

1 **UTAH RESIDENTIAL MORTGAGE PRACTICES**

2 **ACT AMENDMENTS**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Merlynn T. Newbold**

6 Senate Sponsor: Wayne L. Niederhauser

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions related to licensing under the Utah Residential Mortgage
11 Practices Act.

12 **Highlighted Provisions:**

- 13 This bill:
- 14 ▶ modifies definitions;
 - 15 ▶ provides that a principal lending manager may act as a mortgage officer;
 - 16 ▶ requires the Division of Real Estate to make rules providing a combined licensing
17 process related to a principal lending manager maintaining a license as an entity if
18 certain conditions are met; and
 - 19 ▶ makes technical and conforming amendments.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **61-2c-102**, as last amended by Laws of Utah 2007, Chapter 325

27 **61-2c-103**, as last amended by Laws of Utah 2005, Chapter 199

28

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

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

31 **61-2c-102. Definitions.**

32 (1) As used in this chapter:

33 (a) "Affiliate" means an individual or an entity that directly, or indirectly through one or
34 more intermediaries, controls or is controlled by, or is under common control with, a specified
35 individual or entity.

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

37 (c) "Associate lending manager" means a person who:

38 (i) ~~[has qualified]~~ qualifies under this chapter as a principal lending manager; and

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

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

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

44 (ii) other than the main office of the licensed entity.

45 (e) (i) "Business of residential mortgage loans" means for compensation to:

46 (A) make or originate a residential mortgage loan;

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

49 (C) render services related to the origination of a residential mortgage loan including:

50 (I) taking ~~[applications]~~ an application; and

51 (II) communicating with the borrower and lender.

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

53 (A) the performance of a clerical ~~[functions]~~ function such as:

54 (I) gathering information related to a residential mortgage loan on behalf of the
55 prospective borrower or a person licensed under this chapter; or

56 (II) ~~[requesting or gathering information, word processing, sending correspondence, or
57 assembling files by]~~ an individual who works under the instruction of a person licensed under

58 this chapter[;];
59 (Aa) requesting or gathering information;
60 (Bb) word processing;
61 (Cc) sending correspondence; or
62 (Dd) assembling files;
63 (B) ownership of an entity that engages in the business of residential mortgage loans if
64 the owner does not personally perform the acts listed in Subsection (1)(e)(i);
65 (C) acting as a loan wholesaler;
66 (D) acting as an account executive for a loan wholesaler;
67 (E) acting as a loan underwriter;
68 (F) acting as a loan closer; or
69 (G) funding a loan.
70 (f) "Closed-end" means a loan;
71 (i) with a fixed amount borrowed; and [which]
72 (ii) that does not permit additional borrowing secured by the same collateral.
73 (g) "Commission" means the Residential Mortgage Regulatory Commission created in
74 Section 61-2c-104.
75 (h) "Compensation" means anything of economic value that is paid, loaned, granted,
76 given, donated, or transferred to an individual or entity for or in consideration of:
77 (i) services;
78 (ii) personal or real property; or
79 (iii) ~~other~~ another thing of value.
80 (i) "Control," as used in Subsection (1)(a), means the power to directly or indirectly:
81 (i) direct or exercise a controlling interest over:
82 (A) the management or policies of an entity; or
83 (B) the election of a majority of the directors, officers, managers, or managing partners
84 of an entity;
85 (ii) vote 20% or more of ~~any~~ a class of voting securities of an entity by an individual;

86 or

87 (iii) vote more than 5% of [~~any~~] a class of voting securities of [~~any~~] an entity by another
88 entity.

89 (j) "Depository institution" is as defined in Section 7-1-103.

90 (k) "Director" means the director of the division.

91 (l) "Division" means the Division of Real Estate.

92 (m) "Dwelling" means a residential structure attached to real property that contains one
93 to four units including any of the following if used as a residence:

94 (i) a condominium unit;

95 (ii) a cooperative unit;

96 (iii) a manufactured home; or

97 (iv) a house.

98 (n) "Entity" means [~~any~~]:

99 (i) a corporation[;];

100 (ii) a limited liability company[;];

101 (iii) a partnership[;];

102 (iv) a company[;];

103 (v) an association[;];

104 (vi) a joint venture[;];

105 (vii) a business trust[;];

106 (viii) a trust[;]; or [~~other~~]

107 (ix) another organization.

108 (o) "Executive director" means the executive director of the Department of Commerce.

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

112 [~~(r)~~] (q) "Licensee" means an individual or entity licensed with the division under this
113 chapter.

114 ~~[(s) (i) Except as provided in Subsection (1)(s)(ii), "mortgage]~~ (r) "Mortgage officer"
115 means an individual who is licensed with the division to transact the business of residential
116 mortgage loans through a principal lending manager.

117 ~~[(ii) "Mortgage officer" does not include a principal lending manager.]~~

118 ~~[(q) "Lending manager" or "principal]~~ (s) (i) "Principal lending manager" means a
119 person licensed as a principal lending manager under Section 61-2c-206[-] to transact the
120 business of residential mortgage loans.

121 (ii) A person licensed as a principal lending manager may transact the business of
122 residential mortgage loans as a mortgage officer.

123 (t) "Record" means information that is:

124 (i) prepared, owned, received, or retained by an individual or entity; and

125 (ii) (A) inscribed on a tangible medium; or

126 (B) (I) stored in an electronic or other medium; and

127 (II) retrievable in perceivable form.

128 (u) "Residential mortgage loan" means a closed-end, first mortgage loan or extension of
129 credit, if:

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

131 (A) mortgage;

132 (B) deed of trust; or

133 (C) lien interest; and

134 (ii) the mortgage, deed of trust, or lien interest described in Subsection (1)(u)(i):

135 (A) is on a dwelling located in the state; and

136 (B) created with the consent of the owner of the residential real property.

137 (v) "State" means:

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

139 (ii) the District of Columbia; or

140 (iii) the Commonwealth of Puerto Rico.

141 (2) (a) If a term not defined in this section is defined by rule, the term shall have the

142 meaning established by the division by rule made in accordance with Title 63, Chapter 46a, Utah
143 Administrative Rulemaking Act.

144 (b) If a term not defined in this section is not defined by rule, the term shall have the
145 meaning commonly accepted in the business community.

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

147 **61-2c-103. Powers and duties of the division.**

148 (1) The division shall administer this chapter.

149 (2) In addition to any power or duty expressly provided in this chapter, the division
150 may:

151 (a) receive and act on ~~[complaints]~~ a complaint including:

152 (i) taking action designed to obtain voluntary compliance with this chapter; or

153 (ii) commencing an administrative or judicial ~~[proceedings]~~ proceeding on the division's
154 own initiative;

155 (b) establish one or more programs for the education of consumers with respect to
156 residential mortgage loans;

157 (c) (i) make one or more studies appropriate to effectuate the purposes and policies of
158 this chapter; and

159 (ii) make the results of the studies described in Subsection (2)(c)(i) available to the
160 public;

161 (d) visit and investigate an entity licensed under this chapter, regardless of whether the
162 entity is located in Utah; and

163 (e) employ ~~[any]~~ one or more necessary hearing examiners, investigators, clerks, and
164 other employees and agents.

165 (3) The division shall make rules for the administration of this chapter in accordance
166 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, including:

167 (a) licensure procedures for:

168 (i) ~~[individuals and entities]~~ an individual or entity required by this chapter to obtain a
169 license with the division; and

170 (ii) the establishment of a branch office by an entity;
171 (b) proper handling of funds received by [~~licensees~~] a licensee;
172 (c) record-keeping requirements by [~~licensees~~] a licensee; and
173 (d) standards of conduct for [~~licensees~~] a licensee.

174 (4) The division may make available to the public a list of the names and mailing
175 addresses of all licensees:

176 (a) either directly or through a third party; and
177 (b) at a reasonable cost.

178 (5) The division shall:

179 (a) certify an education [~~providers~~] provider who [~~offer~~] offers:

180 (i) prelicensing education to candidates for licensure under this chapter; or
181 (ii) continuing education to individuals licensed under this chapter; and
182 (b) make available to the public, licensees, and candidates for licensure a list of the
183 names and addresses of all education providers certified under this Subsection (5).

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

186 (a) certification criteria and procedures for [~~providers~~] a provider of prelicensing
187 education and continuing education; and
188 (b) standards of conduct for a certified education [~~providers~~] provider.

189 (7) The division may charge a fee established in accordance with Section 63-38-3.2 for
190 processing [~~any of the changes~~] a change that a licensee is required by Section 61-2c-205 to
191 report to the division.

192 (8) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
193 and this Subsection (8), the division shall make rules establishing a licensure procedure for
194 obtaining both a principal lending manager license and an entity license at the same time that
195 applies if the principal lending manager is the only individual that transacts the business of
196 residential mortgage loans on behalf of the entity, including as an employee or agent of the
197 entity.

198 (b) A rule made under this Subsection (8) shall require that to obtain or renew both a
199 principal lending manager license and an entity license, an individual described in Subsection
200 (8)(a) is required to only:

201 (i) complete one licensing process for the term of a license; and

202 (ii) pay one licensing fee for the term of a license.