

UTAH RESIDENTIAL MORTGAGE PRACTICES ACT

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Gerry A. Adair

AN ACT RELATING TO REAL ESTATE DIVISION; ENACTING THE UTAH RESIDENTIAL MORTGAGE PRACTICES ACT; DEFINING TERMS; ESTABLISHING POWERS AND DUTIES OF THE DIVISION OF REAL ESTATE; CREATING THE RESIDENTIAL MORTGAGE REGULATORY COMMISSION; PROVIDING SCOPE OF CHAPTER; REQUIRING REGISTRATION; PROVIDING GRANDFATHERING; PROVIDING EXEMPTIONS; PROVIDING REGISTRATION QUALIFICATIONS AND PROCEDURES; ADDRESSING OPERATIONAL RESTRICTIONS; REQUIRING RECORDKEEPING; PROVIDING FOR INVESTIGATIONS; PROVIDING FOR ENFORCEMENT; MAKING TECHNICAL CHANGES; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

61-2-5, as last amended by Chapter 146, Laws of Utah 1993

ENACTS:

61-2c-101, Utah Code Annotated 1953

61-2c-102, Utah Code Annotated 1953

61-2c-103, Utah Code Annotated 1953

61-2c-104, Utah Code Annotated 1953

61-2c-105, Utah Code Annotated 1953

61-2c-106, Utah Code Annotated 1953

61-2c-201, Utah Code Annotated 1953

61-2c-202, Utah Code Annotated 1953

61-2c-203, Utah Code Annotated 1953

61-2c-204, Utah Code Annotated 1953

61-2c-205, Utah Code Annotated 1953

61-2c-301, Utah Code Annotated 1953

61-2c-302, Utah Code Annotated 1953

61-2c-401, Utah Code Annotated 1953

61-2c-402, Utah Code Annotated 1953

61-2c-403, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **61-2-5** is amended to read:

61-2-5. Division of Real Estate created -- Functions -- Director appointed -- Functions.

(1) There is created within the Department of Commerce a Division of Real Estate. It is responsible for the administration and enforcement of:

(a) this chapter;

~~[(b) the Real Estate Education, Research, and Recovery Fund under Title 61, Chapter 2a;]~~

~~[(c)]~~ (b) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;

~~[(d)]~~ (c) Title 57, Chapter 19, Timeshare and Camp Resort Act;

~~[(e)]~~ (d) Title 57, Chapter 23, Real Estate Cooperative Marketing Act; ~~[and]~~

(e) Chapter 2a, Real Estate Education, Research, and Recovery Fund;

(f) ~~[Title 61,]~~ Chapter 2b, Real Estate Appraiser ~~[Registration]~~ Licensing and Certification Act~~[-]; and~~

(g) Chapter 2c, Utah Residential Mortgage Practices Act.

(2) The division is under the direction and control of a director appointed by the executive director of the department with the approval of the governor. The director holds ~~[his]~~ the office of director at the pleasure of the governor.

(3) The director, with the approval of the executive director, may employ personnel necessary to discharge the duties of the division at salaries to be fixed by the director according to standards established by the Department of Administrative Services.

(4) On or before October 1 of each year, the director shall, in conjunction with the department, report to the governor and the Legislature concerning the division's work for the preceding fiscal year ending June 30.

(5) The director, in conjunction with the executive director, shall prepare and submit to the

governor and the Legislature a budget for the fiscal year next following the convening of the Legislature.

Section 2. Section **61-2c-101** is enacted to read:

CHAPTER 2c. UTAH RESIDENTIAL MORTGAGE PRACTICES ACT

Part 1. General Provisions

61-2c-101. Title.

This chapter is known as the "Utah Residential Mortgage Practices Act."

Section 3. Section **61-2c-102** is enacted to read:

61-2c-102. Definitions.

As used in this chapter:

(1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person.

(2) "Applicant" means a person applying for registration under this chapter.

(3) "Business of residential mortgage loans" means for compensation to:

(a) make or originate a residential mortgage loan;

(b) directly or indirectly solicit, process, place, or negotiate a residential mortgage loan for another; or

(c) render services related to the origination, processing, or funding of a residential mortgage loan including:

(i) taking applications;

(ii) obtaining verifications and appraisals; and

(iii) communicating with the borrower and lender.

(4) "Commission" means the Residential Mortgage Regulatory Commission created in

Section 61-2c-104.

(5) "Compensation" means anything of economic value that is paid, loaned, granted, given, donated, or transferred to a person for or in consideration of:

(a) services;

(b) personal or real property; or

(c) other thing of value.

(6) "Control" means the power, directly or indirectly, to:

(a) direct or exercise a controlling influence over:

(i) the management or policies of an entity; or

(ii) the election of a majority of the directors or managing partners of an entity;

(b) vote 20% or more of any class of voting securities of an entity by an individual; or

(c) vote more than 5% of any class of voting securities of an entity by a person other than an individual.

(7) "Depository institution" is as defined in Section 7-1-103.

(8) "Director" means the director of the division.

(9) "Division" means the Division of Real Estate.

(10) "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.

(11) "Executive director" means the executive director of the Department of Commerce.

(12) "Record" means information that is:

(a) prepared, owned, received, or retained by a person; and

(b) (i) inscribed on a tangible medium; or

(ii) (A) stored in an electronic or other medium; and

(B) retrievable in perceivable form.

(13) "Residential mortgage loan" means a loan or extension of credit, if:

(a) the loan or extension of credit is secured by a:

(i) mortgage;

(ii) deed of trust; or

(iii) lien interest; and

(b) the mortgage, deed of trust, or lien interest described in Subsection (13)(a):

(i) is on a dwelling located in the state; and

(ii) created with the consent of the owner of the residential real property.

(14) "State" means:

(a) a state, territory, or possession of the United States;

(b) the District of Columbia; or

(c) the Commonwealth of Puerto Rico.

Section 4. Section **61-2c-103** is enacted to read:

61-2c-103. Powers and duties of the division.

(1) The division shall administer this chapter.

(2) In addition to any power or duty expressly provided in this chapter, the division may:

(a) receive and act on complaints including:

(i) taking action designed to obtain voluntary compliance with this chapter; or

(ii) commencing administrative or judicial proceedings on the division's own initiative;

(b) establish programs for the education of consumers with respect to residential mortgage loans;

(c) (i) make 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;

and

(d) employ any necessary hearing examiners, investigators, clerks, and other employees and agents.

(3) The division shall make rules when authorized by this chapter in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(4) (a) The division shall make available to the public a list of the names and addresses of all persons registered under this chapter.

(b) The division may charge a fee established by the division in accordance with Section 63-38-3.2 for obtaining the list described in Subsection (4)(a).

Section 5. Section **61-2c-104** is enacted to read:

61-2c-104. Residential Mortgage Regulatory Commission.

(1) There is created within the division the Residential Mortgage Regulatory Commission consisting of:

(a) the following members appointed by the executive director with the approval of the governor:

(i) two members having at least three years of experience in transacting the business of residential mortgage loans; and

(ii) two members from the general public; and

(b) the commissioner of the Department of Financial Institutions or the commissioner's designee.

(2) (a) Except as required by Subsection (2)(b), the executive director shall appoint each 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 replacement shall be appointed for the unexpired term.

(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) The action of a majority of a quorum present is an action of the commission.

(6) (a) (i) Members who are not government employees shall receive no compensation or

benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) Members who are not government employees may decline to receive per diem and expenses for their service.

(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the commission at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) State government officer and employee members may decline to receive per diem and expenses for their service.

(7) The commission shall:

(a) concur in the registration of persons under this chapter in accordance with Part 2;

(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.

Section 6. Section **61-2c-105** is enacted to read:

61-2c-105. Scope of chapter.

(1) (a) 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 (1)(a)

through (c) including:

(i) the Utah Housing Finance Agency created in Title 9, Chapter 4, Part 9, Utah Housing Finance Agency Act;

(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 Department of Veterans Affairs;

(e) a depository institution;

(f) an affiliate of a depository institution;

(g) an employee or agent of an entity described in Subsections (2)(a) through (f) when that person acts on behalf of the entity described in Subsections (2)(a) through (f);

(h) a person:

(i) who 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) a person who receives a mortgage, deed of trust, or lien interest on real property if the person:

(i) is the seller of real property; and

(ii) receives the mortgage, deed of trust, or lien interest on real property as security for a separate money obligation;

- (j) a person who receives a mortgage, deed of trust, or lien interest on real property if:
- (i) the person receives the mortgage, deed of trust, or lien 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 lien interest; and
 - (iii) the mortgage, deed of trust, or lien interest was created without the consent of the owner of the real property that is the subject of the mortgage, deed of trust, or lien interest;
- (k) a nonprofit corporation that:
- (i) is exempt from paying federal income taxes;
 - (ii) is certified by the United States Small Business Administration as a small business investment company;
 - (iii) is organized to promote economic development in this state; and
 - (iv) has as its primary activity providing financing for business expansion;
- (l) a court appointed fiduciary; or
- (m) 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; and
 - (ii) when the attorney renders services in the course of the attorney's practice as an attorney.
- (3) (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 (3)(a), the attorney:
- (i) is not subject to enforcement by the division under Part 4, Enforcement; and
 - (ii) is 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 (3)(a), the division shall forward the complaint to the Utah State Bar for

disciplinary action.

Section 7. Section **61-2c-106** is enacted to read:

61-2c-106. Addresses provided the division.

(1) In providing an address to the division under this chapter, a physical location or street address shall be provided.

(2) A person registered under this chapter will be considered to have received any notification that is mailed to the last address furnished to the division by the person registered under this chapter.

Section 8. Section **61-2c-201** is enacted to read:

Part 2. Registration

61-2c-201. Registration required for persons engaged in the business of residential mortgage loans -- Grandfathering.

(1) A person may not transact the business of residential mortgage loans in this state unless that person is:

(a) registered under this chapter; or

(b) exempt from this chapter under Section 61-2c-105.

(2) For purposes of this chapter, a person transacts business in this state if:

(a) (i) the person engages in an act that constitutes the business of residential mortgage loans; and

(ii) (A) the act described in Subsection (2)(a)(i) is directed to or received in this state; or (B) the real property that is the subject of the act described in Subsection (2)(a)(i) is located in this state; or

(b) that person represents that the person transacts the business of residential mortgage loans in this state.

(3) Unless otherwise exempted under this chapter, registration 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 another person, the person for which the individual transacts the business of residential mortgage loans.

- (4) (a) Notwithstanding Subsection (1), a person described in Subsection (4)(b):
 - (i) is not required to be registered under this chapter until July 1, 2001; and
 - (ii) notwithstanding Subsection (4)(a)(i), on or after July 1, 2000, is subject to Parts 3 and

4.

(b) Subsection (4)(a) applies to a person that as of July 1, 2000, has:

- (i) filed written notification with the Department of Financial Institutions under Title 70D, Chapter 1, Mortgage Lending and Servicing Act; and
- (ii) paid the required fees to the Department of Financial Institutions in accordance with Section 70D-1-10.

Section 9. Section **61-2c-202** is enacted to read:

61-2c-202. Registration procedures.

(1) To apply for registration under this chapter a person shall:

(a) submit to the division a registration statement that:

- (i) lists any name under which the person will transact business in this state;
- (ii) the address of the principal business location of the person;
- (iii) if the person is not an individual, lists the persons that exercise control of that person;
- (iv) demonstrates to the satisfaction of the division with the concurrence of the commission

that the person meets the qualifications listed in Section 61-2c-203; and

(v) includes any information required by the division by rule;

(b) pay to the division:

- (i) an application fee established by the division in accordance with Section 63-38-3.2; and
- (ii) the reasonable expenses incurred in processing the application for registration including

the costs incurred by the division under Subsection (4);

(c) meet the requirements under Section 61-2c-204 for:

- (i) obtaining a surety bond;
- (ii) depositing assets; or
- (iii) providing a letter of credit; and
- (d) comply with Subsection (4).

(2) The division, with the concurrence of the commission, shall grant a registration to a person if the division finds that the person:

- (a) meets the qualifications of Sections 61-2c-203 and 61-2c-204; and
- (b) complies with this section.

(3) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, a person who is denied registration under this chapter may submit a request for agency review to the executive director within 30 days following the issuance of the order denying the registration.

(4) (a) An individual applying for registration under this chapter or any individual exercising control over the person applying for registration under this section shall:

(i) submit a fingerprint card in a form acceptable to the division at the time the registration statement is filed; and

(ii) consent to a fingerprint background check by:

- (A) the Utah Bureau of Criminal Identification; and
- (B) the Federal Bureau of Investigation.

(b) The division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for each person applying for registration under this chapter through a national criminal history system.

(c) The person applying for registration shall pay the cost of:

- (i) the fingerprinting required by this section; and
- (ii) the background check required by this section.

(d) (i) A registration under this chapter is conditional pending completion of the criminal background check required by this Subsection (4).

(ii) If a criminal background check discloses that the person applying for registration failed to accurately disclose a criminal history, the registration shall be immediately and automatically revoked.

(iii) A person whose conditional registration is revoked under Subsection (4)(d)(ii) may appeal the revocation in a hearing conducted:

- (A) after the revocation; and

(B) in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

Section 10. Section **61-2c-203** is enacted to read:

61-2c-203. Qualifications for registration.

(1) To qualify for registration under this chapter, an individual shall:

(a) have good moral character and the competency to transact the business of residential mortgage loans;

(b) not have been convicted of a felony or misdemeanor involving moral turpitude in the five years preceding the date the individual applies for registration;

(c) not have had a license or registration suspended, revoked, surrendered, canceled, or denied in the five years preceding the date the individual applies for registration if:

(i) the registration or license is issued by this state or another jurisdiction; and

(ii) the suspension, revocation, surrender, cancellation, or denial is based on misconduct in a professional capacity that relates to good moral character or the competency to transact the business of residential mortgage loans.

(2) If the person is not an individual, to qualify for registration under this chapter the person shall:

(a) at all times during the term of the registration, have at least one of the following meet the requirements of Subsection (1)(a):

(i) a managing partner;

(ii) a director;

(iii) an executive officer; or

(iv) an individual occupying a position or performing functions similar to those described in Subsections (2)(a)(i) through (iii); and

(b) not have a person that exercises control of the person registered under this chapter:

(i) have been convicted of a felony or misdemeanor involving moral turpitude in the five years preceding the date the person applies for registration; or

(ii) have had a license or registration suspended, revoked, surrendered, canceled, or denied in the five years preceding the date the person applies for registration if:

(A) the registration or license is issued by this state or another jurisdiction; and

(B) the suspension, revocation, surrender, cancellation, or denial is based on misconduct in a professional capacity that relates to good moral character or the competency to transact the business of residential mortgage loans.

(3) (a) If a person described in Subsection (3)(b) provides evidence satisfactory to the division with the concurrence of the commission that the person has good moral character and the competency to transact the business of residential mortgage loans, notwithstanding Subsections (1) and (2) and Section 61-2c-402, the division may permit that person to be registered under this chapter.

(b) Subsection (3)(a) applies to a person that meets the qualifications for registration except that the person or a person that exercises control of the person:

(i) has been convicted of a felony or misdemeanor involving moral turpitude in the five years preceding the date the person applies for registration; or

(ii) has had a license or registration suspended, revoked, surrendered, canceled, or denied in the five years preceding the date the person applies for registration if:

(A) the registration or license is issued by this state or another jurisdiction; and

(B) the suspension, revocation, surrender, cancellation, or denial is based on misconduct in a professional capacity that relates to good moral character or the competency to transact the business of residential mortgage loans.

Section 11. Section **61-2c-204** is enacted to read:

61-2c-204. Requirements for bonding, letter of credit, or deposit of assets.

(1) If an applicant is an individual, the applicant shall:

(a) file with the division a surety bond:

(i) that meets the requirements of Subsection (3); and

(ii) in the amount not less than \$10,000; or

(b) demonstrate to the satisfaction of the division that:

(i) the applicant is an employee or agent of a person registered under this chapter; and

(ii) the acts of the applicant are covered by a surety bond filed with the division under

Subsection (2) by a person registered under this chapter for which the applicant is an employee or agent.

(2) If the applicant is not an individual, the applicant shall file with the division a surety bond:

(a) that meets the requirements of Subsection (4); and

(b) in an amount not less than \$25,000.

(3) A surety bond filed under this section shall name as beneficiaries:

(a) the state, for payment of costs incurred and charges made in connection with an enforcement action under Part 4 against the applicant including costs and charges relating to an examination or investigation; and

(b) after all claims and charges of the state have been paid in full, any person who has a claim against the surety on the bond based on any default or violation of any duty or obligation of the applicant.

(4) If an applicant is not an individual, a surety bond filed under this section shall:

(a) comply with Subsection (3); and

(b) cover the acts of:

(i) the person registered under this chapter;

(ii) any person exercising control of the person registered under this chapter; and

(iii) any agent or employee of the person registered under this chapter.

(5) If an individual registered under this chapter does not file a surety bond under this section because at the time of applying for registration that person met the requirements of Subsection (1)(b), the individual shall post a surety bond meeting the requirements of Subsections (1) and (3) by no later than 30 days from the day on which the person is not covered by a surety bond in accordance with Subsection (1)(b).

(6) Notwithstanding the other provisions of this section, an applicant can comply with the requirements of this section, if the applicant deposits assets with or provides a letter of credit to the division:

(a) in the amounts required for a surety bond; and

(b) subject to the same surety conditions of Subsections (3) and (4).

Section 12. Section **61-2c-205** is enacted to read:

61-2c-205. Term of registration -- Renewal -- Reporting of changes.

(1) (a) A registration under this chapter is valid for a two-year period.

(b) Notwithstanding Subsection (1)(a), the time period of a registration 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 registration, no later than 30 days before the date the registration expires, a person registered under this chapter shall:

(a) file a registration statement meeting the requirements of Section 61-2c-202; and

(b) pay a fee to the division established by the division in accordance with Section 63-38-3.2.

(3) (a) A person registered under this chapter shall amend its registration statement filed with the division within ten days of the date on which there is a change in:

(i) a name under which the person transacts the business of residential mortgage loans in this state;

(ii) the address of the principal business location of the person;

(iii) if the person is not an individual, the persons who exercise control of the person registered under this chapter; or

(iv) 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 person registered under this chapter.

(4) A person licensed under this chapter shall notify the division in writing within ten business days of:

(a) a conviction of any criminal offense; or

(b) filing a personal bankruptcy or bankruptcy of a business that transacts the business of residential mortgage loans.

Section 13. Section **61-2c-301** is enacted to read:

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) give or receive compensation or anything of value in exchange for a referral of residential mortgage loan business unless the compensation or thing of value is de minimis as defined by the division;

(b) charge a fee in connection with a residential mortgage loan transaction:

(i) that is excessive; or

(ii) if the person does not comply with Section 70D-1-6;

(c) give or receive compensation or anything of value in exchange for a referral of settlement or loan closing services related to a residential mortgage loan transaction;

(d) make a false statement or representation for purposes of inducing a lender to extend credit as part of a residential mortgage loan transaction;

(e) give or receive compensation or anything of value to influence the independent judgment of an appraiser in reaching a value conclusion in a residential mortgage loan transaction;

(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 registration statement;

(i) engage in unprofessional conduct as defined by rule; or

(j) engage in an act or omission in transacting the business of residential mortgage loans that constitutes dishonesty, fraud, or misrepresentation.

(2) A person violates this chapter if, for a criminal offense involving moral turpitude, whether or not the crime is related to the business of residential mortgage loans, that person while registered under this chapter:

(a) is convicted;

(b) pleads guilty or nolo contendere;

(c) enters a plea in abeyance; or

(d) is subjected to a criminal disposition similar to the ones described in Subsections (2)(a) through (c).

Section 14. Section **61-2c-302** is enacted to read:

61-2c-302. Record requirements.

(1) For the time period specified in Subsection (2), a person registered under this chapter shall make or possess any record required for that person by a rule made by the division.

(2) A person registered under this chapter shall maintain in its possession a record described in Subsection (1) until the later of 25 months from the date:

(a) the final entry on a residential mortgage loan is made by that person;

(b) if the residential mortgage loan is serviced by the person:

(i) the residential mortgage loan is paid in full; or

(ii) the person ceases to service the residential mortgage loan; or

(c) if the residential mortgage loan is not serviced by the person, the residential mortgage loan is closed.

Section 15. Section **61-2c-401** is enacted to read:

Part 4. Enforcement

61-2c-401. Investigations -- Subpoena power of division.

(1) The division may investigate or cause to be investigated the actions of:

(a) a person registered under this chapter;

(b) a person applying for registration under this chapter; or

(c) a person who transacts the business of residential mortgage loans within this state.

(2) In conducting an investigation, the division may:

(a) subpoena witnesses;

(b) take evidence;

(c) require by subpoena duces tecum the production of books, papers, contracts, records, other documents, or information considered relevant to an investigation; and

(d) serve a subpoena by certified mail.

(3) A failure to respond to a subpoena served by the division is considered as a separate violation of this chapter.

Section 16. Section **61-2c-402** is enacted to read:

61-2c-402. Disciplinary action.

(1) Subject to the requirements of this section, if a person required to be registered under this chapter violates this chapter, the commission with the concurrence of the director, may:

(a) impose a civil penalty against the person in an amount not to exceed \$500 per violation;

(b) do any of the following to a registration under this chapter:

(i) suspend;

(ii) revoke;

(iii) place on probation;

(iv) deny renewal; or

(v) deny reinstatement; or

(c) do both Subsections (1)(a) and (b).

(2) (a) Before the commission may take an action described in Subsection (1) against a person required to be registered under this chapter, the division shall:

(i) give notice to that person; and

(ii) schedule an adjudicative proceeding.

(b) If after the adjudicative proceeding scheduled under Subsection (2)(a), the commission determines that a person required to be registered under this section has violated this chapter, the commission may take an action described in Subsection (1):

(i) by written order of the commission; and

(ii) with the concurrence of the director.

(3) (a) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, a person against whom disciplinary action is taken under this section may seek review by the executive director of the disciplinary action.

(b) If the person described in Subsection (3)(a) prevails in the appeal and the court finds that

the state action was undertaken without substantial justification, the court may award reasonable litigation expenses to that person as provided under Title 78, Chapter 27a, 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 registered under this chapter, the division may stay enforcement of the commission's order in accordance with Section 63-46b-18.

(5) If ordered by the court of competent jurisdiction, the division shall promptly take an action described in Subsection (1)(b) against a registration granted under this chapter.

(6) (a) If a person's registration under this chapter is revoked, the person may have its registration reinstated by complying with the requirements of Section 61-2c-202 for registration.

(b) Notwithstanding Subsection (6)(a), if a person's registration under this chapter is revoked, that person may not apply for reinstatement of the registration sooner than five years after the date the registration is revoked in accordance with this section.

Section 17. Section **61-2c-403** is enacted to read:

61-2c-403. Cease and desists.

(1) (a) The director may issue and serve on a person an order to cease and desist if:

(i) the director has reason to believe that a person has been or is engaging in acts constituting a violation of this chapter; and

(ii) it appears to the director that it would be in the public interest to stop the acts.

(b) Within ten days after receiving the order, the person on whom the order is served may request an adjudicative proceeding to be held in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

(c) Pending the hearing, the cease and desist order shall remain in effect.

(2) (a) After the hearing described in Subsection (1), if the commission with the concurrence of the director finds that the acts of the person violate this chapter, the director shall issue an order making the cease and desist order permanent.

(b) (i) The director shall 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 did 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 acts; or

(II) after discontinuing the acts, the person again commences the acts.

(ii) The suit described in Subsection (2)(b)(i) shall be filed in the district court in the county:

(A) in which the acts occurred;

(B) where the person resides; or

(C) where the person 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) A person who violates a cease and desist order issued under this section is guilty of a class A misdemeanor.

Section 18. Effective date.

This act takes effect on July 1, 2000.