

September 13, 2007

To: Mortgage Banker Licensees  
Mortgage Broker Licensees

From: Mortgage Lending Division

Re: Mortgage Lending Division Letter No.: 2007-2  
Assembly Bill 440

The Mortgage Lending Division (the "Division") has become aware that there exists some confusion amongst licensees regarding certain amendatory language to Nevada Revised Statutes Section **598D.100** as contained in Assembly Bill 440 of the 2007 Session ("AB 440"). The purpose of this Letter is to advise licensees on how the Division interprets this language and how its examiners will examine in regards thereto. Upon issuance of an opinion by the Attorney General or the Legislative Counsel Bureau, this letter will be reviewed and amended or rescinded, as necessary.

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Effective October 1, 2007, AB 440 amends NRS 598D.100, in part, to make it an unfair lending practice for a lender to:

"(b) Knowingly or intentionally make a home loan, other than a reverse mortgage, to a borrower, including, without limitation, a low-document home loan, no-document home loan or stated-document home loan, without determining, using any commercially reasonable means or mechanism, that the borrower has the ability to repay the home loan."

Many licensees have expressed concern as to the meaning of "commercially reasonable means or mechanism" in the context of determining that the borrower has the ability to repay the home loan.

AB 440 does not prohibit specific mortgage products or types of documentation that may be utilized in the making or underwriting of home loans. Instead, AB 440 recognizes, and specifically defines, "low-document", "stated-document" and "no-document" home loans. [These definitions will not be repeated here. All licensees are advised to review AB 440 in detail for a complete understanding of the new law.]

What all of these definitions have in common is that they specifically pertain to the *borrower* establishing his or her ability to repay a home loan, in other words, what income and asset documentation, if any, the borrower may submit to prove his or her

ability to repay. These definitions do not address the *lender's obligation* to verify the accuracy of the information the borrower has submitted or otherwise determine the borrower's ability to repay.

This obligation is embodied in NRS 598D.100(b), which requires that lenders use a "commercially reasonable means or mechanism" in determining a borrower's ability to repay a home loan. The Division believes that all home loans as defined in NRS 598D.040 are subject to this requirement, even home loans that have been approved, but not funded, by October 1, 2007.

The Division is unaware of any specific legal definition of the term "commercially reasonable means or mechanism". In the absence of such a specific definition, the Division believes it means that licensees must inquire into a borrower's current and future income and financial status, but without dictating what specific methods must be utilized as long as they are reasonable and frequently used within the lending community.

The remainder of this Letter will set forth suggested guidelines that the Division considers to constitute a reasonable inquiry into the borrower's ability to repay. Since the Legislature was clear in stating that "any" commercially reasonable means or mechanism may be utilized, and that other means or mechanisms not considered herein may exist, licensees are not required to follow these suggested guidelines. However, until the Legislature or the Attorney General or Legislative Counsel Bureau clarifies this matter, licensees who in good faith follow them will be presumed for examination purposes to have used a "commercially reasonable means or mechanism" in making their determination of ability to repay.

### Guidelines

Licensees should meet with their borrowers [that means all borrowers obligated on the particular loan] in person, over the telephone, or in other ways where personal contact is achieved, and discuss their economic situation, including their employment, credit history, current sources and amounts of income and assets, and the likelihood of any of these items changing [up or down] in the reasonably foreseeable future. While no particular time span is contemplated, for purposes of this guidance, the reasonably foreseeable future should at least encompass a time span past the first adjustment date of a variable rate home loan. This list is not exclusive of the items that should be discussed with borrowers, and each licensee may add or subtract from this list as it deems necessary. Licensees should also review with borrowers all of the information contained in the home loan application.

Licensees must verify the information that the borrowers provide. The Division recognizes that there are some general sources, such as Salary.com or the Department of Labor, which may be utilized to verify income in those situations where verification of employment, pay stubs or tax returns are not utilized. The Division will not recommend any particular source(s), only that it be generally utilized by the lending community and that its or their usage is properly documented in the loan file.

It is also important that licensees document for examination purposes that these discussions and verifications have occurred. One suggested method for doing so would be the completion of a worksheet for each home loan, a sample of such a worksheet being attached hereto as Exhibit "A".

Licensees who in good faith complete this worksheet, or a similar worksheet that properly documents the discussions and verifications, for all home loans funded on or after October 1, 2007 will be deemed for examination purposes to be in compliance with the "commercially reasonable means or mechanism" provisions of AB 440.

Joseph L. Waltuch  
Commissioner