

**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

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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) The attorney general shall employ:

37 (a) 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; and

41 (b) at least two experienced investigators.

42 (2) (a) An attorney employed under Subsection (1)(a) shall have as that attorney's  
43 primary responsibility the prosecution of real estate fraud.

44 (b) Each person under Subsection (1)(b) shall have as that person's primary  
45 responsibility the investigation of real estate fraud.

46 (3) The attorney general may employ clerks, interns, or other personnel to assist the  
47 persons 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, directly or indirectly, to knowingly, intentionally, or  
56 with a reckless disregard for the truth employ any device, scheme, or artifice to defraud.

57 (2) Reliance on the part of any person is not a necessary element of this offense.

58 (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.

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)~~] (jjj) unlawful marking of pistol or revolver, Section 76-10-521;  
193        [~~(jjj)~~] (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            [~~(bbb)~~] (cccc) aggravated exploitation of prostitution, Section 76-10-1306;  
216            [~~(cccc)~~] (dddd) communications fraud, Section 76-10-1801;  
217            [~~(ddd)~~] (eeee) any act prohibited by the criminal provisions of [~~Title 76,~~] Chapter 10,  
218 Part 19, Money Laundering and Currency Transaction Reporting Act;  
219            [~~(cccc)~~] (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.

---

---

**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
<b>Total</b>	<b>\$0</b>	<b>\$436,300</b>	<b>\$379,800</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

---

---

**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.

---

---