

ASSEMBLY BILL NO. 398—ASSEMBLYWOMAN JAUREGUI

MARCH 21, 2019

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to commercial mortgage lending. (BDR 54-1068)

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 commercial mortgage lending; exempting commercial mortgage brokers from the requirement to obtain a certain type of license; requiring a commercial mortgage broker to obtain a certificate of exemption from the Commissioner of Mortgage Lending under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law requires persons and entities engaged in mortgage lending to be
2 licensed by the Commissioner of Mortgage Lending. (Chapter 645B of NRS)
3 Existing law provides exemptions from licensing for certain persons and entities.
4 (645B.015) **Section 1** of this bill defines a person who only brokers commercial
5 mortgage loans as a "commercial mortgage broker." **Section 3** of this bill exempts
6 a commercial mortgage broker from the provisions of chapter 645B of NRS.
7 **Section 4** of this bill requires a person who claims an exemption as a commercial
8 mortgage broker to obtain a certificate of exemption from the Commissioner.

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

1 **Section 1.** Chapter 645B of NRS is hereby amended by adding
2 thereto a new section to read as follows:
3 *1. "Commercial mortgage broker" means a person who,*
4 *directly or indirectly:*



(a) Holds himself or herself out for hire to serve as an agent for any person in an attempt to obtain a commercial mortgage loan which will be secured by a lien on commercial property;

(b) Holds himself or herself out for hire to serve as an agent for any person who has money to lend, if the loan is or will be secured by a lien on commercial property;

(c) Holds himself or herself out as being able to make commercial mortgage loans secured by liens on commercial property;

(d) Holds himself or herself out as being able to buy or sell notes secured by liens on commercial property; or

(e) 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 commercial property.

2. The term does not include a wholesale lender, as defined in NRS 645B.01356, or a person who is licensed as a mortgage company, as defined in NRS 645B.0127.

Sec. 2. NRS 645B.010 is hereby amended to read as follows:

645B.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 645B.0102 to 645B.01356, inclusive, *and section 1 of this act* have the meanings ascribed to them in those sections.

Sec. 3. NRS 645B.015 is hereby amended to read as follows:

645B.015 Except as otherwise provided in NRS 645B.016, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 U.S.C. §§ 5101 et seq., and any regulations adopted pursuant thereto and other applicable law, 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, industrial loan companies, credit unions, thrift companies or insurance companies, including, without limitation, 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 or her duties as an attorney at law.



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

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

7. Any one natural person, or married couple, who provides money for investment in commercial loans secured by a lien on real property, on his or her own account, unless such a person makes a loan secured by a lien on real property using his or her own money and assigns all or a part of his or her interest in the loan to another person, other than his or her spouse or child, within 3 years after the date on which the loan is made or the deed of trust is recorded, whichever occurs later.

8. A natural person who only offers or negotiates terms of a residential mortgage loan:

(a) With or on behalf of an immediate family member of the person;

(b) Secured by a dwelling that served as the person's residence; or

(c) If:

(1) The residential mortgage loan is for a manufactured home, as defined in NRS 118B.015;

(2) The residential mortgage loan is financed by the seller; and

(3) The seller has not engaged in more than five such loans in this State during the immediately preceding 12 consecutive months.

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

10. A seller of real property who offers credit secured by a mortgage of the property sold.

11. A nonprofit agency or organization:

(a) Which provides self-help housing for a borrower who has provided part of the labor to construct the dwelling securing the borrower's loan;

(b) Which does not charge or collect origination fees in connection with the origination of residential mortgage loans;

(c) Which only makes residential mortgage loans at an interest rate of 0 percent per annum;

(d) Whose volunteers, if any, do not receive compensation for their services in the construction of a dwelling;

(e) Which does not profit from the sale of a dwelling to a borrower; and

(f) Which maintains tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3).



12. A housing counseling agency approved by the United States Department of Housing and Urban Development.

13. A person doing business as a commercial mortgage broker who only offers or negotiates terms of commercial mortgage loans and does not offer or negotiate terms of residential mortgage loans.

Sec. 4. NRS 645B.016 is hereby amended to read as follows:
645B.016 Except as otherwise provided in subsection 2 and NRS 645B.690:

1. A person who claims an exemption from the provisions of this chapter pursuant to subsection 1 of NRS 645B.015 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 645B.017;

(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 or her 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 ~~12~~ **13**, 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.017; 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 *commercial mortgage broker*, mortgage company or mortgage loan originator or otherwise engage in, carry on or hold himself or herself out as engaging in or carrying on the business of a *commercial mortgage broker*, mortgage company or mortgage loan originator unless the person applies for and is issued:



1 (a) A license as a mortgage company or mortgage loan
2 originator, as applicable, pursuant to this chapter; or

3 (b) Another certificate of exemption.

4 6. The Commissioner may impose upon a person who is
5 required to apply for a certificate of exemption or who holds a
6 certificate of exemption an administrative fine of not more than
7 \$10,000 for each violation that the person commits, if the person:

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

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

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

18 7. A person who is exempt from the requirements of this
19 chapter may file a written application for a certificate of exemption
20 with the Office of the Commissioner for the purposes of complying
21 with the requirements of the Registry or enabling a mortgage loan
22 originator to comply with the requirements of the Registry.

23 8. The Commissioner may require an applicant or person
24 described in subsection 7 to submit the information or pay the fee
25 directly to the Division or, if the applicant or person is required to
26 register or voluntarily registers with the Registry, to the Division
27 through the Registry.

28 9. An application filed pursuant to subsection 7 does not affect
29 the applicability of this chapter to such an applicant or person.

30 **Sec. 5.** This act becomes effective upon passage and approval
31 for the purposes of adopting regulations and performing any other
32 preparatory administrative tasks that are necessary to carry out the
33 provisions of this act, and on January 1, 2020, for all other purposes.

