

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;
- ▶ modifies the scope of the Utah Residential Mortgage Practices Act;



- 28 ▶ allows reciprocal licensure for applicants licensed in another state;
- 29 ▶ enacts provisions related to activation and inactivation of a license;
- 30 ▶ modifies certain operational restrictions;
- 31 ▶ modifies the persons subject to an investigation by the Division of Real Estate;
- 32 ▶ enacts provisions related to record retention requirements;
- 33 ▶ enacts provisions governing civil actions;
- 34 ▶ provides for the establishment and operation of the Residential Mortgage Loan
- 35 Education, Research, and Recovery Fund to pay certain claims under this chapter;
- 36 ▶ provides uses for excess monies in the Residential Mortgage Loan Education,
- 37 Research, and Recovery Fund, including:
 - 38 • providing educational courses and materials;
 - 39 • contracting for research projects; and
 - 40 • funding salaries and training expenses for certain Division of Real Estate staff;
- 41 and
- 42 ▶ makes technical changes.

43 **Monies Appropriated in this Bill:**

44 None

45 **Other Special Clauses:**

46 This bill provides an effective date.

47 **Utah Code Sections Affected:**

48 AMENDS:

- 49 **61-2c-102**, as last amended by Chapter 243, Laws of Utah 2003
- 50 **61-2c-103**, as last amended by Chapter 243, Laws of Utah 2003
- 51 **61-2c-104 (Superseded 07/01/04)**, as last amended by Chapter 243, Laws of Utah 2003
- 52 **61-2c-104 (Effective 07/01/04)**, as last amended by Chapters 145 and 243, Laws of
- 53 Utah 2003
- 54 **61-2c-105**, as last amended by Chapters 159 and 204, Laws of Utah 2002
- 55 **61-2c-106**, as last amended by Chapter 243, Laws of Utah 2003
- 56 **61-2c-201**, as last amended by Chapter 243, Laws of Utah 2003
- 57 **61-2c-202**, as last amended by Chapter 243, Laws of Utah 2003
- 58 **61-2c-203**, as last amended by Chapter 243, Laws of Utah 2003

- 59 **61-2c-205**, as last amended by Chapter 243, Laws of Utah 2003
- 60 **61-2c-301**, as last amended by Chapter 243, Laws of Utah 2003
- 61 **61-2c-302**, as last amended by Chapter 243, Laws of Utah 2003
- 62 **61-2c-401**, as last amended by Chapter 243, Laws of Utah 2003
- 63 **61-2c-402**, as last amended by Chapter 243, Laws of Utah 2003
- 64 **61-2c-403**, as last amended by Chapter 204, Laws of Utah 2002
- 65 **70D-1-10**, as last amended by Chapter 204, Laws of Utah 2002

66 ENACTS:

- 67 **61-2c-206**, Utah Code Annotated 1953
- 68 **61-2c-207**, Utah Code Annotated 1953
- 69 **61-2c-208**, Utah Code Annotated 1953
- 70 **61-2c-404**, Utah Code Annotated 1953
- 71 **61-2c-501**, Utah Code Annotated 1953
- 72 **61-2c-502**, Utah Code Annotated 1953
- 73 **61-2c-503**, Utah Code Annotated 1953
- 74 **61-2c-504**, Utah Code Annotated 1953
- 75 **61-2c-505**, Utah Code Annotated 1953
- 76 **61-2c-506**, Utah Code Annotated 1953
- 77 **61-2c-507**, Utah Code Annotated 1953
- 78 **61-2c-508**, Utah Code Annotated 1953
- 79 **61-2c-509**, Utah Code Annotated 1953
- 80 **61-2c-510**, Utah Code Annotated 1953

81 REPEALS:

- 82 **61-2c-204**, as last amended by Chapter 243, Laws of Utah 2003



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

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

86 **61-2c-102. Definitions.**

87 As used in this chapter:

- 88 (1) "Affiliate" means an individual or an entity that directly, or indirectly through one
- 89 or more intermediaries, controls or is controlled by, or is under common control with, a

90 specified individual or entity.

91 (2) "Applicant" means an individual or entity applying for a license under this chapter.

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

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

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

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

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

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

100 [~~(3)~~] (5) (a) "Business of residential mortgage loans" means for compensation to:

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

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

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

106 (A) taking applications; and

107 (B) communicating with the borrower and lender.

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

109 (i) the performance of clerical functions such as:

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

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

115 (ii) ownership of an entity that engages in the business of residential mortgage loans if
116 the owner does not personally perform the acts listed in Subsection (5)(a).

117 [~~(4)~~] (6) "Closed-end" means a loan with a fixed amount borrowed and which does not
118 permit additional borrowing secured by the same collateral.

119 [~~(5)~~] (7) "Commission" means the Residential Mortgage Regulatory Commission
120 created in Section 61-2c-104.

121 ~~[(6)]~~ (8) "Compensation" means anything of economic value that is paid, loaned,
122 granted, given, donated, or transferred to an individual or entity for or in consideration of:
123 (a) services;
124 (b) personal or real property; or
125 (c) other thing of value.

126 ~~[(7) "Control" means the power, directly or indirectly, to:]~~
127 ~~[(a) direct or exercise a controlling influence over:]~~
128 ~~[(i) the management or policies of an entity; or]~~
129 ~~[(ii) the election of a majority of the directors, officers, managers, or managing partners~~
130 ~~of an entity;]~~
131 ~~[(b) vote 20% or more of any class of voting securities of an entity by an individual; or]~~
132 ~~[(c) vote more than 5% of any class of voting securities of an entity by another entity:]~~

133 ~~[(8)]~~ (9) "Control person" means ~~[any]~~ an individual ~~[or]~~ who is designated by an
134 entity ~~[which]~~ as the individual who directly manages or controls ~~[another]~~ the entity's
135 transaction of the business of residential mortgage loans secured by Utah dwellings.

136 ~~[(9)]~~ (10) "Depository institution" is as defined in Section 7-1-103.
137 ~~[(10)]~~ (11) "Director" means the director of the division.
138 ~~[(11)]~~ (12) "Division" means the Division of Real Estate.
139 ~~[(12)]~~ (13) "Dwelling" means a residential structure attached to real property that
140 contains one to four units including any of the following if used as a residence:
141 (a) a condominium unit;
142 (b) a cooperative unit;
143 (c) a manufactured home; or
144 (d) a house.

145 ~~[(13)]~~ (14) "Entity" means any corporation, limited liability company, partnership,
146 company, association, joint venture, business trust, trust, or other organization.
147 ~~[(14)]~~ (15) "Executive director" means the executive director of the Department of
148 Commerce.

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

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

154 [~~15~~] (18) "Licensee" means an individual or entity licensed with the division under
155 this chapter.

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

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

160 [~~16~~] (20) "Record" means information that is:

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

162 (b) (i) inscribed on a tangible medium; or

163 (ii) (A) stored in an electronic or other medium; and

164 (B) retrievable in perceivable form.

165 [~~17~~] (21) "Residential mortgage loan" means a closed-end, first mortgage loan or
166 extension of credit, if:

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

168 (i) mortgage;

169 (ii) deed of trust; or

170 (iii) lien interest; and

171 (b) the mortgage, deed of trust, or lien interest described in Subsection [~~17~~] (21)(a):

172 (i) is on a dwelling located in the state; and

173 (ii) created with the consent of the owner of the residential real property.

174 [~~18~~] (22) "State" means:

175 (a) a state, territory, or possession of the United States;

176 (b) the District of Columbia; or

177 (c) the Commonwealth of Puerto Rico.

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

179 **61-2c-103. Powers and duties of the division.**

180 (1) The division shall administer this chapter.

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

182 may:

- 183 (a) receive and act on complaints including:
- 184 (i) taking action designed to obtain voluntary compliance with this chapter; or
- 185 (ii) commencing administrative or judicial proceedings on the division's own initiative;
- 186 (b) establish programs for the education of consumers with respect to residential
- 187 mortgage loans;
- 188 (c) (i) make studies appropriate to effectuate the purposes and policies of this chapter;
- 189 and
- 190 (ii) make the results of the studies described in Subsection (2)(c)(i) available to the
- 191 public; ~~and~~
- 192 (d) (i) visit and investigate an entity licensed under this chapter, regardless of whether
- 193 the entity is located in Utah; and
- 194 (ii) assess investigation fees established under Section 63-38-3.2 to a licensee for the
- 195 reasonable costs, including reasonable travel costs, incurred by the division in conducting a
- 196 records inspection;
- 197 ~~(e)~~ (e) employ any necessary hearing examiners, investigators, clerks, and other
- 198 employees and agents.
- 199 (3) The division shall make rules for the administration of this chapter in accordance
- 200 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, including:
- 201 (a) licensure procedures for:
- 202 (i) individuals and entities required by this chapter to obtain a license with the division;
- 203 and
- 204 (ii) the establishment of a branch office by an entity;
- 205 (b) proper handling of funds received by licensees;
- 206 (c) record-keeping requirements by licensees; and
- 207 (d) standards of conduct for licensees.
- 208 (4) (a) The division shall make available to the public a list of the names and addresses
- 209 of all licensees.
- 210 (b) The division may charge a fee established by the division in accordance with
- 211 Section 63-38-3.2 for obtaining the list described in Subsection (4)(a).
- 212 (5) The division shall:
- 213 (a) certify education providers who offer:

- 214 (i) prelicensing education to candidates for licensure under this chapter; or
215 (ii) continuing education to individuals licensed under this chapter; and
216 (b) make available to the public, licensees, and candidates for licensure a list of the
217 names and addresses of all education providers certified under this Subsection (5).
218 (6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
219 division shall make rules establishing:
220 (a) certification criteria and procedures for providers of prelicensing education and
221 continuing education; and
222 (b) standards of conduct for certified education providers.
- 223 Section 3. Section **61-2c-104 (Superseded 07/01/04)** is amended to read:
224 **61-2c-104 (Superseded 07/01/04). Residential Mortgage Regulatory Commission.**
- 225 (1) There is created within the division the Residential Mortgage Regulatory
226 Commission consisting of:
227 (a) the following members appointed by the executive director with the approval of the
228 governor:
229 (i) three members having at least three years of experience in transacting the business of
230 residential mortgage loans and who are currently licensed under this chapter; and
231 (ii) one member from the general public; and
232 (b) the commissioner of the Department of Financial Institutions or the commissioner's
233 designee.
- 234 (2) (a) Except as required by Subsection (2)(b), the executive director shall appoint
235 each new member or reappointed member subject to appointment by the executive director to a
236 four-year term ending June 30.
237 (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall,
238 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms
239 of commission members are staggered so that approximately half of the commission is
240 appointed every two years.
- 241 (c) If a vacancy occurs in the membership of the commission for any reason, the
242 replacement shall be appointed for the unexpired term.
- 243 (3) Members of the commission shall annually select one member to serve as chair.
244 (4) (a) The commission shall meet at least quarterly.

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

247 (i) at the discretion of the director;

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

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

250 (5) (a) Three members of the commission constitute a quorum for the transaction of
251 business.

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

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

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

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

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

265 (7) The commission shall:

266 (a) concur in the licensure or denial of licensure of individuals and entities under this
267 chapter in accordance with Part 2, Licensure;

268 (b) take disciplinary action with the concurrence of the director in accordance with Part
269 4, Enforcement;

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

272 (d) with the concurrence of the division, determine the requirements for:

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

274 (A) the fundamentals of the English language;

275 (B) arithmetic;

276 (C) the provisions of this chapter;
277 (D) rules adopted by the division;
278 (E) basic residential mortgage principles and practices; and
279 (F) any other aspect of Utah law the commission determines is appropriate; [~~and~~]
280 (ii) with the concurrence of the division, the continuing education requirements under
281 Section 61-2c-205, including:
282 (A) except as provided in Subsection 61-2c-206(2)(c), the appropriate number of hours
283 of required prelicensing education and continuing education; and
284 (B) the subject matter of courses the division may accept for continuing education
285 purposes[-];
286 (iii) with the concurrence of the division, the prelicensing education required under
287 Sections 61-2c-202 and 61-2c-206; and
288 (iv) the examination required under Section 61-2c-206 covering:
289 (A) advanced residential mortgage principles and practices; and
290 (B) other aspects of Utah law the commission, with the concurrence of the division,
291 determines appropriate.
292 (8) The commission may appoint a committee to make recommendations to the
293 commission concerning approval of prelicensing and continuing education courses.
294 (9) The commission and the division shall make the examination and prelicensing and
295 continuing education requirements described in this section available through the Internet or
296 other distance education methods approved by the commission and division when reasonably
297 practicable.
298 (10) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
299 the commission shall make rules establishing procedures under which a licensee may be
300 exempted from continuing education requirements:
301 (a) for a period not to exceed four years; and
302 (b) upon a finding of reasonable cause.
303 Section 4. Section **61-2c-104 (Effective 07/01/04)** is amended to read:
304 **61-2c-104 (Effective 07/01/04). Residential Mortgage Regulatory Commission.**
305 (1) There is created within the division the Residential Mortgage Regulatory
306 Commission consisting of:

307 (a) the following members appointed by the executive director with the approval of the
308 governor:

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

311 (ii) one member from the general public; and

312 (b) the commissioner of the Department of Financial Institutions or the commissioner's
313 designee.

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

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

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

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

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

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

327 (i) at the discretion of the director;

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

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

330 (5) (a) Three members of the commission constitute a quorum for the transaction of
331 business.

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

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

337 (ii) Members who are not government employees may decline to receive per diem and

338 expenses for their service.

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

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

345 (7) The commission shall:

346 (a) concur in the licensure or denial of licensure of individuals and entities under this
347 chapter in accordance with Part 2, Licensure;

348 (b) take disciplinary action with the concurrence of the director in accordance with Part
349 4, Enforcement;

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

352 (d) with the concurrence of the division, determine the requirements for:

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

354 (A) the fundamentals of the English language;

355 (B) arithmetic;

356 (C) the provisions of this chapter;

357 (D) rules adopted by the division;

358 (E) basic residential mortgage principles and practices; and

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

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

362 (A) except as provided in Subsection 61-2c-206(2)(c), the appropriate number of hours
363 of prelicensing education and required continuing education; and

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

366 (iii) with the concurrence of the division, the prelicensing education required under
367 Sections 61-2c-202 and 61-2c-206; and

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

369 (A) advanced residential mortgage principles and practices; and

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

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

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

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

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

382 (b) upon a finding of reasonable cause.

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

384 **61-2c-105. Scope of chapter.**

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

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

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

390 (a) the federal government;

391 (b) a state;

392 (c) a political subdivision of a state;

393 (d) an agency of or entity created by a governmental entity described in Subsections
394 (2)(a) through (c) including:

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

397 (ii) the Federal National Mortgage Corporation;

398 (iii) the Federal Home Loan Mortgage Corporation;

399 (iv) the Federal Deposit Insurance Corporation;

- 400 (v) the Resolution Trust Corporation;
- 401 (vi) the Government National Mortgage Association;
- 402 (vii) the Federal Housing Administration;
- 403 (viii) the National Credit Union Administration;
- 404 (ix) the Farmers Home Administration; and
- 405 (x) the Department of Veterans Affairs;
- 406 (e) a depository institution;
- 407 (f) an affiliate of a depository institution;
- 408 (g) an employee or agent of an entity described in Subsections (2)(a) through (f) when
- 409 that person acts on behalf of the entity described in Subsections (2)(a) through (f);
- 410 (h) an individual or entity:
- 411 (i) that makes a loan:
- 412 (A) secured by an interest in real property;
- 413 (B) with the individual's or the entity's own money; and
- 414 (C) for the individual's or entity's own investment; and
- 415 (ii) that does not engage in the business of making loans secured by an interest in real
- 416 property;
- 417 (i) an individual or entity who receives a mortgage, deed of trust, or lien interest on real
- 418 property if the individual or entity:
- 419 (i) is the seller of real property; and
- 420 (ii) receives the mortgage, deed of trust, or lien interest on real property as security for
- 421 a separate money obligation;
- 422 (j) an individual or entity who receives a mortgage, deed of trust, or lien interest on real
- 423 property if:
- 424 (i) the individual or entity receives the mortgage, deed of trust, or lien interest as
- 425 security for an obligation payable on an installment or deferred payment basis;
- 426 (ii) the obligation described in Subsection (2)(j)(i) arises from an individual or entity
- 427 providing materials or services used in the improvement of the real property that is the subject
- 428 of the mortgage, deed of trust, or lien interest; and
- 429 (iii) the mortgage, deed of trust, or lien interest was created without the consent of the
- 430 owner of the real property that is the subject of the mortgage, deed of trust, or lien interest;

- 431 (k) a nonprofit corporation that:
- 432 (i) is exempt from paying federal income taxes;
- 433 (ii) is certified by the United States Small Business Administration as a small business
- 434 investment company;
- 435 (iii) is organized to promote economic development in this state; and
- 436 (iv) has as its primary activity providing financing for business expansion;
- 437 (l) a court appointed fiduciary; or
- 438 (m) an attorney admitted to practice law in this state:
- 439 (i) if the attorney is not principally engaged in the business of negotiating residential
- 440 mortgage loans; and
- 441 (ii) when the attorney renders services in the course of the attorney's practice as an
- 442 attorney.
- 443 (3) (a) Notwithstanding Subsection (2)(m), an attorney exempt from this chapter may
- 444 not engage in conduct described in Section 61-2c-301 when transacting business of residential
- 445 mortgage loans.
- 446 (b) If an attorney exempt from this chapter violates Subsection (3)(a), the attorney:
- 447 (i) is not subject to enforcement by the division under Part 4, Enforcement; and
- 448 (ii) is subject to disciplinary action generally applicable to an attorney admitted to
- 449 practice law in this state.
- 450 (c) If the division receives a complaint alleging an attorney exempt from this chapter is
- 451 in violation of Subsection (3)(a), the division shall forward the complaint to the Utah State Bar
- 452 for disciplinary action.
- 453 (4) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
- 454 the division shall, by rule, determine a date, on or after December 31, 2004, after which an
- 455 individual who is exempt under Subsection (2) may voluntarily obtain a license pursuant to
- 456 Subsection (4)(b).
- 457 (b) (i) After the date described in Subsection (4)(a), an individual who is exempt under
- 458 Subsection (2) may voluntarily obtain a license under this chapter by complying with Part 2,
- 459 Licensure.
- 460 (ii) An individual who voluntarily obtains a license pursuant to this Subsection (4)(b)
- 461 shall comply with all the provisions of this chapter.

462 Section 6. Section **61-2c-106** is amended to read:

463 **61-2c-106. Addresses provided the division.**

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

466 (2) An individual or entity licensed under this chapter will be considered to have
467 received any notification that is mailed to the last address furnished to the division by the
468 individual, or by [~~a control person~~] the principal lending manager of the entity, licensed under
469 this chapter.

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

471 **61-2c-201. Licensure required of individuals and entities engaged in the business**
472 **of residential mortgage loans -- Mortgage officer -- Principal lending manager.**

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

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

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

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

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

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

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

489 [~~(3)~~] (4) Unless otherwise exempted under this chapter, licensure under this chapter is
490 required of both:

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

492 (b) if the individual transacts business as an employee or agent of an entity or

493 individual, the entity or individual for whom the employee or agent transacts the business of
494 residential mortgage loans.

495 (5) (a) On or after January 1, 2005, a license issued under this chapter to an individual
496 who has not obtained a license as a principal lending manager automatically converts to a
497 mortgage officer license.

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

501 ~~[(4)]~~ (6) (a) An individual licensed under this chapter may not engage in the business
502 of residential mortgage loans on behalf of more than one entity at the same time.

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

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

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

508 (A) licensed under this chapter; or

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

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

512 (a) an entity licensed under this chapter; and

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

514 (8) On or after January 1, 2005, except as provided under Title 16, Chapter 11,
515 Professional Corporation Act or under Title 48, Chapter 2c, Utah Revised Limited Liability
516 Company Act, a mortgage officer may not receive consideration for transacting the business of
517 residential mortgage loans from any person or entity except the principal lending manager with
518 whom the mortgage officer is licensed.

519 (9) On or after January 1, 2005, a mortgage officer shall conduct all business of
520 residential mortgage loans:

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

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

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

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

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

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

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

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

537 (b) On or after January 1, 2005, a mortgage officer whose license has been placed in
538 inactive status may not transact the business of residential mortgage loans until the mortgage
539 officer has licensed with a principal lending manager by following the procedures established
540 by the division by rule made in accordance with Title 63, Chapter 46a, Utah Administrative
541 Rulemaking Act, including submission of all required forms and payment of all required
542 activation fees.

543 (12) (a) On or after May 3, 2004 and before January 1, 2005, if a licensed entity
544 terminates its control person, or if the control person of a licensed entity resigns, dies, or
545 becomes unable to act as control person due to disability, the entity shall cease all business of
546 residential mortgage loans until the entity has submitted all forms and fees to the division that
547 are required to affiliate another control person with the licensed entity.

548 (b) On or after January 1, 2005, if a licensed entity terminates its principal lending
549 manager, or if the principal lending manager of a licensed entity resigns, dies, or becomes
550 unable to act as a principal lending manager due to disability, the entity may not transact the
551 business of residential mortgage loans until the entity has submitted all forms and fees to the
552 division that are required to affiliate another principal lending manager with the entity.

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

554 **61-2c-202. Licensure procedures.**

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

556 (a) submit to the division a licensure statement that:

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

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

560 (iii) ~~on or after May 3, 2004 and before January 1, 2005, if the applicant is an entity[;];~~

561 (A) lists the control ~~[persons]~~ person of the applicant; and

562 (B) contains the signature of the control person;

563 (iv) on or after January 1, 2005, if the applicant is an entity:

564 (A) lists the principal lending manager of the entity; and

565 (B) contains the signature of the principal lending manager;

566 ~~[(iv)]~~ (v) demonstrates to the satisfaction of the division with the concurrence of the
567 commission that the applicant meets the qualifications listed in Section 61-2c-203; ~~[and]~~

568 (vi) if the applicant is an entity, lists:

569 (A) all jurisdictions in which the entity is registered, licensed, or otherwise regulated in
570 the business of residential mortgage loans; and

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

573 ~~[(v)]~~ (vii) includes any information required by the division by rule;

574 (b) pay to the division:

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

576 and

577 (ii) the reasonable expenses incurred in processing the application for licensure
578 including the costs incurred by the division under Subsection (4); and

579 ~~[(c) meet the requirements under Section 61-2c-204 for:]~~

580 ~~[(i) obtaining a surety bond;]~~

581 ~~[(ii) depositing assets; or]~~

582 ~~[(iii) providing a letter of credit; and]~~

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

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

586 (a) meets the qualifications of ~~[Sections]~~ Section 61-2c-203 ~~[and 61-2c-204]~~; and

587 (b) complies with this section.

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

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

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

595 (B) consent to a fingerprint background check by:

596 (I) the Utah Bureau of Criminal Identification; and

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

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

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

603 (ii) Notwithstanding ~~[Subsection]~~ Subsections (4)(a)(i)(C) and (4)(a)(i)(D), an
604 individual who was registered with the division under this chapter prior to January 1, 2004 may
605 engage in the business of residential mortgage loans until January 1, 2005 ~~[without having~~
606 ~~passed the examination described in Subsection (4)(a)(i)(C).]~~ without having:

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

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

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

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

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

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

615 (d) (i) A license under this chapter is conditional pending completion of the criminal
616 background check required by this Subsection (4).

617 (ii) If a criminal background check discloses that an applicant or an applicant's control
618 person failed to accurately disclose a criminal history, the license shall be immediately and
619 automatically revoked.

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

622 (A) after the revocation; and

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

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

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

626 (I) did not occur; or

627 (II) was the criminal history of another person;

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

629 and

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

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

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

634 **61-2c-203. Qualifications for licensure.**

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

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

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

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

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

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

646 (ii) the suspension, revocation, surrender, probation, fine, cancellation, or denial is
647 based on misconduct in a professional capacity that relates to [~~good~~] moral character, honesty,

648 integrity, truthfulness, or the competency to transact the business of residential mortgage
649 loans[-];

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

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

656 (i) by a court or licensing agency; and

657 (ii) based on:

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

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

660 (2) To qualify for licensure under this chapter an entity may not have:

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

663 (i) a manager or a managing partner;

664 (ii) a director;

665 (iii) an executive officer; or

666 (iv) an individual occupying a position or performing functions similar to those
667 described in Subsections (2)(a)(i) through (iii); ~~and~~ or

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

669 (b) (i) before January 1, 2005, a control person who fails to meet the requirements of
670 Subsection (1); or

671 (ii) on or after January 1, 2005, a principal lending manager who fails to meet the
672 requirements of Subsection (1).

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

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

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

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

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

682 (ii) is honest;

683 (iii) has integrity;

684 (iv) is truthful; and

685 (v) has the competency to transact the business of residential mortgage loans[-

686 ~~notwithstanding the failure to meet the requirements of Subsection (1)(b) or (c) the division~~

687 ~~may permit that individual or entity to be licensed under this chapter].~~

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

689 **61-2c-205. Term of licensure -- Renewal -- Reporting of changes.**

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

691 (b) Notwithstanding Subsection (1)(a), the time period of a license may be extended or
692 shortened by as much as one year to maintain or change a renewal cycle established by rule by
693 the division.

694 (2) To renew a license, no later than [~~30 days before~~] the date the license expires, a
695 licensee shall:

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

697 (b) pay a fee to the division established by the division in accordance with Section
698 63-38-3.2; and

699 (c) if the licensee is an individual, submit proof using forms approved by the division
700 of having completed during the two years prior to application the continuing education required
701 by the commission under Section 61-2c-104.

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

704 (i) a name under which the licensee transacts the business of residential mortgage loans
705 in this state;

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

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

708 (iii) (A) on or after May 3, 2004 and before January 1, 2005, the control [~~persons~~]

709 person of the licensee; or

- 710 (B) on or after January 1, 2005, the principal lending manager of the entity; or
711 (iv) any other information that is defined as material by rule made by the division.
- 712 (b) Failure to notify the division of a change described in Subsection (3)(a) is separate
713 grounds for disciplinary action against a licensee.
- 714 (4) A licensee shall notify the division by sending the division a signed statement
715 within ten business days of:
- 716 (a) (i) a conviction of any criminal offense;
717 (ii) the entry of a plea in abeyance to any criminal offense; or
718 (iii) the potential resolution of any criminal case by:
- 719 (A) a diversion agreement; or
720 (B) any other agreement under which criminal charges are held in suspense for a period
721 of time;
- 722 (b) filing a personal bankruptcy or bankruptcy of a business that transacts the business
723 of residential mortgage loans; ~~or~~
- 724 (c) the suspension, revocation, surrender, cancellation, or denial of a professional
725 license or professional registration of the licensee, whether the license or registration is issued
726 by this state or another jurisdiction[-]; or
- 727 (d) the entry of a cease and desist order or a temporary or permanent injunction:
728 (i) against the licensee by a court or licensing agency; and
729 (ii) based on:
- 730 (A) conduct or a practice involving the business of residential mortgage loans; or
731 (B) conduct involving fraud, misrepresentation, or deceit.
- 732 (5) (a) A license under this chapter expires if the licensee does not apply to renew the
733 license on or before the expiration date of the license.
- 734 (b) Within 30 calendar days after the expiration date, a licensee whose license has
735 expired may apply to reinstate the expired license upon:
- 736 (i) payment of a renewal fee and a late fee determined by the division under Section
737 63-38-3.2; and
- 738 (ii) providing proof using forms approved by the division of having completed the
739 continuing education required by the commission under Section 61-2c-104.
- 740 (c) After the 30 calendar days described in Subsection (5)(b) and within six months

741 after the expiration date, a licensee whose license has expired may apply to reinstate an expired
742 license upon:

743 (i) payment of a renewal fee and a late fee determined by the division under Section
744 63-38-3.2;

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

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

749 (d) A licensee whose license has been expired for more than [~~one year may apply to~~
750 ~~reinstate an expired license upon:~~] six months shall be relicensed as prescribed for an original
751 application under Section 61-2c-202.

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

753 [~~(ii) passing the examination approved by the commission under Section 61-2c-104.]~~
754 Section 11. Section **61-2c-206** is enacted to read:

755 **61-2c-206. Lending manager licenses.**

756 (1) On or after January 1, 2005 and before January 1, 2006, to qualify as a principal
757 lending manager under this chapter, an individual shall, in addition to meeting the standards in
758 Section 61-2c-203:

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

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

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

763 (2) On or after January 1, 2006, to qualify as a principal lending manager under this
764 chapter, an individual shall, in addition to meeting the standards in Section 61-2c-203:

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

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

767 (c) submit proof of having successfully completed 80 hours of prelicensing education
768 approved by the commission under Section 61-2c-104;

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

771 (e) submit proof on forms approved by the division of three years of full-time active

772 experience as a mortgage officer, or its equivalent as approved by the commission; and

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

775 (3) On or after January 1, 2006, the principal lending manager license of an individual
776 who has not submitted proof to the division of successful completion of the education,
777 examination, and experience requirements of Subsection (2) shall be automatically inactivated
778 by the division until the individual provides proof of having successfully completed the
779 education, examination, and experience requirements of Subsection (2).

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

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

783 **61-2c-207. Reciprocal licensure.**

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

786 (1) state has substantially equivalent licensing laws;

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

789 (3) licensee has not had:

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

791 or

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

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

794 **61-2c-208. Activation and inactivation of license.**

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

797 (b) On or after January 1, 2005, if the license of a principal lending manager is
798 revoked, suspended, or expires, the license of any mortgage officer licensed with that principal
799 lending manager shall automatically convert to inactive status.

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

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

802 (b) pay an activation fee established by the division under Section 63-38-3.2.

803 (3) On or after January 1, 2005, in addition to the requirements of Subsection (2), a
 804 mortgage officer whose license has been placed on inactive status shall obtain the signature of
 805 the principal lending manager with whom the mortgage officer will be actively licensed on the
 806 form required by the division.

807 (4) (a) On or after May 3, 2004 and before January 1, 2005, in addition to the
 808 requirements of Subsection (2), an entity whose license has been placed on inactive status
 809 because of the termination, death, disability, or departure of its control person shall submit the
 810 forms required by the division to affiliate the license of another control person with the entity.

811 (b) On or after January 1, 2005, in addition to the requirements of Subsection (2), an
 812 entity whose license has been placed on inactive status because of the termination, death,
 813 disability, or departure of its principal lending manager shall submit the forms required by the
 814 division to affiliate the license of another principal lending manager with the entity.

815 Section 14. Section **61-2c-301** is amended to read:

816 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

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

819 (a) give or receive compensation or anything of value in exchange for a referral of
 820 residential mortgage loan business [~~unless the compensation or thing of value is de minimis as~~
 821 ~~defined by the division];~~

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

823 (i) that is excessive; or

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

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

827 (d) [~~make a false statement or representation for purposes of inducing~~] do any of the
 828 following to induce a lender to extend credit as part of a residential mortgage loan
 829 transaction[;]:

830 (i) make a false statement or representation;

831 (ii) cause false documents to be generated; or

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

833 (e) (i) give or receive compensation or anything of value, or withhold or threaten to

834 withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in
835 reaching a value conclusion in a residential mortgage loan transaction, except that it is not a
836 violation of this section for a licensee to withhold payment because of a bona fide dispute
837 regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards
838 of Professional Appraisal Practice;

839 (f) violate or not comply with:

840 (i) this chapter;

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

842 (iii) a rule made by the division;

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

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

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

846 (h) make false representations to the division, including in a licensure statement;

847 (i) for any residential mortgage loan transaction beginning on or after January 1, 2004,

848 engage in the business of residential mortgage loans with respect to the transaction if the

849 individual or entity also acts in any of the following capacities with respect to the same

850 residential mortgage loan transaction:

851 (i) appraiser;

852 (ii) escrow agent;

853 (iii) real estate agent; or

854 (iv) general contractor;

855 (j) order a title insurance report or hold a title insurance policy unless the individual or

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

857 (k) engage in unprofessional conduct as defined by rule; ~~or~~

858 (l) engage in an act or omission in transacting the business of residential mortgage

859 loans that constitutes dishonesty, fraud, or misrepresentation~~[-];~~

860 (m) engage in false or misleading advertising;

861 (n) (i) fail to account for all funds received in connection with a residential mortgage

862 loan;

863 (ii) use funds for a different purpose from the purpose for which the funds were

864 received; or

- 865 (iii) retain funds paid for services if the services were not actually performed;
 866 (o) fail, within 30 calendar days of a request from a borrower who has paid for an
 867 appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;
 868 (p) engage in an act that is performed to:
 869 (i) evade this chapter; or
 870 (ii) assist another person to evade this chapter;
 871 (q) recommend or encourage default or delinquency, or continuation of an existing
 872 default or delinquency, by a mortgage applicant on an existing indebtedness prior to the closing
 873 of a residential mortgage loan that will refinance all or part of the indebtedness;
 874 (r) in the case of a control person of an entity, fail to exercise reasonable supervision
 875 over the activities of:
 876 (i) the individuals engaged in the business of residential mortgage loans on behalf of
 877 the entity; or
 878 (ii) any unlicensed staff;
 879 (s) on or after January 1, 2005, in the case of the principal lending manager of an entity
 880 or a branch office of an entity, fail to exercise reasonable supervision over the activities of the
 881 mortgage officers who are licensed with the principal lending manager; or
 882 (t) pay or offer to pay an individual who does not hold a license under this chapter for
 883 work that requires the individual to hold a license under this chapter.
 884 (2) Whether or not the crime is related to the business of residential mortgage loans, it
 885 is a violation of this chapter for a licensee ~~or~~, a control person of a licensee, or a person who
 886 is a certified education provider to do any of the following with respect to a criminal offense
 887 which involves moral turpitude:
 888 (a) be convicted;
 889 (b) plead guilty or nolo contendere;
 890 (c) enter a plea in abeyance; or
 891 (d) be subjected to a criminal disposition similar to the ones described in Subsections
 892 (2)(a) through (c).
 893 Section 15. Section **61-2c-302** is amended to read:
 894 **61-2c-302. Record requirements.**
 895 (1) For the time period specified in Subsection (2), a licensee shall make or possess any

896 record required for that licensee by a rule made by the division.

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

899 (a) the final entry on a residential mortgage loan is made by that licensee;

900 (b) if the residential mortgage loan is serviced by the licensee:

901 (i) the residential mortgage loan is paid in full; or

902 (ii) the licensee ceases to service the residential mortgage loan; or

903 (c) if the residential mortgage loan is not serviced by the licensee, the residential
904 mortgage loan is closed.

905 (3) A licensee shall:

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

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

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

913 Section 16. Section **61-2c-401** is amended to read:

914 **61-2c-401. Investigations -- Subpoena power of division.**

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

916 (a) (i) a licensee [and the control persons of any licensee]; or

917 (ii) the following with respect to an entity that is a licensee:

918 (A) a control person;

919 (B) a manager;

920 (C) a managing partner;

921 (D) a director;

922 (E) an executive officer; or

923 (F) an individual who performs a function similar to an individual listed in this

924 Subsection (1)(a)(ii);

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

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

929 (A) a control person;

930 (B) a manager;

931 (C) a managing partner;

932 (D) a director;

933 (E) an executive officer; or

934 (F) an individual who performs a function similar to an individual listed in this

935 Subsection (1)(b)(ii); or

936 (c) any individual or entity that transacts the business of residential mortgage loans
937 within this state, and the control persons of any such entity.

938 (2) In conducting investigations, records inspections, and adjudicative proceedings, the
939 division may:

940 (a) subpoena witnesses;

941 (b) take evidence;

942 (c) require by subpoena duces tecum the production of books, papers, contracts,
943 records, other documents, or information considered relevant to an investigation; and

944 (d) serve a subpoena by certified mail.

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

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

950 (a) investigations of complaints; or

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

952 (i) this chapter; or

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

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

957 (b) Upon receipt of notification from the division that records maintained outside Utah

958 are to be examined in connection with an investigation or an examination, the licensee shall
959 deposit with the division a deposit of \$500 to cover the division's expenses in connection with
960 the examination of the records.

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

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

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

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

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

974 Section 17. Section **61-2c-402** is amended to read:

975 **61-2c-402. Disciplinary action -- Reinstatement.**

976 (1) Subject to the requirements of this section, if an individual or entity required to be
977 licensed under this chapter violates this chapter, or an education provider certified under this
978 chapter, the commission, with the concurrence of the director, may:

979 (a) impose a civil penalty against the individual or entity in an amount not to exceed
980 \$2,500 per violation;

981 (b) do any of the following to a license under this chapter:

982 (i) suspend;

983 (ii) revoke;

984 (iii) place on probation;

985 (iv) deny renewal; or

986 (v) deny reinstatement; or

987 (c) do both Subsections (1)(a) and (b).

988 (2) (a) Before the commission and the division may take an action described in

989 Subsection (1), the division shall:

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

991 (ii) schedule an adjudicative proceeding.

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

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

999 (4) If an individual or entity prevails in a judicial appeal and the court finds that the
1000 state action was undertaken without substantial justification, the court may award reasonable
1001 litigation expenses to that individual or entity as provided under Title 78, Chapter 27a, Small
1002 Business Equal Access to Justice Act.

1003 (5) (a) An order issued under this section takes effect 30 days after the service of the
1004 order unless otherwise provided in the order.

1005 (b) If an appeal of an order issued under this section is taken by an individual or entity,
1006 the division may stay enforcement of the commission's order in accordance with Section
1007 63-46b-18.

1008 (6) If ordered by the court of competent jurisdiction, the division shall promptly take an
1009 action described in Subsection (1)(b) against a license granted under this chapter.

1010 (7) (a) If a license under this chapter is revoked, the individual or entity may apply to
1011 have the license reinstated by complying with the requirements of Section 61-2c-202 for
1012 licensure.

1013 (b) Notwithstanding Subsection (7)(a), if a license under this chapter is revoked, the
1014 individual or entity may not apply for reinstatement of the license sooner than five years after
1015 the date the license is revoked in accordance with this section.

1016 (c) If an individual or entity whose license has been revoked applies for reinstatement
1017 in accordance with Subsection (7)(b), the commission and the division may grant the
1018 application for reinstatement if they find that:

1019 (i) there has been good conduct on the part of the applicant subsequent to the events

1020 that led to the revocation, and that the subsequent good conduct outweighs the events which led
1021 to the revocation; and

1022 (ii) the interest of the public is not likely to be harmed by the granting of the license.

1023 Section 18. Section **61-2c-403** is amended to read:

1024 **61-2c-403. Cease and desist orders.**

1025 (1) (a) The director may issue and serve by certified mail, or by personal service, on an
1026 individual or entity an order to cease and desist if:

1027 (i) the director has reason to believe that the individual or entity has been or is
1028 engaging in acts constituting a violation of this chapter; and

1029 (ii) it appears to the director that it would be in the public interest to stop the acts.

1030 (b) Within ten days after service of the order, the party named in the order may request
1031 an adjudicative proceeding to be held in accordance with Title 63, Chapter 46b, Administrative
1032 Procedures Act.

1033 (c) Pending the hearing, the cease and desist order shall remain in effect.

1034 (2) (a) After the hearing described in Subsection (1), if the director finds that the acts
1035 of the individual or entity violate this chapter, the director shall issue an order making the cease
1036 and desist order permanent.

1037 (b) (i) The director may file suit in the name of the division to enjoin and restrain an
1038 individual or entity on whom an order is served under this section from violating this chapter
1039 if:

1040 (A) (I) the individual or entity did not request a hearing under Subsection (1); or

1041 (II) a permanent cease and desist order is issued against the individual or entity
1042 following a hearing or stipulation; and

1043 (B) (I) the individual or entity fails to cease the acts; or

1044 (II) after discontinuing the acts, the individual or entity again commences the acts.

1045 (ii) The suit described in Subsection (2)(b)(i) shall be filed in the district court in the
1046 county:

1047 (A) in which the acts occurred;

1048 (B) where the individual resides; or

1049 (C) where the individual or entity carries on business.

1050 (3) The cease and desist order issued under this section may not interfere with or

1051 prevent the prosecution of a remedy or action enforcement under this chapter.

1052 (4) An individual [~~or a control person of an entity~~] who violates a cease and desist order
1053 issued under this section is guilty of a class A misdemeanor.

1054 Section 19. Section **61-2c-404** is enacted to read:

1055 **61-2c-404. Civil actions.**

1056 (1) (a) A person who violates this chapter is liable for an additional penalty, as
1057 determined by the court, of at least the amount the person received in consequence of a
1058 violation of this chapter as:

1059 (i) commission;

1060 (ii) compensation; or

1061 (iii) profit.

1062 (b) A person aggrieved by a violation of this chapter may:

1063 (i) bring an action for a penalty described in Subsection (1)(a); and

1064 (ii) use a penalty obtained under Subsection (1)(a) for the person's own use and benefit.

1065 (2) A person who is not licensed under this chapter at the time of an act or service that
1066 requires a license under this chapter may not bring an action in court for the recovery of a
1067 commission, fee, or compensation for that act or service.

1068 (3) On or after January 1, 2005:

1069 (a) a mortgage officer may not bring an action in the mortgage officer's own name for
1070 the recovery of a fee, commission, or compensation for transacting the business of residential
1071 mortgage loans unless the action is brought against the principal lending manager with whom
1072 the mortgage officer was licensed at the time of the act or service that is the subject of the
1073 action; and

1074 (b) an action by an entity for the recovery of a fee, commission, or other compensation
1075 shall be brought by:

1076 (i) an entity; or

1077 (ii) the principal lending manager of an entity on behalf of the entity.

1078 (4) On or after January 1, 2005, a principal lending manager who transacts the business
1079 of residential mortgage loans on the principal lending manager's own behalf may sue in the
1080 principal lending manager's own name for the recovery of a fee, commission, or compensation
1081 for transacting the business of residential mortgage loans.

1082 Section 20. Section **61-2c-501** is enacted to read:

1083 **Part 5. Residential Mortgage Loan Education, Research, and Recovery Fund**

1084 **61-2c-501. Fund created -- Minimum balance.**

1085 (1) There is created a restricted special revenue fund known as the "Residential
1086 Mortgage Loan Education, Research, and Recovery Fund."

1087 (2) The interest earned on the fund shall be deposited into the fund.

1088 (3) At the beginning of each state fiscal year, \$100,000 shall remain available in the
1089 fund to satisfy judgments rendered against individuals and entities licensed under this chapter.

1090 Section 21. Section **61-2c-502** is enacted to read:

1091 **61-2c-502. Additional license fee.**

1092 (1) An individual who applies for or renews a license shall pay, in addition to the
1093 application or renewal fee, a reasonable annual fee:

1094 (a) determined by the division with the concurrence of the commission; and

1095 (b) not to exceed \$18.

1096 (2) An entity that applies for or renews an entity license shall pay, in addition to the
1097 application or renewal fee, a reasonable annual fee:

1098 (a) determined by the division with the concurrence of the commission; and

1099 (b) not to exceed \$25.

1100 (3) Notwithstanding Section 13-1-2, the fees provided in this section shall be paid into
1101 the fund to be used as provided in this part.

1102 (4) If the balance in the fund that is available to satisfy judgments against licensees
1103 decreases to less than \$100,000, the division may make additional assessments to licensees to
1104 maintain the balance available at \$100,000 to satisfy judgments.

1105 Section 22. Section **61-2c-503** is enacted to read:

1106 **61-2c-503. Notice to division -- Judgment against mortgage licensee -- Fraud,**
1107 **misrepresentation, or deceit -- Verified petition for order directing payment from fund --**
1108 **Limitations and procedure.**

1109 (1) (a) A person may bring a claim against the fund if the person sends a signed
1110 notification to the division at the time the person files an action:

1111 (i) against a licensee; and

1112 (ii) alleging fraud, misrepresentation, or deceit.

1113 (b) Within 30 calendar days of receipt of the notice described in Subsection (1)(a), the
1114 division may intervene in the action.

1115 (c) If a person making a claim against the fund obtains a final judgment in a court of
1116 competent jurisdiction in Utah against a licensee based on fraud, misrepresentation, or deceit in
1117 a residential mortgage loan transaction, the person making the claim may, upon termination of
1118 all proceedings including appeals, file a verified petition in the court where the judgment was
1119 entered for an order directing payment from the fund for the uncollected actual damages
1120 included in the judgment.

1121 (d) A recovery from the fund may not include punitive damages, interest, or court
1122 costs.

1123 (e) Regardless of the number of claimants or number of loans involved in a transaction,
1124 the liability of the fund may not exceed:

1125 (i) \$15,000 for a single transaction;

1126 (ii) \$45,000 for an individual licensee; or

1127 (iii) \$45,000 for an entity.

1128 (2) A person making a claim against the fund shall:

1129 (a) serve a copy of the petition on the division; and

1130 (b) file a copy of the affidavit of the service of the petition described in Subsection
1131 (2)(a) with the court.

1132 (3) (a) The court shall conduct a hearing on the petition within 30 calendar days after
1133 service.

1134 (b) The petitioner shall recover from the fund only if the petitioner shows:

1135 (i) that the petitioner is not:

1136 (A) the spouse of the judgment debtor; or

1137 (B) the personal representative of the spouse of the judgment debtor;

1138 (ii) that the petitioner has complied with this chapter;

1139 (iii) that the petitioner has obtained a final judgment in the manner prescribed under
1140 this section, indicating the amount of the judgment awarded;

1141 (iv) that the petitioner has proved the amount still owing on the judgment at the date of
1142 the petition;

1143 (v) (A) that:

- 1144 (I) the petitioner has a writ of execution issued upon the judgment; and
1145 (II) the officer executing the writ has made a return showing that no property subject to
1146 execution in satisfaction of the judgment could be found; and
1147 (B) if execution is levied against the property of the judgment debtor, that:
1148 (I) the amount realized was insufficient to satisfy the judgment; and
1149 (II) a balance remains on the judgment after application of the amount realized; and
1150 (vi) that the petitioner has:
1151 (A) made reasonable searches and inquiries to ascertain whether the judgment debtor
1152 has any interest in property, real or personal, that may satisfy the judgment; and
1153 (B) has exercised reasonable diligence to secure payment of the judgment from the
1154 assets of the judgment debtor.
1155 (4) If the petitioner satisfies the court that it is not practicable for the petitioner to
1156 comply with one or more of the requirements in Subsections (3)(b)(v) and (3)(b)(vi), the court
1157 may waive those requirements.
1158 (5) (a) A judgment that is the basis for a claim against the fund may not have been
1159 discharged in bankruptcy.
1160 (b) In the case of a bankruptcy proceeding that is open or that is commenced during the
1161 pendency of the claim, the claimant shall, prior to obtaining a claim against the fund, obtain an
1162 order from the bankruptcy court declaring the judgment and debt to be nondischargeable.
1163 Section 23. Section **61-2c-504** is enacted to read:
1164 **61-2c-504. Authority to act on receipt of petition.**
1165 (1) Upon receipt of a petition meeting the requirements of Section 61-2c-503, the
1166 division may answer, initiate review proceedings, or appear in a proceeding:
1167 (a) in the name of the defendant to the action; or
1168 (b) on behalf of the fund.
1169 (2) The division may settle a claim subject to:
1170 (a) the application of a petitioner; and
1171 (b) court approval.
1172 Section 24. Section **61-2c-505** is enacted to read:
1173 **61-2c-505. Court determination and order.**
1174 If the court determines that a claim should be levied against the portion of the fund

1175 allocated to carry out the provisions of this chapter, the court shall enter an order requiring the
1176 division to pay from the fund the portion of the petitioner's judgment that is payable from the
1177 fund under Section 61-2c-503.

1178 Section 25. Section **61-2c-506** is enacted to read:

1179 **61-2c-506. Insufficient funds to satisfy judgment -- Procedure and interest.**

1180 If the money deposited in the fund and allotted for satisfying judgments against
1181 licensees is insufficient to satisfy an authorized claim for payment, the division shall, when
1182 sufficient money has been deposited in the fund, satisfy the unpaid claims in the order they
1183 originally were filed, together with accumulated interest at the rate allowable on judgments
1184 under Section 15-1-4.

1185 Section 26. Section **61-2c-507** is enacted to read:

1186 **61-2c-507. Division subrogated to judgment creditor -- Authority to revoke**
1187 **license.**

1188 (1) If the division pays a judgment creditor from the fund:

1189 (a) the division is subrogated to the rights of the judgment creditor for the amounts
1190 paid out of the fund; and

1191 (b) any amount and interest recovered by the division shall be deposited in the fund.

1192 (2) The license of a licensee for whom payment from the fund is made under this part
1193 is automatically revoked.

1194 (3) A licensee whose license is revoked pursuant to Subsection (2) may not apply for a
1195 new license until the licensee has paid into the fund:

1196 (a) the amount paid out of the fund on behalf of the licensee; and

1197 (b) interest at a rate determined by the division with the concurrence of the
1198 commission.

1199 Section 27. Section **61-2c-508** is enacted to read:

1200 **61-2c-508. Failure to comply.**

1201 The failure of a person to comply with this part is a waiver of any right provided under
1202 this part.

1203 Section 28. Section **61-2c-509** is enacted to read:

1204 **61-2c-509. Disciplinary actions.**

1205 (1) This part does not limit the authority of the director to take disciplinary action

1206 against a licensee for a violation of:

1207 (a) this chapter; or

1208 (b) rules made by the division under this chapter.

1209 (2) The repayment in full of all obligations to the fund by a licensee does not nullify or

1210 modify the effect of a disciplinary proceeding brought under:

1211 (a) this chapter; or

1212 (b) rules made by the division under this chapter.

1213 Section 29. Section **61-2c-510** is enacted to read:

1214 **61-2c-510. Moneys accumulated -- Purpose.**

1215 The division may use monies accumulated in the fund in excess of the amount

1216 necessary to satisfy claims to advance education and research in the field of residential

1217 mortgage loans, including:

1218 (1) courses sponsored by the division;

1219 (2) courses offered by the division in conjunction with a university or college in Utah;

1220 (3) contracting for a research project for the state in the field of residential mortgage

1221 loans;

1222 (4) funding the salaries and training expenses of division staff members who are
1223 employed in positions related to the education of mortgage licensees;

1224 (5) funding the training expenses of division staff members who are employed in
1225 positions conducting investigations of complaints under this chapter; and

1226 (6) publishing and distributing educational materials to:

1227 (a) licensees; and

1228 (b) applicants for licensure.

1229 Section 30. Section **70D-1-10** is amended to read:

1230 **70D-1-10. Notification of department -- Exemptions.**

1231 (1) Except as provided in Subsection (2), no person may engage in the business of
1232 making mortgage loans nor may any person engage in the business of being a mortgage loan
1233 broker or servicer, without first filing written notification with the department and paying the
1234 fees required by this chapter.

1235 (2) The following persons are exempt from the notification requirements contained in
1236 this chapter and from the annual fee imposed in Subsection 70D-1-12(1):

1237 (a) all persons authorized under Utah law or under federal law to do business as a
1238 depository institution in this state;
1239 (b) all wholly-owned subsidiaries of depository institutions described in Subsection
1240 (2)(a); and
1241 (c) all persons that:
1242 (i) are required to ~~register~~ license with the Utah Division of Real Estate pursuant to
1243 Title 61, Chapter 2c, Utah Residential Mortgage Practices Act; and
1244 (ii) are not engaged in the business of being a mortgage loan servicer.
1245 Section 31. **Repealer.**
1246 This bill repeals:
1247 Section **61-2c-204, Requirements for bonding, letter of credit, or deposit of assets.**
1248 Section 32. **Effective date.**
1249 This bill takes effect on May 3, 2004, except that:
1250 (1) the amendments to Section 61-2c-106 take effect on January 1, 2005; and
1251 (2) the amendments to Section 62-2c-104 (Effective 07/01/04) take effect on July 1,
1252 2004.

Legislative Review Note
as of 2-3-04 3:39 PM

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

Office of Legislative Research and General Counsel

State Impact

This bill will generate fee revenues of \$253,800 to the Mortgage Education and Recovery Fund (a newly created restricted fund) in the first year. The Department of commerce will need to add one technician at a cost of \$40,700.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
Restricted Funds	\$40,700	\$34,400	\$253,800	\$165,300
TOTAL	\$40,700	\$34,400	\$253,800	\$165,300

Individual and Business Impact

Mortgage brokers and agents will save money as they will be subject to licensing but exempted from bonds. Balances in the fund are to satisfy judgements against licensees.

Office of the Legislative Fiscal Analyst