

# PROPOSED REGULATION OF THE COMMISSIONER OF MORTGAGE LENDING

LCB File No. R126-16

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

**AUTHORITY:** NRS 645E.300(2)(a) & (2)(b)

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

**Section 1.** *NAC 645E.\_\_\_\_ In addition to any other duties imposed by chapter 645E of NRS, this chapter, or other applicable law, a mortgage banker that acts as a mortgage servicer in connection with one or more mortgage loans that it made or arranged under its mortgage banker license:*

*1. Has a duty of good faith and fair dealing in its communications, transactions and course of dealings with each borrower in connection with the servicing of the borrower's mortgage loan.*

*2. Shall:*

*(a) Safeguard and account for any money handled for the borrower or, if applicable, investor.*

*(b) Follow reasonable and lawful instructions from the borrower or, if applicable, investor.*

*(c) Act with reasonable skill, care and diligence.*

*(d) 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., as amended, and any regulations promulgated thereunder. In addition to any other remedies provided by law, a violation of any such law or regulation shall be deemed a violation of this section and a basis upon which the Commissioner may impose discipline pursuant to chapter 645E of NRS or this chapter.*

*(e) Annually file with the Commissioner a complete schedule of the ranges of costs and fees the mortgage banker charges to a borrower for its servicing-related activities.*

*(f) Quarterly file directly with the Commissioner, or through the Registry with the Commissioner, on a date and in a form prescribed by the Commissioner, a report of the mortgage servicing activity the mortgage banker is performing in this State on loans that it made or arranged pursuant to its mortgage banker license under chapter 645E of NRS. The report must specify:*

*(i) The total number of loans the mortgage banker is servicing.*

*(ii) The total dollar volume of mortgage loans the mortgage banker is servicing.*

*(iii) The type and characteristics of mortgage loans the mortgage banker is servicing.*

*(iv) Any other information required by the Commissioner.*

*3. Shall not:*

*(a) Transfer the servicing of a mortgage loan to another person unless that person holds a license as a mortgage servicer or is a person otherwise exempt from holding a license pursuant to chapter 645F of NRS and the Nevada Mortgage Servicer Regulations.*

*(b) Directly or indirectly employ any scheme, device or artifice to defraud or mislead a borrower or investor or to defraud any person.*

*(c) Fail to apply mortgage loan payments in accordance with a servicing agreement or the terms of a note.*

*(d) Fail to properly apply payments to an escrow account or 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.*

*4. As used in this section, “mortgage servicer” has the meaning ascribed to it in § 86.2 of AB 480 (2015), as applicable.*

**Sec.2.** *NAC 645E.\_\_\_\_ “Control person” defined. “Control person” means an executive officer, director, general partner, trustee, member, or shareholder of a licensee or applicant. As used in this section, “executive officer” means an officer, partner or managing member 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.** *NAC 645E.\_\_\_\_ Designation of hearing officer. The Commissioner may designate a hearing officer to conduct any hearing required pursuant to Chapter 645E of NRS or this chapter.*

**Sec. 4. Amend NAC 645E.015 to read as follows:**

**NAC 645E.015 “Affiliated business” defined. (NRS 645E.300)**

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.

(Added to NAC by Comm’r of Mortgage Lending by R088-04, eff. 8-25-2004)

**Sec. 5. Strike NAC 645E.080 in its entirety:**

~~[NAC 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.~~
- ~~—(Added to NAC by Comm’r of Mortgage Lending by R038-10, eff. 7-22-2010)}~~

**Sec. 6. Amend NAC 645E.090 to read as follows:**

**NAC 645E.090 Provision of certain information to Commissioner by regulating entity or agency.** (NRS 645E.300, 645F.292, 645F.293)

~~{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 *has the burden of demonstrating that the person qualifies for such an exemption.* ~~{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.}~~

(Added to NAC by Comm’r of Mortgage Lending by R038-10, eff. 7-22-2010)

**Sec. 7. Amend NAC 645E.200 to read as follows:**

**NAC 645E.200 Qualifications of applicant: Required experience.** (NRS 645E.200, 645E.300)

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 deemed to be relevant by the Commissioner.*

(Added to NAC by Comm’r of Financial Institutions by R046-00, eff. 9-5-2000; A by Comm’r of Mortgage Lending by R088-04, 8-25-2004; R053-08, 4-23-2009)

**Sec. 8. Amend NAC 645E.210 to read as follows:**

**NAC 645E.210 Documentation required with application for license; conditional approval; effect of failure to respond to written request for information.** (NRS 645E.200, 645E.300)

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 business license *from the Nevada Secretary of State* ~~[-when applicable,] or, if the applicant has not obtained such a license, a copy of the applicant's application filed with the Nevada Secretary of State or evidence that the applicant is exempt from filing for such license. [his or her application for such a license if he or she has not obtained one.]~~

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

(c) If the applicant is *not a natural person, a copy of its formation and operating documents and any amendments thereto.* ~~[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)](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 *of the applicant or its designated regulator contact.*

*(f) The name of each mortgage agent that 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 of the date of the request or a later date set by the Commissioner*, to any written request for information *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.* ~~[by the Division within 30 days after the date of the request.]~~

**Sec. 9. Amend NAC 645E.220 to read as follows:**

**NAC 645E.220 Branch office: Prerequisites and name for issuance of license; display of license; responsibilities of mortgage banker; conditional approval; effect of failure to respond to written request for information.** (NRS 645E.200,645E.300, 645F.292, 645F.293)

1. An applicant must submit with his or her application for a license for a branch *location mortgage banker license* ~~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.}~~2. 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 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, 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 shall 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.

~~{9.}~~7. An application shall be deemed abandoned if the applicant fails to respond, *within 30 calendar days of the date of the request or a later date set by the Commissioner*, to any written request for information *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.* ~~{by the Division within 30 days after the date of the request.}~~

(Added to NAC by Comm'r of Financial Institutions by R046-00, eff. 9-5-2000; A by Comm'r of Mortgage Lending by R088-04, 8-25-2004; R053-08, 4-23-2009; R038-10, 7-22-2010)

**Sec. 10. Strike NAC 645E.223 in its entirety:**

~~{NAC 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.~~
- ~~— (Added to NAC by Comm’r of Mortgage Lending by R038-10, eff. 7-22-2010)}~~

**Sec. 11. Amend NAC 645E.235 to read as follows:**

**NAC 645E.235 Change of electronic mail address.** (NRS 645E.300, 645F.292, 645F.293)  
*An applicant for a license, and a licensee upon the issuance or renewal of a license issued, under chapter 645E of the NRS* ~~{If a licensee who}~~ *that changes its electronic mail address or contact information that was provided in its initial or renewal application* ~~{provided an electronic mail address to the Division wishes to change that address, the licensee}~~ shall make the change and notify the Division through the Registry, *if the person is registered with the Registry, or, if the person is not registered with the Registry, provide written notice directly to the Division.*

(Added to NAC by Comm’r of Mortgage Lending by R038-10, eff. 7-22-2010)

**Sec. 12. Amend NAC 645E.250 to read as follows:**

**NAC 645E.250 Use of same name, confusingly similar name or name not approved by Division.** (NRS 645E.300)

1. The ~~{Division}~~ *Commissioner* shall 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 *mortgage banking* business 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.

(Added to NAC by Comm’r of Financial Institutions by R046-00, eff. 9-5-2000; A by Comm’r of Mortgage Lending by R088-04, 8-25-2004)

**Sec. 13. Strike NAC 645E.260 in its entirety:**

~~{NAC 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.~~

~~— (Added to NAC by Comm’r of Financial Institutions by R046-00, eff. 9-5-2000; A by Comm’r of Mortgage Lending by R088-04, 8-25-2004)}~~

**Sec. 14. Amend NAC 645E.270 to read as follows:**

**NAC 645E.270 Activity not constituting services as mortgage banker.** (NRS 645E.300, 645F.292, 645F.293) 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* to 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.(Added to NAC by Comm'r of Financial Institutions by R046-00, eff. 9-5-2000; A by Comm'r of Mortgage Lending by R088-04, 8-25-2004; R038-10, 7-22-2010)

**Sec. 15. Amend NAC 645E.285 to read as follows:**

**NAC 645E.285 Representation of activity as licensed; restrictions on advertising.**  
(NRS 645E.300, 645F.292, 645F.293)

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 *that appears on the mortgage banker license issued under chapter 645E of NRS* ~~for the complete name under which the mortgage banker does business~~.
  - (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.

(Added to NAC by Comm’r of Financial Institutions by R046-00, eff. 9-5-2000; A by Comm’r of Mortgage Lending by R088-04, 8-25-2004; R053-08, 4-23-2009; R038-10, 7-22-2010)—(Substituted in revision for NAC 645E.450)

## **Sec. 16. Amend NAC 645E.295 to read as follows:**

### **NAC 645E.295 Insider loans: Limitations and conditions. (NRS 645E.300, 645E.350)**

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.

(Added to NAC by Comm’r of Mortgage Lending by R053-08, eff. 4-23-2009)

**Sec. 17. Amend NAC 645E.310 to read as follows:**

**NAC 645E.310 Qualified employee: Designation and approval.** (NRS 645E.300, 645F.292, 645F.293)

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 employed by the mortgage banker;

(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. As used in this subsection, “verifiable experience in the business of lending money for real estate or mortgages” has the meaning ascribed to that term in NAC 645E.200(2).*

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.

(Added to NAC by Comm’r of Financial Institutions by R046-00, eff. 9-5-2000; A by Comm’r of Mortgage Lending by R088-04, 8-25-2004; R038-10, 7-22-2010)

**Sec. 18. Amend NAC 645E.315 to read as follows:**

**NAC 645E.315 Change in ownership, control, management, principal employees or principal or branch office.** (NRS 645E.300, 645E.390, 645F.292, 645F.293)

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 ~~within~~ *at least* 30 calendar days ~~after~~ *before* the change. *Any new control person is required to submit to a background investigation of that person in the same manner provided for in NRS 645E.200. A new control person may not participate in the management of a mortgage banker until approved by the Commissioner.*

~~2. Any material change in the ownership or any change of control of a mortgage banker at his or her principal office or a branch office must be 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.~~ *No change of control is effective until approved by the Commissioner. A transfer, sale or conveyance of outstanding voting stock or ownership interest that will result in the cumulative transfer of 25 percent or more of a licensee's outstanding voting stock or ownership interest from the date upon which the license was issued constitutes a change of control.*

3. *At least 15 days before ~~Hf~~ a person acquires stock or ownership in a mortgage banker as a result of a transfer that constitutes a change of control, a licensee shall make written application to the Commissioner for the approval of the change of control. The application must include:*

*(a) The name and percentage of ownership of each person who has obtained or is obtaining ownership resulting in a cumulative transfer of 25 percent or more of the licensee's outstanding voting stock or ownership interest;*

*(b) A personal interrogatory and a complete set of fingerprints of each 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 conduct a background investigation of the person's background in the same manner as provided in NRS 645E.200.*

~~A financial statement or 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 mortgage banker may not change the location of its principal office or a branch office until the Commissioner has approved the transfer.~~

4. *The Commissioner will conduct an investigation of an application submitted pursuant to this section to determine whether the requirements necessary for licensure pursuant to NRS 645E and this chapter are met.*

5. *A mortgage banker may not change the location of his or her principal office or branch office until the mortgage banker has:*

*(a) filed a request with the Commissioner to change its principal or branch office address;*

*(b) returned its original principal or branch location license certificate to the Commissioner;*

*(c) submitted any additional information required by the Commissioner; and*

*(d) the Commissioner has approved the change of address and issued a new license reflecting the new address.*

~~4.16.~~ A mortgage banker may not *surrender its license or* close his or her principal office or a branch office until:

(a) The mortgage banker has returned his or her *original* license *certificate* to the Division; and

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

~~5.17.~~ The request for approval of the 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 it made under its mortgage banker license, a listing of those loans and the mortgage banker's plan for transferring those loans to another mortgage servicer;*

~~(e)~~(d) If any mortgage agent associated with or employed by the mortgage banker terminates his or her association pursuant to NRS 645E.292, 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.

~~6-18~~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.

~~7-19~~9. As used in this section, "change of control" has the meaning ascribed to it in NRS 645E.390.

(Added to NAC by Comm'r of Financial Institutions by R046-00, eff. 9-5-2000; A by Comm'r of Mortgage Lending by R088-04, 8-25-2004; R053-08, 4-23-2009; R038-10, 7-22-2010)— (Substituted in revision for NAC 645E.230)

#### **Sec. 19. Amend NAC 645E.320 to read as follows:**

**NAC 645E.320 Fee for supervision and related activities: Amount; collection; failure to pay; accounting of time billed. (NRS 645E.300, 645E.310, 645F.280)**

1. *The Commissioner will annually charge and collect a supervision fee from each mortgage banker under NRS 645E. The annual supervision fee will be based upon the mortgage banker's annual dollar volume of activity reported to the Commissioner under NRS 645E and will be calculated pursuant to subsection 2. The supervision fee must be paid within 30 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 with an annual dollar volume under NRS 645E of:*

*(a) Less than \$10,000,000 will not be assessed a supervision fee.*

*(b) \$10,000,000 or more shall pay a supervision fee of ½ cent per \$1,000 of its annual dollar volume.*

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.

4. ~~2-1~~ The Commissioner will bill each mortgage banker upon the completion of the activity for the fee established in subsection ~~3~~~~4~~. 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. *Upon written request by a mortgage banker, the Division will provide an accounting of the time billed to the mortgage banker pursuant to this subsection.*

~~{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.}~~

(Added to NAC by Comm'r of Financial Institutions by R046-00, eff. 9-5-2000; A by Comm'r of Mortgage Lending by R088-04, 8-25-2004; R038-10, 7-22-2010)

## Sec. 20. Amend NAC 645E.321 to read as follows:

**NAC 645E.321 Grounds for denial of renewal of license.** (NRS 645E.300, 645F.292, 645F.293) 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}~~ *the State of Nevada*;
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}~~.

(Added to NAC by Comm'r of Mortgage Lending by R038-10, eff. 7-22-2010)

## Sec. 21. Amend NAC 645E.335 to read as follows:

**NAC 645E.335 Authority of examiner, auditor or investigator.** (NRS 645E.300)

*For purposes of conducting any examination, investigation or periodic or special audit pursuant to this chapter or chapter 645E of the NRS:*

1. ~~The Commissioner or his or her designee {An examiner, auditor or investigator conducting an examination, periodic or special audit, or investigation of a pursuant to paragraph (b), (c) or (d) of subsection 2 of NRS 645E.300}~~ may:

~~{1.}~~*(i)* 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; or

~~{(c)}~~ *(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.}~~*(ii)* Inspect and copy any documents which are in the possession, control or custody of the mortgage banker and which are related to business conducted pursuant to this chapter or chapter 645E of NRS.

2. *The Commissioner may:*

*(i) Retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators to conduct or assist in the conduct of such examinations or investigations;*

*(ii) Enter into agreements or relationships with other governmental officials or regulatory associations in order to improve efficiencies 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;*

*(iii) Use, hire, contract with or employ public or privately available analytical systems, methods or software to examine or investigate a licensee or other person subject to chapter 645E of NRS; and*

*(iv) Accept and rely on reports of examinations or investigations made by other state or federal government officials; and*

*(iv) Accept audit reports prepared by an independent certified public accountant for the licensee or other person subject to chapter 645E of NRS, in the course of that part of an examination covering the same general subject matter as the audit and incorporate the audit report in the report of examination, report of investigation or other writing of the Commissioner.*

(Added to NAC by Comm'r of Mortgage Lending by R088-04, eff. 8-25-2004)

## **Sec. 22. Amend NAC 645E.350 to read as follows:**

**NAC 645E.350 Monthly reports.** (NRS 645E.300, 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.

(Added to NAC by Comm'r of Financial Institutions by R046-00, eff. 9-5-2000; A by Comm'r of Mortgage Lending by R088-04, 8-25-2004)

## **Sec. 23. Amend NAC 645E.355 to read as follows:**

**NAC 645E.355 “Complete and suitable records” interpreted for purposes of NRS 645E.350.** (NRS 645E.300, 645E.350) 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) ~~[(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;~~

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

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

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

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

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

~~(n) [(p)] 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 (j), inclusive, of subsection 1.

3. *For a mortgage loan made by the mortgage banker under chapter 645E of NRS that the mortgage banker is acting as the mortgage servicer in connection with, a file that includes, but is not limited to, the following documents, 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, itemizing 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) Copies of any servicing agreements;*

*(e) Copies of any disclosures or notifications provided to a borrower 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 that documents all verbal or written communications with a borrower or a borrower's representative;*

*(h) A copy of all notices sent to a borrower related 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.

(Added to NAC by Comm'r of Mortgage Lending by R088-04, eff. 8-25-2004; A by R053-08, 4-23-2009)

**Sec. 24. Amend NAC 645E.360 to read as follows:**

**NAC 645E.360 Retention and maintenance of certain records.** (NRS 645E.300, 645E.350)

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 1 year or longer, the mortgage banker 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 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 of the 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 *may retain the records required under this section in an electronic format if:* ~~{shall maintain 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.}~~

*(a) The records are maintained and made available to the Commissioner 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 location 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, in printed form any or all of the records maintained in an electronic format upon request of the Commissioner or his or her designee.*

*(d) The records are maintained on a media that:*

*(i) Is not erasable.*

*(ii) Does not allow changes to a document stored on the media.*

*(iii) Is consistent with the minimum standards of quality approved by the National Institute of Standards and Technology or the Association for Information and Image Management.*

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

(Added to NAC by Comm'r of Financial Institutions by R046-00, eff. 9-5-2000; A by Comm'r of Mortgage Lending by R088-04, 8-25-2004; R053-08, 4-23-2009)

**Sec. 25. Amend NAC 645E.545 to read as follows:**

**NAC 645E.545 Burden and standard of proof.** (NRS 645E.300) The Division has the burden of proof in any hearing pursuant to this chapter. The standard of proof in such a hearing is ~~substantial evidence~~ *a preponderance of the evidence.*

(Added to NAC by Comm'r of Mortgage Lending by R070-08, eff. 4-23-2009)