

**ADOPTED REGULATION OF
THE COMMISSIONER OF MORTGAGE LENDING**

LCB File No. R057-08

Effective April 23, 2009

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

AUTHORITY: §1, NRS 645B.060; §§2 and 3, NRS 645B.060 and 645B.080.

A REGULATION relating to mortgage brokers; establishing provisions relating to investments to acquire ownership of certain interests; and providing other matters properly relating thereto.

Section 1. Chapter 645B of NAC is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 5, before an investor, other than a financial or institutional investor, enters into a transaction with a mortgage broker or mortgage agent to acquire ownership of or a beneficial interest in a loan secured by a lien on real property by investing money, the investor must provide a statement on a form prescribed by the Division which verifies that the investor meets one or more of the following financial requirements:

(a) The investor's household net worth is more than \$250,000, excluding any equity in any real property used as the investor's primary residence at the time of the investment; or

(b) The investor's household net annual income was more than \$70,000 for each of the previous 2 tax years, and there is a reasonable expectation of attaining or exceeding the same income for the current year.

2. Except as otherwise provided in this subsection, an investor must also verify on the form prescribed by the Division that the investor's total investments in loans secured by a lien

on real property transacted by a mortgage broker or mortgage agent are not valued at more than 50 percent of the investor's household net worth or household net annual income, whichever is greater. The Division may waive this requirement in writing.

3. In the absence of knowledge to the contrary, a mortgage broker or mortgage agent is not responsible for determining the validity of an investor's stated financial information and may rely on such information submitted by the investor.

4. An investor shall verify on a form prescribed by the Division that he continues to meet the minimum financial requirement set forth in subsection 1 for each transaction subsequent to the first transaction.

5. The provisions of this section do not apply to transactions of a mortgage broker or mortgage agent investing on his own behalf.

6. As used in this section, "financial or institutional investor" has the meaning ascribed to it in NRS 90.240.

Sec. 2. NAC 645B.080 is hereby amended to read as follows:

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

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

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

(c) A report on the history of credit of the 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 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.

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

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

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

(c) The investor continues to meet the minimum financial requirement set forth in section 1 of this regulation.

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

(a) A copy of the promissory note;

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

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

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

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

(a) A copy of a policy of fire insurance which is adequate to cover the replacement costs of all improvements on the property securing the loan, including an endorsement naming the investor as the insured, when applicable;

(b) If the investor is ~~[a corporation or partnership,]~~ *not a natural person*, a copy of its statement authorizing the loan; and

(c) If the borrower is ~~[a corporation or partnership,]~~ *not a natural person*, a copy of its statement authorizing the loan.

5. The mortgage broker shall store his original notes, if retained, in a fireproof container or room.

6. If the mortgage broker has obtained an appraisal *or any other independent assessment of the value of the mortgaged property* on behalf of an investor, the mortgage broker shall provide a copy of the appraisal *or independent assessment* to the:

(a) Investor, upon request; and

(b) Borrower, upon request, if the borrower has paid for the appraisal ~~[.]~~ *or independent assessment.*

Sec. 3. NAC 645B.215 is hereby amended to read as follows:

645B.215 1. Before a person purchases an existing note secured by a deed of trust or an interest therein for which a licensed mortgage broker is acting as a broker ~~[.]~~ *or as an investor selling his interest*, the mortgage broker ~~[shall]~~ *must* 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 *or any other independent assessment of the value* of the *mortgaged* property securing the note, if available.

2. A mortgage broker shall retain a copy of the materials provided to the purchaser pursuant to subsection 1.

3. If the purchase is made, the mortgage broker shall retain in his 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 the replacement costs of all improvements 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~~ :

(1) 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 ~~H~~ ; *and*

(2) The purchaser meets the minimum financial requirement set forth in section 1 of this regulation.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R057-08

The Commissioner of Mortgage Lending adopted regulations assigned LCB File No. R057-08 which pertain to chapter 645B of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

- 1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.**

Copies of the proposed regulation, notice of workshop and notice of intent to act upon the regulation were e-mailed to persons who were known to have an interest in the regulations, as well as any persons who had specifically requested such notice. These documents were also made available at the Division of Mortgage Lending's Web site www.mld.nv.gov, mailed to the State Library and all county libraries in Nevada, and posted at the Division's offices.

Workshops were held in Las Vegas on July 16, 2008, and in Carson City on July 22, 2008. Minutes of those workshops are attached hereto. No public comment was offered at the workshop. Thereafter, on or about January 16, 2009, the Commissioner of the Division of Mortgage Lending (Commissioner) posted a Notice of Intent to Act Upon a Regulation, which incorporated in the proposed amendments suggestions of the parties attending the July workshops as well as the written comments received by the Division.

A public hearing on the proposed regulation was held on February 19, 2009. The hearing was video conferenced between Las Vegas and Carson City. Minutes of the hearing are attached hereto and include summaries of the public comment.

A copy of the summary of the public response to the proposed regulation may be obtained from the Division of Mortgage Lending, 7220 Bermuda Road, Suite A., Las Vegas, NV 89119, or by e-mailing a request to jwaltuch@mld.nv.gov.

- 2. The number of persons who:**

	<u>CC</u>	<u>LV</u>
Attended workshop: 7-16-08	21	
7-22-08	5	
Testified at workshop	0	3
Submitted written comments:	0	2
Attended hearing 2-19-09:	5	8
Testified at Hearing	0	2
Submitted written comments:	0	0

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public. In addition to the e-mail notice described in question 1, which was sent to all company licensees, the Division sent an additional e-mail two days prior to the hearing as a reminder. The Summary may be obtained in the same manner as instructed in the response to question #1.

The industry comments included:

1. Request to allow investor to waive the investment standards.
2. Request that investors not be required to take a class, or qualify the class requirements differently.
3. Request that investors not be required to recertify for new loans and that there not be a requirement to have the form notarized.
4. Request to clarify if the final language gives the investor or the Division the ability to waive the requirement.
5. Request to clarify the term “independent valuation of property”.
6. Request to clarify the term “net income”.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation, as reviewed by the Legislative Counsel was adopted on March 5, 2008, as proposed, with the exception a change to Sec. 1 (2). The words “whichever is greater” was added to the end of the first sentence. The addition was deemed necessary to clarify that the total investments of an investor with a mortgage broker need only meet one standard, either household net worth, or household net income.

However, additional changes were incorporated into the language submitted to the Legislative Counsel for review pursuant to NRS 233B.063 from comments offered at the workshop and through written comment. The adopted language meets the requirement in NRS 645B.060(2)(a)(1), which requires the Commissioner to establish requirements, including minimum financial conditions, for an investor to acquire ownership of or a beneficial interest in a loan secured by a lien on real property.

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

Business which it is to regulate & the public:

(1) Both adverse and beneficial effects:

(a) Beneficial effects: The Proposed Regulation will have the beneficial effect of safeguarding investors with limited net worth or income to potential speculative investments which may threaten their financial security.

(b) Adverse effects: Because the Proposed Regulation establishes minimum investor financial thresholds, the pool of potential investors that mortgage brokers could utilize to fund loans they arrange could potentially be diminished.

(2) Both immediate and long-term effects.

The immediate and long term effects are anticipated to be the same and are consistent with #5 (1) (a) & (b).

6. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of this regulation.

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

The Proposed Permanent Regulation does not overlap regulations of other state or governmental agencies.

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

The Proposed Permanent Regulation does not include provisions which are more stringent than federal regulation.

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

The Proposed Permanent Regulation does not include any new or increased fees.

10. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What did the agency use in determining the impact of the regulation on a small business?

The Commissioner determined that the Proposed Regulation does not impose a direct and significant economic burden upon a small business or restrict the formation, operation or expansion of a small business. In making this determination, the Commissioner considered that the regulation could nominally diminish the potential pool of investors utilized by a licensed broker.

To evaluate this potential impact, the Division contacted small businesses which may be impacted by the proposed regulation, e-mailed the proposed regulation to the small businesses and requested that they review and respond to the same. The responses to the

proposed regulation were discussed prior to and during the workshop and changes were incorporated into the proposed language to reduce the impact on small businesses affected by the regulation, while continuing to safeguard investors with limited net worth or income to potential speculative investments which may threaten to eliminate their financial wherewithal.