

Amendment No. 762

Senate Amendment to Assembly Bill No. 513 First Reprint	(BDR 54-1136)
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	☐	Lost ☐	_____	Adopted	☐
Concurred In	☐	Not ☐	_____	Concurred In	☐
Receded	☐	Not ☐	_____	Receded	☐

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: 5/16/2009

A.B. No. 513—Makes various changes to provisions governing licensing of escrow agencies and mortgage brokers, agents and bankers.
(BDR 54-1136)



ASSEMBLY BILL NO. 513—COMMITTEE ON COMMERCE AND LABOR

MARCH 23, 2009

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions governing licensing of escrow agencies and mortgage brokers, agents and bankers. (BDR 54-1136)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

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

AN ACT relating to mortgage lending; ~~requiring the licensing of a construction control as an escrow agent or agency;~~ establishing education requirements for an escrow agent or agency; revising provisions relating to the jurisdiction of the Commissioner of Mortgage Lending; revising subpoena powers of the Commissioner; revising provisions relating to holders of a beneficial interest in a loan; eliminating the exemption of consumer finance companies from provisions relating to mortgage brokers, mortgage agents and mortgage bankers; revising provisions for the issuance of a certificate of exemption to a mortgage broker, mortgage agent or mortgage banker; requiring a mortgage broker to make additional disclosures under certain circumstances; revising provisions for the revocation of the license of a mortgage broker or mortgage agent; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~Section 1 of this bill requires a construction control to be licensed as an escrow agent or agency.~~ Sections 3 and 4 of this bill establish educational prerequisites and continuing education requirements for an escrow agent or agency. Sections 5, 9 and 15 of this bill provide that the jurisdiction and authority of the Commissioner of Mortgage Lending is unaffected by the expiration or voluntary surrender of a license as an escrow agent or agency, mortgage broker, mortgage agent or mortgage banker.

Sections 6, 12 and 18 of this bill provide that the Commissioner may subpoena documents without also subpoenaing the custodian of such documents. (NRS 645A.060, 645B.070, 645E.310)

Section 8 of this bill provides that if the beneficial interest in a loan for real property belongs to more than one natural person, the holders of 51 percent or more of the outstanding principal balance may act on behalf of all the holders of the beneficial interests of record.

Sections 10 and 16 of this bill eliminate the exemption of consumer finance companies from licensing and other requirements governing mortgage brokers, mortgage agents and mortgage bankers. (NRS 645B.015, 645E.150) Sections 11 and 17 of this bill revise existing law by requiring proof of the right to transact mortgage loans, if applicable, in another

jurisdiction as a condition to obtaining an exemption to licensing and other provisions governing mortgage brokers, agents and bankers. (NRS 645B.016, 645E.160)

Existing law requires a mortgage broker to include a servicing fee in any loan for which he engages in activity as a mortgage broker. (NRS 645B.305) **Section 13** of this bill limits the requirement to only such loans in which a private investor has acquired a beneficial interest. **Section 13** also requires a mortgage broker to make additional disclosures pertaining to fees earned by the mortgage broker and any impact such fees may have on the terms of the loan.

Section 14 of this bill revises existing law to provide that the Commissioner has the discretionary authority, rather than a mandatory obligation, to revoke the license of a mortgage broker or mortgage agent under certain circumstances. (NRS 645B.690)

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

Section 1. ~~[Chapter 627 of NRS is hereby amended by adding thereto a new section to read as follows:~~

~~1. A construction control must be licensed pursuant to chapter 645A of NRS as an escrow agent or agency.~~

~~2. The Division of Mortgage Lending of the Department of Business and Industry may adopt regulations as are necessary to carry out the provisions of this section.] (Deleted by amendment.)~~

Sec. 2. Chapter 645A of NRS is hereby amended by adding thereto the provisions set forth as sections 3, 4 and 5 of this act.

Sec. 3. *1. In addition to any other requirement, an applicant for an original license as an escrow agent or agency must furnish proof satisfactory to the Commissioner of the successful completion of a course of instruction in the principles, practices, procedures, law and ethics of escrows, which course may be an extension or correspondence course offered by the Nevada System of Higher Education, by any other accredited college or university or by any other college or school approved by the Commissioner.*

2. An applicant for a license as an escrow agent or agency pursuant to NRS 645A.020 must meet the educational prerequisites required pursuant to this section not later than the date on which his application is received by the Office of the Commissioner.

3. The Commissioner shall adopt regulations setting forth standards for the educational prerequisites required pursuant to this section. The regulations must address standards for instructors, the scope and content of the instruction, required hours of instruction and such other criteria as the Commissioner considers necessary.

Sec. 4. *1. The Commissioner shall adopt regulations that prescribe standards for the continuing education of persons licensed pursuant to this chapter.*

2. The standards adopted pursuant to subsection 1 must:

(a) Permit alternative subject material appropriate for specialized areas of practice and alternative sources of programs to ensure availability throughout the State and throughout the year;

(b) Set forth procedures pursuant to which the Commissioner may qualify providers to offer courses of continuing education, including, without limitation, generally accredited educational institutions, private vocational schools, educational programs and seminars of professional societies and organizations and other organized educational programs on technical subjects;

(c) Set forth procedures pursuant to which the Commissioner may qualify those continuing education courses that he determines address the appropriate subject matter; and

(d) Set forth required hours of instruction and such other criteria as the Commissioner considers necessary.

3. Subject to the provisions of this section, the Commissioner has exclusive authority to determine which providers and courses may qualify for the purposes of continuing education under this chapter.

Sec. 5. The expiration or revocation of a license of an escrow agent or agency by operation of law or by order or decision of the Commissioner or a court of competent jurisdiction, or the voluntary surrender of a license, does not:

1. Prohibit the Commissioner from initiating or continuing an investigation of, or action or disciplinary proceeding against, the escrow agent or agency as authorized pursuant to the provisions of this chapter or the regulations adopted pursuant thereto; or

2. Prevent the imposition or collection of any fine or penalty authorized pursuant to the provisions of this chapter or the regulations adopted pursuant thereto against the escrow agent or agency.

Sec. 6. NRS 645A.060 is hereby amended to read as follows:

645A.060 1. In the conduct of any examination, investigation or hearing, the Commissioner may:

(a) Compel the attendance of any person by subpoena.

(b) Compel the production of any document by subpoena.

(c) Administer oaths.

~~*(c)*~~ *(d) Examine any person under oath concerning the business and conduct of affairs of any person subject to the provisions of this chapter, and in connection therewith require the production of any books, records or papers relevant to the inquiry.*

2. Every person subpoenaed pursuant to the provisions of this section who willfully refuses or willfully neglects to appear at the time and place named in the subpoena or to produce books, records or papers required by the Commissioner, or who refuses to be sworn or answer as a witness, is guilty of a misdemeanor.

Sec. 7. Chapter 645B of NRS is hereby amended by adding thereto the provisions set forth as sections 8 and 9 of this act.

Sec. 8. 1. Except as otherwise provided by law or by agreement between the parties and regardless of the date the interests were created, if the beneficial interest in a loan belongs to more than one natural person, the holders of 51 percent or more of the outstanding principal balance may act on behalf of all the holders of the beneficial interests of record on matters which require the action of the holders of the beneficial interests in the loan, including, without limitation:

(a) The designation of a mortgage broker or mortgage agent, servicing agent or any other person to act on behalf of all the holders of the beneficial interests of record;

(b) The foreclosure of the property for which the loan was made;

(c) The sale, encumbrance or lease of real property owned by the holders resulting from a foreclosure or the receipt of a deed in lieu of a foreclosure in full satisfaction of a loan;

(d) The release of any obligation under a loan in return for an interest in equity in the real property or, if the loan was made to a person other than a natural person, an interest in equity of that entity; and

(e) The modification or restructuring of any term of the loan, deed of trust or other document relating to the loan, including, without limitation, changes to the

1 *maturity date, interest rate and the acceptance of payment of less than the full*
2 *amount of the loan and any accrued interest in full satisfaction of the loan.*

3 2. *Any action which is taken pursuant to subsection 1 must be in writing.*

4 3. *The provisions of this section do not apply to a transaction involving two*
5 *investors with equal interests.*

6 **Sec. 9.** *The expiration or revocation of a license of a mortgage broker or*
7 *mortgage agent by operation of law or by order or decision of the Commissioner*
8 *or a court of competent jurisdiction, or the voluntary surrender of a license, does*
9 *not:*

10 1. *Prohibit the Commissioner from initiating or continuing an investigation*
11 *of, or action or disciplinary proceeding against, the mortgage broker or mortgage*
12 *agent as authorized pursuant to the provisions of this chapter or the regulations*
13 *adopted pursuant thereto; or*

14 2. *Prevent the imposition or collection of any fine or penalty authorized*
15 *pursuant to the provisions of this chapter or the regulations adopted pursuant*
16 *thereto against the mortgage broker or mortgage agent.*

17 **Sec. 10.** NRS 645B.015 is hereby amended to read as follows:

18 645B.015 Except as otherwise provided in NRS 645B.016, the provisions of
19 this chapter do not apply to:

20 1. Any person doing business under the laws of this State, any other state or
21 the United States relating to banks, savings banks, trust companies, savings and
22 loan associations, ~~consumer finance companies,~~ industrial loan companies, credit
23 unions, thrift companies or insurance companies, including, without limitation, a
24 subsidiary or a holding company of such a bank, company, association or union.

25 2. A real estate investment trust, as defined in 26 U.S.C. § 856, unless the
26 business conducted in this State is not subject to supervision by the regulatory
27 authority of the other jurisdiction, in which case licensing pursuant to this chapter is
28 required.

29 3. An employee benefit plan, as defined in 29 U.S.C. § 1002(3), if the loan is
30 made directly from money in the plan by the plan's trustee.

31 4. An attorney at law rendering services in the performance of his duties as an
32 attorney at law.

33 5. A real estate broker rendering services in the performance of his duties as a
34 real estate broker.

35 6. Any person doing any act under an order of any court.

36 7. Any one natural person, or husband and wife, who provides money for
37 investment in loans secured by a lien on real property, on his own account, unless
38 such a person makes a loan secured by a lien on real property using his own money
39 and assigns all or a part of his interest in the loan to another person, other than his
40 spouse or child, within 5 years after the date on which the loan is made or the deed
41 of trust is recorded, whichever occurs later.

42 8. Agencies of the United States and of this State and its political
43 subdivisions, including the Public Employees' Retirement System.

44 9. A seller of real property who offers credit secured by a mortgage of the
45 property sold.

46 **Sec. 11.** NRS 645B.016 is hereby amended to read as follows:

47 645B.016 Except as otherwise provided in subsection 2 and NRS 645B.690:

48 1. A person who claims an exemption from the provisions of this chapter
49 pursuant to subsection 1 of NRS 645B.015 must:

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

52 (b) Pay the fee required pursuant to NRS 645B.050;

(c) Include with the written application satisfactory proof that the person meets the requirements of subsection 1 of NRS 645B.015; and

(d) Provide evidence to the Commissioner that the person is duly licensed to conduct his business , *including, if applicable, the right to transact mortgage loans*, 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 645B.015 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 645B.050; and

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

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 645B.015.

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

(a) A license as a mortgage broker or mortgage agent, as applicable, pursuant to this chapter; or

(b) Another certificate of exemption.

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. 12. NRS 645B.070 is hereby amended to read as follows:

645B.070 1. In the conduct of any examination, periodic or special audit, investigation or hearing, the Commissioner may:

(a) Compel the attendance of any person by subpoena.

(b) *Compel the production of any document by subpoena.*

(c) Administer oaths.

~~(c)~~ (d) Examine any person under oath concerning the business and conduct of affairs of any person subject to the provisions of this chapter and in connection therewith require the production of any books, records or papers relevant to the inquiry.

2. Any person subpoenaed under the provisions of this section who willfully refuses or willfully neglects to appear at the time and place named in the subpoena or to produce books, records or papers required by the Commissioner, or who

refuses to be sworn or answer as a witness, is guilty of a misdemeanor and shall be punished as provided in NRS 645B.950.

3. In addition to the authority to recover attorney's fees and costs pursuant to any other statute, the Commissioner may assess against and collect from a person all costs, including, without limitation, reasonable attorney's fees, that are attributable to any examination, periodic or special audit, investigation or hearing that is conducted to examine or investigate the conduct, activities or business of the person pursuant to this chapter.

Sec. 13. NRS 645B.305 is hereby amended to read as follows:

645B.305 A mortgage broker shall ensure that each loan secured by a lien on real property for which he engages in activity as a mortgage broker :

1. Includes a disclosure:

(a) Describing, in a specific dollar amount, all fees earned by the mortgage broker;

(b) Explaining which party is responsible for the payment of the fees described in paragraph (a); and

(c) Explaining the probable impact the fees described in paragraph (a) may have on the terms of the loan, including, without limitation, the interest rates.

2. If a private investor has acquired a beneficial interest in the loan, 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.

Sec. 14. 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~~ *may* 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.

Sec. 15. Chapter 645E of NRS is hereby amended by adding thereto a new section to read as follows:

The expiration or revocation of a license of a mortgage banker by operation of law or by order or decision of the Commissioner or a court of competent jurisdiction, or the voluntary surrender of a license, does not:

1 ***1. Prohibit the Commissioner from initiating or continuing an investigation***
2 ***of, or action or disciplinary proceeding against, the mortgage banker as***
3 ***authorized pursuant to the provisions of this chapter or the regulations adopted***
4 ***pursuant thereto; or***

5 ***2. Prevent the imposition or collection of any fine or penalty authorized***
6 ***pursuant to the provisions of this chapter or the regulations adopted pursuant***
7 ***thereto against the mortgage banker.***

8 **Sec. 16.** NRS 645E.150 is hereby amended to read as follows:

9 645E.150 Except as otherwise provided in NRS 645E.160, the provisions of
10 this chapter do not apply to:

11 1. Any person doing business under the laws of this State, any other state or
12 the United States relating to banks, savings banks, trust companies, savings and
13 loan associations, ~~consumer finance companies,~~ industrial loan companies, credit
14 unions, thrift companies or insurance companies, including, without limitation, a
15 subsidiary or a holding company of such a bank, company, association or union.

16 2. A real estate investment trust, as defined in 26 U.S.C. § 856, unless the
17 business conducted in this State is not subject to supervision by the regulatory
18 authority of the other jurisdiction, in which case licensing pursuant to this chapter is
19 required.

20 3. An employee benefit plan, as defined in 29 U.S.C. § 1002(3), if the loan is
21 made directly from money in the plan by the plan's trustee.

22 4. An attorney at law rendering services in the performance of his duties as an
23 attorney at law.

24 5. A real estate broker rendering services in the performance of his duties as a
25 real estate broker.

26 6. Any person doing any act under an order of any court.

27 7. Any one natural person, or husband and wife, who provides money for
28 investment in loans secured by a lien on real property, on his own account, unless
29 such a person makes a loan secured by a lien on real property using his own money
30 and assigns all or a part of his interest in the loan to another person, other than his
31 spouse or child, within 5 years after the date on which the loan is made or the deed
32 of trust is recorded, whichever occurs later.

33 8. Agencies of the United States and of this State and its political
34 subdivisions, including the Public Employees' Retirement System.

35 9. A seller of real property who offers credit secured by a mortgage of the
36 property sold.

37 **Sec. 17.** NRS 645E.160 is hereby amended to read as follows:

38 645E.160 1. Except as otherwise provided in subsection 2, a person who
39 claims an exemption from the provisions of this chapter pursuant to subsection 1 of
40 NRS 645E.150 must:

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

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

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

46 (d) Provide evidence to the Commissioner that the person is duly licensed to
47 conduct his business , ***including, if applicable, the right to transact mortgage***
48 ***loans,*** and such license is in good standing pursuant to the laws of this State, any
49 other state or the United States.

50 2. The provisions of subsection 1 do not apply to the extent preempted by
51 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. 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. 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. 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. 18. NRS 645E.310 is hereby amended to read as follows:

645E.310 1. In the conduct of any examination, periodic or special audit, investigation or hearing, the Commissioner may:

(a) Compel the attendance of any person by subpoena.

(b) *Compel the production of any document by subpoena.*

(c) Administer oaths.

~~(c)~~ (d) Examine any person under oath concerning the business and conduct of affairs of any person subject to the provisions of this chapter and, in connection therewith, require the production of any books, records or papers relevant to the inquiry.

2. Any person subpoenaed under the provisions of this section who willfully refuses or willfully neglects to appear at the time and place named in the subpoena or to produce books, records or papers required by the Commissioner, or who refuses to be sworn or answer as a witness, is guilty of a misdemeanor.

3. In addition to the authority to recover attorney's fees and costs pursuant to any other statute, the Commissioner may assess against and collect from a person all costs, including, without limitation, reasonable attorney's fees, that are attributable to any examination, periodic or special audit, investigation or hearing that is conducted to examine or investigate the conduct, activities or business of the person pursuant to this chapter.

Sec. 19. (Deleted by amendment.)

1 **Sec. 20.** Chapter 645F of NRS is hereby amended by adding thereto a new
2 section to read as follows:

3 *The Commissioner shall adopt regulations establishing guidelines and*
4 *limitations for the servicing or arranging of loans of which an investor has*
5 *ownership or in which an investor has a beneficial interest.*

6 **Sec. 21.** 1. This section and sections 1, 2 and 4 to 20, inclusive, of this act
7 become effective upon passage and approval.

8 2. Section 3 of this act becomes effective:

9 (a) On January 1, 2011, for the purposes of educational qualifications of
10 escrow agents or agencies; and

11 (b) Upon passage and approval for all other purposes.