

1                                   **PREDATORY MORTGAGE LENDING**

2                                   2002 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Sponsor: Paul Ray**

5 **This act amends code provisions dealing with residential mortgage loans. The act prohibits**  
6 **contractors and real estate brokers from offering financial incentives to a borrower to steer**  
7 **the borrower to use a specific lender for a residential mortgage loan. The act prohibits**  
8 **mortgage loan brokers from brokering or arranging for loans which would result in total**  
9 **indebtedness secured by a dwelling exceeding certain limits. The act prohibits the financing**  
10 **of mortgage life or disability insurance as part of a residential mortgage loan and requires**  
11 **a separate disclosure to the borrower regarding mortgage life and disability insurance. The**  
12 **act provides that a debtor may prepay the unpaid balance of a residential mortgage loan at**  
13 **any time without penalty unless certain requirements are met. The act modifies restrictions**  
14 **on fees charged by mortgage lenders and brokers. The act makes technical changes.**

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

16 AMENDS:

17           **58-55-501**, as last amended by Chapters 198 and 257, Laws of Utah 2001

18           **58-55-503**, as last amended by Chapters 198 and 361, Laws of Utah 2001

19           **61-2c-301**, as enacted by Chapter 329, Laws of Utah 2000

20           **70D-1-3**, as enacted by Chapter 172, Laws of Utah 1990

21           **70D-1-6**, as enacted by Chapter 172, Laws of Utah 1990

22 ENACTS:

23           **61-2-25**, Utah Code Annotated 1953

24           **61-2c-303**, Utah Code Annotated 1953

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

26           Section 1. Section **58-55-501** is amended to read:

27           **58-55-501. Unlawful conduct.**



28 Unlawful conduct includes:

29 (1) engaging in a construction trade, acting as a contractor, an alarm business or company,  
30 or an alarm company agent, or representing oneself to be engaged in a construction trade or to be  
31 acting as a contractor in a construction trade requiring licensure, unless the person doing any of  
32 these is appropriately licensed or exempted from licensure under this chapter;

33 (2) acting in a construction trade, as an alarm business or company, or as an alarm  
34 company agent beyond the scope of the license held;

35 (3) hiring or employing in any manner an unlicensed person, other than an employee for  
36 wages who is not required to be licensed under this chapter, to engage in a construction trade for  
37 which licensure is required or to act as a contractor or subcontractor in a construction trade  
38 requiring licensure;

39 (4) applying for or obtaining a building permit either for oneself or another when not  
40 licensed or exempted from licensure as a contractor under this chapter;

41 (5) issuing a building permit to any person for whom there is no evidence of a current  
42 license or exemption from licensure as a contractor under this chapter;

43 (6) applying for or obtaining a building permit for the benefit of or on behalf of any other  
44 person who is required to be licensed under this chapter but who is not licensed or is otherwise not  
45 entitled to obtain or receive the benefit of the building permit;

46 (7) failing to obtain a building permit when required by law or rule;

47 (8) submitting a bid for any work for which a license is required under this chapter by a  
48 person not licensed or exempted from licensure as a contractor under this chapter;

49 (9) willfully or deliberately misrepresenting or omitting a material fact in connection with  
50 an application to obtain or renew a license under this chapter;

51 (10) allowing one's license to be used by another except as provided by statute or rule;

52 (11) doing business under a name other than the name appearing on the license, except as  
53 permitted by statute or rule;

54 (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,  
55 journeyman plumber, residential journeyman plumber, journeyman electrician, master electrician,  
56 or residential electrician, failing to directly supervise an apprentice under one's supervision or  
57 exceeding the number of apprentices one is allowed to have under his supervision;

58 (13) if licensed as a contractor or representing oneself to be a contractor, receiving any

59 funds in payment for a specific project from an owner or any other person, which funds are to pay  
 60 for work performed or materials and services furnished for that specific project, and after receiving  
 61 the funds to exercise unauthorized control over the funds by failing to pay the full amounts due and  
 62 payable to persons who performed work or furnished materials or services within a reasonable  
 63 period of time;

64 (14) employing as an alarm company an unlicensed individual as an alarm company agent,  
 65 except as permitted under the exemption from licensure provisions under Section 58-1-307;

66 (15) if licensed as an alarm company or alarm company agent, filing with the division  
 67 fingerprint cards for an applicant which are not those of the applicant, or are in any other way false  
 68 or fraudulent and intended to mislead the division in its consideration of the applicant for  
 69 licensure;

70 (16) if licensed under this chapter, willfully or deliberately disregarding or violating:

71 (a) the building or construction laws of this state or any political subdivision;

72 (b) the safety and labor laws applicable to a project;

73 (c) any provision of the health laws applicable to a project;

74 (d) the workers' compensation insurance laws of the state applicable to a project;

75 (e) the laws governing withholdings for employee state and federal income taxes,  
 76 unemployment taxes, FICA, or other required withholdings; or

77 (f) reporting, notification, and filing laws of this state or the federal government;

78 (17) aiding or abetting any person in evading the provisions of this chapter or rules  
 79 established under the authority of the division to govern this chapter;

80 (18) engaging in the construction trade or as a contractor for the construction of residences  
 81 of up to two units when not currently registered or exempt from registration as a qualified  
 82 beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act;

83 (19) failing, as an original contractor, as defined in Section 38-11-102, to include in a  
 84 written contract the notification required in Section 38-11-108; [~~or~~]

85 (20) wrongfully filing a mechanics' lien in violation of Section 38-1-25[~~;~~]; or

86 (21) giving or offering compensation, as defined in Section 61-2c-102, as an incentive to  
 87 a borrower to use a specific lender for a residential mortgage loan, as defined in Section 61-2c-102.

88 Section 2. Section **58-55-503** is amended to read:

89 **58-55-503. Penalty for unlawful conduct -- Citations.**

90 (1) Any person who violates Subsection 58-55-501(1), (2), (3), (4), (5), (6), (7), (9), (10),  
91 (12), (14), [or] (15), or (21), or who fails to comply with a citation issued under this section after  
92 it is final, is guilty of a class A misdemeanor. Any person who violates the provisions of  
93 Subsection 58-55-501(8) may not be awarded and may not accept a contract for the performance  
94 of the work.

95 (2) Any person who violates the provisions of Subsection 58-55-501(13) is guilty of an  
96 infraction unless the violator did so with the intent to deprive the person to whom money is to be  
97 paid of the money received, in which case the violator is guilty of theft, as classified in Section  
98 76-6-412.

99 (3) Grounds for immediate suspension of the licensee's license by the division and the  
100 board include the issuance of a citation for violation of Section 58-55-501 or the failure by a  
101 licensee to make application to, report to, or notify the division with respect to any matter for  
102 which application, notification, or reporting is required under this chapter or rules adopted under  
103 this chapter, including applying to the division for a new license to engage in a new specialty  
104 classification or to do business under a new form of organization or business structure, filing with  
105 the division current financial statements, notifying the division concerning loss of insurance  
106 coverage, or change in qualifier.

107 (4) (a) If upon inspection or investigation, the division concludes that a person has violated  
108 the provisions of [Subsections] Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), or  
109 (21), or any rule or order issued with respect to these subsections, and that disciplinary action is  
110 appropriate, the director or his designee from within the division for each alternative respectively,  
111 shall, promptly issue a citation to the person according to this chapter and any pertinent rules,  
112 attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative  
113 proceeding conducted under Title 63, Chapter 46b, Administrative Procedures Act.

114 (i) Any person who is in violation of the provisions of Subsection 58-55-501(1), (2), (3),  
115 (9), (10), (12), (14), [or] (19), or (21), as evidenced by an uncontested citation, a stipulated  
116 settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine  
117 pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist  
118 from violating Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), [or] (19), or (21).

119 (ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-55-401  
120 may not be assessed through a citation.

121 (b) Each citation shall be in writing and describe with particularity the nature of the  
122 violation, including a reference to the provision of the chapter, rule, or order alleged to have been  
123 violated. The citation shall clearly state that the recipient must notify the division in writing within  
124 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing  
125 conducted under Title 63, Chapter 46b, Administrative Procedures Act. The citation shall clearly  
126 explain the consequences of failure to timely contest the citation or to make payment of any fines  
127 assessed by the citation within the time specified in the citation.

128 (c) Each citation issued under this section, or a copy of each citation, may be served upon  
129 any person upon whom a summons may be served in accordance with the Utah Rules of Civil  
130 Procedure and may be made personally or upon his agent by a division investigator or by any  
131 person specially designated by the director or by mail.

132 (d) If within 20 calendar days from the service of a citation, the person to whom the  
133 citation was issued fails to request a hearing to contest the citation, the citation becomes the final  
134 order of the division and is not subject to further agency review. The period to contest a citation  
135 may be extended by the division for cause.

136 (e) The division may refuse to issue or renew, suspend, revoke, or place on probation the  
137 license of a licensee who fails to comply with a citation after it becomes final.

138 (f) The failure of an applicant for licensure to comply with a citation after it becomes final  
139 is a ground for denial of license.

140 (g) No citation may be issued under this section after the expiration of six months  
141 following the occurrence of any violation.

142 (h) Fines shall be assessed by the director or his designee according to the following:

143 (i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$1,000;  
144 (ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000; and  
145 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to  
146 \$2,000 for each day of continued offense.

147 (i) (i) For purposes of issuing a final order under this section and assessing a fine under  
148 Subsection (4)(i), an offense constitutes a second or subsequent offense if:

149 (A) the division previously issued a final order determining that a person committed a first  
150 or second offense in violation of Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), [or] (19),  
151 or (21); or

152 (B) (I) the division initiated an action for a first or second offense;  
 153 (II) no final order has been issued by the division in the action initiated under Subsection  
 154 (4) (i)(i)(B)(I);

155 (III) the division determines during an investigation that occurred after the initiation of the  
 156 action under Subsection (4) (i)(i)(B)(I) that the person committed a second or subsequent violation  
 157 of the provisions of Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), [~~or~~] (19), or (21); and

158 (IV) after determining that the person committed a second or subsequent offense under  
 159 Subsection (4) (i)(i)(B)(III), the division issues a final order on the action initiated under  
 160 Subsection (4) (i)(i)(B)(I).

161 (ii) In issuing a final order for a second or subsequent offense under Subsection (4) (i)(i),  
 162 the division shall comply with the requirements of this section.

163 (5) Any penalty imposed by the director under Subsection (4) (h) shall be deposited into  
 164 the Commerce Service Fund. Any penalty which is not paid may be collected by the director by  
 165 either referring the matter to a collection agency or bringing an action in the district court of the  
 166 county in which the person against whom the penalty is imposed resides or in the county where  
 167 the office of the director is located. Any county attorney or the attorney general of the state is to  
 168 provide legal assistance and advice to the director in any action to collect the penalty. In any  
 169 action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall  
 170 be awarded.

171 Section 3. Section **61-2-25** is enacted to read:

172 **61-2-25. Unlawful financial incentive.**

173 It is unlawful for a real estate broker to give or offer compensation, as defined in Section  
 174 61-2c-102, as an incentive to a borrower to use a specific lender for a residential mortgage loan,  
 175 as defined in Section 61-2c-102.

176 Section 4. Section **61-2c-301** is amended to read:

177 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

178 (1) A person transacting the business of residential mortgage loans in this state may not:

179 (a) give or receive compensation [~~or anything of value~~], as defined in Section 61-2c-102,  
 180 in exchange for a referral of residential mortgage loan business unless the compensation [~~or thing~~  
 181 of value] is de minimis as defined by the division;

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

- 183 (i) that is excessive; or
- 184 (ii) if the person does not comply with Section 70D-1-6;
- 185 (c) give or receive compensation [~~or anything of value~~], as defined in Section 61-2c-102,  
186 in exchange for a referral of settlement or loan closing services related to a residential mortgage  
187 loan transaction;
- 188 (d) make a false statement or representation for purposes of inducing a lender to extend  
189 credit as part of a residential mortgage loan transaction;
- 190 (e) give or receive compensation [~~or anything of value~~], as defined in Section 61-2c-102,  
191 to influence the independent judgment of an appraiser in reaching a value conclusion in a  
192 residential mortgage loan transaction;
- 193 (f) violate or not comply with:
- 194 (i) this chapter;
- 195 (ii) an order of the commission or division; or
- 196 (iii) a rule made by the division;
- 197 (g) fail to respond within the required time period to:
- 198 (i) a notice or complaint of the division; or
- 199 (ii) a request for information from the division;
- 200 (h) make false representations to the division, including in a registration statement;
- 201 (i) engage in unprofessional conduct as defined by rule; [~~or~~]
- 202 (j) engage in an act or omission in transacting the business of residential mortgage loans  
203 that constitutes dishonesty, fraud, or misrepresentation[-];
- 204 (k) broker or otherwise arrange for any residential mortgage loan which would result in  
205 the total indebtedness secured by a dwelling, excluding federally insured loans, exceeding the fair  
206 market value of the dwelling; or
- 207 (l) (i) cause mortgage life or disability insurance to be financed in and not separate from  
208 the residential mortgage loan; or
- 209 (ii) broker or arrange for the purchase of mortgage life or disability insurance by the  
210 borrower, even though separate from the residential mortgage loan, unless the borrower signs a  
211 separate disclosure at the time the residential mortgage loan is applied for, acknowledging that the  
212 borrower understands that mortgage life and disability insurance are not required for loan approval  
213 but that the borrower chooses nevertheless to purchase mortgage life or disability insurance.

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

- 217 (a) is convicted;
- 218 (b) pleads guilty or nolo contendere;
- 219 (c) enters a plea in abeyance; or
- 220 (d) is subjected to a criminal disposition similar to the ones described in Subsections (2)(a)  
221 through (c).

222 Section 5. Section **61-2c-303** is enacted to read:

223 **61-2c-303. Prepayment of residential mortgage loan.**

224 (1) A debtor may prepay the unpaid balance of a residential mortgage loan at any time  
225 without penalty or fee unless:

226 (a) the prepayment penalty or fee does not exceed a sum equal to six months of interest  
227 on the outstanding residential mortgage loan balance at the time of payoff, calculated as simple  
228 interest based upon the loan's interest rate on the business day immediately preceding the payoff  
229 date;

230 (b) the interest rate of that residential mortgage loan is discounted below what the lender's  
231 published residential mortgage loan rate was as of the date of the lender's loan commitment to the  
232 borrower; and

233 (c) at the time the residential mortgage loan was applied for, the borrower signed a  
234 disclosure, separate from any disclosure required under federal law, acknowledging that the  
235 borrower was aware of the prepayment penalty or fee.

236 (2) Subsection (1) does not apply to federally insured loans.

237 Section 6. Section **70D-1-3** is amended to read:

238 **70D-1-3. Definitions.**

239 As used in this chapter:

240 (1) "Affiliate" means a person that directly or indirectly owns or controls, is owned or  
241 controlled by, or is under common ownership or control with, another person.

242 ~~[(1)]~~ (2) "Department" means the Department of Financial Institutions.

243 ~~[(2)]~~ (3) "Mortgage" means a mortgage or deed of trust affecting real property located in  
244 this state.



245           ~~[(3)]~~ (4) "Mortgage lender" or "lender" means any person who in the regular course of  
246 business originates loans secured by mortgages. A person shall not be considered to be a mortgage  
247 lender, however, solely because the person, as seller, receives one or more mortgages as security  
248 for a purchase money obligation, or because the person receives mortgages as security for an  
249 obligation payable on an installment or deferred payment basis and arising out of materials  
250 furnished or services rendered in the improvement of real property.

251           ~~[(4)]~~ (5) "Mortgage loan" means any loan for a term longer than two years secured by a  
252 mortgage and made for personal, family, or household purposes. "Mortgage loan" does not include  
253 a loan made by an individual to a member of his family or a loan subject to Title 70C.

254           ~~[(5)]~~ (6) "Mortgage loan broker" or "broker" means any person who in the regular course  
255 of business assists a person in obtaining a mortgage loan for a fee or other consideration paid  
256 directly or indirectly. A person shall not be considered to be a mortgage loan broker, however,  
257 solely because of his activities as:

258           (a) a real estate broker or agent who, for a normal and customary real estate sales  
259 commission, assists a buyer in obtaining a mortgage loan in order to buy real property; or

260           (b) an attorney licensed to practice law in this state who, in the course of his practice as  
261 an attorney, assists a person in obtaining a mortgage loan.

262           ~~[(6)]~~ (7) "Mortgage loan servicer" or "servicer" means any person who in the regular  
263 course of business assumes responsibility for servicing and accepting payments for a mortgage  
264 loan.

265           ~~[(7)]~~ (8) "Mortgagor" means any person who executes a mortgage or is obligated to pay  
266 a mortgage loan.

267           ~~[(8)]~~ (9) "Regular course of business" as used in this chapter does not include a casual  
268 lender who makes less than five mortgage loans per year.

269           Section 7. Section **70D-1-6** is amended to read:

270           **70D-1-6. Fee restrictions.**

271           (1) No mortgage lender or broker may accept any fee or deposit from an applicant for a  
272 mortgage loan unless at the time the lender or broker accepts the fee or deposit there is a written  
273 statement signed by the applicant stating whether or not the fee or deposit is refundable and  
274 describing the conditions under which all or a portion of the fee or deposit will be refunded to the  
275 applicant.

276           (2) (a) No mortgage lender or broker may charge or accept from an applicant for a  
277 mortgage loan a fee in excess of 7% of the original loan principal amount unless the applicant has  
278 delivered to the mortgage lender or broker a written document certifying that the applicant has  
279 completed a home buyer's education class given by a person that is not an affiliate of either the  
280 mortgage lender or the broker.

281           (b) The restriction in Subsection (2)(a) does not apply to a mortgage loan if the original  
282 principal amount of the loan is less than \$75,000.

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**Legislative Review Note**  
**as of 12-12-01 1:34 PM**

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

**Office of Legislative Research and General Counsel**