

MORTGAGE COMMISSION

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

House Sponsor: Brady Brammer

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

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.



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

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

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

34 (a) the federal government;

35 (b) a state;

36 (c) a political subdivision of a state;

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

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

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

40 (ii) the Federal National Mortgage Corporation;

41 (iii) the Federal Home Loan Mortgage Corporation;

42 (iv) the Federal Deposit Insurance Corporation;

43 (v) the Resolution Trust Corporation;

44 (vi) the Government National Mortgage Association;

45 (vii) the Federal Housing Administration;

46 (viii) the National Credit Union Administration;

47 (ix) the Farmers Home Administration; and

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

49 (e) a depository institution;

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

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

53 (i) when that person acts on behalf of the entity described in Subsections (2)(a) through
54 (f); and

55 (ii) including an employee of:

56 (A) a depository institution;

57 (B) a subsidiary of a depository institution that is:

58 (I) owned and controlled by the depository institution; and

59 (II) regulated by a federal banking agency, as defined in 12 U.S.C. Sec. 5102; or

60 (C) an institution regulated by the Farm Credit Administration;

61 (h) except as provided in Subsection (3), a person who:

62 (i) makes a loan:

63 (A) secured by an interest in real property;

64 (B) with the person's own money; and

65 (C) for the person's own investment; and

66 (ii) that does not engage in the business of making loans secured by an interest in real

67 property;

68 (i) except as provided in Subsection (3), a person who receives a mortgage, deed of
69 trust, or consensual security interest on real property if the individual or entity:

70 (i) is the seller of real property; and

71 (ii) receives the mortgage, deed of trust, or consensual security interest on real property
72 as security for a separate money obligation;

73 (j) a person who receives a mortgage, deed of trust, or consensual security interest on
74 real property if:

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

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

80 (iii) the mortgage, deed of trust, or consensual security interest is created without the
81 consent of the owner of the real property that is the subject of the mortgage, deed of trust, or
82 consensual security interest;

83 (k) a nonprofit corporation that:

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

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

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

88 (D) has as the nonprofit corporation's primary activity providing financing for business
89 expansion;

- 90 (ii) is a community development financial institution; or
- 91 (iii) (A) is exempt from paying federal income taxes;
- 92 (B) has as the nonprofit corporation's primary purpose serving the public by helping
- 93 low-income individuals and families build, repair, or purchase housing;
- 94 (C) does not require, under the terms of a mortgage, a balloon payment; and
- 95 (D) to perform loan originator activities, uses only unpaid volunteers or employees
- 96 whose compensation is not based on the number or size of the mortgage transactions that the
- 97 employees originate;

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

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

100 (m) except as provided in Subsection (3), a court appointed fiduciary; or

101 (n) except as provided in Subsection (6), and subject to Subsection (5)(a), an attorney

102 admitted to practice law in this state:

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

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

105 attorney's clients; and

106 (ii) when the attorney engages in loan modification assistance in the course of the

107 attorney's practice as an attorney.

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

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

110 Subsection (2)(g).

111 (4) (a) A loan processor or loan underwriter who is not a mortgage loan originator is

112 not required to obtain a license under this chapter when the loan processor or loan underwriter

113 is:

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

115 and

116 (ii) under the direction of and subject to the supervision of a person licensed under this

117 chapter.

118 (b) A loan processor or loan underwriter who is an independent contractor is not

119 exempt under Subsection (4)(a).

120 (5) (a) [~~Notwithstanding Subsection (2)(m), an attorney~~] An attorney who is exempt

121 from this chapter may not engage in conduct described in Section **61-2c-301** when transacting
 122 business of residential mortgage loans.

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

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

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

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

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

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

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

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

139 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

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

142 (a) violate Section 8 of RESPA;

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

144 (i) that is excessive; or

145 (ii) without providing to the loan applicant a written statement signed by the loan
 146 applicant:

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

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

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

- 152 (i) safeguard the interests of the public; or
- 153 (ii) conform to acceptable standards of the residential mortgage loan industry;
- 154 (d) do any of the following as part of a residential mortgage loan transaction, regardless
- 155 of whether the residential mortgage loan closes:
 - 156 (i) make a false statement or representation;
 - 157 (ii) cause false documents to be generated; or
 - 158 (iii) knowingly permit false information to be submitted by any party;
- 159 (e) give or receive compensation or anything of value, or withhold or threaten to
- 160 withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in
- 161 reaching a value conclusion in a residential mortgage loan transaction, except that it is not a
- 162 violation of this section for a licensee to withhold payment because of a bona fide dispute
- 163 regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards
- 164 of Professional Appraisal Practice;
- 165 (f) violate or not comply with:
 - 166 (i) this chapter;
 - 167 (ii) an order of the commission or division; or
 - 168 (iii) a rule made by the division;
- 169 (g) fail to respond within the required time period to:
 - 170 (i) a notice or complaint of the division; or
 - 171 (ii) a request for information from the division;
- 172 (h) make false representations to the division, including in a licensure statement;
- 173 (i) engage in the business of residential mortgage loans with respect to the transaction
- 174 if the person also acts in any of the following capacities with respect to the same residential
- 175 mortgage loan transaction:
 - 176 (i) appraiser;
 - 177 (ii) escrow agent;
 - 178 (iii) real estate agent;
 - 179 (iv) general contractor; or
 - 180 (v) title insurance producer;
 - 181 (j) engage in unprofessional conduct as defined by rule;
 - 182 (k) engage in an act or omission in transacting the business of residential mortgage

183 loans that constitutes dishonesty, fraud, or misrepresentation;

184 (l) engage in false or misleading advertising;

185 (m) (i) fail to account for money received in connection with a residential mortgage

186 loan;

187 (ii) use money for a different purpose from the purpose for which the money is

188 received; or

189 (iii) except as provided in Subsection (4), retain money paid for services if the services

190 are not performed;

191 (n) fail to provide a prospective borrower a copy of each appraisal and any other

192 written valuation developed in connection with an application for credit that is to be secured by

193 a first lien on a dwelling in accordance with Subsection (5);

194 (o) engage in an act that is performed to:

195 (i) evade this chapter; or

196 (ii) assist another person to evade this chapter;

197 (p) recommend or encourage default, delinquency, or continuation of an existing

198 default or delinquency, by a mortgage applicant on an existing indebtedness before the closing

199 of a residential mortgage loan that will refinance all or part of the indebtedness;

200 (q) in the case of the lending manager of an entity or a branch office of an entity, fail to

201 exercise reasonable supervision over the activities of:

202 (i) unlicensed staff; or

203 (ii) a mortgage loan originator who is affiliated with the lending manager;

204 (r) pay or offer to pay an individual who does not hold a license under this chapter for

205 work that requires the individual to hold a license under this chapter;

206 (s) in the case of a dual licensed title licensee as defined in Section [31A-2-402](#):

207 (i) provide a title insurance product or service without the approval required by Section

208 [31A-2-405](#); or

209 (ii) knowingly provide false or misleading information in the statement required by

210 Subsection [31A-2-405\(2\)](#);

211 (t) represent to the public that the person can or will perform any act of a mortgage

212 loan originator if that person is not licensed under this chapter because the person is exempt

213 under Subsection [61-2c-105\(4\)](#), including through:

- 214 (i) advertising;
- 215 (ii) a business card;
- 216 (iii) stationery;
- 217 (iv) a brochure;
- 218 (v) a sign;
- 219 (vi) a rate list; or
- 220 (vii) other promotional item;
- 221 (u) (i) engage in an act of loan modification assistance without being licensed under
- 222 this chapter;
- 223 (ii) engage in an act of foreclosure rescue that requires licensure as a real estate agent
- 224 or real estate broker under Chapter 2, Division of Real Estate, without being licensed under
- 225 that chapter;
- 226 (iii) engage in an act of loan modification assistance without entering into a written
- 227 agreement specifying which one or more acts of loan modification assistance will be
- 228 completed;
- 229 (iv) request or require a person to pay a fee before obtaining:
- 230 (A) a written offer for a loan modification from the person's lender or servicer; and
- 231 (B) the person's written acceptance of the offer from the lender or servicer;
- 232 (v) induce a person seeking a loan modification to hire the licensee to engage in an act
- 233 of loan modification assistance by:
- 234 (A) suggesting to the person that the licensee has a special relationship with the
- 235 person's lender or loan servicer; or
- 236 (B) falsely representing or advertising that the licensee is acting on behalf of:
- 237 (I) a government agency;
- 238 (II) the person's lender or loan servicer; or
- 239 (III) a nonprofit or charitable institution;
- 240 (vi) recommend or participate in a loan modification that requires a person to:
- 241 (A) transfer title to real property to the licensee or to a third-party with whom the
- 242 licensee has a business relationship or financial interest;
- 243 (B) make a mortgage payment to a person other than the person's loan servicer; or
- 244 (C) refrain from contacting the person's:

- 245 (I) lender;
- 246 (II) loan servicer;
- 247 (III) attorney;
- 248 (IV) credit counselor; or
- 249 (V) housing counselor; or
- 250 (vii) for an agreement for loan modification assistance entered into on or after May 11,
- 251 2010, engage in an act of loan modification assistance without offering in writing to the person
- 252 entering into the agreement for loan modification assistance a right to cancel the agreement
- 253 within three business days after the day on which 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 accordance
- 256 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
- 264 loans, 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
292 attempted 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
297 Section [70D-2-305](#), charge a reasonable cancellation fee for work done originating a mortgage
298 if 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 each
301 appraisal and any other written valuation developed in connection with an application for credit
302 that is to be secured by a first lien on a dwelling on or before the earlier of:
303 (i) as soon as reasonably possible after the appraisal or other valuation is complete; or
304 (ii) three business days before the day of the settlement.
305 (b) Subject to Subsection (5)(c), unless otherwise prohibited by law, a prospective
306 borrower may waive the timing requirement described in Subsection (5)(a) and agree to receive

307 each appraisal and any other written valuation:

308 (i) less than three business days before the day of the settlement; or

309 (ii) at the settlement.

310 (c) (i) Except as provided in Subsection (5)(c)(ii), a prospective borrower shall submit
311 a waiver described in Subsection (5)(b) at least three business days before the day of the
312 settlement.

313 (ii) Subsection (5)(b) does not apply if the waiver only pertains to a copy of an
314 appraisal or other written valuation that contains only clerical changes from a previous version
315 of the appraisal or other written valuation and the prospective borrower received a copy of the
316 original appraisal or other written valuation at least three business days before the day of the
317 settlement.

318 (d) If a prospective borrower submits a waiver described in Subsection (5)(b) and the
319 transaction never completes, the person transacting the business of residential mortgage loans
320 shall provide a copy of each appraisal or any other written valuation to the applicant no later
321 than 30 days after the day on which the person knows the transaction will not complete.

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

323 **61-2c-401. Investigations.**

324 (1) The division may, either publicly or privately, investigate or cause to be
325 investigated the actions of any of the following when engaged in the business of residential
326 mortgage loans:

327 (a) (i) a licensee;

328 (ii) a person required to be licensed under this chapter; or

329 (iii) the following with respect to an entity that is a licensee or an entity required to be
330 licensed under this chapter:

331 (A) a manager;

332 (B) a managing partner;

333 (C) a director;

334 (D) an executive officer; or

335 (E) an individual who performs a function similar to an individual listed in this
336 Subsection (1)(a)(iii);

337 (b) (i) an applicant for licensure or renewal of licensure under this chapter; or

338 (ii) the following with respect to an entity that has applied for a license or renewal of
339 licensure under this chapter:

340 (A) a manager;

341 (B) a managing partner;

342 (C) a director;

343 (D) an executive officer; or

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

345 Subsection (1)(b)(ii); or

346 (c) except as provided in Subsection 61-2c-105(6)(c), a person who transacts the
347 business of residential mortgage loans within this state.

348 (2) In conducting investigations, records inspections, and adjudicative proceedings, the
349 division may:

350 (a) administer an oath or affirmation;

351 (b) issue a subpoena that requires:

352 (i) the attendance and testimony of a witness; or

353 (ii) the production of evidence;

354 (c) take evidence;

355 (d) require the production of a record or information relevant to an investigation; and

356 (e) serve a subpoena by certified mail.

357 (3) (a) A court of competent jurisdiction shall enforce, according to the practice and
358 procedure of the court, a subpoena issued by the division.

359 (b) The division shall pay any witness fee, travel expense, mileage, or any other fee
360 required by the service statutes of the state where the witness or evidence is located.

361 (4) A failure to respond to a request by the division in an investigation authorized
362 under this chapter within 10 days after the day on which the request is served is considered as a
363 separate violation of this chapter, including:

364 (a) failing to respond to a subpoena;

365 (b) withholding evidence; or

366 (c) failing to produce a record.

367 (5) The division may inspect and copy a record related to the business of residential
368 mortgage loans by a licensee under this chapter, regardless of whether the record is maintained

369 at a business location in Utah, in conducting:

370 (a) investigations of complaints; or

371 (b) inspections of the record required to be maintained under:

372 (i) this chapter; or

373 (ii) rules adopted by the division under this chapter.

374 (6) (a) If a licensee maintains a record required by this chapter and the rules adopted by
375 the division under this chapter outside Utah, the licensee is responsible for all reasonable costs,
376 including reasonable travel costs, incurred by the division in inspecting the record.

377 (b) Upon receipt of notification from the division that a record maintained outside Utah
378 is to be examined in connection with an investigation or an examination, the licensee shall
379 deposit with the division a deposit of \$500 to cover the division's expenses in connection with
380 the examination of the record.

381 (c) If the deposit described in Subsection (6)(b) is insufficient to meet the estimated
382 costs and expenses of examination of the record, the licensee shall make an additional deposit
383 to cover the estimated costs and expenses of the division.

384 (d) (i) A deposit under this Subsection (6) shall be deposited in the General Fund as a
385 dedicated credit to be used by the division under Subsection (6)(a).

386 (ii) The division, with the concurrence of the executive director, may use a deposit as a
387 dedicated credit for the records inspection costs under Subsection (6)(a).

388 (iii) A deposit under this Subsection (6) shall be refunded to the licensee to the extent it
389 is not used, together with an itemized statement from the division of all amounts it has used.

390 (7) Failure to deposit with the division a deposit required to cover the costs of
391 examination of a record that is maintained outside Utah shall result in automatic suspension of
392 a license until the deposit is made.

393 (8) (a) If a person is found to have violated this chapter or a rule made under this
394 chapter, the person shall pay the costs incurred by the division to copy a record required under
395 this chapter, including the costs incurred to copy an electronic record in a universally readable
396 format.

397 (b) If a person fails to pay the costs described in Subsection (8)(a) when due, the
398 person's license or certification is automatically suspended:

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

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

401 Section 4. **Effective date.**

402 This bill takes effect on May 1, 2024.