

Amendment No. 280

Assembly Amendment to Assembly Bill No. 486

(BDR 54-230)

Proposed by: Assembly Committee on Commerce and Labor**Amends:** Summary: No Title: No 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 dashed underlining* is newly added transitory language.

DY/WLK



Date: 4/14/2009

A.B. No. 486—Makes various changes to provisions relating to mortgage lending.
(BDR 54-230)



ASSEMBLY BILL NO. 486—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY
MORTGAGE LENDING AND HOUSING ISSUES)

MARCH 20, 2009

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions relating to mortgage lending.
(BDR 54-230)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 mortgage lending; requiring escrow agencies and agents, mortgage brokers, mortgage agents and mortgage bankers to pay restitution under certain circumstances; authorizing additional remedies and penalties for conducting business as an escrow agency or agent, mortgage broker, mortgage agent or mortgage banker without a license; providing for the exercise of jurisdiction over a party to a civil action; increasing the fine imposed on escrow agencies and agents for certain violations; requiring a mortgage broker to deposit a surety bond or other security; providing for the payment of a claim against a surety bond; establishing fiduciary obligations of a mortgage broker and mortgage agent; increasing the fine imposed on a mortgage broker or mortgage agent for conducting business without a license; authorizing the Commissioner of Mortgage Lending to adopt regulations relating to mortgage lending and other such professions; requiring certain persons and institutions in the business of servicing mortgage loans to register with the Commissioner; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 2, 13 and 19 of this bill authorize the Commissioner of Mortgage Lending to require escrow agencies, escrow agents, mortgage brokers, mortgage agents and mortgage bankers to pay restitution under certain circumstances. **Sections 3, 14 and 20** of this bill provide that if any person engages in the escrow business or the business of a mortgage broker, agent or banker without a license, the contract for the transaction in question may be voided by the other parties to the contract. **Sections 3, 17 and 20** of this bill authorize the Commissioner to impose an administrative fine of \$50,000 under the same circumstances. **Sections 4, 5, 15, 16, 21 and 22** of this bill provide that parties to certain escrow and mortgage transactions may bring a civil suit against the person who has engaged in the escrow or mortgage business without a license and also establish provisions relating to the exercise of

jurisdiction by a court of this State. **Section 6** of this bill increases the fine imposed on escrow agencies or agents from \$500 to \$10,000 for each occurrence of certain violations.

Sections 8 and 9 of this bill require a mortgage broker, as a condition to doing business in this State, to deposit with the Commissioner a corporate surety bond or other security in the amount of ~~[\$25,000]~~ \$50,000 for the principal office and ~~[\$10,000]~~ \$25,000 for each branch office, not to exceed an aggregate amount of \$75,000. **Section 10** of this bill allows a surety to cancel a bond with notice and requires the Commissioner to inform a mortgage broker or mortgage agent that his license will be revoked unless an equivalent bond or security is deposited before the cancellation. **Section 11** of this bill provides for the manner in which claims against a bond may be paid. **Section 12** of this bill provides that a mortgage broker or mortgage agent has a fiduciary obligation to his client.

Section 24 of this bill grants regulatory authority over mortgage lending and related professionals, including foreclosure consultants, to the Commissioner by requiring the Commissioner to adopt regulations relating to mortgage lending and other professionals.

Section 25 of this bill requires certain persons and institutions in the business of servicing mortgage loans secured by a lien on real property located in this State to register with the Commissioner.

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

Section 1. Chapter 645A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

Sec. 2. ~~*In a manner consistent with the provisions of chapter 622A of NRS, the:*~~

1. The holder of a license as an escrow agent or escrow agency may be required by the Commissioner to pay restitution to any person who has suffered an economic loss as a result of a violation of the provisions of this chapter or any regulation adopted pursuant thereto.

2. Notwithstanding the provision of paragraph (m) of subsection 1 of NRS 622A.120, payment of restitution pursuant to subsection 1 shall be done in a manner consistent with the provisions of chapter 622A of NRS.

Sec. 3. *If a person, or any general partner, director, officer, agent or employee of a person, violates the provisions of NRS 645A.210 or 645A.220:*

1. Any contracts entered into by that person for the escrow transaction are voidable by the other party to the contract; and

2. In addition to any other remedy or penalty, the Commissioner may impose an administrative fine of not more than \$50,000.

Sec. 4. *In addition to any other remedy or penalty, if a person violates the provisions of NRS 645A.210 or 645A.220, the respective parties to the escrow transaction may bring a civil action against the person for:*

1. Actual and consequential damages;

2. Punitive damages, which are subject to the provisions of NRS 42.005;

3. Reasonable attorney's fees and costs; and

4. Any other legal or equitable relief that the court deems appropriate.

Sec. 5. *1. A court of this State may exercise jurisdiction over a party to a civil action arising under the provisions of this chapter on any basis not inconsistent with the Constitution of the State of Nevada or the Constitution of the United States.*

2. Personal service of summons upon a party outside this State is sufficient to confer upon a court of this State jurisdiction over the party so served if the service is made by delivering a copy of the summons, together with a copy of the

1 *complaint, to the party served in the manner provided by statute or rule of court*
2 *for service upon a person of like kind within this State.*

3 *3. In all cases of such service, the defendant has 40 days, exclusive of the*
4 *day of service, within which to answer or plead.*

5 *4. This section provides an additional manner of serving process and does*
6 *not invalidate any other service.*

7 **Sec. 6.** NRS 645A.090 is hereby amended to read as follows:

8 645A.090 1. The Commissioner may refuse to license any escrow agent or
9 agency or may suspend or revoke any license or impose a fine of not more than
10 ~~[\$500]~~ **\$10,000** for each violation by entering an order to that effect, with his
11 findings in respect thereto, if upon a hearing, it is determined that the applicant or
12 licensee:

13 (a) In the case of an escrow agency, is insolvent;

14 (b) Has violated any provision of this chapter or any regulation adopted
15 pursuant thereto or has aided and abetted another to do so;

16 (c) In the case of an escrow agency, is in such a financial condition that he
17 cannot continue in business with safety to his customers;

18 (d) Has committed fraud in connection with any transaction governed by this
19 chapter;

20 (e) Has intentionally or knowingly made any misrepresentation or false
21 statement to, or concealed any essential or material fact from, any principal or
22 designated agent of a principal in the course of the escrow business;

23 (f) Has intentionally or knowingly made or caused to be made to the
24 Commissioner any false representation of a material fact or has suppressed or
25 withheld from the Commissioner any information which the applicant or licensee
26 possesses;

27 (g) Has failed without reasonable cause to furnish to the parties of an escrow
28 their respective statements of the settlement within a reasonable time after the close
29 of escrow;

30 (h) Has failed without reasonable cause to deliver, within a reasonable time
31 after the close of escrow, to the respective parties of an escrow transaction any
32 money, documents or other properties held in escrow in violation of the provisions
33 of the escrow instructions;

34 (i) Has refused to permit an examination by the Commissioner of his books
35 and affairs or has refused or failed, within a reasonable time, to furnish any
36 information or make any report that may be required by the Commissioner pursuant
37 to the provisions of this chapter;

38 (j) Has been convicted of a felony relating to the practice of escrow agents or
39 agencies or any misdemeanor of which an essential element is fraud;

40 (k) In the case of an escrow agency, has failed to maintain complete and
41 accurate records of all transactions within the last 6 years;

42 (l) Has commingled the money of others with his own or converted the money
43 of others to his own use;

44 (m) Has failed, before the close of escrow, to obtain written escrow
45 instructions concerning any essential or material fact or intentionally failed to
46 follow the written instructions which have been agreed upon by the parties and
47 accepted by the holder of the escrow;

48 (n) Has failed to disclose in writing that he is acting in the dual capacity of
49 escrow agent or agency and undisclosed principal in any transaction; or

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

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

52 (2) Instructed an escrow agent to commit an act which would be cause for
53 the revocation of the escrow agent's license and the escrow agent committed the

act. An escrow agent is not subject to disciplinary action for committing such an act under instruction by the escrow agency.

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

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

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

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

Sec. 7. Chapter 645B of NRS is hereby amended by adding thereto the provisions set forth as sections 8 to 16, inclusive, of this act.

Sec. 8. 1. *Except as otherwise provided in section 9 of this act, as a condition to doing business in this State, each mortgage broker shall deposit with the Commissioner and keep in full force and effect a corporate surety bond payable to the State of Nevada, in the amount set forth in subsection 4, which is executed by a corporate surety satisfactory to the Commissioner and which names as principals the mortgage broker and all mortgage agents employed by or associated with the mortgage broker.*

2. At the time of filing an application for a license as a mortgage agent ~~or~~ and at the time of filing an application for the renewal of a license as a mortgage agent, the applicant shall file with the Commissioner proof that the applicant is named as a principal on the corporate surety bond deposited with the Commissioner by the mortgage broker with whom he is associated or employed.

3. The bond must be in substantially the following form:

Know All Men by These Presents, that, as principal, and, as surety, are held and firmly bound unto the State of Nevada for the use and benefit of any person who suffers damages because of a violation of any of the provisions of chapter 645B of NRS, in the sum of, lawful money of the United States, to be paid to the State of Nevada for such use and benefit, for which payment well and truly to be made, and that we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of that obligation is such that: Whereas, the principal has been issued a license as a mortgage broker or mortgage agent by the Commissioner of Mortgage Lending and is required to furnish a bond, which is conditioned as set forth in this bond:

Now, therefore, if the principal, his agents and employees, strictly, honestly and faithfully comply with the provisions of chapter 645B of NRS, and pay all damages suffered by any person because of a violation of any of the provisions of chapter 645B of NRS, or by reason of any fraud, dishonesty, misrepresentation or concealment of material facts growing out of any transaction governed by the provisions of chapter 645B of NRS, then this obligation is void; otherwise it remains in full force.

This bond becomes effective on the(day) of(month) of(year), and remains in force until the surety is released from liability by the

Commissioner of Mortgage Lending or until this bond is cancelled by the surety. The surety may cancel this bond and be relieved of further liability hereunder by giving 60 days' written notice to the principal and to the Commissioner of Mortgage Lending.

In Witness Whereof, the seal and signature of the principal hereto is affixed, and the corporate seal and the name of the surety hereto is affixed and attested by its authorized officers at, Nevada, this(day) of(month) of(year).

..... (Seal)

Principal

..... (Seal)

Surety

By.....

Attorney-in-fact

.....

Licensed resident agent

4. Each mortgage broker shall deposit a corporate surety bond that complies with the provisions of this section or a substitute form of security that complies with the provisions of section 9 of this act in the following amounts:

(a) For the principal office, ~~(\$25,000.)~~ \$50,000.

(b) For each branch office, ~~(\$10,000.)~~ \$25,000.

↪ The total amount required for the corporate surety bond may not exceed \$75,000, without regard to the number of branch offices, if any.

Sec. 9. 1. As a substitute for the surety bond required by section 8 of this act, a mortgage broker may, in accordance with the provisions of this section, deposit with any bank or trust company authorized to do business in this State, in a form approved by the Commissioner:

(a) An obligation of a bank, savings and loan association, thrift company or credit union licensed to do business in this State;

(b) Bills, bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States; or

(c) Any obligation of this State or any city, county, town, township, school district or other instrumentality of this State, or guaranteed by this State.

2. The obligations of a bank, savings and loan association, thrift company or credit union must be held to secure the same obligation as would the surety bond. With the approval of the Commissioner, the depositor may substitute other suitable obligations for those deposited which must be assigned to the State of Nevada and are negotiable only upon approval by the Commissioner.

3. Any interest or dividends earned on the deposit accrue to the account of the depositor.

4. The deposit must be in an amount at least equal to the required surety bond and must state that the amount may not be withdrawn except by direct and sole order of the Commissioner. The value of any item deposited pursuant to this section must be based upon principal amount or market value, whichever is lower.

Sec. 10. 1. The surety may cancel a bond upon giving 60 days' notice to the Commissioner by certified mail. Upon receipt by the Commissioner of such a notice, the Commissioner immediately shall notify the licensee who is the principal on the bond of the effective date of cancellation of the bond, and that his license will be revoked unless he furnishes an equivalent bond or a substitute form of security authorized by section 9 of this act before the effective date of the

1 *cancellation. The notice must be sent to the licensee by certified mail to his last*
2 *address of record filed in the office of the Division.*

3 *2. If the licensee does not comply with the requirements set out in the notice*
4 *from the Commissioner, his license must be revoked on the date the bond is*
5 *cancelled.*

6 **Sec. 11.** *1. Any person claiming against a bond may bring an action in a*
7 *court of competent jurisdiction on the bond for damages to the extent covered by*
8 *the bond. A person who brings an action on a bond shall notify the*
9 *Commissioner in writing upon filing the action. An action may not be*
10 *commenced after the expiration of 3 years following the commission of the act on*
11 *which the action is based.*

12 *2. Upon receiving a request from a person for whose benefit a bond is*
13 *required, the Commissioner shall notify the person:*

14 *(a) That a bond is in effect and of the amount of the bond; and*

15 *(b) If there is an action against the bond, the title, court and case number of*
16 *the action and the amount sought by the plaintiff.*

17 *3. If a surety wishes to make payment without awaiting action by a court,*
18 *the amount of the bond must be reduced to the extent of any payment made by the*
19 *surety in good faith under the bond. Any payment must be based on written*
20 *claims received by the surety before any action is taken by a court.*

21 *4. The surety may bring an action for interpleader against all claimants*
22 *upon the bond. If it does so, it shall publish notice of the action at least once each*
23 *week for 2 weeks in every issue of a newspaper of general circulation in the*
24 *county where the mortgage broker has its principal place of business. The surety*
25 *may deduct its costs of the action, including attorney's fees and publication, from*
26 *its liability under the bond.*

27 *5. Claims against a bond have equal priority, and if the bond is insufficient*
28 *to pay all claims in full, they must be paid on a pro rata basis. Partial payment of*
29 *claims is not full payment, and any claimant may bring an action against the*
30 *mortgage broker for the unpaid balance.*

31 **Sec. 12.** *1. In addition to any other duties set forth in this chapter, any*
32 *person licensed pursuant to this chapter has a fiduciary obligation to a client.*

33 *2. For the purposes of this section, a person's fiduciary obligation does not*
34 *impose a requirement to offer or obtain access to loan products or services for a*
35 *client other than those that are ~~available to~~ offered by the person at the time of*
36 *the transaction.*

37 *3. As used in this section, "fiduciary obligation" means a duty of good faith*
38 *and fair dealing, including, without limitation, the duty to:*

39 *(a) Act in the client's best interest;*

40 *(b) Conduct only those mortgage transactions which are suitable for the*
41 *client's needs;*

42 *(c) Disclose any financial, business, professional or personal interest the*
43 *person has in conducting a mortgage transaction for the client;*

44 *(d) Disclose any material fact that the person knows or should know may*
45 *affect the client's rights or interests or the ability to obtain the intended benefit*
46 *from the mortgage transaction;*

47 *(e) Provide an accounting to the client that lists all money and property*
48 *received from the client;*

49 *(f) Not accept or collect any fee for services rendered unless the fee was*
50 *disclosed to the client before the service is provided; and*

51 *(g) Exercise reasonable care in performing any other duty relating to a*
52 *mortgage transaction.*

1 **Sec. 13.** ~~*In a manner consistent with the provisions of chapter 622A of*~~
2 ~~*NRS, the*~~

3 *1. The holder of a license as a mortgage broker or mortgage agent may be*
4 *required by the Commissioner to pay restitution to any person who has suffered*
5 *an economic loss as a result of a violation of the provisions of this chapter or any*
6 *regulation adopted pursuant thereto.*

7 *2. Notwithstanding the provision of paragraph (m) of subsection 1 of NRS*
8 *622A.120, payment of restitution pursuant to subsection 1 shall be done in a*
9 *manner consistent with the provisions of chapter 622A of NRS.*

10 **Sec. 14.** *If a person, or any general partner, director, officer, agent or*
11 *employee of a person violates the provisions of NRS 645B.900 or 645B.910, any*
12 *contracts entered into by that person for the mortgage transaction are voidable by*
13 *the other party to the contract.*

14 **Sec. 15.** *In addition to any other remedy or penalty, if a person violates the*
15 *provisions of NRS 645B.900 or 645B.910, the client may bring a civil action*
16 *against the person for:*

17 *1. Actual and consequential damages;*

18 *2. Punitive damages, which are subject to the provisions of NRS 42.005;*

19 *3. Reasonable attorney's fees and costs; and*

20 *4. Any other legal or equitable relief that the court deems appropriate.*

21 **Sec. 16.** *1. A court of this State may exercise jurisdiction over a party to a*
22 *civil action arising under the provisions of this chapter on any basis not*
23 *inconsistent with the Constitution of the State of Nevada or the Constitution of*
24 *the United States.*

25 *2. Personal service of summons upon a party outside this State is sufficient*
26 *to confer upon a court of this State jurisdiction over the party so served if the*
27 *service is made by delivering a copy of the summons, together with a copy of the*
28 *complaint, to the party served in the manner provided by statute or rule of court*
29 *for service upon a person of like kind within this State.*

30 *3. In all cases of such service, the defendant has 40 days, exclusive of the*
31 *day of service, within which to answer or plead.*

32 *4. This section provides an additional manner of serving process and does*
33 *not invalidate any other service.*

34 **Sec. 17.** *NRS 645B.690 is hereby amended to read as follows:*

35 645B.690 *1. If a person offers or provides any of the services of a mortgage*
36 *broker or mortgage agent or otherwise engages in, carries on or holds himself out as*
37 *engaging in or carrying on the business of a mortgage broker or mortgage agent*
38 *and, at the time:*

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

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

42 *the Commissioner shall impose upon the person an administrative fine of not*
43 *more than ~~[\$10,000]~~ \$50,000 for each violation and, if the person has a license, the*
44 *Commissioner shall revoke it.*

45 *2. If a mortgage broker violates any provision of subsection 1 of NRS*
46 *645B.080 and the mortgage broker fails, without reasonable cause, to remedy the*
47 *violation within 20 business days after being ordered by the Commissioner to do so*
48 *or within such later time as prescribed by the Commissioner, or if the*
49 *Commissioner orders a mortgage broker to provide information, make a report or*
50 *permit an examination of his books or affairs pursuant to this chapter and the*
51 *mortgage broker fails, without reasonable cause, to comply with the order within 20*
52 *business days or within such later time as prescribed by the Commissioner, the*
53 *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.

Sec. 18. Chapter 645E of NRS is hereby amended by adding thereto the provisions set forth as sections 19 to 22, inclusive, of this act.

Sec. 19. ~~In a manner consistent with the provisions of chapter 622A of NRS, the~~

1. The holder of a license as a mortgage banker may be required by the Commissioner to pay restitution to any person who has suffered an economic loss as a result of a violation of the provisions of this chapter or any regulation adopted pursuant thereto.

2. Notwithstanding the provision of paragraph (m) of subsection 1 of NRS 622A.120, payment of restitution pursuant to subsection 1 shall be done in a manner consistent with the provisions of chapter 622A of NRS.

Sec. 20. If a person, or any general partner, director, officer, agent or employee of a person violates the provisions of NRS 645E.900 or 645E.910:

1. Any contracts entered into by that person for the mortgage transaction are voidable by the other party to the contract; and

2. In addition to any other remedy or penalty, the Commissioner may impose an administrative fine of not more than \$50,000.

Sec. 21. In addition to any other remedy or penalty, if a person, or any general partner, director, officer, agent or employee of a person violates the provisions of NRS 645E.900 or 645E.910, the client may bring a civil action against the person for:

1. Actual and consequential damages;

2. Punitive damages, which are subject to the provisions of NRS 42.005;

3. Reasonable attorney's fees and costs; and

4. Any other legal or equitable relief that the court deems appropriate.

Sec. 22. 1. A court of this State may exercise jurisdiction over a party to a civil action arising under the provisions of this chapter on any basis not inconsistent with the Constitution of the State of Nevada or the Constitution of the United States.

2. Personal service of summons upon a party outside this State is sufficient to confer upon a court of this State jurisdiction over the party so served if the service is made by delivering a copy of the summons, together with a copy of the complaint, to the party served in the manner provided by statute or rule of court for service upon a person of like kind within this State.

3. In all cases of such service, the defendant has 40 days, exclusive of the day of service, within which to answer or plead.

4. This section provides an additional manner of serving process and does not invalidate any other service.

Sec. 23. Chapter 645F of NRS is hereby amended by adding thereto the provisions set forth as sections 24 and 25 of this act.

Sec. 24. In addition to the other duties imposed upon him by law, the Commissioner shall adopt any regulations that are necessary to carry out the provisions of this chapter.

Sec. 25. A person or institution engaged in the business of servicing mortgage loans that intends to conduct business in this State for the purpose of servicing mortgage loans secured by a lien on real property located in this State

1 *shall register with the Commissioner on a form prescribed by the Commissioner.*
2 *The form must:*

- 3 1. *Identify the state in which the institution is domiciled;*
4 2. *Identify the principal place of business of the institution; and*
5 3. *Provide such other information as the Commissioner may require.*

6 Sec. 26. The amendatory provisions of section 3 of this act apply to
7 contracts entered into before, on or after October 1, 2009.