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MORTGAGE FRAUD

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill modifies the Utah Code to address real estate regulation, transactions, and construction.

Highlighted Provisions:

This bill:

- ▶ directs the attorney general to employ a real estate fraud prosecutor and two investigators;
- ▶ enacts the Real Estate Fraud Act including:
 - creating the crime of real estate fraud; and
 - penalties; and
- ▶ includes real estate fraud as an illegal activity under the Pattern of Illegal Activity

Act.

Monies Appropriated in this Bill:

⌚→ [None] This bill appropriates as ongoing appropriations from the Residential Mortgage Loan Education, Research, and Recovery Fund created in Section 61-2c-501 for fiscal year 2007-08:

- ▶ \$150,000 to the Office of the Attorney General to fund one attorney as provided in this bill ; and
- ▶ \$286,300 to the Department of Public Safety to fund two investigators as provided in this bill. ←⌚

Other Special Clauses:

None



H.B. 25

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **76-10-1602**, as last amended by Chapters 104, 140 and 319, Laws of Utah 2004

27 ENACTS:

- 28 67-5-22, Utah Code Annotated 1953
- 29 76-6-1201, Utah Code Annotated 1953
- 30 76-6-1202, Utah Code Annotated 1953
- 31 76-6-1203, Utah Code Annotated 1953



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

34 Section 1. Section 67-5-22 is enacted to read:

35 **67-5-22. Real estate fraud prosecutor and investigators.**

36 (1) ~~H~~ (a) ~~H~~ The attorney general shall employ ~~H~~ [:

37 ~~(a)]~~ ~~H~~ an attorney licensed to practice law in Utah who:

38 (i) has knowledge of the law related to real estate fraud; and

39 (ii) if possible, has a background or expertise in investigating and prosecuting real

40 estate fraud ~~H~~ [; and

41 ~~(b) at least two experienced investigators]~~ ~~H~~ .

42 ~~H~~ [(2) (a) An] (b) The ~~H~~ attorney employed under Subsection (1)(a) ~~H~~ [shall have]

42a ~~H~~ as ~~H~~ as that attorney's

43 primary responsibility the prosecution of real estate fraud.

44 ~~H~~ (2) The Department of Public Safety shall employ at least two investigators who

44a **have a background or expertise in investigating real estate fraud.**

44b ~~(b)]~~ (3) ~~H~~ Each person ~~H~~ employed ~~H~~ under ~~H~~ [Subsection (1)(b)]

44c (1) and (2) ~~H~~ shall have as that person's primary

45 responsibility the investigation of real estate fraud.

46 ~~H~~ [(3)] (4) ~~H~~ The attorney general may employ clerks, interns, or other personnel to

46a assist the

47 ~~H~~ [persons] attorney ~~H~~ employed under Subsection (1).

48 Section 2. Section 76-6-1201 is enacted to read:

49 **Part 12. Real Estate Fraud Act**

50 **76-6-1201. Title.**

51 This part is known as the "Real Estate Fraud Act."

52 Section 3. Section 76-6-1202 is enacted to read:

53 **76-6-1202. Real estate fraud.**

54 (1) It is unlawful for any person, in connection with the offer, sale, purchase, appraisal,

55 insurance, or financing of any real estate, ~~H~~ **whether to** ~~H~~ directly ~~H~~ , ~~[or indirectly,~~

55a ~~to]~~ ~~H~~ knowingly, intentionally, or

56 with a reckless disregard for the truth employ any device, scheme, or artifice to defraud
56a **H→ another or to obtain from another money, property, or anything of value by means of false**
56b **or fraudulent pretenses, representations, promises, or material omissions ←H .**
57 (2) Reliance on the part of any person is not a necessary element of this offense.
58 **H→ [~~(3) An intent on the part of the perpetrator of this offense to permanently deprive any]~~**

59 ~~[person of property, money, or thing of value is not a necessary element of the offense.] ←H~~

60 Section 4. Section **76-6-1203** is enacted to read:

61 **76-6-1203. Classification of offense.**

62 (1) As used in this section:

63 (a) "Sensitive personal identifying information" means any of the following

64 information regarding an individual's:

65 (i) Social Security number;

66 (ii) driver's license number or other government issued identification number;

67 (iii) financial account number or credit or debit card number;

68 (iv) password or personal identification number or other identification required to gain

69 access to a financial account or a secure website;

70 (v) automated or electronic signature;

71 (vi) unique biometric data; or

72 (vii) any other information that can be used to gain access to an individual's financial

73 accounts or to obtain goods or services.

74 (b) "Value" means the value of the property, money, or thing obtained or sought to be

75 obtained.

76 (2) A violation of Section 76-6-1202 is:

77 (a) a class B misdemeanor when the value is less than \$300;

78 (b) a class A misdemeanor when the value is or exceeds \$300 but is less than \$1,000;

79 (c) a third degree felony when the value is or exceeds \$1,000 but is less than \$5,000;

80 (d) a second degree felony when the value is or exceeds \$5,000;

81 (e) a second degree felony when the object of the scheme or artifice to defraud is other

82 than the obtaining of something of monetary value; and

83 (f) a second degree felony when the object or purpose of the scheme or artifice to

84 defraud is the obtaining of sensitive personal identifying information, regardless of the value.

85 (3) The determination of the degree of any offense under Subsection (2) is measured by

86 the total value of all property, money, or things obtained or sought to be obtained by the

87 scheme or artifice described in Subsection (2) except as provided in Subsection (2)(e).

88 Section 5. Section **76-10-1602** is amended to read:

89 **76-10-1602. Definitions.**

90 As used in this part:

91 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,
92 business trust, association, or other legal entity, and any union or group of individuals
93 associated in fact although not a legal entity, and includes illicit as well as licit entities.

94 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
95 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
96 have the same or similar purposes, results, participants, victims, or methods of commission, or
97 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
98 demonstrate continuing unlawful conduct and be related either to each other or to the
99 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have
100 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful
101 activity as defined by this part shall have occurred within five years of the commission of the
102 next preceding act alleged as part of the pattern.

103 (3) "Person" includes any individual or entity capable of holding a legal or beneficial
104 interest in property, including state, county, and local governmental entities.

105 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,
106 command, encourage, or intentionally aid another person to engage in conduct which would
107 constitute any offense described by the following crimes or categories of crimes, or to attempt
108 or conspire to engage in an act which would constitute any of those offenses, regardless of
109 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor
110 or a felony:

111 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized
112 Recording Practices Act;

113 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality
114 Code, Sections 19-1-101 through 19-7-109;

115 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary
116 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Chapter 13, [~~Wildlife~~
117 ~~Resources Code of Utah~~] General Provisions, or Section 23-20-4;

118 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title
119 26, Chapter 20, False Claims Act, Sections 26-20-1 through 26-20-12;

120 (e) any act prohibited by the criminal provisions of Title 32A, Chapter 12, Criminal

- 121 Offenses;
- 122 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
123 Land Sales Practices Act;
- 124 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
125 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
126 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
127 Clandestine Drug Lab Act;
- 128 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
129 Securities Act;
- 130 (i) any act prohibited by the criminal provisions of Title 63, Chapter 56, Utah
131 Procurement Code;
- 132 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
- 133 (k) a terroristic threat, Section 76-5-107;
- 134 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;
- 135 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
- 136 (n) sexual exploitation of a minor, Section 76-5a-3;
- 137 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 138 (p) causing a catastrophe, Section 76-6-105;
- 139 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 140 (r) burglary of a vehicle, Section 76-6-204;
- 141 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 142 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 143 (u) theft, Section 76-6-404;
- 144 (v) theft by deception, Section 76-6-405;
- 145 (w) theft by extortion, Section 76-6-406;
- 146 (x) receiving stolen property, Section 76-6-408;
- 147 (y) theft of services, Section 76-6-409;
- 148 (z) forgery, Section 76-6-501;
- 149 (aa) fraudulent use of a credit card, Sections 76-6-506.1, 76-6-506.2, and 76-6-506.4;
- 150 (bb) deceptive business practices, Section 76-6-507;
- 151 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or

- 152 criticism of goods, Section 76-6-508;
- 153 (dd) bribery of a labor official, Section 76-6-509;
- 154 (ee) defrauding creditors, Section 76-6-511;
- 155 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 156 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 157 (hh) bribery or threat to influence contest, Section 76-6-514;
- 158 (ii) making a false credit report, Section 76-6-517;
- 159 (jj) criminal simulation, Section 76-6-518;
- 160 (kk) criminal usury, Section 76-6-520;
- 161 (ll) fraudulent insurance act, Section 76-6-521;
- 162 (mm) computer crimes, Section 76-6-703;
- 163 (nn) identity fraud, Section 76-6-1102;
- 164 (oo) real estate fraud, Chapter 6, Part 12, Real Estate Fraud Act;
- 165 [~~(oo)~~] (pp) sale of a child, Section 76-7-203;
- 166 [~~(pp)~~] (qq) bribery to influence official or political actions, Section 76-8-103;
- 167 [~~(qq)~~] (rr) threats to influence official or political action, Section 76-8-104;
- 168 [~~(rr)~~] (ss) receiving bribe or bribery by public servant, Section 76-8-105;
- 169 [~~(ss)~~] (tt) receiving bribe or bribery for endorsement of person as public servant,
- 170 Section 76-8-106;
- 171 [~~(tt)~~] (uu) official misconduct, Sections 76-8-201 and 76-8-202;
- 172 [~~(uu)~~] (vv) obstruction of justice, Section 76-8-306;
- 173 [~~(vv)~~] (ww) acceptance of bribe or bribery to prevent criminal prosecution, Section
- 174 76-8-308;
- 175 [~~(ww)~~] (xx) false or inconsistent material statements, Section 76-8-502;
- 176 [~~(xx)~~] (yy) false or inconsistent statements, Section 76-8-503;
- 177 [~~(yy)~~] (zz) written false statements, Section 76-8-504;
- 178 [~~(zz)~~] (aaa) tampering with a witness or soliciting or receiving a bribe, Section
- 179 76-8-508;
- 180 [~~(aaa)~~] (bbb) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 181 [~~(bbb)~~] (ccc) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 182 [~~(ccc)~~] (ddd) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or

183 76-8-1205;
184 ~~[(ddd)]~~ (eee) unemployment insurance fraud, Section 76-8-1301;
185 ~~[(eee)]~~ (fff) intentionally or knowingly causing one animal to fight with another,
186 Subsection 76-9-301(1)(f);
187 ~~[(fff)]~~ (ggg) possession, use, or removal of explosives, chemical, or incendiary devices
188 or parts, Section 76-10-306;
189 ~~[(ggg)]~~ (hhh) delivery to common carrier, mailing, or placement on premises of an
190 incendiary device, Section 76-10-307;
191 ~~[(hhh)]~~ (iii) possession of a deadly weapon with intent to assault, Section 76-10-507;
192 ~~[(iii)]~~ (jii) unlawful marking of pistol or revolver, Section 76-10-521;
193 ~~[(jii)]~~ (kkk) alteration of number or mark on pistol or revolver, Section 76-10-522;
194 ~~[(kkk)]~~ (lll) forging or counterfeiting trademarks, trade name, or trade device, Section
195 76-10-1002;
196 ~~[(lll)]~~ (mmm) selling goods under counterfeited trademark, trade name, or trade
197 devices, Section 76-10-1003;
198 ~~[(mmm)]~~ (nnn) sales in containers bearing registered trademark of substituted articles,
199 Section 76-10-1004;
200 ~~[(nnn)]~~ (ooo) selling or dealing with article bearing registered trademark or service
201 mark with intent to defraud, Section 76-10-1006;
202 ~~[(ooo)]~~ (ppp) gambling, Section 76-10-1102;
203 ~~[(ppp)]~~ (qqq) gambling fraud, Section 76-10-1103;
204 ~~[(qqq)]~~ (rrr) gambling promotion, Section 76-10-1104;
205 ~~[(rrr)]~~ (sss) possessing a gambling device or record, Section 76-10-1105;
206 ~~[(sss)]~~ (ttt) confidence game, Section 76-10-1109;
207 ~~[(ttt)]~~ (uuu) distributing pornographic material, Section 76-10-1204;
208 ~~[(uuu)]~~ (vvv) inducing acceptance of pornographic material, Section 76-10-1205;
209 ~~[(vvv)]~~ (www) dealing in harmful material to a minor, Section 76-10-1206;
210 ~~[(www)]~~ (xxx) distribution of pornographic films, Section 76-10-1222;
211 ~~[(xxx)]~~ (yyy) indecent public displays, Section 76-10-1228;
212 ~~[(yyy)]~~ (zzz) prostitution, Section 76-10-1302;
213 ~~[(zzz)]~~ (aaaa) aiding prostitution, Section 76-10-1304;

214 [~~(aaaa)~~] (bbbb) exploiting prostitution, Section 76-10-1305;
 215 [~~(bbbb)~~] (cccc) aggravated exploitation of prostitution, Section 76-10-1306;
 216 [~~(cccc)~~] (dddd) communications fraud, Section 76-10-1801;
 217 [~~(dddd)~~] (eeee) any act prohibited by the criminal provisions of [~~Title 76,~~] Chapter 10,
 218 Part 19, Money Laundering and Currency Transaction Reporting Act;
 219 [~~(eeee)~~] (ffff) any act prohibited by the criminal provisions of the laws governing
 220 taxation in this state; and
 221 [~~(ffff)~~] (gggg) any act illegal under the laws of the United States and enumerated in
 222 Title 18, Section 1961 (1)(B), (C), and (D) of the United States Code.

222a **Ĥ→ Section 6. Ongoing appropriation for real estate fraud investigations and**
 222b **prosecutions.**
 222c **There is appropriated as ongoing appropriations from the Residential Mortgage Loan**
 222d **Education, Research, and Recovery Fund created in Section 61-2c-501 for fiscal year 2007-08:**
 222e **(1) \$150,000 to the Office of the Attorney General to fund one attorney as provided in**
 222f **this bill ; and**
 222g **(2) \$286,300 to the Department of Public Safety to fund two investigators as provided**
 222h **in this bill. ←Ĥ**

Legislative Review Note
 as of 11-15-06 2:48 PM

Office of Legislative Research and General Counsel

Interim Committee Note
 as of 12-12-06 11:18 AM

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

H.B. 25 - Mortgage Fraud

Fiscal Note

2007 General Session

State of Utah

State Impact

The Attorney General will require a one-time General Fund appropriation of \$56,500 for one-time equipment needs in FY 2008 and an ongoing General Fund appropriation of \$372,300 beginning FY 2008 for additional staff and associated costs. The Courts will require an ongoing General Fund appropriation of \$7,500 beginning FY 2008 for additional judicial costs.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
General Fund	\$0	\$379,800	\$379,800	\$0	\$0	\$0
General Fund, One-Time	\$0	\$56,500	\$0	\$0	\$0	\$0
Total	\$0	\$436,300	\$379,800	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
