

Senator Sheldon L. Killpack proposes the following substitute bill:

MORTGAGE FRAUD ACT

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Sheldon L. Killpack

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Criminal Code relating to offenses against property and creating an offense of mortgage fraud.

Highlighted Provisions:

This bill:

- ▶ establishes penalties for certain conduct governed by the Real Estate Appraiser Licensing and Certification Act and the Utah Residential Mortgage Practices Act;
- ▶ requires the attorney general to hire a mortgage fraud prosecutor, paralegal, and two investigators with primary responsibilities of investigating and prosecuting mortgage fraud;

▶ enacts the Mortgage Fraud Act including:

- creating the crime of mortgage fraud;
- establishing penalties; and
- providing definitions; and

▶ includes mortgage fraud as an illegal activity under the Pattern of Illegal Activity Act.

Monies Appropriated in this Bill:

None

1st Sub. S.B. 134



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **61-2b-33**, as last amended by Laws of Utah 2005, Chapter 199

31 **76-10-1602**, as last amended by Laws of Utah 2007, Chapter 129

32 ENACTS:

33 **61-2c-405**, Utah Code Annotated 1953

34 **67-5-26**, Utah Code Annotated 1953

35 **76-6-1201**, Utah Code Annotated 1953

36 **76-6-1202**, Utah Code Annotated 1953

37 **76-6-1203**, Utah Code Annotated 1953

38 **76-6-1204**, Utah Code Annotated 1953



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

41 Section 1. Section **61-2b-33** is amended to read:

42 **61-2b-33. Penalty for violating this chapter.**

43 ~~[(1) Any person required by this chapter to be licensed or certified who engages in real~~
44 ~~estate appraisal activity in this state without obtaining a license or certification or] In addition~~
45 ~~to being subject to a disciplinary action by the board, a person who violates [any provision of]~~
46 ~~this chapter:~~

47 ~~[(a)]~~ (1) is guilty of a class ~~[B]~~ A misdemeanor ~~[punishable by a \$1,000 fine and up to~~
48 ~~six months in jail] upon a conviction of a first violation of this chapter ; and~~

49 (2) is guilty of third degree felony, upon conviction of a second or subsequent violation
50 of this chapter.

51 ~~[(b) shall be ineligible to apply for a license or certificate for a period of one year from~~
52 ~~the date of the person's conviction of the offense.]~~

53 ~~[(2) The division, in its discretion, may grant a license or certification to a person~~
54 ~~ineligible pursuant to Subsection (1) within the one-year period upon application and after an~~
55 ~~administrative hearing.]~~

56 Section 2. Section **61-2c-405** is enacted to read:

57 **61-2c-405. Penalty for violation of chapter.**

58 In addition to being subject to a disciplinary action by the commission, a person who
59 violates this chapter:

60 (1) is guilty of a class A misdemeanor upon conviction of a first violation of this
61 chapter; and

62 (2) is guilty of third degree felony, upon conviction of a second or subsequent violation
63 of this chapter.

64 Section 3. Section **67-5-26** is enacted to read:

65 **67-5-26. Real estate fraud prosecutor, paralegal, and investigators.**

66 (1) The state attorney general shall employ:

67 (a) an attorney licensed to practice law in Utah who:

68 (i) has knowledge of the law related to mortgage fraud; and

69 (ii) preferably also has background or expertise in investigating and prosecuting
70 mortgage fraud;

71 (b) a paralegal; and

72 (c) at least two investigators who have background or expertise in investigating
73 mortgage fraud.

74 (2) (a) The primary responsibility of the attorney employed under Subsection (1)(a) is
75 the prosecution of real estate fraud.

76 (b) The primary responsibility of each person employed under Subsection (1)(c) is the
77 investigation of real estate fraud.

78 (3) The state attorney general may employ clerks, interns, or other personnel as
79 necessary to assist the attorney employed under Subsection (1)(a).

80 Section 4. Section **76-6-1201** is enacted to read:

81 **Part 12. Utah Mortgage Fraud Act**

82 **76-6-1201. Title.**

83 This part is known as the "Utah Mortgage Fraud Act."

84 Section 5. Section **76-6-1202** is enacted to read:

85 **76-6-1202. Definitions.**

86 As used in this part:

87 (1) "Mortgage lending process" means the process through which a person seeks or

88 obtains a mortgage loan, including solicitation, application, or origination, negotiation of terms,
89 third-party provider services, underwriting, signing and closing, and funding of the loan.

90 (2) "Mortgage loan":

91 (a) means a loan or agreement made to extend credit to a person when the loan is
92 secured by a deed, security deed, mortgage, security interest, deed of trust, or other document
93 representing a security interest or lien upon any interest in one-to-four family residential
94 property; and

95 (b) includes the renewal or refinancing of any loan.

96 (3) "Pattern of unlawful activity" has the same definition as in Section 76-10-1602.

97 (4) "Sensitive personal identifying information" includes:

98 (a) the following information regarding an individual's:

99 (i) Social Security number;

100 (ii) driver license number or other government issued identification number;

101 (iii) financial account number or credit or debit card number;

102 (iv) password or personal identification number or other identification required to gain
103 access to a financial account or a secure website;

104 (v) automated or electronic signature; and

105 (vi) unique biometric data; and

106 (b) any other information that can be used to gain access to an individual's financial
107 accounts or to obtain goods or services.

108 (5) "Value" means the value of the property, money, or thing obtained or sought to be
109 obtained.

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

111 **76-6-1203. Mortgage fraud.**

112 A person commits the offense of mortgage fraud if the person does any of the following
113 with the intent to defraud:

114 (1) knowingly makes any deliberate misstatement, misrepresentation, or material
115 omission during the mortgage lending process that is relied upon by a mortgage lender,
116 borrower, or any other party to the mortgage lending process;

117 (2) knowingly uses or facilitates the use of any deliberate misstatement,
118 misrepresentation, or material omission, during the mortgage lending process that is relied on

119 by a mortgage lender, borrower, or any other party to the mortgage lending process;

120 (3) files or causes to be filed with any county recorder in Utah any document that the
121 person knows contains a deliberate misstatement, misrepresentation, or material omission;

122 (4) receives any proceeds or any compensation in connection with a mortgage loan that
123 the person knows resulted from a violation of this section; or

124 (5) assists, abets, solicits, or conspires with another to violate this section.

125 Section 7. Section **76-6-1204** is enacted to read:

126 **76-6-1204. Classification of offense.**

127 (1) Notwithstanding any other administrative, civil, or criminal penalties, a person who
128 violates this section is guilty of a:

129 (a) class A misdemeanor when the value is or exceeds \$300 but is less than \$1,000;

130 (b) third degree felony when the value is or exceeds \$1,000 but is less than \$5,000;

131 (c) second degree felony when the value is or exceeds \$5,000;

132 (d) second degree felony when the object or purpose of the commission of an act of
133 mortgage fraud is other than the obtaining of something of monetary value; and

134 (e) second degree felony when the object or purpose of the commission of an act of
135 mortgage fraud is the obtaining of sensitive personal identifying information, regardless of the
136 value.

137 (2) The determination of the degree of any offense under Subsection (1) is measured by
138 the total value of all property, money, or things obtained or sought to be obtained by a violation
139 of Section 76-6-1203, except as provided in Subsections (1)(d) and (e).

140 (3) In addition to any other penalty for a violation of this section, the sentencing judge
141 may impose any penalty or remedy provided in Subsection 61-2-21(2)(d).

142 (4) In addition to any other penalty for a violation of this part, any license or
143 registration issued by the Division of Real Estate, which is created in Section 61-2-5, to any
144 person or entity convicted of a violation of this section is automatically revoked.

145 (5) Each residential or commercial property transaction offense under this part
146 constitutes a separate violation.

147 Section 8. Section **76-10-1602** is amended to read:

148 **76-10-1602. Definitions.**

149 As used in this part:

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

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

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

164 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,
165 command, encourage, or intentionally aid another person to engage in conduct which would
166 constitute any offense described by the following crimes or categories of crimes, or to attempt
167 or conspire to engage in an act which would constitute any of those offenses, regardless of
168 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor
169 or a felony:

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

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

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

177 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title
178 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;

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

- 181 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
182 Land Sales Practices Act;
- 183 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
184 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
185 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
186 Clandestine Drug Lab Act;
- 187 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
188 Securities Act;
- 189 (i) any act prohibited by the criminal provisions of Title 63, Chapter 56, Utah
190 Procurement Code;
- 191 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
- 192 (k) a terroristic threat, Section 76-5-107;
- 193 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;
- 194 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
- 195 (n) sexual exploitation of a minor, Section 76-5a-3;
- 196 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 197 (p) causing a catastrophe, Section 76-6-105;
- 198 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 199 (r) burglary of a vehicle, Section 76-6-204;
- 200 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 201 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 202 (u) theft, Section 76-6-404;
- 203 (v) theft by deception, Section 76-6-405;
- 204 (w) theft by extortion, Section 76-6-406;
- 205 (x) receiving stolen property, Section 76-6-408;
- 206 (y) theft of services, Section 76-6-409;
- 207 (z) forgery, Section 76-6-501;
- 208 (aa) fraudulent use of a credit card, Sections 76-6-506.1, 76-6-506.2, and 76-6-506.4;
- 209 (bb) deceptive business practices, Section 76-6-507;
- 210 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or
211 criticism of goods, Section 76-6-508;

- 212 (dd) bribery of a labor official, Section 76-6-509;
- 213 (ee) defrauding creditors, Section 76-6-511;
- 214 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 215 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 216 (hh) bribery or threat to influence contest, Section 76-6-514;
- 217 (ii) making a false credit report, Section 76-6-517;
- 218 (jj) criminal simulation, Section 76-6-518;
- 219 (kk) criminal usury, Section 76-6-520;
- 220 (ll) fraudulent insurance act, Section 76-6-521;
- 221 (mm) retail theft, Section 76-6-602;
- 222 (nn) computer crimes, Section 76-6-703;
- 223 (oo) identity fraud, Section 76-6-1102;
- 224 (pp) mortgage fraud, Section 76-6-1203;
- 225 [~~(pp)~~] (qq) sale of a child, Section 76-7-203;
- 226 [~~(qq)~~] (rr) bribery to influence official or political actions, Section 76-8-103;
- 227 [~~(rr)~~] (ss) threats to influence official or political action, Section 76-8-104;
- 228 [~~(ss)~~] (tt) receiving bribe or bribery by public servant, Section 76-8-105;
- 229 [~~(tt)~~] (uu) receiving bribe or bribery for endorsement of person as public servant,
- 230 Section 76-8-106;
- 231 [~~(uu)~~] (vv) official misconduct, Sections 76-8-201 and 76-8-202;
- 232 [~~(vv)~~] (ww) obstruction of justice, Section 76-8-306;
- 233 [~~(ww)~~] (xx) acceptance of bribe or bribery to prevent criminal prosecution, Section
- 234 76-8-308;
- 235 [~~(xx)~~] (yy) false or inconsistent material statements, Section 76-8-502;
- 236 [~~(yy)~~] (zz) false or inconsistent statements, Section 76-8-503;
- 237 [~~(zz)~~] (aaa) written false statements, Section 76-8-504;
- 238 [~~(aaa)~~] (bbb) tampering with a witness or soliciting or receiving a bribe, Section
- 239 76-8-508;
- 240 [~~(bbb)~~] (ccc) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 241 [~~(ccc)~~] (ddd) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 242 [~~(ddd)~~] (eee) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or

243 76-8-1205;
244 [~~eee~~] (fff) unemployment insurance fraud, Section 76-8-1301;
245 [~~fff~~] (ggg) intentionally or knowingly causing one animal to fight with another,
246 Subsection 76-9-301(1)(f);
247 [~~ggg~~] (hhh) possession, use, or removal of explosives, chemical, or incendiary
248 devices or parts, Section 76-10-306;
249 [~~hhh~~] (iii) delivery to common carrier, mailing, or placement on premises of an
250 incendiary device, Section 76-10-307;
251 [~~iii~~] (jjj) possession of a deadly weapon with intent to assault, Section 76-10-507;
252 [~~jjj~~] (kkk) unlawful marking of pistol or revolver, Section 76-10-521;
253 [~~kkk~~] (lll) alteration of number or mark on pistol or revolver, Section 76-10-522;
254 [~~lll~~] (mmm) forging or counterfeiting trademarks, trade name, or trade device,
255 Section 76-10-1002;
256 [~~mmm~~] (nnn) selling goods under counterfeited trademark, trade name, or trade
257 devices, Section 76-10-1003;
258 [~~nnn~~] (ooo) sales in containers bearing registered trademark of substituted articles,
259 Section 76-10-1004;
260 [~~ooo~~] (ppp) selling or dealing with article bearing registered trademark or service
261 mark with intent to defraud, Section 76-10-1006;
262 [~~ppp~~] (qqq) gambling, Section 76-10-1102;
263 [~~qqq~~] (rrr) gambling fraud, Section 76-10-1103;
264 [~~rrr~~] (sss) gambling promotion, Section 76-10-1104;
265 [~~sss~~] (ttt) possessing a gambling device or record, Section 76-10-1105;
266 [~~ttt~~] (uuu) confidence game, Section 76-10-1109;
267 [~~uuu~~] (vvv) distributing pornographic material, Section 76-10-1204;
268 [~~vvv~~] (www) inducing acceptance of pornographic material, Section 76-10-1205;
269 [~~www~~] (xxx) dealing in harmful material to a minor, Section 76-10-1206;
270 [~~xxx~~] (yyy) distribution of pornographic films, Section 76-10-1222;
271 [~~yyy~~] (zzz) indecent public displays, Section 76-10-1228;
272 [~~zzz~~] (aaa) prostitution, Section 76-10-1302;
273 [~~aaa~~] (bbb) aiding prostitution, Section 76-10-1304;

274 [~~(bbb)~~] (cccc) exploiting prostitution, Section 76-10-1305;
275 [~~(ccc)~~] (dddd) aggravated exploitation of prostitution, Section 76-10-1306;
276 [~~(ddd)~~] (eee) communications fraud, Section 76-10-1801;
277 [~~(ccc)~~] (fff) any act prohibited by the criminal provisions of [~~Title 76,~~] Chapter 10,
278 Part 19, Money Laundering and Currency Transaction Reporting Act;
279 [~~(fff)~~] (ggg) any act prohibited by the criminal provisions of the laws governing
280 taxation in this state; and
281 [~~(ggg)~~] (hhh) any act illegal under the laws of the United States and enumerated in
282 Title 18, Section 1961 (1)(B), (C), and (D) of the United States Code.