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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: Wednesday, December 2, 1998

8:30 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. Approval of the Minutes from the Subcommittee's Second Meeting held August 24, 1998, in Las Vegas, Nevada

III. Presentation on Requiring Disclosure by Mortgage Bankers of "Yield Spread Premiums"

Senator Bill R. O'Donnell

IV. Public Testimony

(Continued)

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. Regulation of Mortgage Investments

B. Licensing of Mortgage Investment Companies

C. Net Worth or Capital Requirements

D. Handling of Investors' Funds

E. Powers of Attorney

F. Disclosures

G. Advisory Committee

H. Miscellaneous Provisions

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 Ricka Benum, 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 2, 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 via written correspondence. A citation concerning the source of each recommendation is noted at the end of each item.

Some proposals were endorsed by more than one witness. Thus, some recommendations may have optional provisions or choices among provisions. In addition, some recommendations may consist of more than one section. When necessary, the designation "OR" indicates that sections are mutually exclusive and only one recommendation can be chosen.

Regulation of Mortgage Investments

1. Amend Chapter 645B of Nevada Revised Statutes (NRS) to prohibit mortgage companies from guaranteeing the payment of interest or principal amounts of a loan.

[Jerilyn J. Clayton, former Owner, Consolidated Mortgage Corporation, Las Vegas—August 24, 1998, testimony; and Assemblywoman Barbara K. Cegavske—August 24, 1998]

2. Amend Chapter 645B of NRS to include provisions that all monetary return on investments come solely from borrower's funds or the equity in the subject property.

[Jerilyn J. Clayton, former Owner, Consolidated Mortgage Corporation, Las Vegas—August 24, 1998, testimony]

3. Amend NRS 645B.100 to increase the administrative fine that the Commissioner of the Division of Financial Institutions, Nevada's Department of Business and Industry, may impose for a violation of the provisions of Chapter 645B of NRS and clarify that the Commissioner may take disciplinary action pursuant to NRS 645B.1000 against a person who commits a violation in connection with his application for a license as a mortgage company or a person who is operating a mortgage company without a license.

[Jerilyn J. Clayton, former Owner, Consolidated Mortgage Corporation, Las Vegas—August 24, 1998, testimony]

4. Urge by letter to the Senate Finance Committee and the Assembly Committee on Ways and Means that additional funds be allocated for regulatory agencies of the mortgage investment industry for the purpose of increasing staff.

[Jerilyn J. Clayton, former Owner, Consolidated Mortgage Corporation, Las Vegas—August 24, 1998, testimony; Marty LeVasseur, Chairman, Federal Legislation, Nevada Association of Mortgage Brokers—August 24, 1998, testimony; Loretta

Eichelberger—August 24, 1998, testimony; and Leo Davenport, past president, Nevada Mortgage Brokers Association—August 24, 1998, testimony]

5. Make continuing education and testing a job requirement for state auditors/examiners employed by the Division of Financial Institutions.

[Marty LeVasseur, Chairman, Federal Legislation, Nevada Association of Mortgage Brokers—August 24, 1998, testimony; and Assemblywoman Barbara K. Cegavske—August 24, 1998]

6. Amend NRS 645B.100 to expressly provide that the Commissioner of the Division of Financial Institutions may take disciplinary action against a person who is operating a mortgage company and an escrow agency at the same location in violation NRS 645A.037 and, by letter, urge the commissioner to vigorously enforce the provisions of NRS 645A.037.

[Jerilyn J. Clayton, former Owner, Consolidated Mortgage Corporation, Las Vegas—August 24, 1998, testimony]

7. Amend Chapter 645B of NRS to provide straightforward statutory language that would state the exact action that shall be taken by the Division of Financial Institutions for each specified violation of mortgage investments laws and regulations. It was noted that this type of law would give direction to the regulators to either impose fines, or suspend or revoke licenses, and serve to remove the potential for discretionary misjudgment.

[Senator Raymond C. Shaffer—August 24, 1998, meeting and Assemblywoman Barbara K. Cegavske—August 24, 1998]

8. Devise a formula to outline criteria for temporary revocation or suspension of the license of a mortgage company. Amend NRS 645B to authorize the Division of Financial Institutions to temporarily suspend a license should a certain number of violations occur according to the formula developed. Authorize the Division of Financial Institutions to take control of a mortgage company should an order of temporary suspension be issued. The Division of Financial Institutions would further act to administer all transactions, and oversee each phase of the mortgage company from that point forward.

[Mark Moreno, Owner, Las Vegas Investment Group, Ltd.—August 24, 1998, meeting]

9. Amend NRS 645B.100 by changing subsection 1 to read in part "The commissioner [may] *shall* . . ."

[Assemblywoman Barbara K. Cegavske—August 24, 1998]

10. Include in Chapter 645B of NRS a provision that requires the commissioner to grant a mortgage company that has been fined under NRS 645B.100 for a violation to the record keeping or reporting requirements of NRS 645B.080 ten working days within which to come into compliance. Failure to comply within the ten day period shall be deemed to be evidence that the mortgage company's affairs are in an unsafe condition which may result in danger to the public, and the commissioner shall immediately take possession of all the property, business and assets of the company as provided in subsection 1 of NRS 645B.150.

[Assemblywoman Barbara K. Cegavske—August 24, 1998]

11. Amend NRS 645B.120 by changing subsection 1 to read in part "The commissioner [may] *shall*. . ."

[Assemblywoman Barbara K. Cegavske—August 24, 1998]

12. Amend NRS 645B.120 by changing subsection 2 to read in part ". . . the commissioner [may] *shall* . . ."

[Assemblywoman Barbara K. Cegavske—August 24, 1998]

13. Amend NRS 645B.150 by changing subsection 1 to read in part ". . . he [may] *shall* immediately take possession . . ." Further amend this section of NRS by including a requirement that if the commissioner takes possession of a mortgage company, he shall within five working days notify every investor and other clients of the mortgage company that such action has been taken by the commissioner.

[Assemblywoman Barbara K. Cegavske—August 24, 1998]

Licensing of Mortgage Investment Companies

14. Amend Chapter 645B of NRS to create a new Mortgage Investment License for mortgage investment companies that solicit funds directly from the public. Requirements for this license include the following provisions:

- a. A substantial corporate minimum net worth;
- b. Separate escrow accounts for each loan;
- c. Fully funded loan (no unfunded liability) requirements;
- d. Limited power of attorney specific to each loan;

- e. Third-party voucher control;
- f. Third-party title insurance companies;
- g. Strict regulatory reporting format;
- h. Specific advertising and disclosure formats; and
- I. Disclosure of any direct or indirect interests in the borrower.

[Thomas A. Hantges, Chairman, USA Capital, Las Vegas—September 15, 1998, letter to Vance Hughey, Principal Research Analyst, Research Division, Legislative Counsel Bureau (LCB) (see Exhibit A)]

15. Amend Chapter 645B of NRS to include a requirement for extensive background investigations and character/reference checks for persons applying for licences to operate mortgage companies.

[Jerilyn J. Clayton, former Owner, Consolidated Mortgage Corporation, Las Vegas—August 24, 1998, testimony and Marty LeVasseur, Chairman, Federal Legislation, Nevada Association of Mortgage Brokers—August 24, 1998, testimony; and Assemblywoman Barbara K. Cegavske—August 24, 1998]

16. Amend Chapter 645B of NRS to create licensing requirements for loan officers and other persons who arrange mortgage loans for a mortgage company.

[Marty LeVasseur, Chairman, Federal Legislation, Nevada Association of Mortgage Brokers—August 24, 1998, testimony; and Leo Davenport, past president, Nevada Mortgage Brokers Association—August 24, 1998, testimony; and Assemblywoman Barbara K. Cegavske—August 24, 1998]

17a. Amend Chapter 645B of NRS to license exempt mortgage bankers and net branches to conform to state laws for solicitation.

OR

17b. Amend Chapter 645B of NRS to remove the Federal National Mortgage Association (FNMA) exemption from NRS 645B.015.

[Marty LeVasseur, Chairman, Federal Legislation, Nevada Association of Mortgage Brokers—August 24, 1998, testimony; and Leo Davenport, past president, Nevada Mortgage Brokers Association—August 24, 1998, testimony]

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

[Mark Moreno, Owner, Las Vegas Investment Group, Ltd.—August 24, 1998, meeting (see also Exhibit B, a letter addressed to Ricka Benum, Senior Research Secretary, Research Division, LCB, dated September 29, 1998)]

Net Worth or Capital Requirements

19. Amend Chapter 645B of NRS to establish a minimum corporate net worth for licensed mortgage companies (see also item number 1 of this work session document).

[Jerilyn J. Clayton, former Owner, Consolidated Mortgage Corporation, Las Vegas—August 24, 1998, testimony; and Mark Moreno, Owner, Las Vegas Investment Group, Ltd.—August 24, 1998, meeting (see also Exhibit B, a letter addressed to Ricka Benum, Senior Research Secretary, Research Division, LCB, dated September 29, 1998)]

20. 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.

[Senator Bill R. O'Donnell—August 24, 1998, meeting]

21. Amend Chapter 645B of NRS to require that mortgage companies meet certain capital requirements which could include a net worth requirement, a cash deposit, a bond, or a letter of credit (see also item number 18 of this work session document.)

[Mark Moreno, Owner, Las Vegas Investment Group, Ltd.—August 24, 1998, meeting]

Handling of Investors' Funds

22. 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. (See also item 1 of this work session document.)

[Douglas E. Walther, Senior Deputy Attorney General, Office of the Attorney General—January 20, 1998, and July 24, 1998 (see Exhibits D and E); and Mark Moreno, Owner, Las Vegas Investment Group, Ltd.—August 24, 1998, meeting (see also Exhibit B, a letter addressed to Ricka Benum, Senior Research Secretary, Research Division, LCB, dated September 29, 1998)]

23. Amend Chapter 645B of NRS to prohibit "short-funding" of loans, or any other payoff not equal to the recorded beneficial interest of the loan.

[Mark Moreno, Owner, Las Vegas Investment Group, Ltd.—August 24, 1998, meeting (see also Exhibit B, a letter addressed to Ricka Benum, Senior Research Secretary, Research Division, LCB, dated September 29, 1998)]

Powers of Attorney

24. Amend Chapter 645B of NRS to prohibit or limit the use of powers of attorney whereby investors delegate to mortgage companies the authority to make investment decisions (see also item number 1 of this work session document.)

[Douglas E. Walther, Senior Deputy Attorney General, Office of the Attorney General—January 20, 1998, and July 24, 1998, (see Exhibits D and E); and Assemblywoman Barbara K. Cegavske—August 24, 1998]

Disclosure

25. Amend Chapter 645B of NRS to prohibit investors from waiving their rights to receive documentation relating to the degree of risk associated with a particular investment.

[Douglas E. Walther, Senior Deputy Attorney General, Office of the Attorney General—July 24, 1998, (see Exhibit D)]

26. Amend Chapter 645B of NRS to require that mortgage investors review and initial the waiver document on each investment.

[Loretta Eichelberger—August 24, 1998, testimony; and Assemblywoman Barbara K. Cegavske—August 24, 1998]

27. Amend Chapter 645B of NRS to require mortgage companies to make certain disclosures regarding the general risks involved in investing in mortgage loans.

[Douglas E. Walther, Senior Deputy Attorney General, Office of the Attorney General—January 20, 1998, and July 24, 1998, (see Exhibits D and E)]

28. Amend Chapter 645B of NRS to provide a specific duty on the part of mortgage companies to disclose to potential investors whether the company is under investigation for misconduct that, if true, would materially affect the degree of risk associated with the investment.

[Douglas E. Walther, Senior Deputy Attorney General, Office of the Attorney General—July 24, 1998, (see Exhibit E)]

29. Amend Chapter 645B of NRS to clarify and strengthen statutes to provide the Division of Financial Institutions with authority to disclose information pertaining to the investigative findings of financial institutions to persons who make inquiries.

[Brooke Nielsen, Assistant Attorney General, Office of the Attorney General—August 24, 1998]

30. Amend Chapter 645B of NRS to require the Commissioner of the Division of Financial Institutions to adopt by regulation standardized disclosure and waiver forms and to require the Commissioner to take disciplinary action against mortgage companies that fail to use such forms.

[Leo Davenport, past president, Nevada Mortgage Brokers Association—August 24, 1998, testimony; and Assemblywoman Barbara K. Cegavske—August 24, 1998]

Advisory Committee

31. 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.

[Marty LeVasseur, Chairman, Federal Legislation, Nevada Association of Mortgage Brokers—August 24, 1998, testimony; Leo Davenport, past president, Nevada Mortgage Brokers Association—August 24, 1998, testimony; and Assemblywoman Barbara K. Cegavske—August 24, 1998]

Miscellaneous Provisions

32. Amend Chapter 645B of NRS as indicated in Exhibit C (attached). This document contains numerous proposed changes to Nevada's mortgage investment statutes including provisions regarding certifications of exemption, licensing requirements,

administrative penalties and fines, and net worth requirements.

[Dan Gray—June 30, 1998]

33. 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: (1) 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 (2) 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.

[Michele Johnson, President, Consumer Credit Counseling Service of Southern Nevada, August 24, 1998, testimony]

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Revised November 23, 1998