

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;
- ▶ 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

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

30 **76-10-1602**, as last amended by Laws of Utah 2007, Chapter 129

31 ENACTS:

32 **61-2c-405**, Utah Code Annotated 1953

33 **67-5-26**, Utah Code Annotated 1953

34 **76-6-1201**, Utah Code Annotated 1953

35 **76-6-1202**, Utah Code Annotated 1953

36 **76-6-1203**, Utah Code Annotated 1953

37 **76-6-1204**, Utah Code Annotated 1953

38

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

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

41 **61-2-21. Remedies and action for violations.**

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

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

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

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

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

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

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

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

55 (ii) may impose a civil penalty not to exceed the greater of:

56 (A) \$2,500 for each violation; or

57 (B) the amount of any gain or economic benefit derived from each violation.

58 (b) The director shall file suit in the name of the Department of Commerce and the
59 Division of Real Estate, in the district court in the county in which an act described in
60 Subsection (1) occurred or where the person resides or carries on business, to enjoin and
61 restrain the person from violating this chapter if:

- 62 (i) (A) no hearing is requested; and
- 63 (B) the person fails to cease the act described in Subsection (1); or
- 64 (ii) after discontinuing the act described in Subsection (1), the person again commences
65 the act.

66 (c) The district courts of this state shall have jurisdiction of an action brought under this
67 section.

68 (d) Upon a proper showing in an action brought under this section [~~related to an~~
69 ~~undivided fractionalized long-term estate;~~] or upon a conviction under Section 76-6-1203, the
70 court may:

- 71 (i) issue a permanent or temporary, prohibitory or mandatory injunction;
- 72 (ii) issue a restraining order or writ of mandamus;
- 73 (iii) enter a declaratory judgment;
- 74 (iv) appoint a receiver or conservator for the defendant or the defendant's assets;
- 75 (v) order disgorgement;
- 76 (vi) order rescission;
- 77 (vii) impose a civil penalty not to exceed the greater of:
78 (A) \$2,500 for each violation; or
79 (B) the amount of any gain or economic benefit derived from each violation; and
- 80 (viii) enter any other relief the court considers just.

81 (e) The court may not require the division to post a bond in an action brought under
82 this Subsection (2).

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

85 [~~3~~] (4) The remedies and action provided in this section may not interfere with, or

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

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

88 **61-2b-33. Penalty for violating this chapter -- Automatic revocation.**

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

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

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

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

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

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

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

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

105 **61-2c-405. Penalty for violating this chapter -- Automatic revocation.**

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

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

110 (b) is guilty of a third degree felony upon conviction of a second or subsequent
111 violation of this chapter.

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

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

115 **67-5-26. Real estate fraud prosecutor.**

116 (1) The state attorney general shall employ an attorney licensed to practice law in Utah

117 who:

118 (a) has knowledge of the law related to mortgage fraud; and

119 (b) preferably also has background or expertise in investigating and prosecuting
120 mortgage fraud.

121 (2) The primary responsibility of the attorney employed under Subsection (1) is the
122 prosecution of real estate fraud.

123 (3) The state attorney general may employ clerks, interns, or other personnel as
124 necessary to assist the attorney employed under Subsection (1).

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

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

127 **76-6-1201. Title.**

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

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

130 **76-6-1202. Definitions.**

131 As used in this part:

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

135 (2) "Mortgage loan":

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

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

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

- 142 (4) "Sensitive personal identifying information" includes:
- 143 (a) the following information regarding an individual's:
- 144 (i) Social Security number;
- 145 (ii) driver license number or other government issued identification number;
- 146 (iii) financial account number or credit or debit card number;
- 147 (iv) password or personal identification number or other identification required to gain
- 148 access to a financial account or a secure website;
- 149 (v) automated or electronic signature; and
- 150 (vi) unique biometric data; and
- 151 (b) any other information that can be used to gain access to an individual's financial
- 152 accounts or to obtain goods or services.
- 153 (5) "Value" means the value of the property, money, or thing obtained or sought to be
- 154 obtained.

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

156 **76-6-1203. Mortgage fraud.**

157 A person commits the offense of mortgage fraud if the person does any of the following

158 with the intent to defraud:

159 (1) knowingly makes any material misstatement, misrepresentation, or omission during

160 the mortgage lending process, intending that it be relied upon by a mortgage lender, borrower,

161 or any other party to the mortgage lending process;

162 (2) knowingly uses or facilitates the use of any material misstatement,

163 misrepresentation, or omission, during the mortgage lending process, intending that it be relied

164 upon by a mortgage lender, borrower, or any other party to the mortgage lending process;

165 (3) files or causes to be filed with any county recorder in Utah any document that the

166 person knows contains a material misstatement, misrepresentation, or omission; or

167 (4) receives any proceeds or any compensation in connection with a mortgage loan that

168 the person knows resulted from a violation of this section.

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

170 **76-6-1204. Classification of offense.**

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

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

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

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

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

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

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

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

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

187 **76-10-1602. Definitions.**

188 As used in this part:

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

192 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
193 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
194 have the same or similar purposes, results, participants, victims, or methods of commission, or
195 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
196 demonstrate continuing unlawful conduct and be related either to each other or to the
197 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have

198 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful
199 activity as defined by this part shall have occurred within five years of the commission of the
200 next preceding act alleged as part of the pattern.

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

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

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

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

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

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

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

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

222 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
223 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, Title
224 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
225 Clandestine Drug Lab Act;

- 226 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
- 227 Securities Act;
- 228 (i) any act prohibited by the criminal provisions of Title 63, Chapter 56, Utah
- 229 Procurement Code;
- 230 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
- 231 (k) a terroristic threat, Section 76-5-107;
- 232 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;
- 233 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
- 234 (n) sexual exploitation of a minor, Section 76-5a-3;
- 235 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 236 (p) causing a catastrophe, Section 76-6-105;
- 237 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 238 (r) burglary of a vehicle, Section 76-6-204;
- 239 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 240 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 241 (u) theft, Section 76-6-404;
- 242 (v) theft by deception, Section 76-6-405;
- 243 (w) theft by extortion, Section 76-6-406;
- 244 (x) receiving stolen property, Section 76-6-408;
- 245 (y) theft of services, Section 76-6-409;
- 246 (z) forgery, Section 76-6-501;
- 247 (aa) fraudulent use of a credit card, Sections 76-6-506.1, 76-6-506.2, and 76-6-506.4;
- 248 (bb) deceptive business practices, Section 76-6-507;
- 249 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or
- 250 criticism of goods, Section 76-6-508;
- 251 (dd) bribery of a labor official, Section 76-6-509;
- 252 (ee) defrauding creditors, Section 76-6-511;
- 253 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;

- 254 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 255 (hh) bribery or threat to influence contest, Section 76-6-514;
- 256 (ii) making a false credit report, Section 76-6-517;
- 257 (jj) criminal simulation, Section 76-6-518;
- 258 (kk) criminal usury, Section 76-6-520;
- 259 (ll) fraudulent insurance act, Section 76-6-521;
- 260 (mm) retail theft, Section 76-6-602;
- 261 (nn) computer crimes, Section 76-6-703;
- 262 (oo) identity fraud, Section 76-6-1102;
- 263 (pp) mortgage fraud, Section 76-6-1203;
- 264 [~~pp~~] (qq) sale of a child, Section 76-7-203;
- 265 [~~qq~~] (rr) bribery to influence official or political actions, Section 76-8-103;
- 266 [~~rr~~] (ss) threats to influence official or political action, Section 76-8-104;
- 267 [~~ss~~] (tt) receiving bribe or bribery by public servant, Section 76-8-105;
- 268 [~~tt~~] (uu) receiving bribe or bribery for endorsement of person as public servant,
- 269 Section 76-8-106;
- 270 [~~uu~~] (vv) official misconduct, Sections 76-8-201 and 76-8-202;
- 271 [~~vv~~] (ww) obstruction of justice, Section 76-8-306;
- 272 [~~ww~~] (xx) acceptance of bribe or bribery to prevent criminal prosecution, Section
- 273 76-8-308;
- 274 [~~xx~~] (yy) false or inconsistent material statements, Section 76-8-502;
- 275 [~~yy~~] (zz) false or inconsistent statements, Section 76-8-503;
- 276 [~~zz~~] (aaa) written false statements, Section 76-8-504;
- 277 [~~aaa~~] (bbb) tampering with a witness or soliciting or receiving a bribe, Section
- 278 76-8-508;
- 279 [~~bbb~~] (ccc) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 280 [~~ccc~~] (ddd) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 281 [~~ddd~~] (eee) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or

282 76-8-1205;

283 [~~(eee)~~] (fff) unemployment insurance fraud, Section 76-8-1301;

284 [~~(fff)~~] (ggg) intentionally or knowingly causing one animal to fight with another,

285 Subsection 76-9-301(1)(f);

286 [~~(ggg)~~] (hhh) possession, use, or removal of explosives, chemical, or incendiary devices

287 or parts, Section 76-10-306;

288 [~~(hhh)~~] (iii) delivery to common carrier, mailing, or placement on premises of an

289 incendiary device, Section 76-10-307;

290 [~~(iii)~~] (jii) possession of a deadly weapon with intent to assault, Section 76-10-507;

291 [~~(jii)~~] (kkk) unlawful marking of pistol or revolver, Section 76-10-521;

292 [~~(kkk)~~] (lll) alteration of number or mark on pistol or revolver, Section 76-10-522;

293 [~~(lll)~~] (mmm) forging or counterfeiting trademarks, trade name, or trade device, Section

294 76-10-1002;

295 [~~(mmm)~~] (nnn) selling goods under counterfeited trademark, trade name, or trade

296 devices, Section 76-10-1003;

297 [~~(nnn)~~] (ooo) sales in containers bearing registered trademark of substituted articles,

298 Section 76-10-1004;

299 [~~(ooo)~~] (ppp) selling or dealing with article bearing registered trademark or service

300 mark with intent to defraud, Section 76-10-1006;

301 [~~(ppp)~~] (qqq) gambling, Section 76-10-1102;

302 [~~(qqq)~~] (rrr) gambling fraud, Section 76-10-1103;

303 [~~(rrr)~~] (sss) gambling promotion, Section 76-10-1104;

304 [~~(sss)~~] (ttt) possessing a gambling device or record, Section 76-10-1105;

305 [~~(ttt)~~] (uuu) confidence game, Section 76-10-1109;

306 [~~(uuu)~~] (vvv) distributing pornographic material, Section 76-10-1204;

307 [~~(vvv)~~] (www) inducing acceptance of pornographic material, Section 76-10-1205;

308 [~~(www)~~] (xxx) dealing in harmful material to a minor, Section 76-10-1206;

309 [~~(xxx)~~] (yyy) distribution of pornographic films, Section 76-10-1222;

310 [~~(yyy)~~] (zzz) indecent public displays, Section 76-10-1228;
311 [~~(zzz)~~] (aaa) prostitution, Section 76-10-1302;
312 [~~(aaa)~~] (bbb) aiding prostitution, Section 76-10-1304;
313 [~~(bbb)~~] (ccc) exploiting prostitution, Section 76-10-1305;
314 [~~(ccc)~~] (ddd) aggravated exploitation of prostitution, Section 76-10-1306;
315 [~~(ddd)~~] (eee) communications fraud, Section 76-10-1801;
316 [~~(eee)~~] (fff) any act prohibited by the criminal provisions of [~~Title 76,~~] Chapter 10,
317 Part 19, Money Laundering and Currency Transaction Reporting Act;
318 [~~(fff)~~] (ggg) any act prohibited by the criminal provisions of the laws governing
319 taxation in this state; and
320 [~~(ggg)~~] (hhh) any act illegal under the laws of the United States and enumerated in
321 Title 18, Section 1961 (1)(B), (C), and (D) of the United States Code.