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**MORTGAGE COMMISSION**  
2024 GENERAL SESSION  
STATE OF UTAH

**Chief Sponsor: Michael K. McKell**  
House Sponsor: Brady Brammer

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**LONG TITLE**

**General Description:**

This bill makes changes to the Utah Residential Mortgage Practices and Licensing Act.

**Highlighted Provisions:**

This bill:

- clarifies the attorney exemption 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-105**, as last amended by Laws of Utah 2018, Chapter 55
- 61-2c-301**, as last amended by Laws of Utah 2020, Chapter 72
- 61-2c-401**, as last amended by Laws of Utah 2018, Chapter 213

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

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

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

- (1) (a) Except as to an individual who will engage in an activity as a mortgage loan originator, this chapter applies to a closed-end residential mortgage loan secured by a first lien or equivalent security interest on a dwelling.
- (b) This chapter does not apply to a transaction covered by Title 70C, Utah Consumer Credit Code.

- 29 (2) The following are exempt from this chapter:
- 30 (a) the federal government;
- 31 (b) a state;
- 32 (c) a political subdivision of a state;
- 33 (d) an agency of or entity created by a governmental entity described in Subsections
- 34 (2)(a) through (c) including:
- 35 (i) the Utah Housing Corporation created in Section 63H-8-201;
- 36 (ii) the Federal National Mortgage Corporation;
- 37 (iii) the Federal Home Loan Mortgage Corporation;
- 38 (iv) the Federal Deposit Insurance Corporation;
- 39 (v) the Resolution Trust Corporation;
- 40 (vi) the Government National Mortgage Association;
- 41 (vii) the Federal Housing Administration;
- 42 (viii) the National Credit Union Administration;
- 43 (ix) the Farmers Home Administration; and
- 44 (x) the United States Department of Veterans Affairs;
- 45 (e) a depository institution;
- 46 (f) an entity that controls, is controlled by, or is under common control with a depository
- 47 institution;
- 48 (g) an employee or agent of an entity described in Subsections (2)(a) through (f):
- 49 (i) when that person acts on behalf of the entity described in Subsections (2)(a)
- 50 through (f); and
- 51 (ii) including an employee of:
- 52 (A) a depository institution;
- 53 (B) a subsidiary of a depository institution that is:
- 54 (I) owned and controlled by the depository institution; and
- 55 (II) regulated by a federal banking agency, as defined in 12 U.S.C. Sec. 5102;
- 56 or
- 57 (C) an institution regulated by the Farm Credit Administration;
- 58 (h) except as provided in Subsection (3), a person who:
- 59 (i) makes a loan:
- 60 (A) secured by an interest in real property;
- 61 (B) with the person's own money; and
- 62 (C) for the person's own investment; and

- 63 (ii) that does not engage in the business of making loans secured by an interest in real  
64 property;
- 65 (i) except as provided in Subsection (3), a person who receives a mortgage, deed of trust,  
66 or consensual security interest on real property if the individual or entity:
- 67 (i) is the seller of real property; and
- 68 (ii) receives the mortgage, deed of trust, or consensual security interest on real  
69 property as security for a separate money obligation;
- 70 (j) a person who receives a mortgage, deed of trust, or consensual security interest on  
71 real property if:
- 72 (i) the person receives the mortgage, deed of trust, or consensual security interest as  
73 security for an obligation payable on an installment or deferred payment basis;
- 74 (ii) the obligation described in Subsection (2)(j)(i) arises from a person providing  
75 materials or services used in the improvement of the real property that is the  
76 subject of the mortgage, deed of trust, or consensual security interest; and
- 77 (iii) the mortgage, deed of trust, or consensual security interest is created without the  
78 consent of the owner of the real property that is the subject of the mortgage, deed  
79 of trust, or consensual security interest;
- 80 (k) a nonprofit corporation that:
- 81 (i) (A) is exempt from paying federal income taxes;
- 82 (B) is certified by the United States Small Business Administration as a small  
83 business investment company;
- 84 (C) is organized to promote economic development in this state; and
- 85 (D) has as the nonprofit corporation's primary activity providing financing for  
86 business expansion;
- 87 (ii) is a community development financial institution; or
- 88 (iii) (A) is exempt from paying federal income taxes;
- 89 (B) has as the nonprofit corporation's primary purpose serving the public by  
90 helping low-income individuals and families build, repair, or purchase housing;
- 91 (C) does not require, under the terms of a mortgage, a balloon payment; and
- 92 (D) to perform loan originator activities, uses only unpaid volunteers or  
93 employees whose compensation is not based on the number or size of the  
94 mortgage transactions that the employees originate;
- 95 (l) an employee or volunteer for a nonprofit corporation described in Subsection  
96 (2)(k)(ii) or (iii), working within the scope of the nonprofit corporation's business;

- 97 (m) except as provided in Subsection (3), a court appointed fiduciary; or
- 98 (n) except as provided in Subsection (6), and subject to Subsection (5)(a), an attorney
- 99 admitted to practice law in this state:
- 100 (i) if the attorney is not principally engaged in the business of negotiating residential
- 101 mortgage loans when considering the attorney's ordinary practice as a whole for
- 102 all the attorney's clients; and
- 103 (ii) when the attorney engages in loan modification assistance in the course of the
- 104 attorney's practice as an attorney.
- 105 (3) An individual who will engage in an activity as a mortgage loan originator is exempt
- 106 from this chapter only if the individual is an employee or agent exempt under Subsection
- 107 (2)(g).
- 108 (4) (a) A loan processor or loan underwriter who is not a mortgage loan originator is not
- 109 required to obtain a license under this chapter when the loan processor or loan
- 110 underwriter is:
- 111 (i) employed by, and acting on behalf of, a person or entity licensed under this
- 112 chapter; and
- 113 (ii) under the direction of and subject to the supervision of a person licensed under
- 114 this chapter.
- 115 (b) A loan processor or loan underwriter who is an independent contractor is not exempt
- 116 under Subsection (4)(a).
- 117 (5) (a) [~~Notwithstanding Subsection (2)(m), an attorney~~] An attorney who is exempt from
- 118 this chapter may not engage in conduct described in Section 61-2c-301 when
- 119 transacting business of residential mortgage loans.
- 120 (b) If an attorney exempt from this chapter violates Subsection (5)(a), the attorney:
- 121 (i) is not subject to enforcement by the division under Part 4, Enforcement; and
- 122 (ii) may be subject to disciplinary action generally applicable to an attorney admitted
- 123 to practice law in this state.
- 124 (c) If the division receives a complaint alleging an attorney exempt from this chapter is
- 125 in violation of Subsection (5)(a) or that an attorney subject to this chapter has
- 126 violated this chapter, the division shall forward the complaint to the Utah State Bar
- 127 for disciplinary action.
- 128 (6) (a) An individual who is exempt under Subsection (2), (3), or (4) may voluntarily
- 129 obtain a license under this chapter by complying with Part 2, Licensure.
- 130 (b) An individual who voluntarily obtains a license under this Subsection (6) shall

131 comply with all the provisions of this chapter.

132 (c) Notwithstanding Subsection (6)(b), an attorney who voluntarily obtains a license  
133 under this chapter is not subject to the provisions of this chapter when the attorney is  
134 acting within the scope of the attorney's role as an attorney, including when acting as  
135 an attorney for an individual or entity regulated under this chapter.

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

137 **61-2c-301 . Prohibited conduct -- Violations of the chapter.**

138 (1) A person, when transacting the business of residential mortgage loans in this state, may  
139 not:

140 (a) violate Section 8 of RESPA;

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

142 (i) that is excessive; or

143 (ii) without providing to the loan applicant a written statement signed by the loan  
144 applicant:

145 (A) stating whether or not the fee or deposit is refundable; and

146 (B) describing the conditions, if any, under which all or a portion of the fee or  
147 deposit will be refunded to the loan applicant;

148 (c) act incompetently in the transaction of the business of residential mortgage loans  
149 such that the person fails to:

150 (i) safeguard the interests of the public; or

151 (ii) conform to acceptable standards of the residential mortgage loan industry;

152 (d) do any of the following as part of a residential mortgage loan transaction, regardless  
153 of whether the residential mortgage loan closes:

154 (i) make a false statement or representation;

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

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

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

163 (f) violate or not comply with:

164 (i) this chapter;

- 165 (ii) an order of the commission or division; or  
166 (iii) a rule made by the division;
- 167 (g) fail to respond within the required time period to:  
168 (i) a notice or complaint of the division; or  
169 (ii) a request for information from the division;
- 170 (h) make false representations to the division, including in a licensure statement;  
171 (i) engage in the business of residential mortgage loans with respect to the transaction if  
172 the person also acts in any of the following capacities with respect to the same  
173 residential mortgage loan transaction:  
174 (i) appraiser;  
175 (ii) escrow agent;  
176 (iii) real estate agent;  
177 (iv) general contractor; or  
178 (v) title insurance producer;
- 179 (j) engage in unprofessional conduct as defined by rule;  
180 (k) engage in an act or omission in transacting the business of residential mortgage loans  
181 that constitutes dishonesty, fraud, or misrepresentation;
- 182 (l) engage in false or misleading advertising;
- 183 (m) (i) fail to account for money received in connection with a residential mortgage  
184 loan;  
185 (ii) use money for a different purpose from the purpose for which the money is  
186 received; or  
187 (iii) except as provided in Subsection (4), retain money paid for services if the  
188 services are not performed;
- 189 (n) fail to provide a prospective borrower a copy of each appraisal and any other written  
190 valuation developed in connection with an application for credit that is to be secured  
191 by a first lien on a dwelling in accordance with Subsection (5);
- 192 (o) engage in an act that is performed to:  
193 (i) evade this chapter; or  
194 (ii) assist another person to evade this chapter;
- 195 (p) recommend or encourage default, delinquency, or continuation of an existing default  
196 or delinquency, by a mortgage applicant on an existing indebtedness before the  
197 closing of a residential mortgage loan that will refinance all or part of the  
198 indebtedness;

- 199 (q) in the case of the lending manager of an entity or a branch office of an entity, fail to  
200 exercise reasonable supervision over the activities of:
- 201 (i) unlicensed staff; or
- 202 (ii) a mortgage loan originator who is affiliated with the lending manager;
- 203 (r) pay or offer to pay an individual who does not hold a license under this chapter for  
204 work that requires the individual to hold a license under this chapter;
- 205 (s) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
- 206 (i) provide a title insurance product or service without the approval required by  
207 Section 31A-2-405; or
- 208 (ii) knowingly provide false or misleading information in the statement required by  
209 Subsection 31A-2-405(2);
- 210 (t) represent to the public that the person can or will perform any act of a mortgage loan  
211 originator if that person is not licensed under this chapter because the person is  
212 exempt under Subsection 61-2c-105(4), including through:
- 213 (i) advertising;
- 214 (ii) a business card;
- 215 (iii) stationery;
- 216 (iv) a brochure;
- 217 (v) a sign;
- 218 (vi) a rate list; or
- 219 (vii) other promotional item;
- 220 (u) (i) engage in an act of loan modification assistance without being licensed under  
221 this chapter;
- 222 (ii) engage in an act of foreclosure rescue that requires licensure as a real estate agent  
223 or real estate broker under Chapter 2, Division of Real Estate, without being  
224 licensed under that chapter;
- 225 (iii) engage in an act of loan modification assistance without entering into a written  
226 agreement specifying which one or more acts of loan modification assistance will  
227 be completed;
- 228 (iv) request or require a person to pay a fee before obtaining:
- 229 (A) a written offer for a loan modification from the person's lender or servicer; and  
230 (B) the person's written acceptance of the offer from the lender or servicer;
- 231 (v) induce a person seeking a loan modification to hire the licensee to engage in an  
232 act of loan modification assistance by:

- 233 (A) suggesting to the person that the licensee has a special relationship with the  
234 person's lender or loan servicer; or
- 235 (B) falsely representing or advertising that the licensee is acting on behalf of:  
236 (I) a government agency;  
237 (II) the person's lender or loan servicer; or  
238 (III) a nonprofit or charitable institution;
- 239 (vi) recommend or participate in a loan modification that requires a person to:  
240 (A) transfer title to real property to the licensee or to a third-party with whom the  
241 licensee has a business relationship or financial interest;  
242 (B) make a mortgage payment to a person other than the person's loan servicer; or  
243 (C) refrain from contacting the person's:  
244 (I) lender;  
245 (II) loan servicer;  
246 (III) attorney;  
247 (IV) credit counselor; or  
248 (V) housing counselor; or
- 249 (vii) for an agreement for loan modification assistance entered into on or after May  
250 11, 2010, engage in an act of loan modification assistance without offering in  
251 writing to the person entering into the agreement for loan modification assistance  
252 a right to cancel the agreement within three business days after the day on which  
253 the person enters the agreement;
- 254 (v) sign or initial a document on behalf of another person, except for in a circumstance  
255 allowed by the division by rule, with the concurrence of the commission, made in  
256 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 257 (w) violate or fail to comply with a provision of Title 57, Chapter 28, Utah Reverse  
258 Mortgage Act; or
- 259 (x) engage in any act or practice that violates appraisal independence as defined in 15  
260 U.S.C. Sec. 1639e or in the policies and procedures of:  
261 (i) the Federal Home Loan Mortgage Corporation; or  
262 (ii) the Federal National Mortgage Association.
- 263 (2) Regardless of whether the crime is related to the business of residential mortgage loans,  
264 it is a violation of this chapter for a licensee or a person who is a certified education  
265 provider to:  
266 (a) be convicted of:



- 267 (i) a felony; or
- 268 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
- 269 (A) a class A misdemeanor;
- 270 (B) a class B misdemeanor; or
- 271 (C) a criminal offense comparable to a class A or class B misdemeanor;
- 272 (b) plead guilty or nolo contendere to:
- 273 (i) a felony; or
- 274 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
- 275 (A) a class A misdemeanor;
- 276 (B) a class B misdemeanor; or
- 277 (C) a criminal offense comparable to a class A or class B misdemeanor; or
- 278 (c) enter into a plea in abeyance agreement in relation to:
- 279 (i) a felony; or
- 280 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
- 281 (A) a class A misdemeanor;
- 282 (B) a class B misdemeanor; or
- 283 (C) a criminal offense comparable to a class A or class B misdemeanor.
- 284 (3) A lending manager does not violate Subsection (1)(q) if:
- 285 (a) in contravention of the lending manager's written policies and instructions, an
- 286 affiliated licensee of the lending manager violates:
- 287 (i) this chapter; or
- 288 (ii) rules made by the division under this chapter;
- 289 (b) the lending manager established and followed reasonable procedures to ensure that
- 290 affiliated licensees receive adequate supervision;
- 291 (c) upon learning of a violation by an affiliated licensee, the lending manager attempted
- 292 to prevent or mitigate the damage;
- 293 (d) the lending manager did not participate in or ratify the violation by an affiliated
- 294 licensee; and
- 295 (e) the lending manager did not attempt to avoid learning of the violation.
- 296 (4) Notwithstanding Subsection (1)(m)(iii), a licensee may, upon compliance with Section
- 297 70D-2-305, charge a reasonable cancellation fee for work done originating a mortgage if
- 298 the mortgage is not closed.
- 299 (5) (a) Except as provided in Subsection (5)(b), a person transacting the business of
- 300 residential mortgage loans in this state shall provide a prospective borrower a copy of

- 301 each appraisal and any other written valuation developed in connection with an  
 302 application for credit that is to be secured by a first lien on a dwelling on or before  
 303 the earlier of:
- 304 (i) as soon as reasonably possible after the appraisal or other valuation is complete; or
  - 305 (ii) three business days before the day of the settlement.
- 306 (b) Subject to Subsection (5)(c), unless otherwise prohibited by law, a prospective  
 307 borrower may waive the timing requirement described in Subsection (5)(a) and agree  
 308 to receive each appraisal and any other written valuation:
- 309 (i) less than three business days before the day of the settlement; or
  - 310 (ii) at the settlement.
- 311 (c) (i) Except as provided in Subsection (5)(c)(ii), a prospective borrower shall  
 312 submit a waiver described in Subsection (5)(b) at least three business days before  
 313 the day of the settlement.
- 314 (ii) Subsection (5)(b) does not apply if the waiver only pertains to a copy of an  
 315 appraisal or other written valuation that contains only clerical changes from a  
 316 previous version of the appraisal or other written valuation and the prospective  
 317 borrower received a copy of the original appraisal or other written valuation at  
 318 least three business days before the day of the settlement.
- 319 (d) If a prospective borrower submits a waiver described in Subsection (5)(b) and the  
 320 transaction never completes, the person transacting the business of residential  
 321 mortgage loans shall provide a copy of each appraisal or any other written valuation  
 322 to the applicant no later than 30 days after the day on which the person knows the  
 323 transaction will not complete.

324 Section 3. Section **61-2c-401** is amended to read:

325 **61-2c-401 . Investigations.**

- 326 (1) The division may, either publicly or privately, investigate or cause to be investigated the  
 327 actions of any of the following when engaged in the business of residential mortgage  
 328 loans:
- 329 (a) (i) a licensee;
  - 330 (ii) a person required to be licensed under this chapter; or
  - 331 (iii) the following with respect to an entity that is a licensee or an entity required to  
 332 be licensed under this chapter:
    - 333 (A) a manager;
    - 334 (B) a managing partner;

- 335 (C) a director;
- 336 (D) an executive officer; or
- 337 (E) an individual who performs a function similar to an individual listed in this
- 338 Subsection (1)(a)(iii);
- 339 (b) (i) an applicant for licensure or renewal of licensure under this chapter; or
- 340 (ii) the following with respect to an entity that has applied for a license or renewal of
- 341 licensure under this chapter:
- 342 (A) a manager;
- 343 (B) a managing partner;
- 344 (C) a director;
- 345 (D) an executive officer; or
- 346 (E) an individual who performs a function similar to an individual listed in this
- 347 Subsection (1)(b)(ii); or
- 348 (c) except as provided in Subsection 61-2c-105(6)(c), a person who transacts the
- 349 business of residential mortgage loans within this state.
- 350 (2) In conducting investigations, records inspections, and adjudicative proceedings, the
- 351 division may:
- 352 (a) administer an oath or affirmation;
- 353 (b) issue a subpoena that requires:
- 354 (i) the attendance and testimony of a witness; or
- 355 (ii) the production of evidence;
- 356 (c) take evidence;
- 357 (d) require the production of a record or information relevant to an investigation; and
- 358 (e) serve a subpoena by certified mail.
- 359 (3) (a) A court of competent jurisdiction shall enforce, according to the practice and
- 360 procedure of the court, a subpoena issued by the division.
- 361 (b) The division shall pay any witness fee, travel expense, mileage, or any other fee
- 362 required by the service statutes of the state where the witness or evidence is located.
- 363 (4) A failure to respond to a request by the division in an investigation authorized under this
- 364 chapter within 10 days after the day on which the request is served is considered as a
- 365 separate violation of this chapter, including:
- 366 (a) failing to respond to a subpoena;
- 367 (b) withholding evidence; or
- 368 (c) failing to produce a record.

- 369 (5) The division may inspect and copy a record related to the business of residential  
370 mortgage loans by a licensee under this chapter, regardless of whether the record is  
371 maintained at a business location in Utah, in conducting:
- 372 (a) investigations of complaints; or  
373 (b) inspections of the record required to be maintained under:  
374 (i) this chapter; or  
375 (ii) rules adopted by the division under this chapter.
- 376 (6) (a) If a licensee maintains a record required by this chapter and the rules adopted by  
377 the division under this chapter outside Utah, the licensee is responsible for all  
378 reasonable costs, including reasonable travel costs, incurred by the division in  
379 inspecting the record.
- 380 (b) Upon receipt of notification from the division that a record maintained outside Utah  
381 is to be examined in connection with an investigation or an examination, the licensee  
382 shall deposit with the division a deposit of \$500 to cover the division's expenses in  
383 connection with the examination of the record.
- 384 (c) If the deposit described in Subsection (6)(b) is insufficient to meet the estimated  
385 costs and expenses of examination of the record, the licensee shall make an  
386 additional deposit to cover the estimated costs and expenses of the division.
- 387 (d) (i) A deposit under this Subsection (6) shall be deposited in the General Fund as a  
388 dedicated credit to be used by the division under Subsection (6)(a).  
389 (ii) The division, with the concurrence of the executive director, may use a deposit as  
390 a dedicated credit for the records inspection costs under Subsection (6)(a).  
391 (iii) A deposit under this Subsection (6) shall be refunded to the licensee to the extent  
392 it is not used, together with an itemized statement from the division of all amounts  
393 it has used.
- 394 (7) Failure to deposit with the division a deposit required to cover the costs of examination  
395 of a record that is maintained outside Utah shall result in automatic suspension of a  
396 license until the deposit is made.
- 397 (8) (a) If a person is found to have violated this chapter or a rule made under this  
398 chapter, the person shall pay the costs incurred by the division to copy a record  
399 required under this chapter, including the costs incurred to copy an electronic record  
400 in a universally readable format.
- 401 (b) If a person fails to pay the costs described in Subsection (8)(a) when due, the  
402 person's license or certification is automatically suspended:

403 (i) beginning the day on which the payment of costs is due; and

404 (ii) ending the day on which the costs are paid in full.

405 Section 4. **Effective date.**

406 This bill takes effect on May 1, 2024.