

**PROPOSED REGULATION OF THE
COMMISSIONER OF FINANCIAL INSTITUTIONS**

LCB File No. R045-00

April 3, 2000

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

AUTHORITY: §§1, 2, 5-12, 16-19, 22-28, 30, 31, 32, 34-40, NRS 645B.060; §§3, 4 and 21, NRS 645B.060 and 645B.700; §14, NRS 645B.060 and 645B.115; §§13 and 29, NRS 645B.060 and 645B.080; §15, NRS 645B.060 and 645B.185; §20, NRS 645B.060 and 645B.600; §33, NRS 645B.060 and 645B.189.

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

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 645B.0103 to 645B.0135, inclusive, and sections 3, 4 and 5, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Major violation” means a violation of the provisions of chapter 645B of NRS or this chapter:*

- 1. Which causes a loss of \$500 or more or other substantial harm to any person;*
- 2. Which, in the opinion of the commissioner, could have caused a loss of \$500 or more or other substantial harm to any person; or*
- 3. For which the commissioner has taken disciplinary action repeatedly, except a violation for the late filing of required reports, financial statements or fees that the commissioner considers to be a minor violation.*

Sec. 4. *“Minor violation” means any violation that is not a major violation.*

Sec. 5. *“Qualified employee” means:*

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 section 11 of this regulation to act on the behalf of the partnership, corporation or limited-liability company; or

2. A person designated by a sole proprietorship who satisfies the requirements set forth in subsection 3 of NRS 645B.020, NAC 645B.010 and section 11 of this regulation.

Sec. 6. *A person who has an unexpired certificate of exemption issued pursuant to chapter 645B of NRS shall be deemed to have an unexpired certificate of exemption issued pursuant to chapter 645E of NRS.*

Sec. 7. 1. *A mortgage broker shall not conduct business using a fictitious name unless the mortgage broker:*

(a) Complies with chapter 602 of NRS;

(b) Files with the division a certified copy, issued by the appropriate county clerk, of the certificate filed by the mortgage broker pursuant to chapter 602 of NRS; and

(c) Receives from the division a license or certificate of exemption indicating the fictitious name.

2. If a mortgage broker conducts business using a fictitious name pursuant to this section, the mortgage broker may conduct business using a new fictitious name only if the mortgage broker:

(a) Obtains a certified copy, issued by the appropriate county clerk, of the certificate filed by the mortgage broker pursuant to chapter 602 of NRS indicating the new fictitious name;

(b) Files with the division, not later than 10 calendar days after obtaining the certified copy pursuant to paragraph (a):

- (1) The certified copy obtained pursuant to paragraph (a); and*
- (2) The current license or certificate of exemption of the mortgage broker; and*
- (c) Receives from the division an amended license or certificate of exemption indicating the new fictitious name.*

Sec. 8. 1. *The division shall not issue a license or certificate of exemption with a name that is the same as or confusingly similar to a name on a license or certificate of exemption previously issued by the division.*

2. A mortgage broker shall not conduct business using a name other than the name approved by the division and indicated on the license or certificate of exemption issued by the division to the mortgage broker.

Sec. 9. 1. *If a person engages in an activity in violation of the provisions of chapter 645B of NRS or this chapter, the commissioner may issue an order to the person directing the person to cease and desist from engaging in the activity.*

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

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

(b) In a manner that violates the provisions of chapter 645B of NRS or this chapter.

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

4. Not later than 30 calendar days after receiving an order pursuant to this section, the person who receives the order may file a verified petition with the commissioner to request a

hearing. Upon receipt of the verified petition, the commissioner may, for good cause shown, suspend the order pending the hearing. The commissioner will hold the hearing on a date not later than 30 calendar days after the date the petition is filed unless the commissioner and the person agree to another date. The order to cease and desist is rescinded if the commissioner fails to:

(a) Hold a hearing:

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

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

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

5. The decision of the commissioner after a hearing is a final decision of the division for the purposes of judicial review.

Sec. 10. 1. *The commissioner will refer to the appropriate federal or state agency for investigation and appropriate action each suspected violation of:*

(a) The Truth and 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.

2. For the purposes of NRS 645B.670, a mortgage broker commits a violation if the mortgage broker:

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

(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.

Sec. 11. 1. *Every partnership, corporation or limited-liability company doing business as a mortgage broker in this state shall designate a qualified employee who may, upon approval of the commissioner, act on behalf of the partnership, corporation or limited-liability company.*

2. The commissioner will approve the qualified employee designated pursuant to subsection 1 if the qualified employee may perform any act authorized by a license issued by the commissioner pursuant to chapter 645B of NRS when the qualified employee is acting in his capacity as a qualified employee of the partnership, corporation or limited-liability company. Approval from the commissioner pursuant to this section does not entitle the qualified employee to perform any act authorized by a license issued by the commissioner pursuant to chapter 645B of NRS when the qualified employee is acting on his own behalf.

3. If the qualified employee designated pursuant to subsection 1 is not approved by the commissioner pursuant to subsection 2 or ceases to be a qualified employee as defined in section 5 of this regulation, the partnership, corporation or limited-liability company, 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 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 section 5 of this regulation; or

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

Sec. 12. *1. 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.

Sec. 13. *The mortgage broker shall retain records of all its completed mortgage transactions for a period of at least 6 years after the date of the last activity relating to the transaction. After a record has been retained 2 or more years, the mortgage broker may cause the record to be reproduced by the microphotographic process, optical disk imaging or any other equivalent technique designed to ensure an accurate reproduction of the original record. A record reproduced as authorized by this section must be considered by the commissioner to be the same as the original record. Upon completion of the reproduction of a record as authorized by this section, the original of the record may be destroyed.*

Sec. 14. *For the purpose of determining the net worth of a mortgage broker pursuant to NRS 645B.115, the commissioner will interpret the term “net worth” to mean the amount by which the assets of a mortgage broker exceed its liabilities, calculated in accordance with generally accepted accounting principles where the mortgage broker:*

- 1. Must exclude any intangible and any amount receivable by the mortgage broker that is related to the intangible; and*
- 2. May exclude any shareholder debt that is subordinated.*

Sec. 15. *1. The commissioner will consider a mortgage broker or mortgage agent to “accept money from an investor to acquire ownership of a beneficial interest in a loan secured by a lien on real property” within the meaning of NRS 645B.185 if the mortgage broker or mortgage agent:*

- (a) Solicits a loan secured by a lien on real property for the investor; or*
 - (b) Arranges for the investor to invest in a loan secured by a lien on real property.*
- 2. The disclosure form given to an investor pursuant to NRS 645B.185 must be in substantially the following form:*

(At least 14-point bold type)

MORTGAGE INVESTMENT DISCLOSURE FORM

(At least 10-point type)

IMPORTANT: *Pursuant to NRS 645B.185, each investor must sign and date a disclosure form before a mortgage broker or mortgage agent accepts money for the investment. This form must be executed for each separate loan in which the investor invests money. A mortgage broker or mortgage agent may not act as the*

investor's attorney in fact or agent in the signing or dating of this form and may not by agreement alter or waive these disclosure requirements.

Description of loan:_____

(At least 14-point bold type)

***BEFORE YOU INVEST IN A PROMISSORY NOTE SECURED BY
AN INTEREST IN REAL PROPERTY, YOU SHOULD KNOW. . .***

The funding of a loan or purchase of a promissory note that is secured by a lien on real property (mortgage loan) is an investment that involves some risk.

(At least-10 point type)

An investment in a promissory note secured by a lien on real property, usually through a deed of trust (mortgage loan or mortgage loan investment), like most investments involves risk that the investment will not perform as expected. The mortgage broker with whom you are dealing is not a depository institution, and a deed of trust investment is not secured by any depository insurance or insured or guaranteed by any agency of the state or federal government. Nevada law prohibits the mortgage broker with whom you are dealing from representing or even implying to you that he or she will insure or guarantee that the investment will perform as expected. The borrower on the loan may default in required payments, and you may lose all or part of the principal amount you invested and/or the interest you expected to earn from the investment.

Some of the most significant factors that affect your risk in a mortgage loan investment include: (1) the knowledge, experience and integrity of the mortgage broker with whom you are dealing; (2) the market value and equity of the property that will secure the promissory note; (3) the borrower's financial standing and

creditworthiness; (4) the escrow process involving the funding of the loan or purchase of the note; (5) the documents and instruments describing, evidencing and securing the loan; (6) provisions regarding the collection and servicing of the loan; and (7) provisions for enforcement of the deed of trust.

(At least 14-point bold type)

You are entitled to information about the mortgage broker with whom you are investing.

(At least 10-point bold type)

You are entitled to receive information regarding the mortgage broker with whom you are dealing from the Division of Financial Institutions, which may be contacted at either one of the following locations:

Division of Financial Institutions

406 E. Second Street, Suite 3

Carson City, Nevada 89701-4758

(775) 687-4259

Division of Financial Institutions

2501 E. Sahara Avenue Suite 300, Third Floor

Las Vegas, Nevada 89104

(702) 486-4120

You may wish to ascertain:

- Whether the mortgage broker or mortgage agent with whom you are dealing is properly licensed or registered with the Division of Financial Institutions.*
- How long the mortgage broker or mortgage agent has been licensed or registered.*
- Whether the Division of Financial Institutions during the immediately preceding 5 years has disciplined the mortgage broker.*
- The findings and results of any investigation which was completed during the immediately preceding 5 years against the mortgage broker pursuant to the provisions of Chapter 645B of NRS and which has*

resulted in a finding by the Commissioner that the mortgage broker committed a violation of a provision of Chapter 645B of NRS, a regulation adopted pursuant to this chapter or an order of the Commissioner.

You also have the right to request the mortgage broker with whom you are dealing to authorize the Division of Financial Institutions to release to you the most recent financial statement of the mortgage broker on file with the Division. YES, I would like to review a financial statement. NO, I would not like to review a financial statement.

Disclosures required by subparagraphs (3) and (4) of paragraph (b) of subsection 6 of NRS 645B.185:

Has any disciplinary action been taken by the commissioner against the mortgage broker or any general partner, officer or director of the mortgage broker within the preceding 12 months? YES NO. If yes, describe below:

Has the mortgage broker or any general partner, officer or director of the mortgage broker been convicted within the preceding 12 months for violating any law, ordinance or regulation that involves fraud, misrepresentation or a deceitful, fraudulent or dishonest business practice? YES NO. If yes, describe below:

(At least 14-point bold type)

You are entitled to have a written appraisal of the property that is to secure your deed of trust investment as well as other information relating to the property.

(At least 10-point type)

The law requires the mortgage broker with whom you are dealing to obtain and make available for your inspection a written appraisal of the real property which is to secure the mortgage loan investment unless you specifically waive in writing your right to have the appraisal performed. An appraiser who is licensed or certified to perform real estate appraisals in this state must perform the appraisal if the property is located in this state. The mortgage broker with whom you are dealing is prohibited from performing the appraisal or providing any estimate or opinion of the value of the property that is to secure the mortgage loan investment. You are entitled to a copy of the appraisal upon request.

I waive my right to an appraisal for this loan. Investor: _____

I wish to review an appraisal for this loan. Date: _____

In addition to a written appraisal, you are entitled to know whether the real property that will secure the loan is encumbered by any other liens and, if so, the priority of each such lien, the amount of debt secured by each such lien and the current status of that debt, including, without limitation, whether the debt is being paid or is in default.

The real property that will secure this loan is, is not encumbered by any other liens. If other liens exist, describe, for each lien:

Description: _____

Amount encumbered: _____

Priority: _____

Current status: _____

(At least 14-point type)

You are entitled to review information relating to the financial standing and creditworthiness of the borrower and documentation relating to the mortgage loan.

(At least 10-point type)

If you are a natural person, i.e., not a corporation, partnership or limited-liability company, the law requires that you be given the opportunity to receive and review certain information relating to the loan. You have the right to receive and review some documents before you invest in the loan, while some documents will be provided to you after the loan is made.

Before you decide to invest, you have the right to receive and review the following information regarding the financial standing and creditworthiness of the borrower unless you specifically waive in writing your right to receive such information:

- 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.*
- Evidence of the prospective borrower's history of employment and income, such as a tax return or an employer's statement of the borrower's past yearly income.*
- A report on the prospective borrower's credit history issued by a credit reporting agency, including an explanation by the borrower of any material derogatory item in the report and evidence that the report has been compared for accuracy to the borrower's application of the loan.*
- A preliminary report on the status of the title of the property which is proposed as security for the loan.*

- *An analysis by the mortgage broker of the ability of the prospective borrower to pay his monthly debts.*

Regardless of whether you are a natural person, corporation, partnership or limited-liability company, if the loan is made, you are entitled to review the following documentation relating to the mortgage investment, unless you specifically waive in writing your right to receive such information:

- *A copy of a policy of fire insurance which is adequate to cover all liens on the property securing the loan, including an endorsement naming the investor as the insured, when applicable.*
- *A copy of a statement signed by each investor acknowledging that the decision to make the loan was made after the investor was provided with the material described above.*
- *If the investor is a corporation, partnership or limited-liability company, a copy of its statement authorizing the loan.*
- *If the borrower is a corporation, partnership or limited-liability corporation, a copy of its statement authorizing the loan.*

Regardless of whether you are a natural person, corporation, partnership or limited-liability company, if the loan is made, you must receive the following documentation relating to the mortgage investment:

- *A copy of the promissory note.*
- *A recorded copy of the deed of trust securing the loan.*
- *A copy of the policy of title insurance on the property securing the loan.*

(At least 14-point type)

You are entitled to review documentation relating to how the mortgage loan is funded and serviced.

(At least 10-point type)

Nevada law requires the mortgage broker to fund the entire amount of the loan either out of his or her trust account directly to the borrower or through a third-party escrow agent. In most cases, the loan will be funded through a third-party escrow agent. An escrow is opened when money, documents, instruments and written instructions regarding the transaction (escrow instructions) are conditionally delivered by the principals to a third party (escrow agent). The escrow instructions set forth the conditions that must be satisfied or waived before the escrow agent may disburse your money to either the borrower or the note holder. You have the right to review the escrow instructions. The escrow instructions should be consistent with your understanding of the loan transaction and should identify a specific promissory note and deed of trust (or interest therein). Escrow “closes” when all the conditions of the escrow instructions have been waived or satisfied, the instruments have been recorded and the money was disbursed. You have the right to review a closing statement relating to the escrow describing to whom and how the money was disbursed.

In many cases, including those where the investments consist of “fractionalized” interests, i.e., ownership of less than 100% of the mortgage investment, the loan requires servicing by an authorized agent. Loan servicing includes collecting payments from borrowers, disbursing payments to investors or note holders, mailing of appropriate notices, monitoring the status of senior liens and encumbrances, maintaining adequate insurance coverage, and coordinating foreclosure proceedings. The mortgage broker with whom you are dealing is authorized by Nevada law to act as the servicing agent for the mortgage loan he originates. It is recommended that all persons investing in a mortgage loan that will be serviced by a servicing agent execute a written servicing agreement that clearly specifies the authority granted to the servicing agent. The servicing agreement should address issues such as (1) the fees for servicing and how they are to be paid, (2) the person who has the authority to instruct the trustee under the deed of trust to commence foreclosure proceedings in the event of a default, (3)

how, in the case of a “fractionalized” note and deed of trust with multiple parties owning beneficial interests, the parties are to determine and direct the actions to be taken in the event of default or with respect to other matters that involve the enforcement of terms of the promissory note and/or deed of trust (Nevada law requires that the documentation pertaining to a note and deed of trust owned initially by more than one natural person include a provision by which record holders of 51% or more of the beneficial interests in the mortgage loan may direct certain actions that require direction or approval of the holders of beneficial interests), (4) the identity of person responsible for holding the original promissory note and deed of trust, (5) how the loan servicing agreement may be terminated by the investors in the mortgage loan, (6) the right to obtain the names, addresses and phone numbers of other persons with beneficial interests in the loan, and (7) the monitoring of any senior liens.

A mortgage broker performing loan servicing has an obligation to account to the borrower and every investor for money collected and disbursed in the exercise of that function.

(At least 14-point type)

You have the right to know whether the mortgage broker with whom you are dealing is acting in any capacity, or has any other interest, other than as a mortgage broker.

(At least 10-point type)

Nevada law requires the mortgage broker with whom you are dealing to disclose to you whether he or she has any personal interest in the mortgage loan other than as a mortgage broker. For example, if the mortgage broker owns a 50% interest in the builder applying for a construction loan, he is required to disclose that interest to you. In addition, if a mortgage broker or a relative of the mortgage broker is licensed as, conducts business as or holds a controlling interest or position in (1) a construction control company, (2) an escrow agency, or (3) a title agent, a title insurer or an escrow officer of a title agent or title insurer, he or she must fully disclose that relationship to

every investor and may not require, as a condition to the acquisition or purchase of an interest in a mortgage loan, that the investor transact business with or use the services of the other business.

The mortgage broker has an interest in this loan in a capacity other than as a mortgage broker. YES, NO. If yes, explain below:

(At least 14-point type)

Enforcement of a promissory note and deed of trust involves some risk.

(At least 10-point type)

When the borrower on a mortgage loan fails to make required payments, the actions an investor can take, or that a servicing agent can take on behalf of an investor, are determined by provisions of Nevada law and the documents and instruments evidencing the mortgage loan. Frequently, the borrower who is delinquent on your loan is also delinquent on senior liens. Even though your loan may be current, the borrower may fail to maintain the payments on senior liens, such as taxes, insurance premiums, and/or deeds of trust. A breach of or default in connection with a senior lien by the borrower most likely constitutes an event of default under your deed of trust. It is therefore important that the status of all senior liens be monitored. Before investing in a junior deed of trust, you should determine the amount of debt service (payments) required to maintain the senior lien(s). To protect your investment during any senior lien (loan) foreclosure, it may be necessary for you to maintain the payments (with your own money) on all senior liens. You may lose your interest in the property securing the loan if a senior lien forecloses on the property.

There will be other costs associated with enforcing a mortgage loan such as attorneys' fees and processing fees, and there will likely be a delay of some months before the foreclosure process is complete. Issues such as whether

to commence a judicial or nonjudicial foreclosure, deficiency judgments, rents and profits if the property is income-producing, and bankruptcy may also need to be addressed.

(At least 14-point type)

If you have questions.

(At least 10-point type)

If you have any questions regarding any of the issues discussed in this disclosure form, discuss them with your mortgage broker, lawyer, financial advisor or trusted friend or family member. No one can guarantee that a particular investment will be risk free, but with information about the specific risks involved, you can take steps to minimize your risk.

Loan: _____

Investor signature required: _____

Title (if investor is a corporation, partnership or limited-liability company): _____

Dated: _____

Sec. 16. *The power of attorney required pursuant to NRS 645B.330 must be in substantially the following form:*

Special Power of Attorney

The undersigned, _____, does hereby appoint (name of mortgage broker) my true and lawful attorney, to perform services related to the following loan in which

I own a beneficial interest: _____ . The services to be performed are described below:

(describe services here)

This power of attorney shall not be effective to authorize any transaction that subordinates the priority of the recorded deed of trust that secures this loan unless accompanied by a writing issued by the undersigned that consents to such subordination.

This power of attorney shall not be effective to authorize the use or release of money in which the undersigned owns a beneficial interest for any purpose except for the provision of the services described above relating to the loan described above unless accompanied by written authorization by the undersigned for the use or release of money for the other purpose.

This power of attorney is effective for a period of [not more than 6] ____ months after the date executed but may be extended for additional [not more than 6] ____ -month increments if authorized in writing by the undersigned. Only one such authorization may be given for an extension during each [not more than 6] ____ -month period.

I give and grant to my said attorney full power to execute in my name contracts, escrow instructions, conveyances, mortgages, deeds of trust, and all other documents necessary to carry out the services described herein as fully to all intents and purposes as the undersigned

might or could do if personally present, hereby ratifying and confirming all that my said attorney shall lawfully do, or cause to be done, by virtue of these presents.

Witness my hand this _____ day of _____, _____.

State of _____

County of _____

This instrument was acknowledged before me on (date) _____, by (name(s) of person(s) _____

(Signature of notarial officer)

(Seal if any)

(Title and rank (optional))

(My commission expires (optional) _____)

Approved by the commissioner of financial institutions on _____.

Sec. 17. 1. *Before a mortgage broker or mortgage agent engages in any act or transaction on behalf of an investor pursuant to a power of attorney, the power of attorney must first be submitted to the commissioner for approval. The commissioner will, within 10 business days after receiving a request for approval of a power of attorney:*

(a) Approve the power of attorney;

(b) Approve the power of attorney on the condition that the mortgage broker amend the power of attorney as directed by the commissioner; or

(c) Reject the power of attorney.

2. *If the commissioner has not acted on a power of attorney submitted for approval pursuant to this section within 10 business days after receiving a request for approval of a power of attorney, the power of attorney shall be deemed approved.*

3. *The mortgage broker shall maintain in its file all written communications relating to the request for approval of the power of attorney.*

4. *Any writing executed or issued by a person extending the term of a power of attorney must be dated, and the mortgage broker shall maintain a copy of the extension in the file of the mortgage broker.*

5. *A power of attorney approved by the commissioner pursuant to this section must state the date that the commissioner approved the power of attorney. If the mortgage broker materially changes the power of attorney, the mortgage broker must resubmit the power of attorney to the commissioner for approval before the mortgage broker uses the power of attorney.*

Sec. 18. *In determining whether a mortgage broker has maintained adequate supervision of a mortgage agent, the commissioner will consider whether:*

1. The mortgage broker has made a reasonable effort to investigate the background and experience of a prospective mortgage agent and hire only mortgage agents whose background and experience indicate that the person is trustworthy and competent to conduct the business of a mortgage agent;

2. The mortgage broker has adopted and followed any policies and procedures, written or oral, relating to the supervision and training of mortgage agents;

3. The mortgage agent has followed the policies and procedures of the mortgage broker, written or oral, governing his activities;

4. The mortgage broker has established and followed a system of review for compliance with his written or oral policies and procedures;

5. The policies and procedures of the mortgage broker require regular review of the work of a mortgage agent;

6. The mortgage broker reviewed the work of the mortgage agent in the case under examination by the commissioner;

7. The policies and procedures of the mortgage broker include training in the requirements of chapters 645B of NRS and this chapter;

8. The mortgage broker makes copies of chapters 645B of NRS and this chapter available to mortgage agents;

9. The policies and procedures of the mortgage broker include a provision for continuing education for mortgage agents;

10. The mortgage broker spends a sufficient amount of time in the office where the mortgage agent is working;

11. The mortgage broker has received or acted on previous reports of alleged misconduct by the mortgage agent; and

12. Review of the previous work of the mortgage agent would have disclosed a problem with the conduct or issue being examined by the commissioner.

Sec. 19. 1. *A mortgage broker and any mortgage agent must sign the registration form required pursuant to NRS 645B.450.*

2. A mortgage agent may associate with a mortgage broker at only one licensed office location of the mortgage broker and may not associate with a mortgage broker exempt from chapter 645B of NRS or a mortgage broker whose office is located outside this state.

3. Upon request of a mortgage broker, the commissioner may waive the requirement of an investigation of the criminal history and background of a mortgage agent if such an investigation has been conducted within one year immediately preceding the date the registration form is submitted.

4. The registration of a mortgage agent pursuant to this section is effective upon the date that the mortgage broker files the form with the division, but must be invalidated by the division if, upon investigation, the division determines that the mortgage agent does not meet the requirements of paragraphs (a) and (b) of subsection 4 of NRS 645B.450. The division shall notify the mortgage broker and the mortgage agent in writing if a registration is invalidated pursuant to this subsection.

5. *The report of an investigation of the criminal history and background of a mortgage agent is confidential, and the commission will release the report only pursuant to a valid subpoena or court order.*

6. *The written statement of the circumstances surrounding the termination of a mortgage agent required by subparagraph (1) of paragraph (b) of subsection 5 of NRS 645B.450 will be considered a public record.*

Sec. 20. 1. *A complaint filed pursuant to NRS 645B.600 must:*

(a) Be in writing;

(b) Be signed by the person filing the complaint or the authorized representative of the person filing the complaint;

(c) Contain the address and telephone number of the person filing the complaint or the authorized representative of the person filing the complaint;

(d) Describe the nature of the complaint in as much detail as possible; and

(e) Include as exhibits copies of any documentation supporting the complaint.

2. *If the commissioner determines that a complaint filed pursuant to subsection 1 contains an alleged action which, if true, violates a provision of chapter 645B of NRS, a provision of this chapter or an order of the commissioner, the commissioner will investigate each such violation alleged in the complaint, unless the commissioner has previously investigated the alleged violation.*

3. *Except as otherwise provided in subsection 2 of NRS 645B.090, if the commissioner does not conduct an investigation of an alleged violation pursuant to subsection 2 because the commissioner determines that the alleged action, if true, does not violate a provision of chapter 645B of NRS, a provision of this chapter or an order of the commissioner, the*

commissioner will provide to the person who filed the complaint a written summary of the reasons for his decision.

4. The commissioner will provide a copy of the written complaint to the person against whom the complaint is filed pursuant to NRS 645B.600 and may order the person to respond in writing to the written complaint within a period of time specified by the commissioner.

Sec. 21. *The commissioner will suspend or revoke the license of the person who commits a major violation.*

Sec. 22. NAC 645B.010 is hereby amended to read as follows:

645B.010 ~~[(1)]~~ An applicant for a ~~[mortgage company's]~~ license *as a mortgage broker* must have:

~~[(a)]~~ **1.** At least 2 years of verifiable experience in lending money for real estate or mortgages; and

~~[(b)]~~ **2.** A knowledge of generally accepted accounting practices and bookkeeping procedures evidenced by verifiable experience in working in these areas or appropriate educational training, or both.

~~[- 2. If a qualified employee of the principal office or a branch office of a mortgage company is the person who satisfies the requirement for verifiable experience set forth in paragraph (a) of subsection 1, the qualified employee must also possess the qualifications set forth in subsection 3 of NRS 645B.020.]~~

Sec. 23. NAC 645B.015 is hereby amended to read as follows:

645B.015 **1.** A person ~~[who]~~ conducts verifiable business as a mortgage ~~[company is one~~ **who:**

~~—1.]~~ *broker if he:*

(a) Handles the arrangements between a borrower and a lender for a loan which is secured by a lien on real property and is consummated as a result of such arrangements;

~~2.~~ (b) Originates a loan secured by a lien on real property in the capacity of a lender or provider; or

~~3.~~ (c) Purchases or sells existing notes secured by liens on real property.

2. Evidence of ~~such~~ activity *described in subsection 1* must be submitted to the commissioner ~~of financial institutions~~ in the monthly report of activity.

Sec. 24. NAC 645B.020 is hereby amended to read as follows:

645B.020 An applicant must submit with his application for a license ~~;~~ *pursuant to chapter 645B of NRS:*

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

2. A copy of the ~~mortgage company's certificate of~~ *certificate filed by the mortgage broker pursuant to chapter 602 of NRS indicating* the fictitious name of the ~~business;~~ *mortgage broker*, if any.

3. If the applicant is a corporation, a copy of:

(a) Its articles of incorporation and its bylaws;

(b) Its ~~most recent biennial~~ 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

(c) The most recent list of its officers ~~directors~~ and resident agents ~~which~~ *that* is filed with the secretary of state.

4. 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 partners for the 2 years immediately preceding the year of the application.

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

6. If the applicant is a limited-liability company, a copy of:

(a) Its articles of organization and operating agreement;

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

(c) The most recent list of its members or managers, and resident agents, that is filed with the secretary of state.

Sec. 25. NAC 645B.030 is hereby amended to read as follows:

645B.030 ~~[The commissioner of financial institutions will not approve a branch of a mortgage company until its principal office has been examined by the commissioner and has received at least a satisfactory rating. An application for a license for a branch office must include evidence of adequate operating procedures and qualified personnel in order to ensure a lending quality which is equivalent to the mortgage company's principal office.]~~

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 registration form for mortgage agents with which it intends to associate required pursuant to NRS 645B.450.

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

- (a) The principal office of the mortgage broker has been examined by the commissioner and has received at least a satisfactory rating;*
- (b) The mortgage broker has registered with the division any mortgage agent who intends to work at the branch office pursuant to NRS 645B.450; and*
- (c) 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. A license for a branch office may be issued only in the name in which the mortgage broker is licensed to conduct business at its principal office.

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

5. A mortgage broker is responsible for and shall supervise:

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

Sec. 26. NAC 645B.040 is hereby amended to read as follows:

645B.040 *1.* Any material change in the ownership, management or principal employees of a mortgage ~~[company]~~ *broker at its principal office or a branch office* must be reported to the ~~[administrator of financial institutions]~~ *commissioner* within 30 *calendar* days after the change.

2. If a person acquires stock or ownership in a mortgage broker as a result of a transfer that constitutes a change of control pursuant to NRS 645B.095:

(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 broker until the commissioner has approved the transfer; and*

(c) *The mortgage broker may not change the location of its principal office or branch office until the commissioner has approved the transfer.*

3. *A mortgage broker may not close its principal office or a branch office until:*

(a) *The mortgage broker has returned its license; and*

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

4. *The request for approval of the closure of the principal office of the mortgage broker 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 broker and the plan for distribution of money in the account;*

(c) *If any mortgage agent associated with the mortgage broker has been terminated pursuant to subsection 5 of NRS 645B.450, evidence of the termination; and*

(d) *The location in this state where records of the mortgage broker will be maintained pursuant to subsection 1 of NRS 645B. 080 and subsection 6 of NAC 645B.080.*

Sec. 27. NAC 645B.060 is hereby amended to read as follows:

645B.060 1. ~~[The commissioner of financial institutions]~~ *Except as otherwise provided in this subsection, the commissioner* will charge and collect a fee of \$40 per hour from each

mortgage ~~[company]~~ *broker* for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 645B of NRS. *The commissioner may charge a fee of \$125 per hour for the time of an attorney required in any examination, investigation or hearing conducted pursuant to chapter 645B of NRS.*

2. The commissioner will bill each mortgage ~~[company]~~ *broker* upon the completion of the activity for the fee established in subsection 1. The fee must be paid within 30 *calendar* days after the date the bill is received. Except as otherwise provided in this subsection, any payment received after that date must include a penalty of 10 percent of the fee plus an additional 1 percent of the fee for each *complete* month, or portion of ~~[a]~~ *the last* month, that the fee is not paid. The commissioner may waive the penalty for good cause.

3. Failure of a mortgage ~~[company]~~ *broker* to pay the fee required in subsection 1 as provided in this section constitutes grounds for *the imposition of any discipline authorized pursuant to NRS 645B.670, including, without limitation, the* revocation of its license.

Sec. 28. NAC 645B.064 is hereby amended to read as follows:

645B.064 1. ~~[Except as otherwise provided in NAC 658.030, each mortgage company]~~ *Each mortgage broker* shall pay to the division ~~[of financial institutions of the department of business and industry]~~ an annual assessment ~~[of \$300]~~ *in an amount calculated in accordance with NAC 658.030* to cover the costs related to the employment of a certified public accountant and the performance of audits and examinations conducted by the division.

2. The division ~~[will]~~ *shall* bill each mortgage ~~[company]~~ *broker* for the assessment. The assessment must be paid within 30 *calendar* days after the date the bill is received.

3. A charge of 10 percent of the assessment will be imposed on any mortgage ~~[company]~~ *broker* whose assessment is received by the division after the date on which the assessment is due. *The commissioner may waive the penalty for good cause.*

Sec. 29. NAC 645B.070 is hereby amended to read as follows:

645B.070 1. Each mortgage ~~[company]~~ *broker* shall submit, ~~[on a monthly basis,]~~ *for each month, on a form approved by the commissioner,* a report on the volume of loans arranged in that month. ~~[These reports]~~ *If the mortgage broker is performing loan servicing and maintains any accounts described in subsection 4 of NRS 645B.175, the monthly report must include the information required pursuant to subsection 2. The monthly report* must be submitted to the commissioner ~~[of financial institutions]~~ by the 15th day of the month following the month for which the report was made. If no loans were arranged in that month, the report must ~~[so state:~~

~~—2.— The commissioner will not]~~ *state that fact.*

2. If, on the last day of any month, a debtor has failed to make 2 or more consecutive payments in accordance with the terms of the loan, a mortgage broker who is performing loan servicing and maintains any accounts described in subsection 4 of NRS 645B.175 shall:

(a) Include in its report to the commissioner:

- (1) The name, address and telephone number of the debtor;*
- (2) The total number and amount of any payments made on the current delinquency;*
- (3) The outstanding balance of the loan and any accrued interest on the last day of the month for which the report is submitted;*
- (4) A statement of whether the loan has been declared to be in default and, if so, the nature of any actions that have been taken because of the default; and*

(5) The date on which the mortgage broker sent the notice to investors required pursuant to paragraph (b) of subsection 1 or NRS 645B.260 and paragraph (b).

(b) Mail a notice containing the following information to the last known address of each investor who owns a beneficial interest in the loan not later than 15 days after the last day of any such month:

(1) The name, address and telephone number of the debtor;

(2) The total number of months and days that the debtor has failed to make a payment;

(3) The outstanding balance of the loan and any accrued interest on the last day of the month for which the notice is submitted; and

(4) A statement of whether the loan has been declared to be in default and, if so, the nature of any actions that have been taken because of the default.

3. If the mortgage broker is not servicing any loans in which a debtor has failed to make 2 or more consecutive payments in accordance with the terms of the loan, the monthly report required pursuant to subsection 1 must state that fact.

4. The mortgage broker must comply with the provisions of subsection 2 each month until the:

(a) Debtor or his designee remedies the delinquency in payments and any default; or

(b) Lien securing the loan is extinguished.

5. The commissioner may refuse to renew the license of a mortgage ~~company which~~ broker that has not submitted ~~the reports~~ a monthly report required by subsection 1 ~~for one~~ or more of the preceding 12 months.

Sec. 30. NAC 645B.080 is hereby amended to read as follows:

645B.080 1. Before ~~[a lender]~~ *an investor* who is a natural person makes a loan for which a licensed mortgage ~~[company]~~ *broker* is acting as a broker, the mortgage ~~[company]~~ *broker* shall provide, unless specifically waived in writing, to the ~~[lender:]~~ *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 ~~[lender:]~~ *investor*.

(b) Evidence of the ~~[prospective borrower's]~~ 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 ~~[prospective borrower's]~~ history of credit ~~[:]~~ *of the prospective borrower issued by a credit reporting agency*, including an explanation by the borrower of any material derogatory item in the report and evidence that the report has been compared for accuracy to the borrower's application for the loan.

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

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

~~[(f) A statement of the status of prior liens against the property which is proposed as security, including the current balance of the liens and the status of payments.~~

~~—(g) An appraisal of the property which is proposed as security.~~

~~—2. A mortgage company]~~

2. *A mortgage broker* shall retain a copy of the materials ~~[it has provided to a lender pursuant to subsection 1.]~~ *described in subsection 1 and, on a form provided by the division, a*

statement from the investor acknowledging the receipt or waiver of those documents and that 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 ~~[company]~~ *broker* shall retain in its files and provide to the ~~[lender:]~~ *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 . ~~;~~

~~—(d)]~~

4. If the loan is made, the mortgage broker shall retain in the files of the mortgage broker:

(a) A copy of a policy of fire insurance which is adequate to cover all liens on the property securing the loan, including an endorsement naming the ~~[lender]~~ *investor* as the insured, when applicable;

~~[(e) A copy of a statement signed by each lender acknowledging that the decision to make the loan was made after the lender was provided with the material required in subsection 1;~~

~~—(f) If the lender]~~

(b) *If the investor* is a corporation or partnership, a copy of its statement authorizing the loan; and

~~[(g)]~~ (c) If the borrower is a corporation or partnership, a copy of its statement authorizing the loan.

~~[4.— If the loan is made, the mortgage company shall provide the borrower with at least the items listed in paragraphs (a), (b) and (c) of subsection 3.~~

~~—5. The mortgage company]~~

5. *The mortgage broker shall provide, on a form provided by the division, a copy of the items listed in paragraphs (a) to (e), inclusive, of subsection 1 and paragraphs (a), (b) and (c) of subsection 4 to the investor and obtain a receipt from the investor unless the investor waives in writing his right to receive the documents. The mortgage broker shall provide, using a form provided by the division, a copy of the items listed in paragraphs (a), (b) and (c) of subsection 3 to the investor and obtain a receipt from the investor.*

6. *The mortgage broker shall store its original notes, if retained, in a fireproof container [] or room.*

7. *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. 31. NAC 645B.090 is hereby amended to read as follows:

645B.090 A mortgage ~~[company]~~ *broker* may solicit and accept ~~[a lender's]~~ *the* money *of an investor* before there is an actual request for a loan if the money is deposited and held in the same manner required for money accepted pursuant to NRS 645B.175.

Sec. 32. NAC 645B.100 is hereby amended to read as follows:

645B.100 All decisions regarding the funding of investments in mortgages must be made by the ~~[lender unless the authority to make those decisions is otherwise delegated to the mortgage company by contract.]~~ *investor.*

Sec. 33. NAC 645B.110 is hereby amended to read as follows:

645B.110 1. A licensed mortgage ~~[company]~~ *broker* shall not represent an activity which is not licensed ~~[under]~~ *pursuant to* chapter 645B of NRS as being licensed ~~[under]~~ *pursuant to* that chapter.

2. An advertisement for an activity which is licensed pursuant to chapter 645B of NRS must be separate and distinct from an advertisement for an activity which is not licensed pursuant to that chapter.

3. A licensed mortgage ~~[company]~~ *broker* must include in its advertisements ~~[:]~~, *including, without limitation, any advertising material available on the Internet:*

(a) Its name ~~[:]~~, *address and telephone number;* and

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

4. A mortgage broker shall not use advertising material that simulates the appearance of a check, a communication from a government entity, or an envelope containing a check or a communication from a government entity, unless:

(a) The words “THIS IS NOT A CHECK,” “NOT NEGOTIABLE” or “THIS IS NOT A GOVERNMENT ENTITY,” as appropriate, appear prominently on the envelope and any material that simulates the appearance of a check or a communication from a government 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.

5. Provided the representation of interest rates in advertisements complies with applicable provisions of federal law regarding the advertising of interest rates, the mortgage broker may

make changes in the interest rates advertised and any other nonsubstantive changes to its advertisements without additional approval from the commissioner.

Sec. 34. NAC 645B.120 is hereby amended to read as follows:

645B.120 ~~[H.]~~ An appraisal submitted to ~~[a lender]~~ *an investor* pursuant to NAC 645B.080 *must not be prepared by the mortgage broker and* must:

~~[(a) Be written in an objective manner so that a third person can follow the reasoning, logic and analysis of the appraiser in his determination of the final estimate of the market value of the property.~~

~~—(b) Be dated by the appraiser before the date on which a loan which is secured by the appraised property is made.~~

~~—(c) Contain an objective, concise description of the neighborhood, the site of the property and any improvements made to the property.~~

~~—(d) Contain an estimate of the value of the property, formulated according to each of the approaches customarily used by appraisers (cost, market data and income), as applicable.~~

~~—(e) Contain a statement from the appraiser in which he explains any difference in his estimate of the value of the property and the values formulated according to the customarily accepted approaches.~~

~~—2.— An appraisal must be prepared by an appraiser who:~~

~~—(a) Is professionally designated by a major, nationally recognized society of appraisers;~~

~~—(b) Is approved by the Federal National Mortgage Association; or~~

~~—(c) Has verifiable experience or training in the amount necessary to prepare an appraisal in accordance with the guidelines set forth by the association or those societies.]~~

1. If the appraised property is located in this state, be prepared by an appraiser who holds the appropriate license, certificate or permit issued by the real estate division of the department of business and industry; or

2. If the appraised property is located outside the state, be prepared by an appraiser who is authorized to perform the appraisal by the appropriate agency of the state in which the property is located.

Sec. 35. NAC 645B.130 is hereby amended to read as follows:

645B.130 1. If an owner, partner, director, *officer*, manager, *member* or employee of a licensed mortgage ~~[company has]~~ *broker, or a relative of an owner, partner, director, officer, manager, member or employee of a licensed mortgage broker:*

(a) Has any personal involvement in a lending or borrowing transaction of the mortgage ~~[company]~~ *broker* which is authorized under chapter 645B of NRS ~~[]~~; *or*

(b) Is licensed as, conducts business as or holds a controlling interest or position in:

(1) A construction control;

(2) An escrow agency or escrow agent; or

(3) A title agent, a title insurer or an escrow officer of a title agent or title insurer,

FLUSH the involvement must be disclosed to the borrower and the ~~[lender.]~~ *investor before the date that the loan is consummated.* Such a disclosure must be separate from the documents of the transaction and must clearly and concisely state the nature of the involvement. The statement of disclosure must be signed by the borrower and the ~~[lender.]~~ *investor* as an acknowledgment of the involvement. *The mortgage broker shall not act as the attorney in fact or the agent of an investor with respect to signing the acknowledgment.*

2. If a mortgage ~~[company]~~ *broker* is owned by a corporation in which one owner, director, manager or employee owns an interest of 10 percent or more, and that person has any personal involvement in a licensed transaction of the mortgage ~~[company]~~ *broker* the involvement must be disclosed to the borrower and the ~~[lender]~~ *investor* pursuant to subsection 1.

Sec. 36. NAC 645B.140 is hereby amended to read as follows:

645B.140 1. Before a person purchases an existing note secured by a deed of trust *or an interest therein* for which a licensed mortgage ~~[company]~~ *broker* is acting as a broker, the mortgage ~~[company]~~ *broker* shall provide to the purchaser, unless specifically waived in writing ~~[:]~~ *by that person:*

(a) A copy of the promissory note;

(b) A record of the history of payments on the note or a document signed by the seller and borrower stating the existing balance of the note;

(c) The policy of title insurance for the original beneficiaries of the note; and

(d) The original appraisal of the property securing the note, if available.

2. A mortgage ~~[company]~~ *broker* shall retain a copy of the materials it provides to the purchaser pursuant to subsection 1.

3. If the purchase is made, the mortgage ~~[company]~~ *broker* shall retain in its files the original or a copy and provide to the purchaser, respectively, the copy or original of the following documents:

(a) The promissory note and the assignment of the note.

(b) The recorded deed of trust and recorded assignment of the beneficial interest.

(c) The endorsement to the policy of title insurance or a new policy of title insurance for the assignment.

(d) A policy of fire insurance indicating coverage in an amount sufficient to cover all liens on the property including, if applicable, an endorsement naming the purchaser as a payee in case of loss.

(e) A statement signed by the purchaser acknowledging that the decision to purchase the note secured by a deed of trust was made after the purchaser was provided with and reviewed the material required in subsection 1.

Sec. 37. NAC 645B.145 is hereby amended to read as follows:

645B.145 1. Except as otherwise provided in subsection 3, a mortgage ~~[company]~~ *broker and any partnership, corporation or limited-liability company in which the mortgage broker, or any officer, director, employee or relative of the mortgage broker has a controlling interest,* shall not act as a trustee or substitute trustee for any deed of trust for which the mortgage ~~[company]~~ *broker* acted at any time as ~~[a lender,]~~ *an investor,* mortgage broker or holder of a beneficial interest if the loan for which the deed of trust was executed was funded in whole or in part by a person other than the mortgage ~~[company]~~ *broker* or has been assigned in whole or in part to one or more natural persons.

2. Except as otherwise provided in subsection 3, an officer, director or employee of a mortgage ~~[company]~~ *broker, a relative of any officer, director or employee of a mortgage broker, or an officer, director or employee of any corporation, partnership or limited-liability company in which the officer, director or employee has a controlling interest* shall not act as a trustee or substitute trustee for any deed of trust for which the mortgage ~~[company]~~ *broker* acted at any time as ~~[a lender,]~~ *an investor,* mortgage broker or holder of a beneficial interest if the loan for which the deed of trust was executed was funded in whole or in part by a person other

than the mortgage ~~[company]~~ *broker* or has been assigned in whole or in part to one or more natural persons.

3. A mortgage ~~[company]~~ *broker* may act as substitute trustee in a deed of trust for the purpose of reconveying title to the trustor upon payment in full of the note if the mortgage ~~[company]~~ *broker* receives a signed and notarized statement from each person holding a beneficial interest in the note, or ~~[that person's agent,]~~ *the agent of that person*, authorizing the mortgage ~~[company]~~ *broker* to so act and directing the disposition of ~~[that person's]~~ *the* share of the money received *for that person* to pay the loan in full. The statement must be executed within 45 days before the execution of the deed of reconveyance. The mortgage ~~[company]~~ *broker* and its officers, directors and employees shall not act as the ~~[person's]~~ agent *for that person* for the purpose of executing the statement required by this section.

Sec. 38. NAC 645B.150 is hereby amended to read as follows:

645B.150 A licensed mortgage ~~[company]~~ *broker* maintaining any accounts described in subsection 1 of NRS 645B.175 shall:

1. Provide to the commissioner ~~[of financial institutions]~~ a financial statement of the account or accounts which has been audited in accordance with generally accepted auditing standards.

2. Maintain a subsidiary ledger for each investor which must include:

- (a) The name and address of the investor;
- (b) The amount of the initial investment and the amount of any subsequent investment;
- (c) The date of any investment placed with the licensee by the investor;
- (d) Each specific loan invested in, including:
 - (1) The number of the loan;

- (2) The name of the borrower;
- (3) The closing date of the loan; and
- (4) The percentage of the loan owned by the investor, if the loan is owned by more than one person;
- (e) The date of the investment;
- (f) The amount of money invested;
- (g) The maturity date of the loan or loans made;
- (h) Any change in the investment made on behalf of the investor; and
- (i) The status of each loan, including whether the loan is current or delinquent, and if the loan is delinquent, the number of months it is past due.

3. At least annually, provide each investor with a statement which details:

- (a) The total amount he has invested with the mortgage ~~[company;]~~ *broker;*
- (b) The amount he has invested in a loan or loans; and
- (c) The current status of the loan or loans.

FLUSH The statement, if annual, must be provided to the investor not later than 120 days after the end of the ~~[company's fiscal year.]~~ *fiscal year of the mortgage broker.*

Sec. 39. NAC 645B.160 is hereby amended to read as follows:

645B.160 A licensed mortgage ~~[company]~~ *broker* maintaining any accounts described in subsection 3 of NRS 645B.175 shall:

- 1. Provide to the commissioner of financial institutions a statement of the account or accounts which has been audited in accordance with generally accepted auditing standards as promulgated for special reports.

2. Keep monthly records reconciling all payments received on loans made by investors to such accounts and any subsequent disbursement to the investors.

3. At least annually, provide to each investor:

(a) A statement indicating all money collected and disbursed; and

(b) The amortized balance of each loan in which the investor has an interest.

FLUSH The statement, if annual, must be provided to the investor not later than 120 days after the end of the licensee's fiscal year.

Sec. 40. NAC 645B.170 is hereby amended to read as follows:

645B.170 A licensed mortgage ~~company~~ *broker* shall retain all records of accounts maintained pursuant to subsections 1 and 3 of NRS 645B.175 for at least 2 years after the date of the last transaction with the investor.