

SAFE ACT EXEMPTIONS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad M. Daw

Senate Sponsor: Daniel Hemmert

LONG TITLE

General Description:

This bill amends the Utah Residential Mortgage Practices and Licensing Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ exempts certain nonprofit corporations from licensing requirements under the Utah Residential Mortgage Practices and Licensing Act; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

61-2c-102, as last amended by Laws of Utah 2017, Chapter 182

61-2c-105, as last amended by Laws of Utah 2017, Chapter 182

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

Section 1. Section **61-2c-102** is amended to read:

61-2c-102. Definitions.

(1) As used in this chapter:

(a) "Affiliation" means that a mortgage loan originator is associated with a principal

30 lending manager in accordance with Section [61-2c-209](#).

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

32 (c) "Approved examination provider" means a person approved by the nationwide
33 database or by the division as an approved test provider.

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

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

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

38 (e) "Balloon payment" means a required payment in a mortgage transaction that:

39 (i) results in a greater reduction in the principle of the mortgage than a regular
40 installment payment; and

41 (ii) is made during or at the end of the term of the loan.

42 ~~(e)~~ (f) "Branch lending manager" means an individual who is:

43 (i) licensed as a lending manager; and

44 (ii) designated in the nationwide database by the individual's sponsoring entity as being
45 responsible to work from a branch office and to supervise the business of residential mortgage
46 loans that is conducted at the branch office.

47 ~~(f)~~ (g) "Branch office" means a licensed entity's office:

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

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

51 (iii) that operates under:

52 (A) the same business name as the licensed entity; or

53 (B) another trade name that is registered with the division under the entity license.

54 ~~(g)~~ (h) "Business day" means a day other than:

55 (i) a Saturday;

56 (ii) a Sunday; or

57 (iii) a federal or state holiday.

58 ~~(h)~~ (i) "Business of residential mortgage loans" means for compensation or in the
59 expectation of compensation to:

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

61 (B) make or originate a residential mortgage loan;

62 (C) directly or indirectly solicit a residential mortgage loan for another;

63 (D) unless exempt under Section 61-2c-105 or excluded under Subsection

64 (1)~~(h)~~(i)(ii), render services related to the origination of a residential mortgage loan including:

65 (I) preparing a loan package;

66 (II) communicating with the borrower or lender;

67 (III) advising on a loan term;

68 (IV) receiving, collecting, or distributing information common for the processing or
69 underwriting of a loan in the mortgage industry; or

70 (V) communicating with a consumer to obtain information necessary for the processing
71 or underwriting of a residential mortgage loan; or

72 (E) engage in loan modification assistance.

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

74 (A) ownership of an entity that engages in the business of residential mortgage loans if
75 the owner does not personally perform the acts listed in Subsection (1)~~(h)~~(i)(i);

76 (B) acting in one or more of the following capacities:

77 (I) a loan wholesaler;

78 (II) an account executive for a loan wholesaler;

79 (III) a loan closer; or

80 (IV) funding a loan; or

81 (C) if employed by a person who owns or services an existing residential mortgage
82 loan, the direct negotiation with the borrower for the purpose of loan modification.

83 ~~(i)~~ (j) "Certified education provider" means a person who is certified under Section
84 61-2c-204.1 to provide one or more of the following:

85 (i) Utah-specific prelicensing education; or

86 (ii) Utah-specific continuing education.

87 [~~(j)~~] (k) "Closed-end" means a loan:

88 (i) with a fixed amount borrowed; and

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

90 [~~(k)~~] (l) "Commission" means the Residential Mortgage Regulatory Commission
91 created in Section [61-2c-104](#).

92 [~~(l)~~] (m) "Community development financial institution" means the same as that term
93 is defined in 12 U.S.C. Sec. 4702.

94 [~~(m)~~] (n) "Compensation" means anything of economic value that is paid, loaned,
95 granted, given, donated, or transferred to an individual or entity for or in consideration of:

96 (i) services;

97 (ii) personal or real property; or

98 (iii) another thing of value.

99 [~~(n)~~] (o) "Concurrence" means that entities given a concurring role must jointly agree
100 for the action to be taken.

101 [~~(o)~~] (p) "Continuing education" means education taken by an individual licensed
102 under this chapter in order to meet the education requirements imposed by Sections
103 [61-2c-204.1](#) and [61-2c-205](#) to renew a license under this chapter.

104 [~~(p)~~] (q) "Control," as used in Subsection [61-2c-105\(2\)\(f\)](#), means the power to directly
105 or indirectly:

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

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

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

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

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

112 [~~(q)~~] (r) (i) "Control person" means an individual identified by an entity registered with
113 the nationwide database as being an individual directing the management or policies of the

114 entity.

115 (ii) "Control person" may include one of the following who is identified as provided in

116 Subsection (1)~~(r)~~(r)(i):

117 (A) a manager;

118 (B) a managing partner;

119 (C) a director;

120 (D) an executive officer; or

121 (E) an individual who performs a function similar to an individual listed in this

122 Subsection (1)~~(r)~~(r)(ii).

123 ~~(r)~~ (s) "Depository institution" means the same as that term is defined in Section

124 7-1-103.

125 ~~(s)~~ (t) "Director" means the director of the division.

126 ~~(t)~~ (u) "Division" means the Division of Real Estate.

127 ~~(u)~~ (v) "Dwelling" means a residential structure attached to real property that contains

128 one to four family units including any of the following if used as a residence:

129 (i) a condominium unit;

130 (ii) a cooperative unit;

131 (iii) a manufactured home; or

132 (iv) a house.

133 ~~(v)~~ (w) "Employee":

134 (i) means an individual:

135 (A) whose manner and means of work performance are subject to the right of control

136 of, or are controlled by, another person; and

137 (B) whose compensation for federal income tax purposes is reported, or is required to

138 be reported, on a W-2 form issued by the controlling person; and

139 (ii) does not include an independent contractor who performs duties other than at the

140 direction of, and subject to the supervision and instruction of, another person.

141 ~~(w)~~ (x) "Entity" means:

- 142 (i) a corporation;
- 143 (ii) a limited liability company;
- 144 (iii) a partnership;
- 145 (iv) a company;
- 146 (v) an association;
- 147 (vi) a joint venture;
- 148 (vii) a business trust;
- 149 (viii) a trust; or
- 150 (ix) another organization.

151 ~~[(x)]~~ (y) "Executive director" means the executive director of the Department of
152 Commerce.

153 ~~[(y)]~~ (z) "Federal licensing requirements" means Secure and Fair Enforcement for
154 Mortgage Licensing, 12 U.S.C. Sec. 5101 et seq.

155 ~~[(z)]~~ (aa) "Foreclosure rescue" means, for compensation or with the expectation of
156 receiving valuable consideration, to:

- 157 (i) engage, or offer to engage, in an act that:
 - 158 (A) the person represents will assist a borrower in preventing a foreclosure; and
 - 159 (B) relates to a transaction involving the transfer of title to residential real property; or
- 160 (ii) as an employee or agent of another person:
 - 161 (A) solicit, or offer that the other person will engage in an act described in Subsection
 - 162 (1)~~[(z)]~~(aa)(i); or
 - 163 (B) negotiate terms in relationship to an act described in Subsection (1)~~[(z)]~~(aa)(i).

164 ~~[(aa)]~~ (bb) "Inactive status" means a dormant status into which an unexpired license is
165 placed when the holder of the license is not currently engaging in the business of residential
166 mortgage loans.

167 ~~[(bb)]~~ (cc) "Lending manager" means an individual licensed as a lending manager
168 under Section [61-2c-206](#) to transact the business of residential mortgage loans.

169 ~~[(cc)]~~ (dd) "Licensee" means a person licensed with the division under this chapter.

170 ~~(dd)~~ (ee) "Licensing examination" means the examination required by Section
171 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

172 ~~(ee)~~ (ff) "Loan modification assistance" means, for compensation or with the
173 expectation of receiving valuable consideration, to:

174 (i) act, or offer to act, on behalf of a person to:

175 (A) obtain a loan term of a residential mortgage loan that is different from an existing
176 loan term including:

177 (I) an increase or decrease in an interest rate;

178 (II) a change to the type of interest rate;

179 (III) an increase or decrease in the principal amount of the residential mortgage loan;

180 (IV) a change in the number of required period payments;

181 (V) an addition of collateral;

182 (VI) a change to, or addition of, a prepayment penalty;

183 (VII) an addition of a cosigner; or

184 (VIII) a change in persons obligated under the existing residential mortgage loan; or

185 (B) substitute a new residential mortgage loan for an existing residential mortgage
186 loan; or

187 (ii) as an employee or agent of another person:

188 (A) solicit, or offer that the other person will engage in an act described in Subsection
189 (1)~~(ee)~~(ff)(i); or

190 (B) negotiate terms in relationship to an act described in Subsection (1)~~(ee)~~(ff)(i).

191 ~~(ff)~~ (gg) (i) "Mortgage loan originator" means an individual who, for compensation or
192 in expectation of compensation:

193 (A) (I) takes a residential mortgage loan application;

194 (II) offers or negotiates terms of a residential mortgage loan for the purpose of:

195 (Aa) a purchase;

196 (Bb) a refinance;

197 (Cc) a loan modification assistance; or

198 (Dd) a foreclosure rescue; or
 199 (III) directly or indirectly solicits a residential mortgage loan for another person; and
 200 (B) is licensed as a mortgage loan originator in accordance with this chapter.
 201 (ii) "Mortgage loan originator" does not include a person who:
 202 (A) is described in Subsection (1)[~~(ff)~~](gg)(i), but who performs exclusively
 203 administrative or clerical tasks as described in Subsection (1)[~~(ff)~~](i)(ii)(A);
 204 (B) (I) is licensed under Chapter 2f, Real Estate Licensing and Practices Act;
 205 (II) performs only real estate brokerage activities; and
 206 (III) receives no compensation from:
 207 (Aa) a lender;
 208 (Bb) a lending manager; or
 209 (Cc) an agent of a lender or lending manager; or
 210 (C) is solely involved in extension of credit relating to a timeshare plan, as defined in
 211 11 U.S.C. Sec. 101(53D).
 212 [~~(gg)~~] (hh) "Nationwide database" means the Nationwide Mortgage Licensing System
 213 and Registry, authorized under federal licensing requirements.
 214 [~~(hh)~~] (ii) "Nontraditional mortgage product" means a mortgage product other than a
 215 30-year fixed rate mortgage.
 216 [~~(ii)~~] (jj) "Person" means an individual or entity.
 217 [~~(jj)~~] (kk) "Prelicensing education" means education taken by an individual seeking to
 218 be licensed under this chapter in order to meet the education requirements imposed by Section
 219 [61-2c-204.1](#) or [61-2c-206](#) for an individual to obtain a license under this chapter.
 220 [~~(kk)~~] (ll) "Principal lending manager" means an individual:
 221 (i) licensed as a lending manager under Section [61-2c-206](#); and
 222 (ii) identified in the nationwide database by the individual's sponsoring entity as the
 223 entity's principal lending manager.
 224 [~~(ll)~~] (mm) "Prospective borrower" means a person applying for a mortgage from a
 225 person who is required to be licensed under this chapter.

226 [~~(mm)~~] (nn) "Record" means information that is:

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

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

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

230 (II) in a perceivable and reproducible form.

231 [~~(mm)~~] (oo) "Referral fee":

232 (i) means any fee, kickback, other compensation, or thing of value tendered for a
233 referral of business or a service incident to or part of a residential mortgage loan transaction;

234 and

235 (ii) does not include:

236 (A) a payment made by a licensed entity to an individual employed by the entity under
237 a contractual incentive program according to rules made by the division in accordance with
238 Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

239 (B) a payment made for reasonable promotional and educational activities that is not
240 conditioned on the referral of business and is not used to pay expenses that a person in a
241 position to refer settlement services or business related to the settlement services would
242 otherwise incur.

243 [~~(oo)~~] (pp) "Residential mortgage loan" means an extension of credit, if:

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

245 (A) mortgage;

246 (B) deed of trust; or

247 (C) consensual security interest; and

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

249 (1)[~~(oo)~~](pp)(i):

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

251 (B) is created with the consent of the owner of the residential real property.

252 [~~(pp)~~] (qq) "Settlement" means the time at which each of the following is complete:

253 (i) the borrower and, if applicable, the seller sign and deliver to each other or to the

254 escrow or closing office each document required by:

255 (A) the real estate purchase contract;

256 (B) the lender;

257 (C) the title insurance company;

258 (D) the escrow or closing office;

259 (E) the written escrow instructions; or

260 (F) applicable law;

261 (ii) the borrower delivers to the seller, if applicable, or to the escrow or closing office
262 any money, except for the proceeds of any new loan, that the borrower is required to pay; and

263 (iii) if applicable, the seller delivers to the buyer or to the escrow or closing office any
264 money that the seller is required to pay.

265 ~~[(qq)]~~ (rr) "Settlement services" means a service provided in connection with a real
266 estate settlement, including a title search, a title examination, the provision of a title certificate,
267 services related to title insurance, services rendered by an attorney, preparing documents, a
268 property survey, rendering a credit report or appraisal, a pest or fungus inspection, services
269 rendered by a real estate agent or broker, the origination of a federally related mortgage loan,
270 and the processing of a federally related mortgage.

271 ~~[(rr)]~~ (ss) "Sponsorship" means an association in accordance with Section [61-2c-209](#)
272 between an individual licensed under this chapter and an entity licensed under this chapter.

273 ~~[(ss)]~~ (tt) "State" means:

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

275 (ii) the District of Columbia; or

276 (iii) the Commonwealth of Puerto Rico.

277 ~~[(tt)]~~ (uu) "Uniform state test" means the uniform state content section of the qualified
278 written test developed by the nationwide database.

279 ~~[(uu)]~~ (vv) "Unique identifier" means the same as that term is defined in 12 U.S.C. Sec.
280 5102.

281 ~~[(vv)]~~ (ww) "Utah-specific" means an educational requirement under this chapter that

282 relates specifically to Utah.

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

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

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

289 **61-2c-105. Scope of chapter -- Exemptions.**

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

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

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

296 (a) the federal government;

297 (b) a state;

298 (c) a political subdivision of a state;

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

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

301 (i) the Utah Housing Corporation created in Section [63H-8-201](#);

302 (ii) the Federal National Mortgage Corporation;

303 (iii) the Federal Home Loan Mortgage Corporation;

304 (iv) the Federal Deposit Insurance Corporation;

305 (v) the Resolution Trust Corporation;

306 (vi) the Government National Mortgage Association;

307 (vii) the Federal Housing Administration;

308 (viii) the National Credit Union Administration;

309 (ix) the Farmers Home Administration; and

- 310 (x) the United States Department of Veterans Affairs;
- 311 (e) a depository institution;
- 312 (f) an entity that controls, is controlled by, or is under common control with a
- 313 depository institution;
- 314 (g) an employee or agent of an entity described in Subsections (2)(a) through (f):
- 315 (i) when that person acts on behalf of the entity described in Subsections (2)(a) through
- 316 (f); and
- 317 (ii) including an employee of:
- 318 (A) a depository institution;
- 319 (B) a subsidiary of a depository institution that is:
- 320 (I) owned and controlled by the depository institution; and
- 321 (II) regulated by a federal banking agency, as defined in 12 U.S.C. Sec. 5102; or
- 322 (C) an institution regulated by the Farm Credit Administration;
- 323 (h) except as provided in Subsection (3), a person who:
- 324 (i) makes a loan:
- 325 (A) secured by an interest in real property;
- 326 (B) with the person's own money; and
- 327 (C) for the person's own investment; and
- 328 (ii) that does not engage in the business of making loans secured by an interest in real
- 329 property;
- 330 (i) except as provided in Subsection (3), a person who receives a mortgage, deed of
- 331 trust, or consensual security interest on real property if the individual or entity:
- 332 (i) is the seller of real property; and
- 333 (ii) receives the mortgage, deed of trust, or consensual security interest on real property
- 334 as security for a separate money obligation;
- 335 (j) a person who receives a mortgage, deed of trust, or consensual security interest on
- 336 real property if:
- 337 (i) the person receives the mortgage, deed of trust, or consensual security interest as

338 security for an obligation payable on an installment or deferred payment basis;

339 (ii) the obligation described in Subsection (2)(j)(i) arises from a person providing

340 materials or services used in the improvement of the real property that is the subject of the

341 mortgage, deed of trust, or consensual security interest; and

342 (iii) the mortgage, deed of trust, or consensual security interest is created without the

343 consent of the owner of the real property that is the subject of the mortgage, deed of trust, or

344 consensual security interest;

345 (k) a nonprofit corporation that:

346 (i) (A) is exempt from paying federal income taxes;

347 (B) is certified by the United States Small Business Administration as a small business

348 investment company;

349 (C) is organized to promote economic development in this state; and

350 (D) has as ~~[its]~~ the nonprofit corporation's primary activity providing financing for

351 business expansion; ~~[or]~~

352 (ii) is a community development financial institution; or

353 (iii) (A) is exempt from paying federal income taxes;

354 (B) has as the nonprofit corporation's primary purpose serving the public by helping

355 low-income individuals and families build, repair, or purchase housing;

356 (C) does not require, under the terms of a mortgage, a balloon payment; and

357 (D) to perform loan originator activities, uses only unpaid volunteers or employees

358 whose compensation is not based on the number or size of the mortgage transactions that the

359 employees originate;

360 (l) an employee or volunteer for a nonprofit corporation described in Subsection

361 (1)(k)(ii) or (iii), working within the scope of the nonprofit corporation's business;

362 ~~[(t)]~~ (m) except as provided in Subsection (3), a court appointed fiduciary; or

363 ~~[(m)]~~ (n) an attorney admitted to practice law in this state:

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

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

366 attorney's clients; and

367 (ii) when the attorney engages in loan modification assistance in the course of the
368 attorney's practice as an attorney.

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

372 (4) (a) A loan processor or loan underwriter who is not a mortgage loan originator is
373 not required to obtain a license under this chapter when the loan processor or loan underwriter
374 is:

375 (i) employed by, and acting on behalf of, a person or entity licensed under this chapter;
376 and

377 (ii) under the direction of and subject to the supervision of a person licensed under this
378 chapter.

379 (b) A loan processor or loan underwriter who is an independent contractor is not
380 exempt under Subsection (4)(a).

381 (5) (a) Notwithstanding Subsection (2)(m), an attorney exempt from this chapter may
382 not engage in conduct described in Section [61-2c-301](#) when transacting business of residential
383 mortgage loans.

384 (b) If an attorney exempt from this chapter violates Subsection (5)(a), the attorney:

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

386 (ii) may be subject to disciplinary action generally applicable to an attorney admitted to
387 practice law in this state.

388 (c) If the division receives a complaint alleging an attorney exempt from this chapter is
389 in violation of Subsection (5)(a) or that an attorney subject to this chapter has violated this
390 chapter, the division shall forward the complaint to the Utah State Bar for disciplinary action.

391 (6) (a) An individual who is exempt under Subsection (2), (3), or (4) may voluntarily
392 obtain a license under this chapter by complying with Part 2, Licensure.

393 (b) An individual who voluntarily obtains a license under this Subsection (6) shall

394 comply with all the provisions of this chapter.