

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066**

Informational Statement

LCB FILE NO. R178-18

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

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

To comply with the Division’s statutory duty to ensure the effectiveness of Chapter 645B of the Nevada Revised Statutes (“NRS”), to carry out the provisions of NRS 645B, and to conform with and implement revisions as necessitated by certain statutory changes made to NRS 645B, as well as NRS 622, resulting from passage of Senate Bill 498 and Senate Bill 69, respectively, in the 79th Session (2017) of the Nevada Legislature. Under existing law, specifically at NRS 645B.060, the Commissioner of the Nevada Division of Mortgage Lending (“the Commissioner”) has the authority to regulate mortgage brokers and mortgage agents.

The statutory amendments made to NRS 622 require that the state regulatory bodies authorized to license and regulate the professions and occupations organized under Title 54 of the NRS adopt regulations providing for the issuance of a license by endorsement to engage in such professions and occupations. Following its enactment, the pertinent provisions of Senate Bill 69 were codified in NRS 622.530. Accordingly, pursuant to NRS 622, the adopted regulation adds to and amends NAC 645B to:

- Establish the prerequisites, requirements, conditions, and manner of submission by a natural person, of his or her initial application for license by endorsement to the Division, to engage in the activities of a mortgage broker or mortgage agent in Nevada, where such person: 1) holds a comparable license issued by the District of Columbia or any state or territory of the United States; (2) possesses qualifications that are equal to or substantially similar to the qualifications required for issuance of a license to engage in such activities in the state of Nevada; and (3) satisfies other requirements as directed or authorized by Senate Bill 69 as adopted by the 2017 Session of the Nevada Legislature.
- Provide the standards for licensure by endorsement of a natural person as a mortgage broker or mortgage agent.
- Provide the timeline for the Commissioner to request additional information related to an application, approve an application, and issue a license by endorsement.

- Establish grounds for the Commissioner to deny an application for licensure by endorsement.
- Establish that a person who has been issued a license by endorsement is subject to the same duties, restrictions, penalties, liabilities, conditions and limitations that apply to a natural person who has been issued a license which is not a license by endorsement, including those provisions of law relating to the expiration and renewal of a license.

To conform with the statutory amendments made to NAC 645B resulting from passage of Senate 498 concerning a mortgage broker's required reporting of certain monthly activity report(s), as well as the continuing education requirements for renewal of a mortgage broker license or mortgage agent license, the adopted regulation additionally includes respective amendments to the following existing provisions:

- NAC 645B.070, to authorize the Commissioner of the Division to waive the required reporting by a mortgage broker of certain monthly activity report(s) if substantially similar information is available to the Commissioner from another source.
- NAC 645B.073, to reduce the total number of continuing education which must be completed by a mortgage broker or mortgage agent on an annual basis, from 10 hours to 8 hours, eliminates the previous requirement that the hours of continuing education which must be completed include 3 hours concerning Nevada laws and regulations (instead requiring that such education include one hour of any elective course approved by the Nationwide Mortgage Licensing System and Registry), but that as applied to *qualified employees*, that person must complete one hour of an approved course in Nevada laws and regulations in lieu of an elective course.

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 text of the proposed regulation, notice of workshop (as combined with the workshop noticed for NAC 645E (governing mortgage bankers as subject of LCB File No. R179-18)), 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>. Further, in addition to the Nevada Legislature's website at

<https://www.leg.state.nv.us/App/Notice/A/>, such documents were posted at prominent Nevada offices which included the Nevada State Business Center in Las Vegas, the Division's office in Las Vegas, the Office of the Department of Business and Industry in Carson City, and the Nevada State Library and Archives in Carson City. As also publicly noticed in the same manner as stated above, the Revised Proposed Regulation R178-18 as drafted by the Legislative Counsel Bureau ("LCB") dated January 4, 2019, the notice of intent to act upon the regulation, and small business statement, were additionally provided to all county libraries in Nevada at which the Division does not maintain an office, for posting. Notice of intent to act upon the regulation, as accompanied by the LCB's draft of revised proposed regulation and the Division's small business statement, was further submitted to the LCB for posting on the Nevada Legislative website.

In May 2018, in anticipation of the Division's workshop to be held in this matter, the Division e-mailed approximately 9,200 of its licensees under NRS 645B as well as other interested parties concerning 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. Further, in addition, to solicitation of such comments through its website, 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.

In response to these solicitations of input, the Division received a total of four e-mailed comments. Three of such comments, as submitted to the Division prior to its June 7, 2018 issuance of the Small Business Impact Statement regarding the proposed additions and amendments to NAC 645B, addressed only the proposed criteria and/or process for issuance of a license by endorsement under the provisions of NAC 645B. One additional e-mail, as received by the Division after issuance of its Small Business Impact Statement but prior to the scheduled workshop, expressed concern as limited to application of the continuing education requirements to a mortgage broker, who engaged only in the commercial-lending business.

As reflected in the Division's issued and publicly noticed workshops scheduled for June 26, 2018 (to be held in the identified Las Vegas, Nevada, location and video-conferenced to the identified Carson City, Nevada location), the Division subsequently solicited additional receipt of written comments, testimony, or documentary evidence, and advised that oral comments on the proposed regulations may be made at the meeting. No public response was received.

The duly-noticed workshops (as combined with that duly-noticed for NAC 645E) were held on June 26, 2018 in Las Vegas and video-conferenced to Carson City. Minutes of the workshops are attached hereto as "Exhibit A, Part I" and "Exhibit A, Part II." In conformance with its noticed public workshop and agenda, the Commissioner conducted a 9:00 a.m. proceeding on this date to describe an introduction of the regulatory amendments

to both NAC 645B and NAC 645B, as well as to the other chapters of the Nevada Administrative Code over which the Commission has jurisdiction (NAC 645A and NAC 645F), as the requirements of Senate Bill 69 concerning licensure by endorsement apply to all of these chapters in the same fashion. In conformance with its noticed public workshop and agenda as issued on June 7, 2018, the Commissioner conducted a 10:00 a.m. proceeding on June 26, 2018, to specifically address the proposed regulatory amendments to NAC 645B and to NAC 645E, even though these generally “mirror” the same revisions as proposed to be made to the other NAC Chapters under the Division’s jurisdiction as addressed at the noticed 9:00 a.m. introductory proceeding. None of the attendees at these proceedings provided any written or verbal comments.

Thereafter, on January 28, 2019, with respect to NAC 645B only, the Commissioner issued and posted a Notice of Intent to Act Upon a Regulation based upon the LCB Draft of Revised Proposed Regulation R178-18, dated January 4, 2019 as stated above, again soliciting comments. No public response was received. The Division further issued and posted, on February 11 and February 12, 2019, its Notice of Public Meetings with the Agendas for adoption hearings to be held on March 7, 2019, including adoption of the proposed amendments to NAC 645B.

As duly-noticed, the public hearing for adoption of the proposed regulation was held on March 7, 2019, in Las Vegas and video-conferenced to Carson City. Minutes of the public hearing are attached hereto as “Exhibit B.” While one member of the public appeared at the Las Vegas location for the hearing, he did not provide any verbal or written comments at the hearing.

A copy of the summary of the public response which was received concerning the proposed regulation may be obtained from the Division of Mortgage Lending, 3300 W. Sahara Avenue, Suite 285, Las Vegas, Nevada, 89102, or by e-mailing a request to krailey@mld.nv.gov.

3. The number of persons from the public who:

	<u>Carson City</u>	<u>Las Vegas</u>
Attended <i>June 26, 2018</i> workshops—		
	9:00 a.m. proceeding:	1
	8	
	10:00 a.m. proceeding:	0
	6	
Testified at the <i>June 26, 2018</i> workshop:	0	0
Attended March 7, 2019 adoption hearing:	0	1
Testified at the March 7, 2019 adoption hearing:	0	0

Submitted written comments: 4 emails were received (3 prior to issuance of the small business impact statement and 1 after issuance of the small business statement, but all being received prior to the scheduled workshop)

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 (if provided to the agency), for each person who testified at each hearing and submitted to the agency written statements.**

No member of the public who appeared at the workshops and/or adoption hearing, at either the noticed Las Vegas or Carson City locations for such, either testified or submitted written statements to the agency. However, prior to the noticed and scheduled workshops as combined for NAC 645B and NAC 645E, the Division received four e-mails concerning the proposed regulations, three of which addressed concerns related to the licensure by endorsement provisions proposed in NAC 645B, and one of which addressed the continuing education requirements for a mortgage broker under NAC 645B who engaged only in the commercial-lending business.

Pursuant to e-mailed transmission, the Division received four written statements prior to the workshop, but none of the persons who made such statements appeared and testified at either the workshop or adoption hearing as noticed to occur in Las Vegas and video-conferenced with Carson City.

Testified at workshop: 0 Testified at adoption hearing: 0

Submitted to the Division written (e-mailed) comments: 4

- (a) *Doris Mitchell*, (NMLS #342436), Lone Mortgage, 5275 Durango Drive, Las Vegas NV 89113, 702-838-9922 (business phone number), 702-596-1511 (cell number), 702-947-6739 (fax number), doris.mitchell@lonemortgage.com [<mailto:kf7nsk@gmail.com>]
- (b) *Allyson Harr*, Licensing Manager, DHI Mortgage (Company NMLS #14622), 10700 Pecan Park Blvd., Ste 450, Austin TX 78750 (business address), 512-219-3414 (business phone number), 512-202-5843 (cell number), 800-605-0256 (fax number), ADHarr@drhorton.com
- (c) *Dee Hontz* (individual NMLS #281675), Principal of Capline Mortgage (Company NMLS #1559619), 702-562-4077 (whether company phone number, cell number, home number, or fax number, unspecified), 7251 W. Lake Mead Blvd., Suite 300, Las Vegas, NV 89128, dh@caplinemortgage.com
- (d) *Christopher Funai*, Newmark Realty Capital, LLC (Nevada MLD #452), 8716

Spanish Ridge Avenue, Suite 100, Las Vegas, NV 89148, 702-304-0437 (direct phone number), 702-325-8197 (cell number), 702-341-6935 (fax number), cfunai@newmarkrealtycapital.com / newmarkrealtycapital.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 as provided in response to Item #2, above.

Ms. Mitchell expressly submitted her “thoughts on the proposed changes” as limited to the licensure by endorsement provisions. She believed that “the additions of letting a mortgage Broker license/Mortgage Agent license go to a non-citizen, or otherwise “Legal right” to work in the United States, opens the door to fraud.” She contended that the current licensing requirements didn’t need any adjustments, that the NMLS [“Nationwide Multistate System & Registry”] existed to “provide the integrity of back round [sic] check and previous fraud check,” and that “State licensing should not be permitted to supersede the NMLS.” She questioned the proposal to add regulatory changes.

Ms. Harr, also referring only to the licensure by endorsement provisions of the proposed regulations, expressed worry or concern that the continuous 5-year period of required licensure in another jurisdiction, which the Division included among the express conditions which must be satisfied in order to obtain a mortgage broker license or mortgage agent by endorsement in Nevada, could serve to eliminate many persons from applying for such licensure.

Ms. Hontz, further addressing only the licensure by endorsement provisions, requested clarification concerning the meaning of the language contained in Section 2, paragraph (1)(c) of the proposed regulations [the Division’s draft version of the proposed language at that time], which provided that among the prerequisites for submission for an initial license by endorsement, the applicant must possess “qualifications that are equal to or substantially similar to the qualifications required for issuance of a license to engage in the activity of a mortgage broker or mortgage agent in this State.” *Ms. Hontz* additionally expressed that it “would be interesting to know the reasoning for the proposed changes, and why there might be different regulations than how mortgage brokers were previously regulated.”

While the Division’s website and e-mail blasts to licensees concerning the proposed regulations had already explained the basis for the Division’s draft regulatory changes, the Deputy Commissioner at that time, Scott Whittemore, personally provided an e-mailed answer to *Ms. Hontz*. Deputy Commissioner Whittemore clarified that the Division’s stated terminology applied only to out-of-state, non-Nevada licensed persons, the licensure-by-endorsement provisions providing only a framework for licensure in Nevada based upon an “equal playing field” as originating from the requirements of Senate Bill 69,

and emphasized that the scheme does not change the way in which the Division regulates or licenses current Nevada licensees.

Following receipt of the aforementioned written comments, which were discussed in the Division's subsequently drafted Small Business Statement concerning the proposed regulatory revisions to NAC 645B, the Division received the written comment from Mr. Funai. This comment was received prior to the Division's noticed and scheduled workshops as conducted on June 26, 2018.

Mr. Funai addressed only the provisions of the proposed regulations which revised the number of hours a licensee must complete in to comply with continuing education requirements, asserting that the 8 hours of such imposed requirements constitute a waste of both his time and money and would adversely affect his business because he was engaged in only the *commercial-lending* business. Noting that existing continuing education courses applied only to residential and consumer-based lending laws, Mr. Funai suggested that the Division create an exemption for the commercial-only brokers in the NAC and NRS, either by eliminating regulation of this class or by greatly reducing regulation of the existing licensees.

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 March 7, 2019, the permanent regulation was adopted in the substantive form as proposed and reflected in the *LCB Draft of Proposed Regulation R178-18*, dated January 4, 2019. Having contemplated the goals to be served by the regulation, and the text of the proposed regulation since the time of original drafting and revision, as well as considering them throughout the workshop and hearing proceeding, the Commissioner determined that such LCB draft adequately set forth the desired language in such manner as to not merit any substantive change(s) to the provisions.

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

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

(a) Both adverse and beneficial effects

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

The Division anticipates that the beneficial effects of the adopted regulation may result in cost savings and expedited licensure for those who met the criteria for licensure by endorsement as provided in the adopted regulation without unnecessarily burdening business activity.

(b) Both immediate and long-term effects.

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, if any, to the agency for enforcement. The Division expects that any costs will be absorbed into the existing workloads of current staffing levels.

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 adopted 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.

To the extent that the anticipated fee for an applicant seeking licensure by endorsement may be interpreted as a new fee, the fee for filing such application will be the same as that currently imposed upon any other natural person who applies for a Nevada license to engage in the activities of a mortgage broker or mortgage agent.

The fee for licensure by endorsement will be used to offset the cost of processing the application and issuing the license, in the same manner imposed upon any other natural person who applies for a Nevada license to engage in the activities of a mortgage broker or mortgage agent.

The Division is unable to estimate the annual amount of application fee(s) that may be

collected for licensure by endorsement. The regulation does not otherwise provide a new fee and does not provide for any increase to an existing fee.