

LCB File No. R046-00

**PROPOSED REGULATION OF THE
DIVISION OF FINANCIAL INSTITUTIONS
OF THE DEPARTMENT OF BUSINESS AND INDUSTRY**

Mortgage Companies

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

Purpose: To implement the provisions of Assembly Bill 64 and make other appropriate amendments to the regulation of mortgage companies.

Authority: NRS 645E.200, 645E.300, 645E.350 and 645E.360, and NRS 86.555

Address of Agency: The agency promulgating this regulation is the Commissioner of Financial Institutions (Commissioner), whose address is 406 East Second Street, Carson City, Nevada 89710. The Commissioner is being advised and assisted by the Nevada Attorney General's Office in the drafting of these regulations. The contact person is Doug Walther, Senior Deputy Attorney General, Attorney General's Office, Capital Complex, Carson City, Nevada 89710, phone (775) 684-1213, FAX (775) 684-1108.

Section 1. Chapter 645E of NAC is hereby amended by adding sections 2 to 19, inclusive, of these proposed regulations.

Sec. 2. *1. A person makes loans secured by liens on real property using his own money if the loan is funded from any of the following sources:*

(a) The person's cash, corporate capital or warehouse credit lines at a depository financial institution or other sources that are liability items on the person's financial statements; or

(b) An affiliate's cash, corporate capital or warehouse credit lines at a depository financial institution or other sources that are liability items on the affiliate's financial statements for which the affiliate's assets are pledged. As used in this subsection, "affiliate" means another person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the person who is the institutional investor.

2. A person does not make a loan secured by a lien on real property using his own money if, after consummation of the loan, he sells the loan, or an interest therein, to any other person from whom the person would not be authorized to accept money to initially fund the loan.

Sec. 3. *1. A mortgage company shall not operate under a fictitious name unless he complies with chapter 602 of NRS, files with the division a certified copy of the certificate issued by the county clerk, and the division has issued a license that reflects the fictitious name. The division shall not issue more than one license or exemption certificate under the same or a confusingly similar name.*

2. A mortgage company shall not use more than one name, fictitious or otherwise, for each license or exemption certificate issued by the division.

3. If a mortgage company changes or assume a fictitious name under which business is conducted, he shall file with the division a certified copy of the certificate issued by the county clerk within 10 days after the certificate is issued, return the current mortgage company's license and request that a new license be issued that reflects the name under which business is conducted. The mortgage company may not use the fictitious name until he has received the amended license reflecting the fictitious name.

Sec. 4. 1. The commissioner may issue an order directing a person to cease engaging in activities for which the person has not received a license NRS Chapter 645E or conducting activities in a manner not in compliance with the provisions NRS Chapter 645E or the regulations adopted pursuant thereto.

2. The order to cease must be in writing and must state that, in the opinion of the commissioner, the person has not been issued a license for the activity or the provisions of NRS Chapter 645E or the regulations adopted pursuant thereto do not allow the person to conduct the activity in that manner. The person shall not engage in any activity regulated by NRS Chapter 645E after he receives such an order.

3. Within 30 days after receiving such an order, a person may file a verified petition with the commissioner for a hearing. The commissioner may, for good cause shown, suspend the order to cease pending the hearing. The commissioner shall hold a hearing within 30 days after the petition has been filed unless the parties agree to a longer period of time. If the commissioner fails to hold a hearing within 30 days or such other period of time as the parties agree, or does not render a written decision within 45 days after the final hearing, the cease and desist order is rescinded.

4. The decision of the commissioner after a hearing is a final order of the division for purposes of appeal.

Sec. 5. A certificate of exemption from the provision of chapter 645B of NRS and the regulations adopted pursuant thereto issued by the division pursuant to NRS 645B.020(5) shall be deemed to constitute a certificate of exemption issued pursuant to NRS 645E.160. A person must apply to the commissioner for a certificate of exemption from the provisions NRS Chapter 645E and the regulations adopted pursuant thereto pursuant to NRS 645E.160 if he has not already received a certificate of exemption from the provision of chapter 645B of NRS and the regulations adopted pursuant thereto issued by the division pursuant to NRS 645B.020(5).

Sec. 6. 1. If during the course of an examination or investigation an examiner believes that the mortgage broker has violated any of the following laws:

(a) The Truth and Lending Act, 15 U.S.C. §§ 1601 to 1667e, inclusive, Regulation Z, 12 C.F.R. Part 226, or the Official Staff Commentary thereto, including, but not limited to, the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1639;

(b) The Equal Credit Opportunity Act, 15. U.S.C. §§ 1691 to 1691f, inclusive, Regulation B, 12 C.F.R. Part 202, or the Official Staff Commentary thereto; or

(c) The Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 to § 2617, inclusive and Regulation X, 24 C.F.R Part 3500, or the Official Staff Commentary thereto, the commissioner will refer the matter to the appropriate federal and/or state agency with jurisdiction to investigate and take action in the matter.

2. The commissioner may impose any discipline authorized by NRS 645E.670 if a mortgage broker:

(a) Commits any act that constitutes 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 he 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. 7. "Qualified Employee" means a director, officer, member, employee, manager or trustee designated by a partnership, corporation or limited liability company to act on its behalf as a mortgage company or a person designated by a sole proprietorship to satisfy the requirements of subsection 3 of NRS 645E.200 and Section 9 of these proposed regulations.

Sec. 8. 1. Every partnership, corporation or limited liability company doing business as a mortgage company in this state shall designate a qualified employee to be approved to act on behalf of the partnership, corporation or limited liability company.

2. The commissioner shall approve the qualified employee to act on behalf of the partnership, corporation or limited liability company, upon compliance by the qualified employee with all the requirements of subsection 3 of NRS 645E.200 and Section 9 of these proposed regulations, and all other requirements for a mortgage company license.

3. Upon receipt of the approval the qualified employee is entitled to perform all the acts authorized by a license issued by the commissioner, except:

(a) That the approval issued entitles the qualified employee to act pursuant to the terms and conditions of the license issued by the commissioner only as a qualified employee of the partnership, corporation or limited liability company, and not on his own behalf; and

(b) That if the person designated by the partnership, corporation or limited liability company:
(1) Is not approved to act on behalf of the partnership, corporation or limited liability company; or

(2) Ceases to be connected with the partnership, corporation or limited liability company, the partnership, corporation or limited liability company must, within 30 days, unless additional time is granted by the commissioner for good cause shown, designate another person who shall make application and qualify as in the first instance.

Sec. 9 An applicant for a mortgage company license must have:

(1) At least 2 years of verifiable experience in lending money for real estate or mortgages; and

(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.

Sec. 10. A person who conducts verifiable business as a mortgage company is one who:

1. 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; or

2. Originates a loan secured by a lien on real property in the capacity of a lender or provider. Evidence of such activity must be submitted to the commissioner of financial institutions in the monthly report of activity.

Sec. 11. *An applicant must submit with his application for a license:*

- 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 the fictitious name of the business, if any.*
- 3. If the applicant is a corporation, a copy of:*
 - (a) Its articles of incorporation and its bylaws;*
 - (b) Its balance sheet and a statement of the profit and loss of the corporation for the 2 years immediately preceding the year of the application; and*
 - (c) The most recent list of its officers and resident agents which 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 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 or 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 which is filed with the secretary of state.*

Sec. 12. *1. An applicant must submit with his application for a branch license the name, residence address and telephone number of the qualified employee designated to manage the branch office.*

- 2. The commissioner will approve an application for a branch office if:*
 - (a) The principal office of the mortgage company has been examined by the commissioner and has received at least a satisfactory rating; and*
 - (b) He approves a qualified employee to manage the branch office.*
- 3. A mortgage company is responsible for and shall supervise all branch offices operated by him and all qualified employees authorized to conduct mortgage lending activity at that location. The license for each branch office must be conspicuously displayed at each branch office location. A license for a branch office may only be issued in the name in which the mortgage company is licensed to conduct business at his main office. A qualified employee approved to manage an office may not manage more than one office.*

Sec. 13. *Any material change in the ownership, management or principal employees of a mortgage company at its principal office or any branch office must be reported to the commissioner of financial institutions within 30 days after the change. 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 if the change constitutes a change of control pursuant to NRS 645B.095. A person who acquires stock or ownership in a mortgage company as the result of a transfer that constitutes a change of control pursuant to NRS 645E.390 must not participate in the management of the mortgage*

company until the commissioner has approved the transfer. No mortgage company may change its principal office or branch office until the commissioner has approved the change.

Sec. 14. 1. The commissioner of financial institutions will charge and collect a fee of \$40 per hour from each mortgage company for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 645E of NRS and may charge a fee of \$125 per hour for any attorney time required in any examination, investigation or hearing conducted pursuant to chapter 645E of NRS.

2. The commissioner will bill each mortgage company upon the completion of the activity for the fee established in subsection 1. The fee must be paid within 30 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 month, or portion of a month, that the fee is not paid. The commissioner may waive the penalty for good cause.

3. Failure of a mortgage company to pay the fee required in subsection 1 as provided in this section constitutes grounds for the imposition of any discipline authorized NRS 645E.670, including the revocation of its license.

Sec. 15. 1. Except as otherwise provided in NAC 658.030, each mortgage company shall pay to the division of financial institutions of the department of business and industry an annual assessment 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 bill each mortgage company for the assessment. The assessment must be paid within 30 days after the date the bill is received.

3. A charge of 10 percent of the assessment will be imposed on any mortgage company 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. 16. 1. Each mortgage company shall submit, on a monthly basis, a report on the volume of loans arranged in that month on a form approved by the commissioner. These reports 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 administrator may refuse to renew the license of a mortgage company which has not submitted the reports required by subsection 1 for any of the preceding 12 months.

Sec. 17. The mortgage company shall retain records of all 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 at least two years the mortgage company 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. Any such reproduction has the same effect as the original. Upon completion of such a duplication, the original of the record may be destroyed.

Sec. 18. *1. A licensed mortgage company shall not represent an activity which is not licensed under NRS Chapter 645E as being licensed under that chapter.*

2. An advertisement for an activity which is licensed pursuant NRS Chapter 645E must be separate and distinct from an advertisement for an activity which is not licensed pursuant to that chapter.

3. A licensed mortgage company must include in its advertisements, including any advertising material available on the Internet:

(a) Its name, address and telephone number; and

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

(c) Any information that, in the commissioner's judgment, would be of material interest to a person considering whether to invest money with the mortgage company.

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

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

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

5. A licensed mortgage company must submit to the commissioner a hard copy of all material appearing on the Internet. Provided the representation of interest rates in such advertisements comply with applicable provisions of federal law regarding the advertising of interest rates, the mortgage broker may make changes in the interest rates advertised and any other non-substantive changes to its Internet advertisement without additional approval from the commissioner.

Sec. 19. *1. An appraisal submitted to a lender must:*

(a) In the case of property located in this state, be prepared by an appraiser who holds the appropriate license or certification issued by the Nevada Real Estate Division; or

(b) In the case of property located outside this state, be prepared by an appraiser who is authorized to perform the appraisal by the state in which the property is located; and

(c) Not be prepared by the mortgage company.