

## **Clarification on AB 440**

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### **What does AB 440 do?**

The 2007 Nevada Legislature passed AB 440, introduced as a consumer protection bill which regulates payday loans, mortgage loans and protects members of the military against bad loans. Section 2 further regulates stated income, low documentation and no documentation lending within the State of Nevada. The bill revises statutory provisions which allow a lender to base a home loan solely on the borrower's equity through low-document, no-document or stated document loans. Low-document home loan means a home loan whose terms allow a borrower to establish his ability to repay the home loan by providing only limited verification of his income and other assets or which is evidenced only by a deed transferring some or all of the interest of the borrower in the home property to the creditor. No-document home loan means a home loan whose terms allow a borrower to establish his ability to repay the home loan without providing any verification of his income and other assets. Stated-document home loan means a home loan whose terms allow a borrower to establish his ability to repay the home loan by providing only his own statement of verification of his income and other assets. The legislation is effective October 1, 2007.

### **Does the legislation prohibit stated income, low documentation and no documentation lending products within the State of Nevada?**

As noted in Section 2 of the bill, AB 440 does not prohibit the ability of consumers to apply for a stated income, low documentation and no documentation loan nor does it prohibit mortgage agencies from issuing these types of loans. Passage of AB 440 resulted in tighter use and practice of issuing these types of loan products. However, certain lenders may be making individual business decisions prohibiting these types of loans.

### **Who was involved in drafting Section 2 of AB 440?**

While our lobbying team watched the progress of this measure closely during the session, the **Nevada Bankers Association, Nevada Mortgage Professionals and the Nevada Mortgage Brokers Association** were the lead lobbyists on the issue. Together they worked to draft legislation that would not hinder the public's ability to apply for these three types of loans. In fact, the language which is creating such consternation by the lending community was drafted by the lobbyist for the banking and lending industry, suggested and signed off on by all of these industries.

## **What is creating all of the angst in the real estate community?**

There is a new requirement that a lender must use a “commercially reasonable means or mechanism” in determining a borrower's ability to repay a home loan. It simply requires that a lender must provide a little more due diligence and a prospective buyer must provide a little more information that they are able to repay the loan. Some lenders are uncomfortable with this new requirement despite the fact that their lobbyist signed off on the language.

For further information on this, please visit the Mortgage Lending Division website and read the opinions issued by the head of the lending division. He also sets forth guidelines for lenders as to how to comply with AB 440: <http://mld.nv.gov/index.htm>

## **How are lenders supposed to proceed when AB 440 goes into effect on October 1<sup>st</sup>?**

According to the head of the mortgage lending division, lenders should ask borrowers to sign the following worksheet. <http://mld.nv.gov/Documents/2007-09-14-MLD-ExhibitA.pdf>

## **Did other states enact similar legislation and are they experiencing similar effects?**

Yes. AB 440 was not only pushed in Nevada, but in a number of other states across the United States. While we are still researching this issue further, it is our understanding that several states passed more onerous legislation than Nevada to address the issue of the sub prime market without any adverse impacts.

## **Are lenders leaving Nevada as a result of the passage of AB 440?**

Some lenders have threatened to pull out of Nevada if further clarification is not provided on the intent of AB 440. As noted earlier, AB 440 does not prohibit stated income, no doc or low doc loans products, therefore any pull out by lenders will be a business decision on their part, not because these types of loans are prohibited in Nevada.

## **How can the regulations be drafted for AB 440 and are they going to be drafted?**

Since AB 440 was a consumer protection bill and falls under NRS 598D, it is the responsibility of the Attorney General to draft the regulations and not the duty of the Department of Business and Industry.

## **What is NVAR doing on this issue?**

NVAR's leadership and staff have been working on multiple fronts for several weeks on this issue.

First, President Myrna Kingham sent a letter to the Governor and copied the Attorney General urging action to resolve this issue and emphasizing the critical nature of this issue on the real estate industry.

Second, discussions are ongoing with various state agencies on how to resolve this problem in a timely fashion.

Third, discussion is occurring with key legislators to ensure that they are aware of NVAR's concerns.

Finally, ongoing dialogue is occurring with the mortgage lending and banking community on how best to coordinate efforts.

Watch for updates in future issues of **NVAR e-news**.

EXHIBIT "A"

"COMMERCIALLY REASONABLE MEANS OR MECHANISM" WORKSHEET

Date: \_\_\_\_\_

Borrower: \_\_\_\_\_ Property Address: \_\_\_\_\_

Borrower: \_\_\_\_\_

Borrower: \_\_\_\_\_

To the Borrower: Commencing October 1, 2007 Nevada Revised Statute 598D.100 requires the mortgage broker or mortgage banker named below to use any "commercially reasonable means or mechanism" to verify that you have the ability to repay the home loan for which you are applying. There is no requirement that you enter into any proposed loan transaction even though you may have submitted an application to the broker/banker. Be sure that all of the terms set forth below are accurate and that you agree to them.

To be completed by Borrower [complete as applicable]:

The purpose of this loan is to \_\_\_\_\_ purchase a home or \_\_\_\_\_ refinance a current home loan. The loan is a \_\_\_\_\_ fixed rate or \_\_\_\_\_ adjustable interest rate loan.

My monthly pre-tax income is \$\_\_\_\_\_. I \_\_\_\_\_ have or \_\_\_\_\_ have not submitted pay stubs or tax returns to the mortgage broker/banker as proof of this income.

The mortgage broker/mortgage banker has discussed with me:

- \_\_\_\_\_ My overall economic situation
- \_\_\_\_\_ My employment, including length of time on job and prospects for its continuation in the future
- \_\_\_\_\_ My credit history and credit score
- \_\_\_\_\_ My 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
- \_\_\_\_\_ The information required on my loan application
- \_\_\_\_\_ That if I have applied for an adjustable rate loan, the interest rate may increase and my monthly payments may go up substantially on and after the first change date
- \_\_\_\_\_ Other: List \_\_\_\_\_

I certify under penalty of perjury that I have the financial ability to repay the loan I have applied for. I have carefully reviewed any and all rate loan disclosures that have been provided to me, and agree that even if the interest rate on my adjustable rate loan increases and my monthly payments increase as result, I can still afford to repay the loan.

\_\_\_\_\_  
Borrower Signature/Date

\_\_\_\_\_  
Borrower Signature/Date

\_\_\_\_\_  
Borrower Signature/Date

To be completed by mortgage broker/mortgage banker:

This is a:

- Full document loan
- Low document loan
- No document loan
- Stated income loan
- Other [describe] \_\_\_\_\_

I have verified the income amount provided by the Borrower by:

- Salary.com
- U.S. Department of Labor
- Other: specify [i.e. VOE, pay stubs] \_\_\_\_\_

I have also discussed with the Borrower the items s/he has checked above, and have given him/her a completed copy of this worksheet.

I certify under penalty of perjury that the above is true and correct.

Name of Mortgage Broker/Banker: \_\_\_\_\_  
License Number: \_\_\_\_\_  
By:

\_\_\_\_\_  
Signature Date