ASSEMBLY BILL 490: NEW CHANGES IN NEVADA'S MORTGAGE LENDING INDUSTRY[1]

Statutes Affected: NEV. REV. STAT. 40.750; 232.510; 232.520; 232.545; 604.090; 645A.010; 645A.037; 645A.040; 645A.067; 645A.085; 645A.137; 645B.010; 645B.0105; 645B.0111; 645B.0123; 645B.0127; 645B.015-.016; 645B.035; 645B.050-.051; 645B.060; 645B.070; 645B.450; 645B.620; 645B.670; 645B.680; 645B.690; 645B.900; 645E.020; 645E.050; 645E.070; 645E.090; 645E.100; 645E.130; 645E.150; 645E.160; 645E.200; 645E.220; 645E.230; 645E.280; 645E.300; 645E.320; 645E.350; 645E.360; 645E,370; 645E.390; 645E.420; 645E.430; 645E.440; 645E.470; 645E.620; 645E.630; 645E.640; 645E.680; 645E.910; 675.040; 675.230.

Adds a new chapter to NEV. REV. STAT. Title 54; a new section to NEV. REV. STAT. Chapter 645B.

Statutes Repealed: NEV. REV. STAT. 645B.0103.

Statutes of Nevada: Assemb. B. 490, 72d Sess. (Nev. 2003); 2003 Nev. Stat. 516 (pursuant to NEV. CONST. art. IV., § 35).

I. Introduction

Nevada Assembly Bill 490, introduced by Assemblyman David Goldwater on March 24, 2003, addresses mortgage regulation, focusing on weaknesses in existing statutes and regulations.[2] The bill was enacted into law on June 12, 2003, containing additions and changes to Title 54 of NEVADA REVISED STATUTES. There are three main objectives to Assembly Bill 490: 1) to create a new agency of the Department of Business and Industry, to be known as the Division of Mortgage Lending,[3] for the purpose of overseeing the mortgage industry; 2) to create

---

[1] By William Simmons

[2] *Minutes of Assemb. Comm. on Commerce & Labor for Apr. 4, 2003: Hearing on Assemb. B. 490 Before Assemb. Comm. on Commerce & Labor*, 2003 Leg., 72d Sess. (Nev. 2003) [hereinafter *Minutes of Assemb. Commerce Comm. of Apr. 4, 2003*].

[3] The bill as initially proposed provided for the creation of a five person board that would be responsible for regulating the mortgage industry. *Id*. *However, through amendments during the committee process, the bill was* changed to create a new agency, the Division of Mortgage Lending, whose purpose is to oversee the newly created Commissioner of Mortgage Brokers. *Minutes of Assemb. Comm. on Ways & Means for May 22, 2003: Hearing on Assemb. B. 490 Before Assemb. Comm. on Ways & Means*, 2003 Leg., 72d Sess. (Nev. 2003) [hereinafter *Minutes of Assemb. Ways Comm. of May 22, 2003*]. The Commissioner will be responsible for the day-to-day regulation of the mortgage industry. *Id*.

joint and several liability for any spokesman and/or advertiser of a mortgage company that engages in fraud or embezzlement; and 3) to regulate and license mortgage agents.[4] The purpose of this bill is to address concerns that the entity responsible for mortgage regulation, the Division of Financial Institutions, was not as responsive as it should have been to complaints regarding mortgage brokers and agents.

II. Provisions of Nevada Assembly Bill 490[5]

The first major substantive change brought about by Nevada Assembly Bill 490 is the creation of the Division of Mortgage Lending ("Division") and the Commissioner of Mortgage Lending ("Commissioner").[6] The Commissioner is responsible for the day-to-day regulations of the mortgage industry and is subject to such restrictions as: 1) the Commissioner cannot pursue any other business or occupation, and 2) cannot have an interest in any escrow or mortgage entity.[7] The newly created Division is meant to be a self-funded entity,[8] including assessments that are levied upon escrow and mortgage entities by the Commissioner.[9] These assessments will be deposited into a newly created Fund for Mortgage Lending, which is intended to cover the costs of all expenses incurred by the Division and Commissioner in the furtherance of their duties, including supervision and examination of escrow and mortgage entities.[10]

The second substantive change created by Nevada Assembly Bill 490 is to impose joint and several liability for any advertising spokesman for a mortgage broker, if the damage caused by the mortgage broker is the result of fraud, embezzlement or misappropriation.[11] There are some important limitations on this liability. In order to hold the advertising spokesman jointly and severally liable, it must be shown: 1) that the spokesman knew or should have known of the fraud, embezzlement or misappropriation; 2) that the spokesman knew or should have known that the conduct of the spokesman was likely to deceive, defraud or harm the public or any person engaged in business with the mortgage broker; or 3) that the spokesman was disseminating false or misleading information.[12]

The final major change as a result of Assembly Bill 490 concerns new licensing requirements for mortgage agents. Now, to act as or provide services of a mortgage agent, a

---

4 *Minutes of Assemb. Commerce Comm. of Apr. 4, 2003, supra* note 2.

5 *Minutes of Assemb. Comm. on Ways & Means for May 5, 2003: Hearing on Assemb. B. 490 Before Assemb. Comm. on Ways & Means*, 2003 Leg., 72d Sess. (Nev. 2003) [hereinafter *Minutes of Assemb. Ways Comm. of May 5, 2003*].

6 2003 Nev. Stat. 516 §§3-4 (Nev. 2003).

7 *Id*. at §§9-10.

8 *Minutes of Assemb. Ways Comm. of May 5, 2003, supra* note 5.

9 2003 Nev. Stat. 516 §§ 15-16 (Nev. 2003).

10 *Id*. at § 17.

11 *Id*. at § 25.

12 *Id*.

person must be licensed pursuant to this act.[13] To become licensed, a person must: 1) be a natural person; 2) file a written application with the Commissioner's office; 3) comply with applicable requirements of this chapter; and 4) pay an application fee.[14] Additionally, the license is subject to annual renewal requirements.[15] The purpose of creating license and renewal requirements was to address concerns regarding previously exempt out-of-state or national escrow and mortgage entities over which the prior Division of Financial Institutions had no real control.[16] For example, there were specific concerns discussed in committee regarding out-of-state brokers advertising extremely low rates that were not accurate, otherwise known as "bait and switch" operations.[17] The new law now brings previously unregulated companies within the same regulations and laws as local mortgage entities.[18]

III. Conclusion

The changes in Assembly Bill 490 were put into effect changes were put into effect due to growing concern and criticism over a mortgage industry that was loosely regulated, especially with respect to national companies, and slow to respond to consumer complaints. At the very least this new legislation should provide an easier and quicker response to problems within the industry.

---

13 *Id*. at § 26.
14 *Id*. at § 27. This section also details the specific application requirements and provides that no license shall be issued to a person who has been convicted of a felony or any crime involving fraud, misrepresentation or moral turpitude. *Id*.
15 *Id*. at § 28. This section details the specific renewal requirements.
16 *Minutes of S. Comm. on Commerce & Labor for June 1, 2003: Hearing on Assemb. B. 490 Before S .Comm. on Commerce & Labor*, 2003 Leg., 72d Sess. (Nev. 2003) [hereinafter *Minutes of S.Commerce Comm. of Jun. 1, 2003*].
17 *Minutes of Assemb. Ways Comm. of May 5, 2003, supra* note 5.
18 *Minutes of S. Commerce Comm. of June 1, 2003, supra* note 16.