

1                           **REAL ESTATE RELATED REGULATION,**  
2                           **TRANSACTIONS, AND CONSTRUCTION**

3   2006 GENERAL SESSION

4   STATE OF UTAH

5   **Chief Sponsor: Paul Ray**

6   Senate Sponsor: \_\_\_\_\_

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8   **LONG TITLE**

9   **General Description:**

10           This bill modifies the Utah Code to address real estate related regulation, transactions,  
11   and construction.

12   **Highlighted Provisions:**

13           This bill:

14           ▶ enacts the Residential Mortgage Financial Institutions Act including:

- 15                   • specifying prohibited or required acts; and
- 16                   • enforcement;

17           ▶ addresses prohibiting payment of certain kickback or referral fees and related  
18   enforcement;

19           ▶ requires compliance with Truth in Lending and its implementing regulations and  
20   related enforcement;

21           ▶ requires persons licensed under the Utah Construction Trade Licensing Act to  
22   disclose certain business arrangements and makes unprofessional conduct the  
23   failure to disclose;

24           ▶ addresses scope of the Utah Residential Mortgage Practices Act;

25           ▶ addresses licensing and continuing education requirements of mortgage officer  
26   licensees;

27           ▶ directs the attorney general to employ a real estate fraud prosecutor and two



28 investigators;

29       ▶ enacts the Real Estate Fraud Act including:

30             • creating the crime of real estate fraud; and

31             • penalties;

32       ▶ includes real estate fraud as an illegal activity under the Pattern of Illegal Activity

33 Act; and

34       ▶ makes technical changes.

35 **Monies Appropriated in this Bill:**

36       None

37 **Other Special Clauses:**

38       None

39 **Utah Code Sections Affected:**

40 AMENDS:

41       **58-55-502**, as last amended by Chapter 198, Laws of Utah 2001

42       **61-2c-104**, as last amended by Chapter 199, Laws of Utah 2005

43       **61-2c-105**, as last amended by Chapter 297, Laws of Utah 2004

44       **61-2c-201**, as last amended by Chapter 199, Laws of Utah 2005

45       **61-2c-301**, as last amended by Chapter 199, Laws of Utah 2005

46       **61-2c-402**, as last amended by Chapter 199, Laws of Utah 2005

47       **76-10-1602**, as last amended by Chapters 104, 140 and 319, Laws of Utah 2004

48 ENACTS:

49       **7-1-1001**, Utah Code Annotated 1953

50       **7-1-1002**, Utah Code Annotated 1953

51       **7-1-1003**, Utah Code Annotated 1953

52       **7-1-1004**, Utah Code Annotated 1953

53       **7-1-1005**, Utah Code Annotated 1953

54       **58-55-504**, Utah Code Annotated 1953

55       **67-5-21**, Utah Code Annotated 1953

56       **76-6-1201**, Utah Code Annotated 1953

57       **76-6-1202**, Utah Code Annotated 1953

58       **76-6-1203**, Utah Code Annotated 1953

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

61 Section 1. Section **7-1-1001** is enacted to read:

62 **Part 10. Residential Mortgage Financial Institutions Act**

63 **7-1-1001. Title.**

64 This part is known as the "Residential Mortgage Financial Institutions Act."

65 Section 2. Section **7-1-1002** is enacted to read:

66 **7-1-1002. Definitions.**

67 As used in this part:

68 (1) "Mortgage lending process" means the process through which a person seeks or  
69 obtains a residential mortgage loan including:

- 70 (a) solicitation;
- 71 (b) application;
- 72 (c) origination;
- 73 (d) negotiation of terms;
- 74 (e) third-party provider services;
- 75 (f) underwriting;
- 76 (g) signing and closing; and
- 77 (h) funding of a residential mortgage loan.

78 (2) (a) Except as provided in Subsection (2)(b), "mortgage officer" means an individual  
79 employed by a financial institution for the purposes of engaging in the mortgage loan process  
80 for the financial institution.

81 (b) "Mortgage officer" does not include an individual who performs only clerical  
82 functions including:

- 83 (i) delivering a loan application to a financial institution;
- 84 (ii) gathering or requesting information related to a residential mortgage loan  
85 application on behalf of a prospective borrower or the financial institution;
- 86 (iii) word processing;
- 87 (iv) sending correspondence; or
- 88 (v) assembling files.

89 (3) (a) "Residential mortgage loan" means a loan or agreement to extend credit:

- 90            (i) made to a person;
- 91            (ii) that is secured by:
- 92            (A) a deed to secure debt;
- 93            (B) a security deed;
- 94            (C) a mortgage;
- 95            (D) a security interest;
- 96            (E) a deed of trust; or
- 97            (F) other document representing a security interest or lien upon any interest; and
- 98            (iii) on an interest in a one-to-four unit residential property located in Utah.
- 99            (b) "Residential mortgage loan" includes the renewing or refinancing of a residential
- 100 mortgage loan.

Section 3. Section **7-1-1003** is enacted to read:

**7-1-1003. Required conduct.**

A financial institution engaged in the mortgage lending process shall:

(1) before employing a mortgage officer who will engage in the mortgage lending process on behalf of the financial institution, access the database that the Division of Real Estate is required to maintain under Subsection 61-2c-402(4) to determine whether disciplinary action related to a license issued under Title 61, Chapter 2c, Utah Residential Mortgage Practices Act, has been taken against the person to be employed;

(a) under Title 61, Chapter 2c, Utah Residential Mortgage Practices Act; and

(b) during the time period beginning five years before the day on which the financial institution accesses the Division of Real Estate's database; and

(2) maintain reproducible evidence of complying with Subsection (1) in the personnel file of the mortgage officer throughout the time the mortgage officer is employed by the financial institution.

Section 4. Section **7-1-1004** is enacted to read:

**7-1-1004. Enforcement of certain requirements upon examination.**

(1) It is a violation of this part for a financial institution engaged in the mortgage lending process to:

(a) violate 12 U.S.C. Sec. 2607, as may be amended in the future; or

(b) as part of a residential mortgage loan transaction, fail to comply with Truth in

121 Lending Act, 15 U.S.C. Sec. 1601 et seq., as may be amended in the future, and its  
122 implementing regulations to the extent required by 15 U.S.C. Sec. 1601 et seq.

123 (2) If as part of an examination of a financial institution engaged in the mortgage  
124 lending process the department determines that the financial institution violated or is in  
125 violation of Subsection (1), the department may take any action provided for in Section  
126 7-1-1005.

127 (3) The department is not required to investigate or to take action for a violation of  
128 Subsection (1) separate from an examination conducted by the department for a purpose other  
129 than enforcement of this part.

130 Section 5. Section **7-1-1005** is enacted to read:

131 **7-1-1005. Enforcement.**

132 If a financial institution engaged in the mortgage lending process violates this part, the  
133 department may take any action permitted under:

134 (1) Article 3, Powers and Duties of Commissioner of Financial Institutions;

135 (2) Chapter 2, Possession of Depository Institution by Commissioner; and

136 (3) Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies.

137 Section 6. Section **58-55-502** is amended to read:

138 **58-55-502. Unprofessional conduct.**

139 Unprofessional conduct includes:

140 (1) failing to establish, maintain, or demonstrate financial responsibility while licensed  
141 as a contractor under this chapter;

142 (2) disregarding or violating through gross negligence or a pattern of negligence:

143 (a) the building or construction laws of this state or any political subdivision;

144 (b) the safety and labor laws applicable to a project;

145 (c) any provision of the health laws applicable to a project;

146 (d) the workers' compensation insurance laws of this state applicable to a project;

147 (e) the laws governing withholdings for employee state and federal income taxes,  
148 unemployment taxes, FICA, or other required withholdings; or

149 (f) any reporting, notification, and filing laws of this state or the federal government;

150 (3) any willful, fraudulent, or deceitful act by a licensee, caused by a licensee, or at a  
151 licensee's direction which causes material injury to another;

152 (4) contract violations that pose a threat or potential threat to the public health, safety,  
153 and welfare including:

154 (a) willful, deliberate, or grossly negligent departure from or disregard for plans or  
155 specifications, or abandonment or failure to complete a project without the consent of the  
156 owner or ~~[his]~~ the owner's duly authorized representative or the consent of any other person  
157 entitled to have the particular project completed in accordance with the plans, specifications,  
158 and contract terms;

159 (b) failure to deposit funds to the benefit of an employee as required under any written  
160 contractual obligation the licensee has to the employee;

161 (c) failure to maintain in full force and effect any health insurance benefit to an  
162 employee that was extended as a part of any written contractual obligation or representation by  
163 the licensee, unless the employee is given written notice of the licensee's intent to cancel or  
164 reduce the insurance benefit at least 45 days before the effective date of the cancellation or  
165 reduction;

166 (d) failure to reimburse the Residence Lien Recovery Fund as required by Section  
167 38-11-207;

168 (e) failure to provide, when applicable, the information required by Section 38-11-108;  
169 and

170 (f) willfully or deliberately misrepresenting or omitting a material fact in connection  
171 with an application to claim recovery from the Residence Lien Recovery Fund under Section  
172 38-11-204;

173 (5) failing as an alarm company to notify the division of the cessation of performance  
174 of its qualifying agent, or failing to replace its qualifying agent as required under Section  
175 58-55-304;

176 (6) failing as an alarm company agent to carry or display a copy of the licensee's  
177 license as required under Section 58-55-311; ~~[or]~~

178 (7) failing to comply with operating standards established by rule in accordance with  
179 Section 58-55-308~~[-];~~ or

180 (8) a licensee failing to comply with Section 58-55-504.

181 Section 7. Section **58-55-504** is enacted to read:

182 **58-55-504. Disclosure of business arrangement for residential projects.**

183 (1) As used in this section:

184 (a) (i) "Affiliate" means a person who controls, is controlled by, or is under common  
185 control with, another person.

186 (ii) A corporation is an affiliate of another corporation, regardless of ownership, if  
187 substantially the same group of natural persons manages the corporations.

188 (b) "Business arrangement" means an arrangement under which a licensee:

189 (i) is an affiliate of a person;

190 (ii) has direct or beneficial ownership interest of more than 1% in a person; or

191 (iii) receives a financial benefit for taking an action described in Subsection (2)(b).

192 (c) "Residential project" means the construction, alteration, remodeling, repairing,  
193 wrecking or demolition, addition to, or improvement of:

194 (i) a single-family residence; or

195 (ii) a multifamily residence up to four units.

196 (2) In accordance with this section, a licensee shall disclose the existence of a business  
197 arrangement:

198 (a) to:

199 (i) the owner of a single-family or a multifamily residence up to four units for a  
200 residential project; or

201 (ii) another person entitled to have a residential project completed in accordance with  
202 the plans, specifications, and contract terms; and

203 (b) if the licensee in relationship to the residential project:

204 (i) provides a benefit to the person described in Subsection (2)(a) for contracting with  
205 or receiving services from the person with whom the licensee has a business relationship;

206 (ii) conditions any plans, specifications, or contract terms on the person described in  
207 Subsection (2)(a) contracting with or receiving services from the person with whom the  
208 licensee has a business relationship; or

209 (iii) refers to or affirmatively influences the selection by the person described in  
210 Subsection (2)(a) of the person with whom the licensee has a business relationship.

211 (3) The notice required by Subsection (2) shall be:

212 (a) in writing; and

213 (b) made before the person described in Subsection (2)(a) enters into a contract with

214 the licensee for the residential project.

215 Section 8. Section **61-2c-104** is amended to read:

216 **61-2c-104. Residential Mortgage Regulatory Commission.**

217 (1) (a) There is created within the division the Residential Mortgage Regulatory  
218 Commission consisting of the following members appointed by the executive director with the  
219 approval of the governor:

220 (i) four members having at least three years of experience in transacting the business of  
221 residential mortgage loans and who are currently licensed under this chapter; and

222 (ii) one member from the general public.

223 (b) (i) The executive director with the approval of the governor may appoint an  
224 alternate member to the board.

225 (ii) The alternate member shall:

226 (A) at the time of the appointment, have at least three years of experience in transacting  
227 the business of residential mortgage loans; and

228 (B) be licensed under this chapter at the time of and during appointment.

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

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

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

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

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

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

242 (i) at the discretion of the director;

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

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

245 (5) (a) Three members of the commission constitute a quorum for the transaction of  
246 business.

247 (b) If a quorum of members is unavailable for any meeting and an alternate member  
248 has been appointed to the commission by the executive director with the approval of the  
249 governor, the alternate member shall serve as a regular member of the commission for that  
250 meeting if with the presence of the alternate member there is a quorum present at the meeting.

251 (c) The action of a majority of a quorum present is an action of the commission.

252 (6) (a) (i) A member who is not a government employee shall receive no compensation  
253 or benefits for the member's services, but may receive per diem and expenses incurred in the  
254 performance of the member's official duties at the rates established by the Division of Finance  
255 under Sections 63A-3-106 and 63A-3-107.

256 (ii) A member who is not a government employee may decline to receive per diem and  
257 expenses for the member's service.

258 (b) (i) A state government officer and employee member who does not receive salary,  
259 per diem, or expenses from the member's agency for the member's service may receive per  
260 diem and expenses incurred in the performance of the member's official duties from the  
261 commission at the rates established by the Division of Finance under Sections 63A-3-106 and  
262 63A-3-107.

263 (ii) A state government officer and employee member may decline to receive per diem  
264 and expenses for the member's service.

265 (7) The commission shall:

266 (a) except as provided in Subsection 61-2c-202(2), concur in the licensure or denial of  
267 licensure of individuals and entities under this chapter in accordance with Part 2, Licensure;

268 (b) take disciplinary action with the concurrence of the director in accordance with Part  
269 4, Enforcement;

270 (c) advise the division concerning matters related to the administration and  
271 enforcement of this chapter; and

272 (d) with the concurrence of the division, determine the requirements for:

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

274 (A) the fundamentals of the English language;

275 (B) arithmetic;

276 (C) the provisions of this chapter;  
277 (D) rules adopted by the division;  
278 (E) basic residential mortgage principles and practices; and  
279 (F) any other aspect of Utah law the commission determines is appropriate;  
280 (ii) with the concurrence of the division, the continuing education requirements under  
281 Section 61-2c-205[-];  
282 (A) including:  
283 [~~(A)~~] (I) except as provided in Subsection 61-2c-202(4)(a)(i)(C) and Subsection  
284 61-2c-206(1)(c), the appropriate number of hours of prelicensing education and required  
285 continuing education; and  
286 [~~(B)~~] (II) the subject matter of courses the division may accept for continuing education  
287 purposes; and  
288 (B) except that a mortgage officer licensee may use continuing education provided to  
289 the mortgage officer licensee by a depository institution described in Subsection 61-2c-201(13)  
290 that is related to transacting the business of residential mortgage loans to comply with the  
291 continuing education requirements under this chapter;  
292 (iii) with the concurrence of the division, the prelicensing education required under  
293 Sections 61-2c-202 and 61-2c-206, including online education or distance learning options; and  
294 (iv) the examination required under Section 61-2c-206 covering:  
295 (A) advanced residential mortgage principles and practices; and  
296 (B) other aspects of Utah law the commission, with the concurrence of the division,  
297 determines appropriate.  
298 (8) The commission may appoint a committee to make recommendations to the  
299 commission concerning approval of prelicensing education and continuing education courses.  
300 (9) The commission and the division shall make the examination and prelicensing  
301 education and continuing education requirements described in this section available through  
302 the Internet or other distance education methods approved by the commission and division  
303 when reasonably practicable.  
304 (10) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,  
305 the commission, with the concurrence of the division, shall make rules establishing procedures  
306 under which a licensee may be exempted from continuing education requirements:

307 (a) for a period not to exceed four years; and

308 (b) upon a finding of reasonable cause.

309 Section 9. Section **61-2c-105** is amended to read:

310 **61-2c-105. Scope of chapter.**

311 (1) (a) This chapter applies to a closed-end residential mortgage loan secured by a first  
312 lien or equivalent security interest on a one to four unit dwelling.

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

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

316 (a) the federal government;

317 (b) a state;

318 (c) a political subdivision of a state;

319 (d) an agency of or entity created by a governmental entity described in Subsections

320 (2)(a) through (c) including:

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

323 (ii) the Federal National Mortgage Corporation;

324 (iii) the Federal Home Loan Mortgage Corporation;

325 (iv) the Federal Deposit Insurance Corporation;

326 (v) the Resolution Trust Corporation;

327 (vi) the Government National Mortgage Association;

328 (vii) the Federal Housing Administration;

329 (viii) the National Credit Union Administration;

330 (ix) the Farmers Home Administration; and

331 (x) the Department of Veterans Affairs;

332 (e) a depository institution;

333 (f) ~~[an affiliate]~~ a wholly owned subsidiary of a depository institution;

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

336 (h) an individual or entity;

337 (i) that makes a loan:

- 338 (A) secured by an interest in real property;
- 339 (B) with the individual's or the entity's own money; and
- 340 (C) for the individual's or entity's own investment; and
- 341 (ii) that does not engage in the business of making loans secured by an interest in real
- 342 property;
- 343 (i) an individual or entity who receives a mortgage, deed of trust, or lien interest on real
- 344 property if the individual or entity:
- 345 (i) is the seller of real property; and
- 346 (ii) receives the mortgage, deed of trust, or lien interest on real property as security for
- 347 a separate money obligation;
- 348 (j) an individual or entity who receives a mortgage, deed of trust, or lien interest on real
- 349 property if:
- 350 (i) the individual or entity receives the mortgage, deed of trust, or lien interest as
- 351 security for an obligation payable on an installment or deferred payment basis;
- 352 (ii) the obligation described in Subsection (2)(j)(i) arises from an individual or entity
- 353 providing materials or services used in the improvement of the real property that is the subject
- 354 of the mortgage, deed of trust, or lien interest; and
- 355 (iii) the mortgage, deed of trust, or lien interest was created without the consent of the
- 356 owner of the real property that is the subject of the mortgage, deed of trust, or lien interest;
- 357 (k) a nonprofit corporation that:
- 358 (i) is exempt from paying federal income taxes;
- 359 (ii) is certified by the United States Small Business Administration as a small business
- 360 investment company;
- 361 (iii) is organized to promote economic development in this state; and
- 362 (iv) has as its primary activity providing financing for business expansion;
- 363 (l) a court appointed fiduciary; or
- 364 (m) an attorney admitted to practice law in this state:
- 365 (i) if the attorney is not principally engaged in the business of negotiating residential
- 366 mortgage loans; and
- 367 (ii) when the attorney renders services in the course of the attorney's practice as an
- 368 attorney.

369 (3) (a) Notwithstanding Subsection (2)(m), an attorney exempt from this chapter may  
370 not engage in conduct described in Section 61-2c-301 when transacting business of residential  
371 mortgage loans.

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

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

374 (ii) is subject to disciplinary action generally applicable to an attorney admitted to  
375 practice law in this state.

376 (c) If the division receives a complaint alleging an attorney exempt from this chapter is  
377 in violation of Subsection (3)(a), the division shall forward the complaint to the Utah State Bar  
378 for disciplinary action.

379 (4) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,  
380 the division shall, by rule, determine a date, on or after December 31, 2004, after which an  
381 individual who is exempt under Subsection (2) may voluntarily obtain a license pursuant to  
382 Subsection (4)(b).

383 (b) (i) After the date described in Subsection (4)(a), an individual who is exempt under  
384 Subsection (2) may voluntarily obtain a license under this chapter by complying with Part 2,  
385 Licensure.

386 (ii) An individual who voluntarily obtains a license pursuant to this Subsection (4)(b)  
387 shall comply with all the provisions of this chapter.

388 Section 10. Section **61-2c-201** is amended to read:

389 **61-2c-201. Licensure required of individuals and entities engaged in the business**  
390 **of residential mortgage loans -- Mortgage officer -- Principal lending manager.**

391 (1) Unless exempt from this chapter under Section 61-2c-105, an individual or entity  
392 may not transact the business of residential mortgage loans, as defined in Section 61-2c-102,  
393 without obtaining a license under this chapter.

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

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

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

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

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

404 (3) An individual who has an ownership interest in an entity required to be licensed  
405 under this chapter is not required to obtain an individual license under this chapter unless the  
406 individual transacts the business of residential mortgage loans.

407 (4) Unless otherwise exempted under this chapter, licensure under this chapter is  
408 required of both:

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

410 (b) if the individual transacts business as an employee or agent of an entity or  
411 individual, the entity or individual for whom the employee or agent transacts the business of  
412 residential mortgage loans.

413 (5) (a) On or after May 1, 2006, a license issued under this chapter to an individual  
414 who has not obtained a license as a principal lending manager automatically converts to a  
415 mortgage officer license.

416 (b) A mortgage officer license issued pursuant to Subsection (5)(a) shall be placed on  
417 inactive status until the holder of the license has submitted to the division the forms required to  
418 activate the license with a principal lending manager.

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

421 (b) This Subsection (6) does not restrict the number of:

422 (i) different lenders an individual or entity may use as a funding source for residential  
423 mortgage loans; or

424 (ii) entities in which an individual may have an ownership interest, regardless of  
425 whether the entities are:

426 (A) licensed under this chapter; or

427 (B) exempt under Section 61-2c-105.

428 (7) An individual licensed under this chapter may not transact the business of  
429 residential mortgage loans for the following at the same time:

430 (a) an entity licensed under this chapter; and

431 (b) an entity that is exempt from licensure under Section 61-2c-105.

432 (8) On or after May 1, 2006, except as provided under Title 16, Chapter 11,  
433 Professional Corporation Act or under Title 48, Chapter 2c, Utah Revised Limited Liability  
434 Company Act, a mortgage officer may not receive consideration for transacting the business of  
435 residential mortgage loans from any person or entity except the principal lending manager with  
436 whom the mortgage officer is licensed.

437 (9) On or after May 1, 2006, a mortgage officer shall conduct all business of residential  
438 mortgage loans:

439 (a) through the principal lending manager with which the individual is licensed; and

440 (b) in the business name under which the principal lending manager is authorized by  
441 the division to do business.

442 (10) (a) (i) Subject to Subsection (10)(a)(ii) and until May 1, 2006, if an individual  
443 who is authorized by this chapter to transact the business of residential mortgage loans as an  
444 individual transacts the business of residential mortgage loans under an assumed business  
445 name, the individual shall:

446 (A) register the assumed business name with the division; and

447 (B) furnish to the division proof that the assumed business name has been filed with  
448 the Division of Corporations and Commercial Code pursuant to Title 42, Chapter 2,  
449 Conducting Business Under Assumed Name.

450 (ii) This Subsection (10)(a) does not apply to an individual who transacts the business  
451 of residential mortgage loans as an employee or agent of another individual or entity.

452 (iii) If an entity that is authorized by this chapter to transact the business of residential  
453 mortgage loans transacts the business of residential mortgage loans under an assumed business  
454 name, the entity shall:

455 (A) register the assumed name with the division; and

456 (B) furnish the division proof that the assumed business name has been filed with the  
457 Division of Corporations and Commercial Code pursuant to Title 42, Chapter 2, Conducting  
458 Business Under Assumed Name.

459 (b) The division may charge a fee established in accordance with Section 63-38-3.2 for  
460 registering an assumed name pursuant to this Subsection (10).

461 (11) (a) A licensee whose license is in inactive status may not transact the business of

462 residential mortgage loans.

463 (b) On or after May 1, 2006, a mortgage officer whose license has been placed in  
464 inactive status may not transact the business of residential mortgage loans until the mortgage  
465 officer has licensed with a principal lending manager by following the procedures established  
466 by the division by rule made in accordance with Title 63, Chapter 46a, Utah Administrative  
467 Rulemaking Act, including submission of all required forms and payment of all required  
468 activation fees.

469 (12) (a) On or after May 3, 2004 and before May 1, 2006, if a licensed entity terminates  
470 its control person, or if the control person of a licensed entity resigns, dies, or becomes unable  
471 to act as control person due to disability, the entity shall cease all business of residential  
472 mortgage loans until the entity has submitted all forms and fees to the division that are required  
473 to affiliate another control person with the licensed entity.

474 (b) On or after May 1, 2006, if a licensed entity terminates its principal lending  
475 manager, or if the principal lending manager of a licensed entity resigns, dies, or becomes  
476 unable to act as a principal lending manager due to disability, the entity may not transact the  
477 business of residential mortgage loans until the entity has submitted all forms and fees to the  
478 division that are required to affiliate another principal lending manager with the entity.

479 (13) (a) As used in this Subsection (13), "mortgage lending process" is as defined in  
480 Section 7-1-1002.

481 (b) Notwithstanding the other provisions of this chapter, a depository institution is  
482 considered the principal lending manager with which a mortgage officer licensee is licensed:

483 (i) solely for the purpose of meeting the requirement that a mortgage officer licensee be  
484 with a principal lending manager;

485 (ii) only if:

486 (A) when the mortgage officer licensee is first licensed under this chapter, the  
487 mortgage officer licensee is affiliated with a principal lending manager; and

488 (B) after the mortgage officer licensee is first licensed, the mortgage officer licensee is  
489 employed by the depository institution to engage in the mortgage lending process on behalf of  
490 the depository institution; and

491 (iii) only during the time period that the mortgage officer licensee is employed as  
492 provided in Subsection (13)(b)(ii)(B).

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

494 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

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

497 (a) give or receive compensation or anything of value in exchange for a referral of  
498 residential mortgage loan business;

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

500 (i) that is excessive; or

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

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

504 (d) do any of the following to induce a lender to extend credit as part of a residential  
505 mortgage loan transaction:

506 (i) make a false statement or representation;

507 (ii) cause false documents to be generated; or

508 (iii) knowingly permit false information to be submitted by any party;

509 (e) give or receive compensation or anything of value, or withhold or threaten to  
510 withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in  
511 reaching a value conclusion in a residential mortgage loan transaction, except that it is not a  
512 violation of this section for a licensee to withhold payment because of a bona fide dispute  
513 regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards  
514 of Professional Appraisal Practice;

515 (f) violate or not comply with:

516 (i) this chapter;

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

518 (iii) a rule made by the division;

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

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

521 (ii) a request for information from the division;

522 (h) make false representations to the division, including in a licensure statement;

523 (i) for any residential mortgage loan transaction beginning on or after January 1, 2004,

524 engage in the business of residential mortgage loans with respect to the transaction if the  
525 individual or entity also acts in any of the following capacities with respect to the same  
526 residential mortgage loan transaction:

- 527 (i) appraiser;
- 528 (ii) escrow agent;
- 529 (iii) real estate agent;
- 530 (iv) general contractor; or
- 531 (v) title insurance agent;
- 532 (j) order a title insurance report or hold a title insurance policy unless the individual or  
533 entity provides to the title insurer a copy of a valid, current license under this chapter;
- 534 (k) engage in unprofessional conduct as defined by rule;
- 535 (l) engage in an act or omission in transacting the business of residential mortgage  
536 loans that constitutes dishonesty, fraud, or misrepresentation;
- 537 (m) engage in false or misleading advertising;
- 538 (n) (i) fail to account for all funds received in connection with a residential mortgage  
539 loan;
- 540 (ii) use funds for a different purpose from the purpose for which the funds were  
541 received; or
- 542 (iii) except as provided in Subsection (4), retain funds paid for services if the services  
543 were not actually performed;
- 544 (o) fail, within 90 calendar days of a request from a borrower who has paid for an  
545 appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;
- 546 (p) engage in an act that is performed to:
  - 547 (i) evade this chapter; or
  - 548 (ii) assist another person to evade this chapter;
- 549 (q) recommend or encourage default or delinquency, or continuation of an existing  
550 default or delinquency, by a mortgage applicant on an existing indebtedness prior to the closing  
551 of a residential mortgage loan that will refinance all or part of the indebtedness;
- 552 (r) in the case of a control person of an entity, fail to exercise reasonable supervision  
553 over the activities of:
  - 554 (i) the individuals engaged in the business of residential mortgage loans on behalf of

555 the entity; or

556 (ii) any unlicensed staff;

557 (s) on or after May 1, 2006, in the case of the principal lending manager of an entity or

558 a branch office of an entity, fail to exercise reasonable supervision over the activities of the

559 mortgage officers who are licensed with the principal lending manager; or

560 (t) pay or offer to pay an individual who does not hold a license under this chapter for

561 work that requires the individual to hold a license under this chapter.

562 (2) Whether or not the crime is related to the business of residential mortgage loans, it

563 is a violation of this chapter for a licensee, a control person of a licensee, or a person who is a

564 certified education provider to do any of the following with respect to a criminal offense which

565 involves moral turpitude:

566 (a) be convicted;

567 (b) plead guilty or nolo contendere;

568 (c) enter a plea in abeyance; or

569 (d) be subjected to a criminal disposition similar to the ones described in Subsections

570 (2)(a) through (c).

571 (3) A principal lending manager does not violate Subsection (1)(s) if:

572 (a) in contravention of the principal lending manager's written policies and

573 instructions, an affiliated licensee of the principal lending manager violates a provision of:

574 (i) this chapter; or

575 (ii) rules made by the division under this chapter;

576 (b) the principal lending manager established and followed reasonable procedures to

577 ensure that affiliated licensees receive adequate supervision;

578 (c) upon learning of a violation by an affiliated licensee, the principal lending manager

579 attempted to prevent or mitigate the damage;

580 (d) the principal lending manager did not participate in or ratify the violation by an

581 affiliated licensee; and

582 (e) the principal lending manager did not attempt to avoid learning of the violation.

583 (4) Notwithstanding Subsection (1)(n)(iii), a licensee may, upon compliance with

584 Section 70D-1-6, charge a reasonable cancellation fee for work done originating a mortgage if

585 the mortgage is not closed.

586 (5) (a) It is a violation of this Subsection (5) for an individual or entity transacting the  
587 business of residential mortgage loans in this state to:

588 (i) violate 12 U.S.C. Sec. 2607, as may be amended in the future; or

589 (ii) as part of a residential mortgage loan transaction, fail to comply with Truth in  
590 Lending Act, 15 U.S.C. Sec. 1601 et seq., as may be amended in the future, and its  
591 implementing regulations to the extent required by 15 U.S.C. Sec. 1601 et seq.

592 (b) If as part of an investigation of an individual or entity transacting the business of  
593 residential mortgage loans in this state for a purpose other than investigating a violation of this  
594 Subsection (5) the division determines that the person or entity violated or is in violation of  
595 Subsection (5)(a), the division may take any disciplinary action provided for under this chapter.

596 (c) The division is not required to investigate or to take action for a violation of  
597 Subsection (5)(a) separate from an investigation conducted by the division for a purpose other  
598 than enforcement of this Subsection (5).

599 Section 12. Section **61-2c-402** is amended to read:

600 **61-2c-402. Disciplinary action -- Reinstatement -- Education providers --**  
601 **Database.**

602 (1) Subject to the requirements of Section 61-2c-402.1, if an individual or entity  
603 required to be licensed under this chapter violates this chapter, or an education provider  
604 required to be certified under this chapter violates this chapter, the commission, with the  
605 concurrence of the director, may:

606 (a) impose a civil penalty against the individual or entity in an amount not to exceed  
607 \$2,500 per violation;

608 (b) do any of the following to a license under this chapter:

609 (i) suspend;

610 (ii) revoke;

611 (iii) place on probation;

612 (iv) deny renewal; or

613 (v) deny reinstatement; or

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

615 (2) (a) If a license under this chapter is revoked, the individual or entity may apply to  
616 have the license reinstated by complying with the requirements of Section 61-2c-202 for

617 licensure.

618 (b) Notwithstanding Subsection (2)(a) and except as provided in Subsection  
619 61-2c-202(4)(e), if a license under this chapter is revoked, the individual or entity may not  
620 apply for reinstatement of the license sooner than five years after the day on which the license  
621 is revoked in accordance with this section.

622 (c) If an individual or entity whose license has been revoked applies for reinstatement  
623 in accordance with Subsection (2)(b), the presiding officer may grant the application for  
624 reinstatement if the presiding officer finds that:

625 (i) (A) there has been good conduct on the part of the applicant subsequent to the  
626 events that led to the revocation; and

627 (B) the subsequent good conduct outweighs the events that led to the revocation; and

628 (ii) the interest of the public is not likely to be harmed by the granting of the license.

629 (3) Subject to the requirements of Section 61-2c-402.1, if an individual or entity  
630 required to be licensed under this chapter violates this chapter, or an education provider  
631 required to be certified under this chapter violates this chapter, the presiding officer in an  
632 adjudicative proceeding commenced after a person or an entity applies for an original or  
633 renewed license may:

634 (a) deny an application for an original license;

635 (b) deny an application for renewal;

636 (c) deny an application for reinstatement; or

637 (d) issue or renew the license but:

638 (i) place the license on probation;

639 (ii) suspend the license for a period of time;

640 (iii) impose a civil penalty not to exceed \$2,500 per violation; or

641 (iv) any combination of Subsections (3)(d)(i) through (iii).

642 (4) The division shall maintain a database on an Internet website that:

643 (a) lists the following information with regard to an individual or entity against whose  
644 license disciplinary action has been taken under this chapter:

645 (i) the name of the individual or entity;

646 (ii) the license number of the individual or entity; and

647 (iii) whether the license has been:



- 679 (a) knowingly or intentionally employ any device, scheme, or artifice to defraud;  
680 (b) knowingly, intentionally, or with a reckless disregard for the truth:  
681 (i) make any untrue statement of a material fact;  
682 (ii) omit to state a material fact necessary in order to make the statements made, in the  
683 light of the circumstances under which they are made, not misleading; or  
684 (iii) engage in any act, practice, or course of business that operates or would operate as  
685 a fraud or deceit upon any person.

686 (2) Reliance on the part of any person is not a necessary element of this offense.

687 (3) An intent on the part of the perpetrator of this offense to permanently deprive any  
688 person of property, money, or thing of value is not a necessary element of the offense.

689 Section 16. Section **76-6-1203** is enacted to read:

690 **76-6-1203. Classification of offense.**

691 A violation of Section 76-6-1202 is punishable as a felony of the second degree.

692 Section 17. Section **76-10-1602** is amended to read:

693 **76-10-1602. Definitions.**

694 As used in this part:

695 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,  
696 business trust, association, or other legal entity, and any union or group of individuals  
697 associated in fact although not a legal entity, and includes illicit as well as licit entities.

698 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the  
699 commission of at least three episodes of unlawful activity, which episodes are not isolated, but  
700 have the same or similar purposes, results, participants, victims, or methods of commission, or  
701 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall  
702 demonstrate continuing unlawful conduct and be related either to each other or to the  
703 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have  
704 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful  
705 activity as defined by this part shall have occurred within five years of the commission of the  
706 next preceding act alleged as part of the pattern.

707 (3) "Person" includes any individual or entity capable of holding a legal or beneficial  
708 interest in property, including state, county, and local governmental entities.

709 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,

710 command, encourage, or intentionally aid another person to engage in conduct which would  
711 constitute any offense described by the following crimes or categories of crimes, or to attempt  
712 or conspire to engage in an act which would constitute any of those offenses, regardless of  
713 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor  
714 or a felony:

715 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized  
716 Recording Practices Act;

717 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality  
718 Code, Sections 19-1-101 through 19-7-109;

719 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary  
720 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Chapter 13, [~~Wildlife~~  
721 ~~Resources Code of Utah~~] General Provisions, or Section 23-20-4;

722 (d) false claims for medical benefits, kickbacks, and any other act prohibited by False  
723 Claims Act, Sections 26-20-1 through 26-20-12;

724 (e) any act prohibited by the criminal provisions of Title 32A, Chapter 12, Criminal  
725 Offenses;

726 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform  
727 Land Sales Practices Act;

728 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah  
729 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,  
730 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,  
731 Clandestine Drug Lab Act;

732 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform  
733 Securities Act;

734 (i) any act prohibited by the criminal provisions of Title 63, Chapter 56, Utah  
735 Procurement Code;

736 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;

737 (k) a terroristic threat, Section 76-5-107;

738 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;

739 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;

740 (n) sexual exploitation of a minor, Section 76-5a-3;

- 741 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 742 (p) causing a catastrophe, Section 76-6-105;
- 743 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 744 (r) burglary of a vehicle, Section 76-6-204;
- 745 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 746 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 747 (u) theft, Section 76-6-404;
- 748 (v) theft by deception, Section 76-6-405;
- 749 (w) theft by extortion, Section 76-6-406;
- 750 (x) receiving stolen property, Section 76-6-408;
- 751 (y) theft of services, Section 76-6-409;
- 752 (z) forgery, Section 76-6-501;
- 753 (aa) fraudulent use of a credit card, Sections 76-6-506.1, 76-6-506.2, and 76-6-506.4;
- 754 (bb) deceptive business practices, Section 76-6-507;
- 755 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or  
756 criticism of goods, Section 76-6-508;
- 757 (dd) bribery of a labor official, Section 76-6-509;
- 758 (ee) defrauding creditors, Section 76-6-511;
- 759 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 760 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 761 (hh) bribery or threat to influence contest, Section 76-6-514;
- 762 (ii) making a false credit report, Section 76-6-517;
- 763 (jj) criminal simulation, Section 76-6-518;
- 764 (kk) criminal usury, Section 76-6-520;
- 765 (ll) fraudulent insurance act, Section 76-6-521;
- 766 (mm) computer crimes, Section 76-6-703;
- 767 (nn) identity fraud, Section 76-6-1102;
- 768 (oo) real estate fraud, Chapter 6, Part 12, Real Estate Fraud Act;
- 769 [~~(oo)~~] (pp) sale of a child, Section 76-7-203;
- 770 [~~(pp)~~] (qq) bribery to influence official or political actions, Section 76-8-103;
- 771 [~~(qq)~~] (rr) threats to influence official or political action, Section 76-8-104;

772            [~~(rr)~~] (ss) receiving bribe or bribery by public servant, Section 76-8-105;  
773            [~~(ss)~~] (tt) receiving bribe or bribery for endorsement of person as public servant,  
774 Section 76-8-106;  
775            [~~(tt)~~] (uu) official misconduct, Sections 76-8-201 and 76-8-202;  
776            [~~(uu)~~] (vv) obstruction of justice, Section 76-8-306;  
777            [~~(vv)~~] (ww) acceptance of bribe or bribery to prevent criminal prosecution, Section  
778 76-8-308;  
779            [~~(ww)~~] (xx) false or inconsistent material statements, Section 76-8-502;  
780            [~~(xx)~~] (yy) false or inconsistent statements, Section 76-8-503;  
781            [~~(yy)~~] (zz) written false statements, Section 76-8-504;  
782            [~~(zz)~~] (aaa) tampering with a witness or soliciting or receiving a bribe, Section  
783 76-8-508;  
784            [~~(aaa)~~] (bbb) retaliation against a witness, victim, or informant, Section 76-8-508.3;  
785            [~~(bbb)~~] (ccc) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;  
786            [~~(ccc)~~] (ddd) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or  
787 76-8-1205;  
788            [~~(ddd)~~] (eee) unemployment insurance fraud, Section 76-8-1301;  
789            [~~(eee)~~] (fff) intentionally or knowingly causing one animal to fight with another,  
790 Subsection 76-9-301(1)(f);  
791            [~~(fff)~~] (ggg) possession, use, or removal of explosives, chemical, or incendiary devices  
792 or parts, Section 76-10-306;  
793            [~~(ggg)~~] (hhh) delivery to common carrier, mailing, or placement on premises of an  
794 incendiary device, Section 76-10-307;  
795            [~~(hhh)~~] (iii) possession of a deadly weapon with intent to assault, Section 76-10-507;  
796            [~~(iii)~~] (jjj) unlawful marking of pistol or revolver, Section 76-10-521;  
797            [~~(jjj)~~] (kkk) alteration of number or mark on pistol or revolver, Section 76-10-522;  
798            [~~(kkk)~~] (lll) forging or counterfeiting trademarks, trade name, or trade device, Section  
799 76-10-1002;  
800            [~~(lll)~~] (mmm) selling goods under counterfeited trademark, trade name, or trade  
801 devices, Section 76-10-1003;  
802            [~~(mmm)~~] (nnn) sales in containers bearing registered trademark of substituted articles,

803 Section 76-10-1004;

804        [~~(mmm)~~] (ooo) selling or dealing with article bearing registered trademark or service

805 mark with intent to defraud, Section 76-10-1006;

806        [~~(ooo)~~] (ppp) gambling, Section 76-10-1102;

807        [~~(ppp)~~] (qqq) gambling fraud, Section 76-10-1103;

808        [~~(qqq)~~] (rrr) gambling promotion, Section 76-10-1104;

809        [~~(rrr)~~] (sss) possessing a gambling device or record, Section 76-10-1105;

810        [~~(sss)~~] (ttt) confidence game, Section 76-10-1109;

811        [~~(ttt)~~] (uuu) distributing pornographic material, Section 76-10-1204;

812        [~~(uuu)~~] (vvv) inducing acceptance of pornographic material, Section 76-10-1205;

813        [~~(vvv)~~] (www) dealing in harmful material to a minor, Section 76-10-1206;

814        [~~(www)~~] (xxx) distribution of pornographic films, Section 76-10-1222;

815        [~~(xxx)~~] (yyy) indecent public displays, Section 76-10-1228;

816        [~~(yyy)~~] (zzz) prostitution, Section 76-10-1302;

817        [~~(zzz)~~] (aaaa) aiding prostitution, Section 76-10-1304;

818        [~~(aaaa)~~] (bbbb) exploiting prostitution, Section 76-10-1305;

819        [~~(bbbb)~~] (cccc) aggravated exploitation of prostitution, Section 76-10-1306;

820        [~~(cccc)~~] (dddd) communications fraud, Section 76-10-1801;

821        [~~(dddd)~~] (eeee) any act prohibited by the criminal provisions of [~~Title 76;~~] Chapter 10,

822 Part 19, Money Laundering and Currency Transaction Reporting Act;

823        [~~(eeee)~~] (ffff) any act prohibited by the criminal provisions of the laws governing

824 taxation in this state; and

825        [~~(ffff)~~] (gggg) any act illegal under the laws of the United States and enumerated in

826 Title 18, Section 1961 (1)(B), (C), and (D) of the United States Code.

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**Legislative Review Note**  
**as of 1-25-06 7:30 PM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

**State Impact**

Implementation of this bill by Commerce will require 2 Investigators, 1 Office Technical II, and 2 Auditors at a cost of \$477,500 from the Commerce Service Fund. Spending from the Commerce Service Fund could affect revenue available to the General Fund. Implementation by the Attorney General will cost \$275,000 from the General Fund for 1.5 Attorneys and 2 Investigators.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>
General Fund	\$275,000	\$275,000	\$0	\$0
Commerce Service Fund	\$477,500	\$424,600	\$0	\$0
<b>TOTAL</b>	<b>\$752,500</b>	<b>\$699,600</b>	<b>\$0</b>	<b>\$0</b>

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**Individual and Business Impact**

Licensing and compliance costs will be borne by depositories who employ licensed Mortgage Officers. They will also bear the costs associated with audits.

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**Office of the Legislative Fiscal Analyst**