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MEETING NOTICE AND AGENDA

Name of Organization: Legislative Commission's Subcommittee to Investigate Regulation of Mortgage Investments

Date and Time of Meeting: Saturday, December 12, 1998
10 a.m.

Place of Meeting: Grant Sawyer State Office Building

Room 4412

555 East Washington Avenue

Las Vegas, Nevada

Note: Some members of the committee may be attending the meeting, and other persons may observe the meeting and provide testimony, through a simultaneous video conference conducted at the following location:

Legislative Building

Room 4100

401 South Carson Street

Carson City, Nevada

AGENDA

I. Opening Remarks and Introductions by the Chairman

Assemblyman David E. Goldwater

*II. Discussion of Recommendation Regarding Registration of Certain Mortgage Company Transactions with the Securities Division of the Office of the Secretary of State

Dean Heller, Secretary of State

*III. Discussion of Preliminary Bill Draft Regarding Fines, Penalties, and Criminal Actions

IV. Public Testimony

WORK SESSION

*V. Discussion and Subcommittee Action on Recommendations to the Seventieth Session of the Nevada Legislature (See Attached "Work Session Document" for a Summary of Proposals Compiled from Previous Subcommittee Meetings)

- A. Registration of Certain Mortgage Company Transactions with the Securities Division of the Office of the Secretary of State
- B. Preliminary Bill Draft Regarding Fines, Penalties, and Criminal Actions
- C. Handling of Investors' Funds
- D. Reporting
- E. Powers of Attorney
- F. Disclosure Forms
- G. Advisory Committee
- H. Licensing and Capital Requirements
- I. Advertising Disclosure
- J. Staffing of the Division of Financial Institutions
- K. Yield Spread Premiums
- L. Regulation of Check-Cashing Services and Deferred Deposit Services

VI. Adjournment

*Denotes items on which the subcommittee may take action.

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Research Division of the Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747, or call Nenita Wasserman, at 684-6825, as soon as possible.

Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; Carson City Courthouse, 198 North Carson Street; Legislative Building, Room 1214, 401 South Carson Street; and Nevada State Library, 100 Stewart Street. Notice of this meeting was faxed for posting to the following Las Vegas, Nevada, locations: Clark County Office, 500 South Grand Central Parkway; and Grant Sawyer State Office Building, 555 East Washington Avenue.

WORK SESSION DOCUMENT

Legislative Commission's Subcommittee to Investigate Regulation of Mortgage Investments

December 12, 1998

This "Work Session Document" has been prepared by staff of the Legislative Commission's Subcommittee to Investigate Regulation of Mortgage Investments. Organized by topic, it is designed as a working document to assist members of the subcommittee in making decisions during its work session. Enumerated below are recommendations presented to the subcommittee as well as recommendations received by staff.

Registration of Certain Mortgage Company Transactions with the Securities Division of the Office of the Secretary of State

1. Repeal subsection 21 of *Nevada Revised Statutes* (NRS) 90.530. This section exempts from registration with the Securities Division of the Office of the Secretary of State transactions involving promissory notes or fractional interests in such notes that are secured by a lien on real estate if the issuer is a mortgage company licensed by the Division of Financial Institutions, Department of Business and Industry.

Preliminary Bill Draft Regarding Fines, Penalties, and Criminal Actions

2. Revises the provisions relating to the suspension and revocation of licenses of certain mortgage companies and provides for administrative sanctions and criminal penalties against certain mortgage companies.

Handling of Investors' Funds

3. Amend Chapter 645B of NRS to prohibit mortgage companies from handling funds received for investment in mortgage loans, funds held for disbursement to borrowers, and funds received in payment of loans.

Reporting

4. Amend Chapter 645B of NRS to require a mortgage company that maintains trust accounts for the payment of investors to:
 - a. Identify each nonperforming loan that mortgage company is administering when the mortgage company submits its monthly report to the Commissioner of Financial Institutions pursuant to NRS 645B.080; and
 - b. Report the status of each such nonperforming loan, on a monthly basis, to each investor who owns a beneficial interest in the loan.

Powers of Attorney

5. Amend Chapter 645B of NRS to permit a mortgage company to act on behalf of an investor pursuant to a power of attorney only if:
 - a. The power of attorney is executed for the sole purpose of servicing a single note in which the investor owns a beneficial interest; and

b. The provisions of the power of attorney:

- (1) Have been approved by the Commissioner of Financial Institutions; and
- (2) Expressly prohibit the mortgage company from using money that the investor has loaned to or is entitled to receive from the borrower pursuant to the terms of the note for any purpose which is not directly related to servicing the note.

Disclosure Forms

6. Amend NRS 645B.185 to add the following provisions:

- a. The Commissioner of Financial Institutions shall adopt by regulation standardized disclosure forms for investors.
- b. The mortgage company must give the disclosure form to each investor before each investment, and the investor may not waive receipt of the disclosure form.
- c. The disclosure form must be signed by the investor, and a copy of the signed disclosure form must be retained by the mortgage company.
- d. The disclosure form must include a statement explaining the risks of investing through the mortgage company, including, without limitation:
 - (1) The possibility that the borrower may default on the loan;
 - (2) The nature of the losses that may result through foreclosure;
 - (3) The fact that payments of principal and interest are not guaranteed and that the investor may lose the entire amount of principal that he has invested;
 - (4) The fact that the mortgage company is not a depository financial institution and that the investment is not insured by any depository insurance; and
 - (5) Any other information required by the Commissioner of Financial Institutions.
- e. The disclosure form must inform the investor whether the mortgage company has any direct or indirect interest in the borrower.
- f. The disclosure form must inform the investor of whether the mortgage company is currently being investigated for any alleged violation of the provisions of Chapter 645B of NRS and must include a statement of the nature of any disciplinary action that has been taken against the mortgage company within the preceding 12 months.

7. Amend NRS 645B.090 to:

- a. Require the Commissioner of Financial Institutions to disclose any information concerning a pending investigation against a mortgage company to any person who requests such information, unless the Commissioner determines that the release of such information would impede or otherwise interfere with the investigation.
- b. Require the Commissioner of Financial Institutions to disclose the results of any completed investigations that have ever been taken against a mortgage company and to disclose the nature of any disciplinary action that has ever been taken against a mortgage company to any person who requests such information.

Advisory Committee

8. Establish a statutory committee to advise the Division of Financial Institutions in matters related to regulation of mortgage investment companies including but not limited to licensing, continuing education requirements, consumer complaints, and actions against mortgage companies.

Licensing and Capital Requirements

9. Amend Chapter 645B of NRS to create a new Mortgage Investment License for mortgage companies that solicit funds directly from the public.

a. Requirements for this license include the following provisions:

(1) A mortgage company that does not handle trust account funds must maintain net worth in an amount at least equal to the total amount of the loan transactions which are secured by liens on real property that are handled by the mortgage company. In lieu of meeting this net worth requirement, the mortgage company may provide the Division of Financial Institutions with a cash deposit, a bond, or an irrevocable letter of credit in the required amount. If a mortgage company handles trust account funds, the mortgage company must secure and maintain a license bond of at least \$250,000 but not more than the total amount of the loan transactions which are secured by liens on real property that are handled by the mortgage company;

(2) All funds received by a mortgage company from investors must be deposited in specific trust accounts for each loan;

(3) Amend Chapter 645B of NRS to provide that, for each loan, a mortgage company shall not release any amount of money to a borrower or his designee unless the amount of money released is equal to the total amount of money which is being loaned to the borrower for that loan less any amount of money that is due to the mortgage company for the payment of any fee or service charge;

(4) Amend NRS to provide that:

(a) A person may not be licensed as or, if exempt from licensing, may not conduct business as a construction control company, an escrow agency, a mortgage company or a title insurer if the person, the person's spouse or any other person related to him within the second degree by blood or marriage owns or controls a majority of the voting stock or a controlling interest, directly or indirectly, in:

(i) A construction control company, an escrow agency, a mortgage company or a title insurer; or

(ii) Any company that owns or controls a majority of the voting stock or a controlling interest, directly or indirectly, in a construction control company, an escrow agency, a mortgage company or a title insurer.

(b) The provisions of this section do not prohibit a person, the person's spouse or any other person related to him within the second degree by blood or marriage from being licensed as, conducting

business as, owning or controlling the same construction control company, escrow agency, mortgage company or title insurer, so long as such joint licensing, operation, ownership or control extends to only one of these types of businesses.

b. Amend Chapter 645B of NRS to expand the application process for a mortgage company license to include a basic business plan, a company policy and procedure manual, a collection policy, loan servicing procedures and restrictions, and underwriting standards.

10. Require that a mortgage company provide the lender at the time of closing of a loan an insured closing letter which guarantees that an underwriter will insure the lender against loss incurred in connection with a loan closing.

11. Amend Chapter 645B of NRS to provide that:

a. A mortgage company shall not charge a person a late fee, an additional amount of interest, or any other penalty if the payment is personally delivered to the mortgage company before 5 p.m. on the day that the payment is due;

b. If no offices of the mortgage company are open to customers on the day that the payment is due, the mortgage company shall not charge a person a late fee, an additional amount of interest or any other penalty if the payment is personally delivered to the mortgage company before 5 p.m. on the next day that an office of the mortgage company is open to customers;

c. A mortgage company or a person may not agree to alter the foregoing provisions by contract or other agreement, unless the contract or other agreement:

(1) Is executed before the effective date of the bill;

(2) Is in writing; and

(3) Includes a provision that expressly establishes a specific time of day before which a person must deliver a payment to the mortgage company to avoid a late fee, an additional amount of interest or any other penalty.

12. Amend Chapter 645B of NRS to require that a mortgage company must provide a written disclosure which must be signed by the lender of the exact priority of each loan. Further, every trust deed must clearly indicate the priority of the loan in which the investor's funds must be placed. In the event a mortgage company might want to subordinate an investor's priority, the mortgage company must obtain the lender's written approval and provide a copy of that approval to the investor and the Division of Financial Institutions.

13. Amend NRS to provide that a person who is subject to the provisions of Chapter 627 of NRS as a construction control company, Chapter 645A of NRS as an escrow agency, or Chapter 692A of NRS as a title insurer must file a bond of not less than \$250,000.

Advertising Disclosure

14. Amend Chapter 645B of NRS to prohibit a mortgage company from advertising for new investment money when portfolio thresholds fall below a determined amount, when monetary difficulties arise, or when specific problem circumstances have occurred.

15. Amend NRS 645B.189 to provide that:

a. If a mortgage company maintains any accounts described in NRS 645B.175, the mortgage company shall include in each advertisement:

(1) The following statement: "Money invested through a mortgage company is not insured or guaranteed by the federal or state government. An investor is not guaranteed to recover or to be repaid any of the money he invests, an investor is not guaranteed to earn or to be paid any interest or other return on the money he invests, and an investor may lose some or all of the money he invests."

(2) Any other statement or information that is required by a regulation adopted pursuant to this chapter or an order of the commissioner.

b. If conveyed in printed form, including, without limitation, if displayed in printed form on a television or any other video screen, monitor or device, the statement or information which is required pursuant to paragraph (a) must be printed in a size that is approved by the commissioner and, if displayed in printed form on a television or any other video screen, monitor or device, displayed for a period that is approved by the commissioner.

c. The commissioner may adopt any other regulations that are necessary to carry out the provisions of this section.

Staffing of the Division of Financial Institutions

16. Include in the subcommittee's final report a statement in support of additional funding for regulatory agencies of the mortgage investment industry for the purpose of increasing enforcement staff.

Yield Spread Premiums

17. Amend Chapter 645B of NRS to require that, before closing a loan, a mortgage company must disclose to the borrower the yield spread premium due to the mortgage broker.

Regulation of Check-Cashing and Deferred Deposit Services

18. Amend Chapter 604 of NRS, which provides for the regulation of check-cashing services and deferred deposit services (also known as "postdated check services") to: (a) establish a statutory cap on the fees and interest rates that may be charged by a check-cashing service or deferred deposit service for each check transaction with a customer; and (b) prohibit a deferred deposit service from accepting a customer's payment of the fee or interest that is owed from a previous postdated check transaction and then "rolling over" the amount that the customer owes on the cash advance portion of the previous transaction into another check transaction.

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Revised: December 8, 1998