

Senator John W. Hickman proposes the following substitute bill:

RESIDENTIAL MORTGAGE PRACTICES

AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: J. Morgan Philpot

This act modifies the Utah Residential Mortgage Practices Act to modify the definition of the business of residential mortgage loans, to require licensing, prelicensing examinations, and continuing education of persons engaging in the business of residential mortgage loans, and to modify other licensing 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 makes technical changes. This act takes effect January 1, 2004. This act provides a coordination clause.

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



26 **61-2c-302**, as last amended by Chapter 204, Laws of Utah 2002

27 **61-2c-401**, as last amended by Chapter 204, Laws of Utah 2002

28 **61-2c-402**, as last amended by Chapter 204, Laws of Utah 2002

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

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

31 **61-2c-102. Definitions.**

32 As used in this chapter:

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

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

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

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

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

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

44 (A) taking applications; and

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

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

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

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

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

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

56 (5) "Commission" means the Residential Mortgage Regulatory Commission created in

57 Section 61-2c-104.

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

60 (a) services;

61 (b) personal or real property; or

62 (c) other thing of value.

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

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

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

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

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

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

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

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

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

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

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

78 (a) a condominium unit;

79 (b) a cooperative unit;

80 (c) a manufactured home; or

81 (d) a house.

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

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

86 [~~16~~] (15) [~~"Registrant"~~] "Licensee" means an individual or entity [~~registered~~] licensed
87 with the division under this chapter.

88 [~~(15)~~] (16) "Record" means information that is:

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

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

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

92 (B) retrievable in perceivable form.

93 (17) "Residential mortgage loan" means a closed-end, first mortgage loan or extension

94 of credit, if:

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

96 (i) mortgage;

97 (ii) deed of trust; or

98 (iii) lien interest; and

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

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

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

102 (18) "State" means:

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

104 (b) the District of Columbia; or

105 (c) the Commonwealth of Puerto Rico.

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

107 **61-2c-103. Powers and duties of the division.**

108 (1) The division shall administer this chapter.

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

110 may:

111 (a) receive and act on complaints including:

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

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

114 (b) establish programs for the education of consumers with respect to residential

115 mortgage loans;

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

117 and

118 (ii) make the results of the studies described in Subsection (2)(c)(i) available to the

119 public; and

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

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

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

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

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

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

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

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

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

134 **61-2c-104. Residential Mortgage Regulatory Commission.**

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

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

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

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

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

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

147 (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall,
148 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms
149 of commission members are staggered so that approximately half of the commission is

150 appointed every two years.

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

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

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

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

157 (i) at the discretion of the director;

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

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

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

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

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

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

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

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

175 (7) The commission shall:

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

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

180 (c) advise the division concerning matters related to the administration and

181 enforcement of this chapter[-]; and

182 (d) determine the requirements for:

183 (i) the examination required under Section 61-2c-202, covering at least:

184 (A) the fundamentals of the English language;

185 (B) arithmetic;

186 (C) the provisions of this chapter;

187 (D) rules adopted by the division;

188 (E) basic residential mortgage principles and practices; and

189 (F) any other aspect of Utah law the commission determines is appropriate; and

190 (ii) the continuing education requirements under Section 61-2c-205, including:

191 (A) the appropriate number of hours of required continuing education; and

192 (B) the subject matter of courses the division may accept for continuing education

193 purposes.

194 (8) The commission may appoint a committee to make recommendations to the

195 commission concerning approval of continuing education courses.

196 (9) The commission shall make the examination and continuing education

197 requirements described in this Section available through the Internet when reasonably

198 practicable.

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

200 **61-2c-106. Addresses provided the division.**

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

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

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

207 **Part 2. Licensure**

208 **61-2c-201. Licensure required of individuals and entities engaged in the business**
209 **of residential mortgage loans.**

210 (1) Unless exempt from this chapter under Section 61-2c-105, an individual or entity
211 may not transact the business of residential mortgage loans, as defined in Section 61-2c-102,

212 without [~~registering~~] obtaining a license under this chapter.

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

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

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

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

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

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

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

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

229 (4) An individual licensed under this chapter may not engage in the business of
230 residential mortgage loans on behalf of more than one entity at the same time.

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) An individual applying for ~~[registration]~~ a license under this chapter and
 261 any control person of the applicant shall:

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

264 ~~[(ii)]~~ (B) consent to a fingerprint background check by:

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

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

267 (C) provide proof using methods approved by the division of having successfully
 268 completed an examination approved by the commission under Section 61-2c-104.

269 (ii) Notwithstanding Subsection (4)(a)(i)(C), an individual who was registered with the
 270 division under this chapter prior to January 1, 2004 may engage in the business of residential
 271 mortgage loans until January 1, 2005 without having passed the examination described in
 272 Subsection (4)(a)(i)(c).

273 (b) The division shall request the Department of Public Safety to complete a Federal

274 Bureau of Investigation criminal background check for each applicant and each control person
275 of an applicant through a national criminal history system.

276 (c) The applicant shall pay the cost of:

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

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

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

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

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

286 (A) after the revocation; and

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

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

289 **61-2c-203. Qualifications for licensure.**

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

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

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

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

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

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

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

304 (a) any of the following individuals in management who fails to meet the requirements

305 of Subsection (1):

306 (i) a manager or a managing partner;

307 (ii) a director;

308 (iii) an executive officer; or

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

310 described in Subsections (2)(a)(i) through (iii); and

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

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

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

320 **61-2c-204. Requirements for bonding, letter of credit, or deposit of assets.**

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

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

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

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

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

326 (i) the applicant is an employee or agent of an entity [~~registered~~] licensed under this
327 chapter; and

328 (ii) the acts of the applicant are covered by a surety bond filed with the division under
329 Subsection (2) by the entity [~~registered~~] licensed under this chapter for which the applicant is
330 an employee or agent.

331 (2) If the applicant is an entity, the applicant shall file with the division a surety bond:

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

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

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

335 (a) the state, for payment of costs incurred and charges made in connection with an

336 enforcement action under Part 4, Enforcement, against the applicant including costs and
337 charges relating to an examination or investigation; and

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

341 (4) If an applicant is an entity, a surety bond filed under this section shall:

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

343 (b) cover the acts of:

344 (i) the entity [~~registered~~] licensed under this chapter;

345 (ii) any control person of the entity [~~registered~~] licensed under this chapter; and

346 (iii) any agent or employee of the entity [~~registered~~] licensed under this chapter.

347 (5) If an individual [~~registered~~] licensed under this chapter does not file a surety bond
348 under this section because at the time of applying for [~~registration~~] licensure that person met
349 the requirements of Subsection (1)(b), the individual shall post a surety bond meeting the
350 requirements of Subsections (1) and (3) by no later than 30 days from the day on which the
351 person is not covered by a surety bond in accordance with Subsection (1)(b).

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

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

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

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

358 **61-2c-205. Term of licensure -- Renewal -- Reporting of changes.**

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

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

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

365 (a) file a [~~registration~~] licensure statement meeting the requirements of Section
366 61-2c-202; [~~and~~]

367 (b) pay a fee to the division established by the division in accordance with Section
368 63-38-3.2[-]; and

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

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

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

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

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

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

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

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

383 (a) a conviction of any criminal offense;

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

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

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

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

393 (i) payment of a renewal fee and a late fee determined by the division under Section
394 63-38-3.2; and

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

397 (c) After the 30 calendar days described in Subsection (5)(b) and within six months

398 after the expiration date, a licensee whose license has expired may apply to reinstate an expired
399 license upon:

400 (i) payment of a renewal fee and a late fee determined by the division under Section
401 63-38-3.2;

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

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

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

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

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

410 Section 10. Section **61-2c-301** is amended to read:

411 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

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

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

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

418 (i) that is excessive; or

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

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

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

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

427 (f) violate or not comply with:

428 (i) this chapter;

- 429 (ii) an order of the commission or division; or
 430 (iii) a rule made by the division;
 431 (g) fail to respond within the required time period to:
 432 (i) a notice or complaint of the division; or
 433 (ii) a request for information from the division;
 434 (h) make false representations to the division, including in a [~~registration~~] licensure
 435 statement;
 436 (i) for any residential mortgage loan transaction beginning on or after January 1, 2004,
 437 engage in the business of residential mortgage loans with respect to the transaction if the
 438 individual or entity also acts in any of the following capacities with respect to the same
 439 residential mortgage loan transaction:
 440 (i) appraiser;
 441 (ii) escrow agent;
 442 (iii) real estate agent; or
 443 (iii) general contractor;
 444 (j) order a title insurance report or hold a title insurance policy unless the individual or
 445 entity provides to the title insurer a copy of a valid, current license under this chapter.
 446 [~~(i)~~] (k) engage in unprofessional conduct as defined by rule; or
 447 [~~(j)~~] (l) engage in an act or omission in transacting the business of residential mortgage
 448 loans that constitutes dishonesty, fraud, or misrepresentation.
 449 (2) Whether or not the crime is related to the business of residential mortgage loans, it
 450 is a violation of this chapter for a [~~registrant~~] licensee or a control person of a [~~registrant~~]
 451 licensee to do any of the following with respect to a criminal offense which involves moral
 452 turpitude:
 453 (a) be convicted;
 454 (b) plead guilty or nolo contendere;
 455 (c) enter a plea in abeyance; or
 456 (d) be subjected to a criminal disposition similar to the ones described in Subsections
 457 (2)(a) through (c).
 458 Section 11. Section **61-2c-302** is amended to read:
 459 **61-2c-302. Record requirements.**

460 (1) For the time period specified in Subsection (2), a [registrant] licensee shall make or
461 possess any record required for that [registrant] licensee by a rule made by the division.

462 (2) A [registrant] licensee shall maintain in its possession a record described in
463 Subsection (1) until the later of four years from the last to occur of the following:

- 464 (a) the final entry on a residential mortgage loan is made by that [registrant] licensee;
- 465 (b) if the residential mortgage loan is serviced by the [registrant] licensee:
 - 466 (i) the residential mortgage loan is paid in full; or
 - 467 (ii) the [registrant] licensee ceases to service the residential mortgage loan; or
- 468 (c) if the residential mortgage loan is not serviced by the [registrant] licensee, the
469 residential mortgage loan is closed.

470 Section 12. Section **61-2c-401** is amended to read:

471 **61-2c-401. Investigations -- Subpoena power of division.**

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

- 473 (a) a [registrant] licensee and the control persons of any [registrant] licensee;
- 474 (b) an applicant for [registration] licensure under this chapter, and the control persons
475 of any applicant; or
- 476 (c) any individual or entity that transacts the business of residential mortgage loans
477 within this state, and the control persons of any such entity.

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

- 479 (a) subpoena witnesses;
- 480 (b) take evidence;
- 481 (c) require by subpoena duces tecum the production of books, papers, contracts,
482 records, other documents, or information considered relevant to an investigation; and
- 483 (d) serve a subpoena by certified mail.

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

486 Section 13. Section **61-2c-402** is amended to read:

487 **61-2c-402. Disciplinary action -- Reinstatement.**

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

491 (a) impose a civil penalty against the individual or entity in an amount not to exceed
492 [~~\$500~~] \$2,500 per violation;

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

494 (i) suspend;

495 (ii) revoke;

496 (iii) place on probation;

497 (iv) deny renewal; or

498 (v) deny reinstatement; or

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

500 (2) (a) Before the commission and the division may take an action described in
501 Subsection (1), the division shall:

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

503 (ii) schedule an adjudicative proceeding.

504 (b) If after the adjudicative proceeding scheduled under Subsection (2)(a), the
505 commission and the director determine that an individual or entity required to be [~~registered~~]
506 licensed under this [~~section~~] chapter has violated this chapter, the commission may take an
507 action described in Subsection (1) by written order.

508 (3) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, an
509 individual or entity against whom disciplinary action is taken under this section may seek
510 review by the executive director of the disciplinary action.

511 (4) If an individual or entity prevails in a judicial appeal and the court finds that the
512 state action was undertaken without substantial justification, the court may award reasonable
513 litigation expenses to that individual or entity as provided under Title 78, Chapter 27a, Small
514 Business Equal Access to Justice Act.

515 (5) (a) An order issued under this section takes effect 30 days after the service of the
516 order unless otherwise provided in the order.

517 (b) If an appeal of an order issued under this section is taken by an individual or entity,
518 the division may stay enforcement of the commission's order in accordance with Section
519 63-46b-18.

520 (6) If ordered by the court of competent jurisdiction, the division shall promptly take an
521 action described in Subsection (1)(b) against a [~~registration~~] license granted under this chapter.

522 (7) (a) If a [registration] license under this chapter is revoked, the individual or entity
523 may apply to have the [registration] license reinstated by complying with the requirements of
524 Section 61-2c-202 for [registration] licensure.

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

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

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

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

537 Section 14. **Effective date.**

538 This act takes effect on January 1, 2004.

539 Section 15. **Coordination clause.**

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