

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

LCB File No. R091-10

NRS 645B MORTGAGE BROKERS

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

AUTHORITY: § 2(b), NRS 645B.060 and NRS 645F.277.

A REGULATION relating to mortgage lending; establishing general guidelines and limitations pertaining to the arranging and servicing of loans in which an investor has an ownership or beneficial interest; and providing other matters properly related thereto.

Section 1. Chapter 645B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 38, inclusive, of this chapter.

Sec. 2. *“Authorized representative” means a person designated by a borrower or investor in a written authorization that is signed by the borrower or investor and his authorized representative. Any such written authorization shall also state the capacity in which the authorized representative may act.*

Sec. 3. *“Borrower” means the obligor or obligors under a promissory note secured by a lien on real property.*

Sec. 4. *“Commercial mortgage loan” has the meaning ascribed to it in NRS 645E.030.*

Sec. 5. *“Commercial property” has the meaning ascribed to it in NRS 645E.040.*

Sec.6. *“Dwelling” has the meaning ascribed to it in Section 103(v) of the Truth in Lending Act, 15 U.S.C. section 1600 et seq.*

Sec. 7. *“Loan” means a commercial mortgage loan, a residential mortgage loan, or both, as the context requires.*

Sec. 8. *“Majority of investors” means investors holding 51% or more of the outstanding principal balance of the loan.*

Sec. 9. *The security instrument, including without limitation, assignments of the beneficial interest in a deed of trust or mortgage, must be recorded before or concurrently with any disbursement of funds. Such recorded instrument must bear the name of the investors as beneficiaries or mortgagees, as applicable, and not contain the name of the mortgage broker as a beneficiary or mortgagee unless the mortgage broker is also an investor in the loan.*

Sec. 10. *If a valuation of real property for a vacant land, construction or property improvement loan is provided by or on behalf of a mortgage broker as part of the marketing or solicitation for a loan, the mortgage broker shall disclose in each such marketing piece or solicitation:*

(a) The valuation based on an “as is” basis, although the valuation may also contain an “as built” or “as completed” basis for valuation; and

(b) The loan-to-value ratio of the loan based on the valuation or valuations provided.

Sec. 11. *A mortgage broker who arranges a loan that has more than one investor at the time of loan origination must:*

(a) Prior to accepting any funds from an investor, provide a written disclosure to each investor that states:

_____ My contact information [name, address, telephone number and email address, if any] may be provided to other investors in this loan upon written request at any time.

_____ My contact information [name, address, telephone number and email address, if any] may be provided to other investors in this loan upon written request only if the loan is in default.

_____ I request that my contact information [name, address, telephone number and email address, if any] remain confidential and not be provided to other investors in this loan.

(b) Provide to only those investors who authorize distribution of their contact information the contact information of the other investors who have similarly authorized distribution of such information.

Sec. 12. *No loan document of a mortgage broker shall require an investor to undertake mandatory or binding arbitration of disputes.*

Sec. 13. *No mortgage broker shall place an investor into a limited liability company, business trust or other entity for the servicing of the loan prior to foreclosure of the real property securing the loan until the mortgage broker:*

(a) Obtains the written authorization of the investor to transfer the investor’s interest into such entity; and

(b) Provides a copy of the organizational documents of the entity to each investor for his review at least 5 days prior to accepting the investor into the entity.

Sec. 14. *Unless otherwise permitted by law, no mortgage broker shall release a borrower or guarantor from personal liability, or release collateral securing the loan, without the majority of investors voting affirmatively for such release.*

Sec. 15. *The fiduciary obligation imposed pursuant to NRS 645B.0147 on a mortgage broker who services a loan for investors includes, without limitation, the duty:*

(a) Act in the client’s best interests, including safeguarding any money handled for the borrower and following all reasonable and lawful instructions from the borrower;

(b) Disclose any financial, business, professional or personal relationship or interest the mortgage broker has in the borrower;

(c) Disclose to the investor any material fact that the mortgage broker knows or should know may affect the investor's rights or interests or the ability to obtain the intended benefit from the servicing transaction;

(d) Provide within 5 business days upon written request an accounting to the investor that lists all money and other consideration received from the borrower and costs charged to the investor;

(e) Not accept or collect any fee for services rendered unless the fee is first agreed to in writing in the loan servicing agreement; and

(f) Provide personnel and telephone facilities in order to respond promptly to borrower and investor inquiries regarding their loans.

Sec. 16. 1. A mortgage broker shall adopt, maintain and follow reasonable policies and procedures to:

(a) Supervise and train personnel in the servicing of its loans; and

(b) Respond to and resolve borrower and investor inquiries and complaints in a prompt and appropriate manner.

2. A mortgage broker must maintain current internal controls to ensure that such servicing policies and procedures are being met.

3. A mortgage broker must maintain a file of all servicing complaints or disputes, including any documentation related to the matter, for a period of 2 years.

Sec. 17. A mortgage broker shall designate a contact to whom borrowers and investors may direct complaints and inquiries and provide a telephone number or email address through which any borrower or investor may direct telephone or email inquiries during established business hours. A servicer must maintain established business hours and disclose such hours to each investor.

Sec. 18. A mortgage broker shall not refuse to communicate with a borrower's or investor's authorized representative, provided that the mortgage broker may verify that the representative is in fact authorized to act on behalf of the borrower or investor.

Sec.19. Within 21 days of receipt of a written request from a borrower or the borrower's authorized representative for an accounting of the debt owed or a request for a payment history, a mortgage broker shall deliver to the borrower or his authorized representative such accounting or payment history of the borrower's account for the last 12 months (unless a different period is requested) which includes the dates and amounts of all payments made or credited to the account and the total current unpaid balance.

Sec. 20. A mortgage broker shall provide at least annually an account statement to each borrower and investor that discloses:

1. A clear and conspicuous statement of all payments made during the previous statement period, and identifying any payments made from a trust account;

2. An address to which complaints and inquiries can be addressed;

3. A telephone number or email address that gives the borrower or investor access to a person trained to answer inquiries and resolve or help resolve complaints; and

4. A statement that the borrower or investor may file written complaints about the mortgage broker with the Division of Mortgage Lending, 7220 Bermuda Road, Suite A, Las Vegas, NV 89119 and may obtain a complaint form by visiting the Division's website at www.mld.nv.gov under the Submit a Complaint, Consumer Complaint Form link.

Sec. 21. *A mortgage broker that receives funds from a borrower or investor to be held in trust for payment of insurance premiums or taxes shall:*

1. Upon receipt of sufficient funds for payment of insurance premiums or taxes make such payment when due, or within 5 days of the mortgage broker's failure to make such payment when due, notify each investor and the borrower in writing of the reason for the failure to pay, the amount owed, the nature, timing and amount of any penalty for failure to pay, and the actions planned for the mortgage broker to make such payment, including any penalty amount.

2. If insufficient funds are received for payment of insurance premiums or taxes, immediately notify each investor and the borrower of the amount necessary to cure the shortage and the consequences of the investors' or borrower's failure to do so.

Sec. 22. *A mortgage broker shall not offset moneys owed to it or owed to other investors by an investor without the written consent of the investor or by order of court. Such written consent may be contained in the loan servicing agreement.*

Sec. 23. *A mortgage broker servicing a loan for investors:*

1. Shall establish written policies and procedures for determining the handling of payments, including overages and shortages, and shall also conduct periodic audits of payment processing functions to ensure payments are properly credited.

2. Shall credit all payments received on the business day received unless the borrower has provided insufficient information to credit the account. If the mortgage broker accepts a payment that does not contain sufficient information necessary to credit the account, the mortgage broker shall credit the payment as soon as commercially reasonable, but in no event later than 5 days after receipt. No late fee may be assessed if payment was received pursuant to the provisions of NRS 645B.240.

3. That receives any payment and does not credit it as provided for in subsection (a) shall within 10 business days of receipt notify the borrower by mail at the borrower's last known address of the reason the payment was not credited and specify any actions by the borrower which are necessary to bring the loan current.

4. Must credit the payment before a late charge is assessed, and may not deduct a late charge from any regular payment or base a late charge on an amount greater than the amount past due.

5. Shall send a payment reminder notice to a borrower at the borrower's last known address no later than 15 days after the payment becomes due and remains unpaid.

6. Shall not charge a late fee more than once with respect to a single past due payment, and shall not deduct the late fee from a trust account or add the late fee to the unpaid principal balance of the loan.

7. Shall not impose any late fee when the only delinquency is attributable to late fees assessed on an earlier payment, and the payment is otherwise a full payment for the applicable period and is paid on its due date or within any applicable grace period.

8. Shall provide at no cost to the borrower or investor an accurate statement of the total amount that is required to pay off the loan as of a specified date within 5 business days after receipt of a written request from the borrower or investor, or their authorized representative, provided that a mortgage broker may charge a reasonable fee for providing a loan payoff statement after three requests in any calendar year.

9. Shall provide at no cost to the borrower one payment history furnished to a borrower in any 12-month period.

10. Shall respond within a reasonable time under the circumstances to a borrower's request to correct errors relating to the borrower's loan.

11. Shall provide written notice to a borrower upon taking action to place any insurance on the real property securing a loan and shall not place such insurance in excess of the replacement cost of the improvements on the real property or when the mortgage broker knows or has reason to know that the borrower has an effective policy in place for such insurance.

12. Shall provide to the borrower a refund of unearned premiums paid by the borrower or charged to the borrower for insurance placed by the mortgage broker, lender or investor if the borrower provides reasonable proof that he has obtained appropriate coverage and that the real property is insured.

Sec. 24. *In the event of default of a residential mortgage loan, a mortgage broker servicing a loan for investors shall make the borrower aware of:*

- 1. The loss mitigation options and default services offered by the mortgage broker.*
- 2. Approved HUD counselors in the borrower's geographic area.*
- 3. Any foreclosure mediation programs available to the borrower or required by law.*

Sec. 25. *A mortgage broker servicing a loan for investors shall:*

- 1. Have a written loan servicing agreement with each investor setting forth specifically what services will be provided and the compensation for those services, including an amount reasonably necessary to pay the cost of servicing the loan;*
- 2. Not assess or collect any fee which is not authorized by the loan documents or loan servicing agreement and is not assessed for bona fide services rendered or costs incurred; and*
- 3. Only apply the fees collected in the manner set forth in the loan documents or loan servicing agreement.*

Sec. 26. *Unless otherwise required by law, the loan servicing agreement shall at a minimum require that:*

- 1. Payments received on the loan shall be immediately deposited to a collection trust account;*
- 2. Payments shall not be commingled with the assets of the mortgage broker or used for any transaction other than the servicing transaction for which the funds are received;*
- 3. Payments received on the loan shall be transmitted to the investors pro rata according to their respective interests within 30 days after receipt thereof by the mortgage broker;*
- 4. The mortgage broker will file a request for notice of default upon any prior encumbrance of record against the real property and all other real property securing the loan,*

including real property used to cross collateralize the loan, and promptly notify the investors of any such default or on any default under the terms of the loan;

5. The mortgage broker will promptly notify the investors in writing of any mechanic's lien, lis pendens or other lien recorded against the real property after loan origination of which it becomes aware;

6. The servicing agreement may be transferred to another servicer authorized to service loans or terminated for any reason by either the mortgage broker or the majority of investors upon 30 days' prior written notice;

7. In the event real property taxes or insurance on the real property securing a loan becomes delinquent, the mortgage broker will provide the investors with an itemized report indicating:

(a) Each specific tax, insurance premium or other charge due and owing;

(b) The total amount owed;

(c) The due dates before any penalties attach for late payment;

(d) The amounts of any such penalties; and

(e) An estimated amount of quarterly taxes, insurance premiums and other charges to become due for the following 12-month period; and

8. Upon written request the mortgage broker will provide a vote tally of any vote taken of investors.

Sec. 27. *A mortgage broker shall not service two or more loans secured by the same real property unless the investors in all such loans are identical.*

Sec. 28. *A mortgage broker shall not maintain a construction control account for funds belonging to a borrower or an investor. Such funds must be placed in the control of an appropriately licensed or registered entity or entity otherwise exempt from licensing or registration.*

Sec. 29. *Unless the mortgage broker is an investor in the loan the mortgage broker shall not make any statement designed or calculated to unduly influence the outcome of any vote.*

Sec. 30. *In addition to the requirements prescribed in NRS 645B.260, the Commissioner may require a mortgage broker to file any regular or special report, including reports with respect to loan delinquencies, loss mitigation efforts and foreclosures, annually or as otherwise requested by the Commissioner. Such reports shall be in a form prescribed by the Commissioner.*

Sec. 31. *A mortgage broker may only manage real property for investors who have become owners of the real property after foreclosure or by other means provided the mortgage broker is properly licensed pursuant to chapter 645 of NRS.*

Sec. 32. *A mortgage broker managing real property for investors who have become owners of the real property shall have a written property management agreement signed by each investor which at a minimum includes the provisions contained in Section 645.6056 of NRS.*

Sec. 33. *In addition to the requirements of Section 32, a mortgage broker when acting as a manager of real property for investors who have become owners of the property shall provide the investors a written disclosure when making a recommendation to the investors to sell the foreclosed property. Such written disclosure shall include an appraisal or updated appraisal that is dated within four months of the recommendation unless a majority of investors, excluding the mortgage broker, consent in writing to the waiver of such appraisal. The mortgage broker shall not act as an attorney-in-fact for the investor and shall not require investors to consent to this waiver prior to issuing its recommendation to sell the foreclosed real property.*

Sec. 34. *The written disclosure required by Section 33 shall disclose:*

- 1. The name, address and telephone number of any real estate broker with whom the real property is listed for sale;*
- 2. Upon listing the real property for sale, an estimated marketing period and marketing plan necessary to obtain fair market value or short sale of the real property as established by the current appraisal, if an appraisal is required under Section 33;*
- 3. A summary of any purchase and sale agreement;*
- 4. Current appraised value of the real property, if an appraisal is required under Section 33, as well as the appraised value or other valuation of the property provided at the time the loan was originated or a statement that the appraisal or other property valuation was waived at the time of the origination of the loan;*
- 5. Current tax assessed value of the real property, as well as the tax assessed value at the time the loan was originated, and any plan for the mortgage broker to appeal the current tax assessment valuation;*
- 6. A summary of the reasons for the mortgage broker making any recommendation to the investors regarding the purchase and sale agreement;*
- 7. A summary of the options available to investors should they elect to reject the purchase and sale agreement;*
- 8. The right of investors to obtain upon written request a list of all investors holding an interest in the real property and their respective addresses, telephone numbers and email addresses, if available;*
- 9. A summary of the options available to an individual investor who does not wish to participate in the sale of the real property on the terms set forth in the purchase and sale agreement should the majority of investors accept the purchase and sale agreement.*

Sec. 35. *If the terms of the purchase and sale agreement include the investors financing any portion of the purchase price, and unless waived in writing by all of the investors, the disclosure required by section 33 shall also disclose the following:*

- 1. A loan application completed by the prospective buyer;*
- 2. The credit report of the prospective buyer if the buyer is a natural person;*
- 3. The financial statement of the prospective buyer if the prospective buyer is not a natural person; and*
- 4. A recent preliminary report of title to the real property.*

Sec. 36. *The disclosure required by section 33 shall be sent to all the investors holding an interest in the real property subject to the purchase and sale agreement at least 5 days prior to the closing date of the sale.*

Sec. 37. *Upon closing of the sale of the real property, the mortgage broker shall send to all the investors holding an interest in the real property that was sold a final HUD-1 or other final closing document that itemizes all of the costs and fees associated with the sale of the real property.*

Sec. 38. *The appraisal provided pursuant to section 33 must:*

1. Meet the standards set forth in the Uniform Standards of Professional Appraisal Practice as adopted by the Appraisal Standards Board of the Appraisal Foundation;

2. Meet the requirements of the Home Valuation Code of Conduct where the real property is improved with a dwelling;

3. Be performed by an appraiser who is authorized to perform appraisals in the state where the real property is located;

4. In the case of a vacant land, construction or property improvement loan, reflect the value of the real property on an "as is" basis, although the valuation may also contain an "as built" or "as completed" basis for valuation; and

5. Not be performed by the mortgage broker or an employee or agent of the mortgage broker.

Sec. 39. **NAC 645B.072 is hereby amended to read as follows:**

As used in NRS 645B.080, the Commissioner interprets "complete and suitable records" to mean:

1. A file that includes, but is not limited to, the following documents, if applicable to the type and purpose of the loan:

(a) The real estate sales contract;

(b) Escrow instructions;

(c) The preliminary title report;

(d) The loan application, including, but not limited to, any attachments or supplements;

(e) An appraisal report;

(f) Any verification of representations made by the consumer on the application for a mortgage;

(g) A credit report;

(h) A good faith estimate of closing costs and any disclosures required pursuant to the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq.;

(i) The Uniform Settlement Statement, as described pursuant to 12 U.S.C. § 2603; and

(j) Any commitments made by the lender to the consumer, including, but not limited to, a commitment to guarantee the consumer a certain interest rate and a commitment to fund the loan.

2. For loans brokered to, *or serviced for*, private investors, a file that must include all the items required pursuant to subsection 1, if applicable, and any additional documents or disclosures required pursuant to this chapter, chapter 645B of NRS or federal law, including, but not limited to:

(a) The original documents subject to the provisions of NAC 645B.080 or 645B.215;

(b) All disclosures required pursuant to NRS 645B.185 and 645B.186, and NAC 645B.073, 645B.210 and 645B.220; ~~and~~

(c) If the mortgage broker maintains any account pursuant to NRS 645B.175, the mortgage broker must include records that demonstrate compliance with the provisions of NRS 645B.115 and NAC 645B.150 and 645B.160 and any other applicable law;

(d) A log of all payments received, the payor, disbursements made and the dates of transactions for each account, including, but not limited to:

(i) The principal balance of each account;

(ii) The amount and due date of each installment for each loan serviced;

(iii) The servicing history for all loans serviced, including the servicing history of loans acquired from another entity; and

(iv) The servicing of delinquent loans, including those in foreclosure or affected by a bankruptcy proceeding.

(e) A file of all written correspondence, including facsimile transmissions and e-mail correspondence, relating to the servicing of each loan, including, but not limited to, communications and correspondence between it and the borrower or investor or their authorized representatives, any previous loan servicer, any governmental entity or government sponsored enterprise, the investor or the lender or owner of the loan;

(f) A log of all votes taken by investors, including all written ballots or authorizations submitted by the investors; and

(g) Records of all loan modification agreements, trustees' deeds upon sale and deeds-in-lieu.

3. For loans funded by the mortgage broker, a file that must include all the items required pursuant to subsection 1 and all closing documentation, including, but not limited to, a recorded or confirmed deed of trust, the title insurance policy, the note, the hazard insurance policy and any subsequent assignment to additional investors. Assignments to private investors must comply with all documentation requirements of this chapter and chapter 645B of NRS.

4. Any additional books and records that must be maintained or readily accessible at each place of business of the mortgage broker, including, but not limited to, any branch office as applicable to the operations of the mortgage broker, including:

(a) Any book or record that evidences compliance with applicable federal and state laws and regulations;

(b) A copy of each item of advertising material that was published or distributed by or on behalf of the mortgage broker in the format in which the material was published or distributed;

(c) A copy of any written complaint against the mortgage broker, together with all correspondence, notes, responses and other documentation related to the disposition of the complaint;

(d) All checkbooks, check registers, bank statements, deposit slips, withdrawal slips, cancelled checks and other records that relate to the business of the mortgage broker;

(e) Copies of all federal tax withholding forms, reports of income for federal taxation and evidence of payments to all employees, independent contractors and other persons that worked for the mortgage broker;

(f) Copies of all documents evidencing a contractual relationship between the mortgage broker and any third-party provider of services related to mortgages, including, but not limited to, contracts, invoices, billings and remittances to the provider by or on behalf of the mortgage broker;

(g) Copies of all material correspondence related to the business of the mortgage broker, including, but not limited to, electronic messages; and

(h) Copies of all reports, audits, examinations, inspections, reviews, investigations or other similar activities relating to the business of the mortgage broker performed by any third party, including, but not limited to, any regulatory or supervisory authority.

Sec. 40. NAC 645B.080 as amended by R058-08 is hereby amended to read as follows:

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

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

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

(c) A report on the history of credit of ~~the~~ *each* prospective borrower *and guarantor who is a natural person* issued by a credit reporting agency, including an explanation by the borrower *or guarantor* of any material derogatory item in the report and evidence that the report has been compared for accuracy to *other credit or financial information furnished by the borrower or guarantor*.

(d) *A report of business information or credit, if available, for a borrower or guarantor who is not a natural person;*

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

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

(g) If the loan is a construction loan, a completion bond in an amount not less than 100% of the construction amount, conditioned upon the faithful performance of the construction contract in accordance with the plans, specifications and conditions of that contract.

For purposes of this subsection, a construction loan is a loan for which the proceeds are used, or intended to be used, to finance the construction or improvement of a dwelling, or the construction, alteration or repair of another building or structure, but excluding the acquisition of land.

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

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

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

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

(a) A copy of the promissory note;

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

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

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

4. If the loan is made, the mortgage broker shall retain in his files:
 - (a) A copy of a policy of fire insurance which is adequate to cover the replacement costs of all improvements on the property securing the loan, including an endorsement naming the investor as the insured, when applicable;
 - (b) If the investor is a corporation or partnership, a copy of its statement authorizing the loan; and
 - (c) If the borrower is a corporation or partnership, a copy of its statement authorizing the loan.
5. The mortgage broker shall store his original notes, if retained, in a fireproof container or room.
6. If the mortgage broker has obtained an appraisal on behalf of an investor, the mortgage broker shall provide a copy of the appraisal to the:
 - (a) Investor, upon request; and
 - (b) Borrower, upon request, if the borrower has paid for the appraisal.

Sec. 41. NAC 645B.220 as amended by R058-08 is hereby amended to read as follows:

The disclosure form given to an investor pursuant to NRS 645B.185 must be the form prescribed by the Commissioner *and shall: 1. clearly disclose the risks to investors of holding a high concentration of their investment portfolio in deeds of trust or mortgage loans; and 2. If the beneficial interest in a loan arranged by a mortgage broker belongs to more than one natural person, also clearly state that unless otherwise provided by law or by agreement between the parties, the holders of 51 percent or more of the outstanding principal balance of the loan are authorized to act on behalf of all the holders of the beneficial interest of record on matters which require the action of the beneficial interest.*

Sec. 42. NAC 645B.330 as amended by R058-08 is hereby amended to read as follows:

1. The Commissioner may refer to 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 645B.670, a mortgage broker or mortgage agent commits a violation if the mortgage broker or a mortgage agent associated with the mortgage broker:
 - (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.

(5) Any Nevada laws or regulation relating to the servicing of loans that are applicable to the type of loan, including but not limited to Chapters 106, 107, 111, 112 and 113 of NRS.

3. Nothing in this section shall be construed to prohibit a mortgage broker 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. 43. NAC 645B.073 is hereby repealed.

Sec. 44. 1. Sections 1 to 42 become effective on October 10, 2010.

2. Section 43 becomes effective immediately upon enactment.

Text of repealed section:

1. Except as otherwise provided in subsection 3, if a mortgage broker acts on behalf of investors on a matter related to a mortgage loan, and if the beneficial interest in the loan belongs to more than one natural person, the documentation of the matter must include provisions to allow the holders of 51 percent or a greater specified percentage of the beneficial interests of record to act on behalf of all the holders of the beneficial interests of record in the event of a default or foreclosure for matters that require the direction or approval of the holders of the beneficial interests in the loan, including, without limitation:

(a) The designation of the mortgage broker, servicing agent or other person to act on the behalf of the holders of the beneficial interests in the loan; and

(b) The sale, encumbrance or lease of real property owned by the holders resulting from a foreclosure or the receipt of a deed in lieu of a foreclosure.

2. The provisions required by this section may be included in the deed of trust, the assignment of interest or any other documentation that binds the mortgage broker and the investors.

3. The provisions of this section do not apply to a transaction involving two investors with equal interests.