

LCB File No. T017-03

**ADOPTED TEMPORARY REGULATION OF THE DIVISION OF
FINANCIAL INSTITUTIONS OF THE DEPARTMENT
OF BUSINESS AND INDUSTRY**

Filed with the Secretary of State on February 21, 2003

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

Authority: NRS 645B.060

Section 1. Chapter 645B of NAC is hereby amended by adding thereto the provisions set forth as sections 2-6, inclusive of this regulation.

Sec. 2.

“Documents” includes any account, including but not limited to bank, operating and trust accounts, contracts, writings, drawings, graphs, charts, photographs, phonorecords, electronic, magnetic, and other data compilations from which information can be obtained or translated or any tangible thing which contains matters within the scope of NRS chapter 645B or NAC chapter 645B or any applicable federal or state laws or regulations.

Sec. 3. 1. *An auditor conducting a periodic or special audit of a mortgage broker pursuant to NRS chapter 645B may:*

(a) Require the licensee to produce for purposes of the periodic or special audit any and all documents:

- (1) Relating to the business conducted under NRS chapter 645B or NAC chapter 645B; or*
- (2) Required to be kept as part of the licensee's business by federal or state law; or*
- (3) Kept on the business premises or business storage area of the licensee and which is related to the operation of the licensee's business.*

(b) Inspect and copy, test, or sample, any and all documents which are in the possession, control or custody of the licensee or related to the business conducted under NRS chapter 645B or NAC chapter 645B.

Sec. 4. 1. *An examiner conducting an annual examination pursuant to NRS 645B.060(2)(c), other examination pursuant to NRS 645B.060(2)(d) may:*

(a) Require the licensee to produce for purposes of the annual or other examination pursuant to subsection 1 any and all documents:

- (1) Relating to the business conducted under NRS chapter 645B or NAC chapter 645B; or*
- (2) Required to be kept as part of the licensee's business by federal or state law; or*
- (3) Kept on the business premises or business storage area of the licensee and which is related to the operation of the licensee's business.*

(b) Inspect and copy, test, or sample, any and all documents which are in the possession, control or custody of the licensee or related to the business conducted under NRS chapter 645B or NAC chapter 645B.

Sec. 5.

1. Each licensee, upon completion of an examination, will be rated on a scale of 1 to 5, with 1 being the highest rating and 5 being the lowest rating as described herein. The ratings will be based primarily on compliance with applicable statutes and regulations and the perceived capability of management to achieve and maintain such compliance.

(a) The rating of "1" indicates the licensee and its management have demonstrated the highest degree of compliance with applicable laws and regulations. Consideration of a "1" rating may be given if corrective action to a minor violation or documentation exception was immediate and will likely prevent future violations.

(b) The rating of "2" indicates the licensee and its management have demonstrated substantial compliance with applicable laws and regulations. The deficiencies noted in the report can be remedied with a minimum of regulatory supervision. Consideration of a "2" rating may be given if minor violations have also occurred previously and if corrective actions were immediate and will likely prevent future violations.

(c) The rating of "3" indicates the licensee and its management have demonstrated less than satisfactory compliance with applicable laws and regulations. Regulatory supervision is required to determine correction of the deficiencies noted in the report. Consideration of a "3" rating may be given if minor violations had previously occurred and corrective action was not taken.

(d) The rating of "4" indicates the licensee and its management have demonstrated substantial lack of compliance with applicable laws and regulations. Immediate remedial action to correct the noted deficiencies is required. Close regulatory supervision is also necessary.

(e) The rating of "5" indicates the licensee and its management have demonstrated unsatisfactory compliance with applicable laws and regulations. Remedial action must be effective and immediate. Close regulatory supervision is also required.

Sec. 6.

1. No later than 15 days after the completion of an annual examination of a licensee, the examiner designated by the commissioner shall make and file a draft report thereof with the Division which must be comprised of facts appearing upon the files, books, records or other documents of the licensee examined, or as ascertained from statements of the officers or agents or other persons examined concerning the affairs of the licensee, and such conclusions and recommendations as may reasonably be supported from the facts. The format of the draft report will be consistent with the format utilized for a final report of examination.

2. No later than 15 days after receipt of the draft report of the examination, the commissioner or his designee shall deliver a copy of the report to the licensee examined, together with a notice affording the licensee 15 days, or such additional reasonable period as the commissioner for good cause may allow, within which to review the report and make any written submissions or objections to any matters contained in the report.

3. If any written submissions or objections are received by the Division within the time permitted by subsection 2, the commissioner or his designee shall:

(a) Hold an informal meeting with the licensee examined regarding the report within 15 days at the end of the period allowed for the receipt of written submissions or objections.

(b) Fully consider and review the report, together with any written submissions or objections and any relevant portions of the examiner's working papers and within 15 days after the informal meeting:

(1) Adopt the report as filed or with modification or corrections; or

(2) Reject the report and direct the examiner to reopen the examination for purposes of obtaining additional data, documents or information, and re-file the report pursuant to subsection 1 above. The licensee shall not be responsible for additional fees or costs incurred in connection with the reopening of the examination into any written objection submitted by a licensee.

4. The results of the annual examination may not be opened to public inspection pursuant to NRS 645B.090 until any objections made by the licensee examined have been decided by the commissioner pursuant to subsection 3.

5. If the report reveals that the licensee is operating in violation of any law, regulation or previous order of the commissioner, the commissioner may order the licensee to take any action the commissioner considers necessary or appropriate to cure the violation. The commissioner shall also have the authority to take disciplinary action pursuant to NRS 645B.670.

6. If the licensee does not file a written submission or objection within the time permitted by subsection 2, the draft report will be deemed a final report of examination pursuant to NRS 645B.060.

7. The commissioner may extend a time period under this section applicable to the examiner, the commissioner or his designee for up to an additional 15 days for good cause upon written notice to the licensee.

Sec. 7. NAC 645B.280 is hereby amended to read as follows:

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]~~ **15** 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 ~~[or]~~; or

(d) Notify in writing the person requesting approval of the power of attorney that an additional period of time, not to exceed an additional 15 business days, is needed to act upon the power of attorney pursuant to this section.

2. If the commissioner has not acted *pursuant to the requirements of subsection 1* on a power of attorney submitted for approval pursuant to this section within ~~[10]~~ **15** 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.

**NOTICE OF ADOPTION OF TEMPORARY REGULATION
LCB File No. T017-03**

INFORMATIONAL STATEMENT

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

Public comment was solicited by sending notices of the workshop and hearings to all of the licensed mortgage brokers in the state of Nevada. Public comment was also solicited by posting notices of the hearings at public libraries throughout the state and several other locations. Public comment dealt with all of the provisions of the temporary regulation, including (1) the documents a mortgage broker must produce for an audit; (2) the procedures for review of the examination report and whether the informal meeting should be mandatory; (3) the numerical rating system for mortgage brokers and whether the proposed system was detailed enough or an audit manual or prescribed checklist forms should be adopted; and (4) the proposed extension of time for the Division to review powers of attorney. Interested persons may obtain a copy of the minutes and written comments from the Financial Institutions Division at 406 E. Second St. Suite 3, Carson City, NV 89701, or by telephone to (775) 684-1834.

2. A statement indicating the number of persons who attended each meeting or workshop, testified at each hearing, and submitted written statements regarding the proposed regulation:

A. The number of persons who:

(a) Attended each workshop:	November 22, 2002	52
	February 3, 2003	17
(b) Attended each hearing:	February 3, 2003	17
(c) Testified at each workshop:	November 22, 2002	11
	February 3, 2003	7
(d) Testified at each hearing:	February 3, 2003	1
(e) Submitted written comments to the agency:		4

3. 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:

Public comment was solicited by sending notices to the all of the licensed mortgage brokers in the state of Nevada and by posting the proposed regulation at public libraries throughout the state of Nevada. Comment from affected businesses, which was virtually all oral comments at the workshops and hearing with the exception of 1 written comment, dealt with all of the provisions of the temporary regulation, including (1) the documents a mortgage broker must produce for an audit; (2) the procedures for review of the examination report and whether the informal meeting should be mandatory; (3) the rating system and whether it was detailed enough or an audit manual or prescribed checklist forms should be adopted; and (4) the proposed extension of time

for the Division to review special powers of attorney. Interested persons may obtain a copy of the minutes and written comments from the Division by mailing a copy to the Financial Institutions Division at 406 E. Second St. Suite 3, Carson City, NV 89701, or by telephone to (775) 684-1834.

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. The statement should also explain the reasons for making any changes to the regulation proposed.

Several changes were made to the regulation as originally proposed based upon public comment at the workshop and comment from Division staff after the first workshop on November 22, 2002. Sections 3 and 4, pertaining to procedures for periodic and special audits and annual examinations respectively, were expanded to clarify what documents a mortgage broker may have to produce. Section 5, pertaining to numerical ratings of mortgage brokers, was also expanded based on public comments that the proposed standards were too vague and needed greater clarification. Section 6, pertaining to the procedures by which a mortgage broker may submit objections to the annual examination prior to it becoming final, was revised substantially based upon comments received at the workshop. Certain time periods for the Division and Commissioner to act were shortened from 30 days to 15 days, and the informal meeting provision, which in the previous version was discretionary with the Commissioner, was made mandatory if objections were received. Also, based upon comment from a Division examiner, a provision was inserted which makes the draft report served on the licensee a final report if no objections are received within the time period for the licensee to provide objections and comments. Section 7, which amends NAC 645B.280 to increase the 10 business day time period for the Commissioner to review a power of attorney, was reduced from the original proposal of an increase to 30 business days to an increase to only 15 business days, with an added provision for one extension of an additional 15 business days for good cause upon written notice to the requestor.

5. The estimated economic effect of the adopted regulation on the business that it is to regulate and on the public. These must be stated separately, and each case must include: (a) both adverse and beneficial effects and (b) both immediate and long-term effects:

A. Estimated economic effect on mortgage brokers:

It is estimated that the temporary regulation has a negligible economic effect on mortgage brokers. The regulation does not increase any fees.

(a) Adverse and beneficial effects: There are no apparent adverse economic affects on mortgage brokers. There are also no apparent beneficial economic effects from this regulation on mortgage brokers.

(b) Immediate and long-term effects: The immediate effects and the long-term effects of this regulation are very negligible and very difficult to calculate in either case.

B. Estimated economic effect on the public:

It is estimated that the proposed regulation to be adopted and amended will not have any significant negative or positive economic effect on the public.

(a) Adverse and beneficial effects: There are no adverse or beneficial effects to the public of this regulation.

(b) Immediate and long-term effects: None.

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

There is estimated to be no additional cost to the Financial Institutions Division for enforcement of the proposed regulation.

7. A description of any regulations of the 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 temporary regulation does not overlap or duplicate any regulations of other state or local government agencies or of any federal agency.

8. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of those provisions.

Not applicable.

9. If the regulation establishes a new fee or increases an existing fee, a statement indicating the total annual amount the agency expects to collect and the manner in which the money will be used.

Not applicable.