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*Governor*

STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF MORTGAGE LENDING  
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DIANNE CORNWALL  
*Director*

JOSEPH L. WALTUCH  
*Commissioner*

February 2, 2009

To: All Mortgage Brokers, Mortgage Agents and Mortgage Bankers

Re: Advance Fees

The Division is concerned that some licensees may have been charging "advance fees" in violation of the law. This memo is a reminder of the requirements pertaining to the charging of these fees.

All advance fees, including application fees, collected by a licensee must be placed in escrow. These fees can only be released to the licensee upon completion of the loan commitment or the loan. In the event no loan commitment is obtained or the loan does not close, the advance fees must be returned to the person who paid them. The only exception to this is that fees paid to third persons, such as credit report fees paid to a reporting agency, need not be refunded if the person who paid them first signs an advance fee agreement. There is no required form of advance fee agreement, but the law does impose certain requirements.

Please review the applicable provisions of law, set forth below, and act accordingly. The Division examines to these standards. Should you have any questions do not hesitate to contact the Division at (702) 486-0782.

**Mortgage Brokers and Mortgage Agents**

**NRS 645B.165 Escrow account required for fee, salary, deposit or money paid in advance; release from escrow; exceptions; refunds; penalty.**

1. Except as otherwise provided in subsection 3, the amount of any advance fee, salary, deposit or money paid to a mortgage broker and his mortgage agents or any other person to obtain a loan which will be secured by a lien on real property must be placed in escrow pending completion of the loan or a commitment for the loan.
2. The amount held in escrow pursuant to subsection 1 must be released:
  - a. Upon completion of the loan or commitment for the loan, to the mortgage broker or other person to whom the advance fee, salary, deposit or money was paid.
  - b. If the loan or commitment for the loan fails, to the person who made the payment.
3. Advance payments to cover reasonably estimated costs paid to third persons are excluded from the provisions of subsections 1 and 2 if the person making them first signs a written agreement which specifies the estimated

costs by item and the estimated aggregate cost, and which recites that money advanced for costs will not be refunded. If an itemized service is not performed and the estimated cost thereof is not refunded, the recipient of the advance payment is subject to the penalties provided in NRS 645B.960.

(Added to NRS by 1977, 618; A 1979, 1397; 1989, 1442; 1991, 178; 1995, 1313; 1999, 3793)

### **Mortgage Bankers**

#### **NRS 645E.420 Escrow account required for fee, salary, deposit or money paid in advance; release from escrow; exceptions; refunds; penalty.**

1. Except as otherwise provided in subsection 3, the amount of any advance fee, salary, deposit or money paid to any mortgage banker or other person to obtain a loan secured by a lien on real property must be placed in escrow pending completion of the loan or a commitment for the loan.

2. The amount held in escrow pursuant to subsection 1 must be released:

(a) Upon completion of the loan or commitment for the loan, to the mortgage banker or other person to whom the advance fee, salary, deposit or money was paid.

(b) If the loan or commitment for the loan fails, to the person who made the payment.

3. Advance payments to cover reasonably estimated costs paid to third persons are excluded from the provisions of subsections 1 and 2 if the person making them first signs a written agreement which specifies the estimated costs by item and the estimated aggregate cost, and which recites that money advanced for costs will not be refunded. If an itemized service is not performed and the estimated cost thereof is not refunded, the recipient of the advance payment is subject to the penalties provided in NRS 645E.960.

(Added to NRS by 1999, 3753; A 2003, 3566)