

1 **RESIDENTIAL MORTGAGE PRACTICES**

2 **AMENDMENTS**

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: J. Morgan Philpot**

6 **This act modifies the Utah Residential Mortgage Practices Act to provide a state**
7 **certification under which a certified individual or entity engaging in the business of**
8 **residential mortgage loans may operate with different fees and bond requirements than a**
9 **noncertified individual or entity engaging in the business of residential mortgage loans.**

10 **The act exempts certain mortgage lending institutions from the Utah Residential**
11 **Mortgage Practices Act.**

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

13 AMENDS:

14 **61-2c-104**, as last amended by Chapter 204, Laws of Utah 2002

15 **61-2c-105**, as last amended by Chapters 159 and 204, Laws of Utah 2002

16 **61-2c-202**, as last amended by Chapter 204, Laws of Utah 2002

17 **61-2c-204**, as last amended by Chapter 204, Laws of Utah 2002

18 **61-2c-402**, as last amended by Chapter 204, Laws of Utah 2002

19 ENACTS:

20 **61-2c-501**, Utah Code Annotated 1953

21 **61-2c-502**, Utah Code Annotated 1953

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

23 Section 1. Section **61-2c-104** is amended to read:

24 **61-2c-104. Residential Mortgage Regulatory Commission.**

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

27 (a) the following members appointed by the executive director with the approval of the



28 governor:

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

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

32 (b) the commissioner of the Department of Financial Institutions or the commissioner's
33 designee.

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

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

41 (c) If a vacancy occurs in the membership of the commission for any reason, the
42 replacement shall be appointed for the unexpired term.

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

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

45 (b) The director may call a meeting in addition to the meetings required by Subsection
46 (4)(a):

47 (i) at the discretion of the director;

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

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

50 (5) (a) Three members of the commission constitute a quorum for the transaction of
51 business.

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

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

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

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

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

65 (7) The commission shall:

66 (a) concur in the registration or denial of registration of individuals and entities under
 67 this chapter in accordance with Part 2, Registration;

68 (b) take disciplinary action with the concurrence of the director in accordance with Part
 69 4, Enforcement; ~~and~~

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

72 (d) determine the requirements, including the subject matter, for:

73 (i) the precertification course required for individual state certification under Section
 74 61-2c-501; and

75 (ii) the continuing education required for renewal of individual state certification under
 76 Section 61-2c-501.

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

78 **61-2c-105. Scope of chapter.**

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

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

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

84 (a) the federal government;

85 (b) a state;

86 (c) a political subdivision of a state;

87 (d) an agency of or entity created by a governmental entity described in Subsections

88 (2)(a) through (c) including:

89 (i) the Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing

90 Corporation Act;

91 (ii) the Federal National Mortgage Corporation;

92 (iii) the Federal Home Loan Mortgage Corporation;

93 (iv) the Federal Deposit Insurance Corporation;

94 (v) the Resolution Trust Corporation;

95 (vi) the Government National Mortgage Association;

96 (vii) the Federal Housing Administration;

97 (viii) the National Credit Union Administration;

98 (ix) the Farmers Home Administration; and

99 (x) the Department of Veterans Affairs;

100 (e) a depository institution;

101 (f) an affiliate of a depository institution;

102 (g) any firm or corporation:

103 (i) whose principal purpose or activity is lending money on real property that is secured

104 by a trust deed;

105 (ii) approved as a seller or servicer by the:

106 (A) Federal National Mortgage Association; or

107 (B) Federal Home Loan Mortgage Corporation; and

108 (iii) approved as a supervised or nonsupervised mortgagee by the:

109 (A) Department of Housing and Urban Development; and

110 (B) Department of Veterans Affairs;

111 [~~g~~] (h) an employee or agent of an entity described in Subsections (2)(a) through [~~f~~]

112 (g) when that person acts on behalf of the entity described in Subsections (2)(a) through [~~f~~]

113 (g);

114 [~~h~~] (i) an individual or entity:

115 (i) that makes a loan:

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

117 (B) with the individual's or the entity's own money; and

118 (C) for the individual's or entity's own investment; and

119 (ii) that does not engage in the business of making loans secured by an interest in real

120 property;

121 ~~(j)~~ (j) an individual or entity who receives a mortgage, deed of trust, or lien interest on
122 real property if the individual or entity:

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

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

126 ~~(j)~~ (k) an individual or entity who receives a mortgage, deed of trust, or lien interest
127 on real property if:

128 (i) the individual or entity receives the mortgage, deed of trust, or lien interest as
129 security for an obligation payable on an installment or deferred payment basis;

130 (ii) the obligation described in Subsection (2)~~(j)~~ (k)(i) arises from an individual or
131 entity providing materials or services used in the improvement of the real property that is the
132 subject of the mortgage, deed of trust, or lien interest; and

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

135 ~~(k)~~ (l) a nonprofit corporation that:

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

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

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

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

141 ~~(h)~~ (m) a court appointed fiduciary; or

142 ~~(m)~~ (n) an attorney admitted to practice law in this state:

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

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

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

150 (b) If an attorney exempt from this chapter violates Subsection (3)(a), the attorney:

151 (i) is not subject to enforcement by the division under Part 4, Enforcement; and

152 (ii) is subject to disciplinary action generally applicable to an attorney admitted to
153 practice law in this state.

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

157 Section 3. Section **61-2c-202** is amended to read:

158 **61-2c-202. Registration procedures.**

159 (1) To apply for registration under this chapter an individual or entity shall:

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

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

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

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

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

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

168 (b) pay to the division:

169 (i) an application fee established by the division in accordance with Section 63-38-3.2,
170 which for an individual or entity that has obtained state certification under Section 61-2c-501
171 or 61-2c-502, may not exceed 50% of the application fee for an equivalent individual or entity
172 that has not obtained state certification under Section 61-2c-501 or 61-2c-502; and

173 (ii) the reasonable expenses incurred in processing the application for registration
174 including the costs incurred by the division under Subsection (4);

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

176 (i) obtaining a surety bond;

177 (ii) depositing assets; or

178 (iii) providing a letter of credit; and

179 (d) comply with Subsection (4).

180 (2) The division, with the concurrence of the commission, shall grant a registration to
181 an applicant if the division finds that the applicant:

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

183 (b) complies with this section.

184 (3) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, an
185 applicant who is denied registration under this chapter may submit a request for agency review
186 to the executive director within 30 days following the issuance of the order denying the
187 registration.

188 (4) (a) An individual applying for registration under this chapter and any control person
189 of the applicant shall:

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

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

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

194 (B) the Federal Bureau of Investigation.

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

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

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

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

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

203 (ii) If a criminal background check discloses that an applicant or an applicant's control
204 person failed to accurately disclose a criminal history, the registration shall be immediately and
205 automatically revoked.

206 (iii) An individual or entity whose conditional registration is revoked under Subsection
207 (4)(d)(ii) may appeal the revocation in a hearing conducted:

208 (A) after the revocation; and

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

210 Section 4. Section **61-2c-204** is amended to read:

211 **61-2c-204. Requirements for bonding, letter of credit, or deposit of assets.**

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

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

- 214 (i) that meets the requirements of Subsection (3); and
- 215 (ii) in the amount [~~not less than \$10,000; or~~];
- 216 (A) not less than \$10,000 for:
- 217 (I) an individual who obtained a registration under this chapter prior to May 5, 2003; or
- 218 (II) an individual who meets the requirements for state certification under Section
- 219 61-2c-501; or
- 220 (B) not less than \$20,000 for an individual who does not meet the requirements of
- 221 Subsection (1)(a)(ii)(A);
- 222 (b) demonstrate to the satisfaction of the division that:
- 223 (i) the applicant is an employee or agent of an entity registered under this chapter; and
- 224 (ii) the acts of the applicant are covered by a surety bond filed with the division under
- 225 Subsection (2) by the entity registered under this chapter for which the applicant is an
- 226 employee or agent.
- 227 (2) If the applicant is an entity, the applicant shall file with the division a surety bond:
- 228 (a) that meets the requirements of Subsection (4); and
- 229 (b) in an amount [~~not less than \$25,000;~~];
- 230 (i) not less than \$15,000 for:
- 231 (A) an entity that obtained a registration under this chapter prior to May 5, 2003; or
- 232 (B) an entity that meets the requirements for state certification under Section
- 233 61-2c-502; or
- 234 (ii) not less than \$35,000 for an entity that does not meet the requirements of
- 235 Subsection(2)(b)(i).
- 236 (3) A surety bond filed under this section shall name as beneficiaries:
- 237 (a) the state, for payment of costs incurred and charges made in connection with an
- 238 enforcement action under Part 4, Enforcement, against the applicant including costs and
- 239 charges relating to an examination or investigation; and
- 240 (b) after all claims and charges of the state have been paid in full, any person who has a
- 241 claim against the surety on the bond based on any default or violation of any duty or obligation
- 242 of the applicant.
- 243 (4) If an applicant is an entity, a surety bond filed under this section shall:
- 244 (a) comply with Subsection (3); and

- 245 (b) cover the acts of:
- 246 (i) the entity registered under this chapter;
- 247 (ii) any control person of the entity registered under this chapter; and
- 248 (iii) any agent or employee of the entity registered under this chapter.

249 (5) If an individual registered under this chapter does not file a surety bond under this
250 section because at the time of applying for registration that person met the requirements of
251 Subsection (1)(b), the individual shall post a surety bond meeting the requirements of
252 Subsections (1) and (3) by no later than 30 days from the day on which the person is not
253 covered by a surety bond in accordance with Subsection (1)(b).

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

- 257 (a) in the amounts required for a surety bond; and
- 258 (b) subject to the same surety conditions of Subsections (3) and (4).

259 Section 5. Section **61-2c-402** is amended to read:

260 **61-2c-402. Disciplinary action -- Reinstatement.**

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

264 (a) impose a civil penalty against the individual or entity in an amount not to exceed
265 \$500 per violation;

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

- 267 (i) suspend;
- 268 (ii) revoke;
- 269 (iii) place on probation;
- 270 (iv) deny renewal; or
- 271 (v) deny reinstatement; [or]

272 (c) if the individual or entity has obtained state certification under Sections 61-2c-501
273 and 61-2c-502, do any of the following to the state certification:

274 (i) suspend;

275 (ii) revoke;

276 (iii) place on probation;
277 (iv) deny renewal; or
278 (v) deny reinstatement; or
279 [~~(c)~~] (d) do [both] any combination of Subsections (1)(a), (1)(b), and [~~(b)~~] (1)(c).
280 (2) (a) Before the commission and the division may take an action described in
281 Subsection (1), the division shall:
282 (i) give notice to the individual or entity; and
283 (ii) schedule an adjudicative proceeding.
284 (b) If after the adjudicative proceeding scheduled under Subsection (2)(a), the
285 commission and the director determine that an individual or entity required to be registered
286 under this section has violated this chapter, the commission may take an action described in
287 Subsection (1) by written order.
288 (3) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, an
289 individual or entity against whom disciplinary action is taken under this section may seek
290 review by the executive director of the disciplinary action.
291 (4) If an individual or entity prevails in a judicial appeal and the court finds that the
292 state action was undertaken without substantial justification, the court may award reasonable
293 litigation expenses to that individual or entity as provided under Title 78, Chapter 27a, Small
294 Business Equal Access to Justice Act.
295 (5) (a) An order issued under this section takes effect 30 days after the service of the
296 order unless otherwise provided in the order.
297 (b) If an appeal of an order issued under this section is taken by an individual or entity,
298 the division may stay enforcement of the commission's order in accordance with Section
299 63-46b-18.
300 (6) If ordered by the court of competent jurisdiction, the division shall promptly take an
301 action described in Subsection (1)(b) against a registration granted under this chapter.
302 (7) (a) If a registration under this chapter is revoked, the individual or entity may apply
303 to have the registration reinstated by complying with the requirements of Section 61-2c-202 for
304 registration.
305 (b) Notwithstanding Subsection (7)(a), if a registration under this chapter is revoked,
306 the individual or entity may not apply for reinstatement of the registration sooner than five

307 years after the date the registration is revoked in accordance with this section.

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

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

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

316 (8) (a) If a state certification under Section 61-2c-501 or 61-2c-502 is revoked, the
317 individual or entity may apply to have the state certification reinstated by complying with the
318 requirements of Section 61-2c-501 or 61-2c-502 for state certification.

319 (b) Notwithstanding Subsection (8)(a), if a state certification under Section 61-2c-501
320 or 61-2c-502 is revoked, the individual or entity may not apply for reinstatement of the state
321 certification sooner than five years after the date the state certification is revoked in accordance
322 with this section.

323 (c) If an individual or entity whose state certification has been revoked applies for
324 reinstatement in accordance with this Subsection (8), the commission and the division may
325 grant the application for reinstatement if the commission and the division find that:

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

329 (ii) the interest of the public is not likely to be harmed by the granting of the state
330 certification.

331 Section 6. Section **61-2c-501** is enacted to read:

332 **Part 5. Certification**

333 **61-2c-501. State certification for individuals.**

334 (1) An individual that is registered with the division under Part 2, Registration, may
335 apply for state certification by providing proof using forms approved by the division:

336 (a) of having successfully completed a 15-hour precertification course approved by the
337 commission under Section 61-2c-104; and

338 (b) that the individual is employed by an entity that has obtained state certification.

339 (2) (a) A state certification under this section is valid for the same period that the
340 individual's registration under this chapter is valid under Section 61-2c-205.

341 (b) To renew a state certification, an individual shall, in connection with the
342 individual's renewal of the individual's registration under Section 61-2c-205, submit proof
343 using forms approved by the division of having completed during the two years prior to
344 application 12 hours of continuing education approved by the commission under Section
345 61-2c-104.

346 (3) The division, with the concurrence of the commission, shall grant a state
347 certification or a renewal of a state certification to an individual applicant if the division finds
348 that the individual applicant:

349 (a) holds a valid registration under this chapter; and

350 (b) meets the requirements of this section.

351 Section 7. Section **61-2c-502** is enacted to read:

352 **61-2c-502. State certification for entities.**

353 (1) An entity that is registered with the division under Part 2, Registration, may apply
354 for state certification by providing proof using forms approved by the division that:

355 (a) the entity designates as a principal an individual who:

356 (i) has three years experience transacting the business of residential mortgage loans;
357 and

358 (ii) has held an individual state certification under Section 61-2c-501 for at least three
359 years; and

360 (b) all individuals who have been transacting the business of residential mortgage loans
361 on behalf of the entity for more than three months have received individual state certification
362 under Section 61-2c-501.

363 (2) (a) A state certification under this section is valid for the same period that the
364 entity's registration under this chapter is valid under Section 61-2c-205.

365 (b) To renew a state certification, an entity shall, in connection with the entity's
366 renewal of the entity's registration under Section 61-2c-205, submit proof using forms
367 approved by the division of compliance with the requirements of this section.

368 (3) The division, with the concurrence of the commission, shall grant a state

369 certification or a renewal of a state certification to an entity applicant if the division finds that
370 the entity applicant:
371 (a) holds a valid registration under this chapter; and
372 (b) meets the requirements of this section.

Legislative Review Note
as of 2-4-03 2:30 PM

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

Office of Legislative Research and General Counsel

Fiscal Note**Residential Mortgage Practices Amendments***04-Mar-03***Bill Number HB0277***10:17 AM*

State Impact

The number of persons who qualify under the provisions of this bill are small and can be handled within existing budgets of the Division of Real Estate and the Department of Financial Institutions.

Individual and Business Impact

Exempted mortgage bankers will save on registration fees.

Office of the Legislative Fiscal Analyst