

## Part 4 Enforcement

### 61-2c-401 Investigations.

- (1) The division may investigate or cause to be investigated the actions of:
  - (a)
    - (i) a licensee;
    - (ii) a person required to be licensed under this chapter; or
    - (iii) the following with respect to an entity that is a licensee or an entity required to be licensed under this chapter:
      - (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)(a)(iii);
  - (b)
    - (i) an applicant for licensure or renewal of licensure under this chapter; or
    - (ii) the following with respect to an entity that has applied for a license or renewal of licensure under this chapter:
      - (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)(b)(ii); or
  - (c) a person who transacts the business of residential mortgage loans within this state.
- (2) In conducting investigations, records inspections, and adjudicative proceedings, the division may:
  - (a) administer an oath or affirmation;
  - (b) issue a subpoena that requires:
    - (i) the attendance and testimony of a witness; or
    - (ii) the production of evidence;
  - (c) take evidence;
  - (d) require the production of a record or information relevant to an investigation; and
  - (e) serve a subpoena by certified mail.
- (3)
  - (a) A court of competent jurisdiction shall enforce, according to the practice and procedure of the court, a subpoena issued by the division.
  - (b) The division shall pay any witness fee, travel expense, mileage, or any other fee required by the service statutes of the state where the witness or evidence is located.
- (4) A failure to respond to a request by the division in an investigation authorized under this chapter is considered as a separate violation of this chapter, including:
  - (a) failing to respond to a subpoena;
  - (b) withholding evidence; or
  - (c) failing to produce a record.

- (5) The division may inspect and copy a record related to the business of residential mortgage loans by a licensee under this chapter, regardless of whether the record is maintained at a business location in Utah, in conducting:
  - (a) investigations of complaints; or
  - (b) inspections of the record required to be maintained under:
    - (i) this chapter; or
    - (ii) rules adopted by the division under this chapter.
- (6)
  - (a) If a licensee maintains a record required by this chapter and the rules adopted by the division under this chapter outside Utah, the licensee is responsible for all reasonable costs, including reasonable travel costs, incurred by the division in inspecting the record.
  - (b) Upon receipt of notification from the division that a record maintained outside Utah is to be examined in connection with an investigation or an examination, the licensee shall deposit with the division a deposit of \$500 to cover the division's expenses in connection with the examination of the record.
  - (c) If the deposit described in Subsection (6)(b) is insufficient to meet the estimated costs and expenses of examination of the record, the licensee shall make an additional deposit to cover the estimated costs and expenses of the division.
  - (d)
    - (i) A deposit under this Subsection (6) shall be deposited in the General Fund as a dedicated credit to be used by the division under Subsection (6)(a).
    - (ii) The division, with the concurrence of the executive director, may use a deposit as a dedicated credit for the records inspection costs under Subsection (6)(a).
    - (iii) A deposit under this Subsection (6) shall be refunded to the licensee to the extent it is not used, together with an itemized statement from the division of all amounts it has used.
- (7) Failure to deposit with the division a deposit required to cover the costs of examination of a record that is maintained outside Utah shall result in automatic suspension of a license until the deposit is made.
- (8)
  - (a) If a person is found to have violated this chapter or a rule made under this chapter, the person shall pay the costs incurred by the division to copy a record required under this chapter, including the costs incurred to copy an electronic record in a universally readable format.
  - (b) If a person fails to pay the costs described in Subsection (8)(a) when due, the person's license or certification is automatically suspended:
    - (i) beginning the day on which the payment of costs is due; and
    - (ii) ending the day on which the costs are paid.

Amended by Chapter 384, 2016 General Session

**61-2c-402 Disciplinary action.**

- (1) Subject to the requirements of Section 61-2c-402.1, the commission, with the concurrence of the division, may impose a sanction described in Subsection (2) against a person if the person:
  - (a)
    - (i) is a licensee, a person previously licensed under this chapter for an act the person committed while licensed, or a person required to be licensed under this chapter; and
    - (ii) violates this chapter; or
  - (b)

- (i) is a certified education provider or person required to be certified to provide prelicensing or continuing education under this chapter; and
  - (ii) violates this chapter.
- (2) The commission, with the concurrence of the director, may against a person described in Subsection (1):
  - (a) impose an educational requirement;
  - (b) impose a civil penalty against the individual or entity in an amount not to exceed the greater of:
    - (i) \$5,000 for each violation; or
    - (ii) the amount equal to any gain or economic benefit derived from each violation;
  - (c) deny an application for an original license;
  - (d) do any of the following to a license under this chapter:
    - (i) suspend;
    - (ii) revoke;
    - (iii) place on probation;
    - (iv) reduce a lending manager license to a loan originator license;
    - (v) deny renewal;
    - (vi) deny reinstatement; or
    - (vii) in the case of a denial of a license or a suspension that extends to the expiration date of a license, set a waiting period for a person to apply for a license under this chapter;
  - (e) issue a cease and desist order;
  - (f) require the reimbursement of the division of costs incurred by the division related to the recovery, storage, or destruction of a record that the person disposes of in a manner that violates this chapter or a rule made under this chapter;
  - (g) modify a sanction described in Subsections (2)(a) through (f) if the commission finds that the person complies with court ordered restitution; or
  - (h) impose any combination of sanctions described in this Subsection (2).
- (3)
  - (a) If the commission, with the concurrence of the division, issues an order that orders a fine or educational requirements as part of a disciplinary action against a person, including a stipulation and order, the commission shall state in the order the deadline by which the person shall comply with the fine or educational requirements.
  - (b) If a person fails to comply with a stated deadline:
    - (i) the person's license or certificate is automatically suspended:
      - (A) beginning the day specified in the order as the deadline for compliance; and
      - (B) ending the day on which the person complies in full with the order; and
    - (ii) if the person fails to pay a fine required by an order, the division may begin a collection process:
      - (A) established by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
      - (B) subject to Title 63A, Chapter 3, Part 5, Office of State Debt Collection.
- (4)
  - (a) A person whose license was revoked under this chapter before May 11, 2010, may request that the revocation be converted to a suspension under this Subsection (4):
    - (i) if the revocation was not as a result of a felony conviction involving fraud, misrepresentation, deceit, dishonesty, breach of trust, or money laundering; and
    - (ii) by filing a written request with the division.

- (b) Upon receipt of a request to convert a revocation under this Subsection (4), the commission, with the concurrence of the director, shall determine whether to convert the revocation.
- (c) The commission may delegate to the division the authority to make a decision on whether to convert a revocation.
- (d) If the division, acting under Subsection (4)(c), denies a request to convert a revocation, the person who requests the conversion may appeal the decision in a hearing conducted by the commission:
  - (i) after the division denies the request to convert the revocation; and
  - (ii) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (e) The commission may delegate to the division or an administrative law judge the authority to conduct a hearing described in Subsection (4)(d).

Amended by Chapter 384, 2016 General Session

**61-2c-402.1 Adjudicative proceedings -- Review.**

- (1)
  - (a) Before an action described in Section 61-2c-402 may be taken, the division shall:
    - (i) give notice to the person against whom the action is brought; and
    - (ii) commence an adjudicative proceeding.
  - (b) If after the adjudicative proceeding is commenced under Subsection (1)(a) the presiding officer determines that a person required to be licensed under this chapter has violated this chapter, the division may take an action described in Section 61-2c-402 by written order.
- (2) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, a person against whom action is taken under this section may seek review by the executive director of the action.
- (3) If a person prevails in a judicial appeal and the court finds that the state action was undertaken without substantial justification, the court may award reasonable litigation expenses to that individual or entity as provided under Title 78B, Chapter 8, Part 5, Small Business Equal Access to Justice Act.
- (4)
  - (a) An order issued under this section takes effect 30 days after the service of the order unless otherwise provided in the order.
  - (b) If an appeal of an order issued under this section is taken by a person, the division may stay enforcement of the order in accordance with Section 63G-4-405.
- (5) If ordered by the court of competent jurisdiction, the division shall promptly take an action described in Section 61-2c-402 against a license granted under this chapter.
- (6)
  - (a) Except as provided in Subsection (6)(b), the division shall commence a disciplinary action under this chapter no later than the earlier of the following:
    - (i) four years after the day on which the violation is reported to the division; or
    - (ii) 10 years after the day on which the violation occurred.
  - (b) The division may commence a disciplinary action under this chapter after the time period described in Subsection (6)(a) expires if:
    - (i)
      - (A) the disciplinary action is in response to a civil or criminal judgment or settlement; and
      - (B) the division initiates the disciplinary action no later than one year after the day on which the judgment is issued or the settlement is final; or
    - (ii) the division and the person subject to a disciplinary action enter into a written stipulation to extend the time period described in Subsection (6)(a).

Amended by Chapter 350, 2014 General Session

**61-2c-403 Cease and desist orders.**

- (1)
  - (a) The director may issue and serve by certified mail, or by personal service, on a person an order to cease and desist from an act if:
    - (i) the director has reason to believe that the person has been engaged, is engaging in, or is about to engage in the act constituting a violation of this chapter; and
    - (ii) it appears to the director that it would be in the public interest to stop the act.
  - (b) Within 10 days after service of the order, the party named in the order may request a hearing to be held in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
  - (c) Pending a hearing requested under Subsection (1)(b), a cease and desist order shall remain in effect.
- (2)
  - (a) After the hearing described in Subsection (1), if the director finds that an act of the person violates this chapter, the director:
    - (i) shall issue an order making the cease and desist order permanent; and
    - (ii) may impose another disciplinary action under Section 61-2c-402.
  - (b)
    - (i) The director may file suit in the name of the division to enjoin and restrain a person on whom an order is served under this section from violating this chapter if:
      - (A)
        - (I) the person does not request a hearing under Subsection (1); or
        - (II) a permanent cease and desist order is issued against the person following a hearing or stipulation; and
      - (B)
        - (I) the person fails to cease the act; or
        - (II) after discontinuing the act, the person again commences the act.
    - (ii) The suit described in Subsection (2)(b)(i) shall be filed in the district court in the county:
      - (A) in which the act occurs;
      - (B) where the individual resides; or
      - (C) where the individual or entity carries on business.
- (3) The cease and desist order issued under this section may not interfere with or prevent the prosecution of a remedy or action enforcement under this chapter.
- (4) An individual who violates a cease and desist order issued under this section is guilty of a class A misdemeanor.

Amended by Chapter 372, 2009 General Session

**61-2c-404 Civil actions.**

- (1)
  - (a) A person who violates this chapter is liable for an additional penalty, as determined by the court, of at least the amount the person received in consequence of a violation of this chapter as:
    - (i) commission;
    - (ii) compensation; or
    - (iii) profit.

- (b) A person aggrieved by a violation of this chapter may:
  - (i) bring an action for a penalty described in Subsection (1)(a); and
  - (ii) use a penalty obtained under Subsection (1)(a) for the person's own use and benefit.
- (2) A person who is not licensed under this chapter at the time of an act or service that requires a license under this chapter may not bring an action in court for the recovery of a commission, fee, or compensation for that act or service.
- (3)
  - (a) A mortgage loan originator may not bring an action in the mortgage loan originator's own name for the recovery of a fee, commission, or compensation for transacting the business of residential mortgage loans unless the action is brought against the entity by which the mortgage loan originator is sponsored at the time of the act or service that is the subject of the action.
  - (b) An action by an entity for the recovery of a fee, commission, or other compensation shall be brought by:
    - (i) an entity; or
    - (ii) the principal lending manager of an entity on behalf of the entity.
- (4) A principal lending manager who transacts the business of residential mortgage loans on the principal lending manager's own behalf may sue in the principal lending manager's own name for the recovery of a fee, commission, or compensation for transacting the business of residential mortgage loans.

Amended by Chapter 166, 2012 General Session

**61-2c-405 Penalty for violating this chapter -- Automatic revocation.**

- (1) In addition to being subject to a disciplinary action by the commission, a person required to be licensed or certified under this chapter who violates this chapter:
  - (a) is guilty of a class A misdemeanor upon conviction of a first violation of this chapter; and
  - (b) is guilty of a third degree felony upon conviction of a second or subsequent violation of this chapter.
- (2) A license or certification issued by the division to a person convicted of a violation of Section 76-6-1203 is automatically revoked.

Amended by Chapter 352, 2009 General Session

Amended by Chapter 372, 2009 General Session