

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

LCB File No. R070-23

October 23, 2023

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

AUTHORITY: § 1, NRS 645A.050; §§ 2 and 5, NRS 645B.060, 645F.292 and 645F.293; § 3, NRS 645B.060; § 4, NRS 645B.060, 645B.189, 645F.292 and 645F.293; §§ 6-8, NRS 645F.255 and 645F.390; § 9, NRS 645F.255 and 645F.520.

A REGULATION relating to mortgage lending; revising provisions relating to closing or changing the location of a principal or branch office of the holder of certain licenses issued by the Commissioner of Mortgage Lending of the Department of Business and Industry; revising the required contents of certain disclosures; revising provisions governing advertisements by mortgage companies; revising provisions relating to challenging information reported by the Commissioner to the Nationwide Mortgage Licensing System and Registry; revising provisions governing the termination of certain employees or associates of independent licensees; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law creates the Division of Mortgage Lending within the Department of Business and Industry and authorizes the Division to license and regulate mortgage companies, mortgage loan originators, mortgage servicers, escrow agencies and agents and related professionals. (Chapters 645A, 645B and 645F of NRS) Existing regulations provide that an escrow agency, mortgage broker, or licensee may not close a principal office or branch office until: (1) the agency, broker or licensee, as applicable, returns its original license and submits a request for the approval of the closure of the office; and (2) the Commissioner of Mortgage Lending approves the closure. (NAC 645A.290, 645B.057, 645F.285, 645F.982) **Sections 1, 2, 6 and 9** of this regulation remove the requirement that an agency, broker or licensee return its original license. **Sections 1, 2, 6 and 9** also require an agency, broker or licensee to submit a request for approval of the surrender of a license or closure of the office in a format prescribed by the Commissioner.

Existing regulations require a mortgage broker or mortgage agent who is also licensed as a real estate broker or real estate salesperson and who acts in both capacities in a single transaction to disclose certain information to a borrower. Existing regulations also prescribe the form and contents of such a disclosure. (NAC 645B.235) **Section 3** of this regulation revises the required contents of this disclosure.

Existing law sets forth certain requirements for advertisements used by mortgage companies and authorizes the Commissioner to adopt regulations concerning such advertisements. (NRS 645B.189) Existing regulations: (1) prescribe additional requirements concerning advertising by mortgage companies; and (2) define the term “advertising” for the purposes of these requirements to include certain yellow page listings and websites or other Internet sites that promote or accept loan applications. (NAC 645B.240) **Section 4** of this regulation removes certain yellow page listings from the definition of the term “advertising” and clarifies that the term includes a media platform that promotes or accepts loan applications.

Existing law requires the Commissioner to adopt regulations necessary to comply with and carry out the provisions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008. Under existing law, such regulations must include: (1) a method by which to allow for reporting certain information to the Nationwide Mortgage Licensing System and Registry; and (2) a process whereby a person may challenge information reported by the Commissioner to the Nationwide Mortgage Licensing System and Registry. (NRS 645F.292, 645F.293) Existing regulations prescribe this procedure and require that certain information relating to a challenge be sent by regular mail. (NAC 645B.510) **Section 5** of this regulation authorizes such information to be sent by electronic mail.

Existing regulations require an independent licensee who terminates the employment of or association with an associated licensee to deliver or send by certified mail to the Commissioner a written statement concerning the termination and certain additional information concerning the associated licensee. (NAC 645F.330) Existing regulations similarly require an associated licensee who terminates his or her employment by or association with an independent licensee to deliver or send by certified mail to the Commissioner a written statement concerning the termination and a copy of certain notice provided to the independent licensee. (NAC 645F.335) **Sections 7 and 8** of this regulation instead require an independent licensee or associated licensee who terminates his or her employment by or association with an associate licensee or independent licensee, respectively, to notify the Commissioner of the termination in a format prescribed by the Commissioner. **Section 8** also removes the requirement that an associated licensee provide the Commissioner a copy of the notice provided to the independent licensee.

Section 1. NAC 645A.290 is hereby amended to read as follows:

645A.290 1. An escrow agency may not close its principal office or a branch office until:

(a) The escrow agency has ~~+~~

~~—(1) Returned its original license; and~~

~~—(2) Submitted~~ *submitted* to the Commissioner *in a format prescribed by the*

Commissioner a request for approval of the closure of the office pursuant to subsection 2; and

(b) The Commissioner has approved the closure.

2. A request for approval of the closure of the principal office or a branch office of an escrow agency must include:

(a) The status of any incomplete escrow agreements and the manner in which they will be finalized;

(b) An accounting and reconciliation of any trust account maintained by the escrow agency and the plan for distribution of the money in the account;

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

(d) The location where records of the office will be maintained and the name, telephone number and mailing address of the custodian who will be responsible for the maintenance of the records.

Sec. 2. NAC 645B.057 is hereby amended to read as follows:

645B.057 1. Any material change in the control persons of a mortgage broker must be reported to the Commissioner at least 30 calendar days before the change. Each new control person must submit to a background investigation in the manner provided in NRS 645B.020. A new control person may not participate in the management of a mortgage broker until the person is approved by the Commissioner.

2. A change of control of a mortgage broker is not effective until the change of control is approved by the Commissioner. A transfer, sale or conveyance of outstanding voting stock or ownership interest in a mortgage broker that will result in the cumulative transfer, from the date upon which the license of the mortgage broker was issued, of 25 percent or more of the

outstanding voting stock or ownership interest in the mortgage broker is deemed to constitute a change of control.

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

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

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

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

5. A mortgage broker who wishes to change the location of his or her principal office or branch office must ~~file~~ *submit to the Commissioner, in a format prescribed by the Commissioner*, a request ~~[with the Commissioner, return his or her original license]~~ for ~~the~~ *approval to change the location of his or her* principal office or branch office. ~~to~~ *Upon the request of* the Commissioner ~~and~~, *a mortgage broker shall* submit any additional information required by the Commissioner. A mortgage broker may not change the location of his or her

principal office or a branch office until the Commissioner has approved the transfer and issued a new license reflecting the change in location.

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

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

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

7. The request for approval of the surrender of the license or closure of the principal office ~~{of the mortgage broker}~~ or a branch office must *be submitted in a format prescribed by the Commissioner and* contain the following information:

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

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

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

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

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

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

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

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

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

Sec. 3. NAC 645B.235 is hereby amended to read as follows:

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

(a) Whether the mortgage broker or mortgage agent will be receiving compensation for acting as a mortgage broker or mortgage agent and as a real estate broker or real estate salesperson in the same transaction;

(b) That the borrower is under no obligation to allow the real estate broker or real estate salesperson to submit the loan package of the borrower to a mortgage broker or mortgage agent; and

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

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

(At least 14-point font)
BORROWER(S)

**ACKNOWLEDGMENT AND AGREEMENT CONCERNING
DUAL CAPACITY AS REAL ESTATE SALES AGENT
AND MORTGAGE LOAN AGENT**

(At least 12-point bold font)

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

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

(At least 10-point font)

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

- Real estate sales agent _____, hereinafter referred to as "agent," is also associated with _____ (mortgage broker/banker) and is acting in the dual capacity as both mortgage loan agent and real estate sales agent and shall receive compensation from the real estate sales transaction and separate compensation for arranging the mortgage loan.
- Real estate company _____ (check one of the following):

Does have a business relationship with the licensed mortgage broker/banker or exempt company to which your loan is referred. Because of this relationship, this referral may provide the real estate company named above a financial or other benefit.
Describe the nature of the relationship, including percentage of ownership interest, if applicable. _____

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

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

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

BORROWER

BORROWER

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

MORTGAGE BROKER/QUALIFIED EMPLOYEE/AGENT

If you have any questions regarding your mortgage loan agent or loan, please visit the

Division of Mortgage Lending website at ~~http://www.mld.nv.gov~~

~~https://www.mld.nv.gov~~ or call (702) 486-0782 . ~~in Las Vegas or (775) 684-7060 in~~

~~Northern Nevada.~~

3. As used in this section:

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

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

Sec. 4. NAC 645B.240 is hereby amended to read as follows:

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

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

3. A mortgage broker or mortgage agent may advertise jointly with a company licensed pursuant to chapter 624 or 645 of NRS if each business is disclosed separately in the

advertisement and each business incurs a pro rata share of the cost associated with the advertisement.

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

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

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

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

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

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

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

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

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

(a) Interest rates that are quoted in the advertisement and any corresponding annual percentage rates;

(b) Promoting another mortgage agent in the same format of advertisement;

(c) Promoting other branch offices in the same format of advertisement;

(d) Placing links on websites that direct the user to noncommercial or consumer education websites;

(e) Telephone or cellular phone numbers other than the phone number that the mortgage broker or mortgage agent has on file with the Division; and

(f) Changes to words used in the advertisement that do not alter the content of the advertisement.

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

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

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

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

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

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

- (a) Print media;
- (b) Sales literature;
- (c) Sales brochures or flyers;

(d) Billboards;

(e) ~~Yellow page listings if more than a line listing;~~

~~(f)~~ Radio and television advertisements;

~~(g)~~ (f) Mass mailings distributed by the United States Postal Service or another such delivery service or by electronic mail;

~~(h)~~ (g) Telephone or seminar scripts;

~~(i)~~ (h) Websites or other Internet sites that promote or accept loan applications ~~(j)~~, *including, without limitation, media platforms;* and

~~(j)~~ (i) Business cards.

Sec. 5. NAC 645B.510 is hereby amended to read as follows:

645B.510 1. The Division shall regularly report violations of this chapter and chapter 645B of NRS, enforcement actions and other relevant information, including, without limitation, violations of any applicable federal law or regulation, to the Registry pursuant to the protocols of the Registry.

2. A person may challenge information provided by the Division to the Registry.

3. A challenge must be sent in writing by regular mail *or electronic mail* to the Division and addressed to the Office of the Commissioner.

4. Once received, the Division shall consider the merits of a challenge and provide the person with a written reply which must be sent by regular mail *or electronic mail* to the person within 30 days after receipt of the challenge.

5. The person may send a written rebuttal within 30 days after receipt of the Division's reply by regular mail *or electronic mail* to the Division and addressed to the Office of the Commissioner.

6. Upon receipt of the written rebuttal, the Commissioner will make a written final decision concerning the written rebuttal and underlying challenge and send the final decision by regular mail *or electronic mail* to the person within 30 days.

7. If, pursuant to subsection 6, the Commissioner upholds a challenge, the Commissioner will promptly take action to correct the information submitted to the Registry.

8. The Commissioner will not submit a challenge, reply, rebuttal or final decision described in this section to the Registry unless otherwise required by law.

Sec. 6. NAC 645F.285 is hereby amended to read as follows:

645F.285 1. A licensee may not *surrender his or her license or* close ~~to~~ *his or her* principal office or a branch office until ~~;~~

~~—(a) The licensee has returned his or her license; and~~

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

2. The request for approval of the *surrender of the license or* closure of the principal office ~~of the licensee~~ or a branch office ~~of the licensee~~ must *be submitted in a format prescribed by the Commissioner and* contain the following information:

(a) The status of any incomplete contracts for covered services and the manner in which they will be finalized;

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

(c) If any person employed by or otherwise associated with the licensee has been terminated from such employment or association, evidence of the termination; and

(d) The location within or outside of this State where records of the licensee will be maintained.

Sec. 7. NAC 645F.330 is hereby amended to read as follows:

645F.330 If an independent licensee terminates the employment of or association with an associated licensee for any reason, the independent licensee shall, not later than the third business day following the date of termination:

1. Deliver to the associated licensee or send by certified mail to the last known residence address of the associated licensee a written statement which advises the associated licensee:

(a) Of the termination of the associated licensee's employment by or association with the independent licensee; and

(b) That the termination is being reported to the Commissioner; and

2. ~~{Deliver or send by certified mail to}~~ *Notify* the Commissioner ~~};~~

~~—(a) A written statement that the independent licensee has terminated the employment of or association with the associated licensee; and~~

~~—(b) The license or license number}~~ of the ~~{associated licensee.}~~ *termination in a format prescribed by the Commissioner.*

Sec. 8. NAC 645F.335 is hereby amended to read as follows:

645F.335 If an associated licensee terminates his or her employment by or association with an independent licensee for any reason, the associated licensee shall, not later than the third business day following the date of termination:

1. Deliver to the independent licensee or send by certified mail to the last known business address of the independent licensee a written statement which advises the independent licensee:

(a) Of the termination of the associated licensee's employment by or association with the independent licensee; and

(b) That the termination is being reported to the Commissioner; and

2. ~~{Deliver or send by certified mail to}~~ **Notify** the Commissioner ~~};~~
- ~~—(a) The license numbers of the associated licensee and the independent licensee;~~
 - ~~—(b) A written statement}~~ of the ~~{circumstances surrounding the}~~ termination ~~}; and~~
 - ~~—(c) A copy of the written statement that the associated licensee delivered or mailed to the independent licensee pursuant to subsection 1.}~~ **in a format prescribed by the Commissioner.**

Sec. 9. NAC 645F.982 is hereby amended to read as follows:

645F.982 1. ~~{A licensee may surrender a license by delivering to the Commissioner the original license, if applicable, with written notice that the licensee surrenders the license.~~

~~—2.— A licensee whose original license has been destroyed or lost may comply with this section by submitting to the Commissioner a notarized affidavit of the loss accompanied by written notice that the licensee surrenders the license.~~

~~—3.}~~ A licensee may not surrender ~~{a}~~ **his or her** license or close his or her principal office until ~~};~~

~~—(a) The licensee has returned his or her original license or licenses; and~~

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

~~{4.}~~ **2.** The request for approval of the **surrender of the license or** closure of the principal office ~~{of the licensee}~~ must be **submitted** in the ~~{form}~~ **format prescribed by the Commissioner** and contain the information prescribed by the Commissioner.