

MORTGAGE PRACTICES ACT REVISIONS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Gerry A. Adair

This act amends the Utah Residential Mortgage Practices Act and the Mortgage Lending and Servicing Act. 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 The act clarifies standards for reinstatement of the registration of an individual or entity whose registration has been revoked.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. The act clarifies an exemption under the Mortgage Lending and Servicing Act which references the Utah Residential Mortgage Practices Act. This act makes technical changes.

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

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

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

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~~] an individual or an entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified [~~person~~] individual or entity.

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

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

(i) make or originate a residential mortgage loan;

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

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

(A) taking applications;

(B) obtaining verifications and appraisals; and

(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) "Closed-end" means a loan with a fixed amount borrowed and which does not permit

additional borrowing secured by the same collateral.

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

~~[(5)]~~ (6) "Compensation" means anything of economic value that is paid, loaned, granted, given, donated, or transferred to ~~[a person]~~ an individual or entity for or in consideration of:

- (a) services;
- (b) personal or real property; or
- (c) other thing of value.

~~[(6)]~~ (7) "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, officers, managers, 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]~~ another entity.

(8) "Control Person" means any individual or entity which directly manages or controls another entity's transaction of the business of residential mortgage loans secured by Utah dwellings.

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

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

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

~~[(10)]~~ (12) "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.

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

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

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

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

- (a) prepared, owned, received, or retained by ~~[a person]~~ an individual or entity; and
- (b) (i) inscribed on a tangible medium; or
- (ii) (A) stored in an electronic or other medium; and
- (B) retrievable in perceivable form.

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

~~[(13)]~~ (17) "Residential mortgage loan" means a closed-end, first mortgage 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)]~~ (17)(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)]~~ (18) "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 **61-2c-103** is amended 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~~] for the administration of this chapter in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act[-], including:

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

(b) proper handling of funds received by registrants;

(c) record-keeping requirements by registrants; and

(d) standards of conduct for registrants.

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

(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 3. Section **61-2c-104** is amended 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~~] or denial of registration of individuals and entities under this chapter in accordance with Part 2, Registration;

(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 4. Section **61-2c-105** is amended 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 (2)(a) through (c) including:

(i) the Utah Housing Finance Agency created in Title 9, Chapter 4, Part 9, Utah Housing [~~Finance Agency~~] Corporation 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]~~ an individual or entity:
 - (i) ~~[who]~~ that makes a loan:
 - (A) secured by an interest in real property;
 - (B) with the ~~[person's]~~ individual's or the entity's own money; and
 - (C) for the ~~[person's]~~ individual's or entity'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]~~ an individual or entity who receives a mortgage, deed of trust, or lien interest on real property if the ~~[person]~~ individual or entity:
 - (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]~~ an individual or entity who receives a mortgage, deed of trust, or lien interest on real property if:
 - (i) the ~~[person]~~ individual or entity 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~~] an individual or entity 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 5. Section **61-2c-106** is amended 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]~~ An individual or entity 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 individual, or by a control person of the entity, registered under this chapter.

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

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

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

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

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

(a) (i) the ~~[person]~~ individual or entity 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]~~ and

(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]~~ a representation is made by the individual or entity that the individual or entity 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]~~ an entity or individual, the ~~[person]~~ entity or individual for ~~[which]~~ whom the ~~[individual]~~ employee or agent 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 7. Section **61-2c-202** is amended to read:

61-2c-202. Registration procedures.

- (1) To apply for registration under this chapter ~~[a person]~~ an individual or entity shall:
- (a) submit to the division a registration statement that:
 - (i) lists any name under which the ~~[person]~~ individual or entity will transact business in this state;
 - (ii) lists the address of the principal business location of the ~~[person]~~ applicant;
 - (iii) if the ~~[person is not an individual]~~ applicant is an entity, lists the control persons ~~[that exercise control]~~ of ~~[that person]~~ the applicant;
 - (iv) demonstrates to the satisfaction of the division with the concurrence of the commission that the ~~[person]~~ applicant 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~~] an applicant if the division finds that the [~~person~~] applicant:

- (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~~] an applicant 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~~] and any [~~individual exercising control over the person applying for registration under this section~~] control person of the applicant 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~~] applicant and each control person of an applicant through a national criminal history system.

- (c) The [~~person applying for registration~~] applicant 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~~] an applicant or an applicant's control person failed to accurately disclose a criminal history, the registration shall be immediately and automatically revoked.

(iii) ~~[A person]~~ An individual or entity 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 8. Section **61-2c-203** is amended 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, except as provided in Subsection (3);

(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, except as provided in Subsection (3), 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]~~ 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]~~ an entity may not have:

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

(i) a manager or 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 control person [that exercises control of the person registered under this chapter:] who fails to meet the requirements of Subsection (1).~~

~~[(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] an individual or a control person [described in Subsection (3)(b)] of an entity fails to meet the requirements of Subsection (1)(b) or (c), but otherwise meets the qualifications for registration, and provides evidence satisfactory to the division with the concurrence of the commission that the individual or control 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 failure to meet the requirements of Subsection (1)(b) or (c) the division may permit [that person] that individual or entity 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 9. Section **61-2c-204** is amended 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~~] an entity 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~~] the entity registered under this chapter for which the applicant is an employee or agent.

(2) If the applicant is [~~not~~] an [~~individual~~] entity, 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, Enforcement, 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~~] entity, a surety bond filed under this section shall:

(a) comply with Subsection (3); and

(b) cover the acts of:

(i) the [~~person~~] entity registered under this chapter;

(ii) any control person [~~exercising control~~] of the [~~person~~] entity registered under this chapter; and

(iii) any agent or employee of the ~~[person]~~ entity 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 10. Section **61-2c-205** is amended 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~~] a registrant 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~~] A registrant 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]~~ registrant transacts the business of residential mortgage loans in this state;

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

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

(4) A ~~[person licensed under this chapter]~~ registrant shall notify the division ~~[in writing]~~ by sending the division a signed statement 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~~[-];~~ or

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

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

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

(1) ~~[A person]~~ An individual or entity 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]~~ individual or entity 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]~~ Whether or not the crime is related to the business of residential mortgage loans, ~~[that person while registered under this chapter]~~ it is a violation of this chapter for a registrant or a control person of a registrant to do any of the following with respect to a criminal offense which involves moral turpitude:

- (a) ~~[is]~~ be convicted;
- (b) ~~[pleads]~~ plead guilty or nolo contendere;
- (c) ~~[enters]~~ enter a plea in abeyance; or
- (d) ~~[is]~~ be subjected to a criminal disposition similar to the ones described in Subsections (2)(a) through (c).

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

61-2c-302. Record requirements.

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

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

- (a) the final entry on a residential mortgage loan is made by that [person] registrant;
- (b) if the residential mortgage loan is serviced by the [person] registrant;
- (i) the residential mortgage loan is paid in full; or
- (ii) the [person] registrant ceases to service the residential mortgage loan; or
- (c) if the residential mortgage loan is not serviced by the [person] registrant, the residential mortgage loan is closed.

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

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;]~~
 - (a) a registrant and the control persons of any registrant;
 - (b) [a person applying] an applicant for registration under this chapter, and the control persons of any applicant; or
 - (c) [a person who] any individual or entity that transacts the business of residential mortgage loans within this state, and the control persons of any such entity.
- (2) In conducting ~~[an investigation]~~ investigations and adjudicative proceedings, 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 14. Section **61-2c-402** is amended to read:

61-2c-402. Disciplinary action -- Reinstatement.

- (1) Subject to the requirements of this section, if ~~[a person]~~ an individual or entity 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]~~ individual or entity 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 and the division 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]~~ the individual or entity; and

(ii) schedule an adjudicative proceeding.

(b) If after the adjudicative proceeding scheduled under Subsection (2)(a), the commission ~~[determines]~~ and the director determine that ~~[a person]~~ an individual or entity 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]~~ an individual or entity against whom disciplinary action is taken under this section may seek review by the executive director of the disciplinary action.

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

~~[(4)]~~ (5) (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]~~ an individual or entity, the division may stay enforcement of the commission's order in accordance with Section 63-46b-18.

~~[(5)]~~ (6) 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)]~~ (7) (a) If a ~~[person's]~~ registration under this chapter is revoked, the ~~[person]~~ individual or entity may apply to have ~~[its]~~ the registration reinstated by complying with the requirements of Section 61-2c-202 for registration.

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

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

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

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

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

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

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

(i) the director has reason to believe that ~~[a person]~~ the individual or entity 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]~~ service of the order, the ~~[person on whom the order is served]~~ party named in the order 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~~] individual or entity violate this chapter, the director shall issue an order making the cease and desist order permanent.

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

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

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

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

(II) after discontinuing the acts, the [~~person~~] individual or entity 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~~] individual resides; or

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

Section 16. 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;

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

(c) all persons that:

(i) are required to register with the Utah Division of Real Estate pursuant to Title 61, Chapter 2c, Utah Residential Mortgage Practices Act[-]; and

(ii) are not engaged in the business of being a mortgage loan servicer.