

## LCB File No. R052-09

# PROPOSED REGULATION OF THE COMMISSIONER OF MORTGAGE LENDING

### Chapter 645F of NAC

AUTHORITY: AB152 Sections 3, 3.1 and 3.3 provide that the Commissioner shall adopt regulations for the licensing standards and requirements of persons providing loan modification or foreclosure consulting services, the content of written contracts, trust account requirements and licensee accountability to homeowners. AB 486 Sec. 24 provides: "In addition to the other duties imposed upon him by law, the Commissioner shall adopt any regulations that are necessary to carry out the provisions of this chapter." (Chapter 645F by reference to Sec. 23 of AB 486.)

A REGULATION related to defining the terms "loan modification and foreclosure consultant" and "loan modification and foreclosure consultant agent;" requiring loan modification and foreclosure consultants and agents to be licensed; establishing certain requirements for the provision of services by loan modification and foreclosure consultants and agents; establishing provisions governing compensation of loan modification and foreclosure consultants and agents and setting forth contractual requirements; establishing certain powers of the Commissioner of Mortgage Lending; establishing provisions relating to the imposition of certain fees and assessments on loan modification and foreclosure consultants and agents; application requirements, license denials and hearings, disciplinary action and hearings, bonding or other security requirements; educational and continuing education requirements; and examination matters; receivership matters; trust account issues; record keeping requirements; and other matters properly relating thereto.

#### **Sec. 1. *Licensing criteria; effective date of license.***

*1. From the effective filing date of these regulations until December 31, 2009, the license of a loan modification and foreclosure consultant or loan modification and foreclosure consultant agent is effective upon the date that the loan modification and foreclosure consultant or loan modification and foreclosure consultant agent files a complete application package with the Division, posts the bond as prescribed in Sec. 72 and receives written notification from the Division that a completed package has been received. An applicant will have three months from the date the complete application package is received by the Division to complete the pre-licensing education requirements prescribed in Sec. 36.. .*

*2. The license issued pursuant to subsection 1 must be invalidated by the Division if, upon investigation, the Division determines that the applicant does not meet the requirements of the regulations adopted pursuant to chapter 645F of NRS. The Division will notify the loan modification and foreclosure consultant or loan modification and foreclosure consultant agent in writing if a license is invalidated pursuant to this section. Such invalidation shall be construed as a license denial and not as a contested case under chapter 233B of NRS. A loan modification and foreclosure consultant or loan modification and foreclosure consultant agent who accepts a license upon the foregoing conditions agrees that invalidation of the*

*license will be construed as a license denial and not a contested case under chapter 233B of NRS.*

*3. A loan modification and foreclosure consultant or loan modification and foreclosure consultant agent who submits an application for licensure after December 31, 2009, shall not be deemed to be licensed as a loan modification and foreclosure consultant or loan modification and foreclosure consultant agent until the Commissioner has verified the information submitted by the applicant pursuant to Sec. 15 and Sec. 27 of these regulations.*

*Sec. 2. Unless the context requires otherwise, the words and terms defined in chapter 645F of NRS have the meanings ascribed to them in those sections.*

*Sec. 3. "Approved course" defined. "Approved course" means a course of education that has been approved by the Division as a course for initial licensing or continuing education.*

*Sec. 4. "Change of control" defined. "Change of control" means:*

*(a) A transfer of voting stock which results in giving a person, directly or indirectly, the power to direct the management and policy of a loan modification and foreclosure consultant;*  
*or*

*(b) A transfer of at least 25% of the outstanding voting stock of a loan modification and foreclosure consultant.*

*Sec. 5. "Hour of instruction" defined. "Hour of instruction" means 50 minutes of instruction or more.*

*Sec. 6. "Licensee" defined. "Licensee" means a person licensed under chapter 645F of NRS and these regulations.*

*Sec. 7. "Loan modification" defined. "Loan modification" means the adjustment of the terms of a loan during its term in a way not provided for in the original or previously modified mortgage loan contract including, but not limited to:*

- (a) A change in the payment amount;*
- (b) A change in the loan amount;*
- (c) A loan forbearance;*
- (d) A change in the loan maturity; or*
- (e) A change in the interest rate.*

*Sec. 8. "Loan modification and foreclosure consultant" defined.*

*1. "Loan modification and foreclosure consultant" means a loan modification consultant, foreclosure consultant or any person providing loan modification or covered services for compensation under chapter 645F of NRS. The term does not include a government, governmental agency or political subdivision of a government or organization which provides loan modification services without compensation.*

*2. For purposes of this section, "person" means any form of business entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization. The term does not include a government, governmental agency or political subdivision of a government.*

**Sec. 9. “Loan modification and foreclosure consultant agent” defined.**

**1. “Loan modification and foreclosure consultant agent” means a natural person who:**

**(a) Is an employee or independent contractor of a loan modification and foreclosure consultant who is required to be licensed pursuant to these regulations; and**

**(b) Is authorized by the loan modification and foreclosure consultant to engage in, on behalf of the loan modification and foreclosure consultant, any activity that would require the person, if he were not an employee or independent contractor of the loan modification and foreclosure consultant, to be licensed as a loan modification and foreclosure consultant pursuant to these regulations.**

**2. The term does not include a person who:**

**(a) Is licensed as a loan modification and foreclosure consultant; or**

**(b) Performs only clerical or ministerial tasks for a loan modification and foreclosure consultant.**

**Sec. 10. “Provider” defined. “Provider” means any person or entity approved by the Division pursuant to Sec. 38.**

**Sec. 11. “Relative” defined. “Relative” means a spouse or any other person who is related within the second degree by blood or marriage.**

**Sec. 12. “Residence” defined. “Residence” means residential real property located in the State of Nevada and consisting of not more than four family dwelling units.**

## **LICENSING AND OFFICES OF LOAN MODIFICATION AND FORECLOSURE CONSULTANTS**

**Sec. 13. Loan modification and foreclosure consultants performing services prescribed in chapter 645F of NRS or these regulations for compensation to license before advertising services or conducting business in this State.**

**1. Unless otherwise exempt pursuant to NRS 645F.380, before advertising its services or conducting business in this State, a loan modification and foreclosure consultant, a loan modification and foreclosure consultant agent or any person providing covered services for compensation, including an owner or employee of or independent contractor for a loan modification and foreclosure consultant, must be licensed as a loan modification and foreclosure consultant or as a loan modification and foreclosure consultant agent with the Division pursuant to Sec. 15 or Sec. 27.**

**2. Except as provided for in Sec. 1, an applicant for a license as a loan modification and foreclosure consultant or loan modification and foreclosure consultant agent shall not be deemed to be licensed as a loan modification and foreclosure consultant or agent until the Commissioner has verified the information submitted by the applicant pursuant to these regulations and has given written notice of such verification to the applicant.**

**Sec. 14. For purposes of qualifying for an exemption from licensing pursuant to NRS 645F.380(1):**

**1. An attorney must be licensed in Nevada or otherwise authorized to practice law in Nevada by the Nevada State Bar Association.**

2. *The activities rendered by the attorney pursuant to these regulations must be performed within the normal course and scope of his practice as an attorney at law;*
3. *There must be an attorney-client relationship which creates a fiduciary duty between the attorney and the homeowner; and*
4. *All contracts entered into by homeowners for services provided pursuant to these regulations must be drawn in the attorney's law practice's name, and all monies paid by the homeowner for services pursuant to these regulations must be paid to the attorney's law office and deposited into the attorney law practice's trust account until earned.*

**Sec. 15. Application for license; application for branch offices; requirements for issuance of license; grounds for denial of license to partnership, corporation or unincorporated association; license for office outside Nevada which conducts business in Nevada.**

1. *A person who desires to be licensed as a loan modification and foreclosure consultant must file a written application for a license with the Office of the Commissioner and pay a non-refundable application fee. An application for a license as a loan modification and foreclosure consultant must:*

- (a) *Be verified by the Commissioner or his designee.*
- (b) *State the name, residence address and business address of the applicant and the location of the principal office and each branch office at which the loan modification and foreclosure consultant will conduct business, including, without limitation, any office or other place of business located outside this State from which the loan modification and foreclosure consultant will conduct business in this State.*
- (c) *State the name under which the applicant will conduct business as a loan modification and foreclosure consultant.*
- (d) *List the name, residence address and business address of each person who will:*
  - (1) *If the applicant is not a natural person, have an interest in the loan modification and foreclosure consultant as an owner, principal, partner, officer, director or trustee, specifying the capacity and title of each such person.*
  - (2) *Be associated with or employed by the loan modification and foreclosure consultant as an agent of the loan modification and foreclosure consultant.*
- (e) *Include a written consent signed by any natural person holding a 25% ownership interest or who has the power to direct the management of the loan modification and foreclosure consultant giving the Division authority to conduct an investigation of his credit history, criminal history and background.*
- (f) *Include a complete set of fingerprints for any natural person holding an ownership interest in the loan modification and foreclosure consultant which the Division may forward to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.*
- (g) *Indicate the general plan and character of the business and description of the policies and procedures that the loan modification and foreclosure consultant and his agents will follow in providing activities or services pursuant to chapter 645F of NRS and these regulations.*
- (h) *State the length of time the applicant has been engaged in the business of a loan modification and foreclosure consultant.*
- (i) *Include a financial statement of the applicant.*

*(j) Include signed and notarized personal history forms from all natural persons holding a 25% ownership interest in the loan modification and foreclosure consultant, and each person who has the power to direct the management of the company.*

*(k) Include the applicable fee and any other information required by the Commissioner including, but not limited to, education, training and experience.*

*2. If a loan modification and foreclosure consultant will conduct business at one or more branch offices, the loan modification and foreclosure consultant must apply for a license for each such branch office on forms prescribed by the Commissioner and pay the applicable fee. An application for a branch license shall be deemed abandoned if the applicant fails to respond to any written request for information by the Division within 30 days after the date of the request.*

*3. Except as otherwise provided in these regulations, the Commissioner shall issue a license to an applicant as a loan modification and foreclosure consultant if:*

*(a) The application complies with the requirements of these regulations; and*

*(b) The applicant, or any associated person pursuant to subsection 1(e) of this section, and each general partner, officer, director of the applicant, if the applicant is a partnership, corporation or unincorporated association:*

*(1) Has a good reputation for honesty, trustworthiness and integrity and displays competence to transact the business of a loan modification and foreclosure consultant in a manner which safeguards the interests of the general public. The applicant must submit satisfactory proof of these qualifications to the Commissioner.*

*(2) Has not been convicted of, or entered a plea of guilty or nolo contendere to, a felony relating to the practice of loan modification and foreclosure consultants or agents or any crime involving fraud, misrepresentation or moral turpitude.*

*(3) Has not made a false statement of material fact on his application.*

*(4) Has not had a professional license or a financial services license or registration that was issued in this state or any other state, the United States, any district or territory of the United States or any foreign country suspended or revoked within the 10 years immediately preceding the date of his application.*

*(5) Has not violated any provision of chapter 645F of NRS or a regulation adopted pursuant thereto or an order of the Commissioner.*

*4. If an applicant is a partnership, corporation or unincorporated association, the Commissioner may refuse to issue a license to the applicant if any member of the partnership or any officer or director of the corporation or unincorporated association has committed any act or omission that would be cause for refusing to issue a license to a natural person.*

*5. A person may apply for a license for an office or other place of business located outside this State from which the applicant will conduct business in this State if the applicant agrees to:*

*(a) Make available at a location within this State the books, accounts, papers, records and files of the office or place of business located outside this State to the Commissioner or a representative of the Commissioner; or*

*(b) Pay the reasonable expenses for travel, meals and lodging of the Commissioner or a representative of the Commissioner incurred during any investigation or examination made at the office or place of business located outside this State.*

*The applicant must be allowed to choose between paragraph (a) or (b) in complying with the provisions of this subsection.*

**Sec. 16. Documentation required with application for license; compliance with request for additional requirements.**

**1. If applicable, an applicant must submit with his application for a license:**

**(a) If the applicant is a corporation, a copy of:**

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

**(2) If applicable, 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.**

**(b) 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 general partners for the 2 years immediately preceding the year of the application.**

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

**(d) If the applicant is a limited liability company, a copy of:**

**(1) Its articles of organization and operating agreement; and**

**(2) If applicable, a statement of the profit and loss of the limited liability company for the 2 years immediately preceding the year of the application.**

**2. Prior to issuance of a license, an applicant must submit:**

**(a) A copy of the certificate filed by the loan modification and foreclosure consultant pursuant to chapter 602 of NRS indicating the fictitious name of the loan modification and foreclosure consultant, if any;**

**(b) Supporting documentation that the applicant is in good standing with the State of Nevada Secretary of State, and the most recent list of its officers, members or managers, and registered agents that is filed with the Secretary of State;**

**(c) A copy of the lease of the applicant or other document which includes the address of the place of business and phone number of the applicant;**

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

**(e) A copy of his State of Nevada Department of Taxation business license, or his application for such a license if he has not obtained one;**

**(f) Original bond or other substitute security required by Sec. 72;**

**(g) Evidence that all applicable persons have met the pre-licensing education requirements; and**

**(h) Any other information deemed necessary to complete the application.**

**3. If an applicant has received a letter 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 or such other time as provided for in the letter. If the applicant does not satisfy all additional requirements set forth in the letter within the period prescribed in this subsection, the application will be deemed to have been abandoned and the applicant must reapply to obtain a license. The Commissioner may, for good cause, extend the 30-day or other period prescribed in this subsection.**

**4. If an applicant does not maintain an office in Nevada, or if its corporate office is located outside of Nevada, the applicant must sign an authorization and agreement that any actions brought by the Division related to chapter 645F of the NRS or a regulation adopted thereto will be brought in the jurisdiction and venue of the courts of the State of Nevada.**

**Sec. 17. Use of new fictitious name; use of multiple names.**

*1. If a loan modification and foreclosure consultant conducts business using a fictitious name, the loan modification and foreclosure consultant may conduct business using a new fictitious name only if the loan modification and foreclosure consultant:*

*(a) Obtains a certified copy, issued by the appropriate county clerk, of the certificate filed by the loan modification and foreclosure consultant 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 of the loan modification and foreclosure consultant; and*

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

*2. A loan modification and foreclosure consultant may conduct business using more than one fictitious name only if the loan modification and foreclosure consultant obtains a separate license issued pursuant to these regulations for each fictitious name under which he intends to do business. A loan modification and foreclosure consultant who conducts business in this State using more than one fictitious name is responsible for the conduct of each employee or agent associated with the loan modification and foreclosure consultant regardless of the license or name under which the conduct takes place.*

**Sec. 18. Use of same name, confusingly similar name or name not approved by Division.**

*1. The Division shall not issue a license with a name that is the same as or confusingly similar to a name on a license previously issued by the Division.*

*2. A loan modification and foreclosure consultant shall not conduct business using a name other than the name approved by the Division and indicated on the license issued by the Division to the loan modification and foreclosure consultant.*

**Sec. 19. Annual expiration of license; procedure for renewal; fees.**

*1. A license issued to a loan modification and foreclosure consultant expires each year on July 1, unless it is renewed. The licensee may not renew its license until all fees, assessments and fines owed to the Division are paid. To renew a license, the licensee must submit to the Commissioner on or before May 31 of each year:*

*(a) An application for renewal including prescribed information to determine the licensee complies with the requirements of these regulations; and*

*(b) The fee required to renew the license pursuant to this section.*

*2. If the licensee fails to submit any item required pursuant to subsection 1 to the Commissioner on or before May 31 of any year, the license is cancelled as of July 1 of that year. The Commissioner may reinstate a cancelled license within six months of its cancellation if the licensee submits to the Commissioner:*

*(a) An application for renewal that complies with the requirements of these regulations;*

*(b) The fee required to renew the license pursuant to this section; and*

*(c) A non-refundable reinstatement fee of \$100.*

*3. A person must pay the following non-refundable fees to apply for, to be issued or to renew a license as a loan modification and foreclosure consultant pursuant to these regulations or for a change of control:*

*(a) To file an original application for a license, \$750 for the principal office and \$100 for each branch office. The person must also pay such additional expenses incurred in the process of investigation as the Commissioner deems necessary.*

*(b) To be issued a license, \$500 for the principal office and \$150 for each branch office.*

*(c) To renew a license, \$500 for the principal office and \$100 for each branch office.*

*4. To be issued a duplicate copy of any license, a person must make a satisfactory showing of its loss and pay a fee of \$25.*

*5. A change of control fee of \$250.*

*6. Except as otherwise provided in these regulations, all fees received must be deposited in the Fund for Mortgage Lending created by NRS 645F.270.*

*7. The Commissioner may adjust any fee set forth in this section if the Commissioner determines that such an adjustment is necessary for the Commissioner to carry out his duties pursuant to chapter 645F of NRS. The amount of any adjustment in a fee pursuant to this subsection must not exceed the amount determined to be necessary for the Commissioner to carry out his duties pursuant to chapter 645F of NRS.*

**Sec. 20.** *Grounds for denial of license: Employing or associating with certain persons who are ineligible to be a loan modification and foreclosure consultant.*

*The Commissioner may refuse to issue a license to an applicant if the Commissioner has reasonable cause to believe that the applicant or any general partner, officer or director of the applicant has employed or proposes to employ a person authorized to conduct activity on behalf of the loan modification and foreclosure consultant at a time when the applicant or the general partner, officer or director knew or, in light of all the surrounding facts and circumstances, reasonably should have known that the person had been convicted of, or entered a plea of guilty or nolo contendere to:*

*(a) A felony relating to the practice of loan modification and foreclosure consultants or agents, or any crime involving fraud, misrepresentation or moral turpitude; or*

*(b) Had a professional license or a financial services license or registration that was issued in this state or any other state, the United States, any district or territory of the United States or any foreign country suspended or revoked within the immediately preceding 10 years.*

**Sec. 21.** *Grounds for denial of license: Control by relative who would be ineligible to be licensed; act or omission of partner, officer or director.*

*1. If an applicant is a natural person, the Commissioner may refuse to issue a license to the applicant if the Commissioner has reasonable cause to believe that the applicant would be subject to control by a relative who would be ineligible to be licensed pursuant to these regulations.*

*2. If an applicant is a partnership, corporation or unincorporated association, the Commissioner may refuse to issue a license to the applicant if:*

*(a) Any member of the partnership or any officer or director of the corporation or unincorporated association has committed any act or omission that would be cause for refusing to issue a license to a natural person; or*

*(b) The Commissioner has reasonable cause to believe that any member of the partnership or any officer or director of the corporation or unincorporated association would be subject to control by a relative who would be ineligible to be licensed pursuant to these regulations.*

**Sec. 22. Grounds for denial of license; Authority of Commissioner not limited.**

*The provisions of these regulations do not limit the authority of the Commissioner to refuse to issue a license to an applicant for any other lawful reason or pursuant to any other provision of law.*

**Sec. 23. Posting and disclosure of license; restrictions on transfer or assignment of license.**

*A loan modification and foreclosure consultant shall:*

- 1. Post each license, including those of all licensed agents and independent contractors, in a conspicuous place in the office to which it pertains.*
- 2. Only conduct business under the name for which it is licensed.*
- 3. Ensure that each contract for covered services prominently discloses the license number of the loan modification and foreclosure consultant.*
- 4. Not transfer or assign a license to another person, unless the Commissioner gives his written approval.*

**Sec. 24. Activities authorized by license; sharing of office space.**

*1. A license as a loan modification and foreclosure consultant entitles a licensee to engage only in the activities authorized by chapter 645F of NRS and these regulations.*

*2. A licensee is not prohibited from conducting any other business in the same office or place of business, provided each business has a designated space within the office space and each business is separately identifiable by a prominent sign or other method of identification within the office space and each has a method to secure private and confidential information from the other business.*

**Sec. 25. Loan modification and foreclosure consultant company who is not a natural person to designate natural person as qualified employee.**

*1. If a loan modification and foreclosure consultant is not a natural person, the loan modification and foreclosure consultant must designate a natural person as a qualified employee to act on behalf of the loan modification and foreclosure consultant.*

*2. The Commissioner may approve the qualified employee designated pursuant to subsection*

*I if the qualified employee is a natural person who:*

*(a) Is licensed in good standing as a loan modification and foreclosure consultant agent;*  
*(b) Is designated by a loan modification and foreclosure consultant to act on behalf of the loan modification and foreclosure consultant and to supervise the conduct of the business of the loan modification and foreclosure consultant and its agents associated with or employed by the loan modification and foreclosure consultant;*

*(c) Will be present at the licensed office location for which he is the qualified employee the majority of the time that the office is open to the public; and*

*(d) Has at least 2 years of verifiable experience working in the real estate, mortgage, foreclosure or loan modification industries or applicable legal fields.*

*3. 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, the loan modification and foreclosure consultant 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 loan modification and foreclosure consultant that the initial qualified employee designated pursuant to subsection 1 is not approved; or*
- (2) The qualified employee ceases to be a qualified employee; or*
- (b) A date after the date described in paragraph (a) if agreed to by the Commissioner.*

## **LICENSING OF LOAN MODIFICATION AND FORECLOSURE CONSULTANT AGENTS**

### **Sec. 26. Loan modification and foreclosure consultant agent; license required.**

*1. A person shall not act as or provide any of the services of a loan modification and foreclosure consultant agent or otherwise engage in, carry on or hold himself out as engaging in or carrying on the activities of a loan modification and foreclosure consultant agent unless the person has a license as a loan modification and foreclosure consultant agent issued pursuant to these regulations.*

*2. A loan modification and foreclosure consultant shall not associate with or employ a person as a loan modification and foreclosure consultant agent or authorize a person to be associated with the loan modification and foreclosure consultant as an agent if the loan modification and foreclosure consultant agent is not licensed with the Division pursuant to these regulations.*

*3. Except as provided for in Sec. 1, an applicant for a license as a loan modification and foreclosure consultant agent shall not be deemed to be licensed as a loan modification and foreclosure consultant agent until the Commissioner has verified the information submitted by the applicant pursuant to these regulations and has given written notice of such verification to the applicant.*

### **Sec. 27. Qualifications and procedure for issuance of license; fees.**

*1. To obtain a license as a loan modification and foreclosure consultant agent, a person must:*

*(a) Be a natural person;*

*(b) File a written application for a license as a loan modification and foreclosure consultant agent with the Commissioner;*

*(c) Comply with the applicable requirements of these regulations; and*

*(d) Pay a non-refundable application fee of \$185.*

*2. An application for a license as a loan modification and foreclosure consultant agent must:*

*(a) State the name and residence address of the applicant;*

*(b) Include a provision by which the applicant gives his written consent to an investigation of his credit history, criminal history and background;*

*(c) Include a complete set of fingerprints which the Division may forward to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;*

*(d) Include a verified statement from the loan modification and foreclosure consultant with whom the applicant will be associated that expresses the intent of that consultant to associate the applicant with the loan modification and foreclosure consultant and to be responsible for the activities of the applicant as an agent;*

*(e) Include support, acceptable to the Division, that the applicant has completed the pre-licensing education requirement pursuant to Sec. 36; and*

*(f) Include the applicable fee and any other information or supporting materials required pursuant to these regulations or by an order of the Commissioner. Such information or supporting materials may include, without limitation, other forms of identification of the person.*

*3. Except as otherwise provided in these regulations, the Commissioner may issue a license as a loan modification and foreclosure consultant agent to an applicant if:*

*(a) The application is verified by the Commissioner and complies with the applicable requirements of these regulations; and*

*(b) The applicant:*

*(1) Has not been convicted of, or entered a plea of guilty or nolo contendere to, a felony relating to the practice of loan modification and foreclosure consultants or agents or any crime involving fraud, misrepresentation or moral turpitude;*

*(2) Has not had a professional license or financial services license or registration that was issued in this state or any other state, the United States, and district or territory of the United States or any foreign country suspended or revoked within the immediately preceding 10 years;*

*(3) Has not made a false statement of material fact on his application;*

*(4) Has not violated any provision of chapter 645F of NRS, these regulations or an order of the Commissioner; and*

*(5) Has a good reputation for honesty, trustworthiness and integrity and displays competence to transact the business of a loan modification and foreclosure consultant agent in a manner which safeguards the interests of the general public. The applicant must submit satisfactory proof of these qualifications to the Commissioner.*

*4. Upon request of a loan modification and foreclosure consultant, the Commissioner may waive the requirement of an investigation of the credit history, criminal history and background of a loan modification and foreclosure consultant agent if such an investigation has been conducted within 6 months immediately preceding the date the application is submitted.*

*5. Money received by the Commissioner pursuant to this section must be deposited in the Fund for Mortgage Lending created by NRS 645F.270.*

*6. An application for licensure shall be deemed abandoned if the applicant fails to respond to any written request for information by the Division within 30 days after the date of the request. The Commissioner may, for good cause, extend the 30-day period prescribed in this subsection.*

**Sec. 28. Annual expiration of license; procedure for renewal; continuing education; fees.**

*1. A license as a loan modification and foreclosure consultant agent issued pursuant to these regulations expires 1 year after the date the license is issued, unless it is renewed. The licensee may not renew its license until all fees, assessments and fines owed to the Division are paid. To renew a license as a loan modification and foreclosure consultant agent, the holder of the license must submit to the Commissioner each year, on or before the date the license expires:*

*(a) An application for renewal;*

*(b) Except as otherwise provided in this section, satisfactory proof that the holder of the license as such an agent attended at least 5 hours of certified courses of continuing education in subject areas relevant to chapter 645F of NRS and these regulations, as determined by the*

*Commissioner, during the 12 months immediately preceding the date on which the license expires; and*

*(c) A non-refundable renewal fee of \$170.*

*2. If the holder of the license as a loan modification and foreclosure consultant agent fails to submit any item required pursuant to subsection 1 to the Commissioner each year on or before the date the license expires, the license is cancelled. The Commissioner may reinstate a cancelled license if the holder of the license submits to the Commissioner:*

*(a) An application for renewal;*

*(b) The fee required to renew the license pursuant to this section; and*

*(c) A reinstatement fee of \$75.*

*3. To be issued a duplicate copy of a license as a loan modification and foreclosure consultant agent, a person must make a satisfactory showing of its loss and pay a fee of \$25.*

*4. To change the loan modification and foreclosure consultant with whom the agent is associated, a person must pay a fee of \$25. A change includes a terminated agent reactivating his license with his prior loan modification and foreclosure consultant.*

*5. Money received by the Commissioner pursuant to this section must be deposited in the Fund for Mortgage Lending created by NRS 645F.270.*

*6. The Commissioner may, by regulation, adjust any fee set forth in this section if the Commissioner determines that such an adjustment is necessary for the Commissioner to carry out his duties pursuant to chapter 645F of NRS. The amount of any adjustment in a fee pursuant to this subsection must not exceed the amount determined to be necessary for the Commissioner to carry out his duties pursuant to chapter 645F of NRS.*

**Sec. 29. *Loan modification and foreclosure consultant responsibilities for termination of affiliation with loan modification and foreclosure consultant agent.***

*If a loan modification and foreclosure consultant terminates the association or employment of a loan modification and foreclosure consultant agent for any reason, the loan modification and foreclosure consultant shall provide written notification of the termination to the loan modification and foreclosure consultant agent not later than the third business day following the date of termination and:*

*(a) Deliver to the loan modification and foreclosure consultant agent or send by certified mail to the last known residence address of the agent a written statement which advises him that his termination is being reported to the Division; and*

*(b) Deliver or send by certified mail to the Division the license or license number of the loan modification and foreclosure consultant agent.*

**Sec. 30. *Loan modification and foreclosure consultant agent responsibilities for termination of affiliation with loan modification and foreclosure consultant.***

*If a loan modification and foreclosure consultant agent terminates his association or employment with a loan modification and foreclosure consultant for any reason, the loan modification and foreclosure consultant agent shall, not later than the third business day following the date of termination:*

*(a) Deliver to the loan modification and foreclosure consultant or send by certified mail to the last known residence address of the consultant a written statement which advises him that his termination is being reported to the Division; and*

*(b) Deliver or send by certified mail to the Division:*

- (1) The license number of the loan modification and foreclosure consultant;*
- (2) A written statement of the circumstances surrounding the termination; and*
- (c) A copy of the written statement that the loan modification and foreclosure consultant agent delivers or mails to the consultant pursuant to paragraph (a).*

**Sec. 31. Conditions and limitations regarding employment of or association with loan modification and foreclosure consultant agent.**

*1. A person licensed as a loan modification and foreclosure consultant agent pursuant to the provisions of these regulations may not be associated with or employed by more than one loan modification and foreclosure consultant at the same time.*

*2. A loan modification and foreclosure consultant agent may associate with or be employed by a loan modification and foreclosure consultant at only one licensed office location of the loan modification and foreclosure consultant.*

*3. A loan modification and foreclosure consultant agent license does not preclude an agent from holding, including without limitation, licenses pursuant to NRS 645B, NRS 645E and NRS 645.*

**Sec. 32. Payment of child support: Submission of certain information by applicant; grounds for denial of license; duty of Commissioner.**

*1. In addition to any other requirements set forth in these regulations, a natural person who applies for the issuance or renewal of a license as a loan modification and foreclosure consultant or as an agent of a loan modification and foreclosure consultant shall submit to the Commissioner the statement prescribed by the Division of Welfare and Supportive Services of the Department of Health and Human Services pursuant to NRS 425.520. The statement must be completed and signed by the applicant.*

*2. The Commissioner shall include the statement required pursuant to subsection 1 in:*

*(a) The application or any other forms that must be submitted for the issuance or renewal of the license; or*

*(b) A separate form prescribed by the Commissioner.*

*3. A license as a loan modification and foreclosure consultant or as an agent of such consultant may not be issued or renewed by the Commissioner if the applicant is a natural person who:*

*(a) Fails to submit the statement required pursuant to subsection 1; or*

*(b) Indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.*

*4. If an applicant indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the Commissioner shall advise the applicant to contact the district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.*

*5. If the Commissioner receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional, occupational and recreational licenses, certificates and permits issued to a person who is the holder of a license as a loan modification*

*and foreclosure consultant or an agent of such consultant, the Commissioner shall deem the license issued to that person to be suspended at the end of the 30th day after the date on which the court order was issued unless the Commissioner receives a letter issued to the holder of the license by the district attorney or other public agency pursuant to NRS 425.550 stating that the holder of the license has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.*

*6. The Commissioner shall reinstate a license as a loan modification and foreclosure consultant or a loan modification and foreclosure consultant agent that has been suspended by a district court pursuant to NRS 425.540 if the Commissioner receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose license was suspended stating that the person whose license was suspended has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.*

**Sec. 33. *Right to be placed on inactive status; procedure for reinstatement during military service.***

*1. Any loan modification and foreclosure consultant or loan modification and foreclosure consultant agent licensed under the provisions of these regulations who is called into the military service of the United States shall, at his request, be relieved from compliance with the provisions of these regulations and placed on inactive status for the period of such military service and for a period of 6 months after discharge therefrom.*

*2. At any time within 6 months after termination of such service, if the loan modification and foreclosure consultant or agent complies with the provisions of subsection 1, the loan modification and foreclosure consultant or agent may be reinstated, without having to meet any qualification or requirement other than the payment of the reinstatement fee, as provided in Sec. 19 and Sec. 28, and the loan modification and foreclosure consultant or agent is not required to make payment of the renewal fee for the current year.*

*3. Any loan modification and foreclosure consultant or loan modification and foreclosure consultant agent seeking to qualify for reinstatement, as provided in subsections 1 and 2, must present a certified copy of his honorable discharge or certificate of satisfactory service to the Commissioner.*

**Sec. 34. *Determination by Commissioner of adequate supervision of loan modification and foreclosure consultant agents by loan modification and foreclosure consultant.***

*1. A loan modification and foreclosure consultant shall exercise reasonable supervision over the activities of his loan modification and foreclosure consultant agents, including the establishment of a system to review, oversee and inspect the activities of his loan modification and foreclosure agents.*

*2. In determining whether a loan modification and foreclosure consultant has maintained adequate supervision of a loan modification and foreclosure consultant agent, the Commissioner will consider whether:*

*(a) The loan modification and foreclosure consultant has made a reasonable effort to investigate the background and experience of a prospective loan modification and foreclosure consultant agent and hire only such an agent whose background and experience indicate that the person is trustworthy and competent to conduct the business of a loan modification and foreclosure consultant agent;*

*(b) The loan modification and foreclosure consultant has adopted and followed any policies and procedures, written or oral, relating to the supervision and training of loan modification and foreclosure consultant agents;*

*(c) The agent has followed the policies and procedures of the loan modification and foreclosure consultant, written or oral, governing his activities;*

*(d) The loan modification and foreclosure consultant has established and followed a system of review for compliance with his written or oral policies and procedures;*

*(e) The policies and procedures of the loan modification and foreclosure consultant require regular review of the work of the agent, including communications between his agents and a party to such a transaction;*

*(f) The loan modification and foreclosure consultant reviewed the work of the agent in the case under examination by the Commissioner;*

*(g) The policies and procedures of the loan modification and foreclosure consultant include training in the requirements of chapter 645F of NRS and these regulations;*

*(h) The loan modification and foreclosure consultant makes copies of chapter 645F of NRS and these regulations available to loan modification and foreclosure consultant agents;*

*(i) The policies and procedures of the loan modification and foreclosure consultant include a provision for continuing education for loan modification and foreclosure consultant agents;*

*(j) The loan modification and foreclosure consultant spends a sufficient amount of time in the office where the agent is working;*

*(k) The loan modification and foreclosure consultant has received or acted on previous reports of alleged misconduct by the loan modification and foreclosure consultant agent;*

*(l) The loan modification and foreclosure consultant has reviewed the handling by his agents of any fee, deposit or money paid to the loan modification and foreclosure consultant or his agents or held in trust by the loan modification and foreclosure consultant or his loan modification and foreclosure consultant agents pursuant to chapter 645F of NRS or these regulations; and*

*(m) The loan modification and foreclosure consultant's review of the previous work of the loan modification and foreclosure consultant agent would have disclosed a problem with the conduct or issue being examined by the Commissioner.*

*3. The Commissioner shall allow a loan modification and foreclosure consultant to take into consideration the total number of loan modification and foreclosure consultant agents associated with or employed by the loan modification and foreclosure consultant when the consultant determines the form and extent of the policies and procedures for those loan modification and foreclosure consultant agents and the system to review, oversee and inspect the activities of those agents.*

## **EDUCATION**

**Sec. 35. The following subjects are approved as course material for initial licensing and continuing education:**

*1. Federal and Nevada state laws and regulations relating to mortgage lending or loan modification and foreclosure consultant activities.*

*2. The provisions of:*

*(a) Chapter 645B of the NRS or a regulation adopted thereto governing loan modification and foreclosure consultants;*

*(b) Chapter 645B governing mortgage brokers and mortgage agents;*

*(c) Chapter 598D of NRS governing unfair lending practices;*

*(d) Chapter 645A of NRS governing escrow agencies and agents; and*

*(e) Chapter 107 of NRS governing deeds of trust.*

*3. Loan modification and foreclosure consultant or mortgage industry practices and information including federal programs designed to assist homeowners facing foreclosure.*

*4. Ethics and deceptive practices.*

*5. Any other subject approved by the Division, including but not limited to, the tax consequences of a loan modification or foreclosure.*

### **Sec. 36.**

*1. An applicant for an initial license as a loan modification and foreclosure consultant or loan modification and foreclosure consultant agent must complete at least 15 hours of instruction in the areas of instruction set forth in subsection 2 of this section. The 15 hours of required instruction may be through either live, classroom instruction or through distance education.*

*2. The 15 hours of instruction required pursuant to subsection 1 must include:*

*(a) 3 hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues;*

*(b) 6 hours of federal law and regulations relating to mortgage lending, at least 2 hours of which must be related to RESPA, 2 hours of training in Regulation Z, Truth in Lending and 2 hours of which must be related to the tax consequences of loan modifications or foreclosure and federal programs designed to assist homeowners facing foreclosure.*

*(c) 4 hours of Nevada law and regulations, at least 2 hours of which must be related to NRS and NAC 645F; the additional 2 hours may relate to other Nevada mortgage laws; and*

*(d) 2 hours of electives.*

*3. An applicant for an initial license as a loan modification and foreclosure consultant or loan modification and foreclosure consultant agent must provide to the Division a certificate(s) of completion, in a form satisfactory to the Division, indicating that the applicant has successfully completed the 15 hours of instruction required pursuant to this section. Certificates issued for all courses must bear the name of the certifying organization.*

### **Sec. 37.**

*1. A licensee must complete at least 5 hours of certified courses of continuing education during the 12 months immediately preceding the date on which the license of the loan modification and foreclosure consultant expires. A course of continuing education must focus on the practical application of loan modification and foreclosure consultant transactions.*

*2. Of the 5 hours of certified courses of continuing education required pursuant to subsection 1, a licensee must complete:*

*(a) Two hour of professional ethics which shall include instruction on fraud, consumer protection and fair lending issues;*

*(b) Two hours of federal law and regulations; and*

*(c) One hour of Nevada law and regulations relating to NRS and NAC 645F or other Nevada mortgage laws.*

**Sec. 38.**

*A provider that wishes to offer courses to meet the educational requirements for licensure or continuing education under chapter 645F of NRS must apply to the Commissioner prior to offering any approved courses and annually thereafter on or before December 31 for approval on a form prescribed by the Division and pay any applicable fee. The application must include, without limitation:*

- 1. The name and address of the provider;*
- 2. The type of provider and a description of its facilities;*
- 3. Any information requested by the Division concerning the ownership of the provider, including the business organization and the names and addresses of all directors, principals, officers and others having interests as owners;*
- 4. A list of the instructors;*
- 5. A list of the courses to be offered and a topical syllabus for each;*
- 6. The allotment of time for each subject;*
- 7. A tentative schedule of courses;*
- 8. The titles, authors and publishers of all required textbooks;*
- 9. A copy of each examination to be used and the correct answer for each question;*
- 10. A statement of:*
  - (a) The purpose of the provider;*
  - (b) The fees to be charged;*
  - (c) The days, times and locations of classes;*
  - (d) The number of quizzes and examinations;*
  - (e) The grading systems, including the methods of testing and standards of grading;*
  - (f) The requirements for attendance; and*
  - (g) The location of the students' records.*
- 11. A statement as to whether the provider or any instructor employed by the provider has been disciplined by any governmental agency in this or any other state; and*
- 12. A statement that education courses will not be provided free of charge as an inducement for students or their employers to utilize the services of the provider for any loan modification and foreclosure consultant related activities.*
- 13. The Commissioner may waive the requirements of this section for courses offered by or through a federal or state governmental agency.*
- 14. If the application of the provider is denied, the provider may appeal the decision of the Division to deny approval of the provider by filing an appeal with the Division not later than 20 days after the date on which the denial or withdrawal of the approval of the provider becomes effective and the provider will have a right to a hearing which is not a contested case under NRS Chapter 233B.*
- 15. The Division has the right to be awarded and recover costs and attorney fees from the provider related to a hearing in which the hearing officer affirms the denial or withdrawal of approval of a provider.*

**Sec. 39.**

- 1. A provider must submit an application for the approval of each course the provider intends to offer on a form provided by the Division and include with the submission:*
  - (a) All applicable information prescribed in Sec. 38; and*
  - (b) The applicable fee.*

*2. The Division will not grant retroactive approval of a course.*

*3. If a course offered by a provider that is a professional organization has been approved for continuing education, the sponsor shall not restrict attendance at the course to only members of that organization.*

*4. Any advertising, promotional brochure or form for registration for a course must contain, in writing, the policy of the provider concerning cancellations and refunds.*

*5. If the application of the provider for a course is denied, the provider may appeal the decision of the Division to deny approval of the provider's course by filing an appeal with the Division not later than 20 days after the date on which the denial of the approval of the provider's course becomes effective and the provider will have a right to a hearing which is not a contested case under chapter 233B of NRS.*

*6. The Division has the right to be awarded and recover costs and attorney fees from the provider related to a hearing in which the hearing officer affirms the denial or withdrawal of approval of a course.*

**Sec. 40.**

*1. A provider approved by the Commissioner to offer courses to meet requirements for licensure or continuing education under chapter 645F of NRS shall maintain a record of each student's attendance and certification in any of those courses for 4 years after his enrollment and shall have such records open to inspection by the Division, upon its request, during the provider's business hours.*

*2. A provider that is licensed to operate by the Commission on Postsecondary Education shall provide evidence of such licensure to the Division.*

**Sec. 41.**

*1. Within 15 days after the occurrence of any material change in the information provided by the provider in its application pursuant to Sec. 38 of this regulation which would affect its approval by the Commissioner, the provider shall give the Division written notice of that change.*

*2. To qualify for annual renewal of approval by the Commissioner, a provider must submit to the Commissioner before December 31, 2009, and annually thereafter:*

*(a) A written certification, in a form prescribed by the Division, declaring that the provider has met all applicable requirements of chapter 645F of the NRS or a regulation adopted thereto;*

*(b) A sworn statement, in a form prescribed by the Division, declaring that the information contained in the original application is current or, if it is not current, a list of all material changes; and*

*(c) Payment of any applicable fee for each course for which renewal is being sought.*

*3. The Commissioner may deny renewal of approval to any provider that does not meet the standards required by chapter 645F of NRS or a regulation adopted thereto.*

*4. Within 60 days after a decision is made to deny renewal of approval, the Commissioner will give written notice of the decision and the basis for that decision by certified mail to the last known address of the provider.*

**Sec. 42.** *A provider approved by the Commissioner shall not make any misrepresentation in its advertising about any course of instruction which it offers to fulfill requirements for licensing or continuing education under these regulations.*

**Sec. 43.** *A provider that conducts courses approved by the Commissioner:*

*1. May employ as instructors of those courses only persons who meet the qualifications set forth in Sec. 44 of these regulations.*

*2. Shall limit guest lecturers who are experts in the related fields, excluding Division personnel, to 25% of the total instructional hours per approved course.*

*3. Shall include a statement that the provider is approved by the Division on all advertisements of the provider.*

*4. Shall require each student to attend the entire course as a condition of receiving certification for the course.*

*5. Shall certify the completion of only the number of hours for which the course has been approved by the Commissioner. A portion of a course does not satisfy the requirements for certification.*

*6. Shall update its course materials no less frequently than annually to reflect changes in the law and the marketplace.*

*7. Shall not allow a student to pass a course by taking an examination without having the required attendance. In addition, an owner, instructor, affiliate or other person associated with the provider may not take an examination conducted by the provider to meet the requirements for licensing or continuing education under these regulations.*

*8. Shall admit authorized personnel of the Division or its designee to audit and evaluate the presentation of the course without prior notice by the Division or cost to the Division.*

*9. Shall not present a course for the main purpose of selling products or services and shall limit the announcement of products or services during the course to not more than 1 minute for each credit hour.*

*10. Shall not provide, distribute, disseminate or otherwise make available to students the answers to examination questions.*

**Sec. 44.**

*1. An instructor must have written approval from the Division before teaching an approved course. No retroactive approval for instructors will be granted.*

*2. An applicant for approval as an instructor must apply on a form prescribed by the Division.*

*3. The Division shall not approve a person as an instructor if the person:*

*(a) Has been disciplined by the Division:*

*(1) Within the immediately preceding 5 years; or*

*(2) More than one time; or*

*(b) Has been determined in an administrative or judicial proceeding to have violated any statute, rule, regulation or order pertaining to mortgage lending, real estate or loan modification and foreclosure consulting in this or any other state.*

*4. A person may be approved as an instructor to teach an approved course relating to his principal occupation if:*

*(a) He has:*

*(1) A bachelor's degree or a more advanced degree, plus at least 2 years of full-time experience in the field in which he will be providing instruction;*

*(2) Teaching experience of at least 75 hours in the field in which he will be providing instruction within the 3 years immediately preceding the date of his application for approval plus at least 3 years of full-time experience in that field;*

*(3) At least 6 years of full-time experience in the field, or a closely related field, in which he will be providing instruction; or*

*(4) Any combination of at least 6 years of college-level course work and full-time experience in the field in which he will be providing instruction;*

*(b) He has a good reputation for honesty, integrity and trustworthiness; and*

*(c) He submits to the Division satisfactory documentation of his qualifications and a resume outlining his experience, education and teaching experience in the field in which he will be providing instruction.*

*5. The Division shall periodically review and evaluate each approved instructor.*

*6. An approved instructor who is also a licensee may receive credit for the instructor's own annual continuing education requirement at the rate of two hours of credit for every one hour taught.*

#### **Sec. 45.**

*1. The Division may deny or withdraw the approval of an instructor who:*

*(a) Does not meet the standards prescribed in Sec 44.*

*(b) Does an inadequate job of teaching the subject matter of a course as evidenced by student evaluations or an audit conducted by the Division.*

*(c) Has been determined in any administrative or judicial proceeding to have violated any statute, rule, regulation or order pertaining to real estate.*

*(d) Has been convicted of, or entered a plea of guilty or nolo contendere to, any crime involving fraud, deceit, misrepresentation or moral turpitude; or*

*(e) Engages in inappropriate behavior in the classroom as evidenced by an audit conducted by the Division.*

*2. Before denying or withdrawing approval of the instructor of a course, the Division must notify the provider of the course of its intent to deny or withdraw approval of the instructor. The notice must include the specific reasons upon which the Division is basing its decision to deny or withdraw the approval of the instructor. Not later than 20 days after the date on which he receives the notice, a provider may provide a written response to the Division that clearly sets forth the reasons why the approval of the instructor should not be denied or withdrawn and outlining any corrective measures that the provider will undertake. After the 20-day period has elapsed, the Division shall review the notice and any response submitted by the provider and shall:*

*(a) Deny or withdraw the approval of the instructor;*

*(b) Approve or allow the instructor to remain approved if certain specific enumerated conditions are met; or*

*(c) Allow the continued approval of the instructor.*

*If the Division decides to withdraw approval of the instructor, the withdrawal of approval of the instructor becomes effective upon the mailing of the Division's decision to the provider of the course taught by the instructor by certified mail, return receipt requested, to the provider's last known business address.*

3. *If the Division withdraws approval of an instructor, the Division shall give credit to a student for completing the course if the student began the course before the provider received written notice of the withdrawal of approval of the instructor.*

4. *The instructor may appeal the decision of the Division to withdraw approval of an instructor by filing an appeal with the Division not later than 20 days after the date on which the withdrawal of the approval of the instructor becomes effective and the instructor will have a right to a hearing which is not a contested case under NRS Chapter 233B.*

5. *The Division has the right to be awarded and recover costs and attorney fees from the instructor related to a hearing in which the hearing officer affirms the denial or withdrawal of approval of an instructor.*

#### **Sec. 46.**

1. *An instructor shall ensure that:*

(a) *Class sessions are commenced in a timely manner and are conducted for the full amount of time that is approved; and*

(b) *Each course is taught according to the course plan and instructor guide that was approved by the Commissioner, including the furnishing to students of appropriate student materials.*

2. *An instructor shall conduct himself in a professional and courteous manner when performing his instructional duties and shall conduct classes in a manner that demonstrates the following basic teaching skills:*

(a) *The ability to present instruction in a thorough, accurate, logical, orderly and understandable manner, to utilize illustrative examples as appropriate and to respond appropriately to questions from students;*

(b) *The ability to effectively utilize varied instructional techniques in addition to lectures, including, without limitation, class discussion, role-playing and other techniques;*

(c) *The ability to utilize varied instructional aids effectively to enhance learning;*

(d) *The ability to maintain an appropriate learning environment and effective control of a class; and*

(e) *The ability to interact with adult students in a positive manner that:*

(1) *Encourages students to learn;*

(2) *Demonstrates an understanding of varied student backgrounds;*

(3) *Avoids offending the sensibilities of students; and*

(4) *Avoids personal criticism of any other person, agency or organization.*

#### **Sec. 47.**

1. *A course must:*

(a) *Be approved annually by the Division; and*

(b) *Relate to the subject matters prescribed in Sec. 35.*

2. *None of the following kinds of courses or activities will be accepted from a student as fulfillment of the education required for licensing or continuing education:*

(a) *Courses designed to develop or improve clerical, office or business skills that are not related to the subject matters listed in Sec. 35, such as typing, shorthand, operation of business machines, the use of computers or computer software, improvement of memory, or writing of letters and reports;*

(b) *Business courses in advertising or psychology;*

- (c) Courses designed to motivate an individual or to develop the self-image of an individual;*
- (d) A course for the development of instructors; or*
- (e) A meeting for the promotion of sales, a program of office training or other activity which is held as part of the general business of a loan modification and foreclosure consultant.*

*3. The Division will not approve more than seven full hours of credit per day of instruction.*

**Sec. 48.** *A provider seeking approval of a computer-based distance education course must submit a complete copy of the course to the Division in the medium to be used and, if requested, must make available, at a date and time satisfactory to the Division and at the provider's expense, all equipment and software necessary to enable the Division to review the course. In the case of an Internet-based course, the provider shall provide the Division access to the course via the Internet at no charge at a date and time satisfactory to the Division.*

**Sec. 49.**

*1. To receive a certificate of completion for an approved course, a student must:*

*(a) Direct his attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction;*

*(b) Refrain from engaging in activities which are distracting to other students or the instructor, or which otherwise disrupt the orderly conduct of a class, including, without limitation, the use of text messages, voice pagers, beepers, Blackberries and cell phones; and*

*(c) Not be absent from the classroom for more than 18 minutes per every 3 hours of instruction, not including break periods.*

*2. If an instructor denies the award of a certificate of completion to a student who fails to satisfy the conditions set forth in subsection 1, the student may, within 30 days after that denial, file a written request with the Division to review the matter. If the written request contains allegations which, if true, would qualify the student to receive a certificate of completion, the Division shall set the matter for an informal hearing to be conducted as soon as practicable.*

**Sec. 50.**

*1. Each approved course and each instructor of an approved course must be evaluated by students on a form prescribed by the Division and provided by the provider during every course offering.*

*2. The instructor shall provide the student a certificate of completion, in a form satisfactory to the Division, indicating that the student has successfully completed the hours of instruction required pursuant to Sec. 36 and Sec. 37.*

**Sec. 51.**

*1. A provider must apply annually for renewal of approval of a course on a form prescribed by the Division and pay any applicable renewal fee. An application for renewal must be submitted to the Division at least 5 weeks before the previous approval expires. If the provider does not timely submit the application for renewal and pay any applicable renewal fee, the provider must apply for an original approval as provided in Sec. 38.*

*2. Each approved course and instructor is subject to review and audit by the Division. If the Division conducts such a review or audit, the provider shall make available to the Division all records and materials requested which are necessary to the review.*

**Sec. 52. *Withdrawal of approval of course.***

*1. If the Division determines, through an audit or otherwise, that an approved course does not meet the standards for such a course set forth in these regulations, the Division shall notify the provider of the course of its intent to withdraw approval of the course. The notice must include the specific reasons upon which the Division is basing its decision to deny or withdraw approval of the course. Not later than 20 days after the date on which he receives the notice, the provider may provide a written response to the Division that clearly sets forth the reasons why approval of the course should not be denied or withdrawn and outlining any corrective measures that the provider will undertake. After the 20-day period has elapsed, the Division shall review the notice and any response submitted by the provider and:*

*(a) Withdraw approval of the course;*

*(b) Allow the course to remain approved if certain specific enumerated conditions are met;*

*or*

*(c) Allow the continued approval of the course.*

*If the Division decides to withdraw approval of the course, the withdrawal of approval of the course becomes effective upon the mailing of the Division's decision to withdraw approval to the provider by certified mail, return receipt requested to the provider's last known business address.*

*2. If the Division withdraws approval of a course, the Division shall give credit to a student for completing the course if the student began the course before the provider received written notice of the withdrawal of approval of the course.*

*3. The provider may appeal the decision of the Division to withdraw approval of a course or instructor by filing an appeal with the Division not later than 20 days after the date on which the withdrawal of the approval of the course becomes effective and the provider will have a right to a hearing which is not a contested case under chapter 233B of NRS.*

**Sec. 53. *Prerequisites to receipt of credit for course.***

*1. To obtain credit for a course of continuing education, the course must be completed not more than 12 months immediately preceding the date on which the license of the loan modification and foreclosure consultant or loan modification and foreclosure consultant agent expires.*

*2. A loan modification and foreclosure consultant or loan modification and foreclosure consultant agent must complete at least 90 percent of a course to receive credit for continuing education for that course.*

**SUPERVISION BY COMMISSIONER**

**Sec. 54. *Assessment for legal services rendered by Attorney General.***

*Each loan modification and foreclosure consultant and each loan modification and foreclosure consultant agent shall pay to the Division an annual assessment as required pursuant to NRS 645F.290 to cover the costs related to legal services rendered by the Attorney General.*

**Sec. 55. Assessment for costs related to use of certified public accountant for audits and examinations.**

1. Each loan modification and foreclosure consultant shall pay to the Division an annual assessment to cover the costs related to the employment of a certified public accountant and the performance of audits and examinations conducted by the Division.

2. The Division will bill each loan modification and foreclosure consultant for the assessment. The assessment must be paid within 30 calendar days after the date the bill is received.

3. A charge of 10% of the assessment will be imposed on any loan modification and foreclosure consultant 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. 56. Duties of Commissioner: Investigations; examinations; periodic and special audits; hearings; related fees.**

1. In addition to the other duties imposed upon him by law for the general supervision of loan modification and foreclosure consultants and loan modification and foreclosure consultant agents, the Commissioner shall:

(a) Conduct such investigations as may be necessary to determine whether any person has violated any provision of chapter 645F of NRS, a regulation adopted thereto or an order of the Commissioner.

(b) Conduct an examination of each loan modification and foreclosure consultant doing business in this State within three months of the loan modification and foreclosure consultant commencing business and at least annually thereafter. The examination must include, without limitation, a formal exit review with the loan modification and foreclosure consultant.

(c) Conduct such other examinations, periodic or special audits, investigations and hearings as may be necessary for the efficient administration of the laws of this State regarding loan modification and foreclosure consultants and loan modification and foreclosure consultant agents.

2. For each special audit, investigation or examination, a loan modification and foreclosure consultant or loan modification and foreclosure consultant agent shall pay a fee based on the rate established pursuant to Sec. 57 and NRS 645F.280.

**Sec. 57. Fee for supervision and related activities: Amount; collection; failure to pay; accounting of time billed.**

1. Except as otherwise provided in this subsection, the Commissioner will charge and collect a fee of \$60 per hour from each loan modification and foreclosure consultant for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 645F of NRS or these regulations. The Commissioner may charge a fee 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 645F of NRS or these regulations.

2. The Commissioner will bill each loan modification and foreclosure consultant upon the completion of the activity for the fee established in subsection 1. The fee must be paid within 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% of the fee plus

*an additional 1% 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. The failure of a loan modification and foreclosure consultant to pay the fee required in subsection 1 of this section constitutes grounds for the imposition of any discipline authorized pursuant to chapter 645F of NRS or these regulations, including, without limitation, the revocation of his license.*

*4. Upon written request by a loan modification and foreclosure consultant, the Division will provide an accounting of the time billed to the loan modification and foreclosure consultant pursuant to this section.*

**Sec. 58. Authority of examiner, auditor or investigator.**

*An examiner, auditor or investigator conducting an examination, periodic or special audit, or investigation of a loan modification and foreclosure consultant pursuant to chapter 645F of NRS or a regulation adopted thereto may:*

*1. Require the loan modification and foreclosure consultant to produce, for the purposes of the examination, audit or investigation, all documents:*

*(a) Relating to business conducted by the loan modification and foreclosure consultant pursuant to chapter 645F of NRS and these regulations;*

*(b) Required to be kept by the loan modification and foreclosure consultant pursuant to any federal or state law or regulation; or*

*(c) Related to the operation of the business of the loan modification and foreclosure consultant or any affiliated business that conducts business activities which are directly related to the business of the loan modification and foreclosure consultant.*

*2. Inspect and copy any documents which are in the possession, control or custody of the loan modification and foreclosure consultant and which are related to business conducted pursuant to chapter 645F of NRS or these regulations.*

**Sec. 59. Rating of loan modification and foreclosure consultant upon completion of examination.**

*Upon completion of an examination of a loan modification and foreclosure consultant, the examiner shall rate the loan modification and foreclosure consultant on a scale of "1" to "5," as follows:*

*1. A rating of "1" indicates that the loan modification and foreclosure consultant and the management of the loan modification and foreclosure consultant 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, but only if the loan modification and foreclosure consultant acted to correct the violation or deficiency immediately and the action taken by the loan modification and foreclosure consultant is likely to prevent future violations or deficiencies.*

*2. A rating of "2" indicates that the loan modification and foreclosure consultant and the management of the loan modification and foreclosure consultant have demonstrated substantial compliance with applicable laws and regulations and that any deficiencies noted in the report made by the examiner pursuant to Sec. 60 can be corrected by the loan modification and foreclosure consultant with a minimum of regulatory supervision. A rating of "2" may be given if there is more than one minor violation or deficiency, but only if the loan modification and foreclosure consultant acted to correct the violations or deficiencies immediately and the*

*action taken by the loan modification and foreclosure consultant is likely to prevent future violations or deficiencies.*

*3. A rating of “3” indicates that the loan modification and foreclosure consultant and the management of the loan modification and foreclosure consultant 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 Sec. 60. A rating of “3” may be given if there were minor violations or deficiencies from a previous examination that were not corrected.*

*4. A rating of “4” indicates that the loan modification and foreclosure consultant and the management of the loan modification and foreclosure consultant 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 Sec. 60. The loan modification and foreclosure consultant will be subject to close regulatory supervision, and the examiner will recommend disciplinary action against the loan modification and foreclosure consultant to the Commissioner.*

*5. A rating of “5” indicates that the loan modification and foreclosure consultant and the management of the loan modification and foreclosure consultant 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 Sec. 60 and may include action by the Commissioner to take possession of the business and assets of the loan modification and foreclosure consultant. The examiner will recommend disciplinary action against the loan modification and foreclosure consultant to the Commissioner.*

**Sec. 60. Results of examination: Preparation and review of draft report; final report; confidentiality; action by Commissioner.**

*1. Not more than 30 days after the completion of an examination of a loan modification and foreclosure consultant, 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 loan modification and foreclosure consultant that were examined by the examiner;*

*(b) Facts that are contained in statements made by officers or agents of the loan modification and foreclosure consultant or other persons that the examiner interviewed concerning the loan modification and foreclosure consultant; and*

*(c) Conclusions and recommendations that are reasonably supported by the facts that are included in the draft report, including, but not limited to, the rating given to the loan modification and foreclosure consultant pursuant to Sec. 59.*

*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 loan modification and foreclosure consultant who was examined:*

*(a) A copy of the draft report; and*

*(b) Notice that the loan modification and foreclosure consultant 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 loan modification and foreclosure consultant received a rating of “3,” “4” or “5” 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 loan modification and foreclosure consultant could submit written comments or objections pursuant to subsection 2, hold an informal meeting with the loan modification and foreclosure consultant regarding the draft report; and*

*(b) Review the draft report, together with the written submissions or objections made by the loan modification and foreclosure consultant 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 loan modification and foreclosure consultant 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 completion of the reopened examination, the loan modification and foreclosure consultant is responsible for the costs attributable to the reopened examination pursuant to Sec. 57.*

*4. If a loan modification and foreclosure consultant:*

*(a) Received a rating of “1” or “2” on an examination pursuant to Sec. 59 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. The rating of an examination is not open to public inspection until the review process pursuant to this section is completed and no information other than the rating will be released except upon the express finding of the Commissioner that such release would not impede an investigation and or that the public will not be harmed by such a release.*

*6. If the examination and report reveal that a loan modification and foreclosure consultant is operating in violation of chapter 645F of NRS, these regulations or a previous order of the Commissioner, the Commissioner may order the loan modification and foreclosure consultant to take any action the Commissioner deems necessary or appropriate to correct the violation. The Commissioner may also take disciplinary action pursuant to Sec. 96.*

*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. 61. Notification of certain transfers required; application to Commissioner for approval of change of control; investigation; waiver.**

*1. The Commissioner must be notified of a transfer of 5% or more of the outstanding voting stock of a loan modification and foreclosure consultant and must approve a transfer of voting stock of a loan modification and foreclosure consultant which constitutes a change of control.*

*2. The person who acquires stock resulting in a change of control of the loan modification and foreclosure consultant shall apply to the Commissioner for approval of the transfer. The application must contain information which shows that the requirements of these regulations for obtaining a license will be satisfied after the change of control. Except as otherwise provided in subsection 3, the Commissioner shall conduct an investigation to determine whether those requirements will be satisfied. If, after the investigation, the Commissioner denies the application, he may forbid the applicant from participating in the business of the loan modification and foreclosure consultant.*

*3. A loan modification and foreclosure consultant may submit a written request to the Commissioner to waive an investigation pursuant to subsection 2. The Commissioner may grant a waiver if the applicant has undergone a similar investigation by a state or federal agency in connection with the licensing of or his employment with a financial institution.*

**Sec. 62. Change in ownership, management, principal employees or principal or branch office.**

*1. Any material change in the ownership, management or principal employees of a loan modification and foreclosure consultant at his principal office or a branch office must be reported to the Commissioner on a form prescribed by the Division within 30 calendar days prior to the change.*

*2. Any material change in the ownership or any change of control of a loan modification and foreclosure consultant at his principal office or a branch office must be approved by the Commissioner.*

*3. If a person acquires stock or ownership in a loan modification and foreclosure consultant as a result of a transfer that constitutes a change of control pursuant to Sec. 61:*

*(a) A financial statement 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 loan modification and foreclosure consultant until the Commissioner has approved the transfer; and*

*(c) The loan modification and foreclosure consultant may not change the location of his principal office or branch office until the Commissioner has approved the transfer.*

*4. A loan modification and foreclosure consultant may not close his principal office or a branch office until:*

*(a) The loan modification and foreclosure consultant has returned his license; and*

*(b) The Commissioner has approved the closure.*

*5. The request for approval of the closure of the principal office of the loan modification and foreclosure consultant or a branch office must contain the following information:*

*(a) The status of any incomplete contracts for covered services and the manner in which they will be finalized;*

*(b) An accounting of any trust account maintained by the loan modification and foreclosure consultant and the plan for distribution of money in the account;*

*(c) If any person associated with or employed by the loan modification and foreclosure consultant has been terminated from such association or employment, evidence of the termination; and*

*(d) The location in this State or out of state where records of the loan modification and foreclosure consultant will be maintained.*

**Sec. 63. Subpoenas; oaths; examination of witnesses; penalty; assessment of costs.**

*1. In the conduct of any examination, periodic or special audit, investigation or hearing, the Commissioner may:*

*(a) Compel the attendance of any person by subpoena.*

*(b) Compel any person to produce records related to the activity of a loan modification and foreclosure consultant.*

*(c) Compel the production of any document by subpoena.*

*(d) Administer oaths.*

*(e) Examine any person under oath concerning the business and conduct of affairs of any person subject to the provisions of chapter 645F of NRS or these regulations and in connection therewith require the production of any books, records or papers relevant to the inquiry.*

*2. Any person subpoenaed under the provisions of this section who willfully refuses or willfully neglects to appear at the time and place named in the subpoena or to produce books, records or papers required by the Commissioner, or who refuses to be sworn or answer as a witness, is guilty of a misdemeanor and shall be punished as provided in Assembly Bill 152, Sec. 3.5(2), of the 2009 Legislative Session.*

*3. In addition to the authority to recover attorney's fees and costs pursuant to any other provision of law, the Commissioner may assess against and collect from a person all costs, including, without limitation, reasonable attorney's fees, that are attributable to any examination, periodic or special audit, investigation or hearing that is conducted to examine or investigate the conduct, activities or business of the person pursuant to these regulations.*

## **RECORDS AND FINANCIAL STATEMENTS**

**Sec. 64. Records relating to transactions, financial condition and trust accounts.**

*1. Each loan modification and foreclosure consultant shall keep and maintain at all times at each location where the loan modification and foreclosure consultant conducts business complete and suitable records of all transactions by the loan modification and foreclosure consultant at that location. Each loan modification and foreclosure consultant shall also keep and maintain at all times at each such location all original books, papers and data, or copies thereof, clearly reflecting the financial condition of the business of the loan modification and foreclosure consultant, and shall retain records of all his activity for a period of at least 4 years after the date of the last activity relating to the transaction.*

*2. As used in this section, "complete and suitable records" means a file that includes, but is not limited to, the following documents, if applicable to the type and purpose of the transaction:*

*(a) All contracts entered into between the loan modification and foreclosure consultant and the homeowner;*

*(b) Any additional contracts entered into between parties to the transaction;*

*(c) All disclosures provided to the homeowner;*

*(d) All authorizations signed by the homeowner;*

*(e) All worksheets;*

*(f) All mortgage statements and notices;*

*(g) All related loan documentation for the loan subject to modification or other covered services;*

*(h) All lender or servicer requested items, including, but not limited to, hardship letters, bank statements, W-2's, paystubs, expense support or tax returns;*

*(i) All correspondence between the lender or homeowner with the loan modification and foreclosure consultant, including, but not limited to, letters, e-mails, faxes and logs related to calls or other contacts or information;*

*(j) All modification offers or agreements provided to, or received from, the lender or servicer;*

*(k) Copies of all public, recorded documents, including, but not limited to, the Notice of Default and Election to Sell and the Notice of Sale;*

*(l) Any other documentation used by the loan modification and foreclosure consultant in the normal course of his business as it relates to a homeowner;*

*(m) A copy of each item of advertising material that was published or distributed by or on behalf of the loan modification and foreclosure consultant in the format in which the material was published or distributed;*

*(n) A copy of any written complaint against the loan modification and foreclosure consultant, together with all correspondence, notes, responses and other documentation related to the disposition of the complaint;*

*(o) All checkbooks, check registers, bank statements, deposit slips, withdrawal slips, cancelled checks and other records that relate to the business of the loan modification and foreclosure consultant;*

*(p) 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 loan modification and foreclosure consultant;*

*(q) Copies of all documents evidencing a contractual relationship between the loan modification and foreclosure consultant and any third-party provider of services related to covered transactions, including, but not limited to, contracts, invoices, billings and remittances to the provider by or on behalf of the loan modification and foreclosure consultant;*

*(r) Copies of all material correspondence related to the business of the loan modification and foreclosure consultant not covered in (i), including, but not limited to, electronic messages; and*

*(s) Copies of all reports, audits, examinations, inspections, reviews, investigations or other similar activities relating to the business of the loan modification and foreclosure consultant performed by any third party, including, but not limited to, any regulatory or supervisory authority.*

**Sec. 65. Advertisements must comply with state and federal laws concerning deceptive trade practices and deceptive advertising.**

**1. A loan modification and foreclosure consultant shall include its name, license number and street address in each advertisement that a loan modification and foreclosure consultant uses. The street address must be the physical address of the loan modification and foreclosure consultant and may not be the address of a mail processing business. An advertisement used by a loan modification and foreclosure consultant agent must include his name and license number as well as the name, address and license number of his associated loan modification and foreclosure consultant.**

**2. Each advertisement that a loan modification and foreclosure consultant uses in carrying on his business must comply with the requirements of:**

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

*(b) Any applicable federal statute or regulation concerning deceptive advertising and the advertising of interest rates.*

*3. A loan modification and foreclosure consultant shall not use advertising material that simulates the appearance of a check or a communication from a governmental entity, or an envelope containing a check or a communication from a governmental entity, unless:*

*(a) The words "THIS IS NOT A CHECK," "NOT NEGOTIABLE" or "THIS IS NOT A GOVERNMENTAL ENTITY," as appropriate, appear prominently on the envelope and any material that simulates the appearance of a check or a communication from a governmental entity; and*

*(b) If the material simulates the appearance of a check, the material does not contain an American Bankers Association number, micro-encoding or any other marks intended to create the appearance that the material is a negotiable check.*

*4. A loan modification and foreclosure consultant or loan modification and foreclosure consultant agent shall not refer to an existing lender or financial institution on any advertising material without the written consent of the lender or financial institution.*

*5. Except as otherwise provided in subsection 6, an advertisement for an activity which is licensed pursuant to these regulations must be separate and distinct from an advertisement for an activity which is not licensed pursuant to these regulations.*

*6. A licensee may advertise jointly with another entity if each business is disclosed separately in the advertisement and each business incurs a pro rata share of the cost associated with the advertisement.*

*7. An Internet link on a website of the licensee that links the user to the website of another commercial enterprise must provide notification to the user that the user is leaving the website of the licensee.*

*8. For the purposes of this section, "advertising" includes commercial messages that promote the availability of products or services offered by or through the loan modification and foreclosure consultant. Commercial messages include, but are not limited to:*

*(a) Print media;*

*(b) Sales literature;*

*(c) Sales brochures or flyers;*

*(d) Billboards;*

*(e) Yellow-page listings if more than a line listing;*

*(f) Radio and television advertisements;*

*(g) Mass mailings distributed by the United States Postal Service or another such delivery service or by electronic mail;*

*(h) Telephone or seminar scripts; and*

*(i) Websites or other Internet sites that promote loan modification and foreclosure consultant services.*

*9. A licensee shall not use advertising material that represents that it is approved by or affiliated with any governmental agency or non-profit organization unless it is so approved or affiliated.*

*10. A licensee shall not advertise that he is licensed or certified by any entity or organization unless he has such a license or certification and may only advertise services authorized by chapter 645F of NRS or these regulations.*

*11. A licensee shall not use advertising material which guarantees that the homeowner will be successful in obtaining a loan modification or that the homeowner will be able to successfully avoid or stop foreclosure.*

**Sec. 66.** *For purpose of compliance with Sec. 3.3 of AB 152, a “separate account” means a trust account maintained with a federally-insured depository institution located in this State that is separate from accounts belonging to the loan modification and foreclosure consultant. The trust account:*

*1. May include monies collected from various homeowners. However, the loan modification and foreclosure consultant must maintain separate internal subsidiary ledgers for each homeowner which includes:*

*(a) The name, address and phone number of the homeowner(s);*

*(b) The address and APN number for the property securing the loan for which the loan modification and foreclosure consultant is providing services;*

*(c) The account number(s) of the loan(s);*

*(d) The lender or loan servicer contact information related to the loan;*

*(e) The amount and date of the initial and any subsequent payment(s) received from the homeowner or other parties noted with separate entries;*

*(f) The amount and date of each deposit into the trust account maintained with the federally-insured depository institution;*

*(g) The amount and date of each withdrawal from the trust account, and the name of each recipient of each withdrawal; contact information for each recipient must be separately maintained.*

*2. Must at all times have a reconciled balance on deposit equal to all monies collected and deposited and not yet legitimately disbursed;*

*3. Must be under the control of a licensed loan modification and foreclosure consultant; a loan modification and foreclosure consultant agent may not maintain client trust accounts.*

*4. Must be reconciled monthly by the loan modification and loan consultant. Such reconciliation must include, without limitation, a breakdown of each homeowner who has monies on deposit, a list of all checks issued and a list of any outstanding checks issued but not paid, a list of all deposits showing the related homeowner’s account and any other credit or debit adjustments to the bank account with a full explanation of the items.*

**Sec. 67.** *Annual financial statement; audit of trust accounts.*

*1. Except as otherwise provided in this section, not later than 120 days after the last day of each fiscal year for a loan modification and foreclosure consultant, the loan modification and foreclosure consultant shall submit to the Commissioner a financial statement that:*

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

*(b) Has been prepared from the books and records of the loan modification and foreclosure consultant by an independent certified public accountant who holds a permit to engage in the practice of certified public accounting in this State or another state.*

*2. The Commissioner may grant a reasonable extension for the submission of a financial statement pursuant to this section if a loan modification and foreclosure consultant requests such an extension before the date on which the financial statement is due.*

*3. If a loan modification and foreclosure consultant maintains any accounts described in Sec. 66, and the 6-month average balance in those accounts exceeds \$75,000, the financial*

*statement submitted pursuant to this section must be audited in accordance with generally accepted auditing standards. The public accountant who prepares the report of an audit shall submit a copy of the report to the Commissioner at the same time that he submits the report to the loan modification and foreclosure consultant.*

**Sec. 68. Form of financial statements.**

*1. A financial statement of the account or accounts required pursuant to Sec. 66 must include, if applicable:*

- (a) A statement of the balance and liabilities of each trust account;*
- (b) A statement of all receipts for, disbursements from and changes in cash balances of each trust account;*
- (c) A supplementary schedule of the liabilities of each trust account; and*
- (d) A reconciliation of the cash balance of each trust account to the supplementary schedule of the liabilities of each trust account.*

*2. The Commissioner will make available an approved format and sample content for the statements required pursuant to this section. Loan modification and foreclosure consultants shall submit the statements in substantially the same format as the approved forms.*

*3. In addition to the annual financial statement of the account or accounts required pursuant to subsection 1, not later than 60 days after the last day of each fiscal year for a loan modification and foreclosure consultant, and every 6 months thereafter, the loan modification and foreclosure consultant shall submit to the Commissioner an unaudited financial statement of the account or accounts. The financial statement required pursuant to this subsection may be self-prepared.*

*4. Except as otherwise provided in this subsection, the Commissioner may grant a reasonable extension, not to exceed 30 days, for the submission of a financial statement of the account or accounts pursuant to this section if a loan modification and foreclosure consultant requests such an extension in writing before the date on which the financial statement is due. Upon written request, the Commissioner may, for good cause, grant in writing an additional extension, not to exceed 30 days, of the period for the submission of a financial statement.*

**Sec. 69. Records of Commissioner: General provisions governing public inspection, confidentiality and disclosure of information relating to investigations and disciplinary action.**

*1. Except as otherwise provided in this section or by specific statute, all papers, documents, reports and other written instruments filed with the Commissioner pursuant to these regulations are open to public inspection.*

*2. Except as otherwise provided in subsection 3, the Commissioner may withhold from public inspection or refuse to disclose to a person, for such time as the Commissioner considers necessary, any information that, in his judgment, would:*

- (a) Impede or otherwise interfere with an investigation or examination that is currently pending against a loan modification and foreclosure consultant;*
- (b) Have an undesirable effect on the welfare of the public; or*
- (c) Reveal personal information in violation of NRS 239B.030.*

*3. Except as otherwise provided by law, the Commissioner shall disclose the following information concerning a loan modification and foreclosure consultant or loan modification and foreclosure consultant agent to any person who requests it:*

*(a) The findings and results of any investigation which has been completed during the immediately preceding 5 years against the loan modification and foreclosure consultant or loan modification and foreclosure consultant agent pursuant to the provisions of these regulations and which resulted in a finding by the Commissioner that the loan modification and foreclosure consultant or agent committed a violation of a provision of chapter 645F of NRS or these regulations and which has resulted in an administrative complaint or an order of the Commissioner and lead to administrative action and/or which has resulted in a stipulated settlement agreement;*

*(b) The nature of any disciplinary action that has been taken during the immediately preceding 5 years against the loan modification and foreclosure consultant or loan modification and foreclosure consultant agent pursuant to the provisions of these regulations;*

*(c) Any information in the possession of the Commissioner regarding the present and past ownership and management structure of the loan modification and foreclosure consultant; and*

*(d) The rating for each examination of a loan modification and foreclosure consultant and an explanation of the standards for determining that rating.*

**Sec. 70. Confidentiality of certain records.**

*1. Except as provided in subsection 2, the Commissioner may classify as confidential certain records and information obtained by the Division when those matters are obtained from a governmental agency upon the express condition that they remain confidential. This paragraph does not limit examination by:*

*(a) The Legislative Auditor; and*

*(b) The Department of Taxation if necessary to carry out the provisions of chapter 363A of NRS;*

*2. Except as limited by agreement with the governmental agency that provided the records and information, the Commissioner may release the information and records to the Attorney General's Office with respect to its criminal and civil divisions, and any district attorney and/or other local, state or federal law enforcement organization; provided that nothing contained herein shall prevent the Commissioner from redacting social security numbers and personal, non-public information from any documents.*

**Sec. 71. Records of Commissioner: Certain records relating to investigation deemed confidential; certain records relating to disciplinary action and orders imposing discipline deemed public records.**

*1. Except as otherwise provided in this section, Section 70, and NRS 239.0115, a complaint filed with the Commissioner, all documents and other information filed with the complaint and all documents and other information compiled as a result of an investigation conducted to determine whether to initiate disciplinary action are confidential.*

*2. The complaint or other document filed by the Commissioner to initiate disciplinary action and all documents and information considered by the Commissioner when determining whether to impose discipline are public records.*

*3. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.*

**BOND OR OTHER SECURITY REQUIRED FOR LICENSE**

**Sec. 72. Requirement to maintain bond; form of bond.**

1. As a condition to doing business in this State, each loan modification and foreclosure consultant shall deposit with the Commissioner and keep in full force and effect a corporate surety bond payable to the State of Nevada, in the amount set forth in subsection 4, which is executed by a corporate surety satisfactory to the Commissioner and which names as principals the loan modification and foreclosure consultant and all agents employed by or associated with the loan modification and foreclosure consultant.

2. At the time of filing an application for a license as a loan modification and foreclosure consultant and at the time of filing an application for the renewal of a license as a loan modification and foreclosure consultant, the applicant shall file with the Commissioner proof that the applicant is named as a principal as well as all associated loan modification and foreclosure consultant agents on the corporate surety bond deposited with the Commissioner by the loan modification and foreclosure consultant.

3. The bond must be in substantially the following form:

*Know All Men by These Presents, that ....., as principal, and ....., as surety, are held and firmly bound unto the State of Nevada for the use and benefit of any person who suffers damages because of a violation of any of the provisions of chapter 645F of NRS and the regulations promulgated thereunder, in the sum of ....., lawful money of the United States, to be paid to the State of Nevada for such use and benefit, for which payment well and truly to be made, and that we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.*

*The condition of that obligation is such that:*

*Whereas, the principal has been issued a license as a loan modification and foreclosure consultant by the Commissioner of Mortgage Lending and is required to furnish a bond, which is conditioned as set forth in this bond:*

*Now, therefore, if the principal, his agents and employees, strictly, honestly and faithfully comply with the provisions of chapter 645F of NRS and the regulations promulgated thereunder, and pay all damages suffered by any person because of a violation of any of the provisions of chapter 645F of NRS and the regulations promulgated thereunder, or by reason of any fraud, dishonesty, misrepresentation or concealment of material facts growing out of any transaction governed by the provisions of chapter 645F of NRS or the regulations promulgated thereunder, then this obligation is void; otherwise it remains in full force.*

*This bond becomes effective on the ..... (day) of ..... (month) of ..... (year), and remains in force until the surety is released from liability by the Commissioner of Mortgage Lending or until this bond is cancelled by the surety. The surety may cancel this bond and be relieved of further liability hereunder by giving 60 days' written notice to the principal and to the Commissioner of Mortgage Lending.*

*In Witness Whereof, the seal and signature of the principal hereto is affixed, and the corporate seal and the name of the surety hereto is affixed and attested by its authorized officers at ....., Nevada, this ..... (day)of ..... (month) of ..... (year).*

.....(Seal)  
*Principal*

.....(Seal)  
*Surety*

*By*.....  
*Attorney-in-fact*

.....  
*Licensed resident agent*

*4. Except as provided in subsection 5, each loan modification and foreclosure consultant shall deposit a corporate surety bond in the amount of \$75,000 that complies with the provisions of this section or a substitute form of security that complies with the provisions of Sec. 73 of these regulations.*

*5. If a loan modification and foreclosure consultant maintains any accounts described in Sec. 66, and the 6-month average balance in those accounts exceeds \$50,000, the loan modification and foreclosure consultant shall deposit a corporate surety bond in the amount of \$100,000 that complies with the provisions of this section or a substitute form of security that complies with the provisions of Sec. 73 of these regulations.*

**Sec. 73. Substitute form of security.**

*1. As a substitute for the surety bond required by Sec. 72 of these regulations, a loan modification and foreclosure consultant may, in accordance with the provisions of this section, deposit with any bank or trust company authorized to do business in this State which is federally insured, in a form approved by the Commissioner:*

*(a) An obligation of a bank, savings and loan association, thrift company or credit union licensed to do business in this State which is federally insured;*

*(b) Bills, bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States; or*

*(c) Any obligation of this State or any city, county, town, township, school district or other instrumentality of this State, or guaranteed by this State.*

*2. The obligations of a bank, savings and loan association, thrift company or credit union must be held to secure the same obligation as would the surety bond. With the approval of the Commissioner, the depositor may substitute other suitable obligations for those deposited which must be assigned to the State of Nevada and are negotiable only upon approval by the Commissioner.*

*3. Any interest or dividends earned on the deposit accrue to the account of the depositor.*

*4. The deposit must be in an amount at least equal to the required surety bond and must state that the amount may not be withdrawn except by direct and sole order of the Commissioner. The value of any item deposited pursuant to this section must be based upon principal amount or market value, whichever is lower.*

**Sec. 74. Cancellation of bond by surety.**

*1. The surety may cancel a bond upon giving 60 days' notice to the Commissioner by certified mail. Upon receipt by the Commissioner of such a notice, the Commissioner shall immediately notify the licensee who is the principal on the bond of the effective date of cancellation of the bond, and that his license will be revoked unless he furnishes an equivalent bond or a substitute form of security authorized by Sec. 73 of these regulations before the effective date of the cancellation. The notice must be sent to the licensee by certified mail to his last address of record filed in the office of the Division.*

*2. If the licensee does not comply with the requirements set out in the notice from the Commissioner, his license must be revoked on the date the bond is cancelled.*

**Sec. 75. Claims against bond.**

*1. Any person claiming against a bond may bring an action in a court of competent jurisdiction on the bond for damages to the extent covered by the bond. A person who brings an action on a bond shall notify the Commissioner in writing upon filing the action. An action may not be commenced after the expiration of 3 years following the commission of the act on which the action is based.*

*2. Upon receiving a request from a person for whose benefit a bond is required, the Commissioner shall notify the person:*

*(a) That a bond is in effect and the amount of the bond; and*

*(b) If there is an action against the bond, the title, court and case number of the action and the amount sought by the plaintiff.*

*3. If a surety wishes to make payment without awaiting action by a court, the amount of the bond must be reduced to the extent of any payment made by the surety in good faith under the bond. Any payment must be based on written claims received by the surety before any action is taken by a court.*

*4. The surety and or the Commissioner may bring an action for interpleader against all claimants upon the bond. If it does so, it shall publish notice of the action at least once each week for 2 weeks in every issue of a newspaper of general circulation in Clark County, Nevada. The surety may deduct its costs of the action, including attorney's fees and publication, from its liability under the bond.*

*5. Claims against a bond have equal priority, and if the bond is insufficient to pay all claims in full, they must be paid on a pro rata basis. Partial payment of claims is not full payment, and any claimant may bring an action against the loan modification and foreclosure consultant for the unpaid balance.*

**Sec. 76. Term of bond; record keeping; rejection of security and change of form.**

*1. The term of the bond, letter of credit or certificate of deposit, or any renewal thereof, must be not less than 1 year.*

*2. If the loan modification and foreclosure consultant deposits a bond, the loan modification and foreclosure consultant shall keep accurate records of the bond and the payments made on the premium. The records must be open to inspection by the Division during business hours. The loan modification and foreclosure consultant shall notify the Division not later than 30 days before the date of expiration of the bond and provide written proof of the renewal of the bond to the Division.*

*3. The Commissioner may reject any bond, letter of credit or certificate of deposit which fails to conform to the requirements of these regulations.*

*4. A loan modification and foreclosure consultant may change the form of security which he has deposited with the Division. If the loan modification and foreclosure consultant changes the form of the security, the Commissioner may retain for not more than 1 year any portion of the security previously deposited by the loan modification and foreclosure consultant as security for claims arising during the time the previous security was in effect.*

*5. If the amount of the deposited security falls below the amount required by chapter 645F of NRS or a regulation adopted thereto for that security, the loan modification and foreclosure consultant shall be deemed not to be licensed pursuant to Sec. 15.*

**Sec. 77. Release of security if a loan modification and foreclosure consultant ceases to operate or license expires.**

*1. If no claims have been filed against the security deposited with the Division pursuant to Sec. 72 within 12 months after the loan modification and foreclosure consultant ceases to operate or his license expires, whichever occurs later, the Commissioner may release the security to the loan modification and foreclosure consultant and shall not audit any claims filed against the security thereafter by consumers.*

*2. If one or more claims have been filed against the security within 12 months after the loan modification and foreclosure consultant ceases to operate or his license expires, whichever occurs later, the proceeds must not be released to the loan modification and foreclosure consultant or distributed to any consumer earlier than 1 year after the loan modification and foreclosure consultant ceases to operate or his license expires, whichever occurs later.*

*3. For purposes of this section, the Commissioner shall determine the date on which a loan modification and foreclosure consultant ceases to operate.*

## **CONSUMER PROTECTIONS**

**Sec. 78. Timing and content of written contracts with homeowners.**

*In addition to the requirements of chapter 645F of NRS, before a loan modification and foreclosure consultant provides any covered service, the loan modification and foreclosure consultant shall provide a written contract to the homeowner, in simple English and in at least 10-point type, that includes without limitation:*

*(a) Full disclosure of the exact nature of each of the services to be provided, the costs associated with each phase of the services, that the loan modification and foreclosure consultant may not take the fees associated for any phase of services until the phase of service has been fully completed and the total amount and terms of payment of all compensation. The percentage of the total payment collected, or to be collected, for each phase of service must be reasonable in relation to the work required to complete that phase.*

*(b) The address, telephone number, full name and license number of the loan modification and foreclosure consultant and each loan modification and foreclosure consultant agent who will be involved in the transaction.*

*(c) The contract shall be dated and provide for the signature of the homeowner and the loan modification and foreclosure consultant. The originally signed contract shall be given to*

*the homeowner and a copy of the original retained by the loan modification and foreclosure consultant.*

**Sec. 79. Rescission of contracts.**

*1. A homeowner may rescind without penalty or obligation a contract at any time prior to midnight of the third business day after the date on which the homeowner signs a loan modification and foreclosure consultant contract.*

*2. In the event a homeowner rescinds a contract in accordance with this section, the loan modification and foreclosure consultant shall immediately provide a full refund of all compensation paid by the homeowner. Consideration for clearance of the homeowner's check though the loan modification and foreclosure consultant's bank account may be considered prior to refund.*

*3. The contract must contain in immediate proximity to the space reserved for the homeowner's signature a conspicuous statement in at least 12-point boldface type that the homeowner has the right to rescind the contract without penalty or obligation until midnight of the third business day after the date on which the homeowner signs the contract.*

*4. Rescission occurs:*

*(a) When the homeowner gives written notice of rescission to the loan modification and foreclosure consultant at the address specified in the contract. For purposes of this section, the notice may be e-mailed or faxed to the licensee, or may be mailed or personally delivered.*

*(b) Notice of rescission, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.*

*(c) Notice of rescission given by the homeowner need not take the particular form as provided in the contract and, however expressed, is effective if it indicates the intention of the homeowner not to be bound by the contract.*

**Sec. 80. Cancellation of contract after expiration of rescission period.**

*1. A homeowner may cancel a contract upon written notification at any time after the expiration of the rescission period provided for in Sec. 79. A homeowner may cancel a contract without penalty or obligation for payment of any phase of service that has not been fully completed. For purposes of this section, the notice may be e-mailed, faxed, personally delivered or mailed.*

*2. In the event a homeowner cancels a contract in accordance with this section:*

*(a) The loan modification and foreclosure consultant must, within five business days of receipt of the written notification, provide a full or partial refund of all compensation paid by the homeowner for phases of services not fully performed. Consideration for clearance of the homeowner's check though the loan modification and foreclosure consultant's bank account may be considered prior to refund.*

*(b) The contract must clearly set forth the refund policy and procedure of the loan modification and foreclosure consultant in 14-point bolded font and provide the physical address, fax number and e-mail address for providing cancellation notice.*

*(c) Notice of cancellation given by the homeowner need not take the particular form as provided in the contract and, however expressed, is effective if it indicates the intention of the homeowner not to be bound by the contract.*

**Sec. 81. *Contracts negotiated in language other than English.***

*A loan modification and foreclosure consultant who negotiates in a language other than English in the course of entering into a contract for the provision of any covered service shall deliver to the homeowner at least two calendar days prior to the execution of the contract a translation in at least 10-point type of the material terms of the contract in the language in which the contract was negotiated, along with a statement indicating that the original contract will be in English.*

**Sec. 82. *Disclosure of certain business and personal relationships required.***

*1. If a licensee or a relative of the licensee is licensed as, conducts business as or holds a controlling interest or position in:*

*(a) An escrow agency, a title or escrow agent, a title insurer or an escrow officer of a title agent or title insurer; or*

*(b) A mortgage broker, mortgage agent, mortgage banker or real estate broker or agent, the licensee shall fully disclose in writing his status as, connection to or relationship with such person or entity to each homeowner prior to entering into a contract for the provision of covered services. The licensee shall not require as a condition to a homeowner entering into a contract for the provision of covered services that the homeowner transact business with or use the services of any such person or entity or that the homeowner authorize the licensee to transact business with or use the services of such person or entity on behalf of the homeowner.*

*2. For purposes of this section, a person shall be deemed to hold a controlling interest or position if the person:*

*(a) Owns or controls a majority of the voting stock or holds any other controlling interest, directly or indirectly, that gives him the power to direct management or determine policy; or*

*(b) Is a partner, officer, director or trustee.*

*3. As used in this section, "licensee" means:*

*(a) A person who is licensed as a loan modification and foreclosure consultant pursuant to these regulations; and*

*(b) Any general partner, officer or director of such a person.*

**Sec. 83. *Waiver prohibited; arbitration.***

*1. A licensee shall not attempt to induce a homeowner to waive any of the provisions of Sec. 78 to Sec. 82 or otherwise attempt to limit the liability of the licensee for the licensee's conduct. Any waiver by a homeowner of the provisions of Sec. 78 to Sec. 82, or limitation of liability, is void and unenforceable.*

*2. Any provision in a contract which attempts or purports to require mandatory arbitration of any dispute arising under Sec. 78 to Sec. 82 is voidable at the option of the homeowner.*

**Sec. 84. *No guarantee.***

*A loan modification and foreclosure consultant shall not:*

*(a) In any advertisement; or*

*(b) Before, during or after solicitation or receipt of money from the homeowner, make, or cause or encourage to be made, any explicit or implicit statement, representation or promise, oral or written, which a reasonable person would construe as a guarantee or warranty that the homeowner will be successful in obtaining a loan modification or that the homeowner will be able to successfully avoid or stop foreclosure.*

**Sec. 85. Prohibited conduct.**

1. *A loan modification and foreclosure consultant shall not advise or instruct a homeowner to:*

*(a) Stop making any mortgage loan or other loan payment or cease communication with any mortgage lender, mortgage loan servicer or any other lender or loan servicer.*

*(b) Make a home loan payment to the licensee or any person not otherwise authorized by the mortgage lender or loan servicer to receive such payment, and the loan modification and foreclosure consultant shall not accept such payment from a homeowner unless otherwise required by court order.*

*(c) Have written communication from or on behalf of the lender redirected or sent directly to the licensee.*

*(d) Transfer or encumber or purport to transfer or encumber or accept any interest in the residence of the homeowner to the licensee or any third party.*

2. *A loan modification and foreclosure consultant shall not sign any binding contract or agreement with any lender or loan servicer on behalf of the homeowner.*

3. *A loan modification and foreclosure consultant shall not take into their own account any payment from a homeowner for a phase of service until the phase of service has been fully completed.*

**FORECLOSURE PURCHASERS**

**Sec. 86. Written contract required.**

1. *A foreclosure purchaser shall provide a written contract to the homeowner, in simple English and in at least 10-point type.*

2. *The written contract must be fully completed and signed and dated by the homeowner and foreclosure purchaser before the execution of any instrument of conveyance of the residence in foreclosure.*

**Sec. 87. Timing and content of written contracts with homeowners.**

*Every contract entered into between a homeowner and a foreclosure purchaser must contain the entire agreement of the parties and must include the following terms:*

*(a) The name, business address, and the telephone number of the foreclosure purchaser;*

*(b) The address of the residence;*

*(c) The total consideration to be given by the foreclosure purchaser in connection with or incident to the sale of the residence;*

*(d) A complete description of the terms of payment or other consideration including, but not limited to, any services of any nature that the foreclosure purchaser represents he will perform for the foreclosed homeowner before or after the sale;*

*(e) The time at which possession of the residence is to be transferred to the foreclosure purchaser; and*

*(f) A complete description of the terms of any related agreement designed to allow the homeowner to remain in the residence, such as a rental agreement, repurchase agreement, contract for deed, or lease with option to buy.*

**Sec. 88. *Contracts negotiated in language other than English.***

*A foreclosure purchaser who negotiates a contract with a homeowner in a language other than English shall deliver to the homeowner at least two calendar days prior to the execution of the contract a translation in at least 10 point type of the material terms of the contract in the language in which the contract was negotiated, along with a statement indicating that the original contract will be in English.*

**Sec. 89. *Cancellation of Contracts.***

*1. A homeowner may cancel a contract with a foreclosure purchaser without penalty or obligation at any time prior to midnight of the third business day after the date on which the homeowner signs the contract that complies with Sec. 86 to Sec. 88.*

*2. The contract must contain in immediate proximity to the space reserved for the homeowner's signature a conspicuous statement in at least 12-point boldface type that the homeowner has the right to cancel the contract without penalty or obligation until midnight of the third business day after the date on which the homeowner signs the contract.*

*3. Unless waived as provided for in Sec. 90(1), cancellation occurs:*

*(a) When the homeowner gives written notice of cancellation to the foreclosure purchaser at the address specified in the contract.*

*(b) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.*

*(c) Notice of cancellation given by the homeowner need not take the particular form as provided with the contract and, however expressed, is effective if it indicates the intention of the homeowner not to be bound by the contract.*

*4. Within seven business days following receipt of a notice of cancellation given in accordance with subsection 3, the foreclosure purchaser shall return without condition any original contract and any other documents signed by the homeowner.*

*5. Until the period for cancellation provided for in subsection 1 has expired, a foreclosure purchaser cannot ask a homeowner to sign, or have a homeowner sign, any deed or other document.*

**Sec. 90. *Waiver prohibited; arbitration.***

*1. A foreclosure purchaser shall not attempt to induce a homeowner to waive any of the provisions of Sec. 86 to Sec. 89 or otherwise attempt to limit the liability of the foreclosure purchaser. Any waiver by a homeowner of the provisions of Sec. 86 to Sec. 89, or limitation of liability, is void and unenforceable; provided, however, that a waiver of the right to cancel is not void and unenforceable if the residence is subject to a foreclosure sale within the three business days provided for cancellation in Sec. 89, and the homeowner agrees to waive his right to cancel in a handwritten statement signed by the homeowner.*

*2. Any provision in a contract which attempts or purports to require arbitration of any dispute arising under Sec. 86 to Sec. 89 is voidable at the option of the homeowner.*

**Sec. 91. *Prohibited representations and activities.***

*1. A foreclosure purchaser shall not represent, directly or indirectly, that he is:*

*(a) Acting as an advisor or consultant to the homeowner, or in any other manner represents that he is acting on behalf of the homeowner;*

*(b) Licensed or certified by any entity or organization unless he has such a license or certification; or*

*(c) Assisting the homeowner to "save the home" or use a substantially similar phrase.*

*2. A foreclosure purchaser shall not make any false statement, directly or indirectly, regarding the amount of proceeds the homeowner will receive after a foreclosure sale, any contract term, or the homeowner's rights or obligations incident to or arising out of the foreclosure reconveyance; or*

*3. A foreclosure purchaser shall not do any of the following until the time during which the homeowner may cancel the transaction has fully elapsed:*

*(a) Accept from a homeowner an execution of, or induce any homeowner to execute, any instrument of conveyance of any interest in the residence;*

*(b) Record with the county recorder any document, including but not limited to, any instrument of conveyance, signed by the homeowner;*

*(c) Transfer or encumber or purport to transfer or encumber any interest in the residence to any third party; or*

*(d) Pay the homeowner any consideration.*

#### **Sec. 92.**

*1. In addition to any other duties set forth in these regulations, any person licensed pursuant to chapter 645F of NRS and these regulations has a fiduciary obligation to a client.*

*2. For the purposes of this section, a person's fiduciary obligation does not impose a requirement to obtain access to products or services for a client other than those that are available to the person at the time of the transaction.*

*3. As used in this section, "fiduciary obligation" means a duty of good faith and fair dealing, including, without limitation, the duty to:*

*(a) Act in the client's best interest;*

*(b) Conduct only those loan modification and foreclosure consultant services which are suitable for the client's needs;*

*(c) Disclose any financial, business, professional or personal interest the person has in conducting a loan modification and foreclosure consultant transaction for the client;*

*(d) Disclose any material fact that the person knows or should know may affect the client's rights or interests or the ability to obtain the intended benefit from the loan modification and foreclosure consultant transaction;*

*(e) Provide an accounting to the client that lists all money received from the client;*

*(f) Exercise reasonable care in performing any other duty relating to a loan modification and foreclosure consultant services transaction.*

### **INVESTIGATION OF VIOLATIONS AND UNSAFE PRACTICES; REMEDIAL ACTION, ENFORCEMENT AND HEARING PROCEDURES**

#### **Sec. 93. Person may file complaint alleging violation; requirements.**

*1. A person may file with the Commissioner a complaint alleging that another person has violated a provision of chapter 645F of NRS, these regulations or an order of the Commissioner.*

*2. A complaint filed pursuant to this section must:*

*(a) Be in writing;*

- (b) Be signed by the person filing the complaint or the authorized representative of the person filing the complaint;*
- (c) Contain an address and a telephone number for the person filing the complaint or the authorized representative of the person filing the complaint;*
- (d) Describe the nature of the alleged violation in as much detail as possible;*
- (e) Include as exhibits copies of all documentation supporting the complaint; and*
- (f) Include any other information or supporting materials required by the Commissioner.*

**Sec. 94. Duties of Commissioner when complaint is filed.**

- 1. If a person properly files a complaint with the Commissioner pursuant to these regulations, the Commissioner may investigate each violation alleged in the complaint, unless the Commissioner has previously investigated the alleged violation.*
- 2. If the Commissioner does not conduct an investigation of an alleged violation pursuant to subsection 1 because he previously has investigated the alleged violation, the Commissioner may provide to the person who filed the complaint a written summary of the previous investigation and the nature of any disciplinary action that was taken as a result of the previous investigation.*
- 3. If the Commissioner conducts an investigation of an alleged violation pursuant to subsection 1, the Commissioner may determine from the investigation whether there is reasonable cause to believe that the person committed the alleged violation.*
- 4. If, upon investigation, the Commissioner determines that there is not reasonable cause to believe that the person committed the alleged violation, the Commissioner may provide the reason for his determination, in writing, to the person who filed the complaint and to the person alleged to have committed the violation.*
- 5. If it is determined that a violation has occurred, the Commissioner may take any actions within his authority.*

**Sec. 95. Unlawful to conduct business of a loan modification and foreclosure consultant or a loan modification and foreclosure consultant agent without being licensed or exempt from licensing.**

*It is unlawful for any person to offer or provide any of the services of a loan modification and foreclosure consultant or a loan modification and foreclosure consultant agent or otherwise to engage in, carry on or hold himself out as engaging in or carrying on the business of a loan modification and foreclosure consultant or a loan modification and foreclosure consultant agent without first obtaining the applicable license issued pursuant to chapter 645F of NRS or a regulation adopted thereto, unless the person:*

- 1. Is exempt from the provisions of chapter 645F of NRS or regulations adopted thereto; and*
- 2. Complies with the requirements for that exemption.*

**Sec. 96. Authorized grounds for disciplinary action.**

- 1. For each violation committed by an applicant for a license issued pursuant to chapter 645F of NRS and these regulations, whether or not he is issued a license, the Commissioner may impose upon the applicant an administrative fine of not more than \$10,000, if the applicant:*

*(a) Has knowingly made or caused to be made to the Commissioner any false representation of material fact;*

*(b) Has suppressed or withheld from the Commissioner any information which the applicant possesses and which, if submitted by him, would have rendered the applicant ineligible to be licensed pursuant to the provisions of chapter 645F of NRS or these regulations; or*

*(c) Has violated any provision of chapter 645F of NRS, these regulations or an order of the Commissioner in completing and filing his application for a license or during the course of the investigation of his application for a license.*

*2. A loan modification and foreclosure consultant or a loan modification and foreclosure consultant agent may be required by the Commissioner to pay restitution to any person who has suffered an economic loss as a result of a violation of the provisions of chapter 645F of NRS, any regulation adopted pursuant thereto or an order of the Court.*

*3. For each violation committed by a loan modification and foreclosure consultant or a loan modification and foreclosure consultant agent under chapter 645F of NRS and these regulations, the Commissioner may impose upon the person an administrative fine of not more than \$10,000, and if the person holds a license, may suspend, revoke or place conditions upon his license, or may do both, if the person, whether or not acting as such:*

*(a) Is insolvent;*

*(b) Is grossly negligent or incompetent in performing any act for which he is required to be licensed pursuant to the provisions of chapter 645F of NRS or these regulations;*

*(c) Does not conduct his business in accordance with law or has violated any provision of chapter 645F of NRS, these regulations or an order of the Commissioner;*

*(d) Is in such financial condition that he cannot continue in business with safety to his customers;*

*(e) Has made a material misrepresentation in connection with any transaction governed by chapter 645F of NRS or these regulations;*

*(f) Has suppressed or withheld from a client any material facts, data or other information relating to any transaction governed by the provisions of chapter 645F of NRS or these regulations which the licensee knew or, by the exercise of reasonable diligence, should have known;*

*(g) Has knowingly made or caused to be made to the Commissioner any false representation of material fact or has suppressed or withheld from the Commissioner any information which the licensee possesses and which, if submitted by him, would have rendered the licensee ineligible to be licensed pursuant to the provisions of chapter 645F of NRS or these regulations;*

*(h) Has failed to account to persons interested for all money received for a trust account or has failed to refund money for rescinded or canceled contracts;*

*(i) Has refused to permit an examination by the Commissioner of his books and affairs or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the Commissioner pursuant to the provisions of chapter 645F of NRS or these regulations;*

*(j) Has been convicted of, or entered a plea of guilty or nolo contendere to, a felony relating to the practice of loan modification and foreclosure consultants or loan modification and foreclosure consultant agents or any crime involving fraud, misrepresentation or moral turpitude;*

*(k) Has refused or failed to pay, within a reasonable time, any fines, fees, assessments and costs that the licensee is required to pay pursuant to chapter 645F of NRS or these regulations;*

*(l) Has failed to satisfy a claim made by a client which has been reduced to judgment;*

*(m) Has failed to account for or to remit any money of a client within a reasonable time after a request for an accounting or remittal;*

*(n) Has commingled the money or other property of a client with his own or has converted the money or property of others to his own use;*

*(o) Has engaged in any other conduct constituting a deceitful, fraudulent or dishonest business practice;*

*(p) Has repeatedly violated the policies and procedures required of a licensee;*

*(q) As a qualified employee, has failed to exercise reasonable supervision over the activities of licensees working under him;*

*(r) Has instructed a loan modification and foreclosure consultant agent to commit an act that would be cause for the revocation of the license of the loan modification and foreclosure consultant, whether or not the loan modification and foreclosure consultant agent commits the act;*

*(s) Has employed a person as a loan modification and foreclosure consultant agent or authorized a person to be associated with the loan modification and foreclosure consultant as a loan modification and foreclosure consultant agent at a time when the loan modification and foreclosure consultant knew or, in light of all the surrounding facts and circumstances, reasonably should have known that the person:*

*(1) Had been convicted of, or entered a plea of guilty or nolo contendere to, a felony relating to the practice of loan modification and foreclosure consultants or agents or any crime involving fraud, misrepresentation or moral turpitude; or*

*(2) Had a professional license or a financial services license or registration that was issued in this state or any other state, the United States, any district or territory of the United States or any foreign country suspended or revoked within the 10 years immediately preceding the date of his application;*

*(t) Has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS;*

*(u) Has allowed and/or permitted a person not licensed pursuant to chapter 645F of NRS and these regulations to act as a loan modification and foreclosure consultant agent.*

*(v) Has violated the policies and procedures of the business that employs the licensee; or*

*(w) Has offered or provided any services prescribed under chapter 645F of NRS or these regulations requiring licensure and the person did not have such a license and was not exempt from licensing at the time the person engaged in the activities.*

**Sec. 97. Effect of failure to appear at hearing; penalty.**

*If a person is alleged to have engaged in any conduct or committed any violation related to a trust account, or is alleged to have committed a violation of any other provision of chapter 645F of NRS, a regulation adopted pursuant thereto or an order of the Commissioner, and the person fails to appear, without reasonable cause, at a hearing before the Commissioner concerning the alleged conduct or violation, the Commissioner may conduct the hearing in the person's absence, draw any conclusions that the Commissioner deems appropriate from his failure to appear and render a decision concerning the alleged conduct or violation.*

**Sec. 98. Duties of Commissioner when violation is suspected; referral of violations to Attorney General.**

*1. Whether or not a complaint has been filed, the Commissioner may investigate a loan modification and foreclosure consultant or other person if, for any reason, it appears that:*

*(a) The loan modification and foreclosure consultant is conducting business in an unsafe and injurious manner or in violation of any provision of chapter 645F of NRS, these regulations or an order of the Commissioner;*

*(b) The person is offering or providing any of the services of a loan modification and foreclosure consultant or otherwise engaging in, carrying on or holding himself out as engaging in or carrying on the business of a loan modification and foreclosure consultant without being appropriately licensed or exempt from licensing pursuant to the provisions of chapter 645F of NRS or these regulations; or*

*(c) The person is violating any other provision of chapter 645F of NRS, these regulations or an order of the Commissioner.*

*2. If, upon investigation, the Commissioner has reasonable cause to believe that the loan modification and foreclosure consultant or other person has engaged in any conduct or committed any violation described in subsection 1, the Commissioner may notify the Attorney General of the conduct.*

**Sec. 99. Authority of Commissioner when unsafe condition or practice suspected.**

*1. In addition to any other action that is required or permitted pursuant to chapter 645F of NRS or these regulations, if the Commissioner has reasonable cause to believe that:*

*(a) The assets or capital of a licensee are impaired; or*

*(b) A licensee is conducting business in an unsafe and injurious manner that may result in danger to the public, the Commissioner may immediately take possession of all the property, business and assets of the licensee that are located in this State and may retain possession of them.*

*2. If the licensee, the board of directors or any officer or person in charge of the offices of the licensee refuses to permit the Commissioner to take possession of the property of the licensee pursuant to subsection 1:*

*(a) The Commissioner may notify the Attorney General; and*

*(b) The Attorney General may immediately bring such proceedings as may be necessary to place the Commissioner in immediate possession of the property of the licensee.*

*3. If the Commissioner takes possession of the property of the licensee, the Commissioner may:*

*(a) Make or have made an inventory of the assets and known liabilities of the licensee;*

*(b) File one copy of the inventory in his office and one copy in the office of the clerk of the Eighth Judicial District Court of the State of Nevada in and for Clark County and may mail one copy to each stockholder, partner, officer, director or associate of the licensee at his last known address; and*

*(c) If the licensee maintains any trust accounts, not later than 5 business days after the date on which the Commissioner takes possession of the property of the licensee, mail notice of his possession to the last known address of each person whose money is deposited in such an account or whose money was or should have been deposited in such an account during the preceding 12 months.*

4. *The clerk of the court with which the copy of the inventory is filed shall file it as any other case or proceeding pending in the court and shall give it a docket number.*

5. *If the Commissioner takes possession of the property of a licensee as set forth herein, the licensee, officers, directors, partners, associates or stockholders of the licensee may, within 60 days after the date on which the Commissioner takes possession of the property, make good any deficit in the assets or capital of the licensee or remedy any unsafe and injurious conditions or practices of the licensee.*

6. *At the expiration of the 60-day period, if the deficiency in assets or capital has not been made good or the unsafe and injurious conditions or practices remedied, the Commissioner may apply to the court to be appointed receiver and proceed to liquidate the assets of the licensee which are located in this State in the same manner as now provided by law for liquidation of a private corporation in receivership.*

7. *No other person may be appointed receiver by any court without first giving the Commissioner ample notice of his application.*

8. *The inventory made by the Commissioner and all claims filed by creditors are open at all reasonable times for inspection, and any action taken by the receiver upon any of the claims is subject to the approval of the court before which the cause is pending.*

9. *The expenses of the receiver and compensation of counsel, as well as all expenditures required in the liquidation proceedings, must be fixed by the Commissioner subject to the approval of the court and, upon certification of the Commissioner, must be paid out of the money in his hands as the receiver.*

**Sec. 100.** *Persons entitled to correct unsafe conditions and practices; effect of failure to correct; receivership and liquidation of assets.*

1. *If the Commissioner takes possession of the property of a loan modification and foreclosure consultant, the licensee, officers, directors, partners, associates or stockholders of the loan modification and foreclosure consultant may, within 60 days after the date on which the Commissioner takes possession of the property, make good any deficit in the assets or capital of the loan modification and foreclosure consultant or remedy any unsafe and injurious conditions or practices of the loan modification and foreclosure consultant.*

2. *At the expiration of the 60-day period, if the deficiency in assets or capital has not been made good or the unsafe and injurious conditions or practices remedied, the Commissioner may apply to the court to be appointed receiver and proceed to liquidate the assets of the loan modification and foreclosure consultant which are located in this State in the same manner as now provided by law for liquidation of a private corporation in receivership.*

3. *The inventory made by the Commissioner and all claims filed by creditors are open at all reasonable times for inspection, and any action taken by the receiver upon any of the claims shall be subject to the approval of the court before which the cause is pending.*

4. *The expenses of the receiver and compensation of counsel, as well as all expenditures required in the liquidation proceedings, will be fixed by the Commissioner subject to the approval of the court and, upon certification of the Commissioner, will be paid out of the money in his hands as the receiver.*

**Sec. 101. Order to cease and desist from certain activities.**

*1. If a person engages in an activity in violation of the provisions of chapter 645F of NRS, these regulations or an order of the Commissioner, the Commissioner may issue an order to the person directing the person to cease and desist from engaging in the activity.*

*2. The order to cease and desist must be in writing and must state that, in the opinion of the Commissioner, the person has engaged in an activity:*

*(a) For which the person has not received a license as required by chapter 645F of NRS; or*

*(b) In a manner that violates the provisions of chapter 645F of NRS, these regulations or an order of the Commissioner.*

*3. A person who receives an order to cease and desist pursuant to this section shall not engage in any activity governed by chapter 645F of NRS or these regulations after he receives the order unless the order is suspended or rescinded.*

*4. Not later than 20 calendar days after receiving an order pursuant to this section, the person who receives the order may file a verified petition with the Commissioner to request a hearing. Upon receipt of the verified petition, the Commissioner may, for good cause shown, suspend the order pending the hearing. The Commissioner will hold the hearing on a date not later than 30 calendar days after the date the petition is filed unless the Commissioner and the person agree to another date. The order to cease and desist is rescinded if the Commissioner fails to:*

*(a) Hold a hearing:*

*(1) Not later than 30 calendar days after the date the petition is filed; or*

*(2) On a date agreed to by the Commissioner and the person; or*

*(b) Render a written decision within 45 days after the date the hearing is concluded.*

*5. The decision of the Commissioner after a hearing is a final decision of the Division for the purposes of judicial review.*

**Sec. 102. Statutory and common-law rights, remedies and punishments unaffected; limitation on actions against State and its officers and employees.**

*The provisions of these regulations are not intended to:*

*1. Limit any statutory or common-law right of a person to bring a civil action against a loan modification and foreclosure consultant or other person for any act or omission involved in the transaction of business by or on behalf of the loan modification and foreclosure consultant or other person;*

*2. Limit the right of the State to punish a person for the violation of any law, ordinance or regulation; or*

*3. Establish a basis for a person to bring a civil action against the State or its officers or employees for any act or omission in carrying out the provisions of chapter 645F of NRS or these regulations, including, without limitation, any act or omission relating to the disclosure of information or the failure to disclose information pursuant to the provisions of these regulations.*

**Sec. 103. Authority of Commissioner to order summary suspension of license and take other action to protect public before conducting hearing.**

*Before conducting a hearing, the Commissioner may, to the fullest extent permitted by the Constitution of the United States and the Constitution of this State:*

1. *Order a summary suspension of a license pursuant to subsection 3 of NRS 233B.127; and*
2. *Take any other action against a licensee or other person that is necessary to protect the health, safety or welfare of the public.*

**Sec. 104. Penalties for violation of certain provisions; suspension or revocation of license.**

1. *If a loan modification and foreclosure consultant violates any provision of Sec. 66 to Sec. 68 and the loan modification and foreclosure consultant fails, without reasonable cause, to remedy the violation within 20 business days after being ordered by the Commissioner to do so or within such later time as prescribed by the Commissioner, or if the Commissioner orders a loan modification and foreclosure consultant to provide information, make a report or permit an examination of his books or affairs pursuant to these regulations and the loan modification and foreclosure consultant fails, without reasonable cause, to comply with the order within 20 business days or within such later time as prescribed by the Commissioner, the Commissioner may:*

- (a) *Suspend or revoke the license of the loan modification and foreclosure consultant; and*
- (b) *Conduct a hearing to determine whether the loan modification and foreclosure consultant is conducting business in an unsafe and injurious manner that may result in danger to the public and whether it is necessary for the Commissioner to take possession of the property of the loan modification and foreclosure consultant pursuant to Sec. 99.*

2. *In no case shall a licensee be entitled to a hearing for the imposition of disciplinary action by the Commissioner, unless, within 20 days of such notice the licensee requests a hearing from the Commissioner in the manner set forth in the written notice from the Commissioner.*

3. *If the licensee fails to timely request a hearing, the Commissioner may enter a final order imposing disciplinary action as set forth in the notice sent to the licensee.*

**Sec. 105. Denial of application for license.**

1. *The Commissioner or his designee may issue the denial of any application for a license. Any such denial shall not be construed as a contested case as that term is defined in NRS 233B.032.*

2. *Upon receipt of an application denial as set forth in subsection 1, the applicant shall not engage in any activity requiring licensure under chapter 645F of NRS or these regulations.*

3. *Upon receipt of an application denial, the applicant must request a hearing within 20 days of receipt of the notice or the Commissioner shall issue a final order denying licensure.*

4. *The Commissioner may designate a person to serve as a hearing officer and a hearing shall be set as promptly as possible.*

5. *The parties to any hearing shall exchange documents anticipated to be used at the hearing and no other discovery shall be allowed.*

**Sec. 106. Duty of Commissioner to provide written notice of disciplinary action or denial of license; right to administrative hearing; entry of final order; appeals.**

1. *If the Commissioner enters an order taking any disciplinary action against a person or denying a person's application for a license, or denying a provider the right to teach approved courses, or denying the approval of a providers course, or denying the right of an instructor of*

*a provider to teach a course or course, the Commissioner shall cause a written notice of the order to be served personally or sent by certified mail or telegram to the person.*

*2. Unless a hearing has already been conducted concerning the matter, the person, upon application, is entitled to a hearing. If the person does not make such an application within 20 days after the date of the initial order, the Commissioner shall enter a final order concerning the matter.*

*3. A person may appeal a final order of the Commissioner in accordance with the provisions of chapter 233B of NRS that apply to a contested case.*

## **HEARING PROCEDURES**

### **Sec. 107.**

*1. If a hearing has been requested in a timely manner as set forth in these regulations, each party must provide to the opposing party, not less than 10 days before a hearing, a copy of all papers, records, data or documents expected to be used as exhibits at the hearing and a list of witnesses expected to testify at the hearing. Nothing herein prohibits a party from calling a rebuttal witness or offering other rebuttal evidence which has not been disclosed if allowed by the hearing officer. The filing of a motion does not toll the time for providing information to an opposing party.*

*2. Not less than 10 days before a hearing, each party must provide to the hearing officer a copy of all papers, records, data or documents expected to be used as exhibits at the hearing and a list of witnesses expected to testify at the hearing.*

*3. If a party fails to provide any document required to be provided by the provisions of this section, the hearing officer may exclude the document.*

*4. Neither party may serve interrogatories on the other party or conduct depositions, and neither party may engage in any other discovery unless otherwise required by law and permitted by the hearing officer.*

### **Sec. 108.**

*1. All motions, unless made to exclude a witness, must be in writing.*

*2. A written motion must be served on the opposing party and the hearing officer at least 15 days before the time set for the hearing on the motion unless good cause is shown to the hearing officer.*

*3. An opposing party may file a written response to a motion at least 7 days before the time set for the hearing on the motion by serving the written response on all parties and the hearing officer.*

*4. No motion for summary judgment will be allowed.*

### **Sec. 109.**

*1. The time of a hearing may be continued by the hearing officer upon the written petition of a party only for good cause shown.*

*2. The party requesting a continuance must serve the written petition upon the opposing party at the time that the request is made, and the opposing party may file an objection to the request for a continuance within 3 days after receipt of the written petition.*

**Sec. 110.**

*1. In conducting any hearing, the hearing officer is not bound by the technical rules of evidence, and any informality in any proceeding or in the manner of taking testimony does not invalidate any order or decision of the hearing officer. The rules of evidence of courts of this State will be followed generally but may be relaxed at the discretion of the hearing officer if deviation from the technical rules of evidence will aid in determining the facts.*

*2. Any evidence offered at a hearing must be material and relevant to the issues of the hearing.*

*3. Sworn declarations may be introduced in lieu of testimony if a witness resides outside the State of Nevada.*

*4. The hearing officer may exclude inadmissible, incompetent, repetitious or irrelevant evidence or order that the presentation of that evidence be discontinued.*

*5. A party who objects to the introduction of evidence shall briefly state the grounds of the objection at the time the evidence is offered. The party who offers the evidence may present a rebuttal argument to the objection.*

**Sec. 111.**

*1. The hearing officer shall:*

*(a) Ascertain whether all persons ordered to appear under subpoena are present and whether all documents, books, records and other evidence under subpoena are present in the hearing room.*

*(b) Administer the oath to all persons whose testimony will be taken as follows:  
Do you and each of you solemnly swear or affirm to tell the truth and nothing but the truth in these proceedings?*

*(c) Ascertain whether either party desires to have a witness excluded from the hearing room until he is called. A witness may be excluded upon the motion of the hearing officer or upon the motion of either party. If a witness is excluded, he will be instructed not to discuss the case during the pendency of the proceeding. The respondent will be allowed to remain present at the hearing. The Division may designate a person who is a member of the staff of the Division and who may also be a witness to act as its representative. Such a representative will be allowed to remain present at the hearing.*

*(d) Ascertain whether a copy of the complaint or decision to deny has been filed and whether an answer has been filed as part of the record in the proceedings.*

*(e) Hear any preliminary motions, stipulations or orders upon which the parties agree and address any administrative details.*

*(f) Request the Division to proceed with the presentation of its case.*

*2. Parties may waive opening and closing statements.*

*3. The respondent may cross-examine witnesses in the order that the Division presents them.*

*4. Witnesses or counsel may be questioned by the hearing officer at any time during the proceeding.*

*5. Evidence which will be introduced or which is used by a witness:*

*(a) Must first be marked for identification; and*

*(b) May be received by the hearing officer at any point during the proceeding.*

*6. When the Division has completed its presentation, the hearing officer shall request the respondent to proceed with the introduction of evidence and calling of witnesses on his behalf.*

*7. The Division may cross-examine witnesses in the order that the respondent presents them.*

*8. When the respondent has completed his presentation, the Division may call any rebuttal witnesses.*

*9. When all testimony for the Division and respondent has been given and all evidence has been submitted, the hearing officer may request the Division and the respondent to summarize their presentations.*

*10. The hearing officer may, in his discretion, waive or modify any provision of this section if necessary to expedite or ensure the fairness of the hearing.*

**Sec. 112.** *The Division has the burden of proof in any hearing pursuant to these regulations. The standard of proof in such a hearing is substantial evidence.*

**Sec. 113.** *A respondent may represent himself at the hearing or be represented by an attorney.*

**Sec. 114.** *The hearing officer shall:*

*1. Attempt to coordinate the time and location of the hearing with the parties before setting the matter; and*

*2. Advise the Commissioner or his designee in writing of the time and location of the hearing in such a manner as to allow the Division to comply with the notice requirements of NRS 233B.121.*

**Sec. 115.**

*1. The provisions of chapter 645F of NRS or regulations adopted thereto do not affect or limit the authority of the Commissioner or his designee, at any stage of a contested case, to make an informal disposition of the contested case pursuant to subsection 5 of NRS 233B.121 or to enter into a consent or settlement agreement pursuant to NRS 622.330.*

*2. Any action taken by the Commissioner or his designee pursuant to subsection 1:*

*(a) Is not subject to approval by the hearing officer; and*

*(b) May have its terms placed into the record at the discretion of the Commissioner or his designee.*

**Sec. 116.** *The hearing officer shall issue and serve upon all parties a written decision meeting the requirements of NRS 233B.125 within 30 days after the close of the hearing.*

**Sec. 117.**

*1. A party may file a post-hearing motion only to request a rehearing or to request a modification of the discipline, fine, costs or attorney's fees imposed against a respondent.*

*2. Any post-hearing motion must be filed within 15 days after service of the decision by the hearing officer.*

*3. The opposing party may file an opposition within 10 days after a post-hearing motion is filed, and the moving party may file a final reply within 5 days after an opposition is filed.*

*4. The hearing officer shall issue and serve upon all parties a written decision on any post-hearing motion within 30 days after the post-hearing motion is filed.*

**Sec. 118.**

*1. A person who provides a governmental entity, officer or employee with any information relating to a contested case is immune from any civil liability for providing that information if the person acted in good faith and without malicious intent.*

*2. A governmental entity, officer or employee is immune from any civil liability for:*

*(a) Any decision or action taken in good faith and without malicious intent in carrying out the provisions of chapter 645F of NRS or regulations adopted thereto or any law or regulation governing occupational licensing; or*

*(b) Communicating or cooperating with or providing any documents or other information to any other governmental entity, officer or employee conducting an investigation, disciplinary proceeding or civil or criminal prosecution.*