

ASSEMBLY BILL NO. 72—COMMITTEE ON JUDICIARY

PREFILED JANUARY 28, 1999

(ON BEHALF OF LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO INVESTIGATE
REGULATION OF MORTGAGE INVESTMENTS)

Referred to Committee on Judiciary

SUMMARY—Subjects certain transactions involving mortgage companies and notes secured by
liens on real property to laws regulating securities. (BDR 7-1203)FISCAL NOTE: Effect on Local Government: No.
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; subjecting certain transactions involving mortgage companies and notes secured by liens on real property to laws regulating securities; authorizing the administrator of the securities division of the office of the secretary of state to adopt regulations to exempt from the laws regulating securities certain transactions involving mortgage companies and notes secured by liens on real property; 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.** NRS 90.372 is hereby amended to read as follows:
2 90.372 1. The administrator shall grant to a bona fide officer or
3 director of an issuer a waiver from the examination required for licensure
4 as a sales representative or broker-dealer if:
5 (a) The securities of the issuer:
6 (1) Are registered under the Securities Exchange Act of 1934; or
7 (2) Comply with the ~~requirements~~ ***provisions*** of Regulation D of
8 the Securities and Exchange Commission, 17 C.F.R. §§ 230.501 to
9 ~~230.506,~~ ***230.508***, inclusive, except for ***the provisions of*** 17 C.F.R. §
10 230.504 ~~and any provision of 17 C.F.R. § 230.507 or § 230.508 that~~
11 ***the administrator waives by regulation, and the securities*** are exempt
12 from registration by regulation of the administrator;

1 (b) The officer or director does not receive a commission or other
2 compensation for the sale of the issuer's securities; and

3 (c) The officer or director files with the administrator an affidavit which
4 states that he:

5 (1) Is an officer or director of the issuer;

6 (2) Will not be receiving a commission or other compensation for the
7 sale of the issuer's securities;

8 (3) Understands that the waiver applies only to the sale of the issuer's
9 securities; and

10 (4) Agrees to provide to prospective purchasers of the issuer's
11 securities such pamphlets, circulars, literature or other information as may
12 be required by regulation or order of the administrator.

13 2. If the officer or director sells or offers to sell any securities other
14 than the securities of the issuer, he must pass the examination for licensure
15 as a sales representative or broker-dealer unless the examination is
16 otherwise waived by the administrator pursuant to NRS 90.370.

17 **Sec. 2.** NRS 90.530 is hereby amended to read as follows:

18 90.530 The following transactions are exempt from NRS 90.460 and
19 90.560:

20 1. An isolated nonissuer transaction, whether or not effected through a
21 broker-dealer.

22 2. A nonissuer transaction in an outstanding security if the issuer of
23 the security has a class of securities subject to registration under section 12
24 of the Securities Exchange Act of 1934 and has been subject to the
25 reporting requirements of section 13 or ~~15(d)~~ 15(c) of the Securities
26 Exchange Act of 1934 for not less than 90 days next preceding the
27 transaction, or has filed and maintained with the administrator for not less
28 than 90 days preceding the transaction information, in such form as the
29 administrator, by regulation, specifies, substantially comparable to the
30 information the issuer would be required to file under section 12(b) or
31 12(g) of the Securities Exchange Act of 1934 were the issuer to have a
32 class of its securities registered under section 12 of the Securities
33 Exchange Act of 1934 and paid a fee with the filing of \$150.

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

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

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

1 (c) At the time of the transaction, a recognized securities manual
2 designated by the administrator by regulation or order contains the names
3 of the issuer's officers and directors, a statement of the financial condition
4 of the issuer as of a date within the preceding 18 months, and a statement
5 of income or operations for each of the last 2 years next preceding the date
6 of the statement of financial condition, or for the period as of the date of
7 the statement of financial condition if the period of existence is less than 2
8 years;

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

12 (e) At the time of the transaction, the issuer of the security has a class of
13 equity security listed on the New York Stock Exchange, American Stock
14 Exchange or other exchange designated by the administrator, or on the
15 National Market System of the National Association of Securities Dealers
16 Automated Quotation System. The requirements of this paragraph do not
17 apply if:

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

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

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

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

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

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

33 7. A transaction in a bond or other evidence of indebtedness secured
34 by a real estate mortgage, deed of trust, personal property security
35 agreement, or by an agreement for the sale of real estate or personal
36 property, if the entire mortgage, deed of trust or agreement, together with
37 all the bonds or other evidences of indebtedness secured thereby, is offered
38 and sold as a unit.

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

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

chapter.

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

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

5 (a) The transaction is part of an issue in which there are no more than
6 25 purchasers in this state, other than those designated in subsection 10,
7 during any 12 consecutive months;

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

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

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

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

18 (2) Immediately before and immediately after the transaction, the
19 issuer reasonably believes that the securities of the issuer are held by 50 or
20 fewer beneficial owners, other than those designated in subsection 10, and
21 the transaction is part of an aggregate offering that does not exceed
22 \$500,000 during any 12 consecutive months.

23 The administrator by rule or order as to a security or transaction or a type
24 of security or transaction, may withdraw or further condition the
25 exemption set forth in this subsection or waive one or more of the
26 conditions of the exemption.

27 12. An offer to sell or sale of a preorganization certificate or
28 subscription if:

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

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

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

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

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

36 13. An offer to sell or sale of a preorganization certificate or
37 subscription issued in connection with the organization of a depository
38 institution if that organization is under the supervision of an official or
39 agency of a state or of the United States which has and exercises the
40 authority to regulate and supervise the organization of the depository
41 institution. For the purpose of this subsection, ~~["supervision of the~~

42 ~~organization by]~~ **"under the supervision of** an official or agency" means

43 that the official or agency by law has authority to require disclosures to

1 prospective investors similar to those required under NRS 90.490,
2 impound proceeds from the sale of a preorganization certificate or
3 subscription until organization of the depository institution is completed,
4 and require refund to investors if the depository institution does not obtain
5 a grant of authority from the appropriate official or agency.

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

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

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

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

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

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

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

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

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

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

36 17. A transaction involving the distribution of the securities of an
37 issuer to the security holders of another person in connection with a
38 merger, consolidation, exchange of securities, sale of assets or other
39 reorganization to which the issuer, or its parent or subsidiary, and the other
40 person, or its parent or subsidiary, are parties, if:

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

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

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

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

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

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

19. A transaction involving the offer to sell or sale of one or more promissory notes directly secured by a first lien on a single parcel of real estate or participating interests in the notes, if the notes and interests are originated by a mortgagee approved by the Secretary of Housing and Urban Development under sections 203 and 211 of the National Housing Act and are offered or sold, subject to the conditions specified in subsection 18, to a depository institution or insurance company, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the Government National Mortgage Association.

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

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

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

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

~~[21. — A transaction involving one or more promissory notes secured by a lien on real estate, or participating interests in those notes, by a mortgage company licensed pursuant to chapter 645B of NRS to engage in those transactions.]~~

Sec. 3. NRS 90.540 is hereby amended to read as follows:

90.540 The administrator by regulation or order may:

- 1 1. *Exempt from NRS 90.460 and 90.560 a transaction involving one*
2 *or more promissory notes secured by a lien on real estate, or*
3 *participating interests in those notes, by a mortgage company licensed*
4 *pursuant to chapter 645B of NRS to engage in such a transaction, if the*
5 *transaction complies with:*
6 *(a) The provisions of Regulation D of the Securities and Exchange*
7 *Commission, 17 C.F.R. §§ 230.501 to 230.508, inclusive, except for the*
8 *provisions of 17 C.F.R. § 230.504 and any provision of 17 C.F.R. §*
9 *230.507 or § 230.508 that the administrator waives by regulation; and*
10 *(b) Any other requirements imposed by the administrator by*
11 *regulation or order.*
12 2. Exempt any other security or transaction or class of securities or
13 transactions from NRS 90.460 and 90.560.
14 ~~2.~~ 3. Adopt a transactional exemption for limited offerings that will
15 further the objectives of compatibility with the exemptions from securities
16 registration authorized by the Securities Act of 1933 and uniformity among
17 the states.
18 ~~3.~~ 4. Require the filing of a notice and the payment of a fee not
19 greater than \$250 for an exemption adopted pursuant to this section.
20 **Sec. 4.** This act becomes effective on July 1, 1999.