

LCB File No. 154-98

PROPOSED REGULATION OF THE FINANCIAL INSTITUTIONS DIVISION

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Adoption of Regulations of the Financial Institutions Division,
Department of Business and Industry

The Financial Institutions Division will hold a public hearing at 9:00 AM, on Thursday, September 24, 1998, at The Nevada State Library, Boardroom, 100 Stewart Street, Carson City, Nevada 89710, and at 10:00 AM on Friday September 25, 1998 at the Manufactured Housing Division, Conference Room, 2501 E. Sahara Avenue, Suite 204, Las Vegas, Nevada 89104. The purpose of the hearing is to receive comments from all interested persons regarding the adoption and amendment of regulation that pertain to chapter 645B of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.060:

1. The need for and the purpose of the proposed regulation or amendment.

To provide greater protection to member of the public dealing with mortgage companies as either investors or potential borrowers.

2. Either the terms or the substance of the regulations to be adopted, amended or repealed, or a description of the subjects and issues involved.

See attached regulations.

3. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case must include:

- (a) Both adverse and beneficial effects; and

The regulations will increase copying and mailing costs to the licensee, but will provide potential investors with more information with which to make an informed decision. There should be little or no additional costs incurred for the disclosures required on advertising material, but will alert potential borrowers that the advertisement material is not a negotiable check.

- (b) Both immediate and long-term effects.

The immediate effect of the regulations is to prohibit mortgage companies from having an investor waive the requirements of being provided with documentation; to require appraisals from Nevada licensed appraisers; and to place warning on certain advertisements. The long term effect is to provide greater disclosure to the public, relating to potential mortgage transactions.

4. The estimated cost to the agency for enforcement of the proposed regulation.

Minimal.

5. A description of and citation to any regulation or other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

N/A

6. If the regulation is required pursuant to federal law, a citation and description of the federal law.

N/A

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

N/A

8. Whether the proposed regulation establishes a new fee or increases an existing fee.

N/A

Persons wishing to comment upon the proposed action of the Division of Financial Institutions may appear at the scheduled public hearings or may address their comments, data, views or arguments, in written form, to Commissioner, Division of Financial Institutions, 406 East Second Street, Suite 3, Carson City Nevada 89701-4758. Written submission must be received by the Division of Financial Institutions on or before September 24, 1998. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Division of Financial Institutions may proceed immediately to act upon any written submissions.

A copy of this notice and the proposed regulation to be adopted or amended will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation will be available at Financial Institutions Division, 406 E. Second Street, Suite 3, Carson City, Nevada 89701-4758, (702) 687-4259 and Financial Institutions Division, 2501 E. Sahara Avenue, Suite 300, Las Vegas, Nevada 89104, (702) 486-4120, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations: (see attached list).

NEVADA COUNTY PUBLIC LIBRARIES	93 Main Street P.O. Box 330 Pioche, NV 89043	Reno, NV 89505 (301 South Center)
Attn: Barbara Mathews, Director Carson City Library Churchill County Library 5553 S. Maine Street Fallon, NV 89406	Attn: Christian Freer-Parsons, Director Lyon County Library 20 Nevin Way Yerington, NV 89447	Attn: Lori Romero, Director White Pine County Library 950 Campton Street Ely, NV 89301
Attn: Darryl Batson, Director Las Vegas - Clark County Library Las Vegas Blvd., North 833 Las Vegas, Boulevard N. Las Vegas, NV 89101	Attn: Steve Schlatter, Director Mineral County Library P.O. Box 1390 Hawthorne, NV 89415\ (First & A Street)	Attn: Lynn Chambliss, Director Battle Mountain Branch Library (Lander County) P.O. Box 141 Battle Mountain, NV 89820
Attn: Sara Jones, Director Douglas County Library Elko County Library Minden, NV 89423 720 Court Street Elko, NV 89801	Goldfield Public Library P.O. Box 430 Goldfield, NV 89013	Attn: Sally Edwards, Director Carson City Library 900 N. Room Street Carson City, NV 89701
Esmeralda County: Goldfield Public Library P.O. Box 430 Goldfield, NV 89013 (Fourth & Crook Street)	Attn: Diane Hartsock, Director Tonopah Public Library P.O. Box 449 Tonopah, NV 89049 (171 Central Street)	Attn: Carolyn Rawles-Heiser, Director Douglas County Library P.O. Box 337 Minden, NV 89423
Attn: Lauri Oki, Director Eureka Branch Library P.O. Box 293 Eureka, NV 89316	Attn: Jeanne Munk, Director Pershing County Library P.O. Box 781 Lovelock, NV 89419 (1125 Central Avenue)	
Attn: Sherry Allen, Director Humboldt County Library 85 East 5th Street Winnemucca, NV 89445	Storey County Library P.O. Box 14 Virginia City, NV 89440 (95 South R Street)	
Lincoln County Library	Attn: Nancy Cummings, Director Washoe County Library P.O. Box 2151	

LCB File No. R154-98

Proposed Regulation of the Division of Financial Institutions

Regulation of Mortgage Companies

August 20, 1998

EXPLANATION--Matter in italics is new, matter in brackets [] is material to be omitted.

Purpose: To amend the regulations pertaining to waiver of rights to review documentation relating to mortgage investments, standards for appraisals and approval of proposed advertising material used by licensed mortgage companies.

Authority: NRS 645B.060(2); 645B.189

Address of Agency: The agency promulgating this regulation is the Commissioner of Financial Institutions (Commissioner), whose address is 406 East Second Street, Carson City, Nevada 89710. The Commissioner is being advised and assisted by the Nevada Attorney General's Office in the drafting of these regulations. The contact person is Doug Walther, Senior Deputy Attorney General, Attorney General's Office, Capital Complex, Carson City, Nevada 89710, phone (702) 687-6421, FAX (702) 687-5798.

Section 1. NAC 645B.080 is hereby amended to read as follows:

1. Before a lender who is a natural person makes a loan for which a licensed mortgage company is acting as a broker, the mortgage company shall provide [, unless specifically waived in writing,] to the lender:

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

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

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

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

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

(f) A statement of the status of prior liens against the property which is proposed as security, including the current balance of the liens and the status of payments.

(g) An appraisal of the property which is proposed as security.

2. A mortgage company shall retain a copy of the materials it has provided to a lender pursuant to subsection 1.

3. If the loan is made, the mortgage company shall retain in its files and provide to the lender:

- (a) A copy of the promissory note;
- (b) A recorded copy of the deed of trust securing the loan;
- (c) A copy of the policy of title insurance on the property securing the loan;
- (d) A copy of a policy of fire insurance which is adequate to cover all liens on the property securing the loan, including an endorsement naming the lender as the insured, when applicable;
- (e) A copy of a statement signed by each lender acknowledging that the decision to make the loan was made after the lender was provided with the material required in subsection 1;
- (f) If the lender is a corporation or partnership, a copy of its statement authorizing the loan; and
- (g) If the borrower is a corporation or partnership, a copy of its statement authorizing the loan.

4. If the loan is made, the mortgage company shall provide the borrower with at least the items listed in paragraphs (a), (b) and (c) of subsection 3.

5. The mortgage company shall store its original notes, if retained, in a fireproof container.

Sec. 2. NAC 645B.100 is hereby amended to read as follows:

All decisions regarding the funding of investments in mortgages must be made by the lender [unless the authority to make those decisions is otherwise delegated to the mortgage company by contract].

Sec. 3. NAC 645B.110 is hereby amended to read as follows:

1. A licensed mortgage company shall not represent an activity which is not licensed under chapter 645b of NRS as being licensed under that chapter.

2. 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 licensed mortgage company must include in its advertisements:

- (a) Its name; and
- (b) A description of any licensed activity mentioned in an advertisement, written in nontechnical terms.

4. Any advertising material, including an envelope containing advertising material, that simulates the appearance that a check is enclosed or is a communication from a government entity shall not be approved for use unless:

(a) The words "THIS IS NOT A CHECK," "NOT NEGOTIABLE" and "THIS IS NOT A GOVERNMENT ENTITY", as appropriate, appear prominently on the envelope and any other material that appears to represent a check or a communication from a government entity;

(b) In the case of material that simulates the appearance of a check, the material may not contain an ABA number or micro-encoding or any other marks intended to create the appearance that the material is actually a negotiable check.

Sec. 4. NAC 645B.120 is hereby amended to read as follows:

1. An appraisal submitted to a lender pursuant to NAC 645B.080 must [:

(a) Be written in an objective manner so that a third person can follow the reasoning, logic and analysis of the appraiser in his determination of the final estimate of the market value of the property.

(b) Be dated by the appraiser before the date on which a loan which is secured by the appraised property is made.

(c) Contain an objective, concise description of the neighborhood, the site of the property and any improvements made to the property.

(d) Contain an estimate of the value of the property, formulated according to each of the approaches customarily used by appraisers (cost, market data and income), as applicable.

(e) Contain a statement from the appraiser in which he explains any difference in his estimate of the value of the property and the values formulated according to the customarily accepted approaches.

2. An appraisal must] be prepared by an appraiser who *holds the appropriate license or certification issued by the Nevada Real Estate Division.* [:

(a) Is professionally designated by a major, nationally recognized society of appraisers;

(b) Is approved by the Federal National Mortgage Association; or

(c) Has verifiable experience or training in the amount necessary to prepare an appraisal in accordance with the guidelines set forth by the association or those societies.]

Sec. 5. NAC 645B.140 is hereby amended to read as follows:

1. Before a person purchases an existing note secured by a deed of trust for which a licensed mortgage company is acting as a broker, the mortgage company shall provide to the purchaser [**unless specifically waived in writing**]:

(a) A copy of the promissory note;

(b) A record of the history of payments on the note or a document signed by the seller and borrower stating the existing balance of the note;

(c) The policy of title insurance for the original beneficiaries of the note; and

(d) The original appraisal of the property securing the note, if available.

2. A mortgage company shall retain a copy of the materials it provides to the purchaser pursuant to subsection 1.

3. If the purchase is made, the mortgage company shall retain in its files the original or a copy and provide to the purchaser, respectively, the copy or original of the following documents:

(a) The promissory note and the assignment of the note.

(b) The recorded deed of trust and recorded assignment of the beneficial interest.

(c) The endorsement to the policy of title insurance or a new policy of title insurance for the assignment.

(d) A policy of fire insurance indicating coverage in an amount sufficient to cover all liens

on the property including, if applicable, an endorsement naming the purchaser as a payee in case of loss.

(e) A statement signed by the purchaser acknowledging that the decision to purchase the note secured by a deed of trust was made after the purchaser was provided with and reviewed the material required in subsection 1.