

1 **UTAH RESIDENTIAL MORTGAGE PRACTICES**

2 **ACT**

3 2000 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Gerry A. Adair**

6 AN ACT RELATING TO REAL ESTATE DIVISION; ENACTING THE UTAH RESIDENTIAL
7 MORTGAGE PRACTICES ACT; DEFINING TERMS; ESTABLISHING POWERS AND
8 DUTIES OF THE DIVISION OF REAL ESTATE; CREATING THE MORTGAGE INDUSTRY
9 REGULATORY COMMISSION; PROVIDING SCOPE OF CHAPTER; REQUIRING
10 REGISTRATION; PROVIDING GRANDFATHERING; PROVIDING EXEMPTIONS;
11 PROVIDING REGISTRATION QUALIFICATIONS AND PROCEDURES; ADDRESSING
12 OPERATIONAL RESTRICTIONS; REQUIRING RECORDKEEPING; PROVIDING FOR
13 INVESTIGATIONS; PROVIDING FOR ENFORCEMENT; MAKING TECHNICAL
14 CHANGES; AND PROVIDING AN EFFECTIVE DATE.

15 This act affects sections of Utah Code Annotated 1953 as follows:

16 AMENDS:

17 **61-2-5**, as last amended by Chapter 146, Laws of Utah 1993

18 ENACTS:

19 **61-2c-101**, Utah Code Annotated 1953

20 **61-2c-102**, Utah Code Annotated 1953

21 **61-2c-103**, Utah Code Annotated 1953

22 **61-2c-104**, Utah Code Annotated 1953

23 **61-2c-105**, Utah Code Annotated 1953

24 **61-2c-106**, Utah Code Annotated 1953

25 **61-2c-201**, Utah Code Annotated 1953

26 **61-2c-202**, Utah Code Annotated 1953

27 **61-2c-203**, Utah Code Annotated 1953

- 28 **61-2c-204**, Utah Code Annotated 1953
29 **61-2c-205**, Utah Code Annotated 1953
30 **61-2c-206**, Utah Code Annotated 1953
31 **61-2c-301**, Utah Code Annotated 1953
32 **61-2c-302**, Utah Code Annotated 1953
33 **61-2c-401**, Utah Code Annotated 1953
34 **61-2c-402**, Utah Code Annotated 1953
35 **61-2c-403**, Utah Code Annotated 1953

36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **61-2-5** is amended to read:

38 **61-2-5. Division of Real Estate created -- Functions -- Director appointed --**
39 **Functions.**

40 (1) There is created within the Department of Commerce a Division of Real Estate. It is
41 responsible for the administration and enforcement of:

42 (a) this chapter;

43 ~~[(b) the Real Estate Education, Research, and Recovery Fund under Title 61, Chapter 2a;]~~

44 ~~[(c)]~~ (b) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;

45 ~~[(d)]~~ (c) Title 57, Chapter 19, Timeshare and Camp Resort Act;

46 ~~[(e)]~~ (d) Title 57, Chapter 23, Real Estate Cooperative Marketing Act; ~~[and]~~

47 (e) Chapter 2a, Real Estate Education, Research, and Recovery Fund;

48 (f) ~~[Title 61,]~~ Chapter 2b, Real Estate Appraiser ~~[Registration]~~ Licensing and Certification

49 Act[-]; and

50 (g) Chapter 2c, Utah Residential Mortgage Practices Act.

51 (2) The division is under the direction and control of a director appointed by the executive
52 director of the department with the approval of the governor. The director holds ~~[his]~~ the office
53 of director at the pleasure of the governor.

54 (3) The director, with the approval of the executive director, may employ personnel
55 necessary to discharge the duties of the division at salaries to be fixed by the director according
56 to standards established by the Department of Administrative Services.

57 (4) On or before October 1 of each year, the director shall, in conjunction with the
58 department, report to the governor and the Legislature concerning the division's work for the

59 preceding fiscal year ending June 30.

60 (5) The director, in conjunction with the executive director, shall prepare and submit to
61 the governor and the Legislature a budget for the fiscal year next following the convening of the
62 Legislature.

63 Section 2. Section **61-2c-101** is enacted to read:

64 **CHAPTER 2c. UTAH RESIDENTIAL MORTGAGE PRACTICES ACT**

65 **Part 1. General Provisions**

66 **61-2c-101. Title.**

67 This chapter is known as the "Utah Residential Mortgage Practices Act."

68 Section 3. Section **61-2c-102** is enacted to read:

69 **61-2c-102. Definitions.**

70 As used in this chapter:

71 (1) "Affiliate" means a person that directly, or indirectly through one or more
72 intermediaries, controls or is controlled by, or is under common control with, a specified person.

73 (2) "Applicant" means a person applying for registration under this chapter.

74 (3) "Business of mortgage loans" means for compensation to:

75 (a) make or originate a mortgage loan;

76 (b) directly or indirectly solicit, process, place, or negotiate a residential mortgage loan for
77 another; or

78 (c) render services related to the origination, processing, or funding of a residential
79 mortgage loan including:

80 (i) taking applications;

81 (ii) obtaining verifications and appraisals; and

82 (iii) communicating with the borrower and lender.

83 (4) "Commission" means the Residential Mortgage Regulatory Commission created in
84 Section 61-2c-104.

85 (5) "Compensation" means anything of economic value that is paid, loaned, granted, given,
86 donated, or transferred to a person for or in consideration of:

87 (a) services;

88 (b) personal or real property; or

89 (c) other thing of value.

- 90 (6) "Control" means the power, directly or indirectly, to:
- 91 (a) direct or exercise a controlling influence over:
- 92 (i) the management or policies of an entity; or
- 93 (ii) the election of a majority of the directors or managing partners of an entity;
- 94 (b) vote 20% or more of any class of voting securities of an entity by an individual; or
- 95 (c) vote more than 5% of any class of voting securities of an entity by a person other than
- 96 an individual.
- 97 (7) "Depository institution" is as defined in Section 7-1-103.
- 98 (8) "Director" means the director of the division.
- 99 (9) "Division" means the Division of Real Estate.
- 100 (10) "Dwelling" means a residential structure attached to real property that contains one
- 101 to four units including any of the following if used as a residence:
- 102 (a) a condominium unit;
- 103 (b) a cooperative unit; or
- 104 (c) a manufactured home.
- 105 (11) "Executive director" means the executive director of the Department of Commerce.
- 106 (12) "Record" means information that is:
- 107 (a) prepared, owned, received, or retained by a person; and
- 108 (b) (i) inscribed on a tangible medium; or
- 109 (ii) (A) stored in an electronic or other medium; and
- 110 (B) retrievable in perceivable form.
- 111 (13) "Residential mortgage loan" means a loan, extension of credit, or retail sales contract
- 112 if:
- 113 (a) the loan, extension of credit, or retail sales contract is secured by a:
- 114 (i) mortgage;
- 115 (ii) deed of trust; or
- 116 (iii) lien interest; and
- 117 (b) the mortgage, deed of trust, or lien interest described in Subsection (13)(a):
- 118 (i) is on a dwelling located in the state; and
- 119 (ii) created with the consent of the owner of the residential real property.
- 120 (14) "State" means:

121 (a) a state, territory, or possession of the United States;

122 (b) the District of Columbia; or

123 (c) the Commonwealth of Puerto Rico.

124 Section 4. Section **61-2c-103** is enacted to read:

125 **61-2c-103. Powers and duties of the division.**

126 (1) The division shall administer this chapter.

127 (2) In addition to any power or duty expressly provided in this chapter, the division may:

128 (a) receive and act on complaints including:

129 (i) taking action designed to obtain voluntary compliance with this chapter; or

130 (ii) commencing administrative or judicial proceedings on the division's own initiative;

131 (b) counsel a person regarding that person's rights and duties under this chapter;

132 (c) establish programs for the education of consumers with respect to residential mortgage

133 loans;

134 (d) (i) make studies appropriate to effectuate the purposes and policies of this chapter; and

135 (ii) make the results of the studies described in Subsection (2)(d)(i) available to the public;

136 and

137 (e) employ any necessary hearing examiners, investigators, clerks, and other employees

138 and agents.

139 (3) The division shall make rules when authorized by this chapter in accordance with Title
140 63, Chapter 46a, Utah Administrative Rulemaking Act.

141 (4) (a) The division shall make available to the public a list of the names and addresses of
142 all persons registered under this chapter.

143 (b) The division may charge a fee established by the division in accordance with Section
144 63-38-32.2 for obtaining the list described in Subsection (4)(a).

145 Section 5. Section **61-2c-104** is enacted to read:

146 **61-2c-104. Residential Mortgage Regulatory Commission.**

147 (1) There is created within the division the Residential Mortgage Regulatory Commission
148 consisting of:

149 (a) the following members appointed by the executive director with the approval of the
150 governor:

151 (i) two members having at least three years of experience in transacting the business of

152 mortgage loans; and

153 (ii) two members from the general public; and

154 (b) the commissioner of the Department of Financial Institutions or the commissioner's
155 designee.

156 (2) (a) Except as required by Subsection (2)(b), the executive director shall appoint each
157 new member or reappointed member subject to appointment by the executive director to a
158 four-year term ending June 30.

159 (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall,
160 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of
161 commission members are staggered so that approximately half of the commission is appointed
162 every two years.

163 (c) If a vacancy occurs in the membership of the commission for any reason, the
164 replacement shall be appointed for the unexpired term.

165 (3) Members of the commission shall annually select one member to serve as chair.

166 (4) (a) The commission shall meet at least quarterly.

167 (b) The director may call a meeting in addition to the meetings required by Subsection

168 (4)(a):

169 (i) at the discretion of the director;

170 (ii) at the request of the chair of the commission; or

171 (iii) at the written request of three or more commission members.

172 (5) (a) Three members of the commission constitute a quorum for the transaction of
173 business.

174 (b) The action of a majority of a quorum present is an action of the commission.

175 (6) (a) (i) Members who are not government employees shall receive no compensation or
176 benefits for their services, but may receive per diem and expenses incurred in the performance of
177 the member's official duties at the rates established by the Division of Finance under Sections
178 63A-3-106 and 63A-3-107.

179 (ii) Members who are not government employees may decline to receive per diem and
180 expenses for their service.

181 (b) (i) State government officer and employee members who do not receive salary, per
182 diem, or expenses from their agency for their service may receive per diem and expenses incurred

183 in the performance of their official duties from the commission at the rates established by the
184 Division of Finance under Sections 63A-3-106 and 63A-3-107.

185 (ii) State government officer and employee members may decline to receive per diem and
186 expenses for their service.

187 (7) The commission shall:

188 (a) concur in the registration of persons under this chapter in accordance with Part 2;

189 (b) take disciplinary action with the concurrence of the director in accordance with Part
190 4, Enforcement; and

191 (c) advise the department concerning matters related to the administration and enforcement
192 of this chapter.

193 Section 6. Section **61-2c-105** is enacted to read:

194 **61-2c-105. Scope of chapter.**

195 (1) (a) This chapter applies to a closed-end residential mortgage loan secured by a first lien
196 or equivalent security interest on a dwelling.

197 (b) This chapter does not apply to a transaction covered by Title 70C, Utah Consumer
198 Credit Code.

199 (2) The following are exempt from this chapter:

200 (a) the federal government;

201 (b) a state;

202 (c) a political subdivision of a state;

203 (d) an agency of or entity created by a governmental entity described in Subsections (1)(a)
204 through (c) including:

205 (i) the Utah Housing Financing Agency created in Title 9, Chapter 4, Part 9, Utah Housing
206 Finance Agency Act;

207 (ii) the Federal National Mortgage Corporation;

208 (iii) the Federal Home Loan Mortgage Corporation;

209 (iv) the Federal Deposit Insurance Corporation;

210 (v) the Resolution Trust Corporation;

211 (vi) the Government National Mortgage Association;

212 (vii) the Federal Housing Administration;

213 (viii) the National Credit Union Administration; and

214 (ix) the Farmers Home Administration;
215 (e) a depository institution;
216 (f) an affiliate of a depository institution; or
217 (g) an employee or agent of an entity described in Subsections (2)(a) through (f) when that
218 person acts on behalf of the entity described in Subsections (2)(a) through (f).

219 Section 7. Section **61-2c-106** is enacted to read:

220 **61-2c-106. Addresses provided the division.**

221 (1) In providing an address to the division under this chapter, a physical location or street
222 address shall be provided.

223 (2) A person registered under this chapter will be considered to have received any
224 notification that is mailed to the last address furnished to the division by the person registered
225 under this chapter.

226 Section 8. Section **61-2c-201** is enacted to read:

227 **Part 2. Registration**

228 **61-2c-201. Registration required for persons engaged in the business of mortgage**
229 **loans -- Grandfathering.**

230 (1) A person may not transact the business of mortgage loans in this state unless that
231 person is:

232 (a) registered under this chapter;

233 (b) exempt from this chapter under Section 61-2c-105; or

234 (c) exempt from registration under Section 61-2c-202.

235 (2) For purposes of this chapter, a person transacts business in this state if:

236 (a) (i) the person engages in an act that constitutes the business of mortgage loans; and

237 (ii) (A) the act described in Subsection (2)(a)(i) is directed to or received in this state; or

238 (B) the real property that is the subject of the act described in Subsection (2)(a)(i) is
239 located in this state; or

240 (b) that person represents that the person transacts the business of mortgage loans in this
241 state.

242 (3) Unless otherwise exempted under this chapter, registration under this chapter is
243 required of both:

244 (a) the individual who directly transacts the business of mortgage loans; and

245 (b) if the individual transacts business as an employee or agent of another person, the
246 person for which the individual transacts the business of mortgage loans.

247 (4) (a) Notwithstanding Subsection (1), a person described in Subsection (4)(b):

248 (i) is not required to be registered under this chapter until July 1, 2001; and

249 (ii) notwithstanding Subsection (4)(a)(i), on or after July 1, 2000, is subject to Parts 3 and
250 4.

251 (b) Subsection (4)(a) applies to a person that as of July 1, 2000, has:

252 (i) filed written notification with the Department of Financial Institutions under Title 70D,

253 Chapter 1, Mortgage Lending and Servicing Act; and

254 (ii) paid the required fees to the Department of Financial Institutions in accordance with
255 Section 70D-1-10.

256 Section 9. Section **61-2c-202** is enacted to read:

257 **61-2c-202. Exemptions from registration.**

258 (1) The following are exempt from the registration requirement under Section 61-2c-201:

259 (a) a person:

260 (i) who makes a loan:

261 (A) secured by an interest in real property;

262 (B) with the person's own money; and

263 (C) for the person's own investment; and

264 (ii) that does not engage in the business of making loans secured by an interest in real
265 property;

266 (b) a person who receives a mortgage, deed of trust, or lien interest on real property if the
267 person:

268 (i) is the seller of real property; and

269 (ii) receives the mortgage, deed of trust, or lien interest on real property as security for a
270 separate money obligation;

271 (c) a person who receives a mortgage, deed of trust, or lien interest on real property if:

272 (i) the person receives the mortgage, deed of trust, or lien interest as security for an
273 obligation payable on an installment or deferred payment basis;

274 (ii) the obligation described in Subsection (1)(c)(i) arises from a person providing
275 materials or services used in the improvement of the real property that is the subject of the

276 mortgage, deed of trust, or lien interest; and
277 (iii) the mortgage, deed of trust, or lien interest was created without the consent of the
278 owner of the real property that is the subject of the mortgage, deed of trust, or lien interest;
279 (d) a nonprofit corporation that:
280 (i) is exempt from paying federal income taxes;
281 (ii) is certified by the United States Small Business Administration as a small business
282 investment company;
283 (iii) is organized to promote economic development in this state; and
284 (iv) has as its primary activity providing financing for business expansion; or
285 (e) a court appointed fiduciary.
286 (2) Notwithstanding Subsection (1), a person exempt from registration under Subsection
287 (1), is subject to Parts 3 and 4.

288 Section 10. Section **61-2c-203** is enacted to read:

289 **61-2c-203. Registration procedures.**

290 (1) To apply for registration under this chapter a person shall:

291 (a) submit to the division a registration statement that:

292 (i) lists any name under which the person will transact business in this state;

293 (ii) the address of the principal business location of the person;

294 (iii) if the person is not an individual, lists the persons that exercise control of that person;

295 (iv) demonstrates to the satisfaction of the division with the concurrence of the

296 commission that the person meets the qualifications listed in Section 61-2c-204; and

297 (v) includes any information required by the division by rule;

298 (b) pay to the division:

299 (i) an application fee established by the division in accordance with Section 63-38-3.2; and

300 (ii) the reasonable expenses incurred in processing the application for registration
301 including the costs incurred by the division under Subsection (4);

302 (c) meet the requirements under Section 61-2c-205 for:

303 (i) obtaining a surety bond;

304 (ii) depositing assets; or

305 (iii) providing a letter of credit; and

306 (d) comply with Subsection (4).

307 (2) The division, with the concurrence of the commission, shall grant a registration to a
308 person if the division finds that the person:

309 (a) meets the qualifications of Sections 61-2c-204 and 61-2c-205; and

310 (b) complies with this section.

311 (3) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, a person who
312 is denied registration under this chapter may submit a request for agency review to the executive
313 director within 30 days following notification of the denial of a registration.

314 (4) (a) An individual applying for registration under this chapter or any individual
315 exercising control over the person applying for registration under this section shall:

316 (i) submit a fingerprint card in a form acceptable to the division at the time the registration
317 statement is filed; and

318 (ii) consent to a fingerprint background check by:

319 (A) the Utah Bureau of Criminal Identification; and

320 (B) the Federal Bureau of Investigation.

321 (b) The division shall request the Department of Public Safety to complete a Federal
322 Bureau of Investigation criminal background check for each person applying for registration under
323 this chapter through a national criminal history system.

324 (c) The person applying for registration shall pay the cost of:

325 (i) the fingerprinting required by this section; and

326 (ii) the background check required by this section.

327 (d) (i) A registration under this chapter is conditional pending completion of the criminal
328 background check required by this Subsection (4).

329 (ii) If a criminal background check discloses that the person applying for registration failed
330 to accurately disclose a criminal history, the registration is immediately and automatically revoked.

331 (iii) A person whose conditional registration is revoked under Subsection (4)(d)(ii) may
332 appeal the revocation in a hearing conducted:

333 (A) after the revocation; and

334 (B) in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

335 Section 10. Section **61-2c-204** is enacted to read:

336 **61-2c-204. Qualifications for registration.**

337 (1) To qualify for registration under this chapter, an individual shall:

338 (a) have the competency and moral character to transact the business of mortgage loans;

339 (b) not have been convicted of a felony or misdemeanor involving moral turpitude in the

340 five years preceding the date the individual applies for registration;

341 (c) not have had a license or registration suspended, revoked, surrendered, canceled, or

342 denied in the five years preceding the date the individual applies for registration if:

343 (i) the registration or license is issued by this state or another jurisdiction; and

344 (ii) the suspension, revocation, surrender, cancellation, or denial is based on misconduct

345 in a professional capacity that relates to the competency or moral character to transact the business

346 of mortgage loans.

347 (2) If the person is not an individual, to qualify for registration under this chapter the

348 person shall:

349 (a) at all times during the term of the registration, have at least one of the following meet

350 the requirements of Subsection (1)(a):

351 (i) a managing partner;

352 (ii) a director; or

353 (iii) an executive officer; or

354 (iv) an individual occupying a position or performing functions similar to those described

355 in Subsections (2)(a)(i) through (iii); and

356 (b) not have a person that exercises control of the person registered under this chapter:

357 (i) have been convicted of a felony or misdemeanor involving moral turpitude in the five

358 years preceding the date the person applies for registration; or

359 (ii) have had a license or registration suspended, revoked, surrendered, canceled, or denied

360 in the five years preceding the date the person applies for registration if:

361 (A) the registration or license is issued by this state or another jurisdiction; and

362 (B) the suspension, revocation, surrender, cancellation, or denial is based on misconduct

363 in a professional capacity that relates to the competency or moral character to transact the business

364 of mortgage loans.

365 (3) (a) If a person described in Subsection (3)(b) provides evidence satisfactory to the

366 division with the concurrence of the commission that the person has the competence and moral

367 character to transact the business of mortgage loans, notwithstanding Subsection (3) and Sections

368 61-2c-301 and 61-2c-402, the division may permit that person to:

- 369 (i) be registered under this chapter; and
370 (ii) if registered under this chapter, to transact the business of mortgage loans.
371 (b) Subsection (3)(a) applies to a person that meets the qualifications for registration
372 except that the person or a person that exercises control of the person:
373 (i) has been convicted of a felony or misdemeanor involving moral turpitude in the five
374 years preceding the date the person:
375 (A) applies for registration; or
376 (B) transacts the business of mortgage loans; or
377 (ii) has had a license or registration suspended, revoked, surrendered, canceled, or denied
378 in the five years preceding the date the person applies for registration or transacts the business of
379 mortgage loans if:
380 (A) the registration or license is issued by this state or another jurisdiction; and
381 (B) the suspension, revocation, surrender, cancellation, or denial is based on misconduct
382 in a professional capacity that relates to the competency or moral character to transact the business
383 of mortgage loans.

384 Section 10. Section **61-2c-205** is enacted to read:

385 **61-2c-205. Requirements for bonding, letter of credit, or deposit of assets.**

386 (1) If an applicant is an individual, the applicant shall:

387 (a) file with the division a surety bond:

388 (i) that meets the requirements of Subsection (3); and

389 (ii) in the amount not less than \$10,000; or

390 (b) demonstrate to the satisfaction of the division that:

391 (i) the applicant is an employee or agent of a person registered under this chapter; and

392 (ii) the acts of the applicant are covered by a surety bond filed with the division under

393 Subsection (2) by a person registered under this chapter for which the applicant is an employee or
394 agent.

395 (2) If the applicant is not an individual, the applicant shall file with the division a surety
396 bond:

397 (a) that meets the requirements of Subsection (4); and

398 (b) in an amount not less than \$25,000.

399 (3) A surety bond filed under this section shall name as beneficiaries:

400 (a) the state, for payment of costs incurred and charges made in connection with an
401 enforcement action under Part 4 against the applicant including costs and charges relating to an
402 examination or investigation; and

403 (b) after all claims and charges of the state have been paid in full, any person who has a
404 claim against the surety on the bond based on any default or violation of any duty or obligation of
405 the applicant.

406 (4) If an applicant is not an individual, a surety bond filed under this section shall:

407 (a) comply with Subsection (3); and

408 (b) cover the acts of:

409 (i) the person registered under this chapter;

410 (ii) any person exercising control of the person registered under this chapter; and

411 (iii) any agent or employee of the person registered under this chapter.

412 (5) If an individual registered under this chapter does not file a surety bond under this
413 section because at the time of applying for registration that person met the requirements of
414 Subsection (1)(b), the individual shall post a surety bond meeting the requirements of Subsections
415 (1) and (3) by no later than 30 days from the day on which the person is not covered by a surety
416 bond in accordance with Subsection (1)(b).

417 (6) Notwithstanding the other provisions of this section, an applicant can comply with the
418 requirements of this section, if the applicant deposits assets with or provides a letter of credit to
419 the division:

420 (a) in the amounts required for a surety bond; and

421 (b) subject to the same surety conditions of Subsections (3) and (4).

422 Section 11. Section **61-2c-206** is enacted to read:

423 **61-2c-206. Term of registration -- Renewal -- Reporting of changes.**

424 (1) (a) A registration under this chapter is valid for a two-year period.

425 (b) Notwithstanding Subsection (1)(a), the time period of a registration may be extended
426 or shortened by as much as one year to maintain or change a renewal cycle established by rule by
427 the division.

428 (2) To renew a registration, no later than 30 days before the date the registration expires,
429 a person registered under this chapter shall:

430 (a) file a registration statement meeting the requirements of Section 61-2c-203; and

431 (b) pay a fee to the division established by the division in accordance with Section
432 63-38-3.2.

433 (3) (a) A person registered under this chapter shall amend its registration statement filed
434 with the division within ten days of the date on which there is a change in:

435 (i) a name under which the person transacts the business of mortgage loans in this state;

436 (ii) the address of the principal business location of the person;

437 (iii) if the person is not an individual, the persons who exercise control of the person
438 registered under this chapter; or

439 (iv) any other information that is defined as material by rule made by the division.

440 (b) Failure to notify the division of a change described in Subsection (4)(a) is separate
441 grounds for disciplinary action against a person registered under this chapter.

442 (4) A person licensed under this chapter shall notify the division in writing within ten
443 business days of:

444 (a) a conviction of any criminal offense; or

445 (b) filing a personal bankruptcy or bankruptcy of a business that transacts the business of
446 mortgage loans.

447 Section 12. Section **61-2c-301** is enacted to read:

448 **Part 3. Operational Restrictions**

449 **61-2c-301. Prohibited conduct.**

450 A person transacting the business of mortgage loans in this state may not:

451 (1) give or receive compensation or anything of value in exchange for a referral of
452 residential mortgage loan business;

453 (2) charge a fee in connection with a residential mortgage loan transaction:

454 (a) that is excessive; or

455 (b) if the person does not comply with Section 70D-1-6;

456 (3) give or receive compensation or anything of value in exchange for a referral of
457 settlement or loan closing services related to a residential mortgage loan transaction;

458 (4) make a false statement or representation for purposes of inducing a lender to extend
459 credit as part of a residential mortgage loan transaction;

460 (5) give or receive compensation or anything of value to influence the independent
461 judgment of an appraiser in reaching a value conclusion in a residential mortgage loan transaction;

- 462 (6) violate or not comply with:
463 (a) this chapter;
464 (b) an order of the commission or division; or
465 (c) a rule made by the division;
466 (7) fail to respond within the required time period to:
467 (a) a notice or complaint of the division; or
468 (b) a request for information from the division;
469 (8) make false representations to the division, including in a registration statement;
470 (9) transact the business of mortgage loans if that person was convicted of, or entered a
471 guilty plea or nolo contendere plea to a criminal offense involving moral turpitude in the five years
472 preceding the date the person transacts the business of mortgage loans, whether or not the crime
473 is related to the business of mortgage loans;
474 (10) engage in unprofessional conduct as defined by rule; or
475 (11) engage in an act or omission in transacting the business of mortgage loans that
476 constitutes dishonesty, fraud, or misrepresentation.

477 Section 13. Section **61-2c-302** is enacted to read:

478 **61-2c-302. Record requirements.**

- 479 (1) For the time period specified in Subsection (2), a person registered under this chapter
480 shall make or possess any record required for that person by a rule made by the division.
481 (2) A person registered under this chapter shall maintain in its possession a record
482 described in Subsection (1) until the later of 25 months from the date:
483 (a) the final entry on a residential mortgage loan is made by that person;
484 (b) if the residential mortgage loan is serviced by the person:
485 (i) the residential mortgage loan is paid in full; or
486 (ii) the person ceases to service the residential mortgage loan; or
487 (c) if the residential mortgage loan is not serviced by the person, the residential mortgage
488 loan is closed.

489 Section 14. Section **61-2c-401** is enacted to read:

490 **Part 4. Enforcement**

491 **61-2c-401. Investigations -- Subpoena power of division.**

- 492 (1) The division may investigate or cause to be investigated the actions of:

- 493 (a) a person registered under this chapter;
494 (b) a person applying for registration under this chapter; or
495 (c) a person who transacts the business of mortgage loans within this state.
496 (2) In conducting an investigation, the division may:
497 (a) subpoena witnesses;
498 (b) take evidence;
499 (c) require by subpoena duces tecum the production of books, papers, contracts, records,
500 other documents, or information considered relevant to an investigation; and

501 (d) serve a subpoena by certified mail.

502 (3) A failure to respond to a subpoena served by the division is considered as a separate
503 violation of this chapter.

504 Section 15. Section **61-2c-402** is enacted to read:

505 **61-2c-402. Disciplinary action.**

506 (1) Subject to the requirements of this section, if a person registered under this chapter
507 engages in prohibited conduct, the commission with the concurrence of the director, may:

508 (a) impose a civil penalty against the person in an amount not to exceed \$500 per
509 violation;

510 (b) do any of the following to a registration under this chapter:

511 (i) suspend;

512 (ii) revoke;

513 (iii) place on probation;

514 (iv) deny renewal; or

515 (v) deny reinstatement.

516 (2) (a) Before the commission may take an action described in Subsection (1) against a
517 person registered under this chapter, the division shall:

518 (i) give notice to that person; and

519 (ii) schedule an adjudicative proceeding.

520 (b) If after the adjudicative proceeding scheduled under Subsection (2)(a), the commission
521 determines that a person registered under this section has engaged in prohibited conduct, the
522 commission may take an action described in Subsection (1):

523 (i) by written order of the commission; and

524 (ii) with the concurrence of the director.

525 (3) (a) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, a person
526 against whom disciplinary action is taken under this section may seek review of the disciplinary
527 action.

528 (b) If the person described in Subsection (3)(a) prevails in the appeal and the court finds
529 that the state action was undertaken without substantial justification, the court may award
530 reasonable litigation expenses to that person as provided under Title 78, Chapter 27a, Small
531 Business Equal Access to Justice Act.

532 (4) (a) An order issued under this section takes effect 30 days after the service of the order
533 unless otherwise provided in the order.

534 (b) If an appeal of an order issued under this section is taken by a person registered under
535 this chapter, the division may stay enforcement of the commission's order in accordance with
536 Section 63-46b-18.

537 (5) The division shall promptly withhold, suspend, restrict, or reinstate the use of a
538 registration granted under this chapter if ordered by a court.

539 (6) (a) If a person's registration under this chapter is revoked, the person may have its
540 registration reinstated by complying with the requirements of Section 61-2c-203 for registration.

541 (b) Notwithstanding Subsection (6)(a), if a person's registration under this chapter is
542 revoked, that person may not apply for reinstatement of the registration sooner than five years after
543 the date the registration is revoked in accordance with this section.

544 Section 16. Section **61-2c-403** is enacted to read:

545 **61-2c-403. Cease and desists.**

546 (1) (a) The director may issue and serve on a person an order to cease and desist if:

547 (i) the director has reason to believe that a person has been or is engaging in acts
548 constituting a violation of this chapter; and

549 (ii) it appears to the director that it would be in the public interest to stop the acts.

550 (b) Within ten days after receiving the order, the person on whom the order is served may
551 request an adjudicative proceeding to be held in accordance with Title 63, Chapter 46b,
552 Administrative Procedures Act.

553 (c) Pending the hearing, the cease and desist order shall remain in effect.

554 (2) (a) After the hearing described in Subsection (1), if the commission with the

555 concurrence of the director finds that the acts of the person violate this chapter, the director shall
556 issue an order making the cease and desist order permanent.

557 (b) (i) The director shall file suit in the name of the Department of Commerce and the
558 division to enjoin and restrain a person on whom an order is served under this section from
559 violating this chapter if:

560 (A) the person did not request a hearing under Subsection (1); and

561 (B) (I) the person fails to cease the acts; or

562 (II) after discontinuing the acts, the person again commences the acts.

563 (ii) The suit described in Subsection (2)(b)(i) shall be filed in the district court in the
564 county:

565 (A) in which the acts occurred;

566 (B) where the person resides; or

567 (C) where the person carries on business.

568 (3) The cease and desist order issued under this section may not interfere with or prevent
569 the prosecution of a remedy or action enforcement under this chapter.

570 (4) A person who violates a cease and desist order issued under this section is guilty of a
571 class A misdemeanor.

572 Section 17. **Effective date.**

573 This act takes effect on July 1, 2000.

Legislative Review Note as of 2-9-00 12:26 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel