

Part 2 Licensure

61-2c-201 Licensure required of person engaged in the business of residential mortgage loans.

- (1) Unless exempt from this chapter under Section 61-2c-105, a person may not transact the business of residential mortgage loans without obtaining a license under this chapter.
- (2) For purposes of this chapter, a person transacts business in this state if:
 - (a)
 - (i) the person engages in an act that constitutes the business of residential mortgage loans; and
 - (ii)
 - (A) the act described in Subsection (2)(a)(i) is directed to or received in this state; and
 - (B) the real property that is the subject of the act described in Subsection (2)(a)(i) is located in this state; or
 - (b) a representation is made by the person that the person transacts the business of residential mortgage loans in this state.
- (3) An individual who has an ownership interest in an entity required to be licensed under this chapter is not required to obtain an individual license under this chapter unless the individual transacts the business of residential mortgage loans.
- (4) Unless otherwise exempted under this chapter, licensure under this chapter is required of both:
 - (a) the individual who directly transacts the business of residential mortgage loans; and
 - (b) if the individual transacts business as an employee or agent of an entity or individual, the entity or individual for whom the employee or agent transacts the business of residential mortgage loans.
- (5)
 - (a) If an entity that is licensed to transact the business of residential mortgage loans transacts the business of residential mortgage loans under an assumed business name, the entity shall in accordance with rules made by the division:
 - (i) register the assumed name under this chapter; and
 - (ii) furnish proof that the assumed business name is filed with the Division of Corporations and Commercial Code pursuant to Title 42, Chapter 2, Conducting Business Under Assumed Name.
 - (b) The division may charge a fee established in accordance with Section 63J-1-504 for registering an assumed name pursuant to this Subsection (5).

Amended by Chapter 379, 2010 General Session

61-2c-202 Licensure procedures.

- (1) To apply for licensure under this chapter an applicant shall in a manner provided by the division by rule:
 - (a) if the applicant is an entity, submit:
 - (i) through the nationwide database, a licensure statement that:
 - (A) lists any name under which the entity will transact business in this state;
 - (B) lists the address of the principal business location of the entity;
 - (C) identifies each control person for the entity;
 - (D) identifies each jurisdiction in which the entity is registered, licensed, or otherwise regulated in the business of residential mortgage loans;

- (E) discloses any adverse administrative action taken by an administrative agency against the entity or a control person for the entity; and
- (F) discloses any history of criminal proceedings that involves a control person of the entity; and
- (ii) a notarized letter to the division that:
 - (A) is on the entity's letterhead;
 - (B) is signed by the entity's owner, director, or president;
 - (C) authorizes the principal lending manager to do business under the entity's name and under each of the entity's licensed trade names, if any; and
 - (D) includes any information required by the division by rule;
- (b) if the applicant is an individual:
 - (i) submit a licensure statement that identifies the entity with which the applicant is sponsored;
 - (ii) authorize periodic criminal background checks through the nationwide database, at times provided by rule that the division makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, accessing:
 - (A) the Utah Bureau of Criminal Identification, if the nationwide database is able to obtain information from the Utah Bureau of Criminal Identification; and
 - (B) the Federal Bureau of Investigation;
 - (iii) submit evidence using a method approved by the division by rule of having successfully completed approved prelicensing education in accordance with Section 61-2c-204.1;
 - (iv) submit evidence using a method approved by the division by rule of having successfully passed any required licensing examination in accordance with Section 61-2c-204.1;
 - (v) submit evidence using a method approved by the division by rule of having successfully registered in the nationwide database, including paying a fee required by the nationwide database; and
 - (vi) authorize the division to obtain independent credit reports:
 - (A) through a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. Sec. 1681a; and
 - (B) at times provided by rule that the division makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
- (c) pay to the division:
 - (i) an application fee established by the division in accordance with Section 63J-1-504; and
 - (ii) the reasonable expenses incurred by the division in processing the application for licensure.
- (2)
 - (a) Upon receiving an application, the division, with the concurrence of the commission, shall determine whether the applicant:
 - (i) meets the qualifications for licensure; and
 - (ii) complies with this section.
 - (b) If the division, with the concurrence of the commission, determines that an applicant meets the qualifications for licensure and complies with this section, the division shall issue the applicant a license.
 - (c) If the division, with the concurrence of the commission, determines that the division requires more information to make a determination under Subsection (2)(a), the division may:
 - (i) hold the application pending further information about an applicant's criminal background or history related to adverse administrative action in any jurisdiction; or
 - (ii) issue a conditional license:
 - (A) pending the completion of a criminal background check; and

(B) subject to probation, suspension, or revocation if the criminal background check reveals that the applicant did not truthfully or accurately disclose on the licensing application a criminal history or other history related to adverse administrative action.

- (3)
- (a) The commission may delegate to the division the authority to:
 - (i) review a class or category of application for an initial or renewed license;
 - (ii) determine whether an applicant meets the qualifications for licensure;
 - (iii) conduct a necessary hearing on an application; and
 - (iv) approve or deny a license application without concurrence by the commission.
 - (b) If the commission delegates to the division the authority to approve or deny an application without concurrence by the commission and the division denies an application for licensure, the applicant who is denied licensure may petition the commission for a de novo review of the application.
 - (c) An applicant who is denied licensure under Subsection (3)(b) may seek agency review by the executive director only after the commission reviews the division's denial of the applicant's application.
 - (d) Subject to Subsection (3)(c) and in accordance with Title 63G, Chapter 4, Administrative Procedures Act, an applicant who is denied licensure under this chapter may submit a request for agency review to the executive director within 30 days following the day on which the commission order denying the licensure is issued.

Amended by Chapter 262, 2015 General Session

61-2c-203 General qualifications for licensure.

- (1) To qualify for licensure under this chapter, a person shall demonstrate through procedures established by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
- (a) financial responsibility;
 - (b) good moral character, honesty, integrity, and truthfulness; and
 - (c) the competence to transact the business of residential mortgage loans, including general fitness such as to command the confidence of the community and to warrant a determination that the person will operate honestly, fairly, and efficiently within the purposes of this chapter.
- (2) If an applicant is an entity, the applicant may not have a control person who fails to meet the requirements of Subsection (1) for an individual applicant.
- (3)
- (a) The division shall determine whether an applicant with a criminal history qualifies for licensure.
 - (b) If the division, acting under Subsection (3)(a), denies or restricts a license or places a license on probation, the applicant may petition the commission for de novo review of the application.

Amended by Chapter 166, 2012 General Session

61-2c-204.1 Education providers -- Education requirements -- Examination requirements.

- (1) As used in this section:
- (a) "Approved continuing education course" means a course of continuing education that is approved by the nationwide database or by the division.
 - (b) "Approved prelicensing education course" means a course of prelicensing education that is approved by the nationwide database or by the division.

- (2)
 - (a) A person may not provide Utah-specific prelicensing education or Utah-specific continuing education if that person is not certified by the division under this chapter.
 - (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules establishing:
 - (i) certification criteria and procedures to become a certified education provider; and
 - (ii) standards of conduct for a certified education provider.
 - (c) In accordance with the rules described in Subsection (2)(b), the division shall certify a person to provide the education described in Subsection (2)(a).
 - (d)
 - (i) Upon request, the division shall make available to the public a list of the names and addresses of certified education providers either directly or through a third party.
 - (ii) A person who requests a list under this Subsection (2)(d) shall pay the costs incurred by the division to make the list available.
 - (e) In certifying a person as a certified education provider, the division by rule may:
 - (i) distinguish between an individual instructor and an entity that provides education; or
 - (ii) approve:
 - (A) Utah-specific prelicensing education; or
 - (B) Utah-specific continuing education courses.
- (3)
 - (a) The division may not:
 - (i) license an individual under this chapter as a mortgage loan originator who has not completed the prelicensing education required by this section:
 - (A) before taking the one or more licensing examinations required by Subsection (4);
 - (B) in the number of hours, not to exceed 90 hours, required by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (C) that includes the prelicensing education required by federal licensing regulations;
 - (ii) subject to Subsection (6), renew a license of an individual who has not completed the continuing education required by this section and Section 61-2c-205:
 - (A) in the number of hours required by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (B) that includes the continuing education required by federal licensing regulations; or
 - (iii) license an individual under this chapter as a lending manager who has not completed the prelicensing education required by Section 61-2c-206 before taking the licensing examination required by Section 61-2c-206.
 - (b) Subject to Subsection (3)(a) and with the concurrence of the division, the commission shall determine:
 - (i) except as provided in Subsection 61-2c-206(1)(b), the appropriate number of hours of prelicensing education required to obtain a license;
 - (ii) the subject matters of the prelicensing education required under this section and Section 61-2c-206, including online education or distance learning options;
 - (iii) the appropriate number of hours of continuing education required to renew a license; and
 - (iv) the subject matter of courses the division may accept for continuing education purposes.
 - (c) The commission may appoint a committee to make recommendations to the commission concerning approval of prelicensing education and continuing education courses, except that the commission shall appoint at least one member to the committee to represent each association that represents a significant number of individuals licensed under this chapter.

- (d) The division may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the calculation of continuing education credits, except that the rules shall be consistent with 12 U.S.C. Sec. 5105.
- (4)
 - (a) The division may not license an individual under this chapter unless that individual first passes the one or more licensing examinations that:
 - (i) are adopted by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
 - (ii) meet the minimum federal licensing requirements; and
 - (iii) are administered by an approved examination provider.
 - (b) The commission, with the concurrence of the division, shall determine the requirements for:
 - (i) a licensing examination that at least:
 - (A) meets the minimum federal licensing requirements; and
 - (B) tests knowledge of the:
 - (I) fundamentals of the English language;
 - (II) arithmetic;
 - (III) provisions of this chapter;
 - (IV) rules adopted under this chapter;
 - (V) basic residential mortgage principles and practices; and
 - (VI) any other aspect of Utah law the commission determines is appropriate; and
 - (ii) a licensing examination required under Section 61-2c-206 that:
 - (A) meets the requirements of Subsection (4)(b)(i); and
 - (B) tests knowledge of the:
 - (I) advanced residential mortgage principles and practices; and
 - (II) other aspects of Utah law the commission, with the concurrence of the division, determines appropriate.
 - (c) An individual who will engage in an activity as a mortgage loan originator, is not considered to have passed a licensing examination if that individual has not met the minimum competence requirements of 12 U.S.C. Sec. 5104(d)(3).
- (5) When reasonably practicable, the commission and the division shall make the Utah-specific education requirements described in this section available electronically through one or more distance education methods approved by the commission and division.
- (6)
 - (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission, with the concurrence of the division, shall make rules establishing procedures under which a licensee may be exempted from a Utah-specific continuing education requirement:
 - (i) for a period not to exceed four years; and
 - (ii) upon a finding of reasonable cause.
 - (b) An individual who engages in an activity as a mortgage loan originator may not under this Subsection (6) be exempted from the minimum continuing education required under federal licensing regulations for an individual who engages in an activity as a mortgage loan originator.

Amended by Chapter 262, 2015 General Session

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

(1)

- (a) A license issued under this chapter expires as follows:
 - (i) for the calendar year the license is issued:
 - (A) if the license is issued on or before October 31, the license expires on December 31 of the same calendar year; and
 - (B) if the license is issued on or after November 1, the license expires on December 31 of the following calendar year; and
 - (ii) after the December 31 on which a license expires under Subsection (1)(a)(i), a license expires annually on December 31.
 - (b) Notwithstanding Subsection (1)(a), the time period of a license may be extended or shortened by as much as one year to maintain or change a renewal cycle established by rule by the division.
- (2) To renew a license, no later than the date the license expires, a licensee shall in a manner provided by the division by rule:
- (a) file a renewal statement;
 - (b) furnish the information required by Subsection 61-2c-202(1);
 - (c) renew the licensee's registration with the nationwide database, including the payment of a fee required by the nationwide database;
 - (d) pay a fee to the division established by the division in accordance with Section 63J-1-504; and
 - (e) if the licensee is an individual, submit proof of having completed the continuing education required under Section 61-2c-204.1, according to the deadline the division establishes by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3)
- (a) A licensee under this chapter shall notify the division in a manner provided by the division by rule within 10 days of the date on which there is a change in:
 - (i) a name under which the licensee transacts the business of residential mortgage loans in this state;
 - (ii)
 - (A) if the licensee is an entity, the business location of the licensee; or
 - (B) if the licensee is an individual, the home and business addresses of the individual;
 - (iii) the principal lending manager of the entity;
 - (iv) the entity with which an individual licensee is licensed to conduct the business of residential mortgage loans; or
 - (v) any other information that is defined as material by rule made by the division.
 - (b) Failure to notify the division of a change described in Subsection (3)(a) is separate grounds for disciplinary action against a licensee.
 - (c) The division may charge a fee established in accordance with Section 63J-1-504 for processing a change that a licensee is required to report to the division under Subsection (3)(a).
- (4)
- (a) A licensee shall notify the division by sending the division a signed statement within 10 business days of:
 - (i) a conviction of, or the entry of a plea in abeyance to:
 - (A) a felony; or
 - (B) a misdemeanor involving financial services or a financial services-related business, fraud, a false statement or omission, theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, or extortion;

- (ii) the potential resolution of a felony or of a misdemeanor described in Subsection (4)(a)(i)(B) by a diversion agreement, or any other agreement under which a criminal charge is held in suspense for a period of time;
 - (iii) filing a personal bankruptcy or bankruptcy of a business that transacts the business of residential mortgage loans;
 - (iv) the suspension, revocation, surrender, cancellation, or denial of a professional license or professional registration of the licensee, whether the license or registration is issued by this state or another jurisdiction; or
 - (v) the entry of a cease and desist order or a temporary or permanent injunction:
 - (A) against the licensee by a court or licensing agency; and
 - (B) based on conduct or a practice involving the business of residential mortgage loans, or conduct involving fraud, misrepresentation, or deceit.
 - (b) The commission, with the concurrence of the division, shall enforce the reporting requirement under this Subsection (4) pursuant to Section 61-2c-402.
- (5)
- (a) A license under this chapter expires if the licensee does not apply to renew the license on or before the expiration date of the license.
 - (b) A licensee whose license has expired may apply to reinstate the expired license, in a manner provided by the division by rule by:
 - (i) requesting reinstatement;
 - (ii) paying to the division a renewal fee and a late fee determined by the division under Section 63J-1-504; and
 - (iii) reinstating the licensee's registration with the nationwide database, including the payment of a fee required by the nationwide database.

Amended by Chapter 166, 2012 General Session

61-2c-206 Lending manager licenses.

- (1) To qualify for licensure as a lending manager under this chapter, an individual shall:
 - (a) meet the standards in Section 61-2c-203;
 - (b) successfully complete the following education:
 - (i) mortgage loan originator prelicensing education as required by federal licensing regulations; and
 - (ii) 40 hours of Utah-specific prelicensing education for a lending manager that is approved by the division under Section 61-2c-204.1;
 - (c) successfully complete the following examinations:
 - (i) the mortgage loan originator licensing examination, including the national and state components, as approved by the nationwide database; and
 - (ii) the lending manager licensing examination approved by the commission under Section 61-2c-204.1;
 - (d) submit proof, on a form approved by the division, of three years of full-time active experience as a mortgage loan originator licensed in any state in the five years preceding the day on which the application is submitted, or equivalent experience as approved by the commission pursuant to rule that the division makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
 - (e) submit an application in a manner established by the division by rule;
 - (f) establish sponsorship with an entity licensed under this chapter;
 - (g) submit to the criminal background check required by Subsection 61-2c-202(1)(b); and

- (h) pay a fee determined by the division under Section 63J-1-504.
- (2) A lending manager may not:
 - (a) engage in the business of residential mortgage loans on behalf of more than one entity at the same time;
 - (b) be sponsored by more than one entity at the same time; or
 - (c) act simultaneously as the principal lending manager and branch lending manager for the individual's sponsoring entity, unless:
 - (i) the sponsoring entity does not originate Utah residential mortgage loans from the sponsoring entity's location; and
 - (ii) the sponsoring entity originates Utah residential mortgage loans from no more than one branch location.
- (3) An individual who is a lending manager may:
 - (a) transact the business of residential mortgage loans as a mortgage loan originator; and
 - (b) be designated within the nationwide database to act for the individual's sponsoring entity as the principal lending manager, an associate lending manager, or a branch lending manager.

Amended by Chapter 262, 2015 General Session

61-2c-209 Sponsorship -- Affiliation.

- (1)
 - (a) The division may not license an individual, and an individual licensed under this chapter may not conduct the business of residential mortgage loans unless:
 - (i) if licensed as a mortgage loan originator, the individual:
 - (A) is sponsored by an entity licensed under this chapter; and
 - (B) is affiliated with the sponsoring entity's principal lending manager; or
 - (ii) if licensed as a lending manager, the individual is sponsored by an entity licensed under this chapter.
 - (b) The division may not license any entity and an entity licensed under this chapter may not conduct the business of residential mortgage loans unless the entity:
 - (i) sponsors a principal lending manager;
 - (ii) identifies at least one control person for the entity; and
 - (iii) provides a list of the mortgage loan originators sponsored by the entity.
- (2)
 - (a) A mortgage loan originator's license automatically becomes inactive the day on which:
 - (i) the mortgage loan originator is not sponsored by an entity licensed under this chapter;
 - (ii) the license of the entity with which the mortgage loan originator is sponsored becomes inactive or terminates;
 - (iii) the mortgage loan originator is not affiliated with a principal lending manager; or
 - (iv) the license of the principal lending manager with whom the mortgage loan originator is affiliated becomes inactive or terminates.
 - (b) A lending manager's license automatically becomes inactive the day on which:
 - (i) the lending manager is not sponsored by an entity licensed under this chapter; or
 - (ii) the license of the entity with which the lending manager is sponsored becomes inactive or terminates.
 - (c) A entity licensed under this chapter automatically becomes inactive the day on which the entity's sponsorship with its principal lending manager terminates.
- (3)

- (a) A person whose license is inactive may not transact the business of residential mortgage loans.
 - (b) To activate an inactive mortgage loan originator license, an individual shall:
 - (i) provide evidence that the individual:
 - (A) is sponsored by an entity that holds an active license under this chapter; and
 - (B) is affiliated with a principal lending manager who holds an active license under this chapter; and
 - (ii) pay a fee to the division set in accordance with Section 63J-1-504.
 - (c) To activate an inactive lending manager license, an individual shall:
 - (i) provide evidence that the individual is sponsored by an entity that holds an active license under this chapter; and
 - (ii) pay a fee to the division set in accordance with Section 63J-1-504.
 - (d) To activate an inactive license held by an entity, an entity shall:
 - (i) provide evidence of the entity's sponsorship of a principal lending manager; and
 - (ii) pay a fee to the division set in accordance with Section 63J-1-504.
- (4)
- (a) A mortgage loan originator shall conduct the business of residential mortgage loans only:
 - (i) through the entity by which the individual is sponsored; and
 - (ii) in the business name under which the sponsoring entity's principal lending manager is authorized by the division to do business.
 - (b) An individual licensed under this chapter may not:
 - (i) engage in the business of residential mortgage loans on behalf of more than one entity at the same time;
 - (ii) be sponsored by more than one entity at the same time;
 - (iii) transact the business of residential mortgage loans for the following at the same time:
 - (A) an entity licensed under this chapter; and
 - (B) an entity that is exempt from licensure under Section 61-2c-105; or
 - (iv) if the individual is a mortgage loan originator, receive consideration for transacting the business of residential mortgage loans from any person except the principal lending manager of the mortgage loan originator's sponsoring entity.
 - (c) This Subsection (4) does not restrict the number of:
 - (i) different lenders a person may use as a funding source for a residential mortgage loan; or
 - (ii) entities in which an individual may have an ownership interest, regardless of whether the entities are:
 - (A) licensed under this chapter; or
 - (B) exempt under Section 61-2c-105.
- (5) The division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may make rules that:
- (a) define what constitutes:
 - (i) affiliation; or
 - (ii) sponsorship; and
 - (b) provide procedures by which:
 - (i) an individual who is licensed under this chapter may provide evidence of sponsorship by an entity that is licensed under this chapter;
 - (ii) a mortgage loan originator may provide evidence of affiliation with a principal lending manager; and
 - (iii) an entity licensed under this chapter may:
 - (A) provide evidence of its sponsorship of a principal lending manager;

- (B) identify at least one control person for the entity; and
- (C) provide a list of the one or more mortgage loan originators that the entity sponsors.

Amended by Chapter 166, 2012 General Session

61-2c-210 Surrender of license.

- (1) The division may, by written agreement, accept the voluntary surrender of a license issued under this chapter.
- (2) Tender and acceptance of a voluntary surrender of a license under Subsection (1):
 - (a) does not prevent the division from pursuing additional action, including disciplinary action, that relates to the surrendered license and is authorized by this chapter or by rules made under this chapter; and
 - (b) terminates all rights and privileges associated with the license.
- (3) A person may restore the rights and privileges described in Subsection (2)(b) only if the person reapplies for, and is granted, licensure in accordance with the requirements described in this chapter.
- (4) Any documentation relating to the tender and acceptance of a voluntary surrender is a public record.

Enacted by Chapter 350, 2014 General Session