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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.



- 28 (1) As used in this chapter:
- 29 (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 payment in a mortgage transaction:
- 39 (i) that the creditor requires the debtor to make during the term of the mortgage;
- 40 (ii) that represents the entire amount of the outstanding balance of the mortgage; and
- 41 (iii) the entire amount of which is due no later than a date on which the aggregate
- 42 amount of the remaining minimum periodic payments required under the mortgage would not
- 43 fully amortize the outstanding balance of the mortgage.
- 44 [~~e~~] (f) "Branch lending manager" means an individual who is:
- 45 (i) licensed as a lending manager; and
- 46 (ii) designated in the nationwide database by the individual's sponsoring entity as being
- 47 responsible to work from a branch office and to supervise the business of residential mortgage
- 48 loans that is conducted at the branch office.
- 49 [~~f~~] (g) "Branch office" means a licensed entity's office:
- 50 (i) for the transaction of the business of residential mortgage loans regulated under this
- 51 chapter;
- 52 (ii) other than the main office of the licensed entity; and
- 53 (iii) that operates under:
- 54 (A) the same business name as the licensed entity; or
- 55 (B) another trade name that is registered with the division under the entity license.
- 56 [~~g~~] (h) "Business day" means a day other than:
- 57 (i) a Saturday;
- 58 (ii) a Sunday; or

- 59 (iii) a federal or state holiday.
- 60 ~~(h)~~ (i) (i) "Business of residential mortgage loans" means for compensation or in the
61 expectation of compensation to:
- 62 (A) engage in an act that makes an individual a mortgage loan originator;
- 63 (B) make or originate a residential mortgage loan;
- 64 (C) directly or indirectly solicit a residential mortgage loan for another;
- 65 (D) unless exempt under Section 61-2c-105 or excluded under Subsection
66 (1)~~(h)~~(i)(ii), render services related to the origination of a residential mortgage loan including:
- 67 (I) preparing a loan package;
- 68 (II) communicating with the borrower or lender;
- 69 (III) advising on a loan term;
- 70 (IV) receiving, collecting, or distributing information common for the processing or
71 underwriting of a loan in the mortgage industry; or
- 72 (V) communicating with a consumer to obtain information necessary for the processing
73 or underwriting of a residential mortgage loan; or
- 74 (E) engage in loan modification assistance.
- 75 (ii) "Business of residential mortgage loans" does not include:
- 76 (A) ownership of an entity that engages in the business of residential mortgage loans if
77 the owner does not personally perform the acts listed in Subsection (1)~~(h)~~(i)(i);
- 78 (B) acting in one or more of the following capacities:
- 79 (I) a loan wholesaler;
- 80 (II) an account executive for a loan wholesaler;
- 81 (III) a loan closer; or
- 82 (IV) funding a loan; or
- 83 (C) if employed by a person who owns or services an existing residential mortgage
84 loan, the direct negotiation with the borrower for the purpose of loan modification.
- 85 ~~(j)~~ (j) "Certified education provider" means a person who is certified under Section
86 61-2c-204.1 to provide one or more of the following:
- 87 (i) Utah-specific prelicensing education; or
- 88 (ii) Utah-specific continuing education.
- 89 ~~(k)~~ (k) "Closed-end" means a loan:

90 (i) with a fixed amount borrowed; and

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

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

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

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

98 (i) services;

99 (ii) personal or real property; or

100 (iii) another thing of value.

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

103 ~~[(o)]~~ (p) "Continuing education" means education taken by an individual licensed
104 under this chapter in order to meet the education requirements imposed by Sections
105 61-2c-204.1 and 61-2c-205 to renew a license under this chapter.

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

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

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

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

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

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

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

117 (ii) "Control person" may include one of the following who is identified as provided in
118 Subsection (1)~~[(q)]~~(r)(i):

119 (A) a manager;

120 (B) a managing partner;

- 121 (C) a director;
- 122 (D) an executive officer; or
- 123 (E) an individual who performs a function similar to an individual listed in this
- 124 Subsection (1)~~(r)~~(r)(ii).
- 125 ~~(r)~~ (s) "Depository institution" means the same as that term is defined in Section
- 126 7-1-103.
- 127 ~~(s)~~ (t) "Director" means the director of the division.
- 128 ~~(t)~~ (u) "Division" means the Division of Real Estate.
- 129 ~~(u)~~ (v) "Dwelling" means a residential structure attached to real property that contains
- 130 one to four family units including any of the following if used as a residence:
- 131 (i) a condominium unit;
- 132 (ii) a cooperative unit;
- 133 (iii) a manufactured home; or
- 134 (iv) a house.
- 135 ~~(v)~~ (w) "Employee":
- 136 (i) means an individual:
- 137 (A) whose manner and means of work performance are subject to the right of control
- 138 of, or are controlled by, another person; and
- 139 (B) whose compensation for federal income tax purposes is reported, or is required to
- 140 be reported, on a W-2 form issued by the controlling person; and
- 141 (ii) does not include an independent contractor who performs duties other than at the
- 142 direction of, and subject to the supervision and instruction of, another person.
- 143 ~~(w)~~ (x) "Entity" means:
- 144 (i) a corporation;
- 145 (ii) a limited liability company;
- 146 (iii) a partnership;
- 147 (iv) a company;
- 148 (v) an association;
- 149 (vi) a joint venture;
- 150 (vii) a business trust;
- 151 (viii) a trust; or

152 (ix) another organization.

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

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

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

159 (i) engage, or offer to engage, in an act that:

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

161 (B) relates to a transaction involving the transfer of title to residential real property; or

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

163 (A) solicit, or offer that the other person will engage in an act described in Subsection

164 (1)[~~(z)~~](aa)(i); or

165 (B) negotiate terms in relationship to an act described in Subsection (1)[~~(z)~~](aa)(i).

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

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

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

172 [~~(dd)~~] (ee) "Licensing examination" means the examination required by Section
173 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

174 [~~(ee)~~] (ff) "Loan modification assistance" means, for compensation or with the
175 expectation of receiving valuable consideration, to:

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

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

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

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

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

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

183 (V) an addition of collateral;

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

185 (VII) an addition of a cosigner; or

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

187 (B) substitute a new residential mortgage loan for an existing residential mortgage

188 loan; or

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

190 (A) solicit, or offer that the other person will engage in an act described in Subsection

191 (1)~~(cc)~~(ff)(i); or

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

193 ~~(ff)~~ (gg) (i) "Mortgage loan originator" means an individual who, for compensation or

194 in expectation of compensation:

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

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

197 (Aa) a purchase;

198 (Bb) a refinance;

199 (Cc) a loan modification assistance; or

200 (Dd) a foreclosure rescue; or

201 (III) directly or indirectly solicits a residential mortgage loan for another person; and

202 (B) is licensed as a mortgage loan originator in accordance with this chapter.

203 (ii) "Mortgage loan originator" does not include a person who:

204 (A) is described in Subsection (1)~~(ff)~~(gg)(i), but who performs exclusively

205 administrative or clerical tasks as described in Subsection (1)~~(ff)~~(gg)(i)(ii)(A);

206 (B) (I) is licensed under Chapter 2f, Real Estate Licensing and Practices Act;

207 (II) performs only real estate brokerage activities; and

208 (III) receives no compensation from:

209 (Aa) a lender;

210 (Bb) a lending manager; or

211 (Cc) an agent of a lender or lending manager; or

212 (C) is solely involved in extension of credit relating to a timeshare plan, as defined in

213 11 U.S.C. Sec. 101(53D).

214 ~~[(gg)]~~ (hh) "Nationwide database" means the Nationwide Mortgage Licensing System
215 and Registry, authorized under federal licensing requirements.

216 ~~[(hh)]~~ (ii) "Nontraditional mortgage product" means a mortgage product other than a
217 30-year fixed rate mortgage.

218 ~~[(ii)]~~ (jj) "Person" means an individual or entity.

219 ~~[(jj)]~~ (kk) "Prelicensing education" means education taken by an individual seeking to
220 be licensed under this chapter in order to meet the education requirements imposed by Section
221 [61-2c-204.1](#) or [61-2c-206](#) for an individual to obtain a license under this chapter.

222 ~~[(kk)]~~ (ll) "Principal lending manager" means an individual:

223 (i) licensed as a lending manager under Section [61-2c-206](#); and

224 (ii) identified in the nationwide database by the individual's sponsoring entity as the
225 entity's principal lending manager.

226 ~~[(ll)]~~ (mm) "Prospective borrower" means a person applying for a mortgage from a
227 person who is required to be licensed under this chapter.

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

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

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

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

232 (II) in a perceivable and reproducible form.

233 ~~[(nn)]~~ (oo) "Referral fee":

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

237 (ii) does not include:

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

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

- 245 [~~(oo)~~] (pp) "Residential mortgage loan" means an extension of credit, if:
- 246 (i) the loan or extension of credit is secured by a:
- 247 (A) mortgage;
- 248 (B) deed of trust; or
- 249 (C) consensual security interest; and
- 250 (ii) the mortgage, deed of trust, or consensual security interest described in Subsection
- 251 (1)[~~(oo)~~](pp)(i):
- 252 (A) is on a dwelling located in the state; and
- 253 (B) is created with the consent of the owner of the residential real property.
- 254 [~~(pp)~~] (qq) "Settlement" means the time at which each of the following is complete:
- 255 (i) the borrower and, if applicable, the seller sign and deliver to each other or to the
- 256 escrow or closing office each document required by:
- 257 (A) the real estate purchase contract;
- 258 (B) the lender;
- 259 (C) the title insurance company;
- 260 (D) the escrow or closing office;
- 261 (E) the written escrow instructions; or
- 262 (F) applicable law;
- 263 (ii) the borrower delivers to the seller, if applicable, or to the escrow or closing office
- 264 any money, except for the proceeds of any new loan, that the borrower is required to pay; and
- 265 (iii) if applicable, the seller delivers to the buyer or to the escrow or closing office any
- 266 money that the seller is required to pay.
- 267 [~~(qq)~~] (rr) "Settlement services" means a service provided in connection with a real
- 268 estate settlement, including a title search, a title examination, the provision of a title certificate,
- 269 services related to title insurance, services rendered by an attorney, preparing documents, a
- 270 property survey, rendering a credit report or appraisal, a pest or fungus inspection, services
- 271 rendered by a real estate agent or broker, the origination of a federally related mortgage loan,
- 272 and the processing of a federally related mortgage.
- 273 [~~(rr)~~] (ss) "Sponsorship" means an association in accordance with Section [61-2c-209](#)
- 274 between an individual licensed under this chapter and an entity licensed under this chapter.
- 275 [~~(ss)~~] (tt) "State" means:

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

277 (ii) the District of Columbia; or

278 (iii) the Commonwealth of Puerto Rico.

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

281 ~~[(uu)]~~ (vv) "Unique identifier" means the same as that term is defined in 12 U.S.C. Sec.
282 5102.

283 ~~[(vv)]~~ (ww) "Utah-specific" means an educational requirement under this chapter that
284 relates specifically to Utah.

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

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

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

291 **61-2c-105. Scope of chapter -- Exemptions.**

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

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

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

298 (a) the federal government;

299 (b) a state;

300 (c) a political subdivision of a state;

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

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

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

304 (ii) the Federal National Mortgage Corporation;

305 (iii) the Federal Home Loan Mortgage Corporation;

306 (iv) the Federal Deposit Insurance Corporation;

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

338 real property if:

339 (i) the person receives the mortgage, deed of trust, or consensual security interest as
340 security for an obligation payable on an installment or deferred payment basis;

341 (ii) the obligation described in Subsection (2)(j)(i) arises from a person providing
342 materials or services used in the improvement of the real property that is the subject of the
343 mortgage, deed of trust, or consensual security interest; and

344 (iii) the mortgage, deed of trust, or consensual security interest is created without the
345 consent of the owner of the real property that is the subject of the mortgage, deed of trust, or
346 consensual security interest;

347 (k) a nonprofit corporation that:

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

349 (B) is certified by the United States Small Business Administration as a small business
350 investment company;

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

352 (D) has as ~~[its]~~ the nonprofit corporation's primary activity providing financing for
353 business expansion; ~~[or]~~

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

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

356 (B) has as the nonprofit corporation's primary purpose serving the public by helping
357 low-income individuals and families build, repair, or purchase housing;

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

359 (D) to perform loan originator activities, uses only unpaid volunteers or employees
360 whose compensation is not based on the number or size of the mortgage transactions that the
361 employees originate; and

362 (E) does not charge a loan origination fee in connection with a mortgage transaction;

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

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

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

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

367 (i) if the attorney is not principally engaged in the business of negotiating residential
368 mortgage loans when considering the attorney's ordinary practice as a whole for all the

369 attorney's clients; and

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

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

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

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

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

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

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

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

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

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

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

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

396 (b) An individual who voluntarily obtains a license under this Subsection (6) shall
397 comply with all the provisions of this chapter.

**Legislative Review Note
Office of Legislative Research and General Counsel**