

**SECOND REVISED PROPOSED REGULATION OF THE
COMMISSIONER OF MORTGAGE LENDING**

LCB File No. R052-09

August 17, 2009

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

AUTHORITY: §§1-84, 86-92 and 99-130, section 3 of Assembly Bill No. 152 of the 75th Session of the Nevada Legislature and section 24 of Assembly Bill No. 486 of the 75th Session of the Nevada Legislature; §85, sections 3 and 3.1 of Assembly Bill No. 152 of the 75th Session of the Nevada Legislature and section 24 of Assembly Bill No. 486 of the 75th Session of the Nevada Legislature; §§93-98, section 24 of Assembly Bill No. 486 of the 75th Session of the Nevada Legislature.

A REGULATION relating to housing; providing for the licensure and regulation of covered service providers, foreclosure consultants and loan modification consultants; requiring certain information to be contained in a written contract for certain services provided by a covered service provider, foreclosure consultant or loan modification consultant; providing for the regulation of contracts entered into by foreclosure purchasers under certain circumstances; and providing other matters properly relating thereto.

Section 1. Chapter 645F of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 125, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in chapter 645F of NRS and sections 3 to 13, inclusive, of this regulation have the meanings ascribed to them in that chapter and those sections.*

Sec. 3. *“Approved course” means a course of education that has been certified by an organization set forth in NAC 645B.360 and approved by the Commissioner as a course for initial licensure or continuing education.*

Sec. 4. 1. *“Associated licensee” means a licensee who:*

(a) Is an employee of or independent contractor for an independent licensee; and

(b) Is authorized by the independent licensee to engage in, on behalf of the independent licensee, any activity that would require a person to be licensed pursuant to this chapter and chapter 645F of NRS.

2. The term does not include a person who performs only clerical or ministerial tasks for an independent licensee.

Sec. 5. *“Change of control” means:*

1. A transfer of voting stock which results in giving a person, directly or indirectly, the power to direct the management and policy of a licensee who is not a natural person; or

2. A transfer of at least 25 percent of the outstanding voting stock of a licensee who is not a natural person.

Sec. 6. *“Covered service provider” means a person who performs any covered service for compensation, as that phrase is used in paragraph (a) of subsection 1 of section 3 of Assembly Bill No. 152 of the 75th Session of the Nevada Legislature.*

Sec. 7. *“Hour of instruction” means 50 minutes of instruction or more.*

Sec. 8. *“Independent licensee” means a licensee who is not an employee of or independent contractor for another licensee.*

Sec. 9. *“Licensee” means a person licensed under this chapter and chapter 645F of NRS.*

Sec. 10. *“Loan modification” means the adjustment of the terms of a mortgage loan in a manner that is not provided for in the original or previously modified mortgage loan. Such an adjustment includes, but is not limited to:*

- 1. A change in the payment amount;*
- 2. A change in the loan amount;*
- 3. A loan forbearance;*
- 4. A change in the loan maturity; and*
- 5. A change in the interest rate.*

Sec. 11. *“Provider” means any person or entity approved by the Commissioner pursuant to section 45 of this regulation.*

Sec. 12. *“Relative” means a spouse or any other person who is related within the second degree by blood or marriage.*

Sec. 13. *“Residence” means residential real property located in this State and consisting of not more than four family dwelling units.*

Sec. 14. *As used in subsection 3 of NRS 645F.310, the phrase “contacting a creditor on behalf of a homeowner” includes, without limitation, all activity in which a loan modification consultant may engage, as described in section 2 of Assembly Bill No. 152 of the 75th Session of the Nevada Legislature.*

Sec. 15. *For the purposes of subsection 1 of NRS 645F.380, a person who:*

- 1. Is not an attorney at law; and*
- 2. Engages in any activity for which a license under this chapter and chapter 645F of NRS is required,*

↳ must be appropriately licensed under this chapter and chapter 645F of NRS without regard to whether the person is employed by or otherwise associated with an attorney at law.

Sec. 16. The Commissioner may designate the Division, an appropriate employee of the Division or another appropriate person to perform any function or duty assigned to the Commissioner by a provision of this chapter.

Sec. 17. A person shall not advertise services as, provide any of the services of, act as or conduct business as a covered service provider, foreclosure consultant or loan modification consultant or otherwise engage in, carry on or hold himself out as engaging in or carrying on the activities of a covered service provider, foreclosure consultant or loan modification consultant unless the person has a license as a covered service provider, foreclosure consultant or loan modification consultant, as applicable, issued pursuant to this chapter and chapter 645F of NRS.

Sec. 18. An applicant for a license as a covered service provider, foreclosure consultant or loan modification consultant is not licensed as a covered service provider, foreclosure consultant or loan modification consultant, respectively, and may not engage in any activity requiring such a license until the Commissioner has issued the license to the applicant pursuant to this chapter and chapter 645F of NRS and has given written notice of such issuance to the applicant.

Sec. 19. 1. A person who desires to be licensed as a covered service provider, foreclosure consultant or loan modification consultant must file a written application for a license with the Commissioner and pay a nonrefundable application fee as set forth in section

27 of this regulation. An application for a license as a covered service provider, foreclosure consultant or loan modification consultant must:

(a) State the name and business address of the applicant and the location of the principal office and each branch office, if any, at which the applicant will conduct business, including, without limitation, any office or other place of business located outside this State from which the applicant will conduct business in this State.

(b) If the applicant is a natural person, state the residence address of the applicant.

(c) If the applicant will be conducting business using a fictitious name, state the fictitious name under which the applicant will conduct business.

(d) If the applicant is not a natural person, list the name, residence address and business address of:

(1) Each person who will have an interest in the applicant as an owner, principal, partner, officer, director or trustee, specifying the capacity and title of each such person; and

(2) Each person whom the applicant proposes to be a qualified employee for the applicant.

(e) If the applicant will be an independent licensee, list the name, residence address and business address of each associated licensee, if any, who will be employed by or otherwise associated with the applicant.

(f) If the applicant will be an associated licensee, include a verified statement from the independent licensee with whom the applicant will be associated that expresses the intent of the independent licensee to associate the applicant with the independent licensee and to be

responsible for the activities of the applicant as a covered service provider, foreclosure consultant or loan modification consultant.

(g) Include a signed and notarized personal history form, provided by the Commissioner, from the applicant or, if the applicant is not a natural person, each natural person holding an ownership interest of 25 percent or more in the applicant and each natural person who has the power to direct the management of the applicant.

(h) Include a written consent giving the Commissioner authority to conduct an investigation of the credit history, criminal history and background of:

(1) If the applicant is a natural person, the applicant. The written consent must be signed by the applicant.

(2) If the applicant is not a natural person, any natural person holding an ownership interest of 25 percent or more in the applicant or who has the power to direct the management of the applicant. The written consent must be signed by each such person.

(i) Include a complete set of fingerprints of the applicant or, if the applicant is not a natural person, any natural person holding an ownership interest in the applicant. The Commissioner may forward these fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.

(j) If the applicant will be an independent licensee, indicate the general plan and character of the applicant's business and describe the policies and procedures that the applicant and any associated licensees who will be employed by or otherwise associated with the applicant will follow in providing services and conducting activities pursuant to this chapter and chapter 645F of NRS.

(k) State the length of time the applicant has been engaged in the business of a covered service provider, foreclosure consultant or loan modification consultant.

(l) If the applicant will be an independent licensee, include a financial statement of the applicant.

(m) Include any other information required by the Commissioner, including, but not limited to, information concerning the education, training and experience of any applicable person.

(n) Include the applicable fee set forth in section 27 of this regulation.

2. If the applicant is a natural person who will be an associated licensee, the Commissioner may waive the requirement of an investigation of the credit history, criminal history and background of the applicant if such an investigation has been conducted within 6 months immediately preceding the date on which the application is submitted.

3. If an applicant will conduct business at one or more branch offices, the applicant must apply for a license for each such branch office on forms prescribed by the Commissioner and pay the applicable fee set forth in section 27 of this regulation. An application for a branch license shall be deemed abandoned if the applicant fails to respond to any written request by the Commissioner for information concerning the application within 30 days after the date of the request.

4. An applicant for a license may apply for a license for an office or other place of business located outside this State from which the applicant will conduct business in this State if the applicant agrees to:

(a) Make available at a location within this State the books, accounts, papers, records and files of the office or place of business located outside this State to the Commissioner or a representative of the Commissioner; or

(b) Pay the reasonable expenses for travel, meals and lodging of the Commissioner or a representative of the Commissioner incurred during any investigation or examination made at the office or place of business located outside this State.

↪ The applicant must be allowed to choose between paragraph (a) or (b) in complying with the provisions of this subsection.

5. Except as otherwise provided in this chapter or chapter 645F of NRS, the Commissioner will issue a license to an applicant if:

(a) The application and information submitted by the applicant in support of the application is verified by the Commissioner;

(b) The application and information submitted by the applicant in support of the application complies with the requirements of this chapter and chapter 645F of NRS; and

(c) Each person identified in paragraph (h) of subsection 1 and, if the applicant is a partnership, corporation or unincorporated association, each general partner, officer or director of the applicant:

(1) Has a good reputation for honesty, trustworthiness and integrity and displays competence to transact the business of a covered service provider, foreclosure consultant or loan modification consultant in a manner which safeguards the interests of the general public. The applicant must submit satisfactory proof of these qualifications to the Commissioner.

(2) Has not been convicted of, or entered a plea of guilty or nolo contendere to, a felony related to the practice of a covered service provider, foreclosure consultant or loan modification consultant or any crime involving fraud, misrepresentation or moral turpitude.

(3) Has not made a false statement of material fact on the application.

(4) Has not had a professional license or a financial services license or registration that was issued in this State or any other state, the United States, any district or territory of the United States or any foreign country suspended or revoked within the 10 years immediately preceding the date of the application.

(5) Has not violated any provision of this chapter or chapter 645F of NRS or any order of the Commissioner.

Sec. 20. 1. *If applicable, an applicant must submit with the application for a license as a covered service provider, foreclosure consultant or loan modification consultant:*

(a) If the applicant is a corporation, a copy of:

(1) Its articles of incorporation and its bylaws; and

(2) If applicable, its balance sheet and a statement of the profit and loss of the corporation for the 2 years immediately preceding the year of the application.

(b) If the applicant is a partnership or joint venture, a copy of the agreement of partnership or joint venture and the financial statements of the general partners for the 2 years immediately preceding the year of the application.

(c) If the applicant is a corporation being organized, a copy of its proposed articles of incorporation and its bylaws.

(d) If the applicant is a limited-liability company, a copy of:

- (1) Its articles of organization and operating agreement; and*
 - (2) If applicable, a statement of the profit and loss of the limited-liability company for the 2 years immediately preceding the year of the application.*
- 2. Before the issuance of a license, an applicant must submit:*
- (a) If applicable, a copy of the certificate filed by the covered service provider, foreclosure consultant or loan modification consultant pursuant to chapter 602 of NRS indicating the fictitious name of the covered service provider, foreclosure consultant or loan modification consultant;*
 - (b) If applicable, supporting documentation that the applicant is in good standing with the Secretary of State, and the most recent list of its officers, members or managers, and registered agents that is filed with the Secretary of State;*
 - (c) A copy of a lease or other document which indicates the address of the place of business and telephone number of the applicant;*
 - (d) If applicable, a copy of the applicant's business license or, if the applicant has not yet obtained a business license, the applicant's application for such a license;*
 - (e) If applicable, a copy of the applicant's state business license or, if the applicant has not yet obtained a state business license, the applicant's application for such a license;*
 - (f) If applicable, a bond or other substitute security required by section 80 or 81 of this regulation;*
 - (g) If the applicant is a natural person, documentation, acceptable to the Commissioner, that the applicant has completed the educational requirements for initial licensure required by section 43 of this regulation;*

(h) If the applicant is not a natural person, documentation, acceptable to the Commissioner, that all applicable persons have completed the educational requirements for initial licensure required by section 43 of this regulation;

(i) If the applicant is a natural person and will be an independent licensee, documentation, acceptable to the Commissioner, that the applicant has at least 2 years of verifiable experience working in the real estate, mortgage, foreclosure or loan modification industries or applicable financial or legal fields;

(j) If the applicant is not a natural person and will be an independent licensee, documentation, acceptable to the Commissioner, that each proposed qualified employee for the applicant has at least 2 years of verifiable experience working in the real estate, mortgage, foreclosure or loan modification industries or applicable financial or legal fields; and

(k) Any other information deemed necessary by the Commissioner to complete the application.

3. If an applicant has received a letter from the Commissioner which imposes additional requirements that the applicant must satisfy to obtain a license as a covered service provider, foreclosure consultant or loan modification consultant, the applicant must comply with those requirements within 30 days after the date on which the letter was issued by the Commissioner or such other time as provided in the letter. If the applicant does not satisfy all additional requirements set forth in the letter within the period prescribed in this subsection, the application will be deemed to have been abandoned and the applicant must reapply to obtain a license. The Commissioner may, for good cause, extend the 30-day or other period prescribed in this subsection.

4. If an applicant does not maintain an office in this State, or if its corporate office is located outside of this State, the applicant must sign an authorization and agreement that any actions brought by the Commissioner related to this chapter or chapter 645F of NRS will be brought in the applicable court of the State of Nevada.

Sec. 21. 1. *In addition to any other requirements set forth in this chapter and chapter 645F of NRS:*

(a) A natural person who applies for the issuance of a license as a covered service provider, foreclosure consultant or loan modification consultant must include his social security number in the application submitted to the Commissioner.

(b) A natural person who applies for the issuance or renewal of a license as a covered service provider, foreclosure consultant or loan modification consultant must submit to the Commissioner the statement prescribed by the Division of Welfare and Supportive Services of the Department of Health and Human Services pursuant to NRS 425.520. The statement must be completed and signed by the applicant.

2. The Commissioner will include the statement required by subsection 1 in:

(a) The application or any other forms that must be submitted for the issuance or renewal of the license; or

(b) A separate form prescribed by the Commissioner.

3. A license as a covered service provider, foreclosure consultant or loan modification consultant may not be issued or renewed by the Commissioner if the applicant is a natural person who:

(a) Fails to submit the statement required by subsection 1; or

(b) Indicates on the statement submitted pursuant to subsection 1 that the applicant is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

4. If an applicant indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the Commissioner will advise the applicant to contact the district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.

5. If the Commissioner receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional, occupational and recreational licenses, certificates and permits issued to a person who is the holder of a license as a covered service provider, foreclosure consultant or loan modification consultant, the Commissioner will deem the license issued to that person to be suspended at the end of the 30th day after the date on which the court order was issued unless the Commissioner receives a letter issued to the holder of the license by the district attorney or other public agency pursuant to NRS 425.550 stating that the holder of the license has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

6. The Commissioner will reinstate a license as a covered service provider, foreclosure consultant or loan modification consultant that has been suspended by a district court pursuant to NRS 425.540 if the Commissioner receives a letter issued by the district attorney

or other public agency pursuant to NRS 425.550 to the person whose license was suspended stating that the person whose license was suspended has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

Sec. 22. An independent licensee who is a natural person must be licensed and conduct business using a fictitious name.

Sec. 23. 1. A licensee may conduct business using a new fictitious name only if the licensee:

(a) Obtains a certified copy, issued by the appropriate county clerk, of the certificate filed by the licensee pursuant to chapter 602 of NRS indicating the new fictitious name;

(b) Files with the Commissioner, not later than 10 calendar days after obtaining the certified copy pursuant to paragraph (a):

(1) The certified copy obtained pursuant to paragraph (a); and

(2) The current license of the licensee; and

(c) Receives from the Commissioner an amended license indicating the new fictitious name.

2. A licensee may conduct business using more than one fictitious name only if the licensee obtains a separate license issued pursuant to this chapter and chapter 645F of NRS for each fictitious name under which the licensee intends to do business. A licensee who conducts business in this State using more than one fictitious name is responsible for the conduct of each person employed by or otherwise associated with the licensee regardless of the license or name under which the conduct takes place.

Sec. 24. 1. *The Commissioner will not issue a license with a fictitious name that is the same as or confusingly similar to a name on a license previously issued by the Commissioner.*

2. A licensee shall not conduct business using a name other than the name approved by the Commissioner and indicated on the license issued by the Commissioner to the licensee.

Sec. 25. 1. *A license issued pursuant to this chapter and chapter 645F of NRS expires each year on July 1, unless it is renewed. The licensee may not renew the license until all fees, assessments and fines owed to the Commissioner are paid. To renew a license, the licensee must submit to the Commissioner on or before May 31 of each year:*

(a) An application for renewal that includes all information required by the Commissioner to determine that the licensee complies with the requirements of this chapter and chapter 645F of NRS;

(b) If the licensee is a natural person, satisfactory proof that the licensee has attended at least the number of hours of approved courses of continuing education required by section 44 of this regulation in subject areas relevant to this chapter and chapter 645F of NRS, as determined by the Commissioner, during the 12 months immediately preceding the date on which the license expires; and

(c) The fee required to renew the license as set forth in section 27 of this regulation.

2. If the licensee fails to submit any item required by subsection 1 to the Commissioner on or before May 31 of any year, the license is cancelled as of July 1 of that year. The Commissioner may reinstate a cancelled license within 6 months after its cancellation if the licensee submits to the Commissioner:

(a) An application for renewal that complies with the requirements of this chapter and chapter 645F of NRS;

(b) The fee required to renew the license as set forth in section 27 of this regulation; and

(c) The fee required to reinstate the license as set forth in section 27 of this regulation.

Sec. 26. 1. *Any licensee who is a natural person and who is called into the military service of the United States will be, upon request, relieved from compliance with the provisions of this chapter and chapter 645F of NRS and placed on inactive status for the period of such military service and for a period of 6 months after discharge therefrom.*

2. At any time within 6 months after termination of such service, if the licensee complies with the provisions of subsection 1, the licensee may be reinstated without having to meet any qualification or requirement other than the payment of the reinstatement fee as set forth in section 27 of this regulation, as applicable, and the licensee is not required to make payment of the renewal fee for the current year.

3. Any licensee seeking to qualify for reinstatement, as provided in subsections 1 and 2, must present a certified copy of his honorable discharge or certificate of satisfactory service to the Commissioner.

Sec. 27. 1. *The Commissioner will charge and collect the following nonrefundable fees from an independent licensee or from an applicant for a license who will be an independent licensee:*

(a) To file an original application for a license, \$750 for the principal office and \$100 for each branch office, and such additional expenses incurred in the process of investigation as the Commissioner deems necessary.

(b) To be issued a license, \$500 for the principal office and \$150 for each branch office.

(c) To renew a license, \$500 for the principal office and \$100 for each branch office.

(d) To reinstate a cancelled license, \$100.

2. The Commissioner will charge and collect the following nonrefundable fees from an associated licensee or from an applicant for a license who will be an associated licensee:

(a) To file an original application for a license and, if approved, issued a license, \$185.

(b) To renew a license, \$170.

(c) To reinstate a cancelled license, \$75.

3. To change the independent licensee with whom an associated licensee is employed or otherwise associated, the associated licensee must pay to the Commissioner a nonrefundable fee of \$25. Such a change includes, without limitation, an associated licensee reactivating his license with an independent licensee with whom the associated licensee was previously employed or otherwise associated.

4. To be issued a duplicate copy of a license, the licensee must make a satisfactory showing of its loss and pay to the Commissioner a nonrefundable fee of \$25.

5. To file an application for a change of control, the applicant must pay to the Commissioner a nonrefundable fee of \$250.

6. Except as otherwise provided in this chapter or chapter 645F of NRS, all fees received must be deposited in the Fund for Mortgage Lending created by NRS 645F.270.

Sec. 28. *The Commissioner may refuse to issue a license to an applicant if the Commissioner has reasonable cause to believe that the applicant or, if the applicant is not a natural person, any general partner, officer or director of the applicant has employed or*

otherwise associated with, or proposes to employ or otherwise associate with, a person authorized to conduct activity on behalf of the applicant at a time when the applicant or the general partner, officer or director knew or, in light of all the surrounding facts and circumstances, reasonably should have known that the person:

1. Had been convicted of, or entered a plea of guilty or nolo contendere to a felony relating to the practice of a covered service provider, foreclosure consultant or loan modification consultant, or any crime involving fraud, misrepresentation or moral turpitude; or

2. Had a professional license or a financial services license or registration that was issued in this State or any other state, the United States, any district or territory of the United States or any foreign country suspended or revoked within the immediately preceding 10 years.

Sec. 29. *1. If an applicant is not a natural person, the Commissioner may refuse to issue a license to the applicant if the Commissioner has reasonable cause to believe that any person who will have an interest in the applicant as an owner, principal, partner, officer, director or trustee:*

(a) Is ineligible to be licensed as a covered service provider, foreclosure consultant or loan modification consultant or has committed any act or omission that would be cause for refusing to issue a license to that person as a covered service provider, foreclosure consultant or loan modification consultant; or

(b) Is or would be subject to control by a relative who is ineligible to be licensed as a covered service provider, foreclosure consultant or loan modification consultant or has

committed any act or omission that would be cause for refusing to issue a license to that relative as a covered service provider, foreclosure consultant or loan modification consultant.

2. If an applicant is a natural person, the Commissioner may refuse to issue a license to the applicant if the Commissioner has reasonable cause to believe that the applicant is or would be subject to control by a relative who is ineligible to be licensed as a covered service provider, foreclosure consultant or loan modification consultant or has committed any act or omission that would be cause for refusing to issue a license to that relative as a covered service provider, foreclosure consultant or loan modification consultant.

Sec. 30. *The provisions of this chapter do not limit the authority of the Commissioner to refuse to issue a license to an applicant for any other lawful reason or pursuant to any other provision of law.*

Sec. 31. *A licensee:*

1. Shall post each license, including, but not limited to, those of any associated licensees, in a conspicuous place in the office to which the license pertains.

2. Shall conduct business only under the name for which the licensee is licensed.

3. Shall ensure that each contract for covered services to which the licensee is a party prominently discloses the license number of the licensee.

4. Shall not transfer or assign a license to another person, unless the Commissioner gives his written approval.

Sec. 32. *A license as a covered service provider, foreclosure consultant or loan modification consultant entitles the licensee to engage only in the activities authorized by this*

chapter and chapter 645F of NRS for a covered service provider, foreclosure consultant or loan modification consultant, as applicable.

Sec. 33. *A licensee is not prohibited from conducting any other business in the same office or place of business if each business has a designated space within the office and each business is separately identifiable by a prominent sign or other method of identification within the office and has a method to secure private and confidential information from the other business.*

Sec. 34. *A person who holds a license as a covered service provider, foreclosure consultant or loan modification consultant is not precluded from also holding other licenses which may be issued pursuant to chapter 645, 645B, 645E or 645F of NRS.*

Sec. 35. 1. *If a licensee is not a natural person, the licensee must designate a natural person as a qualified employee to act on behalf of the licensee.*

2. *The Commissioner may approve the qualified employee designated pursuant to subsection 1 if the qualified employee is a natural person who:*

(a) Is licensed in good standing pursuant to this chapter and chapter 645F of NRS;

(b) Is designated by the licensee to act on behalf of the licensee and to supervise the conduct of the business of the licensee and any associated licensee employed by or otherwise associated with the licensee;

(c) Will be present at the licensed office location for which that person is the qualified employee for the majority of the time that the office is open to the public;

(d) Has at least 2 years of verifiable experience working in the real estate, mortgage, foreclosure or loan modification industries or applicable financial or legal fields; and

(e) Meets the requirements of subsection 3.

3. If the licensee which is not a natural person is licensed as:

(a) A covered service provider, the qualified employee designated pursuant to subsection 1 must be licensed as a covered service provider.

(b) A foreclosure consultant, the qualified employee designated pursuant to subsection 1 must be licensed as a covered service provider or a foreclosure consultant.

(c) A loan modification consultant, the qualified employee designated pursuant to subsection 1 must be licensed as a covered service provider, foreclosure consultant or loan modification consultant.

4. If the qualified employee designated pursuant to subsection 1 is not approved by the Commissioner pursuant to subsection 2 or ceases to be a qualified employee, the licensee shall designate another qualified employee pursuant to subsection 1 not later than:

(a) Thirty calendar days after the date that:

(1) The Commissioner notifies the licensee that the initial qualified employee designated pursuant to subsection 1 is not approved; or

(2) The qualified employee ceases to be a qualified employee; or

(b) A date after the date described in paragraph (a), if agreed to by the Commissioner.

Sec. 36. *An independent licensee which is not a natural person:*

1. If the independent licensee is a loan modification consultant, shall not employ or otherwise associate with an associated licensee who is licensed as a covered service provider or a foreclosure consultant.

2. If the independent licensee is a foreclosure consultant, shall not employ or otherwise associate with an associated licensee who is licensed as a covered service provider.

Sec. 37. *An independent licensee who is a natural person:*

1. Must have at least 2 years of verifiable experience working in the real estate, mortgage, foreclosure or loan modification industries or applicable financial or legal fields.

2. If the independent licensee is a loan modification consultant, shall not employ or otherwise associate with an associated licensee who is licensed as a covered service provider or a foreclosure consultant.

3. If the independent licensee is a foreclosure consultant, shall not employ or otherwise associate with an associated licensee who is licensed as a covered service provider.

Sec. 38. *1. An independent licensee shall not:*

(a) Employ or otherwise associate with a person as a covered service provider, foreclosure consultant or loan modification consultant if that other person is not licensed with the Commissioner pursuant to this chapter and chapter 645F of NRS; or

(b) Authorize a person to be employed by or otherwise associated with the independent licensee as a covered service provider, foreclosure consultant or loan modification consultant if that other person is not licensed with the Commissioner pursuant to this chapter and chapter 645F of NRS.

2. An associated licensee shall not:

(a) Employ another licensee;

(b) Have another licensee as an independent contractor for the associated licensee;

(c) Be an employee of or an independent contractor for another associated licensee; or

(d) Be an employee of or an independent contractor for more than one independent licensee at the same time.

3. An associated licensee may be employed by or otherwise associated with an independent licensee at only one licensed office location of the independent licensee.

Sec. 39. 1. *An independent licensee shall exercise reasonable and adequate supervision over the activities of the associated licensees, if any, who are employed by or otherwise associated with the independent licensee, including, without limitation, by establishing a system to review, oversee and inspect the activities of the associated licensees.*

2. In determining whether an independent licensee has maintained reasonable and adequate supervision of an associated licensee, the Commissioner will consider whether:

(a) The independent licensee has made a reasonable effort to investigate the background and experience of a prospective associated licensee and hire only such associated licensees whose background and experience indicate that they are trustworthy and competent to conduct the business of a covered service provider, foreclosure consultant or loan modification consultant, as applicable;

(b) The independent licensee has adopted and followed policies and procedures, written or oral, relating to the supervision and training of associated licensees;

(c) The associated licensee has followed the policies and procedures of the independent licensee, written or oral, governing the activities of the associated licensee;

(d) The independent licensee has established and followed a system of review for compliance with the written or oral policies and procedures established by the independent licensee;

(e) The policies and procedures of the independent licensee require regular review of the work of the associated licensee, including, without limitation, communications between the associated licensee and other parties to a transaction;

(f) The independent licensee reviewed the work of the associated licensee in the case under examination by the Commissioner;

(g) The policies and procedures of the independent licensee include, without limitation, training in the requirements of this chapter and chapter 645F of NRS;

(h) The independent licensee makes copies of this chapter and chapter 645F of NRS available to the associated licensee;

(i) The policies and procedures of the independent licensee include, without limitation, a provision for continuing education for associated licensees;

(j) The licensee or the applicable qualified employee of the licensee spends a sufficient amount of time in the office where the associated licensee is working;

(k) The independent licensee has received or acted on previous reports of alleged misconduct by the associated licensee;

(l) The independent licensee has reviewed the handling by the associated licensee of any fee, deposit or money paid to the independent licensee or an associated licensee who is employed by or otherwise associated with the independent licensee, or held in trust by the independent licensee or an associated licensee who is employed by or otherwise associated with the independent licensee, pursuant to this chapter or chapter 645F of NRS; and

(m) The independent licensee's review of the previous work of the associated licensee would have disclosed a problem with the conduct or issue being examined by the Commissioner.

3. The Commissioner will allow an independent licensee to take into consideration the total number of associated licensees who are employed by or otherwise associated with the independent licensee when the independent licensee determines the form and extent of the policies and procedures for those associated licensees and the system to review, oversee and inspect the activities of those associated licensees.

Sec. 40. *If an independent licensee terminates the employment of or association with an associated licensee for any reason, the independent licensee shall, not later than the third business day following the date of termination:*

1. Deliver to the associated licensee or send by certified mail to the last known residence address of the associated licensee a written statement which advises the associated licensee:

(a) Of the termination of the associated licensee's employment by or association with the independent licensee; and

(b) That the termination is being reported to the Commissioner; and

2. Deliver or send by certified mail to the Commissioner:

(a) A written statement that the independent licensee has terminated the employment of or association with the associated licensee; and

(b) The license or license number of the associated licensee.

Sec. 41. *If an associated licensee terminates his employment by or association with an independent licensee for any reason, the associated licensee shall, not later than the third business day following the date of termination:*

1. Deliver to the independent licensee or send by certified mail to the last known business address of the independent licensee a written statement which advises the independent licensee:

(a) Of the termination of the associated licensee's employment by or association with the independent licensee; and

(b) That the termination is being reported to the Commissioner; and

2. Deliver or send by certified mail to the Commissioner:

(a) The license numbers of the associated licensee and the independent licensee;

(b) A written statement of the circumstances surrounding the termination; and

(c) A copy of the written statement that the associated licensee delivered or mailed to the independent licensee pursuant to subsection 1.

Sec. 42. *The following subjects are approved as course material for initial licensing and continuing education:*

1. Federal and Nevada state laws and regulations relating to mortgage lending or the activities of covered service providers, foreclosure consultants and loan modification consultants.

2. The provisions of:

(a) This chapter or chapter 645F of NRS governing covered service providers, foreclosure consultants and loan modification consultants;

(b) Chapter 645B of NRS governing mortgage brokers and mortgage agents;

(c) Chapter 598D of NRS governing unfair lending practices;

(d) Chapter 645A of NRS governing escrow agencies and agents; and

(e) Chapter 107 of NRS governing deeds of trust.

3. Practices and information relating to covered service providers, foreclosure consultants and loan modification consultants or to the mortgage industry, including, but not limited to, federal programs designed to assist homeowners facing foreclosure.

4. Ethics and deceptive trade practices.

5. Any other subject approved by the Commissioner, including, but not limited to, the tax consequences of a loan modification or foreclosure.

Sec. 43. 1. *A natural person who is an applicant for an initial license as a covered service provider, foreclosure consultant or loan modification consultant must complete at least:*

(a) If the applicant is applying for a license as a covered service provider, 25 hours of instruction.

(b) If the applicant is applying for a license as a foreclosure consultant, 20 hours of instruction.

(c) If the applicant is applying for a license as a loan modification consultant, 15 hours of instruction.

2. The required hours of instruction may be through live instruction in a classroom or through distance education.

3. The hours of instruction required by subsection 1 must include:

(a) Three hours of professional ethics, which must include instruction on fraud, consumer protection and fair lending issues;

(b) Six hours of federal law and regulations relating to mortgage lending, which must include not less than:

(1) Two hours regarding the Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 et seq.;

(2) Two hours regarding the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., and Regulation Z, 12 C.F.R. Part 226; and

(3) Two hours regarding other federal laws and regulations, including, without limitation, information related to the tax consequences of loan modification or foreclosure and federal programs designed to assist homeowners facing foreclosure; and

(c) Four hours of Nevada law and regulations relating to mortgages, at least 2 hours of which must be related to this chapter and chapter 645F of NRS.

4. In addition to the hours of instruction specified in subsection 3, an applicant for an initial license must complete an adequate number of hours of instruction in elective subjects to meet the number of hours of instruction required by subsection 1.

5. An applicant for an initial license must provide to the Commissioner one or more certificates of completion, in a form satisfactory to the Commissioner, indicating that the applicant has successfully completed the hours of instruction required by this section.

Certificates issued for all such courses must bear the name of the certifying organization.

Sec. 44. *1. A licensee who is a natural person must complete, during the 12 months immediately preceding the date on which his license expires, at least:*

(a) If the licensee is a covered service provider, 10 hours of instruction in approved courses of continuing education.

(b) If the licensee is a foreclosure consultant, 7 hours of instruction in approved courses of continuing education.

(c) If the licensee is a license as a loan modification consultant, 5 hours of instruction in approved courses of continuing education.

2. An approved course of continuing education must focus on the practical application of transactions conducted by covered service providers, foreclosure consultants or loan modification consultants.

3. Of the hours of instruction required by subsection 1, a licensee must complete:

(a) Two hours of professional ethics, which must include instruction on fraud, consumer protection and fair lending issues;

(b) Two hours of federal law and regulations relating to mortgage lending; and

(c) One hour of Nevada law and regulations relating to this chapter and chapter 645F of NRS or other Nevada laws and regulations relating to mortgages.

4. In addition to the hours of instruction specified in subsection 3, a covered service provider or foreclosure consultant must complete an adequate number of hours of instruction in elective subjects to meet the number of hours of instruction required by subsection 1.

Sec. 45. 1. *A provider that wishes to offer approved courses to meet the educational requirements for licensure or continuing education under this chapter and chapter 645F of NRS must apply to the Commissioner before offering any approved courses and annually*

thereafter on or before December 31 for approval on a form prescribed by the Commissioner.

The application must include, without limitation:

- (a) The name and address of the provider;*
- (b) The type of provider and a description of its facilities;*
- (c) Any information requested by the Commissioner concerning the ownership of the provider, including the business organization and the names and addresses of all directors, principals, officers and others having interests as owners;*
- (d) A list of the instructors;*
- (e) A list of the courses to be offered and a hard copy of course materials for each course;*
- (f) The allotment of time for each subject;*
- (g) A tentative schedule of courses;*
- (h) The titles, authors and publishers of all required textbooks;*
- (i) A copy of each examination to be used and the correct answer for each question;*
- (j) A statement of:*
 - (1) The purpose of the provider;*
 - (2) The fees to be charged;*
 - (3) The days, times and locations of classes;*
 - (4) The number of quizzes and examinations for each course;*
 - (5) The grading systems, including the methods of testing and standards of grading for each course;*
 - (6) The requirements for attendance; and*
 - (7) The location of the students' records;*

(k) A statement as to whether the provider or any instructor employed by the provider has been disciplined by any governmental agency in this State or any other state; and

(l) A statement that educational courses will not be provided free of charge as an inducement for students or their employers to use the services of the provider for any activities related to covered service providers, foreclosure consultants or loan modification consultants.

2. The Commissioner may waive the requirements of this section for courses offered by or through a federal or state governmental agency.

3. If the application of the provider is denied, the provider may appeal the decision of the Commissioner to deny approval of the provider by filing an appeal with the Commissioner not later than 20 days after the date on which the denial or withdrawal of the approval of the provider becomes effective, and the provider will have a right to a hearing.

4. The Commissioner has the right to be awarded and recover costs and attorney's fees from the provider related to a hearing in which the hearing officer affirms the denial or withdrawal of approval of a provider.

Sec. 46. *1. A provider must submit an application for the approval of each course the provider intends to offer on a form provided by the Commissioner and include with the submission all applicable information prescribed in section 45 of this regulation.*

2. The Commissioner will not grant retroactive approval of a course.

3. If a course offered by a provider that is a professional organization has been approved for continuing education, the provider shall not restrict attendance at the course to only members of that organization.

4. Any advertising, promotional brochure or form for registration for an approved course must contain, in writing, the policy of the provider concerning cancellations and refunds.

5. If the application of the provider for a course is denied, the provider may appeal the decision of the Commissioner to deny approval of the provider's course by filing an appeal with the Commissioner not later than 20 days after the date on which the denial of the approval of the provider's course becomes effective, and the provider will have a right to a hearing.

6. The Commissioner has the right to be awarded and recover costs and attorney's fees from the provider related to a hearing in which the hearing officer affirms the denial or withdrawal of approval of a course.

Sec. 47. *1. A provider approved by the Commissioner to offer courses to meet the requirements for licensure or continuing education under this chapter or chapter 645F of NRS shall maintain a record of each student's attendance and certification in any of those courses for 4 years after the student's enrollment and shall have such records open to inspection by the Commissioner, upon request, during the provider's business hours.*

2. A provider that is licensed to operate by the Commission on Postsecondary Education shall provide evidence of such licensure to the Commissioner.

Sec. 48. *1. Within 15 days after the occurrence of any material change in the information provided by a provider in its application pursuant to section 45 of this regulation which would affect its approval by the Commissioner, the provider shall give the Commissioner written notice of that change.*

2. To qualify for annual renewal of approval by the Commissioner, a provider must

submit to the Commissioner on or before December 31 of each year:

(a) A written certification, in a form prescribed by the Commissioner, declaring that the provider has met all applicable requirements of this chapter and chapter 645F of NRS; and

(b) A sworn statement, in a form prescribed by the Commissioner, declaring that the information contained in the original application is current or, if it is not current, a list of all material changes.

3. The Commissioner may deny renewal of approval to any provider that does not meet the standards required by this chapter or chapter 645F of NRS.

4. Within 60 days after a decision is made to deny the renewal of approval of a provider, the Commissioner will give written notice of the decision and the basis for that decision by certified mail to the last known address of the provider.

Sec. 49. *A provider approved by the Commissioner shall not make any misrepresentation in its advertising about any approved course which it offers to fulfill requirements for licensing or continuing education under this chapter or chapter 645F of NRS.*

Sec. 50. *A provider that conducts approved courses:*

1. May employ as instructors of the approved courses only persons who meet the qualifications set forth in section 51 of this regulation.

2. Shall limit guest lecturers who are experts in related fields, excluding Division personnel, to 25 percent of the total hours of instruction per approved course.

3. Shall include a statement that the provider is approved by the Commissioner on all advertisements of the provider.

4. Shall require each student to attend the entire approved course as a condition of receiving certification for the approved course.

5. Shall certify the completion of only the number of hours for which the approved course has been approved by the Commissioner. Except as otherwise provided in subsection 2 of section 60 of this regulation, completion of a portion of an approved course does not satisfy the requirements for certification.

6. Shall update its course materials at least annually to reflect changes in the law and the marketplace.

7. Shall not allow a student to pass an approved course by taking an examination without having the required attendance. In addition, an owner, instructor, affiliate or other person associated with the provider may not take an examination administered by the provider to meet the requirements for initial licensure or continuing education under this chapter and chapter 645F of NRS.

8. Shall admit the Commissioner to audit and evaluate the presentation of the approved course without prior notice by the Commissioner or cost to the Commissioner.

9. Shall not present an approved course for the main purpose of selling products or services and shall limit the announcement of products or services during the approved course to not more than 1 minute for each credit hour.

10. Shall not provide, distribute, disseminate or otherwise make available to students the answers to examination questions.

Sec. 51. 1. An instructor must have written approval from the Commissioner before teaching an approved course. No retroactive approval for instructors will be granted.

2. An applicant for approval as an instructor must apply on a form prescribed by the Commissioner.

3. The Commissioner will not approve a person as an instructor if the person:

(a) Has been disciplined by the Commissioner:

(1) Within the immediately preceding 5 years; or

(2) More than one time; or

(b) Has been determined in an administrative or judicial proceeding to have violated any statute, rule, regulation or order pertaining to mortgage lending or real estate or the practice of covered service providers, foreclosure consultants or loan modification consultants in this State or any other state.

4. A person may be approved as an instructor to teach an approved course relating to his principal occupation if the person:

(a) Has:

(1) A bachelor's degree or a more advanced degree, plus at least 2 years of full-time experience in the field in which the person will be providing instruction;

(2) Teaching experience of at least 75 hours in the field in which the person will be providing instruction within the 3 years immediately preceding the date of the application for approval plus at least 3 years of full-time experience in that field;

(3) At least 6 years of full-time experience in the field, or a closely related field, in which the person will be providing instruction; or

(4) Any combination of at least 6 years of college-level course work and full-time experience in the field in which the person will be providing instruction;

(b) *Has a good reputation for honesty, integrity and trustworthiness; and*

(c) *Submits to the Commissioner satisfactory documentation of his qualifications and a resume outlining his experience, education and teaching experience in the field in which he will be providing instruction.*

5. *The Commissioner will periodically review and evaluate each approved instructor.*

6. *An approved instructor who is also a licensee may receive credit for the instructor's own annual continuing education requirement at the rate of 2 hours of credit for every 1 hour taught.*

Sec. 52. 1. *The Commissioner may deny or withdraw the approval of an instructor who:*

- (a) *Does not meet the standards prescribed in section 51 of this regulation;*
- (b) *Does an inadequate job of teaching the subject matter of an approved course, as evidenced by student evaluations or an audit conducted by the Commissioner;*
- (c) *Has been determined in any administrative or judicial proceeding to have violated any statute, rule, regulation or order pertaining to mortgage lending or real estate or the practice of covered service providers, foreclosure consultants or loan modification consultants;*
- (d) *Has been convicted of, or entered a plea of guilty or nolo contendere to, any crime involving fraud, deceit, misrepresentation or moral turpitude; or*
- (e) *Engages in inappropriate behavior in the classroom as evidenced by an audit conducted by the Commissioner.*

2. *Before denying or withdrawing the approval of the instructor of an approved course, the Commissioner will notify the provider of the approved course of his intent to deny or withdraw approval of the instructor. The notice must include the specific reasons upon which*

the Commissioner is basing the decision to deny or withdraw the approval of the instructor. Not later than 20 days after the date on which the provider receives the notice, the provider may provide a written response to the Commissioner that clearly sets forth the reasons why the approval of the instructor should not be denied or withdrawn and outlining any corrective measures that the provider will undertake. After the 20-day period has elapsed, the Commissioner will review the notice and any response submitted by the provider and will:

(a) Deny or withdraw the approval of the instructor;

(b) Approve the instructor or allow the instructor to remain approved if certain specific enumerated conditions are met; or

(c) Allow the continued approval of the instructor.

↳ If the Commissioner decides to deny or withdraw the approval of the instructor, the denial or withdrawal of approval of the instructor becomes effective upon the mailing of the Commissioner's decision to the provider of the approved course taught or proposed to be taught by the instructor by certified mail, return receipt requested, to the provider's last known business address.

3. If the Commissioner withdraws the approval of an instructor, the Commissioner will give credit to a student for completing the approved course if the student began the approved course before the provider received written notice of the withdrawal of approval of the instructor.

4. The instructor may appeal the decision of the Commissioner to deny or withdraw the approval of the instructor by filing an appeal with the Commissioner not later than 20 days

after the date on which the denial or withdrawal of the approval of the instructor becomes effective, and the instructor will have the right to a hearing.

5. The Commissioner has the right to be awarded and recover costs and attorney's fees from the instructor related to a hearing in which the hearing officer affirms the denial or withdrawal of approval of an instructor.

Sec. 53. 1. *An instructor of an approved course shall ensure that:*

(a) Class sessions are commenced in a timely manner and are conducted for the full amount of time that is approved; and

(b) Each approved course is taught according to the course plan and any instructor guide that was approved by the Commissioner, including the furnishing to students of appropriate student materials.

2. An instructor shall conduct himself in a professional and courteous manner when performing instructional duties and shall conduct classes in a manner that demonstrates the following basic teaching skills:

(a) The ability to present instruction in a thorough, accurate, logical, orderly and understandable manner, to use illustrative examples as appropriate and to respond appropriately to questions from students;

(b) The ability to effectively use varied instructional techniques in addition to lectures, including, without limitation, class discussion, role-playing and other techniques;

(c) The ability to use varied instructional aids effectively to enhance learning;

(d) The ability to maintain an appropriate learning environment and effective control of a class; and

- (e) The ability to interact with adult students in a positive manner that:*
 - (1) Encourages students to learn;*
 - (2) Demonstrates an understanding of varied student backgrounds;*
 - (3) Avoids offending the sensibilities of students; and*
 - (4) Avoids personal criticism of any other person, agency or organization.*

Sec. 54. 1. A course must:

- (a) Be approved annually by the Commissioner; and*
- (b) Relate to the subject matters prescribed in section 42 of this regulation.*

2. None of the following kinds of courses or activities will be accepted from a student as fulfillment of the education required for initial licensure or continuing education:

(a) Courses designed to develop or improve clerical, office or business skills that are not related to the subject matters listed in section 42 of this regulation, including, without limitation, typing, shorthand, operation of business machines, the use of computers or computer software, improvement of memory, or writing of letters and reports;

(b) Business courses in advertising or psychology;

(c) Courses designed to motivate a person or to develop the self-image of a person;

(d) A course for the development of instructors; or

(e) A meeting for the promotion of sales, a program of office training or other activity which is held as part of the general business of a covered service provider, foreclosure consultant or loan modification consultant.

3. The Commissioner will not approve credit for more than 7 hours of instruction per day.

Sec. 55. A provider seeking approval of a computer-based distance education course must submit a complete copy of the course to the Commissioner in the medium to be used and, if requested, must make available, at a date and time satisfactory to the Commissioner and at the provider's expense, all equipment and software necessary to enable the Commissioner to review the course. In the case of an Internet-based course, the provider shall provide the Commissioner access to the course via the Internet at no charge at a date and time satisfactory to the Commissioner.

Sec. 56. 1. To receive a certificate of completion for an approved course, a student must:

(a) Direct his attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction;

(b) Refrain from engaging in activities which are distracting to other students or the instructor, or which otherwise disrupt the orderly conduct of a class, including, without limitation, the use of text messages, voice pagers, beepers, smartphones and cellular phones; and

(c) Not be absent from the classroom for more than 18 minutes per every 3 hours of instruction, not including break periods.

2. If an instructor denies the award of a certificate of completion to a student who fails to satisfy the conditions set forth in subsection 1, the student may, within 30 days after that denial, file a written request with the Commissioner to review the matter. If the written request contains allegations which, if true, would qualify the student to receive a certificate of

completion, the Commissioner will set the matter for an informal hearing to be conducted as soon as practicable.

Sec. 57. *1. Each approved course and each instructor of an approved course must be evaluated by students on a form prescribed by the Commissioner and provided by the provider during every course offering.*

2. The instructor shall provide to each student who successfully completes an approved course a certificate of completion, in a form satisfactory to the Commissioner, indicating that the student has successfully completed the applicable number of hours of instruction which may be used to satisfy the requirements of section 43 or 44 of this regulation.

Sec. 58. *1. A provider must apply annually for the renewal of approval of a course on a form prescribed by the Commissioner. An application for renewal must be submitted to the Commissioner at least 5 weeks before the previous approval expires. If the provider does not timely submit the application for renewal, the provider must apply for an original approval as provided in section 46 of this regulation.*

2. Each approved course and instructor is subject to review and audit by the Commissioner. If the Commissioner conducts such a review or audit, the provider shall make available to the Commissioner all records and materials requested which are necessary to the review.

Sec. 59. *1. If the Commissioner determines, through an audit or otherwise, that an approved course does not meet the standards for such a course set forth in this chapter or chapter 645F of NRS, the Commissioner will notify the provider of the approved course of his intent to withdraw approval of the course. The notice must include the specific reasons upon*

which the Commissioner is basing the decision to withdraw approval of the course. Not later than 20 days after the date on which the provider receives the notice, the provider may provide a written response to the Commissioner that clearly sets forth the reasons why approval of the course should not be withdrawn and outlining any corrective measures that the provider will undertake. After the 20-day period has elapsed, the Commissioner will review the notice and any response submitted by the provider and:

(a) Withdraw approval of the course;

(b) Allow the course to remain approved if certain specific enumerated conditions are met;

or

(c) Allow the continued approval of the course.

↳ If the Commissioner decides to withdraw approval of the course, the withdrawal of approval of the course becomes effective upon the mailing of the Commissioner's decision to withdraw approval to the provider by certified mail, return receipt requested, to the provider's last known business address.

2. If the Commissioner withdraws approval of a course, the Commissioner will give credit to a student for completing the course if the student began the course before the provider received written notice of the withdrawal of approval of the course.

3. The provider may appeal the decision of the Commissioner to withdraw approval of a course or an instructor of an approved course by filing an appeal with the Commissioner not later than 20 days after the date on which the withdrawal of the approval of the course becomes effective, and the provider will have the right to a hearing.

Sec. 60. 1. *To receive credit for an approved course of continuing education, the course must be completed not more than 12 months immediately preceding the date on which the license of the licensee expires.*

2. A licensee must complete at least 90 percent of an approved course to receive credit for continuing education for that course.

Sec. 61. *Each licensee shall pay to the Commissioner an annual assessment as required by NRS 645F.290 to cover the costs related to legal services rendered by the Attorney General.*

Sec. 62. 1. *Each licensee shall pay to the Commissioner an annual assessment to cover the costs related to the employment of a certified public accountant and the performance of audits and examinations conducted by the Commissioner.*

2. The Commissioner will bill each licensee for the assessment. The assessment must be paid within 30 calendar days after the date the bill is received by the licensee.

3. A charge of 10 percent of the assessment will be imposed on any licensee whose assessment is received by the Commissioner after the date on which the assessment is due. The Commissioner may waive the penalty for good cause.

Sec. 63. 1. *In addition to the other duties imposed upon the Commissioner by law for the general supervision of licensees, the Commissioner will:*

(a) Conduct such investigations as may be necessary to determine whether any person has violated any provision of this chapter or chapter 645F of NRS or any order of the Commissioner.

(b) Conduct an examination of each independent licensee doing business in this State within 3 months after the independent licensee commences business in this State and at least

annually thereafter. The examination must include, without limitation, a formal exit review with the independent licensee.

(c) 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 licensees.

2. For each special audit, investigation or examination, a licensee shall pay a fee based on the rate established pursuant to NRS 645F.280 and section 64 of this regulation.

Sec. 64. *1. Except as otherwise provided in this subsection, the Commissioner will charge and collect a fee of \$60 per hour from each licensee for any supervision, examination, audit, investigation or hearing conducted pursuant to this chapter or chapter 645F of NRS. The Commissioner may charge a fee equivalent to the estimated or actual fee charged to the Commissioner for the time of an attorney required in any examination, investigation or hearing conducted pursuant to this chapter or chapter 645F of NRS.*

2. The Commissioner will bill each licensee upon the completion of the activity for the fee established in subsection 1. The fee must be paid within 30 calendar days after the date the bill is received by the licensee. Except as otherwise provided in this subsection, any payment received after that date must include a penalty of 10 percent of the fee plus an additional 1 percent of the fee for each complete month, or portion of the last month, that the fee is not paid. The Commissioner may waive the penalty for good cause.

3. The failure of a licensee to pay the fee required in subsection 1 constitutes grounds for the imposition of any discipline authorized pursuant to this chapter or chapter 645F of NRS, including, without limitation, revocation of his license.

4. Upon written request by a licensee, the Commissioner will provide an accounting of the time billed to the licensee pursuant to this section.

Sec. 65. An examiner, auditor or investigator conducting an examination, periodic or special audit, or investigation of a licensee pursuant to this chapter or chapter 645F of NRS may:

1. Require the licensee to produce, for the purposes of the examination, audit or investigation, all documents:

(a) Related to business conducted by the licensee pursuant to this chapter or chapter 645F of NRS;

(b) Required to be kept by the licensee pursuant to any federal or state law or regulation; or

(c) Related to the operation of the business of the licensee or any affiliated business that conducts business activities which are directly related to the business of the licensee.

2. Inspect and copy any documents which are in the possession, control or custody of the licensee and which are related to business conducted pursuant to this chapter or chapter 645F of NRS.

Sec. 66. Upon completion of an examination of a licensee, the examiner shall rate the licensee on a scale of "1" to "5," as follows:

1. A rating of "1" indicates that the licensee and the management of the licensee, if any, have demonstrated a high degree of compliance with applicable laws and regulations. A rating of "1" may be given if there is a minor violation or deficiency, but only if the licensee acted to

correct the violation or deficiency immediately and the action taken by the licensee is likely to prevent future violations or deficiencies.

2. A rating of “2” indicates that the licensee and the management of the licensee, if any, have demonstrated substantial compliance with applicable laws and regulations and that any deficiencies noted in the report made by the examiner pursuant to section 67 of this regulation can be corrected by the licensee with a minimum of regulatory supervision. A rating of “2” may be given if there is more than one minor violation or deficiency, but only if the licensee acted to correct the violations or deficiencies immediately and the action taken by the licensee is likely to prevent future violations or deficiencies.

3. A rating of “3” indicates that the licensee and the management of the licensee, if any, have demonstrated less than satisfactory compliance with applicable laws and regulations and that regulatory supervision is required for the correction of the violations and deficiencies noted in the report made by the examiner pursuant to section 67 of this regulation. A rating of “3” may be given if there were minor violations or deficiencies from a previous examination that were not corrected.

4. A rating of “4” indicates that the licensee and the management of the licensee, if any, have demonstrated substantial lack of compliance with applicable laws and regulations and that immediate remedial action is required for the correction of the violations and deficiencies noted in the report made by the examiner pursuant to section 67 of this regulation. The licensee will be subject to close regulatory supervision, and the examiner will recommend disciplinary action against the licensee to the Commissioner.

5. A rating of “5” indicates that the licensee and the management of the licensee, if any, have demonstrated unsatisfactory compliance with applicable laws and regulations and that immediate remedial action is required for the correction of the violations and deficiencies noted in the report made by the examiner pursuant to section 67 of this regulation and may include action by the Commissioner to take possession of the business and assets of the licensee. The examiner will recommend disciplinary action against the licensee to the Commissioner.

Sec. 67. 1. Not more than 30 days after the completion of an examination of a licensee, the examiner that performed the examination shall prepare a draft report of the examination and provide the draft report to the Commissioner. The draft report must include only:

(a) Facts that are contained in the files, books, records or other documents of the licensee that were examined by the examiner;

(b) Facts that are contained in statements made by the licensee or officers or agents of the licensee, if any, or other persons that the examiner interviewed concerning the licensee; and

(c) Conclusions and recommendations that are reasonably supported by the facts that are included in the draft report, including, but not limited to, the rating given to the licensee pursuant to section 66 of this regulation.

2. Not more than 15 days after the draft report of an examination is received by the Commissioner, the Commissioner will deliver to the licensee who was examined:

(a) A copy of the draft report; and

(b) Notice that the licensee has not more than 30 days, unless the Commissioner, for good cause, allows a longer period, to review the draft report and submit to the Commissioner, in writing, any comments regarding or objections to matters contained in the draft report.

3. If a licensee received a rating of “3,” “4” or “5” pursuant to section 66 of this regulation and submitted written comments or objections within the period specified in subsection 2, the Commissioner will:

(a) Not more than 15 days after the last day on which the licensee could submit written comments or objections pursuant to subsection 2, hold an informal meeting with the licensee regarding the draft report; and

(b) Review the draft report, together with the written submissions or objections made by the licensee and any relevant portions of the working papers of the examiner, and, not more than 15 days after the date on which the informal meeting was held pursuant to paragraph (a):

(1) Adopt the draft report as filed;

(2) Adopt the draft report with modifications;

(3) Provide the licensee with an opportunity for a formal hearing; or

(4) Direct the examiner to reopen the examination to obtain additional data, documents or information and, if necessary, file a new draft report pursuant to subsection 1. If the findings of the initial draft report are supported by the findings of the examiner after completion of the reopened examination, the licensee is responsible for the costs attributable to the reopened examination pursuant to section 64 of this regulation.

4. If a licensee:

(a) Received a rating of “1” or “2” pursuant to section 66 of this regulation and submitted written comments or objections within the period specified in subsection 2; or

(b) Did not file a written comment or objection to a draft report within the period specified in subsection 2,

↳ the draft report will be deemed to be the final report of the examination.

5. The rating of an examination is not open to public inspection until the review process pursuant to this section is completed, and no information other than the rating will be released except upon the express finding of the Commissioner that such release would not impede an investigation and or that the public will not be harmed by such a release.

6. If the examination and report reveal that a licensee is operating in violation of this chapter or chapter 645F of NRS or a previous order of the Commissioner, the Commissioner may order the licensee to take any action the Commissioner deems necessary or appropriate to correct the violation. The Commissioner may also take disciplinary action pursuant to section 103 of this regulation.

7. The Commissioner may, for good cause, extend any period specified in this section that is applicable to an examiner or the Commissioner for an additional period of not more than 15 days.

Sec. 68. 1. *If a licensee is not a natural person and has voting stock:*

(a) The Commissioner must be notified of a transfer of 5 percent or more of the outstanding voting stock of the licensee; and

(b) Any transfer of voting stock of the licensee which constitutes a change of control must be approved by the Commissioner.

2. A person who acquires voting stock resulting in a change of control of the licensee shall apply to the Commissioner for approval of the transfer. The application must contain the applicable fee and satisfactory information which shows that the requirements of this chapter and chapter 645F of NRS for obtaining a license will be satisfied after the change of control. Except as otherwise provided in subsection 3, the Commissioner will conduct an investigation to determine whether those requirements will be satisfied. If, after the investigation, the Commissioner denies the application, the Commissioner may forbid the applicant from participating in the business of the licensee.

3. The applicant may submit a written request to the Commissioner to waive the investigation required by subsection 2. The Commissioner may grant a waiver if the applicant has undergone a similar investigation by a state or federal agency in connection with the licensing of or his employment with a financial institution.

Sec. 69. 1. If a licensee is not a natural person:

(a) Any material change in the ownership, management or principal employees of the licensee at its principal office or a branch office must be reported to the Commissioner on a form prescribed by the Commissioner within 30 calendar days before the change; and

(b) Any material change in the ownership or any change of control of the licensee at its principal office or a branch office must be approved by the Commissioner.

2. If a licensee is not a natural person and a person acquires stock or ownership in the licensee as a result of a transfer that constitutes a change of control:

(a) A financial statement of the prospective owner, partner, corporate shareholder, manager or employee must be submitted to the Commissioner for consideration;

(b) The person may not participate in the management of the licensee until the Commissioner has approved the transfer; and

(c) The licensee may not change the location of its principal office or a branch office until the Commissioner has approved the transfer.

Sec. 70. 1. A licensee may not close his principal office or a branch office until:

(a) The licensee has returned his license; and

(b) The Commissioner has approved the closure.

2. The request for approval of the closure of the principal office of the licensee or a branch office of the licensee must contain the following information:

(a) The status of any incomplete contracts for covered services and the manner in which they will be finalized;

(b) An accounting of any trust account maintained by the licensee and the plan for distribution of money in the account;

(c) If any person employed by or otherwise associated with the licensee has been terminated from such employment or association, evidence of the termination; and

(d) The location within or outside of this State where records of the licensee will be maintained.

Sec. 71. 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 any person to produce records related to the activity of a licensee.

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

(d) Administer oaths.

(e) Examine any person under oath concerning the business and conduct of affairs of any person subject to the provisions of this chapter or chapter 645F of NRS 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 provision of law, 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 or chapter 645F of NRS.

Sec. 72. *1. Each licensee shall keep and maintain, at all times at each location where the licensee conducts business, complete and suitable records of all transactions by the licensee at that location. Each licensee shall also keep and maintain, at all times at each such location, all original books, papers and data, or copies thereof, clearly reflecting the financial condition of the business of the licensee and shall retain records of all of the activity of the licensee for a period of at least 4 years after the date of the last activity relating to the transaction.*

2. *As used in this section, “complete and suitable records” means a file that includes, but is not limited to, the following documents, if applicable to the type and purpose of the transaction:*

- (a) All contracts entered into between the licensee and the homeowner;*
- (b) Any additional contracts entered into between parties to the transaction;*
- (c) All disclosures provided to the homeowner;*
- (d) All authorizations signed by the homeowner;*
- (e) All worksheets;*
- (f) All mortgage statements and notices;*
- (g) All related loan documentation for the loan subject to modification or other covered services;*
- (h) All lender or servicer requested items, including, but not limited to, hardship letters, bank statements, W-2 forms, pay stubs, expense support or tax returns;*
- (i) All correspondence between the lender or homeowner with the licensee, including, but not limited to, letters, messages sent via electronic mail, facsimiles and logs related to calls or other contacts or information;*
- (j) All loan modification offers or agreements provided to, or received from, the lender or servicer;*
- (k) Copies of all public, recorded documents, including, but not limited to, the notice of default and election to sell and the notice of sale;*
- (l) Any other documentation used by the licensee in the normal course of business as it relates to a homeowner;*

(m) A copy of each item of advertising material that was published or distributed by or on behalf of the licensee in the format in which the material was published or distributed;

(n) A copy of any written complaint against the licensee, together with all correspondence, notes, responses and other documentation related to the disposition of the complaint;

(o) All checkbooks, check registers, bank statements, deposit slips, withdrawal slips, cancelled checks and other records that relate to the business of the licensee;

(p) Copies of all federal tax withholding forms, reports of income for federal taxation and evidence of payments to all employees, independent contractors and other persons that worked for the licensee;

(q) Copies of all documents evidencing a contractual relationship between the licensee and any third-party provider of services related to covered transactions, including, but not limited to, contracts, invoices, billings and remittances to the third-party provider by or on behalf of the licensee;

(r) Copies of all material correspondence related to the business of the licensee not covered in paragraph (i), including, but not limited to, electronic messages; and

(s) Copies of all reports, audits, examinations, inspections, reviews, investigations or other similar activities relating to the business of the licensee performed by any third party, including, but not limited to, any regulatory or supervisory authority.

Sec. 73. *For the purpose of compliance with section 3.3 of Assembly Bill No. 152 of the 75th Session of the Nevada Legislature, a “separate trust account” means a trust account maintained with a federally insured depository institution located in this State that is separate from accounts belonging to the independent licensee. The trust account:*

1. May include money collected from various homeowners. However, the independent licensee must maintain separate internal subsidiary ledgers for each homeowner which include:

(a) The name, address and telephone number of the homeowner;

(b) The address and assessor parcel number for the property securing the loan for which the licensee is providing services;

(c) The account number of each loan;

(d) The lender or loan servicer contact information related to each loan;

(e) The amount and date of the initial and each subsequent payment received from the homeowner or other parties noted with separate entries;

(f) The amount and date of each deposit into the trust account maintained with the federally insured depository institution; and

(g) The amount and date of each withdrawal from the trust account and the name of each recipient of each withdrawal with the contact information for each recipient separately maintained.

2. Must at all times have a reconciled balance on deposit equal to all money collected and deposited and not yet legitimately disbursed.

3. Must be under the control of the independent licensee. An associated licensee may not maintain client trust accounts.

4. Must be reconciled monthly by the independent licensee. Such reconciliation must include, without limitation, a breakdown of each homeowner who has money on deposit, a list of all checks issued and a list of any outstanding checks issued but not paid, a list of all

deposits showing the related homeowner's account and any other credit or debit adjustments to the bank account with a full explanation of the items.

Sec. 74. 1. *Except as otherwise provided in this section, not later than 120 days after the last day of each fiscal year for an independent licensee, the independent licensee shall submit to the Commissioner a financial statement that:*

(a) Is dated not earlier than the last day of the fiscal year; and

(b) Has been prepared from the books and records of the independent licensee by an independent certified public accountant who holds a permit to engage in the practice of certified public accounting in this State or another state.

2. The Commissioner may grant a reasonable extension for the submission of a financial statement pursuant to this section if an independent licensee requests such an extension before the date on which the financial statement is due.

3. If an independent licensee maintains any accounts described in section 73 of this regulation and the 6-month average balance in those accounts exceeds \$75,000, the financial statement submitted pursuant to this section must be audited in accordance with generally accepted auditing standards. The independent certified public accountant who prepares the report of an audit shall submit a copy of the report to the Commissioner at the same time that the independent certified public accountant submits the report to the independent licensee.

Sec. 75. 1. *An independent licensee maintaining any account described in section 73 of this regulation shall, not later than 120 days after the end of the fiscal year for the independent licensee, provide to the Commissioner an annual financial statement of the*

account or accounts. A financial statement of the account or accounts required by this subsection must include, if applicable:

(a) A statement of the asset balance and liabilities of each trust account;

(b) A statement of all receipts for, disbursements from and changes in cash balances of each trust account;

(c) A supplementary schedule of the liabilities of each trust account; and

(d) A reconciliation of the cash balance of each trust account to the supplementary schedule of the liabilities of each trust account.

2. The Commissioner will make available an approved format and sample content for the statements required by this section. An independent licensee shall submit the statements required by this section in substantially the same format as the approved forms.

3. In addition to the annual financial statement of the account or accounts required by subsection 1, not later than 60 days after the last day of each fiscal year for an independent licensee, and every 6 months thereafter, the independent licensee shall submit to the Commissioner an unaudited financial statement of the account or accounts. The financial statement required by this subsection may be self-prepared.

4. Except as otherwise provided in this subsection, the Commissioner may grant a reasonable extension, not to exceed 30 days, for the submission of a financial statement of the account or accounts pursuant to this section if an independent licensee requests such an extension, in writing, before the date on which the financial statement is due. Upon written request, the Commissioner may, for good cause, grant, in writing, an additional extension, not to exceed 30 days, of the period for the submission of a financial statement.

Sec. 76. 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 or chapter 645F of NRS 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 licensee;

(b) Have an undesirable effect on the welfare of the public; or

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

3. Except as otherwise provided by law, the Commissioner will disclose the following information concerning a licensee to any person who requests it:

(a) The findings and results of any investigation which:

(1) Has been completed during the immediately preceding 5 years against the licensee pursuant to the provisions of this chapter or chapter 645F of NRS;

(2) Resulted in a finding by the Commissioner that the licensee violated a provision of this chapter or chapter 645F of NRS;

(3) Resulted in an administrative complaint or an order of the Commissioner; and

(4) Led to administrative action or a stipulated settlement agreement;

(b) The nature of any disciplinary action that has been taken during the immediately preceding 5 years against the licensee pursuant to the provisions of this chapter or chapter 645F of NRS;

(c) If the licensee is not a natural person, any information in the possession of the Commissioner regarding the present and past ownership and management structure of the licensee; and

(d) The rating for each examination of a licensee and an explanation of the standards for determining that rating.

Sec. 77. *1. Except as otherwise provided in subsection 2, the Commissioner may classify as confidential certain records and information obtained by the Commissioner when those matters are obtained from a governmental agency upon the express condition that they remain confidential. This subsection does not limit examination by:*

(a) The Legislative Auditor; and

(b) The Department of Taxation, if necessary, to carry out the provisions of chapter 363A of NRS.

2. Except as limited by agreement with the governmental agency that provided the records and information, the Commissioner may release the information and records to the Office of the Attorney General with respect to its criminal and civil divisions, any district attorney or any other local, state or federal law enforcement organization. Nothing contained in this subsection prevents the Commissioner from redacting social security numbers and personal, nonpublic information from any documents.

Sec. 78. *1. Except as otherwise provided in this section, section 77 of this regulation and NRS 239.0115, a complaint filed with the Commissioner, all documents and other information filed with the complaint and all documents and other information compiled as a result of an investigation conducted to determine whether to initiate disciplinary action are confidential.*

2. The complaint or other document filed by the Commissioner to initiate disciplinary action and all documents and information considered by the Commissioner when determining whether to impose discipline are public records.

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

Sec. 79. *1. A licensee shall include his name, license number and street address in each advertisement that the licensee uses. The street address must be the physical address of the licensee and may not be the address of a mail processing business. An advertisement used by an associated licensee must include his name and license number as well as the name, address and license number of the independent licensee with whom the associated licensee is employed or associated.*

2. Each advertisement that a licensee uses in conducting business must comply with the requirements of:

(a) NRS 598.0903 to 598.0999, inclusive, concerning deceptive trade practices; and

(b) Any applicable federal statute or regulation concerning deceptive advertising and the advertising of interest rates.

3. A licensee shall not use advertising material that simulates the appearance of a check or a communication from a governmental entity, or an envelope containing a check or a communication from a governmental entity, unless:

(a) The words “THIS IS NOT A CHECK,” “NOT NEGOTIABLE” or “THIS IS NOT A GOVERNMENTAL ENTITY,” as appropriate, appear prominently on the envelope and any

material that simulates the appearance of a check or a communication from a governmental entity; and

(b) If the material simulates the appearance of a check, the material does not contain an American Bankers Association number, microencoding or any other marks intended to create the appearance that the material is a negotiable check.

4. A licensee shall not refer to an existing lender or financial institution on any advertising material without the written consent of the lender or financial institution.

5. Except as otherwise provided in subsection 6, an advertisement for an activity which is licensed pursuant to this chapter or chapter 645F of NRS must be separate and distinct from an advertisement for an activity which is not licensed pursuant to this chapter or chapter 645F of NRS.

6. A licensee may advertise jointly with another person if each business is disclosed separately in the advertisement and each business incurs a pro rata share of the cost associated with the advertisement.

7. An Internet link on a website of the licensee that links the user to the website of another commercial enterprise must provide notification to the user that the user is leaving the website of the licensee.

8. A licensee shall not use advertising material, including, without limitation, any Internet domain name or address, that represents that it is approved by or affiliated with a governmental agency or nonprofit organization unless it is approved by or affiliated with the governmental agency or nonprofit organization.

9. A licensee shall not advertise that he is licensed or certified by any entity or organization unless the licensee has such a license or certification and may only advertise services authorized by this chapter or chapter 645F of NRS.

10. A licensee shall not use advertising material which guarantees that the homeowner will be successful in obtaining a loan modification or that the homeowner will be able to successfully avoid or stop foreclosure.

11. For the purposes of this section, “advertising” includes commercial messages that promote the availability of products or services offered by or through the licensee. Commercial messages include, but are not limited to:

- (a) Print media;*
- (b) Sales literature;*
- (c) Sales brochures or flyers;*
- (d) Billboards;*
- (e) Yellow-page listings if more than a line listing;*
- (f) Radio and television advertisements;*
- (g) Mass mailings distributed by the United States Postal Service or another such delivery service or by electronic mail;*
- (h) Telephone or seminar scripts; and*
- (i) Websites or other Internet sites that promote services by a covered service provider, foreclosure consultant or loan modification consultant.*

Sec. 80. 1. *As a condition to doing business in this State, each independent licensee shall deposit with the Commissioner and keep in full force and effect a 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 independent licensee and all associated licensees employed by or otherwise associated with the independent licensee.

2. At the time of filing an application for a license as a covered service provider, foreclosure consultant or loan modification consultant and at the time of filing an application for the renewal of such a license, an applicant who is or who will be an independent licensee shall file with the Commissioner proof that the applicant is named as a principal and all associated licensees employed by or otherwise associated with the independent licensee are named as principals on the surety bond deposited with the Commissioner by the independent licensee.

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

Know All Persons 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 645F of NRS and the regulations promulgated thereunder, 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 covered service provider, foreclosure consultant or loan modification consultant 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, the principal's agents and employees, strictly, honestly and faithfully comply with the provisions of chapter 645F of NRS and the regulations promulgated thereunder, and pay all damages suffered by any person because of a violation of any of the provisions of chapter 645F of NRS and the regulations promulgated thereunder, or by reason of any fraud, dishonesty, misrepresentation or concealment of material facts growing out of any transaction governed by the provisions of chapter 645F of NRS or the regulations promulgated thereunder, 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. Except as otherwise provided in subsection 5, each independent licensee shall deposit a surety bond in the amount of \$75,000 that complies with the provisions of this section or a substitute form of security that complies with the provisions of section 81 of this regulation.

5. If an independent licensee maintains any accounts described in section 73 of this regulation, and the 6-month average balance in those accounts exceeds \$50,000, the independent licensee shall deposit a surety bond in the amount of \$100,000 that complies with the provisions of this section or a substitute form of security that complies with the provisions of section 81 of this regulation.

Sec. 81. 1. *As a substitute for the surety bond required by section 80 of this regulation, an independent licensee may, in accordance with the provisions of this section, deposit with any bank or trust company authorized to do business in this State which is federally insured, 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 which is federally insured;

(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. 82. 1. *The surety may cancel a surety bond upon giving 60 days' notice to the Commissioner by certified mail. Upon receipt by the Commissioner of such a notice, the*

Commissioner will immediately notify the independent licensee who is a principal on the surety bond of the effective date of cancellation of the surety bond, and that the license of the independent licensee will be revoked unless an equivalent surety bond or a substitute form of security authorized by section 81 of this regulation is furnished before the effective date of the cancellation. The notice must be sent to the independent licensee by certified mail to the independent licensee's last address of record filed in the office of the Commissioner.

2. If the independent licensee does not comply with the requirements set out in the notice from the Commissioner, the license of the independent licensee must be revoked as of the date the surety bond is cancelled.

Sec. 83. *1. Any person claiming against a surety bond may bring an action in a court of competent jurisdiction on the surety bond for damages to the extent covered by the surety bond. A person who brings an action on a surety bond shall notify the Commissioner in writing upon filing the action. An action may be commenced not more than 3 years following the commission of the act on which the action is based.*

2. Upon receiving a request from a person for whose benefit a surety bond is required, the Commissioner will notify the person:

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

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

3. If a surety wishes to make payment without awaiting action by a court, the amount of the surety bond must be reduced to the extent of any payment made by the surety in good faith

under the surety bond. Any payment must be based on written claims received by the surety before any action is taken by a court.

4. The surety or the Commissioner may bring an action for interpleader against all claimants upon the surety bond. If the surety or the Commissioner does so, the surety or the Commissioner, as applicable, will publish notice of the action at least once each week for 2 weeks in every issue of a newspaper of general circulation in:

(a) If the principal office of the independent licensee whose surety bond is at issue is located within this State, the county in which the independent licensee has his principal office;
or

(b) If the principal office of the independent licensee whose surety bond is at issue is not located within this State, Clark County, Nevada.

5. The surety may deduct its costs of the action, including, without limitation, attorney's fees and publication, from its liability under the surety bond.

6. Claims against a surety bond have equal priority, and if the surety bond is insufficient to pay all claims in full, they must be paid on a pro rata basis. Partial payment of claims is not full payment, and any claimant may bring an action against the independent licensee for the unpaid balance.

Sec. 84. 1. *The term of the surety bond or substitute for the surety bond, if applicable, must be not less than 1 year.*

2. If the independent licensee deposits a surety bond, the independent licensee shall keep accurate records of the surety bond and the payments made on the premium. The records must be open to inspection by the Commissioner during business hours. The independent licensee

shall notify the Commissioner not later than 30 days before the date of expiration of the surety bond and provide written proof of the renewal of the surety bond to the Commissioner.

3. The Commissioner may reject any surety bond or substitute for the surety bond which fails to conform to the requirements of this chapter or chapter 645F of NRS.

4. An independent licensee may change the form of security deposited with the Commissioner. If the independent licensee changes the form of the security, the Commissioner may retain for not more than 1 year any portion of the security previously deposited by the independent licensee as security for claims arising during the time the previous security was in effect.

5. If the amount of the deposited security falls below the amount required by this chapter or chapter 645F of NRS for that security, the license of the independent licensee must be revoked as of the date the deposited security falls below the amount required.

Sec. 85. *In addition to the requirements of this chapter and chapter 645F of NRS, before a licensee provides any covered service, the licensee shall provide a written contract to the homeowner, in simple English and in at least 10-point type, that includes, without limitation:*

1. A statement, on the top of the first page of the written contract and in at least 12-point boldface type, as follows:

The amount of fees you agree to pay to (here insert name of licensee) is not fixed by Nevada law, and is negotiable between you and (here insert name of licensee). You may be able to obtain the same services at no cost from a housing counselor or by doing them yourself.

2. Full disclosure of the exact nature of each of the services to be provided, the costs associated with each phase of the services, that the licensee may not take the fees associated for any phase of services until the phase of service has been fully completed and the total amount and terms of payment of all compensation. The percentage of the total payment collected, or to be collected, for each phase of service must be reasonable in relation to the work required to complete that phase.

3. The business address, telephone number, full name and license number of the independent licensee and each associated licensee, if any, who will be involved in the transaction.

4. The signature and date of the signature of the homeowner and the licensee. The originally signed contract must be given to the homeowner and a copy of the original retained by the licensee.

Sec. 86. 1. *A homeowner may rescind without penalty or obligation a contract at any time before midnight of the third business day after the date on which the homeowner signs a contract with a licensee.*

2. Except as otherwise provided in this subsection, in the event a homeowner rescinds a contract in accordance with this section, the licensee shall immediately provide a full refund of all compensation paid by the homeowner. If the licensee deposited the homeowner's check before the homeowner rescinds the contract, the licensee may wait to provide the refund until the homeowner's check clears through the bank account used by the licensee.

3. The contract must contain in immediate proximity to the space reserved for the homeowner's signature a conspicuous statement in at least 12-point boldface type that the homeowner has the right to rescind the contract without penalty or obligation until midnight of the third business day after the date on which the homeowner signs the contract.

4. Rescission occurs when the homeowner gives written notice of rescission to the licensee at the address specified in the contract. For the purposes of this section, the notice may be given to the licensee by electronic mail, facsimile, regular mail or personal delivery.

5. Notice of rescission, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

6. Notice of rescission given by the homeowner is not required to take the particular form as provided in the contract and, however expressed, is effective if the notice indicates the intention of the homeowner not to be bound by the contract.

Sec. 87. 1. *A homeowner may cancel a contract upon written notification at any time after the expiration of the rescission period that is provided for in section 86 of this regulation. A homeowner may cancel a contract without penalty or obligation for payment of any phase of service that has not been fully completed. For the purposes of this section, the notice may be given to the licensee by electronic mail, facsimile, regular mail or personal delivery.*

2. Except as otherwise provided in this subsection, in the event a homeowner cancels a contract in accordance with this section, the licensee must, within 5 business days after receipt of the written notification, provide a full or partial refund of all compensation paid by the homeowner for phases of services not fully performed. If the licensee deposited the homeowner's check before the homeowner cancels the contract, the licensee may wait to

provide the refund until the homeowner's check clears through the bank account used by the licensee.

3. The contract must clearly set forth the refund policy and procedure of the licensee in 12-point boldface type and provide the physical address, facsimile number and electronic mail address for providing notice of cancellation.

4. Notice of cancellation given by the homeowner is not required to take the particular form as provided in the contract and, however expressed, is effective if the notice indicates the intention of the homeowner not to be bound by the contract.

Sec. 88. *An licensee who negotiates in a language other than English in the course of entering into a contract for the provision of any covered service shall deliver to the homeowner at least 2 calendar days before the execution of the contract a translation in at least 10-point type of the material terms of the contract in the language in which the contract was negotiated, along with a statement indicating that the original contract will be in English.*

Sec. 89. 1. *If a licensee or a relative of the licensee is licensed as, conducts business as or holds a controlling interest or position in:*

(a) An escrow agency, a title or escrow agent, a title insurer or an escrow officer of a title agent or title insurer; or

(b) A mortgage broker, mortgage agent, mortgage banker or real estate broker or agent, ↪ the licensee shall fully disclose, in writing, his status as, connection to or relationship with such a person or entity to each homeowner before entering into a contract for the provision of covered services. The licensee shall not require as a condition to a homeowner entering into a contract for the provision of covered services that the homeowner transact business with or

use the services of any such person or entity or that the homeowner authorize the licensee to transact business with or use the services of such person or entity on behalf of the homeowner.

2. For the purposes of this section, a person shall be deemed to hold a controlling interest or position if the person:

(a) Owns or controls a majority of the voting stock or holds any other controlling interest, directly or indirectly, that gives the person the power to direct management or determine policy; or

(b) Is a partner, officer, director or trustee.

3. As used in this section, "licensee" means:

(a) A licensee; and

(b) If the licensee is not a natural person, any general partner, officer or director of the licensee.

Sec. 90. *1. A licensee shall not attempt to induce a homeowner to waive any of the provisions of sections 85 to 89, inclusive, of this regulation, or otherwise attempt to limit the liability of the licensee for the licensee's conduct. Any waiver by a homeowner of the provisions of sections 85 to 89, inclusive, of this regulation, or limitation of liability, is void and unenforceable.*

2. Any provision in a contract which attempts or purports to require mandatory arbitration of any dispute arising under sections 85 to 89, inclusive, of this regulation is voidable at the option of the homeowner.

Sec. 91. *A licensee shall not:*

1. In any advertisement; or

*2. Before, during or after solicitation or receipt of money from a homeowner,
↳ make, or cause or encourage to be made, any explicit or implicit statement, representation or promise, oral or written, which a reasonable person would construe as a guarantee or warranty that the homeowner will be successful in obtaining a loan modification or that the homeowner will be able to successfully avoid or stop foreclosure.*

Sec. 92. 1. *A licensee shall not advise or instruct a homeowner to:*

(a) Stop making any mortgage loan or other loan payment or cease communication with any mortgage lender, any mortgage loan servicer or any other lender or loan servicer.

(b) Make a home loan payment to the licensee or any person not otherwise authorized by the mortgage lender or loan servicer to receive such payment, and the licensee shall not accept such payment from a homeowner unless otherwise required by court order.

(c) Designate the licensee as the exclusive recipient of notices or other communications sent from a lender or servicer to a homeowner, or otherwise have written communication from or on behalf of the lender redirected or sent directly to the licensee.

(d) Transfer or encumber or purport to transfer or encumber the residence of the homeowner to or for the benefit of the licensee or any third party, and the licensee shall not accept any interest in the residence of the homeowner.

2. A licensee shall not sign any binding contract or agreement with any lender or loan servicer on behalf of a homeowner.

3. An independent licensee shall not take into his own account any payment from a homeowner for a phase of service until the phase of service has been fully completed.

Sec. 93. 1. *Before purchasing a residence in foreclosure, a foreclosure purchaser shall provide a written contract to the homeowner, in simple English and in at least 10-point type.*

2. The written contract must be fully completed and signed and dated by the homeowner and the foreclosure purchaser before the execution of any instrument of conveyance of the residence in foreclosure.

Sec. 94. *Every contract entered into between a homeowner and a foreclosure purchaser must contain the entire agreement of the parties and must include the following terms:*

1. The name, business address and telephone number of the foreclosure purchaser;

2. The address of the residence;

3. The total consideration to be given by the foreclosure purchaser in connection with or incident to the sale of the residence;

4. A complete description of the terms of payment or other consideration, including, but not limited to, any services of any nature that the foreclosure purchaser represents will be performed for the foreclosed homeowner before or after the sale;

5. The date on which possession of the residence is to be transferred to the foreclosure purchaser; and

6. A complete description of the terms of any related agreement designed to allow the homeowner to remain in the residence, such as a rental agreement, repurchase agreement, contract for deed, or lease with option to buy.

Sec. 95. *A foreclosure purchaser who negotiates a contract with a homeowner in a language other than English shall deliver to the homeowner at least 2 calendar days before the execution of the contract a translation in at least 10-point type of the material terms of the*

contract in the language in which the contract was negotiated, along with a statement indicating that the original contract will be in English.

Sec. 96. 1. *A homeowner may cancel a contract with a foreclosure purchaser without penalty or obligation at any time before midnight of the third business day after the date on which the homeowner signs the contract.*

2. The contract must contain in immediate proximity to the space reserved for the homeowner's signature a conspicuous statement in at least 12-point boldface type that the homeowner has the right to cancel the contract without penalty or obligation until midnight of the third business day after the date on which the homeowner signs the contract.

3. Unless waived as provided for in subsection 1 of section 97 of this regulation, cancellation occurs when the homeowner gives written notice of cancellation to the foreclosure purchaser at the address specified in the contract.

4. Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

5. Notice of cancellation given by the homeowner is not required to take the particular form as provided with the contract and, however expressed, is effective if the notice indicates the intention of the homeowner not to be bound by the contract.

6. Within 7 business days following receipt of a notice of cancellation given in accordance with subsection 3, the foreclosure purchaser shall return without condition any original contract and any other documents signed by the homeowner.

7. Until the period for cancellation that is provided in subsection 1 has expired, a foreclosure purchaser cannot ask a homeowner to sign, or have a homeowner sign, any deed or other document.

Sec. 97. 1. A foreclosure purchaser shall not attempt to induce a homeowner to waive any of the provisions of sections 93 to 96, inclusive, of this regulation, or otherwise attempt to limit the liability of the foreclosure purchaser. Except as otherwise provided in this subsection, any waiver by a homeowner of the provisions of sections 93 to 96, inclusive, of this regulation, or limitation of liability, is void and unenforceable. A waiver of the right to cancel is not void and unenforceable if the residence is subject to a foreclosure sale within the 3 business days provided for cancellation in section 96 of this regulation and the homeowner agrees to waive the right to cancel in a handwritten statement signed by the homeowner.

2. Any provision in a contract which attempts or purports to require arbitration of any dispute arising under sections 93 to 96, inclusive, of this regulation is voidable at the option of the homeowner.

Sec. 98. 1. A foreclosure purchaser shall not represent, directly or indirectly, that the foreclosure purchaser is:

(a) Acting as an advisor or consultant to the homeowner, or in any other manner represent that the foreclosure purchaser is acting on behalf of the homeowner;

(b) Licensed or certified by any entity or organization unless the foreclosure purchaser has such a license or certification; or

(c) Assisting the homeowner to “save the home” or use a substantially similar phrase.

2. A foreclosure purchaser shall not make any false statement, directly or indirectly, regarding the amount of proceeds the homeowner will receive after a foreclosure sale, any contract term, or the homeowner's rights or obligations incident to or arising out of the foreclosure reconveyance.

3. A foreclosure purchaser shall not do any of the following until the time during which the homeowner may cancel the transaction has fully elapsed:

(a) Accept from a homeowner an execution of, or induce any homeowner to execute, any instrument of conveyance of any interest in the residence;

(b) Record with the county recorder any document, including, but not limited to, any instrument of conveyance, signed by the homeowner;

(c) Transfer or encumber or purport to transfer or encumber any interest in the residence to or for the benefit of any third party; or

(d) Pay the homeowner any consideration.

Sec. 99. 1. In addition to any other duties set forth in this chapter or chapter 645F of NRS, any person licensed pursuant to this chapter and chapter 645F of NRS has a fiduciary obligation to a client.

2. For the purposes of this section, a person's fiduciary obligation does not impose a requirement to obtain access to products or services for a client other than those that are available to the person at the time of the transaction.

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

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

- (b) Conduct only those services which are suitable for the client's needs;*
- (c) Disclose any financial, business, professional or personal interest the person has in conducting a transaction for the client;*
- (d) Disclose any material fact that the person knows or should know may affect the client's rights or interests or the ability to obtain the intended benefit from a transaction;*
- (e) Provide an accounting to the client that lists all money received from the client; and*
- (f) Exercise reasonable care in performing any other duty relating to the provision of services as a covered service provider, foreclosure consultant or loan modification consultant, as applicable.*

Sec. 100. 1. *A person may file with the Commissioner a complaint alleging that another person has violated a provision of this chapter or chapter 645F of NRS or an order of the Commissioner.*

2. A complaint filed pursuant to this section must:

- (a) Be in writing;*
- (b) Be signed by the person filing the complaint or the authorized representative of the person filing the complaint;*
- (c) Contain an address and a telephone number for the person filing the complaint or the authorized representative of the person filing the complaint;*
- (d) Describe the nature of the alleged violation in as much detail as possible;*
- (e) Include as exhibits copies of all documentation supporting the complaint; and*
- (f) Include any other information or supporting materials required by the Commissioner.*

Sec. 101. *1. If a person properly files a complaint with the Commissioner pursuant to this chapter or chapter 645F of NRS, the Commissioner may investigate each violation alleged in the complaint, unless the Commissioner has previously investigated the alleged violation.*

2. If the Commissioner does not conduct an investigation of an alleged violation pursuant to subsection 1 because he previously has investigated the alleged violation, the Commissioner may provide to the person who filed the complaint a written summary of the previous investigation and the nature of any disciplinary action that was taken as a result of the previous investigation.

3. If the Commissioner conducts an investigation of an alleged violation pursuant to subsection 1, the Commissioner may determine from the investigation whether there is reasonable cause to believe that the person committed the alleged violation.

4. If, upon investigation, the Commissioner determines that there is not reasonable cause to believe that the person committed the alleged violation, the Commissioner may provide the reason for the determination, in writing, to the person who filed the complaint and to the person alleged to have committed the violation.

5. If it is determined that a violation has occurred, the Commissioner may take any actions within his authority.

Sec. 102. *It is unlawful for any person to provide or offer to provide any of the services of a covered service provider, foreclosure consultant or loan modification consultant or otherwise to engage in, carry on or hold himself out as engaging in or carrying on the business of a covered service provider, foreclosure consultant or loan modification consultant*

without first obtaining the applicable license issued pursuant to this chapter and chapter 645F of NRS, unless the person:

- 1. Is exempt from the provisions of this chapter and chapter 645F of NRS; and*
- 2. Complies with the requirements for that exemption.*

Sec. 103. *1. For each violation committed by an applicant for a license issued pursuant to this chapter and chapter 645F of NRS, whether or not the applicant is issued a license, the Commissioner may impose upon the applicant an administrative fine of not more than \$10,000 if the applicant:*

- (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 applicant possesses and which, if submitted by the applicant, would have rendered the applicant ineligible to be licensed pursuant to the provisions of this chapter and chapter 645F of NRS; or*
- (c) Has violated any provision of this chapter or chapter 645F of NRS or any order of the Commissioner in completing and filing the application for a license or during the course of the investigation of the application for a license.*

2. A person who engages in an activity for which licensure as a covered service provider, foreclosure consultant or loan modification consultant is required under this chapter and chapter 645F of NRS, without regard to whether the person is licensed under this chapter and chapter 645F of NRS, 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 chapter 645F of NRS or an order of a court of competent jurisdiction.

3. For each violation committed by a person who engages in an activity for which licensure as a covered service provider, foreclosure consultant or loan modification consultant is required under this chapter and chapter 645F of NRS, without regard to whether the person is licensed under this chapter and chapter 645F of NRS, the Commissioner may impose upon the person an administrative fine of not more than \$10,000, and if the person holds a license as a covered service provider, foreclosure consultant or loan modification consultant, the Commissioner may suspend, revoke or place conditions upon the person's license, or may do both, if the person, whether or not acting as such:

(a) Is insolvent;

(b) Is grossly negligent or incompetent in performing any act for which the person is required to be licensed pursuant to the provisions of this chapter and chapter 645F of NRS;

(c) Does not conduct business in accordance with law or has violated any provision of this chapter or chapter 645F of NRS or any order of the Commissioner;

(d) Is in such financial condition that the person cannot continue in business with safety to his customers;

(e) Has made a material misrepresentation in connection with any transaction governed by this chapter or chapter 645F of NRS;

(f) Has suppressed or withheld from a client any material facts, data or other information relating to any transaction governed by the provisions of this chapter or chapter 645F of NRS which the person knew or, by the exercise of reasonable diligence, should have known;

(g) Has knowingly made or caused to be made to the Commissioner any false representation of material fact or has suppressed or withheld from the Commissioner any information which the person possesses and which, if submitted to the Commissioner, would have rendered the person ineligible to be licensed pursuant to the provisions of this chapter and chapter 645F of NRS;

(h) Has failed to account to persons interested for all money received for a trust account or has failed to refund money for rescinded or cancelled contracts;

(i) Has refused to permit an examination by the Commissioner of his books and affairs or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the Commissioner pursuant to the provisions of this chapter or chapter 645F of NRS;

(j) Has been convicted of, or entered a plea of guilty or nolo contendere to, a felony relating to the practice of covered service providers, foreclosure consultants or loan modification consultants or any crime involving fraud, misrepresentation or moral turpitude;

(k) Has refused or failed to pay, within a reasonable time, any fines, fees, assessments and costs that the person is required to pay pursuant to this chapter or chapter 645F of NRS;

(l) Has failed to satisfy a claim made by a client which has been reduced to judgment;

(m) Has failed to account for or to remit any money of a client within a reasonable time after a request for an accounting or remittal;

(n) Has commingled the money or other property of a client with his own or has converted the money or property of others to his own use;

(o) Has engaged in any other conduct constituting a deceitful, fraudulent or dishonest business practice;

(p) Has repeatedly violated the policies and procedures required of a licensee;

(q) As a qualified employee, has failed to exercise reasonable supervision over the activities of associated licensees working under the qualified employee;

(r) Has instructed an associated licensee to commit an act that would be cause for the revocation of the license of the associated licensee, whether or not the associated licensee commits the act;

(s) If the person is an independent licensee, has employed a person as an associated licensee or authorized a person to be associated with the independent licensee as an associated licensee at a time when the independent licensee knew or, in light of all the surrounding facts and circumstances, reasonably should have known that the person:

(1) Had been convicted of, or entered a plea of guilty or nolo contendere to, a felony relating to the practice of covered service providers, foreclosure consultants or loan modification consultants or any crime involving fraud, misrepresentation or moral turpitude;
or

(2) Had a professional license or a financial services license or registration that was issued in this State or any other state, the United States, any district or territory of the United States or any foreign country suspended or revoked within the 10 years immediately preceding the date of his application;

(t) Has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS;

(u) Has allowed a person not licensed pursuant to this chapter and chapter 645F of NRS to act as a covered service provider, foreclosure consultant or loan modification consultant;

(v) If the person is an associated licensee, has violated the policies and procedures of the independent licensee who employs the associated licensee;

(w) Has offered or provided any services prescribed under this chapter or chapter 645F of NRS requiring licensure and the person did not have such a license and was not exempt from licensing at the time the person engaged in the activities; or

(x) Has failed to deposit money to a trust account when required to do so or has removed money from a trust account when not authorized to do so.

Sec. 104. *If a person is alleged to have engaged in any conduct or committed any violation related to a trust account, or is alleged to have committed a violation of any other provision of this chapter or chapter 645F of NRS or any order of the Commissioner, and the person fails to appear, without reasonable cause, at a hearing before the Commissioner concerning the alleged conduct or violation, the Commissioner may conduct the hearing in the person's absence, draw any conclusions that the Commissioner deems appropriate from the person's failure to appear and render a decision concerning the alleged conduct or violation.*

Sec. 105. 1. *Whether or not a complaint has been filed, the Commissioner may investigate a licensee or other person if, for any reason, it appears that:*

(a) The licensee or other person is conducting business in an unsafe and injurious manner or in violation of any provision of this chapter or chapter 645F of NRS or any order of the Commissioner;

(b) The licensee or other person is offering or providing any of the services of a covered services provider, foreclosure consultant or loan modification consultant or otherwise engaging in, carrying on or holding himself out as engaging in or carrying on the business of a covered services provider, foreclosure consultant or loan modification consultant without being appropriately licensed or exempt from licensing pursuant to the provisions of this chapter or chapter 645F of NRS; or

(c) The licensee or other person is violating any other provision of this chapter or chapter 645F of NRS or any order of the Commissioner.

2. If, upon investigation, the Commissioner has reasonable cause to believe that the licensee or other person has engaged in any conduct or committed any violation described in subsection 1, the Commissioner will notify the Attorney General of the conduct.

Sec. 106. 1. *In addition to any other action that is required or allowed pursuant to this chapter or chapter 645F of NRS, if the Commissioner has reasonable cause to believe that:*

(a) The assets or capital of a licensee are impaired; or

(b) A licensee is conducting business in an unsafe and injurious manner that may result in danger to the public,

↳ the Commissioner may immediately take possession of all the property, business and assets of the licensee that are located in this State and may retain possession of them.

2. If the licensee, or the board of directors or any officer or person in charge of the offices of the licensee, if any, refuses to permit the Commissioner to take possession of the property of the licensee pursuant to subsection 1:

(a) The Commissioner will notify the Attorney General; and

(b) The Attorney General may immediately bring such proceedings as may be necessary to place the Commissioner in immediate possession of the property of the licensee.

3. If the Commissioner takes possession of the property of the licensee, the Commissioner will:

(a) Make or have made an inventory of the assets and known liabilities of the licensee;

(b) File one copy of the inventory in his office;

(c) If the licensee's principal office is located within this State, file one copy in the office of the clerk of the district court of the county in which the licensee has his principal office;

(d) If the licensee's principal office is not located within this State, file one copy in the office of the clerk of the Eighth Judicial District Court of the State of Nevada in and for Clark County;

(e) Mail one copy to the licensee and to each stockholder, partner, officer, director or associate of the licensee, if any, at the last known address of each person; and

(f) If the licensee maintains any trust accounts, not later than 5 business days after the date on which the Commissioner takes possession of the property of the licensee, mail notice of such possession to the last known address of each person whose money is deposited in such an account or whose money was or should have been deposited in such an account during the preceding 12 months.

4. The clerk of the court with whom the copy of the inventory is filed shall file it as any other case or proceeding pending in the court and shall give it a docket number.

Sec. 107. *1. If the Commissioner takes possession of the property of a licensee as set forth in section 106 of this regulation, the licensee or any officers, directors, partners,*

associates or stockholders of the licensee may, within 60 days after the date on which the Commissioner takes possession of the property, make good any deficit in the assets or capital of the licensee or remedy any unsafe and injurious conditions or practices of the licensee.

2. At the expiration of the 60-day period, if the deficiency in assets or capital has not been made good or the unsafe and injurious conditions or practices remedied, the Commissioner may apply to the court to be appointed receiver and proceed to liquidate the assets of the licensee which are located in this State in the same manner as now provided by law for liquidation of a private corporation in receivership.

3. No other person may be appointed receiver by any court without first giving the Commissioner ample notice of his application.

4. The inventory made by the Commissioner and all claims filed by creditors are open at all reasonable times for inspection, and any action taken by the receiver upon any of the claims is subject to the approval of the court before which the case is pending.

5. The expenses of the receiver and compensation of counsel, as well as all expenditures required in the liquidation proceedings, must be fixed by the Commissioner subject to the approval of the court and, upon certification of the Commissioner, must be paid out of the money in his hands as the receiver.

Sec. 108. *1. If a person engages in an activity in violation of the provisions of this chapter or chapter 645F of NRS or an order of the Commissioner, the Commissioner may issue an order to the person directing the person to cease and desist from engaging in the activity.*

2. The order to cease and desist must be in writing and must state that, in the opinion of the Commissioner, the person has engaged in an activity:

(a) For which the person has not received a license as required by this chapter or chapter 645F of NRS; or

(b) In a manner that violates the provisions of this chapter or chapter 645F of NRS or an order of the Commissioner.

3. A person who receives an order to cease and desist pursuant to this section shall not engage in any activity governed by this chapter or chapter 645F of NRS after receiving the order unless the order is suspended or rescinded.

4. Not later than 20 calendar days after receiving an order pursuant to this section, the person who receives the order may file a verified petition with the Commissioner to request a hearing. Upon receipt of the verified petition, the Commissioner may, for good cause shown, suspend the order pending the hearing. The Commissioner will hold the hearing on a date not later than 30 calendar days after the date the petition is filed unless the Commissioner and the person agree to another date. The order to cease and desist is rescinded if the Commissioner fails to:

(a) Hold a hearing:

(1) Not later than 30 calendar days after the date the petition is filed; or

(2) On a date agreed to by the Commissioner and the person; or

(b) Render a written decision within 45 days after the date the hearing is concluded.

5. The decision of the Commissioner after a hearing is a final decision of the Commissioner for the purposes of judicial review.

Sec. 109. *The provisions of this chapter are not intended to:*

- 1. Limit any statutory or common-law right of a person to bring a civil action against a licensee or other person for any act or omission involved in the transaction of business by or on behalf of the licensee or other person;*
- 2. Limit the right of the State to punish a person for the violation of any law, ordinance or regulation; or*
- 3. Establish a basis for a person to bring a civil action against the State or its officers or employees for any act or omission in carrying out the provisions of this chapter or chapter 645F of NRS, including, without limitation, any act or omission relating to the disclosure of information or the failure to disclose information pursuant to the provisions of this chapter or chapter 645F of NRS.*

Sec. 110. *Before conducting a hearing, the Commissioner may, to the fullest extent allowed by the Constitution of the United States and the Constitution of this State:*

- 1. Order a summary suspension of a license pursuant to subsection 3 of NRS 233B.127; and*
- 2. Take any other action against a licensee or other person that is necessary to protect the health, safety or welfare of the public.*

Sec. 111. *1. If a licensee violates any provision of sections 73, 74 and 75 of this regulation and the licensee 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 licensee to provide information, make a report or permit an examination of the licensee's books or affairs*

pursuant to this chapter or chapter 645F of NRS and the licensee 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 may:

(a) Suspend or revoke the license of the licensee; and

(b) Conduct a hearing to determine whether the licensee 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 licensee pursuant to section 106 of this regulation.

2. In no case is a licensee entitled to a hearing for the imposition of disciplinary action by the Commissioner, unless, within 20 days after receiving a written notice, the licensee requests a hearing from the Commissioner in the manner set forth in the written notice from the Commissioner.

3. If the licensee fails to timely request a hearing, the Commissioner will enter a final order imposing disciplinary action as set forth in the notice sent to the licensee.

Sec. 112. 1. The Commissioner may issue the denial of any application for a license.

2. Upon receipt of a denial of an application, the applicant must request a hearing within 20 days after receipt of the notice or the Commissioner will issue a final order denying licensure.

3. Upon receipt of a request for a hearing pursuant to subsection 2, the Commissioner may designate a person to serve as a hearing officer and a hearing must be set as promptly as possible.

4. Each party to any hearing held pursuant to this section shall, not later than 10 days before the hearing, provide to the opposing party and to the hearing officer all documents anticipated to be used at the hearing. No other discovery is allowed.

Sec. 113. *1. If the Commissioner enters an order taking any disciplinary action against a person, denying a person's application for a license, denying a provider the right to teach approved courses, denying the approval of a provider's course or denying the right of an instructor of a provider to teach an approved course or approved courses, the Commissioner will cause a written notice of the order to be served personally or sent by certified mail or telegram to the person.*

2. Unless a hearing has already been conducted concerning the matter, the person, upon application, is entitled to a hearing. If the person does not make such an application within 20 days after the date of the initial order, the Commissioner will enter a final order concerning the matter.

3. A person may appeal a final order of the Commissioner taking any disciplinary action against the person in accordance with the provisions of chapter 233B of NRS that apply to a contested case.

Sec. 114. *1. If a hearing has been requested in a timely manner as set forth in this chapter or chapter 645F of NRS, each party must provide to the opposing party and to the hearing officer, not less than 10 days before a hearing, a copy of all papers, records, data or documents expected to be used as exhibits at the hearing and a list of witnesses expected to testify at the hearing. Nothing in this subsection prohibits a party from calling a rebuttal witness or offering other rebuttal evidence which has not been disclosed if allowed by the*

hearing officer. The filing of a motion does not toll the time for providing information and documentation to an opposing party.

2. Not less than 10 days before a hearing, each party must provide to the hearing officer a copy of all papers, records, data or documents expected to be used as exhibits at the hearing and a list of witnesses expected to testify at the hearing.

3. If a party fails to provide any document required to be provided by the provisions of this section, the hearing officer may exclude the document.

4. Neither party may serve interrogatories on the other party or conduct depositions, and neither party may engage in any other discovery unless otherwise required by law and allowed by the hearing officer.

Sec. 115. *1. All motions, unless made to exclude a witness, must be in writing.*

2. A written motion must be served on the opposing party and the hearing officer at least 15 days before the time set for the hearing on the motion unless good cause is shown to the hearing officer.

3. An opposing party may file a written response to a motion at least 7 days before the time set for the hearing on the motion by serving the written response on all parties and the hearing officer.

4. No motion for summary judgment will be allowed.

Sec. 116. *1. The time of a hearing may be continued by the hearing officer upon the written petition of a party only for good cause shown.*

2. The party requesting a continuance must serve the written petition upon the opposing party at the time that the request is made, and the opposing party may file an objection to the

request for a continuance within 3 days after receipt of the written petition.

Sec. 117. 1. *In conducting any hearing, the hearing officer is not bound by the technical rules of evidence, and any informality in any proceeding or in the manner of taking testimony does not invalidate any order or decision of the hearing officer. The rules of evidence of courts of this State will be followed generally but may be relaxed at the discretion of the hearing officer if deviation from the technical rules of evidence will aid in determining the facts.*

2. Any evidence offered at a hearing must be material and relevant to the issues of the hearing.

3. Sworn declarations may be introduced in lieu of testimony if a witness resides outside the State of Nevada.

4. The hearing officer may exclude inadmissible, incompetent, repetitious or irrelevant evidence or order that the presentation of that evidence be discontinued.

5. A party who objects to the introduction of evidence shall briefly state the grounds of the objection at the time the evidence is offered. The party who offers the evidence may present a rebuttal argument to the objection.

Sec. 118. 1. *The hearing officer shall:*

(a) Ascertain whether all persons ordered to appear under subpoena are present and whether all documents, books, records and other evidence under subpoena are present in the hearing room.

(b) Administer the oath to all persons whose testimony will be taken as follows:

Do you and each of you solemnly swear or affirm to tell the truth and nothing but the truth in these proceedings?

(c) Ascertain whether either party desires to have a witness excluded from the hearing room until the witness is called. A witness may be excluded upon the motion of the hearing officer or upon the motion of either party. If a witness is excluded, the witness will be instructed not to discuss the case during the pendency of the proceeding. The respondent will be allowed to remain present at the hearing. The Commissioner may designate a person who is a member of the staff of the Division and who may also be a witness to act as its representative. Such a representative will be allowed to remain present at the hearing.

(d) Ascertain whether a copy of the complaint or decision to deny has been filed and whether an answer has been filed as part of the record in the proceedings.

(e) Hear any preliminary motions, stipulations or orders upon which the parties agree and address any administrative details.

(f) Request the Division to proceed with the presentation of its case.

2. Parties may waive opening and closing statements.

3. The respondent may cross-examine witnesses in the order that the Division presents them.

4. Witnesses or counsel may be questioned by the hearing officer at any time during the proceeding.

5. Evidence which will be introduced or which is used by a witness:

(a) Must first be marked for identification; and

(b) May be received by the hearing officer at any point during the proceeding.

6. When the Division has completed its presentation, the hearing officer shall request the respondent to proceed with the introduction of evidence and calling of witnesses on the respondent's behalf.

7. The Division may cross-examine witnesses in the order that the respondent presents them.

8. When the respondent has completed his presentation, the Division may call any rebuttal witnesses.

9. When all testimony for the Division and respondent has been given and all evidence has been submitted, the hearing officer may request the Division and the respondent to summarize their presentations.

10. The hearing officer may, in his discretion, waive or modify any provision of this section if necessary to expedite or ensure the fairness of the hearing.

Sec. 119. *The Division has the burden of proof in any hearing pursuant to this chapter or chapter 645F of NRS. The standard of proof in such a hearing is substantial evidence.*

Sec. 120. *A respondent may represent himself at the hearing or be represented by an attorney.*

Sec. 121. *The hearing officer shall:*

1. Attempt to coordinate the time and location of the hearing with the parties before setting the matter; and

2. Advise the Commissioner in writing of the time and location of the hearing in such a manner as to allow the Commissioner to comply with the notice requirements of NRS 233B.121.

Sec. 122. 1. The provisions of this chapter or chapter 645F of NRS do not affect or limit the authority of the Commissioner, at any stage of a contested case, to make an informal disposition of the contested case pursuant to subsection 5 of NRS 233B.121 or to enter into a consent or settlement agreement pursuant to NRS 622.330.

2. Any action taken by the Commissioner pursuant to subsection 1:

(a) Is not subject to approval by the hearing officer; and

(b) May have its terms placed into the record at the discretion of the Commissioner.

Sec. 123. The hearing officer shall issue and serve upon all parties, personally or by certified mail, a written decision meeting the requirements of NRS 233B.125 within 30 days after the close of the hearing.

Sec. 124. 1. A party may file a posthearing motion only to request a rehearing or to request a modification of the discipline, fine, costs or attorney's fees imposed against a respondent.

2. Any posthearing motion must be filed within 15 days after service of the decision by the hearing officer.

3. The opposing party may file an opposition within 10 days after a posthearing motion is filed, and the moving party may file a final reply within 5 days after an opposition is filed.

4. The hearing officer shall issue and serve upon all parties, personally or by certified mail, a written decision on any posthearing motion within 30 days after the posthearing motion is filed.

Sec. 125. *1. A person who provides a governmental entity, officer or employee with any information relating to a contested case is immune from any civil liability for providing that information if the person acted in good faith and without malicious intent.*

2. A governmental entity, officer or employee is immune from any civil liability for:

(a) Any decision or action taken in good faith and without malicious intent in carrying out the provisions of this chapter or chapter 645F of NRS or any law or regulation governing occupational licensing; or

(b) Communicating or cooperating with or providing any documents or other information to any other governmental entity, officer or employee conducting an investigation, disciplinary proceeding or civil or criminal prosecution.

Sec. 126. Section 21 of this regulation is hereby amended to read as follows:

Sec. 21. 1. In addition to any other requirements set forth in this chapter and chapter 645F of NRS ~~†~~:

~~—(a) A natural person who applies for the issuance of a license as a covered service provider, foreclosure consultant or loan modification consultant must include his social security number in the application submitted to the Commissioner.~~

~~—(b) A~~ *a* natural person who applies for the issuance or renewal of a license as a covered service provider, foreclosure consultant or loan modification consultant must submit to the Commissioner the statement prescribed by the Division of Welfare and

Supportive Services of the Department of Health and Human Services pursuant to NRS 425.520. The statement must be completed and signed by the applicant.

2. The Commissioner will include the statement required by subsection 1 in:

(a) The application or any other forms that must be submitted for the issuance or renewal of the license; or

(b) A separate form prescribed by the Commissioner.

3. A license as a covered service provider, foreclosure consultant or loan modification consultant may not be issued or renewed by the Commissioner if the applicant is a natural person who:

(a) Fails to submit the statement required by subsection 1; or

(b) Indicates on the statement submitted pursuant to subsection 1 that the applicant is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

4. If an applicant indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the Commissioner will advise the applicant to contact the district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.

5. If the Commissioner receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional, occupational and recreational

licenses, certificates and permits issued to a person who is the holder of a license as a covered service provider, foreclosure consultant or loan modification consultant, the Commissioner will deem the license issued to that person to be suspended at the end of the 30th day after the date on which the court order was issued unless the Commissioner receives a letter issued to the holder of the license by the district attorney or other public agency pursuant to NRS 425.550 stating that the holder of the license has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

6. The Commissioner will reinstate a license as a covered service provider, foreclosure consultant or loan modification consultant that has been suspended by a district court pursuant to NRS 425.540 if the Commissioner receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose license was suspended stating that the person whose license was suspended has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

Sec. 127. 1. Notwithstanding the provisions of sections 2 to 126, inclusive, of this regulation to the contrary, during the period from the date this regulation is filed with the Secretary of State until December 31, 2009, inclusive, the license of a covered service provider, foreclosure consultant or loan modification consultant is effective upon the date that the applicant for a license as a covered service provider, foreclosure consultant or loan modification consultant:

(a) Except as otherwise provided in this subsection, has filed with the Commissioner of Mortgage Lending a complete application package as provided in chapter 645F of NRS, sections

2 to 126, inclusive, of this regulation, and any other regulation adopted pursuant to chapter 645F of NRS;

(b) Has posted the surety bond as prescribed in section 80 of this regulation or has provided a substitute for the surety bond as prescribed in section 81 of this regulation, if applicable; and

(c) Has received written notification from the Commissioner that a complete application package as provided in paragraph (a), except as otherwise provided in this subsection, has been received by the Commissioner.

↪ A natural person who is required to complete the educational requirements for initial licensure prescribed in section 43 of this regulation, including, without limitation, a natural person who is an applicant for a license as a covered service provider, foreclosure consultant or loan modification consultant, will have 3 months from the date that the complete application package as provided in paragraph (a) is received by the Commissioner to complete the educational requirements for initial licensure prescribed in section 43 of this regulation.

2. The license issued pursuant to subsection 1 must be invalidated by the Commissioner if, upon investigation, the Commissioner determines that the applicant does not meet the requirements of chapter 645F of NRS, sections 2 to 126, inclusive, of this regulation, or any other regulation adopted pursuant to chapter 645F of NRS. The Commissioner will notify the applicant, in writing, if a license is invalidated pursuant to this section. Such invalidation shall be construed as a license denial. A covered service provider, foreclosure consultant or loan modification consultant who accepts a license upon the foregoing conditions agrees that invalidation of the license will be construed as a license denial.

3. The provisions of this section do not apply to an application for a license which is received by the Commissioner after December 31, 2009.

4. As used in this section:

(a) “Covered service provider” has the meaning ascribed to it in section 6 of this regulation.

(b) “Foreclosure consultant” has the meaning ascribed to it in NRS 645F.320.

(c) “Loan modification consultant” has the meaning ascribed to it in section 2 of Assembly Bill No. 152 of the 75th Session of the Nevada Legislature.

Sec. 128. 1. A license as a loan modification and foreclosure consultant which is issued pursuant to and valid in accordance with section 1 of the emergency regulation adopted by the Commissioner of Mortgage Lending on July 8, 2009, and assigned LCB File No. E003-09, shall be deemed to be a license as a covered service provider issued pursuant to section 127 of this regulation and chapter 645F of NRS, and such a licensee shall be deemed to be an independent licensee. A license as a loan modification and foreclosure consultant agent which is issued pursuant to and valid in accordance with section 1 of the emergency regulation adopted by the Commissioner of Mortgage Lending on July 8, 2009, and assigned LCB File No. E003-09, shall be deemed to be a license as a covered service provider issued pursuant to section 127 of this regulation and chapter 645F of NRS, and such a licensee shall be deemed to be an associated licensee. The date of issuance of any such license remains the date that the license was issued pursuant to the emergency regulation adopted by the Commissioner of Mortgage Lending on July 8, 2009, and assigned LCB File No. E003-09.

2. A license as a loan modification and foreclosure consultant which is issued pursuant to and valid in accordance with sections 2 to 36, inclusive, of the emergency regulation adopted by

the Commissioner of Mortgage Lending on July 8, 2009, and assigned LCB File No. E003-09, shall be deemed to be a license as a covered service provider issued pursuant to sections 2 to 126, inclusive, of this regulation and chapter 645F of NRS, and such a licensee shall be deemed to be an independent licensee. A license as a loan modification and foreclosure consultant agent which is issued pursuant to and valid in accordance with sections 2 to 36, inclusive, of the emergency regulation adopted by the Commissioner of Mortgage Lending on July 8, 2009, and assigned LCB File No. E003-09, shall be deemed to be a license as a covered service provider issued pursuant to sections 2 to 126, inclusive, of this regulation and chapter 645F of NRS, and such a licensee shall be deemed to be an associated licensee. The date of issuance of any such license remains the date that the license was issued pursuant to the emergency regulation adopted by the Commissioner of Mortgage Lending on July 8, 2009, and assigned LCB File No. E003-09.

3. As used in this section:

- (a) “Associated licensee” has the meaning ascribed to it in section 4 of this regulation.
- (b) “Covered service provider” has the meaning ascribed to it in section 6 of this regulation.
- (c) “Independent licensee” has the meaning ascribed to it in section 8 of this regulation.

Sec. 129. The emergency regulation adopted by the Commissioner of Mortgage Lending on July 8, 2009, and assigned LCB File No. E003-09, is hereby repealed.

Sec. 130. 1. This section and sections 1 to 92, inclusive, 99 to 125, inclusive, 127, 128 and 129 of this regulation become effective upon filing with the Secretary of State.

2. Sections 93 to 98, inclusive, of this regulation become effective upon the later of:

- (a) October 1, 2009; or

(b) The date this regulation is filed with the Secretary of State.

3. Section 21 of this regulation expires by limitation on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment for the support of one or more children,

↪ are repealed by the Congress of the United States.

4. Section 126 of this regulation becomes effective on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with a subpoena or warrant relating to a procedure to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment for the support of one or more children,

↪ are repealed by the Congress of the United States.