

**Effective 5/12/2020**

**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) "Balloon payment" means a required payment in a mortgage transaction that:
    - (i) results in a greater reduction in the principle of the mortgage than a regular installment payment; and
    - (ii) is made during or at the end of the term of the loan.
  - (f) "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.
  - (g) "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.
  - (h) "Business day" means a day other than:
    - (i) a Saturday;
    - (ii) a Sunday; or
    - (iii) a federal or state holiday.
  - (i)
    - (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 exempt under Section 61-2c-105 or excluded under Subsection (1)(i)(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) receiving, collecting, or distributing information common for the processing or underwriting of a loan in the mortgage industry; or
        - (V) communicating with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan; or
        - (E) engage in loan modification assistance.
    - (ii) "Business of residential mortgage loans" does not include:

- (A) 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)(i)(i);
- (B) acting in one or more of the following capacities:
  - (I) a loan wholesaler;
  - (II) an account executive for a loan wholesaler;
  - (III) a loan closer; or
  - (IV) funding a loan; or
- (C) 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.
- (j) "Certified education provider" means a person who is certified under Section 61-2c-204.1 to provide Utah-specific prelicensing education.
- (k) "Closed-end" means a loan:
  - (i) with a fixed amount borrowed; and
  - (ii) that does not permit additional borrowing secured by the same collateral.
- (l) "Commission" means the Residential Mortgage Regulatory Commission created in Section 61-2c-104.
- (m) "Community development financial institution" means the same as that term is defined in 12 U.S.C. Sec. 4702.
- (n) "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.
- (o) "Concurrence" means that entities given a concurring role must jointly agree for the action to be taken.
- (p) "Continuing education" means education an individual takes in order to meet the education requirements imposed by Sections 61-2c-204.1 and 61-2c-205 to activate, renew, or reinstate a license under this chapter.
- (q) "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.
- (r)
  - (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)(r)(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)(r)(i).
- (s) "Depository institution" means the same as that term is defined in Section 7-1-103.
- (t) "Director" means the director of the division.

- (u) "Division" means the Division of Real Estate.
- (v) "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.
- (w) "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.
- (x) "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.
- (y) "Executive director" means the executive director of the Department of Commerce.
- (z) "Federal licensing requirements" means Secure and Fair Enforcement for Mortgage Licensing, 12 U.S.C. Sec. 5101 et seq.
- (aa) "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)(aa)(i); or
    - (B) negotiate terms in relationship to an act described in Subsection (1)(aa)(i).
- (bb) "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.
- (cc) "Lending manager" means an individual licensed as a lending manager under Section 61-2c-206 to transact the business of residential mortgage loans.
- (dd) "Licensee" means a person licensed with the division under this chapter.
- (ee) "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.
- (ff) "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)(ff)(i); or
  - (B) negotiate terms in relationship to an act described in Subsection (1)(ff)(i).
- (gg)
  - (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)(gg)(i), but who performs exclusively administrative or clerical tasks as described in Subsection (1)(i)(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).
- (hh) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry, authorized under federal licensing requirements.
- (ii) "Nontraditional mortgage product" means a mortgage product other than a 30-year fixed rate mortgage.
- (jj) "Person" means an individual or entity.
- (kk) "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.
- (ll) "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.
- (mm) "Prospective borrower" means a person applying for a mortgage from a person who is required to be licensed under this chapter.
- (nn) "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.
- (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) "Section 8 of RESPA" means 12 U.S.C. Sec. 2607 and any rules made thereunder.
- (qq) "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.
- (rr) "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.
- (ss) "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.
- (tt) "State" means:
- (i) a state, territory, or possession of the United States;
  - (ii) the District of Columbia; or
  - (iii) the Commonwealth of Puerto Rico.

- (uu) "Uniform state test" means the uniform state content section of the qualified written test developed by the nationwide database.
- (vv) "Unique identifier" means the same as that term is defined in 12 U.S.C. Sec. 5102.
- (ww) "Utah-specific" means an educational 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 72, 2020 General Session