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SECRETARY OF STATE
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Form for Filing
Administrative Regulations

LCB File No. R177-18

Agency: **Department of Business & Industry,**
Division of Mortgage Lending

FOR EMERGENCY
REGULATIONS ONLY

Effective date _____

Expiration date _____

Governor's signature

Classification: ☐ PROPOSED ☒ ADOPTED BY AGENCY ☐ EMERGENCY

Brief description of action: To comply with the statutory duty of the Nevada Division of Mortgage Lending ("Division") to ensure the effectiveness of NRS 645A and to carry out the provisions of NRS 645A; to conform with and implement revisions as necessitated by statutory changes to NRS 622 resulting from passage of Senate Bill 69 in the 79th Session (2017) of the Nevada Legislature (as codified in NRS 622.530, requiring that regulatory bodies authorized to license and regulate the professions and occupations organized under Title 54 of the NRS adopt regulations providing for the issuance of a license by endorsement to engage in such professions and occupations); and to ensure that its regulations are written clearly and concisely.

The proposed regulations amend NAC 645A to:

- Establish the prerequisites, requirements, conditions, and manner of submission by a natural person, of his or her initial application for license by endorsement to the Division, to engage in the activities of an escrow agency or escrow agent in Nevada, where such person: 1) holds a comparable license issued by the District of Columbia or any state or territory of the United States; (2) possesses qualifications that are equal to or substantially similar to the qualifications required for issuance of a license to engage in such activities in the state of Nevada; and (3) satisfies other requirements as directed or authorized by Senate Bill 69 as adopted by the 79th Session (2017) of the Nevada Legislature (as codified in NRS 622.530).
- Establish a timeline for the Commissioner of the Division to request additional information related to an application, approve an application, and issue a license by endorsement.

- Provide the grounds or basis upon which the Commissioner of the Division may deny an application for license by endorsement.
- Establish that a person who has been issued a license by endorsement is subject to the same duties, restrictions, penalties, liabilities, conditions and limitations that apply to a person who has been issued a license which is not a license by endorsement, including those provisions of law relating to the expiration and renewal of a license.

Authority citation other than NRS 233B: NRS 645A.015; NRS 645A.050; and §3 of Senate Bill 69 adopted into law during the 79th Session (2017) of the Nevada Legislature (NRS 622.530).

Notice date: January 28, 2019

Date of Adoption by Agency:

Hearing date: March 7, 2019

March 7, 2019

**APPROVED REGULATION OF
THE COMMISSIONER OF MORTGAGE LENDING**

LCB File No. R177-18

Effective June 26, 2019

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

AUTHORITY: §§1-4, NRS 622.530 and 645A.050.

A REGULATION relating to licensure by endorsement; prescribing the requirements for licensure by endorsement as an escrow agent or escrow agency; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires certain regulatory bodies to adopt regulations providing for the issuance of a license by endorsement to engage in an occupation or profession in this State to any natural person who: (1) holds a corresponding valid and unrestricted license to engage in that occupation or profession in the District of Columbia or any state or territory of the United States; (2) possesses qualifications that are substantially similar to the qualifications required for issuance of a license to engage in that occupation or profession in this State; and (3) meets certain other requirements. (NRS 622.530) Under existing law, the Commissioner of Mortgage Lending has the authority to regulate escrow agents and escrow agencies. (NRS 645A.050)

Section 2 of this regulation establishes standards for the licensure by endorsement of a natural person as an escrow agent or escrow agency. **Section 3** of this regulation establishes a timeline for the Commissioner to request additional information related to an application, approve an application and issue a license by endorsement. **Section 3** also establishes grounds for the Commissioner to deny an application for licensure by endorsement. **Section 4** of this regulation establishes that a person who has been issued a license by endorsement is subject to the same duties, restrictions, penalties, liabilities, conditions and limitations that apply to a person who has been issued a license which is not a license by endorsement, including those provisions of law relating to the expiration and renewal of a license.

Section 1. Chapter 645A of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *The Commissioner may issue a license by endorsement as an escrow agent or escrow agency to a natural person who holds a corresponding valid and unrestricted license to engage in the activities of an escrow agent or escrow agency, as applicable, in the District of Columbia or any state or territory of the United States if the natural person:*

1. Submits to the Commissioner all of the following:

(a) An application on a form prescribed by the Commissioner. The applicant shall include in the application his or her social security number.

(b) Proof satisfactory to the Commissioner that he or she:

(1) Holds a corresponding valid and unrestricted license to engage in the activities of an escrow agent or escrow agency, as applicable, in the District of Columbia or any state or territory of the United States and has held such a license for a period of at least 5 continuous years immediately preceding the date on which the application is submitted;

(2) Possesses qualifications that are equal to or substantially similar to the qualifications for issuance of a license as an escrow agent or escrow agency, as applicable, in this State, including, without limitation, proof satisfactory to the Commissioner that the applicant has successfully completed the education and training required for the issuance of the applicant's license to engage in the activities of an escrow agent or escrow agency, as applicable, in the District of Columbia or any state or territory of the United States and that such education and training provided instruction that is, as determined by the Commissioner, equivalent to the instruction required for initial licensure pursuant to NAC 645A.055 to 645A.160, inclusive;

(3) Has at least 2 years of verifiable experience in the business of administering escrows, as defined in NRS 645A.010, in the District of Columbia or any state or territory of the United States within the 5 years immediately preceding the date on which the application is submitted;

(4) Is a citizen of the United States or otherwise has the legal right to work in the United States;

(5) Has not been disciplined by the corresponding regulatory authority of the District of Columbia or any state or territory of the United States in which the applicant currently holds or has held a license to engage in the activities of an escrow agent or escrow agency, as applicable;

(6) Has not been held civilly or criminally liable in the District of Columbia or any state or territory of the United States for misconduct relating to his or her license to engage in the activities of an escrow agent or escrow agency, as applicable;

(7) Has not had a license to engage in the activities of an escrow agent or escrow agency, as applicable, suspended or revoked in the District of Columbia or any state or territory of the United States;

(8) Has not been refused a license to engage in the activities of an escrow agent or escrow agency, as applicable, in the District of Columbia or any state or territory of the United States for any reason; and

(9) Does not have pending any disciplinary action concerning his or her license to engage in the activities of an escrow agent or escrow agency, as applicable, in the District of Columbia or any state or territory of the United States.

(c) A complete set of his or her fingerprints, submitted directly or through the Registry, and written permission authorizing the Commissioner to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report or proof that the applicant previously passed a comparable criminal background check within the 6 months immediately preceding the date on which the application is submitted.

(d) The statement required by NRS 645A.025.

(e) If the applicant is applying for a license as an escrow agent, proof that the applicant is named as principal in any corporate surety bond deposited with the Commissioner pursuant to NRS 645A.041 by the escrow agency with whom he or she is associated or employed.

(f) If the applicant is applying for a license as an escrow agency:

(1) An audited financial statement that is prepared using the records of the activities of an escrow agency engaged in by the applicant in the District of Columbia or any state or territory of the United States by a certified public accountant who holds a certificate to engage in the practice of public accounting;

(2) Proof satisfactory to the Commissioner that the applicant is in such financial condition that the applicant can continue in business with safety to his or her customers; and

(3) Proof that the applicant is named as a principal on a corporate surety bond deposited with the Commissioner pursuant to NRS 645A.041 that is in full force and effect and satisfies all of the requirements of NRS 645A.041 or that the applicant has deposited a substitute form of security pursuant to NRS 645A.042.

(g) An affidavit stating that the information contained in the application and any accompanying material is true and complete.

(h) Any other information required by the Commissioner.

2. Pays the fees to apply for and be issued a license as an escrow agent or escrow agency, as applicable, as required by NRS 645A.040.

Sec. 3. 1. Not later than 21 business days after receiving an application for a license by endorsement as an escrow agent or escrow agency pursuant to section 2 of this regulation, the Commissioner will provide written notice to the applicant of any additional information required by the Commissioner to consider the application. Unless the Commissioner denies the application pursuant to subsection 2, the Commissioner will approve the application and issue a license by endorsement as an escrow agent or escrow agency, as applicable, to the applicant not later than:

(a) Sixty days after receiving the application;

(b) Fifteen days after the Commissioner receives the report from the Federal Bureau of Investigation or proof that the applicant has previously passed a comparable criminal background check within the 6 months immediately preceding the date on which the application is submitted, as required by paragraph (c) of subsection 1 of section 2 of this regulation; or

(c) If the application is for licensure as an escrow agency, 15 days after depositing with the Commissioner the corporate surety bond required by NRS 645A.041 or a substitute form of security pursuant to NRS 645A.042,

↪ whichever occurs latest.

2. The Commissioner may deny an application for licensure by endorsement submitted pursuant to section 2 of this regulation if:

(a) The applicant willfully fails to comply with the requirements of paragraph (c) of subsection 1 of section 2 of this regulation;

(b) The report from the Federal Bureau of Investigation indicates that the applicant has been convicted of a crime that would be grounds for taking disciplinary action against the applicant as a licensee and the Commissioner has not previously taken disciplinary action against the applicant based on that conviction; or

(c) The Commissioner finds that he or she would have grounds to deny the application if the application was not an application for licensure by endorsement.

Sec. 4. 1. Except as otherwise provided in section 2 of this regulation, a person who has been issued a license by endorsement as an escrow agent or escrow agency pursuant to section 3 of this regulation is subject to the same duties, restrictions, penalties, liabilities, conditions and limitations that would apply under the laws of this State to a person issued a license as an escrow agent or escrow agency, as applicable, who did not obtain his or her license by endorsement pursuant to section 3 of this regulation.

2. A license by endorsement issued pursuant to section 3 of this regulation expires and is subject to renewal as provided by NRS 645A.040 on the same terms as a license which was not issued by endorsement.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066**

Informational Statement

LCB FILE NO. R177-18

The following statement is submitted for adopted amendments to Nevada Administrative Code ("NAC") Chapter 645A.

1. A clear and concise explanation of the need for the adopted regulation.

To comply with the Division's statutory duty to ensure the effectiveness of Chapter 645A of the Nevada Revised Statutes ("NRS"), to carry out the provisions of NRS 645A, and to conform with and implement revisions as necessitated by the statutory changes to NRS 622 resulting from passage of Senate Bill 69 in the 79th Session (2017) of the Nevada Legislature (requiring that the state regulatory bodies authorized to license and regulate the professions and occupations organized under Title 54 of the NRS adopt regulations providing for the issuance of a license by endorsement to engage in such professions and occupations). Following its enactment, the pertinent provisions of Senate Bill 69 were codified in NRS 622.530. Under existing law, specifically at NRS 645A.050, the Commissioner of the Nevada Division of Mortgage Lending ("the Commissioner") has the authority to regulate escrow agents and escrow agencies.

Specifically, the adopted regulation adds to and amends NAC 645A to:

- Establish the prerequisites, requirements, conditions, and manner of submission by a natural person, of his or her initial application for license by endorsement to the Commissioner of the Nevada Division of Mortgage Lending, to engage in the activities of an escrow agency or escrow agent in Nevada, where such person: 1) holds a comparable license issued by the District of Columbia or any state or territory of the United States; (2) possesses qualifications that are equal to or substantially similar to the qualifications required for issuance of a license to engage in such activities in the state of Nevada; and (3) satisfies other requirements as directed or authorized by Senate Bill 69 as adopted by the 2017 Session of the Nevada Legislature.
- Provide the standards for the licensure by endorsement of a natural person as an escrow agent or escrow agency.
- Provide the timeline for the Commissioner to request additional information related to an application, approve an application, and issue a license by endorsement.

- Establish grounds for the Commissioner to deny an application for licensure by endorsement.
- Establish that a person who has been issued a license by endorsement is subject to the same duties, restrictions, penalties, liabilities, conditions and limitations that apply to a person who has been issued a license which is not a license by endorsement, including those provisions of law relating to the expiration and renewal of a license.

2. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

Copies of the text of the proposed regulation, notice of workshop, small business impact statement, and notice of intent to act upon the regulation were e-mailed to Division licensees and other interested parties on the Division's mailing list as well as any persons who had specifically requested such notice. These documents were also made available at the Division of Mortgage Lending's Website at <http://www.mld.nv.gov> and the Nevada Public Notice Website at <http://notice.nv.gov>. Further, in addition to the Nevada Legislature's website at <https://www.leg.state.nv.us/App/Notice/A/>, such documents were posted at prominent Nevada offices which included the Nevada State Business Center in Las Vegas, the Division's office in Las Vegas, the Office of the Department of Business and Industry in Carson City, and the Nevada State Library and Archives in Carson City. As also publicly noticed in the same manner as stated above, the Revised Proposed Regulation R177-18 as drafted by the Legislative Counsel Bureau ("LCB") dated January 4, 2019, the notice of intent to act upon the regulation, and small business statement, were additionally provided to all county libraries in Nevada at which the Division does not maintain an office, for posting. Notice of intent to act upon the regulation, as accompanied by the LCB's draft of revised proposed regulation and the Division's small business statement, was further submitted to the LCB for posting on the Nevada Legislative website.

In May 2018, in anticipation of the Division's workshop to be held in this matter, the Division made e-mail notification to approximately 46 of its licensees under NRS 645A as well as other interested parties concerning the proposed regulation amendments, in which it solicited comments concerning whether these would impose a direct and significant economic burden upon a small business, or directly restrict the formation operation, or expansion of a small business. Further, in addition to solicitation of such comments through its website, the Division reached out to a variety of stakeholders, including the Nevada Mortgage Lenders Association and the Advisory Council on Mortgage Investments and Mortgage Lending. The Division did not receive any public comments in response to these efforts.

As reflected in the Division's issued and publicly noticed workshops scheduled for June 26, 2018 (to be held in the identified Las Vegas, Nevada, location as video-conferenced with the identified Carson City, Nevada location), the Division subsequently solicited additional receipt of written comments, testimony, or documentary evidence, and advised that oral comments on the proposed regulations may be made at the meeting. No public response was received.

The duly-noticed workshops were indeed held on June 26, 2018 in Las Vegas as video-conferenced with Carson City. Minutes of the workshops are attached hereto as "Exhibit A, Part I" and "Exhibit A, Part II." In conformance with its noticed public workshop and agenda, the Commissioner conducted a 9:00 a.m. proceeding on this date to describe an introduction of the regulatory process and provisions of the basis for, and summary of, the proposed regulatory amendments to NAC 645A, as well as to the other chapters of the Nevada Administrative Code over which the Commissioner has jurisdiction (NAC 645B, NAC 645E, and NAC 645F), as the requirements of Senate Bill 69 concerning licensure by endorsement apply to all of these chapters in the same fashion. In conformance with its noticed public workshop and agenda as issued on June 7, 2018, the Commissioner conducted a scheduled 9:30 a.m. proceeding on June 26, 2018, to specifically address the proposed regulatory amendments to NAC 645A, even though these generally "mirror" the same revisions proposed to be made to the other NAC Chapters under the Division's jurisdiction as addressed at the noticed 9:00 a.m. introductory proceeding. None of the attendees at these proceedings provided any written or verbal comments.

Thereafter, on January 28, 2019, the Commissioner issued and posted a Notice of Intent to Act Upon a Regulation based upon the LCB Draft of Revised Proposed Regulation R177-18, dated January 4, 2019 as stated above, again soliciting comments. No public response was received. The Division further issued and posted, on February 11 and February 12, 2019, its Notice of Public Meetings with the Agendas for adoption hearings to be held on March 7, 2019, including adoption of the proposed amendments to NAC 645A.

As duly-noticed, the public hearing for adoption of the proposed regulation was held on March 7, 2019, in Las Vegas and video-conferenced to Carson City. Minutes of the public hearing are attached hereto as "Exhibit B." While one member of the public attended the hearing in the Las Vegas location, he did not provide any verbal or written comments at the hearing.

If public comments or testimony had been provided concerning the proposed regulations, a copy of the summary of such public response would have been obtained from the Division of Mortgage Lending, 3300 W. Sahara Avenue, Suite 285, Las Vegas, Nevada, 89102, or by e-mailing a request to krailey@mld.nv.gov

3. The number of persons from the public who:

	<u>Carson City</u>	<u>Las Vegas</u>
Attended <i>June 26, 2018</i> workshops—		
9:00 a.m. proceeding:	1	8
9:30 a.m. proceeding:	1	4
Testified at the <i>June 26, 2018</i> workshop:	0	0
Attended <i>March 7, 2019</i> adoption hearing:	0	1
Testified at the <i>March 7, 2019</i> adoption hearing:	0	0
Submitted written comments::	0	

4. **A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented (if provided to the agency), for each person who testified at each hearing and submitted to the agency written statements.**

No members of the public who attended the workshop proceedings on June 26, 2018 (at either the Las Vegas or Carson City locations) testified or submitted to the agency written comments. The one member of the public who attended the adoption hearing in Las Vegas on March 7, 2019, provided neither testimony nor written comments. No member of the public appeared at the adoption hearing in the Carson City location to have presented testimony or written comments.

5. **A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited from affected businesses in the same manner as they were solicited from the public as provided in the response to Item #2, above. The Division did not receive any responsive comments.

6. **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

At the conclusion of the noticed public hearing on March 7, 2019, the permanent regulation was adopted in the verbatim form as proposed and reflected in the *LCB Draft of Revised Proposed Regulation R177-18*, dated January 4, 2019. Having contemplated the goals to be served by the regulations, and the text of the proposed regulations since the time they were originally drafted and revised, as well as considering them throughout the workshop and hearing proceedings, the Commissioner determined that such LCB draft adequately set forth the desired language in such manner as to not merit any change(s) to the provisions.

7. **The estimated economic effect of the adopted regulation on the businesses which it is to regulation and on the public. These must be stated separately, and each case must include:**

- (a) **Both adverse and beneficial effects; and**
- (b) **Both immediate and long-term effects.**

- (a) Both adverse and beneficial effects

The Division does not foresee any major adverse effects of the adopted regulation to either the business of an escrow agency, escrow agent, or to the public.

The Division anticipates that the beneficial effects of the adopted regulation may result in cost savings and expedited licensure for those who met the criteria for licensure by endorsement as provided in the adopted regulation without unnecessarily burdening business activity.

- (b) Both immediate and long-term effects.

The Division anticipates that both the immediate and long-term beneficial effects of the adopted regulation will protect the health and welfare of Nevadans without unnecessarily burdening business activity.

8. **The estimated cost to the agency for enforcement of the adopted regulation.**

The Division estimates that the adopted regulation will result in minimal costs, if any, to the agency for enforcement. The Division expects that any costs will be absorbed into the existing workloads of current staffing levels.

9. **A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

There are no other state or government agencies regulations known by the Division that the adopted regulation overlaps or duplicates.

10. **If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

The adopted regulation does not include provisions which are known to be more stringent than a federal regulation which regulates the same activity.

11. **If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

To the extent that the anticipated fee for an applicant seeking licensure by endorsement may be interpreted as a new fee, the fee for filing such application will be the same as that currently imposed upon any other natural person who applies for a Nevada license to engage in the activities of an escrow agency or escrow agent.

The fee for licensure by endorsement will be used to offset the cost of processing the application and issuing the license, in the same manner imposed upon any other natural person who applies for a Nevada license to engage in the activities of an escrow agency or escrow agent.

The Division is unable to estimate the annual amount of application fee(s) that may be collected for licensure by endorsement. The regulation does not otherwise provide a new fee and does not provide for any increase to an existing fee.