

**ADOPTED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R121-06

Effective September 18, 2006

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

AUTHORITY: §§1 and 4-8, NRS 692A.090; §2, NRS 692A.1045; §3, NRS 692A.100.

A REGULATION relating to insurance; establishing certain standards for adequate supervision of a title agent or escrow officer; establishing certain requirements for licensure as a title agent; authorizing the retention of certain records in electronic form; prohibiting issuance of title insurance and disbursement of money from an escrow account under certain circumstances; requiring a title insurer, title agent or escrow officer to report certain information to the Commissioner of Mortgage Lending; and providing other matters properly relating thereto.

Section 1. Chapter 692A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. *For the purposes of NRS 692A.105 and 692A.107, a title insurer or title agent maintains adequate supervision of a title agent or an escrow officer he has appointed or employed if he:*

1. Designates a supervisor to assist the title agent or escrow officer. The supervisor must be:

- (a) Licensed as a title agent pursuant to this chapter and chapter 692A of NRS; and*
- (b) Present at the location where the title agent or escrow officer does business, or immediately available to the title agent or escrow officer, at least one-half of the time the location is open to the public.*

2. *Provides the title agent or escrow officer with instruction concerning the duties of a title agent or an escrow officer, including, without limitation, the provisions of this chapter and chapters 686A and 692A of NRS.*

3. *Maintains records that set forth the manner and frequency with which he provides supervision and instruction to the title agent or escrow officer.*

4. *Provides the title agent or escrow officer with written policies and procedures that set forth the duties of the title agent or escrow officer and the manner in which the duties must be performed. The policies and procedures must:*

(a) Include, without limitation, the provisions of sections 5 and 6 of this regulation; and

(b) Be provided to the Commissioner upon request.

5. *Prevents the title agent from issuing a policy of title of insurance and the title agent or escrow officer from disbursing money from an escrow account unless the title agent or escrow officer is certified to the Commissioner pursuant to NRS 692A.110 and NAC 692A.110.*

Sec. 3. *1. A person who wishes to obtain a license as a title agent must have at least 1 year of recent experience relating to title insurance of a nature sufficient to allow him to fulfill the responsibilities of a title agent.*

2. *Except as otherwise provided in subsection 3, an applicant for a license as a title agent must submit to the Commissioner proof of the experience required by this section in the form of a statement from each employer with whom the applicant claims to have obtained the experience. Each statement must be signed and attested to by the employer and include:*

(a) The name and address of the employer;

(b) The name and title of the immediate supervisor of the applicant, if any;

(c) A description of the duties and responsibilities of the applicant during his employment and their relation to title insurance;

(d) The period during which the applicant fulfilled those duties and responsibilities; and

(e) The reason the applicant left the employment of his employer.

3. An applicant may submit any other form of proof of his experience that is satisfactory to the Commissioner.

Sec. 4. A title insurer, title agent or escrow officer who is required to maintain records pursuant to this chapter or chapter 692A of NRS may maintain the records in any permanent form, including, without limitation, electronic form.

Sec. 5. A title insurer or title agent that appoints or employs a title agent or an escrow officer shall not allow the title agent to issue a policy of title insurance or the title agent or escrow officer to disburse money from an escrow account unless the title agent or escrow officer is certified to the Commissioner pursuant to NRS 692A.110 and NAC 692A.110.

Sec. 6. A title insurer, title agent or escrow officer who has knowledge of a violation of any provision of NRS 645B.900 or 645E.900 shall promptly report the facts and circumstances concerning the violation to the Commissioner of Mortgage Lending.

Sec. 7. NAC 692A.010 is hereby amended to read as follows:

692A.010 As used in this chapter, unless the context otherwise requires:

1. The words and terms defined in NRS ~~[692A.021]~~ 692A.015 to 692A.080, inclusive, have the meanings ascribed to them in those sections.

2. “Bona fide resident” means a:

(a) Person who actually resides in this State with the intent that it be his domicile; or

(b) Firm or corporation which maintains its principal place of business in this State and whose articles of incorporation or partnership agreement authorize it to do business in this State.

3. “Commissioner” means the Commissioner of Insurance.

4. “Division” means the Division of Insurance of the Department of Business and Industry.

5. *“Mortgage banker” has the meaning ascribed to it in NRS 645E.100.*

6. *“Mortgage broker” has the meaning ascribed to it in NRS 645B.0127.*

Sec. 8. NAC 692A.060 is hereby amended to read as follows:

692A.060 ~~[A]~~ *1. Except as otherwise provided in subsection 2, a* person applying for a license as an escrow officer must submit to the Commissioner proof of the experience required by NRS 692A.103 in the form of a statement from each person who employed him within the 2 years immediately preceding the date of the application and from whom the person applying for the escrow officer’s license claims to have obtained such experience. Each statement must be signed and attested to by the employer and must include:

~~[1]~~ *(a)* The name and address of the employer of the person applying for the license;

~~[2]~~ *(b)* The name and title of the immediate supervisor of that person, if any;

~~[3]~~ *(c)* A description of the duties and responsibilities of that person while so employed and their relation to escrow;

~~[4]~~ *(d)* The period during which that person fulfilled those duties and responsibilities; and

~~[5]~~ *(e)* The reason that person left the employment of his employer.

2. An applicant may submit any other form of proof of his experience that is satisfactory to the Commissioner.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R121-06**

The Commissioner of Insurance adopted regulations assigned LCB File No. R121-06 which pertain to chapter 692A of the Nevada Administrative Code on August 11, 2006.

Notice date: 5/10/2006
Hearing date: 6/22/2006

Date of adoption by agency: 8/11/2006
Filing date: 9/18/2006

INFORMATIONAL STATEMENT

A workshop and hearing was held on June 22, 2006, at the offices of the Department of Business and Industry, Division of Insurance (Division), 788 Fairview Drive, Suite 300, Carson City, Nevada 89701, with a simultaneous video-conference conducted at the Bradley Building, 2501 E. Sahara Avenue, Real Estate Division Conference Room, 2nd Floor, Las Vegas, Nevada 89104, regarding the adoption of the regulation concerning supervision of title agents and escrow officers, written procedures and maintenance of records.

Public comment was solicited by posting notice of the hearing in the following public locations: The Division's Carson City Office, Legislative Counsel Bureau, Capitol Building Lobby, Blasdel Building, Carson City Courthouse, State Library, Capitol Press Room, the Division's Las Vegas Office, and on the Internet at www.leg.state.nv.us.

The Division maintains a list of interested parties, comprised mainly of insurance companies, agencies and other persons regulated by the Division. These persons were notified of the hearing and that copies of the regulation could be obtained from or examined at the offices of the Division in Carson City.

The hearing was attended by eight interested parties in Carson City and thirteen interested parties in Las Vegas. Fifteen persons provided oral testimony. Oral testimony was provided by Elena Ahrens, Debbie Thurner and Erin Summers, representing the Division; Scott Bice, Commissioner of Mortgage Lending; Spencer Judd, Nevada Association of Mortgage Professionals; Leo Davenport, GFT Investments; Sylvia Smith, Western Title Company; Rhonda Johnson, Western Nevada Title Company; David Goldwater, Goldwater Capital; Dale Puhl, Southwest Title Company; Norma Spaeth, Equity Title Company; Jerry Miller, Stewart Title Guaranty Company; Micki Johnson, Nevada Land Title Association; and Paulette Baker, First American Title Company. There was one written comment received prior to the workshop and hearing from Carol Tidd, Commissioner of Financial Institutions.

Commissioner of Insurance Alice A. Molasky-Arman (Commissioner) ordered that the record remain open until July 10, 2006, in order to receive written comments regarding the propriety or impropriety of Section 6. A final order with the Commissioner's findings would then follow within thirty days after July 10, 2006. The Commissioner's order was based, in part, on the following facts and testimony received:

1. Pursuant to Nevada Revised Statute (NRS) 692A.1045(3), the Commissioner shall, with the approval of the Commissioner of Financial Institutions, adopt regulations prescribing the standards for determining whether a title insurer or title agent has maintained adequate supervision of a title agent or escrow officer.
2. The Commissioner of Financial Institutions directed Division staff to work with the Commissioner of Mortgage Lending to fulfill the requirements of NRS 692A.1045(3).
3. The Commissioner of Mortgage Lending requested the Proposed Regulation, LCB File No. R121-06, be amended to include the language contained in Section 6.
4. There is an interrelationship in regulation of escrow functions between the Commissioner of Insurance and the Commissioner of Mortgage Lending. Pursuant to Chapter 692A of the NRS, the Commissioner of Insurance has authority to regulate title insurers, including title agents and escrow officers employed by a title company. Pursuant to Chapter 645A of the NRS, the Commissioner of Mortgage Lending has the authority to regulate escrow agencies and agents that are not otherwise licensed as title agencies and agents.
5. Testimony received from title agents indicated concern that the provisions of Section 6 as proposed would delay the closing of an escrow and unfairly discriminate against and negatively impact the parties to the escrow, specifically, the buyers and sellers of real estate.

Based upon the testimony received at the hearing, written comments received on or before July 10, 2006, and careful consideration of existing statutes, the Commissioner determined the following:

1. NRS 679B.159 requires every insurer, agent, solicitor, broker, administrator or other person who has knowledge of a violation of any provision of Title 57 to promptly report the violation to the Commissioner of Insurance.
2. Amending Section 6 with language similar to NRS 679B.159, requiring a title insurer, title agent or escrow officer to report a known violation of any provision of NRS 645B.900 or 645E.900 to the Commissioner of Mortgage Lending, would not delay the closing of escrow or pose hardship on the members of the public, who are the parties of a real estate contract.
3. The requirement that a title insurer, title agent or escrow officer report a known violation of any provision of NRS 645B.900 or 645E.900 to the Commissioner of Mortgage Lending would assist in deterring unlicensed activity.

Therefore, the proposed regulation is revised as follows:

1. Subsection 6 of Section 2 is deleted in its entirety.
2. Subsection 2 of Section 3 is amended to read as follows:

2. An applicant for a license as a title agent must submit to the Commissioner proof of the experience required by this section in the form of a statement from each employer with whom the applicant claims to have obtained the experience **or other verification acceptable to the Commissioner**. Each statement must be signed and attested to by the employer and include:

- (a) The name and address of the employer;
- (b) The name and title of the immediate supervisor of the applicant, if any;
- (c) A description of the duties and responsibilities of the applicant during his employment and their relation to title insurance;
- (d) The period during which the applicant fulfilled those duties and responsibilities; and
- (e) The reason the applicant left the employment of his employer.

3. Section 6 is amended to read as follows:

Sec. 6. A title insurer, title agent or escrow officer [~~shall not pay any compensation to a mortgage broker or mortgage banker in connection with an escrow transaction unless the title insurer, title agent or escrow officer first verifies that the mortgage broker or mortgage banker is licensed pursuant to NRS 645B.020 or 645E.200~~] **who has knowledge of a violation of any provision of NRS 645B.900 or 645E.900 shall promptly report the facts and circumstances pertaining to the violation to the Commissioner of Mortgage Lending.**

4. A new Section 8 is added to read as follows:

Sec. 8. NAC 692A.060 is hereby amended to read as follows:

A person applying for a license as an escrow officer must submit to the [e]Commissioner proof of the experience required by NRS 692A.103 in the form of a statement from each person who employed him within the 2 years immediately preceding the date of the application and from whom the person applying for the escrow officer's license claims to have obtained such experience. Each statement must be signed and attested to by the employer, **or be verified in another form acceptable to the Commissioner**, and must include:

1. The name and address of the employer of the person applying for the license;
2. The name and title of the immediate supervisor of that person, if any;
3. A description of the duties and responsibilities of that person while so employed and their relation to escrow;
4. The period during which that person fulfilled those duties and responsibilities; and
5. The reason that person left the employment of his employer.

The economic impact of the regulation is as follows:

- a. On the business it is to regulate: There would be a minimal cost to title insurers and title agents to implement written procedures, ensure proper supervision of a title agent or escrow officer, and report any known violation of NRS 645B and NRS 645E to the Division of Mortgage Lending.
- b. On the public: The proposed regulation will potentially protect consumers in the purchase of title insurance by implementing supervisory procedures to oversee escrow functions and requiring the report of any known violations regarding mortgage brokers or mortgage banker unlicensed activity.

The Division does not anticipate additional expenses to enforce the proposed regulation. Compliance with this regulation can be checked during routine examinations of title insurance companies.

The Division is not aware of any overlap or duplication of the regulation with any state, local or federal regulation.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

IN THE MATTER OF THE

CAUSE NO. **06.464**
LCB FILE NO. **R121-06**

**REGULATION REGARDING
SUPERVISION OF TITLE AGENTS
AND ESCROW OFFICERS.**

**SUMMARY OF PROCEEDINGS
AND ORDER**

SUMMARY OF PROCEEDINGS

A public workshop, as required by Nevada Revised Statute (NRS) 233B.061, on the proposed regulation concerning supervision of title agents and escrow officers, written procedures and maintenance of records, was held before Alice A. Molasky-Arman, Commissioner of Insurance (Commissioner), on June 22, 2006, in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, Nevada. A public hearing on the proposed regulation was also held before the Commissioner of Insurance on June 22, 2006, in Carson City, Nevada, and video-conferenced to the Bradley Building in Las Vegas, Nevada.

The hearing was attended by eight interested parties in Carson City and thirteen interested parties in Las Vegas. The following people provided testimony before the Hearing Officer: Elena Ahrens, Debbie Thurner and Erin Summers, representing the Division; Scott Bice, Commissioner of Mortgage Lending; Spencer Judd, representing Nevada Association of Mortgage Professionals; Leo Davenport, representing GFT Investments; Sylvia Smith, representing Western Title Company; Rhonda Johnson, representing Western Nevada Title Company; David Goldwater, representing Goldwater Capital; Dale Puhl, representing Southwest Title Company; Norma Spaeth, representing Equity Title Company; Jerry Miller, representing

Stewart Title Guaranty Company; Micki Johnson, representing Nevada Land Title Association; and Paulette Baker, representing First American Title Company.

Ms. Ahrens testified that:

1. The proposed regulation has three functions: first, to prescribe standards for determining whether a title insurer or title agent has maintained adequate supervision of a title agent or escrow officer appointed or employed by him; second, to codify the Division's existing position that title insurers and title agents may maintain their records in electronic format; and third, to require title agents to have one year of recent experience in order to obtain a license.

2. The proposed regulation also requires title insurers, title agents and escrow officers to verify a mortgage broker or mortgage banker's license before paying compensation in connection with an escrow transaction.

3. In the workshop preceding the hearing, there was testimony both in favor of and in opposition to the proposed regulation. Persons testifying on behalf of title agencies expressed concern about Section 6 of the proposed regulation such that title agents or escrow officers should not be responsible for policing another industry.

4. Also, during the workshop, language changes were suggested to clarify that the Commissioner would accept other forms of verification regarding an applicant's experience when applying for a title agent or escrow officer license. It was also suggested that subsection 6 of section 2 be deleted entirely.

At the hearing, testimony was provided by title agencies regarding Section 6 expressing concern that delaying the closing of an escrow would be harmful to consumers. The agencies

explained that funds and closing instructions are almost always received within 24 hours of closing. They expressed concern regarding their legal responsibility to timely comply with escrow instructions while also having to comply with the new requirements of Section 6. However, testimony was also given by Scott Bice, Commissioner of Mortgage Lending, and Leo Davenport of GFD Investments, in favor of Section 6 of the proposed regulation explaining the ease by which a mortgage broker's or mortgage banker's license could be verified.

The Commissioner explained that the proposed regulation did not establish a methodology to comply with the regulation, but rather that the procedure used to ensure compliance would be left to the licensees.

Based upon testimony received at the hearing, the Commissioner ordered that the record remain open until July 10, 2006, to receive written comments concerning the propriety or impropriety of Section 6. A final order with the Commissioner's findings would then be issued within thirty (30) days after July 10, 2006.

Six written comments were later received, two in support of Section 6, and four in opposition of Section 6. One written comment in opposition was signed by fourteen Escrow Managers and one County Manager.

Written comments in support of the proposed regulation asserted that:

- Unlicensed activity accounts for approximately 70% to 75% of the Division of Mortgage Lending's administrative actions;
- The proposed regulation speaks of qualifications of individuals performing escrow services and addresses a critical check for those in the lending industry that need to be licensed;
- The Mortgage Lending Division has similar requirements for escrow agencies as defined by Chapter 645A of the NRS;
- License verification of a mortgage banker or mortgage broker can be quickly and easily done using the Mortgage Lending's Web site;
- Unlicensed operators prey upon Nevada citizens causing irreparable financial harm;
- Regulation of title agents and escrow officers employed by title insurers clearly lies with the Division of Insurance; and

- The Mortgage Lending Division will move toward implementing regulations requiring a mortgage broker or mortgage banker to submit a copy of their license prior to the opening of escrow.

Comments in opposition to the proposed regulation asserted that:

- Title agents, title insurers and escrow officers must comply completely and accurately with the Lender's instructions;
- Failure to timely close an escrow could result in the seller having to pay an additional month's interest;
- Consumers would suffer contractual, financial and emotional hardship if escrow was unable to close due to the inability to comply with Section 6 of the proposed regulation;
- Compliance with the proposed requirement could increase the cost of escrow, which would increase the cost to the consumer;
- Smaller title agents and escrow offices may not have the technology or resources to comply with the proposed regulation;
- The proposed regulation could open the door for other government agencies or divisions to seek policing powers through the back door of the Division;
- Title companies are given final closing instructions hours prior to the actual closing;
- The title industry should not be required to interpret mortgage industry regulations in order to determine which mortgage bankers and brokers are exempt from licensing requirements;
- Verifying a mortgage banker's or broker's license is to undertake law enforcement and regulatory functions without expertise, resources or legal protections (governmental immunity);
- Forcing escrow agents to police mortgage brokers or bankers causes the escrow agent to abandon the position of a neutral third party holder of documents, funds and instructions; The proposed change to Chapter 692A of the NRS cannot be regulated by the Division; and
- Enforcement of the licensing rules is best left to the Commissioner of Mortgage Lending.

Based upon the testimony received at the hearing, written comments received on or before July 10, 2006, and careful consideration of existing statutes, the Commissioner determined the following:

4. NRS 679B.159 requires every insurer, agent, solicitor, broker, administrator or other person who has knowledge of a violation of any provision of Title 57 to promptly report the violation to the Commissioner of Insurance.

5. Amending Section 6 with language similar to NRS 679B.159, requiring a title insurer, title agent or escrow officer to report a known violation of any provision of NRS

645B.900 or 645E.900 to the Commissioner of Mortgage Lending, would not delay the closing of escrow or pose hardship on the members of the public, who are the parties of a real estate contract.

6. The requirement that a title insurer, title agent or escrow officer report a known violation of any provision of NRS 645B.900 or 645E.900 to the Commissioner of Mortgage Lending would assist in deterring unlicensed activity.

Therefore, the proposed regulation is revised as follows:

1. Subsection 6 of Section 2 is deleted in its entirety.
2. Subsection 2 of Section 3 is amended to read as follows:

2. An applicant for a license as a title agent must submit to the Commissioner proof of the experience required by this section in the form of a statement from each employer with whom the applicant claims to have obtained the experience ***or other verification acceptable to the Commissioner.*** Each statement must be signed and attested to by the employer and include:

- (a) The name and address of the employer;
- (b) The name and title of the immediate supervisor of the applicant, if any;
- (c) A description of the duties and responsibilities of the applicant during his employment and their relation to title insurance;
- (d) The period during which the applicant fulfilled those duties and responsibilities; and
- (e) The reason the applicant left the employment of his employer.

3. Section 6 is amended to read as follows:

Sec. 6. A title insurer, title agent or escrow officer [~~shall not pay any compensation to a mortgage broker or mortgage banker in connection with an escrow transaction unless the title insurer, title agent or escrow officer first verifies that the mortgage broker or mortgage banker is licensed pursuant to NRS 645B.020 or 645E.200~~] ***who has knowledge of a violation of any provision of NRS 645B.900 or 645E.900 shall promptly report the facts and circumstances pertaining to the violation to the Commissioner of Mortgage Lending.***

4. A new Section 8 to read as follows:

Sec. 8. NAC 692A.060 is hereby amended to read as follows:

A person applying for a license as an escrow officer must submit to the [e]Commissioner proof of the experience required by NRS 692A.103 in the form of a statement from each person who employed him within the 2 years immediately preceding the date of the application and from whom the person applying for the escrow officer's license claims to have

obtained such experience. Each statement must be signed and attested to by the employer, ***or be verified in another form acceptable to the Commissioner***, and must include:

1. The name and address of the employer of the person applying for the license;
2. The name and title of the immediate supervisor of that person, if any;
3. A description of the duties and responsibilities of that person while so employed and their relation to escrow;
4. The period during which that person fulfilled those duties and responsibilities; and
5. The reason that person left the employment of his employer.

Pursuant to NRS 692A.1045(3), the Commissioner of Financial Institutions concurs with the proposed regulation, as amended.

ORDER OF THE COMMISSIONER

Having reviewed the record in this matter, it is hereby ordered that the proposed regulation concerning supervision to title agents and escrow officers, written procedures and maintenance of records, LCB File No. R121-06, be adopted, as amended, as a permanent regulation of the Division

SO ORDERED this _____ day of August, 2006.

ALICE A. MOLASKY-ARMAN
Commissioner of Insurance