

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

**LCB File No. R038-10**

**NRS 645E MORTGAGE BANKERS**

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

AUTHORITY:§2(b), NRS 645E.300 and section 76 of Assembly Bill No. 523 of the 75<sup>th</sup> Legislative Session.

A REGULATION relating to mortgage lending; establishing provisions for the implementation of the federal Secure and Fair Enforcement for Mortgage Lending Act of 2008; and providing other matters properly related thereto.

**Section. 1.** *Chapter 645E of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 21, inclusive, of this regulation.*

**Sec. 2.** *“Immediate family member” means a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.*

**Sec. 3.** *“Individual” means a natural person.*

**Sec. 4.** *“Loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under NRS Chapter 645B or 645E.*

**Sec. 5.** *“Nationwide Mortgage Licensing System and Registry” or “Registry” means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for licensing and registration of residential mortgage loan originators.*

**Sec 6.** *“Residential real estate” for purposes of section 5 of Assembly Bill No. 523 enacted in the 75th Session of the Nevada Legislature (AB 523) means any real property located in Nevada, upon which is constructed or intended to be constructed a 1 to 4 unit dwelling, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, manufactured or mobile home, and trailer, if it is used as a residence.*

**Sec. 7.** *“Unique identifier” means a number or other identifier assigned by protocols established by the Registry.*

**Sec. 8.** *Except as otherwise required by law, for purposes of this chapter and NRS chapter 645E, any requirement for the Division to provide written notification to an applicant or licensee may be met by sending an e-mail to the last known e-mail address of the applicant or licensee.*

**Sec. 9.** *The term Residential Mortgage Loan Originator, as defined in Section 6 of AB 523 does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Nevada law, unless the person or entity is compensated by a lender, a mortgage broker or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.*

*for purposes of this section the term “real estate brokerage activity” means any activity defined in NRS 645.030.*

**Sec. 10.** *Except as otherwise provided in NRS 645E.150, the provisions of this Chapter and NRS Chapter 645E do not apply to:*

*(a) Any individual who offers or negotiates terms of a residential mortgage loan to or on behalf of an immediate family member of the individual.*

*(b) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual’s residence.*

*(c) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney’s representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.*

**Sec. 11.** *1. Each person licensed pursuant to NRS Chapter 645E and each individual who conducts activity prescribed in NRS 645E.100 on behalf of a mortgage banker must register with and maintain a valid unique identifier issued by the Registry and comply with the provisions of the federal Secure and Fair Enforcement for Mortgage Lending Act of 2008 (“SAFE Act”) and any regulations promulgated thereunder.*

*2. To promote compliance with this section, the Commissioner shall, without limitation:*

*(a) Allow the Registry to process applications, renewals, changes of association, as well as other documentation of behalf of the Division;*

*(b) Allow the Registry to collect Nevada statutory required fees or assessments on behalf of the Division, which must be remitted after collection to the Fund for Mortgage Lending created by NRS 645F.270;*

*(c) Require an applicant or licensee to pay any independent fees assessed by the Registry as a condition of licensure;*

*(d) Require licensees to submit financial statements required pursuant to NRS 645E.360 to the Registry on behalf of the Division;*

*(e) Allow the Registry to accept and monitor applicant and licensee compliance with pre-licensing and continuing education requirements pursuant to NRS Chapter 645B as they apply to individuals who are associated with a mortgage banker and are subject to these requirements;*

*(f) Allow the Registry, or a vendor acting on behalf of the Registry, to administer any tests required to hold licensure pursuant to federal law, this Chapter or NRS Chapter 645B as*

*they apply to individuals who are associated with a mortgage banker and are subject to these requirements;*

*(g) Allow the Registry to approve any provider, course or instructor for purposes of compliance by applicants or licensees with the pre-licensing or continuing education requirements pursuant to federal law, this chapter or chapter 645B of NRS as they apply to individuals who are associated with a mortgage banker and are subject to these requirements;*

*(h) Require licensees to submit reports of condition and other required reports to the Registry, which shall be in such form and shall contain such information as the Registry may require;*

*(i) Require licensees or applicants to submit fingerprint cards to the Registry;*

*(j) Require applicants or licensees to authorize the Registry to obtain the person's credit report as a condition of licensure;*

*(k) Require licensees to report the termination of a mortgage agent required by section 59.5 of AB 523 to the Registry; and*

*(l) Undertake all other actions as may be required by the Registry.*

**Sec. 12.** *A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a license under NRS 645B.410. Each independent contractor loan processor or underwriter licensed as a mortgage agent must have and maintain a valid unique identifier issued by the Registry.*

**Sec. 13.** *1. In connection with an application for licensing pursuant to NRS Chapter 645E, the person shall, at a minimum, furnish to the Registry information concerning the applicant's identity, including, but not limited to:*

*(a) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a state, national or international criminal history background check; and*

*(b) Personal history and experience on a form prescribed by the Registry, including the submission of authorization for the Registry and the Commissioner to conduct a background investigation to determine an applicant's suitability;*

*(c) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and*

*(d) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.*

*2. For purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation or the Commissioner may have to maintain for purposes of this section, the Commissioner may use the Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any federal or state governmental agency or to and from any source so directed by the Commissioner.*

*3. Nothing in this section shall be construed as limiting the Commissioner's ability to conduct his own independent investigation of an applicant, including without limitation requests of fingerprints or authorizations by an applicant to obtain an independent credit report or other information deemed necessary to determine the suitability of an applicant.*

**Sec. 14.** *1. Each mortgage agent 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 2 of this section, which is executed by a corporate surety satisfactory to the Commissioner. In the event that the mortgage agent is an employee of, or is associated with a mortgage banker subject to licensing pursuant to NRS Chapter 645E, the surety bond of the mortgage banker can be used in lieu of the mortgage agent's individual surety bond requirement so long as the bond expressly covers the mortgage agent as a principal. A bond deposited pursuant to this section by a mortgage banker must name the mortgage banker as a principal as well as name all mortgage agents associated with the mortgage banker as principals, either by individual name or as a group, such as "All Associated Mortgage Agents".*

*2. At the time of filing an application for a license as a mortgage agent and at the time of filing an application for the renewal of a license as a mortgage agent, the applicant shall file with the Commissioner proof that the applicant is named as a principal on the corporate surety bond deposited with the Commissioner by the mortgage banker with whom he is associated or employed.*

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

*Know All Men by These Presents, that ....., as principals, 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 645E of NRS, 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 mortgage banker or mortgage agent 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 645E of NRS, and pay all damages suffered by any person because of a violation of any of the provisions of chapter 645E of NRS, or by reason of any fraud, dishonesty, misrepresentation or concealment of material facts growing out of any transaction governed by the provisions of chapter 645E of NRS, 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 registered agent*

*2. The required amount of the surety bond that complies with the provisions of this section is calculated by combining the annual loan production amounts for an individual, or in the case where an individual is covered under his licensed mortgage banker’s bond, of all persons originating residential mortgage loans on behalf of the mortgage banker from all business locations of the mortgage broker. The Commissioner shall determine the appropriate amount of the surety bond that must be deposited initially by the mortgage banker or mortgage agent based upon the expected annual residential loan production. After the initial deposit, the Commissioner shall, on an annual basis, determine the appropriate amount of the surety bond that must be deposited by the mortgage banker or mortgage agent based upon the residential loan production by the mortgage banker or mortgage agent in the previous year. The surety bond amounts will be set and adjusted as necessary annually by the Division in accordance with the following scale:*

<i>Annual Loan Production</i>	<i>Bond Amount Required</i>
<i>\$20,000,000 or less.....</i>	<i>\$50,000</i>
<i>Greater than \$20,000,000.....</i>	<i>\$75,000</i>

**Sec.15.** *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 immediately shall 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 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. 16.** *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 of 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 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 the county where the mortgage banker has its principal place of business. 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 mortgage banker for the unpaid balance.

**Sec. 17.** 1. Final administrative actions, including but not limited to final license denials or revocations, orders to cease and desist, executed stipulated settlement agreements and final disciplinary orders taken by the Division against a person pursuant to NRS Chapter 645E shall be considered public information and may be disseminated through the Registry for public posting. The report to the Registry of these actions shall be in such form and shall contain such information as the Registry may require.

2. A person may challenge information provided by the Division to the Registry. All challenges must be sent to the Division in writing addressed to the attention of the Commissioner. Once received, the Division shall consider the merits of the challenge raised and provide the person with a written reply that shall be the Division's final decision in response thereto.

3. The Commissioner shall not submit the challenge or the results of the challenge to the Registry unless otherwise required by the Registry. If the Commissioner determines that the challenged information submitted to the Registry is factually incorrect, the Commissioner shall take prompt steps to correct the information submitted.

**Sec.18.** 1. Except as provided in subsection 2, for purposes of NRS 645E.300 (4)(b), a licensee shall not be considered to have had an adverse change in financial condition solely if its financial statement discloses a decrease in income from a prior period, so long as the licensee remains profitable.

2. A licensee may be considered to have had an adverse change in financial condition if the licensee's financial statement discloses the existence of material receivables or payables to related parties, material off balance sheet commitments, contingent liabilities or other identified concerns related to deterioration of net worth or liquidity.

**Sec.19.** 1. For the purpose of determining the financial condition of a mortgage banker, as shown by financial statements of the mortgage banker, the Commissioner will



*interpret “solvency” pursuant to NRS 645E.670 (2)(a) to mean that the assets of a mortgage banker shall exceed his liabilities, calculated in accordance with generally accepted accounting principles.*

*2. In calculating solvency the Commissioner;*

*a. Must exclude any intangible and any amount receivable by the mortgage banker that is related to the intangible; and*

*b. May exclude any shareholder debt that is subordinated.*

**Sec.20.** *In addition to the requirements of subsection 1 of NRS 645E.160, a person who claims an exemption from the provisions of chapter 645E of NRS pursuant to subsection 1 of NRS 645E.150 must ensure that the entity or agency which regulates the conduct of his business provides to the Commissioner written notification that:*

*1. The license of the person provides the right to make mortgage loans;*

*2. The entity or agency will investigate complaints arising from or relating to consumers in this State; and*

*3. The person is compliant with the requirements of the federal SAFE Act or regulations promulgated thereunder, if the person conducts activity as a residential mortgage loan originator.*

**Sec.21.** *The Commissioner will not renew the license of a mortgage banker if:*

*a. The mortgage banker has not paid all fees, fines and assessments owed to the Division or the Registry;*

*b. The mortgage banker is not properly registered with the Registry;*

*c. The mortgage banker fails to provide any required annual financial statements or condition reports to the Division or Registry; or*

*d. The mortgage banker fails to provide any other item deemed required by state or federal law.*

**Sec.22 .** NAC 645E.030, as amended by R053-08, is hereby amended to read: “Qualified employee” means a natural person who is ~~[:1. A director, officer, member, employee, manager or trustee of a partnership, corporation or limited liability company designated by the partnership, corporation or limited liability company pursuant to NAC 645E.310 to act on the behalf of the partnership, corporation or limited liability company]~~ *designated by a mortgage banker to act on behalf of the mortgage banker and who is approved by the Commissioner pursuant to NAC 645E.310.*

**Sec.23.** NAC 645E.210, as amended by section 4 of R053-08, is hereby amended to now read:

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

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

(b) A copy of the certificate filed by the mortgage broker pursuant to chapter 602 of NRS indicating the fictitious name of the mortgage broker, if any.

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

(1) Its articles of incorporation and its bylaws;

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

(3) The most recent list of its officers and registered agent that is filed with the Secretary of State.

(d) If the applicant is a partnership or joint venture, a copy of the agreement of partnership or joint venture and the financial statements of the general partners for the 2 years immediately preceding the year of the application.

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

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

(1) Its articles of organization and operating agreement;

(2) A statement of the profit and loss of the limited-liability company for the 2 years immediately preceding the year of the application; and

(3) The most recent list of its members or managers, and registered agent, that is filed with the Secretary of State.

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

*(h) Evidence that the applicant is in good standing with the Registry.*

*(i) Any other requirements imposed by the Registry pursuant to federal law or required by the Commissioner as a condition of licensure.*

*(k) A current e-mail address.*

2. If an applicant has received a letter *or e-mail* of conditional approval of his application from the Division *or the Registry* 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 *or e-mail* was issued by the Division *or the Registry*. If the applicant does not satisfy all additional requirements set forth in the letter *or e-mail* within the period prescribed in this subsection, the conditional approval of the application will be deemed to have expired and the applicant must reapply to obtain a license. The Commissioner may, for good cause, extend the 30-day period prescribed in this subsection.

3. An application shall be deemed abandoned if the applicant fails to respond to any written request, *including e-mail requests*, for information by the Division *or the Registry* within 30 days after the date of the request.

**Sec.24.** NAC 645E.220, as revised by section 4 of R053-08, is hereby amended to read as follows:

1. An applicant must submit with his application for a branch license:

(a) The name, residence address and telephone number of the qualified employee designated to manage the branch office; and

(b) The name of each mortgage agent who intends to work at the branch office.

*(c) The Commissioner may require that an application for a branch license and any additional required information be submitted to the Registry.*

2. The Commissioner will approve an application for a branch office if:

(a) The principal office of the mortgage banker has been examined by the Commissioner and has received at least a satisfactory rating during the preceding 12 months; and



(b) The Commissioner approves a qualified employee to manage the branch office. The Commissioner will not approve a qualified employee to manage a branch office if the qualified employee manages or has been designated and approved to manage another office.

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

4. A license for a branch office may be issued only in the name in which the mortgage banker is licensed to conduct business at his principal office.

5. Each branch office must conspicuously display its license at the branch office.

6. A mortgage banker is responsible for and shall supervise:

(a) Each branch office of the mortgage banker; and

(b) Each qualified employee and mortgage agent authorized to conduct mortgage lending activity at a branch office of the mortgage banker.

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

8. An application for a branch license shall be deemed abandoned if the applicant fails to respond to any written request, *including e-mail requests*, for information by the Division *or the Registry* within 30 days after the date of the request.

**Sec.25 .** NAC 645E.231 is hereby repealed.

**Sec.26.** NAC 645E.270 is hereby amended to read as follows: Activity not constituting services as mortgage banker. A person does not hold himself out as being able to perform the services described in NRS 645E.100 if the person *is in compliance with any applicable requirements prescribed in the SAFE Act or regulations promulgated thereunder and the person* only offers to provide money to invest in loans secured by an interest in real property to:

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

**Sec.27.** NAC 645E.285, as revised by R053-08, is hereby amended to read as follows:

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

2. Except as otherwise provided in subsection 3, an advertisement for an activity which is licensed pursuant to chapter 645E of NRS must be separate and distinct from an advertisement for an activity which is not licensed pursuant to that chapter.

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

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

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

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

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

5. A mortgage banker 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, microencoding or any other marks intended to create the appearance that the material is a negotiable check.

6. A mortgage banker shall not refer to an existing lender or financial institution, other than the mortgage banker himself or any affiliate or subsidiary of the mortgage banker, on any advertising material without the written consent of the lender or financial institution.

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

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

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

8. For purposes of this section, “advertisement” does not include white-page listings, employment recruiting announcements, office signs, banners, magnetic car signs, business cards and letterhead which contain only the name, address and telephone number of the mortgage banker, whether together or separate, and which are used for the purpose of identification only.

***9. An Internet link on a website of the mortgage banker or mortgage agent 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 mortgage banker or mortgage agent.***

***10. For the purposes of this section, “advertising” includes commercial messages that promote the availability of mortgage products or investments offered by the mortgage banker or mortgage agent. 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 or accept loan applications.***

**Sec.28.** NAC 645E.310 is hereby amended to read as follows:

1. Every ~~[partnership, corporation or limited liability company]~~ *person, other than a natural person*, doing business as a mortgage banker in this State shall designate a *natural person as a* qualified employee who may, upon approval of the Commissioner, act on behalf of the ~~[partnership, corporation or limited liability company.]~~ *mortgage banker.*

2. The Commissioner will approve the qualified employee designated pursuant to subsection 1 if the qualified employee ~~[meets the requirements of an applicant for a license as a mortgage banker pursuant to chapter 645E of NRS.]~~ *is a natural person who:*

(a) *Is licensed in good standing as a mortgage agent pursuant to NRS 645B.410;*

(b) *Is designated by a mortgage banker to act on behalf of the mortgage banker and to supervise the conduct of the business of the mortgage banker and the mortgage agents associated with or employed by the mortgage banker;*

(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) *Is licensed in good standing with the Registry.*

3. ~~[The approval issued by the Commissioner entitles the qualified employee to act pursuant to the terms and conditions of the license issued to the partnership, corporation or limited liability company by the Commissioner pursuant to chapter 645E of NRS, but only as a qualified employee of the partnership, corporation or limited liability company, and not on his own behalf.]~~

~~4.]~~ If the qualified employee designated pursuant to subsection 1 is not approved by the Commissioner pursuant to subsection 2 or ceases to be a qualified employee as defined in NAC 645E.030, the ~~[partnership, corporation or limited liability company]~~ *mortgage banker* shall designate another qualified employee pursuant to subsection 1 not later than:

(a) Thirty calendar days after the date that:

(1) The Commissioner notifies the ~~[partnership, corporation or limited liability company]~~ *mortgage banker* that the initial qualified employee designated pursuant to subsection 1 is not approved; or

(2) The qualified employee ceases to be a qualified employee as defined in NAC 645B.008; or

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

**Sec.29.** NAC 645E.315, as revised by section 8 of R053-08, is hereby amended to read as follows:

1. Any material change in the management or principal employees of a mortgage banker at his principal office or a branch office must be reported to the Commissioner *or the Registry* within 30 calendar days after the change.

2. Any material change in the ownership or any change of control of a mortgage banker at his principal office or a branch office must be approved by the Commissioner. An application for approval of a change of ownership or a change of control must be submitted to the Commissioner *or the Registry* on a form prescribed by the Division *or the Registry* not later than 30 days before the proposed change.

3. If a person acquires stock or ownership in a mortgage banker as a result of a transfer that constitutes a change of control pursuant to NRS 645E.390:

(a) A financial statement or a personal interrogatory, or both, of the prospective owner, partner, corporate shareholder, manager or employee must be submitted to the Commissioner for his consideration;

(b) The person may not participate in the management of the mortgage banker until the Commissioner has approved the transfer; and

(c) The mortgage banker may not change the location of his principal office or branch office until the Commissioner has approved the transfer.

***4. A mortgage banker may not close his principal office or a branch office until:***

***(a) The mortgage banker 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 mortgage banker or a branch office must contain the following information:***

***(a) The status of any incomplete applications for mortgage loans and the manner in which the loans will be finalized;***

***(b) An accounting of any trust account maintained by the mortgage banker and the plan for distribution of money in the account;***

***(c) If any mortgage agent associated with or employed by the mortgage banker has been terminated pursuant to subsection 3 of section 59.5 of AB523, evidence of the termination;***

***(d) The location in this State where records of the mortgage banker will be maintained pursuant to subsection 1 of NRS 645E.350; and***

***(e) The Commissioner may require the person to submit any required item or notification to the Registry.***

***6. As used in this section, "change of control" has the meaning ascribed to it in NRS 645E.390.***

**Sec.30.** NAC 645E.500, as amended by R053-09, is hereby amended to read as follows:

1. The Commissioner may refer to, ***produce documents upon the written request of*** and cooperate with the appropriate federal or state agency for investigation and appropriate action each suspected violation of:

(a) The Truth in Lending Act, 15 U.S.C. §§ 1601 to 1667f, inclusive, including, without limitation, the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1639, or Regulation Z, 12 C.F.R. Part 226.

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

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

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

2. For the purposes of NRS 645E.670, a mortgage banker or mortgage agent commits a violation if the mortgage broker or a mortgage agent associated with the mortgage banker:

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

(b) Fails to refund any fees collected in excess of the actual cost the mortgage broker incurs or pays for any appraisal, credit report or any other product or service provided by a third party in connection with the making of a loan;

(c) Improperly influences or attempts to improperly influence the proper development, reporting, result or review of a real estate appraisal with respect to the making of a mortgage loan; or

(d) Violates a provision of:

(1) The Truth in Lending Act, 15 U.S.C. §§ 1601 to 1667f, inclusive, including, without limitation, the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1639, or Regulation Z, 12 C.F.R. Part 226.

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

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

(4) Any other applicable federal or state law or regulation related to mortgage transactions ~~H~~, or

*(e) Fails to comply with the requirements of the SAFE Act or the requirements of the Registry, including without limitation registration on the Registry.*

3. Nothing in this section shall be construed to prohibit a mortgage banker from requesting an appraiser of real estate to do one or more of the following:

(a) Consider any appropriate information relating to the property;

(b) Provide additional details, substantiations or explanations in support of the appraiser's valuation of the property; or

(c) Correct errors in the appraisal report.

***Sec.31. 1. The effective date for section 11 shall be no later than December 1, 2010, unless otherwise ordered by the Commissioner. In order to facilitate an orderly transition onto the Registry, the Commissioner may require licensees to begin transition onto the Registry on a date prior to December 1, 2010.***

***Sec.32 . Any person licensed as a mortgage agent or who applies for a mortgage agent license must comply with the SAFE Act education requirements prescribed in section 22 of R--10, unless the person has previously completed the requirement through Division approved instruction and the Division certifies to the Registry that the person has met the requirement.***

***Sec.33. Any person licensed as a mortgage agent or who applies for a mortgage agent license must comply with the SAFE Act testing requirements prescribed in section 23 of R---10. The Division may certify to the Registry that a person has met the requirement as it relates to passage of the state law section of the test requirement if the person successfully passed the test offered by the approved vendor PSI. However, all persons must take the federal, ethics and general practice sections of the test pursuant to the SAFE Act testing requirements without regard to passage of the PSI test.***

## **TEXT OF REPEALED SECTIONS**

NAC 645E.231 A mortgage banker shall maintain a permanent sign that includes the name of the mortgage banker at each place of business of the mortgage banker, including, but not limited to, each branch office of the mortgage banker. This sign must be:

1. Readable from the nearest public sidewalk, street or highway; or

2. If the place of business of the mortgage banker is an office building, posted on the building directory of the office building or near the entrance to the office building on the exterior of the building.