

**RESIDENTIAL MORTGAGE PRACTICES**

**AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: J. Morgan Philpot**

**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, to modify certain penalties, and to modify other licensing and operational 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 provides a coordination clause.**

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

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

*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 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 individual or entity.

(2) "Applicant" means an individual or entity applying for ~~[registration]~~ a license 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; and

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

~~[(C)]~~ (B) 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]~~ licensed 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]~~ licensed 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.

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

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

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

(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 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.

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

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

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

(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.

(14) "Executive director" means the executive director of the Department of Commerce.

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

with the division under this chapter.

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

- (a) prepared, owned, received, or retained by 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.

(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 (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.

(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 for the administration of this chapter in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, including:

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

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

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

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

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

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

(ii) [~~two members~~] one member 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]~~ licensure or denial of ~~[registration]~~ licensure of individuals and entities under this chapter in accordance with Part 2, ~~[Registration]~~ Licensure;

(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~~[-]; and~~

(d) determine the requirements for:

(i) the examination required under Section 61-2c-202, covering at least:

(A) the fundamentals of the English language;

(B) arithmetic;

(C) the provisions of this chapter;

(D) rules adopted by the division;

(E) basic residential mortgage principles and practices; and

(F) any other aspect of Utah law the commission determines is appropriate; and

(ii) the continuing education requirements under Section 61-2c-205, including:

(A) the appropriate number of hours of required continuing education; and

(B) the subject matter of courses the division may accept for continuing education purposes.

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

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

Section 4. 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) An individual or entity [~~registered~~] licensed 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~~] licensed under this chapter.

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

**Part 2. Licensure**

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

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

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

(a) (i) the 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; 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) 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~~] licensure 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 an entity or individual, the entity or individual for whom the employee or agent transacts the business of residential mortgage loans.

(4) An individual licensed under this chapter may not engage in the business of



residential mortgage loans on behalf of more than one entity at the same time.

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

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

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

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

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

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

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

(iv) demonstrates to the satisfaction of the division with the concurrence of the commission that the 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~~] licensure 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~~] license to an applicant if the division finds that the 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, an applicant who is denied [~~registration~~] licensure 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]~~ licensure.

(4) (a) (i) An individual applying for ~~[registration]~~ a license under this chapter and any control person of the applicant shall:

~~[(i)]~~ (A) submit a fingerprint card in a form acceptable to the division at the time the ~~[registration]~~ licensure statement is filed; ~~[and]~~

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

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

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

(C) provide proof using methods approved by the division of having successfully completed an examination approved by the commission under Section 61-2c-104.

(ii) Notwithstanding Subsection (4)(a)(i)(C), an individual who was registered with the division under this chapter prior to January 1, 2004 may engage in the business of residential mortgage loans until January 1, 2005 without having passed the examination described in Subsection (4)(a)(i)(C).

(b) The division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for each applicant and each control person of an applicant through a national criminal history system.

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

(iii) An individual or entity whose conditional ~~[registration]~~ license 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 7. Section **61-2c-203** is amended to read:

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

(1) To qualify for [~~registration~~] licensure 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~~] ten years preceding the date the individual applies for [~~registration~~] a license, 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,~~] licensure 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) To qualify for [~~registration~~] licensure under this chapter an entity may not have:

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

(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) a control person who fails to meet the requirements of Subsection (1).

(3) If an individual or a control person of an entity fails to meet the requirements of Subsection (1)(b) or (c), but otherwise meets the qualifications for [~~registration~~] licensure, 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 the failure to meet the requirements of Subsection (1)(b) or (c) the division may permit that individual or entity to be [~~registered~~] licensed under this chapter.

Section 8. 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 an entity [~~registered~~] licensed under this chapter; and

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

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

(a) comply with Subsection (3); and

(b) cover the acts of:

- (i) the entity [~~registered~~] licensed under this chapter;
- (ii) any control person of the entity [~~registered~~] licensed under this chapter; and
- (iii) any agent or employee of the entity [~~registered~~] licensed under this chapter.

(5) If an individual [~~registered~~] licensed under this chapter does not file a surety bond under this section because at the time of applying for [~~registration~~] licensure 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 9. Section **61-2c-205** is amended to read:

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

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

(b) Notwithstanding Subsection (1)(a), the time period of a [~~registration~~] license 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~~] license, no later than 30 days before the date the [~~registration~~] license expires, a [~~registrant~~] licensee shall:

(a) file a [~~registration~~] licensure 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[-]; and

(c) if the licensee is an individual, submit proof using forms approved by the division of having completed during the two years prior to application the continuing education required by

the commission under Section 61-2c-104.

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

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

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

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

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

(a) a conviction of any criminal offense;

(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] licensee, whether the license or registration is issued by this state or another jurisdiction.

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

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

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

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

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

upon:

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

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

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

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

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

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

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

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

(1) 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 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~~ licensure

statement;

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

- (i) appraiser;
- (ii) escrow agent;
- (iii) real estate agent; or
- (iv) general contractor;
- (j) order a title insurance report or hold a title insurance policy unless the individual or

entity provides to the title insurer a copy of a valid, current license under this chapter.

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

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

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

- (a) be convicted;
- (b) plead guilty or nolo contendere;
- (c) enter a plea in abeyance; or



(d) be subjected to a criminal disposition similar to the ones described in Subsections (2)(a) through (c).

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

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

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

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

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

Section 12. 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 [registrant] licensee and the control persons of any [registrant] licensee;
  - (b) an applicant for [registration] licensure under this chapter, and the control persons of any applicant; or
  - (c) 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 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 13. Section **61-2c-402** is amended to read:

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

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

(a) impose a civil penalty against the individual or entity in an amount not to exceed ~~[\$500]~~ \$2,500 per violation;

(b) do any of the following to a ~~registration~~ license 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), the division shall:

(i) give notice to the individual or entity; and

(ii) schedule an adjudicative proceeding.

(b) If after the adjudicative proceeding scheduled under Subsection (2)(a), the commission and the director determine that an individual or entity required to be ~~registered~~ licensed under this ~~section~~ chapter has violated this chapter, the commission may take an action described in Subsection (1) by written order.

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

(4) If an individual or entity prevails in 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 individual or entity as provided under Title 78, Chapter 27a, Small Business Equal Access to Justice Act.

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

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

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

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

(c) If an individual or entity whose [registration] license 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] license.

**Section 14. Effective date.**

This act takes effect on January 1, 2004.

**Section 15. Coordination clause.**

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