

Representative Brent D. Parker proposes the following substitute bill:

LICENSING MORTGAGE LOAN OFFICERS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Brent D. Parker

This act modifies the Utah Residential Mortgage Practices Act to require licensing, prelicensing education, prelicensing examinations, and continuing education of persons engaging in the business of residential mortgage loans, and to modify other licensing and bonding requirements. The act modifies the membership of the Residential Mortgage Regulatory Commission. The act prohibits persons from acting in certain multiple capacities with respect to a residential mortgage loan. The act enacts requirements relating to a principal mortgage loan officer. The act makes technical changes. This act takes effect January 1, 2004.

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

AMENDS:

61-2c-102, as last amended by Chapter 204, Laws of Utah 2002

61-2c-103, as last amended by Chapter 204, Laws of Utah 2002

61-2c-104, as last amended by Chapter 204, Laws of Utah 2002

61-2c-106, as last amended by Chapter 204, Laws of Utah 2002

61-2c-201, as last amended by Chapter 204, Laws of Utah 2002

61-2c-202, as last amended by Chapter 204, Laws of Utah 2002

61-2c-203, as last amended by Chapter 204, Laws of Utah 2002

61-2c-204, as last amended by Chapter 204, Laws of Utah 2002

61-2c-205, as last amended by Chapter 204, Laws of Utah 2002

61-2c-301, as last amended by Chapter 204, Laws of Utah 2002

61-2c-302, as last amended by Chapter 204, Laws of Utah 2002



26 **61-2c-401**, as last amended by Chapter 204, Laws of Utah 2002

27 **61-2c-402**, as last amended by Chapter 204, Laws of Utah 2002

28 ENACTS:

29 **61-2c-206**, Utah Code Annotated 1953

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

31 Section 1. Section **61-2c-102** is amended to read:

32 **61-2c-102. Definitions.**

33 As used in this chapter:

34 (1) "Affiliate" means an individual or an entity that directly, or indirectly through one
35 or more intermediaries, controls or is controlled by, or is under common control with, a
36 specified individual or entity.

37 (2) "Applicant" means an individual or entity applying for [~~registration~~] a license
38 under this chapter.

39 (3) (a) "Business of residential mortgage loans" means for compensation to:

40 (i) make or originate a residential mortgage loan;

41 (ii) directly or indirectly solicit, [~~process,~~] place, or negotiate a residential mortgage
42 loan for another; or

43 (iii) render services related to the origination[~~, processing,~~] or funding of a residential
44 mortgage loan including:

45 (A) taking applications; and

46 [~~(B) obtaining verifications and appraisals; and~~]

47 [(~~C~~)] (B) communicating with the borrower and lender.

48 (b) "Business of residential mortgage loans" does not include the performance of
49 clerical functions such as:

50 (i) gathering information related to a residential mortgage loan on behalf of the
51 prospective borrower or a person [~~registered~~] licensed under this chapter; or

52 (ii) requesting or gathering information, word processing, sending correspondence, or
53 assembling files by an individual who works under the instruction of a person [~~registered~~]
54 licensed under this chapter.

55 (4) "Closed-end" means a loan with a fixed amount borrowed and which does not
56 permit additional borrowing secured by the same collateral.

57 (5) "Commission" means the Residential Mortgage Regulatory Commission created in
58 Section 61-2c-104.

59 (6) "Compensation" means anything of economic value that is paid, loaned, granted,
60 given, donated, or transferred to an individual or entity for or in consideration of:

61 (a) services;

62 (b) personal or real property; or

63 (c) other thing of value.

64 (7) "Control" means the power, directly or indirectly, to:

65 (a) direct or exercise a controlling influence over:

66 (i) the management or policies of an entity; or

67 (ii) the election of a majority of the directors, officers, managers, or managing partners
68 of an entity;

69 (b) vote 20% or more of any class of voting securities of an entity by an individual; or

70 (c) vote more than 5% of any class of voting securities of an entity by another entity.

71 (8) "Control person" means any individual or entity which directly manages or controls
72 another entity's transaction of the business of residential mortgage loans secured by Utah
73 dwellings.

74 (9) "Depository institution" is as defined in Section 7-1-103.

75 (10) "Director" means the director of the division.

76 (11) "Division" means the Division of Real Estate.

77 (12) "Dwelling" means a residential structure attached to real property that contains
78 one to four units including any of the following if used as a residence:

79 (a) a condominium unit;

80 (b) a cooperative unit;

81 (c) a manufactured home; or

82 (d) a house.

83 (13) "Entity" means any corporation, limited liability company, partnership, company,
84 association, joint venture, business trust, trust, or other organization.

85 (14) "Executive director" means the executive director of the Department of
86 Commerce.

87 ~~[(16)]~~ (15) ~~["Registrant"]~~ "Licensee" means an individual or entity ~~[registered]~~ licensed

88 with the division under this chapter.

89 [~~(15)~~] (16) "Record" means information that is:

90 (a) prepared, owned, received, or retained by an individual or entity; and

91 (b) (i) inscribed on a tangible medium; or

92 (ii) (A) stored in an electronic or other medium; and

93 (B) retrievable in perceivable form.

94 (17) "Residential mortgage loan" means a closed-end, first mortgage loan or extension
95 of credit, if:

96 (a) the loan or extension of credit is secured by a:

97 (i) mortgage;

98 (ii) deed of trust; or

99 (iii) lien interest; and

100 (b) the mortgage, deed of trust, or lien interest described in Subsection (17)(a):

101 (i) is on a dwelling located in the state; and

102 (ii) created with the consent of the owner of the residential real property.

103 (18) "State" means:

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

105 (b) the District of Columbia; or

106 (c) the Commonwealth of Puerto Rico.

107 Section 2. Section **61-2c-103** is amended to read:

108 **61-2c-103. Powers and duties of the division.**

109 (1) The division shall administer this chapter.

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

112 (a) receive and act on complaints including:

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

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

115 (b) establish programs for the education of consumers with respect to residential
116 mortgage loans;

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

118 and

119 (ii) make the results of the studies described in Subsection (2)(c)(i) available to the
120 public; and

121 (d) employ any necessary hearing examiners, investigators, clerks, and other employees
122 and agents.

123 (3) The division shall make rules for the administration of this chapter in accordance
124 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, including:

125 (a) [~~registration~~] licensure procedures for individuals and entities required by this
126 chapter to [~~register~~] obtain a license with the division;

127 (b) proper handling of funds received by [~~registrants~~] licensees;

128 (c) record-keeping requirements by [~~registrants; and~~] licensees; and

129 (d) standards of conduct for [~~registrants.~~] licensees.

130 (4) (a) The division shall make available to the public a list of the names and addresses
131 of all [~~registrants~~] licensees.

132 (b) The division may charge a fee established by the division in accordance with
133 Section 63-38-3.2 for obtaining the list described in Subsection (4)(a).

134 Section 3. Section **61-2c-104** is amended to read:

135 **61-2c-104. Residential Mortgage Regulatory Commission.**

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

138 (a) the following members appointed by the executive director with the approval of the
139 governor:

140 (i) [~~two~~] three members having at least three years of experience in transacting the
141 business of residential mortgage loans and who are currently licensed under this chapter; and

142 (ii) [~~two members~~] one member from the general public; and

143 (b) the commissioner of the Department of Financial Institutions or the commissioner's
144 designee.

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

148 (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall,
149 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms

150 of commission members are staggered so that approximately half of the commission is
151 appointed every two years.

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

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

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

156 (b) The director may call a meeting in addition to the meetings required by Subsection
157 (4)(a):

158 (i) at the discretion of the director;

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

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

161 (5) (a) Three members of the commission constitute a quorum for the transaction of
162 business.

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

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

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

170 (b) (i) State government officer and employee members who do not receive salary, per
171 diem, or expenses from their agency for their service may receive per diem and expenses
172 incurred in the performance of their official duties from the commission at the rates established
173 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

176 (7) The commission shall:

177 (a) concur in the ~~[registration]~~ licensure or denial of ~~[registration]~~ licensure of
178 individuals and entities under this chapter in accordance with Part 2, ~~[Registration]~~ Licensure;

179 (b) take disciplinary action with the concurrence of the director in accordance with Part
180 4, Enforcement; ~~[and]~~

181 (c) advise the division concerning matters related to the administration and
182 enforcement of this chapter[-]; and
183 (d) determine the requirements for:
184 (i) the 45-hour prelicensing course required under Section 61-2c-202;
185 (ii) the examination required under Section 61-2c-202, covering at least:
186 (A) the fundamentals of the English language;
187 (B) arithmetic;
188 (C) the provisions of this chapter;
189 (D) rules adopted by the division;
190 (E) basic residential mortgage principles and practices; and
191 (F) any other aspect of Utah law the commission determines is appropriate; and
192 (iii) the continuing education requirements under Section 61-2c-205, including:
193 (A) the appropriate number of hours of required continuing education; and
194 (B) the subject matter of courses the division may accept for continuing education
195 purposes.

196 (8) The commission may appoint a committee to make recommendations to the
197 commission concerning approval of continuing education courses.

198 (9) The commission shall make the prelicensing course, examination, and continuing
199 education requirements described in this Section available through the Internet when
200 reasonably practicable.

201 Section 4. Section **61-2c-106** is amended to read:

202 **61-2c-106. Addresses provided the division.**

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

205 (2) An individual or entity [~~registered~~] licensed under this chapter will be considered to
206 have received any notification that is mailed to the last address furnished to the division by the
207 individual, or by a control person of the entity, [~~registered~~] licensed under this chapter.

208 Section 5. Section **61-2c-201** is amended to read:

209 **Part 2. Licensure**

210 **61-2c-201. Licensure required of individuals and entities engaged in the business**
211 **of residential mortgage loans.**

212 (1) Unless exempt from this chapter under Section 61-2c-105, an individual or entity
213 may not transact the business of residential mortgage loans, as defined in Section 61-2c-102,
214 without [~~registering~~] obtaining a license under this chapter.

215 (2) For purposes of this chapter, an individual or entity transacts business in this state
216 if:

217 (a) (i) the individual or entity engages in an act that constitutes the business of
218 residential mortgage loans; and

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

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

223 (b) a representation is made by the individual or entity that the individual or entity
224 transacts the business of residential mortgage loans in this state.

225 (3) Unless otherwise exempted under this chapter, [~~registration~~] licensure under this
226 chapter is required of both:

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

228 (b) if the individual transacts business as an employee or agent of an entity or
229 individual, the entity or individual for whom the employee or agent transacts the business of
230 residential mortgage loans.

231 Section 6. Section **61-2c-202** is amended to read:

232 **61-2c-202. Licensure procedures.**

233 (1) To apply for [~~registration~~] licensure under this chapter an individual or entity shall:

234 (a) submit to the division a [~~registration~~] licensure statement that:

235 (i) lists any name under which the individual or entity will transact business in this
236 state;

237 (ii) lists the address of the principal business location of the applicant;

238 (iii) if the applicant is an entity, lists the control persons of the applicant;

239 (iv) demonstrates to the satisfaction of the division with the concurrence of the
240 commission that the applicant meets the qualifications listed in Section 61-2c-203; and

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

242 (b) pay to the division:

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

245 (ii) the reasonable expenses incurred in processing the application for [registration]
246 licensure including the costs incurred by the division under Subsection (4);

247 (c) meet the requirements under Section 61-2c-204 for:

248 (i) obtaining a surety bond;

249 (ii) depositing assets; or

250 (iii) providing a letter of credit; and

251 (d) comply with Subsection (4).

252 (2) The division, with the concurrence of the commission, shall grant a [registration]
253 license to an applicant if the division finds that the applicant:

254 (a) meets the qualifications of Sections 61-2c-203 and 61-2c-204; and

255 (b) complies with this section.

256 (3) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, an
257 applicant who is denied [registration] licensure under this chapter may submit a request for
258 agency review to the executive director within 30 days following the issuance of the order
259 denying the [registration] licensure.

260 (4) (a) (i) Prior to January 1, 2005, an individual applying for licensure under this
261 chapter and any control person of the applicant shall:

262 (A) submit a fingerprint card in a form acceptable to the division at the time the
263 registration statement is filed; and

264 (B) consent to a fingerprint background check by:

265 (I) the Utah Bureau of Criminal Identification;

266 (II) the Federal Bureau of Investigation; and

267 (C) except as provided in Subsection (4)(a)(ii), provide proof using forms approved by
268 the division of having successfully completed an examination approved by the commission
269 under Section 61-2c-104.

270 (ii) Notwithstanding Subsection (4)(a)(i)(C), an individual who has unsuccessfully
271 attempted to complete the examination approved by the commission under Section 61-2c-104
272 at least three times is not required to pass the examination approved by the commission under
273 Section 61-2c-104 if the individual provides proof using forms approved by the division of

274 having successfully completed the prelicensing course described in Subsection (4)(b)(iii)(A).

275 ~~[(4)(a) An]~~ (b) On or after January 1, 2005, an individual applying for [registration]
276 licensure under this chapter and any control person of the applicant shall:

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

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

280 (A) the Utah Bureau of Criminal Identification; ~~[and]~~

281 (B) the Federal Bureau of Investigation~~[-]~~; and

282 (iii) provide proof using forms approved by the division of having successfully
283 completed:

284 (A) a 45-hour prelicensing course approved by the commission under Section
285 61-2c-104; and

286 (B) an examination approved by the commission under Section 61-2c-104.

287 ~~[(b)]~~ (c) The division shall request the Department of Public Safety to complete a
288 Federal Bureau of Investigation criminal background check for each applicant and each control
289 person of an applicant through a national criminal history system.

290 ~~[(c)]~~ (d) The applicant shall pay the cost of:

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

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

293 ~~[(d)]~~ (e) (i) A ~~[registration]~~ license under this chapter is conditional pending
294 completion of the criminal background check required by this Subsection (4).

295 (ii) If a criminal background check discloses that an applicant or an applicant's control
296 person failed to accurately disclose a criminal history, the ~~[registration]~~ license shall be
297 immediately and automatically revoked.

298 (iii) An individual or entity whose conditional ~~[registration]~~ license is revoked under
299 Subsection (4)(d)(ii) may appeal the revocation in a hearing conducted:

300 (A) after the revocation; and

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

302 Section 7. Section **61-2c-203** is amended to read:

303 **61-2c-203. Qualifications for licensure.**

304 (1) To qualify for ~~[registration]~~ licensure under this chapter, an individual shall:

305 (a) have good moral character and the competency to transact the business of
306 residential mortgage loans;

307 (b) not have been convicted of a felony or misdemeanor involving moral turpitude in
308 the ~~[five]~~ ten years preceding the date the individual applies for ~~[registration]~~ a license, except
309 as provided in Subsection (3);

310 (c) not have had a license or registration suspended, revoked, surrendered, canceled, or
311 denied in the five years preceding the date the individual applies for ~~[registration,]~~ licensure
312 except as provided in Subsection (3), if:

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

314 (ii) the suspension, revocation, surrender, cancellation, or denial is based on
315 misconduct in a professional capacity that relates to good moral character or the competency to
316 transact the business of residential mortgage loans.

317 (2) To qualify for ~~[registration]~~ licensure under this chapter an entity may not have:

318 (a) any of the following individuals in management who fails to meet the requirements
319 of Subsection (1):

320 (i) a manager or a managing partner;

321 (ii) a director;

322 (iii) an executive officer; or

323 (iv) an individual occupying a position or performing functions similar to those
324 described in Subsections (2)(a)(i) through (iii); and

325 (b) a control person who fails to meet the requirements of Subsection (1).

326 (3) If an individual or a control person of an entity fails to meet the requirements of
327 Subsection (1)(b) or (c), but otherwise meets the qualifications for ~~[registration]~~ licensure, and
328 provides evidence satisfactory to the division with the concurrence of the commission that the
329 individual or control person has good moral character and the competency to transact the
330 business of residential mortgage loans, notwithstanding the failure to meet the requirements of
331 Subsection (1)(b) or (c) the division may permit that individual or entity to be ~~[registered]~~
332 licensed under this chapter.

333 Section 8. Section **61-2c-204** is amended to read:

334 **61-2c-204. Requirements for bonding, letter of credit, or deposit of assets.**

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

- 336 (a) file with the division a surety bond:
- 337 (i) that meets the requirements of Subsection (3); and
- 338 (ii) in the amount not less than \$10,000; or
- 339 (b) demonstrate to the satisfaction of the division that:
- 340 (i) the applicant is an employee or agent of an entity [~~registered~~] licensed under this
- 341 chapter; and
- 342 (ii) the acts of the applicant are covered by a surety bond filed with the division under
- 343 Subsection (2) by the entity [~~registered~~] licensed under this chapter for which the applicant is
- 344 an employee or agent.
- 345 (2) If the applicant is an entity, the applicant shall file with the division a surety bond:
- 346 (a) that meets the requirements of Subsection (4); and
- 347 (b) in an amount not less than [~~\$25,000~~] \$50,000.
- 348 (3) A surety bond filed under this section shall name as beneficiaries:
- 349 (a) the state, for payment of costs incurred and charges made in connection with an
- 350 enforcement action under Part 4, Enforcement, against the applicant including costs and
- 351 charges relating to an examination or investigation; and
- 352 (b) after all claims and charges of the state have been paid in full, any person who has a
- 353 claim against the surety on the bond based on any default or violation of any duty or obligation
- 354 of the applicant.
- 355 (4) If an applicant is an entity, a surety bond filed under this section shall:
- 356 (a) comply with Subsection (3); and
- 357 (b) cover the acts of:
- 358 (i) the entity [~~registered~~] licensed under this chapter;
- 359 (ii) any control person of the entity [~~registered~~] licensed under this chapter; and
- 360 (iii) any agent or employee of the entity [~~registered~~] licensed under this chapter.
- 361 (5) If an individual [~~registered~~] licensed under this chapter does not file a surety bond
- 362 under this section because at the time of applying for [~~registration~~] licensure that person met
- 363 the requirements of Subsection (1)(b), the individual shall post a surety bond meeting the
- 364 requirements of Subsections (1) and (3) by no later than 30 days from the day on which the
- 365 person is not covered by a surety bond in accordance with Subsection (1)(b).
- 366 (6) Notwithstanding the other provisions of this section, an applicant can comply with

367 the requirements of this section, if the applicant deposits assets with or provides a letter of
368 credit to the division:

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

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

371 Section 9. Section **61-2c-205** is amended to read:

372 **61-2c-205. Term of licensure -- Renewal -- Reporting of changes.**

373 (1) (a) A [registration] license under this chapter is valid for a two-year period.

374 (b) Notwithstanding Subsection (1)(a), the time period of a [registration] license may
375 be extended or shortened by as much as one year to maintain or change a renewal cycle
376 established by rule by the division.

377 (2) To renew a [registration] license, no later than 30 days before the date the
378 [registration] license expires, a [registrant] licensee shall:

379 (a) file a [registration] licensure statement meeting the requirements of Section
380 61-2c-202; ~~and~~

381 (b) pay a fee to the division established by the division in accordance with Section
382 63-38-3.2[-]; and

383 (c) if the licensee is an individual, submit proof using forms approved by the division
384 of having completed during the two years prior to application the continuing education required
385 by the commission under Section 61-2c-104.

386 (3) (a) A [registrant] licensee under this chapter shall amend its [registration] licensure
387 statement filed with the division within ten days of the date on which there is a change in:

388 (i) a name under which the [registrant] licensee transacts the business of residential
389 mortgage loans in this state;

390 (ii) the location of the [registrant] licensee;

391 (iii) the control persons of the [registrant] licensee; or

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

393 (b) Failure to notify the division of a change described in Subsection (3)(a) is separate
394 grounds for disciplinary action against a [registrant] licensee.

395 (4) A [registrant] licensee shall notify the division by sending the division a signed
396 statement within ten business days of:

397 (a) a conviction of any criminal offense;

398 (b) filing a personal bankruptcy or bankruptcy of a business that transacts the business
399 of residential mortgage loans; or

400 (c) the suspension, revocation, surrender, cancellation, or denial of a professional
401 license or professional registration of the [registrant] licensee, whether the license or
402 registration is issued by this state or another jurisdiction.

403 (5) (a) A license under this chapter expires if the licensee does not apply to renew the
404 license on or before the expiration date of the license.

405 (b) Within 30 calendar days after the expiration date, a licensee whose license has
406 expired may apply to reinstate the expired license upon:

407 (i) payment of a renewal fee and a late fee determined by the division under Section
408 63-38-3.2; and

409 (ii) providing proof using forms approved by the division of having completed the
410 continuing education required by the commission under Section 61-2c-104.

411 (c) After the 30 calendar days described in Subsection (5)(b) and within six months
412 after the expiration date, a licensee whose license has expired may apply to reinstate an expired
413 license upon:

414 (i) payment of a renewal fee and a late fee determined by the division under Section
415 63-38-3.2;

416 (ii) providing proof using forms approved by the division of having completed the
417 continuing education required by the commission under Section 61-2c-104; and

418 (iii) completing an additional 12 hours of continuing education approved by the
419 commission under Section 61-2c-104.

420 (d) A licensee whose license has been expired for more than one year may apply to
421 reinstate an expired license upon:

422 (i) satisfying the requirements of Subsection (5)(c); and

423 (ii) passing the examination approved by the commission under Section 61-2c-104.

424 Section 10. Section **61-2c-206** is enacted to read:

425 **61-2c-206. Principal mortgage loan officer.**

426 (1) An individual or entity licensed under this chapter shall affiliate with a principal
427 mortgage loan officer pursuant to this section.

428 (2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

429 director shall determine the requirements for a person to act as a principal mortgage loan
430 officer.

431 (3) It is unlawful for any licensee under this chapter to accept valuable consideration
432 for the performance of any of the acts specified in this chapter from any person except the
433 principal mortgage loan officer with whom the licensee is affiliated.

434 (4) A licensee under this chapter may not affiliate with more than one principal
435 mortgage loan officer at the same time.

436 (5) A principal mortgage loan officer may not affiliate with more than one entity
437 licensed under this chapter at the same time.

438 Section 11. Section **61-2c-301** is amended to read:

439 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

440 (1) An individual or entity transacting the business of residential mortgage loans in this
441 state may not:

442 (a) give or receive compensation or anything of value in exchange for a referral of
443 residential mortgage loan business unless the compensation or thing of value is de minimis as
444 defined by the division;

445 (b) charge a fee in connection with a residential mortgage loan transaction:

446 (i) that is excessive; or

447 (ii) if the individual or entity does not comply with Section 70D-1-6;

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

450 (d) make a false statement or representation for purposes of inducing a lender to extend
451 credit as part of a residential mortgage loan transaction;

452 (e) give or receive compensation or anything of value to influence the independent
453 judgment of an appraiser in reaching a value conclusion in a residential mortgage loan
454 transaction;

455 (f) violate or not comply with:

456 (i) this chapter;

457 (ii) an order of the commission or division; or

458 (iii) a rule made by the division;

459 (g) fail to respond within the required time period to:

- 460 (i) a notice or complaint of the division; or
461 (ii) a request for information from the division;
462 (h) make false representations to the division, including in a [~~registration~~] licensure
463 statement;
464 (i) for any residential mortgage loan transaction beginning on or after January 1, 2004,
465 engage in the business of residential mortgage loans with respect to the transaction if the
466 individual or entity also acts in any of the following capacities with respect to the same
467 residential mortgage loan transaction:
468 (i) appraiser;
469 (ii) escrow agent;
470 (iii) real estate agent; or
471 (iii) general contractor;
472 (j) order a title insurance report or hold a title insurance policy unless the individual or
473 entity provides to the title insurer a copy of a valid, current license under this chapter.
474 [(†)] (k) engage in unprofessional conduct as defined by rule; or
475 [(†)] (l) engage in an act or omission in transacting the business of residential mortgage
476 loans that constitutes dishonesty, fraud, or misrepresentation.
477 (2) Whether or not the crime is related to the business of residential mortgage loans, it
478 is a violation of this chapter for a [~~registrant~~] licensee or a control person of a [~~registrant~~]
479 licensee to do any of the following with respect to a criminal offense which involves moral
480 turpitude:
481 (a) be convicted;
482 (b) plead guilty or nolo contendere;
483 (c) enter a plea in abeyance; or
484 (d) be subjected to a criminal disposition similar to the ones described in Subsections
485 (2)(a) through (c).
486 Section 12. Section **61-2c-302** is amended to read:
487 **61-2c-302. Record requirements.**
488 (1) For the time period specified in Subsection (2), a [~~registrant~~] licensee shall make or
489 possess any record required for that [~~registrant~~] licensee by a rule made by the division.
490 (2) A [~~registrant~~] licensee shall maintain in its possession a record described in

491 Subsection (1) until the later of four years from the last to occur of the following:

492 (a) the final entry on a residential mortgage loan is made by that ~~[registrant]~~ licensee;

493 (b) if the residential mortgage loan is serviced by the ~~[registrant]~~ licensee;

494 (i) the residential mortgage loan is paid in full; or

495 (ii) the ~~[registrant]~~ licensee ceases to service the residential mortgage loan; or

496 (c) if the residential mortgage loan is not serviced by the ~~[registrant]~~ licensee, the
497 residential mortgage loan is closed.

498 Section 13. Section **61-2c-401** is amended to read:

499 **61-2c-401. Investigations -- Subpoena power of division.**

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

501 (a) a ~~[registrant]~~ licensee and the control persons of any ~~[registrant]~~ licensee;

502 (b) an applicant for ~~[registration]~~ licensure under this chapter, and the control persons
503 of any applicant; or

504 (c) any individual or entity that transacts the business of residential mortgage loans
505 within this state, and the control persons of any such entity.

506 (2) In conducting investigations and adjudicative proceedings, the division may:

507 (a) subpoena witnesses;

508 (b) take evidence;

509 (c) require by subpoena duces tecum the production of books, papers, contracts,
510 records, other documents, or information considered relevant to an investigation; and

511 (d) serve a subpoena by certified mail.

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

514 Section 14. Section **61-2c-402** is amended to read:

515 **61-2c-402. Disciplinary action -- Reinstatement.**

516 (1) Subject to the requirements of this section, if an individual or entity required to be
517 ~~[registered]~~ licensed under this chapter violates this chapter, the commission with the
518 concurrence of the director, may:

519 (a) impose a civil penalty against the individual or entity in an amount not to exceed
520 ~~[\$500]~~ \$2,500 per violation;

521 (b) do any of the following to a ~~[registration]~~ license under this chapter:

522 (i) suspend;

523 (ii) revoke;

524 (iii) place on probation;

525 (iv) deny renewal; or

526 (v) deny reinstatement; or

527 (c) do both Subsections (1)(a) and (b).

528 (2) (a) Before the commission and the division may take an action described in

529 Subsection (1), the division shall:

530 (i) give notice to the individual or entity; and

531 (ii) schedule an adjudicative proceeding.

532 (b) If after the adjudicative proceeding scheduled under Subsection (2)(a), the

533 commission and the director determine that an individual or entity required to be ~~registered~~

534 licensed under this ~~section~~ chapter has violated this chapter, the commission may take an

535 action described in Subsection (1) by written order.

536 (3) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, an

537 individual or entity against whom disciplinary action is taken under this section may seek

538 review by the executive director of the disciplinary action.

539 (4) If an individual or entity prevails in a judicial appeal and the court finds that the

540 state action was undertaken without substantial justification, the court may award reasonable

541 litigation expenses to that individual or entity as provided under Title 78, Chapter 27a, Small

542 Business Equal Access to Justice Act.

543 (5) (a) An order issued under this section takes effect 30 days after the service of the

544 order unless otherwise provided in the order.

545 (b) If an appeal of an order issued under this section is taken by an individual or entity,

546 the division may stay enforcement of the commission's order in accordance with Section

547 63-46b-18.

548 (6) If ordered by the court of competent jurisdiction, the division shall promptly take an

549 action described in Subsection (1)(b) against a ~~registration~~ license granted under this chapter.

550 (7) (a) If a ~~registration~~ license under this chapter is revoked, the individual or entity

551 may apply to have the ~~registration~~ license reinstated by complying with the requirements of

552 Section 61-2c-202 for ~~registration~~ licensure.

553 (b) Notwithstanding Subsection (7)(a), if a [registration] license under this chapter is
554 revoked, the individual or entity may not apply for reinstatement of the [registration] license
555 sooner than five years after the date the [registration] license is revoked in accordance with this
556 section.

557 (c) If an individual or entity whose [registration] license has been revoked applies for
558 reinstatement in accordance with Subsection (7)(b), the commission and the division may grant
559 the application for reinstatement if they find that:

560 (i) there has been good conduct on the part of the applicant subsequent to the events
561 that led to the revocation, and that the subsequent good conduct outweighs the events which led
562 to the revocation; and

563 (ii) the interest of the public is not likely to be harmed by the granting of the
564 [registration] license.

565 Section 15. **Effective date.**

566 This act takes effect on January 1, 2004.

567 Section 16. **Coordination clause.**

568 If this bill and H.B. 203, Residential Mortgage Regulatory Commission, both pass, it is
569 the intent of the Legislature that the Office of Legislative Research and General Counsel, in
570 preparing the Utah Code database for publication, shall replace the phrase "and are currently
571 registered as a mortgage lender with the division" in Subsection 61-2c-104(1)(a)(i) of H.B. 203
572 with the phrase "and who are currently licensed under this chapter".