

PROPOSED REGULATION OF THE COMMISSIONER OF MORTGAGE LENDING

LCB File No. R120-10

NAC 645F

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

AUTHORITY: §§1-84, 86-92 and 99-130, section 3 of Assembly Bill No. 152 of the 75th Session of the Nevada Legislature and section 24 of Assembly Bill No. 486 of the 75th Session of the Nevada Legislature; §85, sections 3 and 3.1 of Assembly Bill No. 152 of the 75th Session of the Nevada Legislature and section 24 of Assembly Bill No. 486 of the 75th Session of the Nevada Legislature; §§93-98, section 24 of Assembly Bill No. 486 of the 75th Session of the Nevada Legislature.

A REGULATION relating to housing; providing for the licensure and regulation of covered service providers, foreclosure consultants and loan modification consultants; requiring certain information to be contained in a written contract for certain services provided by a covered service provider, foreclosure consultant or loan modification consultant; providing for the regulation of contracts entered into by foreclosure purchasers under certain circumstances; and providing other matters properly relating thereto.

Section. 1. Section 19 of LCB File No. R052-09, which was adopted by the Commissioner of Mortgage Lending and filed with the Secretary of State on August 25, 2009, is hereby amended to read as follows:

Sec. 19. 1. A person who desires to be licensed as a covered service provider, foreclosure consultant or loan modification consultant must file a written application for a license with the Commissioner and pay a nonrefundable application fee as set forth in section 27 of this regulation. An application for a license as a covered service provider, foreclosure consultant or loan modification consultant must:

(a) State the name and business address of the applicant and the location of the principal office and each branch office, if any, at which the applicant will conduct business, including, without limitation, any office or other place of business located outside this State from which the applicant will conduct business in this State.

(b) If the applicant is a natural person, state the residence address of the applicant.

(c) If the applicant will be conducting business using a fictitious name, state the fictitious name under which the applicant will conduct business.

(d) If the applicant is not a natural person, list the name, residence address and business address of:

(1) Each person who will have an interest in the applicant as an owner, principal, partner, officer, director or trustee, specifying the capacity and title of each such person; and

(2) Each person whom the applicant proposes to be a qualified employee for the applicant.

(e) If the applicant will be an independent licensee, list the name, residence address and business address of each associated licensee, if any, who will be employed by or otherwise associated with the applicant.

(f) If the applicant will be an associated licensee, include a verified statement from the independent licensee with whom the applicant will be associated that expresses the intent of the independent licensee to associate the applicant with the independent licensee and to be responsible for the activities of the applicant as a covered service provider, foreclosure consultant or loan modification consultant.

(g) Include a signed and notarized personal history form, provided by the Commissioner, from the applicant or, if the applicant is not a natural person, each natural person holding an ownership interest of 25 percent or more in the applicant and each natural person who has the power to direct the management of the applicant.

(h) Include a written consent giving the Commissioner authority to conduct an investigation of the credit history, criminal history and background of:

(1) If the applicant is a natural person, the applicant. The written consent must be signed by the applicant.

(2) If the applicant is not a natural person, any natural person holding an ownership interest of 25 percent or more in the applicant or who has the power to direct the management of the applicant. The written consent must be signed by each such person.

(i) Include a complete set of fingerprints of the applicant or, if the applicant is not a natural person, any natural person holding an ownership interest in the applicant. The Commissioner may forward these fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.

(j) If the applicant will be an independent licensee, indicate the general plan and character of the applicant's business and describe the policies and procedures that the applicant and any associated licensees who will be employed by or otherwise associated with the applicant will follow in providing services and conducting activities pursuant to this chapter and chapter 645F of NRS.

(k) State the length of time the applicant has been engaged in the business of a covered service provider, foreclosure consultant or loan modification consultant.

(l) If the applicant will be an independent licensee, include a financial statement of the applicant.

(m) Include any other information required by the Commissioner, including, but not limited to, information concerning the education, training and experience of any applicable person.

(n) Include the applicable fee set forth in section 27 of this regulation.

2. If the applicant is a natural person who will be an associated licensee, the Commissioner may waive the requirement of an investigation of the credit history, criminal history and background of the applicant if such an investigation has been conducted within 6 months immediately preceding the date on which the application is submitted.

3. If an applicant will conduct business at one or more branch offices, the applicant must apply for a license for each such branch office on forms prescribed by the Commissioner and pay the applicable fee set forth in section 27 of this regulation. An application for a branch license shall be deemed abandoned if the applicant fails to respond to any written request by the Commissioner for information concerning the application within 30 days after the date of the request.

4. An applicant for a license 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.

5. Except as otherwise provided in this chapter or chapter 645F of NRS, the Commissioner will issue a license to an applicant if:

(a) The application and information submitted by the applicant in support of the application is verified by the Commissioner;

(b) The application and information submitted by the applicant in support of the application complies with the requirements of this chapter and chapter 645F of NRS; and

(c) Each person identified in paragraph (h) of subsection 1 and, if the applicant is a partnership, corporation or unincorporated association, each general partner, officer or director of the applicant:

(1) ~~Has a good reputation for honesty, trustworthiness and integrity and displays competence to transact the business of a covered service provider, foreclosure consultant or loan modification consultant in a manner which safeguards the interests of the general public.~~ *Has demonstrated financial responsibility, character and general fitness so as to command the confidence of the community and warrant a determination that the applicant will operate honestly, fairly and efficiently for the purposes of this chapter and chapter 645F of NRS.* 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 related to the practice of a covered service provider, foreclosure consultant or loan modification consultant or any crime involving fraud, misrepresentation or moral turpitude.

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

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

(5) Has not violated any provision of this chapter or chapter 645F of NRS or any order of the Commissioner.

6. For purposes of subparagraph (c)(1) of subsection 5 of this section 19, factors considered in determining 'financial responsibility' include, without limitation:

(a) whether the person's personal credit history indicates any adverse material items, including, without limitation, liens, judgments, disciplinary action, bankruptcies, failure to comply with court-approved payment plans, or foreclosures;

(b) The circumstances surrounding any adverse material items in the person's personal credit history; and

(c) Any instances of fraud, misrepresentation, dishonest business practices, the mishandling of trust funds, or other types of comparable behavior.

Sec. 2. Section 20 of LCB File No. R052-09, which was adopted by the Commissioner of Mortgage Lending and filed with the Secretary of State on August 25, 2009, is hereby amended to read as follows:

Sec. 20. 1. If applicable, an applicant must submit with the application for a license as a covered service provider, foreclosure consultant or loan modification consultant:

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

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

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

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

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

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

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

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

2. Before the issuance of a license, an applicant must submit:

(a) If applicable, a copy of the certificate filed by the covered service provider, foreclosure consultant or loan modification consultant pursuant to chapter 602 of NRS indicating the fictitious name of the covered service provider, foreclosure consultant or loan modification consultant;

(b) If applicable, supporting documentation that the applicant is in good standing with the 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 a lease or other document which indicates the address of the place of business and telephone number of the applicant;

(d) If applicable, a copy of the applicant's business license or, if the applicant has not yet obtained a business license, the applicant's application for such a license;

(e) If applicable, a copy of the applicant's state business license or, if the applicant has not yet obtained a state business license, the applicant's application for such a license;

(f) ~~If applicable, a~~ A bond ~~for other substitute security~~ required by section 80 ~~or 81~~ of this regulation;

(g) If the applicant is a natural person, documentation, acceptable to the Commissioner, that the applicant has completed the educational requirements for initial licensure required by section 43 of this regulation;

(h) If the applicant is not a natural person, documentation, acceptable to the Commissioner, that all applicable persons have completed the educational requirements for initial licensure required by section 43 of this regulation;

(i) If the applicant is a natural person and will be an independent licensee, documentation, acceptable to the Commissioner, that the applicant has at least 2 years of verifiable experience working in the real estate, mortgage, foreclosure or loan modification industries or applicable financial or legal fields;

(j) If the applicant is not a natural person and will be an independent licensee, documentation, acceptable to the Commissioner, that each proposed qualified employee for the applicant has at least 2 years of verifiable experience working in the real estate, mortgage, foreclosure or loan modification industries or applicable financial or legal fields; and

(k) Any other information deemed necessary by the Commissioner to complete the application.

3. If an applicant has received a letter from the Commissioner which imposes additional requirements that the applicant must satisfy to obtain a license as a covered service provider, foreclosure consultant or loan modification consultant, the applicant must comply with those requirements within 30 days after the date on which the letter was issued by the Commissioner or such other time as provided in the letter. If the applicant does not satisfy all additional requirements set forth in the letter within the period prescribed in this subsection, the application will be deemed to have been abandoned and the applicant must reapply to obtain a license. The Commissioner may, for good cause, extend the 30-day or other period prescribed in this subsection.

4. If an applicant does not maintain an office in this State, or if its corporate office is located outside of this State, the applicant must sign an authorization and agreement that any actions brought by the Commissioner related to this chapter or chapter 645F of NRS will be brought in the applicable court of the State of Nevada.

Sec. 3. Section 25 of LCB File No. R052-09, which was adopted by the Commissioner of Mortgage Lending and filed with the Secretary of State on August 25, 2009, is hereby amended to read as follows:

Sec. 25. 1. A license issued pursuant to this chapter and chapter 645F of NRS expires each year on ~~July 1~~ **December 31**, unless it is renewed. The licensee may not renew the license until all fees, assessments and fines owed to the Commissioner are paid. To renew a license, the licensee must submit to the Commissioner on or before ~~May 31~~ **November 30** of each year:

(a) An application for renewal that includes all information required by the Commissioner to determine that the licensee complies with the requirements of this chapter and chapter 645F of NRS;

(b) If the licensee is a natural person, satisfactory proof that the licensee has attended at least the number of hours of approved courses of continuing education required by section 44 of this regulation in subject areas relevant to this chapter and chapter 645F of NRS, as determined by the Commissioner, during the 12 months immediately preceding the date on which the license expires; and

(c) The fee required to renew the license as set forth in section 27 of this regulation.

2. If the licensee fails to submit any item required by subsection 1 to the Commissioner on or before ~~May 31~~ **November 30** of any year, the license is cancelled as of ~~July 1~~ **December 31** of that year. The Commissioner may reinstate a cancelled license within ~~6~~ **2** months after its cancellation if the licensee submits to the Commissioner:

(a) An application for renewal that complies with the requirements of this chapter and chapter 645F of NRS;

(b) The fee required to renew the license as set forth in section 27 of this regulation; and

(c) The fee required to reinstate the license as set forth in section 27 of this regulation.

Sec. 4. Section 26 of LCB File No. R052-09, which was adopted by the Commissioner of Mortgage Lending and filed with the Secretary of State on August 25, 2009, is hereby amended to read as follows:

Sec. 26. 1. Any licensee who is a natural person and who is called into the military service of the United States will be, upon request, relieved from compliance with the provisions of this chapter and chapter 645F of NRS and placed on inactive status for the period of such military service and for a period of 6 months after discharge therefrom.

2. At any time within ~~6~~ 2 months after termination of such service, if the licensee complies with the provisions of subsection 1, the licensee may be reinstated without having to meet any qualification or requirement other than the payment of the reinstatement fee as set forth in section 27 of this regulation, as applicable, and the licensee is not required to make payment of the renewal fee for the current year.

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

Sec. 5. Section 31 of LCB File No. R052-09, which was adopted by the Commissioner of Mortgage Lending and filed with the Secretary of State on August 25, 2009, is hereby amended to read as follows:

Sec. 31. A *independent* licensee:

1. Shall post each license ~~[, including, but not limited to, those of any associated licensees,]~~ in a conspicuous place in the office to which the license pertains.

2. Shall conduct business only under the name for which the licensee is licensed.

3. Shall ensure that each contract for covered services to which the licensee is a party prominently discloses the license number of the licensee.

4. Shall not transfer or assign a license to another person, unless the Commissioner gives his *prior* written approval.

Sec. 6. Section 44 of LCB File No. R052-09, which was adopted by the Commissioner of Mortgage Lending and filed with the Secretary of State on August 25, 2009, is hereby amended to read as follows:

Sec. 44. 1. A licensee who is a natural person must complete, during the 12 months immediately preceding the date on which his license expires, at least:

(a) If the licensee is a covered service provider, 10 hours of instruction in approved courses of continuing education.

(b) If the licensee is a foreclosure consultant, 7 hours of instruction in approved courses of continuing education.

(c) If the licensee is a ~~[license as a]~~ loan modification consultant, 5 hours of instruction in approved courses of continuing education.

2. An approved course of continuing education must focus on the practical application of transactions conducted by covered service providers, foreclosure consultants or loan modification consultants.

3. Of the hours of instruction required by subsection 1, a licensee must complete:

- (a) Two hours of professional ethics, which must include instruction on fraud, consumer protection and fair lending issues;
 - (b) Two hours of federal law and regulations relating to mortgage lending; and
 - (c) One hour of Nevada law and regulations relating to this chapter and chapter 645F of NRS or other Nevada laws and regulations relating to mortgages.
4. In addition to the hours of instruction specified in subsection 3, a covered service provider or foreclosure consultant must complete an adequate number of hours of instruction in elective subjects to meet the number of hours of instruction required by subsection 1.

Sec. 7. Section 62 of LCB File No. R052-09, which was adopted by the Commissioner of Mortgage Lending and filed with the Secretary of State on August 25, 2009, is hereby amended to read as follows:

- Sec. 62. 1. Each *independent* licensee shall pay to the Commissioner an annual assessment to cover the costs related to the employment of a certified public accountant and the performance of audits and examinations conducted by the Commissioner.
2. The Commissioner will bill each *independent* licensee for the assessment. The assessment must be paid within 30 calendar days after the date ~~the bill is received by the licensee~~ of the *invoice*.
3. A charge of 10 percent of the assessment will be imposed on any *independent* licensee whose assessment is received by the Commissioner after the date on which the assessment is due. The Commissioner may waive the penalty for good cause.

Sec. 8. Section 63 of LCB File No. R052-09, which was adopted by the Commissioner of Mortgage Lending and filed with the Secretary of State on August 25, 2009, is hereby amended to read as follows:

- Sec. 63. 1. In addition to the other duties imposed upon the Commissioner by law for the general supervision of licensees, the Commissioner will:
- (a) Conduct such investigations as may be necessary to determine whether any person has violated any provision of this chapter or chapter 645F of NRS or any order of the Commissioner.
 - (b) Conduct an examination of each independent licensee doing business in this State within ~~3~~ 6 months after the independent licensee commences business in this State and at least annually thereafter. The examination must include, without limitation, a formal exit review with the independent licensee.
 - (c) Conduct such other examinations, periodic or special audits, investigations and hearings as may be necessary for the efficient administration of the laws of this State regarding licensees.
2. For each special audit, investigation or examination, a licensee shall pay a fee based on the rate established pursuant to NRS 645F.280 and section 64 of this regulation.

Sec. 9. Section 64 of LCB File No. R052-09, which was adopted by the Commissioner of Mortgage Lending and filed with the Secretary of State on August 25, 2009, is hereby amended to read as follows:

- Sec. 64. 1. Except as otherwise provided in this subsection, the Commissioner will charge and collect a fee of \$60 per hour from each licensee for any supervision, examination, audit, investigation or hearing conducted pursuant to this chapter or chapter 645F of NRS. The

Commissioner may charge a fee equivalent to the estimated or actual fee charged to the Commissioner for the time of an attorney required in any examination, investigation or hearing conducted pursuant to this chapter or chapter 645F of NRS.

2. The Commissioner will bill each licensee 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 by the licensee.~~ *of the invoice.* 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. The failure of a licensee to pay the fee required in subsection 1 constitutes grounds for the imposition of any discipline authorized pursuant to this chapter or chapter 645F of NRS, including, without limitation, revocation of his license.

4. Upon written request by a licensee, the Commissioner will provide an accounting of the time billed to the licensee pursuant to this section.

Sec. 10. Section 67 of LCB File No. R052-09, which was adopted by the Commissioner of Mortgage Lending and filed with the Secretary of State on August 25, 2009, is hereby amended to read as follows:

Sec. 67. 1. Not more than 30 days after the completion of an examination of a licensee, the examiner that performed the examination shall prepare a draft report of the examination and provide the draft report to the Commissioner. The draft report must include only:

(a) Facts that are contained in the files, books, records or other documents of the licensee that were examined by the examiner;

(b) Facts that are contained in statements made by the licensee or officers or agents of the licensee, if any, or other persons that the examiner interviewed concerning the licensee; and

(c) Conclusions and recommendations that are reasonably supported by the facts that are included in the draft report, including, but not limited to, the rating given to the licensee pursuant to section 66 of this regulation.

2. Not more than 15 days after the draft report of an examination is received by the Commissioner, the Commissioner will deliver to the licensee who was examined:

(a) A copy of the draft report; and

(b) Notice that the licensee has not more than 30 days, unless the Commissioner, for good cause, allows a longer period, to review the draft report and submit to the Commissioner, in writing, any comments regarding or objections to matters contained in the draft report.

3. If a licensee received a rating of “3,” “4” or “5” pursuant to section 66 of this regulation and submitted written comments or objections within the period specified in subsection 2, the Commissioner will:

(a) Not more than 15 days after the last day on which the licensee could submit written comments or objections pursuant to subsection 2, hold an informal meeting *in person or by telephone* with the licensee regarding the draft report; and

(b) Review the draft report, together with the written submissions or objections made by the licensee and any relevant portions of the working papers of the examiner, and, not more than 15 days after the date on which the informal meeting was held pursuant to paragraph (a):

(1) Adopt the draft report as filed;

(2) Adopt the draft report with modifications;

(3) Provide the licensee with an opportunity for a ~~formal hearing;~~ *review of the draft report;* or

(4) Direct the examiner to reopen the examination to obtain additional data, documents or information and, if necessary, file a new draft report pursuant to subsection 1. If the findings of the initial draft report are supported by the findings of the examiner after completion of the reopened examination, the licensee is responsible for the costs attributable to the reopened examination pursuant to section 64 of this regulation.

4. If a licensee:

(a) Received a rating of “1” or “2” pursuant to section 66 of this regulation and submitted written comments or objections within the period specified in subsection 2; or

(b) Did not file a written comment or objection to a draft report within the period specified in subsection 2, the draft report will be deemed to be the final report of the examination.

5. The rating of an examination is not open to public inspection until the review process pursuant to this section is completed, and no information other than the rating will be released except upon the express finding of the Commissioner that such release would not impede an investigation and or that the public will not be harmed by such a release.

6. If the examination and report reveal that a licensee is operating in violation of this chapter or chapter 645F of NRS or a previous order of the Commissioner, the Commissioner may order the licensee to take any action the Commissioner deems necessary or appropriate to correct the violation. The Commissioner may also take disciplinary action pursuant to section 103 of this regulation.

7. The Commissioner may, for good cause, extend any period specified in this section that is applicable to an examiner or the Commissioner for an additional period of not more than 15 days.

Sec. 11. Section 72 of LCB File No. R052-09, which was adopted by the Commissioner of Mortgage Lending and filed with the Secretary of State on August 25, 2009, is hereby amended to read as follows:

Sec. 72. 1. Each licensee shall keep and maintain, at all times at each location where the licensee conducts business, complete and suitable records of all transactions by the licensee at that location. Each licensee shall also keep and maintain, at all times at each such location, all original books, papers and data, or copies thereof, clearly reflecting the financial condition of the business of the licensee and shall retain records of all of the activity of the licensee for a period of at least 4 years after the date of the last activity relating to the transaction.

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

- (a) All contracts entered into between the licensee and the homeowner;
- (b) Any additional contracts entered into between parties to the transaction;
- (c) All disclosures provided to the homeowner;
- (d) All authorizations signed by the homeowner;
- (e) All worksheets;
- (f) All mortgage statements and notices;
- (g) All related loan documentation for the loan subject to modification or other covered services;

(h) All lender or servicer requested items, including, but not limited to, hardship letters, bank statements, W-2 forms, pay stubs, expense support or tax returns;

(i) All correspondence between the lender or homeowner with the licensee, including, but not limited to, letters, messages sent via electronic mail, facsimiles and logs related to calls or other contacts or information;

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

(k) Copies of all public, recorded documents, including, but not limited to, the notice of default and election to sell and the notice of sale;

(l) Any other documentation used by the licensee in the normal course of business as it relates to a homeowner;

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

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

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

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

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

(r) Copies of all material correspondence related to the business of the licensee not covered in paragraph (i), including, but not limited to, electronic messages; and

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

3. Each independent licensee shall submit to the Commissioner each month a report of activity for the previous month. The form and content of such report shall be as prescribed by the Commissioner.

Sec. 12. Section 73 of LCB File No. R052-09, which was adopted by the Commissioner of Mortgage Lending and filed with the Secretary of State on August 25, 2009, is hereby amended to read as follows:

Sec. 73. For the purpose of compliance with section 3.3 of Assembly Bill No. 152 of the 75th Session of the Nevada Legislature, a “separate trust account” means a trust account maintained with a federally insured depository institution located in this State that is separate from accounts belonging to the independent licensee. The trust account:

1. May include money collected from various homeowners. However, the independent licensee must maintain separate internal subsidiary ledgers for each homeowner which include:

(a) The name, address and telephone number of the homeowner;

(b) The address and assessor parcel number for the property securing the loan for which the licensee is providing services;

- (c) The account number of each loan;
- (d) The lender or loan servicer contact information related to each loan;
- (e) The amount and date of the initial and each subsequent payment received from the homeowner or other parties noted with separate entries;
- (f) The amount and date of each deposit into the trust account maintained with the federally insured depository institution; and
- (g) The amount and date of each withdrawal from the trust account and the name of each recipient of each withdrawal with the contact information for each recipient separately maintained.

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

3. Must be under the control of the independent licensee. An associated licensee may not maintain client trust accounts.

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

5. Must list the licensed address of the independent licensee as the mailing address for all correspondence and depository institution trust account statements related to the trust account.

Sec. 13. Section 80 of LCB File No. R052-09, which was adopted by the Commissioner of Mortgage Lending and filed with the Secretary of State on August 25, 2009, is hereby amended to read as follows:

Sec. 80. 1. As a condition to doing business in this State, each independent licensee shall deposit with the Commissioner and keep in full force and effect a surety bond payable to the State of Nevada, in the amount set forth in subsection 4, which is executed by a corporate surety satisfactory to the Commissioner and which names as principals the independent licensee and all associated licensees employed by or otherwise associated with the independent licensee.

2. At the time of filing an application for a license as a covered service provider, foreclosure consultant or loan modification consultant and at the time of filing an application for the renewal of such a license, an applicant who is or who will be an independent licensee shall file with the Commissioner proof that the applicant is named as a principal and all associated licensees employed by or otherwise associated with the independent licensee are named as principals on the surety bond deposited with the Commissioner by the independent licensee.

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

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

The condition of that obligation is such that:

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

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

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

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

.....(Seal)

Principal

.....(Seal)

Surety

By.....

Attorney-in-fact

.....

Licensed ~~resident~~ *registered* agent

4. ~~[Except as otherwise provided in subsection 5, each]~~ *Each* independent licensee shall deposit a surety bond in the amount of \$75,000 that complies with the provisions of this section. ~~[or a substitute form of security that complies with the provisions of section 81 of this regulation.]~~

5. If an independent licensee maintains any accounts described in section 73 of this regulation, and the 6-month average balance in those accounts exceeds \$50,000, the independent licensee shall deposit a surety bond in the amount of \$100,000 that complies with the provisions of this section. ~~[or a substitute form of security that complies with the provisions of section 81 of this regulation.]~~

Sec. . Section 82 of LCB File No. R052-09, which was adopted by the Commissioner of Mortgage Lending and filed with the Secretary of State on August 25, 2009, is hereby amended to read as follows:

Sec. 82. 1. The surety may cancel a surety bond upon giving 60 days' notice to the Commissioner by certified mail. Upon receipt by the Commissioner of such a notice, the Commissioner will immediately notify the independent licensee who is a principal on the surety bond of the effective date of cancellation of the surety bond, and that the license of the independent licensee will be revoked unless an equivalent surety bond ~~for a substitute form of security authorized by section 81 of this regulation~~ is furnished before the effective date of the cancellation. The notice must be sent to the independent licensee by certified mail to the independent licensee's last address of record filed in the office of the Commissioner.

2. If the independent licensee does not comply with the requirements set out in the notice from the Commissioner, the license of the independent licensee must be revoked as of the date the surety bond is cancelled.

Sec. 14. Section 83 of LCB File No. R052-09, which was adopted by the Commissioner of Mortgage Lending and filed with the Secretary of State on August 25, 2009, is hereby amended to read as follows:

Sec. 83. 1. ~~Any~~ *Except as provided in subsection 2, any* person claiming against a surety bond may bring an action in a court of competent jurisdiction on the surety bond for damages to the extent covered by the surety bond. A person who brings an action on a surety bond shall notify the Commissioner in writing upon filing the action. An action may be commenced not more than 3 years following the commission of the act on which the action is based.

2. The Commissioner may make a claim on a surety bond without the necessity of commencing an action in a court of competent jurisdiction.

~~2.~~ *3.* Upon receiving a request from a person for whose benefit a surety bond is required, the Commissioner will notify the person:

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

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

~~3.~~ *4.* If a surety wishes to make payment without awaiting action by a court, the amount of the surety bond must be reduced to the extent of any payment made by the surety in good faith under the surety bond. Any payment must be based on written claims received by the surety before any action is taken by a court.

~~4.~~ *5.* The surety or the Commissioner may bring an action for interpleader against all claimants upon the surety bond. If the surety or the Commissioner does so, the surety or the Commissioner, as applicable, will publish notice of the action at least once each week for 2 weeks in every issue of a newspaper of general circulation in:

(a) If the principal office of the independent licensee whose surety bond is at issue is located within this State, the county in which the independent licensee has his principal office; or

(b) If the principal office of the independent licensee whose surety bond is at issue is not located within this State, Clark County, Nevada.

~~5.~~ *6.* The surety may deduct its costs of the action, including, without limitation, attorney's fees and publication, from its liability under the surety bond.

~~6.~~ *7.* Claims against a surety bond have equal priority, and if the surety 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 independent licensee for the unpaid balance.

Sec. 15. Section 84 of LCB File No. R052-09, which was adopted by the Commissioner of Mortgage Lending and filed with the Secretary of State on August 25, 2009, is hereby amended to read as follows:

Sec. 84. 1. The term of the surety bond ~~for substitute for the surety bond, if applicable,~~ must be not less than 1 year.

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

3. The Commissioner may reject any surety bond ~~for substitute for the surety bond~~ which fails to conform to the requirements of this chapter or chapter 645F of NRS.

4. ~~An independent licensee may change the form of security deposited with the Commissioner. If the independent licensee changes the form of the security, the Commissioner may retain for not more than 1 year any portion of the security previously deposited by the independent licensee as security for claims arising during the time the previous security was in effect.~~

~~—5.—~~ If the amount of the ~~deposited security~~ *surety bond* falls below the amount required by this chapter or chapter 645F of NRS, ~~for that security,~~ the license of the independent licensee must be revoked as of the date the deposited ~~security~~ *surety bond* falls below the amount required.

Sec. 16. Section 88 of LCB File No. R052-09, which was adopted by the Commissioner of Mortgage Lending and filed with the Secretary of State on August 25, 2009, is hereby amended to read as follows:

Sec. 88. ~~An~~ *A* licensee who negotiates in a language other than English in the course of entering into a contract for the provision of any covered service shall deliver to the homeowner at least 2 calendar days before the execution of the contract a translation in at least 10-point type of the material terms of the contract in the language in which the contract was negotiated, along with a statement indicating that the original contract will be in English.

Sec. 17. Section 127 of LCB File No. R052-09, which was adopted by the Commissioner of Mortgage Lending and filed with the Secretary of State on August 25, 2009, is hereby amended to read as follows:

Sec. 127. 1. Notwithstanding the provisions of sections 2 to 126, inclusive, of this regulation to the contrary, during the period from the date this regulation is filed with the Secretary of State until December 31, 2009, inclusive, the license of a covered service provider, foreclosure consultant or loan modification consultant is effective upon the date that the applicant for a license as a covered service provider, foreclosure consultant or loan modification consultant:

(a) Except as otherwise provided in this subsection, has filed with the Commissioner of Mortgage Lending a complete application package as provided in chapter 645F of NRS, sections

2 to 126, inclusive, of this regulation, and any other regulation adopted pursuant to chapter 645F of NRS;

(b) Has posted the surety bond as prescribed in section 80 of this regulation ~~for has provided a substitute for the surety bond as prescribed in section 81 of this regulation, if applicable~~; and

(c) Has received written notification from the Commissioner that a complete application package as provided in paragraph (a), except as otherwise provided in this subsection, has been received by the Commissioner.

□ A natural person who is required to complete the educational requirements for initial licensure prescribed in section 43 of this regulation, including, without limitation, a natural person who is an applicant for a license as a covered service provider, foreclosure consultant or loan modification consultant, will have 3 months from the date that the complete application package as provided in paragraph (a) is received by the Commissioner to complete the educational requirements for initial licensure prescribed in section 43 of this regulation.

2. The license issued pursuant to subsection 1 must be invalidated by the Commissioner if, upon investigation, the Commissioner determines that the applicant does not meet the requirements of chapter 645F of NRS, sections 2 to 126, inclusive, of this regulation, or any other regulation adopted pursuant to chapter 645F of NRS. The Commissioner will notify the applicant, in writing, if a license is invalidated pursuant to this section. Such invalidation shall be construed as a license denial. A covered service provider, foreclosure consultant or loan modification consultant who accepts a license upon the foregoing conditions agrees that invalidation of the license will be construed as a license denial.

3. The provisions of this section do not apply to an application for a license which is received by the Commissioner after December 31, 2009.

4. As used in this section:

(a) "Covered service provider" has the meaning ascribed to it in section 6 of this regulation.

(b) "Foreclosure consultant" has the meaning ascribed to it in NRS 645F.320.

(c) "Loan modification consultant" has the meaning ascribed to it in section 2 of Assembly Bill No. 152 of the 75th Session of the Nevada Legislature.

Sec. 18. Section 81 of LCB File No. R052-09, which was adopted by the Commissioner of Mortgage Lending and filed with the Secretary of State on August 25, 2009, is hereby repealed.

Sec. 19. Section 112 of LCB File No. R052-09, which was adopted by the Commissioner of Mortgage Lending and filed with the Secretary of State on August 25, 2009, is hereby repealed.

TEXT OF REPEALED SECTIONS

Section 81 of LCB File No. R052-09:

Sec. 81. 1. As a substitute for the surety bond required by section 80 of this regulation, an independent licensee may, in accordance with the provisions of this section, deposit with any bank or trust company authorized to do business in this State which is federally insured, in a form approved by the Commissioner:

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

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

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

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

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

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

Section 112 of LCB File No. R052-09:

Sec. 112. 1. The Commissioner may issue the denial of any application for a license.

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

3. Upon receipt of a request for a hearing pursuant to subsection 2, the Commissioner may designate a person to serve as a hearing officer and a hearing must be set as promptly as possible.

4. Each party to any hearing held pursuant to this section shall, not later than 10 days before the hearing, provide to the opposing party and to the hearing officer all documents anticipated to be used at the hearing. No other discovery is allowed.