

Representative Brent D. Parker proposes the following substitute bill:

LICENSING MORTGAGE LOAN OFFICERS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Brent D. Parker

This act modifies the Utah Residential Mortgage Practices Act to modify the definition of the business of residential mortgage loans, to require licensing, prelicensing examinations, and continuing education of persons engaging in the business of residential mortgage loans, and to modify other licensing requirements. The act modifies the membership of the Residential Mortgage Regulatory Commission. The act prohibits persons from acting in certain multiple capacities with respect to a residential mortgage loan. The act makes technical changes. This act takes effect January 1, 2004.

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

AMENDS:

61-2c-102, as last amended by Chapter 204, Laws of Utah 2002

61-2c-103, as last amended by Chapter 204, Laws of Utah 2002

61-2c-104, as last amended by Chapter 204, Laws of Utah 2002

61-2c-106, as last amended by Chapter 204, Laws of Utah 2002

61-2c-201, as last amended by Chapter 204, Laws of Utah 2002

61-2c-202, as last amended by Chapter 204, Laws of Utah 2002

61-2c-203, as last amended by Chapter 204, Laws of Utah 2002

61-2c-204, as last amended by Chapter 204, Laws of Utah 2002

61-2c-205, as last amended by Chapter 204, Laws of Utah 2002

61-2c-301, as last amended by Chapter 204, Laws of Utah 2002

61-2c-302, as last amended by Chapter 204, Laws of Utah 2002

61-2c-401, as last amended by Chapter 204, Laws of Utah 2002



26 **61-2c-402**, as last amended by Chapter 204, Laws of Utah 2002

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

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

29 **61-2c-102. Definitions.**

30 As used in this chapter:

31 (1) "Affiliate" means an individual or an entity that directly, or indirectly through one
32 or more intermediaries, controls or is controlled by, or is under common control with, a
33 specified individual or entity.

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

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

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

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

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

42 (A) taking applications; and

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

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

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

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

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

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

54 (5) "Commission" means the Residential Mortgage Regulatory Commission created in
55 Section 61-2c-104.

56 (6) "Compensation" means anything of economic value that is paid, loaned, granted,

57 given, donated, or transferred to an individual or entity for or in consideration of:

58 (a) services;

59 (b) personal or real property; or

60 (c) other thing of value.

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

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

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

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

65 of an entity;

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

67 (c) vote more than 5% of any class of voting securities of an entity by another entity.

68 (8) "Control person" means any individual or entity which directly manages or controls

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

70 dwellings.

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

72 (10) "Director" means the director of the division.

73 (11) "Division" means the Division of Real Estate.

74 (12) "Dwelling" means a residential structure attached to real property that contains

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

76 (a) a condominium unit;

77 (b) a cooperative unit;

78 (c) a manufactured home; or

79 (d) a house.

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

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

82 (14) "Executive director" means the executive director of the Department of

83 Commerce.

84 ~~[(16)]~~ (15) ~~["Registrant"]~~ "Licensee" means an individual or entity ~~[registered]~~ licensed

85 with the division under this chapter.

86 ~~[(15)]~~ (16) "Record" means information that is:

87 (a) prepared, owned, received, or retained by an individual or entity; and

- 88 (b) (i) inscribed on a tangible medium; or
- 89 (ii) (A) stored in an electronic or other medium; and
- 90 (B) retrievable in perceivable form.

91 (17) "Residential mortgage loan" means a closed-end, first mortgage loan or extension
92 of credit, if:

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

- 94 (i) mortgage;
- 95 (ii) deed of trust; or
- 96 (iii) lien interest; and

97 (b) the mortgage, deed of trust, or lien interest described in Subsection (17)(a):

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

100 (18) "State" means:

- 101 (a) a state, territory, or possession of the United States;
- 102 (b) the District of Columbia; or
- 103 (c) the Commonwealth of Puerto Rico.

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

105 **61-2c-103. Powers and duties of the division.**

106 (1) The division shall administer this chapter.

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

108 may:

109 (a) receive and act on complaints including:

- 110 (i) taking action designed to obtain voluntary compliance with this chapter; or
- 111 (ii) commencing administrative or judicial proceedings on the division's own initiative;

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

114 (c) (i) make studies appropriate to effectuate the purposes and policies of this chapter;

115 and

116 (ii) make the results of the studies described in Subsection (2)(c)(i) available to the

117 public; and

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

119 and agents.

120 (3) The division shall make rules for the administration of this chapter in accordance
121 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, including:

122 (a) [~~registration~~] licensure procedures for individuals and entities required by this
123 chapter to [~~register~~] obtain a license with the division;

124 (b) proper handling of funds received by [~~registrants~~] licensees;

125 (c) record-keeping requirements by [~~registrants; and~~] licensees; and

126 (d) standards of conduct for [~~registrants.~~] licensees.

127 (4) (a) The division shall make available to the public a list of the names and addresses
128 of all [~~registrants~~] licensees.

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

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

132 **61-2c-104. Residential Mortgage Regulatory Commission.**

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

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

137 (i) [~~two~~] three members having at least three years of experience in transacting the
138 business of residential mortgage loans and who are currently licensed under this chapter; and

139 (ii) [~~two members~~] one member from the general public; and

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

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

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

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

150 replacement shall be appointed for the unexpired term.

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

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

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

154 (4)(a):

155 (i) at the discretion of the director;

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

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

158 (5) (a) Three members of the commission constitute a quorum for the transaction of
159 business.

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

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

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

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

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

173 (7) The commission shall:

174 (a) concur in the ~~[registration]~~ licensure or denial of ~~[registration]~~ licensure of
175 individuals and entities under this chapter in accordance with Part 2, ~~[Registration]~~ Licensure;

176 (b) take disciplinary action with the concurrence of the director in accordance with Part
177 4, Enforcement; ~~[and]~~

178 (c) advise the division concerning matters related to the administration and
179 enforcement of this chapter[-]; and

180 (d) determine the requirements for:

- 181 (i) the examination required under Section 61-2c-202, covering at least:
 182 (A) the fundamentals of the English language;
 183 (B) arithmetic;
 184 (C) the provisions of this chapter;
 185 (D) rules adopted by the division;
 186 (E) basic residential mortgage principles and practices; and
 187 (F) any other aspect of Utah law the commission determines is appropriate; and
 188 (ii) the continuing education requirements under Section 61-2c-205, including:
 189 (A) the appropriate number of hours of required continuing education; and
 190 (B) the subject matter of courses the division may accept for continuing education
 191 purposes.

192 (8) The commission may appoint a committee to make recommendations to the
 193 commission concerning approval of continuing education courses.

194 (9) The commission shall make the examination and continuing education
 195 requirements described in this Section available through the Internet when reasonably
 196 practicable.

197 Section 4. Section **61-2c-106** is amended to read:

198 **61-2c-106. Addresses provided the division.**

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

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

204 Section 5. Section **61-2c-201** is amended to read:

205 **Part 2. Licensure**

206 **61-2c-201. Licensure required of individuals and entities engaged in the business**
 207 **of residential mortgage loans.**

208 (1) Unless exempt from this chapter under Section 61-2c-105, an individual or entity
 209 may not transact the business of residential mortgage loans, as defined in Section 61-2c-102,
 210 without [~~registering~~] obtaining a license under this chapter.

211 (2) For purposes of this chapter, an individual or entity transacts business in this state

212 if:

213 (a) (i) the individual or entity engages in an act that constitutes the business of
214 residential mortgage loans; and

215 (ii) (A) the act described in Subsection (2)(a)(i) is directed to or received in this state;
216 and

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

219 (b) a representation is made by the individual or entity that the individual or entity
220 transacts the business of residential mortgage loans in this state.

221 (3) Unless otherwise exempted under this chapter, [~~registration~~] licensure under this
222 chapter is required of both:

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

224 (b) if the individual transacts business as an employee or agent of an entity or
225 individual, the entity or individual for whom the employee or agent transacts the business of
226 residential mortgage loans.

226a **h (4) AN INDIVIDUAL LICENSED UNDER THIS CHAPTER MAY NOT ENGAGE IN THE**
226b **BUSINESS OF RESIDENTIAL MORTGAGE LOANS ON BEHALF OF MORE THAN ONE ENTITY AT THE**
226c **SAME TIME. h**

227 Section 6. Section **61-2c-202** is amended to read:

228 **61-2c-202. Licensure procedures.**

229 (1) To apply for [~~registration~~] licensure under this chapter an individual or entity shall:

230 (a) submit to the division a [~~registration~~] licensure statement that:

231 (i) lists any name under which the individual or entity will transact business in this
232 state;

233 (ii) lists the address of the principal business location of the applicant;

234 (iii) if the applicant is an entity, lists the control persons of the applicant;

235 (iv) demonstrates to the satisfaction of the division with the concurrence of the
236 commission that the applicant meets the qualifications listed in Section 61-2c-203; and

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

238 (b) pay to the division:

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

240 and

241 (ii) the reasonable expenses incurred in processing the application for [~~registration~~]
242 licensure including the costs incurred by the division under Subsection (4);

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

244 (i) obtaining a surety bond;

245 (ii) depositing assets; or

246 (iii) providing a letter of credit; and

247 (d) comply with Subsection (4).

248 (2) The division, with the concurrence of the commission, shall grant a [~~registration~~]

249 license to an applicant if the division finds that the applicant:

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

251 (b) complies with this section.

252 (3) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, an

253 applicant who is denied [~~registration~~] licensure under this chapter may submit a request for

254 agency review to the executive director within 30 days following the issuance of the order

255 denying the [~~registration~~] licensure.

256 (4) (a) (i) An individual applying for ~~h~~ [~~registration~~] **A LICENSE** ~~h~~ under this chapter and
256a any control

257 person of the applicant shall:

258 [~~(i)~~] (A) submit a fingerprint card in a form acceptable to the division at the time the

259 ~~h~~ [~~registration~~] **LICENSURE** ~~h~~ statement is filed; [~~and~~]

260 [~~(ii)~~] (B) consent to a fingerprint background check by:

261 [~~(A)~~] (I) the Utah Bureau of Criminal Identification; and

262 [~~(B)~~] (II) the Federal Bureau of Investigation[-]; and

263 (C) provide proof using methods approved by the division of having successfully

264 completed an examination approved by the commission under Section 61-2c-104.

265 (ii) Notwithstanding Subsection (4)(a)(i)(C), an individual who was registered with the

266 division under this chapter prior to January 1, 2004 may engage in the business of residential

267 mortgage loans until January 1, 2005 without having passed the examination described in

268 Subsection (4)(a)(i)(c).

269 (b) The division shall request the Department of Public Safety to complete a Federal

270 Bureau of Investigation criminal background check for each applicant and each control person

271 of an applicant through a national criminal history system.

272 (c) The applicant shall pay the cost of:

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

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

275 (d) (i) A [~~registration~~] license under this chapter is conditional pending completion of
276 the criminal background check required by this Subsection (4).

277 (ii) If a criminal background check discloses that an applicant or an applicant's control
278 person failed to accurately disclose a criminal history, the [~~registration~~] license shall be
279 immediately and automatically revoked.

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

282 (A) after the revocation; and

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

284 Section 7. Section **61-2c-203** is amended to read:

285 **61-2c-203. Qualifications for licensure.**

286 (1) To qualify for [~~registration~~] licensure under this chapter, an individual shall:

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

289 (b) not have been convicted of a felony or misdemeanor involving moral turpitude in
290 the [~~five~~] ten years preceding the date the individual applies for [~~registration~~] a license, except
291 as provided in Subsection (3);

292 (c) not have had a license or registration suspended, revoked, surrendered, canceled, or
293 denied in the five years preceding the date the individual applies for [~~registration,~~] licensure
294 except as provided in Subsection (3), if:

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

296 (ii) the suspension, revocation, surrender, cancellation, or denial is based on

297 misconduct in a professional capacity that relates to good moral character or the competency to
298 transact the business of residential mortgage loans.

299 (2) To qualify for [~~registration~~] licensure under this chapter an entity may not have:

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

302 (i) a manager or a managing partner;

303 (ii) a director;

304 (iii) an executive officer; or

305 (iv) an individual occupying a position or performing functions similar to those
306 described in Subsections (2)(a)(i) through (iii); and
307 (b) a control person who fails to meet the requirements of Subsection (1).
308 (3) If an individual or a control person of an entity fails to meet the requirements of
309 Subsection (1)(b) or (c), but otherwise meets the qualifications for [~~registration~~] licensure, and
310 provides evidence satisfactory to the division with the concurrence of the commission that the
311 individual or control person has good moral character and the competency to transact the
312 business of residential mortgage loans, notwithstanding the failure to meet the requirements of
313 Subsection (1)(b) or (c) the division may permit that individual or entity to be [~~registered~~]
314 licensed under this chapter.

315 Section 8. Section **61-2c-204** is amended to read:

316 **61-2c-204. Requirements for bonding, letter of credit, or deposit of assets.**

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

318 (a) file with the division a surety bond:

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

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

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

322 (i) the applicant is an employee or agent of an entity [~~registered~~] licensed under this
323 chapter; and

324 (ii) the acts of the applicant are covered by a surety bond filed with the division under
325 Subsection (2) by the entity [~~registered~~] licensed under this chapter for which the applicant is
326 an employee or agent.

327 (2) If the applicant is an entity, the applicant shall file with the division a surety bond:

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

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

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

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

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

336 of the applicant.

337 (4) If an applicant is an entity, a surety bond filed under this section shall:

338 (a) comply with Subsection (3); and

339 (b) cover the acts of:

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

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

342 (iii) any agent or employee of the entity [~~registered~~] licensed under this chapter.

343 (5) If an individual [~~registered~~] licensed under this chapter does not file a surety bond

344 under this section because at the time of applying for [~~registration~~] licensure that person met

345 the requirements of Subsection (1)(b), the individual shall post a surety bond meeting the

346 requirements of Subsections (1) and (3) by no later than 30 days from the day on which the

347 person is not covered by a surety bond in accordance with Subsection (1)(b).

348 (6) Notwithstanding the other provisions of this section, an applicant can comply with

349 the requirements of this section, if the applicant deposits assets with or provides a letter of

350 credit to the division:

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

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

353 Section 9. Section **61-2c-205** is amended to read:

354 **61-2c-205. Term of licensure -- Renewal -- Reporting of changes.**

355 (1) (a) A [~~registration~~] license under this chapter is valid for a two-year period.

356 (b) Notwithstanding Subsection (1)(a), the time period of a [~~registration~~] license may

357 be extended or shortened by as much as one year to maintain or change a renewal cycle

358 established by rule by the division.

359 (2) To renew a [~~registration~~] license, no later than 30 days before the date the

360 [~~registration~~] license expires, a [~~registrant~~] licensee shall:

361 (a) file a [~~registration~~] licensure statement meeting the requirements of Section

362 61-2c-202; [~~and~~]

363 (b) pay a fee to the division established by the division in accordance with Section

364 63-38-3.2[-]; and

365 (c) if the licensee is an individual, submit proof using forms approved by the division

366 of having completed during the two years prior to application the continuing education required

367 by the commission under Section 61-2c-104.

368 (3) (a) A [registrant] licensee under this chapter shall amend its [registration] licensure
369 statement filed with the division within ten days of the date on which there is a change in:

370 (i) a name under which the [registrant] licensee transacts the business of residential
371 mortgage loans in this state;

372 (ii) the location of the [registrant] licensee;

373 (iii) the control persons of the [registrant] licensee; or

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

375 (b) Failure to notify the division of a change described in Subsection (3)(a) is separate
376 grounds for disciplinary action against a [registrant] licensee.

377 (4) A [registrant] licensee shall notify the division by sending the division a signed
378 statement within ten business days of:

379 (a) a conviction of any criminal offense;

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

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

385 (5) (a) A license under this chapter expires if the licensee does not apply to renew the
386 license on or before the expiration date of the license.

387 (b) Within 30 calendar days after the expiration date, a licensee whose license has
388 expired may apply to reinstate the expired license upon:

389 (i) payment of a renewal fee and a late fee determined by the division under Section
390 63-38-3.2; and

391 (ii) providing proof using forms approved by the division of having completed the
392 continuing education required by the commission under Section 61-2c-104.

393 (c) After the 30 calendar days described in Subsection (5)(b) and within six months
394 after the expiration date, a licensee whose license has expired may apply to reinstate an expired
395 license upon:

396 (i) payment of a renewal fee and a late fee determined by the division under Section
397 63-38-3.2;

398 (ii) providing proof using forms approved by the division of having completed the
399 continuing education required by the commission under Section 61-2c-104; and

400 (iii) completing an additional 12 hours of continuing education approved by the
401 commission under Section 61-2c-104.

402 (d) A licensee whose license has been expired for more than one year may apply to
403 reinstate an expired license upon:

404 (i) satisfying the requirements of Subsection (5)(c); and

405 (ii) passing the examination approved by the commission under Section 61-2c-104.

406 Section 10. Section **61-2c-301** is amended to read:

407 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

408 (1) An individual or entity transacting the business of residential mortgage loans in this
409 state may not:

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

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

414 (i) that is excessive; or

415 (ii) if the individual or entity does not comply with Section 70D-1-6;

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

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

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

423 (f) violate or not comply with:

424 (i) this chapter;

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

426 (iii) a rule made by the division;

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

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

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

430 (h) make false representations to the division, including in a [~~registration~~] licensure
431 statement;

432 (i) for any residential mortgage loan transaction beginning on or after January 1, 2004,
433 engage in the business of residential mortgage loans with respect to the transaction if the
434 individual or entity also acts in any of the following capacities with respect to the same
435 residential mortgage loan transaction:

436 (i) appraiser;

437 (ii) escrow agent;

438 (iii) real estate agent; or

439 (iii) general contractor;

440 (j) order a title insurance report or hold a title insurance policy unless the individual or
441 entity provides to the title insurer a copy of a valid, current license under this chapter.

442 ~~[(f)]~~ (k) engage in unprofessional conduct as defined by rule; or

443 ~~[(g)]~~ (l) engage in an act or omission in transacting the business of residential mortgage
444 loans that constitutes dishonesty, fraud, or misrepresentation.

445 (2) Whether or not the crime is related to the business of residential mortgage loans, it
446 is a violation of this chapter for a [~~registrant~~] licensee or a control person of a [~~registrant~~]
447 licensee to do any of the following with respect to a criminal offense which involves moral
448 turpitude:

449 (a) be convicted;

450 (b) plead guilty or nolo contendere;

451 (c) enter a plea in abeyance; or

452 (d) be subjected to a criminal disposition similar to the ones described in Subsections

453 (2)(a) through (c).

454 Section 11. Section **61-2c-302** is amended to read:

455 **61-2c-302. Record requirements.**

456 (1) For the time period specified in Subsection (2), a [~~registrant~~] licensee shall make or
457 possess any record required for that [~~registrant~~] licensee by a rule made by the division.

458 (2) A [~~registrant~~] licensee shall maintain in its possession a record described in
459 Subsection (1) until the later of four years from the last to occur of the following:

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

466 Section 12. Section **61-2c-401** is amended to read:

467 **61-2c-401. Investigations -- Subpoena power of division.**

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

- 469 (a) a [registrant] licensee and the control persons of any [registrant] licensee;
- 470 (b) an applicant for [registration] licensure under this chapter, and the control persons
- 471 of any applicant; or
- 472 (c) any individual or entity that transacts the business of residential mortgage loans
- 473 within this state, and the control persons of any such entity.

474 (2) In conducting investigations and adjudicative proceedings, the division may:

- 475 (a) subpoena witnesses;
- 476 (b) take evidence;
- 477 (c) require by subpoena duces tecum the production of books, papers, contracts,
- 478 records, other documents, or information considered relevant to an investigation; and
- 479 (d) serve a subpoena by certified mail.

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

482 Section 13. Section **61-2c-402** is amended to read:

483 **61-2c-402. Disciplinary action -- Reinstatement.**

484 (1) Subject to the requirements of this section, if an individual or entity required to be
485 [registered] licensed under this chapter violates this chapter, the commission with the
486 concurrence of the director, may:

- 487 (a) impose a civil penalty against the individual or entity in an amount not to exceed
- 488 [\$500] \$2,500 per violation;
- 489 (b) do any of the following to a [registration] license under this chapter:
- 490 (i) suspend;

- 491 (ii) revoke;
- 492 (iii) place on probation;
- 493 (iv) deny renewal; or
- 494 (v) deny reinstatement; or
- 495 (c) do both Subsections (1)(a) and (b).
- 496 (2) (a) Before the commission and the division may take an action described in
- 497 Subsection (1), the division shall:
- 498 (i) give notice to the individual or entity; and
- 499 (ii) schedule an adjudicative proceeding.
- 500 (b) If after the adjudicative proceeding scheduled under Subsection (2)(a), the
- 501 commission and the director determine that an individual or entity required to be ~~registered~~
- 502 licensed under this ~~section~~ chapter has violated this chapter, the commission may take an
- 503 action described in Subsection (1) by written order.
- 504 (3) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, an
- 505 individual or entity against whom disciplinary action is taken under this section may seek
- 506 review by the executive director of the disciplinary action.
- 507 (4) If an individual or entity prevails in a judicial appeal and the court finds that the
- 508 state action was undertaken without substantial justification, the court may award reasonable
- 509 litigation expenses to that individual or entity as provided under Title 78, Chapter 27a, Small
- 510 Business Equal Access to Justice Act.
- 511 (5) (a) An order issued under this section takes effect 30 days after the service of the
- 512 order unless otherwise provided in the order.
- 513 (b) If an appeal of an order issued under this section is taken by an individual or entity,
- 514 the division may stay enforcement of the commission's order in accordance with Section
- 515 63-46b-18.
- 516 (6) If ordered by the court of competent jurisdiction, the division shall promptly take an
- 517 action described in Subsection (1)(b) against a ~~registration~~ license granted under this chapter.
- 518 (7) (a) If a ~~registration~~ license under this chapter is revoked, the individual or entity
- 519 may apply to have the ~~registration~~ license reinstated by complying with the requirements of
- 520 Section 61-2c-202 for ~~registration~~ licensure.
- 521 (b) Notwithstanding Subsection (7)(a), if a ~~registration~~ license under this chapter is

522 revoked, the individual or entity may not apply for reinstatement of the [registration] license
523 sooner than five years after the date the [registration] license is revoked in accordance with this
524 section.

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

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

531 (ii) the interest of the public is not likely to be harmed by the granting of the
532 [registration] license.

533 Section 14. **Effective date.**

534 This act takes effect on January 1, 2004.

535 Section 15. **Coordination clause.**

536 If this bill and H.B. 203, Residential Mortgage Regulatory Commission, both pass, it is
537 the intent of the Legislature that the Office of Legislative Research and General Counsel, in
538 preparing the Utah Code database for publication, shall replace the phrase "and are currently
539 registered as a mortgage lender with the division" in Subsection 61-2c-104(1)(a)(i) of H.B. 203
540 with the phrase "and who are currently licensed under this chapter".

State Impact

The bill requires the Division of Real Estate to monitor 7,000 mortgage loan officer's continuing education requirements at a cost of \$27,500 from the Commerce Service Fund. Appropriations from the Commerce Service Fund affect the amount available for transfer to the General Fund.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
Commerce Service Fund	\$27,500	\$22,500	\$0	\$0
TOTAL	\$27,500	\$22,500	\$0	\$0

Individual and Business Impact

The bill increases continuing education requirements.
