

**ADOPTED REGULATION OF THE COMMISSIONER
OF MORTGAGE LENDING**

LCB File No. R086-04

Effective August 25, 2004

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

AUTHORITY: §§1-6, NRS 645A.050; §7, NRS 645A.050 and 645A.065.

A REGULATION relating to escrows; providing for the use of trust accounts by escrow agents and escrow agencies; requiring escrow agencies to submit financial statements to the Commissioner of Mortgage Lending; increasing the fee for supervision and other related activities conducted pursuant to chapter 645A of NRS; and providing other matters properly relating thereto.

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

Sec. 2. *As used in this chapter, unless the context otherwise requires, “trust account” means an account held by an escrow agent or agency pursuant to NRS 645A.160.*

Sec. 3. *Except as otherwise provided in any written escrow instructions or an escrow agreement, each escrow agent or agency shall:*

1. Hold all money deposited in escrow with the agent or agency in trust for the person on whose behalf the deposit is made; and

2. Upon the request of the person on whose behalf the deposit was made, return all money deposited in escrow with the agent or agency.

Sec. 4. *1. Each escrow agency shall:*

(a) Deposit all money held in trust by the escrow agency into a trust account in a financial institution pursuant to NRS 645A.160; and

(b) Inform the financial institution of the purpose of the trust account.

2. Pursuant to NRS 645A.070, each escrow agency shall maintain, for a period of at least 6 years after final disposition of an escrow transaction:

(a) All records of the transaction, including, without limitation, checkbooks, cancelled checks, check stubs, vouchers, ledgers, journals, closing statements, accountings and other statements of disbursements rendered to a client or other party with regard to the trust account; and

(b) Any records that are related to the trust account which clearly reflect the date, amount, source and explanation for any receipt, withdrawal, delivery or disbursement of the funds or other property of a client with regard to the trust account.

3. The records maintained pursuant to subsection 2 must be available for inspection by the Division, upon its request.

4. For the purposes of this section, "financial institution" includes any federally insured bank, savings and loan association, credit union, savings bank and any other federally insured institution located in this State that accepts for deposit funds held in trust by escrow agents and agencies.

Sec. 5. 1. *Except as otherwise provided in this section, an escrow agency shall submit to the Commissioner, not later than 120 days after the last day of each fiscal year of the escrow agency, a financial statement that:*

(a) Is dated not earlier than the last day of the fiscal year of the escrow agency; and

(b) Has been prepared based on the books and records of the escrow agency by an independent public accountant who has a valid permit to engage in the practice of public accounting in this State.

2. *The Commissioner may grant a reasonable extension of time for the submission of a financial statement required pursuant to this section if an escrow agency requests an extension not later than 120 days after the last day of the fiscal year of the escrow agency.*

3. *If an escrow agency maintains a trust account pursuant to NRS 645A.160, the financial statement submitted pursuant to this section must:*

(a) *If the trust account has an average monthly balance of \$250,000 or less, be reviewed by an independent public accountant before it is submitted to the Commissioner. The review must be consistent with the standards set out in sections 400 to 408, inclusive, of the Statements on Standards for Accounting and Review Services published by the American Institute of Certified Public Accountants.*

(b) *If the trust account has an average monthly balance that exceeds \$250,000, be audited before it is submitted to the Commissioner. The escrow agency shall ensure that the public accountant who prepares the report of an audit submits a copy of the report to the Commissioner and the escrow agency at the same time.*

Sec. 6. 1. *Each escrow agent and agency shall conduct the business of the escrow agency openly, fairly and honestly, and shall at all times conform to the accepted business ethics and practices of the escrow agency business.*

2. *If an escrow agency performs services as a third party in the collection of payments in connection with a loan secured by real property, unless otherwise agreed between the parties, the escrow agency must remit the payment to the person who is entitled to receive the payment not later than 30 days after the last day of the month in which the escrow agency collected the payment.*

3. If an escrow agency maintains a trust account, the trust account must at all times contain sufficient money to pay all money due or owing to all clients. An escrow agency shall not make a disbursement from the account unless authorized to make a disbursement by:

(a) Escrow instructions;

(b) A servicing agreement; or

(c) An agreement between the parties to the transaction that the escrow agency may periodically withdraw money from the account to pay for services performed for the client.

4. Each escrow agency that maintains a trust account shall keep a record of all money deposited in the account. These records are subject to inspection by the Commissioner or his authorized representative and must include, without limitation:

(a) The name of the person who sent the money to the escrow agency;

(b) The account in which the money was deposited;

(c) The name of the person to whom the money belongs;

(d) The date the money was received;

(e) The date the money was deposited into the account;

(f) The date of each withdrawal from the account; and

(g) Any other pertinent information concerning the account, including, without limitation, escrow instructions and servicing agreements.

5. If the Commissioner determines that an escrow agency has not complied with subsection 2, 3 or 4 of this section, he may require the escrow agency to deliver an audited financial statement that is prepared, using the records of the escrow agency, by a certified public accountant who holds a certificate to engage in the practice of public accounting in this State. Except as otherwise provided in this subsection, the financial statement must be

submitted to the Commissioner not later than 60 days after the Commissioner requests the financial statement from the escrow agency. The Commissioner may grant a reasonable extension for the submission of the financial statement if an extension is requested not later than 60 days after the Commissioner requests the financial statement from the escrow agency.

Sec. 7. NAC 645A.010 is hereby amended to read as follows:

645A.010 1. The Commissioner ~~[of Financial Institutions]~~ will charge and collect a fee of ~~[\$50]~~ \$60 per hour from each escrow agency for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 645A of NRS.

2. The Commissioner will bill each escrow agency 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. The failure of an escrow agency to pay the fee required in subsection 1 as provided in this section constitutes grounds for revocation of its license.

4. Upon written request by an escrow agency, the Division must provide an accounting of the time billed to the escrow agency pursuant to this section.

NOTICE OF ADOPTION OF REGULATION

The Department of Business and Industry Mortgage Lending Division adopted regulations assigned LCB File No. R086-04 that pertain to chapter 645A of the Nevada Administrative Code on July 30, 2004.

Notice date: 4/28/2004

Date of adoption by agency: 7/30/2004

Hearing date: 5/28/2004, 6/11/2004, 6/16/2004

Filing date: 8/25/2004

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 NAC 645A, NAC 645B & NAC 645E workshop and hearings to all licensees and all interested parties on the Division's mailing list. Public comment was also solicited by posting notices of the workshop and hearings at public libraries throughout the state, the Division's offices, the Division's website at www.mld.nv.gov, the Attorney General's Office in Carson City, and the Manufactured Housing Division in Las Vegas. A summary of the public response is outlined in section 3 below. Interested persons may obtain a copy of the minutes and written comments from the Division of Mortgage Lending at 3075 East Flamingo, Ste. 104A, Las Vegas, Nevada 89121 or 400 W. King St., Ste. 406, Carson City, Nevada 89703 or by calling (702) 486-0782. The minutes may also be found on the Division's website.

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:	April 26, 2004	31
(b) Attended each hearing:	May 28, 2004	157
	June 11, 2004	158
	June 16, 2004	32
(c) Testified at each workshop:	April 26, 2004	14
(d) Testified at each hearing:	May 28, 2004	25
	June 11, 2004	41
	June 16, 2004	21
(e) Submitted written comments to the agency:		31

The workshop and hearings to solicit comments for NAC 645A were held concurrent with proposals to NAC 645B and NAC 645E. The numbers shown above represent testimony regarding proposals to all three regulations.

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 all licensed brokers, bankers and escrow companies in the state of Nevada and by posting the proposed regulations at public libraries throughout the state of Nevada and the Division's website. There was limited verbal comment during the workshop and hearings related to NAC 645A. Two written comments were submitted related to proposed changes to NAC 645A.

One interested party commented regarding the potential increased costs to escrow companies related to submitting audited financial statements by a certified public accountant to the Division.

Interested persons may obtain a copy of the minutes, transcript and written comments from the Division of Mortgage Lending at 3075 East Flamingo, Ste. 104A, Las Vegas, Nevada 89121 or 400 W. King St., Ste. 406, Carson City, Nevada 89703 or by calling (702) 486-0782. The minutes may also be found on the Division's website.

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.

Escrow agencies with an average monthly balance of \$250,000 or less are now permitted to have financial statements reviewed by an independent public accountant rather than audited.

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:

Estimated economic effect on the business:

Escrow companies maintaining average monthly balances over \$250,000 must have audited financial statements, causing an economic impact to those licensees. However, the majority of licensees maintain lower balances allowing them to supply financial statements which have been reviewed rather than audited thus reducing the economic impact.

(a) Adverse and beneficial effects:

As adopted, the permanent regulations will have an adverse economic affect on some escrow companies relating to increased cost associated with obtaining an audited or reviewed financial statement. There are no apparent beneficial economic effects from these regulations to the industry.

(b) Immediate and long-term effects:

The immediate effects and the long-term effects of this regulation are negligible and difficult to calculate in either case.

Estimated economic effect on the public:

It is estimated that the proposed regulations to be adopted and amended will have a positive economic effect on the public by instituting safeguards to ensure escrow agencies are fulfilling their fiduciary duties.

(a) Adverse and beneficial effects:

The regulation greatly improves accountability of escrow companies relating to trust accounts and maintenance of books and records. The regulation also requires escrow companies to maintain sufficient funds at all times to pay all money due or owing to all clients. Third party verification via review or audit of financial statements ensures correct maintenance of trust accounts and that generally accepted accounting principles are followed.

(b) Immediate and long-term effects:

The regulation will have both immediate and long-term effects by increasing escrow agency accountability, and by providing safeguards for consumer and businesses transacting business with escrow agencies as they relate to monies placed with the agency.

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

No additional cost to the Division of Mortgage Lending for enforcement of the proposed regulations is anticipated.

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 regulations do 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.**

The fee for examinations performed on escrow companies increased from \$50.00 to \$60.00. It is anticipated this fee will increase revenue by approximately \$1,300 per year. These funds will be used to offset the Division's costs of examinations.