

Part 1 General Provisions

61-2c-101 Title.

This chapter is known as the "Utah Residential Mortgage Practices and Licensing Act."

Amended by Chapter 372, 2009 General Session

61-2c-102 Definitions.

- (1) As used in this chapter:
- (a) "Affiliation" means that a mortgage loan originator is associated with a principal lending manager in accordance with Section 61-2c-209.
 - (b) "Applicant" means a person applying for a license under this chapter.
 - (c) "Approved examination provider" means a person approved by the nationwide database or by the division as an approved test provider.
 - (d) "Associate lending manager" means an individual who:
 - (i) qualifies under this chapter as a principal lending manager; and
 - (ii) works by or on behalf of another principal lending manager in transacting the business of residential mortgage loans.
 - (e) "Branch lending manager" means an individual who is:
 - (i) licensed as a lending manager; and
 - (ii) designated in the nationwide database by the individual's sponsoring entity as being responsible to work from a branch office and to supervise the business of residential mortgage loans that is conducted at the branch office.
 - (f) "Branch office" means a licensed entity's office:
 - (i) for the transaction of the business of residential mortgage loans regulated under this chapter;
 - (ii) other than the main office of the licensed entity; and
 - (iii) that operates under:
 - (A) the same business name as the licensed entity; or
 - (B) another trade name that is registered with the division under the entity license.
 - (g) "Business day" means a day other than:
 - (i) a Saturday;
 - (ii) a Sunday; or
 - (iii) a federal or state holiday.
 - (h)
 - (i) "Business of residential mortgage loans" means for compensation or in the expectation of compensation to:
 - (A) engage in an act that makes an individual a mortgage loan originator;
 - (B) make or originate a residential mortgage loan;
 - (C) directly or indirectly solicit a residential mortgage loan for another;
 - (D) unless excluded under Subsection (1)(h)(ii), render services related to the origination of a residential mortgage loan including:
 - (I) preparing a loan package;
 - (II) communicating with the borrower or lender;
 - (III) advising on a loan term;

- (IV) acting as a loan processor or loan underwriter without being employed by a licensed entity; or
- (V) except as provided in Subsection (1)(h)(ii)(B) or (C), acting as a loan underwriter;
or
- (E) engage in loan modification assistance.
- (ii) "Business of residential mortgage loans" does not include:
 - (A) if working as an employee under the direction of and subject to the supervision and instruction of a person licensed under this chapter, the performance of a clerical or support duty, including:
 - (I) the receipt, collection, or distribution of information common for the processing or underwriting of a loan in the mortgage industry other than taking an application;
 - (II) communicating with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan;
 - (III) word processing;
 - (IV) sending correspondence;
 - (V) assembling files; or
 - (VI) acting as a loan processor or loan underwriter;
 - (B) acting as a loan underwriter under the direction and control of an employer licensed under this chapter;
 - (C) acting as a loan underwriter, as an employee of a depository institution, exclusively in the capacity of the depository institution's employee;
 - (D) ownership of an entity that engages in the business of residential mortgage loans if the owner does not personally perform the acts listed in Subsection (1)(h)(i);
 - (E) except if an individual will engage in an activity as a mortgage loan originator, acting in one or more of the following capacities:
 - (I) a loan wholesaler;
 - (II) an account executive for a loan wholesaler;
 - (III) a loan underwriter;
 - (IV) a loan closer; or
 - (V) funding a loan; or
 - (F) if employed by a person who owns or services an existing residential mortgage loan, the direct negotiation with the borrower for the purpose of loan modification.
- (i) "Certified education provider" means a person who is certified under Section 61-2c-204.1 to provide one or more of the following:
 - (i) Utah-specific prelicensing education; or
 - (ii) Utah-specific continuing education.
- (j) "Closed-end" means a loan:
 - (i) with a fixed amount borrowed; and
 - (ii) that does not permit additional borrowing secured by the same collateral.
- (k) "Commission" means the Residential Mortgage Regulatory Commission created in Section 61-2c-104.
- (l) "Community development financial institution" means the same as that term is defined in 12 U.S.C. Sec. 4702.
- (m) "Compensation" means anything of economic value that is paid, loaned, granted, given, donated, or transferred to an individual or entity for or in consideration of:
 - (i) services;
 - (ii) personal or real property; or
 - (iii) another thing of value.

- (n) "Concurrence" means that entities given a concurring role must jointly agree for the action to be taken.
- (o) "Continuing education" means education taken by an individual licensed under this chapter in order to meet the education requirements imposed by Sections 61-2c-204.1 and 61-2c-205 to renew a license under this chapter.
- (p) "Control," as used in Subsection 61-2c-105(2)(f), means the power to directly or indirectly:
 - (i) direct or exercise a controlling interest over:
 - (A) the management or policies of an entity; or
 - (B) the election of a majority of the directors, officers, managers, or managing partners of an entity;
 - (ii) vote 20% or more of a class of voting securities of an entity by an individual; or
 - (iii) vote more than 5% of a class of voting securities of an entity by another entity.
- (q)
 - (i) "Control person" means an individual identified by an entity registered with the nationwide database as being an individual directing the management or policies of the entity.
 - (ii) "Control person" may include one of the following who is identified as provided in Subsection (1)(q)(i):
 - (A) a manager;
 - (B) a managing partner;
 - (C) a director;
 - (D) an executive officer; or
 - (E) an individual who performs a function similar to an individual listed in this Subsection (1)(q)(ii).
- (r) "Depository institution" means the same as that term is defined in Section 7-1-103.
- (s) "Director" means the director of the division.
- (t) "Division" means the Division of Real Estate.
- (u) "Dwelling" means a residential structure attached to real property that contains one to four family units including any of the following if used as a residence:
 - (i) a condominium unit;
 - (ii) a cooperative unit;
 - (iii) a manufactured home; or
 - (iv) a house.
- (v) "Employee":
 - (i) means an individual:
 - (A) whose manner and means of work performance are subject to the right of control of, or are controlled by, another person; and
 - (B) whose compensation for federal income tax purposes is reported, or is required to be reported, on a W-2 form issued by the controlling person; and
 - (ii) does not include an independent contractor who performs duties other than at the direction of, and subject to the supervision and instruction of, another person.
- (w) "Entity" means:
 - (i) a corporation;
 - (ii) a limited liability company;
 - (iii) a partnership;
 - (iv) a company;
 - (v) an association;
 - (vi) a joint venture;

- (vii) a business trust;
- (viii) a trust; or
- (ix) another organization.
- (x) "Executive director" means the executive director of the Department of Commerce.
- (y) "Federal licensing requirements" means Secure and Fair Enforcement for Mortgage Licensing, 12 U.S.C. Sec. 5101 et seq.
- (z) "Foreclosure rescue" means, for compensation or with the expectation of receiving valuable consideration, to:
 - (i) engage, or offer to engage, in an act that:
 - (A) the person represents will assist a borrower in preventing a foreclosure; and
 - (B) relates to a transaction involving the transfer of title to residential real property; or
 - (ii) as an employee or agent of another person:
 - (A) solicit, or offer that the other person will engage in an act described in Subsection (1)(z)(i); or
 - (B) negotiate terms in relationship to an act described in Subsection (1)(z)(i).
- (aa) "Inactive status" means a dormant status into which an unexpired license is placed when the holder of the license is not currently engaging in the business of residential mortgage loans.
- (bb) "Lending manager" means an individual licensed as a lending manager under Section 61-2c-206 to transact the business of residential mortgage loans.
- (cc) "Licensee" means a person licensed with the division under this chapter.
- (dd) "Licensing examination" means the examination required by Section 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.
- (ee) "Loan modification assistance" means, for compensation or with the expectation of receiving valuable consideration, to:
 - (i) act, or offer to act, on behalf of a person to:
 - (A) obtain a loan term of a residential mortgage loan that is different from an existing loan term including:
 - (I) an increase or decrease in an interest rate;
 - (II) a change to the type of interest rate;
 - (III) an increase or decrease in the principal amount of the residential mortgage loan;
 - (IV) a change in the number of required period payments;
 - (V) an addition of collateral;
 - (VI) a change to, or addition of, a prepayment penalty;
 - (VII) an addition of a cosigner; or
 - (VIII) a change in persons obligated under the existing residential mortgage loan; or
 - (B) substitute a new residential mortgage loan for an existing residential mortgage loan; or
 - (ii) as an employee or agent of another person:
 - (A) solicit, or offer that the other person will engage in an act described in Subsection (1)(ee)(i); or
 - (B) negotiate terms in relationship to an act described in Subsection (1)(ee)(i).
- (ff)
 - (i) "Mortgage loan originator" means an individual who, for compensation or in expectation of compensation:
 - (A)
 - (I) takes a residential mortgage loan application;
 - (II) offers or negotiates terms of a residential mortgage loan for the purpose of:
 - (Aa) a purchase;
 - (Bb) a refinance;

- (Cc)a loan modification assistance; or
- (Dd)a foreclosure rescue; or
- (III)directly or indirectly solicits a residential mortgage loan for another person; and
- (B)is licensed as a mortgage loan originator in accordance with this chapter.
- (ii) "Mortgage loan originator" does not include a person who:
 - (A) is described in Subsection (1)(ff)(i), but who performs exclusively administrative or clerical tasks as described in Subsection (1)(h)(ii)(A);
 - (B)
 - (I) is licensed under Chapter 2f, Real Estate Licensing and Practices Act;
 - (II)performs only real estate brokerage activities; and
 - (III) receives no compensation from:
 - (Aa)a lender;
 - (Bb)a lending manager; or
 - (Cc)an agent of a lender or lending manager; or
 - (C)is solely involved in extension of credit relating to a timeshare plan, as defined in 11 U.S.C. Sec. 101(53D).
- (gg)"Nationwide database" means the Nationwide Mortgage Licensing System and Registry, authorized under federal licensing requirements.
- (hh)"Nontraditional mortgage product" means a mortgage product other than a 30-year fixed rate mortgage.
- (ii)"Person" means an individual or entity.
- (jj) "Prelicensing education" means education taken by an individual seeking to be licensed under this chapter in order to meet the education requirements imposed by Section 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.
- (kk) "Principal lending manager" means an individual:
 - (i) licensed as a lending manager under Section 61-2c-206; and
 - (ii)identified in the nationwide database by the individual's sponsoring entity as the entity's principal lending manager.
- (ll) "Prospective borrower" means a person applying for a mortgage from a person who is required to be licensed under this chapter.
- (mm) "Record" means information that is:
 - (i)prepared, owned, received, or retained by a person; and
 - (ii)
 - (A)inscribed on a tangible medium; or
 - (B)
 - (I)stored in an electronic or other medium; and
 - (II)in a perceivable and reproducible form.
- (nn) "Referral fee":
 - (i)means any fee, kickback, other compensation, or thing of value tendered for a referral of business or a service incident to or part of a residential mortgage loan transaction; and
 - (ii) does not include:
 - (A) a payment made by a licensed entity to an individual employed by the entity under a contractual incentive program according to rules made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or
 - (B)a payment made for reasonable promotional and educational activities that is not conditioned on the referral of business and is not used to pay expenses that a person in a position to refer settlement services or business related to the settlement services would otherwise incur.

- (oo) "Residential mortgage loan" means an extension of credit, if:
 - (i) the loan or extension of credit is secured by a:
 - (A)mortgage;
 - (B)deed of trust; or
 - (C)consensual security interest; and
 - (ii) the mortgage, deed of trust, or consensual security interest described in Subsection (1)(oo)(i):
 - (A)is on a dwelling located in the state; and
 - (B)is created with the consent of the owner of the residential real property.
 - (pp) "Settlement" means the time at which each of the following is complete:
 - (i) the borrower and, if applicable, the seller sign and deliver to each other or to the escrow or closing office each document required by:
 - (A)the real estate purchase contract;
 - (B)the lender;
 - (C)the title insurance company;
 - (D)the escrow or closing office;
 - (E)the written escrow instructions; or
 - (F)applicable law;
 - (ii)the borrower delivers to the seller, if applicable, or to the escrow or closing office any money, except for the proceeds of any new loan, that the borrower is required to pay; and
 - (iii)if applicable, the seller delivers to the buyer or to the escrow or closing office any money that the seller is required to pay.
 - (qq)"Settlement services" means a service provided in connection with a real estate settlement, including a title search, a title examination, the provision of a title certificate, services related to title insurance, services rendered by an attorney, preparing documents, a property survey, rendering a credit report or appraisal, a pest or fungus inspection, services rendered by a real estate agent or broker, the origination of a federally related mortgage loan, and the processing of a federally related mortgage.
 - (rr) "Sponsorship" means an association in accordance with Section 61-2c-209 between an individual licensed under this chapter and an entity licensed under this chapter.
 - (ss) "State" means:
 - (i)a state, territory, or possession of the United States;
 - (ii)the District of Columbia; or
 - (iii)the Commonwealth of Puerto Rico."
 - (tt)Unique identifier" means the same as that term is defined in 12 U.S.C. Sec. 5102."
 - (uu)Utah-specific" means an educational or examination requirement under this chapter that relates specifically to Utah.
- (2)
- (a)If a term not defined in this section is defined by rule, the term shall have the meaning established by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
 - (b)If a term not defined in this section is not defined by rule, the term shall have the meaning commonly accepted in the business community.

Amended by Chapter 384, 2016 General Session

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

- (1) The division shall administer this chapter.

- (2) In addition to a power or duty expressly provided in this chapter, the division may:
 - (a) receive and act on a complaint including:
 - (i) taking action designed to obtain voluntary compliance with this chapter; or
 - (ii) commencing an administrative or judicial proceeding on the division's own initiative;
 - (b) establish one or more programs for the education of consumers with respect to residential mortgage loans;
 - (c)
 - (i) make one or more studies appropriate to effectuate the purposes and policies of this chapter; and
 - (ii) make the results of the studies described in Subsection (2)(c)(i) available to the public;
 - (d) visit and investigate a person licensed under this chapter, regardless of whether the person is located in Utah;
 - (e) employ one or more necessary hearing examiners, investigators, clerks, and other employees and agents; and
 - (f) establish fees under Section 63J-1-504 for:
 - (i) processing an application for licensing or certification; and
 - (ii) any other function required or permitted by this chapter.
- (3) The division shall make rules for the administration of this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including:
 - (a) licensure procedures for:
 - (i) a person required by this chapter to obtain a license with the division; and
 - (ii) the establishment of a branch office by an entity;
 - (b) proper handling of money received by a licensee;
 - (c) record-keeping requirements by a licensee, including proper disposal of a record;
 - (d) certification procedures for certifying an education provider; and
 - (e) standards of conduct for a licensee or certified education provider.
- (4) The division may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, require as a condition of maintaining a license or certification under this chapter that a person comply with a requirement of the nationwide database if:
 - (a) required for uniformity amongst states; and
 - (b) not inconsistent with this chapter.
- (5) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide a process under which an individual may challenge information contained in the nationwide database.
- (6) The division may enter into a relationship or contract with the nationwide database or another entity designated by the nationwide database to do the following related to a licensee or other person subject to this chapter:
 - (a) collect or maintain a record; and
 - (b) process a transaction fee or other fee.
- (7) The division shall regularly report the following to the nationwide database:
 - (a) a violation of this chapter;
 - (b) licensing or disciplinary action under this chapter; and
 - (c) other information relevant to this chapter.
- (8) If a person pays a fee or costs to the division with a negotiable instrument or any other method that is not honored for payment:
 - (a) the transaction for which the payment is submitted is voidable by the division;
 - (b) the division may reverse the transaction if payment of the applicable fee or costs is not received in full; and

- (c) the person's license, certification, or registration is automatically suspended:
 - (i) beginning the day on which the payment is due; and
 - (ii) ending the day on which payment is made in full.

Amended by Chapter 43, 2013 General Session

61-2c-104 Residential Mortgage Regulatory Commission.

- (1)
 - (a) There is created within the division the "Residential Mortgage Regulatory Commission" consisting of the following members appointed by the executive director with the approval of the governor:
 - (i) four members who:
 - (A) have at least three years of experience in transacting the business of residential mortgage loans; and
 - (B) are licensed under this chapter at the time of and during appointment; and
 - (ii) one member from the general public.
 - (b)
 - (i) The executive director with the approval of the governor may appoint an alternate member to the board.
 - (ii) The alternate member shall:
 - (A) at the time of the appointment, have at least three years of experience in transacting the business of residential mortgage loans; and
 - (B) be licensed under this chapter at the time of and during appointment.
- (2)
 - (a) Except as required by Subsection (2)(b), the executive director shall appoint a new member or reappointed member subject to appointment by the executive director to a four-year term ending June 30.
 - (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.
 - (c) If a vacancy occurs in the membership of the commission for any reason, the executive director shall appoint a replacement for the unexpired term.
 - (d) A member shall remain on the commission until the member's successor is appointed and qualified.
- (3) Members of the commission shall annually select one member to serve as chair.
- (4)
 - (a) The commission shall meet at least quarterly.
 - (b) The director may call a meeting in addition to the meetings required by Subsection (4)(a):
 - (i) at the discretion of the director;
 - (ii) at the request of the chair of the commission; or
 - (iii) at the written request of three or more commission members.
- (5)
 - (a) Three members of the commission constitute a quorum for the transaction of business.
 - (b) If a quorum of members is unavailable for any meeting and an alternate member is appointed to the commission by the executive director with the approval of the governor, the alternate member shall serve as a regular member of the commission for that meeting if with the presence of the alternate member there is a quorum present at the meeting.

- (c) The action of a majority of a quorum present is an action of the commission.
- (6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (7) In addition to a duty or power expressly provided for elsewhere in this chapter, the commission shall:
 - (a) except as provided in Subsection 61-2c-202(3), concur in the licensure or denial of licensure of a person under this chapter in accordance with Part 2, Licensure;
 - (b) take disciplinary action with the concurrence of the director in accordance with Part 4, Enforcement; and
 - (c) advise the division concerning matters related to the administration and enforcement of this chapter.

Amended by Chapter 286, 2010 General Session

Amended by Chapter 379, 2010 General Session

61-2c-105 Scope of chapter -- Exemptions.

- (1)
 - (a) Except as to an individual who will engage in an activity as a mortgage loan originator, this chapter applies to a closed-end residential mortgage loan secured by a first lien or equivalent security interest on a dwelling.
 - (b) This chapter does not apply to a transaction covered by Title 70C, Utah Consumer Credit Code.
- (2) The following are exempt from this chapter:
 - (a) the federal government;
 - (b) a state;
 - (c) a political subdivision of a state;
 - (d) an agency of or entity created by a governmental entity described in Subsections (2)(a) through (c) including:
 - (i) the Utah Housing Corporation created in Section 63H-8-201;
 - (ii) the Federal National Mortgage Corporation;
 - (iii) the Federal Home Loan Mortgage Corporation;
 - (iv) the Federal Deposit Insurance Corporation;
 - (v) the Resolution Trust Corporation;
 - (vi) the Government National Mortgage Association;
 - (vii) the Federal Housing Administration;
 - (viii) the National Credit Union Administration;
 - (ix) the Farmers Home Administration; and
 - (x) the United States Department of Veterans Affairs;
 - (e) a depository institution;
 - (f) an entity that controls, is controlled by, or is under common control with a depository institution;
 - (g) an employee or agent of an entity described in Subsections (2)(a) through (f):
 - (i) when that person acts on behalf of the entity described in Subsections (2)(a) through (f); and
 - (ii) including an employee of:
 - (A) a depository institution;

- (B) a subsidiary of a depository institution that is:
 - (I) owned and controlled by the depository institution; and
 - (II) regulated by a federal banking agency, as defined in 12 U.S.C. Sec. 5102; or
- (C) an institution regulated by the Farm Credit Administration;
- (h) except as provided in Subsection (3), a person who:
 - (i) makes a loan:
 - (A) secured by an interest in real property;
 - (B) with the person's own money; and
 - (C) for the person's own investment; and
 - (ii) that does not engage in the business of making loans secured by an interest in real property;
- (i) except as provided in Subsection (3), a person who receives a mortgage, deed of trust, or consensual security interest on real property if the individual or entity:
 - (i) is the seller of real property; and
 - (ii) receives the mortgage, deed of trust, or consensual security interest on real property as security for a separate money obligation;
- (j) a person who receives a mortgage, deed of trust, or consensual security interest on real property if:
 - (i) the person receives the mortgage, deed of trust, or consensual security interest as security for an obligation payable on an installment or deferred payment basis;
 - (ii) the obligation described in Subsection (2)(j)(i) arises from a person providing materials or services used in the improvement of the real property that is the subject of the mortgage, deed of trust, or consensual security interest; and
 - (iii) the mortgage, deed of trust, or consensual security interest is created without the consent of the owner of the real property that is the subject of the mortgage, deed of trust, or consensual security interest;
- (k) a nonprofit corporation that:
 - (i)
 - (A) is exempt from paying federal income taxes;
 - (B) is certified by the United States Small Business Administration as a small business investment company;
 - (C) is organized to promote economic development in this state; and
 - (D) has as its primary activity providing financing for business expansion; or
 - (ii) is a community development financial institution;
- (l) except as provided in Subsection (3), a court appointed fiduciary; or
- (m) an attorney admitted to practice law in this state:
 - (i) if the attorney is not principally engaged in the business of negotiating residential mortgage loans when considering the attorney's ordinary practice as a whole for all the attorney's clients; and
 - (ii) when the attorney engages in loan modification assistance in the course of the attorney's practice as an attorney.
- (3) An individual who will engage in an activity as a mortgage loan originator is exempt from this chapter only if the individual is an employee or agent exempt under Subsection (2)(g).
- (4)
 - (a) Notwithstanding Subsection (2)(m), an attorney exempt from this chapter may not engage in conduct described in Section 61-2c-301 when transacting business of residential mortgage loans.
 - (b) If an attorney exempt from this chapter violates Subsection (4)(a), the attorney:

- (i) is not subject to enforcement by the division under Part 4, Enforcement; and
 - (ii) may be subject to disciplinary action generally applicable to an attorney admitted to practice law in this state.
 - (c) If the division receives a complaint alleging an attorney exempt from this chapter is in violation of Subsection (4)(a) or that an attorney subject to this chapter has violated this chapter, the division shall forward the complaint to the Utah State Bar for disciplinary action.
- (5)
- (a) An individual who is exempt under Subsection (2) or (3) may voluntarily obtain a license under this chapter by complying with Part 2, Licensure.
 - (b) An individual who voluntarily obtains a license under this Subsection (5) shall comply with all the provisions of this chapter.

Amended by Chapter 226, 2015 General Session

Amended by Chapter 262, 2015 General Session

61-2c-106 Addresses provided the division.

- (1)
- (a) A person shall provide a physical location or street address when the person provides the nationwide database an address required by the division.
 - (b) The following when provided to and maintained within the division under this chapter is public information:
 - (i) a business address; or
 - (ii) a mailing address other than a home address, unless the person provides no other address.
- (2) A licensee is considered to have received a notification that is mailed to the last mailing address furnished to the nationwide database by:
- (a) the individual, if the licensee is an individual; or
 - (b) the lending manager who is designated within the nationwide database to act as the principal lending manager for the entity, if the licensee is an entity.

Amended by Chapter 292, 2013 General Session