

**RESIDENTIAL MORTGAGE LOAN CLOSING****ACT**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Larry B. Wiley**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE****General Description:**

This bill addresses requirements related to a closing on a residential mortgage loan.

**Highlighted Provisions:**

This bill:

- ▶ requires a county, city, or town to issue certain documents;
- ▶ enacts the Residential Mortgage Loan Closing Act including:
  - defining terms;
  - providing exemptions;
  - requiring certain documents;
  - addressing the validity of a mortgage loan;
  - providing for administrative enforcement by the Title and Escrow Commission and the Insurance Department;
  - granting rulemaking authority;
  - providing for civil liability; and
  - addressing the scope of the liability; and
- ▶ makes technical amendments.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**31A-23a-406**, as last amended by Laws of Utah 2007, Chapter 325

ENACTS:

**10-9a-522**, Utah Code Annotated 1953

**17-27a-521**, Utah Code Annotated 1953

**31A-40-101**, Utah Code Annotated 1953

**31A-40-102**, Utah Code Annotated 1953

**31A-40-103**, Utah Code Annotated 1953

**31A-40-201**, Utah Code Annotated 1953

**31A-40-202**, Utah Code Annotated 1953

**31A-40-301**, Utah Code Annotated 1953

**31A-40-302**, Utah Code Annotated 1953

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

Section 1. Section **10-9a-522** is enacted to read:

**10-9a-522. Documents for closing of a residential mortgage loan.**

(1) As used in this section:

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

(i) a condominium unit;

(ii) a cooperative unit;

(iii) a manufactured home; or

(iv) a house.

(b) "Mortgage lender" means a person who originates a loan secured by:

(i) a mortgage;

(ii) a deed of trust; or

(iii) a lien interest.

(c) "Mortgagor" means a person who executes a mortgage or is obligated to pay a mortgage loan.

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

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

(A) mortgage;

(B) deed of trust; or

(C) lien interest; and

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

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

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

(e) "Title insurance producer" means a person licensed as a title insurance producer under Title 31A, Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries.

(2) A city or town shall, at the request of one of the following provide a document that states for purposes of Section 31A-40-201 that in relation to the real property or an improvement to the real property that is the subject of the residential mortgage loan whether or not the city or town has a record of an unresolved zoning issue:

(a) a mortgagor;

(b) a mortgage lender; or

(c) a title insurance producer.

(3) A city or town may charge a fee that reasonably reimburses the city or town only for time spent and expenses incurred in providing a document described in Subsection (2).

(4) Title 63, Chapter 30d, Governmental Immunity Act of Utah, applies to an action against a city or town for damages sustained as a result of the city or town providing information under this section.

Section 2. Section **17-27a-521** is enacted to read:

**17-27a-521. Documents for closing of a residential mortgage loan.**

(1) As used in this section:

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

(i) a condominium unit;

(ii) a cooperative unit;

(iii) a manufactured home; or

(iv) a house.

(b) "Mortgage lender" means a person who originates a loan secured by:

(i) a mortgage;

(ii) a deed of trust; or

(iii) a lien interest.

(c) "Mortgagor" means a person who executes a mortgage or is obligated to pay a mortgage loan.

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

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

(A) mortgage;

(B) deed of trust; or

(C) lien interest; and

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

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

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

(e) "Title insurance producer" means a person licensed as a title insurance producer under Title 31A, Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries.

(2) A county shall, at the request of one of the following, provide a document that states for purposes of Section 31A-40-201 that in relation to the real property or an improvement to the real property that is the subject of the residential mortgage loan whether or not the county has a record of an unresolved zoning issue:

(a) a mortgagor;

(b) a mortgage lender; or

(c) a title insurance producer.

(3) A county may charge a fee that reasonably reimburses the city or town only for time spent and expenses incurred in providing a document described in Subsection (2).

(4) Title 63, Chapter 30d, Governmental Immunity Act of Utah, applies to an action against a county for damages sustained as a result of the county providing information under

121 this section.

122 Section 3. Section **31A-23a-406** is amended to read:

123 **31A-23a-406. Title insurance producer's business.**

124 (1) A title insurance producer may do escrow involving a real property [~~transactions~~]  
125 transaction if all of the following exist:

126 (a) the title insurance producer is licensed with:

127 (i) the title line of authority; and

128 (ii) the escrow subline of authority;

129 (b) the title insurance producer is appointed by a title insurer authorized to do business  
130 in the state;

131 (c) one or more of the following is to be issued as part of the transaction:

132 (i) an owner's policy of title insurance; or

133 (ii) a lender's policy of title insurance;

134 (d) (i) all funds deposited with the title insurance producer in connection with [~~any~~] an  
135 escrow:

136 (A) are deposited:

137 (I) in a federally insured financial institution; and

138 (II) in a trust account that is separate from all other trust account funds that are not  
139 related to a real estate [~~transactions~~] transaction; and

140 (B) are the property of the persons entitled to them under the provisions of the escrow;

141 and

142 (ii) are segregated escrow by escrow in the records of the title insurance producer;

143 (e) earnings on funds held in escrow may be paid out of the escrow account to any  
144 person in accordance with the conditions of the escrow; and

145 (f) the escrow does not require the title insurance producer to hold:

146 (i) construction funds; or

147 (ii) funds held for exchange under Section 1031, Internal Revenue Code.

148 (2) Notwithstanding Subsection (1), a title insurance producer may engage in the  
149 escrow business if:

150 (a) the escrow involves:

151 (i) a mobile home;

152 (ii) a grazing right;  
153 (iii) a water right; or  
154 (iv) other personal property authorized by the commissioner; and  
155 (b) the title insurance producer complies with all the requirements of this section  
156 except for ~~[the requirement of]~~ Subsection (1)(c).  
157 (3) Funds held in escrow:  
158 (a) are not subject to ~~[any debts]~~ a debt of the title insurance producer;  
159 (b) may only be used to fulfill the terms of the individual escrow under which the funds  
160 ~~[were]~~ are accepted; and  
161 (c) may not be used until all conditions of the escrow ~~[have been]~~ are met.  
162 (4) ~~[Assets]~~ An asset or property other than escrow funds received by a title insurance  
163 producer in accordance with an escrow shall be maintained in a manner that will:  
164 (a) reasonably ~~[preserve]~~ preserves and ~~[protect]~~ protects the asset or property from  
165 loss, theft, or damages; and  
166 (b) otherwise ~~[comply]~~ complies with all general duties and responsibilities of a  
167 fiduciary or bailee.  
168 (5) (a) A check from the trust account described in Subsection (1)(d) may not be  
169 drawn, executed, or dated, or funds otherwise disbursed unless the segregated escrow account  
170 from which funds are to be disbursed contains a sufficient credit balance consisting of collected  
171 or cleared funds at the time the check is drawn, executed, or dated, or funds are otherwise  
172 disbursed.  
173 (b) As used in this Subsection (5), funds are considered to be "collected or cleared,"  
174 and may be disbursed as follows:  
175 (i) cash may be disbursed on the same day the cash is deposited;  
176 (ii) a wire transfer may be disbursed on the same day the wire transfer is deposited;  
177 (iii) the following may be disbursed on the day following the date of deposit:  
178 (A) a cashier's check;  
179 (B) a certified check;  
180 (C) a teller's check;  
181 (D) a U.S. Postal Service money order; and  
182 (E) a check drawn on a Federal Reserve Bank or Federal Home Loan Bank; and

(iv) ~~[any other]~~ another check or deposit may be disbursed:

(A) within the time limits provided under the Expedited Funds Availability Act, 12 U.S.C. Section 4001 et seq., as amended, and related regulations of the Federal Reserve System; or

(B) upon written notification from the financial institution to which the funds ~~[have been]~~ are deposited, that final settlement has occurred on the deposited item.

(c) Subject to Subsections (5)(a) and (b), ~~[any]~~ a material change to a settlement statement made after the final closing documents are executed must be authorized or acknowledged by date and signature on each page of the settlement statement by the one or more persons affected by the change before disbursement of funds.

(6) ~~[The]~~ A title insurance producer shall maintain records of all receipts and disbursements of escrow funds.

(7) ~~[The]~~ A title insurance producer shall comply with:

(a) Section 31A-23a-409;

(b) Title 46, Chapter 1, Notaries Public Reform Act; ~~[and]~~

(c) ~~[any rules]~~ a rule adopted by the Title and Escrow Commission, subject to Section 31A-2-404, that govern escrows~~[-]; and~~

(d) in relation to a residential mortgage loan, Chapter 40, Residential Mortgage Loan Closing Act.

Section 4. Section **31A-40-101** is enacted to read:

## **CHAPTER 40. RESIDENTIAL MORTGAGE LOAN CLOSING ACT**

### **Part 1. General Provisions**

#### **31A-40-101. Title.**

This chapter is known as the "Residential Mortgage Loan Closing Act."

Section 5. Section **31A-40-102** is enacted to read:

#### **31A-40-102. Definitions.**

As used in this chapter:

(1) "Closing" means the day by which:

(a) all documents relating to a residential mortgage loan are executed and recorded; and

(b) all monies are accounted for under the terms of the escrow instructions.

(2) "Commission" means the Title and Escrow Commission created in Section

31A-2-403.

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

(a) a condominium unit;

(b) a cooperative unit;

(c) a manufactured home; or

(d) a house.

(4) "Mortgage lender" means a person who originates a loan secured by:

(a) a mortgage;

(b) a deed of trust; or

(c) a lien interest.

(5) "Mortgagor" means a person who executes a mortgage or is obligated to pay a mortgage loan.

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

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

(i) mortgage;

(ii) deed of trust; or

(iii) lien interest; and

(b) the mortgage, deed of trust, or lien interest described in Subsection (5)(a):

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

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

(7) "Title insurance producer" means a person licensed as a title insurance producer under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries.

Section 6. Section 31A-40-103 is enacted to read:

**31A-40-103. Validity of a mortgage loan.**

A violation of Section 31A-40-201 does not:

(1) affect the validity of a residential mortgage loan; or

(2) relieve any of the following of an obligation under the mortgage loan or mortgage:

(a) a mortgage lender;



(b) a title insurance producer; or

(c) a mortgagor.

Section 7. Section **31A-40-201** is enacted to read:

**Part 2. Requirements for Closings**

**31A-40-201. Clearance document required to close.**

(1) For a residential mortgage loan to be complete for purposes of this chapter, the mortgagor must:

(a) receive:

(i) a certificate of occupancy if the residential mortgage loan relates to a dwelling for which a certificate of occupancy is required before a person may occupy the dwelling; and

(ii) a document:

(A) stating that in relation to the real property or an improvement to the real property that is the subject of the residential mortgage loan there is a record of an unresolved zoning issue; and

(B) issued by:

(I) a city or town in accordance with Section 10-9a-522, if the dwelling is located within a city or town; or

(II) a county in accordance with Section 17-27a-521, if the dwelling is located in an unincorporated area of a county; or

(b) sign a waiver document described in Section 31A-40-202.

(2) A title insurance producer may not consider a closing of a residential mortgage loan complete unless the mortgagor:

(a) indicates in writing that the mortgagor received during the closing the documents required by Subsection (1); or

(b) signs a waiver document described in Section 31A-40-202.

Section 8. Section **31A-40-202** is enacted to read:

**31A-40-202. Waiver of receipt of documents.**

A mortgagor may waive the mortgagor's right to receive a document described in Subsection 31A-40-201(1)(a) by signing a document:

(1) as part of the closing of a residential mortgage loan; and

(2) that states that:

276 (a) the mortgagor has the right to receive as part of the closing a document described in  
277 Subsection 31A-40-201(1)(a); and

278 (b) in the absence of receiving a document described in Subsection 31A-40-201(1)(a),  
279 in relation to the dwelling that is the subject of the residential mortgage loan:

280 (i) a certificate of occupancy may be required, but may not have been issued; or

281 (ii) there may exist an unresolved zoning issue.

282 Section 9. Section **31A-40-301** is enacted to read:

283 **Part 3. Administrative Enforcement and Civil Penalties**

284 **31A-40-301. Commission and department enforcement -- Rulemaking.**

285 (1) The commission with the concurrence of the department may take an action against  
286 a title insurance producer that violates this chapter in the same manner as the commission may  
287 take an action for a violation of Section 31A-23a-406.

288 (2) The commission may make a rule, subject to Section 31A-2-404, to:

289 (a) promote disclosure of the requirements of this chapter related to a document  
290 required by Subsection 31A-40-201(1); and

291 (b) provide for the form of:

292 (i) the writing required under Subsection 31A-40-201(2) that is used by a title  
293 insurance producer; or

294 (ii) a waiver under Section 31A-40-202.

295 Section 10. Section **31A-40-302** is enacted to read:

296 **31A-40-302. Civil liability.**

297 (1) A title insurance producer who violates this chapter is liable to a person who is  
298 injured by the violation for actual damages.

299 (2) This chapter does not limit any civil liability that may exist against a title insurance  
300 producer for breach of contract or another wrong committed against a mortgagor.

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Legislative Review Note  
as of 2-11-08 11:06 AM

Office of Legislative Research and General Counsel

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**H.B. 197 - Residential Mortgage Loan Closing Act**

**Fiscal Note**

2008 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Businesses may be impacted due to new regulations and may be subject to disciplinary actions. Individuals may have to pay additional fees when closing on a home.

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