
ASSEMBLY BILL NO. 676—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF BUDGET DIVISION)

MARCH 22, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to mortgage companies and loans secured by liens on real property. (BDR 54-1610)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.

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

AN ACT relating to real property; revising the provisions relating to certain loans secured by liens on real property; revising the provisions relating to the licensing and the operation of certain mortgage companies and mortgage brokers; establishing licensing requirements for certain mortgage agents and requiring such agents to pay certain fees; prohibiting various acts by mortgage companies, mortgage brokers and mortgage agents; providing for administrative sanctions and criminal penalties; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Title 54 of NRS is hereby amended by adding thereto a
2 new chapter to consist of the provisions set forth as sections 2 to 36,
3 inclusive, of this act.
4 **Sec. 2.** *As used in this chapter, unless the context otherwise requires,*
5 *the words and terms defined in sections 3 to 8, inclusive, of this act have*
6 *the meanings ascribed to them in those sections.*
7 **Sec. 3.** *“Applicant” means a person who applies for licensure as a*
8 *mortgage company pursuant to this chapter.*
9 **Sec. 4.** *“Commissioner” means the commissioner of financial*
10 *institutions.*
11 **Sec. 5.** *“Depository financial institution” means a bank, savings and*
12 *loan association, thrift company or credit union.*

1 **Sec. 6.** *“Division” means the division of financial institutions of the*
2 *department of business and industry.*

3 **Sec. 7.** *“Licensee” means a person who is licensed as a mortgage*
4 *company pursuant to this chapter.*

5 **Sec. 8. 1.** *“Mortgage company” means any person who, directly or*
6 *indirectly:*

7 **(a)** *Holds himself out as being able to:*

8 **(1)** *Buy or sell notes secured by liens on real property; or*

9 **(2)** *Make loans secured by liens on real property using his own*
10 *money; and*

11 **(b)** *Does not engage in any other act or transaction described in the*
12 *definition of “mortgage broker,” as set forth in section 50 of this act,*
13 *unless he is also licensed as a mortgage broker pursuant to chapter 645B*
14 *of NRS.*

15 **2.** *For the purposes of this section, a person does not make a loan*
16 *secured by a lien on real property using his own money if any portion of*
17 *the money that is used to make the loan is provided by another person*
18 *who acquires ownership of or a beneficial interest in the loan.*

19 **Sec. 9.** *The provisions of this chapter do not:*

20 **1.** *Limit any statutory or common law right of a person to bring a*
21 *civil action against a mortgage company for any act or omission involved*
22 *in the transaction of business by or on behalf of the mortgage company;*

23 **2.** *Limit the right of the state to punish a person for the violation of*
24 *any law, ordinance or regulation; or*

25 **3.** *Establish a basis for a person to bring a civil action against the*
26 *state or its officers or employees for any act or omission in carrying out*
27 *the provisions of this chapter, including, without limitation, any act or*
28 *omission relating to the disclosure of information or the failure to*
29 *disclose information pursuant to the provisions of this chapter.*

30 **Sec. 10.** *Except as otherwise provided in section 11 of this act, the*
31 *provisions of this chapter do not apply to:*

32 **1.** *Any person doing business under the laws of this state, any other*
33 *state or the United States relating to banks, savings banks, trust*
34 *companies, savings and loan associations, consumer finance companies,*
35 *industrial loan companies, credit unions, thrift companies, independent*
36 *mortgage agencies or insurance companies, unless the business*
37 *conducted in this state is not subject to supervision by the regulatory*
38 *authority of the other jurisdiction, in which case licensing pursuant to*
39 *this chapter is required.*

40 **2.** *A real estate investment trust, as defined in 26 U.S.C. § 856,*
41 *unless the business conducted in this state is not subject to supervision by*
42 *the regulatory authority of the other jurisdiction, in which case licensing*
43 *pursuant to this chapter is required.*

1 3. An employee benefit plan, as defined in 29 U.S.C. § 1002(3), if the
2 loan is made directly from money in the plan by the plan's trustee.

3 4. An attorney at law rendering services in the performance of his
4 duties as an attorney at law.

5 5. A real estate broker rendering services in the performance of his
6 duties as a real estate broker.

7 6. Any person doing any act under an order of any court.

8 7. Any one natural person, or husband and wife, who provides
9 money for investment in loans secured by a lien on real property, on his
10 own account.

11 8. Agencies of the United States and of this state and its political
12 subdivisions, including the public employees' retirement system.

13 9. A seller of real property who offers credit secured by a mortgage
14 of the property sold.

15 **Sec. 11. 1.** A person who claims an exemption from the provisions
16 of this chapter pursuant to subsection 1 of section 10 of this act must:

17 (a) File a written application for a certificate of exemption with the
18 office of the commissioner;

19 (b) Pay the fee required pursuant to section 15 of this act; and

20 (c) Include with the written application satisfactory proof that the
21 person meets the requirements of subsection 1 of section 10 of this act.

22 2. The commissioner may require a person who claims an exemption
23 from the provisions of this chapter pursuant to subsections 2 to 9,
24 inclusive, of section 10 of this act to:

25 (a) File a written application for a certificate of exemption with the
26 office of the commissioner;

27 (b) Pay the fee required pursuant to section 15 of this act; and

28 (c) Include with the written application satisfactory proof that the
29 person meets the requirements of at least one of those exemptions.

30 3. A certificate of exemption expires automatically if, at any time, the
31 person who claims the exemption no longer meets the requirements of at
32 least one exemption set forth in the provisions of section 10 of this act.

33 4. If a certificate of exemption expires automatically pursuant to this
34 section, the person shall not provide any of the services of a mortgage
35 company or otherwise engage in, carry on or hold himself out as
36 engaging in or carrying on the business of a mortgage company, unless
37 the person applies for and is issued:

38 (a) A license as a mortgage company pursuant to this chapter; or

39 (b) Another certificate of exemption.

40 5. The commissioner may impose upon a person who is required to
41 apply for a certificate of exemption or who holds a certificate of
42 exemption an administrative fine of not more than \$5,000 for each
43 violation that he commits, if the person:

1 (a) Has knowingly made or caused to be made to the commissioner
2 any false representation of material fact;

3 (b) Has suppressed or withheld from the commissioner any
4 information which the person possesses and which, if submitted by him,
5 would have rendered the person ineligible to hold a certificate of
6 exemption; or

7 (c) Has violated any provision of this chapter, a regulation adopted
8 pursuant to this chapter or an order of the commissioner that applies to a
9 person who is required to apply for a certificate of exemption or who
10 holds a certificate of exemption.

11 **Sec. 12. 1.** A person may apply to the commissioner for an
12 exemption from the provisions of this chapter governing the making of a
13 loan or a particular class of loans of money.

14 2. The commissioner may grant the exemption if he finds that:

15 (a) The making of the loan or the particular class of loans would not
16 be detrimental to the financial condition of the lenders or debtors who
17 would be involved in the loan or the particular class of loans;

18 (b) Such lenders or debtors have established a record of sound
19 performance, efficient management, financial responsibility and
20 integrity;

21 (c) The making of the loan or the particular class of loans is likely to
22 increase the availability of capital for a sector of the state economy; and

23 (d) The making of the loan or the particular class of loans is not
24 detrimental to the public interest.

25 3. The commissioner:

26 (a) May revoke an exemption unless a loan for which an exemption
27 was granted has been made; and

28 (b) Shall issue a written statement setting forth the reasons for his
29 decision to grant, deny or revoke an exemption.

30 **Sec. 13. 1.** A person who wishes to be licensed as a mortgage
31 company must file a written application for a license with the office of
32 the commissioner and pay the fee required pursuant to section 15 of this
33 act. An application for a license as a mortgage company must:

34 (a) Be verified.

35 (b) State the name, residence address and business address of the
36 applicant.

37 (c) State the location of each principal office and branch office at
38 which the mortgage company will conduct business within this state. If
39 the mortgage company will not maintain any offices within this state, the
40 applicant must include the name and address of the person within this
41 state who will serve as the resident agent for the mortgage company
42 pursuant to section 14 of this act.

1 (d) State the name under which the applicant will conduct business as
2 a mortgage company.

3 (e) If the applicant is not a natural person, list the name, residence
4 address and business address of each person who will have an interest in
5 the mortgage company as a principal, partner, officer, director, manager
6 or trustee, specifying the capacity and title of each such person.

7 (f) Indicate the general plan and character of the business.

8 (g) State the length of time the applicant has been engaged in the
9 mortgage company business.

10 (h) Include a financial statement of the applicant.

11 (i) Include any other information required pursuant to the regulations
12 adopted by the commissioner or an order of the commissioner.

13 2. If a mortgage company will conduct business at one or more
14 branch offices within this state, the mortgage company must apply for a
15 license for each such branch office.

16 3. Except as otherwise provided in this chapter, the commissioner
17 shall issue a license to an applicant as a mortgage company if:

18 (a) The application complies with the requirements of this chapter;
19 and

20 (b) The commissioner finds, after investigation, that the applicant and
21 each general partner, officer or director of the applicant, if the applicant
22 is a partnership, corporation or unincorporated association:

23 (1) Has a good reputation for honesty, trustworthiness and integrity
24 and displays competence to transact the business of a mortgage company
25 in a manner which safeguards the interests of the general public. The
26 applicant must submit satisfactory proof of these qualifications to the
27 commissioner.

28 (2) Has not been convicted of, or entered a plea of nolo contendere
29 to, a felony or any crime involving fraud, misrepresentation or moral
30 turpitude.

31 (3) Has not made a false statement of material fact on his
32 application.

33 (4) Has not had a license that was issued pursuant to the provisions
34 of this chapter or chapter 645B of NRS suspended or revoked within the
35 10 years immediately preceding the date of his application.

36 (5) Has not had a license that was issued in any other state, district
37 or territory of the United States or any foreign country suspended or
38 revoked within the 10 years immediately preceding the date of his
39 application.

40 (6) Has not violated any provision of this chapter or chapter 645B
41 of NRS, a regulation adopted pursuant thereto or an order of the
42 commissioner.

1 **4. The commissioner shall not conduct an investigation of an**
2 **applicant pursuant to paragraph (b) of subsection 3 if the applicant is:**

3 **(a) Approved by the Federal National Mortgage Association as a**
4 **seller and servicer; and**

5 **(b) Approved by the Department of Housing and Urban Development**
6 **and the Department of Veterans Affairs.**

7 **5. If an applicant is a partnership, corporation or unincorporated**
8 **association, the commissioner may refuse to issue a license to the**
9 **applicant if any member of the partnership or any officer or director of**
10 **the corporation or unincorporated association has committed any act or**
11 **omission that would be cause for refusing to issue a license to a natural**
12 **person.**

13 **Sec. 14. 1. The commissioner shall not issue a license pursuant to**
14 **this chapter to an applicant who does not maintain an office in this state,**
15 **unless the applicant has executed a written statement that appoints a**
16 **person in this state as his resident agent for the service of process for any**
17 **action or proceeding filed against him in this state.**

18 **2. The statement of appointment must include a provision which**
19 **provides:**

20 **(a) That any process which is served on the resident agent shall be**
21 **deemed to have the same legal validity as if it had been served on the**
22 **applicant;**

23 **(b) That the appointment of the resident agent as his agent for the**
24 **service of process continues as long as any liability remains outstanding**
25 **against him in this state; and**

26 **(c) For venue in any judicial or administrative district in this state**
27 **without regard to the residence or principal place of business of the**
28 **applicant.**

29 **3. The statement of appointment must be signed by the applicant and**
30 **notarized. The applicant shall file a copy of the statement of appointment**
31 **with the commissioner. A copy of such a statement that is certified by the**
32 **commissioner shall be deemed sufficient evidence of the appointment.**

33 **4. If any process is served upon the resident agent pursuant to this**
34 **section, the resident agent shall mail the process by certified mail to the**
35 **last known address of the person holding the license. Service of process**
36 **shall be deemed complete upon service upon the resident agent. The**
37 **manner of the service of process described in this subsection does not**
38 **affect the validity of any other service of process authorized by law.**

39 **Sec. 15. 1. A license issued to a mortgage company pursuant to**
40 **this chapter expires each year on December 31, unless it is renewed. To**
41 **renew a license, the licensee must submit to the commissioner on or**
42 **before December 31 of each year:**

1 (a) An application for renewal that complies with the requirements of
2 this chapter; and

3 (b) The fee required to renew the license pursuant to this section.

4 2. If the licensee fails to submit any item required pursuant to
5 subsection 1 to the commissioner on or before December 31 of any year,
6 the license is canceled. The commissioner may reinstate a canceled
7 license if the licensee submits to the commissioner:

8 (a) An application for renewal that complies with the requirements of
9 this chapter;

10 (b) The fee required to renew the license pursuant to this section; and

11 (c) A reinstatement fee of \$200.

12 3. Except as otherwise provided in section 11 of this act, a certificate
13 of exemption issued pursuant to this chapter expires each year on
14 December 31, unless it is renewed. To renew a certificate of exemption, a
15 person must submit to the commissioner on or before December 31 of
16 each year:

17 (a) An application for renewal that complies with the requirements of
18 this chapter; and

19 (b) The fee required to renew the certificate of exemption.

20 4. If the person fails to submit any item required pursuant to
21 subsection 3 to the commissioner on or before December 31 of any year,
22 the certificate of exemption is canceled. Except as otherwise provided in
23 section 11 of this act, the commissioner may reinstate a canceled
24 certificate of exemption if the person submits to the commissioner:

25 (a) An application for renewal that complies with the requirements of
26 this chapter;

27 (b) The fee required to renew the certificate of exemption; and

28 (c) A reinstatement fee of \$100.

29 5. A person must pay the following fees to apply for, to be issued or
30 to renew a license as a mortgage company pursuant to this chapter:

31 (a) To file an original application for a license, \$1,500 for the
32 principal office and \$40 for each branch office. The person must also
33 pay such additional expenses incurred in the process of investigation as
34 the commissioner deems necessary. All money received by the
35 commissioner pursuant to this paragraph must be placed in the
36 investigative account created by NRS 232.545.

37 (b) To be issued a license, \$1,000 for the principal office and \$60 for
38 each branch office.

39 (c) To renew a license, \$500 for the principal office and \$100 for each
40 branch office.

41 6. A person must pay the following fees to apply for or to renew a
42 certificate of exemption pursuant to this chapter:

43 (a) To file an application for a certificate of exemption, \$200.

1 **(b) To renew a certificate of exemption, \$100.**

2 **7. To be issued a duplicate copy of any license or certificate of**
3 **exemption, a person must make a satisfactory showing of its loss and pay**
4 **a fee of \$10.**

5 **8. Except as otherwise provided in this chapter, all fees received**
6 **pursuant to this chapter must be deposited in the state treasury for credit**
7 **to the state general fund.**

8 **Sec. 16. 1. In addition to the requirements set forth in sections 13**
9 **and 15 of this act, a natural person who applies for the issuance or**
10 **renewal of a license as a mortgage company shall submit to the**
11 **commissioner:**

12 **(a) In any application for issuance of a license, the social security**
13 **number of the applicant and the statement prescribed by the welfare**
14 **division of the department of human resources pursuant to NRS 425.520.**
15 **The statement must be completed and signed by the applicant.**

16 **(b) In any application for renewal of a license, the statement**
17 **prescribed by the welfare division of the department of human resources**
18 **pursuant to NRS 425.520. The statement must be completed and signed**
19 **by the applicant.**

20 **2. The commissioner shall include the statement required pursuant**
21 **to subsection 1 in:**

22 **(a) The application or any other forms that must be submitted for the**
23 **issuance or renewal of the license; or**

24 **(b) A separate form prescribed by the commissioner.**

25 **3. The commissioner shall not issue or renew a license as a mortgage**
26 **company if the applicant is a natural person who:**

27 **(a) Fails to submit the statement required pursuant to subsection 1; or**

28 **(b) Indicates on the statement submitted pursuant to subsection 1 that**
29 **he is subject to a court order for the support of a child and is not in**
30 **compliance with the order or a plan approved by the district attorney or**
31 **other public agency enforcing the order for the repayment of the amount**
32 **owed pursuant to the order.**

33 **4. If an applicant indicates on the statement submitted pursuant to**
34 **subsection 1 that he is subject to a court order for the support of a child**
35 **and is not in compliance with the order or a plan approved by the district**
36 **attorney or other public agency enforcing the order for the repayment of**
37 **the amount owed pursuant to the order, the commissioner shall advise**
38 **the applicant to contact the district attorney or other public agency**
39 **enforcing the order to determine the actions that the applicant may take**
40 **to satisfy the arrearage.**

41 **Sec. 17. 1. A license entitles a licensee to engage only in the**
42 **activities authorized by this chapter.**

43 **2. The provisions of this chapter do not prohibit a licensee from:**

1 (a) Holding a license as a mortgage broker pursuant to chapter 645B
2 of NRS; or

3 (b) Conducting the business of a mortgage company and the business
4 of a mortgage broker in the same office.

5 **Sec. 18.** A mortgage company may not transfer or assign a license to
6 another person, unless the commissioner gives his written approval.

7 **Sec. 19. 1.** The commissioner must be notified of a transfer of 5
8 percent or more of the outstanding voting stock of a mortgage company
9 and must approve a transfer of voting stock of a mortgage company
10 which constitutes a change of control.

11 2. The person who acquires stock resulting in a change of control of
12 the mortgage company shall apply to the commissioner for approval of
13 the transfer. The application must contain information which shows that
14 the requirements of this chapter for obtaining a license will be satisfied
15 after the change of control. Except as otherwise provided in subsection 3,
16 the commissioner shall conduct an investigation to determine whether
17 those requirements will be satisfied. If, after the investigation, the
18 commissioner denies the application, he may forbid the applicant from
19 participating in the business of the mortgage company.

20 3. A mortgage company may submit a written request to the
21 commissioner to waive an investigation pursuant to subsection 2. The
22 commissioner may grant a waiver if the applicant:

23 (a) Has undergone a similar investigation by a state or federal agency
24 in connection with the licensing of or his employment with a financial
25 institution; or

26 (b) Satisfies the requirements of subsection 4 of section 13 of this act.

27 4. As used in this section, "change of control" means:

28 (a) A transfer of voting stock which results in giving a person, directly
29 or indirectly, the power to direct the management and policy of a
30 mortgage company; or

31 (b) A transfer of at least 25 percent of the outstanding voting stock of
32 a mortgage company.

33 **Sec. 20. 1.** Subject to the administrative control of the director of
34 the department of business and industry, the commissioner shall exercise
35 general supervision and control over mortgage companies doing business
36 in this state.

37 2. In addition to the other duties imposed upon him by law, the
38 commissioner shall:

39 (a) Adopt any regulations that are necessary to carry out the
40 provisions of this chapter, except as to loan fees.

41 (b) Conduct such investigations as may be necessary to determine
42 whether any person has violated any provision of this chapter, a

1 regulation adopted pursuant to this chapter or an order of the
2 commissioner.

3 (c) Conduct an annual examination of each mortgage company doing
4 business in this state unless, before the annual examination is conducted,
5 the mortgage company submits to the commissioner an audited financial
6 statement that has been prepared by a certified public accountant who is
7 authorized to perform public accounting in this state.

8 (d) Conduct such other examinations, periodic or special audits,
9 investigations and hearings as may be necessary and proper for the
10 efficient administration of the laws of this state regarding mortgage
11 companies.

12 (e) Classify as confidential certain records and information obtained
13 by the division when those matters are obtained from a governmental
14 agency upon the express condition that they remain confidential. This
15 paragraph does not limit examination by the legislative auditor.

16 (f) Conduct such examinations and investigations as are necessary to
17 ensure that mortgage companies meet the requirements of this chapter
18 for obtaining a license, both at the time of the application for a license
19 and thereafter on a continuing basis.

20 3. For each special audit, investigation or examination, a mortgage
21 company shall pay a fee based on the rate established pursuant to NRS
22 658.101.

23 **Sec. 21.** Each mortgage company shall pay the assessment levied
24 pursuant to NRS 658.055 and cooperate fully with the audits and
25 examinations performed pursuant thereto.

26 **Sec. 22. 1.** In the conduct of any examination, periodic or special
27 audit, investigation or hearing, the commissioner may:

28 (a) Compel the attendance of any person by subpoena.

29 (b) Administer oaths.

30 (c) Examine any person under oath concerning the business and
31 conduct of affairs of any person subject to the provisions of this chapter
32 and in connection therewith require the production of any books, records
33 or papers relevant to the inquiry.

34 2. Every person subpoenaed under the provisions of this section who
35 willfully refuses or willfully neglects to appear at the time and place
36 named in the subpoena or to produce books, records or papers required
37 by the commissioner, or who refuses to be sworn or answer as a witness,
38 is guilty of a misdemeanor.

39 3. The commissioner may assess against and collect from a person
40 all costs, including, without limitation, reasonable attorney's fees, that
41 are attributable to any examination, periodic or special audit,
42 investigation or hearing that is conducted to examine or investigate the
43 conduct, activities or business of the person pursuant to this chapter.

1 **Sec. 23. 1.** *Each mortgage company shall keep and maintain at all*
2 *times at each location where the mortgage company conducts business in*
3 *this state complete and suitable records of all mortgage transactions*
4 *made by the mortgage company at that location. Each mortgage*
5 *company shall also keep and maintain at all times at each such location*
6 *all original books, papers and data, or copies thereof, clearly reflecting*
7 *the financial condition of the business of the mortgage company.*

8 2. *Each mortgage company shall submit to the commissioner each*
9 *month a report of the mortgage company's activity for the previous*
10 *month. The report must:*

11 (a) *Specify the volume of loans arranged by the mortgage company*
12 *for the month or state that no loans were arranged in that month;*

13 (b) *Include any information required pursuant to the regulations*
14 *adopted by the commissioner; and*

15 (c) *Be submitted to the commissioner by the 15th day of the month*
16 *following the month for which the report is made.*

17 3. *The commissioner may adopt regulations prescribing accounting*
18 *procedures for mortgage companies handling trust accounts and the*
19 *requirements for keeping records relating thereto.*

20 **Sec. 24. 1.** *Except as otherwise provided in this section, not later*
21 *than 60 days after the last day of each fiscal year for a mortgage*
22 *company, the mortgage company shall submit to the commissioner a*
23 *financial statement that:*

24 (a) *Is dated not earlier than the last day of the fiscal year; and*

25 (b) *Has been prepared from the books and records of the mortgage*
26 *company by an independent public accountant who holds a permit to*
27 *engage in the practice of public accounting in this state that has not been*
28 *revoked or suspended.*

29 2. *The commissioner may grant a reasonable extension for the*
30 *submission of a financial statement pursuant to this section if a mortgage*
31 *company requests such an extension before the date on which the*
32 *financial statement is due.*

33 3. *If a mortgage company maintains any accounts described in*
34 *section 27 of this act, the financial statement submitted pursuant to this*
35 *section must be audited. The public accountant who prepares the report*
36 *of an audit shall submit a copy of the report to the commissioner at the*
37 *same time that he submits the report to the mortgage company.*

38 4. *The commissioner shall adopt regulations prescribing the scope of*
39 *an audit conducted pursuant to subsection 3.*

40 **Sec. 25. 1.** *Except as otherwise provided in this section or by*
41 *specific statute, all papers, documents, reports and other written*
42 *instruments filed with the commissioner pursuant to this chapter are*

43 *open to public inspection.*

1 2. The commissioner may withhold from public inspection or refuse
2 to disclose to a person, for such time as the commissioner considers
3 necessary, any information that, in his judgment, would:

4 (a) Impede or otherwise interfere with an investigation that is
5 currently pending against a mortgage company; or

6 (b) Have an undesirable effect on the welfare of the public or the
7 welfare of any mortgage company.

8 **Sec. 26. 1.** Except as otherwise provided in subsection 3, the
9 amount of any advance fee, salary, deposit or money paid to any
10 mortgage company or other person to obtain a loan secured by a lien on
11 real property must be placed in escrow pending completion of the loan or
12 a commitment for the loan.

13 2. The amount held in escrow pursuant to subsection 1 must be
14 released:

15 (a) Upon completion of the loan or commitment for the loan, to the
16 mortgage company or other person to whom the advance fee, salary,
17 deposit or money was paid.

18 (b) If the loan or commitment for the loan fails, to the person who
19 made the payment.

20 3. Advance payments to cover reasonably estimated costs paid to
21 third persons are excluded from the provisions of subsections 1 and 2 if
22 the person making them first signs a written agreement which specifies
23 the estimated costs by item and the estimated aggregate cost, and which
24 recites that money advanced for costs will not be refunded. If an itemized
25 service is not performed and the estimated cost thereof is not refunded,
26 the recipient of the advance payment is subject to the penalties provided
27 in section 36 of this act.

28 **Sec. 27. 1.** All money paid to the mortgage company for payment
29 of taxes or insurance premiums on real property which secures any loan
30 made by the mortgage company must be deposited in an insured
31 depository financial institution and kept separate, distinct and apart from
32 money belonging to the mortgage company. Such money, when
33 deposited, is to be designated as an “impound trust account” or under
34 some other appropriate name indicating that the accounts are not the
35 money of the mortgage company.

36 2. The mortgage company has a fiduciary duty to its debtors with
37 respect to the money in an impound trust account.

38 3. The mortgage company shall, upon reasonable notice, account to
39 any debtor whose real property secures a loan made by the mortgage
40 company for any money which that person has paid to the mortgage
41 company for the payment of taxes or insurance premiums on the real
42 property.

1 4. The mortgage company shall, upon reasonable notice, account to
2 the commissioner for all money in an impound trust account.

3 5. Except as otherwise provided in this section, a mortgage company
4 shall maintain an impound trust account in the same manner that an
5 escrow account must be maintained pursuant to section 10 of the Real
6 Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2609, as amended,
7 and the regulations adopted pursuant thereto.

8 6. A mortgage company shall not make payments from an impound
9 trust account in a manner that causes a policy of insurance to be
10 canceled or causes property taxes or similar payments to become
11 delinquent.

12 **Sec. 28. 1.** Money in an impound trust account is not subject to
13 execution or attachment on any claim against the mortgage company.

14 2. It is unlawful for a mortgage company knowingly to keep or cause
15 to be kept any money in a depository financial institution under the
16 heading of "impound trust account" or any other name designating such
17 money as belonging to the debtors of the mortgage company, unless the
18 money has been paid to the mortgage company by a debtor pursuant to
19 section 27 of this act and is being held in trust by the mortgage company
20 pursuant to the provisions of that section.

21 **Sec. 29. 1.** Whether or not a complaint has been filed, the
22 commissioner may investigate a mortgage company or other person if,
23 for any reason, it appears that:

24 (a) The mortgage company is conducting business in an unsafe and
25 injurious manner or in violation of any provision of this chapter, a
26 regulation adopted pursuant to this chapter or an order of the
27 commissioner;

28 (b) The person is offering or providing any of the services of a
29 mortgage company or otherwise engaging in, carrying on or holding
30 himself out as engaging in or carrying on the business of a mortgage
31 company without being licensed or exempt from licensing pursuant to the
32 provisions of this chapter; or

33 (c) The person is violating any other provision of this chapter, a
34 regulation adopted pursuant to this chapter or an order of the
35 commissioner.

36 2. If, upon investigation, the commissioner has reasonable cause to
37 believe that the mortgage company or other person has engaged in any
38 conduct or committed any violation described in subsection 1, the
39 commissioner may:

40 (a) Advise the district attorney of the county in which the conduct or
41 violation occurred, and the district attorney shall cause the appropriate
42 legal action to be taken against the mortgage company or other person to

1 *enjoin the conduct or the operation of the business or prosecute the*
2 *violation; and*

3 *(b) Bring a civil action to:*

4 *(1) Enjoin the mortgage company or other person from engaging in*
5 *the conduct, operating the business or committing the violation; and*

6 *(2) Enjoin any other person who has encouraged, facilitated, aided*
7 *or participated in the conduct, the operation of the business or the*
8 *commission of the violation, or who is likely to engage in such acts, from*
9 *engaging in or continuing to engage in such acts.*

10 *3. If the commissioner brings a civil action pursuant to subsection 2,*
11 *the district court of any county of this state is hereby vested with the*
12 *jurisdiction in equity to enjoin the conduct, the operation of the business*
13 *or the commission of the violation and may grant any injunctions that*
14 *are necessary to prevent and restrain the conduct, the operation of the*
15 *business or the commission of the violation. During the pendency of the*
16 *proceedings before the district court:*

17 *(a) The court may issue any temporary restraining orders as may*
18 *appear to be just and proper;*

19 *(b) The findings of the commissioner shall be deemed to be prima*
20 *facie evidence and sufficient grounds, in the discretion of the court, for*
21 *the ex parte issuance of a temporary restraining order; and*

22 *(c) The commissioner may apply for and on due showing is entitled to*
23 *have issued the court's subpoena requiring forthwith the appearance of*
24 *any person to:*

25 *(1) Produce any documents, books and records as may appear*
26 *necessary for the hearing of the petition; and*

27 *(2) Testify and give evidence concerning the conduct complained of*
28 *in the petition.*

29 **Sec. 30. 1.** *For each violation committed by an applicant, whether*
30 *or not he is issued a license, the commissioner may impose upon the*
31 *applicant an administrative fine of not more than \$5,000, if the*
32 *applicant:*

33 *(a) Has knowingly made or caused to be made to the commissioner*
34 *any false representation of material fact;*

35 *(b) Has suppressed or withheld from the commissioner any*
36 *information which the applicant possesses and which, if submitted by*
37 *him, would have rendered the applicant ineligible to be licensed pursuant*
38 *to the provisions of this chapter; or*

39 *(c) Has violated any provision of this chapter, a regulation adopted*
40 *pursuant to this chapter or an order of the commissioner in completing*
41 *and filing his application for a license or during the course of the*
42 *investigation of his application for a license.*

1 2. For each violation committed by a licensee, the commissioner may
2 impose upon the licensee an administrative fine of not more than \$5,000,
3 may suspend, revoke or place conditions upon his license, or may do
4 both, if the licensee, whether or not acting as such:

5 (a) Is insolvent;

6 (b) Is grossly negligent or incompetent in performing any act for
7 which he is required to be licensed pursuant to the provisions of this
8 chapter;

9 (c) Does not conduct his business in accordance with law or has
10 violated any provision of this chapter, a regulation adopted pursuant to
11 this chapter or an order of the commissioner;

12 (d) Has made a material misrepresentation in connection with any
13 transaction governed by this chapter;

14 (e) Has suppressed or withheld from a debtor or prospective debtor
15 any material facts, data or other information relating to any transaction
16 governed by the provisions of this chapter which the licensee knew or, by
17 the exercise of reasonable diligence, should have known;

18 (f) Has knowingly made or caused to be made to the commissioner
19 any false representation of material fact or has suppressed or withheld
20 from the commissioner any information which the licensee possesses and
21 which, if submitted by him, would have rendered the licensee ineligible to
22 be licensed pursuant to the provisions of this chapter;

23 (g) Has failed to account to persons interested for all money received
24 for the impound trust account;

25 (h) Has refused to permit an examination by the commissioner of his
26 books and affairs or has refused or failed, within a reasonable time, to
27 furnish any information or make any report that may be required by the
28 commissioner pursuant to the provisions of this chapter or a regulation
29 adopted pursuant to this chapter;

30 (i) Has been convicted of, or entered a plea of nolo contendere to, a
31 felony or any crime involving fraud, misrepresentation or moral
32 turpitude;

33 (j) Has refused or failed to pay, within a reasonable time, any fees,
34 assessments, costs or expenses that the licensee is required to pay
35 pursuant to this chapter or a regulation adopted pursuant to this chapter;

36 (k) Has failed to satisfy a claim made by a debtor or prospective
37 debtor which has been reduced to judgment;

38 (l) Has failed to account for or to remit any money of a debtor or
39 prospective debtor within a reasonable time after a request for an
40 accounting or remittal;

41 (m) Has commingled the money or other property of a debtor or
42 prospective debtor with his own or has converted the money or property
43 of others to his own use; or

1 (n) *Has engaged in any other conduct constituting a deceitful,*
2 *fraudulent or dishonest business practice.*

3 **Sec. 31. 1.** *If the commissioner receives a copy of a court order*
4 *issued pursuant to NRS 425.540 that provides for the suspension of all*
5 *professional, occupational and recreational licenses, certificates and*
6 *permits issued to a person who is the holder of a license as a mortgage*
7 *company, the commissioner shall deem the license issued to that person*
8 *to be suspended at the end of the 30th day after the date on which the*
9 *court order was issued unless the commissioner receives a letter issued to*
10 *the holder of the license by the district attorney or other public agency*
11 *pursuant to NRS 425.550 stating that the holder of the license has*
12 *complied with the subpoena or warrant or has satisfied the arrearage*
13 *pursuant to NRS 425.560.*

14 2. *The commissioner shall reinstate a license as a mortgage company*
15 *that has been suspended by a district court pursuant to NRS 425.540 if*
16 *the commissioner receives a letter issued by the district attorney or other*
17 *public agency pursuant to NRS 425.550 to the person whose license was*
18 *suspended stating that the person whose license was suspended has*
19 *complied with the subpoena or warrant or has satisfied the arrearage*
20 *pursuant to NRS 425.560.*

21 **Sec. 32.** *If a person is a partnership, corporation or unincorporated*
22 *association, the commissioner may take any disciplinary action set forth*
23 *in this chapter against the person if any member of the partnership or*
24 *any officer or director of the corporation or unincorporated association*
25 *has committed any act or omission that would be cause for taking such*
26 *disciplinary action against a natural person.*

27 **Sec. 33. 1.** *If the commissioner enters an order taking any*
28 *disciplinary action against a person or denying a person's application for*
29 *a license, the commissioner shall cause written notice of the order to be*
30 *served personally or sent by certified mail or by telegraph to the person.*

31 2. *Unless a hearing has already been conducted concerning the*
32 *matter, the person, upon application, is entitled to a hearing. If the*
33 *person does not make such an application within 20 days after the date*
34 *of the initial order, the commissioner shall enter a final order concerning*
35 *the matter.*

36 3. *A person may appeal a final order of the commissioner in*
37 *accordance with the provisions of chapter 233B of NRS that apply to a*
38 *contested case.*

39 **Sec. 34.** *It is unlawful for any person to offer or provide any of the*
40 *services of a mortgage company or otherwise to engage in, carry on or*
41 *hold himself out as engaging in or carrying on the business of a*
42 *mortgage company without first obtaining a license as a mortgage*
43 *company pursuant to this chapter, unless the person:*

- 1 **1. Is exempt from the provisions of this chapter; and**
- 2 **2. Complies with the requirements for that exemption.**

3 **Sec. 35. Except as otherwise provided in section 36 of this act, a**
4 **person, or any general partner, director, officer, agent or employee of a**
5 **person, who violates any provision of this chapter is guilty of a**
6 **misdemeanor.**

7 **Sec. 36. A person, or any general partner, director, officer, agent or**
8 **employee of a person, who violates any provision of section 26, 27 or 28**
9 **of this act is guilty of:**

10 **1. A misdemeanor if the amount involved is less than \$250;**

11 **2. A gross misdemeanor if the amount involved is \$250 or more but**
12 **less than \$1,000; or**

13 **3. A category D felony if the amount involved is \$1,000 or more, and**
14 **shall be punished as provided in NRS 193.130.**

15 **Sec. 37. NRS 645A.037 is hereby amended to read as follows:**

16 645A.037 1. Except as otherwise provided in subsection 2, no
17 licensee may conduct the business of administering escrows for
18 compensation within any office, suite, room or place of business in which
19 any other business is solicited or engaged in, except a notary public, or in
20 association or conjunction with any other business, unless authority to do
21 so is given by the commissioner.

22 2. A licensee may conduct the business of administering escrows
23 pursuant to this chapter in the same office or place of business as a
24 mortgage company if:

25 (a) The licensee and the mortgage company:

- 26 (1) Operate as separate legal entities;
- 27 (2) Maintain separate accounts, books and records;
- 28 (3) Are subsidiaries of the same parent corporation; and
- 29 (4) Maintain separate licenses; and

30 (b) The mortgage company ~~is~~ :

31 **(1) Is licensed by this state pursuant to sections 2 to 36, inclusive, of**
32 **this act; and** ~~[does not receive money to acquire or repay loans or maintain~~
33 ~~trust accounts as provided by NRS 645B.175.]~~

34 **(2) Does not conduct any business as a mortgage broker licensed**
35 **pursuant to chapter 645B of NRS at the office or place of business.**

36 **Sec. 38. Chapter 645B of NRS is hereby amended by adding thereto**
37 **the provisions set forth as sections 39 to 66, inclusive, of this act.**

38 **Sec. 39. "Applicant" means a person who applies for licensure as a**
39 **mortgage broker or mortgage agent pursuant to this chapter.**

40 **Sec. 40. "Commissioner" means the commissioner of financial**
41 **institutions.**

42 **Sec. 41. "Construction control" has the meaning ascribed to it in**
43 **NRS 627.050.**

1 **Sec. 42.** *“Depository financial institution” means a bank, savings*
2 *and loan association, thrift company or credit union.*

3 **Sec. 43.** *“Division” means the division of financial institutions of*
4 *the department of business and industry.*

5 **Sec. 44.** *“Escrow agency” has the meaning ascribed to it in NRS*
6 *645A.010.*

7 **Sec. 45.** *“Escrow agent” has the meaning ascribed to it in NRS*
8 *645A.010.*

9 **Sec. 46.** *“Escrow officer” has the meaning ascribed to it in NRS*
10 *692A.028.*

11 **Sec. 47.** *“Investor” means a person who wants to acquire or who*
12 *acquires ownership of or a beneficial interest in a loan secured by a lien*
13 *on real property.*

14 **Sec. 48.** *“Licensee” means a person who is licensed as a mortgage*
15 *broker or mortgage agent pursuant to this chapter.*

16 **Sec. 49.** 1. *“Mortgage agent” means a natural person who:*

17 (a) *Is an employee or independent contractor of a mortgage broker*
18 *who is required to be licensed pursuant to this chapter; and*

19 (b) *Is authorized by the mortgage broker to engage in, on behalf of*
20 *the mortgage broker, any activity that would require the person, if he*
21 *were not an employee or independent contractor of the mortgage broker,*
22 *to be licensed as a mortgage broker pursuant to this chapter.*

23 2. *The term does not include a person who:*

24 (a) *Is licensed as a mortgage broker;*

25 (b) *Is a general partner, officer or director of a mortgage broker; or*

26 (c) *Performs only clerical or ministerial tasks for a mortgage broker.*

27 **Sec. 50.** 1. *“Mortgage broker” means any person who, directly or*
28 *indirectly:*

29 (a) *Holds himself out for hire to serve as an agent for any person in*
30 *an attempt to obtain a loan which will be secured by a lien on real*
31 *property;*

32 (b) *Holds himself out for hire to serve as an agent for any person who*
33 *has money to lend, if the loan is or will be secured by a lien on real*
34 *property;*

35 (c) *Holds himself out as being able to make loans secured by liens on*
36 *real property;*

37 (d) *Holds himself out as being able to buy or sell notes secured by*
38 *liens on real property; or*

39 (e) *Offers for sale in this state any security which is exempt from*
40 *registration under state or federal law and purports to make investments*
41 *in promissory notes secured by liens on real property.*

1 2. The term does not include a person who is licensed as a mortgage
2 company, as defined in section 8 of this act, unless the person is also
3 licensed as a mortgage broker pursuant to this chapter.

4 Sec. 51. “Policy of title insurance” has the meaning ascribed to it in
5 NRS 692A.035.

6 Sec. 52. “Relative” means a spouse or any other person who is
7 related within the second degree by blood or marriage.

8 Sec. 53. “Title agent” has the meaning ascribed to it in NRS
9 692A.060.

10 Sec. 54. “Title insurer” has the meaning ascribed to it in NRS
11 692A.070.

12 Sec. 55. 1. A person may not be licensed as, conduct business as or
13 hold a controlling interest or position in a mortgage broker or be licensed
14 as or conduct business as a mortgage agent if the person or a relative of
15 the person is licensed as, conducts business as or holds a controlling
16 interest or position in:

17 (a) A construction control;

18 (b) An escrow agency, escrow agent or escrow officer;

19 (c) A title agent or title insurer; or

20 (d) Any other legal entity, regardless of its purpose, if the legal entity
21 holds a controlling interest or position in a legal entity described in
22 paragraph (a), (b) or (c).

23 2. For the purposes of this section, a person shall be deemed to hold
24 a controlling interest or position if the person:

25 (a) Owns or controls a majority of the voting stock or holds any other
26 controlling interest, directly or indirectly, that gives him the power to
27 direct management or determine policy; or

28 (b) Is a partner, officer, director or trustee.

29 Sec. 56. If a person is a partnership, corporation or unincorporated
30 association, the person:

31 1. May not be licensed as a mortgage agent; and

32 2. Shall not engage in any act or transaction that would require the
33 person, if it were a natural person, to be licensed as a mortgage agent
34 pursuant to this chapter.

35 Sec. 57. 1. A person who claims an exemption from the provisions
36 of this chapter pursuant to subsection 1 of NRS 645B.015 must:

37 (a) File a written application for a certificate of exemption with the
38 office of the commissioner;

39 (b) Pay the fee required pursuant to NRS 645B.050; and

40 (c) Include with the written application satisfactory proof that the
41 person meets the requirements of subsection 1 of NRS 645B.015.

1 2. The commissioner may require a person who claims an exemption
2 from the provisions of this chapter pursuant to subsections 2 to 9,
3 inclusive, of NRS 645B.015 to:

4 (a) File a written application for a certificate of exemption with the
5 office of the commissioner;

6 (b) Pay the fee required pursuant to NRS 645B.050; and

7 (c) Include with the written application satisfactory proof that the
8 person meets the requirements of at least one of those exemptions.

9 3. A certificate of exemption expires automatically if, at any time, the
10 person who claims the exemption no longer meets the requirements of at
11 least one exemption set forth in the provisions of NRS 645B.015.

12 4. If a certificate of exemption expires automatically pursuant to this
13 section, the person shall not provide any of the services of a mortgage
14 broker or mortgage agent or otherwise engage in, carry on or hold
15 himself out as engaging in or carrying on the business of a mortgage
16 broker or mortgage agent, unless the person applies for and is issued:

17 (a) A license as a mortgage broker or mortgage agent pursuant to this
18 chapter; or

19 (b) Another certificate of exemption.

20 5. The commissioner may impose upon a person who is required to
21 apply for a certificate of exemption or who holds a certificate of
22 exemption an administrative fine of not more than \$5,000 for each
23 violation that he commits, if the person:

24 (a) Has knowingly made or caused to be made to the commissioner
25 any false representation of material fact;

26 (b) Has suppressed or withheld from the commissioner any
27 information which the person possesses and which, if submitted by him,
28 would have rendered the person ineligible to hold a certificate of
29 exemption; or

30 (c) Has violated any provision of this chapter, a regulation adopted
31 pursuant to this chapter or an order of the commissioner that applies to a
32 person who is required to apply for a certificate of exemption or who
33 holds a certificate of exemption.

34 Sec. 58. 1. If an applicant is a natural person, the commissioner
35 may refuse to issue a license to the applicant if it appears that the
36 applicant would be subject to control by a relative who would be
37 ineligible to be licensed pursuant to this chapter.

38 2. If an applicant is a partnership, corporation or unincorporated
39 association, the commissioner may refuse to issue a license to the
40 applicant if:

41 (a) Any member of the partnership or any officer or director of the
42 corporation or unincorporated association has committed any act or

1 *omission that would be cause for refusing to issue a license to a natural*
2 *person; or*

3 *(b) It appears that any member of the partnership or any officer or*
4 *director of the corporation or unincorporated association would be*
5 *subject to control by a relative who would be ineligible to be licensed*
6 *pursuant to this chapter.*

7 **Sec. 59. 1.** *A license entitles a licensee to engage only in the*
8 *activities authorized by this chapter.*

9 **2.** *The provisions of this chapter do not prohibit a licensee who is*
10 *licensed as a mortgage broker from:*

11 *(a) Holding a license as a mortgage company pursuant to sections 2 to*
12 *36, inclusive, of this act; or*

13 *(b) Conducting the business of a mortgage company and the business*
14 *of a mortgage broker in the same office.*

15 **Sec. 60. 1.** *Except as otherwise provided in subsection 2, not later*
16 *than 60 days after the last day of each fiscal year for a mortgage broker,*
17 *the mortgage broker shall submit to the commissioner a financial*
18 *statement that:*

19 *(a) Is dated not earlier than the last day of the fiscal year; and*

20 *(b) Has been prepared from the books and records of the mortgage*
21 *broker by an independent public accountant who holds a permit to*
22 *engage in the practice of public accounting in this state that has not been*
23 *revoked or suspended.*

24 **2.** *The commissioner may grant a reasonable extension for the*
25 *submission of a financial statement pursuant to this section if a mortgage*
26 *broker requests such an extension before the date on which the financial*
27 *statement is due.*

28 **Sec. 61.** *A mortgage broker shall:*

29 **1.** *Teach his mortgage agents the fundamentals of mortgage lending*
30 *and the ethics of the profession; and*

31 **2.** *Supervise the activities of his mortgage agents and the operation*
32 *of his business.*

33 **Sec. 62. 1.** *If a mortgage agent terminates his association or*
34 *employment with a mortgage broker for any reason, the mortgage broker*
35 *shall, not later than the end of the next business day following the date of*
36 *termination:*

37 *(a) Deliver to the mortgage agent or send by certified mail to the last*
38 *known residence address of the mortgage agent a written statement*
39 *which advises him that his license is being delivered or mailed to the*
40 *division; and*

41 *(b) Deliver or send by certified mail to the division:*

- 1 (1) *The license of the mortgage agent;*
- 2 (2) *A written statement of the circumstances surrounding the*
- 3 *termination; and*
- 4 (3) *A copy of the written statement that the mortgage broker*
- 5 *delivers or mails to the mortgage agent pursuant to paragraph (a).*

6 2. *A mortgage agent who terminates his association or employment*
7 *with a mortgage broker shall not, on or after the date on which the*
8 *division receives his license from the mortgage broker, engage in any*
9 *activity, directly or indirectly, for which a license as a mortgage agent is*
10 *required pursuant to this chapter, unless the mortgage agent is*
11 *specifically authorized by the commissioner to transfer his license to*
12 *another mortgage broker or he otherwise obtains a new license pursuant*
13 *to this chapter.*

14 **Sec. 63.** 1. *If a deed of trust is recorded in connection with a loan*
15 *that has been funded, in whole or in part, by money from an investor, the*
16 *mortgage broker that arranged the loan and his mortgage agents shall*
17 *not engage in any act or transaction that subordinates the priority of the*
18 *deed of trust, as recorded, unless the mortgage broker, before such an act*
19 *or transaction, obtains written approval for the subordination from each*
20 *investor who owns a beneficial interest in the loan.*

21 2. *A mortgage broker or mortgage agent shall not act as the attorney*
22 *in fact or the agent of an investor with respect to the giving of written*
23 *approval pursuant to this section.*

24 3. *An investor and a mortgage broker or mortgage agent may not*
25 *agree to alter or waive the provisions of this section by contract or other*
26 *agreement. Any such contract or agreement is void and must not be given*
27 *effect to the extent that it violates the provisions of this section.*

28 **Sec. 64.** 1. *Except as otherwise provided in subsection 4, a*
29 *mortgage broker or mortgage agent shall not accept money from an*
30 *investor to acquire ownership of or a beneficial interest in a loan secured*
31 *by a lien on real property, unless the mortgage broker has obtained a*
32 *written appraisal of the real property securing the loan.*

33 2. *The written appraisal of the real property:*

34 (a) *Must be performed by an appraiser who is authorized to perform*
35 *appraisals in this state; and*

36 (b) *Must not be performed by the mortgage broker or a mortgage*
37 *agent, unless the mortgage broker or mortgage agent is certified or*
38 *licensed to perform such an appraisal pursuant to chapter 645C of NRS.*

39 3. *A copy of the written appraisal of the real property must be:*

40 (a) *Maintained at each office of the mortgage broker where money is*
41 *accepted from an investor to acquire ownership of or a beneficial interest*
42 *in a loan secured by a lien on the real property; and*

1 **(b) Made available during normal business hours for inspection by**
2 **each such investor and the commissioner.**

3 **4. A mortgage broker is not required to obtain a written appraisal of**
4 **the real property pursuant to this section if the mortgage broker obtains a**
5 **written waiver of the appraisal from each investor who acquires**
6 **ownership of or a beneficial interest in a loan secured by a lien on the**
7 **real property. A mortgage broker or mortgage agent shall not act as the**
8 **attorney in fact or the agent of an investor with respect to the giving of a**
9 **written waiver pursuant to this subsection.**

10 **5. As used in this section, “appraisal” has the meaning ascribed to it**
11 **in NRS 645C.030.**

12 **Sec. 65. 1. A mortgage broker or mortgage agent shall not engage**
13 **in any act or transaction on behalf of an investor pursuant to a power of**
14 **attorney unless:**

15 **(a) The power of attorney is executed for the sole purpose of providing**
16 **ministerial services for not more than one loan in which the investor**
17 **owns a beneficial interest; and**

18 **(b) The provisions of the power of attorney:**

19 **(1) Have been approved by the commissioner; and**

20 **(2) Expressly prohibit the mortgage broker and his mortgage agents**
21 **from using or releasing any money in which the investor owns a**
22 **beneficial interest with regard to that loan for a purpose that is not**
23 **directly related to providing ministerial services for the loan.**

24 **2. A power of attorney which designates a mortgage broker or**
25 **mortgage agent as the attorney in fact or the agent of an investor and**
26 **which violates the provisions of this section is void and must not be given**
27 **effect with regard to any act or transaction that occurs on or after July 1,**
28 **1999, whether or not the power of attorney is or has been executed by the**
29 **investor before, on or after July 1, 1999.**

30 **Sec. 66. For the purposes of NRS 645B.100, if a licensee commits**
31 **any unlawful act or violates any provision of this chapter, a regulation**
32 **adopted pursuant to this chapter or an order of the commissioner:**

33 **1. The unlawful act or violation is not cause for the suspension or**
34 **revocation of the license of any other person who employs, is employed**
35 **by or is associated with the licensee, unless it appears to the satisfaction**
36 **of the commissioner that such other person knew or should have known**
37 **of the unlawful act or violation; and**

38 **2. It is presumed that such other person knew or should have known**
39 **of the unlawful act or violation if it is shown that the licensee persistently**
40 **and consistently engaged in a course of dealing that involved the**
41 **unlawful act or violation.**

Sec. 67. NRS 645B.010 is hereby amended to read as follows:

645B.010 As used in this chapter, unless the context otherwise requires ~~it~~:

~~1. "Commissioner" means the commissioner of financial institutions.~~

~~2. "Division" means the division of financial institutions of the department of business and industry.~~

~~3. "Depository financial institution" means a bank, savings and loan association, thrift company or credit union.~~

~~4. "Mortgage company" means any person who, directly or indirectly:~~

~~(a) Holds himself out for hire to serve as an agent for any person in an attempt to obtain a loan which will be secured by a lien on real property;~~

~~(b) Holds himself out for hire to serve as an agent for any person who has money to lend, if the loan is or will be secured by a lien on real property;~~

~~(c) Holds himself out as being able to make loans secured by liens on real property, unless the loans are made pursuant to subsection 8 or 10 of NRS 645B.015;~~

~~(d) Holds himself out as being able to buy or sell notes secured by liens on real property; or~~

~~(e) Offers for sale in this state any security which is exempt from registration under state or federal law and purports to make investments in promissory notes secured by liens on real property.], the words and terms defined in sections 39 to 54, inclusive, of this act have the meanings ascribed to them in those sections.~~

Sec. 68. NRS 645B.015 is hereby amended to read as follows:

645B.015 Except as otherwise provided in ~~subsection 5 of NRS 645B.020,~~ **section 57 of this act**, the provisions of this chapter do not apply to:

1. Any person doing business under the laws of this state, any other state or the United States relating to banks, savings banks, trust companies, savings and loan associations, consumer finance companies, industrial loan companies, credit unions, thrift companies or insurance companies, unless the business conducted in this state is not subject to supervision by the regulatory authority of the other jurisdiction, in which case licensing pursuant to this chapter is required.

2. A real estate investment trust, as defined in 26 U.S.C. § 856, unless the business conducted in this state is not subject to supervision by the regulatory authority of the other jurisdiction, in which case licensing pursuant to this chapter is required.

3. An employee benefit plan, as defined in 29 U.S.C. § 1002(3), if the loan is made directly from money in the plan by the plan's trustee.

4. An attorney at law rendering services in the performance of his duties as an attorney at law.

1 5. A real estate broker rendering services in the performance of his
2 duties as a real estate broker.

3 6. ~~{Except as otherwise provided in this subsection, any firm or~~
4 ~~corporation:~~

5 ~~—(a) Whose principal purpose or activity is lending money on real~~
6 ~~property which is secured by a mortgage;~~

7 ~~—(b) Approved by the Federal National Mortgage Association as a seller~~
8 ~~and servicer; and~~

9 ~~—(c) Approved by the Department of Housing and Urban Development~~
10 ~~and the Department of Veterans Affairs.~~

11 ~~A firm or corporation is not exempt from the provisions of this chapter~~
12 ~~pursuant to this subsection if it maintains any accounts described in~~
13 ~~subsection 1 of NRS 645B.175 or offers for sale in this state any~~
14 ~~unregistered security under state or federal law and purports to make~~
15 ~~investments in promissory notes secured by liens on real property. A firm~~
16 ~~or corporation which is exempted pursuant to this subsection must submit~~
17 ~~annually as a condition of its continued exemption a certified statement by~~
18 ~~an independent certified public accountant that the firm or corporation~~
19 ~~does not maintain any such accounts. This subsection does not prohibit an~~
20 ~~exempt firm or corporation from maintaining accounts described in NRS~~
21 ~~645B.170 and subsection 3 of NRS 645B.175.~~

22 ~~—7.} Any person doing any act under an order of any court.~~

23 ~~{8.} 7.~~ Any one natural person, or husband and wife, who provides
24 money for investment in loans secured by a lien on real property, on his
25 own account.

26 ~~{9.} 8.~~ Agencies of the United States and of this state and its political
27 subdivisions, including the public employees' retirement system.

28 ~~{10.} 9.~~ A seller of real property who offers credit secured by a
29 mortgage of the property sold.

30 **Sec. 69.** NRS 645B.020 is hereby amended to read as follows:

31 645B.020 1. A ~~{license}~~ **person who wishes to be licensed** as a
32 mortgage ~~{company may be obtained by filing}~~ **broker must file** a written
33 application ~~{in}~~ **for a license with** the office of the commissioner ~~{~~

34 ~~—2.— The}~~ **and pay the fee required pursuant to NRS 645B.050. An**
35 application **for a license as a mortgage broker** must:

36 (a) Be verified.

37 (b) State the **name, residence address and business address of the**
38 **applicant and the** location of ~~{the applicant's}~~ **each** principal office and
39 branch ~~{offices in the}~~ **office at which the mortgage broker will conduct**
40 **business within this** state.

41 (c) State the name under which the applicant will conduct business ~~{}~~

42 **as a mortgage broker.**

- 1 (d) List the ~~{names,}~~ *name*, residence *address* and business ~~{addresses~~
2 ~~of all persons having}~~ *address of each person who will:*
- 3 (1) *If the applicant is not a natural person, have an interest in the*
4 ~~{business as principals, partners, officers, trustees and directors,}~~ *mortgage*
5 *broker as a principal, partner, officer, director, manager or trustee,*
6 *specifying the capacity and title of each { } such person.*
- 7 (2) *Be associated with or employed by the mortgage broker as a*
8 *mortgage agent, specifying whether the person has applied for a license*
9 *or is presently licensed as a mortgage agent.*
- 10 (e) If the applicant is a natural person, include the social security
11 number of the applicant.
- 12 (f) ~~{Indicate the}~~ *Include a general business plan and {character of the*
13 ~~business.}~~ *a manual of policies and procedures for the mortgage broker*
14 *and his mortgage agents that includes, without limitation, the*
15 *underwriting standards, restrictions and other policies and procedures*
16 *that the mortgage broker and his mortgage agents will follow to arrange*
17 *loans and to conduct business pursuant to this chapter.*
- 18 (g) State the length of time the applicant has been engaged in the
19 *business of a mortgage {company business.} broker.*
- 20 (h) Include a financial statement of the applicant.
- 21 (i) Include ~~{such}~~ *any* other information ~~{as}~~ *required pursuant to the*
22 *regulations adopted by the commissioner or an order of the commissioner*
23 *. {determines necessary.*
24 ~~—3.—The}~~
- 25 2. *A natural person who wishes to be licensed as a mortgage agent*
26 *must file a written application for a license with the office of the*
27 *commissioner and pay the fee required pursuant to NRS 645B.050. An*
28 *application for a license as a mortgage agent must:*
- 29 (a) *Be verified.*
- 30 (b) *State the name, residence address and business address of the*
31 *applicant and the name under which the applicant will conduct business*
32 *as a mortgage agent.*
- 33 (c) *State the name of the mortgage broker with whom the applicant*
34 *will be associated or employed and whether the mortgage broker has*
35 *applied for a license or is presently licensed.*
- 36 (d) *State the location of each office of the mortgage broker at which*
37 *the applicant will conduct business.*
- 38 (e) *Include the social security number of the applicant.*
- 39 (f) *Include a financial statement of the applicant.*
- 40 (g) *Include any other information required pursuant to the*
41 *regulations adopted by the commissioner or an order of the*
42 *commissioner.*

1 **3. If a mortgage broker will conduct business at one or more branch**
2 **offices within this state, the mortgage broker must apply for a license for**
3 **each such branch office. If a mortgage agent will conduct business from**
4 **more than one office of the mortgage broker with whom he is associated**
5 **or employed, the mortgage agent must apply for a license for each such**
6 **office.**

7 **4. Except as otherwise provided in this chapter, the** commissioner
8 shall issue a license to an applicant as a mortgage ~~company~~ **broker or**
9 **mortgage agent** if:

10 (a) The application complies with the requirements of ~~subsection 2;~~
11 **this chapter;**

12 (b) The applicant submits the statement required pursuant to NRS
13 645B.023, if the applicant is required to do so; and

14 (c) The applicant and each general partner, officer or director of the
15 applicant, if the applicant is a partnership, corporation or unincorporated
16 association:

17 (1) Has a good reputation for honesty, trustworthiness ~~and~~ **and**
18 integrity and displays competence to transact the business of a mortgage
19 ~~company~~ **broker or mortgage agent** in a manner which safeguards the
20 interests of the general public. The applicant must submit satisfactory
21 proof of these qualifications to the commissioner.

22 (2) Has not been convicted of, or entered a plea of nolo contendere
23 to, a felony or any crime involving fraud, misrepresentation or moral
24 turpitude.

25 (3) Has not made a false statement of material fact on his application.

26 (4) Has not had a license that was issued pursuant to the provisions of
27 this chapter **or sections 2 to 36, inclusive, of this act** suspended or revoked
28 within the 10 years immediately preceding the date of his application.

29 (5) Has not had a license that was issued in any other state, district or
30 territory of the United States or any foreign country suspended or revoked
31 within the 10 years immediately preceding the date of his application.

32 (6) Has not violated any ~~of the provisions~~ **provision** of this chapter
33 or ~~any~~ **sections 2 to 36, inclusive, of this act, a** regulation adopted
34 pursuant thereto ~~;~~

35 ~~—4.— A license entitles the holder to engage only in the activities~~
36 ~~authorized by this chapter.~~

37 ~~—5.— A person who claims an exemption from the provisions of this~~
38 ~~chapter must apply to the commissioner for a certificate of exemption and~~
39 ~~pay the fee for application.] or an order of the commissioner.~~

40 **Sec. 70.** NRS 645B.023 is hereby amended to read as follows:

41 645B.023 1. A natural person who applies for the issuance or
42 renewal of a license as a mortgage ~~company~~ **broker or mortgage agent**
43 shall submit to the commissioner the statement prescribed by the welfare

1 division of the department of human resources pursuant to NRS 425.520.
2 The statement must be completed and signed by the applicant.

3 2. The commissioner shall include the statement required pursuant to
4 subsection 1 in:

5 (a) The application or any other forms that must be submitted for the
6 issuance or renewal of the license; or

7 (b) A separate form prescribed by the commissioner.

8 3. A license as a mortgage ~~licensee~~ *broker or mortgage agent* may
9 not be issued or renewed by the commissioner if the applicant is a natural
10 person who:

11 (a) Fails to submit the statement required pursuant to subsection 1; or

12 (b) Indicates on the statement submitted pursuant to subsection 1 that he
13 is subject to a court order for the support of a child and is not in
14 compliance with the order or a plan approved by the district attorney or
15 other public agency enforcing the order for the repayment of the amount
16 owed pursuant to the order.

17 4. If an applicant indicates on the statement submitted pursuant to
18 subsection 1 that he is subject to a court order for the support of a child and
19 is not in compliance with the order or a plan approved by the district
20 attorney or other public agency enforcing the order for the repayment of
21 the amount owed pursuant to the order, the commissioner shall advise the
22 applicant to contact the district attorney or other public agency enforcing
23 the order to determine the actions that the applicant may take to satisfy the
24 arrearage.

25 **Sec. 71.** NRS 645B.025 is hereby amended to read as follows:

26 645B.025 1. A ~~licensee~~ *mortgage agent may not be associated*
27 *with or employed by more than one mortgage broker at the same time.*

28 2. *A mortgage broker shall not employ or pay for the services of a*
29 *mortgage agent, unless the mortgage agent is licensed pursuant to this*
30 *chapter and is not associated with or employed by another mortgage*
31 *broker.*

32 3. *The license of a mortgage agent must be delivered or mailed to the*
33 *mortgage broker with whom he is associated or employed and kept in the*
34 *custody and control of the mortgage broker.*

35 4. *The license of a mortgage broker or mortgage agent must:*

36 (a) *Show the name of the licensee, the address of the office for which*
37 *the license has been issued and, if the licensee is a mortgage agent, the*
38 *name of the mortgage broker with whom he is associated or employed;*

39 (b) *Be imprinted with the seal of the division; and*

40 (c) *Include any other information required pursuant to the*
41 *regulations adopted by the commissioner or an order of the*
42 *commissioner.*

1 **5. A mortgage broker** shall post ~~each~~ **his** license **and the license of**
2 **each of his mortgage agents** in a conspicuous place in the office ~~to which~~
3 ~~it pertains.~~

4 ~~2. A license~~ **for which each license has been issued.**

5 **6. A mortgage broker** may not ~~be transferred or assigned~~ **transfer or**
6 **assign a license to another person**, unless the commissioner gives his
7 written approval.

8 **7. A mortgage agent may not change the mortgage broker with**
9 **whom he is associated or employed, unless the commissioner gives his**
10 **written approval and the mortgage agent pays the fee required pursuant**
11 **to NRS 645B.050.**

12 **Sec. 72.** NRS 645B.050 is hereby amended to read as follows:

13 645B.050 1. A ~~mortgage company's~~ license **issued pursuant to**
14 **this chapter** expires **each year on** June 30 ~~next after the date of issuance if~~
15 ~~it is not renewed. A license may be renewed by filing an~~ **, unless it is**
16 **renewed. To renew a license, the licensee must submit to the**
17 **commissioner on or before June 30 of each year:**

18 **(a) An** application for renewal ~~[, paying the annual fee for a license for~~
19 ~~the succeeding year and, if]~~ **;**

20 **(b) The fee required to renew the license pursuant to this section; and**

21 **(c) If** the licensee is a natural person, ~~submitting~~ the statement
22 required pursuant to NRS 645B.023. ~~The application, statement and~~
23 ~~payment must be received by the commissioner on or before June 30 next~~
24 ~~preceding the expiration date.]~~

25 **2.** If the ~~application, statement, if required, or payment is not received~~
26 ~~by~~ **licensee fails to submit any item required pursuant to subsection 1 to**
27 **the commissioner on or before** June 30 ~~of any year,~~ the license is
28 canceled. The commissioner may reinstate ~~the~~ **a canceled** license if the
29 licensee ~~files an application, submits the statement, if required, pays the~~
30 ~~filing fee and pays a~~ **submits to the commissioner:**

31 **(a) An application for renewal;**

32 **(b) The fee required to renew the license pursuant to this section;**

33 **(c) If the licensee is a natural person, the statement required pursuant**
34 **to NRS 645B.023; and**

35 **(d) A reinstatement fee of \$200.**

36 ~~2.—The commissioner shall require a licensee to deliver a financial~~
37 ~~statement prepared from his books and records by an independent public~~
38 ~~accountant who holds a permit to engage in the practice of public~~
39 ~~accounting in this state which has not been revoked or suspended. The~~
40 ~~financial statement must be dated not earlier than the close of the latest~~
41 ~~fiscal year of the company and must be submitted within 60 days~~
42 ~~thereafter. The commissioner may grant a reasonable extension for the~~

1 ~~submission of the financial statement if requested before the statement is~~
2 ~~due.~~

3 ~~—3.— If a licensee maintains any accounts described in subsection 1 of~~
4 ~~NRS 645B.175, the financial statement submitted pursuant to this section~~
5 ~~must be audited. If the licensee maintains any accounts described in~~
6 ~~subsection 3 of NRS 645B.175, those accounts must be audited. The public~~
7 ~~accountant who prepares the report of an audit shall submit a copy of the~~
8 ~~report to the commissioner at the same time as he submits the report to the~~
9 ~~company. The commissioner shall, by regulation, prescribe the scope of~~
10 ~~audits conducted pursuant to this subsection.~~

11 ~~—4.—A}~~

12 **3. Except as otherwise provided in section 57 of this act, a** certificate
13 of exemption issued pursuant to ~~{subsection 5 of NRS 645B.020}~~ **this**
14 **chapter expires each year on** December 31 ~~{next after the date of issuance~~
15 ~~if it is not renewed. A}~~ **, unless it is renewed. To renew a** certificate of
16 exemption ~~{may be renewed by filing an}~~ **, a person must submit to the**
17 **commissioner on or before December 31 of each year:**

18 **(a) An** application for renewal ~~{and paying the annual fee for renewal~~
19 ~~of a}~~ **; and**

20 **(b) The fee required to renew the** certificate of exemption . ~~{for the~~
21 ~~succeeding year. The application and payment must be received by the~~
22 ~~commissioner on or before December 31 next preceding the expiration~~
23 ~~date.}~~

24 **4. If the** ~~{application or payment is not received by}~~ **person fails to**
25 **submit any item required pursuant to subsection 3 to the commissioner**
26 **on or before** December 31 ~~{}~~ **of any year, the certificate of exemption is**
27 **canceled. {The} Except as otherwise provided in section 57 of this act, the**
28 **commissioner may reinstate {the} a canceled certificate of exemption if the**
29 **{applicant pays the filing fee and a} person submits to the commissioner:**

30 **(a) An application for renewal;**

31 **(b) The fee required to renew the certificate of exemption; and**

32 **(c) A reinstatement fee of \$100.**

33 **5. {The filing fees are:**

34 ~~—(a) For filing}~~ **A person must pay the following fees to apply for, to be**
35 **issued or to renew a license as a mortgage broker pursuant to this**
36 **chapter:**

37 **(a) To file** an original application ~~{}~~ **for a license, \$1,500 for the**
38 **principal office and \$40 for each branch office. The {applicant shall}**
39 **person must** also pay such additional expenses incurred in the process of
40 investigation as the commissioner deems necessary. All money received by
41 the commissioner pursuant to this paragraph must be placed in the
42 investigative account created by NRS

232.545.

(b) ~~If the license is approved for issuance,~~ *To be issued a license,* \$1,000 for the principal office and \$60 for each branch office . ~~Before issuance.~~

~~—(c) For filing an application for renewal,~~

(c) To renew a license, \$500 for the principal office and \$100 for each branch office.

~~[(d) For filing]~~

6. A person must pay the following fees to apply for, to be issued or to renew a license as a mortgage agent pursuant to this chapter or to change the mortgage broker with whom the person is associated or employed as a mortgage agent:

(a) To file an original application for a license, \$500 for the primary office at which the person will conduct business as a mortgage agent and \$40 for each additional office at which the person will conduct business as a mortgage agent. The person must also pay such additional expenses incurred in the process of investigation as the commissioner deems necessary. All money received by the commissioner pursuant to this paragraph must be placed in the investigative account created by NRS 232.545.

(b) To be issued a license, \$250 for the primary office at which the person will conduct business as a mortgage agent and \$40 for each additional office at which the person will conduct business as a mortgage agent.

(c) To renew a license, \$150 for the primary office at which the person will conduct business as a mortgage agent and \$40 for each additional office at which the person will conduct business as a mortgage agent.

(d) To change the mortgage broker with whom the person is associated or employed as a mortgage agent, \$25 for the primary office at which the person will conduct business as a mortgage agent and \$10 for each additional office at which the person will conduct business as a mortgage agent.

7. A person must pay the following fees to apply for or to renew a certificate of exemption pursuant to this chapter:

(a) To file an application for a certificate of exemption, \$200.

~~[(e) For filing an application for renewal of]~~

(b) To renew a certificate of exemption, \$100.

~~[(f) For filing an application for]~~

8. To be issued a duplicate copy of any license ~~[, upon]~~ or certificate of exemption, a person must make a satisfactory showing of its loss ~~[, \$10.~~

~~—6.]~~ and pay a fee of \$10.

1 **9.** Except as otherwise provided in this chapter, all fees received
2 pursuant to this chapter must be deposited in the state treasury for credit to
3 the state general fund.

4 **Sec. 73.** NRS 645B.060 is hereby amended to read as follows:

5 645B.060 1. Subject to the administrative control of the director of
6 the department of business and industry, the commissioner shall exercise
7 general supervision and control over mortgage ~~{companies}~~ *brokers and*
8 *mortgage agents* doing business in this state.

9 2. In addition to the other duties imposed upon him by law, the
10 commissioner shall:

11 (a) Adopt ~~{reasonable regulations as may be necessary for making~~
12 ~~effective}~~ *regulations prescribing standards for determining whether a*
13 *mortgage broker has maintained adequate supervision of a mortgage*
14 *agent pursuant to this chapter.*

15 **(b)** *Adopt any other regulations that are necessary to carry out the*
16 *provisions of this chapter, except as to loan brokerage fees.*

17 ~~{(b)}~~ **(c)** Conduct such investigations as may be necessary to determine
18 whether any person has violated any provision of this chapter ~~{~~
19 ~~–(e)}~~ *, a regulation adopted pursuant to this chapter or an order of the*
20 *commissioner.*

21 **(d)** Conduct an annual examination of each mortgage ~~{company}~~ *broker*
22 doing business in this state.

23 ~~{(d)}~~ **(e)** Conduct such other examinations, periodic or special audits,
24 investigations and hearings as may be necessary and proper for the
25 efficient administration of the laws of this state regarding mortgage
26 ~~{companies}.~~

27 ~~–(e)}~~ *brokers and mortgage agents.*

28 **(f)** Classify as confidential certain records and information obtained by
29 the division when those matters are obtained from a governmental agency
30 upon the express condition that they remain confidential. This paragraph
31 does not limit examination by the legislative auditor.

32 ~~{(f)}~~ **(g)** Conduct such examinations and investigations as are necessary
33 to ensure that mortgage ~~{companies}~~ *brokers and mortgage agents* meet
34 the requirements of this chapter for obtaining a license, both at the time of
35 the application for a license and thereafter on a continuing basis.

36 3. For each special audit, investigation or examination a mortgage
37 ~~{company}~~ *broker* shall pay a fee based on the rate established pursuant to
38 NRS 658.101.

39 **Sec. 74.** NRS 645B.070 is hereby amended to read as follows:

40 645B.070 1. In the conduct of any examination, periodic or special
41 audit, investigation or hearing, the commissioner may:

42 (a) Compel the attendance of any person by subpoena.

43 (b) Administer

oaths.

(c) Examine any person under oath concerning the business and conduct of affairs of any person subject to the provisions of this chapter and in connection therewith require the production of any books, records or papers relevant to the inquiry.

2. Every person subpoenaed under the provisions of this section who willfully refuses or willfully neglects to appear at the time and place named in the subpoena or to produce books, records or papers required by the commissioner, or who refuses to be sworn or answer as a witness, is guilty of a misdemeanor.

3. The ~~cost of~~ *commissioner may assess against and collect from a person all costs, including, without limitation, reasonable attorney's fees, that are attributable to* any examination, periodic or special audit, investigation or hearing *that is* conducted ~~under~~ *to examine or investigate the conduct, activities or business of the person pursuant to* this chapter . ~~may be assessed to and collected from the mortgage company in question by the commissioner.~~

Sec. 75. NRS 645B.080 is hereby amended to read as follows:

645B.080 1. ~~All mortgage companies~~ *Each mortgage broker and mortgage agent* shall keep and maintain at all times ~~in their places of~~ *at each location where the mortgage broker or mortgage agent conducts* business in this state complete and suitable records of all mortgage transactions made by ~~them~~ *the mortgage broker or mortgage agent* at that location . ~~together with~~ *Each mortgage broker shall also keep and maintain at all times at each such location* all original books, papers and data, or copies thereof, clearly reflecting the financial condition of the business of ~~such companies~~ *the mortgage broker.*

2. Each mortgage ~~company~~ *broker* shall submit to the commissioner each month a report of the ~~company's~~ *mortgage broker's* activity for the previous month. The report must:

(a) Specify the volume of loans arranged by the ~~company~~ *mortgage broker* for the month or state that no loans were arranged in that month;

(b) Include ~~such other information as~~ *any information required pursuant to the regulations adopted by* the commissioner ; ~~by regulation requires;~~

(c) Be submitted to the commissioner by the 15th day of the month following the month for which the report is made.

~~3.—The commissioner may adopt regulations prescribing accounting procedures for mortgage companies handling trust accounts and the requirements for keeping records relating thereto.~~

Sec. 76. NRS 645B.090 is hereby amended to read as follows:

645B.090 1. Except as otherwise provided *in this section or* by ~~law,~~ *statute:*

~~all~~

specific

1 **(a) All** papers, documents, reports and other written instruments filed
2 with the commissioner ~~{under}~~ **pursuant to** this chapter are open to public
3 inspection . ~~{-except that the}~~

4 **(b) The commissioner shall disclose the following information**
5 **concerning a mortgage broker or mortgage agent to any person who**
6 **requests it:**

7 **(1) Information concerning any investigation that is currently**
8 **pending against the mortgage broker or mortgage agent pursuant to the**
9 **provisions of this chapter;**

10 **(2) The findings and results of any investigation that has been**
11 **completed during the immediately preceding 5 years against the**
12 **mortgage broker or mortgage agent pursuant to the provisions of this**
13 **chapter; and**

14 **(3) The nature of any disciplinary action that has been taken**
15 **during the immediately preceding 5 years against the mortgage broker or**
16 **mortgage agent pursuant to the provisions of this chapter.**

17 **2. The** commissioner may withhold from public inspection **or refuse**
18 **to disclose to a person,** for such time as ~~{he}~~ **the commissioner** considers
19 necessary , any information ~~{which}~~ **that,** in his judgment , **would:**

20 **(a) Impede or otherwise interfere with an investigation that is**
21 **currently pending against a mortgage broker or mortgage agent; or**

22 **(b) Have an undesirable effect on the {public} welfare of the public or**
23 **the welfare of any mortgage {company requires to be so withheld.} broker.**

24 **Sec. 77.** NRS 645B.095 is hereby amended to read as follows:

25 645B.095 1. As used in this section, “change of control” means:

26 **(a) A transfer of voting stock which results in giving a person, directly**
27 **or indirectly, the power to direct the management and policy of a mortgage**
28 **{company;} broker; or**

29 **(b) A transfer of at least 25 percent of the outstanding voting stock of a**
30 **mortgage {company.} broker.**

31 **2. The** commissioner must be notified of a transfer of 5 percent or
32 more of the outstanding voting stock of a mortgage ~~{company}~~ **broker** and
33 must approve a transfer of voting stock of a mortgage ~~{company}~~ **broker**
34 which constitutes a change of control.

35 **3. The** person who acquires stock resulting in a change of control of
36 the mortgage ~~{company}~~ **broker** shall apply to the commissioner for
37 approval of the transfer. The application must contain information which
38 shows that the requirements of this chapter for obtaining a license will be
39 satisfied after the change of control. Except as **otherwise** provided in
40 subsection 4, the commissioner shall conduct an investigation to determine
41 whether those requirements will be satisfied. If, after the investigation, the
42 commissioner denies the application, he may forbid the applicant from
43 participating in the business of the mortgage ~~{company.}~~ **broker.**

1 4. A mortgage ~~company~~ *broker* may submit a written request to the
2 commissioner to waive an investigation pursuant to subsection 3. The
3 commissioner may grant a waiver if the applicant has undergone a similar
4 investigation by a state or federal agency in connection with the licensing
5 of or his employment with a financial institution.

1 **Sec. 78.** NRS 645B.100 is hereby amended to read as follows:
2 645B.100 1. *For each violation committed by an applicant,*
3 *whether or not he is issued a license, the commissioner may impose upon*
4 *the applicant an administrative fine of not more than \$5,000 if the*
5 *applicant:*
6 (a) *Has knowingly made or caused to be made to the commissioner*
7 *any false representation of material fact;*
8 (b) *Has suppressed or withheld from the commissioner any*
9 *information which the applicant possesses and which, if submitted by*
10 *him, would have rendered the applicant ineligible to be licensed pursuant*
11 *to the provisions of this chapter; or*
12 (c) *Has violated any provision of this chapter, a regulation adopted*
13 *pursuant to this chapter or an order of the commissioner in completing*
14 *and filing his application for a license or during the course of the*
15 *investigation of his application for a license.*
16 2. The commissioner may ~~require~~ *impose upon* a licensee ~~to pay~~
17 *who is licensed as a mortgage broker* an administrative fine of not more
18 than ~~\$500~~ *\$5,000* for each violation *that* he commits or suspend, revoke
19 or place conditions upon his license, or do both, ~~at any time~~ if the
20 licensee, whether or not acting as such:
21 (a) Is insolvent;
22 (b) Is grossly negligent or incompetent in performing any act for which
23 he is required to be licensed pursuant to the provisions of this chapter;
24 (c) Does not conduct his business in accordance with law or has
25 violated any ~~provisions~~ *provision* of this chapter ~~;~~ *, a regulation*
26 *adopted pursuant to this chapter or an order of the commissioner;*
27 (d) Is in such financial condition that he cannot continue in business
28 with safety to his customers;
29 (e) Has made a material misrepresentation in connection with any
30 transaction governed by this chapter;
31 (f) Has suppressed or withheld from a client any material facts, data or
32 other information relating to any transaction governed by the provisions of
33 this chapter which ~~he knew,~~ *the licensee knew* or *,* by the exercise of
34 reasonable diligence, should have known;
35 (g) Has knowingly made or caused to be made to the commissioner any
36 false representation of material fact or has suppressed or withheld from the
37 commissioner any information which the ~~applicant or~~ licensee possesses
38 ~~;~~ and which *,* if submitted by him *,* would have rendered the ~~applicant~~
39 ~~or~~ licensee ineligible to be licensed pursuant to the provisions of this
40 chapter;
41 (h) Has failed to account to persons interested for all money *which is*
42 received ~~for the impound trust account;~~ *by the licensee and which is*
43 *required to be placed in escrow pursuant to this chapter;*

1 (i) Has refused to permit an examination by the commissioner of his
2 books and affairs or has refused or failed, within a reasonable time, to
3 furnish any information or make any report that may be required by the
4 commissioner pursuant to the provisions of this *chapter or a regulation*
5 *adopted pursuant to this* chapter;

6 (j) Has been convicted of, or entered a plea of nolo contendere to, a
7 felony or any crime involving fraud, misrepresentation or moral turpitude;

8 (k) Has refused or failed to pay, within a reasonable time, ~~those~~
9 ~~expenses assessed to the mortgage company~~ *any fees, assessments, costs*
10 *or expenses that the licensee is required to pay* pursuant to ~~NRS~~
11 ~~645B.050 or 645B.070;~~ *this chapter or a regulation adopted pursuant to*
12 *this chapter;*

13 (l) Has failed to satisfy a claim made by a client which has been
14 reduced to judgment;

15 (m) Has failed to account for or to remit any money of a client within a
16 reasonable time after a request for an accounting or remittal;

17 (n) Has commingled the money or other property of a client with his
18 own or has converted the money or property of others to his own use;

19 (o) Has engaged in any other conduct constituting a deceitful,
20 fraudulent or dishonest business practice; ~~or~~

21 (p) *Has repeatedly violated the policies and procedures of the*
22 *mortgage broker;*

23 (q) *Has failed to maintain adequate supervision of a mortgage agent*
24 *who, in the course of his association or employment with the licensee,*
25 *has committed an unlawful act or violated any provision of this chapter,*
26 *a regulation adopted pursuant to this chapter or an order of the*
27 *commissioner, and the licensee knew or should have known of the*
28 *unlawful act or violation;*

29 (r) *Has instructed a mortgage agent to commit an act that would be*
30 *cause for the revocation of the license of the mortgage broker or*
31 *mortgage agent, whether or not the mortgage agent commits the act; or*

32 (s) Has not conducted verifiable business as a mortgage ~~company~~
33 *broker* for 12 consecutive months, except in the case of a new applicant.
34 The commissioner shall determine whether a ~~company~~ *mortgage broker*
35 is conducting business by examining the monthly reports of activity
36 submitted by the licensee or by conducting an examination of the licensee.

37 ~~[2.—It is sufficient cause for refusal or revocation of a license in the~~
38 ~~case of a partnership or corporation or any unincorporated association that~~
39 ~~any member of the partnership or any officer or director of the corporation~~
40 ~~or association has been guilty of any act or omission which would be cause~~
41 ~~for refusing or revoking the registration of a natural person.]~~

42 *3. The commissioner may impose upon a licensee who is licensed as*
43 *a mortgage agent an administrative fine of not more than \$5,000 for*

1 *each violation that he commits or suspend, revoke or place conditions*
2 *upon his license, or do both, if the licensee, whether or not acting as*
3 *such:*

4 *(a) Is grossly negligent or incompetent in performing any act for*
5 *which he is required to be licensed pursuant to the provisions of this*
6 *chapter;*

7 *(b) Has violated any provision of this chapter, a regulation adopted*
8 *pursuant to this chapter or an order of the commissioner;*

9 *(c) Has made a material misrepresentation in connection with any*
10 *transaction governed by this chapter;*

11 *(d) Has suppressed or withheld from a client any material facts, data*
12 *or other information relating to any transaction governed by the*
13 *provisions of this chapter which the licensee knew or, by the exercise of*
14 *reasonable diligence, should have known;*

15 *(e) Has knowingly made or caused to be made to the commissioner*
16 *any false representation of material fact or has suppressed or withheld*
17 *from the commissioner any information which the licensee possesses and*
18 *which, if submitted by him, would have rendered the licensee ineligible to*
19 *be licensed pursuant to the provisions of this chapter;*

20 *(f) Has refused to permit an examination by the commissioner of his*
21 *books and affairs or has refused or failed, within a reasonable time, to*
22 *furnish any information or make any report that may be required by the*
23 *commissioner pursuant to the provisions of this chapter or a regulation*
24 *adopted pursuant to this chapter;*

25 *(g) Has been convicted of, or entered a plea of nolo contendere to, a*
26 *felony or any crime involving fraud, misrepresentation or moral*
27 *turpitude;*

28 *(h) Has refused or failed to pay, within a reasonable time, any fees,*
29 *assessments, costs or expenses that the licensee is required to pay*
30 *pursuant to this chapter or a regulation adopted pursuant to this chapter;*

31 *(i) Has failed to satisfy a claim made by a client which has been*
32 *reduced to judgment;*

33 *(j) Has failed to account for or to remit any money of a client within a*
34 *reasonable time after a request for an accounting or remittal;*

35 *(k) Has commingled the money or other property of a client with his*
36 *own or has converted the money or property of others to his own use;*

37 *(l) Has repeatedly violated the policies and procedures of the*
38 *mortgage broker with whom he is associated or employed; or*

39 *(m) Has engaged in any other conduct constituting a deceitful,*
40 *fraudulent or dishonest business practice.*

41 **Sec. 79.** NRS 645B.105 is hereby amended to read as follows:

42 645B.105 1. If the commissioner receives a copy of a court order
43 issued pursuant to NRS 425.540 that provides for the suspension of all

1 professional, occupational and recreational licenses, certificates and
2 permits issued to a person who is the holder of a license as a mortgage
3 ~~{company,}~~ **broker or mortgage agent**, the commissioner shall deem the
4 license issued to that person to be suspended at the end of the 30th day
5 after the date on which the court order was issued unless the commissioner
6 receives a letter issued to the holder of the license by the district attorney
7 or other public agency pursuant to NRS 425.550 stating that the holder of
8 the license has complied with the subpoena or warrant or has satisfied the
9 arrearage pursuant to NRS 425.560.

10 2. The commissioner shall reinstate a license as a mortgage ~~{company}~~
11 **broker or mortgage agent** that has been suspended by a district court
12 pursuant to NRS 425.540 if the commissioner receives a letter issued by
13 the district attorney or other public agency pursuant to NRS 425.550 to the
14 person whose license was suspended stating that the person whose license
15 was suspended has complied with the subpoena or warrant or has satisfied
16 the arrearage pursuant to NRS 425.560.

17 **Sec. 80.** NRS 645B.110 is hereby amended to read as follows:

18 645B.110 1. ~~{Notice of the entry of any order of suspension or of~~
19 ~~refusing a license to any mortgage company must be given in writing,}~~ **If**
20 **the commissioner enters an order taking any disciplinary action against a**
21 **person or denying a person's application for a license, the commissioner**
22 **shall cause written notice of the order to be** served personally or sent by
23 certified mail or by telegraph to the ~~{company affected.}~~

24 ~~—2.—The company,} person.~~

25 2. **Unless a hearing has already been conducted concerning the**
26 **matter, the person**, upon application, is entitled to a hearing . ~~{; but if no}~~
27 **If the person does not make** such **an** application ~~{is made}~~ within 20 days
28 after the ~~{entry of an order of suspension or of refusing a license of any~~
29 ~~company,} date of the initial order~~, the commissioner shall enter a final
30 order ~~{in either case.}~~ **concerning the matter.**

31 3. **A person may appeal a final order of the commissioner in**
32 **accordance with the provisions of chapter 233B of NRS that apply to a**
33 **contested case.**

34 **Sec. 81.** NRS 645B.120 is hereby amended to read as follows:

35 645B.120 1. ~~{The commissioner may investigate either upon~~
36 ~~complaint or otherwise when}~~ **Whether or not a complaint has been filed,**
37 **the commissioner may investigate a mortgage broker, mortgage agent or**
38 **other person if, for any reason, it appears that {a mortgage company} :**

39 (a) **The mortgage broker or mortgage agent** is conducting ~~{its}~~
40 business in an unsafe and injurious manner or in violation of **any provision**
41 **of this chapter** ~~{or the regulations promulgated thereunder by the~~
42 ~~commissioner, or when it appears that any}~~, **a regulation adopted**
43 **pursuant to this chapter or an order of the commissioner;**

1 (b) The person is offering or providing any of the services of a
2 mortgage broker or mortgage agent or otherwise engaging in ~~the~~
3 ~~mortgage company business~~, carrying on or holding himself out as
4 engaging in or carrying on the business of a mortgage broker or
5 mortgage agent without being licensed ~~under~~ or exempt from licensing
6 pursuant to the provisions of ~~those sections~~ this chapter; or

7 (c) The person is violating any other provision of this chapter, a
8 regulation adopted pursuant to this chapter or an order of the
9 commissioner.

10 2. If , upon investigation ~~it appears that such company is so~~
11 ~~conducting its business or an unlicensed person is engaged in the mortgage~~
12 ~~company business~~, the commissioner has reasonable cause to believe
13 that the mortgage broker, mortgage agent or other person has engaged in
14 any conduct or committed any violation described in subsection 1, the
15 commissioner may:

16 (a) Advise the district attorney of the county in which the ~~business is~~
17 ~~conducted~~, conduct or violation occurred, and the district attorney shall
18 cause the appropriate legal action to be taken against the mortgage broker,
19 mortgage agent or other person to enjoin the conduct or the operation of
20 the business or prosecute the ~~violations of this chapter~~ violation; and

21 (b) Bring ~~suit in the name and on behalf of the State of Nevada against~~
22 ~~such person and any other person concerned in or in any way participating~~
23 ~~in or about to participate in such unsafe or injurious practices or action in~~
24 ~~violation of this chapter or regulations thereunder to enjoin any such~~
25 ~~person from continuing such practices or engaging therein or doing any~~
26 ~~such act~~ a civil action to:

27 (1) Enjoin the mortgage broker, mortgage agent or other person
28 from engaging in the conduct, operating the business or committing the
29 violation; and

30 (2) Enjoin any other person who has encouraged, facilitated, aided
31 or participated in the conduct, the operation of the business or the
32 commission of the violation, or who is likely to engage in such acts, from
33 engaging in or continuing to engage in such acts.

34 3. If the commissioner brings ~~suit~~ a civil action pursuant to
35 subsection 2, the district court of any county of this state is hereby vested
36 with the jurisdiction in equity to ~~restrain unsafe, injurious or illegal~~
37 ~~practices or transactions~~ enjoin the conduct, the operation of the business
38 or the commission of the violation and may grant any injunctions that are
39 necessary to prevent and restrain ~~such practices or transactions. The court~~
40 ~~may, during~~ the conduct, the operation of the business or the
41 commission of the violation. During the pendency of the proceedings
42 before ~~it, issue such~~ the district court:

1 **(a) The court may issue any** temporary restraining orders as may
2 appear to be just and proper; ~~{and the}~~

3 **(b) The** findings of the commissioner shall be deemed to be prima facie
4 evidence and sufficient grounds, in the discretion of the court, for the
5 ~~{issue}~~ ex parte **issuance** of a temporary restraining order ~~{. In any such~~
6 ~~court proceedings the}~~ ; and

7 **(c) The** commissioner may apply for and on due showing is entitled to
8 have issued the court's subpoena requiring forthwith the appearance of any
9 ~~{defendant and his employees and the production of}~~ **person to:**

10 **(1) Produce any** documents, books and records as may appear
11 necessary for the hearing of the petition ; ~~{, to testify}~~ and

12 **(2) Testify and** give evidence concerning the ~~{acts or conduct or~~
13 ~~things}~~ **conduct** complained of in the ~~{application for injunction.}~~ **petition.**

14 **Sec. 82.** NRS 645B.150 is hereby amended to read as follows:

15 645B.150 1. ~~{When}~~ **In addition to any other action that is**
16 **permitted pursuant to this chapter, if** the commissioner ~~{ascertains by~~
17 ~~examination or otherwise that the}~~ **has reasonable cause to believe that:**

18 **(a) The** assets or capital of ~~{any mortgage company}~~ **a mortgage broker**
19 are impaired ; or ~~{that a mortgage company's affairs are in an unsafe~~
20 ~~condition which}~~

21 **(b) A mortgage broker is conducting business in an unsafe and**
22 **injurious manner that** may result in danger to the public, ~~{he}~~
23 **the commissioner** may immediately take possession of all the property,
24 business and assets of the ~~{company which}~~ **mortgage broker that** are
25 located in this state and retain possession of them pending further
26 proceedings provided for in this chapter.

27 2. If the **licensee, the** board of directors or any officer or person in
28 charge of the offices of the ~~{company}~~ **mortgage broker** refuses to permit
29 the commissioner to take possession of ~~{its property,}~~ the **property of the**
30 **mortgage broker pursuant to subsection 1:**

31 **(a) The** commissioner shall ~~{communicate that fact to}~~ **notify** the
32 attorney general ~~{. Thereupon the}~~ ; and

33 **(b) The** attorney general shall immediately ~~{institute}~~ **bring** such
34 proceedings as may be necessary to place the commissioner in immediate
35 possession of the property of the ~~{company. The commissioner thereupon~~
36 ~~shall make}~~ **mortgage broker.**

37 **3. If the commissioner takes possession of the property of the**
38 **mortgage broker, the commissioner shall:**

39 **(a) Make** or have made an inventory of the assets and known liabilities
40 of the ~~{company.}~~

41 ~~—3.—The commissioner shall file}~~ **mortgage broker; and**

42 **(b) File** one copy of the inventory in his office and one copy in the
43 office of the clerk of the district court of the county in which the principal

1 office of the ~~{company}~~ *mortgage broker* is located and shall mail one
2 copy to each stockholder, partner, officer or associate of the mortgage
3 ~~{company}~~ *broker* at his last known address.

4 4. The clerk of the court with which the copy of the inventory is filed
5 shall file it as any other case or proceeding pending in the court and shall
6 give it a docket number.

7 **Sec. 83.** NRS 645B.160 is hereby amended to read as follows:

8 645B.160 1. ~~{The}~~ *If the commissioner takes possession of the*
9 *property of a mortgage broker pursuant to NRS 645B.150, the licensee,*
10 *officers, directors, partners, associates or stockholders of the mortgage*
11 *~~{company}~~ broker* may, within 60 days ~~{from the date when}~~ *after the date*
12 *on which* the commissioner takes possession of the property, ~~{business and~~
13 ~~assets,}~~ make good any deficit ~~{which may exist}~~ *in the assets or capital of*
14 *the mortgage broker* or remedy ~~{the unsafe condition of its affairs.}~~ *any*
15 *unsafe and injurious conditions or practices of the mortgage broker.*

16 2. At the expiration of ~~{such time,}~~ *the 60-day period,* if the deficiency
17 in assets or capital has not been made good or the unsafe ~~{condition}~~ *and*
18 *injurious conditions or practices* remedied, the commissioner may apply
19 to the court to be appointed receiver and proceed to liquidate the assets of
20 the ~~{company}~~ *mortgage broker* which are located in this state in the same
21 manner as now provided by law for liquidation of a private corporation in
22 receivership.

23 3. No other person may be appointed receiver by any court without
24 first giving the commissioner ample notice of his application.

25 4. The inventory made by the commissioner and all claims filed by
26 creditors are open at all reasonable times for inspection , and any action
27 taken by the receiver upon any of the claims is subject to the approval of
28 the court before which the cause is pending.

29 5. The expenses of the receiver and compensation of counsel, as well
30 as all expenditures required in the liquidation proceedings, must be fixed
31 by the commissioner subject to the approval of the court ~~{}~~ and, upon
32 certification of the commissioner, must be paid out of the money in his
33 hands as the receiver.

34 **Sec. 84.** NRS 645B.165 is hereby amended to read as follows:

35 645B.165 1. ~~{The}~~ *Except as otherwise provided in subsection 3,*
36 *the* amount of any advance fee, salary, deposit or money paid to any
37 mortgage ~~{company}~~ *broker, mortgage agent* or other person to obtain a
38 loan which will be secured by a lien on real property must be placed in
39 escrow pending completion of the loan or a commitment for the loan.

40 2. The amount held in escrow *pursuant to subsection 1* must be
41 released:

1 (a) Upon completion of the loan or commitment for the loan, to the
2 mortgage ~~{company}~~ **broker** or other person to whom the advance fee,
3 salary, deposit or money was paid.

4 (b) If the loan or commitment for the loan fails, to the person who made
5 the payment.

6 3. Advance payments to cover reasonably estimated costs paid to third
7 persons are excluded from the provisions of subsections 1 and 2 if the
8 person making them first signs a written agreement which specifies the
9 estimated costs by item and the estimated aggregate cost, and which recites
10 that money advanced for costs will not be refunded. If an itemized service
11 is not performed and the estimated cost thereof is not refunded, the
12 recipient of the advance payment is subject to the penalties provided in
13 ~~{subsection 4.}~~

14 ~~—4.— A person who violates the provisions of subsection 1:~~

15 ~~—(a) Is guilty of a misdemeanor if the amount is less than \$250;~~

16 ~~—(b) Is guilty of a gross misdemeanor if the amount is \$250 or more but
17 less than \$1000; or~~

18 ~~—(c) Is guilty of a category D felony if the amount is \$1,000 or more, and
19 shall be punished as provided in NRS 193.130.] NRS 645B.225.~~

20 **Sec. 85.** NRS 645B.175 is hereby amended to read as follows:

21 645B.175 1. All money received by a mortgage ~~{company from a~~
22 ~~person to acquire ownership of or a beneficial interest in a loan secured by~~
23 ~~a lien on real property, must:~~

24 ~~—(a) Be deposited in:~~

25 ~~—(1) An insured depository financial institution; or~~

26 ~~—(2) An] broker and his mortgage agents from an investor must be~~
27 ~~deposited in an~~ escrow account ~~{which} that~~ is controlled by ~~{a person} an~~
28 ~~escrow agent, escrow officer or title agent~~ who is ~~{independent} :~~

29 ~~(a) Licensed pursuant to chapter 645A or 692A of NRS;~~

30 ~~(b) Independent~~ of the parties ~~and the mortgage broker and his~~
31 ~~mortgage agents;~~ and ~~{subject}~~

32 ~~(c) Subject~~ to instructions regarding the account ~~{which are} that have~~
33 ~~been~~ approved by the parties.

34 ~~{(b) Be kept separate from money:~~

35 ~~—(1) Belonging to the mortgage company in an account appropriately~~
36 ~~named to indicate that the money does not belong to the mortgage~~
37 ~~company.~~

38 ~~—(2) Received pursuant to subsection 3.]~~

39 2. The amount held in ~~{trust} escrow~~ pursuant to subsection 1 must be
40 released:

41 (a) Upon completion of the loan, including proper recordation of the
42 respective interests or release, or upon completion of the transfer of the
43 ownership or beneficial interest therein, to the debtor or his designee less

1 ~~{that}~~ **the** amount due the mortgage ~~{company}~~ **broker** for the payment of
2 any fee or service charge; **or**

3 (b) If the loan or the transfer thereof is not consummated, to ~~{the~~
4 ~~person}~~ **each investor** who furnished the money held in ~~{trust; or~~
5 ~~—(c) Pursuant to any instructions regarding the escrow account.}~~ **escrow.**

6 3. All money paid to a mortgage ~~{company}~~ **broker and his mortgage**
7 **agents** by a person in full or in partial payment of a loan secured by a lien
8 on real property ~~{, must:~~

9 ~~—(a) Be deposited in:~~

10 ~~—(1) An insured depository financial institution; or~~

11 ~~—(2) An}~~ **must be deposited in an** escrow account ~~{which}~~ **that** is
12 controlled by ~~{a person}~~ **an escrow agent, escrow officer or title agent**
13 who is ~~{subject}~~ :

14 (a) **Licensed pursuant to chapter 645A or 692A of NRS;**

15 (b) **Independent of the parties and the mortgage broker and his**
16 **mortgage agents; and**

17 (c) **Subject** to instructions regarding the account ~~{which are}~~ **that have**
18 **been** approved by the parties.

19 ~~{(b) Be kept separate from money:~~

20 ~~—(1) Belonging to the mortgage company in an account appropriately~~
21 ~~named to indicate that it does not belong to the mortgage company.~~

22 ~~—(2) Received pursuant to subsection 1.}~~

23 4. The amount held in ~~{trust}~~ **escrow** pursuant to subsection 3 ~~{must}~~ :

24 (a) **Must** be released, upon the deduction and payment of any ~~{fees}~~ **fee**
25 or service charge due the mortgage ~~{company, to the owner of or the~~
26 ~~person having the}~~ **broker, to each investor who owns a** beneficial interest
27 in the ~~{note.~~

28 ~~—5.— Upon reasonable notice, any mortgage company described in this~~
29 ~~section shall:~~

30 ~~—(a) Account to any debtor or creditor upon whose behalf money has~~
31 ~~been paid to the mortgage company and deposited in the trust accounts as~~
32 ~~set forth in this section; and~~

33 ~~—(b) Account to the commissioner for all money in the mortgage~~
34 ~~company's loan proceeds or loan payments trust account.~~

35 ~~—6.} loan; and~~

36 (b) **May not be reinvested with the mortgage broker for at least 15**
37 **days.**

38 5. Money received by **an escrow agent, escrow officer or title agent at**
39 **the direction of** a mortgage ~~{company}~~ **broker or his mortgage agents**

40 pursuant to this section from a person who is not associated with the
41 ~~{company}~~ **mortgage broker** may be held in ~~{trust for no}~~ **escrow for not**
42 more than 45 days . ~~{before an escrow account must be opened in~~

43 ~~connection with the loan.}~~ If, within this 45-day period, the loan or the

1 transfer therefor is not consummated, the money must be returned *to that*
2 *person* within 24 hours. If the money is so returned, it may not be
3 reinvested with the mortgage ~~company~~ *broker* for at least 15 days.

4 *6. A mortgage broker, any general partner, officer or director of the*
5 *mortgage broker, or an affiliate of the mortgage broker shall not:*

6 *(a) Execute any instructions concerning an escrow account which*
7 *holds or will hold any money that is subject to the provisions of this*
8 *section or execute such instructions as the attorney in fact or the agent of*
9 *a debtor, investor or lender who owns or will own a beneficial interest in*
10 *any money in the escrow account;*

11 *(b) Hold any money that is received from an investor pursuant to*
12 *subsection 1; or*

13 *(c) Receive or hold any other money that is subject to the provisions of*
14 *this section, including, without limitation, receiving or holding such*
15 *money as:*

16 *(1) The designee of a debtor;*

17 *(2) A construction control; or*

18 *(3) An escrow agent, escrow officer or title agent.*

19 *7. As used in this section, “general partner, officer or director of the*
20 *mortgage broker, or an affiliate of the mortgage broker” means any*
21 *person who:*

22 *(a) Is the spouse of the mortgage broker or any general partner,*
23 *officer or director of the mortgage broker;*

24 *(b) Is related within the second degree by blood or marriage to the*
25 *mortgage broker or any general partner, officer or director of the*
26 *mortgage broker;*

27 *(c) Controls the mortgage broker or any general partner, officer or*
28 *director of the mortgage broker;*

29 *(d) Is controlled by the mortgage broker or any general partner,*
30 *officer or director of the mortgage broker, including, without limitation,*
31 *a mortgage agent who is associated with or employed by the mortgage*
32 *broker; or*

33 *(e) Is under common control with the mortgage broker or any general*
34 *partner, officer or director of the mortgage broker.*

35 *For the purposes of this subsection, “control” means directly or*
36 *indirectly having the power to direct or cause the direction of*
37 *management policies.*

38 **Sec. 86.** NRS 645B.185 is hereby amended to read as follows:

39 645B.185 1. ~~Before a person invests money through a mortgage~~
40 ~~company licensed pursuant to this chapter, he must sign a written statement~~
41 ~~received from the company, acknowledging that:~~

42 ~~—(a) The company has explained to him the nature and risks of investing~~
43 ~~through the company, including the possibility of default in payment, the~~

1 ~~fact that payments are not guaranteed, the resulting foreclosure and the~~
2 ~~losses that may result; and~~

3 ~~—(b) He is aware that the company is not a depository financial~~
4 ~~institution.~~

5 ~~—2. The investor must sign such a statement upon his initial investment~~
6 ~~only, and not before each subsequent investment.~~

7 ~~—3. The statement must be made on a form prescribed by the~~
8 ~~commissioner.] A mortgage broker or mortgage agent shall not accept~~

9 ~~money from an investor to acquire ownership of or a beneficial interest~~
10 ~~in a loan secured by a lien on real property unless:~~

11 *(a) The investor and the mortgage broker or mortgage agent sign and*
12 *date a disclosure form that complies with the provisions of subsection 5;*
13 *and*

14 *(b) The mortgage broker or mortgage agent gives the investor the*
15 *original disclosure form that has been signed and dated.*

16 *2. An investor and a mortgage broker or mortgage agent must sign*
17 *and date a separate disclosure form pursuant to subsection 1 for each*
18 *loan in which the investor invests his money. A mortgage broker or*
19 *mortgage agent shall not act as the attorney in fact or the agent of an*
20 *investor with respect to the signing or dating of any disclosure form.*

21 *3. An investor and a mortgage broker or mortgage agent may not*
22 *agree to alter or waive the provisions of this section by contract or other*
23 *agreement. Any such contract or agreement is void and must not be given*
24 *effect to the extent that it violates the provisions of this section.*

25 *4. A mortgage broker shall retain a copy of each disclosure form that*
26 *is signed and dated pursuant to subsection 1 for the period that is*
27 *prescribed in the regulations adopted by the commissioner.*

28 *5. The standard provisions for each such disclosure form must*
29 *include, without limitation, statements:*

30 *(a) Explaining the risks of investing through the mortgage broker,*
31 *including, without limitation:*

32 *(1) The possibility that the debtor may default on the loan;*

33 *(2) The nature of the losses that may result through foreclosure;*

34 *(3) The fact that payments of principal and interest are not*
35 *guaranteed and that the investor may lose the entire amount of principal*
36 *that he has invested;*

37 *(4) The fact that the mortgage broker is not a depository financial*
38 *institution and that the investment is not insured by any depository*
39 *insurance and is not otherwise insured or guaranteed by the federal or*
40 *state government; and*

41 *(5) Any other information required pursuant to the regulations*
42 *adopted by the commissioner; and*

1 ***(b) Disclosing to the investor the following information, if the***
2 ***information is known or, in light of all the surrounding facts and***
3 ***circumstances, reasonably should be known to the mortgage broker:***

4 ***(1) Whether the real property that will secure the loan is***
5 ***encumbered by any other liens and, if so, the priority of each such lien,***
6 ***the amount of debt secured by each such lien and the current status of***
7 ***that debt, including, without limitation, whether the debt is being paid or***
8 ***is in default;***

9 ***(2) Whether the mortgage broker or any general partner, officer,***
10 ***director or mortgage agent of the mortgage broker has any direct or***
11 ***indirect interest in the debtor;***

12 ***(3) Whether any disciplinary action has been taken by the***
13 ***commissioner against the mortgage broker or any general partner,***
14 ***officer, director or mortgage agent of the mortgage broker within the***
15 ***preceding 12 months, and the nature of any such disciplinary action;***

16 ***(4) Whether the mortgage broker or any general partner, officer,***
17 ***director or mortgage agent of the mortgage broker has been convicted***
18 ***within the preceding 12 months for violating any law, ordinance or***
19 ***regulation that involves fraud, misrepresentation or a deceitful,***
20 ***fraudulent or dishonest business practice; and***

21 ***(5) Any other information required pursuant to the regulations***
22 ***adopted by the commissioner.***

23 ***6. Whether or not a mortgage broker is required to disclose any***
24 ***information to investors through a disclosure form that complies with the***
25 ***provisions of subsection 5, the commissioner may order the mortgage***
26 ***broker to disclose to investors or to the general public any information***
27 ***concerning the mortgage broker, any general partner, officer, director or***
28 ***mortgage agent of the mortgage broker or any loan in which the***
29 ***mortgage broker is or has been involved, if the commissioner, in his***
30 ***judgment, believes that the information:***

31 ***(a) Would be of material interest to a reasonable investor who is***
32 ***deciding whether to invest money with the mortgage broker; or***

33 ***(b) Is necessary to protect the welfare of the public.***

34 ***7. In carrying out the provisions of subsection 6, the commissioner***
35 ***may, without limitation, order a mortgage broker to include statements of***
36 ***disclosure prescribed by the commissioner:***

37 ***(a) In the disclosure form that must be given to investors pursuant to***
38 ***subsection 1;***

39 ***(b) In additional disclosure forms that must be given to investors***
40 ***before or after they have invested money through the mortgage broker;***
41 ***or***

42 ***(c) In any advertisement that the mortgage broker uses in carrying on***
43 ***his business.***

1 **8. The commissioner:**

2 **(a) Shall adopt regulations prescribing the period for which a**
3 **mortgage broker must retain a copy of each disclosure form that is given**
4 **to investors; and**

5 **(b) May adopt any other regulations that are necessary to carry out**
6 **the provisions of this section, including, without limitation, regulations**
7 **specifying the size of print and any required formatting or typesetting**
8 **that a mortgage broker must use in any disclosure form that is given to**
9 **investors.**

10 **Sec. 87.** NRS 645B.188 is hereby amended to read as follows:

11 645B.188 Each mortgage ~~company~~ **broker** shall pay the assessment
12 levied pursuant to NRS 658.055 . ~~and~~ **Each mortgage broker and**
13 **mortgage agent shall** cooperate fully with the audits and examinations
14 performed pursuant thereto.

15 **Sec. 88.** NRS 645B.189 is hereby amended to read as follows:

16 645B.189 **1. Each mortgage broker shall include in each**
17 **advertisement that the mortgage broker uses in carrying on his business:**

18 **(a) A statement of disclosure in substantially the following form:**

19 *Money invested through a mortgage broker is not insured or*
20 *guaranteed by the federal or state government. An investor is not*
21 *guaranteed to recover or to be repaid any of the money he invests.*
22 *An investor is not guaranteed to earn or to be paid any interest or*
23 *other return on the money he invests. An investor may lose some or*
24 *all of the money he invests.*
25

26
27 **(b) Any other statements of disclosure required pursuant to the**
28 **regulations adopted by the commissioner or required pursuant to an**
29 **order of the commissioner entered in accordance with subsections 6 and**
30 **7 of NRS 645B.185.**

31 **2.** Each mortgage ~~company~~ **broker** shall submit any proposed
32 advertisement ~~that the mortgage broker~~ intends to use **in carrying on**
33 **his business** to the commissioner for approval. ~~The commissioner shall,~~
34 ~~within 5 working days after receiving the advertisement, approve or~~
35 ~~disapprove its use and notify the company of that decision.~~ **If the**
36 **mortgage broker is required to include any statements of disclosure in**
37 **such an advertisement pursuant to subsection 1 and the statements of**
38 **disclosure will be displayed in printed form:**

39 **(a) The size of the print must be approved by the commissioner; and**

40 **(b) If displayed on television or any other video screen, monitor or**
41 **device, the length of time that the statements are displayed must be**
42 **approved by the commissioner.**

1 **3. In addition to the requirements set forth in this chapter, each**
2 **advertisement that a mortgage broker uses in carrying on his business**
3 **must comply with the requirements of:**

4 **(a) NRS 598.0903 to 598.0999, inclusive, concerning deceptive trade**
5 **practices; and**

6 **(b) Any applicable federal statute or regulation concerning deceptive**
7 **advertising and the advertising of interest rates.**

8 **4. The commissioner may adopt any regulations that are necessary to**
9 **carry out the provisions of this section.**

10 **Sec. 89.** NRS 645B.191 is hereby amended to read as follows:

11 645B.191 Except pursuant to a contract for the collection or servicing
12 of a loan which is governed by the requirements established by the
13 Government National Mortgage Association, Federal Home Loan
14 Mortgage Corporation or Federal National Mortgage Association, ~~no~~
15 ~~mortgage company may~~ **a mortgage broker or mortgage agent shall not**
16 advance payments to an investor on behalf of a person who has obtained a
17 loan secured by a lien on real property and who has defaulted in his
18 payments.

19 **Sec. 90.** NRS 645B.193 is hereby amended to read as follows:

20 645B.193 A mortgage ~~company~~ **broker** shall not assign all or a part
21 of ~~its~~ **his** interest in a ~~mortgage~~ **loan secured by a lien on real property**
22 unless the ~~company~~ **mortgage broker:**

23 1. Obtains **a policy of** title insurance for the ~~mortgaged~~ **real** property;
24 and

25 2. Records the assignment in the office of the county recorder of the
26 county in which the **real** property is located.

27 **Sec. 91.** NRS 645B.197 is hereby amended to read as follows:

28 645B.197 1. A person may apply to the commissioner for an
29 exemption from the provisions of this chapter governing the making of a
30 loan of money.

31 2. The commissioner may grant the exemption if he finds that:

32 (a) The making of the loan would not be detrimental to the financial
33 condition of the lender, ~~borrower~~ **the debtor** or **the** person who is
34 providing the money for the loan;

35 (b) The lender, ~~borrower~~ **the debtor** or **the** person who is providing
36 the money for the loan has established a record of sound performance,
37 efficient management, financial responsibility and integrity;

38 (c) The making of the loan is likely to increase the availability of capital
39 for a sector of the state economy; and

40 (d) The making of the loan is not detrimental to the public interest.

41 3. The commissioner:

42 (a) May revoke an exemption unless the loan for which the exemption
43 was granted has been made; and

(b) Shall issue a written statement setting forth the reasons for his decision to grant, deny or revoke an exemption.

Sec. 92. NRS 645B.200 is hereby amended to read as follows:

645B.200 ~~{This chapter does not limit}~~ *The provisions of this chapter do not:*

1. *Limit* any statutory or common law right of ~~{any}~~ a person to bring ~~{an action in any court}~~ *a civil action against a mortgage broker or mortgage agent* for any act *or omission* involved in the transaction of *business by or on behalf of* the mortgage ~~{company business or the}~~ *broker or mortgage agent;*

2. *Limit the* right of the state to punish ~~{any}~~ a person for ~~{any}~~ the violation of any law ~~{,}~~ *, ordinance or regulation; or*

3. *Establish a basis for a person to bring a civil action against the state or its officers or employees for any act or omission in carrying out the provisions of this chapter, including, without limitation, any act or omission relating to the disclosure of information or the failure to disclose information pursuant to the provisions of this chapter.*

Sec. 93. NRS 645B.210 is hereby amended to read as follows:

645B.210 It is unlawful for any person to *offer or* provide any of the services of a mortgage ~~{company, unless he is exempted under NRS 645B.015,}~~ *broker or mortgage agent or otherwise* to engage in , ~~{or}~~ carry on ~~{,}~~ or hold himself out as engaging in or carrying on ~~{,}~~ the business of a mortgage ~~{company}~~ *broker or mortgage agent* without first obtaining a license as a mortgage ~~{company,}~~ *broker or mortgage agent pursuant to this chapter, unless the person:*

1. *Is exempt from the provisions of this chapter; and*

2. *Complies with the requirements for that exemption.*

Sec. 94. NRS 645B.220 is hereby amended to read as follows:

645B.220 It is unlawful for any foreign corporation, association or business trust to transact any mortgage business in this state unless it:

1. Qualifies under chapter 80 of NRS; and

2. Complies with the provisions of this chapter ~~{unless exempted by NRS 645B.015,}~~ *or, if it claims an exemption from the provisions of this chapter, complies with the requirements for that exemption.*

Sec. 95. NRS 645B.225 is hereby amended to read as follows:

645B.225 A person , *or any general partner, director, officer, agent or employee of a person,* who violates any provision of NRS ~~{645B.170, 645B.175 or 645B.180,}~~ *645B.165 or 645B.175:*

1. Is guilty of a misdemeanor if the amount involved is less than \$250;

2. Is guilty of a gross misdemeanor if the amount involved is \$250 or more but less than \$1,000; or

3. Is guilty of a category D felony if the amount involved is \$1,000 or

more, and shall be punished as provided in NRS 193.130.

1 **Sec. 96.** NRS 645B.230 is hereby amended to read as follows:

2 645B.230 Except as *otherwise* provided in NRS 645B.225, ~~any~~ a
3 person, or any *general partner*, director, officer, agent or employee of a
4 person, who violates any ~~of the provisions~~ *provision* of this chapter is
5 guilty of a misdemeanor.

6 **Sec. 97.** NRS 40.750 is hereby amended to read as follows:

7 40.750 1. As used in this section, "financial institution" means a
8 bank, *mortgage broker*, mortgage company, credit union, thrift company
9 or savings and loan association, or any subsidiary or affiliate of a bank,
10 *mortgage broker*, mortgage company, credit union, thrift company or
11 savings and loan association, which is authorized to transact business in
12 this state and which makes or acquires, in whole or in part, any loan of the
13 kind described in subsection 2.

14 2. Except as otherwise provided in subsection 5, a person who, for the
15 purpose of obtaining a loan secured by a lien on real property, knowingly
16 conceals a material fact, or makes a false statement concerning a material
17 fact knowing that the statement is false, is liable to any financial institution
18 which relied upon the absence of that concealed fact or on that false
19 statement for any damages it sustains because of the fraud.

20 3. In addition to its actual damages, a financial institution may recover
21 exemplary or punitive damages in an amount not to exceed 50 percent of
22 the actual damages awarded.

23 4. The cause of action provided by this section:

24 (a) Is not, for the purposes of NRS 40.430, an action for the recovery of
25 any debt or an action for the enforcement of any right secured by mortgage
26 or lien upon real estate.

27 (b) Is in addition to and not in substitution for any right of foreclosure
28 existing in favor of the financial institution. Any recovery pursuant to this
29 section does not limit the amount of a judgment awarded pursuant to NRS
30 40.459, but the financial institution is not entitled to recover actual
31 damages more than once for the same loss.

32 5. The provisions of this section do not apply to any loan which is
33 secured by a lien on real property used for residential purposes if:

34 (a) The residence is a single-family dwelling occupied by the person
35 obtaining the loan, as represented by him in connection with his
36 application for the loan; and

37 (b) The loan is for the principal amount of \$150,000 or less.

38 **Sec. 98.** NRS 80.015 is hereby amended to read as follows:

39 80.015 1. For the purposes of this chapter, the following activities do
40 not constitute doing business in this state:

41 (a) Maintaining, defending or settling any proceeding;

42 (b) Holding meetings of the board of directors or stockholders or
43 carrying on other activities concerning internal corporate affairs;

- 1 (c) Maintaining bank accounts;
- 2 (d) Maintaining offices or agencies for the transfer, exchange and
- 3 registration of the corporation's own securities or maintaining trustees or
- 4 depositaries with respect to those securities;
- 5 (e) Making sales through independent contractors;
- 6 (f) Soliciting or receiving orders outside of this state through or in
- 7 response to letters, circulars, catalogs or other forms of advertising,
- 8 accepting those orders outside of this state and filling them by shipping
- 9 goods into this state;
- 10 (g) Creating or acquiring indebtedness, mortgages and security interests
- 11 in real or personal property;
- 12 (h) Securing or collecting debts or enforcing mortgages and security
- 13 interests in property securing the debts;
- 14 (i) Owning, without more, real or personal property;
- 15 (j) Isolated transactions completed within 30 days and not a part of a
- 16 series of similar transactions;
- 17 (k) The production of motion pictures as defined in NRS 231.020;
- 18 (l) Transacting business as an out-of-state depository institution
- 19 pursuant to the provisions of Title 55 of NRS; and
- 20 (m) Transacting business in interstate commerce.
- 21 2. The list of activities in subsection 1 is not exhaustive.
- 22 3. A person who is not doing business in this state within the meaning
- 23 of this section need not qualify or comply with any provision of NRS
- 24 80.010 to 80.270, inclusive, chapter 645A or 645B of NRS , *sections 2 to*
- 25 *36, inclusive, of this act* or Title 55 or 56 of NRS unless he:
- 26 (a) Maintains an office in this state for the transaction of business; or
- 27 (b) Solicits or accepts deposits in the state, except pursuant to the
- 28 provisions of chapter 666 or 666A of NRS.
- 29 **Sec. 99.** NRS 90.530 is hereby amended to read as follows:
- 30 90.530 The following transactions are exempt from NRS 90.460 and
- 31 90.560:
- 32 1. An isolated nonissuer transaction, whether or not effected through a
- 33 broker-dealer.
- 34 2. A nonissuer transaction in an outstanding security if the issuer of
- 35 the security has a class of securities subject to registration under section 12
- 36 of the Securities Exchange Act of 1934 , *15 U.S.C. § 78l*, and has been
- 37 subject to the reporting requirements of section 13 or ~~15(d)~~ *15(c)* of the
- 38 Securities Exchange Act of 1934 , *15 U.S.C. §§ 78m and 78o(d)*, for not
- 39 less than 90 days next preceding the transaction, or has filed and
- 40 maintained with the administrator for not less than 90 days preceding the
- 41 transaction information, in such form as the administrator, by regulation,
- 42 specifies, substantially comparable to the information the issuer would be
- 43 required to file under section 12(b) or 12(g) of the Securities Exchange Act

1 of 1934 , *15 U.S.C. §§ 78l(b) and 78l(g)*, were the issuer to have a class of
2 its securities registered under section 12 of the Securities Exchange Act of
3 1934 , *15 U.S.C. § 78l*, and paid a fee with the filing of \$150.

4 3. A nonissuer transaction by a sales representative licensed in this
5 state, in an outstanding security if:

6 (a) The security is sold at a price reasonably related to the current
7 market price of the security at the time of the transaction;

8 (b) The security does not constitute all or part of an unsold allotment to,
9 or subscription or participation by, a broker-dealer as an underwriter of the
10 security;

11 (c) At the time of the transaction, a recognized securities manual
12 designated by the administrator by regulation or order contains the names
13 of the issuer's officers and directors, a statement of the financial condition
14 of the issuer as of a date within the preceding 18 months, and a statement
15 of income or operations for each of the last 2 years next preceding the date
16 of the statement of financial condition, or for the period as of the date of
17 the statement of financial condition if the period of existence is less than 2
18 years;

19 (d) The issuer of the security has not undergone a major reorganization,
20 merger or acquisition within the preceding 30 days which is not reflected
21 in the information contained in the manual; and

22 (e) At the time of the transaction, the issuer of the security has a class of
23 equity security listed on the New York Stock Exchange, American Stock
24 Exchange or other exchange designated by the administrator, or on the
25 National Market System of the National Association of Securities Dealers
26 Automated Quotation System. The requirements of this paragraph do not
27 apply if:

28 (1) The security has been outstanding for at least 180 days;

29 (2) The issuer of the security is actually engaged in business and is
30 not developing his business, in bankruptcy or in receivership; and

31 (3) The issuer of the security has been in continuous operation for at
32 least 5 years.

33 4. A nonissuer transaction in a security that has a fixed maturity or a
34 fixed interest or dividend provision if there has been no default during the
35 current fiscal year or within the 3 preceding years, or during the existence
36 of the issuer, and any predecessors if less than 3 years, in the payment of
37 principal, interest or dividends on the security.

38 5. A nonissuer transaction effected by or through a registered broker-
39 dealer pursuant to an unsolicited order or offer to purchase.

40 6. A transaction between the issuer or other person on whose behalf
41 the offering of a security is made and an underwriter, or a transaction
42 among underwriters.

1 7. A transaction in a bond or other evidence of indebtedness secured
2 by a real estate mortgage, deed of trust, personal property security
3 agreement, or by an agreement for the sale of real estate or personal
4 property, if the entire mortgage, deed of trust or agreement, together with
5 all the bonds or other evidences of indebtedness secured thereby, is offered
6 and sold as a unit.

7 8. A transaction by an executor, administrator, sheriff, marshal,
8 receiver, trustee in bankruptcy, guardian or conservator.

9 9. A transaction executed by a bona fide secured party without the
10 purpose of evading this chapter.

11 10. An offer to sell or sale of a security to a financial or institutional
12 investor or to a broker-dealer.

13 11. Except as otherwise provided in this subsection, a transaction
14 pursuant to an offer to sell securities of an issuer if:

15 (a) The transaction is part of an issue in which there are ~~no~~ **not** more
16 than 25 purchasers in this state, other than those designated in subsection
17 10, during any 12 consecutive months;

18 (b) No general solicitation or general advertising is used in connection
19 with the offer to sell or sale of the securities;

20 (c) No commission or other similar compensation is paid or given,
21 directly or indirectly, to a person, other than a broker-dealer licensed or not
22 required to be licensed under this chapter, for soliciting a prospective
23 purchaser in this state; and

24 (d) One of the following conditions is satisfied:

25 (1) The seller reasonably believes that all the purchasers in this state,
26 other than those designated in subsection 10, are purchasing for
27 investment; or

28 (2) Immediately before and immediately after the transaction, the
29 issuer reasonably believes that the securities of the issuer are held by 50 or
30 fewer beneficial owners, other than those designated in subsection 10, and
31 the transaction is part of an aggregate offering that does not exceed
32 \$500,000 during any 12 consecutive months.

33 The administrator by rule or order as to a security or transaction or a type
34 of security or transaction, may withdraw or further condition the
35 exemption set forth in this subsection or waive one or more of the
36 conditions of the exemption.

37 12. An offer to sell or sale of a preorganization certificate or
38 subscription if:

39 (a) No commission or other similar compensation is paid or given,
40 directly or indirectly, for soliciting a prospective subscriber;

41 (b) No public advertising or general solicitation is used in connection
42 with the offer to sell or sale;

43 (c) The number of offers does not exceed 50;

1 (d) The number of subscribers does not exceed 10; and

2 (e) No payment is made by a subscriber.

3 13. An offer to sell or sale of a preorganization certificate or
4 subscription issued in connection with the organization of a depository
5 institution if that organization is under the supervision of an official or
6 agency of a state or of the United States which has and exercises the
7 authority to regulate and supervise the organization of the depository
8 institution. For the purpose of this subsection, ~~["supervision of the~~
9 ~~organization by]~~ **"under the supervision of** an official or agency" means
10 that the official or agency by law has authority to require disclosures to
11 prospective investors similar to those required under NRS 90.490,
12 impound proceeds from the sale of a preorganization certificate or
13 subscription until organization of the depository institution is completed,
14 and require refund to investors if the depository institution does not obtain
15 a grant of authority from the appropriate official or agency.

16 14. A transaction pursuant to an offer to sell to existing security
17 holders of the issuer, including persons who at the time of the transaction
18 are holders of transferable warrants exercisable within not more than 90
19 days after their issuance, convertible securities or nontransferable warrants,
20 if:

21 (a) No commission or other similar compensation other than a standby
22 commission, is paid or given, directly or indirectly, for soliciting a security
23 holder in this state; or

24 (b) The issuer first files a notice specifying the terms of the offer to sell,
25 together with a nonrefundable fee of \$150, and the administrator does not
26 by order disallow the exemption within the next 5 full business days.

27 15. A transaction involving an offer to sell, but not a sale, of a security
28 not exempt from registration under the Securities Act of 1933 if:

29 (a) A registration or offering statement or similar document as required
30 under the Securities Act of 1933 has been filed, but is not effective;

31 (b) A registration statement, if required, has been filed under this
32 chapter, but is not effective; and

33 (c) No order denying, suspending or revoking the effectiveness of
34 registration, of which the offeror is aware, has been entered by the
35 administrator or the Securities and Exchange Commission, and no
36 examination or public proceeding that may culminate in that kind of order
37 is known by the offeror to be pending.

38 16. A transaction involving an offer to sell, but not a sale, of a security
39 exempt from registration under the Securities Act of 1933 if:

40 (a) A registration statement has been filed under this chapter, but is not
41 effective; and

42 (b) No order denying, suspending or revoking the effectiveness of
43 registration, of which the offeror is aware, has been entered by the

1 administrator and no examination or public proceeding that may culminate
2 in that kind of order is known by the offeror to be pending.

3 17. A transaction involving the distribution of the securities of an
4 issuer to the security holders of another person in connection with a
5 merger, consolidation, exchange of securities, sale of assets or other
6 reorganization to which the issuer, or its parent or subsidiary, and the other
7 person, or its parent or subsidiary, are parties, if:

8 (a) The securities to be distributed are registered under the Securities
9 Act of 1933 before the consummation of the transaction; or

10 (b) The securities to be distributed are not required to be registered
11 under the Securities Act of 1933, written notice of the transaction and a
12 copy of the materials, if any, by which approval of the transaction will be
13 solicited, together with a nonrefundable fee of \$150, are given to the
14 administrator at least 10 days before the consummation of the transaction
15 and the administrator does not, by order, disallow the exemption within the
16 next 10 days.

17 18. A transaction involving the offer to sell or sale of one or more
18 promissory notes each of which is directly secured by a first lien on a
19 single parcel of real estate, or a transaction involving the offer to sell or
20 sale of participation interests in the notes if the notes and participation
21 interests are originated by a depository institution and are offered and sold
22 subject to the following conditions:

23 (a) The minimum aggregate sales price paid by each purchaser may not
24 be less than \$250,000;

25 (b) Each purchaser must pay cash either at the time of the sale or within
26 60 days after the sale; and

27 (c) Each purchaser may buy for his own account only.

28 19. A transaction involving the offer to sell or sale of one or more
29 promissory notes directly secured by a first lien on a single parcel of real
30 estate or participating interests in the notes, if the notes and interests are
31 originated by a mortgagee approved by the Secretary of Housing and
32 Urban Development under sections 203 and 211 of the National Housing
33 Act, **12 U.S.C. §§ 1709 and 1715b**, and are offered or sold, subject to the
34 conditions specified in subsection 18, to a depository institution or
35 insurance company, the Federal Home Loan Mortgage Corporation, the
36 Federal National Mortgage Association or the Government National
37 Mortgage Association.

38 20. A transaction between any of the persons described in subsection
39 19 involving a nonassignable contract to buy or sell the securities
40 described in subsection 18 if the contract is to be completed within 2 years
41 and if:

42 (a) The seller of the securities pursuant to the contract is one of the
43 parties described in subsection 18 or 19 who may originate securities;

1 (b) The purchaser of securities pursuant to a contract is any other person
2 described in subsection 19; and

3 (c) The conditions described in subsection 18 are fulfilled.

4 21. A transaction involving one or more promissory notes secured by a
5 lien on real estate, or participating interests in those notes, by ~~it~~ :

6 (a) A mortgage company licensed pursuant to *sections 2 to 36,*
7 *inclusive, of this act to engage in those transactions; or*

8 (b) *A mortgage broker licensed pursuant to* chapter 645B of NRS to
9 engage in those transactions.

10 **Sec. 100.** NRS 232.545 is hereby amended to read as follows:

11 232.545 1. An investigative account for financial institutions is
12 hereby created in the state general fund. The account consists of money
13 which is:

14 (a) Received by the department of business and industry in connection
15 with the licensing of financial *institutions and persons associated with*
16 *those* institutions; and

17 (b) Required by law to be placed therein.

18 2. The director of the department of business and industry or his
19 designee may authorize expenditures from the investigative account to pay
20 the expenses incurred ~~in~~ :

21 (a) *In* investigating applications for licensing of financial institutions
22 and ~~in~~ *persons associated with those institutions;*

23 (b) *In* conducting special investigations relating to ~~those institutions,~~
24 ~~and expenses incurred in~~ *financial institutions and persons associated*
25 *with those institutions; and*

26 (c) *In* connection with mergers, consolidations, conversions,
27 receiverships and liquidations ~~of~~ *of financial institutions.*

28 3. As used in this section, “financial institution” means an institution
29 for which licensing is required by the provisions of Titles 55 and 56 and
30 chapters 645B and 649 of NRS ~~it~~ *and sections 2 to 36, inclusive, of this*
31 *act.*

32 **Sec. 101.** NRS 604.090 is hereby amended to read as follows:

33 604.090 1. Except as otherwise provided in subsection 2, it is
34 unlawful to operate a check-cashing or deferred deposit service without
35 being registered with the commissioner.

36 2. The provisions of this chapter do not apply to:

37 (a) A person doing business pursuant to the authority of any law of this
38 state or of the United States relating to banks, savings banks, trust
39 companies, savings and loan associations, credit unions, development
40 corporations, *mortgage brokers,* mortgage companies, thrift companies,
41 pawnbrokers or insurance companies.

42 (b) A person licensed to make installment loans pursuant to chapter 675
43 of

NRS.

1 (c) A person who is primarily engaged in the retail sale of goods or
2 services who:

3 (1) As an incident to or independently of a retail sale or service from
4 time to time cashes checks for a fee or other consideration of not more than
5 \$2; and

6 (2) Does not hold himself out as a check-cashing service.

7 (d) A person while performing any act authorized by a license issued
8 pursuant to chapter 671 of NRS.

9 (e) A person who holds a nonrestricted gaming license issued pursuant
10 to chapter 463 of NRS while performing any act in the course of that
11 licensed operation.

12 (f) A person who is exclusively engaged in a check-cashing service
13 relating to out-of-state checks.

14 (g) A corporation organized pursuant to the laws of this state that has
15 been continuously and exclusively engaged in a check-cashing service in
16 this state since July 1, 1973.

17 **Sec. 102.** NRS 657.120 is hereby amended to read as follows:

18 657.120 1. A financial institution may impose and collect a fee or
19 charge, not to exceed an amount specified in or limited by specific statute,
20 for any service it provides to a customer, if the fee or charge is clearly and
21 conspicuously disclosed in writing to the customer before the customer
22 receives the service. A financial institution must provide a customer with
23 written notice of any increase in the fee or charge at least 10 days before
24 the increase becomes effective.

25 2. A fee or charge for the presentation for payment, on a single
26 business day, of multiple checks drawn by a customer on an account for
27 which there is an insufficient balance to pay all ~~of~~ the checks, must be
28 determined as if the checks drawn in a single series or class were presented
29 in order of ascending amounts, the check for the smallest sum being
30 presented first.

31 3. As used in this section, “financial institution” means an institution
32 licensed pursuant to the provisions of Title 55 or 56 or chapter 645B or
33 649 of NRS ~~H~~ **or sections 2 to 36, inclusive, of this act**, or a similar
34 institution chartered or licensed pursuant to federal law.

35 **Sec. 103.** NRS 657.130 is hereby amended to read as follows:

36 657.130 1. As used in this section, unless the context otherwise
37 requires:

38 (a) “Committee to review compliance” means one or more persons
39 assigned or engaged by a financial institution to test, review or evaluate its
40 conduct, transactions or potential transactions, policies or procedures for
41 the purpose of monitoring and improving or enforcing compliance with
42 state and federal statutes and regulations requiring safe, sound and fair
43 lending practices, including, without limitation, acts concerning equal

1 credit opportunity, fair housing, fair lending, flood zone protection,
2 housing and financial discrimination, truth in lending and financial
3 reporting to federal or state regulatory agencies.

4 (b) “Financial institution” means an institution licensed pursuant to the
5 provisions of this Title or Title 56 or chapter 645B of NRS ~~§~~ **or sections 2**
6 **to 36, inclusive, of this act**, or a similar institution chartered or licensed
7 pursuant to federal law ~~. and~~ **The term** includes **, without limitation**, a
8 holding company, affiliate or subsidiary of such an institution.

9 2. Except as otherwise voluntarily authorized by the financial
10 institution:

11 (a) A document prepared for or created by a committee to review
12 compliance is confidential and privileged, and is not subject to discovery
13 or admissible in evidence in a civil action of this state, even if it has been
14 submitted to a governmental or regulatory agency of this state, the United
15 States or a foreign government.

16 (b) A member of a committee to review compliance or a person who
17 acted under the direction of the committee cannot be required to testify in a
18 civil action concerning the contents of a document described in paragraph
19 (a) or concerning the discussions or conclusions of, or the actions taken by,
20 the committee.

21 **Sec. 104.** NRS 675.040 is hereby amended to read as follows:

22 675.040 This chapter does not apply to:

23 1. A person doing business under the authority of any law of this state
24 or of the United States relating to banks, savings banks, trust companies,
25 savings and loan associations, credit unions, development corporations,
26 **mortgage brokers**, mortgage companies, thrift companies, pawnbrokers or
27 insurance companies.

28 2. A real estate investment trust, as defined in 26 U.S.C. § 856.

29 3. An employee benefit plan, as defined in 29 U.S.C. § 1002(3), if the
30 loan is made directly from money in the plan by the plan’s trustee.

31 4. An attorney at law rendering services in the performance of his
32 duties as an attorney at law if the loan is secured by real property.

33 5. A real estate broker rendering services in the performance of his
34 duties as a real estate broker if the loan is secured by real property.

35 6. Except as otherwise provided in this subsection, any firm or
36 corporation:

37 (a) Whose principal purpose or activity is lending money on real
38 property which is secured by a mortgage;

39 (b) Approved by the Federal National Mortgage Association as a seller
40 or servicer; and

41 (c) Approved by the Department of Housing and Urban Development
42 and the Department of Veterans Affairs.

1 7. A person who provides money for investment in loans secured by a
2 lien on real property, on his own account.

3 8. A seller of real property who offers credit secured by a mortgage of
4 the property sold.

5 9. A person holding a nonrestricted state gaming license issued
6 pursuant to the provisions of chapter 463 of NRS.

7 **Sec. 105.** NRS 675.230 is hereby amended to read as follows:

8 675.230 1. Except as otherwise provided in subsection 2, no licensee
9 may conduct the business of making loans under this chapter within any
10 office, suite, room or place of business in which any other business is
11 solicited or engaged in, except an insurance agency or notary public, or in
12 association or conjunction with any other business, unless authority to do
13 so is given by the commissioner.

14 2. A licensee may conduct the business of making loans pursuant to
15 this chapter in the same office or place of business as a mortgage company
16 if:

17 (a) The licensee and the mortgage company:

- 18 (1) Operate as separate legal entities;
19 (2) Maintain separate accounts, books and records;
20 (3) Are subsidiaries of the same parent corporation; and
21 (4) Maintain separate licenses; and

22 (b) The mortgage company ~~is~~ :

23 (1) *Is licensed by this state pursuant to sections 2 to 36, inclusive, of*
24 *this act;* and ~~[does not receive money to acquire or repay loans or maintain~~
25 ~~trust accounts as provided by NRS 645B.175.]~~

26 (2) *Does not conduct any business as a mortgage broker licensed*
27 *pursuant to chapter 645B of NRS at the office or place of business.*

28 **Sec. 106.** NRS 645B.130, 645B.140, 645B.170, 645B.180 and
29 645B.187 are hereby repealed.

30 **Sec. 107.** The amendatory provisions of this act do not apply to
31 offenses that were committed before July 1, 1999.

32 **Sec. 108.** 1. If, on July 1, 1999, a person:

33 (a) Holds a valid license that was issued by the commissioner of
34 financial institutions pursuant to chapter 645B of NRS before July 1, 1999;
35 and

36 (b) Meets the definition of a “mortgage company,” as set forth in the
37 amendatory provisions of section 8 of this act,
38 the person shall be deemed to be licensed as a mortgage company pursuant
39 to the amendatory provisions of sections 2 to 36, inclusive, of this act and
40 the person’s license as a mortgage company expires on December 31,
41 1999, unless it is renewed in accordance with the amendatory provisions of
42 section 15 of this act.

1 2. Notwithstanding the provisions of subsection 1 and the amendatory
2 provisions of section 15 of this act, for each person described in subsection
3 1, the commissioner shall reduce the fee that the person is required to pay
4 to renew his license as a mortgage company on or before December 31,
5 1999, by an amount equal to one-half the fee that the person paid to renew
6 his license as a mortgage company on or before June 30, 1999.

7 3. The provisions of this section do not prohibit a person described in
8 subsection 1 from applying for a license as a mortgage broker on or after
9 July 1, 1999, in accordance with the amendatory provisions of sections 39
10 to 96, inclusive, of this act.

11 **Sec. 109.** 1. If, on July 1, 1999, a person:

12 (a) Holds a valid license that was issued by the commissioner of
13 financial institutions pursuant to chapter 645B of NRS before July 1, 1999;
14 and

15 (b) Meets the definition of a “mortgage broker,” as set forth in the
16 amendatory provisions of section 50 of this act,
17 the person shall be deemed to be licensed as a mortgage broker pursuant to
18 the amendatory provisions of sections 39 to 96, inclusive, of this act and
19 the person’s license as a mortgage broker expires on June 30, 2000, unless
20 it is renewed in accordance with the amendatory provisions of section 72
21 of this act.

22 2. The provisions of this section do not prohibit a person described in
23 subsection 1 from applying for a license as a mortgage company on or
24 after July 1, 1999, in accordance with the amendatory provisions of
25 sections 2 to 36, inclusive, of this act.

26 **Sec. 110.** A person who, on or after July 1, 1999, offers or provides
27 any of the services of a mortgage agent or otherwise engages in, carries on
28 or holds himself out as engaging in or carrying on the business of a
29 mortgage agent:

30 1. Is not required to be licensed before July 1, 2000, notwithstanding
31 the amendatory provisions of section 93 of this act; and

32 2. Is subject to all other amendatory provisions of sections 39 to 96,
33 inclusive, of this act, whether or not he is licensed before July 1, 2000.

34 **Sec. 111.** 1. This act becomes effective on July 1, 1999.

35 2. Sections 16 and 31 of this act expire by limitation on the date on
36 which the provisions of 42 U.S.C. § 666 requiring each state to establish
37 procedures under which the state has authority to withhold or suspend, or
38 to restrict the use of professional, occupational and recreational licenses of
39 persons who:

40 (a) Have failed to comply with a subpoena or warrant relating to a
41 procedure to determine the paternity of a child or to establish or enforce an
42 obligation for the support of a child; or

- 1 (b) Are in arrears in the payment for the support of one or more
- 2 children,
- 3 are repealed by the Congress of the United States.

LEADLINES OF REPEALED SECTIONS

645B.130 **Procedure for appeal of final orders.**

645B.140 **Procedures following decision on appeal.**

645B.170 **Money for payment of taxes or insurance premiums:
Deposit in designated accounts required; duties concerning impound
trust accounts.**

645B.180 **Exemption from execution or attachment; commingling
prohibited.**

645B.187 **Payment of premium interest by mortgage company.**

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