ASSEMBLY BILL NO. 144–ASSEMBLYMEN HOGAN, MCCLAIN, KOIVISTO; AND PIERCE

FEBRUARY 9, 2009

Referred to Committee on Commerce and Labor

SUMMARY—Revises various provisions relating to loans secured by liens on real property. (BDR 54-89)

FISCAL NOTE: Effect on Local Government: No.
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 real property; requiring certain annual or biennial examinations of mortgage brokers to include reviews of various written appraisals and other similar information; revising requirements which relate to the release of certain information on various mortgage brokers regarding ownership and management structure, annual or biennial examinations and other examinations or audits, investigations or hearings; suspending or revoking the license of certain mortgage brokers who receive the lowest possible rating on two consecutive annual or biennial examinations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires annual or biennial examinations for various mortgage brokers. (NRS 645B.060) **Section 1** of this bill requires such examinations to include a review of certain written appraisals of real property and other similar information.

Existing law provides requirements regarding certain information on mortgage brokers that is to be made available for public inspection. (NRS 645B.090) **Section 2** of this bill revises those requirements in regard to mortgage brokers who offer for sale in this State any security which is exempt from registration under state or federal law and purports to make investments in promissory notes secured by liens on real property. The revised requirements relate to information regarding ownership and management structure, annual or biennial examinations, other examinations or audits, investigations or hearings, and standards for withholding other information.

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Existing law provides requirements regarding disciplinary action for certain violations of law relating to the business of a mortgage broker. (NRS 645B.690) **Section 3** of this bill revises those requirements in regard to mortgage brokers who offer for sale in this State any security which is exempt from registration under state or federal law and purports to make investments in promissory notes secured by liens on real property. If such a mortgage broker receives the lowest possible rating on two consecutive annual or biennial examinations, the license of that mortgage broker will be suspended or revoked.

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

Section 1. 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 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.

(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) 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 ~~[.]~~ ***and an examination of all or a sample, as determined by the Commissioner, of any written appraisals performed pursuant to NRS 645B.300 and any other similar information used to appraise real property in regard to the acceptance of money from an investor to acquire ownership of or a beneficial interest in a loan secured by a lien on the real property.*** 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.]~~ ***after a period of time set by the Commissioner during which the mortgage broker may submit any objections to the annual examination.***

(e) Conduct such other examinations, periodic or special audits, investigations and hearings as may be necessary 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.

(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) 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, ***on a biennial instead of an annual basis*** 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. 2. NRS 645B.090 is hereby amended to read as follows:

645B.090 1. Except as otherwise provided in this section or by specific statute, all papers, documents, reports and other written instruments filed with the Commissioner pursuant to this chapter are open to public inspection.

2. Except as otherwise provided in subsection 3, the Commissioner may withhold from public inspection or refuse to disclose to a person, for such time as the Commissioner considers necessary, any information that, in his judgment, would:

(a) Impede or otherwise interfere with an investigation that is currently pending against a mortgage broker; ***or***

(b) Have an undesirable effect on the welfare of the public ***.*** ~~[or the welfare of any mortgage broker or mortgage agent; or~~

~~(c) Give any mortgage broker a competitive advantage over any other mortgage broker.]~~

3. Except as otherwise provided in NRS 645B.092, the Commissioner shall disclose the following information concerning a mortgage broker to any person who requests it ~~[:]~~ ***, including, without limitation, a member of the news media:***

(a) The findings and results of any investigation which has been completed during the immediately preceding 5 years against the mortgage broker pursuant to the provisions of this chapter and which has resulted in a finding by the Commissioner that the mortgage broker committed a violation of a provision of this chapter, a regulation adopted pursuant to this chapter or an order of the Commissioner; ~~[and]~~

(b) The nature of any disciplinary action that has been taken during the immediately preceding 5 years against the mortgage broker pursuant to the provisions of this chapter ~~[.]~~ ***; and***

(c) If the mortgage broker offers for sale in this State any security which is exempt from registration under state or federal law and purports to make investments in promissory notes secured by liens on real property:

(1) Any information in the possession of the Commissioner regarding the present and past ownership and management structure of the mortgage broker; and

(2) The findings and results of:

(I) All annual or biennial examinations of the mortgage broker conducted pursuant to NRS 645B.060, including, without limitation, the rating for each annual or biennial examination and an explanation of the standards for determining that rating; and

(II) Any other examination or audit, investigation or hearing which has been completed during the immediately preceding 3 years against the mortgage broker pursuant to the provisions of this chapter.

Sec. 3. 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 order within 20 business days or within such later time as prescribed by the Commissioner, the Commissioner shall:

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

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

(c) Conduct a hearing to determine whether the mortgage broker is conducting business in an unsafe and injurious manner that may result in danger to the public and whether it is necessary for the Commissioner to take possession of the property of the mortgage broker pursuant to NRS 645B.630.

3. If a mortgage broker:

(a) Offers for sale in this State any security which is exempt from registration under state or federal law and purports to make investments in promissory notes secured by liens on real property; and

(b) Receives the lowest possible rating on two consecutive annual or biennial examinations pursuant to NRS 645B.060,

➥ the Commissioner shall suspend or revoke the license of the mortgage broker.