

**ADOPTED REGULATION OF THE
COMMISSIONER OF FINANCIAL INSTITUTIONS**

LCB File No. R046-00

Effective September 5, 2000

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

AUTHORITY: §§1-4, 6-10, 12, 15-17, 20 and 21, NRS 645E.300; §§5, 11, 13 and 14, NRS 645E.200 and 645E.300; §§18 and 19, NRS 645E.300 and 645E.350.

Section 1. Chapter 645E 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:*

1. The words and terms defined in NRS 645E.020 to 645E.100, inclusive, have the meanings ascribed to them in those sections.

2. “Qualified employee” means:

(a) A director, officer, member, partner, employee, manager or trustee of a partnership, corporation or limited-liability company designated by the partnership, corporation or limited-liability company pursuant to section 10 of this regulation to act on behalf of the partnership, corporation or limited-liability company; or

(b) A person designated by a sole proprietorship who satisfies the requirements set forth in subsection 3 of NRS 645E.200 and section 11 of this regulation.

Sec. 3. *1. A person makes a loan secured by a lien on real property using his own money if the loan is funded from one or more of the following sources:*

(a) The person’s cash, corporate capital or warehouse credit lines at a depository financial institution or other sources that are liability items on the person’s financial statements.

(b) An affiliate's cash, corporate capital or warehouse credit lines at a depository financial institution or other sources that are liability items on the affiliate's financial statements for which the affiliate's assets are pledged. As used in this paragraph, "affiliate" means another person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the person making the loan.

2. A person does not make a loan secured by a lien on real property using his own money if, after consummation of the loan, he sells the loan, or an interest in the loan, to a person from whom he would not be authorized to accept money initially to fund the loan.

Sec. 4. A person does not hold himself out as being able to perform the services described in NRS 645E.100 if he only offers to provide money to invest in loans secured by an interest in real property to:

- 1. A mortgage company licensed pursuant to chapter 645E of NRS; or*
- 2. A person exempt from the provisions of chapter 645E of NRS.*

Sec. 5. 1. A mortgage company shall not conduct business using a fictitious name unless the mortgage company:

- (a) Complies with the provisions of 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 company pursuant to chapter 602 of NRS indicating the fictitious name; and*
- (c) Receives from the division a license or certificate of exemption indicating the fictitious name.*

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

(a) Obtains a certified copy, issued by the appropriate county clerk, of the certificate filed by the mortgage company 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 company; and

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

Sec. 6. 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 company 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 company.

Sec. 7. 1. If a person engages in an activity in violation of the provisions of this chapter or chapter 645E of NRS, 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 645E of NRS; or

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

3. A person who receives an order to cease and desist pursuant to this section shall not engage in any activity governed by chapter 645E 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 the 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 calendar days after the date the hearing is concluded.

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

Sec. 8. *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. 9. 1. *The commissioner will refer to the appropriate federal or state agency for investigation and appropriate action each suspected violation of:*

(a) The Truth in 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 645E.670, a mortgage company commits a violation if the mortgage company:*

(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 company 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. 10. 1. *Every partnership, corporation or limited-liability company doing business as a mortgage company in this state shall designate a qualified employee who may, upon approval by 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 meets the requirements of an applicant for a license as a mortgage company pursuant to chapter 645E of NRS.*

3. The approval issued by the commissioner entitles the qualified employee to act pursuant to the terms and conditions of the license issued to the partnership, corporation or limited-liability company by the commissioner pursuant to chapter 645E of NRS, but only as a qualified employee of the partnership, corporation or limited-liability company, and not on his own behalf.

4. 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 2 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 2 of this regulation; or

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

Sec. 11. *An applicant for a license as a mortgage company must have:*

1. At least 2 years of verifiable experience in lending money for real estate or mortgages; and

2. A knowledge of generally accepted accounting practices and bookkeeping procedures evidenced by verifiable experience in working in these areas or appropriate educational training.

Sec. 12. *1. A person conducts verifiable business as a mortgage company if he:*

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

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

2. Evidence of activity described in subsection 1 must be submitted to the commissioner in the monthly report of activity.

Sec. 13. *An applicant must submit with his application for a license pursuant to chapter 645E 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 certificate filed by the mortgage company pursuant to chapter 602 of NRS indicating the fictitious name of the mortgage company, if any.

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

(a) Its articles of incorporation and its bylaws;

(b) Its balance sheet and a statement of the profit and loss of the corporation for the 2 years immediately preceding the year of the application; and

(c) The most recent list of its officers and resident agents 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. 14. 1. *An applicant must submit with his application for a license for a branch office the name, residence address and telephone number of a qualified employee designated to manage the branch office.*

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

(a) The principal office of the mortgage company has been examined by the commissioner and has received at least a satisfactory rating; and

(b) The commissioner approves the qualified employee designated 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 company 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 company is responsible for and shall supervise:

(a) Each branch office of the mortgage company; and

(b) Each qualified employee authorized to conduct mortgage lending activity at a branch office of the mortgage company.

Sec. 15. 1. *Any material change in the ownership, management or principal employees of a mortgage company at its principal office or a branch office must be reported to the commissioner not later than 30 calendar days after the change.*

2. *If a person acquires stock or ownership in a mortgage company as a result of a transfer that constitutes a change of control pursuant to NRS 645E.390:*

(a) *A financial statement or personal interrogatory 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 company until the commissioner has approved the transfer; and*

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

Sec. 16. 1. *Except as otherwise provided in this subsection, the commissioner will charge and collect a fee of \$40 per hour from each mortgage company for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 645E 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 645E of NRS.*

2. *The commissioner will bill each mortgage company upon the completion of the activity for the fee established in subsection 1. The fee must be paid not later than 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 the last month, that the fee is not paid. The commissioner may waive the penalty for good cause.*

Sec. 17. 1. *Each mortgage company shall pay to the division an annual assessment 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 by the division.*

2. The division shall bill each mortgage company 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 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. 18. 1. *Each mortgage company shall submit, for each month, on a form approved by the commissioner, a report on the volume of loans arranged by the mortgage company in that month. The monthly report must be submitted to the commissioner 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 state that fact.*

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

Sec. 19. *Each mortgage company 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 for 2 or more years, the mortgage company may cause the original 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 record may be destroyed.

Sec. 20. 1. *A licensed mortgage company shall not represent an activity which is not licensed pursuant to chapter 645E of NRS as being licensed pursuant to that chapter.*

2. An advertisement for an activity which is licensed pursuant to chapter 645E 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 must include in its advertisements, including any advertising material available on the Internet:

(a) Its name, address and telephone number; and

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

4. A mortgage company 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.

Sec. 21. *An appraisal submitted to a lender by a mortgage company must not be prepared by the mortgage company and must:*

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 this 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.

NOTICE OF ADOPTION OF REGULATION

The State of Nevada, Department of Business and Industry, Financial Institutions Division adopted regulations assigned LCB File Nos. R-04500 and R046-00 which pertain to chapters 645B and 645E, respectively, of the Nevada Administrative Code on July 28, 2000. A copy of the regulations as adopted is attached hereto.

INFORMATIONAL STATEMENT

LEGISLATIVE REVIEW OF ADOPTED REGULATION AS REQUIRED BY NRS 233B.066

INFORMATIONAL STATEMENT LCB File Nos. R045-00 and R046-00

The following statement is submitted for adopted permanent regulations to Nevada Administrative Code (NAC) Chapter 645E.

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

The proposed regulation was combined with a proposed regulation amending NAC Chapter 645B. On or about September 7, 1999, the Financial Institutions Division (Division) posted a Notice of Workshop to Solicit Comments on Proposed Regulation and a copy of a proposed regulation at the locations listed on Exhibit "A" and sent the same to all companies licensed by the Division as mortgage companies. Workshops were held in Carson City on October 4, 1999 and in Las Vegas on October 5, 1999.

A Notice of Intent to Act Upon a Regulation was posted at the locations listed on the Notice of Intent to Act Upon a Regulation, a copy of which is attached hereto. A public hearing to receive comments on the proposed regulation was held on April 4, 2000. The proposed regulations were also posted for discussion at several meetings of the Advisory Council on Mortgage Investments.

Summary of Public Comment

A summary of public comments relating to the proposed regulation is attached hereto as Exhibit "B." Interested parties may obtain this summary of the public response by contacting the Financial Institutions Division, 406 E. Second Street, Carson City, Nevada 89710, (702) 687-4259. Attached as Exhibit "C" is a copy of a form the Division has adopted in connection with the amendment to NAC 645B.080.

2. 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.

See the response to item #1.

3. The number of persons who: (a) Attended each hearing; (b) Testified at each hearing; and (c) Submitted to the agency written statements.

Approximately 13 persons attended the workshop in Carson City on October 4, 1999 and nine of those persons provided oral comments. Approximately 24 attended the workshop in Las Vegas on October 5, 1999 and fourteen of those persons provided or oral comments.

Approximately 28 persons attended the hearing on April 4, 2000 and seven of those persons provided oral comments. The Division received comments in writing from 13 individuals or businesses. Additional comments were received at subsequent meetings of the Advisory Council on Mortgage Investments.

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.

N/A

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

- (a) Both adverse and beneficial effects; and**
- (b) Both immediate and long-term effects.**

The estimated economic effect of the proposed regulation is as follows:

- (1) Regulated business: Mortgage companies may have increased expenses, short term and long term, relating to additional regulatory requirements contained in the regulation. The industry may benefit from increased clarity of the legal requirements for these types of transactions.
- (2) Public: The proposed regulation should have no adverse effect on the public, immediate or long-term, except that the cost of state regulation may be passed on to consumers. The public may benefit, immediately and long-term, by amendments that clarify the rights and obligations of the parties to a mortgage loan transaction.

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

It will cost approximately \$86,520 for fiscal year 2000-01 to administer and enforce the proposed regulation, which is the cost of an additional full time deputy attorney general assigned to the Division.

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 regulation does not overlap or duplicate any regulations of other state, local or federal 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 adopted regulation does not include provisions which are more stringent than a federal regulation which regulates the same activity.

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 adopted regulation does not provide a new fee or increase an existing fee, although it does establish a rate for the collection of costs and attorneys fees previously authorized by the legislature.

EXHIBIT A

FINANCIAL INSTITUTIONS DIVISION
406 EAST SECOND STREET SUITE 3
CARSON CITY NV 89701-4758

STATE LIBRARY
100 STEWART STREET
CARSON CITY NV 89710

DARRYL BATSON DIRECTOR
LAS VEGAS - CLARK COUNTY LIBRARY
833 LAS VEGAS BLVD N

ESMERALDA COUNTY
P O BOX 430
GOLDFIELD NV 89013

SHERRY ALLEN DIRECTOR
HUMBOLDT COUNTY LIBRARY
85 EAST 5TH STREET
WINNEMUCCA NV 89445

GOLDFIELD PUBLIC LIBRARY
P O BOX 430
GOLDFIELD NV 89013

JEANNE MUNK DIRECTOR
PERSHING COUNTY LIBRARY
P O BOX 781
LOVELOCK NV 89419

NANCY CUMMINGS DIRECTOR
WASHOE COUNTY LIBRARY
P O BOX 2151
RENO NV 89505

LYNN CHAMBLISS DIRECTOR
BATTLE MOUNTAIN BRANCH LIBRARY
P O BOX 141
BATTLE MOUNTAIN NV 89820

FINANCIAL INSTITUTIONS DIVISION
2501 E SAHARA AVE SUITE 300
LAS VEGAS NV 89101

BARBARA MATHEWS DIRECTOR
CHURCHILL COUNTY LIBRARY
5553 S MAINE STREET
FALLON NV 89406

SARA JONES DIRECTOR
ELKO COUNTY LIBRARY
720 COURT STREET
ELKO NV 89801

LAURI OKI DIRECTOR
EUREKA BRANCH LIBRARY
P O BOX 293
EUREKA NV 89316

STEVE SCHLATTER DIRECTOR
MINERAL COUNTY LIBRARY
P O BOX 1390
HAWTHORNE NV 89415

DIANE HARTSOCK DIRECTOR
TONOPAH PUBLIC LIBRARY
P O BOX 449
TONOPAH NV 89049

STOREY COUNTY LIBRARY
P O BOX 14
VIRGINIA CITY NV 89440

LORI ROMERO DIRECTOR
WHITE PINE COUNTY LIBRARY
950 CAMPTON STREET
ELY NV 89301

LINCOLN COUNTY LIBRARY
P O BOX 330
PIOCHE NV 89043

CHRISTIAN FREER - PARSON DIRECTOR
LYON COUNTY LIBRARY
20 NEVIN WAY
YERINGTON NV 89447

SALLY EDWARDS DIRECTOR
CARSON CITY LIBRARY
900 N ROOP STREET
CARSON CITY NV 89701

CAROLYN RQWLES-HEISER DIRECTOR
DOUGLAS COUNTY LIBRARY
P O BOX 337
MINDEN NV 89423

**EXHIBIT “B” – SUMMARY OF PUBLIC COMMENTS ON PROPOSED
REGULATIONS GOVERNING MORTGAGE COMPANIES (NAC CHAPTER 645E)
AND MORTGAGE BROKERS (NAC CHAPTER 645B)**

MORTGAGE COMPANIES – NRS Chapter 645E

1. In the definition of “verifiable mortgage business,” either add a definition of “provider” or delete the reference to “provider.” The Division made no change based on this comment as it was deemed unnecessary.
2. In the description of documents to be retained by the mortgage company, change the reference to a fire insurance policy as follows:

The fire insurance policy should be limited to the replacement cost of all improvements on the land securing the deed of trust, rather than “adequate to cover all liens” as proposed.

This comment became moot after the Division eliminated the section containing record retention requirements for mortgage companies.

3. Clarify the phrase “material change” as used in section describing requirements relating to changes in ownership or management of a mortgage company. The Division deemed no change necessary as the result of this comment as this section merely implements the change of control provisions of NRS 645E.390, which defines the types of changes for which reporting is required.
4. Clarify whether money provided by depository institutions pursuant to “correspondence agreements” may be considered as a mortgage company lending its own money for purposes of the definition of mortgage company. The Division deleted the language that provided that this source of money would be considered as a mortgage company lending its own money.
5. Allow for a hearing to contest a cease and desist order *before* it becomes effective or is enforced. The Division amended the regulation to create a procedure for the order to be suspended pending a hearing.
6. Clarify that a mortgage company is not limited by its license to engaging only in activities that the license authorizes. This suggestion is inconsistent with the mandate of NRS 645E.230(1) that a mortgage company licensee is only authorized to perform activities authorized by its license.
7. Clarify the phrase “holds himself out” set forth in the definition of mortgage broker in NRS 645E.100 to exclude persons offering money to lend exclusively to other licensed mortgage brokers in the secondary mortgage market. The Division accepted this recommendation.
8. Allow mortgage companies to accept nonrefundable application fees. Incorporating this suggestion would, in the Division’s view, conflict with the advance fee statutes, NRS

645E.420, NRS 645B.165, and NRS 205.950.

9. Perform audits on mortgage companies only when required as the result of a complaint from a borrower. This suggestion was not adopted as annual examinations are required by NRS 645E.300(2)(c).
10. Delete section providing for assessments of cost of examinations and audits on mortgage companies. This suggestion was not adopted as the assessment of the cost of examination is required by NRS 645E.300(3).
11. Delete section addressing approval of advertisements. The Division has retained the section containing the standards for advertising but has deleted the requirement that approval of proposed advertising for mortgage companies be obtained prior to its use.
12. Delete section addressing requirements for appraisals. Although this section is not required by statute, its deletion would not affect the statutory requirements of NRS chapter 645C that appraisals be performed only by persons properly licensed or certified pursuant to that chapter.

MORTGAGE BROKERS – NRS Chapter 645B

1. In the definition of “major violation,” add the word “substantial” to describe the type of loss required for a violation to be considered a major violation. The Division accepted this recommendation.
2. In the section containing the disclosure form, change the reference to “written appraisal” to “copy of the written appraisal.” This suggestion has been accepted.
3. In the description of documents to be retained by the mortgage broker, change the reference to a fire insurance policy as follows:

The fire insurance policy should be limited to the replacement cost of all improvements on the land securing the deed of trust, rather than “adequate to cover all liens” as in the existing regulation.

The Division accepted this recommendation.

4. For reasons of privacy, the names, addresses, and telephone numbers of private investors should not be freely available. Loan servicing agreements must provide for investors in a particular loan to be provided the names, addresses, and telephone numbers of other investors in the loan. This information is deemed necessary to avoid problems managing the loan if the broker ever ceases to do so. In addition, the Division may obtain information on individual investors from the delinquent loan reports submitted pursuant to NAC 645B.070 as amended by the proposed regulations. The Commissioner already possesses sufficient discretionary authority to withhold information regarding the identity of investors contained in these

reports, and therefore no amendment to the regulation is necessary.

5. A requirement that a mortgage broker disclose any interest in a related or affiliated business such as a construction control, title or escrow company should be limited to only those situations where the related company is involved in the same transaction in which the person is acting as a mortgage broker. This suggestion was not accepted as it is inconsistent with the requirements of NRS 645B.186.
6. In reference to the investor's right to receive the mortgage broker's financial statement, the mortgage broker should be permitted to provide a more general statement that will protect the broker's privacy and trade practices. The Division amended to regulation to permit a mortgage broker to submit a "compiled" financial statement to be provided to potential investors that will not contain the type of private or proprietary information contained in an audited financial statement. This amendment does not excuse a mortgage broker who maintains trust accounts from the requirement of submitting annual *audited* financial statements.
7. Clarify the phrase "material change" as used in the section describing requirements relating to changes in ownership or management of a mortgage broker. Since this section merely implements the provisions of NRS 645B.095, which, in the Division's view, adequately describes the conditions that constitute a change of control, no change was deemed necessary.
8. Require the mortgage broker to provide the investor with a copy of the proposed disclosure form at the outset of the business relationship (and perhaps require periodic renewal) instead of for *every transaction* and require the use of a condensed version of the disclosure form for every transaction that will satisfy the requirements of AB 64. Although the Division has not adopted the suggestion to create an additional form that will be given to investors at the commencement of the business relationship, it has eliminated language deemed unnecessary from the disclosure form required by NRS 645B.185.
9. Allow mortgage brokers to provide investors with their opinion of value of property proposed as collateral for a mortgage loan or their opinion regarding a written appraisal prepared by another person. This suggestion was not accepted as it would be inconsistent with the appraiser licensing and certification provisions of NRS chapter 645C.
10. Allow registrations for mortgage agents to become effective immediately pending completion of the background check, at least for persons who have been previously investigated. This suggestion was accepted.
11. Clarify whether information obtained during the background check of proposed mortgage agents is public or confidential or whether it can be provided to the employer. Some persons expressed a desire to make the background report confidential, some wished it to be public, and some wished it to be made available to the employer only. The Division amended the regulation to clarify that the report of investigation is considered confidential and will be released only pursuant to subpoena or court order. The Division will consider limited review of the report or the information contained therein if an issue arises as to the accuracy of any

of the information contained therein.

12. Require an applicant for registration as a mortgage agent to provide only that minimal information on the application that is required to complete the background investigation. The background investigation should be limited to that information relevant to the statutory grounds for denying the application. The form currently used by the Division requests information regarding a person's personal history, not his financial status. The Division believes the information required on the form is necessary to ensure the accuracy of the background check. The Division believes that the background check seeks only that information that may reveal grounds for disqualification of the applicant pursuant to NRS 645B.450(1).
13. Add to the list of factors considered in determining the adequacy of a broker's supervision of a mortgage agent whether the broker investigated the agent's background independently of the Division's background investigation. The Division has accepted this suggestion.
14. With regard to the requirement that a mortgage broker who terminates a mortgage agent send the Division a letter which, among other things, explains the reasons for the termination, clarify whether the letter will be considered a public document and available to future prospective employers. Some persons wished the letter to be considered public; some indicated that making the letter public will cause brokers to be extremely cautious in their description of reasons for a termination. The Division amended the regulation to clarify that letters stating reasons for the termination of mortgage agents will be considered public records.
15. With regard to the proposal to adopt certain federal laws as standards of conduct for mortgage brokers, the Division received the following comments:
 - (a) Some persons were opposed to this proposal;
 - (b) Some persons wishes the proposal to be clarified to specifically identify which federal laws and regulations were being adopted by reference; and
 - (c) Some persons questioned whether the Division should adopt additional federal laws by reference that pertain to the mortgage lending business.

The Division amended its initial proposal to provide that suspected violations of the federal laws listed will be referred to the appropriate law enforcement agency for further review. The Division will not enforce these laws itself.
16. Define "major violation" in terms of the monetary amount of loss caused by the conduct. One person suggested \$10,000 as a threshold amount, another suggested \$1,000. The Division has rejected any attempt to define "major violation" in terms of a dollar amount of loss caused by the violation.
17. Exclude from the definition of "major violation" acts that are not the result of deliberate or intentional activity but rather of inadvertence or mistake. The Division has amended the

regulation to allow this factor to be considered.

18. Clarify whether the borrower should be entitled to a copy of any appraisal prepared in connection with the loan. The Division amended the regulation to provide that the borrower has a right to receive a copy of the appraisal if he or she has paid for it.
19. Provide a “grace period” within which a mortgage broker may replace a “qualified employee” who terminates employment with the mortgage broker. The Division amended the regulation to provide a period of 30 days within which a mortgage broker may designate a new qualified employee and provide for additional extensions of time if agreed to by the Commissioner.
20. Clarify that the regulation addresses only those situations involving changes in ownership and management of a mortgage broker that constitute a “change of control” pursuant to NRS 645B.095. The Division did not accept this recommendation as it was deemed unnecessary.
21. Clarify that regulation of material appearing on the Internet is limited to that material intended to solicit potential investors, lenders, or borrowers, not other forms of Internet communication, such as E-mail. The Division did not accept this suggestion as it was deemed unnecessary. The commonly understood meaning of “advertising material” would exclude such inter-personal communications relating to specific transactions as were listed in the comment.
22. Clarify that the licensing exemption set forth in NRS 645B.015(6) does not authorize the payment of finder’s fees in relation to loan transactions that are not exempt pursuant to that section. Since this conduct is already prohibited by statute, and AB 64 grants the Division greater enforcement powers with respect to unlicensed mortgage activity, no change was deemed necessary.
23. Clarify whether the proposed limitation on the use of a fictitious business name will allow only one business name or allow a fictitious name *in addition to* the company’s real name. The Division amended the regulation to clarify that a mortgage broker is authorized to conduct business under only *one* name.
24. Allow for a hearing to contest a cease and desist order *before* it becomes effective or is enforced. The Division amended the regulation to provide for the recipient of a cease and order to request a hearing to contest the order. If a hearing is requested, the order will be suspended pending a final decision after the hearing.
25. With regard to the list of factors proposed to be considered by the Division in determining whether a mortgage broker’s supervision of a mortgage agent was adequate, the Division received the following comments:
 - (a) Some persons understood this section to be imposing requirements rather than listing *factors* to be considered on the issue of adequacy of supervision and opposed some factors on the basis that the standard was not created in NRS chapter 645B or AB 64;
 - (b) Some persons wished the Division to create standards of supervision that, if

followed, will be considered adequate supervision, stating that the listed factors were not sufficiently clear.

The Division has retained the list of factors to consider in judging the adequacy of a mortgage broker's supervision of a mortgage agent. The factors listed are not, by themselves, standards of conduct or requirements for mortgage brokers, but factors that will be considered in each case where adequacy of supervision is an issue. The Division declined the suggestion to impose specific standards of conduct relating to supervision because it believes that reasonable supervision can be accomplished in a variety of different ways depending on the specific circumstances of each case.

26. Clarify that a mortgage broker is entitled to receive a copy of *each and every complaint* filed against it, whether or not the Division determines the complaint is within its jurisdiction to investigate. The regulation as currently proposed requires the Division to provide a copy of a written complaint to the person against whom the complaint is filed but does not specify a time within which this must occur. In many cases, it will be appropriate to provide a copy of a complaint to the subject of the complaint soon after receiving it. In some cases, however, it may be necessary to protect the identity of a complainant or not reveal the fact that a complaint has been filed in order to protect an ongoing investigation. The Commission must retain discretion to determine when this information may be provided to the subject of a complaint without jeopardizing an investigation or the Division's ability to enforce the law.
27. The proposal regarding actions taken by a vote of at least 51% of the investors on a loan should be amended to allow for other methods of management should all the investors agree. The example given for this suggestion was a transaction involving two private investors with equal interests in the loan. The Division has amended the regulation to allow for any type of management agreement where two persons hold equal interests in a mortgage loan. The Division does not, however, wish to allow investors to agree to a general exception to the 51% rule because to do so would allow a mortgage broker to defeat the protective purpose of the rule.
28. Clarify provisions regarding providing and retaining certain documents relating to a mortgage loan so that the requirements are consistent with the statute, the disclosure form, and do not create unnecessary requirements when dealing with loans that do not involve private investors. The Division has attempted to accommodate this concern and has created a new, simplified document receipt form.
29. Clarify whether the Division should adopt or require use of a specific form for powers of attorney or disclosing a broker's personal involvement in a loan or just approve the use of forms submitted by mortgage brokers. The Division has created the basic format for powers of attorney that contains certain language mandated by AB 64. Since the power of attorney may contain additional provisions not set forth in the statute or regulation, it will still have to be submitted to the Division for approval. The investor disclosure form contains a space for disclosing and describing a mortgage broker's personal involvement in

a mortgage loan.

30. Clarify that the requirement that records be maintained for six years applies only to *completed* transactions. The Division has amended the regulation to clarify this point.
31. Clarify whether a mortgage agent may work for a mortgage broker located in another state or another mortgage broker licensed in this state. The Division has amended the regulation to clarify these points.
32. Language required by AB 64 to be provided in advertising pertaining to the risks involved in investing in mortgage loans should be required only in advertising intended to solicit potential investors, not potential borrowers.
33. The power of attorney form was perceived by some as creating a requirement that a separate power of attorney be executed for each loan transaction. The Division has attempted to explain that the power of attorney must refer to a specific loan transaction and legal description to enable it to be publicly recorded. The language of the form states, however, that the power of attorney may be used for other purposes provided the investor agrees to such other use in writing.
34. Some people expressed opposition to adopting the proposed regulations without also adopting regulations creating audit procedures for examinations and audits of licensed mortgage brokers. Audit procedures will be proposed after implementation of the regulations currently proposed so that initial issues of interpretation may be addressed and problems noted. If any changes to the currently proposed regulations are required, they can be made when audit procedures are proposed.
35. Clarify the phrase “holds himself out” set forth in the definition of mortgage broker in NRS 645B.0127 to exclude persons offering money to lend exclusively to other licensed mortgage brokers in the secondary mortgage market. The Division has accepted this recommendation.
36. With regard to the proposal for Division examiners to *refer* suspected violations of federal laws relating to lending to the appropriate enforcement agency, some people were opposed to any involvement by the Division in the enforcement of these laws. The Division will make referrals only and will not take any enforcement action itself with respect to these laws.
37. Clarify that a mortgage broker is not limited by its license to engaging only in activities that the license authorizes. This suggestion is inconsistent with the mandate of NRS 645B.035(1) that a mortgage broker licensee is only authorized to perform activities authorized by its license.
38. Allow mortgage brokers to accept nonrefundable application fees. Incorporating this suggestion would, in the Division’s view, conflict with the advance fee statutes, NRS

645E.420, NRS 645B.165, and NRS 205.950.

39. In the proposed disclosure form, delete any requirement for acknowledging receipt of any document that will not be produced, if at all, until after the loan closes. The Division has accepted this recommendation.
40. Results of a background investigation on a mortgage agent should be available to the agent who is the subject of the investigation. Although the regulation as proposed provides that the investigative report is deemed confidential, the Division will consider review of the report or the information contained therein if an issue arises as to the accuracy of any of that information.
41. Amend the section describing requirements for loan delinquency reports to permit “variances” so that a broker can use existing software reports that may not include all the information requirement by the regulation. The Division has not accepted this suggestion as it would be inconsistent with AB 64.
42. Amend existing requirement for certain documents to be maintained in a fireproof “container” to include a fireproof “room.” The Division has accepted this recommendation.
43. Adopt a record retention period of less than six years as proposed. Some suggested a two year period as required by HUD. Although the six year record retention period has been retained, the Division has amended the regulation to allow records to be retained in computer format after two years.
44. Delete as duplicative the requirement that envelopes containing advertising material not contain anything that would mislead the reader into believing the contents of the envelope was a check or official government communication. The Division has not accepted this recommendation as it believes that misleading material appearing on envelopes should be prohibited.
45. Provide more time to comment on the proposed regulation.
46. The investor disclosure form is too long and has too many places for the investor to sign or initial.
47. Authorizing imposition of discipline for committing any “deceptive trade practice” is too vague. The Division has explained that all businesses are already subject to enforcement action for engaging in any deceptive trade practice as defined in NRS chapter 598 and that any discipline imposed will be based on a specific alleged statutory violation.
48. Investor disclosure form should contain a line where investor acknowledges receipt of the form. The Division has accepted this recommendation.

49. The prohibition against retaining any fees paid to third parties in excess of the actual cost of the service provided should be deleted. The mortgage broker should be able to retain these fees if the borrower agrees in writing. The Division has not accepted this recommendation as the collection and retention of excess fees has been the subject of abuse in the past.
50. Investors should have the right to review in the mortgage broker's office but not *receive* the borrower's credit information in order to protect the privacy rights of the borrower. The Division is amending NAC 645B.080(1)(b) to require only that the broker provide the *information* in a credit report, not necessarily the report itself.
51. The investor disclosure form should be amended to indicate that a mortgage broker must disclose any personal interest he or she has in the mortgage loan as well as any of his or her *relatives*. The Division has accepted this recommendation.
52. No provision is made in the investor disclosure form for disclosing to a *borrower* any personal interest of a mortgage broker or relative in a mortgage loan. No change is necessary as this disclosure requirement only applies to investors.
53. The proposed regulation provides the Commissioner's interpretation of the phrase "accept money from an investor to acquire ownership of or a beneficial interest in a loan secured by a lien on real property" as set forth in NRS 645B.185 regarding a disclosure statement. Since the same phrase appears in NRS 645B.300 regarding provision of the appraisal report, it should be similarly interpreted. The Division has accepted this recommendation.
54. It is unnecessary to require financial statements of all limited partners if the applicant for a mortgage broker's licenses is a limited partnership. The Division amended NAC 645B.020 to require financial statements only of general partners.
55. The form provided by the Division to evidence compliance with NAC 645B.080, as amended, should not require an acknowledgement of receipt of the recorded deed of trust and the title insurance policy as these items are not available until well after the close of escrow. The Division has accepted this recommendation and amended NAC 645B.080(3) to provide that the broker execute a form showing the date these documents were mailed to the investor.
56. A mortgage broker who has control over the production of escrow instructions should not be permitted to provide indirectly, through the execution of such instructions, what he or she cannot do directly pursuant to the restrictions on handling of money set forth in NRS 645B.175. The Division accepted this recommendation and added language that provides as follows: (a) That "money paid to a mortgage broker and his mortgage agents by a person in full or in partial payment of a loan" within the meaning of NRS 645B.175(4) will include money paid to the mortgage broker or his mortgage agents by a person pursuant to written escrow instructions if the payment represents money paid in full or partial repayment of a loan secured by a lien on real property, and (b) That the Commissioner will not consider escrow instructions to have been "approved by the parties" within the meaning

of NRS 645B.175(1)(a)(2) if they are signed by the mortgage broker as attorney in fact for the investor and provide for money to be distributed to the mortgage broker.

57. The disclosure form required by NRS 645B.185 should not have to be signed by institutional investors. Since the definition of “investor” set forth in NRS 645B.0121 does not distinguish between “private” and “institutional” investors, this recommendation could not be accommodated as it would be inconsistent with the plain language of the statute. The Division did, however, amend the regulation to make clear that any person except the mortgage broker and mortgage agent could be authorized by a corporate investor to sign for receipt of the disclosure form on behalf of the corporation or institutional investor.
58. The term “major violation” should be defined in terms of a dollar amount of \$5,000 loss caused to a member of the public. The Division did not accept this recommendation as it is considered too inflexible in defining conduct which requires a strong regulatory response.
59. Suspected violations of federal law relating to mortgage lending should be referred to the appropriate enforcement agency only if observed during a normal investigation, not during annual examinations, because the industry will then be paying for the state to conduct federal compliance audits. Although examination procedures will be proposed in the future and may or may not address the issue of compliance with federal laws, this recommendation was not accepted because it would lead to the absurd result that violations of federal law observed during annual examinations could not be reported to the appropriate enforcement agency.
60. The disclosure form required by NRS 645B.185 should not require the investor to indicate yes or no to the question of whether he or she wishes to review the broker’s financial statement. The Division has rejected this suggestion as inconsistent with the policy of AB 64 to inform the investor of that right.
61. Reference to a form approved by the Division in NAC 645B.080, as amended, should be removed as it is not required by AB 64. NAC 645B.080 has for many years required private investors to acknowledge their opportunity to receive and review documents relevant to the decision to make an investment and the proposed amendment merely mandates the use of a form approved by the Division to evidence compliance. The Division has therefore not accepted this recommendation.
62. The reference to the Commissioner’s authority to charge \$125 per hour for attorney time necessary to enforce the provisions of NRS Chapter 645B should be removed. The Division has rejected this suggestion. AB 64 authorizes the Division to recover attorneys fees in the enforcement of the Mortgage Broker Act and the proposed regulation merely provides that whether to do so lies with the discretion of the Commissioner and sets forth the hourly rate at which such fees will be assessed.

Receipt of Documents and/or Waiver

MORTGAGE BROKER: _____

BORROWER: _____

PROPERTY ADDRESS: _____

LOAN AMOUNT: _____

LOAN TERM: _____

I. **DOCUMENTS RECEIVED OR WAIVED BEFORE INVESTING IN THE LOAN
(NATURAL PERSONS ONLY)**

This is to certify that I (We) received (or waived the right to receive) and was provided with an opportunity to review (or waived the right to review) the following prior to making a decision on the above loan:

- (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.

Received Waived

- (b) 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.

Received Waived

- (c) A report on the prospective borrower's history of credit 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.

Received Waived

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

Received Waived

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

Received Waived

SIGNATURE REQUIRED:

Investor: _____
Title (If investor is a corporation, partnership or
limited liability company) _____
Dated: _____

III. DOCUMENTS REQUIRED TO BE PROVIDED TO ALL INVESTORS

(a) A copy of the promissory note;

Date mailed or provided to investor: _____

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

Date mailed or provided to investor: _____

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

Date mailed or provided to investor: _____