

**Senator Wayne L. Niederhauser** proposes the following substitute bill:

**UTAH RESIDENTIAL MORTGAGE PRACTICES**

**AND LICENSING ACT**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne L. Niederhauser**

House Sponsor: James A. Dunnigan

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Residential Mortgage Practices Act to address requirements under federal law and to make other changes.

**Highlighted Provisions:**

This bill:

- ▶ modifies the definition provision;
- ▶ imposes additional duties on the division related to rulemaking, reporting, or other requirements related to Secure and Fair Enforcement for Mortgage Licensing;
- ▶ modifies the scope and exemptions from the chapter;
- ▶ modifies licensing requirements and procedures, including:
  - modifying requirements related to examinations, prelicensing education, and continuing education;
  - removing the authorization for issuing conditional licenses;
  - addressing requirements to reactivate an inactive license; and
  - providing for a transition and changes related to Secure and Fair Enforcement for Mortgage Licensing;
- ▶ imposes requirements related to reports of condition;



- 26           ▶ clarifies language related to disciplinary action and prohibited conduct;
- 27           ▶ addresses the effect on a license of the division paying a judgment creditor from the
- 28 Residential Mortgage Loan Education, Research, and Recovery Fund; and
- 29           ▶ makes technical and conforming amendments, including making terminology
- 30 consistent.

31 **Monies Appropriated in this Bill:**

32           None

33 **Other Special Clauses:**

34           This bill provides an effective date.

34a **Ĥ→ This bill coordinates with H.B. 86, Division of Real Estate Related Amendments, by**  
34b **making technical changes. ←Ĥ**

35 **Utah Code Sections Affected:**

36 AMENDS:

- 37           **13-34-105**, as last amended by Laws of Utah 2006, Chapter 47
- 38           **31A-2-402**, as last amended by Laws of Utah 2007, Chapter 325
- 39           **61-2-5**, as last amended by Laws of Utah 2000, Chapter 329
- 40           **61-2c-101**, as enacted by Laws of Utah 2000, Chapter 329
- 41           **61-2c-102**, as last amended by Laws of Utah 2008, Chapters 158 and 382
- 42           **61-2c-103**, as last amended by Laws of Utah 2008, Chapters 158 and 382
- 43           **61-2c-104**, as last amended by Laws of Utah 2008, Chapter 382
- 44           **61-2c-105**, as last amended by Laws of Utah 2008, Chapter 382
- 45           **61-2c-106**, as last amended by Laws of Utah 2005, Chapter 199
- 46           **61-2c-201**, as last amended by Laws of Utah 2008, Chapter 382
- 47           **61-2c-202**, as last amended by Laws of Utah 2008, Chapters 382 and 387
- 48           **61-2c-203**, as last amended by Laws of Utah 2007, Chapter 325
- 49           **61-2c-205**, as last amended by Laws of Utah 2008, Chapter 382
- 50           **61-2c-206**, as last amended by Laws of Utah 2008, Chapters 382 and 387
- 51           **61-2c-207**, as last amended by Laws of Utah 2008, Chapter 382
- 52           **61-2c-208**, as last amended by Laws of Utah 2008, Chapter 382
- 53           **61-2c-301**, as last amended by Laws of Utah 2007, Chapter 325
- 54           **61-2c-302**, as last amended by Laws of Utah 2007, Chapter 325
- 55           **61-2c-402**, as last amended by Laws of Utah 2007, Chapter 325
- 56           **61-2c-402.1**, as last amended by Laws of Utah 2008, Chapters 3 and 382

57 **61-2c-403**, as last amended by Laws of Utah 2008, Chapters 382 and 387

58 **61-2c-405**, as enacted by Laws of Utah 2008, Chapters 370 and 387

59 **61-2c-502**, as last amended by Laws of Utah 2008, Chapter 387

60 **61-2c-507**, as enacted by Laws of Utah 2004, Chapter 297

61 **61-2c-509**, as enacted by Laws of Utah 2004, Chapter 297

62 **61-2d-102**, as enacted by Laws of Utah 2004, Chapter 252

63 **70D-1-10**, as last amended by Laws of Utah 2004, Chapter 297

64 ENACTS:

65 **61-2c-204.1**, Utah Code Annotated 1953

66 **61-2c-205.1**, Utah Code Annotated 1953

67 **63I-2-261**, Utah Code Annotated 1953



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

70 Section 1. Section **13-34-105** is amended to read:

71 **13-34-105. Exempted institutions.**

72 (1) This chapter does not apply to the following institutions:

73 (a) a Utah institution directly supported, to a substantial degree, with funds provided

74 by:

75 (i) the state;

76 (ii) a local school district; or

77 (iii) other Utah governmental subdivision;

78 (b) an institution that offers instruction exclusively at or below the 12th grade level;

79 (c) a lawful enterprise that offers only professional review programs, such as C.P.A.

80 and bar examination review and preparation courses;

81 (d) a private, postsecondary educational institution that is owned, controlled, operated,

82 or maintained by a bona fide church or religious denomination, which is exempted from

83 property taxation under the laws of this state;

84 (e) subject to Subsection (3), a school or institution that is accredited by a regional or

85 national accrediting agency recognized by the United States Department of Education;

86 (f) subject to Subsection (4), a business organization, trade or professional association,

87 fraternal society, or labor union that:

- 88 (i) sponsors or conducts courses of instruction or study predominantly for bona fide  
89 employees or members; and
- 90 (ii) does not, in advertising, describe itself as a school;
- 91 (g) an institution that exclusively offers general education courses or instruction solely  
92 remedial, avocational, nonvocational, or recreational in nature, that does not:
- 93 (i) advertise occupation objectives; or  
94 (ii) grant educational credentials;
- 95 (h) an institution that offers only workshops or seminars:  
96 (i) lasting no longer than three calendar days; and  
97 (ii) for which academic credit is not awarded;
- 98 (i) an institution that offers programs:  
99 (i) in barbering, cosmetology, real estate, or insurance; and  
100 (ii) that are regulated and approved by a state or federal governmental agency;
- 101 (j) an education provider certified by the Division of Real Estate under Section  
102 ~~[61-2c-103]~~ 61-2c-204.1;
- 103 (k) an institution that offers aviation training if the institution:  
104 (i) (A) is approved under Part 141, Federal Aviation Regulations, 14 C.F.R. Chapter  
105 141; or  
106 (B) provides aviation training under Part 61, Federal Aviation Regulations, 14 C.F.R.  
107 Chapter 61; and  
108 (ii) exclusively offers aviation training that a student fully receives within 24 hours  
109 after the student pays any tuition, fee, or other charge for the aviation training; and
- 110 (l) an institution that provides emergency medical services training if all of the  
111 institution's instructors, course coordinators, and courses are approved by the Department of  
112 Health.
- 113 (2) (a) If available evidence suggests that an exempt institution under this section is not  
114 in compliance with the standards of registration under this chapter and applicable division  
115 rules, the division shall contact the institution and, if appropriate, the state or federal  
116 government agency to request corrective action.
- 117 (b) Subsection (2)(a) does not apply to an institution exempted under Subsection (1)(e).
- 118 (3) An institution, branch, extension, or facility operating within the state that is

119 affiliated with an institution operating in another state must be separately approved by the  
120 affiliate's regional or national accrediting agency to qualify for the exemption described in  
121 Subsection (1)(e).

122 (4) For purposes of Subsection (1)(f), a business organization, trade or professional  
123 association, fraternal society, or labor union is considered to be conducting the course  
124 predominantly for bona fide employees or members if it hires a majority of the persons who:

125 (a) successfully complete its course of instruction or study with a reasonable degree of  
126 proficiency; and

127 (b) apply for employment with that same entity.

128 Section 2. Section **31A-2-402** is amended to read:

129 **31A-2-402. Definitions.**

130 As used in this part:

131 (1) "Commission" means the Title and Escrow Commission created in Section  
132 31A-2-403.

133 (2) "Concurrence" means the entities given a concurring role must jointly agree for the  
134 action to be taken.

135 (3) "Dual licensed title licensee" means a title licensee who holds:

136 (a) a producer license as a title licensee; and

137 (b) a license or certificate under:

138 (i) Title 61, Chapter 2, Division of Real Estate [~~Division~~];

139 (ii) Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification Act; or

140 (iii) Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act.

141 (4) "Real Estate Commission" means the Real Estate Commission created in Section  
142 61-2-5.5.

143 (5) "Title licensee" means a person licensed under this title as:

144 (a) an agency with a title insurance line of authority;

145 (b) a producer with:

146 (i) a general title insurance line of authority; or

147 (ii) a specific category of authority for title insurance; or

148 (c) a title insurance adjuster.

149 Section 3. Section **61-2-5** is amended to read:

150 **61-2-5. Division of Real Estate created -- Functions -- Director appointed --**  
151 **Functions.**

152 (1) There is created within the Department of Commerce a Division of Real Estate. It  
153 is responsible for the administration and enforcement of:

- 154 (a) this chapter;
- 155 (b) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;
- 156 (c) Title 57, Chapter 19, Timeshare and Camp Resort Act;
- 157 (d) Title 57, Chapter 23, Real Estate Cooperative Marketing Act;
- 158 (e) Chapter 2a, Real Estate [~~Education, Research, and~~] Recovery Fund Act;
- 159 (f) Chapter 2b, Real Estate Appraiser Licensing and Certification Act; and
- 160 (g) Chapter 2c, Utah Residential Mortgage Practices and Licensing Act.

161 (2) The division is under the direction and control of a director appointed by the  
162 executive director of the department with the approval of the governor. The director holds the  
163 office of director at the pleasure of the governor.

164 (3) The director, with the approval of the executive director, may employ personnel  
165 necessary to discharge the duties of the division at salaries to be fixed by the director according  
166 to standards established by the Department of Administrative Services.

167 (4) On or before October 1 of each year, the director shall, in conjunction with the  
168 department, report to the governor and the Legislature concerning the division's work for the  
169 preceding fiscal year ending June 30.

170 (5) The director, in conjunction with the executive director, shall prepare and submit to  
171 the governor and the Legislature a budget for the fiscal year next following the convening of  
172 the Legislature.

173 Section 4. Section **61-2c-101** is amended to read:

174 **CHAPTER 2c. UTAH RESIDENTIAL MORTGAGE PRACTICES AND LICENSING**  
175 **ACT**

176 **61-2c-101. Title.**

177 This chapter is known as the "Utah Residential Mortgage Practices and Licensing Act."

178 Section 5. Section **61-2c-102** is amended to read:

179 **61-2c-102. Definitions.**

180 (1) As used in this chapter:

181 (a) "Affiliate" means ~~[an individual or an entity that]~~ a person who directly, or  
 182 indirectly through one or more intermediaries, controls or is controlled by, or is under common  
 183 control with, a specified individual or entity.

184 (b) "Applicant" means ~~[an individual or entity]~~ a person applying for a license under  
 185 this chapter.

186 (c) "Approved examination provider" means a person approved by the nationwide  
 187 database as an approved test provider.

188 ~~[(e)]~~ (d) "Associate lending manager" means ~~[a person]~~ an individual who:

189 (i) qualifies under this chapter as a principal lending manager; and

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

192 ~~[(d)]~~ (e) "Branch office" means a licensed entity's office:

193 (i) for the transaction of the business of residential mortgage loans regulated under this  
 194 chapter; ~~[and]~~

195 (ii) other than the main office of the licensed entity~~[-]; and~~

196 (iii) that operates under the same business name as the licensed entity.

197 ~~[(e)]~~ (f) (i) "Business of residential mortgage loans" means for compensation or in the  
 198 expectation of compensation to:

199 (A) engage in an act that makes an individual a loan originator;

200 ~~[(A)]~~ (B) make or originate a residential mortgage loan;

201 ~~[(B)]~~ (C) directly or indirectly solicit~~[-, place, or negotiate]~~ a residential mortgage loan  
 202 for another; or

203 ~~[(C)]~~ (D) unless excluded under Subsection (1)(f)(ii), render services related to the  
 204 origination of a residential mortgage loan including:

205 ~~[(F) taking an application; and]~~

206 (I) preparing a loan package;

207 (II) communicating with the borrower and lender[-]; or

208 (III) advising on a loan term.

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

210 (A) if working as an employee under the direction of and subject to the supervision and  
 211 instruction of a person licensed under this chapter, the performance of a clerical ~~[function]~~ or

212 support duty such as:

213 ~~[(F) gathering information related to a residential mortgage loan on behalf of the~~  
214 ~~prospective borrower or a person licensed under this chapter; or]~~

215 ~~[(H) an individual who works under the instruction of a person licensed under this~~  
216 ~~chapter:]~~

217 ~~[(Aa) requesting or gathering information;]~~

218 (I) the receipt, collection, or distribution of information common for the processing or  
219 underwriting of a loan in the mortgage industry other than taking an application;

220 (II) communicating with a consumer to obtain information necessary for the processing  
221 or underwriting of a residential mortgage loan;

222 ~~[(Bb)]~~ (III) word processing;

223 ~~[(Cc)]~~ (IV) sending correspondence; or

224 ~~[(Dd)]~~ (V) assembling files;

225 (B) ownership of an entity that engages in the business of residential mortgage loans if  
226 the owner does not personally perform the acts listed in Subsection (1)~~[(e)]~~(f)(i); or

227 (C) except if an individual will engage in an activity as a loan originator, acting in one  
228 or more of the following capacities:

229 ~~[(C) acting as]~~ (I) a loan wholesaler;

230 ~~[(D) acting as]~~ (II) an account executive for a loan wholesaler;

231 ~~[(E) acting as]~~ (III) a loan underwriter;

232 ~~[(F) acting as]~~ (IV) a loan closer; or

233 ~~[(G)]~~ (V) funding a loan.

234 (g) "Certified education provider" means a person who is certified under Section  
235 61-2c-204.1 to provide one or more of the following:

236 (i) prelicensing education; or

237 (ii) continuing education.

238 ~~[(f)]~~ (h) "Closed-end" means a loan:

239 (i) with a fixed amount borrowed; and

240 (ii) that does not permit additional borrowing secured by the same collateral.

241 ~~[(g)]~~ (i) "Commission" means the Residential Mortgage Regulatory Commission  
242 created in Section 61-2c-104.



243           ~~(h)~~ (j) "Compensation" means anything of economic value that is paid, loaned,  
244 granted, given, donated, or transferred to an individual or entity for or in consideration of:

- 245           (i) services;
- 246           (ii) personal or real property; or
- 247           (iii) another thing of value.

248           ~~(k)~~ (k) "Continuing education" means education taken by an individual licensed under this  
249 chapter in order to meet the education requirements imposed by Sections 61-2c-204.1 and  
250 61-2c-205 to renew a license under this chapter.

251           ~~(i)~~ (l) "Control," as used in Subsection (1)(a), means the power to directly or  
252 indirectly:

- 253           (i) direct or exercise a controlling interest over:
  - 254           (A) the management or policies of an entity; or
  - 255           (B) the election of a majority of the directors, officers, managers, or managing partners
- 256 of an entity;
- 257           (ii) vote 20% or more of a class of voting securities of an entity by an individual; or
- 258           (iii) vote more than 5% of a class of voting securities of an entity by another entity.

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

260           ~~(k)~~ (n) "Director" means the director of the division.

261           ~~(l)~~ (o) "Division" means the Division of Real Estate.

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

- 264           (i) a condominium unit;
- 265           (ii) a cooperative unit;
- 266           (iii) a manufactured home; or
- 267           (iv) a house.

268           ~~(n)~~ (q) "Entity" means:

- 269           (i) a corporation;
- 270           (ii) a limited liability company;
- 271           (iii) a partnership;
- 272           (iv) a company;
- 273           (v) an association;

- 274 (vi) a joint venture;
- 275 (vii) a business trust;
- 276 (viii) a trust; or
- 277 (ix) another organization.

278 [~~(o)~~] (r) "Executive director" means the executive director of the Department of  
279 Commerce.

280 [~~(p)~~] (s) "Inactive status" means a dormant status into which an unexpired license is  
281 placed when the holder of the license is not currently engaging in the business of residential  
282 mortgage loans.

283 [~~(q)~~] (t) "Licensee" means ~~[an individual or entity]~~ a person licensed with the division  
284 under this chapter.

285 (u) "Licensing examination" means the examination required by Section 61-2c-204.1  
286 or 61-2c-206 for an individual to obtain a license under this chapter.

287 (v) (i) Except as provided in Subsection (1)(v)(ii), "loan originator" means an  
288 individual who for compensation or in expectation of compensation:

- 289 (A) takes a residential mortgage loan application; or
- 290 (B) offers or negotiates terms of a residential mortgage loan.

291 (ii) "Loan originator" does not include a person who:

292 (A) is described in Subsection (1)(v)(i), but who performs exclusively administrative  
293 or clerical tasks as described in Subsection (1)(f)(ii)(A);

294 (B) unless compensated by a lender, a principal lending manager, or an agent of a  
295 lender or principal lending manager;

296 (I) only performs real estate brokerage activities; and

297 (II) is licensed under Chapter 2, Division of Real Estate; and

298 (C) is solely involved in extension of credit relating to a timeshare plan, as defined in  
299 11 U.S.C. Sec. 101(53D).

300 [~~(r)~~] (w) "Mortgage officer" means an individual who is licensed with the division to  
301 transact the business of residential mortgage loans through a principal lending manager.

302 (x) "Nationwide database" means the Nationwide Mortgage Licensing System and  
303 Registry, authorized under Secure and Fair Enforcement for Mortgage Licensing, 12 U.S.C.  
304 Sec. 5101, et seq.

305 (y) "Nontraditional mortgage product" means a mortgage product other than a 30-year  
 306 fixed rate mortgage.

307 (z) "Person" means an individual or entity.

308 (aa) "Prelicensing education" means education taken by an individual seeking to be  
 309 licensed under this chapter in order to meet the education requirements imposed by Section  
 310 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

311 ~~[(s)]~~ (bb) (i) "Principal lending manager" means [a person] an individual licensed as a  
 312 principal lending manager under Section 61-2c-206 to transact the business of residential  
 313 mortgage loans.

314 (ii) ~~[A person]~~ An individual licensed as a principal lending manager may transact the  
 315 business of residential mortgage loans as a mortgage officer.

316 ~~[(t)]~~ (cc) "Record" means information that is:

317 (i) prepared, owned, received, or retained by ~~[an individual or entity]~~ a person; and

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

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

320 (II) retrievable in perceivable form.

321 ~~[(u)]~~ (dd) "Residential mortgage loan" means [a closed-end, first mortgage loan or] an  
 322 extension of credit, if:

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

324 (A) mortgage;

325 (B) deed of trust; or

326 (C) ~~[hen]~~ consensual security interest; ~~[and]~~

327 (ii) the mortgage, deed of trust, or ~~[hen]~~ consensual security interest described in

328 Subsection (1)~~[(u)]~~(dd)(i):

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

330 (B) is created with the consent of the owner of the residential real property[-]; and

331 (iii) solely for the purposes of defining "loan originator," the extension of credit is  
 332 primarily for personal, family, or household use.

333 ~~[(v)]~~ (ee) "State" means:

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

335 (ii) the District of Columbia; or

336 (iii) the Commonwealth of Puerto Rico.

337 (ff) "Unique identifier" is as defined in 12 U.S.C. Sec. 5102.

338 (2) (a) If a term not defined in this section is defined by rule, the term shall have the  
339 meaning established by the division by rule made in accordance with Title 63G, Chapter 3,  
340 Utah Administrative Rulemaking Act.

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

343 Section 6. Section **61-2c-103** is amended to read:

344 **61-2c-103. Powers and duties of the division.**

345 (1) The division shall administer this chapter.

346 (2) In addition to ~~any~~ a power or duty expressly provided in this chapter, the division  
347 may:

348 (a) receive and act on a complaint including:

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

350 (ii) commencing an administrative or judicial proceeding on the division's own  
351 initiative;

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

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

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

358 (d) visit and investigate ~~an entity~~ a person licensed under this chapter, regardless of  
359 whether the ~~entity~~ person is located in Utah; and

360 (e) employ one or more necessary hearing examiners, investigators, clerks, and other  
361 employees and agents.

362 (3) The division shall make rules for the administration of this chapter in accordance  
363 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including:

364 (a) licensure procedures for:

365 (i) ~~an individual or entity~~ a person required by this chapter to obtain a license with the  
366 division; and

367 (ii) the establishment of a branch office by an entity;

368 (b) proper handling of ~~[funds]~~ monies received by a licensee;

369 (c) record-keeping requirements by a licensee; ~~[and]~~

370 (d) certification procedures for certifying an education provider; and

371 ~~[(4)]~~ (e) standards of conduct for a licensee or certified education provider.

372 (4) The division may by rule made in accordance with Title 63G, Chapter 3, Utah

373 Administrative Rulemaking Act, require as a condition of maintaining a license or certification

374 under this chapter that a person comply with a requirement of the nationwide database if:

375 (a) required for uniformity amongst states; and

376 (b) not inconsistent with this chapter.

377 (5) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah

378 Administrative Rulemaking Act, provide a process under which an individual may challenge

379 information contained in the nationwide database.

380 ~~[(4)]~~ (6) The division may make available to the public a list of the names and mailing

381 addresses of [all] licensees:

382 (a) either directly or through a third party; and

383 (b) at a reasonable cost.

384 ~~[(5) The division shall:]~~

385 ~~[(a) certify an education provider who offers:]~~

386 ~~[(i) prelicensing education to candidates for licensure under this chapter; or]~~

387 ~~[(ii) continuing education to individuals licensed under this chapter; and]~~

388 ~~[(b) make available to the public, licensees, and candidates for licensure a list of the~~

389 ~~names and addresses of all education providers certified under this Subsection (5).]~~

390 ~~[(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~

391 ~~the division shall make rules establishing:]~~

392 ~~[(a) certification criteria and procedures for a provider of prelicensing education and~~

393 ~~continuing education; and]~~

394 ~~[(b) standards of conduct for a certified education provider.]~~

395 ~~[(7) The division may charge a fee established in accordance with Section 63J-1-303~~

396 ~~for processing a change that a licensee is required by Section 61-2c-205 to report to the~~

397 ~~division.]~~

398 ~~[(8) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~  
 399 ~~and this Subsection (8), the division shall make rules establishing a licensure procedure for~~  
 400 ~~obtaining both a principal lending manager license and an entity license at the same time that~~  
 401 ~~applies if the principal lending manager is the only individual that transacts the business of~~  
 402 ~~residential mortgage loans on behalf of the entity, including as an employee or agent of the~~  
 403 ~~entity.]~~

404 ~~[(b) A rule made under this Subsection (8) shall require that to obtain or renew both a~~  
 405 ~~principal lending manager license and an entity license, an individual described in Subsection~~  
 406 ~~(8)(a) is required to only:]~~

407 ~~[(i) complete one licensing process for the term of a license; and]~~

408 ~~[(ii) pay one licensing fee for the term of a license.]~~

409 (7) The division shall annually:

410 (a) review the requirements related to the nationwide database imposed by federal law  
 411 or the nationwide database on:

412 (i) the division;

413 (ii) a licensee under this chapter;

414 (iii) a certified education provider; or

415 (iv) an approved examination provider; and

416 (b) after the review required by Subsection ~~5~~ (7) ~~5~~ (a):

417 (i) report to the Business and Labor Interim Committee the impact of the requirements  
 418 on the implementation by the division of this chapter; and

419 (ii) recommend legislation, if any, to the Business and Labor Interim Committee  
 420 related to how the division should coordinate with the nationwide database.

421 (8) The division may enter into a relationship or contract with the nationwide database  
 422 or another entity designated by the nationwide database to do the following related to a licensee  
 423 or other person subject to this chapter:

424 (a) collect or maintain a record; and

425 (b) process a transaction fee or other fee.

426 (9) The division shall regularly report the following to the nationwide database:

427 (a) a violation of this chapter;

428 (b) disciplinary action under this chapter; and

429 (c) other information relevant to this chapter.

430 Section 7. Section **61-2c-104** is amended to read:

431 **61-2c-104. Residential Mortgage Regulatory Commission.**

432 (1) (a) There is created within the division the "Residential Mortgage Regulatory  
433 Commission" consisting of the following members appointed by the executive director with the  
434 approval of the governor:

435 (i) four members ~~[having]~~ who:

436 (A) have at least three years of experience in transacting the business of residential  
437 mortgage loans; and ~~[who]~~

438 (B) are ~~[currently]~~ licensed under this chapter at the time of and during appointment;

439 and

440 (ii) one member from the general public.

441 (b) (i) The executive director with the approval of the governor may appoint an  
442 alternate member to the board.

443 (ii) The alternate member shall:

444 (A) at the time of the appointment, have at least three years of experience in transacting  
445 the business of residential mortgage loans; and

446 (B) be licensed under this chapter at the time of and during appointment.

447 (2) (a) Except as required by Subsection (2)(b), the executive director shall appoint  
448 ~~[each]~~ a new member or reappointed member subject to appointment by the executive director  
449 to a four-year term ending June 30.

450 (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall,  
451 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms  
452 of commission members are staggered so that approximately half of the commission is  
453 appointed every two years.

454 (c) If a vacancy occurs in the membership of the commission for any reason, the  
455 ~~[replacement shall be appointed]~~ executive director shall appoint a replacement for the  
456 unexpired term.

457 (3) Members of the commission shall annually select one member to serve as chair.

458 (4) (a) The commission shall meet at least quarterly.

459 (b) The director may call a meeting in addition to the meetings required by Subsection

460 (4)(a):

461 (i) at the discretion of the director;

462 (ii) at the request of the chair of the commission; or

463 (iii) at the written request of three or more commission members.

464 (5) (a) Three members of the commission constitute a quorum for the transaction of  
465 business.

466 (b) If a quorum of members is unavailable for any meeting and an alternate member  
467 ~~[has been]~~ is appointed to the commission by the executive director with the approval of the  
468 governor, the alternate member shall serve as a regular member of the commission for that  
469 meeting if with the presence of the alternate member there is a quorum present at the meeting.

470 (c) The action of a majority of a quorum present is an action of the commission.

471 (6) (a) (i) A member who is not a government employee ~~[shall]~~ may not receive ~~[no]~~  
472 compensation or benefits for the member's services, but may receive per diem and expenses  
473 incurred in the performance of the member's official duties at the rates established by the  
474 Division of Finance under Sections 63A-3-106 and 63A-3-107.

475 (ii) A member who is not a government employee may decline to receive per diem and  
476 expenses for the member's service.

477 (b) (i) A state government officer and employee member who does not receive salary,  
478 per diem, or expenses from the member's agency for the member's service may receive per  
479 diem and expenses incurred in the performance of the member's official duties from the  
480 commission at the rates established by the Division of Finance under Sections 63A-3-106 and  
481 63A-3-107.

482 (ii) A state government officer and employee member may decline to receive per diem  
483 and expenses for the member's service.

484 (7) ~~[The]~~ In addition to a duty or power expressly provided for elsewhere in this  
485 chapter, the commission shall:

486 (a) except as provided in Subsection 61-2c-202(2), concur in the licensure or denial of  
487 licensure of ~~[individuals and entities]~~ a person under this chapter in accordance with Part 2,  
488 Licensure;

489 (b) take disciplinary action with the concurrence of the director in accordance with Part  
490 4, Enforcement; and



491 (c) advise the division concerning matters related to the administration and  
492 enforcement of this chapter~~[-and].~~

493 ~~[(d) with the concurrence of the division, determine the requirements for:]~~  
494 ~~[(i) the examination required under Section 61-2c-202, covering at least:]~~  
495 ~~[(A) the fundamentals of the English language;]~~  
496 ~~[(B) arithmetic;]~~  
497 ~~[(C) the provisions of this chapter;]~~  
498 ~~[(D) rules adopted by the division;]~~  
499 ~~[(E) basic residential mortgage principles and practices; and]~~  
500 ~~[(F) any other aspect of Utah law the commission determines is appropriate;]~~  
501 ~~[(ii) with the concurrence of the division, the continuing education requirements under~~  
502 ~~Section 61-2c-205, including:]~~

503 ~~[(A) except as provided in Subsection 61-2c-202(4)(a)(iii) and Subsection~~  
504 ~~61-2c-206(1)(c), the appropriate number of hours of prelicensing education and required~~  
505 ~~continuing education; and]~~

506 ~~[(B) the subject matter of courses the division may accept for continuing education~~  
507 ~~purposes;]~~

508 ~~[(iii) with the concurrence of the division, the prelicensing education required under~~  
509 ~~Sections 61-2c-202 and 61-2c-206, including online education or distance learning options;~~  
510 ~~and]~~

511 ~~[(iv) the examination required under Section 61-2c-206 covering:]~~  
512 ~~[(A) advanced residential mortgage principles and practices; and]~~  
513 ~~[(B) other aspects of Utah law the commission, with the concurrence of the division,~~  
514 ~~determines appropriate.]~~

515 ~~[(8) The commission may appoint a committee to make recommendations to the~~  
516 ~~commission concerning approval of prelicensing education and continuing education courses.]~~

517 ~~[(9) The commission and the division shall make the examination and prelicensing~~  
518 ~~education and continuing education requirements described in this section available through~~  
519 ~~the Internet or other distance education methods approved by the commission and division~~  
520 ~~when reasonably practicable.]~~

521 ~~[(10) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~

522 ~~the commission, with the concurrence of the division, shall make rules establishing procedures~~  
523 ~~under which a licensee may be exempted from continuing education requirements:]~~

524 ~~[(a) for a period not to exceed four years; and]~~

525 ~~[(b) upon a finding of reasonable cause.]~~

526 Section 8. Section **61-2c-105** is amended to read:

527 **61-2c-105. Scope of chapter -- Exemptions.**

528 (1) (a) ~~[This]~~ Except as to an individual who will engage in an activity as a loan  
529 originator, this chapter applies to a closed-end residential mortgage loan secured by a first lien  
530 or equivalent security interest on a ~~[one to four unit]~~ dwelling.

531 (b) This chapter does not apply to a transaction covered by Title 70C, Utah Consumer  
532 Credit Code.

533 (2) The following are exempt from this chapter:

534 (a) the federal government;

535 (b) a state;

536 (c) a political subdivision of a state;

537 (d) an agency of or entity created by a governmental entity described in Subsections

538 (2)(a) through (c) including:

539 (i) the Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing  
540 Corporation Act;

541 (ii) the Federal National Mortgage Corporation;

542 (iii) the Federal Home Loan Mortgage Corporation;

543 (iv) the Federal Deposit Insurance Corporation;

544 (v) the Resolution Trust Corporation;

545 (vi) the Government National Mortgage Association;

546 (vii) the Federal Housing Administration;

547 (viii) the National Credit Union Administration;

548 (ix) the Farmers Home Administration; and

549 (x) the United States Department of Veterans Affairs;

550 (e) a depository institution;

551 (f) an affiliate of a depository institution;

552 (g) an employee or agent of an entity described in Subsections (2)(a) through (f);

553 (i) when that person acts on behalf of the entity described in Subsections (2)(a) through  
554 (f); and

555 [~~th~~ an individual or entity:]

556 (ii) including an employee of:

557 (A) a depository institution;

558 (B) a subsidiary of a depository institution that is:

559 (I) owned and controlled by the depository institution; and

560 (II) regulated by a federal banking agency, as defined in 12 U.S.C. Sec. 5102; or

561 (C) an institution regulated by the Farm Credit Administration;

562 (h) except as provided in Subsection (3), a person who:

563 (i) [~~that~~] makes a loan:

564 (A) secured by an interest in real property;

565 (B) with the [~~individual's or the entity's~~] person's own money; and

566 (C) for the [~~individual's or entity's~~] person's own investment; and

567 (ii) that does not engage in the business of making loans secured by an interest in real  
568 property;

569 (i) [~~an individual or entity~~] except as provided in Subsection (3), a person who receives  
570 a mortgage, deed of trust, or [~~lien~~] consensual security interest on real property if the individual  
571 or entity:

572 (i) is the seller of real property; and

573 (ii) receives the mortgage, deed of trust, or [~~lien~~] consensual security interest on real  
574 property as security for a separate money obligation;

575 (j) [~~an individual or entity~~] a person who receives a mortgage, deed of trust, or [~~lien~~]  
576 consensual security interest on real property if:

577 (i) the [~~individual or entity~~] person receives the mortgage, deed of trust, or [~~lien~~]  
578 consensual security interest as security for an obligation payable on an installment or deferred  
579 payment basis;

580 (ii) the obligation described in Subsection (2)(j)(i) arises from [~~an individual or entity~~]  
581 a person providing materials or services used in the improvement of the real property that is the  
582 subject of the mortgage, deed of trust, or [~~lien~~] consensual security interest; and

583 (iii) the mortgage, deed of trust, or [~~lien~~] consensual security interest [~~was~~] is created

584 without the consent of the owner of the real property that is the subject of the mortgage, deed  
585 of trust, or ~~lien~~ consensual security interest;

586 (k) a nonprofit corporation that:

587 (i) is exempt from paying federal income taxes;

588 (ii) is certified by the United States Small Business Administration as a small business  
589 investment company;

590 (iii) is organized to promote economic development in this state; and

591 (iv) has as its primary activity providing financing for business expansion;

592 (l) except as provided in Subsection (3), a court appointed fiduciary; or

593 (m) an attorney admitted to practice law in this state:

594 (i) if the attorney is not principally engaged in the business of negotiating residential  
595 mortgage loans; and

596 (ii) when the attorney renders services in the course of the attorney's practice as an  
597 attorney.

598 (3) An individual who will engage in an activity as a loan originator is exempt from  
599 this chapter only if the individual is an employee or agent exempt under Subsection (2)(g).

600 ~~[(3)]~~ (4) (a) Notwithstanding Subsection (2)(m), an attorney exempt from this chapter  
601 may not engage in conduct described in Section 61-2c-301 when transacting business of  
602 residential mortgage loans.

603 (b) If an attorney exempt from this chapter violates Subsection ~~[(3)]~~ (4)(a), the  
604 attorney:

605 (i) is not subject to enforcement by the division under Part 4, Enforcement; and

606 (ii) is subject to disciplinary action generally applicable to an attorney admitted to  
607 practice law in this state.

608 (c) If the division receives a complaint alleging an attorney exempt from this chapter is  
609 in violation of Subsection ~~[(3)]~~ (4)(a), the division shall forward the complaint to the Utah  
610 State Bar for disciplinary action.

611 ~~[(4)(a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~  
612 ~~the division shall, by rule, determine a date, on or after December 31, 2004, after which an~~  
613 ~~individual who is exempt under Subsection (2) may voluntarily obtain a license pursuant to~~  
614 ~~Subsection (4)(b):]~~

615 ~~[(b) (i) After the date described in Subsection (4)(a), an]~~

616 (5) (a) An individual who is exempt under Subsection (2) or (3) may voluntarily obtain  
617 a license under this chapter by complying with Part 2, Licensure.

618 ~~[(ii)]~~ (b) An individual who voluntarily obtains a license pursuant to this Subsection  
619 ~~[(4)(b)]~~ (5) shall comply with all the provisions of this chapter.

620 Section 9. Section **61-2c-106** is amended to read:

621 **61-2c-106. Addresses provided the division.**

622 (1) (a) In providing an address to the division under this chapter, a person shall provide  
623 a physical location or street address ~~[shall be provided]~~.

624 (b) The following ~~[are]~~ is public information:

625 (i) a business address; or

626 (ii) a mailing address.

627 (2) ~~[An individual or entity licensed under this chapter will be]~~ A licensee is  
628 considered to have received ~~[any]~~ a notification that is mailed to the last mailing address  
629 furnished to the division by ~~[the individual, or by]~~:

630 (a) if the licensee is an individual, the individual; or

631 (b) if the licensee is an entity, the principal lending manager of the entity~~[, licensed~~  
632 ~~under this chapter]~~.

633 Section 10. Section **61-2c-201** is amended to read:

634 **61-2c-201. Licensure required of person engaged in the business of residential**  
635 **mortgage loans -- Mortgage officer -- Principal lending manager.**

636 (1) Unless exempt from this chapter under Section 61-2c-105, ~~[an individual or entity]~~  
637 a person may not transact the business of residential mortgage loans~~[, as defined in Section~~  
638 ~~61-2c-102,]~~ without obtaining a license under this chapter.

639 (2) For purposes of this chapter, ~~[an individual or entity]~~ a person transacts business in  
640 this state if:

641 (a) (i) the ~~[individual or entity]~~ person engages in an act that constitutes the business of  
642 residential mortgage loans; and

643 (ii) (A) the act described in Subsection (2)(a)(i) is directed to or received in this state;

644 and

645 (B) the real property that is the subject of the act described in Subsection (2)(a)(i) is

646 located in this state; or

647 (b) a representation is made by the [~~individual or entity~~] person that the [~~individual or~~  
648 ~~entity~~] person transacts the business of residential mortgage loans in this state.

649 (3) An individual who has an ownership interest in an entity required to be licensed  
650 under this chapter is not required to obtain an individual license under this chapter unless the  
651 individual transacts the business of residential mortgage loans.

652 (4) Unless otherwise exempted under this chapter, licensure under this chapter is  
653 required of both:

654 (a) the individual who directly transacts the business of residential mortgage loans; and

655 (b) if the individual transacts business as an employee or agent of an entity or  
656 individual, the entity or individual for whom the employee or agent transacts the business of  
657 residential mortgage loans.

658 (5) (a) An individual licensed under this chapter may not engage in the business of  
659 residential mortgage loans on behalf of more than one entity at the same time.

660 (b) This Subsection (5) does not restrict the number of:

661 (i) different lenders [~~an individual or entity~~] a person may use as a funding source for  
662 residential mortgage loans; or

663 (ii) entities in which an individual may have an ownership interest, regardless of  
664 whether the entities are:

665 (A) licensed under this chapter; or

666 (B) exempt under Section 61-2c-105.

667 (6) An individual licensed under this chapter may not transact the business of  
668 residential mortgage loans for the following at the same time:

669 (a) an entity licensed under this chapter; and

670 (b) an entity that is exempt from licensure under Section 61-2c-105.

671 (7) A mortgage officer may not receive consideration for transacting the business of  
672 residential mortgage loans from any person or entity except the principal lending manager with  
673 whom the mortgage officer is licensed.

674 (8) A mortgage officer shall conduct all business of residential mortgage loans:

675 (a) through the principal lending manager with which the individual is licensed; and

676 (b) in the business name under which the principal lending manager is authorized by

677 the division to do business.

678 ~~[(9)(a)(i) This Subsection (9)(a) does not apply to an individual who transacts the~~  
679 ~~business of residential mortgage loans as an employee or agent of another individual or entity.]~~

680 ~~[(ii) (9)(a) If an entity that is authorized by this chapter to transact the business of~~  
681 ~~residential mortgage loans transacts the business of residential mortgage loans under an~~  
682 ~~assumed business name, the entity shall:~~

683 ~~[(A) (i) register the assumed name with the division; and~~

684 ~~[(B) (ii) furnish the division proof that the assumed business name [has been] is filed~~  
685 ~~with the Division of Corporations and Commercial Code pursuant to Title 42, Chapter 2,~~  
686 ~~Conducting Business Under Assumed Name.~~

687 (b) The division may charge a fee established in accordance with Section 63J-1-303 for  
688 registering an assumed name pursuant to this Subsection (9).

689 (10) A licensee whose license is in inactive status may not transact the business of  
690 residential mortgage loans.

691 Section 11. Section **61-2c-202** is amended to read:

692 **61-2c-202. Licensure procedures.**

693 (1) To apply for licensure under this chapter an applicant shall:

694 (a) submit to the division a licensure statement that:

695 (i) lists any name under which the ~~[individual or entity]~~ applicant will transact business  
696 in this state;

697 (ii) lists the address of the principal business location of the applicant;

698 (iii) if the applicant is an entity:

699 (A) lists the principal lending manager of the entity; and

700 (B) contains the signature of the principal lending manager;

701 (iv) demonstrates that the applicant meets the qualifications listed in Section  
702 61-2c-203;

703 (v) if the applicant is an entity, lists:

704 (A) all jurisdictions in which the entity is registered, licensed, or otherwise regulated in  
705 the business of residential mortgage loans; and

706 (B) the history of any disciplinary action or adverse administrative action taken against  
707 the entity by ~~[any]~~ a regulatory agency ~~[within the ten years preceding the application];~~ and

708 (vi) includes any information required by the division by rule;  
709 (b) if the applicant is an individual, the applicant shall provide:  
710 (i) (A) a fingerprint card in a form acceptable to the division; and  
711 (B) consent to a criminal background check by:  
712 (I) the Utah Bureau of Criminal Identification; and  
713 (II) the Federal Bureau of Investigation;  
714 (ii) evidence using a method approved by the division of having successfully  
715 completed approved prelicensing education in accordance with Section 61-2c-204.1;  
716 (iii) evidence using a method approved by the division by rule of having successfully  
717 passed a licensing examination in accordance with Section 61-2c-204.1; and  
718 (iv) if the applicant will engage in an activity as a loan originator:  
719 (A) the individual's unique identifier;  
720 (B) any other evidence required by the division by rule demonstrating that the  
721 individual has submitted the following to the nationwide database:  
722 (I) a fingerprint card in a form acceptable to the nationwide database;  
723 (II) consent to a criminal background check by:  
724 (Aa) the Utah Bureau of Criminal Identification; and  
725 (Bb) the Federal Bureau of Investigation; and  
726 (III) information requested by the nationwide database regarding personal history and  
727 experience including authorization for the nationwide database and division to obtain:  
728 (Aa) an independent credit report obtained from a consumer reporting agency  
729 described in 15 U.S.C. Sec. 1681 et seq.; and  
730 (Bb) information related to an administrative, civil, or criminal finding of a  
731 governmental jurisdiction; and  
732 ~~[(b)]~~ (c) pay ~~[to the division]~~:  
733 (i) an application fee established by the division in accordance with Section 63J-1-303;  
734 and  
735 (ii) the reasonable expenses incurred in processing the application for licensure,  
736 including the costs incurred by the division under Subsection (4)~~[, and]~~.  
737 ~~[(c) comply with Subsection (4).]~~  
738 (2) (a) The division shall issue a license to an applicant if the division, with the



739 concurrence of the commission, finds that the applicant:

740 (i) meets the qualifications of ~~[Section]~~ Sections 61-2c-203 and 61-2c-204.1; and

741 (ii) complies with this section.

742 (b) The commission may delegate to the division the authority to:

743 (i) review a class or category of application for an initial or renewed license;

744 (ii) determine whether an applicant meets the licensing criteria in ~~[Section]~~ Sections

745 61-2c-203 and 61-2c-204.1;

746 (iii) conduct a necessary hearing on an application; and

747 (iv) approve or deny a license application without concurrence by the commission.

748 (c) If the commission delegates to the division the authority to approve or deny an  
749 application without concurrence by the commission and the division denies an application for  
750 licensure, the applicant who is denied licensure may petition the commission for review of the  
751 denial.

752 (d) An applicant who is denied licensure under Subsection (2)(b) may seek agency  
753 review by the executive director only after the commission reviews the division's denial of the  
754 applicant's application.

755 (3) Subject to Subsection (2)(d) and in accordance with Title 63G, Chapter 4,  
756 Administrative Procedures Act, an applicant who is denied licensure under this chapter may  
757 submit a request for agency review to the executive director within 30 days following the day  
758 on which the commission order denying the licensure is issued.

759 ~~[(4) (a) An individual applying for a license under this chapter shall:]~~

760 ~~[(i) submit a fingerprint card in a form acceptable to the division at the time the~~  
761 ~~licensure statement is filed;]~~

762 ~~[(ii) consent to a criminal background check by:]~~

763 ~~[(A) the Utah Bureau of Criminal Identification; and]~~

764 ~~[(B) the Federal Bureau of Investigation;]~~

765 ~~[(iii) provide proof using a method approved by the division of having successfully~~  
766 ~~completed approved prelicensing education required by the commission under Section~~  
767 ~~61-2c-104;]~~

768 ~~[(A) before taking the examination required by Subsection (4)(a)(iv); and]~~

769 ~~[(B) in the number of hours, not to exceed 90 hours, required by rule made by the~~

770 ~~division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and]~~

771 ~~[(iv) provide proof using a method approved by the division of having successfully~~

772 ~~passed an examination approved by the commission under Section 61-2c-104.]~~

773 ~~[(b)] (4) (a) The division shall request the Department of Public Safety to complete;~~

774 ~~(i) for an applicant who will engage in an activity as a loan originator, a criminal~~

775 ~~background check by the Utah Bureau of Criminal Identification; or~~

776 ~~(ii) for an applicant who will not engage in an activity as a loan originator, a Federal~~

777 ~~Bureau of Investigation criminal background check [for an applicant] through a national~~

778 ~~criminal history system.~~

779 ~~[(c) The] (b) An applicant shall pay the cost of:~~

780 ~~(i) the fingerprinting required by this section; and~~

781 ~~(ii) the criminal background check required by this section.~~

782 ~~[(d) (i) A license under this chapter is conditional pending completion of the criminal~~

783 ~~background check required by this Subsection (4).]~~

784 ~~[(ii) If a criminal background check discloses that an applicant fails to accurately~~

785 ~~disclose a criminal history, the license shall be immediately and automatically revoked.]~~

786 ~~[(iii) An individual or entity whose conditional license is revoked under Subsection~~

787 ~~(4)(d)(ii) may appeal the revocation in a hearing conducted by the commission:]~~

788 ~~[(A) after the revocation; and]~~

789 ~~[(B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.]~~

790 ~~[(iv) The commission may delegate to the division or an administrative law judge the~~

791 ~~authority to conduct a hearing described in Subsection (4)(d)(iii).]~~

792 ~~[(v) Relief from a revocation may be granted only if:]~~

793 ~~[(A) the criminal history upon which the division based the revocation:]~~

794 ~~[(F) did not occur; or]~~

795 ~~[(H) is the criminal history of another person;]~~

796 ~~[(B) (F) the revocation is based on a failure to accurately disclose a criminal history;~~

797 ~~and]~~

798 ~~[(H) the applicant had a reasonable good faith belief at the time of application that there~~

799 ~~was no criminal history to be disclosed; or]~~

800 ~~[(C) the division fails to follow the prescribed procedure for the revocation.]~~

801 ~~[(e) If a license is revoked or a revocation is upheld after a hearing described in~~  
802 ~~Subsection (4)(d)(iii), the person may not apply for a new license for a period of 12 months~~  
803 ~~after the day on which the license is revoked.]~~

804 ~~[(f)]~~ (c) The funds paid by an applicant for the cost of the criminal background check  
805 shall be nonlapsing.

806 ~~[(g) The commission may delegate to the division the authority to make a decision on~~  
807 ~~whether relief from a revocation should be granted.]~~

808 Section 12. Section **61-2c-203** is amended to read:

809 **61-2c-203. General qualifications for licensure.**

810 (1) To qualify for licensure under this chapter, an individual:

811 ~~[(a) shall have good moral character and the competency to transact the business of~~  
812 ~~residential mortgage loans;]~~

813 ~~[(b)]~~ (a) shall demonstrate ~~[honesty, integrity, and truthfulness;]~~:

814 (i) financial responsibility;

815 (ii) good moral character; and

816 (iii) the competence to transact the business of residential mortgage loans, including  
817 general fitness such as to command the confidence of the community and to warrant a  
818 determination that the individual will operate honestly, fairly, and efficiently within the  
819 purposes of this chapter;

820 ~~[(e)]~~ (b) except as provided in Subsection (3), may not have been convicted of, pled  
821 guilty of, pled no contest to, pled guilty in a similar manner to, or resolved by diversion or its  
822 equivalent:

823 (i) a felony involving an act of fraud, dishonesty, a breach of trust, or money  
824 laundering;

825 (ii) a felony in the seven years preceding the day on which an application is submitted  
826 to the division;

827 (iii) in the ten years preceding the day on which an application is submitted to the  
828 division of:

829 ~~[(i) any]~~ (A) a felony or class A misdemeanor involving moral turpitude; or

830 ~~[(ii) any]~~ (B) a crime in [any other] another jurisdiction that is the equivalent of a  
831 felony or class A misdemeanor involving moral turpitude;

832 ~~[(d) except as provided in Subsection (3), may not have been convicted]~~  
833 (iv) in the five years preceding the day on which an application is submitted to the  
834 division ~~[of]:~~

835 ~~[(i) any]~~ (A) a class B or class C misdemeanor involving moral turpitude; or  
836 ~~[(ii) any]~~ (B) a crime in another jurisdiction that is the equivalent of a class B or class  
837 C misdemeanor involving moral turpitude;

838 ~~[(e) except as provided in Subsection (3), in relationship to a crime set forth in~~  
839 ~~Subsection (1)(c) or (d) during the time period set forth in Subsection (1)(c) or (d), may not~~  
840 ~~have:]~~

841 ~~[(i) entered a guilty plea, a no contest plea, or its equivalent; and]~~  
842 ~~[(ii) resolved by diversion or its equivalent;]~~

843 (c) if the applicant will engage in an activity as a loan originator, may not have had a  
844 license as a loan originator revoked by a governmental jurisdiction at any time;

845 ~~[(f)]~~ (d) except as provided in Subsection ~~[61-2c-202(4)(e)]~~ (3), may not have had a  
846 license or registration suspended, revoked, surrendered, canceled, or denied in the five years  
847 preceding the date the individual applies for licensure ~~[except as provided in Subsection (3);]~~  
848 if:

849 (i) the registration or license is issued by this state or another jurisdiction; and  
850 (ii) the suspension, revocation, surrender, probation, fine, cancellation, or denial is  
851 based on misconduct in a professional capacity that relates to moral character, honesty,  
852 integrity, truthfulness, or the competency to transact the business of residential mortgage loans;

853 ~~[(g)]~~ (e) except as provided in Subsection (3), may not have been the subject of a bar  
854 by the Securities and Exchange Commission, the New York Stock Exchange, or the National  
855 Association of Securities Dealers within the five years preceding the date the individual applies  
856 for registration; and

857 ~~[(h)]~~ (f) may not have had ~~[any]~~ a temporary or permanent injunction entered against  
858 the individual:

859 (i) by a court or licensing agency; and  
860 (ii) on the basis of:  
861 (A) conduct or a practice involving the business of residential mortgage loans; or  
862 (B) conduct involving fraud, misrepresentation, or deceit.

863 (2) To qualify for licensure under this chapter an entity may not have:

864 (a) any of the following individuals in management who fails to meet the requirements

865 of Subsection (1) for an individual who will engage in an activity as a loan originator:

866 (i) a manager or a managing partner;

867 (ii) a director;

868 (iii) an executive officer; or

869 (iv) an individual occupying a position or performing functions similar to those

870 described in Subsections (2)(a)(i) through (iii); or

871 (b) a principal lending manager who fails to meet the requirements of Subsection (1)

872 for an individual who will engage in an activity as a loan originator.

873 (3) (a) Notwithstanding the failure to meet the requirements of [~~Subsections (1)(c)~~

874 ~~through (h)] Subsections (1)(b)(iii), (b)(iv), (d), (e), and (f) and except as provided in~~

875 Subsection (3)(b), the division may permit [an individual or entity] a person to be licensed

876 under this chapter if the individual applicant or a person listed in Subsection (2):

877 [~~(a)~~] (i) fails to meet the requirements of Subsections (1)[~~(c) through (h)~~](b)(iii),

878 (b)(iv), (d), (e), and (f);

879 [~~(b)~~] (ii) otherwise meets the qualifications for licensure; and

880 [~~(c)~~] (iii) provides evidence satisfactory to the division with the concurrence of the

881 commission that the individual applicant or person described in Subsection (2):

882 [~~(i)~~] (A) is of good moral character;

883 [~~(ii)~~] (B) is honest;

884 [~~(iii)~~] (C) has integrity;

885 [~~(iv)~~] (D) is truthful; and

886 [~~(v)~~] (E) has the competency to transact the business of residential mortgage loans.

887 (b) The division may not license an individual under this Subsection (3) if that

888 individual will engage in an activity as a loan originator.

889 Section 13. Section **61-2c-204.1** is enacted to read:

890 **61-2c-204.1. Education providers -- Education requirements -- Examination**

891 **requirements.**

892 (1) As used in this section:

893 (a) "Approved continuing education course" means a course of continuing education

894 that is approved by the nationwide database.

895 (b) "Approved prelicensing education course" means a course of prelicensing education  
896 that is approved by the nationwide database.

897 (2) (a) A person may not provide prelicensing education or continuing education if that  
898 person is not certified by the division under this chapter.

899 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
900 division shall make rules establishing:

901 (i) certification criteria and procedures to become a certified education provider; and

902 (ii) standards of conduct for a certified education provider.

903 (c) In accordance with the rules described in Subsection (2)(b), the division shall  
904 certify a person to provide one or more of the following:

905 (i) prelicensing education; or

906 (ii) continuing education.

907 (d) The division shall make available to the public a list of the names and addresses of  
908 certified education providers.

909 (e) In certifying an education provider, the division by rule may:

910 (i) distinguish between an individual instructor and an entity that provides education;

911 or

912 (ii) approve prelicensing education or continuing education courses.

913 (3) (a) The division may not:

914 (i) license an individual under this chapter as a mortgage officer who has not  
915 completed the prelicensing education required by this section:

916 (A) before taking the licensing examination required by Subsection (4); and

917 (B) in the number of hours, not to exceed 90 hours, required by rule made by the  
918 division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except  
919 that the division shall require that a person who will engage in an activity as a loan originator  
920 complete at least 20 hours of approved prelicensing education courses that include at least:

921 (I) three hours of federal law and regulation;

922 (II) three hours of ethics that includes instruction on fraud, consumer protection, and  
923 fair lending issues; and

924 (III) two hours of training related to lending standards for the nontraditional mortgage

925 product marketplace;

926 (ii) subject to Subsection (6), renew a license of an individual who has not completed  
927 the continuing education required by this section and Section 61-2c-205; or

928 (iii) the division may not license an individual under this chapter as a principal lending  
929 manager who has not completed the prelicensing education required by Section 61-2c-206  
930 before taking the licensing examination required by Section 61-2c-206.

931 (b) Subject to Subsection (3)(a) and with the concurrence of the division, the  
932 commission shall determine:

933 (i) except as provided in Subsection 61-2c-206(1)(c), the appropriate number of hours  
934 of prelicensing education required to obtain a license;

935 (ii) the subject matters of the prelicensing education required under this section and  
936 Section 61-2c-206, including online education or distance learning options;

937 (iii) the appropriate number of hours of continuing education required to renew a  
938 license, except that at a minimum the continuing education required for a person who engages  
939 in an activity as a loan originator shall include at least eight hours annually of approved  
940 continuing education courses that include at least:

941 (A) three hours of federal law and regulations;

942 (B) two hours of ethics, that include instruction on fraud, consumer protection, and fair  
943 lending issues; and

944 (C) two hours of training related to lending standards for the nontraditional mortgage  
945 product marketplace; and

946 (iv) the subject matter of courses the division may accept for continuing education  
947 purposes.

948 (c) The commission may appoint a committee to make recommendations to the  
949 commission concerning approval of prelicensing education and continuing education courses,  
950 except that the commission shall appoint at least one member to the committee to represent  
951 each association that represents a significant number of individuals licensed under this chapter.

952 (d) The division may by rule made in accordance with Title 63G, Chapter 3, Utah  
953 Administrative Rulemaking Act, provide for the calculation of continuing education credits,  
954 except that the rules shall be consistent with 12 U.S.C. Sec. 5105.

955 (4) (a) The division may not license an individual under this chapter unless that

956 individual first passes a licensing examination administered by an approved examination  
957 provider.

958 (b) The commission, with the concurrence of the division, shall determine the  
959 requirements for:

960 (i) a licensing examination that at least:

961 (A) includes the qualified written test developed by the nationwide database; and

962 (B) tests knowledge of the:

963 (I) fundamentals of the English language;

964 (II) arithmetic;

965 (III) provisions of this chapter;

966 (IV) rules adopted under this chapter;

967 (V) basic residential mortgage principles and practices; and

968 (VI) any other aspect of Utah law the commission determines is appropriate; and

969 (ii) a licensing examination required under Section 61-2c-206 that:

970 (A) includes the qualified written test developed by the nationwide database; and

971 (B) tests knowledge of the:

972 (I) advanced residential mortgage principles and practices; and

973 (II) other aspects of Utah law the commission, with the concurrence of the division,  
974 determines appropriate.

975 (c) An individual who will engage in an activity as a loan originator, is not considered  
976 to have passed a licensing examination if that individual has not met the minimum competence  
977 requirements of 12 U.S.C. Sec. 5104(d)(3).

978 (5) When reasonably practicable, the commission and the division shall make the  
979 licensing examination, prelicensing education, and continuing education requirements  
980 described in this section available electronically through one or more distance education  
981 methods approved by the commission and division.

982 (6) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
983 the commission, with the concurrence of the division, shall make rules establishing procedures  
984 under which a licensee may be exempted from continuing education requirements:

985 (i) for a period not to exceed four years; and

986 (ii) upon a finding of reasonable cause.



987 (b) An individual who engages in an activity as a loan originator may not under this  
988 Subsection (6) be exempted from the eight hours of continuing education required under  
989 Subsection (3)(b)(iii) for an individual who engages in an activity as a loan originator.

990 Section 14. Section **61-2c-205** is amended to read:

991 **61-2c-205. Term of licensure -- Renewal -- Reporting of changes.**

992 (1) (a) A license under this chapter is valid for [~~a two-year period~~] one year.

993 (b) Notwithstanding Subsection (1)(a), the time period of a license may be extended or  
994 shortened by as much as one year to maintain or change a renewal cycle established by rule by  
995 the division.

996 (2) To renew a license, no later than the date the license expires, a licensee shall:

997 (a) (i) file the renewal form required by the division; and

998 (ii) furnish the information required by Subsection 61-2c-202(1);

999 (b) pay a fee to the division established by the division in accordance with Section  
1000 63J-1-303; and

1001 (c) if the licensee is an individual and the individual's license is in active status at the  
1002 time of application for renewal, submit proof using forms approved by the division of having  
1003 completed during the [~~two years prior to~~] year before application the continuing education  
1004 required [~~by the commission~~] under Section [~~61-2c-104~~] 61-2c-204.1.

1005 (3) (a) A licensee under this chapter shall notify the division using the form required by  
1006 the division within ten days of the date on which there is a change in:

1007 (i) a name under which the licensee transacts the business of residential mortgage loans  
1008 in this state;

1009 (ii) (A) if the licensee is an entity, the business location of the licensee; or

1010 (B) if the licensee is an individual, the home and business addresses of the individual;

1011 (iii) the principal lending manager of the entity;

1012 (iv) the entity with which an individual licensee is licensed to conduct the business of  
1013 residential mortgage loans; or

1014 (v) any other information that is defined as material by rule made by the division.

1015 (b) Failure to notify the division of a change described in Subsection (3)(a) is separate  
1016 grounds for disciplinary action against a licensee.

1017 (4) A licensee shall notify the division by sending the division a signed statement

1018 within ten business days of:

1019 (a) (i) a conviction of ~~[any]~~ a criminal offense;

1020 (ii) the entry of a plea in abeyance to ~~[any]~~ a criminal offense; or

1021 (iii) the potential resolution of ~~[any]~~ a criminal case by:

1022 (A) a diversion agreement; or

1023 (B) any other agreement under which a criminal ~~[charges are]~~ charge is held in

1024 suspense for a period of time;

1025 (b) filing a personal bankruptcy or bankruptcy of a business that transacts the business

1026 of residential mortgage loans;

1027 (c) the suspension, revocation, surrender, cancellation, or denial of a professional

1028 license or professional registration of the licensee, whether the license or registration is issued

1029 by this state or another jurisdiction; or

1030 (d) the entry of a cease and desist order or a temporary or permanent injunction:

1031 (i) against the licensee by a court or licensing agency; and

1032 (ii) based on:

1033 (A) conduct or a practice involving the business of residential mortgage loans; or

1034 (B) conduct involving fraud, misrepresentation, or deceit.

1035 (5) (a) A license under this chapter expires if the licensee does not apply to renew the

1036 license on or before the expiration date of the license.

1037 (b) Within 30 calendar days after the expiration date, a licensee whose license has

1038 expired may apply to reinstate the expired license ~~[upon]~~ by:

1039 (i) ~~[payment of]~~ paying a renewal fee and a late fee determined by the division under

1040 Section 63J-1-303; and

1041 (ii) if the licensee is an individual and is applying to reinstate a license to active status,

1042 providing proof using forms approved by the division of having completed, during the ~~[two~~

1043 ~~years prior to]~~ year before application, the continuing education required ~~[by the commission]~~

1044 under Section ~~[61-2c-104]~~ 61-2c-204.1.

1045 (c) After the 30 calendar days described in Subsection (5)(b) and within six months

1046 after the expiration date, a licensee whose license has expired may apply to reinstate an expired

1047 license ~~[upon]~~ by:

1048 (i) ~~[payment of]~~ paying a renewal fee and a late fee determined by the division under

1049 Section 63J-1-303;

1050 (ii) if the licensee is an individual and is applying to reinstate a license to active status,  
1051 providing proof using forms approved by the division of having completed, during the [~~two~~  
1052 ~~years prior to~~] year before application, the continuing education required [~~by the commission~~]  
1053 under Section [~~61-2c-104~~] 61-2c-204.1; and

1054 (iii) in addition to the continuing education [~~required for a timely renewal;~~] described  
1055 in Subsection (5)(c)(ii), providing proof of completing an additional 12 hours of continuing  
1056 education [~~approved by the commission under Section 61-2c-104~~] meeting the requirements of  
1057 Section 61-2c-204.1.

1058 (d) [~~A~~] The division shall issue a license to a licensee whose license [has been expired]  
1059 expires under this Subsection (5) for more than six months [shall be relicensed as prescribed  
1060 for an original] as if the licensee is a new applicant filing an application for an original license  
1061 under Section 61-2c-202.

1062 (6) The division may charge a fee established in accordance with Section 63J-1-303 for  
1063 processing a change that a licensee is required to report to the division under this section.

1064 Section 15. Section **61-2c-205.1** is enacted to read:

1065 **61-2c-205.1. Transition to use of nationwide database.**

1066 (1) An individual not required to be licensed under this chapter as in effect on  
1067 December 31, 2010, who is required to be licensed under this chapter as in effect on January 1,  
1068 2011, may not engage in the business of residential mortgage loans on or after January 1, 2011  
1069 without holding a license under this chapter.

1070 (2) An individual who applies for a license under this chapter on or after January 1,  
1071 2011, shall meet the requirements of this chapter as in effect on January 1, 2011.

1072 (3) (a) This Subsection (3) applies to a licensee who:

1073 (i) will engage in an activity as a loan originator on or after January 1, 2011; and

1074 (ii) holds an active license under this chapter on December 31, 2010.

1075 (b) A licensee shall comply with the requirements of this chapter as in effect on  
1076 January 1, 2011, by no later than January 1, 2011, in order to hold an active license on or after  
1077 January 1, 2011.

1078 (c) The license of a licensee that fails to comply with this section on or before January  
1079 1, 2011 becomes inactive on January 1, 2011 until:

1080 (i) the day on which the licensee complies with the requirements of this chapter; or  
 1081 (ii) the license expires.

1082 (4) (a) A license of an individual who will engage in an activity as a loan originator  
 1083 that is inactive on December 31, 2010, terminates as of January 1, 2011 unless that licensee  
 1084 provides on or before January 1, 2011, evidence satisfactory to the division that the licensee  
 1085 has complied with the requirements for registration under the nationwide database.

1086 (b) The division may by rule, made in accordance with Title 63G, Chapter 3, Utah  
 1087 Administrative Rulemaking Act, proscribe:

1088 (i) the "requirements for registration under the nationwide database" described in  
 1089 Subsection (4)(a);

1090 (ii) the evidence required by this Subsection (4); and

1091 (iii) the procedure for submitting the evidence required by this Subsection (4).

1092 (5) The division may make rules in accordance with Title 63G, Chapter 3, Utah  
 1093 Administrative Rulemaking Act, providing a process:

1094 (a) that is consistent with this section to transition the licensing of individuals engaged  
 1095 in the business of residential mortgage loans to the license requirements under this chapter as  
 1096 in effect on January 1, 2011; or

1097 (b) to suspend a requirement for holding a license under this chapter that is related to  
 1098 the nationwide database ~~§~~ → if ← ~~§~~ :

1099 (i) ~~§~~ → [if] ← ~~§~~ the suspension is related to changes made to Secure and Fair Enforcement for  
 1100 Mortgage Licensing, 12 U.S.C. Sec. 5105, et seq., on or after January 1, 2009; and

1101 (ii) the suspension ends on or before December 31, 2011.

1102 (6) The division may report or provide recommendations to the Legislature regarding  
 1103 changes, if any, that could be made to this chapter in response to changes made to the  
 1104 nationwide database or under Secure and Fair Enforcement for Mortgage Licensing, 12 U.S.C.  
 1105 Sec. 5101, et seq., including changes related to grandfathering.

1106 Section 16. Section **61-2c-206** is amended to read:

1107 **61-2c-206. Principal lending manager licenses.**

1108 (1) To qualify as a principal lending manager under this chapter, an individual shall, in  
 1109 addition to meeting the standards in Section 61-2c-203:

1110 (a) submit an application on a form approved by the division;

- 1111 (b) pay a fee determined by the division under Section 63J-1-303;
- 1112 (c) submit proof of having successfully completed 40 hours of prelicensing education
- 1113 approved by the commission under Section [~~61-2c-104~~] 61-2c-204.1;
- 1114 (d) submit proof of having successfully completed the principal lending manager
- 1115 licensing examination approved by the commission under Section [~~61-2c-104~~] 61-2c-204.1;
- 1116 (e) submit proof on a form approved by the division of three years of full-time active
- 1117 experience as a mortgage officer in the five years preceding the day on which the application is
- 1118 submitted, or its equivalent as approved by the commission; and
- 1119 (f) if the individual is not licensed under this chapter at the time of application, submit
- 1120 to the criminal background check required by Subsection 61-2c-202[~~(4)~~](1)(b).

1121 (2) A principal lending manager may not engage in the business of residential

1122 mortgage loans on behalf of more than one entity at the same time.

1123 Section 17. Section **61-2c-207** is amended to read:

1124 **61-2c-207. Reciprocal licensure.**

1125 (1) The division may enter into a reciprocity agreement with another state and issue a

1126 reciprocal license to a licensee of that state if the division determines that the:

1127 (a) state has substantially equivalent licensing laws, including compliance with Secure

1128 and Fair Enforcement for Mortgage Licensing, 12 U.S.C. Sec. 5101, et seq.;

1129 (b) state requires a licensing examination that is substantially equivalent to the

1130 examination required by this chapter; and

1131 (c) licensee has not had:

1132 (i) formal charges alleging a violation of state mortgage laws filed against the licensee;

1133 or

1134 (ii) disciplinary action or license restriction taken by the licensee's state of domicile.

1135 (2) The division may issue a reciprocal license to a licensee of a state with which the

1136 division does not have a reciprocity agreement if the individual:

1137 (a) submits to the division an affidavit that the individual has five years of experience

1138 in the business of residential mortgage loans;

1139 (b) establishes that the individual's experience described in Subsection (2)(a) was under

1140 requirements substantially equivalent to the licensing requirements of this chapter; and

1141 (c) provides any other information required by the division by rule under Subsection

1142 (3).

1143 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1144 division shall define the information an individual shall provide to the division pursuant to  
1145 Subsection (2).

1146 Section 18. Section **61-2c-208** is amended to read:

1147 **61-2c-208. Activation and inactivation of license.**

1148 (1) (a) A licensee may request that the division place the license on inactive status by  
1149 submitting an inactivation form approved by the division.

1150 (b) The license of a mortgage officer who or [~~mortgage~~] an entity that is not affiliated  
1151 with an active license of a principal lending manager automatically converts to inactive status  
1152 on the day on which the mortgage officer or [~~mortgage~~] entity is not affiliated with the active  
1153 license of the principal lending manager.

1154 (c) A licensee whose license is in inactive status may not transact the business of  
1155 residential mortgage loans.

1156 (2) To activate a license that [~~has been~~] is placed on inactive status, a licensee shall:

1157 (a) submit an activation form:

1158 (i) approved by the division; and

1159 (ii) signed by the principal lending manager with whom the licensee is affiliating;

1160 (b) pay an activation fee established by the division under Section 63J-1-303; [~~and~~]

1161 (c) if the licensee is an individual whose license was in inactive status at the time of the  
1162 previous renewal, the licensee shall supply the division with proof of the successful completion  
1163 of the number of hours of continuing education that the licensee would have been required to  
1164 complete under [~~Subsection 61-2c-205(2)(c)] Section 61-2c-204.1 if the licensee's license had  
1165 been on active status, up to a maximum of the number of hours required for two licensing  
1166 periods[-]; and~~

1167 (d) pass the licensing examination described in Section 61-2c-204.1 if:

1168 (i) the licensee is an individual who will engage in an activity as a loan originator; and

1169 (ii) the license has been in inactive status for five years or more from the day on which

1170 the licensee submits an inactivation form with the division.

1171 Section 19. Section **61-2c-301** is amended to read:

1172 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

1173 (1) [~~An individual or entity~~] A person transacting the business of residential mortgage  
1174 loans in this state may not:

1175 (a) give or receive compensation or anything of value in exchange for a referral of  
1176 residential mortgage loan business;

1177 (b) charge a fee in connection with a residential mortgage loan transaction:

1178 (i) that is excessive; or  
1179 (ii) if the [~~individual or entity~~] person does not comply with Section 70D-1-6;

1180 (c) give or receive compensation or anything of value in exchange for a referral of  
1181 settlement or loan closing services related to a residential mortgage loan transaction;

1182 (d) do any of the following to induce a lender to extend credit as part of a residential  
1183 mortgage loan transaction:

1184 (i) make a false statement or representation;  
1185 (ii) cause false documents to be generated; or  
1186 (iii) knowingly permit false information to be submitted by any party;

1187 (e) give or receive compensation or anything of value, or withhold or threaten to  
1188 withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in  
1189 reaching a value conclusion in a residential mortgage loan transaction, except that it is not a  
1190 violation of this section for a licensee to withhold payment because of a bona fide dispute  
1191 regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards  
1192 of Professional Appraisal Practice;

1193 (f) violate or not comply with:

1194 (i) this chapter;  
1195 (ii) an order of the commission or division; or  
1196 (iii) a rule made by the division;

1197 (g) fail to respond within the required time period to:

1198 (i) a notice or complaint of the division; or  
1199 (ii) a request for information from the division;

1200 (h) make false representations to the division, including in a licensure statement;

1201 (i) for [~~any~~] a residential mortgage loan transaction beginning on or after January 1,  
1202 2004, engage in the business of residential mortgage loans with respect to the transaction if the  
1203 [~~individual or entity~~] person also acts in any of the following capacities with respect to the

1204 same residential mortgage loan transaction:

1205 (i) appraiser;

1206 (ii) escrow agent;

1207 (iii) real estate agent;

1208 (iv) general contractor; or

1209 (v) title insurance agent;

1210 (j) order a title insurance report or hold a title insurance policy unless the ~~[individual or~~

1211 ~~entity]~~ person provides to the title insurer a copy of a valid, current license under this chapter;

1212 (k) engage in unprofessional conduct as defined by rule;

1213 (l) engage in an act or omission in transacting the business of residential mortgage

1214 loans that constitutes dishonesty, fraud, or misrepresentation;

1215 (m) engage in false or misleading advertising;

1216 (n) (i) fail to account for all funds received in connection with a residential mortgage

1217 loan;

1218 (ii) use funds for a different purpose from the purpose for which the funds were

1219 received; or

1220 (iii) except as provided in Subsection (4), retain funds paid for services if the services

1221 were not actually performed;

1222 (o) fail, within 90 calendar days of a request from a borrower who has paid for an

1223 appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;

1224 (p) engage in an act that is performed to:

1225 (i) evade this chapter; or

1226 (ii) assist another person to evade this chapter;

1227 (q) recommend or encourage default or delinquency, or continuation of an existing

1228 default or delinquency, by a mortgage applicant on an existing indebtedness ~~[prior to]~~ before

1229 the closing of a residential mortgage loan that will refinance all or part of the indebtedness;

1230 (r) in the case of the principal lending manager of an entity or a branch office of an

1231 entity, fail to exercise reasonable supervision over the activities of:

1232 (i) ~~[any]~~ unlicensed staff; and

1233 (ii) ~~[any]~~ a mortgage ~~[officers]~~ officer who ~~[are]~~ is licensed with the principal lending

1234 manager;



1235 (s) pay or offer to pay an individual who does not hold a license under this chapter for  
 1236 work that requires the individual to hold a license under this chapter; [~~or~~]

1237 (t) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

1238 (i) provide a title insurance product or service without the approval required by Section  
 1239 31A-2-405; or

1240 (ii) knowingly provide false or misleading information in the statement required by  
 1241 Subsection 31A-2-405(2)[~~;~~]; or

1242 (u) ~~§~~ ~~→~~ [~~to~~] ~~←~~ ~~§~~ represent to the public that the person can or will perform any act of a loan  
 1243 originator if that person is not licensed under this chapter because the person is exempt under  
 1244 Subsection 61-2c-102(1)(f)(ii)(A), including through:

1245 (i) advertising;

1246 (ii) a business card;

1247 (iii) stationary;

1248 (iv) a brochure;

1249 (v) a sign;

1250 (vi) a rate list; or

1251 (vii) other promotional item.

1252 (2) Whether or not the crime is related to the business of residential mortgage loans, it  
 1253 is a violation of this chapter for a licensee or a person who is a certified education provider to  
 1254 do any of the following with respect to a criminal offense [~~which~~] that involves moral  
 1255 turpitude:

1256 (a) be convicted;

1257 (b) plead guilty or nolo contendere;

1258 (c) enter a plea in abeyance; or

1259 (d) be subjected to a criminal disposition similar to the ones described in Subsections  
 1260 (2)(a) through (c).

1261 (3) A principal lending manager does not violate Subsection (1)(r) if:

1262 (a) in contravention of the principal lending manager's written policies and  
 1263 instructions, an affiliated licensee of the principal lending manager violates:

1264 (i) this chapter; or

1265 (ii) rules made by the division under this chapter;

1266 (b) the principal lending manager established and followed reasonable procedures to  
1267 ensure that affiliated licensees receive adequate supervision;

1268 (c) upon learning of a violation by an affiliated licensee, the principal lending manager  
1269 attempted to prevent or mitigate the damage;

1270 (d) the principal lending manager did not participate in or ratify the violation by an  
1271 affiliated licensee; and

1272 (e) the principal lending manager did not attempt to avoid learning of the violation.

1273 (4) Notwithstanding Subsection (1)(n)(iii), a licensee may, upon compliance with  
1274 Section 70D-1-6, charge a reasonable cancellation fee for work done originating a mortgage if  
1275 the mortgage is not closed.

1276 Section 20. Section **61-2c-302** is amended to read:

1277 **61-2c-302. Record requirements.**

1278 (1) For the time period specified in Subsection (2), a licensee shall make or possess any  
1279 record required for that licensee by a rule made by the division.

1280 (2) A licensee shall maintain in its possession a record described in Subsection (1) for  
1281 four years from the last to occur of the following:

1282 (a) the final entry on a residential mortgage loan is made by that licensee;

1283 (b) if the residential mortgage loan is serviced by the licensee:

1284 (i) the residential mortgage loan is paid in full; or

1285 (ii) the licensee ceases to service the residential mortgage loan; or

1286 (c) if the residential mortgage loan is not serviced by the licensee, the residential  
1287 mortgage loan is closed.

1288 (3) A licensee shall:

1289 (a) make available to the division for inspection and copying during normal business  
1290 hours all records required to be maintained under this chapter; and

1291 (b) upon reasonable notice from the division to a licensee, produce all records  
1292 described in Subsection (3)(a) that are related to an investigation being conducted by the  
1293 division at the division office for inspection and copying by the division.

1294 (4) A [~~licensed entity~~] licensee who is an entity shall maintain and produce for  
1295 inspection by the division a current list of all individuals whose licenses are affiliated with the  
1296 entity.

1297 (5) A licensee who engages in an activity as a loan originator shall maintain and  
 1298 produce for inspection by the division a report of condition submitted to the nationwide  
 1299 database as required by 12 U.S.C. Sec. 5104(e) for at least four years from the day on which the  
 1300 licensee submits the report of condition.

1301 Section 21. Section **61-2c-402** is amended to read:

1302 **61-2c-402. Disciplinary action.**

1303 (1) Subject to the requirements of Section 61-2c-402.1, [if an individual or entity] the  
 1304 commission, with the concurrence of the division, may impose a sanction described in

1305 Subsection (2) against a person if the person:

1306 (a) (i) is a licensee or person required to be licensed under this chapter; and

1307 (ii) violates this chapter[;]; or [an]

1308 (b) (i) is a certified education provider or person required to be certified to provide  
 1309 prelicensing or continuing education under this chapter; and

1310 (ii) violates this chapter[; the].

1311 (2) The commission, with the concurrence of the director, may against a person  
 1312 described in Subsection (1):

1313 ~~[(1)]~~ (a) impose an educational requirement;

1314 ~~[(2)]~~ (b) impose a civil penalty against the individual or entity in an amount not to  
 1315 exceed the greater of:

1316 ~~[(a)]~~ (i) \$2,500 for each violation; or

1317 ~~[(b)]~~ (ii) the amount equal to any gain or economic benefit derived from each violation;

1318 ~~[(3)]~~ (c) deny an application for an original license;

1319 ~~[(4)]~~ (d) do any of the following to a license under this chapter:

1320 ~~[(a)]~~ (i) suspend;

1321 ~~[(b)]~~ (ii) revoke;

1322 ~~[(c)]~~ (iii) place on probation;

1323 ~~[(d)]~~ (iv) deny renewal;

1324 ~~[(e)]~~ (v) deny reinstatement; [or]

1325 ~~[(f)]~~ (vi) in the case of a denial or revocation of a license, set a waiting period for an  
 1326 applicant to apply for a license under this chapter;

1327 ~~[(5)]~~ (vii) issue a cease and desist order; or

1328            [~~(6) do~~] (viii) impose any combination of [~~Subsections (1) through (5)~~] sanctions  
1329 described in this Subsection (2).

1330            Section 22. Section **61-2c-402.1** is amended to read:

1331            **61-2c-402.1. Adjudicative proceedings -- Review.**

1332            (1) (a) Before [~~the actions~~] an action described in Section 61-2c-402 may be taken, the  
1333 division shall:

1334            (i) give notice to the [~~individual or entity~~] person against whom the action is brought;  
1335 and

1336            (ii) commence an adjudicative proceeding.

1337            (b) If after the adjudicative proceeding is commenced under Subsection (1)(a) the  
1338 presiding officer determines that [~~an individual or entity~~] a person required to be licensed under  
1339 this chapter has violated this chapter, the division may take an action described in Section  
1340 61-2c-402 by written order.

1341            (2) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, [~~an~~  
1342 ~~individual or entity~~] a person against whom action is taken under this section may seek review  
1343 by the executive director of the action.

1344            (3) If [~~an individual or entity~~] a person prevails in a judicial appeal and the court finds  
1345 that the state action was undertaken without substantial justification, the court may award  
1346 reasonable litigation expenses to that individual or entity as provided under Title 78B, Chapter  
1347 8, Part 5, Small Business Equal Access to Justice Act.

1348            (4) (a) An order issued under this section takes effect 30 days after the service of the  
1349 order unless otherwise provided in the order.

1350            (b) If an appeal of an order issued under this section is taken by [~~an individual or~~  
1351 ~~entity~~] a person, the division may stay enforcement of the order in accordance with Section  
1352 63G-4-405.

1353            (5) If ordered by the court of competent jurisdiction, the division shall promptly take an  
1354 action described in Section 61-2c-402 against a license granted under this chapter.

1355            Section 23. Section **61-2c-403** is amended to read:

1356            **61-2c-403. Cease and desist orders.**

1357            (1) (a) The director may issue and serve by certified mail, or by personal service, on  
1358 [~~an individual or entity~~] a person an order to cease and desist from an act if:

1359 (i) the director has reason to believe that the [~~individual or entity~~] person has been  
1360 engaged, is engaging in, or is about to engage in the act constituting a violation of this chapter;  
1361 and

1362 (ii) it appears to the director that it would be in the public interest to stop the act.

1363 (b) Within ten days after service of the order, the party named in the order may request  
1364 a hearing to be held in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

1365 (c) Pending a hearing requested under Subsection (1)(b), a cease and desist order shall  
1366 remain in effect.

1367 (2) (a) After the hearing described in Subsection (1), if the director finds that an act of  
1368 the [~~individual or entity~~] person violates this chapter, the director:

1369 (i) shall issue an order making the cease and desist order permanent; and

1370 (ii) may impose another disciplinary action under Section 61-2c-402.

1371 (b) (i) The director may file suit in the name of the division to enjoin and restrain [~~an~~  
1372 ~~individual or entity~~] a person on whom an order is served under this section from violating this  
1373 chapter if:

1374 (A) (I) the [~~individual or entity~~] person does not request a hearing under Subsection  
1375 (1); or

1376 (II) a permanent cease and desist order is issued against the [~~individual or entity~~]  
1377 person following a hearing or stipulation; and

1378 (B) (I) the [~~individual or entity~~] person fails to cease the act; or

1379 (II) after discontinuing the act, the [~~individual or entity~~] person again commences the  
1380 act.

1381 (ii) The suit described in Subsection (2)(b)(i) shall be filed in the district court in the  
1382 county:

1383 (A) in which the act occurs;

1384 (B) where the individual resides; or

1385 (C) where the individual or entity carries on business.

1386 (3) The cease and desist order issued under this section may not interfere with or  
1387 prevent the prosecution of a remedy or action enforcement under this chapter.

1388 (4) An individual who violates a cease and desist order issued under this section is  
1389 guilty of a class A misdemeanor.

1390 Section 24. Section **61-2c-405** is amended to read:

1391 **61-2c-405. Penalty for violating this chapter -- Automatic revocation.**

1392 (1) In addition to being subject to a disciplinary action by the commission, a person  
1393 who violates this chapter:

1394 (a) is guilty of a class A misdemeanor upon conviction of a first violation of this  
1395 chapter; and

1396 (b) is guilty of a third degree felony upon conviction of a second or subsequent  
1397 violation of this chapter.

1398 (2) [~~Any~~] A license or [registration] certification issued by the division to [~~any~~] a  
1399 person [or entity] convicted of a violation of Section 76-6-1203 is automatically revoked.

1400 Section 25. Section **61-2c-502** is amended to read:

1401 **61-2c-502. Additional license fee.**

1402 (1) An individual who applies for or renews a license shall pay, in addition to the  
1403 application or renewal fee, a reasonable annual fee:

1404 (a) determined by the division with the concurrence of the commission; and

1405 (b) not to exceed \$18.

1406 (2) An entity that applies for or renews an entity license shall pay, in addition to the  
1407 application or renewal fee, a reasonable annual fee:

1408 (a) determined by the division with the concurrence of the commission; and

1409 (b) not to exceed \$25.

1410 (3) Notwithstanding Section 13-1-2, the following shall be paid into the Residential  
1411 Mortgage Loan Education, Research, and Recovery Fund to be used as provided in this part:

1412 (a) a fee provided in this section;

1413 (b) a fee for certifying:

1414 (i) a [~~mortgage~~] school as a certified education provider;

1415 (ii) a [~~mortgage~~] prelicensing or continuing education course; or

1416 (iii) a [~~mortgage~~] prelicensing or continuing education provider as an instructor; and

1417 (c) a civil penalty imposed under this chapter.

1418 (4) If the balance in the Residential Mortgage Loan Education, Research, and Recovery  
1419 Fund that is available to satisfy a judgment against a licensee decreases to less than \$100,000,

1420 the division may make an additional assessment to a licensee to maintain the balance available

1421 at \$100,000 to satisfy judgments.

1422 Section 26. Section **61-2c-507** is amended to read:

1423 **61-2c-507. Division subrogated to judgment creditor -- Authority to revoke**  
1424 **license.**

1425 (1) If the division pays a judgment creditor from the fund:

1426 (a) the division is subrogated to the rights of the judgment creditor for the amounts  
1427 paid out of the fund; and

1428 (b) any amount and interest recovered by the division shall be deposited in the fund.

1429 (2) ~~[The]~~ (a) Subject to Subsection (2)(b), the license of a licensee for whom payment  
1430 from the fund is made under this part is automatically revoked~~[-]~~ as of the earlier of the day on  
1431 which:

1432 (i) the division is ordered by a court to pay from the fund; or

1433 (ii) the division pays from the fund.

1434 (b) (i) A person whose license is revoked under Subsection (2)(a) may appeal the  
1435 revocation in a hearing conducted by the commission:

1436 (A) after the revocation; and

1437 (B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

1438 (ii) The commission may delegate:

1439 (A) to the division or an administrative law judge the authority to conduct a hearing  
1440 described in Subsection (2)(b)(i); or

1441 (B) to the division the authority to make a decision on whether relief from a revocation  
1442 should be granted.

1443 (3) ~~[A]~~ Unless the revocation is not upheld after a hearing described in Subsection  
1444 (2)(b), a licensee whose license is revoked pursuant to Subsection (2) may not apply for a new  
1445 license until the licensee ~~[has paid]~~ pays into the fund:

1446 (a) the amount paid out of the fund on behalf of the licensee; and

1447 (b) interest at a rate determined by the division with the concurrence of the  
1448 commission.

1449 Section 27. Section **61-2c-509** is amended to read:

1450 **61-2c-509. Disciplinary actions.**

1451 (1) This part does not limit the authority of the director or commission to take

1452 disciplinary action against a licensee for a violation of:

1453 (a) this chapter; or

1454 (b) rules made by the division under this chapter.

1455 (2) The repayment in full of all obligations to the fund by a licensee does not nullify or

1456 modify the effect of a disciplinary proceeding brought under:

1457 (a) this chapter; or

1458 (b) rules made by the division under this chapter.

1459 Section 28. Section **61-2d-102** is amended to read:

1460 **61-2d-102. Definitions.**

1461 As used in this part:

1462 (1) "Accelerate" means a demand for immediate repayment of the entire balance of a  
1463 residential mortgage loan.

1464 (2) "Borrower" means a person that:

1465 (a) seeks a high-cost mortgage; or

1466 (b) is obligated under a high-cost mortgage.

1467 (3) "High-cost mortgage" means a borrower credit transaction that is secured by the  
1468 borrower's principal dwelling, if any of the following apply with respect to such borrower  
1469 credit transaction:

1470 (a) the transaction is secured by a first mortgage on the borrower's principal dwelling  
1471 and the annual percentage rate on the credit, at the consummation of the transaction, will  
1472 exceed by more than eight percentage points the yield on treasury securities having comparable  
1473 periods of maturity on the 15th day of the month immediately preceding the month in which  
1474 the application for the extension of credit is received by the lender;

1475 (b) the transaction is secured by a junior or subordinate mortgage on the borrower's  
1476 principal dwelling and the annual percentage rate on the credit, at the consummation of the  
1477 transaction, will exceed ten percentage points the yield on treasury securities having  
1478 comparable periods of maturity on the 15th day of the month immediately preceding the month  
1479 in which the application for the extension of credit is received by the lender; or

1480 (c) (i) the total points and fees payable at or before the transaction will exceed the  
1481 greater of 8% of the total loan amount or \$400;

1482 (ii) (A) the \$400 figure shall be adjusted annually on January 1 to match the adjusted



1483 number adopted by the Board of Governors of the Federal Reserve in accordance with Section  
1484 226.32(a)(1)(ii) of the Code of Federal Regulations~~[-Hf]~~; or

1485 (B) if the Board of Governors of the Federal Reserve System does not announce an  
1486 adjusted figure, the last adjustment of the \$400 figure shall be adjusted annually on January 1  
1487 by the annual percentage change in the Consumer Price Index that was reported on the  
1488 preceding June 1; and

1489 (d) the loan is made by or originated through a person or business required to hold a  
1490 license as provided in Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing  
1491 Act.

1492 (4) "Lender" means a person that:

1493 (a) offers a high-cost mortgage; or

1494 (b) extends a high-cost mortgage; and

1495 (c) is required to have a license as provided in Title 61, Chapter 2c, Utah Residential  
1496 Mortgage Practices and Licensing Act.

1497 (5) "Prepay" or "prepayment" means to make a payment to a lender that:

1498 (a) is more than the amount of the next scheduled payment due;

1499 (b) pays more than half of the principal balance of the high-cost mortgage; and

1500 (c) is paid more than 24 months before the last scheduled payment according to the  
1501 terms of the high-cost mortgage when it is made.

1502 (6) "Residential mortgage transaction" means a transaction in which a mortgage, deed  
1503 of trust, purchase money security interest arising under an installment sales contract, or  
1504 equivalent consensual security interest is created or retained in the borrower's principal  
1505 dwelling to finance the acquisition or initial construction of that dwelling.

1506 (7) "Reverse mortgage transaction" means a nonrecourse borrower credit obligation in  
1507 which:

1508 (a) a mortgage, deed of trust, or equivalent consensual security interest securing one or  
1509 more advances is created in the borrower's principal dwelling; and

1510 (b) any principal, interest, or shared appreciation or equity is due and payable, other  
1511 than in the case of default, only after:

1512 (i) the borrower dies;

1513 (ii) the dwelling is transferred; or

1514 (iii) the borrower ceases to occupy the dwelling as a principal dwelling.

1515 Section 29. Section **63I-2-261** is enacted to read:

1516 **63I-2-261. Repeal dates -- Title 61.**

1517 Section 61-2c-205.1 is repealed July 1, 2012.

1518 Section 30. Section **70D-1-10** is amended to read:

1519 **70D-1-10. Notification of department -- Exemptions.**

1520 (1) Except as provided in Subsection (2), ~~no~~ a person may not engage in the business  
1521 of making mortgage loans ~~[nor may any person]~~ or engage in the business of being a mortgage  
1522 loan broker or servicer, without first filing written notification with the department and paying  
1523 the fees required by this chapter.

1524 (2) The following persons are exempt from the notification requirements contained in  
1525 this chapter and from the annual fee imposed in Subsection 70D-1-12(1):

1526 (a) all persons authorized under Utah law or under federal law to do business as a  
1527 depository institution in this state;

1528 (b) all wholly-owned subsidiaries of depository institutions described in Subsection  
1529 (2)(a); and

1530 (c) all persons that:

1531 (i) are required to license with the Utah Division of Real Estate pursuant to Title 61,  
1532 Chapter 2c, Utah Residential Mortgage Practices and Licensing Act; and

1533 (ii) are not engaged in the business of being a mortgage loan servicer.

1534 Section 31. **Effective date.**

1535 This bill takes effect January 1, 2010, except that Section 62-2c-205.1 takes effect on  
1536 July 1, 2009.

1536a **H→ Section 32. Coordinating S.B. 31 with H.B. 86 -- Technical changes.**

1536b **If this S.B. 31, and H.B. 86, Division of Real Estate Related Amendments, both pass, it is the**  
1536c **intent of the Legislature that in preparing the Utah Code database for publication, the Office**  
1536d **of Legislative Research and General Counsel modify Section 61-2c-402 to read as follows:**

1536e (1) Subject to the requirements of Section 61-2c-402.1, ~~[if an individual or entity]~~ **the**  
1536f **commission, with the concurrence of the division, may impose a sanction described in**  
1536g **Subsection (2) against a person if the person:**

1536h **(a) (i) is a licensee or person required to be licensed under this chapter ; and**

1536i **(ii) violates this chapter [s] ; or [an]**

1536j **(b) (i) is a certified education provider or person required to be certified to provide**  
1536k **prelicensing or continuing education under this chapter ; and**

1536l **(ii) violates this chapter** [~~the~~].

1536m **(2) The commission, with the concurrence of the director, may against a person**

1536n **described in Subsection (1) :**

1536o [~~(1)~~] **(a) impose an educational requirement;**

1536p [~~(2)~~] **(b) impose a civil penalty against the individual or entity in an amount not to**

1536q **exceed the greater of:**

1536r [~~(a)~~] **(i) \$2,500 for each violation; or**

1536s [~~(b)~~] **(ii) the amount equal to any gain or economic benefit derived from each violation;**

1536t [~~(3)~~] **(c) deny an application for an original license;**

1536u [~~(4)~~] **(d) do any of the following to a license under this chapter:**

1536v [~~(a)~~] **(i) suspend;**

1536w [~~(b)~~] **(ii) revoke;**

1536x [~~(c)~~] **(iii) place on probation;**

1536y [~~(d)~~] **(iv) deny renewal;**

1536z [~~(e)~~] **(v) deny reinstatement; or**

1536aa [~~(f)~~] **(vi) in the case of a denial or revocation of a license, set a waiting period for [-an**

1536ab **applicant] a person to apply for a license under this chapter;**

1536ac [~~(5)~~] **(e) issue a cease and desist order; [or]**

1536ad **(f) require the reimbursement of the division of costs incurred by the division related to**

1536ae **the recovery, storage, or destruction of a record that the person disposes of in a manner that**

1536af **violates this chapter or a rule made under this chapter;**

1536ag **(g) modify a sanction described in Subsections (2)(a) through (f) if the commission**

1536ah **finds that the person complies with court ordered restitution; or**

1536ai [~~(6) do~~] **(h) impose any combination of [Subsections (1) through (5).] sanctions**

1536aj **described in this Subsection (2). ←H**

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**Fiscal Note**

**S.B. 31 1st Sub. (Green) - Utah Residential Mortgage Practices and Licensing Act**

2009 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 individuals, businesses, or local governments.

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