

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

LCB File No. R088-04

Effective August 25, 2004

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

AUTHORITY: §§1-10, 14, 16-21 and 24-26, NRS 645E.300, §§11-13 and 15, NRS 645E.200 and 645E.300; and §§22 and 23, NRS 645E.300 and 645E.350.

A REGULATION relating to mortgage bankers; defining the term “affiliated business”; providing requirements for records and files of mortgage bankers; providing requirements relating to periodic and special audits, examinations and investigations of mortgage bankers; establishing a rating scale for the examination of mortgage bankers; establishing requirements for a mortgage banker to share space with another business in certain circumstances; requiring a mortgage banker to maintain a sign at each place of business of the mortgage banker; establishing requirements for a mortgage banker who uses more than one fictitious name; providing requirements and forms for certain disclosures; revising requirements related to licensing of, advertising by, and disciplinary action against mortgage bankers; revising fees charged to mortgage bankers for enforcement by the Commissioner of Mortgage Lending; and providing other matters properly relating thereto.

Section 1. Chapter 645E of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this regulation.

Sec. 2. 1. *“Affiliated business” means a business which a mortgage banker or any general partner, officer, director or employee of the mortgage banker:*

- (a) Directly or indirectly owns or controls a controlling interest of the business;*
- (b) Is a partner, officer, director or trustee of the business; or*
- (c) Conducts the operation of the business.*

2. *As used in this section, “controlling interest” means a majority of the voting stock of a business or any other interest in a business that gives the holder of the interest the power to direct the management or to determine the policy of the business.*

Sec. 3. *As used in NRS 645E.350, the Commissioner interprets “complete and suitable records” to mean:*

1. *For residential mortgage loans, a file that includes, but is not limited to, the following documents, if applicable to the type and purpose of the loan:*

- (a) The real estate sales contract;*
- (b) Escrow instructions;*
- (c) The preliminary title report;*
- (d) The loan application, including, but not limited to, any attachments or supplements;*
- (e) An appraisal report;*
- (f) Any verification of representations made by the consumer on the application for the loan;*
- (g) A credit report;*
- (h) A good faith estimate of closing costs and any disclosures required pursuant to the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq.;*
- (i) The Uniform Settlement Statement, as described pursuant to 12 U.S.C. § 2603;*
- (j) Any commitments made by the lender to the consumer, including, but not limited to, a commitment to guarantee the consumer a certain interest rate and a commitment to fund the loan;*
- (k) A recorded or confirmed deed of trust;*
- (l) The title insurance policy;*

(m) The note;

(n) Any subsequent assignment of the loan to institutional investors; and

(o) The hazard insurance policy.

2. For commercial mortgage loans that are funded by the mortgage banker, a file that includes, if applicable, the items required pursuant to paragraphs (a) to (j), inclusive, of subsection 1.

3. Any additional books and records that must be maintained or readily accessible at each place of business of the mortgage banker, including, but not limited to:

(a) Any book or record that evidences compliance with applicable federal and state laws and regulations;

(b) A copy of each item of advertising material that was published or distributed by or on behalf of the mortgage banker, in the format in which the material was published or distributed;

(c) A copy of any written complaint received by the mortgage banker, together with all correspondence, notes, responses and other documentation related to the disposition of the complaint;

(d) All checkbooks, check registers, bank statements, deposit slips, withdrawal slips, cancelled checks and other records that relate to the business of the mortgage banker;

(e) Copies of all federal tax withholding forms, reports of income for federal taxation and evidence of payments to all employees, independent contractors and other persons that worked for the mortgage banker;

(f) Copies of all documents evidencing a contractual relationship between the mortgage banker and any third-party provider of services related to mortgages, including, but not limited

to, contracts, invoices, billings and remittances to the provider by or on behalf of the mortgage banker;

(g) Copies of all material correspondence related to the business of the mortgage banker, including, but not limited to, electronic messages; and

(h) Copies of all reports, audits, examinations, inspections, reviews, investigations or other similar activities relating to the business of the mortgage banker performed by any third party, including, but not limited to, any regulatory or supervisory authority.

Sec. 4. *An examiner, auditor or investigator conducting an examination, periodic or special audit, or investigation pursuant to paragraph (b), (c) or (d) of subsection 2 of NRS 645E.300 may:*

1. Require the mortgage banker to produce, for the purposes of the examination, audit or investigation, all documents:

(a) Relating to business conducted by the mortgage banker pursuant to this chapter or chapter 645E of NRS;

(b) Required to be kept by the mortgage banker pursuant to any federal or state law or regulation; and

(c) Related to the operation of the business of the mortgage banker or any affiliated business that conducts business activities which are directly related to the business of the mortgage banker.

2. Inspect and copy any documents that are in the possession, control or custody of the mortgage banker and related to business conducted by the mortgage banker pursuant to this chapter or chapter 645E of NRS.

Sec. 5. *Upon completion of an examination of a mortgage banker, the examiner shall rate the mortgage banker on a scale of “1” to “5,” as follows:*

1. A rating of “1” indicates that the mortgage banker and the management of the mortgage banker have demonstrated a high degree of compliance with applicable laws and regulations. A rating of “1” may be given if there is a minor violation or deficiency and the mortgage banker acted to correct the violation or deficiency immediately and the action taken by the mortgage banker is likely to prevent future violations or deficiencies.

2. A rating of “2” indicates that the mortgage banker and the management of the mortgage banker have demonstrated substantial compliance with applicable laws and regulations and that any violations or deficiencies noted in the report made by the examiner pursuant to section 6 of this regulation can be corrected by the mortgage banker with a minimum of regulatory supervision. A rating of “2” may be given if there are minor violations or deficiencies and the mortgage banker acted to correct the violations or deficiencies immediately and the action taken by the mortgage banker is likely to prevent future violations or deficiencies.

3. A rating of “3” indicates that the mortgage banker and the management of the mortgage banker have demonstrated less than satisfactory compliance with applicable laws and regulations and that regulatory supervision is required for the correction of the violations and deficiencies noted in the report made by the examiner pursuant to section 6 of this regulation. A rating of “3” may be given if there were previous minor violations or deficiencies that were not corrected.

4. A rating of “4” indicates that the mortgage banker and the management of the mortgage banker have demonstrated substantial lack of compliance with applicable laws and

regulations and that immediate remedial action is required for the correction of the violations and deficiencies noted in the report made by the examiner pursuant to section 6 of this regulation. The mortgage banker will be subject to close regulatory supervision and the examiner will recommend disciplinary action against the mortgage banker to the Commissioner.

5. A rating of “5” indicates that the mortgage banker and the management of the mortgage banker have demonstrated unsatisfactory compliance with applicable laws and regulations and that immediate remedial action is required for the correction of the violations and deficiencies noted in the report made by the examiner pursuant to section 6 of this regulation and may include action by the Commissioner to take possession of the business and assets of the mortgage banker. The examiner will recommend disciplinary action against the mortgage banker to the Commissioner.

Sec. 6. 1. *Not more than 30 days after the completion of an examination of a mortgage banker, the examiner that performed the examination shall prepare a draft report of the examination and provide the draft report to appropriate personnel of the Division. The draft report must include only:*

(a) Facts that are contained in the files, books, records or other documents of the mortgage banker that were examined by the examiner;

(b) Facts that are contained in statements made by officers or agents of the mortgage banker or other persons that the examiner interviewed concerning the mortgage banker; and

(c) Conclusions and recommendations that are reasonably supported by the facts that are included in the report, including, but not limited to, the rating given to the mortgage banker by the examiner pursuant to section 5 of this regulation.

2. Not more than 15 days after the draft report of an examination is received by the Division, the Commissioner or his designee will deliver to the mortgage banker that was examined:

(a) A copy of the draft report; and

(b) Notice that the mortgage banker has not more than 30 days, unless the Commissioner, for good cause, allows a longer period, to review the draft report and submit to the Commissioner, in writing, any comments regarding or objections to matters contained in the draft report.

3. If a mortgage banker received a rating of “3,” “4” or “5” on an examination pursuant to section 5 of this regulation and submitted written comments or objections within the period specified in subsection 2, the Commissioner or his designee will:

(a) Not more than 15 days after the last day on which the mortgage banker could submit written comments or objections pursuant to subsection 2, hold an informal meeting with the mortgage banker regarding the draft report; and

(b) Review the draft report, together with the written comments or objections submitted by the mortgage banker and any relevant portions of the working papers of the examiner, and, not more than 15 days after the date on which the informal meeting was held pursuant to paragraph (a):

(1) Adopt the draft report as filed;

(2) Adopt the draft report with modifications;

(3) Provide the mortgage banker with an opportunity for a formal hearing; or

(4) Direct the examiner to reopen the examination to obtain additional data, documents or information and, if necessary, file a new draft report pursuant to subsection 1. If the

findings of the initial draft report are supported by the findings of the examiner after the completion of the reopened examination, the mortgage banker shall be responsible for the costs attributable to the reopened examination pursuant to NRS 645E.310.

4. If a mortgage banker:

(a) Received a rating of “1” or “2” on an examination pursuant to section 5 of this regulation and submitted written comments or objections within the period specified in subsection 2; or

(b) Did not file a written comment or objection to a draft report within the period specified in subsection 2,

↳ the draft report will be deemed to be the final report of the examination.

5. Pursuant to NRS 645E.370, the results of an examination are not open to public inspection until the requirements set forth in subsection 3 are completed.

6. If the examination and report reveal that a mortgage banker is operating in violation of this chapter, chapter 645E of NRS or a previous order of the Commissioner, the Commissioner may order the mortgage banker to take any action the Commissioner deems necessary or appropriate to correct the violation. The Commissioner may also take disciplinary action pursuant to NRS 645E.670.

7. The Commissioner may, for good cause, extend any period specified in this section that is applicable to an examiner, the Commissioner or his designee for an additional period of not more than 15 days.

Sec. 7. 1. A mortgage banker, loan officer or qualified employee who is also licensed as a real estate broker or real estate salesman and who acts in both capacities in a single

transaction must make to the borrower the disclosures set forth on the form prescribed by the Division pursuant to subsection 2, including, but not limited to:

(a) Whether the mortgage banker, loan officer or qualified employee will be receiving compensation for acting as a mortgage banker, loan officer or qualified employee and as a real estate broker or real estate salesman in the same transaction;

(b) That the borrower is under no obligation to allow the real estate broker or real estate salesman to submit the loan package of the borrower to a mortgage banker, loan officer or qualified employee; and

(c) That the borrower may contact other mortgage bankers, loan officers or qualified employees to determine if the borrower is receiving the best services related to the loan and the best prices for those services.

2. The mortgage banker, loan officer or qualified employee shall provide the disclosures required pursuant to subsection 1 to the borrower at the time of application for a loan and in the following format:

(At least 14-point font)

BORROWER(S)

ACKNOWLEDGMENT AND AGREEMENT CONCERNING

DUAL CAPACITY AS REAL ESTATE SALES AGENT AND MORTGAGE LOAN AGENT

(At least 12-point bold font)

Borrower(s) are under no obligation whatsoever to allow their real estate sales agent to initiate or submit the borrower(s) loan package to any mortgage lender, broker, banker or investor.

Mortgage brokers and other loan originators cannot offer loans from all funding sources and cannot guarantee the lowest price or best terms available in the market.

There may be other mortgage loan providers available with similar services and lower rates and/or fees. You are free and encouraged to contact various lenders to determine that you are receiving the best service and rates and lowest fees for those services. A comparative analysis of providers' services, rates and fees is recommended prior to making a decision on which lender to use.

(At least 10-point font)

Borrower(s) are hereby informed and expressly acknowledge the following:

- Real estate sales agent _____, hereinafter referred to as "agent," is also associated with _____ (mortgage broker/banker) and is acting in the dual capacity as both mortgage loan agent and real estate sales agent and shall receive compensation from the real estate sales transaction and separate compensation for arranging the mortgage loan.

- Real estate company _____ (check one of the following):

_____ Does have a business relationship with the licensed mortgage broker/banker or exempt company to which your loan is referred. Because of this

relationship, this referral may provide the real estate company named above a financial or other benefit.

Describe the nature of the relationship including percentage of ownership interest, if applicable.

Does not have a business relationship with the licensed mortgage broker/banker or exempt company to which your loan is referred.

The mortgage broker/banker must provide you with a Good Faith Estimate disclosing all estimated costs of the loan, including the yield spread premium (YSP.) The YSP is income paid to a mortgage broker upon delivery of a mortgage loan to a lender at a premium interest rate.

By signing I/we confirm my/our understanding of the information provided herein.

BORROWER

BORROWER

By signing this form, the mortgage loan agent agrees that any fees paid to the mortgage broker/banker/agent as referred to above will not increase the cost of the borrower(s) loan

beyond the normal and customary charges typically collected by mortgage lenders, brokers or investors.

MORTGAGE BROKER/QUALIFIED EMPLOYEE/AGENT

If you have any questions regarding your mortgage loan agent or loan, please visit the Division of Mortgage Lending website at <http://www.mld.nv.gov> or call 702.486.0780 in Las Vegas or 775.684.7060 in Northern Nevada.

3. *As used in this section:*

(a) *“Real estate broker” has the meaning ascribed to it in NRS 645.030; and*

(b) *“Real estate salesman” has the meaning ascribed to it in NRS 645.040.*

Sec. 8. 1. *Except as otherwise provided in subsection 2, a mortgage banker may share office space with any other business if each business has a designated space within the office space and each business is separately identifiable by a sign or other method of identification within the office space.*

2. *A mortgage banker may share office space with a business licensed pursuant to chapter 645 of NRS if:*

(a) *Each business has separate and distinct office space and signs such that a reasonable customer would understand which business he is transacting with at all times;*

(b) *Each business operates as a separate legal entity;*

(c) *Each business maintains separate accounts, books and records;*

(d) *Each business maintains separate licenses; and*

(e) The businesses are subsidiaries of the same parent corporation or are otherwise affiliated businesses.

Sec. 9. *A mortgage banker shall maintain a permanent sign that includes the name of the mortgage banker at each place of business of the mortgage banker, including, but not limited to, each branch office of the mortgage banker. This sign must be:*

- 1. Readable from the nearest public sidewalk, street or highway; or*
- 2. If the place of business of the mortgage banker is an office building, posted on the building directory of the office building or near the entrance to the office building on the exterior of the building.*

Sec. 10. NAC 645E.010 is hereby amended to read as follows:

645E.010 As used in this chapter, unless the context otherwise requires:

1. The words and terms defined in NRS 645E.020 to 645E.100, inclusive, *and section 2 of this regulation*, have the meanings ascribed to them in those sections.

2. “Qualified employee” means:

(a) A director, officer, member, partner, employee, manager or trustee of a partnership, corporation or limited-liability company designated by the partnership, corporation or limited-liability company pursuant to NAC 645E.310 to act on behalf of the partnership, corporation or limited-liability company; or

(b) A person designated by a sole proprietorship who satisfies the requirements set forth in subsection 3 of NRS 645E.200 and NAC 645E.200.

Sec. 11. NAC 645E.200 is hereby amended to read as follows:

645E.200 An applicant for a license as a mortgage ~~company~~ *banker* 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.

Sec. 12. NAC 645E.210 is hereby amended to read as follows:

645E.210 **1.** An applicant must submit with his application for a license pursuant to chapter 645E of NRS:

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

~~2.~~ **(b)** A copy of the certificate filed by the mortgage ~~company,~~ *banker* pursuant to chapter 602 of NRS indicating the fictitious name of the mortgage ~~company,~~ *banker*, if any.

~~3.~~ **(c)** If the applicant is a corporation, a copy of:

~~(a)~~ **(1)** Its articles of incorporation and its bylaws;

~~(b)~~ **(2)** 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)~~ **(3)** The most recent list of its officers and resident agents that is filed with the Secretary of State.

~~4.~~ **(d)** 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.~~ **(e)** If the applicant is a corporation being organized, a copy of its proposed articles of incorporation and its bylaws.

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

~~[(a)]~~ (1) Its articles of organization and operating agreement;

~~[(b)]~~ (2) 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)]~~ (3) The most recent list of its members or managers, and resident agents, that is filed with the Secretary of State.

(g) A copy of the lease of the applicant or other document that includes the address of the place of business of the applicant.

(h) Documentation from the appropriate municipal or county authority which indicates that local ordinances allow permanent business signs to be maintained at the place of business of the applicant.

2. If an applicant has received a letter of conditional approval of his application from the Division which imposes additional requirements that the applicant must satisfy to obtain a license, the applicant must comply with those requirements within 30 days after the date on which the letter was issued by the Division. If the applicant does not satisfy all additional requirements set forth in the letter within the period prescribed in this subsection, the conditional approval of the application will be deemed to have expired and the applicant must reapply to obtain a license. The Commissioner may, for good cause, extend the 30-day period prescribed in this subsection.

Sec. 13. NAC 645E.220 is hereby amended to read as follows:

645E.220 1. An applicant must submit with his application for a license for a branch office the name, residence address and telephone number of a qualified employee designated to manage the branch office.

2. The Commissioner will approve an application for a license 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]~~ *during the preceding 12 months.*

(b) The Commissioner approves the qualified employee designated 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.

(c) The applicant provides documentation from the appropriate municipal or county authority which indicates that local ordinances allow permanent business signs to be maintained at the branch office.

3. *The Commissioner may waive the requirements of subsection 2 upon good cause shown.*

4. A license for a branch office may be issued only in the name in which the mortgage ~~[company]~~ *banker* is licensed to conduct business at its principal office.

~~[4.]~~ 5. Each branch office must conspicuously display its license at the branch office.

~~[5.]~~ 6. A mortgage ~~[company]~~ *banker* is responsible for and shall supervise:

(a) Each branch office of the mortgage ~~[company;]~~ *banker;* and

(b) Each qualified employee authorized to conduct mortgage lending activity at a branch office of the mortgage ~~[company.]~~ *banker.*

Sec. 14. NAC 645E.230 is hereby amended to read as follows:

645E.230 1. Any material change in the ownership, management or principal employees of a mortgage ~~[company]~~ *banker* at its principal office or a branch office must be reported to the Commissioner not later than 30 calendar days after the change.

2. If a person acquires stock or ownership in a mortgage ~~[company]~~ *banker* as a result of a transfer that constitutes a change of control pursuant to NRS 645E.390:

(a) A financial statement or personal interrogatory 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 ~~[company]~~ *banker* until the Commissioner has approved the transfer; and

(c) The mortgage ~~[company]~~ *banker* may not change the location of its principal office or a branch office until the Commissioner has approved the transfer.

Sec. 15. NAC 645E.240 is hereby amended to read as follows:

645E.240 1. A mortgage ~~[company]~~ *banker* shall not conduct business using a fictitious name unless the mortgage ~~[company:]~~ *banker:*

(a) Complies with the provisions of 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 ~~[company]~~ *banker* pursuant to chapter 602 of NRS indicating the fictitious name; and

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

2. If a mortgage ~~[company]~~ *banker* conducts business using a fictitious name pursuant to this section, the mortgage ~~[company]~~ *banker* may conduct business using a new fictitious name only if the mortgage ~~[company:]~~ *banker:*

(a) Obtains a certified copy, issued by the appropriate county clerk, of the certificate filed by the mortgage ~~[company]~~ *banker* 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 ~~[company:]~~ *banker*;

and

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

3. A mortgage banker may conduct business using more than one fictitious name only if the mortgage banker obtains a separate license issued pursuant to chapter 645E of NRS for each fictitious name under which he intends to do business. A mortgage banker who conducts business in this State using more than one fictitious name is responsible for the conduct of each qualified employee, mortgage agent and other employee associated with the mortgage banker, regardless of the license or name under which the conduct takes place.

Sec. 16. NAC 645E.250 is hereby amended to read as follows:

645E.250 1. The Division ~~[shall]~~ *will* 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 ~~[company:]~~ *banker* 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 ~~[company:]~~ *banker*.

Sec. 17. NAC 645E.260 is hereby amended to read as follows:

645E.260 1. A person conducts verifiable business as a mortgage ~~[company:]~~ *banker* if he:

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

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

2. Evidence of activity described in subsection 1 must be submitted to the Commissioner in the monthly report of activity.

Sec. 18. NAC 645E.270 is hereby amended to read as follows:

645E.270 A person does not hold himself out as being able to perform the services described in NRS 645E.100 if he only offers to provide money to invest in loans secured by an interest in real property to:

1. A mortgage ~~company~~ *banker* licensed pursuant to chapter 645E of NRS; or
2. A person exempt from the provisions of chapter 645E of NRS.

Sec. 19. NAC 645E.310 is hereby amended to read as follows:

645E.310 1. Every partnership, corporation or limited-liability company doing business as a mortgage ~~company~~ *banker* in this State shall designate a qualified employee who may, upon approval by 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 ~~company~~ *banker* pursuant to chapter 645E 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 645E 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 NAC 645E.010, 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 NAC 645E.010; or

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

Sec. 20. NAC 645E.320 is hereby amended to read as follows:

645E.320 1. Except as otherwise provided in this subsection, the Commissioner will charge and collect a fee of ~~[\$40]~~ \$60 per hour from each mortgage ~~[company]~~ banker for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 645E of NRS. The Commissioner may charge a fee ~~[of \$125 per hour]~~ *equivalent to the estimated or actual fee charged to the Division* for the time of an attorney required in any examination, investigation or hearing conducted pursuant to chapter 645E of NRS.

2. The Commissioner will bill each mortgage ~~[company]~~ banker upon the completion of the activity for the fee established in subsection 1. The fee must be paid not later than 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 the last month, that the fee is not paid. The Commissioner may waive the penalty for good cause.

3. Upon written request by a mortgage banker, the Division will provide an accounting of the time billed to the mortgage banker pursuant to this section.

Sec. 21. NAC 645E.330 is hereby amended to read as follows:

645E.330 1. Each mortgage ~~[company]~~ *banker* shall pay to the Division an annual assessment ~~[in an amount calculated in accordance with NAC 658.030]~~ *as required pursuant to NRS 645F.180* to cover the costs related to the employment of a certified public accountant and the performance of audits and examinations by the Division.

2. The Division ~~[shall]~~ *will* bill each mortgage ~~[company]~~ *banker* 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]~~ *banker* 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. 22. NAC 645E.350 is hereby amended to read as follows:

645E.350 1. Each mortgage ~~[company]~~ *banker* shall submit, for each month, on a form approved by the Commissioner, a report on the volume of loans arranged by the mortgage ~~[company]~~ *banker* in that month. The monthly report must be submitted to the Commissioner 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 state that fact.

2. The Commissioner may refuse to renew the license of a mortgage ~~[company]~~ *banker* that has not submitted a monthly report as required by subsection 1 for 1 or more of the preceding 12 months.

Sec. 23. NAC 645E.360 is hereby amended to read as follows:

645E.360 *1.* Each mortgage ~~company~~ *banker* shall retain records of all its completed mortgage transactions for a period of at least ~~6~~ 4 years after the date of the last activity relating to the transaction. After a record has been retained for 2 or more years, the mortgage ~~company~~ *banker* may cause the original record to be reproduced by the microphotographic process, optical disc 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 record may be destroyed.

2. Each mortgage banker shall retain applications for mortgages that were denied or withdrawn for a period of at least 1 year or as otherwise required by federal law.

3. Each mortgage banker shall maintain records of completed mortgage transactions at the location at which the mortgage loan was made for at least 1 year after the date of closing of the loan. After expiration of the 1-year period required pursuant to this subsection, any such record may be maintained for the minimum period prescribed in subsection 1 at another location if the record can be provided not later than 24 hours after a request for the record. The Commissioner, for good cause shown, may allow a longer period to provide records.

Sec. 24. NAC 645E.400 is hereby amended to read as follows:

645E.400 An appraisal submitted to a lender by a mortgage ~~company~~ *banker* must not be prepared by the mortgage ~~company~~ *banker* and must:

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 this 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. 25. NAC 645E.450 is hereby amended to read as follows:

645E.450 1. A ~~licensed mortgage company~~ *mortgage banker* shall not represent an activity which is not licensed pursuant to chapter 645E of NRS as being licensed pursuant to that chapter.

2. ~~An~~ *Except as otherwise provided in subsection 3, an* advertisement for an activity which is licensed pursuant to chapter 645E 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~~ *mortgage banker may advertise jointly with a company licensed pursuant to chapter 624 or 645 of NRS if each business is disclosed separately in the advertisement and each business incurs a pro rata share of the cost associated with the advertisement.*

4. *A mortgage banker* must include in ~~its~~ *his* advertisements, including any advertising material available on the Internet:

(a) ~~Its name,~~ *The complete name of the mortgage banker or the complete name under which the mortgage banker does business.*

(b) *The* address and telephone number ~~;~~ ~~and~~
~~(b)~~ *that the mortgage banker has on file with the Division. Additional telephone or cellular phone numbers of the mortgage banker may also be included.*

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

~~[4.]~~ 5. A mortgage ~~[company]~~ *banker* 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.

6. In addition to the requirements of this chapter, each advertisement used in carrying on the business of a mortgage banker must comply with:

(a) NRS 598.0903 to 598.0999, inclusive, concerning deceptive trade practices; and

(b) All applicable federal statutes and regulations concerning deceptive advertising and advertising of interest rates.

Sec. 26. NAC 645E.500 is hereby amended to read as follows:

645E.500 1. The Commissioner ~~[will]~~ *may* 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 645E.670, a mortgage ~~company~~ *banker* commits a violation if the mortgage ~~company~~ *banker*:

(a) Engages in a deceptive trade practice as defined in chapter 598 of NRS; ~~for~~

(b) Fails to refund any fees collected in excess of the actual cost the mortgage ~~company~~ *banker* 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 ~~for~~; *or*

(c) *Violates a provision of:*

(1) 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.

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

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

(4) Any other applicable federal or state law or regulation related to mortgage transactions.

NOTICE OF ADOPTION OF REGULATION

The Department of Business and Industry Mortgage Lending Division adopted regulations assigned LCB File No. R088-04 that pertain to chapter 645E 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 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 645E were held concurrent with proposals to NAC 645A and NAC 645B. 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 mortgage brokers, bankers and escrow companies in the state of Nevada, by posting the proposed regulations at public libraries throughout the state of Nevada and posting on the Division's website. Comments from affected businesses were primarily given by oral comment at the workshop and hearings. A limited number of written comments were received.

A large percentage of comments concerned the proposal to disallow mortgage brokers/agents/qualified employees to simultaneously hold a real estate broker/salesman license. In response to industry input, this proposed regulation was revised twice. The first revision would allow mortgage brokers or mortgage agents to hold a real estate salesmen or broker license, but not be compensated on both sides of a single transaction. Following additional industry comment the proposed regulation was revised to permit dual licensing and compensation in a single transaction, but require disclosure to the consumer regarding the dual capacity relationship. Although there was some support to disallow dual licensing and compensation, the professional associations for both mortgage brokers and real estate agents/brokers supported the disclosure requirement.

Other comments pertained to:

The requirement to operate from an office that was separate and distinctly identified.
The Division's authority to examine affiliated businesses that directly related to the business off the mortgage broker.

File retention requirements.

The timeframe for licensees to submit written comments or objections to an examination report.

The licensee's ability to receive an accounting of examination hours.

Advertising requirements when advertising jointly with a builder.

Interested persons may obtain this information statement 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, obtaining this information on the Division's website, or by calling (702) 486-0782.

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 regulations as originally proposed based upon public comments at the workshop and hearings, written comments and comments from Division staff. Changes include:

The regulation permits dual representation by real estate brokers/agents and mortgage lenders with a disclosure to the consumer. A disclosure form was added as a new regulation.

The regulations were revised to allow a mortgage broker to share office space with any other business if each business has a designated space within the office space and each business is separately identifiable by a sign or other method of identification within the office space.

During public hearings, the Division clarified the authority to examine affiliated businesses extends only to activities which are directly related to the business of the licensee. A definition of affiliated business was included in the regulation.

The timeframe for licensees to submit written comments or objections to an examination report was expanded from 15 to 30 days.

A regulation was added requiring the Division to provide an accounting of the examination hours upon request.

The regulation permits a mortgage banker to advertise jointly with a company licensed pursuant to chapter 624 or 645 of NRS if each business is disclosed separately in the advertisement and each business incurs a pro rata share of the cost associated with the advertisement.

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:

Mortgage brokers and bankers may have an increased cost in signage, having separate and distinct office space and sufficient file storage. The Division does not anticipate that this will have a negative economic effect to the majority of licensees.

(a) Adverse and beneficial effects:

There are no apparent beneficial economic effects from these regulations to the industry as a whole.

(b) Immediate and long-term effects:

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

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:

The adverse effect of a dual relationship is the potential risk of fraud and possible increased costs to the consumer. This risk is mitigated by the dual relationship disclosure. The public may benefit from receiving this disclosure by encouraging individuals to make a comparative analysis of provider's services and fees.

(b) Immediate and long-term effects:

None.

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 overlap with federal regulations, in that NAC 645E.500 states violations of the Truth in Lending Act, the Equal Credit Opportunity Act, The Real Estate Settlement Procedures Act and other applicable federal laws and state laws related to mortgage transactions are violations of NAC 645E.500.

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

No.

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 fees for examinations increased from \$40.00 to \$60.00 for brokers and bankers. It is anticipated this fee will increase revenue by approximately \$10,950 per year. These funds will be used to offset the Division's costs of examinations.