

**FORECLOSURE RESCUE AND LOAN
MODIFICATION AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: J. Stuart Adams

LONG TITLE

Committee Note:

The Business and Labor Interim Committee recommended this bill.

General Description:

This bill modifies provisions related to licensure and prohibited conduct for those engaging in foreclosure rescue or loan modification assistance.

Highlighted Provisions:

This bill:

- ▶ modifies definitions related to real estate licensing;
- ▶ modifies prohibited conduct by real estate licensees;
- ▶ modifies definitions related to mortgage officer licensing;
- ▶ modifies prohibited conduct by a mortgage officer licensee; and
- ▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

61-2-2, as last amended by Laws of Utah 2005, Chapter 257



- 28 **61-2-3**, as last amended by Laws of Utah 2009, Chapter 356
- 29 **61-2-10**, as last amended by Laws of Utah 2009, Chapter 352
- 30 **61-2-11**, as last amended by Laws of Utah 2009, Chapter 352
- 31 **61-2c-102**, as last amended by Laws of Utah 2009, Chapter 372
- 32 **61-2c-301**, as last amended by Laws of Utah 2009, Chapters 72 and 372



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

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

36 **61-2-2. Definitions.**

37 As used in this chapter:

38 (1) "Associate real estate broker" and "associate broker" means ~~[any]~~ a person who:
 39 (a) is employed or engaged as an independent contractor by or on behalf of a licensed
 40 principal real estate broker to perform ~~[any]~~ an act set out in Subsection ~~[(12)]~~ (15) for valuable
 41 consideration~~[-, who]; and~~

42 (b) has qualified under this chapter as a principal real estate broker.

43 (2) "Branch office" means a principal broker's real estate brokerage office other than
44 the principal broker's main office.

45 (3) "Business day" means a day other than:

- 46 (a) a Saturday;
- 47 (b) a Sunday; or
- 48 (c) a federal or state holiday.

49 ~~[(3)]~~ (4) "Commission" means the Real Estate Commission established under this
50 chapter.

51 ~~[(4)]~~ (5) "Concurrence" means the entities given a concurring role must jointly agree
52 for action to be taken.

53 ~~[(5)]~~ (6) "Condominium" or "condominium unit" is as defined in Section 57-8-3.

54 ~~[(6)]~~ (7) "Condominium homeowners' association" means all of the condominium unit
55 owners acting as a group in accordance with declarations and bylaws.

56 ~~[(7)]~~ (8) (a) "Condominium hotel" means one or more condominium units that are
57 operated as a hotel.

58 (b) "Condominium hotel" does not mean a hotel consisting of condominium units, all

59 of which are owned by a single entity.

60 ~~[(8)]~~ (9) "Director" means the director of the Division of Real Estate.

61 ~~[(9)]~~ (10) "Division" means the Division of Real Estate.

62 ~~[(10)]~~ (11) "Executive director" means the director of the Department of Commerce.

63 (12) "Foreclosure rescue" means, for compensation or with the expectation of receiving
64 valuable consideration, to engage in an act that:

65 (a) the person represents will assist a borrower in preventing a foreclosure; and

66 (b) relates to a transaction involving the transfer of title to residential real property.

67 (13) "Loan modification assistance" means to act or offer to act on behalf of a person
68 to:

69 (a) obtain a loan term of a residential mortgage loan that is different from an existing
70 loan term including:

71 (i) an increase or decrease in an interest rate;

72 (ii) a change to the type of interest rate;

73 (iii) an increase or decrease in the principal amount of the residential mortgage loan;

74 (iv) a change in the number of required period payments;

75 (v) an addition of collateral;

76 (vi) a change to, or addition of, a prepayment penalty;

77 (vii) an addition of a cosigner; or

78 (viii) a change in persons obligated under the existing residential mortgage loan; or

79 (b) substitute a new residential mortgage loan for an existing residential mortgage loan.

80 ~~[(11)]~~ (14) "Main office" means the address which a principal broker designates with
81 the division as the principal broker's primary brokerage office.

82 ~~[(12)]~~ (15) "Principal real estate broker" and "principal broker" means ~~[any person]~~ an
83 individual who:

84 (a) (i) ~~[who]~~ sells or lists real estate for sale~~;~~;

85 (ii) buys, exchanges, or auctions real estate, options on real estate, or improvements on
86 real estate with the expectation of receiving valuable consideration; or

87 ~~[(ii) who]~~ (iii) advertises, offers, attempts, or otherwise holds [himself] the person out
88 to be engaged in the business described in Subsection ~~[(12)(a)(i)]~~ (15)(a)(i) or (ii);

89 (b) is employed by or on behalf of the owner of real estate or by a prospective

90 purchaser of real estate [~~who performs any of the acts~~] and performs an act described in
91 Subsection [~~(12)~~] (15)(a), whether the person's compensation is at a stated salary, a
92 commission basis, upon a salary and commission basis, or otherwise;

93 (c) (i) [~~who,~~] with the expectation of receiving valuable consideration, manages
94 property owned by another person; or [~~who~~]

95 (ii) advertises or otherwise holds [~~himself~~] the person out to be engaged in property
96 management;

97 (d) [~~who,~~] with the expectation of receiving valuable consideration, assists or directs in
98 the procurement of prospects for or the negotiation of [~~the transactions~~] a transaction listed in
99 Subsections [~~(12)~~] (15)(a) and (c); [~~and~~]

100 (e) except for [~~mortgage lenders, title insurance agents, and their employees, who~~] a
101 mortgage lender, title insurance agent, or an employee of a mortgage lender or title insurance
102 agent, assists or directs in the closing of [~~any~~] a real estate transaction with the expectation of
103 receiving valuable consideration[~~;~~]; or

104 (f) (i) engages in foreclosure rescue; or

105 (ii) advertises, offers, attempts, or otherwise holds the person out as being engaged in
106 foreclosure rescue.

107 [~~(13)~~] (16) (a) "Property management" means engaging in, with the expectation of
108 receiving valuable consideration, the management of property owned by another person, or
109 advertising or otherwise claiming to be engaged in property management by:

110 (i) advertising for, arranging, negotiating, offering, or otherwise attempting or
111 participating in a transaction calculated to secure the rental or leasing of real estate;

112 (ii) collecting, agreeing, offering, or otherwise attempting to collect rent for the real
113 estate and accounting for and disbursing the money collected; or

114 (iii) authorizing expenditures for repairs to the real estate.

115 (b) "Property management" does not include:

116 (i) hotel or motel management;

117 (ii) rental of tourist accommodations, including hotels, motels, tourist homes,
118 condominiums, condominium hotels, mobile home park accommodations, campgrounds, or
119 similar public accommodations for any period of less than 30 consecutive days, and the
120 management activities associated with these rentals; or

121 (iii) the leasing or management of surface or subsurface minerals or oil and gas
122 interests, if the leasing or management is separate from a sale or lease of the surface estate.

123 [~~(14)~~] (17) "Real estate" includes leaseholds and business opportunities involving real
124 property.

125 [~~(15)~~] (18) "Real estate sales agent" and "sales agent" mean [~~any person~~] an individual
126 affiliated with a licensed principal real estate broker, either as an independent contractor or an
127 employee as provided in Section 61-2-25, to perform for valuable consideration any act set out
128 in Subsection [~~(12)~~] (15).

129 [~~(16)~~] (19) (a) "Regular salaried employee" means an individual who performs a
130 service for wages or other remuneration, whose employer withholds federal employment taxes
131 under a contract of hire, written or oral, express or implied.

132 (b) "Regular salaried employee" does not include [~~a person~~] an individual who
133 performs services on a project-by-project basis or on a commission basis.

134 [~~(17)~~] (20) "Reinstatement" means restoring a license that has expired or has been
135 suspended.

136 [~~(18)~~] (21) "Reissuance" means the process by which a licensee may obtain a license
137 following revocation of the license.

138 [~~(19)~~] (22) "Renewal" means extending a license for an additional licensing period on
139 or before the date the license expires.

140 [~~(20)~~] (23) (a) "Undivided fractionalized long-term estate" means an ownership interest
141 in real property by two or more persons that is a:

142 (i) tenancy in common; or

143 (ii) any other legal form of undivided estate in real property including:

144 (A) a fee estate;

145 (B) a life estate; or

146 (C) other long-term estate.

147 (b) "Undivided fractionalized long-term estate" does not include a joint tenancy.

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

149 **61-2-3. Exempt persons and transactions.**

150 (1) (a) Except as provided in Subsection (1)(b), a license under this chapter is not
151 required for:

- 152 (i) a person who as owner or lessor performs the acts described in Subsection
153 61-2-2[~~(12)~~](15) with reference to property owned or leased by that person;
- 154 (ii) a regular salaried employee of the owner or lessor of real estate who, with reference
155 to nonresidential real estate owned or leased by the employer, performs the acts enumerated in
156 Subsections 61-2-2[~~(12)~~](15)(a) and (b);
- 157 (iii) a regular salaried employee of the owner of real estate who performs property
158 management services with reference to real estate owned by the employer, except that the
159 employee may only manage property for one employer;
- 160 (iv) a person who performs property management services for the apartments at which
161 that person resides in exchange for free or reduced rent on that person's apartment;
- 162 (v) a regular salaried employee of a condominium homeowners' association who
163 manages real property subject to the declaration of condominium that established the
164 homeowners' association, except that the employee may only manage property for one
165 condominium homeowners' association; and
- 166 (vi) a regular salaried employee of a licensed property management company who
167 performs support services, as prescribed by rule, for the property management company.
- 168 (b) Subsection (1)(a) does not exempt from licensing:
- 169 (i) an employee engaged in the sale of properties regulated under:
- 170 (A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; and
171 (B) Title 57, Chapter 19, Timeshare and Camp Resort Act;
- 172 (ii) an employee engaged in the sale of cooperative interests regulated under Title 57,
173 Chapter 23, Real Estate Cooperative Marketing Act; or
- 174 (iii) a person whose interest as an owner or lessor is obtained by that person or
175 transferred to that person for the purpose of evading the application of this chapter, and not for
176 any other legitimate business reason.
- 177 (2) A license under this chapter is not required for:
- 178 (a) an isolated transaction by a person holding a duly executed power of attorney from
179 the owner;
- 180 (b) services rendered by an attorney in performing the attorney's duties as an attorney;
- 181 (c) a receiver, trustee in bankruptcy, administrator, executor, or a person acting under
182 order of any court;

- 183 (d) a trustee or employee of a trustee under a deed of trust or a will;
- 184 (e) a public utility, officer of a public utility, or regular salaried employee of a public
185 utility, unless performance of any of the acts set out in Subsection 61-2-2[(12)](15) is in
186 connection with the sale, purchase, lease, or other disposition of real estate or investment in
187 real estate unrelated to the principal business activity of that public utility;
- 188 (f) a regular salaried employee or authorized agent working under the oversight of the
189 Department of Transportation when performing an act on behalf of the Department of
190 Transportation in connection with one or more of the following:
- 191 (i) the acquisition of real property pursuant to Section 72-5-103;
- 192 (ii) the disposal of real property pursuant to Section 72-5-111;
- 193 (iii) services that constitute property management; or
- 194 (iv) the leasing of real property;
- 195 (g) a regular salaried employee of a county, city, or town when performing an act on
196 behalf of the county, city, or town:
- 197 (i) in accordance with:
- 198 (A) if a regular salaried employee of a city or town:
- 199 (I) Title 10, Utah Municipal Code; or
- 200 (II) Title 11, Cities, Counties, and Local Taxing Units; and
- 201 (B) if a regular salaried employee of a county:
- 202 (I) Title 11, Cities, Counties, and Local Taxing Units; and
- 203 (II) Title 17, Counties; and
- 204 (ii) in connection with one or more of the following:
- 205 (A) the acquisition of real property, including by eminent domain;
- 206 (B) the disposal of real property;
- 207 (C) services that constitute property management; or
- 208 (D) the leasing of real property.
- 209 (3) A license under this chapter is not required for a person registered to act as a
210 broker-dealer, agent, or investment adviser under the Utah and federal securities laws in the
211 sale or the offer for sale of real estate if:
- 212 (a) (i) the real estate is a necessary element of a "security" as that term is defined by the
213 Securities Act of 1933 and the Securities Exchange Act of 1934; and

214 (ii) the security is registered for sale:
215 (A) pursuant to the Securities Act of 1933; or
216 (B) by Title 61, Chapter 1, Utah Uniform Securities Act; or
217 (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec.
218 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation
219 D, Rule 506, 17 C.F.R. Sec. 230.506; and

220 (ii) the selling agent and the purchaser are not residents of this state.

221 Section 3. Section **61-2-10** is amended to read:

222 **61-2-10. Restriction on commissions -- Affiliation with more than one broker --**
223 **Specialized licenses -- Designation of agents or brokers.**

224 (1) (a) Except as provided in Subsection (1)(b), an associate broker or sales agent may
225 not accept valuable consideration for the performance of an act specified in this chapter from a
226 person except the principal broker with whom the associate broker or sales agent is affiliated
227 and licensed.

228 (b) An associate broker or sales agent may receive valuable consideration for the
229 performance of an act specified in this chapter from a person other than the principal broker
230 with whom the associate broker or sales agent is affiliated if:

231 (i) the valuable consideration is paid with a payment instrument prepared by a title
232 insurance agent;

233 (ii) the title insurance agent provides the payment instrument to the principal broker;

234 (iii) the title insurance agent complies with the written instructions of the principal
235 broker:

236 (A) in preparing the payment instrument; and

237 (B) delivering the payment instrument to the principal broker; and

238 (iv) the principal broker directly delivers the payment instrument to the associate
239 broker or sales agent.

240 (c) The commission, with the concurrence of the division, shall make rules in
241 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

242 (i) defining what constitutes a "payment instrument" for purposes of this Subsection
243 (1); or

244 (ii) the form and contents of the written instructions required by Subsection (1)(b),

245 including providing that the contents of the written instructions indicate that the payment
246 instrument process is an assignment to the associate broker or sales agent by the principal
247 broker of a portion of the consideration the title insurance agent is obligated to pay the
248 principal broker.

249 (2) An inactive associate broker or sales agent may not conduct a real estate transaction
250 until the inactive associate broker or sales agent becomes affiliated with a licensed principal
251 broker and submits the required documentation to the division. An inactive principal broker
252 may not conduct a real estate transaction until the principal broker's license is activated with
253 the division.

254 (3) A sales agent or associate broker may not affiliate with more than one principal
255 broker at the same time.

256 (4) (a) Except as provided by rule, a principal broker may not be responsible for more
257 than one real estate brokerage at the same time.

258 (b) (i) In addition to issuing principal broker, associate broker, and sales agent licenses
259 authorizing the performance of all of the acts set forth in Subsection 61-2-2~~(12)~~(15), the
260 division may issue specialized sales licenses and specialized property management licenses
261 with the scope of practice limited to the specialty.

262 (ii) An individual may hold a specialized license in addition to a license to act as a
263 principal broker, an associate broker, or a sales agent.

264 (iii) The commission may adopt rules pursuant to Title 63G, Chapter 3, Utah
265 Administrative Procedures Act, for the administration of this Subsection (4), including:

- 266 (A) prelicensing and postlicensing education requirements;
267 (B) examination requirements;
268 (C) affiliation with real estate brokerages or property management companies; and
269 (D) other licensing procedures.

270 (c) An individual may not be a principal broker of a brokerage and a sales agent or
271 associate broker for a different brokerage at the same time.

272 (5) An owner, purchaser, lessor, or lessee who engages the services of a principal
273 broker may designate which sales agents or associate brokers affiliated with that principal
274 broker will also represent that owner, purchaser, lessor, or lessee in the purchase, sale, lease, or
275 exchange of real estate, or in exercising an option relating to real estate.

276 Section 4. Section **61-2-11** is amended to read:

277 **61-2-11. Grounds for disciplinary action.**

278 The following acts are unlawful for a person required to be licensed under this chapter:

279 (1) making a substantial misrepresentation;

280 (2) making a false promise of a character likely to influence, persuade, or induce;

281 (3) pursuing a continued and flagrant course of misrepresentation, or of making false
282 promises through agents, sales agents, advertising, or otherwise;

283 (4) acting for more than one party in a transaction without the informed consent of all
284 parties;

285 (5) (a) acting as an associate broker or sales agent while not licensed with a licensed
286 principal broker;

287 (b) representing or attempting to represent a broker other than the principal broker with
288 whom the person is affiliated; or

289 (c) representing as sales agent or having a contractual relationship similar to that of
290 sales agent with other than a licensed principal broker;

291 (6) (a) failing, within a reasonable time, to account for or to remit monies coming into
292 the person's possession that belong to others;

293 (b) commingling the monies described in Subsection (6)(a) with the person's own
294 monies; or

295 (c) diverting the monies described in Subsection (6)(a) from the purpose for which they
296 were received;

297 (7) paying or offering to pay valuable consideration, as defined by the commission, to a
298 person not licensed under this chapter, except that valuable consideration may be shared:

299 (a) with a licensed principal broker of another jurisdiction; or

300 (b) as provided under:

301 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;

302 (ii) Title 16, Chapter 11, Professional Corporation Act; or

303 (iii) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act;

304 (8) being unworthy or incompetent to act as a principal broker, associate broker, or
305 sales agent in such manner as to safeguard the interests of the public;

306 (9) failing to voluntarily furnish a copy of a document to all parties executing the

- 307 document;
- 308 (10) failing to keep and make available for inspection by the division a record of each
309 transaction, including:
- 310 (a) the names of buyers and sellers or lessees and lessors;
- 311 (b) the identification of the property;
- 312 (c) the sale or rental price;
- 313 (d) monies received in trust;
- 314 (e) agreements or instructions from buyers and sellers or lessees and lessors; and
- 315 (f) any other information required by rule;
- 316 (11) failing to disclose, in writing, in the purchase, sale, or rental of property, whether
317 the purchase, sale, or rental is made for that person or for an undisclosed principal;
- 318 (12) regardless of whether the crime is related to real estate, being convicted of a
319 criminal offense involving moral turpitude within five years of the most recent application,
320 including:
- 321 (a) a conviction based upon a plea of nolo contendere; or
- 322 (b) a plea held in abeyance to a criminal offense involving moral turpitude;
- 323 (13) advertising the availability of real estate or the services of a licensee in a false,
324 misleading, or deceptive manner;
- 325 (14) in the case of a principal broker or a licensee who is a branch manager, failing to
326 exercise reasonable supervision over the activities of the principal broker's or branch manager's
327 licensee or unlicensed staff;
- 328 (15) violating or disregarding:
- 329 (a) this chapter;
- 330 (b) an order of the commission; or
- 331 (c) the rules adopted by the commission and the division;
- 332 (16) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real
333 estate transaction;
- 334 (17) any other conduct which constitutes dishonest dealing;
- 335 (18) unprofessional conduct as defined by statute or rule;
- 336 (19) on the basis of misconduct in a professional capacity that relates to character,
337 honesty, integrity, or truthfulness, having one of the following suspended, revoked,

338 surrendered, or cancelled:

339 (a) a real estate license issued by another jurisdiction; or

340 (b) another professional license issued by this or another jurisdiction;

341 (20) failing to respond to a request by the division in an investigation authorized under
342 this chapter, including:

343 (a) failing to respond to a subpoena;

344 (b) withholding evidence; or

345 (c) failing to produce documents or records;

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

347 (a) providing a title insurance product or service without the approval required by
348 Section 31A-2-405; or

349 (b) knowingly providing false or misleading information in the statement required by
350 Subsection 31A-2-405(2); [~~or~~]

351 (22) violating an independent contractor agreement between a principal broker and a
352 sales agent as evidenced by a final judgment of a court[-];

353 (23) (a) engaging in a foreclosure rescue if not licensed under this chapter;

354 (b) engaging in an act of loan modification assistance that requires licensure as a
355 mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing Act,
356 without being licensed under that chapter;

357 (c) requesting or requiring a person to pay a fee ~~H→~~ [~~before engaging in an act of~~
358 foreclosure rescue] ~~←H~~ if ~~H→~~ ;

358a (i) ~~←H~~ the person is required to ~~H→~~ pay the fee before entering into a written
358b agreement specifying what one or more acts of foreclosure rescue will be completed if the fee
358c is paid; or

358d (ii) in a case when the financing that is the subject of the foreclosure rescue is foreclosed
358e within one year from the day on which the person enters into a written agreement, the person
358f is required to ~~←H~~ forfeit the fee ~~H→~~ [~~if the act is unsuccessful;~~] for any reason. ~~←H~~

359 (d) inducing a person who is at risk of foreclosure to hire the licensee to engage in an
360 act of foreclosure rescue by:

361 (i) suggesting to the person that the licensee has a special relationship with the person's
362 lender or loan servicer; or

363 (ii) falsely representing or advertising that the licensee is acting on behalf of:

364 (A) a government agency;

365 (B) the person's lender or loan servicer; or

366 (C) a nonprofit or charitable institution; or

367 (e) recommending or participating in a foreclosure rescue that requires a person to:

368 (i) transfer title to real property to the licensee or to a third party with whom the

369 licensee has a business relationship or financial interest;
370 (ii) make a mortgage payment to a person other than the person's loan servicer; or
371 (iii) refrain from contacting the person's:
372 (A) lender;
373 (B) loan servicer;
374 (C) attorney;
375 (D) credit counselor; or
376 (E) housing counselor; or
377 (24) for an agreement for foreclosure rescue entered into on or after May 11, 2010,
378 engaging in an act of foreclosure rescue without offering in writing to the person entering into
379 the agreement for foreclosure rescue a right to cancel the agreement within three business days
380 after the day on which the person enters the agreement.

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

382 **61-2c-102. Definitions.**

383 (1) As used in this chapter:

384 (a) "Affiliate" means a person who directly, or indirectly through one or more
385 intermediaries, controls or is controlled by, or is under common control with, a specified
386 individual or entity.

387 (b) "Applicant" means a person applying for a license under this chapter.

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

390 (d) "Associate lending manager" means an individual who:

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

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

394 (e) "Branch office" means a licensed entity's office:

395 (i) for the transaction of the business of residential mortgage loans regulated under this
396 chapter;

397 (ii) other than the main office of the licensed entity; and

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

399 (f) "Business day" means a day other than:

- 400 (i) a Saturday;
- 401 (ii) a Sunday; or
- 402 (iii) a federal or state holiday.
- 403 [~~(f)~~] (g) (i) "Business of residential mortgage loans" means for compensation or in the
- 404 expectation of compensation to:
 - 405 (A) engage in an act that makes an individual a loan originator;
 - 406 (B) make or originate a residential mortgage loan;
 - 407 (C) directly or indirectly solicit a residential mortgage loan for another; [~~or~~]
 - 408 (D) unless excluded under Subsection (1)[~~(f)~~](g)(ii), render services related to the
 - 409 origination of a residential mortgage loan including:
 - 410 (I) preparing a loan package;
 - 411 (II) communicating with the borrower and lender; or
 - 412 (III) advising on a loan term[-]; or
 - 413 (E) engage in loan modification assistance.
- 414 (ii) "Business of residential mortgage loans" does not include:
 - 415 (A) if working as an employee under the direction of and subject to the supervision and
 - 416 instruction of a person licensed under this chapter, the performance of a clerical or support duty
 - 417 such as:
 - 418 (I) the receipt, collection, or distribution of information common for the processing or
 - 419 underwriting of a loan in the mortgage industry other than taking an application;
 - 420 (II) communicating with a consumer to obtain information necessary for the processing
 - 421 or underwriting of a residential mortgage loan;
 - 422 (III) word processing;
 - 423 (IV) sending correspondence; or
 - 424 (V) assembling files;
 - 425 (B) ownership of an entity that engages in the business of residential mortgage loans if
 - 426 the owner does not personally perform the acts listed in Subsection (1)[~~(f)~~](g)(i); or
 - 427 (C) except if an individual will engage in an activity as a loan originator, acting in one
 - 428 or more of the following capacities:
 - 429 (I) a loan wholesaler;
 - 430 (II) an account executive for a loan wholesaler;

431 (III) a loan underwriter;
432 (IV) a loan closer; or
433 (V) funding a loan~~[-];~~ or
434 (D) if employed by a person who owns or services an exiting residential mortgage loan,
435 as defined in Section 70D-2-102, the direct negotiation with the borrower for the purpose of
436 loan modification.

437 ~~[(g)]~~ (h) "Certified education provider" means a person who is certified under Section
438 61-2c-204.1 to provide one or more of the following:

439 (i) prelicensing education; or
440 (ii) continuing education.

441 ~~[(h)]~~ (i) "Closed-end" means a loan:

442 (i) with a fixed amount borrowed; and
443 (ii) that does not permit additional borrowing secured by the same collateral.

444 ~~[(i)]~~ (j) "Commission" means the Residential Mortgage Regulatory Commission
445 created in Section 61-2c-104.

446 ~~[(j)]~~ (k) "Compensation" means anything of economic value that is paid, loaned,
447 granted, given, donated, or transferred to an individual or entity for or in consideration of:

448 (i) services;
449 (ii) personal or real property; or
450 (iii) another thing of value.

451 ~~[(k)]~~ (l) "Continuing education" means education taken by an individual licensed under
452 this chapter in order to meet the education requirements imposed by Sections 61-2c-204.1 and
453 61-2c-205 to renew a license under this chapter.

454 ~~[(l)]~~ (m) "Control," as used in Subsection (1)(a), means the power to directly or
455 indirectly:

456 (i) direct or exercise a controlling interest over:

457 (A) the management or policies of an entity; or

458 (B) the election of a majority of the directors, officers, managers, or managing partners
459 of an entity;

460 (ii) vote 20% or more of a class of voting securities of an entity by an individual; or

461 (iii) vote more than 5% of a class of voting securities of an entity by another entity.

462 ~~[(m)]~~ (n) "Depository institution" is as defined in Section 7-1-103.
463 ~~[(n)]~~ (o) "Director" means the director of the division.
464 ~~[(o)]~~ (p) "Division" means the Division of Real Estate.
465 ~~[(p)]~~ (q) "Dwelling" means a residential structure attached to real property that contains
466 one to four units including any of the following if used as a residence:
467 (i) a condominium unit;
468 (ii) a cooperative unit;
469 (iii) a manufactured home; or
470 (iv) a house.
471 ~~[(q)]~~ (r) "Entity" means:
472 (i) a corporation;
473 (ii) a limited liability company;
474 (iii) a partnership;
475 (iv) a company;
476 (v) an association;
477 (vi) a joint venture;
478 (vii) a business trust;
479 (viii) a trust; or
480 (ix) another organization.
481 ~~[(r)]~~ (s) "Executive director" means the executive director of the Department of
482 Commerce.
483 (t) "Foreclosure rescue" means, for compensation or with the expectation of receiving
484 valuable consideration, to engage in an act that:
485 (i) the person represents will assist a borrower in preventing a foreclosure; and
486 (ii) relates to a transaction involving the transfer of title to residential real property.
487 ~~[(s)]~~ (u) "Inactive status" means a dormant status into which an unexpired license is
488 placed when the holder of the license is not currently engaging in the business of residential
489 mortgage loans.
490 ~~[(t)]~~ (v) "Licensee" means a person licensed with the division under this chapter.
491 ~~[(u)]~~ (w) "Licensing examination" means the examination required by Section
492 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

493 (x) "Loan modification assistance" means to act or offer to act on behalf of a person to:
 494 (i) obtain a loan term of a residential mortgage loan that is different from an existing
 495 loan term including:

496 (A) an increase or decrease in an interest rate;

497 (B) a change to the type of interest rate;

498 (C) an increase or decrease in the principal amount of the residential mortgage loan;

499 (D) a change in the number of required period payments;

500 (E) an addition of collateral;

501 (F) a change to, or addition of, a prepayment penalty;

502 (G) an addition of a cosigner; or

503 (H) a change in persons obligated under the existing residential mortgage loan; or

504 (ii) substitute a new residential mortgage loan for an existing residential mortgage loan.

505 ~~(w)~~ (y) (i) Except as provided in Subsection (1)~~(w)~~(y)(ii), "loan originator" means an
 506 individual who for compensation or in expectation of compensation:

507 (A) takes a residential mortgage loan application; or

508 (B) offers or negotiates terms of a residential mortgage loan~~;~~ for the purpose of:

509 (I) a purchase;

510 (II) a refinance;

511 (III) loan modification assistance; or

512 (IV) a foreclosure rescue.

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

514 (A) is described in Subsection (1)~~(w)~~(y)(i), but who performs exclusively

515 administrative or clerical tasks as described in Subsection (1)~~(f)~~(g)(ii)(A);

516 (B) unless compensated by a lender, a principal lending manager, or an agent of a
 517 lender or principal lending manager:

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

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

520 (C) is solely involved in extension of credit relating to a timeshare plan, as defined in
 521 11 U.S.C. Sec. 101(53D).

522 ~~(w)~~ (z) "Mortgage officer" means an individual who is licensed with the division to
 523 transact the business of residential mortgage loans through a principal lending manager.

524 [~~(x)~~] (aa) "Nationwide database" means the Nationwide Mortgage Licensing System
525 and Registry, authorized under Secure and Fair Enforcement for Mortgage Licensing, 12
526 U.S.C. Sec. 5101, et seq.

527 [~~(y)~~] (bb) "Nontraditional mortgage product" means a mortgage product other than a
528 30-year fixed rate mortgage.

529 [~~(z)~~] (cc) "Person" means an individual or entity.

530 [~~(aa)~~] (dd) "Prelicensing education" means education taken by an individual seeking to
531 be licensed under this chapter in order to meet the education requirements imposed by Section
532 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

533 [~~(bb)~~] (ee) (i) "Principal lending manager" means an individual licensed as a principal
534 lending manager under Section 61-2c-206 to transact the business of residential mortgage
535 loans.

536 (ii) An individual licensed as a principal lending manager may transact the business of
537 residential mortgage loans as a mortgage officer.

538 [~~(cc)~~] (ff) "Record" means information that is:

539 (i) prepared, owned, received, or retained by a person; and

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

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

542 (II) retrievable in perceivable form.

543 [~~(dd)~~] (gg) "Residential mortgage loan" means an extension of credit, if:

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

545 (A) mortgage;

546 (B) deed of trust; or

547 (C) consensual security interest;

548 (ii) the mortgage, deed of trust, or consensual security interest described in Subsection

549 (1)[~~(dd)~~](gg)(i):

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

551 (B) is created with the consent of the owner of the residential real property; and

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

554 [~~(ee)~~] (hh) "State" means:

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

556 (ii) the District of Columbia; or

557 (iii) the Commonwealth of Puerto Rico.

558 [~~(ff)~~] (ii) "Unique identifier" is as defined in 12 U.S.C. Sec. 5102.

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

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

564 Section 6. Section **61-2c-301** is amended to read:

565 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

566 (1) A person transacting the business of residential mortgage loans in this state may
567 not:

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

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

571 (i) that is excessive; or

572 (ii) if the person does not comply with Section 70D-2-305;

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

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

577 (i) make a false statement or representation;

578 (ii) cause false documents to be generated; or

579 (iii) knowingly permit false information to be submitted by any party;

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

- 586 (f) violate or not comply with:
- 587 (i) this chapter;
- 588 (ii) an order of the commission or division; or
- 589 (iii) a rule made by the division;
- 590 (g) fail to respond within the required time period to:
- 591 (i) a notice or complaint of the division; or
- 592 (ii) a request for information from the division;
- 593 (h) make false representations to the division, including in a licensure statement;
- 594 (i) for a residential mortgage loan transaction beginning on or after January 1, 2004,
- 595 engage in the business of residential mortgage loans with respect to the transaction if the
- 596 person also acts in any of the following capacities with respect to the same residential mortgage
- 597 loan transaction:
- 598 (i) appraiser;
- 599 (ii) escrow agent;
- 600 (iii) real estate agent;
- 601 (iv) general contractor; or
- 602 (v) title insurance agent;
- 603 (j) order a title insurance report or hold a title insurance policy unless the person
- 604 provides to the title insurer a copy of a valid, current license under this chapter;
- 605 (k) engage in unprofessional conduct as defined by rule;
- 606 (l) engage in an act or omission in transacting the business of residential mortgage
- 607 loans that constitutes dishonesty, fraud, or misrepresentation;
- 608 (m) engage in false or misleading advertising;
- 609 (n) (i) fail to account for monies received in connection with a residential mortgage
- 610 loan;
- 611 (ii) use monies for a different purpose from the purpose for which the monies are
- 612 received; or
- 613 (iii) except as provided in Subsection (4), retain monies paid for services if the services
- 614 are not performed;
- 615 (o) fail, within 90 calendar days of a request from a borrower who has paid for an
- 616 appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;

- 617 (p) engage in an act that is performed to:
- 618 (i) evade this chapter; or
- 619 (ii) assist another person to evade this chapter;
- 620 (q) recommend or encourage default, delinquency, or continuation of an existing
- 621 default or delinquency, by a mortgage applicant on an existing indebtedness before the closing
- 622 of a residential mortgage loan that will refinance all or part of the indebtedness;
- 623 (r) in the case of the principal lending manager of an entity or a branch office of an
- 624 entity, fail to exercise reasonable supervision over the activities of:
- 625 (i) unlicensed staff; and
- 626 (ii) a mortgage officer who is licensed with the principal lending manager;
- 627 (s) pay or offer to pay an individual who does not hold a license under this chapter for
- 628 work that requires the individual to hold a license under this chapter;
- 629 (t) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
- 630 (i) provide a title insurance product or service without the approval required by Section
- 631 31A-2-405; or
- 632 (ii) knowingly provide false or misleading information in the statement required by
- 633 Subsection 31A-2-405(2); ~~or~~
- 634 (u) represent to the public that the person can or will perform any act of a loan
- 635 originator if that person is not licensed under this chapter because the person is exempt under
- 636 Subsection 61-2c-102(1)~~(f)~~(g)(ii)(A), including through:
- 637 (i) advertising;
- 638 (ii) a business card;
- 639 (iii) stationary;
- 640 (iv) a brochure;
- 641 (v) a sign;
- 642 (vi) a rate list; or
- 643 (vii) other promotional item~~[-]; or~~
- 644 (v) (i) engage in an act of loan modification assistance without being licensed under
- 645 this chapter;
- 646 (ii) engage in an act of foreclosure rescue that requires licensure as a real estate agent
- 647 or real estate broker under Chapter 2, Division of Real Estate, without being licensed under

648 that chapter;

649 (iii) request or require a person to pay a fee ~~H→~~ [before engaging in an act of loan
 650 modification assistance] ~~←H~~ if ~~H→~~ ;

650a (A) ~~←H~~ the person is required to ~~H→~~ pay the fee before entering into a written
 650b agreement specifying what one or more acts of loan modification assistance will be completed
 650c if the fee is paid; or

650d (B) in a case when the residential mortgage loan that is the subject of the loan
 650e modification assistance is foreclosed within one year of the day on which the person enters into
 650f a written agreement, the person is required to ~~←H~~ forfeit the fee ~~H→~~ [if the act is unsuccessful;]
 650g for any reason. ~~←H~~

651 (iv) induce a person seeking a loan modification to hire the licensee to engage in an act
 652 of loan modification assistance by:

653 (A) suggesting to the person that the licensee has a special relationship with the
 654 person's lender or loan servicer; or

655 (B) falsely representing or advertising that the licensee is acting on behalf of:

656 (I) a government agency;

657 (II) the person's lender or loan servicer; or

658 (III) a nonprofit or charitable institution;

659 (v) recommend or participate in a loan modification that requires a person to:

660 (A) transfer title to real property to the licensee or to a third party with whom the
 661 licensee has a business relationship or financial interest;

662 (B) make a mortgage payment to a person other than the person's loan servicer; or

663 (C) refrain from contacting the person's:

664 (I) lender;

665 (II) loan servicer;

666 (III) attorney;

667 (IV) credit counselor; or

668 (V) housing counselor; or

669 (vi) for an agreement for loan modification assistance entered into on or after May 11,
 670 2010, engage in an act of loan modification assistance without offering in writing to the person
 671 entering into the agreement for loan modification assistance a right to cancel the agreement
 672 within three business days after the day on which the person enters the agreement.

673 (2) Whether or not the crime is related to the business of residential mortgage loans, it
 674 is a violation of this chapter for a licensee or a person who is a certified education provider to
 675 do any of the following with respect to a criminal offense that involves moral turpitude:

676 (a) be convicted;

677 (b) plead guilty or nolo contendere;

678 (c) enter a plea in abeyance; or

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

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

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

684 (i) this chapter; or

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

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

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

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

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

693 (4) Notwithstanding Subsection (1)(n)(iii), a licensee may, upon compliance with
694 Section 70D-2-305, charge a reasonable cancellation fee for work done originating a mortgage
695 if the mortgage is not closed.

Legislative Review Note

as of 11-18-09 3:03 PM

Office of Legislative Research and General Counsel

H.B. 53 - Foreclosure Rescue and Loan Modification Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.
