

Amendment No. 283

Assembly Amendment to Assembly Bill No. 375

(BDR 54-393)

Proposed by: Assembly Committee on Commerce and Labor**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

SLP/KCR



Date: 4/21/2007

A.B. No. 375—Revises certain provisions governing mortgages. (BDR 54-393)



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 ~~is serviced by certain third parties and includes a minimum fee for servicing;~~ **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 ~~(1 and 7)~~ 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 ~~is serviced by a third party who is not affiliated with the mortgage broker or mortgage banker and that the loan includes a certain minimum;~~ **includes a reasonable fee ~~(1)~~ 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 ~~(2)~~ 3** of this bill prohibits ~~the Commissioner from issuing, renewing or reinstating a license as~~ a mortgage broker ~~(if the 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 State ~~(1)~~ 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.

~~Section 9 of this bill provides for the temporary validity of a license as a mortgage broker if the license would otherwise be rendered invalid by the amendatory provisions of section 2 of this bill.~~

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 ~~a new section to read as follows:~~

~~A mortgage broker shall ensure that each loan secured by a lien on real property for which he engages in activity as a mortgage broker:~~

~~1. Is serviced by a third party who is not affiliated with the mortgage broker; and~~

~~2. Includes a fee for servicing the loan in an amount that is not less than 0.25 percent of the total amount of principal of the loan;~~ 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.

4. A mortgage broker 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 broker 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

(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 broker shall maintain the excess money in the trust account.

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

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

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

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

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

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

~~[Sec. 2.] Sec. 4. [NRS 645B.050 is hereby amended to read as follows:~~

~~— 645B.050 1. A license as a mortgage broker issued pursuant to this chapter expires each year on June 30, unless it is renewed. To renew such a license, the licensee must submit to the Commissioner on or before May 31 of each year:~~

~~— (a) An application for renewal;~~

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

~~— (c) The information required pursuant to NRS 645B.051; and~~

~~— (d) All information required to complete the renewal.~~

~~2. If the licensee fails to submit any item required pursuant to subsection 1 to the Commissioner on or before May 31 of any year, the license is cancelled as of June 30 of that year. [The] Except as otherwise provided in subsection 10, the Commissioner may reinstate a cancelled license if the licensee submits to the Commissioner:~~

~~— (a) An application for renewal;~~

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

~~— (c) The information required pursuant to NRS 645B.051;~~

~~— (d) Except as otherwise provided in this section, a reinstatement fee of \$200; and~~

~~— (e) All information required to complete the reinstatement.~~

~~3. Except as otherwise provided in NRS 645B.016, a certificate of exemption issued pursuant to this chapter expires each year on December 31, unless it is renewed. To renew a certificate of exemption, a person must submit to the Commissioner on or before November 30 of each year:~~

~~— (a) An application for renewal that includes satisfactory proof that the person meets the requirements for an exemption from the provisions of this chapter; and~~

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

~~4. If the person fails to submit any item required pursuant to subsection 3 to the Commissioner on or before November 30 of any year, the certificate of exemption is cancelled as of December 31 of that year. Except as otherwise provided in NRS 645B.016, the Commissioner may reinstate a cancelled certificate of exemption if the person submits to the Commissioner:~~

~~— (a) An application for renewal that includes satisfactory proof that the person meets the requirements for an exemption from the provisions of this chapter;~~

~~(b) The fee required to renew the certificate of exemption; and~~
~~(c) Except as otherwise provided in this section, a reinstatement fee of \$100.~~
~~5. Except as otherwise provided in this section, a person must pay the following fees to apply for, to be issued or to renew a license as a mortgage broker pursuant to this chapter:~~
~~(a) To file an original application for a license, \$1,500 for the principal office and \$40 for each branch office. The person must also pay such additional expenses incurred in the process of investigation as the Commissioner deems necessary.~~
~~(b) To be issued a license, \$1,000 for the principal office and \$60 for each branch office.~~
~~(c) To renew a license, \$500 for the principal office and \$100 for each branch office.~~
~~6. Except as otherwise provided in this section, 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.~~
~~(b) To renew a certificate of exemption, \$100.~~
~~7. To be issued a duplicate copy of any license or certificate of exemption, a person must make a satisfactory showing of its loss and pay a fee of \$10.~~
~~8. Except as otherwise provided in this chapter, all fees received pursuant to this chapter must be deposited in the Fund for Mortgage Lending created by NRS 645F.270.~~
~~9. The Commissioner may, by regulation, increase any fee set forth in this section if the Commissioner determines that such an increase is necessary for the Commissioner to carry out his duties pursuant to this chapter. The amount of any increase in a fee pursuant to this subsection must not exceed the amount determined to be necessary for the Commissioner to carry out his duties pursuant to this chapter.~~
~~10. The Commissioner shall not issue, renew or reinstate a license as a mortgage broker if the mortgage broker is:~~
~~(a) A broker dealer or sales representative who is exempt from licensing pursuant to NRS 90.220; or~~
~~(b) An investment advisor, sales representative or representative of an investment advisor who is exempt from licensing pursuant to NRS 90.340.]~~
(Deleted by amendment.)

~~[Sec. 3.]~~ **Sec. 5.** NRS 645B.060 is hereby amended to read as follows:

645B.060 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 brokers and mortgage agents doing business in this State.

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

(a) Adopt *regulations:*

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

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

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

~~(b)~~ (c) 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)~~ (d) 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)~~ (e) Conduct such other examinations, periodic or special audits, investigations and 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)~~ (f) 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)~~ (g) 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. 4]~~ 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. 5]~~ Sec. 7. ~~NRS 645B.490 is hereby amended to read as follows:~~

~~645B.490 1. Any mortgage broker or mortgage agent licensed under the provisions of this chapter who is called into the military service of the United States shall, at his request, be relieved from compliance with the provisions of this chapter and placed on inactive status for the period of such military service and for a period of 6 months after discharge therefrom.~~

~~2. [At] Except as otherwise provided in NRS 645B.050, at any time within 6 months after termination of such service, if the mortgage broker or mortgage agent complies with the provisions of subsection 1, the mortgage broker or mortgage agent may be reinstated, without having to meet any qualification or requirement~~

other than the payment of the reinstatement fee, as provided in NRS 645B.050 or 645B.430, and the mortgage broker or mortgage agent is not required to make payment of the renewal fee for the current year.

~~3. Any mortgage broker or mortgage agent seeking to qualify for reinstatement, as provided in subsections 1 and 2, must present a certified copy of his honorable discharge or certificate of satisfactory service to the Commissioner.]~~
(Deleted by amendment.)

~~[Sec. 6.]~~ Sec. 8. ~~[NRS 645B.680 is hereby amended to read as follows:~~

~~645B.680 1. If the Commissioner receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional, occupational and recreational licenses, certificates and permits issued to a person who is the holder of a license as a mortgage broker or mortgage agent, the Commissioner shall deem the license issued to that person to be suspended at the end of the 30th day after the date on which the court order was issued unless the Commissioner receives a letter issued to the holder of the license by the district attorney or other public agency pursuant to NRS 425.550 stating that the holder of the license has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.~~

~~2. [The] Except as otherwise provided in NRS 645B.050, the Commissioner shall reinstate a license as a mortgage broker or mortgage agent that has been suspended by a district court pursuant to NRS 425.540 if the Commissioner receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose license was suspended stating that the person whose license was suspended has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.]~~ (Deleted by amendment.)

~~[Sec. 7.]~~ 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 ~~each~~ :

(a) Each loan secured by a lien on real property for which he engages in activity as a mortgage banker ~~is~~

~~1. Is serviced by a third party who is not affiliated with the mortgage banker; and~~

~~2. Includes] includes a fee for servicing the loan [in an amount that is not less than 0.25 percent of the total amount of principal of] 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

(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. 8.]~~ **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 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 regulations establishing limitations on loans made by a mortgage banker to a director, officer or employee of the mortgage banker.

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

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

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

~~(f)~~ (f) 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.

~~(g)~~ (g) 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. 9.] Sec. 12. [Notwithstanding the provisions of NRS 645B.050 as amended by section 2 of this act to the contrary, if the Commissioner of Mortgage Lending is prohibited by those provisions from renewing or reinstating a license as a mortgage broker, the license remains in effect until its expiration unless earlier suspended, cancelled or revoked.] (Deleted by amendment.)~~

~~[Sec. 10.] Sec. 13. [1.]~~ This act becomes effective upon passage and approval for the purpose of adopting regulations and on October 1, 2007, for all other purposes.

~~[2. Section 6 of this act expires by limitation on the date 2 years after the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:~~

~~— (a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or~~

~~— (b) Are in arrears in the payment for the support of one or more children, — are repealed by the Congress of the United States.]~~