

**RESIDENTIAL MORTGAGE PRACTICES**

**AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Eric K. Hutchings**

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**LONG TITLE**

**General Description:**

This bill modifies provisions of the Utah Residential Mortgage Practices Act related to the scope of the act and prohibited conduct.

**Highlighted Provisions:**

This bill:

- ▶ applies the provisions of the Utah Residential Mortgage Practices Act to a state chartered depository institution and its affiliates;
- ▶ prohibits an act that would constitute a violation of the federal Real Estate Settlement Procedures Act of 1974; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**61-2c-105**, as last amended by Chapters 159 and 204, Laws of Utah 2002

**61-2c-301**, as last amended by Chapter 243, Laws of Utah 2003

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



28 Section 1. Section **61-2c-105** is amended to read:

29 **61-2c-105. Scope of chapter.**

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

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

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

35 (a) the federal government;

36 (b) a state;

37 (c) a political subdivision of a state;

38 (d) an agency of or entity created by a governmental entity described in Subsections  
39 (2)(a) through (c) including:

40 (i) the Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing  
41 Corporation Act;

42 (ii) the Federal National Mortgage Corporation;

43 (iii) the Federal Home Loan Mortgage Corporation;

44 (iv) the Federal Deposit Insurance Corporation;

45 (v) the Resolution Trust Corporation;

46 (vi) the Government National Mortgage Association;

47 (vii) the Federal Housing Administration;

48 (viii) the National Credit Union Administration;

49 (ix) the Farmers Home Administration; and

50 (x) the Department of Veterans Affairs;

51 (e) a federally chartered depository institution;

52 (f) an affiliate of a federally chartered depository institution;

53 (g) an employee or agent of an entity described in Subsections (2)(a) through (f) when  
54 that person acts on behalf of the entity described in Subsections (2)(a) through (f);

55 (h) an individual or entity:

56 (i) that makes a loan:

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

58 (B) with the individual's or the entity's own money; and

- 59 (C) for the individual's or entity's own investment; and  
60 (ii) that does not engage in the business of making loans secured by an interest in real  
61 property;
- 62 (i) an individual or entity who receives a mortgage, deed of trust, or lien interest on real  
63 property if the individual or entity:
- 64 (i) is the seller of real property; and  
65 (ii) receives the mortgage, deed of trust, or lien interest on real property as security for  
66 a separate money obligation;
- 67 (j) an individual or entity who receives a mortgage, deed of trust, or lien interest on real  
68 property if:
- 69 (i) the individual or entity receives the mortgage, deed of trust, or lien interest as  
70 security for an obligation payable on an installment or deferred payment basis;
- 71 (ii) the obligation described in Subsection (2)(j)(i) arises from an individual or entity  
72 providing materials or services used in the improvement of the real property that is the subject  
73 of the mortgage, deed of trust, or lien interest; and
- 74 (iii) the mortgage, deed of trust, or lien interest was created without the consent of the  
75 owner of the real property that is the subject of the mortgage, deed of trust, or lien interest;
- 76 (k) a nonprofit corporation that:
- 77 (i) is exempt from paying federal income taxes;  
78 (ii) is certified by the United States Small Business Administration as a small business  
79 investment company;
- 80 (iii) is organized to promote economic development in this state; and  
81 (iv) has as its primary activity providing financing for business expansion;
- 82 (l) a court appointed fiduciary; or  
83 (m) an attorney admitted to practice law in this state:
- 84 (i) if the attorney is not principally engaged in the business of negotiating residential  
85 mortgage loans; and  
86 (ii) when the attorney renders services in the course of the attorney's practice as an  
87 attorney.
- 88 (3) (a) Notwithstanding Subsection (2)(m), an attorney exempt from this chapter may  
89 not engage in conduct described in Section 61-2c-301 when transacting business of residential

90 mortgage loans.

91 (b) If an attorney exempt from this chapter violates Subsection (3)(a), the attorney:

92 (i) is not subject to enforcement by the division under Part 4, Enforcement; and

93 (ii) is subject to disciplinary action generally applicable to an attorney admitted to

94 practice law in this state.

95 (c) If the division receives a complaint alleging an attorney exempt from this chapter is

96 in violation of Subsection (3)(a), the division shall forward the complaint to the Utah State Bar

97 for disciplinary action.

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

99 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

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

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

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

106 (i) that is excessive; or

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

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

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

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

115 (f) violate or not comply with:

116 (i) this chapter;

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

118 (iii) a rule made by the division;

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

120 (i) a notice or complaint of the division; or

- 121 (ii) a request for information from the division;
- 122 (h) make false representations to the division, including in a licensure statement;
- 123 (i) for any residential mortgage loan transaction beginning on or after January 1, 2004,
- 124 engage in the business of residential mortgage loans with respect to the transaction if the
- 125 individual or entity also acts in any of the following capacities with respect to the same
- 126 residential mortgage loan transaction:
- 127 (i) appraiser;
- 128 (ii) escrow agent;
- 129 (iii) real estate agent; or
- 130 (iv) general contractor;
- 131 (j) order a title insurance report or hold a title insurance policy unless the individual or
- 132 entity provides to the title insurer a copy of a valid, current license under this chapter;
- 133 (k) commit an act with respect to a residential mortgage loan, regardless of whether the
- 134 residential mortgage loan is a federally related mortgage loan as defined in 12 U.S.C. Sec.
- 135 2602, that would be a violation of the Real Estate Settlement Procedures Act of 1974, 12
- 136 U.S.C. Sec. 2601 et seq., if the residential mortgage loan were a federally related mortgage loan
- 137 as defined in 12 U.S.C. Sec. 2602;
- 138 [~~(k)~~] (l) engage in unprofessional conduct as defined by rule; or
- 139 [~~(l)~~] (m) engage in an act or omission in transacting the business of residential
- 140 mortgage loans that constitutes dishonesty, fraud, or misrepresentation.
- 141 (2) Whether or not the crime is related to the business of residential mortgage loans, it
- 142 is a violation of this chapter for a licensee or a control person of a licensee to do any of the
- 143 following with respect to a criminal offense which involves moral turpitude:
- 144 (a) be convicted;
- 145 (b) plead guilty or nolo contendere;
- 146 (c) enter a plea in abeyance; or
- 147 (d) be subjected to a criminal disposition similar to the ones described in Subsections
- 148 (2)(a) through (c).

**Legislative Review Note**

**as of 1-20-04 11:39 AM**

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

**Office of Legislative Research and General Counsel**

**State Impact**

Requiring mortgage officers working for state chartered institutions would increase revenue to the Commerce Service Fund by \$140,000 (second year revenues are estimated at \$10,000). Incorporating federal Real Estate Settlement Procedures Act (RESPA) law into mortgage licensing would require an additional 3 investigators and 1 office tech at a cost of \$276,800 from the Commerce Service Fund. The additional cases would require an additional mid-level attorney at a cost of \$116,000 from the General Fund. Spending from the Commerce Service Fund could affect the revenue available to the General Fund.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
General Fund	\$116,000	\$113,000	\$0	\$0
Commerce Service Fund	\$276,800	\$239,800	\$140,000	\$10,000
<b>TOTAL</b>	<b>\$392,800</b>	<b>\$352,800</b>	<b>\$140,000</b>	<b>\$10,000</b>

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**Individual and Business Impact**

Utah chartered mortgage businesses would pay about \$140,000 in licensing fees the first year and renewal fees thereafter (every two years). Individual homebuyers could experience savings in mortgage closing costs.

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