

MORTGAGE PRACTICES ACT REVISIONS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Gerry A. Adair

This act amends the Utah Residential Mortgage Practices Act ^h and the Mortgage Lending and Servicing Act ^h . The act adds definitions and

replaces certain terms. The act clarifies the division's rulemaking authority. The act deletes expired provisions and simplifies certain others. The act clarifies standards for

reinstatement of the registration of an individual or entity whose registration has been

revoked. The act makes it discretionary for the director to file suit against violators who do

not seek an adjudicative hearing or against whom a permanent cease and desist order has

been issued in agency action. ^h The act clarifies an exemption under the Mortgage Lending and

Servicing Act which references the Utah Residential Mortgage Practices Act. ^h

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

AMENDS:

61-2c-102, as last amended by Chapter 347, Laws of Utah 2001

61-2c-103, as enacted by Chapter 329, Laws of Utah 2000

61-2c-104, as enacted by Chapter 329, Laws of Utah 2000

61-2c-105, as enacted by Chapter 329, Laws of Utah 2000

61-2c-106, as enacted by Chapter 329, Laws of Utah 2000

61-2c-201, as enacted by Chapter 329, Laws of Utah 2000

61-2c-202, as enacted by Chapter 329, Laws of Utah 2000

61-2c-203, as enacted by Chapter 329, Laws of Utah 2000

61-2c-204, as enacted by Chapter 329, Laws of Utah 2000

61-2c-205, as enacted by Chapter 329, Laws of Utah 2000

61-2c-301, as enacted by Chapter 329, Laws of Utah 2000

61-2c-302, as enacted by Chapter 329, Laws of Utah 2000

61-2c-401, as enacted by Chapter 329, Laws of Utah 2000

61-2c-402, as enacted by Chapter 329, Laws of Utah 2000



28 **61-2c-403**, as enacted by Chapter 329, Laws of Utah 2000

28a **§ 70D-1-10**, as last amended by Chapter 347, Laws of Utah 2001 **§**

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

30 Section 1. Section **61-2c-102** is amended to read:

31 **61-2c-102. Definitions.**

32 As used in this chapter:

33 (1) "Affiliate" means [~~a person~~] an individual or an entity that directly, or indirectly
34 through one or more intermediaries, controls or is controlled by, or is under common control with,
35 a specified [~~person~~] individual or entity.

36 (2) "Applicant" means [~~a person~~] an individual or entity applying for registration under
37 this chapter.

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

39 (i) make or originate a residential mortgage loan;

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

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

44 (A) taking applications;

45 (B) obtaining verifications and appraisals; and

46 (C) communicating with the borrower and lender.

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

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

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

54 (4) "Closed-end" means a loan with a fixed amount borrowed and which does not permit
55 additional borrowing secured by the same collateral.

56 [~~(4)~~] (5) "Commission" means the Residential Mortgage Regulatory Commission created
57 in Section 61-2c-104.

58 [~~(5)~~] (6) "Compensation" means anything of economic value that is paid, loaned, granted,

59 given, donated, or transferred to ~~[a person]~~ an individual or entity for or in consideration of:

60 (a) services;

61 (b) personal or real property; or

62 (c) other thing of value.

63 ~~[(6)]~~ (7) "Control" means the power, directly or indirectly, to:

64 (a) direct or exercise a controlling influence over:

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

66 (ii) the election of a majority of the directors, officers, managers, or managing partners of

67 an entity;

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

69 (c) vote more than 5% of any class of voting securities of an entity by ~~[a person other than~~

70 ~~an individual]~~ another entity.

71 (8) "Control Person" means any individual or entity which directly manages or controls

72 another entity's transaction of the business of residential mortgage loans secured by Utah

73 dwellings.

74 ~~[(7)]~~ (9) "Depository institution" is as defined in Section 7-1-103.

75 ~~[(8)]~~ (10) "Director" means the director of the division.

76 ~~[(9)]~~ (11) "Division" means the Division of Real Estate.

77 ~~[(10)]~~ (12) "Dwelling" means a residential structure attached to real property that contains

78 one to four units including any of the following if used as a residence:

79 (a) a condominium unit;

80 (b) a cooperative unit;

81 (c) a manufactured home; or

82 (d) a house.

83 (13) "Entity" means any corporation, limited liability company, partnership, company,

84 association, joint venture, business trust, trust, or other organization.

85 ~~[(11)]~~ (14) "Executive director" means the executive director of the Department of

86 Commerce.

87 ~~[(12)]~~ (15) "Record" means information that is:

88 (a) prepared, owned, received, or retained by ~~[a person]~~ an individual or entity; and

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

- 90 (ii) (A) stored in an electronic or other medium; and
- 91 (B) retrievable in perceivable form.

92 (16) "Registrant" means an individual or entity registered with the division under this
 93 chapter.

94 [~~(13)~~] (17) "Residential mortgage loan" means a closed-end, first mortgage loan or
 95 extension of credit, if:

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

- 97 (i) mortgage;
- 98 (ii) deed of trust; or
- 99 (iii) lien interest; and

100 (b) the mortgage, deed of trust, or lien interest described in Subsection [~~(13)~~] (17)(a):

- 101 (i) is on a dwelling located in the state; and
- 102 (ii) created with the consent of the owner of the residential real property.

103 [~~(14)~~] (18) "State" means:

- 104 (a) a state, territory, or possession of the United States;
- 105 (b) the District of Columbia; or
- 106 (c) the Commonwealth of Puerto Rico.

107 Section 2. Section **61-2c-103** is amended to read:

108 **61-2c-103. Powers and duties of the division.**

- 109 (1) The division shall administer this chapter.
- 110 (2) In addition to any power or duty expressly provided in this chapter, the division may:
 - 111 (a) receive and act on complaints including:
 - 112 (i) taking action designed to obtain voluntary compliance with this chapter; or
 - 113 (ii) commencing administrative or judicial proceedings on the division's own initiative;
 - 114 (b) establish programs for the education of consumers with respect to residential mortgage
 115 loans;
 - 116 (c) (i) make studies appropriate to effectuate the purposes and policies of this chapter; and
 117 (ii) make the results of the studies described in Subsection (2)(c)(i) available to the public;
 - 118 and
 - 119 (d) employ any necessary hearing examiners, investigators, clerks, and other employees
 120 and agents.

121 (3) The division shall make rules [~~when authorized by this chapter~~] for the administration
122 of this chapter in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act[-],
123 including:

124 (a) registration procedures for individuals and entities required by this chapter to register
125 with the division;

126 (b) proper handling of funds received by registrants;

127 (c) record-keeping requirements by registrants; and

128 (d) standards of conduct for registrants.

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

131 (b) The division may charge a fee established by the division in accordance with Section
132 63-38-3.2 for obtaining the list described in Subsection (4)(a).

133 Section 3. Section **61-2c-104** is amended to read:

134 **61-2c-104. Residential Mortgage Regulatory Commission.**

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

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

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

141 (ii) two members from the general public; and

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

144 (2) (a) Except as required by Subsection (2)(b), the executive director shall appoint each
145 new member or reappointed member subject to appointment by the executive director to a
146 four-year term ending June 30.

147 (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall,
148 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of
149 commission members are staggered so that approximately half of the commission is appointed
150 every two years.

151 (c) If a vacancy occurs in the membership of the commission for any reason, the

152 replacement shall be appointed for the unexpired term.

153 (3) Members of the commission shall annually select one member to serve as chair.

154 (4) (a) The commission shall meet at least quarterly.

155 (b) The director may call a meeting in addition to the meetings required by Subsection

156 (4)(a):

157 (i) at the discretion of the director;

158 (ii) at the request of the chair of the commission; or

159 (iii) at the written request of three or more commission members.

160 (5) (a) Three members of the commission constitute a quorum for the transaction of
161 business.

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

163 (6) (a) (i) Members who are not government employees shall receive no compensation or
164 benefits for their services, but may receive per diem and expenses incurred in the performance of
165 the member's official duties at the rates established by the Division of Finance under Sections
166 63A-3-106 and 63A-3-107.

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

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

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

175 (7) The commission shall:

176 (a) concur in the registration [~~of persons~~] or denial of registration of individuals and entities
177 under this chapter in accordance with Part 2, Registration;

178 (b) take disciplinary action with the concurrence of the director in accordance with Part
179 4, Enforcement; and

180 (c) advise the division concerning matters related to the administration and enforcement
181 of this chapter.

182 Section 4. Section **61-2c-105** is amended to read:

183 **61-2c-105. Scope of chapter.**

184 (1) (a) This chapter applies to a closed-end residential mortgage loan secured by a first lien
185 or equivalent security interest on a dwelling.

186 (b) This chapter does not apply to a transaction covered by Title 70C, Utah Consumer
187 Credit Code.

188 (2) The following are exempt from this chapter:

189 (a) the federal government;

190 (b) a state;

191 (c) a political subdivision of a state;

192 (d) an agency of or entity created by a governmental entity described in Subsections (2)(a)
193 through (c) including:

194 (i) the Utah Housing Finance Agency created in Title 9, Chapter 4, Part 9, Utah Housing
195 [~~Finance Agency~~] Corporation Act;

196 (ii) the Federal National Mortgage Corporation;

197 (iii) the Federal Home Loan Mortgage Corporation;

198 (iv) the Federal Deposit Insurance Corporation;

199 (v) the Resolution Trust Corporation;

200 (vi) the Government National Mortgage Association;

201 (vii) the Federal Housing Administration;

202 (viii) the National Credit Union Administration;

203 (ix) the Farmers Home Administration; and

204 (x) the Department of Veterans Affairs;

205 (e) a depository institution;

206 (f) an affiliate of a depository institution;

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

209 (h) [~~a person~~] an individual or entity:

210 (i) [~~who~~] that makes a loan:

211 (A) secured by an interest in real property;

212 (B) with the [~~person's~~] individual's or the entity's own money; and

213 (C) for the [~~person's~~] individual's or entity's own investment; and

214 (ii) that does not engage in the business of making loans secured by an interest in real
215 property;

216 (i) ~~[a person]~~ an individual or entity who receives a mortgage, deed of trust, or lien interest
217 on real property if the ~~[person]~~ individual or entity:

218 (i) is the seller of real property; and

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

221 (j) ~~[a person]~~ an individual or entity who receives a mortgage, deed of trust, or lien interest
222 on real property if:

223 (i) the ~~[person]~~ individual or entity receives the mortgage, deed of trust, or lien interest
224 as security for an obligation payable on an installment or deferred payment basis;

225 (ii) the obligation described in Subsection (2)(j)(i) arises from ~~[a person]~~ an individual
226 or entity providing materials or services used in the improvement of the real property that is the
227 subject of the mortgage, deed of trust, or lien interest; and

228 (iii) the mortgage, deed of trust, or lien interest was created without the consent of the
229 owner of the real property that is the subject of the mortgage, deed of trust, or lien interest;

230 (k) a nonprofit corporation that:

231 (i) is exempt from paying federal income taxes;

232 (ii) is certified by the United States Small Business Administration as a small business
233 investment company;

234 (iii) is organized to promote economic development in this state; and

235 (iv) has as its primary activity providing financing for business expansion;

236 (l) a court appointed fiduciary; or

237 (m) an attorney admitted to practice law in this state:

238 (i) if the attorney is not principally engaged in the business of negotiating residential
239 mortgage loans; and

240 (ii) when the attorney renders services in the course of the attorney's practice as an
241 attorney.

242 (3) (a) Notwithstanding Subsection (2)(m), an attorney exempt from this chapter may not
243 engage in conduct described in Section 61-2c-301 when transacting business of residential
244 mortgage loans.

245 (b) If an attorney exempt from this chapter violates Subsection (3)(a), the attorney:
246 (i) is not subject to enforcement by the division under Part 4, Enforcement; and
247 (ii) is subject to disciplinary action generally applicable to an attorney admitted to practice
248 law in this state.

249 (c) If the division receives a complaint alleging an attorney exempt from this chapter is in
250 violation of Subsection (3)(a), the division shall forward the complaint to the Utah State Bar for
251 disciplinary action.

252 Section 5. Section **61-2c-106** is amended to read:

253 **61-2c-106. Addresses provided the division.**

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

256 (2) ~~[A person]~~ An individual or entity registered under this chapter will be considered to
257 have received any notification that is mailed to the last address furnished to the division by the
258 individual, or by a control person of the entity, registered under this chapter.

259 Section 6. Section **61-2c-201** is amended to read:

260 **61-2c-201. Registration required of individuals and entities engaged in the business**
261 **of residential mortgage loans.**

262 (1) ~~[A person]~~ Unless exempt from this chapter under Section 61-2c-105, an individual
263 or entity may not transact the business of residential mortgage loans ~~[in this state unless that person~~
264 ~~is: (a) registered], as defined in Section 61-2c-102, without registering under this chapter[; or].~~

265 ~~[(b) exempt from this chapter under Section 61-2c-105.]~~

266 (2) For purposes of this chapter, ~~[a person]~~ an individual or entity transacts business in
267 this state if:

268 (a) (i) the ~~[person]~~ individual or entity engages in an act that constitutes the business of
269 residential mortgage loans; and

270 (ii) (A) the act described in Subsection (2)(a)(i) is directed to or received in this state; ~~[or]~~
271 and

272 (B) the real property that is the subject of the act described in Subsection (2)(a)(i) is
273 located in this state; or

274 (b) ~~[that person represents that the person]~~ a representation is made by the individual or
275 entity that the individual or entity transacts the business of residential mortgage loans in this state.

276 (3) Unless otherwise exempted under this chapter, registration under this chapter is
 277 required of both:

278 (a) the individual who directly transacts the business of residential mortgage loans; and

279 (b) if the individual transacts business as an employee or agent of ~~[another person]~~ an
 280 entity or individual, the ~~[person]~~ entity or individual for ~~[which]~~ whom the ~~[individual]~~ employee
 281 or agent transacts the business of residential mortgage loans.

282 ~~[(4) (a) Notwithstanding Subsection (1), a person described in Subsection (4)(b):]~~

283 ~~[(i) is not required to be registered under this chapter until July 1, 2001; and]~~

284 ~~[(ii) notwithstanding Subsection (4)(a)(i), on or after July 1, 2000, is subject to Parts 3 and~~
 285 ~~4.]~~

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

287 ~~[(i) filed written notification with the Department of Financial Institutions under Title 70D,~~
 288 ~~Chapter 1, Mortgage Lending and Servicing Act, and]~~

289 ~~[(ii) paid the required fees to the Department of Financial Institutions in accordance with~~
 290 ~~Section 70D-1-10.]~~

291 Section 7. Section **61-2c-202** is amended to read:

292 **61-2c-202. Registration procedures.**

293 (1) To apply for registration under this chapter ~~[a person]~~ an individual or entity shall:

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

295 (i) lists any name under which the ~~[person]~~ individual or entity will transact business in
 296 this state;

297 (ii) lists the address of the principal business location of the ~~[person]~~ applicant;

298 (iii) if the ~~[person is not an individual]~~ applicant is an entity, lists the control persons ~~[that~~
 299 ~~exercise control]~~ of ~~[that person]~~ the applicant;

300 (iv) demonstrates to the satisfaction of the division with the concurrence of the
 301 commission that the ~~[person]~~ applicant meets the qualifications listed in Section 61-2c-203; and

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

303 (b) pay to the division:

304 (i) an application fee established by the division in accordance with Section 63-38-3.2; and

305 (ii) the reasonable expenses incurred in processing the application for registration

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

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

308 (i) obtaining a surety bond;

309 (ii) depositing assets; or

310 (iii) providing a letter of credit; and

311 (d) comply with Subsection (4).

312 (2) The division, with the concurrence of the commission, shall grant a registration to [~~a~~
313 ~~person~~] an applicant if the division finds that the [~~person~~] applicant:

314 (a) meets the qualifications of Sections 61-2c-203 and 61-2c-204; and

315 (b) complies with this section.

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

320 (4) (a) An individual applying for registration under this chapter [~~or~~] and any [~~individual~~
321 ~~exercising control over the person applying for registration under this section~~] control person of
322 the applicant shall:

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

325 (ii) consent to a fingerprint background check by:

326 (A) the Utah Bureau of Criminal Identification; and

327 (B) the Federal Bureau of Investigation.

328 (b) The division shall request the Department of Public Safety to complete a Federal
329 Bureau of Investigation criminal background check for each [~~person applying for registration under~~
330 ~~this chapter~~] applicant and each control person of an applicant through a national criminal history
331 system.

332 (c) The [~~person applying for registration~~] applicant shall pay the cost of:

333 (i) the fingerprinting required by this section; and

334 (ii) the background check required by this section.

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

337 (ii) If a criminal background check discloses that [~~the person applying for registration~~] an

338 applicant or an applicant's control person failed to accurately disclose a criminal history, the
339 registration shall be immediately and automatically revoked.

340 (iii) ~~[A person]~~ An individual or entity whose conditional registration is revoked under
341 Subsection (4)(d)(ii) may appeal the revocation in a hearing conducted:

342 (A) after the revocation; and

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

344 Section 8. Section **61-2c-203** is amended to read:

345 **61-2c-203. Qualifications for registration.**

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

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

349 (b) not have been convicted of a felony or misdemeanor involving moral turpitude in the
350 five years preceding the date the individual applies for registration, except as provided in
351 Subsection (3);

352 (c) not have had a license or registration suspended, revoked, surrendered, canceled, or
353 denied in the five years preceding the date the individual applies for registration, except as
354 provided in Subsection (3), if:

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

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

359 (2) ~~[If the person is not an individual, to]~~ To qualify for registration under this chapter ~~[the~~
360 ~~person shall: (a) at all times during the term of the registration, have at least one of the following]~~
361 an entity may not have:

362 (a) any of the following individuals in management who fails to meet the requirements of
363 Subsection (1)[(a)]:

364 (i) a manager or a managing partner;

365 (ii) a director;

366 (iii) an executive officer; or

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

369 (b) ~~[not have]~~ a control person ~~[that exercises control of the person registered under this~~
370 ~~chapter:]~~ who fails to meet the requirements of Subsection (1).

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

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

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

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

379 (3) ~~[(a)]~~ If ~~[a]~~ an individual or a control person ~~[described in Subsection (3)(b)]~~ of an
380 entity fails to meet the requirements of Subsection (1)(b) or (c), but otherwise meets the
381 qualifications for registration, and provides evidence satisfactory to the division with the
382 concurrence of the commission that the individual or control person has good moral character and
383 the competency to transact the business of residential mortgage loans, notwithstanding
384 ~~[Subsections (1) and (2) and Section 61-2c-402;]~~ the failure to meet the requirements of Subsection
385 (1)(b) or (c) the division may permit ~~[that person]~~ that individual or entity to be registered under
386 this chapter.

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

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

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

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

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

397 Section 9. Section **61-2c-204** is amended to read:

398 **61-2c-204. Requirements for bonding, letter of credit, or deposit of assets.**

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

400 (a) file with the division a surety bond:
401 (i) that meets the requirements of Subsection (3); and
402 (ii) in the amount not less than \$10,000; or
403 (b) demonstrate to the satisfaction of the division that:
404 (i) the applicant is an employee or agent of [~~a person~~] an entity registered under this
405 chapter; and
406 (ii) the acts of the applicant are covered by a surety bond filed with the division under
407 Subsection (2) by [~~a person~~] the entity registered under this chapter for which the applicant is an
408 employee or agent.
409 (2) If the applicant is [~~not~~] an [~~individual~~] entity, the applicant shall file with the division
410 a surety bond:
411 (a) that meets the requirements of Subsection (4); and
412 (b) in an amount not less than \$25,000.
413 (3) A surety bond filed under this section shall name as beneficiaries:
414 (a) the state, for payment of costs incurred and charges made in connection with an
415 enforcement action under Part 4, Enforcement, against the applicant including costs and charges
416 relating to an examination or investigation; and
417 (b) after all claims and charges of the state have been paid in full, any person who has a
418 claim against the surety on the bond based on any default or violation of any duty or obligation of
419 the applicant.
420 (4) If an applicant is [~~not~~] an [~~individual~~] entity, a surety bond filed under this section
421 shall:
422 (a) comply with Subsection (3); and
423 (b) cover the acts of:
424 (i) the [~~person~~] entity registered under this chapter;
425 (ii) any control person [~~exercising control~~] of the [~~person~~] entity registered under this
426 chapter; and
427 (iii) any agent or employee of the [~~person~~] entity registered under this chapter.
428 (5) If an individual registered under this chapter does not file a surety bond under this
429 section because at the time of applying for registration that person met the requirements of
430 Subsection (1)(b), the individual shall post a surety bond meeting the requirements of Subsections

431 (1) and (3) by no later than 30 days from the day on which the person is not covered by a surety
432 bond in accordance with Subsection (1)(b).

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

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

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

438 Section 10. Section **61-2c-205** is amended to read:

439 **61-2c-205. Term of registration -- Renewal -- Reporting of changes.**

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

441 (b) Notwithstanding Subsection (1)(a), the time period of a registration may be extended
442 or shortened by as much as one year to maintain or change a renewal cycle established by rule by
443 the division.

444 (2) To renew a registration, no later than 30 days before the date the registration expires,
445 ~~[a person registered under this chapter]~~ a registrant shall:

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

447 (b) pay a fee to the division established by the division in accordance with Section
448 63-38-3.2.

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

451 (i) a name under which the ~~[person]~~ registrant transacts the business of residential
452 mortgage loans in this state;

453 (ii) the ~~[address of the principal business]~~ location of the ~~[person]~~ registrant;

454 (iii) ~~[if the person is not an individual,]~~ the control persons ~~[who exercise control of the~~
455 ~~person registered under this chapter]~~ of the registrant; or

456 (iv) any other information that is defined as material by rule made by the division.

457 (b) Failure to notify the division of a change described in Subsection (3)(a) is separate
458 grounds for disciplinary action against ~~[a person registered under this chapter]~~ a registrant.

459 (4) A ~~[person licensed under this chapter]~~ registrant shall notify the division ~~[in writing]~~
460 by sending the division a signed statement within ten business days of:

461 (a) a conviction of any criminal offense; ~~[or]~~

462 (b) filing a personal bankruptcy or bankruptcy of a business that transacts the business of
463 residential mortgage loans[-]; or

464 (c) the suspension, revocation, surrender, cancellation, or denial of a professional license
465 or professional registration of the registrant, whether the license or registration is issued by this
466 state or another jurisdiction.

467 Section 11. Section **61-2c-301** is amended to read:

468 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

469 (1) [~~A person~~] An individual or entity transacting the business of residential mortgage
470 loans in this state may not:

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

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

475 (i) that is excessive; or

476 (ii) if the [~~person~~] individual or entity does not comply with Section 70D-1-6;

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

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

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

483 (f) violate or not comply with:

484 (i) this chapter;

485 (ii) an order of the commission or division; or

486 (iii) a rule made by the division;

487 (g) fail to respond within the required time period to:

488 (i) a notice or complaint of the division; or

489 (ii) a request for information from the division;

490 (h) make false representations to the division, including in a registration statement;

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

492 (j) engage in an act or omission in transacting the business of residential mortgage loans

493 that constitutes dishonesty, fraud, or misrepresentation.

494 (2) ~~[A person violates this chapter if, for a criminal offense involving moral turpitude,~~
 495 ~~whether] Whether~~ or not the crime is related to the business of residential mortgage loans, ~~[that~~
 496 ~~person while registered under this chapter]~~ it is a violation of this chapter for a registrant or a
 497 control person of a registrant to do any of the following with respect to a criminal offense which
 498 involves moral turpitude:

499 (a) ~~[is]~~ be convicted;

500 (b) ~~[pleads]~~ plead guilty or nolo contendere;

501 (c) ~~[enters]~~ enter a plea in abeyance; or

502 (d) ~~[is]~~ be subjected to a criminal disposition similar to the ones described in Subsections
 503 (2)(a) through (c).

504 Section 12. Section **61-2c-302** is amended to read:

505 **61-2c-302. Record requirements.**

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

509 (2) ~~[A person registered under this chapter]~~ A registrant shall maintain in its possession
 510 a record described in Subsection (1) until the later of ~~[25 months]~~ four years from the ~~[date]~~ last
 511 to occur of the following:

512 (a) the final entry on a residential mortgage loan is made by that ~~[person]~~ registrant;

513 (b) if the residential mortgage loan is serviced by the ~~[person]~~ registrant:

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

515 (ii) the ~~[person]~~ registrant ceases to service the residential mortgage loan; or

516 (c) if the residential mortgage loan is not serviced by the ~~[person]~~ registrant, the residential
 517 mortgage loan is closed.

518 Section 13. Section **61-2c-401** is amended to read:

519 **61-2c-401. Investigations -- Subpoena power of division.**

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

521 ~~[(a) a person registered under this chapter;]~~

522 (a) a registrant and the control persons of any registrant;

523 (b) [a person applying] an applicant for registration under this chapter, and the control

524 persons of any applicant; or

525 (c) [~~a person who~~] any individual or entity that transacts the business of residential
526 mortgage loans within this state, and the control persons of any such entity.

527 (2) In conducting [~~an investigation~~] investigations and adjudicative proceedings, the
528 division may:

529 (a) subpoena witnesses;

530 (b) take evidence;

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

533 (d) serve a subpoena by certified mail.

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

536 Section 14. Section **61-2c-402** is amended to read:

537 **61-2c-402. Disciplinary action.**

538 (1) Subject to the requirements of this section, if [~~a person~~] an individual or entity required
539 to be registered under this chapter violates this chapter, the commission with the concurrence of
540 the director, may:

541 (a) impose a civil penalty against the [~~person~~] individual or entity in an amount not to
542 exceed \$500 per violation;

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

544 (i) suspend;

545 (ii) revoke;

546 (iii) place on probation;

547 (iv) deny renewal; or

548 (v) deny reinstatement; or

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

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

552 (i) give notice to [~~that person~~] the individual or entity; and

553 (ii) schedule an adjudicative proceeding.

554 (b) If after the adjudicative proceeding scheduled under Subsection (2)(a), the commission

555 ~~[determines]~~ and the director determine that ~~[a person]~~ an individual or entity required to be
556 registered under this section has violated this chapter, the commission may take an action
557 described in Subsection (1)~~[(i)]~~ by written order~~[of the commission; and]~~.

558 ~~[(ii) with the concurrence of the director.]~~

559 (3) ~~[(a)]~~ In accordance with Title 63, Chapter 46b, Administrative Procedures Act, ~~[a~~
560 ~~person]~~ an individual or entity against whom disciplinary action is taken under this section may
561 seek review by the executive director of the disciplinary action.

562 ~~[(b)]~~ (4) If ~~[the person described in Subsection (3)(a)]~~ an individual or entity prevails in
563 ~~[the]~~ a judicial appeal and the court finds that the state action was undertaken without substantial
564 justification, the court may award reasonable litigation expenses to that ~~[person]~~ individual or
565 entity as provided under Title 78, Chapter 27a, Small Business Equal Access to Justice Act.

566 ~~[(4)]~~ (5) (a) An order issued under this section takes effect 30 days after the service of the
567 order unless otherwise provided in the order.

568 (b) If an appeal of an order issued under this section is taken by ~~[a person registered under~~
569 ~~this chapter]~~ an individual or entity, the division may stay enforcement of the commission's order
570 in accordance with Section 63-46b-18.

571 ~~[(5)]~~ (6) If ordered by the court of competent jurisdiction, the division shall promptly take
572 an action described in Subsection (1)(b) against a registration granted under this chapter.

573 ~~[(6)]~~ (7) (a) If a ~~[person's]~~ registration under this chapter is revoked, the ~~[person]~~
574 individual or entity may apply to have ~~[its]~~ the registration reinstated by complying with the
575 requirements of Section 61-2c-202 for registration.

576 (b) Notwithstanding Subsection ~~[(6)]~~ (7)(a), if a ~~[person's]~~ registration under this chapter
577 is revoked, ~~[that person]~~ the individual or entity may not apply for reinstatement of the registration
578 sooner than five years after the date the registration is revoked in accordance with this section.

579 (c) If an individual or entity whose registration has been revoked applies for reinstatement
580 in accordance with Subsection (7)(b), the commission and the division may grant the application
581 for reinstatement if they find that:

582 (i) There has been good conduct on the part of the applicant subsequent to the events that
583 led to the revocation, and that the subsequent good conduct outweighs the events which led to the
584 revocation; and

585 (ii) The interest of the public is not likely to be harmed by the granting of the registration.

586 Section 15. Section **61-2c-403** is amended to read:

587 **61-2c-403. Cease and desist orders.**

588 (1) (a) The director may issue and serve ~~[on a person]~~ by certified mail, or by personal
589 service, on an individual or entity an order to cease and desist if:

590 (i) the director has reason to believe that ~~[a person]~~ the individual or entity has been or is
591 engaging in acts constituting a violation of this chapter; and

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

593 (b) Within ten days after ~~[receiving]~~ service of the order, the ~~[person on whom the order~~
594 ~~is served]~~ party named in the order may request an adjudicative proceeding to be held in
595 accordance with Title 63, Chapter 46b, Administrative Procedures Act.

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

597 (2) (a) After the hearing described in Subsection (1), if the ~~[commission with the~~
598 ~~concurrence of the]~~ director finds that the acts of the ~~[person]~~ individual or entity violate this
599 chapter, the director shall issue an order making the cease and desist order permanent.

600 (b) (i) The director ~~[shall]~~ may file suit in the name of the division to enjoin and restrain
601 ~~[a person]~~ an individual or entity on whom an order is served under this section from violating this
602 chapter if:

603 (A) (I) the ~~[person]~~ individual or entity did not request a hearing under Subsection (1); or

604 (II) a permanent cease and desist order is issued against the ~~[person]~~ individual or entity
605 following a hearing or stipulation; and

606 (B) (I) the ~~[person]~~ individual or entity fails to cease the acts; or

607 (II) after discontinuing the acts, the ~~[person]~~ individual or entity again commences the acts.

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

610 (A) in which the acts occurred;

611 (B) where the ~~[person]~~ individual resides; or

612 (C) where the ~~[person]~~ individual or entity carries on business.

613 (3) The cease and desist order issued under this section may not interfere with or prevent
614 the prosecution of a remedy or action enforcement under this chapter.

615 (4) ~~[A]~~ An individual or a control person of an entity who violates a cease and desist order
616 issued under this section is guilty of a class A misdemeanor.

616a **h** Section 16. Section **70D-1-10** is amended to read:

616b **70D-1-10. Notification of department -- Exemptions.**

616c (1) Except as provided in Subsection (2), no person may engage in the business of making **h**

616d **h** mortgage loans nor may any person engage in the business of being a mortgage loan broker or servicer,
616e without first filing written notification with the department and paying the fees required by this chapter.

616f (2) The following persons are exempt from the notification requirements contained in this
616g chapter and
616h from the annual fee imposed in Subsection 70D-1-12(1):

616i (a) all persons authorized under Utah law or under federal law to do business as a depository
616j institution in this state;

616k (b) all wholly-owned subsidiaries of depository institutions described in Subsection (2)(a); and

616l (c) all persons **THAT:**

616m **(i) ARE** required to register with the Utah Division of Real Estate pursuant to Title 61, Chapter
616n 2c, Utah Residential Mortgage Practices Act[-]; **AND**

616o **(ii) ARE NOT ENGAGED IN THE BUSINESS OF BEING A MORTGAGE LOAN SERVICER. h**

Legislative Review Note
as of 10-29-01 11:17 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Committee Note

The Business and Labor Interim Committee recommended this bill.