

1 **MORTGAGE AND REAL ESTATE LICENSURE EXEMPTIONS**
2 **FOR ATTORNEYS**

3 2011 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: LaVar Christensen**

6 Senate Sponsor: John L. Valentine

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions related to licensing by the Division of Real Estate to
11 address exemptions from licensure for attorneys.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ addresses the licensure exemption related to residential mortgage loans and an
15 attorney;
- 16 ▶ addresses the licensure exemption related to real estate and an attorney; and
- 17 ▶ makes technical and conforming amendments.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **61-2c-105**, as last amended by Laws of Utah 2010, Chapter 379

25 **61-2f-202**, as last amended by Laws of Utah 2010, Chapter 184 and renumbered and
26 amended by Laws of Utah 2010, Chapter 379

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

29 Section 1. Section **61-2c-105** is amended to read:

30 **61-2c-105. Scope of chapter -- Exemptions.**

31 (1) (a) Except as to an individual who will engage in an activity as a mortgage loan
32 originator, this chapter applies to a closed-end residential mortgage loan secured by a first lien
33 or equivalent security interest on a dwelling.

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

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

37 (a) the federal government;

38 (b) a state;

39 (c) a political subdivision of a state;

40 (d) an agency of or entity created by a governmental entity described in Subsections
41 (2)(a) through (c) including:

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

44 (ii) the Federal National Mortgage Corporation;

45 (iii) the Federal Home Loan Mortgage Corporation;

46 (iv) the Federal Deposit Insurance Corporation;

47 (v) the Resolution Trust Corporation;

48 (vi) the Government National Mortgage Association;

49 (vii) the Federal Housing Administration;

50 (viii) the National Credit Union Administration;

51 (ix) the Farmers Home Administration; and

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

53 (e) a depository institution;

54 (f) an entity that controls, is controlled by, or is under common control with a
55 depository institution;

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

57 (i) when that person acts on behalf of the entity described in Subsections (2)(a) through

58 (f); and
59 (ii) including an employee of:
60 (A) a depository institution;
61 (B) a subsidiary of a depository institution that is:
62 (I) owned and controlled by the depository institution; and
63 (II) regulated by a federal banking agency, as defined in 12 U.S.C. Sec. 5102; or
64 (C) an institution regulated by the Farm Credit Administration;
65 (h) except as provided in Subsection (3), a person who:
66 (i) makes a loan:
67 (A) secured by an interest in real property;
68 (B) with the person's own money; and
69 (C) for the person's own investment; and
70 (ii) that does not engage in the business of making loans secured by an interest in real
71 property;
72 (i) except as provided in Subsection (3), a person who receives a mortgage, deed of
73 trust, or consensual security interest on real property if the individual or entity:
74 (i) is the seller of real property; and
75 (ii) receives the mortgage, deed of trust, or consensual security interest on real property
76 as security for a separate money obligation;
77 (j) a person who receives a mortgage, deed of trust, or consensual security interest on
78 real property if:
79 (i) the person receives the mortgage, deed of trust, or consensual security interest as
80 security for an obligation payable on an installment or deferred payment basis;
81 (ii) the obligation described in Subsection (2)(j)(i) arises from a person providing
82 materials or services used in the improvement of the real property that is the subject of the
83 mortgage, deed of trust, or consensual security interest; and
84 (iii) the mortgage, deed of trust, or consensual security interest is created without the
85 consent of the owner of the real property that is the subject of the mortgage, deed of trust, or

86 consensual security interest;

87 (k) a nonprofit corporation that:

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

89 (ii) is certified by the United States Small Business Administration as a small business

90 investment company;

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

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

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

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

95 (i) if the attorney is not principally engaged in the business of negotiating residential

96 mortgage loans when considering the attorney's ordinary practice as a whole for all the

97 attorney's clients; and

98 (ii) when the attorney [~~renders services~~] engages in loan modification assistance in the

99 course of the attorney's practice as an attorney.

100 (3) An individual who will engage in an activity as a mortgage loan originator is

101 exempt from this chapter only if the individual is an employee or agent exempt under

102 Subsection (2)(g).

103 (4) (a) Notwithstanding Subsection (2)(m), an attorney exempt from this chapter may

104 not engage in conduct described in Section 61-2c-301 when transacting business of residential

105 mortgage loans.

106 (b) If an attorney exempt from this chapter violates Subsection (4)(a), the attorney:

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

108 (ii) [~~is~~] may be subject to disciplinary action generally applicable to an attorney

109 admitted to practice law in this state.

110 (c) If the division receives a complaint alleging an attorney exempt from this chapter is

111 in violation of Subsection (4)(a) or that an attorney subject to this chapter has violated this

112 chapter, the division shall forward the complaint to the Utah State Bar for disciplinary action.

113 (5) (a) An individual who is exempt under Subsection (2) or (3) may voluntarily obtain

114 a license under this chapter by complying with Part 2, Licensure.

115 (b) An individual who voluntarily obtains a license pursuant to this Subsection (5)
116 shall comply with all the provisions of this chapter.

117 Section 2. Section **61-2f-202** is amended to read:

118 **61-2f-202. Exempt persons and transactions.**

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

121 (i) an individual who as owner or lessor performs an act described in Subsection
122 61-2f-102(17) with reference to real estate owned or leased by that individual;

123 (ii) a regular salaried employee of the owner or lessor of real estate who, with reference
124 to nonresidential real estate owned or leased by the employer, performs an act described in
125 Subsection 61-2f-102(17)(a) or (b);

126 (iii) a regular salaried employee of the owner of real estate who performs property
127 management services with reference to real estate owned by the employer, except that the
128 employee may only manage real estate for one employer;

129 (iv) an individual who performs property management services for the apartments at
130 which that individual resides in exchange for free or reduced rent on that individual's
131 apartment;

132 (v) a regular salaried employee of a condominium homeowners' association who
133 manages real estate subject to the declaration of condominium that established the
134 condominium homeowners' association, except that the employee may only manage real estate
135 for one condominium homeowners' association; and

136 (vi) a regular salaried employee of a licensed property management company who
137 performs support services, as prescribed by rule, for the property management company.

138 (b) Subsection (1)(a) does not exempt from licensing:

139 (i) an employee engaged in the sale of real estate regulated under:

140 (A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; and

141 (B) Title 57, Chapter 19, Timeshare and Camp Resort Act;

142 (ii) an employee engaged in the sale of cooperative interests regulated under Title 57,
143 Chapter 23, Real Estate Cooperative Marketing Act; or

144 (iii) an individual whose interest as an owner or lessor is obtained by that individual or
145 transferred to that individual for the purpose of evading the application of this chapter, and not
146 for another legitimate business reason.

147 (2) A license under this chapter is not required for:

148 (a) an isolated transaction by an individual holding a duly executed power of attorney
149 from an owner;

150 (b) services rendered by an attorney admitted to practice law in this state in performing
151 the attorney's duties as an attorney;

152 (c) a receiver, trustee in bankruptcy, administrator, executor, or an individual acting
153 under order of a court;

154 (d) a trustee or employee of a trustee under a deed of trust or a will;

155 (e) a public utility, officer of a public utility, or regular salaried employee of a public
156 utility, unless performance of an act described in Subsection 61-2f-102(17) is in connection
157 with the sale, purchase, lease, or other disposition of real estate or investment in real estate
158 unrelated to the principal business activity of that public utility;

159 (f) a regular salaried employee or authorized agent working under the oversight of the
160 Department of Transportation when performing an act on behalf of the Department of
161 Transportation in connection with one or more of the following:

162 (i) the acquisition of real estate pursuant to Section 72-5-103;

163 (ii) the disposal of real estate pursuant to Section 72-5-111;

164 (iii) services that constitute property management; or

165 (iv) the leasing of real estate; and

166 (g) a regular salaried employee of a county, city, or town when performing an act on
167 behalf of the county, city, or town:

168 (i) in accordance with:

169 (A) if a regular salaried employee of a city or town:

- 170 (I) Title 10, Utah Municipal Code; or
- 171 (II) Title 11, Cities, Counties, and Local Taxing Units; and
- 172 (B) if a regular salaried employee of a county:
- 173 (I) Title 11, Cities, Counties, and Local Taxing Units; and
- 174 (II) Title 17, Counties; and
- 175 (ii) in connection with one or more of the following:
- 176 (A) the acquisition of real estate, including by eminent domain;
- 177 (B) the disposal of real estate;
- 178 (C) services that constitute property management; or
- 179 (D) the leasing of real estate.
- 180 (3) A license under this chapter is not required for an individual registered to act as a
- 181 broker-dealer, agent, or investment adviser under the Utah and federal securities laws in the
- 182 sale or the offer for sale of real estate if:
- 183 (a) (i) the real estate is a necessary element of a "security" as that term is defined by the
- 184 Securities Act of 1933 and the Securities Exchange Act of 1934; and
- 185 (ii) the security is registered for sale in accordance with:
- 186 (A) the Securities Act of 1933; or
- 187 (B) Title 61, Chapter 1, Utah Uniform Securities Act; or
- 188 (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec.
- 189 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation
- 190 D, Rule 506, 17 C.F.R. Sec. 230.506; and
- 191 (ii) the selling agent and the purchaser are not residents of this state.