

**ADOPTED REGULATION OF THE  
COMMISSIONER OF FINANCIAL INSTITUTIONS**

**LCB File No. R045-00**

Effective September 5, 2000

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

AUTHORITY: §§1, 2, 5-13, 20, 24-30, 32, 33, 35-42, NRS 645B.060; §§3, 4 and 23, NRS 645B.060 and 645B.700; §§14 and 31, NRS 645B.060 and 645B.080; §15, NRS 645B.060 and 645B.115; §16, NRS 645B.060, 645B.185 and 645B.186; §17, NRS 645B.060 and 645B.185; §§18 and 19, NRS 645B.060 and 645B.330; §21, NRS 645B.060 and 645B.450; §22, NRS 645B.060 and 645B.600; §34, NRS 645B.060 and 645B.189.

**Section 1.** Chapter 645B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 23, inclusive, of this regulation.

**Sec. 2.** *As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 645B.0103 to 645B.0135, inclusive, and sections 3, 4 and 5 of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Major violation” means a violation of the provisions of this chapter or chapter 645B of NRS:*

*1. Which causes substantial loss or harm to any person, or which, in the opinion of the commissioner, could have caused substantial loss or harm to any person;*

*2. For which the commissioner has taken disciplinary action repeatedly, except a violation for the late filing of required reports, financial statements or fees that the commissioner considers to be a minor violation; or*

*3. Which, in the opinion of the commissioner, was the result of willful misconduct or indifference to the obligations of the mortgage broker pursuant to this chapter or chapter 645B of NRS.*

*Sec. 4. "Minor violation" means any violation that is not a major violation.*

*Sec. 5. "Qualified employee" means:*

*1. A director, officer, member, employee, manager or trustee of a partnership, corporation or limited-liability company designated by the partnership, corporation or limited-liability company pursuant to section 12 of this regulation to act on the behalf of the partnership, corporation or limited-liability company; or*

*2. A person designated by a sole proprietorship who satisfies the requirements set forth in subsection 3 of NRS 645B.020, NAC 645B.010 and section 12 of this regulation.*

*Sec. 6. A person does not hold himself out as being able to perform the services described in NRS 645B.0127 if he only offers to provide money to invest in loans secured by an interest in real property to:*

*1. A mortgage broker licensed pursuant to chapter 645B of NRS; or*

*2. A person exempt from the provisions of chapter 645B of NRS.*

*Sec. 7. A person who has an unexpired certificate of exemption issued pursuant to chapter 645B of NRS shall be deemed to have an unexpired certificate of exemption issued pursuant to chapter 645E of NRS.*

*Sec. 8. 1. A mortgage broker shall not conduct business using a fictitious name unless the mortgage broker:*

*(a) Complies with chapter 602 of NRS;*

*(b) Files with the division a certified copy, issued by the appropriate county clerk, of the certificate filed by the mortgage broker pursuant to chapter 602 of NRS; and*

*(c) Receives from the division a license or certificate of exemption indicating the fictitious name.*

*2. If a mortgage broker conducts business using a fictitious name pursuant to this section, the mortgage broker may conduct business using a new fictitious name only if the mortgage broker:*

*(a) Obtains a certified copy, issued by the appropriate county clerk, of the certificate filed by the mortgage broker pursuant to chapter 602 of NRS indicating the new fictitious name;*

*(b) Files with the division, not later than 10 calendar days after obtaining the certified copy pursuant to paragraph (a):*

*(1) The certified copy obtained pursuant to paragraph (a); and*

*(2) The current license or certificate of exemption of the mortgage broker; and*

*(c) Receives from the division an amended license or certificate of exemption indicating the new fictitious name.*

**Sec. 9. 1.** *The division 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.*

*2. A mortgage broker shall not conduct business using a name other than the name approved by the division and indicated on the license or certificate of exemption issued by the division to the mortgage broker.*

**Sec. 10. 1.** *If a person engages in an activity in violation of the provisions of this chapter or chapter 645B of NRS, the commissioner may issue an order to the person directing the person to cease and desist from engaging in the activity.*

*2. The order to cease and desist must be in writing and must state that, in the opinion of the commissioner, the person has engaged in an activity:*

*(a) For which the person has not received a license or certificate of exemption as required by chapter 645B of NRS; or*

*(b) In a manner that violates the provisions of this chapter or chapter 645B of NRS.*

*3. A person who receives an order to cease and desist pursuant to this section shall not engage in any activity governed by chapter 645B of NRS after he receives the order unless the order is suspended or rescinded.*

*4. Not later than 30 calendar days after receiving an order pursuant to this section, the person who receives the order may file a verified petition with the commissioner to request a hearing. Upon receipt of the verified petition, the commissioner may, for good cause shown, suspend the order pending the hearing. The commissioner will hold the hearing on a date not later than 30 calendar days after the date the petition is filed unless the commissioner and the person agree to another date. The order to cease and desist is rescinded if the commissioner fails to:*

*(a) Hold a hearing:*

*(1) Not later than 30 calendar days after the date the petition is filed; or*

*(2) On a date agreed to by the commissioner and the person; or*

*(b) Render a written decision within 45 days after the date the hearing is concluded.*

*5. The decision of the commissioner after a hearing is a final decision of the division for the purposes of judicial review.*

**Sec. 11.** *1. The commissioner will refer to the appropriate federal or state agency for investigation and appropriate action each suspected violation of:*

*(a) The Truth in Lending Act, 15 U.S.C. §§ 1601 to 1667f, inclusive, including, without limitation, the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1639, or Regulation Z, 12 C.F.R. Part 226.*

*(b) The Equal Credit Opportunity Act, 15 U.S.C. §§ 1691 to 1691f, inclusive, or Regulation B, 12 C.F.R. Part 202.*

*(c) The Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 to 2617, inclusive, or Regulation X, 24 C.F.R. Part 3500.*

*2. For the purposes of NRS 645B.670, a mortgage broker commits a violation if the mortgage broker:*

*(a) Engages in a deceptive trade practice as defined in chapter 598 of NRS; or*

*(b) Fails to refund any fees collected in excess of the actual cost the mortgage broker incurs or pays for any appraisal, credit report or any other product or service provided by a third party in connection with the making of a loan.*

**Sec. 12.** *1. Every partnership, corporation or limited-liability company doing business as a mortgage broker in this state shall designate a qualified employee who may, upon approval of the commissioner, act on behalf of the partnership, corporation or limited-liability company.*

*2. The commissioner will approve the qualified employee designated pursuant to subsection 1 if the qualified employee meets the requirements of an applicant for a license as a mortgage broker pursuant to chapter 645B of NRS.*

*3. The approval issued by the commissioner entitles the qualified employee to act pursuant to the terms and conditions of the license issued to the partnership, corporation or limited-liability company by the commissioner pursuant to chapter 645B of NRS, but only as a qualified employee of the partnership, corporation or limited-liability company, and not on his own behalf.*

*4. 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 as defined in section 5 of this regulation, the partnership, corporation or limited-liability company 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 partnership, corporation or limited-liability company that the initial qualified employee designated pursuant to subsection 1 is not approved; or*

*(2) The qualified employee ceases to be a qualified employee as defined in section 5 of this regulation; or*

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

**Sec. 13. 1.** *Except as otherwise provided in subsection 3, if a mortgage broker acts on behalf of investors on a matter related to a mortgage loan, and if the beneficial interest in the loan belongs to more than one natural person, the documentation of the matter must include provisions to allow the holders of 51 percent or a greater specified percentage of the beneficial interests of record to act on behalf of all the holders of the beneficial interests of record in the*

*event of a default or foreclosure for matters that require the direction or approval of the holders of the beneficial interests in the loan, including, without limitation:*

*(a) The designation of the mortgage broker, servicing agent or other person to act on the behalf of the holders of the beneficial interests in the loan; and*

*(b) The sale, encumbrance or lease of real property owned by the holders resulting from a foreclosure or the receipt of a deed in lieu of a foreclosure.*

*2. The provisions required by this section may be included in the deed of trust, the assignment of interest or any other documentation that binds the mortgage broker and the investors.*

*3. The provisions of this section do not apply to a transaction involving two investors with equal interests.*

**Sec. 14.** *The mortgage broker shall retain records of all his completed mortgage transactions for a period of at least 6 years after the date of the last activity relating to the transaction. After a record has been retained 2 or more years, the mortgage broker may cause the record to be reproduced by the microphotographic process, optical disk imaging or any other equivalent technique designed to ensure an accurate reproduction of the original record. 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.*

**Sec. 15.** *For the purpose of determining the net worth of a mortgage broker pursuant to NRS 645B.115, the commissioner will interpret the term “net worth” to mean the amount by which the assets of a mortgage broker exceed his liabilities, calculated in accordance with generally accepted accounting principles where the mortgage broker:*

*1. Must exclude any intangible and any amount receivable by the mortgage broker that is related to the intangible; and*

*2. May exclude any shareholder debt that is subordinated.*

**Sec. 16. 1.** *The commissioner will not consider escrow instructions to have been “approved by the parties” within the meaning of subparagraph (2) of paragraph (a) of subsection 1 of NRS 645B.175 if the instructions:*

*(a) Are signed by the mortgage broker as attorney in fact for any investor with an interest in the loan; and*

*(b) Direct that all money relating to the transaction, except money for charges or fees due the mortgage broker, be paid to an owner, partner, director, officer, manager, member or employee of the mortgage broker or a relative of an owner, partner, director, officer, manager, member or employee of the mortgage broker.*

*2. The commissioner will consider “money paid to a mortgage broker and his mortgage agents by a person in full or partial payment of a loan” within the meaning of subsection 4 of NRS 645B.175 to include money paid to a mortgage broker or his mortgage agents by a person pursuant to written escrow instructions if the payment represents money paid in full or partial repayment of a loan secured by a lien on real property.*

*3. The commissioner will consider a mortgage broker or mortgage agent to “accept money from an investor to acquire ownership of or a beneficial interest in a loan secured by a lien on real property” within the meaning of NRS 645B.185 and 645B.300 if the mortgage broker or mortgage agent:*

*(a) Receives money from an investor to acquire ownership of or a beneficial interest in a loan secured by a lien on real property; or*



*(b) Arranges for the investor to pay money to a third party to invest in a loan secured by a lien on real property.*

*4. The disclosure form given to an investor pursuant to NRS 645B.185 must be in substantially the following form:*

*(At least 14-point bold type)*

***MORTGAGE INVESTMENT DISCLOSURE FORM***

*(At least 10-point type)*

***IMPORTANT: Pursuant to NRS 645B.185, each investor must sign and date a disclosure form before a mortgage broker or mortgage agent accepts money for the investment. This form must be executed for each separate loan in which the investor invests money. A mortgage broker or mortgage agent may not act as the investor's attorney in fact or agent in the signing or dating of this form and may not by agreement alter or waive these disclosure requirements.***

***Description*** \_\_\_\_\_ ***of***  
***loan:*** \_\_\_\_\_

*(At least 14-point bold type)*

***BEFORE YOU INVEST IN A PROMISSORY NOTE SECURED BY  
AN INTEREST IN REAL PROPERTY, YOU SHOULD KNOW . . .***

*The funding of a loan or purchase of a promissory note that is secured by a lien on real property (mortgage loan) is an investment that involves some risk.*

*(At least-10 point type)*

*An investment in a promissory note secured by a lien on real property, usually through a deed of trust (mortgage loan or mortgage loan investment), like most investments involves the risk that the investment will not perform as expected. The mortgage broker with whom you are dealing is not a depository institution, and a deed of trust investment is not secured by any depository insurance or insured or guaranteed by any agency of the State of Nevada or the Federal Government. Nevada law prohibits the mortgage broker with whom you are dealing from representing or even implying to you that he will ensure or guarantee that the investment will perform as expected. The borrower on the loan may default in required payments, and you may lose all or part of the principal amount you invested and/or the interest you expected to earn from the investment.*

*Some of the most significant factors that affect your risk in a mortgage loan investment include: (1) the knowledge, experience and integrity of the mortgage broker with whom you are dealing; (2) the market value and equity of the property that will secure the promissory note; (3) the borrower's financial standing and creditworthiness; (4) the escrow process involving the funding of the loan or purchase of the note; (5) the documents and instruments describing, evidencing and securing the loan; (6) the provisions regarding the collection and servicing of the loan; and (7) the provisions for enforcement of the deed of trust.*

*(At least 14-point bold type)*

*You are entitled to information about the mortgage broker with whom you are investing.*

*(At least 10-point bold type)*

*You are entitled to receive information regarding the mortgage broker with whom you are dealing from the Division of Financial Institutions, which may be contacted at either one of the following locations:*

<i>Division of Financial Institutions</i>	<i>Division of Financial Institutions</i>
<i>406 E. Second Street, Suite 3</i>	<i>2501 E. Sahara Avenue, Suite 300, Third</i>
<i>Floor</i>	
<i>Carson City, Nevada 89701-4758</i>	<i>Las Vegas, Nevada 89104</i>
<i>(775) 687-4259</i>	<i>(702) 486-4120</i>

*You have the right to request the mortgage broker with whom you are dealing to authorize the Division of Financial Institutions to release to you the most recent financial statement of the mortgage broker on file with the Division. YES, I would like to review a financial statement.*

*NO, I would not like to review a financial statement.*

*Disclosures required by subparagraphs (3) and (4) of paragraph (b) of subsection 6 of NRS 645B.185:*

*Has any disciplinary action been taken by the commissioner against the mortgage broker or any general partner, officer or director of the mortgage broker within the preceding 12 months? YES NO. If yes, describe below:*

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*Has the mortgage broker or any general partner, officer or director of the mortgage broker been convicted within the preceding 12 months for violating any law, ordinance or regulation that involves fraud, misrepresentation or a deceitful, fraudulent or dishonest business practice? YES NO. If yes, describe below:*

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*You also have the right, pursuant to subsection 3 of NRS 645B.090, to ascertain from the Division of Financial Institutions:*

- Whether the Division of Financial Institutions has disciplined the mortgage broker during the immediately preceding 5 years.*
- The findings and results of any investigation against the mortgage broker pursuant to the provisions of chapter 645B of NRS which was completed during the immediately preceding 5 years and which resulted in a finding by the commissioner that the mortgage broker committed a violation of a provision of this chapter or Chapter 645B of NRS or an order of the commissioner.*

*(At least 14-point bold type)*

*You are entitled to have a written appraisal of the property that is to secure your deed of trust investment as well as other information relating to the property.*

*(At least 10-point type)*

*The law requires the mortgage broker with whom you are dealing to obtain and make available for your inspection a written appraisal of the real property which is to secure the mortgage loan investment unless you specifically waive in writing your right to have the appraisal performed. An appraiser who is licensed or certified to perform real estate appraisals in this state must perform the appraisal if the property is located in this state. The mortgage broker with whom you are dealing is prohibited from performing the appraisal or providing any estimate or opinion of the value of the property that is to secure the mortgage loan investment, unless the mortgage broker is certified or licensed to perform the appraisal pursuant to chapter 645C of NRS. You are entitled to a copy of the appraisal upon request.*

*I waive my right to an appraisal for this loan. \_\_\_\_\_ Investor:*

*I wish to review an appraisal for this loan. \_\_\_\_\_ Date:*

*In addition to a written appraisal, you are entitled to know whether the real property that will secure the loan is encumbered by any other liens and, if so, the priority of each such lien, the amount of debt secured by each such lien and the current status of that debt, including, without limitation, whether the debt is being paid or is in default.*

*The real property that will secure this loan is is not encumbered by any other liens. If other liens exist, describe, for each lien:*

*Description:* \_\_\_\_\_

*Amount encumbered:* \_\_\_\_\_

*Priority:* \_\_\_\_\_

*Current status:* \_\_\_\_\_

*(At least 14-point type)*

*You are entitled to review information relating to the financial standing and creditworthiness of the borrower and documentation relating to the mortgage loan. Pursuant to NAC 645B.080, you will be asked to complete a form in which you acknowledge that you had the opportunity to receive and review that information and documentation.*

*You are entitled to review documentation relating to how the mortgage loan is funded and serviced.*

*(At least 10-point type)*

*Nevada law requires the mortgage broker to fund the entire amount of the loan either out of his trust account directly to the borrower or through a third-party escrow agent. In most cases, the loan will be funded through a third-party escrow agent. An escrow is opened when money, documents, instruments and written instructions regarding the transaction (escrow*

*instructions) are conditionally delivered by the principals to a third party (escrow agent). The escrow instructions set forth the conditions that must be satisfied or waived before the escrow agent may disburse your money to the borrower or the note holder. You have the right to review the escrow instructions. The escrow instructions should be consistent with your understanding of the loan transaction and should identify a specific promissory note and deed of trust (or interest therein). Escrow “closes” when all the conditions of the escrow instructions have been waived or satisfied, the instruments have been recorded and the money was disbursed. You have the right to review a closing statement relating to the escrow describing to whom and how the money was disbursed.*

*In many cases, including those cases where the investments consist of “fractionalized” interests, i.e., ownership of less than 100% of the mortgage investment, the loan requires servicing by an authorized agent. Loan servicing includes collecting payments from borrowers, disbursing payments to investors or note holders, mailing of appropriate notices, monitoring the status of senior liens and encumbrances, maintaining adequate insurance coverage and coordinating foreclosure proceedings. The mortgage broker with whom you are dealing is authorized by Nevada law to act as the servicing agent for the mortgage loan he originates. It is recommended that all persons investing in a mortgage loan which will be serviced by a servicing agent execute a written servicing agreement that clearly specifies the authority granted to the servicing agent. The servicing agreement should address issues such as: (1) the fees for servicing and how they are to be paid; (2) the person who has the authority to instruct the trustee under the deed of trust to commence foreclosure proceedings in the event of a default; (3) how, in the case of a “fractionalized” note and deed of trust with*

*multiple parties owning beneficial interests, the parties are to determine and direct the actions to be taken in the event of default or with respect to other matters that involve the enforcement of terms of the promissory note and/or deed of trust (Nevada law requires that the documentation pertaining to a note and deed of trust owned initially by more than one natural person include a provision by which record holders of 51% or a greater specified percentage of the beneficial interests in the mortgage loan may direct certain actions that require direction or approval of the holders of beneficial interests); (4) the identity of the person responsible for holding the original promissory note and deed of trust; (5) how the loan servicing agreement may be terminated by the investors in the mortgage loan; (6) the right to obtain the names, addresses and phone numbers of other persons with beneficial interests in the loan; and (7) the monitoring of any senior liens.*

*A mortgage broker performing loan servicing has an obligation to account to the borrower and every investor for money collected and disbursed in the exercise of that function.*

*(At least 14-point type)*

*You have the right to know whether the mortgage broker with whom you are dealing, or any relative of the mortgage broker, is acting in any capacity, or has any other interest, other than as a mortgage broker.*

*(At least 10-point type)*

*Nevada law requires the mortgage broker with whom you are dealing to disclose to you whether he, or any relative of his, has any personal interest in the mortgage loan other than as*



*a mortgage broker. For example, if the mortgage broker owns a 50% interest in the builder applying for a construction loan, the mortgage broker is required to disclose that interest to you. In addition, if a mortgage broker or a relative of the mortgage broker is licensed as, conducts business as or holds a controlling interest or position in (1) a construction control company, (2) an escrow agency, or (3) a title agent, a title insurer or an escrow officer of a title agent or title insurer, the mortgage broker must fully disclose that relationship to every investor, and may not require, as a condition to the acquisition or purchase of an interest in a mortgage loan, that the investor transact business with or use the services of the other business.*

*The mortgage broker, or a relative of the mortgage broker, has an interest in this loan in a capacity other than as a mortgage broker. YES NO. If yes, explain below:*

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*(At least 14-point type)*

*Collection of a promissory note and enforcement of a deed of trust involves some risk.*

*(At least 10-point type)*

*When the borrower on a mortgage loan fails to make required payments, the actions an investor can take, or that a servicing agent can take on behalf of an investor, are determined by provisions of Nevada law and the documents and instruments evidencing the mortgage loan. Frequently, the borrower who is delinquent on your loan is also delinquent on senior*

*liens. Even though your loan may be current, the borrower may fail to maintain the payments on senior liens, such as taxes, insurance premiums or deeds of trust. A breach of or default in connection with a senior lien by the borrower most likely constitutes an event of default under your deed of trust. It is therefore important that the status of all senior liens be monitored. Before investing in a junior deed of trust, you should determine the amount of debt service (payments) required to maintain the senior lien(s). To protect your investment during any senior lien (loan) foreclosure, it may be necessary for you to maintain the payments (with your own money) on all senior liens. You may lose your interest in the property securing the loan if a senior lien forecloses on the property.*

*There will be other costs associated with enforcing a mortgage loan such as attorney's fees and processing fees, and there will likely be a delay of some months before the foreclosure process is complete. Issues such as whether to commence a judicial or nonjudicial foreclosure, deficiency judgments, rents and profits if the property is income-producing, and bankruptcy may also need to be addressed.*

*(At least 14-point type)*

*If you have questions.*

*(At least 10-point type)*

*If you have any questions regarding any of the issues discussed in this disclosure form, discuss them with your mortgage broker, lawyer or financial advisor or a trusted friend or*

*family member. No one can guarantee that a particular investment will be risk free, but with information about the specific risks involved, you can take steps to minimize your risk.*

*Loan:* \_\_\_\_\_

*Investor signature required:* \_\_\_\_\_

*Title (if investor is a corporation, partnership or limited-liability company):* \_\_\_\_\_

*Dated:* \_\_\_\_\_

*5. If the investor is a corporation, the disclosure form required pursuant to NRS 645B.185 may be signed by any person authorized to sign the form on behalf of the corporation, except a mortgage broker or mortgage agent.*

*Sec. 17. 1. A mortgage broker may submit to the division a financial statement to be provided to an investor pursuant to subsection 3 of NRS 645B.185 that:*

*(a) Is dated not earlier than the last day of the most recently completed fiscal year; and*

*(b) Has been prepared from the books and records of the mortgage broker by an independent public accountant who holds a permit to engage in the practice of public accounting in this state that has not been revoked or suspended.*

*2. A financial statement submitted to the division by a mortgage broker pursuant to this section:*

*(a) Must contain a notation indicating that it is a financial statement to be provided to investors pursuant to subsection 3 of NRS 645B.185.*

*(b) Need not be audited, but the provisions of this section do not affect any obligation of the mortgage broker to submit an audited financial statement to the division pursuant to subsection 3 of NRS 645B.085.*

**Sec. 18.** *The power of attorney required pursuant to NRS 645B.330 must be in substantially the following form:*

*Special Power of Attorney*

*The undersigned, \_\_\_\_\_, does hereby appoint (name of mortgage broker) my true and lawful attorney, to perform services related to the following loan in which I own a beneficial interest: \_\_\_\_\_. The services to be performed are described below:*

*(Describe services here)*

*This power of attorney shall not be effective to authorize any transaction that subordinates the priority of the recorded deed of trust that secures this loan unless accompanied by a writing issued by the undersigned that consents to such subordination.*

*This power of attorney shall not be effective to authorize the use or release of money in which the undersigned owns a beneficial interest for any purpose except for the provision of the services described above relating to the loan described above unless accompanied by written authorization by the undersigned for the use or release of money for the other purpose.*

*This power of attorney is effective for a period of ~~[not more than 6]~~ \_\_\_\_ months after the date executed but may be extended for additional ~~[not more than 6]~~ \_\_\_\_ -month increments if authorized in writing by the undersigned. Only one such authorization may be given for an extension during each ~~[not more than 6]~~ \_\_\_\_ -month period.*

*I give and grant to my said attorney full power to execute in my name contracts, escrow instructions, conveyances, mortgages, deeds of trust, and all other documents necessary to carry out the services described herein as fully to all intents and purposes as the undersigned might or could do if personally present, hereby ratifying and confirming all that my said attorney shall lawfully do, or cause to be done, by virtue of these presents.*

*Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.*

*State of \_\_\_\_\_*

*County of \_\_\_\_\_*

*This instrument was acknowledged before me on (date) \_\_\_\_\_, by (name(s) of person(s) \_\_\_\_\_*

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*(Signature of notarial officer)*

*(Seal if any)*

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*(Title and rank (optional))*

*(My commission expires (optional) \_\_\_\_\_)*

*Approved by the commissioner of financial institutions on \_\_\_\_\_.*

**Sec. 19. 1.** *Before a mortgage broker or mortgage agent engages in any act or transaction on behalf of an investor pursuant to a power of attorney, the power of attorney must first be submitted to the commissioner for approval. The commissioner will, within 10 business days after receiving a request for approval of a power of attorney:*

*(a) Approve the power of attorney;*

*(b) Approve the power of attorney on the condition that the mortgage broker amend the power of attorney as directed by the commissioner; or*

*(c) Reject the power of attorney.*

**2.** *If the commissioner has not acted on a power of attorney submitted for approval pursuant to this section within 10 business days after receiving a request for approval of a power of attorney, the power of attorney shall be deemed approved.*

*3. The mortgage broker shall maintain in his file all written communications relating to the request for approval of the power of attorney.*

*4. Any writing executed or issued by a person extending the term of a power of attorney must be dated, and the mortgage broker shall maintain a copy of the extension in the file of the mortgage broker.*

*5. A power of attorney approved by the commissioner pursuant to this section must state the date that the commissioner approved the power of attorney. If the mortgage broker materially changes the power of attorney, the mortgage broker must resubmit the power of attorney to the commissioner for approval before the mortgage broker uses the power of attorney.*

*Sec. 20. In determining whether a mortgage broker has maintained adequate supervision of a mortgage agent, the commissioner will consider whether:*

*1. The mortgage broker has made a reasonable effort to investigate the background and experience of a prospective mortgage agent and hire only a mortgage agent whose background and experience indicate that the person is trustworthy and competent to conduct the business of a mortgage agent;*

*2. The mortgage broker has adopted and followed any policies and procedures, written or oral, relating to the supervision and training of mortgage agents;*

*3. The mortgage agent has followed the policies and procedures of the mortgage broker, written or oral, governing his activities;*

*4. The mortgage broker has established and followed a system of review for compliance with his written or oral policies and procedures;*

5. *The policies and procedures of the mortgage broker require regular review of the work of a mortgage agent;*

6. *The mortgage broker reviewed the work of the mortgage agent in the case under examination by the commissioner;*

7. *The policies and procedures of the mortgage broker include training in the requirements of this chapter and chapter 645B of NRS;*

8. *The mortgage broker makes copies of this chapter and chapter 645B of NRS available to mortgage agents;*

9. *The policies and procedures of the mortgage broker include a provision for continuing education for mortgage agents;*

10. *The mortgage broker spends a sufficient amount of time in the office where the mortgage agent is working;*

11. *The mortgage broker has received or acted on previous reports of alleged misconduct by the mortgage agent; and*

12. *Review of the previous work of the mortgage agent would have disclosed a problem with the conduct or issue being examined by the commissioner.*

**Sec. 21. 1.** *A mortgage broker and any mortgage agent must sign the registration form required pursuant to NRS 645B.450.*

2. *A mortgage agent may associate with or be employed by a mortgage broker at only one licensed office location of the mortgage broker and may not associate with or be employed by a mortgage broker who is exempt from the provisions of chapter 645B of NRS or whose office is located outside this state.*



3. *Upon request of a mortgage broker, the commissioner may waive the requirement of an investigation of the credit history, criminal history and background of a mortgage agent if such an investigation has been conducted within 1 year immediately preceding the date the registration form is submitted.*

4. *The registration of a mortgage agent pursuant to this section is effective upon the date that the mortgage broker files the form with the division, but must be invalidated by the division if, upon investigation, the division determines that the mortgage agent does not meet the requirements of paragraphs (a) and (b) of subsection 4 of NRS 645B.450. The division shall notify the mortgage broker and the mortgage agent in writing if a registration is invalidated pursuant to this subsection.*

5. *The report of an investigation of the credit history, criminal history and background of a mortgage agent is confidential, and the commissioner will release the report only pursuant to a valid subpoena or court order.*

6. *The written statement of the circumstances surrounding the termination of a mortgage agent required by subparagraph (1) of paragraph (b) of subsection 5 of NRS 645B.450 will be considered a public record.*

**Sec. 22. 1. A complaint filed pursuant to NRS 645B.600 must:**

*(a) Be in writing;*

*(b) Be signed by the person filing the complaint or the authorized representative of the person filing the complaint;*

*(c) Contain the address and telephone number of the person filing the complaint or the authorized representative of the person filing the complaint;*

*(d) Describe the nature of the complaint in as much detail as possible; and*

*(e) Include as exhibits copies of any documentation supporting the complaint.*

*2. If the commissioner determines that a complaint filed pursuant to subsection 1 contains an alleged action which, if true, violates a provision of this chapter or chapter 645B of NRS or an order of the commissioner, the commissioner will investigate each such violation alleged in the complaint, unless the commissioner has previously investigated the alleged violation.*

*3. Except as otherwise provided in subsection 2 of NRS 645B.090, if the commissioner does not conduct an investigation of an alleged violation pursuant to subsection 2 because the commissioner determines that the alleged action, if true, does not violate a provision of this chapter or chapter 645B of NRS or an order of the commissioner, the commissioner will provide to the person who filed the complaint a written summary of the reasons for his decision.*

*4. The commissioner will provide a copy of the written complaint to the person against whom the complaint is filed pursuant to NRS 645B.600 and may order the person to respond in writing to the written complaint within a period of time specified by the commissioner.*

**Sec. 23.** *The commissioner will suspend or revoke the license of a person who commits a major violation.*

**Sec. 24.** NAC 645B.010 is hereby amended to read as follows:

645B.010 ~~[1.]~~ An applicant for a ~~[mortgage company's]~~ license *as a mortgage broker* must have:

~~[(a)]~~ *1.* At least 2 years of verifiable experience in lending money for real estate or mortgages; and

~~[(b)]~~ 2. A knowledge of generally accepted accounting practices and bookkeeping procedures evidenced by verifiable experience in working in these areas or appropriate educational training, or both.

~~[(2.— If a qualified employee of the principal office or a branch office of a mortgage company is the person who satisfies the requirement for verifiable experience set forth in paragraph (a) of subsection 1, the qualified employee must also possess the qualifications set forth in subsection 3 of NRS 645B.020.)]~~

**Sec. 25.** NAC 645B.015 is hereby amended to read as follows:

645B.015 **1.** A person ~~[who]~~ conducts verifiable business as a mortgage ~~[company is one who:~~

~~—1.] broker if he:~~

(a) Handles the arrangements between a borrower and a lender for a loan which is secured by a lien on real property and is consummated as a result of such arrangements;

~~[(2.) (b)]~~ Originates a loan secured by a lien on real property in the capacity of a lender or provider; or

~~[(3.) (c)]~~ Purchases or sells existing notes secured by liens on real property.

**2.** Evidence of ~~[such]~~ activity *described in subsection 1* must be submitted to the commissioner ~~[of financial institutions]~~ in the monthly report of activity.

**Sec. 26.** NAC 645B.020 is hereby amended to read as follows:

645B.020 An applicant must submit with his application for a license ~~[(1)]~~ *pursuant to chapter 645B of NRS:*

**1.** A copy of his business license, when applicable, or his application for such a license if he has not obtained one.

2. A copy of the ~~[mortgage company's certificate of]~~ *certificate filed by the mortgage broker pursuant to chapter 602 of NRS indicating* the fictitious name of the ~~[business,]~~ *mortgage broker*, if any.

3. If the applicant is a corporation, a copy of:

(a) Its articles of incorporation and its bylaws;

(b) Its ~~[most recent biennial]~~ 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

(c) The most recent list of its officers ~~[-directors]~~ and resident agents ~~[which]~~ *that* is filed with the secretary of state.

4. 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 *general* partners for the 2 years immediately preceding the year of the application.

5. If the applicant is a corporation being organized, a copy of its proposed articles of incorporation and its bylaws.

*6. If the applicant is a limited-liability company, a copy of:*

*(a) Its articles of organization and operating agreement;*

*(b) A statement of the profit and loss of the limited-liability company for the 2 years immediately preceding the year of the application; and*

*(c) The most recent list of its members or managers, and resident agents, that is filed with the secretary of state.*

**Sec. 27.** NAC 645B.030 is hereby amended to read as follows:

645B.030 ~~[The commissioner of financial institutions will not approve a branch of a mortgage company until its principal office has been examined by the commissioner and has~~

~~received at least a satisfactory rating. An application for a license for a branch office must include evidence of adequate operating procedures and qualified personnel in order to ensure a lending quality which is equivalent to the mortgage company's principal office.]~~

*1. An applicant must submit with his application for a branch license:*

*(a) The name, residence address and telephone number of the qualified employee*

*designated to manage the branch office; and*

*(b) The registration form required pursuant to NRS 645B.450 for each mortgage agent who intends to work at the branch office.*

*2. The commissioner will approve an application for a branch office if:*

*(a) The principal office of the mortgage broker has been examined by the commissioner and has received at least a satisfactory rating;*

*(b) The mortgage broker has registered with the division pursuant to NRS 645B.450 any mortgage agent who intends to work at the branch office; and*

*(c) The commissioner approves a qualified employee 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. A license for a branch office may be issued only in the name in which the mortgage broker is licensed to conduct business at his principal office.*

*4. Each branch office must conspicuously display its license at the branch office.*

*5. A mortgage broker is responsible for and shall supervise:*

*(a) Each branch office of the mortgage broker; and*

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

**Sec. 28.** NAC 645B.040 is hereby amended to read as follows:

645B.040 **1.** Any material change in the ownership, management or principal employees of a mortgage ~~[company]~~ *broker at his principal office or a branch office* must be reported to the ~~[administrator of financial institutions]~~ *commissioner* within 30 *calendar* days after the change.

**2.** *If a person acquires stock or ownership in a mortgage broker as a result of a transfer that constitutes a change of control pursuant to NRS 645B.095:*

**(a)** A financial statement or a personal interrogatory, or both, of the prospective owner, partner, corporate shareholder, manager or employee must be submitted to the commissioner for his consideration ~~[ ]~~;

**(b)** *The person may not participate in the management of the mortgage broker until the commissioner has approved the transfer; and*

**(c)** *The mortgage broker may not change the location of his principal office or branch office until the commissioner has approved the transfer.*

**3.** *A mortgage broker may not close his principal office or a branch office until:*

**(a)** *The mortgage broker has returned his license; and*

**(b)** *The commissioner has approved the closure.*

**4.** *The request for approval of the closure of the principal office of the mortgage broker 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 broker and the plan for distribution of money in the account;*

*(c) If any mortgage agent associated with or employed by the mortgage broker has been terminated pursuant to subsection 5 of NRS 645B.450, evidence of the termination; and*

*(d) The location in this state where records of the mortgage broker will be maintained pursuant to subsection 1 of NRS 645B.080 and subsection 6 of NAC 645B.080.*

**Sec. 29.** NAC 645B.060 is hereby amended to read as follows:

645B.060 1. ~~[The commissioner of financial institutions]~~ *Except as otherwise provided in this subsection, the commissioner* will charge and collect a fee of \$40 per hour from each mortgage ~~[company]~~ *broker* for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 645B of NRS. *The commissioner may charge a fee of \$125 per hour for the time of an attorney required in any examination, investigation or hearing conducted pursuant to chapter 645B of NRS.*

2. The commissioner will bill each mortgage ~~[company]~~ *broker* upon the completion of the activity for the fee established in subsection 1. The fee must be paid within 30 *calendar* days after the date the bill is received. 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 ~~[a]~~ *the last* month, that the fee is not paid. The commissioner may waive the penalty for good cause.

3. Failure of a mortgage ~~[company]~~ *broker* to pay the fee required in subsection 1 as provided in this section constitutes grounds for *the imposition of any discipline authorized pursuant to NRS 645B.670, including, without limitation, the* revocation of ~~[its]~~ *his* license.

**Sec. 30.** NAC 645B.064 is hereby amended to read as follows:

645B.064 1. ~~[Except as otherwise provided in NAC 658.030, each mortgage company]~~ *Each mortgage broker* shall pay to the division ~~[of financial institutions of the department of~~

~~business and industry~~ an annual assessment ~~[of \$300]~~ *in an amount calculated in accordance with NAC 658.030* to cover the costs related to the employment of a certified public accountant and the performance of audits and examinations conducted by the division.

2. The division ~~[will]~~ *shall* bill each mortgage ~~[company]~~ *broker* for the assessment. The assessment must be paid within 30 *calendar* days after the date the bill is received.

3. A charge of 10 percent of the assessment will be imposed on any mortgage ~~[company]~~ *broker* whose assessment is received by the division after the date on which the assessment is due. *The commissioner may waive the penalty for good cause.*

**Sec. 31.** NAC 645B.070 is hereby amended to read as follows:

645B.070 1. Each mortgage ~~[company]~~ *broker* shall submit, ~~[on a monthly basis,]~~ *for each month, on a form approved by the commissioner,* a report on the volume of loans arranged in that month. ~~[These reports]~~ *If the mortgage broker is performing loan servicing and maintains any accounts described in subsection 4 of NRS 645B.175, the monthly report must include the information required pursuant to subsections 2 and 3. The monthly report* must be submitted to the commissioner ~~[of financial institutions]~~ by the 15th day of the month following the month for which the report was made. If no loans were arranged in that month, the report must ~~[so state:~~

~~—2.—The commissioner will not]~~ *state that fact.*

2. *If, on the last day of any month, a debtor has failed to make two or more consecutive payments in accordance with the terms of the loan, a mortgage broker who is performing loan servicing and maintains any accounts described in subsection 4 of NRS 645B.175 shall:*

*(a) Include in his report to the commissioner:*

*(1) The name, address and telephone number of the debtor;*



- (2) *The total number and amount of any payments made on the current delinquency;*
- (3) *The outstanding balance of the loan and any accrued interest on the last day of the month for which the report is submitted;*
- (4) *A statement of whether the loan has been declared to be in default and, if so, the nature of any actions that have been taken because of the default; and*
- (5) *The date on which the mortgage broker sent the notice to investors required pursuant to paragraph (b) of this subsection and paragraph (b) of subsection 1 of NRS 645B.260.*

*(b) Mail a notice containing the following information to the last known address of each investor who owns a beneficial interest in the loan not later than 15 days after the last day of each such month:*

- (1) *The name, address and telephone number of the debtor;*
- (2) *The total number of months and days that the debtor has failed to make a payment;*
- (3) *The outstanding balance of the loan and any accrued interest on the last day of the month for which the notice is submitted; and*
- (4) *A statement of whether the loan has been declared to be in default and, if so, the nature of any actions that have been taken because of the default.*

*3. If the mortgage broker is not servicing any loans in which a debtor has failed to make two or more consecutive payments in accordance with the terms of the loan, the monthly report required pursuant to subsection 1 must state that fact.*

*4. The mortgage broker must comply with the provisions of subsection 2 each month until:*

- (a) *The debtor or his designee remedies the delinquency in payments and any default; or*

*(b) The lien securing the loan is extinguished.*

*5. The commissioner may refuse to renew the license of a mortgage ~~[company which]~~ broker who has not submitted ~~[the reports]~~ a monthly report required by subsection 1 ~~[.]~~ for 1 or more of the preceding 12 months.*

**Sec. 32.** NAC 645B.080 is hereby amended to read as follows:

645B.080 1. Before ~~[a lender]~~ *an investor* who is a natural person makes a loan for which a licensed mortgage ~~[company]~~ *broker* is acting as a broker, the mortgage ~~[company]~~ *broker* shall provide, unless specifically waived in writing, to the ~~[lender:]~~ *investor*:

(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:]~~ *investor*.

(b) Evidence of the ~~[prospective borrower's]~~ history of employment *of the prospective borrower* 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 ~~[.]~~ *of the prospective borrower issued by a credit reporting agency*, 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]~~ *broker* 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}~~

2. *A mortgage broker* shall retain a copy of the ~~[materials it has provided to a lender pursuant to subsection 1.]~~ *documents described in subsection 1 and shall retain in his files a statement from the investor, on a form provided by the division, acknowledging that:*

*(a) The investor received the documents, or that the investor waived in writing the right to receive the documents; and*

*(b) The decision to make the loan was made after the investor had the opportunity to receive and review the documents.*

3. If the loan is made, the mortgage ~~[company]~~ *broker* shall retain in ~~[its]~~ *his* files and provide to the ~~[lender:]~~ *investor*:

(a) A copy of the promissory note;

(b) A recorded copy of the deed of trust securing the loan; *and*

(c) A copy of the policy of title insurance on the property securing the loan . ~~};~~

~~—(d)]~~

FLUSH *The mortgage broker shall retain in his files a statement, on a form provided by the division, acknowledging that the documents were provided to the investor.*

4. *If the loan is made, the mortgage broker shall retain in his files:*

*(a) A copy of a policy of fire insurance which is adequate to cover ~~[all liens]~~ the replacement costs of all improvements on the property securing the loan, including an endorsement naming the ~~[lender]~~ investor 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]~~

*(b) If the investor* is a corporation or partnership, a copy of its statement authorizing the loan; and

~~[(g)]~~ *(c)* 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]~~ *broker* shall store ~~[its]~~ *his* original notes, if retained, in a fireproof container ~~[.]~~ *or room.*

*6. If the mortgage broker has obtained an appraisal on behalf of an investor, the mortgage broker shall provide a copy of the appraisal to the:*

*(a) Investor, upon request; and*

*(b) Borrower, upon request, if the borrower has paid for the appraisal.*

**Sec. 33.** NAC 645B.100 is hereby amended to read as follows:

645B.100 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.]~~ *investor.*

**Sec. 34.** NAC 645B.110 is hereby amended to read as follows:

645B.110 1. A licensed mortgage ~~[company]~~ *broker* shall not represent an activity which is not licensed ~~[under]~~ *pursuant to* chapter 645B of NRS as being licensed ~~[under]~~ *pursuant to* 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]~~ *broker* must include in ~~[its advertisements];~~  
~~—(a) Its name ;]~~ *his advertisements, including any advertising material available on the Internet:*

*(a) His name, address and telephone number; and*

*(b) A description of any licensed activity mentioned in [an] the advertisement, written in nontechnical terms.*

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

*(a) The words “THIS IS NOT A CHECK,” “NOT NEGOTIABLE” or “THIS IS NOT A GOVERNMENT ENTITY,” as appropriate, appear prominently on the envelope and any material that simulates the appearance of a check or a communication from a government 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.*

5. *Provided the representation of interest rates in advertisements complies with applicable provisions of federal law regarding the advertising of interest rates, a mortgage broker may make changes in the interest rates advertised and any other nonsubstantive changes to his advertisements without additional approval from the commissioner.*

Sec. 35. NAC 645B.120 is hereby amended to read as follows:

645B.120 ~~[(1)]~~ An appraisal submitted to ~~[a lender]~~ *an investor* 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:~~

~~—(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.]~~

*1. If the appraised property is located in this state, be prepared by an appraiser who holds the appropriate license, certificate or permit issued by the real estate division of the department of business and industry; or*

*2. If the appraised property is located outside the state, be prepared by an appraiser who is authorized to perform the appraisal by the appropriate agency of the state in which the property is located.*

**Sec. 36.** NAC 645B.130 is hereby amended to read as follows:

645B.130 1. If an owner, partner, director, *officer*, manager, *member* or employee of a licensed mortgage ~~[company has]~~ *broker, or a relative of an owner, partner, director, officer, manager, member or employee of a licensed mortgage broker:*

(a) *Has* any personal involvement in a lending or borrowing transaction of the mortgage ~~[company]~~ *broker* which is authorized under chapter 645B of NRS ~~[ ]~~; *or*

(b) *Is licensed as, conducts business as or holds a controlling interest or position in:*

(1) *A construction control;*

(2) *An escrow agency or escrow agent; or*

(3) *A title agent, a title insurer or an escrow officer of a title agent or title insurer,*

FLUSH the involvement must be disclosed to the borrower and the ~~[lender]~~ *investor before the date that the loan is consummated.* Such a disclosure must be separate from the documents of the transaction and must clearly and concisely state the nature of the involvement. The statement of disclosure must be signed by the borrower and the ~~[lender]~~ *investor* as an acknowledgment of the involvement. *The mortgage broker shall not act as the attorney in fact or the agent of an investor with respect to signing the acknowledgment.*

2. If a mortgage ~~[company]~~ *broker* is owned by a corporation in which one owner, director, manager or employee owns an interest of 10 percent or more, and that person has any personal involvement in a licensed transaction of the mortgage ~~[company]~~ *broker*, the involvement must be disclosed to the borrower and the ~~[lender]~~ *investor* pursuant to subsection 1.

Sec. 37. NAC 645B.140 is hereby amended to read as follows:

645B.140 1. Before a person purchases an existing note secured by a deed of trust *or an interest therein* for which a licensed mortgage ~~[company]~~ *broker* is acting as a broker, the mortgage ~~[company]~~ *broker* shall provide to the purchaser, unless specifically waived in writing ~~[:]~~ *by that person*:

(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]~~ *broker* shall retain a copy of the materials ~~[it provides]~~ *provided* to the purchaser pursuant to subsection 1.

3. If the purchase is made, the mortgage ~~[company]~~ *broker* shall retain in ~~[its]~~ *his* 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]~~ *the replacement costs of all improvements* 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.

**Sec. 38.** NAC 645B.145 is hereby amended to read as follows:

645B.145 1. Except as otherwise provided in subsection 3, a mortgage ~~[company]~~ *broker and any partnership, corporation or limited-liability company in which the mortgage broker or any officer, director, employee or relative of the mortgage broker has a controlling interest* shall not act as a trustee or substitute trustee for any deed of trust for which the mortgage ~~[company]~~ *broker* acted at any time as ~~[a lender,]~~ *an investor*, mortgage broker or holder of a beneficial interest if the loan for which the deed of trust was executed was funded in whole or in part by a person other than the mortgage ~~[company]~~ *broker* or has been assigned in whole or in part to one or more natural persons.

2. Except as otherwise provided in subsection 3, an officer, director or employee of a mortgage ~~[company]~~ *broker, a relative of any officer, director or employee of a mortgage broker, or an officer, director or employee of any corporation, partnership or limited-liability company that has a controlling interest in a mortgage broker* shall not act as a trustee or substitute trustee for any deed of trust for which the mortgage ~~[company]~~ *broker* acted at any time as ~~[a lender,]~~ *an investor*, mortgage broker or holder of a beneficial interest if the loan for which the deed of trust was executed was funded in whole or in part by a person other than the mortgage ~~[company]~~ *broker* or has been assigned in whole or in part to one or more natural persons.

3. A mortgage ~~[company]~~ *broker* may act as substitute trustee in a deed of trust for the purpose of reconveying title to the trustor upon payment in full of the note if the mortgage

~~[company]~~ *broker* receives a signed and notarized statement from each person holding a beneficial interest in the note, or ~~[that person's agent,]~~ *the agent of that person*, authorizing the mortgage ~~[company]~~ *broker* to so act and directing the disposition of ~~[that person's]~~ *the* share of the money received *for that person* to pay the loan in full. The statement must be executed within 45 days before the execution of the deed of reconveyance. The mortgage ~~[company and its]~~ *broker and his* officers, directors and employees shall not act as the ~~[person's]~~ agent *for that person* for the purpose of executing the statement required by this section.

**Sec. 39.** NAC 645B.150 is hereby amended to read as follows:

645B.150 A licensed mortgage ~~[company]~~ *broker* maintaining any accounts described in subsection 1 of NRS 645B.175 shall:

1. Provide to the commissioner ~~[of financial institutions]~~ a financial statement of the account or accounts which has been audited in accordance with generally accepted auditing standards.

2. Maintain a subsidiary ledger for each investor which must include:

(a) The name and address of the investor;

(b) The amount of the initial investment and the amount of any subsequent investment;

(c) The date of any investment placed with the licensee by the investor;

(d) Each specific loan invested in, including:

(1) The number of the loan;

(2) The name of the borrower;

(3) The closing date of the loan; and

(4) The percentage of the loan owned by the investor, if the loan is owned by more than one person;

- (e) The date of the investment;
- (f) The amount of money invested;
- (g) The maturity date of the loan or loans made;
- (h) Any change in the investment made on behalf of the investor; and
- (i) The status of each loan, including whether the loan is current or delinquent, and if the loan is delinquent, the number of months it is past due.

3. At least annually, provide each investor with a statement which details:

- (a) The total amount he has invested with the mortgage ~~[company;]~~ *broker;*
- (b) The amount he has invested in a loan or loans; and
- (c) The current status of the loan or loans.

FLUSH The statement, if annual, must be provided to the investor not later than 120 days after the end of the ~~[company's]~~ fiscal year ~~[.]~~ *of the mortgage broker.*

**Sec. 40.** NAC 645B.160 is hereby amended to read as follows:

645B.160 A licensed mortgage ~~[company]~~ *broker* maintaining any accounts described in subsection ~~[3]~~ *4* of NRS 645B.175 shall:

- 1. Provide to the commissioner ~~[of financial institutions]~~ a statement of the account or accounts which has been audited in accordance with generally accepted auditing standards as promulgated for special reports.
- 2. Keep monthly records reconciling all payments received on loans made by investors to such accounts and any subsequent disbursement to the investors.
- 3. At least annually, provide to each investor:
  - (a) A statement indicating all money collected and disbursed; and
  - (b) The amortized balance of each loan in which the investor has an interest.

FLUSH The statement, if annual, must be provided to the investor not later than 120 days after the end of the licensee's fiscal year.

**Sec. 41.** NAC 645B.170 is hereby amended to read as follows:

645B.170 A licensed mortgage ~~company~~ *broker* shall retain all records of accounts maintained pursuant to subsections 1 and ~~3~~ 4 of NRS 645B.175 for at least 2 years after the date of the last transaction with the investor.

**Sec. 42.** NAC 645B.090 is hereby repealed.

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**TEXT OF REPEALED SECTION**

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**645B.090 Solicitation and acceptance of money before loan is requested.** A mortgage company may solicit and accept a lender's money before there is an actual request for a loan if the money is deposited and held in the same manner required for money accepted pursuant to NRS 645B.175.

## NOTICE OF ADOPTION OF REGULATION

The State of Nevada, Department of Business and Industry, Financial Institutions Division adopted regulations assigned LCB File Nos. R-04500 and R046-00 which pertain to chapters 645B and 645E, respectively, of the Nevada Administrative Code on July 28, 2000. A copy of the regulations as adopted is attached hereto.

### INFORMATIONAL STATEMENT

#### LEGISLATIVE REVIEW OF ADOPTED REGULATION AS REQUIRED BY NRS 233B.066

#### INFORMATIONAL STATEMENT LCB File Nos. R045-00 and R046-00

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

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

The proposed regulation was combined with a proposed regulation amending NAC Chapter 645B. On or about September 7, 1999, the Financial Institutions Division (Division) posted a Notice of Workshop to Solicit Comments on Proposed Regulation and a copy of a proposed regulation at the locations listed on Exhibit "A" and sent the same to all companies licensed by the Division as mortgage companies. Workshops were held in Carson City on October 4, 1999 and in Las Vegas on October 5, 1999.

A Notice of Intent to Act Upon a Regulation was posted at the locations listed on the Notice of Intent to Act Upon a Regulation, a copy of which is attached hereto. A public hearing to receive comments on the proposed regulation was held on April 4, 2000. The proposed regulations were also posted for discussion at several meetings of the Advisory Council on Mortgage Investments.

#### Summary of Public Comment

A summary of public comments relating to the proposed regulation is attached hereto as Exhibit "B." Interested parties may obtain this summary of the public response by contacting the Financial Institutions Division, 406 E. Second Street, Carson City, Nevada 89710, (702) 687-4259. Attached as Exhibit "C" is a copy of a form the Division has adopted in connection with the amendment to NAC 645B.080.

**2. 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.**

See the response to item #1.

**3. The number of persons who: (a) Attended each hearing; (b) Testified at each hearing; and (c) Submitted to the agency written statements.**

Approximately 13 persons attended the workshop in Carson City on October 4, 1999 and nine of those persons provided oral comments. Approximately 24 attended the workshop in Las Vegas on October 5, 1999 and fourteen of those persons provided or oral comments.

Approximately 28 persons attended the hearing on April 4, 2000 and seven of those persons provided oral comments. The Division received comments in writing from 13 individuals or businesses. Additional comments were received at subsequent meetings of the Advisory Council on Mortgage Investments.

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

N/A

**5. 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**
- (b) Both immediate and long-term effects.**

The estimated economic effect of the proposed regulation is as follows:

- (1) Regulated business: Mortgage companies may have increased expenses, short term and long term, relating to additional regulatory requirements contained in the regulation. The industry may benefit from increased clarity of the legal requirements for these types of transactions.
- (2) Public: The proposed regulation should have no adverse effect on the public, immediate or long-term, except that the cost of state regulation may be passed on to consumers. The public may benefit, immediately and long-term, by amendments that clarify the rights and obligations of the parties to a mortgage loan transaction.

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

It will cost approximately \$86,520 for fiscal year 2000-01 to administer and enforce the proposed regulation, which is the cost of an additional full time deputy attorney general assigned to the Division.

**7. 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.**

The proposed regulation does not overlap or duplicate any regulations of other state, local or federal governmental agencies.

**8. 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 more stringent than a federal regulation which regulates the same activity.

**9. 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.**

The adopted regulation does not provide a new fee or increase an existing fee, although it does establish a rate for the collection of costs and attorneys fees previously authorized by the legislature.

EXHIBIT A

FINANCIAL INSTITUTIONS DIVISION  
406 EAST SECOND STREET SUITE 3  
CARSON CITY NV 89701-4758

STATE LIBRARY  
100 STEWART STREET  
CARSON CITY NV 89710

DARRYL BATSON DIRECTOR  
LAS VEGAS - CLARK COUNTY LIBRARY  
833 LAS VEGAS BLVD N

ESMERALDA COUNTY  
P O BOX 430  
GOLDFIELD NV 89013

SHERRY ALLEN DIRECTOR  
HUMBOLDT COUNTY LIBRARY  
85 EAST 5TH STREET  
WINNEMUCCA NV 89445

GOLDFIELD PUBLIC LIBRARY  
P O BOX 430  
GOLDFIELD NV 89013

JEANNE MUNK DIRECTOR  
PERSHING COUNTY LIBRARY  
P O BOX 781  
LOVELOCK NV 89419

NANCY CUMMINGS DIRECTOR  
WASHOE COUNTY LIBRARY  
P O BOX 2151  
RENO NV 89505

LYNN CHAMBLISS DIRECTOR  
BATTLE MOUNTAIN BRANCH LIBRARY  
P O BOX 141  
BATTLE MOUNTAIN NV 89820

FINANCIAL INSTITUTIONS DIVISION  
2501 E SAHARA AVE SUITE 300  
LAS VEGAS NV 89101

BARBARA MATHEWS DIRECTOR  
CHURCHILL COUNTY LIBRARY  
5553 S MAINE STREET  
FALLON NV 89406

SARA JONES DIRECTOR  
ELKO COUNTY LIBRARY  
720 COURT STREET  
ELKO NV 89801

LAURI OKI DIRECTOR  
EUREKA BRANCH LIBRARY  
P O BOX 293  
EUREKA NV 89316

STEVE SCHLATTER DIRECTOR  
MINERAL COUNTY LIBRARY  
P O BOX 1390  
HAWTHORNE NV 89415

DIANE HARTSOCK DIRECTOR  
TONOPAH PUBLIC LIBRARY  
P O BOX 449  
TONOPAH NV 89049

STOREY COUNTY LIBRARY  
P O BOX 14  
VIRGINIA CITY NV 89440

LORI ROMERO DIRECTOR  
WHITE PINE COUNTY LIBRARY  
950 CAMPTON STREET  
ELY NV 89301

LINCOLN COUNTY LIBRARY  
P O BOX 330  
PIOCHE NV 89043



CHRISTIAN FREER - PARSON DIRECTOR  
LYON COUNTY LIBRARY  
20 NEVIN WAY  
YERINGTON NV 89447

SALLY EDWARDS DIRECTOR  
CARSON CITY LIBRARY  
900 N ROOP STREET  
CARSON CITY NV 89701

CAROLYN RQWLES-HEISER DIRECTOR  
DOUGLAS COUNTY LIBRARY  
P O BOX 337  
MINDEN NV 89423

**EXHIBIT “B” – SUMMARY OF PUBLIC COMMENTS ON PROPOSED  
REGULATIONS GOVERNING MORTGAGE COMPANIES (NAC CHAPTER 645E)  
AND MORTGAGE BROKERS (NAC Chapter 645B)**

**MORTGAGE COMPANIES – NRS CHAPTER 645E**

1. In the definition of “verifiable mortgage business,” either add a definition of “provider” or delete the reference to “provider.” The Division made no change based on this comment as it was deemed unnecessary.
2. In the description of documents to be retained by the mortgage company, change the reference to a fire insurance policy as follows:

The fire insurance policy should be limited to the replacement cost of all improvements on the land securing the deed of trust, rather than “adequate to cover all liens” as proposed.

This comment became moot after the Division eliminated the section containing record retention requirements for mortgage companies.

3. Clarify the phrase “material change” as used in section describing requirements relating to changes in ownership or management of a mortgage company. The Division deemed no change necessary as the result of this comment as this section merely implements the change of control provisions of NRS 645E.390, which defines the types of changes for which reporting is required.
4. Clarify whether money provided by depository institutions pursuant to “correspondence agreements” may be considered as a mortgage company lending its own money for purposes of the definition of mortgage company. The Division deleted the language that provided that this source of money would be considered as a mortgage company lending its own money.
5. Allow for a hearing to contest a cease and desist order before it becomes effective or is enforced. The Division amended the regulation to create a procedure for the order to be suspended pending a hearing.
6. Clarify that a mortgage company is not limited by its license to engaging only in activities that the license authorizes. This suggestion is inconsistent with the mandate of NRS 645E.230(1) that a mortgage company licensee is only authorized to perform activities authorized by its license.
7. Clarify the phrase “holds himself out” set forth in the definition of mortgage broker in NRS 645E.100 to exclude persons offering money to lend exclusively to other licensed mortgage brokers in the secondary mortgage market. The Division accepted this recommendation.
8. Allow mortgage companies to accept nonrefundable application fees. Incorporating this suggestion would, in the Division’s view, conflict with the advance fee statutes, NRS

645E.420, NRS 645B.165, and NRS 205.950.

9. Perform audits on mortgage companies only when required as the result of a complaint from a borrower. This suggestion was not adopted as annual examinations are required by NRS 645E.300(2)(c).
10. Delete section providing for assessments of cost of examinations and audits on mortgage companies. This suggestion was not adopted as the assessment of the cost of examination is required by NRS 645E.300(3).
11. Delete section addressing approval of advertisements. The Division has retained the section containing the standards for advertising but has deleted the requirement that approval of proposed advertising for mortgage companies be obtained prior to its use.
12. Delete section addressing requirements for appraisals. Although this section is not required by statute, its deletion would not affect the statutory requirements of NRS chapter 645C that appraisals be performed only by persons properly licensed or certified pursuant to that chapter.

#### **MORTGAGE BROKERS – NRS CHAPTER 645B**

1. In the definition of “major violation,” add the word “substantial” to describe the type of loss required for a violation to be considered a major violation. The Division accepted this recommendation.
2. In the section containing the disclosure form, change the reference to “written appraisal” to “copy of the written appraisal.” This suggestion has been accepted.
3. In the description of documents to be retained by the mortgage broker, change the reference to a fire insurance policy as follows:

The fire insurance policy should be limited to the replacement cost of all improvements on the land securing the deed of trust, rather than “adequate to cover all liens” as in the existing regulation.

The Division accepted this recommendation.

4. For reasons of privacy, the names, addresses, and telephone numbers of private investors should not be freely available. Loan servicing agreements must provide for investors in a particular loan to be provided the names, addresses, and telephone numbers of other investors in the loan. This information is deemed necessary to avoid problems managing the loan if the broker ever ceases to do so. In addition, the Division may obtain information on individual investors from the delinquent loan reports submitted pursuant to NAC 645B.070 as amended by the proposed regulations. The Commissioner already possesses sufficient discretionary authority to withhold information regarding the identity of investors contained in these

reports, and therefore no amendment to the regulation is necessary.

5. A requirement that a mortgage broker disclose any interest in a related or affiliated business such as a construction control, title or escrow company should be limited to only those situations where the related company is involved in the same transaction in which the person is acting as a mortgage broker. This suggestion was not accepted as it is inconsistent with the requirements of NRS 645B.186.
6. In reference to the investor's right to receive the mortgage broker's financial statement, the mortgage broker should be permitted to provide a more general statement that will protect the broker's privacy and trade practices. The Division amended to regulation to permit a mortgage broker to submit a "compiled" financial statement to be provided to potential investors that will not contain the type of private or proprietary information contained in an audited financial statement. This amendment does not excuse a mortgage broker who maintains trust accounts from the requirement of submitting annual audited financial statements.
7. Clarify the phrase "material change" as used in the section describing requirements relating to changes in ownership or management of a mortgage broker. Since this section merely implements the provisions of NRS 645B.095, which, in the Division's view, adequately describes the conditions that constitute a change of control, no change was deemed necessary.
8. Require the mortgage broker to provide the investor with a copy of the proposed disclosure form at the outset of the business relationship (and perhaps require periodic renewal) instead of for every transaction and require the use of a condensed version of the disclosure form for every transaction that will satisfy the requirements of AB 64. Although the Division has not adopted the suggestion to create an additional form that will be given to investors at the commencement of the business relationship, it has eliminated language deemed unnecessary from the disclosure form required by NRS 645B.185.
9. Allow mortgage brokers to provide investors with their opinion of value of property proposed as collateral for a mortgage loan or their opinion regarding a written appraisal prepared by another person. This suggestion was not accepted as it would be inconsistent with the appraiser licensing and certification provisions of NRS chapter 645C.
10. Allow registrations for mortgage agents to become effective immediately pending completion of the background check, at least for persons who have been previously investigated. This suggestion was accepted.
11. Clarify whether information obtained during the background check of proposed mortgage agents is public or confidential or whether it can be provided to the employer. Some persons expressed a desire to make the background report confidential, some wished it to be public, and some wished it to be made available to the employer only. The Division amended the regulation to clarify that the report of investigation is considered confidential and will be released only pursuant to subpoena or court order. The Division will consider limited review of the report or the information contained therein if an issue arises as to the accuracy of any

of the information contained therein.

12. Require an applicant for registration as a mortgage agent to provide only that minimal information on the application that is required to complete the background investigation. The background investigation should be limited to that information relevant to the statutory grounds for denying the application. The form currently used by the Division requests information regarding a person's personal history, not his financial status. The Division believes the information required on the form is necessary to ensure the accuracy of the background check. The Division believes that the background check seeks only that information that may reveal grounds for disqualification of the applicant pursuant to NRS 645B.450(1).
13. Add to the list of factors considered in determining the adequacy of a broker's supervision of a mortgage agent whether the broker investigated the agent's background independently of the Division's background investigation. The Division has accepted this suggestion.
14. With regard to the requirement that a mortgage broker who terminates a mortgage agent send the Division a letter which, among other things, explains the reasons for the termination, clarify whether the letter will be considered a public document and available to future prospective employers. Some persons wished the letter to be considered public; some indicated that making the letter public will cause brokers to be extremely cautious in their description of reasons for a termination. The Division amended the regulation to clarify that letters stating reasons for the termination of mortgage agents will be considered public records.
15. With regard to the proposal to adopt certain federal laws as standards of conduct for mortgage brokers, the Division received the following comments:
  - (a) Some persons were opposed to this proposal;
  - (b) Some persons wishes the proposal to be clarified to specifically identify which federal laws and regulations were being adopted by reference; and
  - (c) Some persons questioned whether the Division should adopt additional federal laws by reference that pertain to the mortgage lending business.

The Division amended its initial proposal to provide that suspected violations of the federal laws listed will be referred to the appropriate law enforcement agency for further review. The Division will not enforce these laws itself.
16. Define "major violation" in terms of the monetary amount of loss caused by the conduct. One person suggested \$10,000 as a threshold amount, another suggested \$1,000. The Division has rejected any attempt to define "major violation" in terms of a dollar amount of loss caused by the violation.
17. Exclude from the definition of "major violation" acts that are not the result of deliberate or intentional activity but rather of inadvertence or mistake. The Division has amended the

regulation to allow this factor to be considered.

18. Clarify whether the borrower should be entitled to a copy of any appraisal prepared in connection with the loan. The Division amended the regulation to provide that the borrower has a right to receive a copy of the appraisal if he or she has paid for it.
19. Provide a “grace period” within which a mortgage broker may replace a “qualified employee” who terminates employment with the mortgage broker. The Division amended the regulation to provide a period of 30 days within which a mortgage broker may designate a new qualified employee and provide for additional extensions of time if agreed to by the Commissioner.
20. Clarify that the regulation addresses only those situations involving changes in ownership and management of a mortgage broker that constitute a “change of control” pursuant to NRS 645B.095. The Division did not accept this recommendation as it was deemed unnecessary.
21. Clarify that regulation of material appearing on the Internet is limited to that material intended to solicit potential investors, lenders, or borrowers, not other forms of Internet communication, such as E-mail. The Division did not accept this suggestion as it was deemed unnecessary. The commonly understood meaning of “advertising material” would exclude such inter-personal communications relating to specific transactions as were listed in the comment.
22. Clarify that the licensing exemption set forth in NRS 645B.015(6) does not authorize the payment of finder’s fees in relation to loan transactions that are not exempt pursuant to that section. Since this conduct is already prohibited by statute, and AB 64 grants the Division greater enforcement powers with respect to unlicensed mortgage activity, no change was deemed necessary.
23. Clarify whether the proposed limitation on the use of a fictitious business name will allow only one business name or allow a fictitious name in addition to the company’s real name. The Division amended the regulation to clarify that a mortgage broker is authorized to conduct business under only one name.
24. Allow for a hearing to contest a cease and desist order before it becomes effective or is enforced. The Division amended the regulation to provide for the recipient of a cease and order to request a hearing to contest the order. If a hearing is requested, the order will be suspended pending a final decision after the hearing.
25. With regard to the list of factors proposed to be considered by the Division in determining whether a mortgage broker’s supervision of a mortgage agent was adequate, the Division received the following comments:
  - (a) Some persons understood this section to be imposing requirements rather than listing factors to be considered on the issue of adequacy of supervision and opposed some factors on the basis that the standard was not created in NRS chapter 645B or AB 64;
  - (b) Some persons wished the Division to create standards of supervision that, if followed,

will be considered adequate supervision, stating that the listed factors were not sufficiently clear.

The Division has retained the list of factors to consider in judging the adequacy of a mortgage broker's supervision of a mortgage agent. The factors listed are not, by themselves, standards of conduct or requirements for mortgage brokers, but factors that will be considered in each case where adequacy of supervision is an issue. The Division declined the suggestion to impose specific standards of conduct relating to supervision because it believes that reasonable supervision can be accomplished in a variety of different ways depending on the specific circumstances of each case.

26. Clarify that a mortgage broker is entitled to receive a copy of each and every complaint filed against it, whether or not the Division determines the complaint is within its jurisdiction to investigate. The regulation as currently proposed requires the Division to provide a copy of a written complaint to the person against whom the complaint is filed but does not specify a time within which this must occur. In many cases, it will be appropriate to provide a copy of a complaint to the subject of the complaint soon after receiving it. In some cases, however, it may be necessary to protect the identity of a complainant or not reveal the fact that a complaint has been filed in order to protect an ongoing investigation. The Commission must retain discretion to determine when this information may be provided to the subject of a complaint without jeopardizing an investigation or the Division's ability to enforce the law.
27. The proposal regarding actions taken by a vote of at least 51% of the investors on a loan should be amended to allow for other methods of management should all the investors agree. The example given for this suggestion was a transaction involving two private investors with equal interests in the loan. The Division has amended the regulation to allow for any type of management agreement where two persons hold equal interests in a mortgage loan. The Division does not, however, wish to allow investors to agree to a general exception to the 51% rule because to do so would allow a mortgage broker to defeat the protective purpose of the rule.
28. Clarify provisions regarding providing and retaining certain documents relating to a mortgage loan so that the requirements are consistent with the statute, the disclosure form, and do not create unnecessary requirements when dealing with loans that do not involve private investors. The Division has attempted to accommodate this concern and has created a new, simplified document receipt form.
29. Clarify whether the Division should adopt or require use of a specific form for powers of attorney or disclosing a broker's personal involvement in a loan or just approve the use of forms submitted by mortgage brokers. The Division has created the basic format for powers of attorney that contains certain language mandated by AB 64. Since the power of attorney may contain additional provisions not set forth in the statute or regulation, it will still have to be submitted to the Division for approval. The investor disclosure form contains a space for disclosing and describing a mortgage broker's personal involvement in

a mortgage loan.

30. Clarify that the requirement that records be maintained for six years applies only to completed transactions. The Division has amended the regulation to clarify this point.
31. Clarify whether a mortgage agent may work for a mortgage broker located in another state or another mortgage broker licensed in this state. The Division has amended the regulation to clarify these points.
32. Language required by AB 64 to be provided in advertising pertaining to the risks involved in investing in mortgage loans should be required only in advertising intended to solicit potential investors, not potential borrowers.
33. The power of attorney form was perceived by some as creating a requirement that a separate power of attorney be executed for each loan transaction. The Division has attempted to explain that the power of attorney must refer to a specific loan transaction and legal description to enable it to be publicly recorded. The language of the form states, however, that the power of attorney may be used for other purposes provided the investor agrees to such other use in writing.
34. Some people expressed opposition to adopting the proposed regulations without also adopting regulations creating audit procedures for examinations and audits of licensed mortgage brokers. Audit procedures will be proposed after implementation of the regulations currently proposed so that initial issues of interpretation may be addressed and problems noted. If any changes to the currently proposed regulations are required, they can be made when audit procedures are proposed.
35. Clarify the phrase “holds himself out” set forth in the definition of mortgage broker in NRS 645B.0127 to exclude persons offering money to lend exclusively to other licensed mortgage brokers in the secondary mortgage market. The Division has accepted this recommendation.
36. With regard to the proposal for Division examiners to refer suspected violations of federal laws relating to lending to the appropriate enforcement agency, some people were opposed to any involvement by the Division in the enforcement of these laws. The Division will make referrals only and will not take any enforcement action itself with respect to these laws.
37. Clarify that a mortgage broker is not limited by its license to engaging only in activities that the license authorizes. This suggestion is inconsistent with the mandate of NRS 645B.035(1) that a mortgage broker licensee is only authorized to perform activities authorized by its license.
38. Allow mortgage brokers to accept nonrefundable application fees. Incorporating this suggestion would, in the Division’s view, conflict with the advance fee statutes, NRS



645E.420, NRS 645B.165, and NRS 205.950.

39. In the proposed disclosure form, delete any requirement for acknowledging receipt of any document that will not be produced, if at all, until after the loan closes. The Division has accepted this recommendation.
40. Results of a background investigation on a mortgage agent should be available to the agent who is the subject of the investigation. Although the regulation as proposed provides that the investigative report is deemed confidential, the Division will consider review of the report or the information contained therein if an issue arises as to the accuracy of any of that information.
41. Amend the section describing requirements for loan delinquency reports to permit “variances” so that a broker can use existing software reports that may not include all the information requirement by the regulation. The Division has not accepted this suggestion as it would be inconsistent with AB 64.
42. Amend existing requirement for certain documents to be maintained in a fireproof “container” to include a fireproof “room.” The Division has accepted this recommendation.
43. Adopt a record retention period of less than six years as proposed. Some suggested a two year period as required by HUD. Although the six year record retention period has been retained, the Division has amended the regulation to allow records to be retained in computer format after two years.
44. Delete as duplicative the requirement that envelopes containing advertising material not contain anything that would mislead the reader into believing the contents of the envelope was a check or official government communication. The Division has not accepted this recommendation as it believes that misleading material appearing on envelopes should be prohibited.
45. Provide more time to comment on the proposed regulation.
46. The investor disclosure form is too long and has too many places for the investor to sign or initial.
47. Authorizing imposition of discipline for committing any “deceptive trade practice” is too vague. The Division has explained that all businesses are already subject to enforcement action for engaging in any deceptive trade practice as defined in NRS chapter 598 and that any discipline imposed will be based on a specific alleged statutory violation.
48. Investor disclosure form should contain a line where investor acknowledges receipt of the form. The Division has accepted this recommendation.

49. The prohibition against retaining any fees paid to third parties in excess of the actual cost of the service provided should be deleted. The mortgage broker should be able to retain these fees if the borrower agrees in writing. The Division has not accepted this recommendation as the collection and retention of excess fees has been the subject of abuse in the past.
50. Investors should have the right to review in the mortgage broker's office but not receive the borrower's credit information in order to protect the privacy rights of the borrower. The Division is amending NAC 645B.080(1)(b) to require only that the broker provide the information in a credit report, not necessarily the report itself.
51. The investor disclosure form should be amended to indicate that a mortgage broker must disclose any personal interest he or she has in the mortgage loan as well as any of his or her relatives. The Division has accepted this recommendation.
52. No provision is made in the investor disclosure form for disclosing to a borrower any personal interest of a mortgage broker or relative in a mortgage loan. No change is necessary as this disclosure requirement only applies to investors.
53. The proposed regulation provides the Commissioner's interpretation of the phrase "accept money from an investor to acquire ownership of or a beneficial interest in a loan secured by a lien on real property" as set forth in NRS 645B.185 regarding a disclosure statement. Since the same phrase appears in NRS 645B.300 regarding provision of the appraisal report, it should be similarly interpreted. The Division has accepted this recommendation.
54. It is unnecessary to require financial statements of all limited partners if the applicant for a mortgage broker's licenses is a limited partnership. The Division amended NAC 645B.020 to require financial statements only of general partners.
55. The form provided by the Division to evidence compliance with NAC 645B.080, as amended, should not require an acknowledgement of receipt of the recorded deed of trust and the title insurance policy as these items are not available until well after the close of escrow. The Division has accepted this recommendation and amended NAC 645B.080(3) to provide that the broker execute a form showing the date these documents were mailed to the investor.
56. A mortgage broker who has control over the production of escrow instructions should not be permitted to provide indirectly, through the execution of such instructions, what he or she cannot do directly pursuant to the restrictions on handling of money set forth in NRS 645B.175. The Division accepted this recommendation and added language that provides as follows: (a) That "money paid to a mortgage broker and his mortgage agents by a person in full or in partial payment of a loan" within the meaning of NRS 645B.175(4) will include money paid to the mortgage broker or his mortgage agents by a person pursuant to written escrow instructions if the payment represents money paid in full or partial repayment of a loan secured by a lien on real property, and (b) That the Commissioner will not consider escrow instructions to have been "approved by the parties" within the meaning

of NRS 645B.175(1)(a)(2) if they are signed by the mortgage broker as attorney in fact for the investor and provide for money to be distributed to the mortgage broker.

57. The disclosure form required by NRS 645B.185 should not have to be signed by institutional investors. Since the definition of “investor” set forth in NRS 645B.0121 does not distinguish between “private” and “institutional” investors, this recommendation could not be accommodated as it would be inconsistent with the plain language of the statute. The Division did, however, amend the regulation to make clear that any person except the mortgage broker and mortgage agent could be authorized by a corporate investor to sign for receipt of the disclosure form on behalf of the corporation or institutional investor.
58. The term “major violation” should be defined in terms of a dollar amount of \$5,000 loss caused to a member of the public. The Division did not accept this recommendation as it is considered too inflexible in defining conduct which requires a strong regulatory response.
59. Suspected violations of federal law relating to mortgage lending should be referred to the appropriate enforcement agency only if observed during a normal investigation, not during annual examinations, because the industry will then be paying for the state to conduct federal compliance audits. Although examination procedures will be proposed in the future and may or may not address the issue of compliance with federal laws, this recommendation was not accepted because it would lead to the absurd result that violations of federal law observed during annual examinations could not be reported to the appropriate enforcement agency.
60. The disclosure form required by NRS 645B.185 should not require the investor to indicate yes or no to the question of whether he or she wishes to review the broker’s financial statement. The Division has rejected this suggestion as inconsistent with the policy of AB 64 to inform the investor of that right.
61. Reference to a form approved by the Division in NAC 645B.080, as amended, should be removed as it is not required by AB 64. NAC 645B.080 has for many years required private investors to acknowledge their opportunity to receive and review documents relevant to the decision to make an investment and the proposed amendment merely mandates the use of a form approved by the Division to evidence compliance. The Division has therefore not accepted this recommendation.
62. The reference to the Commissioner’s authority to charge \$125 per hour for attorney time necessary to enforce the provisions of NRS Chapter 645B should be removed. The Division has rejected this suggestion. AB 64 authorizes the Division to recover attorneys fees in the enforcement of the Mortgage Broker Act and the proposed regulation merely provides that whether to do so lies with the discretion of the Commissioner and sets forth the hourly rate at which such fees will be assessed.

## Receipt of Documents and/or Waiver

MORTGAGE BROKER: \_\_\_\_\_

BORROWER: \_\_\_\_\_

PROPERTY ADDRESS: \_\_\_\_\_

LOAN AMOUNT: \_\_\_\_\_

LOAN TERM: \_\_\_\_\_

**I. DOCUMENTS RECEIVED OR WAIVED BEFORE INVESTING IN THE LOAN  
(NATURAL PERSONS ONLY)**

**This is to certify that I (We) received (or waived the right to receive) and was provided with an opportunity to review (or waived the right to review) the following prior to making a decision on the above loan:**

- (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 investor.

Received       Waived

- (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.

Received       Waived

- (c) A report on the prospective borrower's history of credit issued by a credit reporting agency, 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.

Received       Waived

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

Received       Waived

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

Received       Waived

**SIGNATURE REQUIRED:**

Investor: \_\_\_\_\_  
Title (If investor is a corporation, partnership or  
limited liability company) \_\_\_\_\_  
Dated: \_\_\_\_\_

**III. DOCUMENTS REQUIRED TO BE PROVIDED TO ALL INVESTORS**

(a) A copy of the promissory note;

Date mailed or provided to investor: \_\_\_\_\_

(b) A recorded copy of the deed of trust securing the loan;

Date mailed or provided to investor: \_\_\_\_\_

(c) A copy of the policy of title insurance on the property securing the loan.

Date mailed or provided to investor: \_\_\_\_\_