day of the month following the month for which the report was made. If no loans were ~~arranged~~ made in that month, the report must state that fact.

2. The Commissioner may refuse to renew the license of a mortgage banker that has not submitted a monthly report as required by subsection 1 for 1 or more of the preceding 12 months.

Sec. 21. NAC 645E.355 is hereby amended to read as follows:

645E.355 As used in NRS 645E.350, the Commissioner interprets “complete and suitable records” to mean:

1. For residential mortgage loans, 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 the loan;
- (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;

~~(k)~~ (i) A recorded or confirmed deed of trust;

~~(l)~~ (j) The title insurance policy;

~~(m)~~ (k) The note;

~~(n)~~ (l) Any subsequent assignment of the loan to institutional investors;

~~(o)~~ (m) The hazard insurance policy; and

~~(p)~~ (n) Any ~~additional~~ disclosures required by state or federal law.

2. For commercial mortgage loans that are funded by the mortgage banker, a file that includes, if applicable, the items required pursuant to paragraphs (a) to ~~(i)~~ (h), inclusive, of subsection 1.

3. *For a mortgage loan made by the mortgage banker pursuant to chapter 645E of NRS for which the mortgage banker 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 banker 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.

4. Any additional books and records that must be maintained or readily accessible at each place of business of the mortgage banker, including, but not limited to:

(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 banker, in the format in which the material was published or distributed;

(c) A copy of any written complaint received by the mortgage banker, 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 banker;

(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 banker;

(f) Copies of all documents evidencing a contractual relationship between the mortgage banker and any third-party provider of services related to mortgages, including, but not limited to, contracts, invoices, billings and remittances to the provider by or on behalf of the mortgage banker;

(g) Copies of all material correspondence related to the business of the mortgage banker, 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 banker performed by any third party, including, but not limited to, any regulatory or supervisory authority.

Sec. 22. NAC 645E.360 is hereby amended to read as follows:

645E.360 1. Each mortgage banker shall retain records of all its 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 for 1 year or longer, the mortgage banker may cause the original 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 banker to reproduce and store a record by electronic means at any time so long as the mortgage banker 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 record may be destroyed.~~

2. Each mortgage banker 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. Each mortgage banker ~~shall~~ **may** maintain *in an electronic format the* records ~~of~~ *completed mortgage transactions at the location at which the mortgage loan was made for at least 1 year after the date of closing of the loan. After 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, for good cause shown, may 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 banker ensures that the Commissioner or his or her designee has the ability to download and print, from all office locations of the mortgage banker, any or all of the records maintained in electronic format;

(c) The mortgage banker 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. 23. NAC 645E.545 is hereby amended to read as follows:

645E.545 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. 24. NAC 645E.080, 645E.223 and 645E.260 are hereby repealed.

TEXT OF REPEALED SECTIONS

645E.080 Application for certificate of exemption for purpose of fulfilling requirements of S.A.F.E. Mortgage Licensing Act. (NRS 645E.300, 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 645E 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.

645E.223 Requirements for reinstatement of license. (NRS 645E.300) The Commissioner may only reinstate a mortgage banker's license pursuant to subsection 2 of NRS 645E.280 if, within 2 months after the date on which the license expired, the mortgage banker:

1. Submits the items described in subsection 2 of NRS 645E.280; and
2. Completes any unfulfilled requirements related to the license.

645E.260 Activity constituting verifiable business; submission of evidence of activity. (NRS 645E.300, 645E.350)

1. A person conducts verifiable business as a mortgage banker if the person:
 - (a) Handles the arrangements between a borrower and a lender for a loan that is secured by a lien on real property and is consummated as a result of the arrangements; or
 - (b) Originates a loan secured by a lien on real property in the capacity of a lender or provider.
2. Evidence of activity described in subsection 1 must be submitted to the Commissioner in the monthly report of activity.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
Informational Statement
LCB FILE NO. R126-16**

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

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

To comply with the Division's statutory duty to carry out the provisions of NRS 645E governing mortgage bankers, as well as NRS 645F, in order to carry out the provisions of law relating to mortgage servicing by certain mortgage bankers (Nevada mortgage servicer provisions, as contained in sections 86.2 through 86.7 of Assembly Bill 480 ("AB 480"), having been adopted into law during the 78th Session of the Nevada Legislature (2015)). Also to ensure that regulations are written clearly and concisely and to remove or clarify provisions that are unnecessary, duplicative or in conflict with statutory provisions.

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

Copies of the proposed regulation, notice of workshop, small business impact statement, and notice of intent to act upon the regulation were e-mailed to Division licensees and other interested parties on the Division's mailing list as well as any persons who had specifically requested such notice. These documents were also made available at the Division of Mortgage Lending's Website at <http://www.mld.nv.gov> and the Nevada Public Notice Website at <http://notice.nv.gov>; posted at the Division's Las Vegas office and Office of the Department of Business and Industry in Carson City; and provided to the Nevada State Library for posting. The proposed regulation and notice of intent to act upon the regulation were additionally provided to the Nevada State Library and all county libraries in Nevada at which the Division does not maintain an office, for posting. Notice of intent to act upon the regulation was further submitted for posting on the Nevada Legislature's website.

Following the Division's e-mail notification to approximately 341 of its licensees and interested parties containing the proposed regulation amendments in which it solicited comments concerning whether these would impose a direct and significant economic burden upon a small business, or directly restrict the formation operation, or expansion of a small business, the Division received two written comments: One identified minor drafting errors, and the other questioned the requirement of a communication log which the Division proposed to be encompassed within the proposed expanded interpretation of "complete and suitable records" as provided in NAC 645B.072 concerning mortgage brokers. In addition, the Division reached out to a variety of stakeholders, including the Nevada Mortgage Lenders Association and the Advisory Council on Mortgage

Investments and Mortgage Lending, which provided comments, suggestions, and feedback considered by the Division.

A duly-noticed workshop was held on June 28, 2016 in Las Vegas, Nevada as video conferenced with Carson City, Nevada. Minutes of the workshop are attached hereto as “Exhibit A.” Thereafter, on November 7, 2016, the Commissioner of the Division of Mortgage Lending (Commissioner) issued and posted a Notice of Intent to Act Upon a Regulation based upon the LCB Draft of Proposed Regulation R126-16.

A duly-noticed public hearing for adoption of the proposed regulation was held on December 12, 2016 in Las Vegas, Nevada, as video conferenced with Carson City, Nevada. An attorney in private practice representing clients in the lending industry and in the secondary mortgage market, appeared in Las Vegas to testify in support of the proposed regulation. He presented a written copy of correspondence which he submitted to the Division dated December 12, 2016, in relation to his testimony. He also verbally expressed on the record that the certainty and predictability of such rulemaking in the mortgage lending industry was a good policy which permitted institutional investors to extend capital in the sense of buying loans or making large institutional loans, thereby making more mortgages available to homeowners and businesses. This attendee voiced particular support for the adoption of the proposed changes to NAC 645E.270 (in which activity in certain secondary mortgage transactions would not be considered conduct within the definition of a “mortgage banker”).

Minutes of the public hearing are attached hereto as “Exhibit B.” No further comments were received.

A copy of the summary of the public response to the proposed regulation, including the written submittal of the attorney described above, may be obtained from the Division of Mortgage Lending, 7220 Bermuda Road, Suite A., Las Vegas, Nevada, 89119, or by e-mailing a request to sslack@mld.nv.gov.

3. The number of persons who:

	<u>Carson City</u>	<u>Las Vegas</u>
Attended <i>June 28, 2016</i> workshop:	0	1
Testified at the workshop:	0	0
Attended <i>December 12, 2016</i> hearing:	0	1
Testified at the hearing:	0	1

Submitted written comments:: 3 (1 via e-mail, 1 via U.S. mail, and 1 hand-delivered)

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

Attended June 28, 2016 workshop in Las Vegas, Nevada:

Sarah Hibbard of Encore Capital [Encore Real Estate Group LLC], (858) 309-9748, sarah.hibbard@MCMCG.com

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

Mark H. Goldstein, Bailey Kennedy Attorneys at Law, (702) 562-8820, 8984 Spanish Ridge Avenue, Las Vegas, Nevada, 89148-1302, MGoldstein@BaileyKennedy.com

Submitted written comments:

Kathy Emenecker, Senior Licensing Analyst PHH Mortgage Corporation 1 Mortgage Way, Mail Stop LIC Mount Laurel, NJ 08054 P: (856) 917-0913 F: (856) 917-2355 Kathy.Emenecker@mortgagefamily.com	William Dyer IFA Integrated Financial Associates 3311 S. Rainbow Blvd, Suite 209 Las Vegas, NV 89146 Voice: (702) 257-0021 Toll-free: (877) 633-9393 Fax: (702) 257-0031
--	--

Mark H. Goldstein
Bailey Kennedy Attorneys at Law
8984 Spanish Ridge Avenue, Las Vegas, Nevada, 89148-1302
Telephone: (702) 562-8820
Facsimile: (702) 562-8821
MGoldstein@BaileyKennedy.com

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

Comments were solicited from affected businesses in the same manner as they were solicited from the public. The summary of public response may be obtained in the same manner as instructed in the response to Item #2, above.

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

At the conclusion of the noticed public hearing on December 12, 2016, the permanent regulation was adopted in the form as proposed and reflected in the *LCB Draft of Proposed Regulation R126-16* because there was no significant objection to the proposed language.

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

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

(a) Both adverse and beneficial effects

The Division does not foresee any major adverse effects of the adopted regulation to either the business of a mortgage broker, its mortgage agents, or to the public.

The adopted regulation may have a minor adverse impact on small business as it will assess an annual supervision fee upon a mortgage banker whose annual volume of loans reported to the Commissioner pursuant to NRS 645E.350 is at least \$10,000,000.00. Where such criteria is met, the mortgage banker is required to pay a supervision fee at a rate of ½ cent per \$1,000.00 of the annual volume of loans reported.

The Division anticipates that the beneficial effects of the adopted regulation will protect the health and welfare of Nevadans without unnecessarily burdening business activity.

(b) Both immediate and long-term effects.

The Commissioner has determined that the adopted regulation may have a minor adverse economic impact on small business based upon implementation of an annual supervision fee upon certain mortgage bankers, based upon a stated volume of loans reported to the Commissioner by the mortgage banker. However, the Commissioner has concluded that the fees are necessary to ensure the effective and efficient operation of the Division in carrying out its mission to protect consumers without discouraging economic growth.

Since 2008, the statutory revenue structure has been insufficient to appropriately fund the Division's ongoing staffing needs and support costs required to carry out its responsibilities. The fees imposed will enable the Division to develop a revenue structure that provides a long-term funding solution.

To reduce the adverse impact of the proposed regulation on small business, the Division conducted an analysis of the fees under its existing licensing programs and those assessed by other licensing jurisdictions, as well as solicited comments from stakeholders in order to establish a fair fee structure.

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

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

The Division estimates that the adopted regulation will result in minimal costs to the agency for enforcement, as such can be incorporated in to the agency's existing billing and collection process, as well as initiated through the Nationwide Mortgage Licensing System and Registry.

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

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

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

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

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

A new fee, in the form of an annual charge for supervision of certain mortgage bankers, shall be collected from such mortgage bankers based upon a specified annual volume of loans reported by the mortgage banker to the Commissioner.

Based on an analyses of calendar year 2015 loan volume reported by mortgage broker and mortgage banker licensees, the implementation of a supervision fee is anticipated to generate approximately \$68,000.00 annually.

Revenue generated from the proposed regulation would fund the ongoing staffing needs and support costs required to carry out statutory responsibilities.