

ASSEMBLY BILL NO. 375—ASSEMBLYMAN OCEGUERA

MARCH 16, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Revises certain provisions governing mortgages.
(BDR 54-393)

FISCAL NOTE: Effect on Local Government: Increases or Newly
Provides for Term of Imprisonment in County or City
Jail or Detention Facility.
Effect on the State: Yes.

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

AN ACT relating to loans; requiring the Commissioner of Mortgage Lending to adopt certain regulations concerning investors and limitations on loans to directors, officers and employees; prohibiting a mortgage broker from assigning all or part of his interest in a loan that is secured by a lien on real property under certain circumstances; requiring a mortgage banker to ensure that each loan secured by a lien on real property includes a reasonable fee for servicing the loan and that the fee is deposited in a trust account; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law regulates the activities of various mortgage lenders, including the activities of mortgage brokers and mortgage bankers. (Chapters 645B and 645E of NRS) Existing law further provides that, subject to administrative supervision by the Director of the Department of Business and Industry, the Commissioner of Mortgage Lending is required to administer the provisions of law governing the licensing and regulation of mortgage brokers and mortgage bankers. (NRS 645B.060, 645E.300, 645F.250)

Sections 2 and 9 of this bill: (1) require a mortgage broker and a mortgage banker, respectively, to ensure that each loan secured by a lien on real property for which the mortgage broker or mortgage banker engages in activity as a mortgage broker or mortgage banker includes a reasonable fee for servicing the loan; and (2) require the establishment and maintenance of a trust account for the deposit of the fee for servicing a loan. **Section 3** of this bill prohibits a mortgage broker who is licensed or exempt from licensing as a broker-dealer, sales representative, investment advisor or representative of an investment advisor under the laws of this



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State from commingling money received from mortgage transactions with money received from securities transactions.

Existing law defines an "investor" for purposes of chapter 645B of NRS to mean a person who wishes to acquire or who acquires ownership of or a beneficial interest in a loan that is secured by a lien on real property. (NRS 645B.0121) **Section 5** of this bill requires the Commissioner to establish, by regulation, the financial conditions for an investor to acquire that ownership or beneficial interest in the loan.

Existing law authorizes the Commissioner of Financial Institutions to establish limitations on loans made by a bank to its directors, officers or employees. (NRS 662.145) **Sections 5 and 11** of this bill require the Commissioner of Mortgage Lending to establish similar limitations on loans made by mortgage brokers and mortgage bankers to directors, officers or employees of the mortgage broker or mortgage banker.

Existing law prohibits a mortgage broker from assigning his interest in a loan that is secured by a lien on real property unless the mortgage broker obtains title insurance for the property and records the assignment in the county recorder's office of the county in which the property is located. (NRS 645B.310) **Section 6** of this bill requires the mortgage broker also to obtain the approval of each investor in the loan if, at the time of the assignment, the debtor on the loan is in default on his loan payments.

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

Section 1. Chapter 645B of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. A mortgage broker shall ensure that:

(a) Each loan secured by a lien on real property for which he engages in activity as a mortgage broker includes a fee for servicing the loan which must be specified in the loan. The fee must be in an amount reasonably necessary to pay the cost of servicing the loan.

(b) All money paid to the mortgage broker and his mortgage agents for servicing such a loan must be deposited in an insured depository financial institution and kept separate, distinct and apart from money belonging to the mortgage broker. Such money, when deposited, is to be deposited under an appropriate name indicating that the accounts are not the money of the mortgage broker.

2. A mortgage broker has a fiduciary duty to each debtor with respect to the money in a trust account maintained pursuant to subsection 1.

3. A mortgage broker shall, upon reasonable notice, account to any debtor whose real property secures a loan arranged by the mortgage broker for any money which that person has paid to the mortgage broker for the cost of servicing a loan.



1 **4. A mortgage broker shall submit to the Commissioner each**
2 **calendar quarter a financial statement concerning the trust**
3 **accounts established and maintained pursuant to subsection 1.**

4 **5. A mortgage broker shall annually review a trust account**
5 **and, within 30 days after the completion of the annual review,**
6 **notify the debtor:**

7 **(a) Of the amount by which the contributions exceed the**
8 **amount reasonably necessary to pay the annual cost of servicing**
9 **the loan; and**

10 **(b) That the debtor may specify the disposition of the excess**
11 **money within 20 days after receipt of the notice. If the debtor fails**
12 **to specify such a disposition within that time, the mortgage broker**
13 **shall maintain the excess money in the trust account.**

14 **Sec. 3. 1. A mortgage broker who is a broker-dealer or a**
15 **sales representative licensed pursuant to NRS 90.310 or who is**
16 **exempt from licensure pursuant to NRS 90.320:**

17 **(a) Shall not commingle money received for mortgage**
18 **transactions and money received for securities transactions; and**

19 **(b) Shall ensure that all money received for mortgage**
20 **transactions is accounted for separately from all money received**
21 **for securities transactions.**

22 **2. A mortgage broker who is an investment advisor or a**
23 **representative of an investment advisor licensed pursuant to NRS**
24 **90.330 or exempt from licensure pursuant to NRS 90.340:**

25 **(a) Shall not commingle money received for mortgage**
26 **transactions and money received for securities transactions; and**

27 **(b) Shall ensure that all money received for mortgage**
28 **transactions is accounted for separately from all money received**
29 **for securities transactions.**

30 **Sec. 4. (Deleted by amendment.)**

31 **Sec. 5. NRS 645B.060 is hereby amended to read as follows:**

32 **645B.060 1. Subject to the administrative control of the**
33 **Director of the Department of Business and Industry, the**
34 **Commissioner shall exercise general supervision and control over**
35 **mortgage brokers and mortgage agents doing business in this State.**

36 **2. In addition to the other duties imposed upon him by law, the**
37 **Commissioner shall:**

38 **(a) Adopt regulations:**

39 **(1) Setting forth the requirements for an investor to acquire**
40 **ownership of or a beneficial interest in a loan secured by a lien on**
41 **real property. The regulations must include, without limitation,**
42 **the minimum financial conditions that the investor must comply**
43 **with before and after becoming an investor.**



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1 (2) *Establishing limitations on loans made by a mortgage*
2 *broker to a director, officer, mortgage agent or employee of the*
3 *mortgage broker.*

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

6 ~~[(b)]~~ (c) Conduct such investigations as may be necessary to
7 determine whether any person has violated any provision of this
8 chapter, a regulation adopted pursuant to this chapter or an order of
9 the Commissioner.

10 ~~[(e)]~~ (d) Conduct an annual examination of each mortgage
11 broker doing business in this State. The annual examination must
12 include, without limitation, a formal exit review with the mortgage
13 broker. The Commissioner shall adopt regulations prescribing:

14 (1) Standards for determining the rating of each mortgage
15 broker based upon the results of the annual examination; and

16 (2) Procedures for resolving any objections made by the
17 mortgage broker to the results of the annual examination. The
18 results of the annual examination may not be opened to public
19 inspection pursuant to NRS 645B.090 until any objections made by
20 the mortgage broker have been decided by the Commissioner.

21 ~~[(d)]~~ (e) Conduct such other examinations, periodic or special
22 audits, investigations and hearings as may be necessary ~~[and proper]~~
23 for the efficient administration of the laws of this State regarding
24 mortgage brokers and mortgage agents. The Commissioner shall
25 adopt regulations specifying the general guidelines that will be
26 followed when a periodic or special audit of a mortgage broker is
27 conducted pursuant to this chapter.

28 ~~[(e)]~~ (f) Classify as confidential certain records and information
29 obtained by the Division when those matters are obtained from a
30 governmental agency upon the express condition that they remain
31 confidential. This paragraph does not limit examination by:

32 (1) The Legislative Auditor; or

33 (2) The Department of Taxation if necessary to carry out the
34 provisions of chapter 363A of NRS.

35 ~~[(f)]~~ (g) Conduct such examinations and investigations as are
36 necessary to ensure that mortgage brokers and mortgage agents meet
37 the requirements of this chapter for obtaining a license, both at the
38 time of the application for a license and thereafter on a continuing
39 basis.

40 3. For each special audit, investigation or examination, a
41 mortgage broker or mortgage agent shall pay a fee based on the rate
42 established pursuant to NRS 645F.280.



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Sec. 6. NRS 645B.310 is hereby amended to read as follows:

645B.310 A mortgage broker shall not assign all or a part of his interest in a loan secured by a lien on real property, unless the mortgage broker:

1. Obtains a policy of title insurance for the real property; ~~[and]~~

2. *Obtains the approval of the assignment from each investor who has acquired ownership of or a beneficial interest in the loan if, at the time of the assignment, the debtor on the loan has defaulted in making a payment required for the loan or any portion of the loan; and*

3. Records the assignment in the office of the county recorder of the county in which the real property is located.

Sec. 7. (Deleted by amendment.)

Sec. 8. (Deleted by amendment.)

Sec. 9. Chapter 645E of NRS is hereby amended by adding thereto a new section to read as follows:

1. *A mortgage banker shall ensure that:*

(a) *Each loan secured by a lien on real property for which he engages in activity as a mortgage banker includes a fee for servicing the loan which must be specified in the loan. The fee must be in an amount reasonably necessary to pay the cost of servicing the loan.*

(b) *All money paid to the mortgage banker for servicing such a loan must be deposited in an insured depository financial institution and kept separate, distinct and apart from money belonging to the mortgage banker. Such money, when deposited, is to be deposited under an appropriate name indicating that the accounts are not the money of the mortgage banker.*

2. *A mortgage banker has a fiduciary duty to each debtor with respect to the money in a trust account maintained pursuant to subsection 1.*

3. *A mortgage banker shall, upon reasonable notice, account to any debtor whose real property secures a loan arranged by the mortgage banker for any money which that person has paid to the mortgage banker for the cost of servicing a loan.*

4. *A mortgage banker shall submit to the Commissioner each calendar quarter a financial statement concerning the trust accounts established and maintained pursuant to subsection 1.*

5. *A mortgage banker shall annually review a trust account and, within 30 days after the completion of the annual review, notify the debtor:*

(a) *Of the amount by which the contributions exceed the amount reasonably necessary to pay the annual cost of servicing the loan; and*



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(b) That the debtor may specify the disposition of the excess money within 20 days after receipt of the notice. If the debtor fails to specify such a disposition within that time, the mortgage banker shall maintain the excess money in the trust account.

Sec. 10. NRS 645E.150 is hereby amended to read as follows:

645E.150 Except as otherwise provided in NRS 645E.160, 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.~~ *including, without limitation, an affiliate, a subsidiary or a holding company of such a bank, company, association or union.*

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.

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

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

7. Any one natural person, or husband and wife, who provides money for investment in loans secured by a lien on real property, on his own account, unless such a person makes a loan secured by a lien on real property using his own money and assigns all or a part of his interest in the loan to another person, other than his spouse or child, within 5 years after the date on which the loan is made or the deed of trust is recorded, whichever occurs later.

8. Agencies of the United States and of this State and its political subdivisions, including the Public Employees' Retirement System.

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

Sec. 11. NRS 645E.300 is hereby amended to read as follows:

645E.300 1. Subject to the administrative control of the Director of the Department of Business and Industry, the



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1 Commissioner shall exercise general supervision and control over
2 mortgage bankers doing business in this State.

3 2. In addition to the other duties imposed upon him by law, the
4 Commissioner shall:

5 (a) Adopt *regulations establishing limitations on loans made*
6 *by a mortgage banker to a director, officer or employee of the*
7 *mortgage banker.*

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

10 ~~[(b)]~~ (c) Conduct such investigations as may be necessary to
11 determine whether any person has violated any provision of this
12 chapter, a regulation adopted pursuant to this chapter or an order of
13 the Commissioner.

14 ~~[(c)]~~ (d) Conduct an annual examination of each mortgage
15 banker doing business in this State.

16 ~~[(d)]~~ (e) Conduct such other examinations, periodic or special
17 audits, investigations and hearings as may be necessary ~~[and proper]~~
18 for the efficient administration of the laws of this State regarding
19 mortgage bankers.

20 ~~[(e)]~~ (f) Classify as confidential certain records and information
21 obtained by the Division when those matters are obtained from a
22 governmental agency upon the express condition that they remain
23 confidential. This paragraph does not limit examination by:

24 (1) The Legislative Auditor; or

25 (2) The Department of Taxation if necessary to carry out the
26 provisions of chapter 363A of NRS.

27 ~~[(f)]~~ (g) Conduct such examinations and investigations as are
28 necessary to ensure that mortgage bankers meet the requirements of
29 this chapter for obtaining a license, both at the time of the
30 application for a license and thereafter on a continuing basis.

31 3. For each special audit, investigation or examination, a
32 mortgage banker shall pay a fee based on the rate established
33 pursuant to NRS 645F.280.

34 **Sec. 12.** (Deleted by amendment.)

35 **Sec. 13.** This act becomes effective upon passage and approval
36 for the purpose of adopting regulations and on October 1, 2007, for
37 all other purposes.

