

Senator Sheldon L. Killpack proposes the following substitute bill:

MORTGAGE FRAUD ACT

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Sheldon L. Killpack

House Sponsor: Paul Ray

LONG TITLE

General Description:

This bill modifies the Utah Criminal Code relating to offenses against property and creating an offense of mortgage fraud.

Highlighted Provisions:

This bill:

- ▶ establishes penalties for certain conduct governed by the Real Estate Appraiser Licensing and Certification Act and the Utah Residential Mortgage Practices Act;
- ▶ requires the attorney general to hire a mortgage fraud prosecutor ~~¶~~ **→** [~~paralegal~~;

and two

~~investigators with primary responsibilities of investigating and prosecuting mortgage fraud] ~~¶~~ ;~~

- ▶ enacts the Mortgage Fraud Act including:
 - creating the crime of mortgage fraud;
 - establishing penalties; and
 - providing definitions; and
- ▶ includes mortgage fraud as an illegal activity under the Pattern of Illegal Activity

Act.

Monies Appropriated in this Bill:

None



2nd Sub. S.B. 134

26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **61-2-21**, as last amended by Laws of Utah 2007, Chapter 325

31 **61-2b-33**, as last amended by Laws of Utah 2005, Chapter 199

32 **76-10-1602**, as last amended by Laws of Utah 2007, Chapter 129

33 ENACTS:

34 **61-2c-405**, Utah Code Annotated 1953

35 **67-5-26**, Utah Code Annotated 1953

36 **76-6-1201**, Utah Code Annotated 1953

37 **76-6-1202**, Utah Code Annotated 1953

38 **76-6-1203**, Utah Code Annotated 1953

39 **76-6-1204**, Utah Code Annotated 1953



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

42 Section 1. Section **61-2-21** is amended to read:

43 **61-2-21. Remedies and action for violations.**

44 (1) (a) The director shall issue and serve upon a person an order directing that person to
45 cease and desist from an act if:

46 (i) the director has reason to believe that the person has been engaging, is about to
47 engage, or is engaging in the act constituting a violation of this chapter; and

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

49 (b) Within ten days after receiving the order, the person upon whom the order is served
50 may request an adjudicative proceeding.

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

52 (d) If a request for a hearing is made, the division shall follow the procedures and
53 requirements of Title 63, Chapter 46b, Administrative Procedures Act.

54 (2) (a) After the hearing, if the commission and the director agree that the act of the
55 person violates this chapter, the director:

56 (i) shall issue an order making the order issued under Subsection (1) permanent; and

57 (ii) may impose a civil penalty not to exceed the greater of:
58 (A) \$2,500 for each violation; or
59 (B) the amount of any gain or economic benefit derived from each violation.
60 (b) The director shall file suit in the name of the Department of Commerce and the
61 Division of Real Estate, in the district court in the county in which an act described in
62 Subsection (1) occurred or where the person resides or carries on business, to enjoin and
63 restrain the person from violating this chapter if:
64 (i) (A) no hearing is requested; and
65 (B) the person fails to cease the act described in Subsection (1); or
66 (ii) after discontinuing the act described in Subsection (1), the person again
67 commences the act.
68 (c) The district courts of this state shall have jurisdiction of an action brought under
69 this section.
70 (d) Upon a proper showing in an action brought under this section [~~related to an~~
71 ~~undivided fractionalized long-term estate;~~] or upon a conviction under Section 76-6-1203, the
72 court may:
73 (i) issue a permanent or temporary, prohibitory or mandatory injunction;
74 (ii) issue a restraining order or writ of mandamus;
75 (iii) enter a declaratory judgment;
76 (iv) appoint a receiver or conservator for the defendant or the defendant's assets;
77 (v) order disgorgement;
78 (vi) order rescission;
79 (vii) impose a civil penalty not to exceed the greater of:
80 (A) \$2,500 for each violation; or
81 (B) the amount of any gain or economic benefit derived from each violation; and
82 (viii) enter any other relief the court considers just.
83 (e) The court may not require the division to post a bond in an action brought under
84 this Subsection (2).
85 (3) Any license or registration issued by the division to any person or entity convicted
86 of a violation of Section 76-6-1203 is automatically revoked.
87 [~~3~~] (4) The remedies and action provided in this section may not interfere with, or

88 prevent the prosecution of, any other remedies or actions including criminal proceedings.

89 Section 2. Section **61-2b-33** is amended to read:

90 **61-2b-33. Penalty for violating this chapter -- Automatic revocation.**

91 ~~[(1) Any person required by this chapter to be licensed or certified who engages in real~~
92 ~~estate appraisal activity in this state without obtaining a license or certification or]~~

93 (1) In addition to being subject to a disciplinary action by the board, a person who
94 violates [any provision of] this chapter:

95 ~~[(a)]~~ (a) is guilty of a class [B] A misdemeanor [punishable by a \$1,000 fine and up to
96 six months in jail] upon a conviction of a first violation of this chapter; and

97 ~~[(b) shall be ineligible to apply for a license or certificate for a period of one year from~~
98 ~~the date of the person's conviction of the offense.]~~

99 ~~[(2) The division, in its discretion, may grant a license or certification to a person~~
100 ~~ineligible pursuant to Subsection (1) within the one-year period upon application and after an~~
101 ~~administrative hearing.]~~

102 (b) is guilty of third degree felony, upon conviction of a second or subsequent violation
103 of this chapter.

104 (2) Any license or registration issued by the division to any person or entity convicted
105 of a violation of Section 76-6-1203 is automatically revoked.

106 Section 3. Section **61-2c-405** is enacted to read:

107 **61-2c-405. Penalty for violating this chapter -- automatic revocation.**

108 (1) In addition to being subject to a disciplinary action by the commission, a person
109 who violates this chapter:

110 (a) is guilty of a class A misdemeanor upon conviction of a first violation of this
111 chapter; and

112 (b) is guilty of third degree felony, upon conviction of a second or subsequent violation
113 of this chapter.

114 (2) Any license or registration issued by the division to any person or entity convicted
115 of a violation of Section 76-6-1203 is automatically revoked.

116 Section 4. Section **67-5-26** is enacted to read:

117 **67-5-26. Real estate fraud prosecutor** ~~↔~~ ~~[, paralegal, and investigators]~~ ~~↔~~ .

118 (1) The state attorney general shall employ ~~↔~~ ~~[:]~~

119 ~~[(a)]~~ ~~←H~~ an attorney licensed to practice law in Utah who:
 120 ~~H→~~ ~~[(i)]~~ ~~(a)~~ ~~←H~~ has knowledge of the law related to mortgage fraud; and
 121 ~~H→~~ ~~[(iii)]~~ ~~(b)~~ ~~←H~~ preferably also has background or expertise in investigating and
 121a prosecuting
 122 mortgage fraud ~~H→~~ ~~[(c)]~~ .

123 ~~[(b) a paralegal; and~~
 124 ~~———— (c) at least two investigators who have background or expertise in investigating~~
 125 ~~mortgage fraud.]~~ ~~←H~~

126 (2) ~~H→~~ ~~[(a)]~~ ~~←H~~ The primary responsibility of the attorney employed under
 126a Subsection (1) ~~H→~~ ~~[(a)]~~ ~~←H~~ is
 127 the prosecution of real estate fraud.

128 ~~H→~~ ~~[(b) The primary responsibility of each person employed under Subsection (1)(c) is the~~
 129 ~~investigation of real estate fraud.]~~ ~~←H~~

130 (3) The state attorney general may employ clerks, interns, or other personnel as
 131 necessary to assist the attorney employed under Subsection (1) ~~H→~~ ~~[(a)]~~ ~~←H~~ .

132 Section 5. Section **76-6-1201** is enacted to read:

133 **Part 12. Utah Mortgage Fraud Act**

134 **76-6-1201. Title.**

135 This part is known as the "Utah Mortgage Fraud Act."

136 Section 6. Section **76-6-1202** is enacted to read:

137 **76-6-1202. Definitions.**

138 As used in this part:

139 (1) "Mortgage lending process" means the process through which a person seeks or
 140 obtains a mortgage loan, including solicitation, application, or origination, negotiation of terms,
 141 third-party provider services, underwriting, signing and closing, and funding of the loan.

142 (2) "Mortgage loan":

143 (a) means a loan or agreement made to extend credit to a person when the loan is
 144 secured by a deed, security deed, mortgage, security interest, deed of trust, or other document
 145 representing a security interest or lien upon any interest in one-to-four family residential
 146 property; and

147 (b) includes the renewal or refinancing of any loan.

148 (3) "Pattern of unlawful activity" has the same definition as in Section 76-10-1602.

149 (4) "Sensitive personal identifying information" includes:

- 150 (a) the following information regarding an individual's:
- 151 (i) Social Security number;
- 152 (ii) driver license number or other government issued identification number;
- 153 (iii) financial account number or credit or debit card number;
- 154 (iv) password or personal identification number or other identification required to gain
- 155 access to a financial account or a secure website;
- 156 (v) automated or electronic signature; and
- 157 (vi) unique biometric data; and
- 158 (b) any other information that can be used to gain access to an individual's financial
- 159 accounts or to obtain goods or services.

160 (5) "Value" means the value of the property, money, or thing obtained or sought to be
 161 obtained.

162 Section 7. Section **76-6-1203** is enacted to read:

163 **76-6-1203. Mortgage fraud.**

164 A person commits the offense of mortgage fraud if the person does any of the following
 165 with the intent to defraud:

166 (1) knowingly makes any ~~§~~→ [deliberate] material ~~←~~§ misstatement, misrepresentation, or
 166a ~~§~~→ [material] ~~←~~§
 167 omission during the mortgage lending process ~~§~~→ [that is] , intending that it be ~~←~~§ relied upon
 167a by a mortgage lender,
 168 borrower, or any other party to the mortgage lending process;

169 (2) knowingly uses or facilitates the use of any ~~§~~→ [deliberate] material ~~←~~§ misstatement,
 170 misrepresentation, or ~~§~~→ [material] ~~←~~§ omission, during the mortgage lending process ~~§~~→ [that
 170a is] intending that it be ~~←~~§ relied ~~§~~→ [on] upon ~~←~~§
 171 by a mortgage lender, borrower, or any other party to the mortgage lending process;

172 (3) files or causes to be filed with any county recorder in Utah any document that the
 173 person knows contains a ~~§~~→ [deliberate] material ~~←~~§ misstatement, misrepresentation, or
 173a ~~§~~→ [material] ~~←~~§ omission; ~~§~~→ or ~~←~~§

174 (4) receives any proceeds or any compensation in connection with a mortgage loan that
 175 the person knows resulted from a violation of this section ~~§~~→ [;or

176 ~~§~~→ [;or (5) assists, abets, solicits, or conspires with another to violate this section] ~~←~~§ .

177 Section 8. Section **76-6-1204** is enacted to read:

178 **76-6-1204. Classification of offense.**

179 (1) Notwithstanding any other administrative, civil, or criminal penalties, a person who
 180 violates Section 76-6-1203 is guilty of a:

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

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

183 (c) second degree felony when the value is or exceeds \$5,000;

184 (d) second degree felony when the object or purpose of the commission of an act of
185 mortgage fraud is other than the obtaining of something of monetary value; and

186 (e) second degree felony when the object or purpose of the commission of an act of
187 mortgage fraud is the obtaining of sensitive personal identifying information, regardless of the
188 value.

189 (2) The determination of the degree of any offense under Subsection (1) is measured by
190 the total value of all property, money, or things obtained or sought to be obtained by a violation
191 of Section 76-6-1203, except as provided in Subsections (1)(d) and (e).

192 (3) Each residential or commercial property transaction offense under this part
193 constitutes a separate violation.

194 Section 9. Section **76-10-1602** is amended to read:

195 **76-10-1602. Definitions.**

196 As used in this part:

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

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

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

211 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,

212 command, encourage, or intentionally aid another person to engage in conduct which would
213 constitute any offense described by the following crimes or categories of crimes, or to attempt
214 or conspire to engage in an act which would constitute any of those offenses, regardless of
215 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor
216 or a felony:

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

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

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

224 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title
225 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;

226 (e) any act prohibited by the criminal provisions of Title 32A, Chapter 12, Criminal
227 Offenses;

228 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
229 Land Sales Practices Act;

230 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
231 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
232 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
233 Clandestine Drug Lab Act;

234 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
235 Securities Act;

236 (i) any act prohibited by the criminal provisions of Title 63, Chapter 56, Utah
237 Procurement Code;

238 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;

239 (k) a terroristic threat, Section 76-5-107;

240 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;

241 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;

242 (n) sexual exploitation of a minor, Section 76-5a-3;

- 243 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 244 (p) causing a catastrophe, Section 76-6-105;
- 245 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 246 (r) burglary of a vehicle, Section 76-6-204;
- 247 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 248 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 249 (u) theft, Section 76-6-404;
- 250 (v) theft by deception, Section 76-6-405;
- 251 (w) theft by extortion, Section 76-6-406;
- 252 (x) receiving stolen property, Section 76-6-408;
- 253 (y) theft of services, Section 76-6-409;
- 254 (z) forgery, Section 76-6-501;
- 255 (aa) fraudulent use of a credit card, Sections 76-6-506.1, 76-6-506.2, and 76-6-506.4;
- 256 (bb) deceptive business practices, Section 76-6-507;
- 257 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or
258 criticism of goods, Section 76-6-508;
- 259 (dd) bribery of a labor official, Section 76-6-509;
- 260 (ee) defrauding creditors, Section 76-6-511;
- 261 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 262 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 263 (hh) bribery or threat to influence contest, Section 76-6-514;
- 264 (ii) making a false credit report, Section 76-6-517;
- 265 (jj) criminal simulation, Section 76-6-518;
- 266 (kk) criminal usury, Section 76-6-520;
- 267 (ll) fraudulent insurance act, Section 76-6-521;
- 268 (mm) retail theft, Section 76-6-602;
- 269 (nn) computer crimes, Section 76-6-703;
- 270 (oo) identity fraud, Section 76-6-1102;
- 271 (pp) mortgage fraud, Section 76-6-1203;
- 272 [~~pp~~] (qq) sale of a child, Section 76-7-203;
- 273 [~~qq~~] (rr) bribery to influence official or political actions, Section 76-8-103;

274 [~~(rr)~~] (ss) threats to influence official or political action, Section 76-8-104;
275 [~~(ss)~~] (tt) receiving bribe or bribery by public servant, Section 76-8-105;
276 [~~(tt)~~] (uu) receiving bribe or bribery for endorsement of person as public servant,
277 Section 76-8-106;
278 [~~(uu)~~] (vv) official misconduct, Sections 76-8-201 and 76-8-202;
279 [~~(vv)~~] (ww) obstruction of justice, Section 76-8-306;
280 [~~(ww)~~] (xx) acceptance of bribe or bribery to prevent criminal prosecution, Section
281 76-8-308;
282 [~~(xx)~~] (yy) false or inconsistent material statements, Section 76-8-502;
283 [~~(yy)~~] (zz) false or inconsistent statements, Section 76-8-503;
284 [~~(zz)~~] (aaa) written false statements, Section 76-8-504;
285 [~~(aaa)~~] (bbb) tampering with a witness or soliciting or receiving a bribe, Section
286 76-8-508;
287 [~~(bbb)~~] (ccc) retaliation against a witness, victim, or informant, Section 76-8-508.3;
288 [~~(ccc)~~] (ddd) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
289 [~~(ddd)~~] (eee) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
290 76-8-1205;
291 [~~(eee)~~] (fff) unemployment insurance fraud, Section 76-8-1301;
292 [~~(fff)~~] (ggg) intentionally or knowingly causing one animal to fight with another,
293 Subsection 76-9-301(1)(f);
294 [~~(ggg)~~] (hhh) possession, use, or removal of explosives, chemical, or incendiary
295 devices or parts, Section 76-10-306;
296 [~~(hhh)~~] (iii) delivery to common carrier, mailing, or placement on premises of an
297 incendiary device, Section 76-10-307;
298 [~~(iii)~~] (jjj) possession of a deadly weapon with intent to assault, Section 76-10-507;
299 [~~(jjj)~~] (kkk) unlawful marking of pistol or revolver, Section 76-10-521;
300 [~~(kkk)~~] (lll) alteration of number or mark on pistol or revolver, Section 76-10-522;
301 [~~(lll)~~] (mmm) forging or counterfeiting trademarks, trade name, or trade device,
302 Section 76-10-1002;
303 [~~(mmm)~~] (nnn) selling goods under counterfeited trademark, trade name, or trade
304 devices, Section 76-10-1003;

305 [~~(mmn)~~] (ooo) sales in containers bearing registered trademark of substituted articles,
306 Section 76-10-1004;
307 [~~(ooo)~~] (ppp) selling or dealing with article bearing registered trademark or service
308 mark with intent to defraud, Section 76-10-1006;
309 [~~(ppp)~~] (qqq) gambling, Section 76-10-1102;
310 [~~(qqq)~~] (rrr) gambling fraud, Section 76-10-1103;
311 [~~(rrr)~~] (sss) gambling promotion, Section 76-10-1104;
312 [~~(sss)~~] (ttt) possessing a gambling device or record, Section 76-10-1105;
313 [~~(ttt)~~] (uuu) confidence game, Section 76-10-1109;
314 [~~(uuu)~~] (vvv) distributing pornographic material, Section 76-10-1204;
315 [~~(vvv)~~] (www) inducing acceptance of pornographic material, Section 76-10-1205;
316 [~~(www)~~] (xxx) dealing in harmful material to a minor, Section 76-10-1206;
317 [~~(xxx)~~] (yyy) distribution of pornographic films, Section 76-10-1222;
318 [~~(yyy)~~] (zzz) indecent public displays, Section 76-10-1228;
319 [~~(zzz)~~] (aaa) prostitution, Section 76-10-1302;
320 [~~(aaa)~~] (bbb) aiding prostitution, Section 76-10-1304;
321 [~~(bbb)~~] (ccc) exploiting prostitution, Section 76-10-1305;
322 [~~(ccc)~~] (ddd) aggravated exploitation of prostitution, Section 76-10-1306;
323 [~~(ddd)~~] (eee) communications fraud, Section 76-10-1801;
324 [~~(eee)~~] (fff) any act prohibited by the criminal provisions of [~~Title 76,~~] Chapter 10,
325 Part 19, Money Laundering and Currency Transaction Reporting Act;
326 [~~(fff)~~] (ggg) any act prohibited by the criminal provisions of the laws governing
327 taxation in this state; and
328 [~~(ggg)~~] (hhh) any act illegal under the laws of the United States and enumerated in
329 Title 18, Section 1961 (1)(B), (C), and (D) of the United States Code.

S.B. 134 2nd Sub. (Salmon) - Mortgage Fraud Act - As Amended

Fiscal Note

2008 General Session
State of Utah

State Impact

The Attorney General will require ongoing General Funds of \$126,000 and the Courts will require ongoing General Funds of \$24,000 beginning FY 2009.

	<u>FY 2008 Approp.</u>	<u>FY 2009 Approp.</u>	<u>FY 2010 Approp.</u>	<u>FY 2008 Revenue</u>	<u>FY 2009 Revenue</u>	<u>FY 2010 Revenue</u>
General Fund	\$0	\$150,000	\$150,000	\$0	\$0	\$0
Total	\$0	\$150,000	\$150,000	\$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.