

**MORTGAGE PRACTICES ACT AMENDMENTS**

2001 GENERAL SESSION

STATE OF UTAH

**Sponsor: Gerry A. Adair**

**This act modifies the Mortgage Lending and Servicing Act and the Utah Residential Mortgage Practices Act. The act exempts persons who are registered under the Residential Mortgage Practices Act from certain notification and registration requirements under the Mortgage Lending and Servicing Act. The act amends the definition of business of residential mortgage loans.**

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

AMENDS:

**61-2c-102**, as enacted by Chapter 329, Laws of Utah 2000

**70D-1-10**, as enacted by Chapter 172, Laws of Utah 1990

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

Section 1. Section **61-2c-102** is amended 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) (a) "Business of residential mortgage loans" means for compensation to:

~~[(a)]~~ (i) make or originate a residential mortgage loan;

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

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

~~[(i)]~~ (A) taking applications;

~~[(ii)]~~ (B) obtaining verifications and appraisals; and

~~[(iii)]~~ (C) communicating with the borrower and lender.

(b) "Business of residential mortgage loans" does not include the performance of clerical functions such as:

(i) gathering information related to a residential mortgage loan on behalf of the prospective borrower or a person registered under this chapter; or

(ii) requesting or gathering information, word processing, sending correspondence, or assembling files by an individual who works under the instruction of a person registered under this chapter.

(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 2. Section **70D-1-10** is amended to read:

**70D-1-10. Notification of department -- Exemptions.**

(1) Except as provided in Subsection (2), no person may engage in the business of making mortgage loans nor may any person engage in the business of being a mortgage loan broker or servicer, without first filing written notification with the department and paying the fees required by this chapter.

(2) The following persons are exempt from the notification requirements contained in this chapter and from the annual fee imposed in Subsection 70D-1-12(1):

(a) all persons authorized under Utah law or under federal law to do business as a depository institution in this state; [~~and~~]

(b) all wholly-owned subsidiaries of depository institutions described in Subsection (2)(a)[~~;~~];  
and

(c) all persons required to register with the Utah Division of Real Estate pursuant to Title 61, Chapter 2c, Utah Residential Mortgage Practices Act.