Title 70D. Financial Institution Mortgage Financing Regulation Act

Chapter 1
General Provisions

70D-1-101 Title.

This title is known as the "Financial Institution Mortgage Financing Regulation Act."

Enacted by Chapter 72, 2009 General Session

70D-1-102 Definitions.

As used in this title:

(1) "Commissioner" means the commissioner of the department.
(2) "Department" means the Department of Financial Institutions.
(3) "Depository institution" is as defined in Section 7-1-103.
(4) "Dwelling" means a residential structure attached to real property that contains one to four units including any of the following if used as a residence:
  (a) a condominium unit;
  (b) a cooperative unit;
  (c) a manufactured home; or
  (d) a house.
(5) "Mortgage" means a mortgage or deed of trust affecting real property located in this state.
(6)
  (a) "Mortgage loan" means a loan:
    (i) secured by a mortgage; and
    (ii) made for personal, family, or household purposes.
  (b) "Mortgage loan" does not include a loan:
    (i) made by an individual to a member of the individual's family; or
    (ii) subject to Title 70C, Utah Consumer Credit Code.
(7) "Mortgagor" means a person who:
  (a) executes a mortgage; or
  (b) is obligated to pay a mortgage loan.
(8) "Record" means information that is:
  (a) inscribed on a tangible medium; or
  (b) stored in an electronic or other medium and is retrievable in perceivable form.
(9) "Real estate brokerage activity" means an act that involves offering or providing real estate brokerage services to the public, including:
  (a) acting as a real estate principal broker, associate broker, or sales agent, as defined in Section 61-2f-102, for a buyer, seller, lessor, or lessee of real property;
  (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
  (c) negotiating, on behalf of a party, a portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to the transaction;
  (d) engaging in an act for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under applicable law; and

(e) offering to engage in an activity, or act in a capacity, described in Subsections (9)(a) through (d).
(10) "State" means:
(a) a state, territory, or possession of the United States;
(b) the District of Columbia; or
(c) the Commonwealth of Puerto Rico.

Amended by Chapter 289, 2011 General Session

Chapter 2
Mortgage Lending and Servicing Act

Part 1
General Provisions

70D-2-101 Short title.
This chapter is known as the "Mortgage Lending and Servicing Act."

Renumbered and Amended by Chapter 72, 2009 General Session

70D-2-102 Definitions.
As used in this chapter:
(1)
(a) Except as provided in Subsection (1)(b), "broker" means a person who in the regular course of business assists a person in obtaining a mortgage loan for a fee or other consideration paid directly or indirectly.
(b) "Broker" does not include a person solely because of the person's:
(i) real estate brokerage activities; or
(ii) activities as an attorney licensed to practice law in this state who, in the course of the attorney's practice as an attorney, assists a person in obtaining a mortgage loan.
(2) "Business as a lender, broker, or servicer" means a person who engages in an act for compensation or in the expectation of compensation that makes the person a lender, broker, or servicer.
(3)
(a) Except as provided in Subsection (3)(c), "lender" means a person who in the regular course of business originates a loan secured by a mortgage.
(b) "Lender" includes a mortgage lender.
(c) "Lender" does not include a person who:
(i) as a seller only receives one or more mortgages as security for a purchase money obligation; or
(ii) only receives a mortgage as security for an obligation:
(A) payable on an installment or deferred payment basis; and
(B) arising out of materials furnished or services rendered in the improvement of real property.
(4) "Manufactured home" means a transportable factory built housing unit that:
(a) is constructed:

(i) on or after June 15, 1976, according to the National Manufactured Housing Construction and Safety Standards Act of 1974; and
(ii) in one or more sections, which:
(A) in the traveling mode, is eight body feet or more in width or 40 body feet or more in length; or
(B) when erected on site, is 400 or more square feet;
(b) is built on a permanent chassis;
(c) is designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities; and
(d) includes the plumbing, heating, air-conditioning, and electrical systems.
(5) "Mobile home" means a transportable factory built housing unit built before June 15, 1976, in accordance with a state mobile home code that existed before the National Manufactured Housing Construction and Safety Standards Act of 1974.
(6) "Modular home" means a modular unit as defined in Section 15A-1-302.
(7) "Mortgage lender" means an entity that performs each of the following related to originating a mortgage loan:
(a) taking and processing an application;
(b) providing a required disclosure;
(c) in some circumstances, underwriting the mortgage loan and making the final credit approval decision;
(d) closing the mortgage loan in its name;
(e) funding the mortgage loan; and
(f) selling the mortgage loan to an investor.
(8) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry, authorized under 12 U.S.C. Sec. 5101 for federal licensing of mortgage loan originators.
(9) "Permanently affixed" means anchored to, and supported by, a permanent foundation or installed in accordance with the manufactured housing installation standard code referred to in Section 15A-1-202.
(10) "Servicer" means a person who in the regular course of business assumes responsibility for servicing and accepting payments for a mortgage loan.

Amended by Chapter 106, 2016 General Session

70D-2-103 Exemptions.

This chapter does not apply to:
(1) a bona fide nonprofit corporation that grants a first mortgage loan to promote home ownership for low and moderate income borrowers;
(2) an agency of the following that grants a first mortgage loan under a specific federal or state law:
(a) the federal government;
(b) a state, county, or municipal government; or
(c) a quasi-governmental agency;
(3) a casual lender that makes less than five mortgage loans a year; or
(4) a mortgage loan of two years or less.

Renumbered and Amended by Chapter 72, 2009 General Session

70D-2-104 Ordinance or law by political subdivision prohibited.

(1) A county subject to Title 17, Counties, and a municipality subject to Title 10, Utah Municipal Code, may not enact an ordinance or law that:
  (a) regulates a term of a mortgage loan on a dwelling; or
  (b) makes the eligibility of a person to do business with the county or municipality dependent upon a term of a mortgage loan on a dwelling originated or serviced by the person.
(2) Subsection (1) does not apply to a term or loan funded in whole or in part with money provided or administered by the county or municipality.

Renumbered and Amended by Chapter 72, 2009 General Session

Part 2
Notification to Commissioner

70D-2-201 Registration -- Exemptions.
(1)
  (a) Except as provided in Subsection (2), a person may not engage in business as a lender, broker, or servicer in this state before the day on which the person:
    (i) provides evidence satisfactory to the commissioner that the person is registered with the nationwide database; and
    (ii) pays a fee required by Section 70D-2-203.
  (b) The commissioner may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the transition of persons registering with the nationwide database.
(2) The following persons are exempt from this part, except for a reimbursement or fee described in Subsection 70D-2-203(2):
  (a) a federally insured depository institution;
  (b) a wholly owned subsidiary of a depository institution described in Subsection (2)(a); and
  (c) a person who:
    (i) is required to be licensed with the Division of Real Estate pursuant to Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act; and
    (ii) is not a:
      (A) servicer; or
      (B) mortgage lender.
(3) A mortgage lender who is required to be registered under this chapter is not exempt from Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act.

Amended by Chapter 106, 2016 General Session

70D-2-203 Fees -- Examination.
(1)
  (a) A person required to register under this part shall pay to the commissioner:
    (i) a fee of $200 with the person's initial registration; and
    (ii) an annual fee, on or before December 31 of each year, in an amount to be set by rule of the commissioner subject to Subsection (1)(b).
  (b) The commissioner:

(i) subject to Subsection (1)(b)(ii), shall set the annual renewal fee at an amount that generates sufficient revenue to cover the department's costs of administering this chapter; and
(ii) may not set an annual renewal fee that exceeds $100 per renewal.
(2)
(a) The commissioner may require a lender, broker, or servicer to make a record of the lender, broker, or servicer relating to its activities as a lender, broker, or servicer available to the commissioner or the commissioner's authorized representative for examination.
(b) A lender, broker, or servicer described in Subsection (2)(a) shall:
(i) reimburse the department for travel and other reasonable and necessary costs incurred in the examination described in Subsection (2)(a); and
(ii) pay to the commissioner a fee set by the commissioner based on an hourly rate per each examiner, not to exceed $55 per hour for each examiner.
(3) No portion of a fee paid or owed to the commissioner under this section is refundable because a person voluntarily or involuntarily ceases to do business as a lender, broker, or servicer:
(a) during the period covered by the fee; or
(b) before the time of an examination by the commissioner of a record pertaining to a transaction preceding the day on which the person ceases to do business as a lender, broker, or servicer.

Amended by Chapter 284, 2015 General Session

Part 3
Operational Requirements

70D-2-301 Record retention.

A lender, broker, or servicer shall keep and maintain at all times in its principal place of business the records of a mortgage loan transaction of the lender, broker, or servicer as required by the rules of the commissioner.

Renumbered and Amended by Chapter 72, 2009 General Session

70D-2-302 Notice required with loan application.

(1) If the following is the case, a lender and broker shall notify in writing a person from whom the lender or broker receives or for whom the lender or broker prepares a written application for a mortgage loan that:
(a) the mortgage loan applied for may be sold or assigned;
(b) the servicing of the loan may be sold or assigned; and
(c) the mortgage loan will not necessarily be held or serviced by the lender that originates the mortgage loan.
(2) A lender and broker shall provide a written notice required by this section at the time of receipt or preparation of the written application for a mortgage loan.

Renumbered and Amended by Chapter 72, 2009 General Session

70D-2-303 Notice upon closing -- Ongoing duty to notify -- Statements required.

(1) At the time of closing of a mortgage loan, a lender shall notify the mortgagor in writing of:
(a) the name of the initial servicer that will service the loan; and

(b) the address at which a loan payment should be made.
(2)
(a)
(i) If the servicing of a mortgage loan is assigned, the servicer that assigns the servicing and the successor servicer shall each mail, at least 10 days before the due date of the first mortgage payment due after the assignment, a written notice to the mortgagor notifying the mortgagor of:
(A) the assignment of servicing; and
(B) the address at which future loan payments should be made.
(ii) A notice required by this Subsection (2)(a) shall be mailed to the mortgagor's last known address contained in the assigning servicer's records.
(b) Unless an assigning servicer regularly provides the information in a monthly statement to a mortgagor, the notice from the assigning servicer shall include the following information in addition to the information required by Subsection (2)(a):
(i) the date and amount of the payments credited to the account within the previous 12-month period;
(ii) the balance in any escrow account held by the servicer; and
(iii) the total unpaid balance of the mortgage loan.
(c) The servicer that assigns the servicing and the successor servicer may, at their option, comply with the requirements of this Subsection (2) by both signing one notice and mailing the notice to the mortgagor.
(d) A signature on a notice required by this section may be printed, stamped, or in another facsimile.
(e) A lender and a subsequent servicer of a mortgage loan shall comply with Section 7-17-6.
(3)
(a) An inadvertent error in a notice required in Subsection (2) may not be construed to waive a payment that would otherwise be due from a mortgagor.
(b) A late payment penalty may not be assessed against a mortgagor with respect to a payment that is misdirected because of:
(i) an error in a notice required in Subsection (2); or
(ii) a failure to timely mail a notice required in Subsection (2).
(4) A lender or servicer must credit to the mortgagor's account a payment received as of the day on which the payment is received or by the next banking day, unless:
(a) the payment is insufficient to pay the principal, interest, late charges, and reserves then due;
(b) the mortgage loan is referred to an attorney because of default; or
(c) the payment is received at an address other than the address for payment specified in writing to the mortgagor.

Renumbered and Amended by Chapter 72, 2009 General Session

70D-2-304 Statement to be provided.
(1) Unless a servicer regularly provides the information described in this Subsection (1) in a monthly statement to a mortgagor, the servicer shall deliver to a mortgagor, within 15 days after receipt of a written request, a statement of the mortgagor's account including the following information:
(a) the date and amount of the payments credited to the account within the previous 12-month period;
(b) the balance in any escrow account held by the servicer; and

(c) the total unpaid balance of the mortgage loan.
(2) A servicer shall provide the first two statements requested for an account in a 12-month period without charge. If more than two statements are requested for the same account in a 12-month period, the servicer may charge a reasonable fee for an additional statement.

Renumbered and Amended by Chapter 72, 2009 General Session

70D-2-305 Fee restrictions.
(1) A lender or broker may not accept a fee or deposit from an applicant for a mortgage loan unless at the time the lender or broker accepts the fee or deposit there is a written statement:
(a) signed by the applicant;
(b) stating whether or not the fee or deposit is refundable; and
(c) describing the conditions, if any, under which all or a portion of the fee or deposit will be refunded to the applicant.
(2) Notwithstanding Subsection (1), a lender or broker may accept a fee or deposit from an applicant for a mortgage loan if the lender or broker receives an email from the applicant acknowledging that the applicant was provided the information required by Subsections (1)(b) and (c).

Amended by Chapter 97, 2014 General Session

Part 4
Manufactured and Mobile Homes

70D-2-401 Qualification of manufactured home or mobile home as improvement to real property -- Requirements -- Removal from property.
(1) Except as provided in this section, for purposes of this chapter, a manufactured home or mobile home is considered personal property.
(2) For purposes of this chapter, if the requirements of this section are met, a manufactured home or mobile home is:
(a) considered to be an improvement to real property; and
(b) considered as real property.
(3) A manufactured home or mobile home is considered to be an improvement to real property if:
(a) the manufactured home or mobile home is permanently affixed to real property;
(b) the person seeking to have the manufactured home or mobile home considered to be an improvement to real property:
(i) owns the manufactured home or mobile home;
(ii)
(A) owns the real property to which the manufactured home or mobile home is permanently affixed; or
(B) leases the real property to which the manufactured home or mobile home is permanently affixed and the real property is financed in accordance with Subsection (4); and
(iii) meets the requirements of:
(A) Subsections (5) and (6); or
(B) Subsection (8); and
(c)

(i) in accordance with Subsection (7), the following are recorded by the county recorder:
(A) the affidavit of affixture described in Subsection (7); and
(B) the receipt of surrender of ownership documents described in Subsection (7); or
(ii) the affidavit of affixture described in Subsection (8) is recorded by the county recorder in accordance with Subsection (8).

(4) For purposes of Subsection (3)(b)(ii)(B), a manufactured home or mobile home shall be financed in accordance with the guidelines established by:
(a) the Federal Home Loan Mortgage Corporation;
(b) the Federal National Mortgage Association;
(c) the United States Department of Agriculture; or
(d) another entity that requires as part of the entity's financing program restrictions:
(i) on:
(A) ownership; and
(B) actions affecting title and possession; and
(ii) if the restrictions described in Subsection (4)(d)(i) are similar to restrictions imposed by one or more of the entities described in Subsections (4)(a) through (c).

(5)
(a) An owner of a manufactured home or mobile home seeking to have the manufactured home or mobile home considered to be an improvement to real property and considered real property shall complete an affidavit of affixture.
(b) An affidavit of affixture described in Subsection (5)(a) shall contain:
(i) the vehicle identification numbers of the manufactured home or mobile home;
(ii) the legal description of the real property to which the manufactured home or mobile home is permanently affixed;
(iii) a statement certified by the assessor of the county in which the manufactured home or mobile home is located that the owner of the manufactured home or mobile home:
(A) is not required to pay personal property tax in this state on the manufactured home or mobile home; or
(B) if the manufactured home or mobile home is subject to personal property tax in this state, has paid all current and prior year personal property taxes assessed on the manufactured home or mobile home;
(iv) a description of any security interests in the manufactured home or mobile home; and
(v) a receipt of surrender of ownership documents issued by the Motor Vehicle Division of the State Tax Commission in accordance with Subsection (6).

(6)
(a) The Motor Vehicle Division of the State Tax Commission shall issue a receipt of surrender of ownership documents under Subsection (5)(b)(v) if an owner described in Subsection (5) surrenders to the Motor Vehicle Division the:
(i) manufacturer's original certificate of origin; or
(ii) title to the manufactured home or mobile home.
(b) After issuing the receipt of surrender of ownership documents in Subsection (6)(a), the Motor Vehicle Division shall maintain a permanent record of:
(i) the receipt of surrender of ownership documents; and
(ii) the certificate or title described in Subsection (6)(a)(ii).

(7)
(a) An owner shall present to the county recorder:
(i) the affidavit of affixture described in Subsection (5); and
(ii) the receipt of surrender of ownership documents described in Subsection (6).

(b) A county recorder who receives the documents described in Subsection (7)(a) shall record the documents.

(c) An owner of property described in Subsection (5) shall provide a copy of the recorded affidavit of affixture to:

(i) the Motor Vehicle Division of the State Tax Commission; and

(ii) the assessor of the county in which the manufactured home or mobile home is located.

(8)

(a) If an owner cannot comply with Subsections (5), (6), and (7) because the certificate of title for the manufactured home or mobile home is lost or destroyed and a duplicate title cannot be obtained, the owner of the manufactured home or mobile home seeking to have the manufactured home or mobile home considered to be an improvement to real property and considered real property shall complete an affidavit of affixture meeting the requirements of Subsection (8)(b).

(b) An affidavit of affixture described in Subsection (8)(a) shall contain the following from the owner:

(i) the vehicle identification number of the manufactured home or mobile home;

(ii) the legal description of the real property to which the manufactured home or mobile home is permanently affixed;

(iii) a statement that the manufactured home or mobile home is permanently affixed to the real property;

(iv) a statement that the manufactured home or mobile home is not registered with nor being assessed a fee in lieu of taxes by the Motor Vehicle Division of the State Tax Commission;

(v) a statement that the manufactured home or mobile home is being taxed as an improvement to real estate by the county assessor as permitted under Section 59-2-1503;

(vi) a statement that the certificate of title described in Subsection (6)(a)(ii) has been lost or destroyed and the owner is unable to secure a duplicate title; and

(vii) a statement that the manufacturer's identification number or numbers are included in the deed or loan document recorded with the county recorder.

(c) The affidavit of affixture described in Subsection (8)(b) may be substantially in the following form:

"AFFIDAVIT OF AFFIXTURE

I,[Affiant's Name], being first duly sworn, do hereby depose and say:

1. I am a resident of [County], State of [State], and I have personal knowledge of the facts contained in this affidavit and I am making this affidavit to comply with Utah Code Ann. Section 70D-2-401.

2. I own a fee simple interest in the following described property ("Real Property") located at [City or Town], [County], State of Utah, more particularly described as:
[legal description].

3. I own a [manufactured home or mobile home] ("the Home") described by the manufacturer's identification number(s): [VIN or other manufacturer's identifying number].

4. The Home is permanently affixed to the Real Property.

5. The Home is not registered with the Utah Motor Vehicles Division.

6. The Home is taxed as an improvement to real estate by the [County] County Assessor as permitted under Utah Code Ann. Section 59-2-1503.

7. The Certificate of Title for the Home has been lost or destroyed and I am unable to secure a duplicate title.

8. The manufacturer's identification number(s) are included in the deed that is being recorded concurrently with this affidavit.

DATED this ____ day of _____, 20__.
_____
The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____.
_____
Notary Public
My Commission Expires:
Residing at:_____
_____"

(d) A county recorder who receives an affidavit of affixture described in Subsection (8)(b) shall record the affidavit of affixture.

(9) A lien on the manufactured home or mobile home that is considered to be an improvement to real property shall be perfected in the manner provided for the perfection of a lien on real property.

(10) If a manufactured home or mobile home owner separates the manufactured home or mobile home from the real property, the owner may acquire a new title by submitting to the Motor Vehicle Division of the State Tax Commission:

(a) a recorded affidavit that the manufactured home or mobile home is removed from the real property; and

(b) an application for a new title.

(11) The determination of whether a manufactured home or mobile home is considered real property or personal property under this section may not be considered in determining whether the manufactured home or mobile home is real property or personal property for purposes of taxation under Title 59, Chapter 2, Property Tax Act.

(12) This section does not apply to a modular home.

Amended by Chapter 266, 2013 General Session
Amended by Chapter 399, 2013 General Session

70D-2-401.5 Qualification of modular home as improvement to real property -- Requirements.

(1) Except as provided in this section, for purposes of this chapter, a modular home is considered to be personal property.

(2) Once a modular home is constructed on real property and the modular home is taxed as real property, it is presumed that the owner of the real property also owns the modular home.

(3) For purposes of this chapter, if the requirements of this section are met, a modular home is:

(a) considered to be an improvement to real property; and

(b) considered to be real property.

(4) A modular home is considered to be an improvement to real property if:

(a) the modular home is permanently affixed to real property;

(b) the person seeking to have the modular home considered to be an improvement to real property:

(i) owns the real property to which the modular home is or will be permanently affixed; and

(ii) controls the use and possession of the modular home;

(c) the person described in Subsection (4)(b) records the document required to be recorded under Subsection (6); and

(d) the modular home is assessed as real property for purposes of property taxes.

(5)

(a) The person seeking to have a modular home considered to be an improvement to real property and considered to be real property shall complete an affidavit of real property.
(b) An affidavit of real property described in Subsection (5)(a) shall contain:
(i) the legal description of the real property to which the modular home is or will be permanently affixed;
(ii) a statement certified by the assessor of the county in which the modular home is located that the modular home is taxed as real property for purposes of property taxes; and
(iii) a statement that all liens or security interests in the modular home under Title 70A, Uniform Commercial Code, as personal property have been released.
(6)
(a) The person seeking treatment of a modular home as real property shall present to the county recorder the affidavit of real property described in Subsection (5).
(b) A county recorder who receives an affidavit of real property described in Subsection (6)(a) shall record the affidavit of real property.
(c) A person described in Subsection (6)(a) shall provide a copy of the recorded affidavit of real property to the assessor of the county in which the modular home is located.
(7) A lien on a modular home that is considered to be an improvement to real property shall be perfected in the manner provided for the perfection of a lien on real property.

Enacted by Chapter 399, 2013 General Session

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

Chapter 3
Financial Institution Loan Originator Licensing Act

Part 1
General Provisions

70D-3-101 Title.

This chapter is known as the "Financial Institution Loan Originator Licensing Act."

Enacted by Chapter 72, 2009 General Session

70D-3-102 Definitions.

As used in this chapter:

(1) "Administrative or clerical tasks" means:
  (a) the receipt, collection, and distribution of information common for the process or underwriting of a loan in the mortgage industry; and
  (b) a communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.
(2) "Affiliate" shall be defined by the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(3) "Applicant" means an individual applying for a license under this chapter.
(4) "Approved examination provider" means a person approved by the nationwide database as an approved test provider.
(5) "Business as a loan originator" means for compensation or in the expectation of compensation to engage in an act that makes an individual a loan originator.
(6) "Clerical or support duties" includes after the receipt of an application for a residential mortgage loan:
  (a) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and
  (b) communicating with a consumer to obtain the information necessary for the processing or underwriting of the residential mortgage loan, to the extent that the communication does not include:
    (i) offering or negotiating a residential mortgage loan rate or term; or

(ii) counseling a consumer about a residential mortgage loan rate or term.

(7) "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:
(a) services;
(b) personal or real property; or
(c) another thing of value.

(8) "Continuing education" means education taken by an individual licensed under this chapter in order to meet the education requirements imposed by Section 70D-3-303 to renew a license under this chapter.

(9) "Covered subsidiary" means a subsidiary that is:
(a) owned and controlled by a depository institution; and
(b) regulated by a federal banking agency.

(10) "Federal banking agency" means:
(a) the Board of Governors of the Federal Reserve System;
(b) the Comptroller of the Currency;
(c) the National Credit Union Administration; or
(d) the Federal Deposit Insurance Corporation.

(11) "Licensee" means an individual licensed under this chapter.

(12)
(a) Except as provided in Subsection (12)(b), "loan originator" means an individual who for compensation or in the expectation of compensation:
(i) takes a residential mortgage loan application; or
(ii) offers or negotiates a term of a residential mortgage loan.
(b) "Loan originator" does not include:
(i) an individual who is engaged solely as a loan processor or underwriter;
(ii) unless compensated by a lender, broker, other loan originator, or an agent of a lender, broker, or other loan originator, a person who:
(A) only performs real estate brokerage activities; and
(B) is licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act;
(iii) a person who is solely involved in extension of credit relating to a timeshare plan, as defined in 11 U.S.C. Sec. 101(53D); or
(iv) an attorney licensed to practice law in this state who, in the course of the attorney's practice as an attorney, assists a person in obtaining a residential mortgage loan.

(13) "Loan processor or underwriter" means an individual who as an employee performs clerical or support duties:
(a) at the direction of and subject to the supervision and instruction of:
(i) a licensee; or
(ii) a registered loan originator; and
(b) as an employee of:
(i) the licensee; or
(ii) a registered loan originator.

(14) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry, authorized under Secure and Fair Enforcement for Mortgage Licensing, 12 U.S.C. Sec. 5101 et seq.

(15) "Nontraditional mortgage product" means a mortgage product other than a 30-year fixed rate mortgage.

(16) "Owned and controlled by a depository institution" may be defined by rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(17) "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 70D-3-301 for an individual to obtain a license under this chapter.
(18) "Registered loan originator" means an individual who:
(a) engages in an act as a loan originator only as an employee of:
(i) a depository institution;
(ii) a covered subsidiary; or
(iii) an institution regulated by the Farm Credit Administration; and
(b) is registered with, and maintains a unique identifier through, the nationwide database.
(19)
(a) Subject to Subsection (19)(b), "residential mortgage loan" means:
(i) a mortgage loan; or
(ii) a loan that is:
(A) secured by a mortgage; and
(B) subject to Title 70C, Utah Consumer Credit Code.
(b) A loan described in Subsection (19)(a) is a "residential mortgage loan" only if the mortgage securing the loan is on:
(i) a dwelling located in the state; or
(ii) real property located in the state, upon which is constructed or intended to be constructed a dwelling.
(20) "Unique identifier" is as defined in 12 U.S.C. Sec. 5102.

Amended by Chapter 97, 2014 General Session

70D-3-103 General powers and duties of commissioner.

Subject to this chapter:
(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may make rules authorized by this chapter, including:
(a) providing for an interim procedure for:
(i) licensing; and
(ii) acceptance of an application; and
(b) coordination between filings required under this chapter and:
(i)Title 70C, Utah Consumer Credit Code; or
(ii)Chapter 2, Mortgage Lending and Servicing Act.
(2) The commissioner 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.
(3) The commissioner shall regularly report the following to the nationwide database:
(a) a violation of this chapter;
(b) disciplinary action under Section 70D-3-501; and
(c) other information relevant to this chapter.

Enacted by Chapter 72, 2009 General Session

Part 2
Licensing Requirements and Procedures

70D-3-201 Licensing required -- Exemptions.

(1)
(a) On or after January 1, 2011, except as provided in Subsection (2), an individual described in Subsection (1)(b) may not engage in the business of a loan originator unless that individual:
(i) is licensed under this chapter; or
(ii) is a registered loan originator.
(b) This Subsection (1) applies to an employee or agent of:
(i) a depository institution;
(ii) a subsidiary of a depository institution; or
(iii) an affiliate of a depository institution.
(2) An individual described in Subsection (1)(b) may engage in the business of a loan originator without being licensed under this chapter or a registered loan originator when acting as a loan processor or underwriter.

Enacted by Chapter 72, 2009 General Session

70D-3-202 Qualifications for licensure.

To qualify for a license under this chapter an individual shall comply with all of the following, the individual:
(1) shall comply with 12 U.S.C. Sec. 5104 to register with and maintain a unique identifier through the nationwide database;
(2) may not have had a loan originator license revoked in a governmental jurisdiction;
(3) may not have been convicted of, or pled guilty or no contest to, a felony:
(a) during the seven years preceding the day on which the individual files an application; or
(b) at any time, if the felony involves an act of:
(i) fraud;
(ii) dishonesty;
(iii) breach of trust; or
(iv) money laundering;
(4) shall demonstrate financial responsibility, character, and general fitness such as to:
(a) command the confidence of the community; and
(b) warrant a determination that the individual will operate as a loan originator honestly, fairly, and efficiently within the purposes of this chapter;
(5) shall be covered by a surety bond posted in accordance with Section 70D-3-205;
(6) shall complete the prelicensing education required by Section 70D-3-301; and
(7) shall pass the written examination required by Section 70D-3-302.

Enacted by Chapter 72, 2009 General Session

70D-3-203 Initial licensure procedure.

(1) To apply for licensure under this chapter an individual shall:
(a) file an application with the commissioner in a form prescribed by the commissioner in rule;
(b) demonstrate that the individual provided the information to the nationwide database required by 12 U.S.C. Sec. 5104;

(c) provide the commissioner the individual's unique identifier;
(d) consent to the commissioner receiving information obtained by the nationwide database under 12 U.S.C. Sec. 5104, including the results of a criminal history background check; and
(e) notwithstanding the requirements applicable to a regulatory fee under Section 63J-1-504, pay a fee of $200.
(2) The commissioner shall grant an individual a license if the commissioner finds that the individual complies with:
(a) Subsection (1); and
(b) the qualifications for a license under Section 70D-3-202.
(3) Subject to this chapter, the commissioner may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, concerning:
(a) the form of an application under this chapter;
(b) the content of an application under this chapter; and
(c) the procedures for filing an application under this chapter.

Enacted by Chapter 72, 2009 General Session

70D-3-204 Renewal of license.
(1) A license issued under this chapter expires on December 31 of each year.
(2) To qualify to renew a license under this chapter an individual shall:
(a) meet the requirements of Section 70D-3-202; and
(b) complete the annual continuing education requirements of Section 70D-3-303.
(3) To renew a license under this chapter an individual shall:
(a) file an application with the commissioner in a form prescribed by the commissioner in rule;
(b) demonstrate that the individual continues to meet the requirements related to the nationwide database under 12 U.S.C. Sec. 5104;
(c) demonstrate completion of the continuing education requirements; and
(d) notwithstanding the requirements applicable to a regulatory fee under Section 63J-1-504, pay a fee of $100.

Enacted by Chapter 72, 2009 General Session

70D-3-205 Surety bond requirements.
(1)
(a) To be licensed under this chapter an individual shall be covered by a surety bond that meets the minimum surety bonding requirements required by rule.
(b) If an action is brought against a bond under this chapter, the commissioner may require that another bond be posted.
(2) The commissioner shall by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish minimum surety bonding requirements under this section, except that the requirements shall:
(a) reflect the dollar amount of residential mortgage loans originated by a loan originator; and
(b) ensure that if in accordance with this chapter a surety bond is posted by an employer or other entity on behalf of an individual, the bond covers the activities of the individual regulated by this chapter.

Enacted by Chapter 72, 2009 General Session

70D-3-206 Challenging information in the nationwide database.

The commissioner 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.

Enacted by Chapter 72, 2009 General Session

Part 3
Education Requirements

70D-3-301 Prelicensing education.

(1) Before an individual may be licensed under this chapter, the individual shall complete the number of hours of prelicensing education required by rule made by the commissioner.

(2)

(a) The commissioner shall make the rules described in Subsection (1):

(i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) subject to the requirements of this Subsection (2).

(b) The rules described in Subsection (1) shall require that an individual complete:

(i) at least 20 hours of prelicensing education approved by the nationwide database; and

(ii) as part of the 20 hours required by Subsection (2)(b)(i):

(A) 3 hours of federal law and regulations;

(B) 3 hours of ethics that include instruction on:

(I) fraud;

(II) consumer protection; and

(III) fair lending issues; and

(C) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

Enacted by Chapter 72, 2009 General Session

70D-3-302 Examination.

(1) Before an individual may be licensed under this chapter, the individual shall pass a written examination that:

(a) meets the requirements of 12 U.S.C. Sec. 5104(d);

(b) is developed by the nationwide database; and

(c) is administered by an approved examination provider.

(2) The commissioner shall make rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

(a) require that an individual comply at a minimum with the standards of 12 U.S.C. Sec. 5104(d); and

(b) address:

(i) what constitutes passing a written examination;

(ii) the ability of an individual to retake a written examination if the individual fails the written examination; and

(iii) when an individual is required to retake a written examination if an individual fails to maintain a valid license under this chapter after taking the written examination.

Enacted by Chapter 72, 2009 General Session

70D-3-303 Continuing education.

(1) A licensee shall annually complete at least the number of hours of continuing education required by rule made by the commissioner.

(2)

(a) The commissioner shall make the rules described in Subsection (1):

(i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) subject to the requirements of this Subsection (2).

(b) The rules described in Subsection (1) shall require that an individual complete each calendar year:

(i) eight hours of continuing education approved by the nationwide database;

(ii) as part of the eight hours required by Subsection (2)(b)(i):

(A) three hours of federal law and regulations; and

(B) two hours of ethics that include instruction on:

(I) fraud;

(II) consumer protection; and

(III) fair lending issues; and

(iii) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(3) The commissioner shall by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the calculation of continuing education hours, except that the rules shall be consistent with 12 U.S.C. Sec. 5105.

Enacted by Chapter 72, 2009 General Session

Part 4
Operational Requirements and Prohibitions

70D-3-401 Record requirements -- Reports of condition.

(1) An individual required to be licensed under this chapter shall create a record required by rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) An individual required to be licensed under this chapter shall maintain and produce for inspection a record required to be maintained by a rule made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, 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) An individual required to be licensed under this chapter shall maintain and produce for inspection by the commissioner a 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 individual submits the report of condition to the nationwide database.

Enacted by Chapter 72, 2009 General Session

70D-3-402 Prohibited acts.

(1) An individual transacting the business of a loan originator in this state may not:
(a) violate or not comply with:
(i) this chapter;
(ii) an order of the commissioner under this chapter;
(iii) a rule made by the commissioner under this chapter;
(iv)Title 70C, Utah Consumer Credit Code, if subject to that title; or
(v)Chapter 2, Mortgage Lending and Servicing Act, if subject to that chapter;
(b) engage in an act that is performed to:
(i) evade this chapter; or
(ii) assist another person to evade this chapter;
(c) do any of the following to induce a lender to extend credit as part of a residential mortgage loan transaction:
(i) make a false statement or representation;
(ii) cause a false document to be generated; or
(iii) knowingly permit false information to be submitted by a person in a transaction;
(d) fail to respond within the required time period to:
(i) a notice or complaint of the commissioner; or
(ii) a request for information from the commissioner;
(e) make a false representation to the commissioner, including in a licensure application;
(f) engage in the business of a loan originator with respect to a residential mortgage loan transaction if the individual 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 agent;
(g) engage in an act or omission in transacting the business of a loan originator that constitutes dishonesty, fraud, or misrepresentation;
(h) engage in false or misleading advertising;
(i)
(i) fail to account for money received in connection with a residential mortgage loan;
(ii) use money for a different purpose than the purpose for which the money is received; or
(iii) subject to Subsection (3), retain money paid for services if the services are not performed;
(j) fail, within 90 calendar days of a request from a borrower who has paid for an appraisal, to give a copy of an appraisal ordered and used for a residential mortgage loan to the borrower;
(k) 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;
(l) pay or offer to pay an individual who does not hold a license under this chapter for services that require the individual to hold a license under this chapter; or
(m) violate or fail to comply with a provision of Title 57, Chapter 28, Utah Reverse Mortgage Act.

(2)
(a) An individual engaging solely in loan processor or underwriter activities, may not represent to the public that the individual can or will perform any act of a loan originator.
(b) A representation prohibited under this Subsection (2) includes an advertisement or other means of communicating or providing information including the use of:
(i) a business card;
(ii) stationery;
(iii) a brochure;
(iv) a sign;
(v) a rate list; or
(vi) another promotional item.
(3) Notwithstanding Subsection (1)(i)(iii), if a licensee complies with Section 70D-2-305, the licensee may charge a reasonable cancellation fee for services completed to originate a residential mortgage loan if the residential mortgage loan is not closed.

Amended by Chapter 290, 2015 General Session

Part 5
Enforcement

70D-3-501 Disciplinary action.
(1) The commissioner may through an adjudicative proceeding subject to Title 63G, Chapter 4, Administrative Procedures Act, impose a sanction described in Subsection (2) against an individual if the individual:
(a) is licensed or required to be licensed under this chapter; and
(b) violates this chapter.
(2) The commissioner may against an individual described in Subsection (1) who violates this chapter:
(a) impose an educational requirement;
(b) impose a civil penalty against the individual in an amount not to exceed the greater of:
(i) $2,500 for each violation; or
(ii) the amount equal to any gain or economic benefit derived from each violation;
(c) deny an application for an initial license;
(d) do any of the following to a license under this chapter:
(i) suspend;
(ii) revoke;
(iii) place on probation;
(iv) deny renewal;
(v) deny reinstatement;
(vi) in the case of a denial of a license, set a waiting period for an individual to apply for a license under this chapter; or
(vii) issue a cease and desist order; or
(e) impose a combination of sanctions described in this Subsection (2).
(3)

(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.

Enacted by Chapter 72, 2009 General Session

70D-3-502 Investigations.
(1) The commissioner may investigate the actions of:
(a) a licensee; or
(b) an individual required to be licensed under this chapter.
(2) In conducting an investigation or adjudicative proceeding, the commissioner may:
(a) administer an oath or affirmation under penalty of perjury;
(b) subpoena a witness;
(c) compel the attendance of a witness;
(d) take evidence;
(e) require the production of a record or information relevant to an investigation from any person 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; and
(f) serve a subpoena.
(3) A failure to respond to a request by the commissioner in an investigation authorized under this chapter is considered as a separate violation of this chapter, including:
(a) failing to respond to a subpoena;
(b) withholding evidence; or
(c) failing to produce a record or other information.
(4) In conducting an investigation, the commissioner may inspect and copy a record related to the business of a loan originator, regardless of whether the record is maintained at a business location in Utah.
(5) Regardless of whether the commissioner takes action pursuant to an investigation under this chapter, an individual investigated under this section shall pay to the commissioner the amounts that would be assessed to a financial institution for an examination under Subsection 7-1-401(7) including:
(a) a per diem assessment at the rate calculated under Subsection 7-1-401(7); and
(b) if the investigation requires one or more representatives of the commissioner to travel out of state, the reasonable travel, lodging, and other expenses incurred by each representative while conducting the investigation.

Enacted by Chapter 72, 2009 General Session