

Chapter 645F of NAC

LCB File No. E003-09

**EMERGENCY REGULATION OF THE
COMMISSIONER OF MORTGAGE LENDING**

(Effective for 120 days from July 8, 2009)

**LOAN MODIFICATION AND FORECLOSURE CONSULTANTS, LOAN
MODIFICATION AND FORECLOSURE CONSULTANT AGENTS AND OTHER
PERSONS PROVIDING COVERED SERVICES FOR COMPENSATION UNDER NRS
645F.**

Sec. 1. 1. The license of a loan modification and foreclosure consultant or loan modification and foreclosure consultant agent pursuant to these emergency regulations is effective upon the date that the Division receives the completed application of a loan modification and foreclosure consultant or loan modification and foreclosure consultant agent at its Carson City, Nevada office, but must be invalidated by the Division if, upon investigation, the Division determines that the applicant does not meet the requirements of the permanent 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.

2. As a condition of being issued a license upon receipt of the completed application by the Division as provided for in subsection 1, the licensee will be required to comply with any additional prescribed standards for licensure adopted pursuant to permanent 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. "Licensee" defined. "Licensee" means a person licensed under chapter 645F of NRS and these regulations.

Sec. 4. "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. 5. “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.

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

Sec. 8. “Residence” defined. “Residence” means residential real property located in the State of Nevada and consisting of not more than four family dwelling units.

Sec. 9. 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. 10 or Sec. 22.

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. 10. 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, 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. 11. Documentation required with application for license; compliance with request for additional requirements

1. An applicant must submit with his application for a license, as applicable:

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

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

(2) Its balance sheet and a statement of the profit and loss of the corporation for the 2 years immediately preceding the year of the application.

(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) 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; and

(f) 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 expired 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.

Sec. 12. 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. 13. 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. 14. 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 any 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 reinstatement fee of \$100.

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

6. A change of control fee of \$250.

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

8. *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. 15. 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:

1. 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, district or territory of the United States or any foreign country suspended or revoked within the immediately preceding 10 years.

Sec. 16. 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. 17. 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. 18. 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. 19. 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. 20. 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 will approve the qualified employee designated pursuant to subsection 1 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.*

Sec. 21. Termination of agent activities by loan modification and foreclosure consultant.

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:

(1) The license or license number of the loan modification and foreclosure consultant agent;

(2) A written statement of the circumstances surrounding the termination; and

(3) A copy of the written statement that the loan modification and foreclosure consultant delivers or mails to the agent pursuant to paragraph (a).

Sec. 22. 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. 23. 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; and

(e) 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 shall 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, 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. 24. 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 any 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 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. 25. Termination of agent activities.

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 office 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

(3) 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. 26. 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.

Sec. 27. 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 for 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. 28. 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. 29. 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 percent of the fee plus an additional 1 percent of the fee for each complete month, or portion of the last month, that the fee is not paid. The Commissioner may waive the penalty for good cause.

3. Failure of a loan modification and foreclosure consultant to pay the fee required in subsection 1 as provided in 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. 30. 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 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. 31. 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.

Sec. 32. 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. 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;

(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 agents or any crime involving fraud, misrepresentation or moral turpitude;

(k) Has refused or failed to pay, within a reasonable time, any fees, assessments, costs or expenses 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, 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; or

(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.

(w) Offered or provided any services prescribed under chapter 645F 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. 33. Hearing procedures for disciplinary action.

Upon the issuance of a disciplinary complaint, a licensee must request a hearing within 20 days of receipt of the complaint or the Commissioner shall issue a final order imposing discipline. Pursuant to NRS 622A.120(2), except as otherwise set forth in this section, disciplinary hearing procedures shall follow the provisions of chapter 622A of NRS.

Sec. 34. Denial of application for license.

1. The Commissioner or his designee may, without a hearing, 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 review 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 reviewer and a review shall be set as promptly as possible.

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

Sec. 35. 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 shall 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 shall:*

(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 district court of the county in which the principal office of the licensee is located and shall 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. 36. 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 address in each advertisement that a loan modification and foreclosure consultant uses.*

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.*

**DIVISION OF MORTGAGE LENDING
STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY**

INFORMATIONAL STATEMENT

1. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects; and**
- (b) Both immediate and long term effects.**

The proposed emergency regulation (“regulation”) provides for the payment of fees by initial and renewal applicants for a loan modification and foreclosure consultant or agent license. However, the fees will not have a significant adverse economic effect on license applicants and no adverse economic effect whatsoever on the general public.

The regulation will have an immediate and long-term beneficial effect on homeowners who are particularly vulnerable to fraud, harassment, deception and unfair dealing by loan modification and foreclosure consultants at the time their residences are in foreclosure or at risk of foreclosure. Such consultants represent that they can assist homeowners who have defaulted on loans secured by their residences. These consultants, however, often charge exorbitant fees upfront and perform no services or essentially worthless services. The regulation will authorize the Division to immediately screen and take action against these consultants who are targeting and victimizing homeowners.

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

Based on the complaints that the Division has received, the Division anticipates that there may be additional costs incurred as well as additional utilization of Attorney General services for bringing administrative actions against persons for violations of this regulation. Additionally, there may be costs associated with enhancements of the Division’s current database to allow for entering and tracking of these new license types.

3. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no known state or government agency regulations that the proposed regulation duplicates.

4. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are no known federal regulations that regulate the same activity.

5. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The Division anticipates that it will collect between \$50,000 and \$75,000 in the first year that loan modification and foreclosure consultants are required to be licensed, and thereafter less than \$10,000 in new license application fees. In year two, annual renewals are expected to be approximately \$25,000 in application and renewal fees, decreasing as the nation's economy recovers. The money collected by the Commissioner pursuant to this regulation will be used to carry out the programs and laws administered by the Commissioner and the Division and pay the expenses related to the operations of the Commissioner and the Division.

**DIVISION OF MORTGAGE LENDING
STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY**

STATEMENT OF EMERGENCY

WHEREAS, prior to July 1, 2009, loan modification consultants must be registered as credit service organizations with the Nevada Consumer Affairs Division, which has investigatory and other administrative authority over those consultants;

WHEREAS, on July 1, 2009, the operations of the Nevada Consumer Affairs Division will be suspended for a two year period, and in accordance with the provisions of enacted Assembly Bill 561 of the 2009 Legislative session, the functions of that division as they relate to credit service organizations will be transferred to the Division.

WHEREAS, prior to July 1, 2009 foreclosure consultants are governed by chapter 645F of the Nevada Revised Statutes (“NRS”), which contains no registration, licensing or regulatory authority over such foreclosure consultants, although it does permit the State of Nevada, Department of Business and Industry, Division of Mortgage Lending ("Division") limited authority to impose a fine upon such consultants for a violation of chapter 645F;

WHEREAS, on July 1, 2009, all loan modification consultants and foreclosure consultants are required to be licensed with the Division, which will then have primary jurisdiction for the licensing and regulation of persons operating and/or engaging in loan modification and foreclosure consultant activities (see, generally, NRS 645F.250 and Assembly Bill 152, enacted as Chapter 330 of the laws of 2009);

WHEREAS, the Commissioner of the Division finds that an emergency exists insofar as:

1. Nevadans are currently faced with a deep, and for many, unprecedented, recessionary economic environment, leading to a statewide double digit unemployment rate and depreciating home values.
2. Due to this financial crisis, the value of many homes in Nevada is less than the outstanding mortgage balances on those homes, and coupled with the high unemployment rate, have led to a high rate of home foreclosures in Nevada.
3. Loan modification and foreclosure prevention programs instituted by major lenders and supported by federal programs have been slow to alleviate the financial burden of high mortgage payments relative to the value of the homes of many Nevadans.
4. Nevada homeowners are therefore seeking to save their homes from foreclosure and in the process become particularly vulnerable to loan modification and foreclosure scams and other predatory loan modification and foreclosure related practices undertaken by unscrupulous persons who oftentimes take thousands of dollars of upfront fees from desperate Nevada homeowners and perform little, if any, of their promised services.
5. Over the past several months, the Division, along with the Nevada Consumer Affairs Division, has received dozens of written and verbal complaints from Nevada citizens regarding

the activities of these companies; the emergency regulations will allow the Division to immediately begin investigating and taking administrative action for violations of the law, as well as allow the Division to commence conducting criminal background investigations on new license applicants.

6. While the Commissioner of the Division is required to submit regulations pertaining to the licensure and regulation of loan modification and foreclosure consultants and agents to the Legislative Commission by August 27, 2009, the licensing and other provisions of Assembly Bill 152 become effective on July 1, 2009.

7. The time period between July 1, 2009 and the date the regulations are approved by the Legislative Commission and filed with the Secretary of State, whether before or after August 27, 2009, will create a "gap" of time in which loan modification and foreclosure consultants will not be regulated by either the Nevada Consumer Affairs Division (as to loan modification consultants) or the Division (as to foreclosure consultants except as to the limited authority provided for in NRS 645F), although the licensing and other provisions of Assembly Bill 152 are effective on July 1, 2009.

8. The immediate enactment of these emergency regulations is required to enable the Division to fill this "gap" and commence the licensing and regulation of persons offering and providing loan modification and foreclosure consultant services in order to best protect Nevada homeowners.

NOW, THEREFORE, the Commissioner hereby adopts the emergency regulation.

July 6, 2009

FOR THE DIVISION OF MORTGAGE LENDING
STATE OF NEVADA
DEPARTMENT OF BUSINESS & INDUSTRY

/s/

NANCY CORBIN
Deputy Commissioner for
JOSEPH L. WALTUCH
Commissioner

GOVERNOR'S ENDORSEMENT

I, Governor Jim Gibbons, endorse the Nevada Division of Mortgage Lending's foregoing Statement of Emergency.

July 8, 2009.

/s/

JIM GIBBONS
Governor of Nevada