

SENATE BILL NO. 160—COMMITTEE ON COMMERCE AND LABOR

FEBRUARY 26, 2007

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes relating to mortgage lending.
(BDR 54-705)

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 mortgage lending; providing for a new commission named the Commission on Mortgage Investments and Lending; providing for the Commission to hold appeals hearings for certain violations of chapters 645A, 645B and 645E of NRS; providing for the membership, eligibility requirements, structure and powers of the Commission; providing for the Commission to adopt regulations for appeals hearings and the continuing education requirements of licensees of chapters 645A, 645B and 645E of NRS; abolishing the Advisory Council on Mortgage Investments and Mortgage Lending; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law allows the Commissioner of Mortgage Lending to hold hearings
- 2 and create continuing education requirements for escrow agents, mortgage brokers
- 3 and agents, and mortgage bankers. (Chapters 645A, 645B, 645E of NRS) **Sections**
- 4 **1, 7 and 17** of this bill allow a new commission, the Commission on Mortgage
- 5 Investments and Lending, to perform two functions. The Commission is allowed to
- 6 hold hearings for appeals of certain decisions by the Commissioner of Mortgage
- 7 Lending, and the Commission is given the sole power to create regulations relating
- 8 to appeals hearings and continuing education requirements relating to licensees of
- 9 chapters 645A, 645B and 645E of NRS.



Sections 21-27 of this bill describe the membership, eligibility requirements, structure and powers of the Commission on Mortgage Investments and Lending. Sections 2-6 of this bill clarify that: (1) the remaining powers of the Commissioner relating to hearings now relate only to initial hearings; and (2) regulations regarding appeals hearings and continuing education requirements for licensees of chapters 645A, 645B and 645E of NRS are now made by the Commission. Section 28 of this bill repeals the Advisory Council on Mortgage Investments and Mortgage Lending. Sections 29 and 30 of this bill are transitory provisions which describe: (1) the initial terms of the members of the Commission; (2) the continuation of any present regulations regarding appeals hearings or continuing education requirements; and (3) the Commissioner's supervision of any requests for appeals made before October 1, 2007.

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

Section 1. Chapter 645A of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a party to an initial hearing receives an adverse decision, that party may apply for an appeals hearing before the Commission on Mortgage Investments and Lending created pursuant to section 22 of this act.

2. If a party applies for an appeals hearing, the original adverse decision is automatically stayed until an appeals decision is made.

3. The Commissioner shall take all actions necessary to enforce and abide by an appeals decision made by the Commission.

4. An appeals decision is a final decision for purposes of judicial review.

Sec. 2. NRS 645A.050 is hereby amended to read as follows:

645A.050 1. Subject to the administrative control of the Director of the Department of Business and Industry, the Commissioner shall exercise general supervision and control over escrow agents and agencies doing business in the State of Nevada.

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

(a) ~~[Adopt]~~ *Except as otherwise provided in section 25 of this act, adopt* such regulations as may be necessary for making this chapter effective.

(b) Conduct or cause to be conducted each year an examination of each escrow agency licensed pursuant to this chapter.

(c) Conduct such investigations as may be necessary to determine whether any person has violated any provision of this chapter.



(d) Conduct such examinations, investigations and *initial* hearings, in addition to those specifically provided for by law, as may be necessary and proper for the efficient administration of the laws of this State relating to escrow.

(e) Classify as confidential the financial statements of an escrow agency and those records and information obtained by the Division which:

(1) Are obtained from a governmental agency upon the express condition that they remain confidential.

(2) Except as otherwise provided in NRS 645A.082, consist of information compiled by the Division in the investigation of possible violations of this chapter.

↳ This paragraph does not limit examination by the Legislative Auditor or any other person pursuant to a court order.

3. An escrow agency may engage a certified public accountant to perform such an examination in lieu of the Division. In such a case, the examination must be equivalent to the type of examination made by the Division and the expense must be borne by the escrow agency being examined.

4. The Commissioner shall determine whether an examination performed by an accountant pursuant to subsection 3 is equivalent to an examination conducted by the Division. The Commissioner may examine any area of the operation of an escrow agency if the Commissioner determines that the examination of that area is not equivalent to an examination conducted by the Division.

Sec. 3. NRS 645A.060 is hereby amended to read as follows:

645A.060 1. In the conduct of any examination, investigation or *initial* hearing, the Commissioner may:

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

(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 pursuant to 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.

Sec. 4. NRS 645A.090 is hereby amended to read as follows:

645A.090 1. The Commissioner may refuse to license any escrow agent or agency or may suspend or revoke any license or impose a fine of not more than \$500 for each violation by entering an order to that effect, with his findings in respect thereto, if upon ~~an~~ *initial* hearing, it is determined that the applicant or licensee:



- 1 (a) In the case of an escrow agency, is insolvent;
- 2 (b) Has violated any provision of this chapter or any regulation
- 3 adopted pursuant thereto or has aided and abetted another to do so;
- 4 (c) In the case of an escrow agency, is in such a financial
- 5 condition that he cannot continue in business with safety to his
- 6 customers;
- 7 (d) Has committed fraud in connection with any transaction
- 8 governed by this chapter;
- 9 (e) Has intentionally or knowingly made any misrepresentation
- 10 or false statement to, or concealed any essential or material fact
- 11 from, any principal or designated agent of a principal in the course
- 12 of the escrow business;
- 13 (f) Has intentionally or knowingly made or caused to be made to
- 14 the Commissioner any false representation of a material fact or has
- 15 suppressed or withheld from the Commissioner any information
- 16 which the applicant or licensee possesses;
- 17 (g) Has failed without reasonable cause to furnish to the parties
- 18 of an escrow their respective statements of the settlement within a
- 19 reasonable time after the close of escrow;
- 20 (h) Has failed without reasonable cause to deliver, within a
- 21 reasonable time after the close of escrow, to the respective parties of
- 22 an escrow transaction any money, documents or other properties
- 23 held in escrow in violation of the provisions of the escrow
- 24 instructions;
- 25 (i) Has refused to permit an examination by the Commissioner
- 26 of his books and affairs or has refused or failed, within a reasonable
- 27 time, to furnish any information or make any report that may be
- 28 required by the Commissioner pursuant to the provisions of this
- 29 chapter;
- 30 (j) Has been convicted of a felony relating to the practice of
- 31 escrow agents or agencies or any misdemeanor of which an essential
- 32 element is fraud;
- 33 (k) In the case of an escrow agency, has failed to maintain
- 34 complete and accurate records of all transactions within the last 6
- 35 years;
- 36 (l) Has commingled the money of others with his own or
- 37 converted the money of others to his own use;
- 38 (m) Has failed, before the close of escrow, to obtain written
- 39 escrow instructions concerning any essential or material fact or
- 40 intentionally failed to follow the written instructions which have
- 41 been agreed upon by the parties and accepted by the holder of the
- 42 escrow;
- 43 (n) Has failed to disclose in writing that he is acting in the dual
- 44 capacity of escrow agent or agency and undisclosed principal in any
- 45 transaction; or



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(o) In the case of an escrow agency, has:

(1) Failed to maintain adequate supervision of an escrow agent; or

(2) Instructed an escrow agent to commit an act which would be cause for the revocation of the escrow agent's license and the escrow agent committed the act. An escrow agent is not subject to disciplinary action for committing such an act under instruction by the escrow agency.

2. It is sufficient cause for the imposition of a fine or the refusal, suspension or revocation of the license of a partnership, corporation or any other association that any member of the partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be cause for such action had the applicant or licensee been a natural person.

3. The Commissioner may suspend any license for not more than 30 days, pending ~~an~~ *an initial* hearing, if upon examination into the affairs of the licensee it is determined that any of the grounds enumerated in subsection 1 or 2 exist.

4. The Commissioner may refuse to issue a license to any person who, within 10 years before the date of applying for a current license, has had suspended or revoked a license issued pursuant to this chapter or a comparable license issued by any other state, district or territory of the United States or any foreign country.

5. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.

Sec. 5. NRS 645A.100 is hereby amended to read as follows:

645A.100 1. Notice of the entry of any order of suspension or revocation or of imposing a fine or refusing a license to any escrow agent or agency must be given in writing, served personally or sent by certified mail or by telegram to the last known address of the agent or agency affected.

2. The agent or agency, upon application, is entitled to ~~an~~ *an initial* hearing. If an application is not made within 20 days after the entry of the order, the Commissioner shall enter ~~an~~ *an* order.

Sec. 6. NRS 645A.110 is hereby amended to read as follows:

645A.110 1. The Commissioner may conduct an investigation if it appears that an escrow agent or agency is conducting business in an unsafe and injurious manner or in violation of this chapter or if it appears that any person is engaging in the escrow business without being licensed pursuant to the provisions of this chapter.

2. If upon investigation it appears that the agent or agency is so conducting business or an unlicensed person is engaged in the escrow business, the Commissioner may:



(a) Order the person to discontinue conducting business in an injurious manner or in violation of this chapter. A person may, within 30 days after receiving the order, file a verified petition with the Commissioner for ~~[a]~~ *an initial* hearing. If the Commissioner does not hold ~~[a]~~ *an initial* hearing within 30 days after the petition is filed or issue a written decision within 45 days after the *initial* hearing is held, the order is rescinded.

(b) So advise the district attorney of the county in which the business is conducted or the Attorney General. The district attorney or the Attorney General shall cause the appropriate legal action to be taken to enjoin the operation of the business or prosecute the violations of this chapter.

(c) Bring suit in the name and on behalf of the State of Nevada against the person and any other person concerned in or in any way participating in or about to participate in the unsafe or injurious practices or action in violation of this chapter or regulations thereunder to enjoin that person from continuing those practices or engaging therein or doing any such act.

3. If the Commissioner brings suit, the district court of any county of this State may grant an injunction to prevent and restrain the unsafe, injurious or illegal practices or transactions. The court may, during the pendency of the proceedings before it, issue such temporary restraining orders as may appear to be just and proper. The findings of the Commissioner shall be deemed to be prima facie evidence and sufficient ground, in the discretion of the court, for the issuance ex parte of a temporary restraining order. In any such court proceedings the Commissioner may apply for and on due showing is entitled to have issued the court's subpoena requiring forthwith the appearance of any defendant and his employees and the production of documents, books and records as may appear necessary for the hearing of the petition, to testify and give evidence concerning the acts or conduct or things complained of in the application for injunction.

Sec. 7. Chapter 645B of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a party to an initial hearing receives an adverse decision, that party may apply for an appeals hearing before the Commission on Mortgage Investments and Lending created pursuant to section 22 of this act.

2. If a party applies for an appeals hearing, the original adverse decision is automatically stayed until an appeals decision is made.

3. The Commissioner shall take all actions necessary to enforce and abide by an appeals decision made by the Commission.



1 ***4. An appeals decision is the final decision for purposes of***
2 ***judicial review.***

3 **Sec. 8.** NRS 645B.051 is hereby amended to read as follows:

4 645B.051 1. Except as otherwise provided in this section, in
5 addition to the requirements set forth in NRS 645B.050, to renew a
6 license as a mortgage broker:

7 (a) If the licensee is a natural person, the licensee must submit to
8 the Commissioner satisfactory proof that the licensee attended at
9 least 10 hours of certified courses of continuing education during
10 the 12 months immediately preceding the date on which the license
11 expires.

12 (b) If the licensee is not a natural person, the licensee must
13 submit to the Commissioner satisfactory proof that each natural
14 person who supervises the daily business of the licensee attended at
15 least 10 hours of certified courses of continuing education during
16 the 12 months immediately preceding the date on which the license
17 expires.

18 2. The ~~[Commissioner]~~ ***Commission on Mortgage Investments***
19 ***and Lending created pursuant to section 22 of this act*** may provide
20 by regulation that any hours of a certified course of continuing
21 education attended during a 12-month period, but not needed to
22 satisfy a requirement set forth in this section for the 12-month
23 period in which the course was taken, may be used to satisfy a
24 requirement set forth in this section for a later 12-month period.

25 3. As used in this section, "certified course of continuing
26 education" means a course of continuing education which relates to
27 the mortgage industry or mortgage transactions and which is
28 certified by:

29 (a) The National Association of Mortgage Brokers or any
30 successor in interest to that organization; or

31 (b) Any organization designated for this purpose by ~~[the~~
32 ~~Commissioner by regulation.]~~ ***regulation of the Commission on***
33 ***Mortgage Investments and Lending created pursuant to section 22***
34 ***of this act.***

35 **Sec. 9.** NRS 645B.060 is hereby amended to read as follows:

36 645B.060 1. Subject to the administrative control of the
37 Director of the Department of Business and Industry, the
38 Commissioner shall exercise general supervision and control over
39 mortgage brokers and mortgage agents doing business in this State.

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

42 (a) Adopt any regulations that are necessary to carry out the
43 provisions of this chapter, except as to loan brokerage fees ~~[]~~ ***and***
44 ***except as otherwise provided in section 25 of this act.***



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

(c) Conduct an annual examination of each mortgage broker doing business in this State. The annual examination must include, without limitation, a formal exit review with the mortgage broker. The Commissioner shall adopt regulations prescribing:

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

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

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

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

(1) The Legislative Auditor; or

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

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

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

Sec. 10. NRS 645B.070 is hereby amended to read as follows:

645B.070 1. In the conduct of any examination, periodic or special audit, investigation or *initial* hearing, the Commissioner may:

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

(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



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chapter and in connection therewith require the production of any books, records or papers relevant to the inquiry.

2. Any 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 and shall be punished as provided in NRS 645B.950.

3. In addition to the authority to recover attorney's fees and costs pursuant to any other statute, the 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 *initial* hearing that is conducted to examine or investigate the conduct, activities or business of the person pursuant to this chapter.

Sec. 11. NRS 645B.430 is hereby amended to read as follows:

645B.430 1. A license as a mortgage agent issued pursuant to NRS 645B.410 expires 1 year after the date the license is issued, unless it is renewed. To renew a license as a mortgage agent, the holder of the license must submit to the Commissioner each year, on or before the date the license expires:

(a) An application for renewal;

(b) Except as otherwise provided in this section, satisfactory proof that the holder of the license as a mortgage agent attended at least 10 hours of certified courses of continuing education during the 12 months immediately preceding the date on which the license expires; and

(c) A renewal fee set by the Commissioner of not more than \$170.

2. If the holder of the license as a mortgage agent fails to submit any item required pursuant to subsection 1 to the Commissioner each year on or before the date the license expires, the license is cancelled. The Commissioner may reinstate a cancelled license if the holder of the license submits to the Commissioner:

(a) An application for renewal;

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

(c) A reinstatement fee of \$75.

3. To be issued a duplicate copy of a license as a mortgage agent, a person must make a satisfactory showing of its loss and pay a fee of \$10.

4. To change the mortgage broker with whom the mortgage agent is associated, a person must pay a fee of \$10.



1 5. Money received by the Commissioner pursuant to this
2 section must be deposited in the Fund for Mortgage Lending created
3 by NRS 645F.270.

4 6. The ~~[Commissioner]~~ *Commission on Mortgage Investments*
5 *and Lending created pursuant to section 22 of this act* may provide
6 by regulation that any hours of a certified course of continuing
7 education attended during a 12-month period, but not needed to
8 satisfy a requirement set forth in this section for the 12-month
9 period in which the hours were taken, may be used to satisfy a
10 requirement set forth in this section for a later 12-month period.

11 7. As used in this section, "certified course of continuing
12 education" has the meaning ascribed to it in NRS 645B.051.

13 **Sec. 12.** NRS 645B.610 is hereby amended to read as follows:

14 645B.610 1. If a person properly files a complaint with the
15 Commissioner pursuant to NRS 645B.600, the Commissioner shall
16 investigate each violation alleged in the complaint, unless the
17 Commissioner has previously investigated the alleged violation.

18 2. Except as otherwise provided in subsection 2 of NRS
19 645B.090, if the Commissioner does not conduct an investigation of
20 an alleged violation pursuant to subsection 1 because he previously
21 has investigated the alleged violation, the Commissioner shall
22 provide to the person who filed the complaint a written summary of
23 the previous investigation and the nature of any disciplinary action
24 that was taken as a result of the previous investigation.

25 3. If the Commissioner conducts an investigation of an alleged
26 violation pursuant to subsection 1, the Commissioner shall
27 determine from the investigation whether there is reasonable cause
28 to believe that the person committed the alleged violation.

29 4. If, upon investigation, the Commissioner determines that
30 there is not reasonable cause to believe that the person committed
31 the alleged violation, the Commissioner shall provide the reason for
32 his determination, in writing, to the person who filed the complaint
33 and to the person alleged to have committed the violation.

34 5. Except as otherwise provided in subsection 6, if, upon
35 investigation, the Commissioner determines that there is reasonable
36 cause to believe that the person committed the alleged violation, the
37 Commissioner shall:

38 (a) Schedule ~~[a]~~ *an initial* hearing concerning the alleged
39 violation;

40 (b) Mail to the last known address of the person who filed the
41 complaint written notice that must include, without limitation:

42 (1) The date, time and place of the *initial* hearing; and

43 (2) A statement of each alleged violation that will be
44 considered at the *initial* hearing; and



(c) By personal service in accordance with the Nevada Rules of Civil Procedure and any applicable provision of NRS, serve written notice of the *initial* hearing to the person alleged to have committed the violation. The written notice that is served pursuant to this paragraph must include, without limitation:

(1) The date, time and place of the *initial* hearing;

(2) A copy of the complaint and a statement of each alleged violation that will be considered at the *initial* hearing; and

(3) A statement informing the person that, pursuant to NRS 645B.760, if he fails to appear, without reasonable cause, at the *initial* hearing:

(I) He is guilty of a misdemeanor; and

(II) The Commissioner is authorized to conduct the *initial* hearing in his absence, draw any conclusions that the Commissioner deems appropriate from his failure to appear and render a decision concerning each alleged violation.

6. If the Commissioner enters into a written consent agreement settling or resolving the alleged violation, the Commissioner shall provide a copy of the written consent agreement to the person who filed the complaint.

7. The Commissioner may:

(a) Investigate and conduct ~~an~~ *an initial* hearing concerning any alleged violation, whether or not a complaint has been filed.

(b) Hear and consider more than one alleged violation against a person at the same *initial* hearing.

Sec. 13. NRS 645B.690 is hereby amended to read as follows:

645B.690 1. If a person offers or provides any of the services of a mortgage broker or mortgage agent or otherwise engages in, carries on or holds himself out as engaging in or carrying on the business of a mortgage broker or mortgage agent and, at the time:

(a) The person was required to have a license pursuant to this chapter and the person did not have such a license; or

(b) The person's license was suspended or revoked pursuant to this chapter,

➤ the Commissioner shall impose upon the person an administrative fine of not more than \$10,000 for each violation and, if the person has a license, the Commissioner shall revoke it.

2. If a mortgage broker violates any provision of subsection 1 of NRS 645B.080 and the mortgage broker fails, without reasonable cause, to remedy the violation within 20 business days after being ordered by the Commissioner to do so or within such later time as prescribed by the Commissioner, or if the Commissioner orders a mortgage broker to provide information, make a report or permit an examination of his books or affairs pursuant to this chapter and the mortgage broker fails, without reasonable cause, to comply with the



1 order within 20 business days or within such later time as prescribed
2 by the Commissioner, the Commissioner shall:

3 (a) Impose upon the mortgage broker an administrative fine of
4 not more than \$10,000 for each violation;

5 (b) Suspend or revoke the license of the mortgage broker; and

6 (c) Conduct ~~fa~~ *an initial* hearing to determine whether the
7 mortgage broker is conducting business in an unsafe and injurious
8 manner that may result in danger to the public and whether it is
9 necessary for the Commissioner to take possession of the property
10 of the mortgage broker pursuant to NRS 645B.630.

11 **Sec. 14.** NRS 645B.720 is hereby amended to read as follows:

12 645B.720 Before conducting ~~fa~~ *an initial* hearing, the
13 Commissioner may, to the fullest extent permitted by the
14 Constitution of the United States and the Constitution of this State:

15 1. Order a summary suspension of a license pursuant to
16 subsection 3 of NRS 233B.127; and

17 2. Take any other action against a licensee or other person that
18 is necessary to protect the health, safety or welfare of the public.

19 **Sec. 15.** NRS 645B.750 is hereby amended to read as follows:

20 645B.750 1. If the Commissioner enters an order taking any
21 disciplinary action against a person or denying a person's
22 application for a license, the Commissioner shall cause a written
23 notice of the order to be served personally or sent by certified mail
24 or telegram to the person.

25 2. Unless ~~fa~~ *an initial* hearing has already been conducted
26 concerning the matter, the person, upon application, is entitled to ~~fa~~
27 *an initial* hearing. If the person does not make such an application
28 within 20 days after the date of the initial order, the Commissioner
29 shall enter a final order concerning the matter.

30 ~~[3. —A person may appeal a final order of the Commissioner in~~
31 ~~accordance with the provisions of chapter 233B of NRS that apply~~
32 ~~to a contested case.]~~

33 **Sec. 16.** NRS 645B.760 is hereby amended to read as follows:

34 645B.760 If a person is alleged to have engaged in any conduct
35 or committed any violation that is described in NRS 645B.620,
36 645B.630 or 645B.670 or is alleged to have committed a violation
37 of any other provision of this chapter, a regulation adopted pursuant
38 to this chapter or an order of the Commissioner, and the person fails
39 to appear, without reasonable cause, at ~~fa~~ *an initial* hearing before
40 the Commissioner concerning the alleged conduct or violation:

41 1. The Commissioner shall notify the Attorney General that the
42 person failed to appear;

43 2. The person is guilty of a misdemeanor and shall be punished
44 as provided in NRS 645B.950; and



3. The Commissioner may conduct the *initial* hearing in the person's absence, draw any conclusions that the Commissioner deems appropriate from his failure to appear and render a decision concerning the alleged conduct or violation.

Sec. 17. Chapter 645E of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a party to an initial hearing receives an adverse decision, that party may apply for an appeals hearing before the Commission on Mortgage Investments and Lending created pursuant to section 22 of this act.

2. If a party applies for an appeals hearing, the original adverse decision is automatically stayed until an appeals decision is made.

3. The Commissioner shall take all actions necessary to enforce and abide by an appeals decision made by the Commission.

4. An appeals decision is the final decision for purposes of judicial review.

Sec. 18. 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 Commissioner shall exercise general supervision and control over mortgage bankers doing business in this State.

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

(a) Adopt any regulations that are necessary to carry out the provisions of this chapter, except as to loan fees ~~and~~ *and except as otherwise provided in section 25 of this act.*

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

(c) Conduct an annual examination of each mortgage banker doing business in this State.

(d) Conduct such other examinations, periodic or special audits, investigations and *initial* hearings as may be necessary and proper for the efficient administration of the laws of this State regarding mortgage bankers.

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

(1) The Legislative Auditor; or

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



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

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

Sec. 19. NRS 645E.310 is hereby amended to read as follows:

645E.310 1. In the conduct of any examination, periodic or special audit, investigation or *initial* hearing, the Commissioner may:

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

(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. Any 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. In addition to the authority to recover attorney's fees and costs pursuant to any other statute, the 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 *initial* hearing that is conducted to examine or investigate the conduct, activities or business of the person pursuant to this chapter.

Sec. 20. NRS 645E.750 is hereby amended to read as follows:

645E.750 1. If the Commissioner enters an order taking any disciplinary action against a person or denying a person's application for a license, the Commissioner shall cause a written notice of the order to be served personally or sent by certified mail or telegram to the person.

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

~~[3.—A person may appeal a final order of the Commissioner in accordance with the provisions of chapter 233B of NRS that apply to a contested case.]~~



1 **Sec. 21.** Chapter 645F of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 22 to 27, inclusive, of this
3 act.

4 **Sec. 22.** *1. The Commission on Mortgage Investments and*
5 *Lending is hereby created.*

6 *2. The Commission shall consist of seven members appointed*
7 *by the Governor, as follows:*

8 *(a) Two members must be escrow agents licensed pursuant to*
9 *chapter 645A of NRS;*

10 *(b) Two members must be mortgage brokers or mortgage*
11 *agents licensed pursuant to chapter 645B of NRS;*

12 *(c) Two members must be mortgage bankers licensed pursuant*
13 *to chapter 645E of NRS; and*

14 *(d) One member must be a member of the general public.*

15 **3. A member of the Commission:**

16 *(a) Must be a citizen of the United States or be lawfully entitled*
17 *to remain and work in the United States;*

18 *(b) Shall serve a term of 3 years and at the pleasure of the*
19 *Governor; and*

20 *(c) May be reappointed, but shall not serve for a period greater*
21 *than 6 years consecutively, after which he is not eligible for*
22 *appointment or reappointment until 3 years have elapsed from his*
23 *previous period of service.*

24 **4. Before entering upon the duties of his office, each member**
25 *of the Commission shall take the constitutional oath of office and*
26 *an oath that he is legally qualified to serve as a member of the*
27 *Commission.*

28 **5. Any vacancy in the membership of the Commission must**
29 *be filled for the remainder of the unexpired term in the same*
30 *manner as the original appointment.*

31 **6. A member of the Commission who is an officer or**
32 *employee of this State or a political subdivision of this State must*
33 *be relieved from his duties without loss of his regular*
34 *compensation so that he may prepare for and attend meetings of*
35 *the Commission and perform any work necessary to carry out the*
36 *duties of the Commission in the most timely manner practicable. A*
37 *state agency or political subdivision of this State shall not require*
38 *an officer or employee who is a member of the Commission to*
39 *make up the time he is absent from work to carry out his duties as*
40 *a member of the Commission or use annual vacation or*
41 *compensatory time for the absence.*

42 **7. Notwithstanding any other provision of law, a member of**
43 *the Commission:*

44 *(a) Is not disqualified from public employment or holding a*
45 *public office because of his membership on the Commission; and*



(b) Does not forfeit his public office or public employment because of his membership on the Commission.

Sec. 23. A member of the Commission on Mortgage Investments and Lending:

1. Is entitled to receive a salary of not more than \$80, as fixed by the Commission, for each day's attendance at each meeting of the Commission; and

2. While engaged in the business of the Commission, is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.

Sec. 24. 1. The members of the Commission on Mortgage Investments and Lending shall elect a Chairman and a Vice Chairman from among their membership. The Vice Chairman shall perform the duties of the Chairman during any absence of the Chairman.

2. The Commission shall meet:

(a) On the call of the Chairman;

(b) On the call of a majority of its members; or

(c) For an appeals hearing granted pursuant to the provisions of chapter 645A, 645B or 645E of NRS.

3. The meetings of the Commission may be held at any location designated by the Chairman or a majority of its members.

4. A majority of the members of the Commission constitutes a quorum for the transaction of all business.

Sec. 25. The Commission on Mortgage Investments and Lending shall:

1. Conduct appeals hearings granted pursuant to the provisions of chapter 645A, 645B or 645E of NRS; and

2. Adopt regulations governing:

(a) Appeals hearings granted pursuant to the provisions of chapters 645A, 645B and 645E of NRS; and

(b) Continuing education requirements for persons licensed pursuant to chapters 645A, 645B and 645E of NRS.

Sec. 26. 1. For an appeals hearing, the Commission on Mortgage Investments and Lending may:

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

(b) Administer oaths.

(c) Examine any person under oath concerning the business and conduct of affairs of any person subject to the provisions of chapter 645A, 645B or 645E of NRS and, in connection with the examination, require the production of any books, records or papers relevant to the inquiry.

2. Any 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,



1 *records or papers required by the Commission, or who refuses to*
2 *be sworn or answer as a witness, is guilty of a misdemeanor.*

3 *3. The Commission may conduct the hearing in the*
4 *subpoenaed person's absence whether or not that person is a party*
5 *to the initial hearing, draw any conclusions that the Commission*
6 *deems appropriate from his failure to appear and render a*
7 *decision concerning the alleged conduct or violation.*

8 **Sec. 27.** *In addition to the authority to recover attorney's fees*
9 *and costs pursuant to any other statute, the Commission on*
10 *Mortgage Investments and Lending may assess against and collect*
11 *from a person all costs, including, without limitation, reasonable*
12 *attorney's fees, that are attributable to any appeals hearing which*
13 *is conducted to examine or investigate the conduct, activities or*
14 *business of the person pursuant to chapter 645A, 645B or 645E of*
15 *NRS, as applicable.*

16 **Sec. 28.** NRS 645B.860, 645B.865 and 645B.870 are hereby
17 repealed.

18 **Sec. 29.** Notwithstanding the provisions of section 22 of this
19 act, for the initial terms of members of the Commission on
20 Mortgage Investments and Lending created pursuant to section 22 of
21 this act:

- 22 1. Two members must be appointed for terms of 1 year;
- 23 2. Two members must be appointed for terms of 2 years; and
- 24 3. Three members must be appointed for terms of 3 years.

25 **Sec. 30.** 1. Any administrative regulations which pertain to
26 appeals hearings or continuing education requirements for persons
27 licensed pursuant to chapters 645A, 645B and 645E of NRS and
28 which were adopted before October 1, 2007, remain in effect unless
29 later amended or repealed.

30 2. Any appeals hearing requested pursuant to chapters 645A,
31 645B and 645E of NRS before October 1, 2007, will be heard by the
32 Commissioner of Mortgage Lending.

TEXT OF REPEALED SECTIONS

**645B.860 Creation; members; appointment; terms and
vacancies; no compensation or per diem allowance; protections
afforded members who are public officers or employees.**

1. The Advisory Council on Mortgage Investments and
Mortgage Lending is hereby created.



* S B 1 6 0 *

2. The Advisory Council consists of five members appointed by the Legislative Commission from a list of persons provided by the Commissioner.

3. The members of the Advisory Council:

(a) Must be persons who have experience with, an interest in or a knowledge of issues relating to mortgage investments or mortgage lending. Such persons may include, without limitation, investors, public officers and employees, licensees and persons who have engaged in or been involved with any business, profession or occupation relating to mortgage investments or mortgage lending.

(b) Serve terms of 2 years and at the pleasure of the Legislative Commission.

(c) May be reappointed.

(d) Serve without compensation and may not receive a per diem allowance or travel expenses.

4. Any vacancy in the membership of the Advisory Council must be filled for the remainder of the unexpired term in the same manner as the original appointment.

5. A member of the Advisory Council who is an officer or employee of this State or a political subdivision of this State must be relieved from his duties without loss of his regular compensation so that he may prepare for and attend meetings of the Advisory Council and perform any work necessary to carry out the duties of the Advisory Council in the most timely manner practicable. A state agency or political subdivision of this State shall not require an officer or employee who is a member of the Advisory Council to make up the time he is absent from work to carry out his duties as a member of the Advisory Council or use annual vacation or compensatory time for the absence.

6. Notwithstanding any other provision of law, a member of the Advisory Council:

(a) Is not disqualified from public employment or holding a public office because of his membership on the Advisory Council; and

(b) Does not forfeit his public office or public employment because of his membership on the Advisory Council.

645B.865 Chairman and Vice Chairman; meetings; quorum; subcommittees.

1. The members of the Advisory Council on Mortgage Investments and Mortgage Lending shall elect a Chairman and a Vice Chairman from among their membership. The Vice Chairman shall perform the duties of the Chairman during any absence of the Chairman.



2. The Advisory Council may meet at least once each calendar quarter and at other times on the call of the Chairman or a majority of its members.

3. The meetings of the Advisory Council may be held at any location designated by the Chairman or a majority of its members.

4. A majority of the members of the Advisory Council constitutes a quorum for the transaction of all business.

5. The Chairman may appoint subcommittees of the members of the Advisory Council to consider specific problems relating to mortgage investments or mortgage lending.

645B.870 Purpose. The purpose of the Advisory Council on Mortgage Investments and Mortgage Lending is to:

1. Consult with, advise and make recommendations to the Commissioner in all matters relating to mortgage investments and mortgage lending.

2. Make recommendations to the Legislature concerning the enactment of any legislation relating to mortgage investments and mortgage lending.

3. Make recommendations to the Legislature and the Commissioner concerning educational requirements and other qualifications for persons who are engaged in any business, profession or occupation relating to mortgage investments and mortgage lending.

4. Conduct hearings, conferences and special studies on all matters relating to mortgage investments and mortgage lending.

5. Provide a forum for the consideration and discussion of all matters relating to mortgage investments and mortgage lending.

6. Gather and disseminate information relating to mortgage investments and mortgage lending.

7. Engage in other activities that are designed to promote, improve and protect the reliability and stability of mortgage investments and mortgage lending in this State.

