

Chapter 2c

Utah Residential Mortgage Practices and Licensing Act

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) "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)(ii).
- (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

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 the nonprofit corporation's primary activity providing financing for business expansion;
 - (ii) is a community development financial institution; or
 - (iii)
 - (A) is exempt from paying federal income taxes;
 - (B) has as the nonprofit corporation's primary purpose serving the public by helping low-income individuals and families build, repair, or purchase housing;
 - (C) does not require, under the terms of a mortgage, a balloon payment; and
 - (D) to perform loan originator activities, uses only unpaid volunteers or employees whose compensation is not based on the number or size of the mortgage transactions that the employees originate;
- (l) an employee or volunteer for a nonprofit corporation described in Subsection (2)(k)(ii) or (iii), working within the scope of the nonprofit corporation's business;
- (m) except as provided in Subsection (3), a court appointed fiduciary; or
- (n) 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) A loan processor or loan underwriter who is not a mortgage loan originator is not required to obtain a license under this chapter when the loan processor or loan underwriter is:
 - (i) employed by, and acting on behalf of, a person or entity licensed under this chapter; and
 - (ii) under the direction of and subject to the supervision of a person licensed under this chapter.
 - (b) A loan processor or loan underwriter who is an independent contractor is not exempt under Subsection (4)(a).
- (5)
 - (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 (5)(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 (5)(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.
- (6)
 - (a) An individual who is exempt under Subsection (2), (3), or (4) 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 (6) shall comply with all the provisions of this chapter.

Amended by Chapter 55, 2018 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

**Part 2
Licensure**

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

- (1)
 - (a) Except as provided in Subsection (1)(b), a person may not transact the business of residential mortgage loans without first obtaining a license under this chapter.
 - (b) A person may transact the business of residential mortgage loans without first obtaining a license under this chapter if the person:
 - (i) is exempt from this chapter under Section 61-2c-105; or
 - (ii) qualifies for temporary authority to act as a mortgage loan originator under Section 61-2c-201.2.
- (2) For purposes of this chapter, a person transacts the business of residential mortgage loans in this state if:
 - (a)
 - (i) the person engages in an act that constitutes the business of residential mortgage loans;

- (ii) the act described in Subsection (2)(a)(i) is directed to or received in this state; and
 - (iii) the real property that is the subject of the act described in Subsection (2)(a)(i) is located in this state; or
- (b) the person makes a representation 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 as described in this Subsection (5).

Amended by Chapter 337, 2019 General Session

61-2c-201.2 Temporary authorization to act as a mortgage loan originator.

- (1) In accordance with the provisions of this section, an individual is temporarily authorized to act as a mortgage loan originator if:
 - (a) an entity licensed to transact the business of residential mortgage loans employs the individual;
 - (b) the individual submits an application for licensure as a mortgage loan originator in accordance with Section 61-2c-202;
 - (c) the individual demonstrates that the individual:
 - (i)
 - (A) is registered as a mortgage loan originator with a depository institution; and
 - (B) was registered in the nationwide database as a mortgage loan originator during the one-year period before the day on which the individual submitted the application described in Subsection (1)(b); or
 - (ii) was licensed as a mortgage loan originator in another state during the 30-day period before the day on which the individual submitted the application described in Subsection (1)(b); and
 - (d) the individual has not in any governmental jurisdiction:
 - (i) had an application for licensure as a mortgage loan originator denied;
 - (ii) had a mortgage loan originator license revoked or suspended;
 - (iii) been subject to, or served with, a cease and desist order in connection with a residential mortgage loan transaction; or
 - (iv) been convicted of, pled guilty to, pled no contest to, or resolved by a plea in abeyance agreement, a crime that would preclude the individual from licensure as a residential

mortgage loan originator, as provided by rule the division makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

- (2) Temporary authorization for an individual who meets the requirements described in Subsection (1) to act as a mortgage loan originator:
 - (a) begins the day on which the individual submits an application in accordance with Section 61-2c-202; and
 - (b) ends the day on which any of the following occurs:
 - (i) the individual withdraws the application described in Subsection (2)(a);
 - (ii) the division denies the application described in Subsection (2)(a);
 - (iii) the division grants the application described in Subsection (2)(a); or
 - (iv) 120 days pass after the day on which the individual submits an application for registration in the nationwide database.
- (3) A person employing an individual with temporary authorization under this section is subject to the requirements of this chapter to the same extent as if the individual was licensed in this state as a mortgage loan originator.
- (4) An individual with temporary authorization under this section is subject to the requirements of this chapter to the same extent as an individual licensed in this state as a mortgage loan originator.
- (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules regulating the temporary authority of an individual to act as a mortgage loan originator in accordance with this section.

Enacted by Chapter 337, 2019 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 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 an application fee established by the division in accordance with Section 63J-1-504.
- (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 204, 2022 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) 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 204, 2022 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.
 - (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 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 Utah-specific prelicensing education.
- (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 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, including additional continuing education required for a new loan originator; 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 qualified written national test developed by the nationwide database that includes the uniform state test content that:
 - (i) meets the minimum federal licensing requirements; and
 - (ii) is administered by an approved examination provider.
 - (b) The commission, with the concurrence of the division, shall determine the requirements for the lending manager licensing examination required under Section 61-2c-206 that tests the applicant's knowledge of:
 - (i) fundamentals of the English language;
 - (ii) arithmetic;
 - (iii) provisions of this chapter;
 - (iv) advanced residential mortgage principles and practices; and
 - (v) 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 72, 2020 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 uniform state test content, 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 182, 2017 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 an entity and an entity licensed under this chapter may not conduct the business of residential mortgage loans unless the entity:
 - (i) conducts the entity's business of residential mortgage loans from a location within the United States;
 - (ii) sponsors a principal lending manager;
 - (iii) identifies at least one control person for the entity; and
 - (iv) 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) An entity licensed under this chapter automatically becomes inactive the day on which the entity's sponsorship with the entity's 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) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules that:
 - (a) define what constitutes:
 - (i) affiliation;
 - (ii) sponsorship; or
 - (iii) conducting the business of residential mortgage loans from a location within the United States; 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 213, 2018 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

Part 3

Operational Restrictions

61-2c-301 Prohibited conduct -- Violations of the chapter.

- (1) A person transacting the business of residential mortgage loans in this state may not:
- (a) violate Section 8 of RESPA;
 - (b) charge a fee in connection with a residential mortgage loan transaction:
 - (i) that is excessive; or
 - (ii) without providing to the loan applicant a written statement signed by the loan applicant:
 - (A) stating whether or not the fee or deposit is refundable; and
 - (B) describing the conditions, if any, under which all or a portion of the fee or deposit will be refunded to the loan applicant;
 - (c) act incompetently in the transaction of the business of residential mortgage loans such that the person fails to:
 - (i) safeguard the interests of the public; or
 - (ii) conform to acceptable standards of the residential mortgage loan industry;
 - (d) do any of the following as part of a residential mortgage loan transaction, regardless of whether the residential mortgage loan closes:
 - (i) make a false statement or representation;
 - (ii) cause false documents to be generated; or
 - (iii) knowingly permit false information to be submitted by any party;
 - (e) give or receive compensation or anything of value, or withhold or threaten to withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in reaching a value conclusion in a residential mortgage loan transaction, except that it is not a violation of this section for a licensee to withhold payment because of a bona fide dispute regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards of Professional Appraisal Practice;
 - (f) violate or not comply with:
 - (i) this chapter;
 - (ii) an order of the commission or division; or
 - (iii) a rule made by the division;
 - (g) fail to respond within the required time period to:
 - (i) a notice or complaint of the division; or
 - (ii) a request for information from the division;
 - (h) make false representations to the division, including in a licensure statement;
 - (i) engage in the business of residential mortgage loans with respect to the transaction if the person also acts in any of the following capacities with respect to the same residential mortgage loan transaction:
 - (i) appraiser;
 - (ii) escrow agent;
 - (iii) real estate agent;
 - (iv) general contractor; or
 - (v) title insurance producer;
 - (j) engage in unprofessional conduct as defined by rule;
 - (k) engage in an act or omission in transacting the business of residential mortgage loans that constitutes dishonesty, fraud, or misrepresentation;
 - (l) engage in false or misleading advertising;

- (m)
 - (i) fail to account for money received in connection with a residential mortgage loan;
 - (ii) use money for a different purpose from the purpose for which the money is received; or
 - (iii) except as provided in Subsection (4), retain money paid for services if the services are not performed;
- (n) fail to provide a prospective borrower a copy of each appraisal and any other written valuation developed in connection with an application for credit that is to be secured by a first lien on a dwelling in accordance with Subsection (5);
- (o) engage in an act that is performed to:
 - (i) evade this chapter; or
 - (ii) assist another person to evade this chapter;
- (p) recommend or encourage default, delinquency, or continuation of an existing default or delinquency, by a mortgage applicant on an existing indebtedness before the closing of a residential mortgage loan that will refinance all or part of the indebtedness;
- (q) in the case of the lending manager of an entity or a branch office of an entity, fail to exercise reasonable supervision over the activities of:
 - (i) unlicensed staff; or
 - (ii) a mortgage loan originator who is affiliated with the lending manager;
- (r) pay or offer to pay an individual who does not hold a license under this chapter for work that requires the individual to hold a license under this chapter;
- (s) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
 - (i) provide a title insurance product or service without the approval required by Section 31A-2-405; or
 - (ii) knowingly provide false or misleading information in the statement required by Subsection 31A-2-405(2);
- (t) represent to the public that the person can or will perform any act of a mortgage loan originator if that person is not licensed under this chapter because the person is exempt under Subsection 61-2c-105(4), including through:
 - (i) advertising;
 - (ii) a business card;
 - (iii) stationery;
 - (iv) a brochure;
 - (v) a sign;
 - (vi) a rate list; or
 - (vii) other promotional item;
- (u)
 - (i) engage in an act of loan modification assistance without being licensed under this chapter;
 - (ii) engage in an act of foreclosure rescue that requires licensure as a real estate agent or real estate broker under Chapter 2, Division of Real Estate, without being licensed under that chapter;
 - (iii) engage in an act of loan modification assistance without entering into a written agreement specifying which one or more acts of loan modification assistance will be completed;
 - (iv) request or require a person to pay a fee before obtaining:
 - (A) a written offer for a loan modification from the person's lender or servicer; and
 - (B) the person's written acceptance of the offer from the lender or servicer;
 - (v) induce a person seeking a loan modification to hire the licensee to engage in an act of loan modification assistance by:

- (A) suggesting to the person that the licensee has a special relationship with the person's lender or loan servicer; or
- (B) falsely representing or advertising that the licensee is acting on behalf of:
 - (I) a government agency;
 - (II) the person's lender or loan servicer; or
 - (III) a nonprofit or charitable institution;
- (vi) recommend or participate in a loan modification that requires a person to:
 - (A) transfer title to real property to the licensee or to a third-party with whom the licensee has a business relationship or financial interest;
 - (B) make a mortgage payment to a person other than the person's loan servicer; or
 - (C) refrain from contacting the person's:
 - (I) lender;
 - (II) loan servicer;
 - (III) attorney;
 - (IV) credit counselor; or
 - (V) housing counselor; or
- (vii) for an agreement for loan modification assistance entered into on or after May 11, 2010, engage in an act of loan modification assistance without offering in writing to the person entering into the agreement for loan modification assistance a right to cancel the agreement within three business days after the day on which the person enters the agreement;
- (v) sign or initial a document on behalf of another person, except for in a circumstance allowed by the division by rule, with the concurrence of the commission, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- (w) violate or fail to comply with a provision of Title 57, Chapter 28, Utah Reverse Mortgage Act; or
- (x) engage in any act or practice that violates appraisal independence as defined in 15 U.S.C. Sec. 1639e or in the policies and procedures of:
 - (i) the Federal Home Loan Mortgage Corporation; or
 - (ii) the Federal National Mortgage Association.
- (2) Regardless of whether the crime is related to the business of residential mortgage loans, it is a violation of this chapter for a licensee or a person who is a certified education provider to:
 - (a) be convicted of:
 - (i) a felony; or
 - (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
 - (A) a class A misdemeanor;
 - (B) a class B misdemeanor; or
 - (C) a criminal offense comparable to a class A or class B misdemeanor;
 - (b) plead guilty or nolo contendere to:
 - (i) a felony; or
 - (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
 - (A) a class A misdemeanor;
 - (B) a class B misdemeanor; or
 - (C) a criminal offense comparable to a class A or class B misdemeanor; or
 - (c) enter into a plea in abeyance agreement in relation to:
 - (i) a felony; or
 - (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
 - (A) a class A misdemeanor;
 - (B) a class B misdemeanor; or

- (C) a criminal offense comparable to a class A or class B misdemeanor.
- (3) A lending manager does not violate Subsection (1)(q) if:
- (a) in contravention of the lending manager's written policies and instructions, an affiliated licensee of the lending manager violates:
 - (i) this chapter; or
 - (ii) rules made by the division under this chapter;
 - (b) the lending manager established and followed reasonable procedures to ensure that affiliated licensees receive adequate supervision;
 - (c) upon learning of a violation by an affiliated licensee, the lending manager attempted to prevent or mitigate the damage;
 - (d) the lending manager did not participate in or ratify the violation by an affiliated licensee; and
 - (e) the lending manager did not attempt to avoid learning of the violation.
- (4) Notwithstanding Subsection (1)(m)(iii), a licensee may, upon compliance with Section 70D-2-305, charge a reasonable cancellation fee for work done originating a mortgage if the mortgage is not closed.
- (5)
- (a) Except as provided in Subsection (5)(b), a person transacting the business of residential mortgage loans in this state shall provide a prospective borrower a copy of each appraisal and any other written valuation developed in connection with an application for credit that is to be secured by a first lien on a dwelling on or before the earlier of:
 - (i) as soon as reasonably possible after the appraisal or other valuation is complete; or
 - (ii) three business days before the day of the settlement.
 - (b) Subject to Subsection (5)(c), unless otherwise prohibited by law, a prospective borrower may waive the timing requirement described in Subsection (5)(a) and agree to receive each appraisal and any other written valuation:
 - (i) less than three business days before the day of the settlement; or
 - (ii) at the settlement.
 - (c)
 - (i) Except as provided in Subsection (5)(c)(ii), a prospective borrower shall submit a waiver described in Subsection (5)(b) at least three business days before the day of the settlement.
 - (ii) Subsection (5)(b) does not apply if the waiver only pertains to a copy of an appraisal or other written valuation that contains only clerical changes from a previous version of the appraisal or other written valuation and the prospective borrower received a copy of the original appraisal or other written valuation at least three business days before the day of the settlement.
 - (d) If a prospective borrower submits a waiver described in Subsection (5)(b) and the transaction never completes, the person transacting the business of residential mortgage loans shall provide a copy of each appraisal or any other written valuation to the applicant no later than 30 days after the day on which the person knows the transaction will not complete.

Amended by Chapter 72, 2020 General Session

61-2c-302 Record requirements.

- (1) For the time period specified in Subsection (2), a licensee shall make or possess any record required for that licensee by a rule made by the division.
- (2) A licensee, or a person required to be licensed under this chapter, shall maintain and safeguard in the licensee's or the person's possession a record described in Subsection (1) for four years from the last to occur of the following:

- (a) the final entry on a residential mortgage loan is made by that licensee;
 - (b) if the residential mortgage loan is serviced by the licensee:
 - (i) the residential mortgage loan is paid in full; or
 - (ii) the licensee ceases to service the residential mortgage loan; or
 - (c) if the residential mortgage loan is not serviced by the licensee, the residential mortgage loan is closed.
- (3) A licensee shall, upon the division's request:
- (a) make available to the division for inspection and copying during normal business hours all records required to be maintained under this chapter; and
 - (b) produce all records described in Subsection (3)(a) that are related to an investigation being conducted by the division at the division office for inspection and copying by the division.
- (4) A licensee who is an entity shall maintain and produce for inspection by the division a current list of all individuals whose licenses are sponsored by the entity.
- (5)
- (a) A licensed entity shall:
 - (i) create, for each quarter of the fiscal year, a report of condition identifying all lending activities, including all loans closed by the entity's sponsored mortgage loan originators during the quarter;
 - (ii) provide each quarterly report of condition to the nationwide database no later than 75 days after the last day of the reporting quarter; and
 - (iii) maintain each report of condition submitted to the nationwide database as required by 12 U.S.C. Sec. 5104(e) for at least four years from the day on which the licensee submits the report of condition to the nationwide database.
 - (b) Upon request by the division, a mortgage loan originator shall produce a report of condition for inspection by the division.

Amended by Chapter 213, 2018 General Session

Part 4

Enforcement

61-2c-401 Investigations.

- (1) The division may, either publicly or privately, 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 within 10 days after the day on which the request is served 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 in full.

Amended by Chapter 213, 2018 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 or a person required to be licensed under this chapter; and
 - (ii) violates this chapter; or
 - (b)
 - (i) is not registered under this chapter; and
 - (ii) violated a provision of this chapter during a period in which:
 - (A) the provision of this chapter was in effect; and
 - (B) the person was registered or required to be registered under this chapter; or
 - (c)
 - (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).
- (5)
- (a) A person whose license the commission revokes in accordance with this section may file a written request with the division for the vacation of the license revocation, if the person:
 - (i) has not held a license under this chapter for at least eight years before the day on which the person files the request; and

- (ii) has not been convicted of a felony involving:
 - (A) fraud;
 - (B) misrepresentation;
 - (C) deceit;
 - (D) dishonesty;
 - (E) breach of trust; or
 - (F) money laundering.
- (b) After receiving a written request a person makes in accordance with Subsection (5)(a), the commission may vacate the revocation of the person's license:
 - (i) after a hearing; and
 - (ii) with the concurrence of the division.
- (c) A person whose license revocation is vacated in accordance with this Subsection (5) may apply for licensure in accordance with this chapter.

Amended by Chapter 204, 2022 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

Superseded 7/1/2024

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

Effective 7/1/2024

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) The director may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, 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:
 - (i)
 - (A) the person does not request a hearing under Subsection (1); or
 - (B) a permanent cease and desist order is issued against the person following a hearing or stipulation; and
 - (ii)
 - (A) the person fails to cease the act; or
 - (B) after discontinuing the act, the person again commences the act.
 - (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 401, 2023 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

Part 5

Residential Mortgage Loan Education, Research, and Recovery Fund

61-2c-501 Fund created.

- (1) There is created an expendable special revenue fund known as the "Residential Mortgage Loan Education, Research, and Recovery Fund."
- (2) The interest earned on the fund shall be deposited into the fund.
- (3) At the beginning of each fiscal year, the division shall make available \$100,000 in the fund to satisfy final judgments rendered against a person licensed under this chapter.

Amended by Chapter 400, 2013 General Session

61-2c-501.5 Definitions.

As used in this part:

- (1) "Civil judgment" means a judgment in a civil action that:
 - (a) is awarded in an action brought against a person licensed under this chapter on the basis of fraud, misrepresentation, or deceit in a residential mortgage loan transaction; and
 - (b) awards actual damages.
- (2) "Criminal restitution judgment" means a judgment that, in accordance with the Utah Code of Criminal Procedure, orders criminal restitution to a person and against a person licensed under

this chapter for a criminal offense involving fraud, misrepresentation, or deceit in a residential mortgage loan transaction.

- (3) "Final judgment" means one of the following judgments upon termination of the proceedings related to the judgment, including appeals:
 - (a) a civil judgment; or
 - (b) a criminal restitution judgment.
- (4) "Fund" means the Residential Mortgage Loan Education, Research, and Recovery Fund created in Section 61-2c-501.

Amended by Chapter 289, 2011 General Session

61-2c-502 Additional license fee.

- (1) An individual who applies for or renews a license shall pay, in addition to any other fee required under this chapter, a reasonable annual fee:
 - (a) determined by the division with the concurrence of the commission; and
 - (b) not to exceed \$18.
- (2)
 - (a) An entity that applies for or renews an entity license shall pay, in addition to any other fee required under this chapter, a reasonable annual fee:
 - (i) determined by the division with the concurrence of the commission; and
 - (ii) not to exceed \$25.
 - (b) This Subsection (2) applies:
 - (i) notwithstanding that an entity is operating under an assumed name registered with the division as required by Subsection 61-2c-201(5); and
 - (ii) to each branch office of an entity that is licensed under this chapter.
- (3) Notwithstanding Section 13-1-2, the following shall be paid into the fund to be used as provided in this part:
 - (a) a fee provided in this section;
 - (b) a fee for certifying:
 - (i) a school as a certified education provider;
 - (ii) a prelicensing or continuing education course; or
 - (iii) a prelicensing or continuing education provider as an instructor; and
 - (c) a civil penalty imposed under this chapter.
- (4) If the balance in the fund that is available to satisfy a judgment against a licensee decreases to less than \$100,000, the division may make an additional assessment to a licensee to maintain the balance available at \$100,000 to satisfy judgments.

Amended by Chapter 258, 2015 General Session

61-2c-503 Notice to division -- Judgment against mortgage licensee -- Fraud, misrepresentation, or deceit -- Verified petition for order directing payment from fund -- Limitations and procedure.

- (1) A person may bring a claim against the fund if:
 - (a) the person obtains a final judgment;
 - (b) the person complies with the requirements under this part;
 - (c) the person is not complicit in the fraud, misrepresentation, or deceit that is the basis of the claim; and
 - (d) the final judgment that is the basis for the claim:

- (i) has not been discharged in bankruptcy; and
 - (ii) when a bankruptcy proceeding is open or commenced during the pendency of the claim, the person obtains an order from the bankruptcy court declaring the final judgment and related debt to be nondischargeable.
- (2)
 - (a) A person may not bring a claim against the fund for money owed under a civil judgment unless, within 10 business days of the day on which the person brings the civil action that results in the civil judgment, the person sends to the division a signed notification alleging fraud, misrepresentation, or deceit.
 - (b) Within 30 calendar days of the day on which the division receives a notice under Subsection (1), the division may intervene in the action.
- (3)
 - (a) After obtaining a final judgment, to file a claim against the fund, a person shall:
 - (i) file a verified petition in the court where the final judgment is entered seeking an order directing payment from the fund of an amount equal to the uncollected actual damages owed under the final judgment that are unpaid;
 - (ii) serve a copy of the verified petition described in Subsection (3)(a)(i) on the division; and
 - (iii) file a copy of the affidavit of service of the verified petition with the court.
 - (b) A recovery from the fund may not include:
 - (i) punitive damages;
 - (ii) attorney fees;
 - (iii) interest; or
 - (iv) court costs.
 - (c) Regardless of the number of claimants or number of loans involved in a transaction, the liability of the fund may not exceed:
 - (i) \$15,000 for a single transaction;
 - (ii) \$45,000 for an individual licensee; or
 - (iii) \$45,000 for an entity.
- (4) A court shall conduct a hearing on a petition filed under Subsection (3) as scheduled by the court.
- (5) Subject to Subsection (6), a court may order payment from the fund under this section only if the person who files the petition shows that the person:
 - (a) is not:
 - (i) in the case of a civil judgment, the spouse of the judgment debtor;
 - (ii) in the case of a criminal judgment, the spouse of the criminal defendant; or
 - (iii) a personal representative of an individual described in Subsection (5)(a)(i) or (ii);
 - (b) has complied with this chapter;
 - (c) is owed damages under a final judgment that:
 - (i) is issued by the court in the manner prescribed under this section; and
 - (ii) indicates the amount of the final judgment awarded;
 - (d) has proved the amount still owing on the final judgment on the day on which the petition is filed;
- (e)
 - (i)
 - (A) has a writ of execution issued upon the final judgment; and
 - (B) has received a return made by the officer executing the writ showing that no property subject to execution in satisfaction of the final judgment could be found; or
 - (ii) if execution is levied against the property of the judgment debtor or criminal defendant:

- (A) has not realized an amount sufficient to satisfy the final judgment; and
 - (B) is owed a balance on the final judgment after application of the amount realized;
 - (f) has made reasonable searches and inquiries to ascertain whether the judgment debtor or criminal defendant has any interest in property, real or personal, that may satisfy the final judgment; and
 - (g) has exercised reasonable diligence to secure payment of the final judgment from the assets of the judgment debtor or criminal defendant.
- (6) If a person satisfies the court that it is not practicable for the person to comply with one or more of the requirements in Subsections (5)(e) through (g), the court may waive those requirements.

Amended by Chapter 379, 2010 General Session

61-2c-504 Authority to act on receipt of petition.

- (1) Upon receipt of a petition meeting the requirements of Section 61-2c-503, the division may answer, initiate review proceedings, or appear in a proceeding:
- (a) in the name of the defendant to the action; or
 - (b) on behalf of the fund.
- (2) The division may settle a claim subject to:
- (a) the application of a petitioner; and
 - (b) court approval.

Enacted by Chapter 297, 2004 General Session

61-2c-505 Court determination and order.

If the court determines that a claim should be levied against the portion of the fund allocated to carry out this chapter, the court shall enter an order requiring the division to pay from the fund the portion of a final judgment that is payable from the fund under Section 61-2c-503.

Amended by Chapter 379, 2010 General Session

61-2c-506 Insufficient funds to satisfy judgment -- Procedure and interest.

If the money deposited in the fund and allotted for satisfying judgments against licensees is insufficient to satisfy an authorized claim for payment, the division shall, when sufficient money has been deposited in the fund, satisfy the unpaid claims in the order they originally were filed, together with accumulated interest at the rate allowable on judgments under Section 15-1-4.

Enacted by Chapter 297, 2004 General Session

61-2c-507 Division subrogated -- Authority to suspend license.

- (1) If the division pays a person from the fund in accordance with this part:
- (a) the division is subrogated to the rights of that person for the amounts paid out of the fund; and
 - (b) any amount and interest recovered by the division shall be deposited in the fund.
- (2)
- (a) Subject to Subsection (2)(b), the license of a licensee for whom payment from the fund is made under this part is automatically suspended as of the earlier of the day on which:
 - (i) the division is ordered by a court to pay from the fund; or
 - (ii) the division pays from the fund.
 - (b)

- (i) A person whose license is suspended under Subsection (2)(a) may appeal the suspension in a de novo hearing conducted by the commission:
 - (A) after the suspension; and
 - (B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (ii) The commission may delegate:
 - (A) to the division or an administrative law judge the authority to conduct a hearing described in Subsection (2)(b)(i); or
 - (B) to the division the authority to make a decision on whether relief from a suspension should be granted.
- (3) Unless the suspension is not upheld after a hearing described in Subsection (2)(b), a licensee whose license is suspended pursuant to Subsection (2) may not apply to renew a license nor apply for a new license until the licensee:
 - (a) pays into the fund:
 - (i) the amount paid out of the fund on behalf of the licensee; and
 - (ii) interest at a rate determined by the division with the concurrence of the commission; and
 - (b) participates in a hearing before the commission and is approved by the commission, with the concurrence of the director, for licensure or activation of the suspended license.

Amended by Chapter 384, 2016 General Session

61-2c-508 Failure to comply.

The failure of a person to comply with this part is a waiver of any right provided under this part.

Enacted by Chapter 297, 2004 General Session

61-2c-509 Disciplinary actions.

- (1) This part does not limit the authority of the director or commission to take disciplinary action against a licensee for a violation of:
 - (a) this chapter; or
 - (b) rules made by the division under this chapter.
- (2) The repayment in full of all obligations to the fund by a licensee does not nullify or modify the effect of a disciplinary proceeding brought under:
 - (a) this chapter; or
 - (b) rules made by the division under this chapter.

Amended by Chapter 372, 2009 General Session

61-2c-510 Money accumulated -- Purpose.

- (1) The division may use money accumulated in the fund in excess of the amount necessary to satisfy claims to:
 - (a) investigate violations of this chapter related to fraud; and
 - (b) advance education and research in the field of residential mortgage loans.
- (2) The division may use the excess money described in Subsection (1) only in a manner consistent with Subsection (1), including for:
 - (a) courses sponsored by the division;
 - (b) courses offered by the division in conjunction with a university or college in Utah;
 - (c) contracting for a research project for the state in the field of residential mortgage loans;

- (d) funding the salaries and training expenses of division staff members who are employed in positions related to the education of mortgage licensees;
- (e) funding the training expenses of division staff members who are employed in positions conducting investigations of complaints under this chapter; and
- (f) publishing and distributing educational materials to:
 - (i) licensees; and
 - (ii) applicants for licensure.

Amended by Chapter 325, 2007 General Session