

## STATE OF UTAH

### Is a license required?

Yes. Loan modification services must be licensed as if they were loan originators. 61-2c(Attached as Schedule A)-201-1 states that “Unless exempt from this chapter under Section 61-2c-105’>61-2c-105, a person may not transact the business of residential mortgage loans without obtaining a license under this chapter.”

The statute does not exactly define what a loan originator is, only what it is not. The law does not really seem applicable to loan modification, but state regulators have stated that the license is required and that this is the applicable law.

### State specific loan modification law?

None

### Advantages of becoming a licensed Mortgage Broker?

Required. There is no alternative.

### Penalties for operating in the state without a license:

61-2c-405 states that “(1) In addition to being subject to a disciplinary action by the commission, a person required to be licensed or certified under this chapter who violates this chapter:(a) is guilty of a class A misdemeanor upon conviction of a first violation of this chapter; and (b) is guilty of a third degree felony upon conviction of a second or subsequent violation of this chapter.”

### Is an advanced fee permitted?

Yes, but with some restrictions. 61-2c-301-a states that a person may not “(a) give or receive compensation or anything of value in exchange for a referral of residential mortgage loan business; (b) charge a fee in connection with a residential mortgage loan transaction: (i) that is excessive; or (ii) if the person does not comply with Section 70D-2-305;”

70D-2-305 states that “A lender or broker may not accept a fee or deposit from an applicant for a mortgage loan unless at the time the lender or broker accepts the fee or deposit there is a written statement: (1) signed by the applicant; (2) stating whether or not the fee or deposit is refundable; and (3) describing the conditions, if any, under which all or a portion of the fee or deposit will be refunded to the applicant.”

### Is a written agreement required?

Yes. See above.

### Other noteworthy information?

Utah regulators are requiring a license and pointing to a law which really does not have anything to do with loan modification. I would recommend that the Utah Division of Real Estate be contacted before trying to do business in the state. They can be contacted here: [Ctrl + Click Here](#)

**Utah Statutes**

[Ctrl + Click Here](#)

Utah code 61-2c:

License application:

[Ctrl + Click Here](#)

[Ctrl + Click Here](#)

## SCHEDULE A

61-2c-101'>61-2c-101 (Effective 01/01/10). Title.

This chapter is known as the "Utah Residential Mortgage Practices and Licensing Act."

61-2c-102'>61-2c-102 (Effective 01/01/10). Definitions.

(1) As used in this chapter:

(a) "Affiliate" means a person who directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified individual or entity.

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

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

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

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

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

(e) "Branch office" means a licensed entity's office:

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

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

(iii) that operates under the same business name as the licensed entity.

(f) (i) "Business of residential mortgage loans" means for compensation or in the expectation of compensation to:

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

(B) make or originate a residential mortgage loan;

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

(D) unless excluded under Subsection (1)(f)(ii), render services related to the origination of a residential mortgage loan including:

(I) preparing a loan package;

(II) communicating with the borrower and lender; or

(III) advising on a loan term.

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

(A) if working as an employee under the direction of and subject to the supervision and instruction of a person licensed under this chapter, the performance of a clerical or support duty such as:

(I) the receipt, collection, or distribution of information common for the processing or underwriting of a loan in the mortgage industry other than taking an application;

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

(III) word processing;

(IV) sending correspondence; or

(V) assembling files;

(B) ownership of an entity that engages in the business of residential mortgage loans if the owner does not personally perform the acts listed in Subsection (1)(f)(i); or

(C) except if an individual will engage in an activity as a loan originator, acting in one or more of the following capacities:

- (I) a loan wholesaler;
- (II) an account executive for a loan wholesaler;
- (III) a loan underwriter;

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- (IV) a loan closer; or
  - (V) funding a loan.

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

- (i) prelicensing education; or
- (ii) continuing education.

(h) "Closed-end" means a loan:

- (i) with a fixed amount borrowed; and
- (ii) that does not permit additional borrowing secured by the same collateral.

(i) "Commission" means the Residential Mortgage Regulatory Commission created in Section 61-2c-104'>61-2c-104.

(j) "Compensation" means anything of economic value that is paid, loaned, granted, given, donated, or transferred to an individual or entity for or in consideration of:

- (i) services;
- (ii) personal or real property; or
- (iii) another thing of value.

(k) "Continuing education" means education taken by an individual licensed under this chapter in order to meet the education requirements imposed by Sections 61-2c-204.1 and 61-2c-205'>61-2c-205 to renew a license under this chapter.

(l) "Control," as used in Subsection (1)(a), means the power to directly or indirectly:

- (i) direct or exercise a controlling interest over:
  - (A) the management or policies of an entity; or
  - (B) the election of a majority of the directors, officers, managers, or managing

partners of an entity;

- (ii) vote 20% or more of a class of voting securities of an entity by an individual; or
- (iii) vote more than 5% of a class of voting securities of an entity by another entity.

(m) "Depository institution" is as defined in Section 7-1-103.

(n) "Director" means the director of the division.

(o) "Division" means the Division of Real Estate.

(p) "Dwelling" means a residential structure attached to real property that contains one to four units including any of the following if used as a residence:

- (i) a condominium unit;
- (ii) a cooperative unit;
- (iii) a manufactured home; or
- (iv) a house.

(q) "Entity" means:

- (i) a corporation;
- (ii) a limited liability company;

- (iii) a partnership;
- (iv) a company;
- (v) an association;
- (vi) a joint venture;
- (vii) a business trust;
- (viii) a trust; or
- (ix) another organization.

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- (r) "Executive director" means the executive director of the Department of Commerce.
  - (s) "Inactive status" means a dormant status into which an unexpired license is placed when the holder of the license is not currently engaging in the business of residential mortgage loans.
  - (t) "Licensee" means a person licensed with the division under this chapter.
  - (u) "Licensing examination" means the examination required by Section 61-2c-204.1 or 61-2c-206'>61-2c-206 for an individual to obtain a license under this chapter.
  - (v) (i) Except as provided in Subsection (1)(v)(ii), "loan originator" means an individual who for compensation or in expectation of compensation:
    - (A) takes a residential mortgage loan application; or
    - (B) offers or negotiates terms of a residential mortgage loan.
  - (ii) "Loan originator" does not include a person who:
    - (A) is described in Subsection (1)(v)(i), but who performs exclusively administrative or clerical tasks as described in Subsection (1)(f)(ii)(A);
    - (B) unless compensated by a lender, a principal lending manager, or an agent of a lender or principal lending manager:
      - (I) only performs real estate brokerage activities; and
      - (II) is licensed under Chapter 2, Division of Real Estate; and
      - (C) is solely involved in extension of credit relating to a timeshare plan, as defined in 11 U.S.C. Sec. 101(53D).
  - (w) "Mortgage officer" means an individual who is licensed with the division to transact the business of residential mortgage loans through a principal lending manager.
  - (x) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry, authorized under Secure and Fair Enforcement for Mortgage Licensing, 12 U.S.C. Sec. 5101, et seq.
  - (y) "Nontraditional mortgage product" means a mortgage product other than a 30-year fixed rate mortgage.
  - (z) "Person" means an individual or entity.
  - (aa) "Prelicensing education" means education taken by an individual seeking to be licensed under this chapter in order to meet the education requirements imposed by Section 61-2c-204.1 or 61-2c-206'>61-2c-206 for an individual to obtain a license under this chapter.
  - (bb) (i) "Principal lending manager" means an individual licensed as a principal lending manager under Section 61-2c-206'>61-2c-206 to transact the business of residential mortgage loans.

(ii) An individual licensed as a principal lending manager may transact the business of residential mortgage loans as a mortgage officer.

(cc) "Record" means information that is:

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

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

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

(II) retrievable in perceivable form.

(dd) "Residential mortgage loan" means an extension of credit, if:

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

(A) mortgage;

(B) deed of trust; or

(C) consensual security interest;

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(ii) the mortgage, deed of trust, or consensual security interest described in Subsection (1)(dd)(i):

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

(B) is created with the consent of the owner of the residential real property; and

(iii) solely for the purposes of defining "loan originator," the extension of credit is primarily for personal, family, or household use.

(ee) "State" means:

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

(ii) the District of Columbia; or

(iii) the Commonwealth of Puerto Rico.

(ff) "Unique identifier" is as defined in 12 U.S.C. Sec. 5102.

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

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

61-2c-103'>61-2c-103 (Effective 01/01/10). Powers and duties of the division.

(1) The division shall administer this chapter.

(2) In addition to a power or duty expressly provided in this chapter, the division may:

(a) receive and act on a complaint including:

(i) taking action designed to obtain voluntary compliance with this chapter; or

(ii) commencing an administrative or judicial proceeding on the division's own initiative;

(b) establish one or more programs for the education of consumers with respect to residential mortgage loans;

(c) (i) make one or more studies appropriate to effectuate the purposes and policies of this chapter; and

(ii) make the results of the studies described in Subsection (2)(c)(i) available to the public;

(d) visit and investigate a person licensed under this chapter, regardless of whether the person is located in Utah; and

(e) employ one or more necessary hearing examiners, investigators, clerks, and other employees and agents.

(3) The division shall make rules for the administration of this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including:

(a) licensure procedures for:

(i) a person required by this chapter to obtain a license with the division; and

(ii) the establishment of a branch office by an entity;

(b) proper handling of monies received by a licensee;

(c) record-keeping requirements by a licensee, including proper disposal of a record;

(d) certification procedures for certifying an education provider; and

(e) standards of conduct for a licensee or certified education provider.

(4) The division may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, require as a condition of maintaining a license or certification under this chapter that a person comply with a requirement of the nationwide database if:

(a) required for uniformity amongst states; and

(b) not inconsistent with this chapter.

(5) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide a process under which an individual may challenge information contained in the nationwide database.

(6) The division may make available to the public a list of the names and mailing addresses of licensees:

(a) either directly or through a third party; and

(b) at a reasonable cost.

(7) The division shall annually:

(a) review the requirements related to the nationwide database imposed by federal law or the nationwide database on:

(i) the division;

(ii) a licensee under this chapter;

(iii) a certified education provider; or

(iv) an approved examination provider; and

(b) after the review required by Subsection (7)(a):

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(i) report to the Business and Labor Interim Committee the impact of the requirements on the implementation by the division of this chapter; and

(ii) recommend legislation, if any, to the Business and Labor Interim Committee related to how the division should coordinate with the nationwide database.

(8) The division may enter into a relationship or contract with the nationwide database or another entity designated by the nationwide database to do the following related to a licensee or other person subject to this chapter:

(a) collect or maintain a record; and

(b) process a transaction fee or other fee.

(9) The division shall regularly report the following to the nationwide database:

(a) a violation of this chapter;

- (b) disciplinary action under this chapter; and
- (c) other information relevant to this chapter.

61-2c-104'>61-2c-104 (Effective 01/01/10). Residential Mortgage Regulatory Commission.

(1) (a) There is created within the division the "Residential Mortgage Regulatory Commission" consisting of the following members appointed by the executive director with the approval of the governor:

(i) four members who:

(A) have at least three years of experience in transacting the business of residential mortgage loans; and

(B) are licensed under this chapter at the time of and during appointment; and

(ii) one member from the general public.

(b) (i) The executive director with the approval of the governor may appoint an alternate member to the board.

(ii) The alternate member shall:

(A) at the time of the appointment, have at least three years of experience in transacting the business of residential mortgage loans; and

(B) be licensed under this chapter at the time of and during appointment.

(2) (a) Except as required by Subsection (2)(b), the executive director shall appoint a new member or reappointed member subject to appointment by the executive director to a four-year term ending June 30.

(b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.

(c) If a vacancy occurs in the membership of the commission for any reason, the executive director shall appoint a replacement for the unexpired term.

(d) A member shall remain on the commission until the member's successor is appointed and qualified.

(3) Members of the commission shall annually select one member to serve as chair.

(4) (a) The commission shall meet at least quarterly.

(b) The director may call a meeting in addition to the meetings required by Subsection (4)(a):

(i) at the discretion of the director;

(ii) at the request of the chair of the commission; or

(iii) at the written request of three or more commission members.

(5) (a) Three members of the commission constitute a quorum for the transaction of business.

(b) If a quorum of members is unavailable for any meeting and an alternate member is appointed to the commission by the executive director with the approval of the governor, the alternate member shall serve as a regular member of the commission for that meeting if with the presence of the alternate member there is a quorum present at the meeting.

(c) The action of a majority of a quorum present is an action of the commission.

(6) (a) (i) A member who is not a government employee may not receive compensation or benefits for the member's services, but may receive per diem and

expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) A member who is not a government employee may decline to receive per diem and expenses for the member's service.

(b) (i) A state government officer and employee member who does not receive salary, per diem, or expenses from the member's agency for the member's service may receive per diem and expenses incurred in the performance of the member's official duties from the commission at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) A state government officer and employee member may decline to receive per diem and expenses for the member's service.

(7) In addition to a duty or power expressly provided for elsewhere in this chapter, the commission shall:

(a) except as provided in Subsection 61-2c-202(2), concur in the licensure or denial of licensure of a person under this chapter in accordance with Part 2, Licensure;

(b) take disciplinary action with the concurrence of the director in accordance with Part 4, Enforcement; and

(c) advise the division concerning matters related to the administration and enforcement of this chapter.

61-2c-105 (Effective 01/01/10). Scope of chapter -- Exemptions.

(1) (a) Except as to an individual who will engage in an activity as a 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.

(2) The following are exempt from this chapter:

(a) the federal government;

(b) a state;

(c) a political subdivision of a state;

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

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

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

(ii) the Federal National Mortgage Corporation;

(iii) the Federal Home Loan Mortgage Corporation;

(iv) the Federal Deposit Insurance Corporation;

(v) the Resolution Trust Corporation;

(vi) the Government National Mortgage Association;

(vii) the Federal Housing Administration;

(viii) the National Credit Union Administration;

(ix) the Farmers Home Administration; and

(x) the United States Department of Veterans Affairs;

(e) a depository institution;

- (f) an affiliate of a depository institution;
- (g) an employee or agent of an entity described in Subsections (2)(a) through (f);
- (i) when that person acts on behalf of the entity described in Subsections (2)(a) through (f); and
- (ii) including an employee of:
  - (A) a depository institution;
  - (B) a subsidiary of a depository institution that is:
    - (I) owned and controlled by the depository institution; and
    - (II) regulated by a federal banking agency, as defined in 12 U.S.C. Sec. 5102; or
  - (C) an institution regulated by the Farm Credit Administration;
- (h) except as provided in Subsection (3), a person who:
  - (i) makes a loan:
    - (A) secured by an interest in real property;
    - (B) with the person's own money; and
    - (C) for the person's own investment; and
  - (ii) that does not engage in the business of making loans secured by an interest in real property:
    - (i) except as provided in Subsection (3), a person who receives a mortgage, deed of trust, or consensual security interest on real property if the individual or entity:
      - (i) is the seller of real property; and
      - (ii) receives the mortgage, deed of trust, or consensual security interest on real property as security for a separate money obligation;
    - (j) a person who receives a mortgage, deed of trust, or consensual security interest on real property if:
      - (i) the person receives the mortgage, deed of trust, or consensual security interest as security for an obligation payable on an installment or deferred payment basis;
      - (ii) the obligation described in Subsection (2)(j)(i) arises from a person providing materials or services used in the improvement of the real property that is the subject of the mortgage, deed of trust, or consensual security interest; and
      - (iii) the mortgage, deed of trust, or consensual security interest is created without the consent of the owner of the real property that is the subject of the mortgage, deed of trust, or consensual security interest;
  - (k) a nonprofit corporation that:
    - (i) is exempt from paying federal income taxes;
    - (ii) is certified by the United States Small Business Administration as a small business investment company;
    - (iii) is organized to promote economic development in this state; and
    - (iv) has as its primary activity providing financing for business expansion;
  - (l) except as provided in Subsection (3), a court appointed fiduciary; or
  - (m) an attorney admitted to practice law in this state:
    - (i) if the attorney is not principally engaged in the business of negotiating residential mortgage loans; and
    - (ii) when the attorney renders services in the course of the attorney's practice as an attorney.

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

(4) (a) Notwithstanding Subsection (2)(m), an attorney exempt from this chapter may not engage in conduct described in Section 61-2c-301'>61-2c-301 when transacting business of residential mortgage loans.

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

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

(ii) is subject to disciplinary action generally applicable to an attorney admitted to practice law in this state.

(c) If the division receives a complaint alleging an attorney exempt from this chapter is in violation of Subsection (4)(a), the division shall forward the complaint to the Utah State Bar for disciplinary action.

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

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

61-2c-106'>61-2c-106 (Effective 01/01/10). Addresses provided the division.

(1) (a) In providing an address to the division under this chapter, a person shall provide a physical location or street address.

(b) The following is public information:

(i) a business address; or

(ii) a mailing address.

(2) A licensee is considered to have received a notification that is mailed to the last mailing address furnished to the division by:

(a) if the licensee is an individual, the individual; or

(b) if the licensee is an entity, the principal lending manager of the entity.

61-2c-201'>61-2c-201 (Effective 01/01/10). Licensure required of person engaged in the business of residential mortgage loans -- Mortgage officer -- Principal lending manager.

(1) Unless exempt from this chapter under Section 61-2c-105'>61-2c-105, a person may not transact the business of residential mortgage loans without obtaining a license under this chapter.

(2) For purposes of this chapter, a person transacts business in this state if:

(a) (i) the person engages in an act that constitutes the business of residential mortgage loans; and

(ii) (A) the act described in Subsection (2)(a)(i) is directed to or received in this state; and

(B) the real property that is the subject of the act described in Subsection (2)(a)(i) is located in this state; or

(b) a representation is made by the person that the person transacts the business of residential mortgage loans in this state.

(3) An individual who has an ownership interest in an entity required to be licensed under this chapter is not required to obtain an individual license under this chapter unless the individual transacts the business of residential mortgage loans.

(4) Unless otherwise exempted under this chapter, licensure under this chapter is required of both:

(a) the individual who directly transacts the business of residential mortgage loans; and

(b) if the individual transacts business as an employee or agent of an entity or individual, the entity or individual for whom the employee or agent transacts the business of residential mortgage loans.

(5) (a) An individual licensed under this chapter may not engage in the business of residential mortgage loans on behalf of more than one entity at the same time.

(b) This Subsection (5) does not restrict the number of:

(i) different lenders a person may use as a funding source for residential mortgage loans; or

(ii) entities in which an individual may have an ownership interest, regardless of whether the entities are:

(A) licensed under this chapter; or

(B) exempt under Section 61-2c-105'>61-2c-105.

(6) An individual licensed under this chapter may not transact the business of residential mortgage loans for the following at the same time:

(a) an entity licensed under this chapter; and

(b) an entity that is exempt from licensure under Section 61-2c-105'>61-2c-105.

(7) A mortgage officer may not receive consideration for transacting the business of residential mortgage loans from any person or entity except the principal lending manager with whom the mortgage officer is licensed.

(8) A mortgage officer shall conduct all business of residential mortgage loans:

(a) through the principal lending manager with which the individual is licensed; and

(b) in the business name under which the principal lending manager is authorized by the division to do business.

(9) (a) If an entity that is authorized by this chapter to transact the business of residential mortgage loans transacts the business of residential mortgage loans under an assumed business name, the entity shall:

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(i) register the assumed name with the division; and

(ii) furnish the division proof that the assumed business name is filed with the Division of Corporations and Commercial Code pursuant to Title 42, Chapter 2, Conducting Business Under Assumed Name.

(b) The division may charge a fee established in accordance with Section 63J-1-504 for registering an assumed name pursuant to this Subsection (9).

(10) A licensee whose license is in inactive status may not transact the business of residential mortgage loans.

61-2c-202'>61-2c-202 (Effective 01/01/10). Licensure procedures.

- (1) To apply for licensure under this chapter an applicant shall:
  - (a) submit to the division a licensure statement that:
    - (i) lists any name under which the applicant will transact business in this state;
    - (ii) lists the address of the principal business location of the applicant;
    - (iii) if the applicant is an entity:
      - (A) lists the principal lending manager of the entity; and
      - (B) contains the signature of the principal lending manager;
    - (iv) demonstrates that the applicant meets the qualifications listed in Section 61-2c-203';>61-2c-203;
    - (v) if the applicant is an entity, lists:
      - (A) all jurisdictions in which the entity is registered, licensed, or otherwise regulated in the business of residential mortgage loans; and
      - (B) the history of any disciplinary action or adverse administrative action taken against the entity by a regulatory agency; and
    - (vi) includes any information required by the division by rule;
  - (b) if the applicant is an individual, the applicant shall provide:
    - (i) (A) a fingerprint card in a form acceptable to the division; and
    - (B) consent to a criminal background check by:
      - (I) the Utah Bureau of Criminal Identification; and
      - (II) the Federal Bureau of Investigation;
    - (ii) evidence using a method approved by the division of having successfully completed approved prelicensing education in accordance with Section 61-2c-204.1;
    - (iii) evidence using a method approved by the division by rule of having successfully passed a licensing examination in accordance with Section 61-2c-204.1; and
    - (iv) if the applicant will engage in an activity as a loan originator:
      - (A) the individual's unique identifier;
      - (B) any other evidence required by the division by rule demonstrating that the individual has submitted the following to the nationwide database:
        - (I) a fingerprint card in a form acceptable to the nationwide database;
        - (II) consent to a criminal background check by:
          - (Aa) the Utah Bureau of Criminal Identification; and
          - (Bb) the Federal Bureau of Investigation; and
        - (III) information requested by the nationwide database regarding personal history and experience including authorization for the nationwide database and division to obtain:
          - (Aa) an independent credit report obtained from a consumer reporting agency described in 15 U.S.C. Sec. 1681 et seq.; and
          - (Bb) information related to an administrative, civil, or criminal finding of a governmental jurisdiction; and
  - (c) pay:
    - (i) an application fee established by the division in accordance with Section 63J-1-504; and
    - (ii) the reasonable expenses incurred in processing the application for licensure, including the costs incurred by the division under Subsection (4).
- (2) (a) The division shall issue a license to an applicant if the division, with the concurrence of the commission, finds that the applicant:

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(i) meets the qualifications of Sections 61-2c-203'>61-2c-203 and 61-2c-204.1; and  
(ii) complies with this section.

(b) The commission may delegate to the division the authority to:

- (i) review a class or category of application for an initial or renewed license;
- (ii) determine whether an applicant meets the licensing criteria in Sections 61-2c-203'>61-2c-203 and 61-2c-204.1;
- (iii) conduct a necessary hearing on an application; and
- (iv) approve or deny a license application without concurrence by the commission.

(c) If the commission delegates to the division the authority to approve or deny an application without concurrence by the commission and the division denies an application for licensure, the applicant who is denied licensure may petition the commission for review of the denial.

(d) An applicant who is denied licensure under Subsection (2)(b) may seek agency review by the executive director only after the commission reviews the division's denial of the applicant's application.

(3) Subject to Subsection (2)(d) and in accordance with Title 63G, Chapter 4, Administrative Procedures Act, an applicant who is denied licensure under this chapter may submit a request for agency review to the executive director within 30 days following the day on which the commission order denying the licensure is issued.

(4) (a) The division shall request the Department of Public Safety to complete:

- (i) for an applicant who will engage in an activity as a loan originator, a criminal background check by the Utah Bureau of Criminal Identification; or
- (ii) for an applicant who will not engage in an activity as a loan originator, a Federal Bureau of Investigation criminal background check through a national criminal history system.

(b) An applicant shall pay the cost of:

- (i) the fingerprinting required by this section; and
- (ii) the criminal background check required by this section.

(c) The funds paid by an applicant for the cost of the criminal background check shall be nonlapsing.

61-2c-203'>61-2c-203 (Effective 01/01/10). General qualifications for licensure.

(1) To qualify for licensure under this chapter, an individual:

(a) shall demonstrate:

- (i) financial responsibility;
- (ii) good moral character; and
- (iii) the competence to transact the business of residential mortgage loans, including general fitness such as to command the confidence of the community and to warrant a determination that the individual will operate honestly, fairly, and efficiently within the purposes of this chapter;

(b) except as provided in Subsection (3), may not have been convicted of, pled guilty of, pled no contest to, pled guilty in a similar manner to, or resolved by diversion or its equivalent:

- (i) a felony involving an act of fraud, dishonesty, a breach of trust, or money laundering;

(ii) a felony in the seven years preceding the day on which an application is submitted to the division;

(iii) in the ten years preceding the day on which an application is submitted to the division of:

(A) a felony or class A misdemeanor involving moral turpitude; or

(B) a crime in another jurisdiction that is the equivalent of a felony or class A misdemeanor involving moral turpitude;

(iv) in the five years preceding the day on which an application is submitted to the division:

(A) a class B or class C misdemeanor involving moral turpitude; or

(B) a crime in another jurisdiction that is the equivalent of a class B or class C misdemeanor involving moral turpitude;

(c) if the applicant will engage in an activity as a loan originator, may not have had a license as a loan originator revoked by a governmental jurisdiction at any time;

(d) except as provided in Subsection (3), may not have had a license or registration suspended, revoked, surrendered, canceled, or denied in the five years preceding the date the individual applies for licensure if:

(i) the registration or license is issued by this state or another jurisdiction; and

(ii) the suspension, revocation, surrender, probation, fine, cancellation, or denial is based on misconduct in a professional capacity that relates to moral character, honesty, integrity, truthfulness, or the competency to transact the business of residential mortgage loans;

(e) except as provided in Subsection (3), may not have been the subject of a bar by the Securities and Exchange Commission, the New York Stock Exchange, or the National Association of Securities Dealers within the five years preceding the date the individual applies for registration; and

(f) may not have had a temporary or permanent injunction entered against the individual:

(i) by a court or licensing agency; and

(ii) on the basis of:

(A) conduct or a practice involving the business of residential mortgage loans; or

(B) conduct involving fraud, misrepresentation, or deceit.

(2) To qualify for licensure under this chapter an entity may not have:

(a) any of the following individuals in management who fails to meet the requirements of Subsection (1) for an individual who will engage in an activity as a loan originator:

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(i) a manager or a managing partner;

(ii) a director;

(iii) an executive officer; or

(iv) an individual occupying a position or performing functions similar to those described in Subsections (2)(a)(i) through (iii); or

(b) a principal lending manager who fails to meet the requirements of Subsection (1) for an individual who will engage in an activity as a loan originator.

(3) (a) Notwithstanding the failure to meet the requirements of Subsections (1)(b)(iii), (b)(iv), (d), (e), and (f) and except as provided in Subsection (3)(b), the division may permit a person to be licensed under this chapter if the individual applicant or a person listed in Subsection (2):

(i) fails to meet the requirements of Subsections (1)(b)(iii), (b)(iv), (d), (e), and (f);  
(ii) otherwise meets the qualifications for licensure; and  
(iii) provides evidence satisfactory to the division with the concurrence of the commission that the individual applicant or person described in Subsection (2):

(A) is of good moral character;

(B) is honest;

(C) has integrity;

(D) is truthful; and

(E) has the competency to transact the business of residential mortgage loans.

(b) The division may not license an individual under this Subsection (3) if that individual will engage in an activity as a loan originator.

61-2c-204.1 (Effective 01/01/10). Education providers -- Education requirements -- Examination requirements.

(1) As used in this section:

(a) "Approved continuing education course" means a course of continuing education that is approved by the nationwide database.

(b) "Approved prelicensing education course" means a course of prelicensing education that is approved by the nationwide database.

(2) (a) A person may not provide prelicensing education or continuing education if that person is not certified by the division under this chapter.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules establishing:

(i) certification criteria and procedures to become a certified education provider; and

(ii) standards of conduct for a certified education provider.

(c) In accordance with the rules described in Subsection (2)(b), the division shall certify a person to provide one or more of the following:

(i) prelicensing education; or

(ii) continuing education.

(d) The division shall make available to the public a list of the names and addresses of certified education providers.

(e) In certifying an education provider, the division by rule may:

(i) distinguish between an individual instructor and an entity that provides education;

or

(ii) approve prelicensing education or continuing education courses.

(3) (a) The division may not:

(i) license an individual under this chapter as a mortgage officer who has not completed the prelicensing education required by this section:

(A) before taking the licensing examination required by Subsection (4); and

(B) in the number of hours, not to exceed 90 hours, required by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except that the division shall require that a person who will engage in an activity as a loan

originator complete at least 20 hours of approved preclicensing education courses that include at least:

- (I) three hours of federal law and regulation;
  - (II) three hours of ethics that includes instruction on fraud, consumer protection, and fair lending issues; and
  - (III) two hours of training related to lending standards for the nontraditional mortgage product marketplace;
- (ii) subject to Subsection (6), renew a license of an individual who has not completed the continuing education required by this section and Section 61-2c-205'>61-2c-205; or
  - (iii) the division may not license an individual under this chapter as a principal lending manager who has not completed the preclicensing education required by Section 61-2c-206'>61-2c-206 before taking the licensing examination required by Section 61-2c-206'>61-2c-206.

(b) Subject to Subsection (3)(a) and with the concurrence of the division, the commission shall determine:

- (i) except as provided in Subsection 61-2c-206'>61-2c-206(1)(c), the appropriate number of hours of preclicensing education required to obtain a license;
- (ii) the subject matters of the preclicensing education required under this section and Section 61-2c-206'>61-2c-206, including online education or distance learning options;
- (iii) the appropriate number of hours of continuing education required to renew a license, except that at a minimum the continuing education required for a person who engages in an activity as a loan originator shall include at least eight hours annually of approved continuing education courses that include at least:
  - (A) three hours of federal law and regulations;
  - (B) two hours of ethics, that include instruction on fraud, consumer protection, and fair lending issues; and
  - (C) two hours of training related to lending standards for the nontraditional mortgage product marketplace; and
- (iv) the subject matter of courses the division may accept for continuing education purposes.

(c) The commission may appoint a committee to make recommendations to the commission concerning approval of preclicensing education and continuing education courses, except that the commission shall appoint at least one member to the committee to represent each association that represents a significant number of individuals licensed under this chapter.

(d) The division may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the calculation of continuing education credits, except that the rules shall be consistent with 12 U.S.C. Sec. 5105.

(4) (a) The division may not license an individual under this chapter unless that individual first passes a licensing examination administered by an approved examination provider.

(b) The commission, with the concurrence of the division, shall determine the requirements for:

- (i) a licensing examination that at least:
  - (A) includes the qualified written test developed by the nationwide database; and
  - (B) tests knowledge of the:

- (I) fundamentals of the English language;
- (II) arithmetic;
- (III) provisions of this chapter;
- (IV) rules adopted under this chapter;
- (V) basic residential mortgage principles and practices; and
- (VI) any other aspect of Utah law the commission determines is appropriate; and
- (ii) a licensing examination required under Section 61-2c-206'>61-2c-206 that:
  - (A) includes the qualified written test developed by the nationwide database; and
  - (B) tests knowledge of the:
    - (I) advanced residential mortgage principles and practices; and
    - (II) other aspects of Utah law the commission, with the concurrence of the division, determines appropriate.

(c) An individual who will engage in an activity as a loan originator, is not considered to have passed a licensing examination if that individual has not met the minimum competence requirements of 12 U.S.C. Sec. 5104(d)(3).

(5) When reasonably practicable, the commission and the division shall make the licensing examination, prelicensing education, and continuing education requirements described in this section available electronically through one or more distance education methods approved

by the commission and division.

(6) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission, with the concurrence of the division, shall make rules establishing procedures under which a licensee may be exempted from continuing education requirements:

- (i) for a period not to exceed four years; and
- (ii) upon a finding of reasonable cause.

(b) An individual who engages in an activity as a loan originator may not under this Subsection (6) be exempted from the eight hours of continuing education required under Subsection (3)(b)(iii) for an individual who engages in an activity as a loan originator.

61-2c-205'>61-2c-205 (Effective 01/01/10). Term of licensure -- Renewal -- Reporting of changes.

(1) (a) A license under this chapter is valid for one year.

(b) Notwithstanding Subsection (1)(a), the time period of a license may be extended or shortened by as much as one year to maintain or change a renewal cycle established by rule by the division.

(2) To renew a license, no later than the date the license expires, a licensee shall:

- (a) (i) file the renewal form required by the division; and
- (ii) furnish the information required by Subsection 61-2c-202'>61-2c-202(1);

(b) pay a fee to the division established by the division in accordance with Section 63J-1-504; and

(c) if the licensee is an individual and the individual's license is in active status at the time of application for renewal, submit proof using forms approved by the division of

having completed during the year before application the continuing education required under Section 61-2c-204.1.

(3) (a) A licensee under this chapter shall notify the division using the form required by the division within ten days of the date on which there is a change in:

- (i) a name under which the licensee transacts the business of residential mortgage loans in this state;
- (ii) (A) if the licensee is an entity, the business location of the licensee; or  
(B) if the licensee is an individual, the home and business addresses of the individual;
- (iii) the principal lending manager of the entity;
- (iv) the entity with which an individual licensee is licensed to conduct the business of residential mortgage loans; or

(v) any other information that is defined as material by rule made by the division.

(b) Failure to notify the division of a change described in Subsection (3)(a) is separate grounds for disciplinary action against a licensee.

(4) A licensee shall notify the division by sending the division a signed statement within ten business days of:

- (a) (i) a conviction of a criminal offense;
- (ii) the entry of a plea in abeyance to a criminal offense; or
- (iii) the potential resolution of a criminal case by:

(A) a diversion agreement; or

(B) any other agreement under which a criminal charge is held in suspense for a period of time;

(b) filing a personal bankruptcy or bankruptcy of a business that transacts the business of residential mortgage loans;

(c) the suspension, revocation, surrender, cancellation, or denial of a professional license or professional registration of the licensee, whether the license or registration is issued by this state or another jurisdiction; or

(d) the entry of a cease and desist order or a temporary or permanent injunction:

(i) against the licensee by a court or licensing agency; and

(ii) based on:

(A) conduct or a practice involving the business of residential mortgage loans; or

(B) conduct involving fraud, misrepresentation, or deceit.

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(5) (a) A license under this chapter expires if the licensee does not apply to renew the license on or before the expiration date of the license.

(b) Within 30 calendar days after the expiration date, a licensee whose license has expired may apply to reinstate the expired license by:

(i) paying a renewal fee and a late fee determined by the division under Section 63J-1-504; and

(ii) if the licensee is an individual and is applying to reinstate a license to active status, providing proof using forms approved by the division of having completed, during the year before application, the continuing education required under Section 61-2c-204.1.

(c) After the 30 calendar days described in Subsection (5)(b) and within six months after the expiration date, a licensee whose license has expired may apply to reinstate an expired license by:

(i) paying a renewal fee and a late fee determined by the division under Section 63J-1-504;

(ii) if the licensee is an individual and is applying to reinstate a license to active status, providing proof using forms approved by the division of having completed, during the year before application, the continuing education required under Section 61-2c-204.1; and

(iii) in addition to the continuing education described in Subsection (5)(c)(ii), providing proof of completing an additional 12 hours of continuing education meeting the requirements of Section 61-2c-204.1.

(d) The division shall issue a license to a licensee whose license expires under this Subsection (5) for more than six months as if the licensee is a new applicant filing an application for an original license under Section 61-2c-202'>61-2c-202.

(e) Notwithstanding Subsection (5)(a), the division may extend the term of a license that would expire under Subsection (5)(a) except for the extension if:

(i) the person complies with the requirements of this section to renew the license; and

(ii) at the time of the extension, there is pending under this chapter:

(A) the application for renewal of the license; or

(B) a disciplinary action.

(6) The division may charge a fee established in accordance with Section 63J-1-504 for processing a change that a licensee is required to report to the division under this section.

61-2c-205.1. Transition to use of nationwide database.

(1) An individual not required to be licensed under this chapter as in effect on December 31, 2010, who is required to be licensed under this chapter as in effect on January 1, 2011, may not engage in the business of residential mortgage loans on or after January 1, 2011 without holding a license under this chapter.

(2) An individual who applies for a license under this chapter on or after January 1, 2011, shall meet the requirements of this chapter as in effect on January 1, 2011.

(3) (a) This Subsection (3) applies to a licensee who:

(i) will engage in an activity as a loan originator on or after January 1, 2011; and

(ii) holds an active license under this chapter on December 31, 2010.

(b) A licensee shall comply with the requirements of this chapter as in effect on January 1, 2011, by no later than January 1, 2011, in order to hold an active license on or after January 1, 2011.

(c) The license of a licensee that fails to comply with this section on or before January 1, 2011 becomes inactive on January 1, 2011 until:

(i) the day on which the licensee complies with the requirements of this chapter; or

(ii) the license expires.

(4) (a) A license of an individual who will engage in an activity as a loan originator that is inactive on December 31, 2010, terminates as of January 1, 2011 unless that licensee provides on or before January 1, 2011, evidence satisfactory to the division that the licensee has complied with the requirements for registration under the nationwide database.

(b) The division may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, proscribe:

(i) the "requirements for registration under the nationwide database" described in Subsection (4)(a);

(ii) the evidence required by this Subsection (4); and

(iii) the procedure for submitting the evidence required by this Subsection (4).

(5) The division may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, providing a process:

(a) that is consistent with this section to transition the licensing of individuals engaged in the business of residential mortgage loans to the license requirements under this chapter as in effect on January 1, 2011; or

(b) to suspend a requirement for holding a license under this chapter that is related to the nationwide database if:

(i) the suspension is related to changes made to Secure and Fair Enforcement for Mortgage Licensing, 12 U.S.C. Sec. 5105, et seq., on or after January 1, 2009; and

(ii) the suspension ends on or before December 31, 2011.

(6) The division may report or provide recommendations to the Legislature regarding changes, if any, that could be made to this chapter in response to changes made to the nationwide database or under Secure and Fair Enforcement for Mortgage Licensing, 12 U.S.C. Sec. 5101, et seq., including changes related to grandfathering.

61-2c-206'>61-2c-206 (Effective 01/01/10). Principal lending manager licenses.

(1) To qualify as a principal lending manager under this chapter, an individual shall, in addition to meeting the standards in Section 61-2c-203'>61-2c-203:

(a) submit an application on a form approved by the division;

(b) pay a fee determined by the division under Section 63J-1-504;

(c) submit proof of having successfully completed 40 hours of prelicensing education approved by the commission under Section 61-2c-204.1;

(d) submit proof of having successfully completed the principal lending manager licensing examination approved by the commission under Section 61-2c-204.1;

(e) submit proof on a form approved by the division of three years of full-time active experience as a mortgage officer in the five years preceding the day on which the application is submitted, or its equivalent as approved by the commission; and

(f) if the individual is not licensed under this chapter at the time of application, submit to the criminal background check required by Subsection 61-2c-202'>61-2c-202(1)(b).

(2) A principal lending manager may not engage in the business of residential mortgage loans on behalf of more than one entity at the same time.

61-2c-207'>61-2c-207 (Effective 01/01/10). Reciprocal licensure.

(1) The division may enter into a reciprocity agreement with another state and issue a reciprocal license to a licensee of that state if the division determines that the:

(a) state has substantially equivalent licensing laws, including compliance with Secure and Fair Enforcement for Mortgage Licensing, 12 U.S.C. Sec. 5101, et seq.;

(b) state requires a licensing examination that is substantially equivalent to the examination required by this chapter; and

(c) licensee has not had:

- (i) formal charges alleging a violation of state mortgage laws filed against the licensee; or
  - (ii) disciplinary action or license restriction taken by the licensee's state of domicile.
- (2) The division may issue a reciprocal license to a licensee of a state with which the division does not have a reciprocity agreement if the individual:
- (a) submits to the division an affidavit that the individual has five years of experience in the business of residential mortgage loans;
  - (b) establishes that the individual's experience described in Subsection (2)(a) was under requirements substantially equivalent to the licensing requirements of this chapter; and
  - (c) provides any other information required by the division by rule under Subsection (3).
- (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall define the information an individual shall provide to the division pursuant to Subsection (2).

61-2c-208'>61-2c-208 (Effective 01/01/10). Activation and inactivation of license.

(1) (a) A licensee may request that the division place the license on inactive status by submitting an inactivation form approved by the division.

(b) The license of a mortgage officer who or an entity that is not affiliated with an active license of a principal lending manager automatically converts to inactive status on the day on which the mortgage officer or entity is not affiliated with the active license of the principal lending manager.

(c) A licensee whose license is in inactive status may not transact the business of residential mortgage loans.

(2) To activate a license that is placed on inactive status, a licensee shall:

(a) submit an activation form:

(i) approved by the division; and

(ii) signed by the principal lending manager with whom the licensee is affiliating;

(b) pay an activation fee established by the division under Section 63J-1-504;

(c) if the licensee is an individual whose license was in inactive status at the time of the previous renewal, the licensee shall supply the division with proof of the successful completion of the number of hours of continuing education that the licensee would have been required to complete under Section 61-2c-204.1 if the licensee's license had been on active status, up to a maximum of the number of hours required for two licensing periods; and

(d) pass the licensing examination described in Section 61-2c-204.1 if:

(i) the licensee is an individual who will engage in an activity as a loan originator; and

(ii) the license has been in inactive status for five years or more from the day on which the licensee submits an inactivation form with the division.

61-2c-301'>61-2c-301 (Effective 01/01/10). Prohibited conduct -- Violations of the chapter.

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

(a) give or receive compensation or anything of value in exchange for a referral of residential mortgage loan business;

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

- (i) that is excessive; or
- (ii) if the person does not comply with Section 70D-2-305;
- (c) give or receive compensation or anything of value in exchange for a referral of settlement or loan closing services related to a residential mortgage loan transaction;
- (d) do any of the following to induce a lender to extend credit as part of a residential mortgage loan transaction:
  - (i) make a false statement or representation;
  - (ii) cause false documents to be generated; or
  - (iii) knowingly permit false information to be submitted by any party;
- (e) give or receive compensation or anything of value, or withhold or threaten to withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in reaching a value conclusion in a residential mortgage loan transaction, except that it is not a violation of this section for a licensee to withhold payment because of a bona fide dispute regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards of Professional Appraisal Practice;
- (f) violate or not comply with:
  - (i) this chapter;
  - (ii) an order of the commission or division; or
  - (iii) a rule made by the division;
- (g) fail to respond within the required time period to:
  - (i) a notice or complaint of the division; or
  - (ii) a request for information from the division;
- (h) make false representations to the division, including in a licensure statement;
- (i) for a residential mortgage loan transaction beginning on or after January 1, 2004, engage in the business of residential mortgage loans with respect to the transaction if the person also acts in any of the following capacities with respect to the same residential mortgage loan transaction:
  - (i) appraiser;
  - (ii) escrow agent;
  - (iii) real estate agent;
  - (iv) general contractor; or
  - (v) title insurance agent;
- (j) order a title insurance report or hold a title insurance policy unless the person provides to the title insurer a copy of a valid, current license under this chapter;
- (k) engage in unprofessional conduct as defined by rule;
- (l) engage in an act or omission in transacting the business of residential mortgage loans that constitutes dishonesty, fraud, or misrepresentation;
- (m) engage in false or misleading advertising;
- (n) (i) fail to account for monies received in connection with a residential mortgage loan;
  - (ii) use monies for a different purpose from the purpose for which the monies are received; or
  - (iii) except as provided in Subsection (4), retain monies paid for services if the services are not performed;

(o) fail, within 90 calendar days of a request from a borrower who has paid for an appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;

(p) engage in an act that is performed to:

(i) evade this chapter; or

(ii) assist another person to evade this chapter;

(q) recommend or encourage default, delinquency, or continuation of an existing default or delinquency, by a mortgage applicant on an existing indebtedness before the closing of a residential mortgage loan that will refinance all or part of the indebtedness;

(r) in the case of the principal lending manager of an entity or a branch office of an entity, fail to exercise reasonable supervision over the activities of:

(i) unlicensed staff; and

(ii) a mortgage officer who is licensed with the principal lending manager;

(s) pay or offer to pay an individual who does not hold a license under this chapter for work that requires the individual to hold a license under this chapter;

(t) in the case of a dual licensed title licensee as defined in Section 31A-2-402'>31A-2-402:

(i) provide a title insurance product or service without the approval required by Section 31A-2-405; or

(ii) knowingly provide false or misleading information in the statement required by Subsection 31A-2-405(2); or

(u) represent to the public that the person can or will perform any act of a loan originator if that person is not licensed under this chapter because the person is exempt under Subsection 61-2c-102'>61-2c-102(1)(f)(ii)(A), including through:

(i) advertising;

(ii) a business card;

(iii) stationary;

(iv) a brochure;

(v) a sign;

(vi) a rate list; or

(vii) other promotional item.

(2) Whether or not the crime is related to the business of residential mortgage loans, it is a violation of this chapter for a licensee or a person who is a certified education provider to do any of the following with respect to a criminal offense that involves moral turpitude:

(a) be convicted;

(b) plead guilty or nolo contendere;

(c) enter a plea in abeyance; or

(d) be subjected to a criminal disposition similar to the ones described in Subsections

(2)(a) through (c).

(3) A principal lending manager does not violate Subsection (1)(r) if:

(a) in contravention of the principal lending manager's written policies and instructions, an affiliated licensee of the principal lending manager violates:

(i) this chapter; or

(ii) rules made by the division under this chapter;

- 
- (b) the principal lending manager established and followed reasonable procedures to ensure that affiliated licensees receive adequate supervision;
  - (c) upon learning of a violation by an affiliated licensee, the principal lending manager attempted to prevent or mitigate the damage;
  - (d) the principal lending manager did not participate in or ratify the violation by an affiliated licensee; and
  - (e) the principal lending manager did not attempt to avoid learning of the violation.

(4) Notwithstanding Subsection (1)(n)(iii), a licensee may, upon compliance with Section 70D-2-305, charge a reasonable cancellation fee for work done originating a mortgage if the mortgage is not closed.

61-2c-302'>61-2c-302 (Effective 01/01/10). Record requirements.

(1) For the time period specified in Subsection (2), a licensee shall make or possess any record required for that licensee by a rule made by the division.

(2) A licensee shall maintain in its possession a record described in Subsection (1) for four years from the last to occur of the following:

- (a) the final entry on a residential mortgage loan is made by that licensee;
- (b) if the residential mortgage loan is serviced by the licensee:
  - (i) the residential mortgage loan is paid in full; or
  - (ii) the licensee ceases to service the residential mortgage loan; or
- (c) if the residential mortgage loan is not serviced by the licensee, the residential mortgage loan is closed.

(3) A licensee shall:

(a) make available to the division for inspection and copying during normal business hours all records required to be maintained under this chapter; and

(b) upon reasonable notice from the division to a licensee, produce all records described in Subsection (3)(a) that are related to an investigation being conducted by the division at the division office for inspection and copying by the division.

(4) A licensee who is an entity shall maintain and produce for inspection by the division a current list of all individuals whose licenses are affiliated with the entity.

(5) A licensee who engages in an activity as a loan originator shall maintain and produce for inspection by the division a report of condition submitted to the nationwide database as required by 12 U.S.C. Sec. 5104(e) for at least four years from the day on which the licensee submits the report of condition.

61-2c-401. Investigations.

(1) The division may investigate or cause to be investigated the actions of:

- (a) (i) a licensee;
- (ii) a person required to be licensed under this chapter; or
- (iii) the following with respect to an entity that is a licensee or an entity required to be licensed under this chapter:
  - (A) a manager;
  - (B) a managing partner;
  - (C) a director;
  - (D) an executive officer; or

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

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

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

(A) a manager;

(B) a managing partner;

(C) a director;

(D) an executive officer; or

(E) an individual who performs a function similar to an individual listed in this Subsection (1)(b)(ii); or

(c) any individual or entity that transacts the business of residential mortgage loans within this state.

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

(a) administer an oath or affirmation;

(b) subpoena witnesses;

(c) take evidence;

(d) require the production of books, papers, contracts, records, other documents, or information relevant to an investigation; and

(e) serve a subpoena by certified mail.

(3) A failure to respond to a request by the division in an investigation authorized under this chapter is considered as a separate violation of this chapter, including:

(a) failing to respond to a subpoena;

(b) withholding evidence; or

(c) failing to produce documents or records.

(4) The division may inspect and copy all records related to the business of residential mortgage loans by a licensee under this chapter, regardless of whether the records are maintained at a business location in Utah, in conducting:

(a) investigations of complaints; or

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

(i) this chapter; or

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

(5) (a) If a licensee maintains the records required by this chapter and the rules adopted by the division under this chapter outside Utah, the licensee is responsible for all reasonable costs, including reasonable travel costs, incurred by the division in inspecting those records.

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

(c) If the deposit described in Subsection (5)(b) is insufficient to meet the estimated costs and expenses of examination of the records, the licensee shall make an additional deposit to cover the estimated costs and expenses of the division.

(d) (i) All deposits under this Subsection (5) shall be deposited in the General Fund as a dedicated credit to be used by the division under Subsection (5)(a).

(ii) The division, with the concurrence of the executive director, may use the deposit monies deposited in the General Fund under this Subsection (5)(d) as a dedicated credit for the records inspection costs under Subsection (5)(a).

(iii) A deposit under this Subsection (5) shall be refunded to the licensee to the extent it is not used, together with an itemized statement from the division of all amounts it has used.

(e) All deposits under this Subsection (5) shall be nonlapsing.

(6) Failure to deposit with the division a deposit required to cover the costs of examination of records that are maintained outside Utah shall result in automatic suspension of a license until the deposit is made.

61-2c-402'>61-2c-402 (Effective 01/01/10). Disciplinary action.

(1) Subject to the requirements of Section 61-2c-402.1'>61-2c-402.1, the commission, with the concurrence of the division, may impose a sanction described in Subsection (2) against a person if the person:

(a) (i) is a licensee or person required to be licensed under this chapter; and

(ii) violates this chapter; or

(b) (i) is a certified education provider or person required to be certified to provide prelicensing or continuing education under this chapter; and

(ii) violates this chapter.

(2) The commission, with the concurrence of the director, may against a person described in Subsection (1):

(a) impose an educational requirement;

(b) impose a civil penalty against the individual or entity in an amount not to exceed the greater of:

(i) \$2,500 for each violation; or

(ii) the amount equal to any gain or economic benefit derived from each violation;

(c) deny an application for an original license;

(d) do any of the following to a license under this chapter:

(i) suspend;

(ii) revoke;

(iii) place on probation;

(iv) deny renewal;

(v) deny reinstatement; or

(vi) in the case of a denial or revocation of a license, set a waiting period for a person to apply for a license under this chapter;

(e) issue a cease and desist order;

(f) require the reimbursement of the division of costs incurred by the division related to the recovery, storage, or destruction of a record that the person disposes of in a manner that violates this chapter or a rule made under this chapter;

(g) modify a sanction described in Subsections (2)(a) through (f) if the commission finds that the person complies with court ordered restitution; or

(h) impose any combination of sanctions described in this Subsection (2).

61-2c-402.1'>61-2c-402.1 (Effective 01/01/10). Adjudicative proceedings -- Review.

(1) (a) Before an action described in Section 61-2c-402 may be taken, the division shall:

- (i) give notice to the person against whom the action is brought; and
- (ii) commence an adjudicative proceeding.

(b) If after the adjudicative proceeding is commenced under Subsection (1)(a) the presiding officer determines that a person required to be licensed under this chapter has violated this chapter, the division may take an action described in Section 61-2c-402 by written order.

(2) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, a person against whom action is taken under this section may seek review by the executive director of the action.

(3) If a person prevails in a judicial appeal and the court finds that the state action was undertaken without substantial justification, the court may award reasonable litigation expenses to that individual or entity as provided under Title 78B, Chapter 8, Part 5, Small Business Equal Access to Justice Act.

(4) (a) An order issued under this section takes effect 30 days after the service of the order unless otherwise provided in the order.

(b) If an appeal of an order issued under this section is taken by a person, the division may stay enforcement of the order in accordance with Section 63G-4-405.

(5) If ordered by the court of competent jurisdiction, the division shall promptly take an action described in Section 61-2c-402 against a license granted under this chapter.

61-2c-501. Fund created -- Minimum balance.

(1) (a) There is created a restricted special revenue fund known as the "Residential Mortgage Loan Education, Research, and Recovery Fund."

(b) As used in this part, "fund" means the Residential Mortgage Loan Education, Research, and Recovery Fund.

(2) The interest earned on the fund shall be deposited into the fund.

(3) (a) At the beginning of each state fiscal year, \$100,000 shall remain available in the fund to satisfy judgments rendered against a person licensed under this chapter.

(b) For purposes of this part, a "judgment" includes a criminal restitution judgment. 61-2c-502 (Effective 01/01/10). Additional license fee.

(1) An individual who applies for or renews a license shall pay, in addition to the application or renewal fee, a reasonable annual fee:

- (a) determined by the division with the concurrence of the commission; and
- (b) not to exceed \$18.

(2) An entity that applies for or renews an entity license shall pay, in addition to the application or renewal fee, a reasonable annual fee:

- (a) determined by the division with the concurrence of the commission; and
- (b) not to exceed \$25.

(3) Notwithstanding Section 13-1-2, the following shall be paid into the fund to be used as provided in this part:

- (a) a fee provided in this section;
- (b) a fee for certifying:
  - (i) a school as a certified education provider;
  - (ii) a prelicensing or continuing education course; or

- (iii) a preclicensing or continuing education provider as an instructor; and
- (c) a civil penalty imposed under this chapter.

(4) If the balance in the fund that is available to satisfy a judgment against a licensee decreases to less than \$100,000, the division may make an additional assessment to a licensee to maintain the balance available at \$100,000 to satisfy judgments.

61-2c-503. Notice to division -- Judgment against mortgage licensee -- Fraud, misrepresentation, or deceit -- Verified petition for order directing payment from fund -- Limitations and procedure.

(1) (a) Subject to Subsection (6), a person may bring a claim against the fund if the person sends a signed notification to the division at the time the person files an action:

- (i) against a licensee; and
- (ii) alleging fraud, misrepresentation, or deceit.

(b) Within 30 calendar days of receipt of the notice described in Subsection (1)(a), the division may intervene in the action.

(c) If a person making a claim against the fund obtains a final judgment in a court of competent jurisdiction in Utah against a licensee based on fraud, misrepresentation, or deceit in a residential mortgage loan transaction, the person making the claim may, upon termination of all proceedings including appeals, file a verified petition in the court where the judgment was entered for an order directing payment from the fund for the uncollected actual damages included in the judgment.

(d) A recovery from the fund may not include punitive damages, interest, or court costs.

(e) Regardless of the number of claimants or number of loans involved in a transaction, the liability of the fund may not exceed:

- (i) \$15,000 for a single transaction;
- (ii) \$45,000 for an individual licensee; or
- (iii) \$45,000 for an entity.

(2) A person making a claim against the fund shall:

- (a) serve a copy of the petition on the division; and
- (b) file a copy of the affidavit of the service of the petition described in Subsection

(2)(a) with the court.

(3) (a) The court shall conduct a hearing on the petition within 30 calendar days after service.

(b) The petitioner shall recover from the fund only if the petitioner shows:

- (i) that the petitioner is not:
  - (A) the spouse of the judgment debtor; or
  - (B) the personal representative of the spouse of the judgment debtor;
- (ii) that the petitioner has complied with this chapter;
- (iii) that the petitioner has obtained a final judgment in the manner prescribed under this section, indicating the amount of the judgment awarded;
- (iv) that the petitioner has proved the amount still owing on the judgment at the date of the petition;

(v) (A) that:

(I) the petitioner has a writ of execution issued upon the judgment; and

(II) the officer executing the writ has made a return showing that no property subject to execution in satisfaction of the judgment could be found; and

(B) if execution is levied against the property of the judgment debtor, that:

(I) the amount realized was insufficient to satisfy the judgment; and

(II) a balance remains on the judgment after application of the amount realized; and

(vi) that the petitioner has:

(A) made reasonable searches and inquiries to ascertain whether the judgment debtor has

any interest in property, real or personal, that may satisfy the judgment; and

(B) has exercised reasonable diligence to secure payment of the judgment from the assets of the judgment debtor.

(4) If the petitioner satisfies the court that it is not practicable for the petitioner to comply with one or more of the requirements in Subsections (3)(b)(v) and (3)(b)(vi), the court may waive those requirements.

(5) (a) A judgment that is the basis for a claim against the fund may not have been discharged in bankruptcy.

(b) In the case of a bankruptcy proceeding that is open or that is commenced during the pendency of the claim, the claimant shall, prior to obtaining a claim against the fund, obtain an order from the bankruptcy court declaring the judgment and debt to be nondischargeable.

(6) A person may not bring a claim against the fund if the person is substantially complicit in the fraud, misrepresentation, or deceit that is the basis of the claim.

61-2c-504. Authority to act on receipt of petition.

(1) Upon receipt of a petition meeting the requirements of Section 61-2c-503, the division may answer, initiate review proceedings, or appear in a proceeding:

(a) in the name of the defendant to the action; or

(b) on behalf of the fund.

(2) The division may settle a claim subject to:

(a) the application of a petitioner; and

(b) court approval.

61-2c-505. Court determination and order.

If the court determines that a claim should be levied against the portion of the fund allocated to carry out the provisions of this chapter, the court shall enter an order requiring the division to pay from the fund the portion of the petitioner's judgment that is payable from the fund under Section 61-2c-503. 61-2c-506. Insufficient funds to satisfy judgment -- Procedure and interest.

If the money deposited in the fund and allotted for satisfying judgments against licensees is insufficient to satisfy an authorized claim for payment, the division shall, when sufficient money has been deposited in the fund, satisfy the unpaid claims in the order they originally were filed, together with accumulated interest at the rate allowable on judgments under Section 15-1-4.

61-2c-507'>61-2c-507 (Effective 01/01/10). Division subrogated to judgment creditor -- Authority to revoke license.

(1) If the division pays a judgment creditor from the fund:

(a) the division is subrogated to the rights of the judgment creditor for the amounts paid out of the fund; and

(b) any amount and interest recovered by the division shall be deposited in the fund.

(2) (a) Subject to Subsection (2)(b), the license of a licensee for whom payment from the fund is made under this part is automatically revoked as of the earlier of the day on which:

- (i) the division is ordered by a court to pay from the fund; or
- (ii) the division pays from the fund.

(b) (i) A person whose license is revoked under Subsection (2)(a) may appeal the revocation in a hearing conducted by the commission:

- (A) after the revocation; and
- (B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(ii) The commission may delegate:

(A) to the division or an administrative law judge the authority to conduct a hearing described in Subsection (2)(b)(i); or

(B) to the division the authority to make a decision on whether relief from a revocation should be granted.

(3) Unless the revocation is not upheld after a hearing described in Subsection (2)(b), a licensee whose license is revoked pursuant to Subsection (2) may not apply for a new license until the licensee pays into the fund:

- (a) the amount paid out of the fund on behalf of the licensee; and
- (b) interest at a rate determined by the division with the concurrence of the commission.

61-2c-508. Failure to comply.

The failure of a person to comply with this part is a waiver of any right provided under this part.

61-2c-509'>61-2c-509 (Effective 01/01/10). Disciplinary actions.

(1) This part does not limit the authority of the director or commission to take disciplinary action against a licensee for a violation of:

- (a) this chapter; or
- (b) rules made by the division under this chapter.

(2) The repayment in full of all obligations to the fund by a licensee does not nullify or modify the effect of a disciplinary proceeding brought under:

- (a) this chapter; or
- (b) rules made by the division under this chapter.

61-2c-510. Monies accumulated -- Purpose.

(1) The division may use monies accumulated in the fund in excess of the amount necessary to satisfy claims to:

- (a) investigate violations of this chapter related to fraud; and
- (b) advance education and research in the field of residential mortgage loans.

(2) The division may use the excess monies described in Subsection (1) only in a manner consistent with Subsection (1), including for:

- (a) courses sponsored by the division;
- (b) courses offered by the division in conjunction with a university or college in Utah;
- (c) contracting for a research project for the state in the field of residential mortgage loans;

(d) funding the salaries and training expenses of division staff members who are employed in positions related to the education of mortgage licensees;

- (e) funding the training expenses of division staff members who are employed in positions conducting investigations of complaints under this chapter; and
- (f) publishing and distributing educational materials to:
  - (i) licensees; and
  - (ii) applicants for licensure.