

LCB File No. R158-04

**PROPOSED REGULATION OF THE COMMISSIONER
OF MORTGAGE LENDING**

**(Note: This language was formerly sections 20 and 21 of R087-04;
it has been removed from that regulation.)**

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

Section 1. NAC 645B.080 is hereby amended to read as follows:

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

(a) A written application for the loan which is signed by the prospective borrower and which contains the borrower's address, a history of his employment and income, details of monthly payments he is obliged to pay and any other information requested by the investor.

(b) Evidence of the history of employment of the prospective borrower and income, such as a tax return or an employer's statement of the borrower's past yearly income.

(c) A report on the history of credit of the prospective borrower issued by a credit reporting agency, including an explanation by the borrower of any material derogatory item in the report and evidence that the report has been compared for accuracy to the borrower's application for the loan.

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

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

2. A mortgage broker shall retain a copy of the documents described in subsection 1 and shall retain in his files a statement from the investor, on a form provided by the Division, acknowledging that:

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

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

3. If the loan is made, the mortgage broker shall retain in his files and provide to the investor:

(a) A copy of the promissory note;

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

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

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

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

(a) A copy of a policy of fire insurance which is adequate to cover the replacement costs of all improvements on the property securing the loan, including an endorsement naming the investor as the insured, when applicable;

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

(c) If the borrower is a corporation or partnership, a copy of its statement authorizing the loan.

5. The mortgage broker shall store his original notes, if retained, in a fireproof container or room.

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

- (a) Investor, upon request; and
- (b) Borrower, upon request, if the borrower has paid for the appraisal.

7. An investor may not waive the provisions of subsection 1 unless:

- (a) The investor has made a prior investment with the mortgage broker;*
- (b) The investor has a net worth that exceeds \$1,000,000; or*

(c) The investor has invested with the mortgage broker an amount that is not more than 20 percent of the net worth of the investor, excluding the residence and motor vehicle of the investor.

~~8.~~ ~~8.~~ *The mortgage broker must obtain a signed statement from the investor indicating the receipt or waiver of the provisions of subsection 1 and the eligibility of the investor to waive the provisions of subsection 1, if applicable. The statement must be in the following form:*

Investor Receipt of Documents and/or Waiver

Mortgage broker: _____

Borrower: _____

Project name: _____

Loan amount: _____

Investor name: _____

I. Documents received or waived before investing in the loan (natural persons only)

This is to certify that I/we received or waived the right to receive the following documents prior to making a decision to invest in the above loan:

(a) A written application for the loan which is signed by the prospective borrower and which contains the borrower's address, a history of his employment and income, details of monthly payments he is obliged to pay and any other information requested by the investor.

✓ Received

✓ Waived

(b) Evidence of the prospective borrower's history of employment and income, such as a tax return or an employer's statement of the borrower's last yearly income.

✓ Received

✓ Waived

(c) A report on the prospective borrower's history of credit issued by a credit reporting agency, including an explanation by the borrower of any material derogatory item in the report and evidence that the report has been compared for accuracy to the borrower's application for the loan.

✓ Received

✓ Waived

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

✓ Received

✓ Waived

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

✓ Received

✓ Waived

II. Investor(s) certify they meet one of the following requirements allowing waiver of any of the above items:

*(a) The investor has made a prior investment with the mortgage broker named above;
or*

(b) The investor has a net worth that exceeds \$1,000,000; or

(c) The investor has invested with the mortgage broker an amount that is not more than 20 percent of the net worth of the investor, excluding the residence and motor vehicle of the investor.

Signature required:

Investor: _____

Investor: _____

Dated: _____

Dated: _____

Sec. 2. NAC 645B.215 is hereby amended to read as follows:

645B.215 1. Before a person purchases an existing note secured by a deed of trust or an interest therein for which a licensed mortgage broker is acting as a broker, the mortgage broker shall provide to the purchaser, unless specifically waived in writing by that person:

(a) A copy of the promissory note;

(b) A record of the history of payments on the note or a document signed by the seller and borrower stating the existing balance of the note;

(c) The policy of title insurance for the original beneficiaries of the note; and

(d) The original appraisal of the property securing the note, if available.

2. A mortgage broker shall retain a copy of the materials provided to the purchaser pursuant to subsection 1.

3. If the purchase is made, the mortgage broker shall retain in his files the original or a copy and *shall* provide to the purchaser, respectively, the copy or original of the following documents:

(a) The promissory note and the assignment of the note.

(b) The recorded deed of trust and recorded assignment of the beneficial interest.

(c) The endorsement to the policy of title insurance or a new policy of title insurance for the assignment.

(d) A policy of fire insurance indicating coverage in an amount sufficient to cover the replacement costs of all improvements on the property, including, if applicable, an endorsement naming the purchaser as a payee in case of loss.

(e) A statement signed by the purchaser acknowledging that the decision to purchase the note secured by a deed of trust was made after the purchaser was provided with and reviewed the material required in subsection 1.

4. An investor may not waive the provisions of subsection 1 unless:

- (a) *The investor has made a prior investment with the mortgage broker;*
- (b) *The investor has a net worth that exceeds \$1,000,000; or*
- (c) *The investor has invested with the mortgage broker an amount that is not more than 20 percent of the net worth of the investor, excluding the residence and motor vehicle of the investor.*

5. The mortgage broker must obtain a signed statement from the investor indicating the receipt or waiver of the provisions of subsection 1 and the eligibility of the investor to waive the provisions of subsection 1, if applicable. The statement must be in the following form:

Investor Receipt of Documents and/or Waiver

Mortgage broker: _____ *Borrower:* _____
Project name: _____ *Loan amount:* _____
Investor name: _____

I. Documents received or waived before investing in the loan (natural persons only)

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

- (a) *A copy of the promissory note.*

Received

Waived

(b) A record of the history of payments on the note or a document signed by the seller and borrower stating the existing balance of the note.

✓ Received

✓ Waived

(c) The policy of title insurance for the original beneficiaries of the note.

✓ Received

✓ Waived

(d) The original appraisal of the property securing the note, if available.

✓ Received

✓ Waived

II. Investor(s) certify they meet one of the following requirements allowing waiver of any of the above items:

(a) The investor has made a prior investment with the mortgage broker named above;

or

(b) The investor has a net worth that exceeds \$1,000,000; or

(c) The investor has invested with the mortgage broker an amount that is not more than 20 percent of the net worth of the investor, excluding the residence and motor vehicle of the investor.

Signature required:

Investor: _____

Investor: _____

Dated: _____

Dated: _____