

Part 5 Remedies and Enforcement

70D-2-501 Civil liability -- Misdemeanor.

- (1)
 - (a) A lender, broker, or servicer who violates this chapter is liable to an injured party for actual damages.
 - (b) In an action filed to determine the liability of a lender, broker, or servicer for damages under this chapter, the prevailing party is entitled to court costs and attorney fees.
- (2) A person who wilfully violates this chapter is guilty of a class A misdemeanor.

Renumbered and Amended by Chapter 72, 2009 General Session

70D-2-502 Enforcement -- Rulemaking -- Federal law.

- (1) The commissioner may:
 - (a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act:
 - (i) receive and act on a complaint;
 - (ii) take action designed to obtain voluntary compliance with this chapter; or
 - (iii) commence a proceeding on the commissioner's own initiative to enforce compliance with this chapter;
 - (b) counsel a person or group on the person's or group's rights and duties under this chapter;
 - (c) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
 - (i) restrict or prohibit a lending or servicing practice that is misleading, unfair, or abusive;
 - (ii) promote or assure fair and full disclosure of the terms and conditions of an agreement or communication between:
 - (A) a lender or servicer; and
 - (B) a borrower; or
 - (iii) promote or assure uniform application of or to resolve ambiguities in applicable state or federal laws or federal regulations; and
 - (d) employ hearing examiners, clerks, and other employees and agents as necessary to perform the commissioner's duties under this chapter.
- (2)
 - (a) A person subject to this chapter violates this chapter if the person violates a federal law:
 - (i) that is applicable to the person because of the activities that make the person subject to this chapter; and
 - (ii) pursuant to the terms of the federal law in effect on the day the person violates the federal law.
 - (b) The commissioner shall by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this chapter, designate which one or more federal laws are applicable to a person described in Subsection (2)(a).
 - (c)
 - (i) Notwithstanding the other provisions of this chapter, only the commissioner may enforce or bring an action under this chapter for a violation described in this Subsection (2).
 - (ii) The commissioner may bring an action under this Subsection (2) in state court.

Renumbered and Amended by Chapter 72, 2009 General Session

70D-2-503 Investigation.

- (1)
 - (a) If the commissioner has probable cause to believe that a lender, broker, or servicer has violated a law, rule, or federal regulation relating to its business or an obligation to a mortgagor, the commissioner may investigate to determine if a violation has been committed.
 - (b) To the extent necessary for an investigation under this section, the commissioner may:
 - (i) administer an oath or affirmation under penalty of perjury; and
 - (ii) upon the commissioner's own motion or upon request of any person:
 - (A) subpoena a witness;
 - (B) compel the attendance of a witness;
 - (C) adduce evidence under penalty of perjury; and
 - (D) require the production of a matter that is relevant to the investigation, including:
 - (I) the existence, description, nature, custody, condition, and location of a record or other tangible thing of any kind or nature; and
 - (II) the identity and location of a person having knowledge of a relevant fact, or any other matter reasonably calculated to lead to the discovery of admissible evidence.
- (2)
 - (a) If the commissioner requires a person to produce a record that is located outside this state, the person shall:
 - (i) make the record available to the commissioner at a convenient location within this state; or
 - (ii) pay the reasonable and necessary expenses for the department to examine the record at the place where the record is maintained.
 - (b) The commissioner may designate one or more representatives, including an official of the state in which a record is located, to inspect the record on behalf of the commissioner.
- (3) Upon failure without lawful excuse to obey a subpoena or give testimony, and upon reasonable notice to affected persons, the commissioner may apply to the Third District Court or to any other district court for an order compelling compliance.
- (4) Unless otherwise required by law, the commissioner may not make public:
 - (a) the name or identity of a person whose acts or conduct the commissioner investigates pursuant to this section; or
 - (b) the facts disclosed in the investigation.
- (5) Subsection (4) does not apply to a disclosure in an enforcement proceeding conducted pursuant to this chapter.

Renumbered and Amended by Chapter 72, 2009 General Session

70D-2-504 Orders.

- (1) If the commissioner determines that a person engaging in business as a lender, broker, or servicer is violating, has violated, or the commissioner has reasonable cause to believe is about to violate this chapter or a rule of the commissioner made under this chapter, the commissioner may:
 - (a) order the person to cease and desist from committing a further violation; and
 - (b) in the most serious instances may prohibit the person from continuing to engage in business as a lender, broker, or servicer.
- (2)
 - (a) If the commissioner determines that a practice that the commissioner alleges is unlawful should be enjoined during the pendency of a proceeding incident to an allegation, the commissioner may issue a temporary order in accordance with Section 63G-4-502:

- (i) at the commencement of the proceedings; or
- (ii) at any time after the proceeding commences.
- (b) For purposes of Section 63G-4-502, an immediate and significant danger to the public health, safety, or welfare exists if the commissioner finds from specific facts supported by sworn statement or the records of a person subject to the order that loan applicants or mortgagors are otherwise likely to suffer immediate and irreparable injury, loss, or damage before a proceeding incident to a final order can be completed.
- (3) The commissioner may not award damages or penalties under this chapter against a lender, broker, or servicer.
- (4)
 - (a) An order issued by the commissioner under this chapter shall:
 - (i) be in writing;
 - (ii) be delivered to or served upon the person affected; and
 - (iii) specify the order's effective date, which may be immediate or at a later date.
 - (b) An order remains in effect until:
 - (i) withdrawn by the commissioner; or
 - (ii) terminated by a court order.
 - (c) An order of the commissioner, upon application made on or after the order's effective date to the Third District Court, or in any other district court, may be enforced ex parte and without notice by an order to comply entered by the court.

Renumbered and Amended by Chapter 72, 2009 General Session

70D-2-505 Relief from order.

A person aggrieved by a rule, order, temporary order, decision, ruling, or other act or failure to act by the commissioner under this chapter is entitled to judicial review as provided under Title 63G, Chapter 4, Administrative Procedures Act.

Renumbered and Amended by Chapter 72, 2009 General Session

70D-2-506 Civil liability.

Nothing in this chapter limits any civil liability that may exist against a lender, broker, or servicer for breach of contract or other wrong committed against a mortgagor.

Renumbered and Amended by Chapter 72, 2009 General Session