

Amendment No. 649

Senate Amendment to Assembly Bill No. 144 First Reprint (BDR 54-89)

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

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 dashed underlining* is newly added transitory language.

DP/WLK



Date: 5/10/2009

A.B. No. 144—Revises various provisions relating to loans secured by liens on real property. (BDR 54-89)



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.

~

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

AN ACT relating to real property; prohibiting public disclosure of the results of an annual examination of a mortgage broker under certain circumstances; revising provisions relating to appraisals of real property securing a loan in which an investor invests money; 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 prohibits the results of an annual examination from being released to the public until after a period of time set by the Commissioner of Mortgage Lending to determine any objections made by the mortgage broker to the results.

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 make or offer for sale in this State any 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.

Existing law prohibits a mortgage broker or mortgage agent from accepting money from an investor to acquire ownership of or a beneficial interest in a loan secured by a lien on real property unless the mortgage broker has first obtained a written appraisal of the real property securing the loan. (NRS 645B.300) **Section 2.5** of this bill requires the appraisal to be made not more than 6 months before the mortgage broker's first solicitation for the loan and the appraisal to meet certain standards. **Section 2.5** further requires a mortgage broker to make additional disclosures to an investor if the investor waives the requirement that an appraisal be obtained.

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 make or offer for sale in this State any 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. 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 to determine any objections made by the mortgage broker.*

(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 *or examination* that is currently pending against a mortgage broker;

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

~~—(c) Give any mortgage broker a competitive advantage over any other mortgage broker.; or~~

(c) Reveal personal information in violation of NRS 239B.030.

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 makes or offers for sale in this State any 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 examinations or investigations of the mortgage broker conducted pursuant to NRS 645B.060 during the immediately preceding 5 years, including, without limitation, 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. 2.5. NRS 645B.300 is hereby amended to read as follows:

645B.300 1. Except as otherwise provided in subsection 4, a mortgage broker or mortgage agent shall not accept money from an investor to acquire ownership of or a beneficial interest in a loan secured by a lien on real property, unless the mortgage broker has obtained a written appraisal of the real property securing the loan.

2. The written appraisal of the real property:

(a) *Must be completed not more than 6 months before the mortgage broker's first solicitation for the loan;*

(b) *Must meet the standards set forth in the Uniform Standards of Professional Appraisal Practice as adopted by the Appraisal Standards Board of The Appraisal Foundation;*

(c) Must be performed by an appraiser who is authorized to perform appraisals in this State ~~or~~ *or in the state where the real property securing the loan is located;* and

~~(b)~~ (d) Must not be performed by the mortgage broker or a mortgage agent, unless the mortgage broker or mortgage agent is certified or licensed to perform such an appraisal pursuant to chapter 645C of NRS.

3. A copy of the written appraisal of the real property must be:

(a) Maintained at each office of the mortgage broker where money is accepted from an investor to acquire ownership of or a beneficial interest in a loan secured by a lien on the real property; and

(b) Made available during normal business hours for inspection by each such investor and the Commissioner.

4. A mortgage broker is not required to obtain a written appraisal of the real property pursuant to this section if the mortgage broker obtains a written waiver of the appraisal from each investor who acquires ownership of or a beneficial interest in a loan secured by a lien on the real property. A mortgage broker or mortgage agent shall not act as the attorney-in-fact or the agent of an investor with respect to the giving of a written waiver pursuant to this subsection.

5. *If the mortgage broker obtains a written waiver of the appraisal as provided in subsection 4, the mortgage broker shall provide to each investor before he accepts any money from the investor a separate written disclosure which contains the information analyzed, the valuation methods and techniques employed and the reasoning for any opinion regarding value provided by or on behalf of the mortgage broker.*

6. As used in this section, "appraisal" has the meaning ascribed to it in NRS 645C.030.

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:

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

3 (b) The person's license was suspended or revoked pursuant to this chapter,
4 ➤ the Commissioner shall impose upon the person an administrative fine of not
5 more than \$10,000 for each violation and, if the person has a license, the
6 Commissioner shall *suspend or* revoke it.

7 2. If a mortgage broker violates any provision of subsection 1 of NRS
8 645B.080 and the mortgage broker fails, without reasonable cause, to remedy the
9 violation within 20 business days after being ordered by the Commissioner to do so
10 or within such later time as prescribed by the Commissioner, or if the
11 Commissioner orders a mortgage broker to provide information, make a report or
12 permit an examination of his books or affairs pursuant to this chapter and the
13 mortgage broker fails, without reasonable cause, to comply with the order within 20
14 business days or within such later time as prescribed by the Commissioner, the
15 Commissioner shall:

16 (a) Impose upon the mortgage broker an administrative fine of not more than
17 \$10,000 for each violation;

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

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

23 *3. If a mortgage broker:*

24 (a) *Makes or offers for sale in this State any investments in promissory notes*
25 *secured by liens on real property; and*

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

28 ➤ *the Commissioner shall suspend or revoke the license of the mortgage broker.*