

**MORTGAGE BROKER AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Michael G. Waddoups**

---

---

**LONG TITLE**

**General Description:**

This bill modifies the Utah Residential Mortgage Practices Act.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ enacts provisions related to records inspections conducted by the Division of Real Estate;
- ▶ modifies the duties of the Residential Mortgage Regulatory Commission;
- ▶ modifies the scope of the Utah Residential Mortgage Practices Act;
- ▶ allows an individual exempt from the chapter to voluntarily obtain a license;
- ▶ exempts certain individuals with an ownership interest in a licensed entity from the requirements of the chapter;
- ▶ establishes license categories of mortgage officer and principal lending manager, and enacts provisions related to those license categories;
- ▶ modifies certain provisions related to obtaining and revoking a license;
- ▶ enacts prelicensing education requirements;
- ▶ repeals provisions related to requirements for bonding, letter of credit, and deposit of assets;
- ▶ makes certain actions of the Residential Mortgage Regulatory Commission subject to the concurrence of the division;
- ▶ allows reciprocal licensure for applicants licensed in another state;
- ▶ enacts provisions related to activation and inactivation of a license;
- ▶ modifies certain operational restrictions;

- ▶ modifies the persons subject to an investigation by the Division of Real Estate;
- ▶ enacts provisions related to record retention requirements;
- ▶ enacts provisions governing civil actions;
- ▶ provides for the establishment and operation of the Residential Mortgage Loan Education, Research, and Recovery Fund to pay certain claims under this chapter;
- ▶ provides uses for excess monies in the Residential Mortgage Loan Education, Research, and Recovery Fund, including:
  - providing educational courses and materials;
  - contracting for research projects; and
  - funding salaries and training expenses for certain Division of Real Estate staff; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides an effective date.

**Utah Code Sections Affected:**

AMENDS:

**61-2c-102**, as last amended by Chapter 243, Laws of Utah 2003

**61-2c-103**, as last amended by Chapter 243, Laws of Utah 2003

**61-2c-104 (Superseded 07/01/04)**, as last amended by Chapter 243, Laws of Utah 2003

**61-2c-104 (Effective 07/01/04)**, as last amended by Chapters 145 and 243, Laws of Utah 2003

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

**61-2c-106**, as last amended by Chapter 243, Laws of Utah 2003

**61-2c-201**, as last amended by Chapter 243, Laws of Utah 2003

**61-2c-202**, as last amended by Chapter 243, Laws of Utah 2003

**61-2c-203**, as last amended by Chapter 243, Laws of Utah 2003

**61-2c-205**, as last amended by Chapter 243, Laws of Utah 2003

**61-2c-301**, as last amended by Chapter 243, Laws of Utah 2003

**61-2c-302**, as last amended by Chapter 243, Laws of Utah 2003

**61-2c-401**, as last amended by Chapter 243, Laws of Utah 2003

**61-2c-402**, as last amended by Chapter 243, Laws of Utah 2003

**61-2c-403**, as last amended by Chapter 204, Laws of Utah 2002

**70D-1-10**, as last amended by Chapter 204, Laws of Utah 2002

ENACTS:

**61-2c-206**, Utah Code Annotated 1953

**61-2c-207**, Utah Code Annotated 1953

**61-2c-208**, Utah Code Annotated 1953

**61-2c-404**, Utah Code Annotated 1953

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

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

**61-2c-503**, Utah Code Annotated 1953

**61-2c-504**, Utah Code Annotated 1953

**61-2c-505**, Utah Code Annotated 1953

**61-2c-506**, Utah Code Annotated 1953

**61-2c-507**, Utah Code Annotated 1953

**61-2c-508**, Utah Code Annotated 1953

**61-2c-509**, Utah Code Annotated 1953

**61-2c-510**, Utah Code Annotated 1953

REPEALS:

**61-2c-204**, as last amended by Chapter 243, Laws of Utah 2003

---

---

*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:

**S.B. 178**

**Enrolled Copy**

(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 a license under this chapter.

(3) "Associate lending manager" means a person who:

(a) has qualified under this chapter as a principal lending manager; and

(b) works by or on behalf of another principal lending manager in transacting the business of residential mortgage loans.

(4) "Branch office" means a licensed entity's office:

(a) for the transaction of the business of residential mortgage loans regulated under this chapter; and

(b) other than the main office of the licensed entity.

~~[(3)]~~ (5) (a) "Business of residential mortgage loans" means for compensation to:

(i) make or originate a residential mortgage loan;

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

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

(A) taking applications; and

(B) communicating with the borrower and lender.

(b) "Business of residential mortgage loans" does not include:

(i) the performance of clerical functions such as:

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

~~[(ii)]~~ (B) requesting or gathering information, word processing, sending correspondence, or assembling files by an individual who works under the instruction of a person licensed under this chapter~~[-]; or~~

(ii) ownership of an entity that engages in the business of residential mortgage loans if the

owner does not personally perform the acts listed in Subsection (5)(a).

~~[(4)]~~ (6) "Closed-end" means a loan with a fixed amount borrowed and which does not permit additional borrowing secured by the same collateral.

~~[(5)]~~ (7) "Commission" means the Residential Mortgage Regulatory Commission created in Section 61-2c-104.

~~[(6)]~~ (8) "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)]~~ (9) "Control person" means ~~[any]~~ an individual ~~[or]~~ who is designated by an entity ~~[which]~~ as the individual who directly manages or controls ~~[another]~~ the entity's transaction of the business of residential mortgage loans secured by Utah dwellings.

~~[(9)]~~ (10) "Depository institution" is as defined in Section 7-1-103.

~~[(10)]~~ (11) "Director" means the director of the division.

~~[(11)]~~ (12) "Division" means the Division of Real Estate.

~~[(12)]~~ (13) "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)]~~ (14) "Entity" means any corporation, limited liability company, partnership, company, association, joint venture, business trust, trust, or other organization.

~~[(14)]~~ (15) "Executive director" means the executive director of the Department of Commerce.

(16) "Inactive status" means a dormant status into which an unexpired license is placed when the holder of the license is not currently engaging in the business of residential mortgage loans.

(17) "Lending manager" or "principal lending manager" means a person licensed as a principal lending manager under Section 61-2c-206.

~~[(15)]~~ (18) "Licensee" means an individual or entity licensed with the division under this chapter.

(19) (a) Except as provided in Subsection (19)(b), "mortgage officer" means an individual who is licensed with the division to transact the business of residential mortgage loans through a principal lending manager.

(b) "Mortgage officer" does not include a principal lending manager.

~~[(16)]~~ (20) "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)]~~ (21) "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)]~~ (21)(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)]~~ (22) "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) visit and investigate an entity licensed under this chapter, regardless of whether the entity is located in Utah; and
  - ~~[(d)]~~ (e) 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) licensure procedures for:
    - (i) individuals and entities required by this chapter to obtain a license with the division;
  - and

(ii) the establishment of a branch office by an entity;

(b) proper handling of funds received by licensees;

(c) record-keeping requirements by licensees; and

(d) standards of conduct for licensees.

(4) (a) The division shall make available to the public a list of the names and addresses of all 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).

(5) The division shall:

(a) certify education providers who offer:

(i) prelicensing education to candidates for licensure under this chapter; or

(ii) continuing education to individuals licensed under this chapter; and

(b) make available to the public, licensees, and candidates for licensure a list of the names and addresses of all education providers certified under this Subsection (5).

(6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division shall make rules establishing:

(a) certification criteria and procedures for providers of prelicensing education and continuing education; and

(b) standards of conduct for certified education providers.

Section 3. Section **61-2c-104 (Superseded 07/01/04)** is amended to read:

**61-2c-104 (Superseded 07/01/04). 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) 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) 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 licensure or denial of licensure of individuals and entities under this chapter in accordance with Part 2, Licensure;

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

(c) advise the division concerning matters related to the administration and enforcement of this chapter; and

(d) with the concurrence of the division, 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) with the concurrence of the division, the continuing education requirements under Section 61-2c-205, including:

(A) except as provided in Subsection 61-2c-202(4)(a)(i)(C) and Subsection 61-2c-206(1)(c), the appropriate number of hours of required prelicensing education and continuing education; and

(B) the subject matter of courses the division may accept for continuing education purposes[=];

(iii) with the concurrence of the division, the prelicensing education required under

Sections 61-2c-202 and 61-2c-206; and

(iv) the examination required under Section 61-2c-206 covering:

(A) advanced residential mortgage principles and practices; and

(B) other aspects of Utah law the commission, with the concurrence of the division,

determines appropriate.

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

(9) The commission and the division shall make the examination and prelicensing and continuing education requirements described in this section available through the Internet or other distance education methods approved by the commission and division when reasonably practicable.

(10) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules establishing procedures under which a licensee may be exempted from continuing education requirements:

(a) for a period not to exceed four years; and

(b) upon a finding of reasonable cause.

Section 4. Section **61-2c-104 (Effective 07/01/04)** is amended to read:

**61-2c-104 (Effective 07/01/04). 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) 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) 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 licensure or denial of licensure of individuals and entities under this chapter in accordance with Part 2, Licensure;

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

(c) advise the division concerning matters related to the administration and enforcement of this chapter; and

(d) with the concurrence of the division, 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) with the concurrence of the division, the continuing education requirements under Section 61-2c-205, including:

(A) except as provided in Subsection 61-2c-202(4)(a)(i)(C) and Subsection 61-2c-206(1)(c), the appropriate number of hours of prelicensing education and required continuing education; and

(B) the subject matter of courses the division may accept for continuing education purposes[-];

(iii) with the concurrence of the division, the prelicensing education required under Sections 61-2c-202 and 61-2c-206, including online education or distance learning options; and

(iv) the examination required under Section 61-2c-206 covering:

(A) advanced residential mortgage principles and practices; and

(B) other aspects of Utah law the commission, with the concurrence of the division, determines appropriate.

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

(9) The commission and the division shall make the examination and prelicensing education and continuing education requirements described in this section available through the Internet or other distance education methods approved by the commission and division when reasonably practicable.

(10) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules establishing procedures under which a licensee may be exempted from continuing education requirements:

(a) for a period not to exceed four years; and

(b) upon a finding of reasonable cause.

Section 5. Section **61-2c-105** is amended to read:

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

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

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

(2) The following are exempt from this chapter:

(a) the federal government;

(b) a state;

(c) a political subdivision of a state;

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

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

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

(ii) the Federal National Mortgage Corporation;

- (iii) the Federal Home Loan Mortgage Corporation;
- (iv) the Federal Deposit Insurance Corporation;
- (v) the Resolution Trust Corporation;
- (vi) the Government National Mortgage Association;
- (vii) the Federal Housing Administration;
- (viii) the National Credit Union Administration;
- (ix) the Farmers Home Administration; and
- (x) the Department of Veterans Affairs;
- (e) a depository institution;
- (f) an affiliate of a depository institution;
- (g) an employee or agent of an entity described in Subsections (2)(a) through (f) when that person acts on behalf of the entity described in Subsections (2)(a) through (f);
- (h) an individual or entity:
  - (i) that makes a loan:
    - (A) secured by an interest in real property;
    - (B) with the individual's or the entity's own money; and
    - (C) for the individual's or entity's own investment; and
  - (ii) that does not engage in the business of making loans secured by an interest in real property;
    - (i) an individual or entity who receives a mortgage, deed of trust, or lien interest on real property if the individual or entity:
      - (i) is the seller of real property; and
      - (ii) receives the mortgage, deed of trust, or lien interest on real property as security for a separate money obligation;
    - (j) an individual or entity who receives a mortgage, deed of trust, or lien interest on real property if:
      - (i) the individual or entity receives the mortgage, deed of trust, or lien interest as security for an obligation payable on an installment or deferred payment basis;

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

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

(k) a nonprofit corporation that:

(i) is exempt from paying federal income taxes;

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

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

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

(l) a court appointed fiduciary; or

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

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

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

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

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

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

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

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

(4) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,



the division shall, by rule, determine a date, on or after December 31, 2004, after which an individual who is exempt under Subsection (2) may voluntarily obtain a license pursuant to Subsection (4)(b).

(b) (i) After the date described in Subsection (4)(a), an individual who is exempt under Subsection (2) may voluntarily obtain a license under this chapter by complying with Part 2, Licensure.

(ii) An individual who voluntarily obtains a license pursuant to this Subsection (4)(b) shall comply with all the provisions of this chapter.

Section 6. 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 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~~] the principal lending manager of the entity, licensed under this chapter.

Section 7. Section **61-2c-201** is amended to read:

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

(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 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) An individual who has an ownership interest in an entity required to be licensed under this chapter is not required to obtain an individual license under this chapter unless the individual transacts the business of residential mortgage loans.

~~[(3)]~~ (4) Unless otherwise exempted under this chapter, 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.

(5) (a) On or after January 1, 2006, a license issued under this chapter to an individual who has not obtained a license as a principal lending manager automatically converts to a mortgage officer license.

(b) A mortgage officer license issued pursuant to Subsection (5)(a) shall be placed on inactive status until the holder of the license has submitted to the division the forms required to activate the license with a principal lending manager.

~~[(4)]~~ (6) (a) 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.

(b) This Subsection (6) does not restrict the number of:

(i) different lenders an individual or entity may use as a funding source for residential mortgage loans; or

(ii) entities in which an individual may have an ownership interest, regardless of whether the entities are:

(A) licensed under this chapter; or

(B) exempt under Section 61-2c-105.

(7) An individual licensed under this chapter may not transact the business of residential mortgage loans for the following at the same time:

(a) an entity licensed under this chapter; and

(b) an entity that is exempt from licensure under Section 61-2c-105.

(8) On or after January 1, 2006, except as provided under Title 16, Chapter 11, Professional Corporation Act or under Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, a mortgage officer may not receive consideration for transacting the business of residential mortgage loans from any person or entity except the principal lending manager with whom the mortgage officer is licensed.

(9) On or after January 1, 2006, a mortgage officer shall conduct all business of residential mortgage loans:

(a) through the principal lending manager with which the individual is licensed;

(b) in the business name under which the principal lending manager is authorized by the division to do business.

(10) (a) (i) If an individual who is authorized by this chapter to transact the business of residential mortgage loans as an individual transacts the business of residential mortgage loans under an assumed business name, the individual shall:

(A) register the assumed business name with the division; and

(B) furnish to the division proof that the assumed business name has been filed with the Division of Corporations and Commercial Code pursuant to Title 42, Chapter 2, Conducting Business Under Assumed Name.

(ii) This Subsection (10)(a) does not apply to an individual who transacts the business of residential mortgage loans as an employee or agent of another individual or entity.

(b) The division may charge a fee established in accordance with Section 63-38-3.2 for registering an assumed name pursuant to this Subsection (10).

(11) (a) A licensee whose license is in inactive status may not transact the business of residential mortgage loans.

(b) On or after January 1, 2006, a mortgage officer whose license has been placed in inactive status may not transact the business of residential mortgage loans until the mortgage officer has licensed with a principal lending manager by following the procedures established by the division by rule made in accordance with Title 63, Chapter 46a, Utah Administrative

Rulemaking Act, including submission of all required forms and payment of all required activation fees.

(12) (a) On or after May 3, 2004 and before January 1, 2006, if a licensed entity terminates its control person, or if the control person of a licensed entity resigns, dies, or becomes unable to act as control person due to disability, the entity shall cease all business of residential mortgage loans until the entity has submitted all forms and fees to the division that are required to affiliate another control person with the licensed entity.

(b) On or after January 1, 2006, if a licensed entity terminates its principal lending manager, or if the principal lending manager of a licensed entity resigns, dies, or becomes unable to act as a principal lending manager due to disability, the entity may not transact the business of residential mortgage loans until the entity has submitted all forms and fees to the division that are required to affiliate another principal lending manager with the entity.

Section 8. Section **61-2c-202** is amended to read:

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

- (1) To apply for licensure under this chapter an [~~individual or entity~~] applicant shall:
- (a) submit to the division a 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) on or after May 3, 2004 and before January 1, 2006, if the applicant is an entity[;];
- (A) lists the control [persons] person of the applicant; and
- (B) contains the signature of the control person;
- (iv) on or after January 1, 2006, if the applicant is an entity:
- (A) lists the principal lending manager of the entity; and
- (B) contains the signature of the principal lending manager;
- ~~[(iv)]~~ (v) 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]
- (vi) if the applicant is an entity, lists:
- (A) all jurisdictions in which the entity is registered, licensed, or otherwise regulated in

the business of residential mortgage loans; and

(B) the history of any disciplinary action or adverse administrative action taken against the entity by any regulatory agency within the ten years preceding the application; and

~~[(v)]~~ (vii) 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 licensure including the costs incurred by the division under Subsection (4); and

~~[(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)]~~ (c) comply with Subsection (4).

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

(a) meets the qualifications of ~~[Sections]~~ Section 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 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 licensure.

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

(A) submit a fingerprint card in a form acceptable to the division at the time the licensure statement is filed;

(B) consent to a fingerprint background check by:

(I) the Utah Bureau of Criminal Identification; and

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

(C) on or after January 1, 2005, provide proof using methods approved by the division of having successfully completed 20 hours of approved prelicensing education required by the commission under Section 61-2c-104; and

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

(ii) Notwithstanding ~~[Subsection]~~ Subsections (4)(a)(i)(C) and (4)(a)(i)(D), 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).]~~ without having:

(A) completed the prelicensing education described in Subsection (4)(a)(i)(C); and

(B) passed the examination described in Subsection (4)(a)(i)(D).

(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 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 license shall be immediately and automatically revoked.

(iii) An individual or entity whose conditional 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.

(iv) Relief from a revocation may be granted only if:

(A) the criminal history upon which the division based the revocation:

(I) did not occur; or

(II) was the criminal history of another person;

(B) (I) the revocation was based on a failure to accurately disclose a criminal history; and

(II) the applicant had a reasonable good faith belief at the time of application that there was no criminal history to be disclosed; or

(C) the division failed to follow the prescribed procedure for the revocation.

Section 9. Section **61-2c-203** is amended to read:

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

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

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

(b) shall demonstrate honesty, integrity, and truthfulness;

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

~~[(c)]~~ (d) may not have had a license or registration suspended, revoked, surrendered, canceled, or denied in the five years preceding the date the individual applies for 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, probation, fine, cancellation, or denial is based on misconduct in a professional capacity that relates to [~~good~~] moral character, honesty, integrity, truthfulness, or the competency to transact the business of residential mortgage loans[-];

(e) except as provided in Subsection (3), may not have been the subject of a bar by the Securities and Exchange Commission, the New York Stock Exchange, or the National Association of Securities Dealers within the five years preceding the date the individual applies for registration; and

(f) may not have had any temporary or permanent injunction entered against the individual:

(i) by a court or licensing agency; and

(ii) based on:

(A) conduct or a practice involving the business of residential mortgage loans; or

(B) conduct involving fraud, misrepresentation, or deceit.

(2) To qualify for 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]~~ or

~~[(b) a control person who fails to meet the requirements of Subsection (1).]~~

(b) (i) before January 1, 2006, a control person who fails to meet the requirements of Subsection (1); or

(ii) on or after January 1, 2006, a principal lending manager who fails to meet the requirements of Subsection (1).

(3) ~~[H]~~ Notwithstanding the failure to meet the requirements of Subsections (1)(c) through (f), the division may permit an individual or [a control person of an] entity to be licensed under this chapter if the individual applicant or a person listed in Subsection (2):

(a) fails to meet the requirements of [Subsection (1)(b) or (c), but] Subsections (1)(c) through (f);

(b) otherwise meets the qualifications for licensure[-]; and

(c) provides evidence satisfactory to the division with the concurrence of the commission that the individual applicant or ~~[control]~~ person ~~[has]~~ described in Subsection (2):

(i) is of good moral character [and];

(ii) is honest;

(iii) has integrity;



(iv) is truthful; and

(v) has 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 licensed under this chapter].~~

Section 10. Section **61-2c-205** is amended to read:

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

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

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

(a) file a licensure statement meeting the requirements of Section 61-2c-202;

(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 and the individual's license is in active status at the time of application for renewal, 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 licensee under this chapter shall amend its 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 licensee transacts the business of residential mortgage loans in this state;

(ii) (A) if the licensee is an entity, the business location of the licensee; or

(B) if the licensee is an individual, the home and business addresses of the individual;

(iii) (A) on or after May 3, 2004 and before January 1, 2006, the control [persons] person  
of the licensee; or

(B) on or after January 1, 2006, the principal lending manager of the entity; 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 licensee.

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

(a) (i) a conviction of any criminal offense;

(ii) the entry of a plea in abeyance to any criminal offense; or

(iii) the potential resolution of any criminal case by:

(A) a diversion agreement; or

(B) any other agreement under which criminal charges are held in suspense for a period of time;

(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 licensee, whether the license or registration is issued by this state or another jurisdiction~~[-]; or~~

(d) the entry of a cease and desist order or a temporary or permanent injunction:

(i) against the licensee by a court or licensing agency; and

(ii) based on:

(A) conduct or a practice involving the business of residential mortgage loans; or

(B) conduct involving fraud, misrepresentation, or deceit.

(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) if the licensee is an individual and is applying to reinstate a license to active status,

providing 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.

(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) if the licensee is an individual and is applying to reinstate a license to active status, providing 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; and

(iii) in addition to the continuing education required for a timely renewal, 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:~~] six months shall be relicensed as prescribed for an original application under Section 61-2c-202.

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

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

Section 11. Section **61-2c-206** is enacted to read:

**61-2c-206. Lending manager licenses.**

(1) Except as provided in Subsection (3), on or after September 1, 2005, to qualify as a principal lending manager under this chapter, an individual shall, in addition to meeting the standards in Section 61-2c-203:

(a) submit an application on a form approved by the division;

(b) pay fees determined by the division under Section 63-38-3.2;

(c) submit proof of having successfully completed 40 hours of prelicensing education

approved by the commission under Section 61-2c-104;

(d) submit proof of having successfully completed the principal lending manager examination approved by the commission under Section 61-2c-104;

(e) submit proof on forms approved by the division of three years of full-time active experience as a mortgage officer, or its equivalent as approved by the commission; and

(f) if the individual is not licensed under this chapter at the time of application, submit to the background check required by Subsection 61-2c-202(4).

(2) (a) Notwithstanding Subsection (1), an individual described in Subsection (2)(b) may qualify as a principal lending manager without:

(i) meeting the requirements of Subsection (1)(c); and

(ii) completing the portions of the principal lending manager examination described in Subsection (1)(d) that:

(A) relate to federal law; and

(B) do not relate to Utah law.

(b) An individual may qualify as a principal lending manager pursuant to Subsection (2)(a) if the individual:

(i) submits to the division an affidavit that the individual has five years of experience in the business of residential mortgage loans;

(ii) establishes that the individual's experience described in Subsection (2)(b) was under requirements substantially equivalent to the licensing requirements of this chapter; and

(iii) provides any other information required by the division by rule under Subsection (2)(c).

(c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division shall define the information an individual shall provide to the division pursuant to Subsection (2)(b).

(3) A principal lending manager may not engage in the business of residential mortgage loans on behalf of more than one entity at the same time.

Section 12. Section **61-2c-207** is enacted to read:

**61-2c-207. Reciprocal licensure.**

(1) The division may enter into a reciprocity agreement with another state and issue a reciprocal license to a licensee of that state if the division determines that the:

(a) state has substantially equivalent licensing laws;

(b) state requires a licensing examination that is substantially equivalent to the examination required by this chapter; and

(c) licensee has not had:

(i) formal charges alleging a violation of state mortgage laws filed against the licensee; or

(ii) disciplinary action or license restriction taken by the licensee's state of domicile.

(2) The division may issue a reciprocal license to a licensee of a state with which the division does not have a reciprocity agreement if the individual:

(a) submits to the division an affidavit that the individual has five years of experience in the business of residential mortgage loans;

(b) establishes that the individual's experience described in Subsection (2)(a) was under requirements substantially equivalent to the licensing requirements of this chapter; and

(c) provides any other information required by the division by rule under Subsection (3).

(3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division shall define the information an individual shall provide to the division pursuant to Subsection (2).

Section 13. Section **61-2c-208** is enacted to read:

**61-2c-208. Activation and inactivation of license.**

(1) (a) A licensee may request that the division place the license on inactive status by submitting an inactivation form approved by the division.

(b) On or after January 1, 2006, if the license of a principal lending manager is revoked, suspended, or expires, the license of any mortgage officer licensed with that principal lending manager shall automatically convert to inactive status.

(2) To activate a license that has been placed on inactive status, a licensee shall:

(a) submit an activation form approved by the division;

(b) pay an activation fee established by the division under Section 63-38-3.2; and  
(c) if the licensee is an individual whose license was in inactive status at the time of the previous renewal, the licensee shall supply the division with proof of the successful completion of the number of hours of continuing education that the licensee would have been required to complete under Section 61-2c-205(2)(c) if the licensee's license had been on active status, up to a maximum of the number of hours required for two licensing periods.

(3) On or after January 1, 2006, in addition to the requirements of Subsection (2), a mortgage officer whose license has been placed on inactive status shall obtain the signature of the principal lending manager with whom the mortgage officer will be actively licensed on the form required by the division.

(4) (a) On or after May 3, 2004 and before January 1, 2006, in addition to the requirements of Subsection (2), an entity whose license has been placed on inactive status because of the termination, death, disability, or departure of its control person shall submit the forms required by the division to affiliate the license of another control person with the entity.

(b) On or after January 1, 2006, in addition to the requirements of Subsection (2), an entity whose license has been placed on inactive status because of the termination, death, disability, or departure of its principal lending manager shall submit the forms required by the division to affiliate the license of another principal lending manager with the entity.

Section 14. 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]~~ do any of the following to induce a lender to extend credit as part of a residential mortgage loan transaction[?];

(i) make a false statement or representation;

(ii) cause false documents to be generated; or

(iii) knowingly permit false information to be submitted by any party;

(e) (i) give or receive compensation or anything of value, or withhold or threaten to withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in reaching a value conclusion in a residential mortgage loan transaction, except that it is not a violation of this section for a licensee to withhold payment because of a bona fide dispute regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards of Professional Appraisal Practice;

(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 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[-];
- (m) engage in false or misleading advertising;
- (n) (i) fail to account for all funds received in connection with a residential mortgage loan;
- (ii) use funds for a different purpose from the purpose for which the funds were received;
- or
- (iii) (A) except as provided in Subsection (1)(n)(iii)(B), retain funds paid for services if the services were not actually performed;
- (B) notwithstanding Subsection (1)(n)(iii)(A), a licensee may, upon compliance with Section 70D-1-6, charge a reasonable cancellation fee for work done originating a mortgage if the mortgage is not closed;
- (o) fail, within 90 calendar days of a request from a borrower who has paid for an appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;
- (p) engage in an act that is performed to:
  - (i) evade this chapter; or
  - (ii) assist another person to evade this chapter;
- (q) recommend or encourage default or delinquency, or continuation of an existing default or delinquency, by a mortgage applicant on an existing indebtedness prior to the closing of a residential mortgage loan that will refinance all or part of the indebtedness;
- (r) in the case of a control person of an entity, fail to exercise reasonable supervision over the activities of:
  - (i) the individuals engaged in the business of residential mortgage loans on behalf of the entity; or
  - (ii) any unlicensed staff;



(s) on or after January 1, 2006, in the case of the principal lending manager of an entity or a branch office of an entity, fail to exercise reasonable supervision over the activities of the mortgage officers who are licensed with the principal lending manager; or

(t) pay or offer to pay an individual who does not hold a license under this chapter for work that requires the individual to hold a license under this chapter.

(2) Whether or not the crime is related to the business of residential mortgage loans, it is a violation of this chapter for a licensee ~~[or]~~, a control person of a licensee, or a person who is a certified education provider 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).

(3) A principal lending manager does not violate Subsection (1)(s) if:

(a) in contravention of the principal lending manager's written policies and instructions, an affiliated licensee of the principal lending manager violates a provision of:

(i) this chapter; or

(ii) rules made by the division under this chapter;

(b) the principal lending manager established and followed reasonable procedures to ensure that affiliated licensees receive adequate supervision;

(c) upon learning of a violation by an affiliated licensee, the principal lending manager attempted to prevent or mitigate the damage;

(d) the principal lending manager did not participate in or ratify the violation by an affiliated licensee; and

(e) the principal lending manager did not attempt to avoid learning of the violation.

Section 15. Section **61-2c-302** is amended to read:

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

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

(2) A 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 licensee;
- (b) if the residential mortgage loan is serviced by the licensee:
  - (i) the residential mortgage loan is paid in full; or
  - (ii) the licensee ceases to service the residential mortgage loan; or
- (c) if the residential mortgage loan is not serviced by the licensee, the residential mortgage loan is closed.

(3) A licensee shall:

(a) make available to the division for inspection during normal business hours all records required to be maintained under this chapter; and

(b) upon reasonable notice from the division to a licensee, produce all records described in Subsection (3)(a) that are related to an investigation being conducted by the division at the division office for inspection and copying by the division.

(4) A licensed entity shall maintain and produce for inspection by the division a current list of all individuals whose licenses are affiliated with the entity.

Section 16. 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) (i) a licensee [~~and the control persons of any licensee~~]; or
- (ii) the following with respect to an entity that is a licensee:

(A) a control person;

(B) a manager;

(C) a managing partner;

(D) a director;

(E) an executive officer; or

(F) an individual who performs a function similar to an individual listed in this Subsection (1)(a)(ii);

(b) (i) an applicant for licensure under this chapter~~[, and the control persons of any applicant];~~ or

(ii) the following with respect to an entity that has applied for a license under this chapter:

(A) a control person;

(B) a manager;

(C) a managing partner;

(D) a director;

(E) an executive officer; or

(F) an individual who performs a function similar to an individual listed in this Subsection (1)(b)(ii); 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, records inspections, 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.

(4) The division may inspect all records related to the business of residential mortgage loans by a licensee under this chapter, regardless of whether the records are maintained at a business location in Utah, in conducting:

(a) investigations of complaints; or

(b) inspections of the records required to be maintained under:

(i) this chapter; or

(ii) rules adopted by the division under this chapter.

(5) (a) If a licensee maintains the records required by this chapter and the rules adopted by the division under this chapter outside Utah, the licensee is responsible for all reasonable costs, including reasonable travel costs, incurred by the division in inspecting those records.

(b) Upon receipt of notification from the division that records maintained outside Utah are to be examined in connection with an investigation or an examination, the licensee shall deposit with the division a deposit of \$500 to cover the division's expenses in connection with the examination of the records.

(c) If the deposit described in Subsection (5)(b) is insufficient to meet the estimated costs and expenses of examination of the records, the licensee shall make an additional deposit to cover the estimated costs and expenses of the division.

(d) (i) All deposits under this Subsection (5) shall be deposited in the General Fund as a dedicated credit to be used by the division under Subsection (5)(a).

(ii) The division, with the concurrence of the executive director, may use the deposit monies deposited in the General Fund under this Subsection (5)(d) as a dedicated credit for the records inspection costs under Subsection (5)(a).

(iii) A deposit under this Subsection (5) shall be refunded to the licensee to the extent it is not used, together with an itemized statement from the division of all amounts it has used.

(e) All deposits under this Subsection (5) shall be nonlapsing.

(6) Failure to deposit with the division a deposit required to cover the costs of examination of records that are maintained outside Utah shall result in automatic suspension of a license until the deposit is made.

Section 17. 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 licensed under this chapter violates this chapter, or an education provider certified under 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 \$2,500 per violation;

(b) do any of the following to a 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 licensed under this 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 license granted under this chapter.

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

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

(c) If an individual or entity whose 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 license.

Section 18. Section **61-2c-403** is amended to read:

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

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

(i) the director has reason to believe that the individual or entity has been or is engaging in acts constituting a violation of this chapter; and

(ii) it appears to the director that it would be in the public interest to stop the acts.

(b) Within ten days after service of the order, the party named in the order may request an adjudicative proceeding to be held in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

(c) Pending the hearing, the cease and desist order shall remain in effect.

(2) (a) After the hearing described in Subsection (1), if the director finds that the acts of the individual or entity violate this chapter, the director shall issue an order making the cease and

desist order permanent.

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

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

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

(B) (I) the individual or entity fails to cease the acts; or

(II) after discontinuing the acts, the individual or entity again commences the acts.

(ii) The suit described in Subsection (2)(b)(i) shall be filed in the district court in the county:

(A) in which the acts occurred;

(B) where the individual resides; or

(C) where the individual or entity carries on business.

(3) The cease and desist order issued under this section may not interfere with or prevent the prosecution of a remedy or action enforcement under this chapter.

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

Section 19. Section **61-2c-404** is enacted to read:

**61-2c-404. Civil actions.**

(1) (a) A person who violates this chapter is liable for an additional penalty, as determined by the court, of at least the amount the person received in consequence of a violation of this chapter as:

(i) commission;

(ii) compensation; or

(iii) profit.

(b) A person aggrieved by a violation of this chapter may:

(i) bring an action for a penalty described in Subsection (1)(a); and

(ii) use a penalty obtained under Subsection (1)(a) for the person's own use and benefit.

(2) A person who is not licensed under this chapter at the time of an act or service that requires a license under this chapter may not bring an action in court for the recovery of a commission, fee, or compensation for that act or service.

(3) On or after January 1, 2006:

(a) a mortgage officer may not bring an action in the mortgage officer's own name for the recovery of a fee, commission, or compensation for transacting the business of residential mortgage loans unless the action is brought against the principal lending manager with whom the mortgage officer was licensed at the time of the act or service that is the subject of the action; and

(b) an action by an entity for the recovery of a fee, commission, or other compensation shall be brought by:

(i) an entity; or

(ii) the principal lending manager of an entity on behalf of the entity.

(4) On or after January 1, 2006, a principal lending manager who transacts the business of residential mortgage loans on the principal lending manager's own behalf may sue in the principal lending manager's own name for the recovery of a fee, commission, or compensation for transacting the business of residential mortgage loans.

Section 20. Section **61-2c-501** is enacted to read:

**Part 5. Residential Mortgage Loan Education, Research, and Recovery Fund**

**61-2c-501. Fund created -- Minimum balance.**

(1) There is created a restricted special revenue fund known as the "Residential Mortgage Loan Education, Research, and Recovery Fund."

(2) The interest earned on the fund shall be deposited into the fund.

(3) At the beginning of each state fiscal year, \$100,000 shall remain available in the fund to satisfy judgments rendered against individuals and entities licensed under this chapter.

Section 21. Section **61-2c-502** is enacted to read:

**61-2c-502. Additional license fee.**

(1) An individual who applies for or renews a license shall pay, in addition to the application or renewal fee, a reasonable annual fee:



(a) determined by the division with the concurrence of the commission; and

(b) not to exceed \$18.

(2) An entity that applies for or renews an entity license shall pay, in addition to the application or renewal fee, a reasonable annual fee:

(a) determined by the division with the concurrence of the commission; and

(b) not to exceed \$25.

(3) Notwithstanding Section 13-1-2, the fees provided in this section shall be paid into the fund to be used as provided in this part.

(4) If the balance in the fund that is available to satisfy judgments against licensees decreases to less than \$100,000, the division may make additional assessments to licensees to maintain the balance available at \$100,000 to satisfy judgments.

Section 22. Section **61-2c-503** is enacted to read:

**61-2c-503. Notice to division -- Judgment against mortgage licensee -- Fraud, misrepresentation, or deceit -- Verified petition for order directing payment from fund -- Limitations and procedure.**

(1) (a) A person may bring a claim against the fund if the person sends a signed notification to the division at the time the person files an action:

(i) against a licensee; and

(ii) alleging fraud, misrepresentation, or deceit.

(b) Within 30 calendar days of receipt of the notice described in Subsection (1)(a), the division may intervene in the action.

(c) If a person making a claim against the fund obtains a final judgment in a court of competent jurisdiction in Utah against a licensee based on fraud, misrepresentation, or deceit in a residential mortgage loan transaction, the person making the claim may, upon termination of all proceedings including appeals, file a verified petition in the court where the judgment was entered for an order directing payment from the fund for the uncollected actual damages included in the judgment.

(d) A recovery from the fund may not include punitive damages, interest, or court costs.

(e) Regardless of the number of claimants or number of loans involved in a transaction, the liability of the fund may not exceed:

(i) \$15,000 for a single transaction;

(ii) \$45,000 for an individual licensee; or

(iii) \$45,000 for an entity.

(2) A person making a claim against the fund shall:

(a) serve a copy of the petition on the division; and

(b) file a copy of the affidavit of the service of the petition described in Subsection (2)(a) with the court.

(3) (a) The court shall conduct a hearing on the petition within 30 calendar days after service.

(b) The petitioner shall recover from the fund only if the petitioner shows:

(i) that the petitioner is not:

(A) the spouse of the judgment debtor; or

(B) the personal representative of the spouse of the judgment debtor;

(ii) that the petitioner has complied with this chapter;

(iii) that the petitioner has obtained a final judgment in the manner prescribed under this section, indicating the amount of the judgment awarded;

(iv) that the petitioner has proved the amount still owing on the judgment at the date of the petition;

(v) (A) that:

(I) the petitioner has a writ of execution issued upon the judgment; and

(II) the officer executing the writ has made a return showing that no property subject to execution in satisfaction of the judgment could be found; and

(B) if execution is levied against the property of the judgment debtor, that:

(I) the amount realized was insufficient to satisfy the judgment; and

(II) a balance remains on the judgment after application of the amount realized; and

(vi) that the petitioner has:

(A) made reasonable searches and inquiries to ascertain whether the judgment debtor has any interest in property, real or personal, that may satisfy the judgment; and

(B) has exercised reasonable diligence to secure payment of the judgment from the assets of the judgment debtor.

(4) If the petitioner satisfies the court that it is not practicable for the petitioner to comply with one or more of the requirements in Subsections (3)(b)(v) and (3)(b)(vi), the court may waive those requirements.

(5) (a) A judgment that is the basis for a claim against the fund may not have been discharged in bankruptcy.

(b) In the case of a bankruptcy proceeding that is open or that is commenced during the pendency of the claim, the claimant shall, prior to obtaining a claim against the fund, obtain an order from the bankruptcy court declaring the judgment and debt to be nondischargeable.

Section 23. Section **61-2c-504** is enacted to read:

**61-2c-504. Authority to act on receipt of petition.**

(1) Upon receipt of a petition meeting the requirements of Section 61-2c-503, the division may answer, initiate review proceedings, or appear in a proceeding:

(a) in the name of the defendant to the action; or

(b) on behalf of the fund.

(2) The division may settle a claim subject to:

(a) the application of a petitioner; and

(b) court approval.

Section 24. Section **61-2c-505** is enacted to read:

**61-2c-505. Court determination and order.**

If the court determines that a claim should be levied against the portion of the fund allocated to carry out the provisions of this chapter, the court shall enter an order requiring the division to pay from the fund the portion of the petitioner's judgment that is payable from the fund under Section 61-2c-503.

Section 25. Section **61-2c-506** is enacted to read:

**61-2c-506. Insufficient funds to satisfy judgment -- Procedure and interest.**

If the money deposited in the fund and allotted for satisfying judgments against licensees is insufficient to satisfy an authorized claim for payment, the division shall, when sufficient money has been deposited in the fund, satisfy the unpaid claims in the order they originally were filed, together with accumulated interest at the rate allowable on judgments under Section 15-1-4.

Section 26. Section **61-2c-507** is enacted to read:

**61-2c-507. Division subrogated to judgment creditor -- Authority to revoke license.**

(1) If the division pays a judgment creditor from the fund:

(a) the division is subrogated to the rights of the judgment creditor for the amounts paid out of the fund; and

(b) any amount and interest recovered by the division shall be deposited in the fund.

(2) The license of a licensee for whom payment from the fund is made under this part is automatically revoked.

(3) A licensee whose license is revoked pursuant to Subsection (2) may not apply for a new license until the licensee has paid into the fund:

(a) the amount paid out of the fund on behalf of the licensee; and

(b) interest at a rate determined by the division with the concurrence of the commission.

Section 27. Section **61-2c-508** is enacted to read:

**61-2c-508. Failure to comply.**

The failure of a person to comply with this part is a waiver of any right provided under this part.

Section 28. Section **61-2c-509** is enacted to read:

**61-2c-509. Disciplinary actions.**

(1) This part does not limit the authority of the director to take disciplinary action against a licensee for a violation of:

(a) this chapter; or

(b) rules made by the division under this chapter.

(2) The repayment in full of all obligations to the fund by a licensee does not nullify or

modify the effect of a disciplinary proceeding brought under:

- (a) this chapter; or
- (b) rules made by the division under this chapter.

Section 29. Section **61-2c-510** is enacted to read:

**61-2c-510. Moneys accumulated -- Purpose.**

The division may use monies accumulated in the fund in excess of the amount necessary to satisfy claims to advance education and research in the field of residential mortgage loans,

including:

- (1) courses sponsored by the division;
- (2) courses offered by the division in conjunction with a university or college in Utah;
- (3) contracting for a research project for the state in the field of residential mortgage loans;
- (4) funding the salaries and training expenses of division staff members who are employed in positions related to the education of mortgage licensees;
- (5) funding the training expenses of division staff members who are employed in positions conducting investigations of complaints under this chapter; and
- (6) publishing and distributing educational materials to:
  - (a) licensees; and
  - (b) applicants for licensure.

Section 30. Section **70D-1-10** is amended to read:

**70D-1-10. Notification of department -- Exemptions.**

(1) Except as provided in Subsection (2), no person may engage in the business of making mortgage loans nor may any person engage in the business of being a mortgage loan broker or servicer, without first filing written notification with the department and paying the fees required by this chapter.

(2) The following persons are exempt from the notification requirements contained in this chapter and from the annual fee imposed in Subsection 70D-1-12(1):

- (a) all persons authorized under Utah law or under federal law to do business as a

depository institution in this state;

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

and

(c) all persons that:

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

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

**Section 31. Repealer.**

This bill repeals:

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

**Section 32. Effective date.**

This bill takes effect on May 3, 2004, except that:

(1) the amendments to Section 61-2c-106 take effect on January 1, 2006; and

(2) the amendments to Section 62-2c-104 (Effective 07/01/04) take effect on July 1, 2004.