

Amendment No. 896

Senate Amendment to Assembly Bill No. 375 First Reprint (BDR 54-393)

Proposed by: Senate 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.

AM/WLK



Date: 5/20/2007

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.

~

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

AN ACT relating to loans; **creating various education and examination requirements related to an initial license as a mortgage broker or mortgage agent; requiring the designation of a qualified employee for certain mortgage brokers; creating certain requirements related to continuing education and mortgage lending; creating certain requirements for fees associated with loans secured by liens on real property; providing for certain requirements related to mortgage brokers and broker-dealers, sales representatives, investment advisers and representatives of investment advisers; revising the possible range of certain fees related to a license as a mortgage broker; revising the apportionment of certain extra hours of continuing education earned by a mortgage broker; requiring the Commissioner of Mortgage Lending to adopt certain regulations concerning investors and limitations on loans to directors, officers and employees; providing for biennial examinations of certain mortgage brokers under various circumstances; revising the deadline for certain financial statements by a mortgage broker; creating requirements for new financial statements related to certain accounts of a mortgage broker; revising certain advertising requirements of a mortgage broker; 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; revising certain provisions related to persons not subject to chapter 645E of NRS; revising certain provisions related to persons exempt from chapter 645E of NRS; ~~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;~~ revising the possible range of fees for a license as a mortgage banker; revising provisions related to financial statements of a**

mortgage banker; revising provisions related to foreign corporations and what constitutes doing business in this State; requiring certain present and future mortgage broker and mortgage agent licensees to meet certain requirements; 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)

Section 1.4 of this bill revises the requirements for an initial license as a mortgage broker or mortgage agent regarding education on mortgage lending and applicable examinations.

Section 1.6 of this bill requires that a qualified employee be designated by a mortgage broker who is not a natural person.

Section 1.8 of this bill revises provisions concerning the requirements that a course of continuing education must meet, including, without limitation, requirements relating to providers and instructors, records, approval and revocation of approval of courses, monitoring, disciplinary action, and participation by representatives of the mortgage lending industry in the creation of the requirements.

~~Sections 2 and 4) Section 2 of this bill ~~[(1) require]~~ requires 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 ~~for mortgage banker]~~ engages in activity as a mortgage broker ~~for mortgage banker]~~ includes a reasonable fee for servicing the loan . ~~[(1) 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 adviser or representative of an investment adviser under the laws of this State from commingling money received from mortgage transactions with money received from securities transactions.

Existing law describes various fees related to a license as a mortgage broker. (NRS 645B.050) Section 4.4 of this bill revises the range of fees that may be charged for a license as a mortgage broker.

Existing law describes various continuing education requirements for a mortgage broker. (NRS 645B.051) Section 4.8 of this bill revises how various extra hours of continuing education that are earned by a mortgage broker may be apportioned by the Commissioner.

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~~

Section 5 ~~and 11]~~ of this bill ~~require]~~ requires 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 . ~~for mortgage banker.]~~ (NRS 645B.060)

Existing law provides for annual examinations of mortgage brokers. (NRS 645B.060) Section 5 of this bill provides for biennial examinations of a mortgage broker, rather than annual examinations, in certain circumstances.

Existing law provides for a mortgage broker to submit a financial statement to the Commissioner at the end of each fiscal year. (NRS 645B.085) Section 5.3 of this bill changes the deadline for this financial statement.

Existing law provides for requirements related to accounts for certain money received in relation to various loans secured by liens on real property. (NRS 645B.175) Section 5.6 of this bill requires the submission every 6 months of a new financial statement for such accounts.

Existing law provides for certain advertising requirements for mortgage brokers. (NRS 645B.189) Section 5.9 of this bill revises those requirements to require only those mortgage brokers who have received an initial license in the last 12 months to submit advertisements for the Commissioner's approval.

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.

Existing law provides for persons who are not subject to chapter 645E of NRS. Section 10 of this bill clarifies which subsidiaries or holding companies are not subject to that chapter.

Existing law provides for the requirements that a person must meet to claim an exemption from the provisions of chapter 645E of NRS. (NRS 645E.160) Section 10.4 of this bill revises the requirements in regards to those who hold certain licenses and in regards to federal law.

Existing law provides for various fees related to a license as a mortgage banker. (NRS 645E.280) Section 10.8 of this bill revises the range of fees that may be charged for a license as a mortgage banker.

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) Section 11 of this bill requires the Commissioner of Mortgage Lending to establish similar limitations on loans made by mortgage bankers to directors, officers or employees of the mortgage banker. (NRS 645E.300)

Existing law provides for a mortgage banker to submit a financial statement to the Commissioner at the end of each fiscal year. (NRS 645E.360) Section 11.5 of this bill changes the deadline for this financial statement.

Existing law provides for the regulation of foreign corporations. (Chapter 80 of NRS) Section 12.4 of this bill revises the definition of what constitutes doing business in this State relating to foreign corporations and regarding the activities of a mortgage broker or a mortgage banker or arranging a mortgage loan that is not secured by commercial property.

Section 12.8 of this bill requires certain present and future holders of a license as a mortgage agent or mortgage broker or a designation as a qualified employee to meet various requirements contained in 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 the provisions set forth as sections ~~1.2 and~~ 1.4 to 3, inclusive, of this act.

Sec. 1.4. 1. In addition to any other requirements provided by this chapter, a person who wishes to receive an initial license as a mortgage broker or mortgage agent must:

(a) Complete education on mortgage lending as required by this chapter; or
(b) Successfully pass a written examination as determined by the Division.

2. If the applicant for an initial license as a mortgage broker is not a natural person, the applicant must designate a natural person to be the qualified employee of the applicant and meet the requirements of subsection 1.

3. The Division:

(a) May hire a testing organization to create, administer and score a written examination; and

(b) May create waivers for a written examination.

4. The Commissioner may adopt regulations to carry out the provisions of this section, including, without limitation, regulations relating to the content of a written examination, the scoring of a written examination or any possible waivers of a written examination.

Sec. 1.6. 1. If a mortgage broker is not a natural person, the mortgage broker must designate a natural person as a qualified employee to act on behalf of the mortgage broker.

2. The Division shall adopt regulations regarding a qualified employee, including, without limitation, regulations that establish:

(a) A definition for the term "qualified employee";

(b) Any duties of a qualified employee; and

(c) Any requirements regarding a qualified employee.

Sec. 1.8. 1. A course of continuing education that is required pursuant to chapter 645B of NRS must meet the requirements set forth by the Commissioner by regulation.

2. The Commissioner shall adopt regulations:

(a) Relating to the requirements for courses of continuing education, including, without limitation, regulations relating to the providers and instructors of such courses, records kept for such courses, approval and revocation of approval of such courses, monitoring of such courses and disciplinary action taken regarding such courses.

(b) Allowing for the participation of representatives of the mortgage lending industry pertaining to the creation of regulations regarding such courses.

Sec. 2. ~~1.1~~ A mortgage broker shall ensure that ~~¶~~

~~(a) Each~~ 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~~ adviser or a representative of an investment ~~advisor~~ adviser 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. 4. (Deleted by amendment.)

Sec. 4.4. 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 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 not more than \$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 not more than \$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, not more than \$1,500 for the principal office and not more than \$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, not more than \$1,000 for the principal office and not more than \$60 for each branch office.

(c) To renew a license, not more than \$500 for the principal office and not more than \$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, not more than \$200.

(b) To renew a certificate of exemption, not more than \$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 not more than \$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~~ adjust any fee set forth in this section if the Commissioner determines that such an ~~increase~~ adjustment is necessary for the Commissioner to carry out his duties pursuant to this chapter. The amount of any ~~increase~~ adjustment 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.

Sec. 4.8. NRS 645B.051 is hereby amended to read as follows:

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

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

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

2. The Commissioner may provide by regulation that ~~any~~ if a person attends more than 10 hours of ~~a certified course~~ certified courses of continuing education ~~attended~~ during a 12-month period, ~~but not needed~~ the extra hours may be used to satisfy ~~a requirement set forth in this section~~ the requirement for the immediately following 12-month period ~~in which the course was taken, may be used to satisfy a requirement set forth in this section for a later 12-month period,~~ and for that immediately following 12-month period only.

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

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

~~(b) Any organization designated for this purpose by the Commissioner by regulation,~~ meets the requirements set forth by the Commissioner by regulation pursuant to section 1.8 of this act.

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 reasonable limitations and guidelines 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)(1)~~ (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)(1)~~ (d) ~~Conduct~~ Except as otherwise provided in subsection 4, 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)(1)~~ (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)(1)~~ (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)(1)~~ (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.

4. The Commissioner may conduct biennial examinations of a mortgage broker instead of annual examinations, as described in paragraph (d) of subsection 2, if the mortgage broker:

(a) Received a rating in the last annual examination that meets a threshold determined by the Commissioner;

(b) Has not had any adverse change in financial condition since the last annual examination, as shown by financial statements of the mortgage broker;

(c) Has not had any complaints received by the Division that resulted in any administrative action by the Division; and

(d) Does not maintain any trust accounts pursuant to NRS 645B.170 or 645B.175 or arrange loans funded by private investors.

Sec. 5.3. NRS 645B.085 is hereby amended to read as follows:

645B.085 1. Except as otherwise provided in this section, not later than ~~90~~ 120 days after the last day of each fiscal year for a mortgage broker, the mortgage broker shall submit to the Commissioner a financial statement that:

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

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

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

3. If a mortgage broker maintains any accounts described in subsection 1 of NRS 645B.175, the financial statement submitted pursuant to this section must be audited. If a mortgage broker maintains any accounts described in subsection 4 of NRS 645B.175, those accounts must be audited. The public accountant who prepares the report of an audit shall submit a copy of the report to the Commissioner at the same time that he submits the report to the mortgage broker.

4. The Commissioner shall adopt regulations prescribing the scope of an audit conducted pursuant to subsection 3.

Sec. 5.6. NRS 645B.175 is hereby amended to read as follows:

645B.175 1. Except as otherwise provided in this section, all money received by a mortgage broker and his mortgage agents from an investor to acquire ownership of or a beneficial interest in a loan secured by a lien on real property must:

(a) Be deposited in:

(1) An insured depository financial institution; or

(2) An escrow account which is controlled by a person who is independent of the parties and subject to instructions regarding the account which are approved by the parties.

(b) Be kept separate from money:

(1) Belonging to the mortgage broker in an account appropriately named to indicate that the money does not belong to the mortgage broker.

(2) Received pursuant to subsection 4.

2. Except as otherwise provided in this section, the amount held in trust pursuant to subsection 1 must be released:

(a) Upon completion of the loan, including proper recordation of the respective interests or release, or upon completion of the transfer of the ownership or beneficial interest therein, to the debtor or his designee less the amount due the mortgage broker for the payment of any fee or service charge;

(b) If the loan or the transfer thereof is not consummated, to each investor who furnished the money held in trust; or

(c) Pursuant to any instructions regarding the escrow account.

1 3. The amount held in trust pursuant to subsection 1 must not be released to
2 the debtor or his designee unless:

3 (a) The amount released is equal to the total amount of money which is being
4 loaned to the debtor for that loan, less the amount due the mortgage broker for the
5 payment of any fee or service charge; and

6 (b) The mortgage broker has provided a written instruction to a title agent or
7 title insurer requiring that a lender's policy of title insurance or appropriate title
8 endorsement, which names as an insured each investor who owns a beneficial
9 interest in the loan, be issued for the real property securing the loan.

10 4. Except as otherwise provided in this section, all money paid to a mortgage
11 broker and his mortgage agents by a person in full or in partial payment of a loan
12 secured by a lien on real property, must:

13 (a) Be deposited in:

14 (1) An insured depository financial institution; or

15 (2) An escrow account which is controlled by a person who is subject to
16 instructions regarding the account which are approved by the parties.

17 (b) Be kept separate from money:

18 (1) Belonging to the mortgage broker in an account appropriately named to
19 indicate that it does not belong to the mortgage broker.

20 (2) Received pursuant to subsection 1.

21 5. Except as otherwise provided in this section, the amount held in trust
22 pursuant to subsection 4:

23 (a) Must be released, upon the deduction and payment of any fee or service
24 charge due the mortgage broker, to each investor who owns a beneficial interest in
25 the loan in exact proportion to the beneficial interest that he owns in the loan; and

26 (b) Must not be released, in any proportion, to an investor who owns a
27 beneficial interest in the loan, unless the amount described in paragraph (a) is also
28 released to every other investor who owns a beneficial interest in the loan.

29 6. An investor may waive, in writing, the right to receive one or more
30 payments, or portions thereof, that are released to other investors in the manner set
31 forth in subsection 5. A mortgage broker or mortgage agent shall not act as the
32 attorney-in-fact or the agent of an investor with respect to the giving of a written
33 waiver pursuant to this subsection. Any such written waiver applies only to the
34 payment or payments, or portions thereof, that are included in the written waiver
35 and does not affect the right of the investor to:

36 (a) Receive the waived payment or payments, or portions thereof, at a later
37 date; or

38 (b) Receive all other payments in full and in accordance with the provisions of
39 subsection 5.

40 7. Upon reasonable notice, any mortgage broker described in this section
41 shall:

42 (a) Account to any investor or debtor who has paid to the mortgage broker or
43 his mortgage agents money that is required to be deposited in a trust account
44 pursuant to this section; and

45 (b) Account to the Commissioner for all money which the mortgage broker and
46 his mortgage agents have received from each investor or debtor and which the
47 mortgage broker is required to deposit in a trust account pursuant to this section.

48 8. Money received by a mortgage broker and his mortgage agents pursuant to
49 this section from a person who is not associated with the mortgage broker may be
50 held in trust for not more than 45 days before an escrow account must be opened in
51 connection with the loan. If, within this 45-day period, the loan or the transfer
52 therefor is not consummated, the money must be returned within 24 hours. If the

1 money is so returned, it may not be reinvested with the mortgage broker for at least
2 15 days.

3 9. If a mortgage broker or a mortgage agent receives any money pursuant to
4 this section, the mortgage broker or mortgage agent, after the deduction and
5 payment of any fee or service charge due the mortgage broker, shall not release the
6 money to:

7 (a) Any person who does not have a contractual or legal right to receive the
8 money; or

9 (b) Any person who has a contractual right to receive the money if the
10 mortgage broker or mortgage agent knows or, in light of all the surrounding facts
11 and circumstances, reasonably should know that the person's contractual right to
12 receive the money violates any provision of this chapter or a regulation adopted
13 pursuant to this chapter.

14 10. If a mortgage broker maintains any accounts described in subsection 1
15 or subsection 4, the mortgage broker shall, in addition to the annual financial
16 statement audited pursuant to NRS 645B.085, submit to the Commissioner each 6
17 calendar months a financial statement concerning those trust accounts.

18 11. The Commissioner shall adopt regulations concerning the form and
19 content required for financial statements submitted pursuant to subsection 10.

20 **Sec. 5.9. NRS 645B.189 is hereby amended to read as follows:**

21 645B.189 1. If, in carrying on his business, a mortgage broker uses an
22 advertisement that is designed, intended or reasonably likely to solicit money from
23 private investors, the mortgage broker shall include in each such advertisement a
24 statement of disclosure in substantially the following form:

25
26 Money invested through a mortgage broker is not guaranteed to earn any
27 interest or return and is not insured.

28
29 2. A mortgage broker shall include in each advertisement that the mortgage
30 broker uses in carrying on his business any statements of disclosure required
31 pursuant to the regulations adopted by the Commissioner or required pursuant to an
32 order of the Commissioner entered in accordance with subsections 7 and 8 of
33 NRS 645B.185.

34 3. Each mortgage broker who has received his initial license within the past
35 12 months shall submit any proposed advertisement that the mortgage broker
36 intends to use in carrying on his business to the Commissioner for approval.

37 4. In addition to the requirements set forth in this chapter, each advertisement
38 that a mortgage broker uses in carrying on his business must comply with the
39 requirements of:

40 (a) NRS 598.0903 to 598.0999, inclusive, concerning deceptive trade practices;
41 and

42 (b) Any applicable federal statute or regulation concerning deceptive
43 advertising and the advertising of interest rates.

44 5. If a mortgage broker violates any provision of NRS 598.0903 to 598.0999,
45 inclusive, concerning deceptive trade practices or any federal statute or regulation
46 concerning deceptive advertising or the advertising of interest rates, in addition to
47 any sanction or penalty imposed by state or federal law upon the mortgage broker
48 for the violation, the Commissioner may take any disciplinary action set forth in
49 subsection 2 of NRS 645B.670 against the mortgage broker.

50 6. The Commissioner may adopt any regulations that are necessary to carry
51 out the provisions of this section.

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~~

~~(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.] (Deleted by amendment.)~~

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. 10.4. NRS 645E.160 is hereby amended to read as follows:

645E.160 1. ~~1. A~~ *Except as otherwise provided in subsection 2, a* person who claims an exemption from the provisions of this chapter pursuant to subsection 1 of NRS 645E.150 must:

(a) File a written application for a certificate of exemption with the Office of the Commissioner;

(b) Pay the fee required pursuant to NRS 645E.280; ~~and~~

(c) Include with the written application satisfactory proof that the person meets the requirements of subsection 1 of NRS 645E.150; ~~and~~

(d) Provide evidence to the Commissioner that the person is duly licensed to conduct his business and such license is in good standing pursuant to the laws of this State, any other state or the United States.

2. *The provisions of subsection 1 do not apply to the extent preempted by federal law.*

3. The Commissioner may require a person who claims an exemption from the provisions of this chapter pursuant to subsections 2 to 9, inclusive, of NRS 645E.150 to:

(a) File a written application for a certificate of exemption with the Office of the Commissioner;

(b) Pay the fee required pursuant to NRS 645E.280; and

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

~~4.~~ 4. A certificate of exemption expires automatically if, at any time, the person who claims the exemption no longer meets the requirements of at least one exemption set forth in the provisions of NRS 645E.150.

~~5.~~ 5. If a certificate of exemption expires automatically pursuant to this section, the person shall not provide any of the services of a mortgage banker or otherwise engage in, carry on or hold himself out as engaging in or carrying on the business of a mortgage banker unless the person applies for and is issued:

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

(b) Another certificate of exemption.

~~§ 6.~~ 6. The Commissioner may impose upon a person who is required to apply for a certificate of exemption or who holds a certificate of exemption an administrative fine of not more than \$10,000 for each violation that he commits, if the person:

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

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

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

Sec. 10.8. NRS 645E.280 is hereby amended to read as follows:

645E.280 1. A license issued to a mortgage banker pursuant to this chapter expires each year on December 31, unless it is renewed. To renew a license, the licensee must submit to the Commissioner on or before December 31 of each year:

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

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

2. If the licensee fails to submit any item required pursuant to subsection 1 to the Commissioner on or before December 31 of any year, the license is cancelled. The Commissioner may reinstate a cancelled license if the licensee submits to the Commissioner:

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

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

(c) A reinstatement fee of not more than \$200.

3. Except as otherwise provided in NRS 645E.160, 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 December 31 of each year:

(a) An application for renewal that complies with the requirements 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 December 31 of any year, the certificate of exemption is cancelled. Except as otherwise provided in NRS 645E.160, the Commissioner may reinstate a cancelled certificate of exemption if the person submits to the Commissioner:

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

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

(c) A reinstatement fee of not more than \$100.

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

(a) To file an original application for a license, not more than \$1,500 for the principal office and not more than \$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, not more than \$1,000 for the principal office and not more than \$60 for each branch office.

(c) To renew a license, not more than \$500 for the principal office and not more than \$100 for each branch office.

6. 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, not more than \$200.

(b) To renew a certificate of exemption, not more than \$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 not more than \$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, adjust any fee set forth in this section if the Commissioner determines that such an adjustment is necessary for the Commissioner to carry out his duties pursuant to this chapter. The amount of any adjustment 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.

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 reasonable limitations and guidelines 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.

~~(c)~~ (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.

~~(d)~~ (d) ~~Conduct~~ Except as otherwise provided in subsection 4, 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.

4. The Commissioner may conduct biennial examinations of a mortgage banker instead of annual examinations, as described in paragraph (d) of subsection 2, if the mortgage banker:

(a) Received a rating in the last annual examination that meets a threshold determined by the Commissioner;

(b) Has not had any adverse change in financial condition since the last annual examination, as shown by financial statements of the mortgage banker; and

(c) Has not had any complaints received by the Division that resulted in any administrative action by the Division.

Sec. 11.5. NRS 645E.360 is hereby amended to read as follows:

645E.360 1. Except as otherwise provided in this section, not later than ~~60~~ **120** days after the last day of each fiscal year for a mortgage banker, the mortgage banker shall submit to the Commissioner a financial statement that:

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

(b) Has been prepared from the books and records of the mortgage banker by an independent public accountant who holds a permit to engage in the practice of public accounting in this State that has not been revoked or suspended.

2. The Commissioner may grant a reasonable extension for the submission of a financial statement pursuant to this section if a mortgage banker requests such an extension before the date on which the financial statement is due.

3. If a mortgage banker maintains any accounts described in NRS 645E.430, the financial statement submitted pursuant to this section must be audited. The public accountant who prepares the report of an audit shall submit a copy of the report to the Commissioner at the same time that he submits the report to the mortgage banker.

4. The Commissioner shall adopt regulations prescribing the scope of an audit conducted pursuant to subsection 3.

Sec. 12. (Deleted by amendment.)

Sec. 12.4. NRS 80.015 is hereby amended to read as follows:

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

(a) Maintaining, defending or settling any proceeding;

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

(c) Maintaining accounts in banks or credit unions;

(d) Maintaining offices or agencies for the transfer, exchange and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

(e) Making sales through independent contractors;

(f) Soliciting or receiving orders outside of this State through or in response to letters, circulars, catalogs or other forms of advertising, accepting those orders outside of this State and filling them by shipping goods into this State;

(g) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) Owning, without more, real or personal property;

(j) Isolated transactions completed within 30 days and not a part of a series of similar transactions;

(k) The production of motion pictures as defined in NRS 231.020;

(l) Transacting business as an out-of-state depository institution pursuant to the provisions of title 55 of NRS; and

(m) Transacting business in interstate commerce.

2. The list of activities in subsection 1 is not exhaustive.

3. A person who is not doing business in this State within the meaning of this section need not qualify or comply with any provision of this chapter, chapter 645A, 645B or 645E of NRS or title 55 or 56 of NRS unless he:

(a) Maintains an office in this State for the transaction of business; ~~for~~

(b) Solicits or accepts deposits in the State, except pursuant to the provisions of chapter 666 or 666A of NRS ~~for~~;

(c) Solicits business for the activities of a mortgage broker as defined by NRS 645B.0127 or the activities of a mortgage banker as defined by NRS 645E.100; or

(d) Arranges a mortgage loan secured by real property which is not commercial property as defined by NRS 645E.040.

4. The fact that a person is not doing business in this State within the meaning of this section:

(a) Does not affect the determination of whether any court, administrative agency or regulatory body in this State may exercise personal jurisdiction over the person in any civil action, criminal action, administrative proceeding or regulatory proceeding; and

(b) Except as otherwise provided in subsection 3, does not affect the applicability of any other provision of law with respect to the person and may not be offered as a defense or introduced in evidence in any civil action, criminal action, administrative proceeding or regulatory proceeding to prove that the person is not doing business in this State, including, without limitation, any civil action, criminal action, administrative proceeding or regulatory proceeding involving an alleged violation of chapter 597, 598 or 598A of NRS.

5. As used in this section and for the purposes of NRS 80.016, "deposits" means demand deposits, savings deposits and time deposits, as those terms are defined in chapter 657 of NRS.

Sec. 12.8. 1. Any person who received or will receive a mortgage agent license between October 1, 2004, and June 30, 2008, must fulfill the requirements of section 1.4 of this act before January 1, 2009, in the same manner as a person obtaining an initial license. If the person who received a mortgage agent license between October 1, 2004, and June 30, 2008, does not do so, the license of that person is suspended until he does so.

2. Any natural person who received or will receive a mortgage broker license or an initial designation as a qualified employee by a mortgage broker between October 1, 2005, and June 30, 2008, must fulfill the requirements of section 1.4 of this act before January 1, 2009, in the same manner as a natural person obtaining an initial license. If the natural person who received a mortgage broker license or was initially designated as the qualified employee by a mortgage broker between October 1, 2005, and June 30, 2008, does not do so, the license of that natural person is suspended until he does so.

Sec. 13. 1. This ~~act becomes~~ section, section 1 and sections 2 to 12.4, inclusive, of this act become effective upon passage and approval for the purpose of adopting regulations and on October 1, 2007, for all other purposes.

2. Sections 1.4, 1.6, 1.8 and 12.8 of this act become effective:

(a) Upon passage and approval for purpose of adopting regulations, administering examinations as set forth in section 1.4 of this act and approving courses of continuing education as set forth in section 1.8 of this act; and

(b) On July 1, 2008, for all other purposes.