STATE OF UTAH
DEPARTMENT OF COMMERCE

DIVISION OF REAL ESTATE

UTAH RESIDENTIAL MORTGAGE PRACTICES AND LICENSING RULES

May 10, 2011

TABLE OF CONTENTS

R162-2c-101 Title. 1
R162-2c-102 Definitions. 1
R162-2c-201 Licensing and Registration Procedures. 3
R162-2c-202 Qualifications for Licensure. 7
R162-2c-203 Utah-specific Education Certification 9
R162-2c-204 License Renewal. 15
R162-2c-205 Notification of Changes 18
R162-2c-209 Sponsorship. 19
R162-2c-301 Unprofessional Conduct 19
R162-2c-302 Requirements for Record Retention and Disposal 25
R162-2c-401 Administrative Proceedings 25
R162-2c-402 Disciplinary Action. 29

R162-2c-101. Title. This chapter is known as the "Utah Residential Mortgage Practices and Licensing Rules."

R162-2c-102. Definitions.

(1) The acronym "ALM" stands for associate lending manager.

(2) "Branch lending manager" means the person assigned to oversee a branch office. As of November 1, 2010:
   (a) a branch office registering in the nationwide database or renewing its registration shall identify an ALM to serve as the branch lending manager; and
   (b) the individual identified by the branch office must be qualified for licensure as a PLM.

(3) The acronym "BLM" stands for branch lending manager.

(4) "Certification" means authorization from the division to:
   (a) establish and operate a school that provides courses for Utah-specific prelicensing education or continuing education; or
   (b) function as an instructor for courses approved for Utah-specific prelicensing education or continuing education.

(5) "Credit hour" means 50 minutes of instruction within a 60-minute time period, allowing for a ten-minute break.

(6) "Control person" means any individual identified by an entity within the nationwide database as being primarily responsible for directing the management or policies of a company and may be:
   (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 (6).

(7) "Individual applicant" means any individual who applies to obtain or renew a license to practice as a mortgage loan originator, principal lending manager, branch lending manager, or associate lending manager.

(8) "Instruction method" means the forum through which the instructor and student interact and may be:
   (a) classroom: traditional instruction where instructors and students are located in the same physical location;
   (b) classroom equivalent: an instructor-led course where the instructor and students may be in two or more physical locations; or
   (c) online: instructor and student interact through an online classroom.

(9) "Instructor applicant" means any individual who applies to obtain or renew certification as an instructor of Utah-specific pre-licensing or continuing education courses.

(10) "Mortgage entity" means any entity that:
- (a) engages in the business of residential mortgage lending;
- (b) is required to be licensed under Section 61-2c-201; and
- (c) operates under a business name or other trade name that is registered with the Division of Corporations and Commercial Code.

(11) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry.

(12) "Other trade name" means any assumed business name under which an entity does business.

(13) The acronym "PLM" stands for principal lending manager.

(14) "Qualifying individual" means the PLM, managing principal, or qualified person who is identified on the MU1 form in the nationwide database as the person in charge of an entity.

(15) As used in Subsection R162-2c-201, "relevant information" includes:
- (a) court dockets;
- (b) charging documents;
- (c) orders;
- (d) consent agreements; and
- (e) any other information the division may require.

(16) "Restricted license" means any license that is issued subject to a definite period of suspension or terms of probation.

(17) "School" means
- (a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;
- (b) any community college;
- (c) any vocational-technical school;
- (d) any state or federal agency or commission;
- (e) any nationally recognized mortgage organization that has been approved by the commission;
- (f) any Utah mortgage organization that has been approved by the commission;
- (g) any local mortgage organization that has been approved by the commission; or
- (h) any proprietary mortgage education school that has been approved by the commission.

(18) "School applicant" means a director or owner of a school who applies to obtain or renew a school's certification.

R162-2c-201. Licensing and Registration Procedures.

(1) Mortgage loan originator.
- (a) To obtain a Utah license to practice as a mortgage loan originator, an individual who is not currently and validly licensed in any state shall:
  - (i) evidence good moral character pursuant to R162-2c-202(1);
  - (ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);
  - (iii) obtain a unique identifier through the nationwide database;
  - (iv) successfully complete, within the 12-month period prior to the date of application, 40 hours of Utah-specific pre-licensing education as approved by the division;
  - (v) (A) successfully complete 20 hours of pre-licensing education as approved by the nationwide database according to the nationwide database outline for national course curriculum; or
    - (B) if the individual previously passed the 20-hour national course, obtained a license, and thereafter allowed the license to expire, successfully complete continuing education:
      - (I) approved by the nationwide database; and
      - (II) in the number of hours that would have been required to renew the expired license in the year in which the individual allowed the license to expire;
  - (vi) take and pass the examinations that meet the requirements of Section 61-2c-204.1(4) and that:
    - (A) are approved and administered through the nationwide database; and
    - (B) consist of a national component and a Utah-specific state component;
  - (vii) request licensure as a mortgage loan originator through the nationwide database;
  - (viii) authorize a criminal background check and submit fingerprints through the nationwide database;
  - (ix) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;
  - (x) complete, sign, and submit to the division a social security verification form as provided by the division; and
  - (xi) pay all fees through the nationwide database as required by the division and by the nationwide database.
- (b) To obtain a Utah license to practice as a mortgage loan originator, an individual who is currently and validly licensed in another state shall:
  - (i) evidence good moral character pursuant to R162-2c-202(1);
  - (ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(iii) (A) successfully complete, within the 12-month period prior to the date of application, 40 hours of Utah-specific mortgage loan originator prelicensing education; and
(B) take and pass the Utah-specific state examination component;
(iv) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;
(v) request licensure as a mortgage loan originator through the nationwide database;
(vi) authorize a criminal background check through the nationwide database;
(vii) complete, sign, and submit to the division a social security verification form as provided by the division; and
(viii) pay all fees through the nationwide database as required by the division and by the nationwide database.

(2) Principal lending manager. To obtain a Utah license to practice as a PLM, an individual shall:
(a) qualify as a mortgage loan originator through the nationwide database;
(b) evidence good moral character pursuant to R162-2c-202(1);
(c) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);
(d) obtain approval from the division to take the Utah-specific PLM prelicensing education by evidencing that the applicant has, within the five years preceding the date of application, had three years of full-time active experience as a mortgage loan originator;
(e) within the 12-month period preceding the date of application, successfully complete 40 hours of Utah-specific PLM prelicensing education as certified by the division;
(f) (i) if currently licensed in Utah as a mortgage loan originator, take and pass a principal lending manager examination as approved by the commission; or
(ii) if not currently licensed in Utah as a mortgage loan originator, take and pass:
(A) the Utah-specific state examination component; and
(B) a principal lending manager examination as approved by the commission;
(g) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;
(h) register in the nationwide database by selecting the "principal lending manager" license type and completing the associated MU4 form;
(i) complete, sign, and submit to the division a social security verification form as provided by the division; and
(j) pay all fees through the nationwide database as required by the division and by the nationwide database.

(3) Associate lending manager. To obtain a Utah license to practice as an ALM, an individual shall:

(a) comply with this Subsection (2)(a) through (g);
(b) register in the nationwide database by selecting the "associate lending manager" license type and completing the associated MU4 form; and
(c) pay all fees through the nationwide database as required by the division and by the nationwide database.

(4) Mortgage entity.
(a) To obtain a Utah license to operate as a mortgage entity, a person shall:
(i) establish that all control persons meet the requirements for moral character pursuant to R162-2c-202(1);
(ii) establish that all control persons meet the requirements for competency pursuant to R162-2c-202(2);
(iii) register any other trade name with the Division of Corporations and Commercial Code;
(iv) register the entity in the nationwide database by:
(A) submitting an MU1 form that includes:
(I) all required identifying information;
(II) the name of the PLM who will serve as the entity's qualifying individual;
(III) the name of any individuals who may serve as control persons;
(IV) the entity's registered agent; and
(V) any other trade name under which the entity will operate; and
(B) creating a sponsorship through the nationwide database that identifies the mortgage loan originator(s) sponsored by the entity;
(v) register any branch office operating from a different location than the entity;
(vi) pay all fees through the nationwide database as required by the division and by the nationwide database;
(vii) provide to the division proof that any assumed business name or other trade name is registered with the Division of Corporations and Commercial Code;
(viii) provide to the division all court documents related to any criminal proceeding not disclosed through a previous application or renewal and involving any control person;
(ix) provide to the division complete documentation of any action taken by a regulatory agency against:
(A) the entity itself; or
(B) any control person; and
(C) not disclosed through a previous application or renewal; and
(x) provide to the division a notarized letter on company letterhead, signed by the owner or president of the entity, authorizing the PLM to use the entity's name.
(b) Restrictions on entity name. No license may be issued by the division to an entity that proposes to operate under a name that closely resembles the name of another entity licensee, or that the division determines might otherwise be confusing or misleading.

(5) Branch office.
- (a) To register a branch office with the division, a person shall:
  - (i) obtain a Utah entity license for the entity under which the branch office will be registered;
  - (ii) submit to the nationwide database an MU3 form that includes:
    - (A) all required identifying information; and
    - (B) the name of the ALM who will serve as the branch lending manager;
  - (iii) create a sponsorship through the nationwide database that identifies the mortgage loan originator(s) who will work from the branch office; and
  - (iv) pay all fees through the nationwide database as required by the division and by the nationwide database.
- (b) A person who registers another trade name and operates under that trade name from an address that is different from the address of the entity shall register the other trade name as a branch office pursuant to this Subsection (5).
- (c) (i) A PLM may not simultaneously serve as a BLM.
  - (ii) An individual may not serve as the BLM for more than one branch at any given time.

(6) Licenses not transferable.
- (a) A licensee shall not transfer the licensee's license to any other person.
- (b) A licensee shall not allow any other person to work under the licensee's license.
- (c) If a change in corporate structure of a licensed entity creates a separate and unique legal entity, that entity shall obtain a unique license, and shall not operate under any existing license.

(7) Expiration of test results.
- (a) Scores for the mortgage loan originator licensing examination shall be valid for five years.
- (b) Scores for the PLM exam shall be valid for 90 days.

(8) Incomplete PLM or ALM application.
- (a) The division may grant a 30-day extension of the 90-day application window upon a finding that:
  - (i) an applicant has made a good faith attempt to submit a completed application; but
  - (ii) requires more time to provide missing documents or to obtain additional information.
- (b) If the applicant does not supply the required documents or information within the 30-day extension, the division may deny the application as incomplete.

(9) Nonrefundable fees. All fees are nonrefundable, regardless of whether an application is granted or denied.

(10) Other trade names.

(a) The division shall not approve a license for any person operating under an assumed business name that poses a reasonable likelihood of misleading the public into thinking that the person is:
  (i) endorsed by the division, the state government, or the federal government;
  (ii) an agency of the state or federal government; or
  (iii) not engaged in the business of residential mortgage loans.
(b) A mortgage entity that operates under another trade name shall register the other trade name by including it on the MU1 form and obtaining the required registration.

R162-2c-202. Qualifications for Licensure.

(1) Character. Individual applicants and control persons shall evidence good moral character, honesty, integrity, and truthfulness.
  (a) An applicant may not have:
    (i) been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner to, or resolved by diversion or its equivalent:
      (A) a felony involving an act of fraud, dishonesty, a breach of trust, or money laundering;
      (B) any felony in the seven years preceding the day on which an application is submitted to the division;
      (C) in the five years preceding the day on which an application is submitted to the division:
        (I) a misdemeanor involving moral turpitude; or
        (II) a crime in another jurisdiction that is the equivalent of a misdemeanor involving moral turpitude;
      (D) in the three years preceding the day on which an application is submitted to the division, any misdemeanor involving:
        (I) fraud;
        (II) misrepresentation;
        (III) theft; or
        (IV) dishonesty;
    (ii) had a license as a mortgage loan originator revoked by a government regulatory body at any time, unless the revocation is subsequently vacated or converted;
    (iii) had a professional license or registration, whether issued by a Utah regulatory body or by another jurisdiction, suspended, surrendered, canceled, or denied in the five years preceding the date the individual applies for licensure if the suspension, surrender, cancellation, or denial is based on misconduct in a professional capacity that relates to:
      (A) moral character;
      (B) honesty;
      (C) integrity;
      (D) truthfulness; or
      (E) the competency to transact the business of residential mortgage loans;

(iv) in the five years preceding the day on which an application is submitted to the division, been the subject of a bar by the:
  (A) Securities and Exchange Commission;
  (B) New York Stock Exchange; or
  (C) National Association of Securities Dealers;
(v) had a permanent injunction entered against the individual:
  (A) by a court or administrative agency; and
  (B) on the basis of:
    (I) conduct or a practice involving the business of residential mortgage loans; or
    (II) conduct involving fraud, misrepresentation, or deceit.

(b) An applicant may be denied a license or issued a restricted license for incidents in the applicant's past other than those specified in this Subsection (1)(a) that reflect negatively on the applicant's moral character, honesty, integrity, and truthfulness. In evaluating an applicant for these qualities, the division and commission may consider any evidence, including the following:
  (i) criminal convictions or plea agreements, with particular consideration given to convictions or plea agreements relative to charges that involve moral turpitude;
  (ii) the circumstances that led to any criminal conviction or plea agreement under consideration;
  (iii) past acts related to honesty or moral character, with particular consideration given to any such acts involving the business of residential mortgage loans;
  (iv) dishonest conduct that would be grounds under Utah law for sanctioning an existing licensee;
  (v) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;
  (vi) court findings of fraudulent or deceitful activity;
  (vii) evidence of non-compliance with court orders or conditions of sentencing;
  (viii) evidence of non-compliance with:
    (A) terms of a diversion agreement still subject to prosecution;
    (B) a probation agreement; or
    (C) a plea in abeyance; or
  (ix) failure to pay taxes or child support obligations.

(2) Competency. Individual applicants and control persons shall evidence competency to transact the business of residential mortgage loans. In evaluating an applicant for competency, the division and commission may consider any evidence that reflects negatively on an applicant's competency, including:
  (a) civil judgments, with particular consideration given to any such judgments involving the business of residential mortgage loans;
  (b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;
  (c) failure of any previous mortgage loan business in which the individual was engaged, as well as the circumstances surrounding that failure;

(d) evidence as to the applicant's business management and employment practices, including the payment of employees, independent contractors, and third parties;
(e) the extent and quality of the applicant's training and education in mortgage lending;
(f) the extent and quality of the applicant's training and education in business management;
(g) the extent of the applicant's knowledge of the Utah Residential Mortgage Practices Act;
(h) evidence of disregard for licensing laws;
(i) evidence of drug or alcohol dependency;
(j) sanctions placed on professional licenses; and
(k) investigations conducted by regulatory agencies relative to professional licenses.

(3) Financial responsibility. Individual applicants shall evidence financial responsibility. To evaluate an applicant for financial responsibility, the division shall:
(a) access the credit information available through the NMLS of:
(i) an applicant for initial licensure, beginning October 18, 2010; and
(ii) a licensee who requests renewal during the 2010 renewal period, unless the licensee's credit report was reviewed in issuing the initial license; and
(b) give particular consideration to:
(i) outstanding civil judgments;
(ii) outstanding tax liens;
(iii) foreclosures;
(iv) multiple social security numbers attached to the individual's name;
(v) child support arrearages; and
(vi) bankruptcies.

(4) Age. An applicant shall be at least 18 years of age.

(5) Minimum education. An applicant shall have a high school diploma, GED, or equivalent education as approved by the commission.

R162-2c-203 Utah-specific Education Certification.

(1) School certification.
(a) A school offering Utah-specific education shall certify with the division before providing any instruction.
(b) To certify, a school applicant shall prepare and supply the following information to the division:
(i) contact information, including:
(A) name, phone number, and address of the physical facility;
(B) name, phone number, and address of any school director;

(C) name, phone number, and address of any school owner; and
(D) an e-mail address where correspondence will be received by the school;

(ii) evidence that all school directors and owners meet the moral character requirements outlined in R162-2c-202(1) and the competency requirements outlined in R162-2c-202(2);

(iii) school description, including:
(A) type of school; and
(B) description of the school's physical facilities;

(iv) list of courses offered;

(v) proof that each course has been certified by the division;

(vi) list of the instructor(s), including any guest lecturer(s), who will be teaching each course;

(vii) proof that each instructor:
(A) has been certified by the division;
(B) is qualified as a guest lecturer; or
(C) is exempt from certification under Subsection 203(5)(f);

(viii) schedule of courses offered, including the days, times, and locations of classes;

(ix) statement of attendance requirements as provided to students;

(x) refund policy as provided to students;

(xi) disclaimer as provided to students; and

(xii) criminal history disclosure statement as provided to students.

(c) Minimum standards.

(i) The course schedule may not provide or allow for more than eight credit hours per student per day.

(ii) The attendance statement shall require that each student attend at least 90% of the scheduled class time.

(iii) The disclaimer shall adhere to the following requirements:
(A) be typed in all capital letters at least 1/4 inch high; and
(B) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the mortgage entities that may be soliciting for licensees at this school."

(iv) The criminal history disclosure statement shall:
(A) be provided to students while they are still eligible for a full refund; and
(B) clearly inform the student that upon application with the nationwide database, the student will be required to:
(I) accurately disclose the student's criminal history according to the licensing questionnaire provided by the nationwide database and authorized by the division; and
(II) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;

(C) clearly inform the student that the division will consider the applicant's criminal history pursuant to R162-2c-202(1) in making a decision on the application; and

(D) include a section for the student's attestation that the student has read and understood the disclosure.

(d) Within 15 calendar days after the occurrence of any material change in the information outlined in Subsection (1), the school shall provide to the division written notice of that change.

(e) A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order for the school to remain in operation. To renew, a school applicant shall:

(i) complete a renewal application as provided by the division; and

(ii) pay a nonrefundable renewal fee.

(2) Utah-specific course certification.

(a) A school providing a Utah-specific course shall certify the course with the division before offering the course to students.

(b) Application shall be made at least 30 days prior to the date on which a course requiring certification is proposed to begin.

(c) To certify a course, a school applicant shall prepare and supply the following information:

(i) instruction method;

(ii) outline of the course, including:

(A) a list of subjects covered in the course;

(B) reference to the approved course outline for each subject covered;

(C) length of the course in terms of hours spent in classroom instruction;

(D) number of course hours allocated for each subject;

(E) at least three learning objectives for every hour of classroom time;

(F) instruction format for each subject; i.e, lecture or media presentation;

(G) name and credentials of any guest lecturer; and

(H) list of topic(s) and session(s) taught by any guest lecturer;

(iii) a list of the titles, authors, and publishers of all required textbooks;

(iv) copies of any workbook used in conjunction with a non-lecture method of instruction;

(v) the number of quizzes and examinations; and

(vi) the grading system, including methods of testing and standards of grading.

(d) Minimum standards.

(i) All texts, workbooks, supplement pamphlets and other materials shall be appropriate, current, accurate, and applicable to the required course outline.

(ii) The course shall cover all of the topics set forth in the associated outline.

(iii) The lecture method shall be used for at least 50% of course instruction unless the division gives special approval otherwise.

(iv) A school applicant that uses a non-lecture method for any portion of course instruction shall provide to the student:
(A) an accompanying workbook as approved by the division for the student to complete during the instruction; and
(B) a certified instructor available within 48 hours of the non-lecture instruction to answer student questions.
(v) The division shall not approve an online education course unless:
(A) there is a method to ensure that the enrolled student is the person who actually completes the course;
(B) the time spent in actual instruction is equivalent to the credit hours awarded for the course; and
(C) there is a method to ensure that the student comprehends the material.

(3) Course expiration and renewal.
(a) A certification for a 40-hour Utah-specific prelicensing course expires two years from the date of certification.
(b) As of January 1, 2010, a 20-hour Utah-specific prelicensing course certified by the division shall be deemed expired, regardless of any expiration date printed on the certification.
(c) (i) A division-approved continuing education course:
(A) shall expire on the expiration date printed on the certificate; or
(B) if the course is due to expire on December 31, 2010, the expiration date shall be extended to February 28, 2011.
(ii) To renew a division-approved continuing education course, a school applicant shall, within six months following the expiration date:
(A) complete a renewal form as provided by the division; and
(B) pay a nonrefundable renewal fee.
(iii) To certify a continuing education course that has been expired for more than six months, a school applicant shall resubmit it as if it were a new course.
(iv) After a continuing education course has been renewed three times, a school applicant shall submit it for certification as if it were a new course.
(d) The division shall cease reviewing and certifying courses for continuing education on December 30, 2010.
(e) As of January 1, 2011, any division-approved continuing education course, regardless of when offered or completed, may not be used to satisfy requirements for the 2011 renewal.

(4) Education committee.
(a) The commission may appoint an education committee to:
(i) assist the division and the commission in approving course topics; and
(ii) make recommendations to the division and the commission about:
(A) whether a particular course topic is relevant to residential mortgage principles and practices; and

(B) whether a particular course topic would tend to enhance the competency and professionalism of licensees.

(b) The division and the commission may accept or reject the education committee's recommendation on any course topic.

(5) Instructor certification.

(a) Except as provided in Subsection (f), an instructor shall certify with the division before teaching a Utah-specific course.

(b) Application shall be made at least 30 days prior to the date on which the instructor proposes to begin teaching.

(c) To certify as an instructor of mortgage loan originator prelicensing courses, an individual shall provide evidence of:

(i) a high school diploma or its equivalent;

(ii) (A) at least five years of experience in the residential mortgage industry within the past ten years; or

(B) successful completion of appropriate college-level courses specific to the topic proposed to be taught;

(iii) (A) a minimum of twelve months of full-time teaching experience;

(B) part-time teaching experience that equates to twelve months of full-time teaching experience; or

(C) participation in instructor development workshops totaling at least two days in length; and

(iv) having passed, within the six-month period preceding the date of application, the principal lending manager licensing examination.

(d) To certify as an instructor of PLM prelicensing courses, an individual shall:

(i) meet the general requirements of this Subsection 5(c); and

(ii) meet the specific requirements for any of the following courses the individual proposes to teach.

(A) Management of a Residential Mortgage Loan Office: at least two years practical experience in managing an office engaged in the business of residential mortgage loans.

(B) Mortgage Lending Law: two years practical experience in the field of real estate law; and either:

(I) current active membership in the Utah Bar Association; or

(II) degree from an American Bar Association accredited law school.

(C) Advanced Appraisal:

(I) at least two years practical experience in appraising; and

(II) current state-certified appraiser license.

(D) Advanced Finance:

(I) at least two years practical experience in real estate finance; and

(II) association with a lending institution as a loan originator.

(e) To certify as an instructor of continuing education courses, an individual shall demonstrate:

(i) knowledge of the subject matter of the course proposed to be taught, as evidenced by:
  (A) at least three years of experience in a profession, trade, or technical occupation in a field directly related to the course;
  (B) a bachelor or higher degree in the field of real estate, business, law, finance, or other academic area directly related to the course; or
  (C) a combination of experience and education acceptable to the division; and
(ii) ability to effectively communicate the subject matter, as evidenced by:
  (A) a state teaching certificate;
  (B) successful completion of college courses acceptable to the division in the field of education;
  (C) a professional teaching designation from the National Association of Mortgage Brokers, the Real Estate Educators Association, the Mortgage Bankers Association of America, or a similar association; or
  (D) other evidence acceptable to the division that the applicant has the ability to teach in schools, seminars, or equivalent settings.

(f) The following instructors are not required to be certified by the division:
(i) a guest lecturer who:
  (A) is an expert in the field on which instruction is given;
  (B) provides to the division a resume or similar documentation evidencing satisfactory knowledge, background, qualifications, and expertise; and
  (C) teaches no more than 20% of the course hours;
(ii) a college or university faculty member who evidences academic training, industry experience, or other qualifications acceptable to the division;
(iii) an individual who:
  (A) evidences academic training, industry experience, or other qualifications satisfactory to the division; and
  (B) receives approval from the commission; and
(iv) a division employee.

(g) Renewal.
(i) An instructor certification for prelicensing education expires 24 months from the date of issuance and shall be renewed before the expiration date. To renew, an applicant shall submit to the division:
  (A) evidence of having taught at least 20 hours of classroom instruction in a certified mortgage education course during the preceding two years;
  (B) evidence of having attended an instructor development workshop sponsored by the division during the preceding two years; and
  (C) a renewal fee as required by the division.
(ii) An instructor certification for division-approved continuing education expires 24 months from the date of issuance and shall be renewed before the expiration date. To renew, an applicant shall submit to the division:

(A) evidence of having taught at least one class in the subject area for which renewal is sought within the year preceding the date of application; or
(B) (I) written explanation for why the instructor has not taught a class in the subject area within the past year; and
(II) documentation to evidence that the applicant maintains the required expertise in the subject matter; and
(C) a renewal fee as required by the division.
(iii) An instructor certification issued by the division on or before December 31, 2010 for continuing education shall expire December 31, 2010.
(iv) The division shall cease certifying instructors for continuing education on December 30, 2010.
(v) As of January 1, 2011, any instructor proposing to teach a continuing education course shall certify through the nationwide database.
(h) Reinstatement.
(i) An instructor may reinstate an expired certification within 30 days of expiration by:
(A) complying with Subsection (g) as applicable to the type of course taught; and
(B) paying an additional non-refundable late fee.
(ii) Until six months following the date of expiration, an instructor may reinstate a certification that has been expired more than 30 days by:
(A) complying with Subsection (g) as applicable to the type of course taught;
(B) paying an additional non-refundable late fee; and
(C) completing six classroom hours of education related to residential mortgages or teaching techniques.

(6) (a) The division may monitor schools and instructors for:
(i) adherence to course content;
(ii) quality of instruction and instructional materials; and
(iii) fulfillment of affirmative duties as outlined in R162-2c-301(6)(a) and R162-2c-301(7)(a).
(b) To monitor schools and instructors, the division may:
(i) collect and review evaluation forms; or
(ii) assign an evaluator to attend a course and make a report to the division.

R162-2c-204 License Renewal.

(1) Renewal period.
(a) Any person who holds an active license as of October 31 shall renew by December 31 of the same calendar year.
(b) Any person who obtains a license on or after November 1 shall renew by December 31 of the following calendar year.

(2) Qualification for renewal.

(a) Character.
  (i) Individuals and control persons applying for a renewed license shall evidence that they maintain good moral character, honesty, integrity, and truthfulness as required for initial licensure.
  (ii) An individual applying for a renewed license may not have:
    (A) a felony that resulted in a conviction or plea agreement during the renewal period; or
    (B) a finding of fraud, misrepresentation, or deceit entered against the applicant by a court of competent jurisdiction or a government agency and occurring within the renewal period.
  (iii) The division may deny an individual applicant a renewed license upon evidence, as outlined in R162-2c-202(1)(b), of circumstances that reflect negatively on the applicant's character, honesty, integrity, or truthfulness and that:
    (A) occurred during the renewal period; or
    (B) were not disclosed and considered in a previous application or renewal.
  (iv) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standards for character, honesty, integrity, and truthfulness required of individual applicants.
(b) Competency.
  (i) Individual applicants and control persons shall evidence that they maintain the competency required for initial licensure.
  (ii) The division may deny an individual applicant a renewed license upon evidence, as outlined in R162-2c-202(2), of circumstances that reflect negatively on the applicant's competency and that:
    (A) occurred during the renewal period; or
    (B) were not disclosed and considered in a previous application or renewal.
  (iii) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standard for competency required of individual applicants.
(c) Continuing education.
  (i) Beginning January 1, 2011, an individual who holds an active license as of January 1 of the calendar year shall complete eight hours of non-duplicative continuing education:
    (A) approved through the nationwide database; and
    (B) consisting of:
      (I) three hours federal laws and regulations;
      (II) two hours ethics (fraud, consumer protection, fair lending);
      (III) two hours non-traditional; and
      (IV) one hour elective.
  (ii) An individual who completes pre-licensing education and obtains the associated license between January 1 and December 31 of the calendar year is exempt from continuing education for the renewal period ending December 31 of the same calendar year.

(iii) Continuing education courses shall be completed within the renewal period.
(iv) Continuing education courses shall be non-duplicative of courses taken in the preceding renewal period.

(3) Renewal procedures for the renewal period ending December 31, 2010. In order to renew by December 31, 2010:
(a) an individual licensee shall:
(i) evidence having completed a minimum of:
(A) 20 hours of prelicensing education as approved by:
(I) the division; or
(II) the nationwide database; or
(B) 28 hours of division-approved continuing education in the two previous renewal cycles;
(ii) evidence having taken and passed a Utah licensing examination as approved by the commission;
(iii) register in the nationwide database by May 31, 2010;
(iv) (A) evidence having completed, since the date of last renewal, continuing education approved by either the division or the nationwide database, non-duplicative of any hours required to satisfy the registration education requirement under this Subsection (3)(a)(i), and:
(I) totaling 14 hours if licensed as of October 1, 2009; or
(II) totaling eight hours if licensed on or after October 1, 2009; or
(B) if licensed as a mortgage loan originator, evidence having completed, since January 1, 2010, all requirements to obtain an ALM or a PLM license, pursuant to Subsection R162-2c-201;
(v) take and pass the national component of the licensing examination as approved by the nationwide database;
(vi) submit to the division the jurisdiction-specific documents and information required by the nationwide database; and
(vii) submit through the nationwide database:
(A) a request for renewal; and
(B) all fees as required by the division and by the nationwide database.
(b) an entity licensee shall:
(i) register in the nationwide database by May 31, 2010;
(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database;
(iii) submit through the nationwide database a request for renewal;
(iv) renew the registration of any branch office or other trade name registered under the license of the entity; and
(v) pay through the nationwide database all renewal fees required by the division and by the nationwide database.

(4) Renewal procedures for the renewal period ending December 31, 2011. In order to renew by December 31, 2011,

(a) an individual licensee shall:
  (i) evidence having completed, since the date of last renewal, continuing education:
    (A) as required by Subsection (2)(c);
    (B) non-duplicative of any continuing education hours taken in the previous renewal cycle; and
    (C) approved by the nationwide database;
  (ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database; and
  (iii) submit through the nationwide database:
    (A) a request for renewal; and
    (B) all fees as required by the division and by the nationwide database.
(b) an entity licensee shall:
  (i) submit through the nationwide database a request for renewal;
  (ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database;
  (iii) renew the registration of any branch office or other trade name registered under the entity license; and
  (iv) pay through the nationwide database all renewal fees required by the division and by the nationwide database.

(5) Reinstatement.
(a) To reinstate an expired license, a person shall, by February 28 of the calendar year following the date on which the license expired:
  (i) comply with all requirements for an on-time renewal; and
  (ii) pay through the nationwide database all late fees and other fees as required by the division and the nationwide database.
(b) A person may not reinstate a license after February 28. To obtain a license after the reinstatement period described in Subsection (5)(a) expires, a person shall reapply as a new applicant.

R162-2c-205 Notification of Changes

(1) An individual licensee who is registered with the nationwide database shall:
(a) enter into the national database any change in the following:
  (i) name of licensee;
  (ii) contact information for licensee, including:
    (A) mailing address;
    (B) telephone number(s); and
    (C) e-mail address(es);
  (iii) sponsoring entity; and
  (iv) license status (sponsored or non-sponsored); and
(b) pay all change fees charged by the national database and the division.

(2) An entity licensee shall:
(a) enter into the national database any change in the following:

(i) name of licensee;
(ii) contact information for licensee, including:
(A) mailing address;
(B) telephone number(s);
(C) fax number(s); and
(D) e-mail address(es);
(iii) sponsorship information;
(iv) control person(s);
(v) qualifying individual;
(vi) license status (sponsored or non-sponsored); and
(vii) branch offices or other trade names registered under the entity license; and
(b) pay any change fees charged by the national database and the division.

R162-2c-209. Sponsorship.

(1) A mortgage loan originator who is sponsored by an entity may operate and advertise under the name of:
(a) the entity;
(b) a branch office registered under the license of the entity; or
(c) another trade name registered under the license of the entity.

(2) A mortgage loan originator who operates or advertises under a name other than that of the entity by which the mortgage loan originator is sponsored:
(a) shall exercise due diligence to verify that the name being used is properly registered under the entity license; and
(b) shall not be immune from discipline if the individual conducts the business of residential mortgage loans on behalf of more than one entity, in violation of Section 61-2c-209(4)(b)(iii).

R162-2c-301 Unprofessional Conduct

(1) Mortgage loan originator.
(a) Affirmative duties. A mortgage loan originator who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator shall:
(i) solicit business and market products solely in the name of the mortgage loan originator's sponsoring entity;
(ii) conduct the business of residential mortgage loans solely in the name of the mortgage loan originator's sponsoring entity;
(iii) remit to any third party service provider the fee(s) that have been collected from a borrower on behalf of the third party service provider, including:
(A) appraisal fees;
(B) inspection fees;
(C) credit reporting fees; and
(D) insurance premiums;

(iv) turn all records over to the sponsoring entity for proper retention and disposal;
(v) comply with a division request for information within 10 business days of the date of the request; and
(vi) retain certificates to prove completion of continuing education requirements for at least two years from the date of renewal.

(b) Prohibited conduct. A mortgage loan originator who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator may not:
(i) charge for services not actually performed;
(ii) require a borrower to pay more for third party services than the actual cost of those services;
(iii) withhold, without reasonable justification, payment owed to a third party service provider in connection with the business of residential mortgage loans;
(iv) alter an appraisal of real property; or
(v) unless acting under a valid real estate license and not under a mortgage license, perform any act that requires a real estate license under Title 61, Chapter 2f, including:
(A) providing a buyer or seller of real estate with a comparative market analysis;
(B) assisting a buyer or seller to determine the offering price or sales price of real estate;
(C) representing or assisting a buyer or seller of real estate in negotiations concerning a possible sale of real estate;
(D) advertising the sale of real estate by use of any advertising medium;
(E) preparing, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property; or
(F) altering, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property.

(c) A mortgage loan originator does not engage in an activity requiring a real estate license where the mortgage loan originator:
(i) offers advice about the consequences that the terms of a purchase agreement might have on the terms and availability of various mortgage products;
(ii) owns real property that the mortgage loan originator offers "for sale by owner"; or
(iii) advertises mortgage loan services in cooperation with a "for sale by owner" seller where the advertising clearly identifies:
(A) the owner's contact information;
(B) the owner's role;
(C) the mortgage loan originator's contact information; and
(D) the specific mortgage-related services that the mortgage loan originator may provide to a buyer; or

(iv) advertises in conjunction with a real estate brokerage where the advertising clearly identifies the:
  (A) contact information for the brokerage;
  (B) role of the brokerage;
  (C) mortgage loan originator's contact information; and
  (D) specific mortgage-related services that the mortgage loan originator may provide to a buyer.

(2) PLM.
(a) Affirmative duties. A PLM who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A PLM shall:
(i) be accountable for the affirmative duties outlined in Subsection (1)(a);
(ii) provide to all sponsored mortgage loan originators and unlicensed staff specific written policies as to their affirmative duties and prohibited activities, as established by:
  (A) federal law governing residential mortgage lending;
  (B) state law governing residential mortgage lending and including the Utah Residential Mortgage Practices Act; and
  (C) administrative rules promulgated by the division under authority of the Utah Residential Mortgage Practices Act;
(iii) exercise reasonable supervision over all sponsored mortgage loan originators and over all unlicensed staff by:
  (A) directing the details and means of their work activities;
  (B) requiring that they read and agree to comply with the Utah Residential Mortgage Practices Act and the rules promulgated thereunder;
  (C) requiring that they conduct all residential mortgage loan business in the name of the sponsoring entity; and
  (D) prohibiting unlicensed staff from engaging in any activity that requires licensure;
(iv) establish and enforce written policies and procedures for ensuring the independent judgment of any underwriter employed by the PLM's sponsoring entity;
(v) establish and follow procedures for responding to all consumer complaints;
(vi) personally review any complaint relating to conduct by a sponsored mortgage loan originator or unlicensed staff member that might constitute a violation of federal law, state law, or division administrative rules;
(vii) establish and maintain a quality control plan that:
  (A) complies with HUD/FHA requirements;
  (B) complies with Freddie Mac and Fannie Mae requirements; or
  (C) includes, at a minimum, procedures for:
    (I) performing pre-closing and post-closing audits of at least ten percent of all loan files; and

(II) taking corrective action for problems identified through the audit process; and

(viii) review for compliance with applicable federal and state laws all advertising and marketing materials and methods used by:

(A) the PLM's sponsoring entity; and

(B) the entity's sponsored mortgage loan originators.

(b) A PLM who hires ALM(s) as needed to assist in accomplishing the required affirmative duties shall:

(i) actively supervise any such ALM; and

(ii) remain personally responsible and accountable for adequate supervision of all sponsored mortgage loan originators and unlicensed staff.

(c) A PLM who manages an entity that operates a branch office shall:

(i) actively supervise the BLM who manages the branch office; and

(ii) remain personally responsible and accountable for adequate supervision of:

(A) mortgage loan originators sponsored by the branch office;

(B) unlicensed staff working at the branch office; and

(C) operations and transactions conducted by the branch office.

(d) Prohibited conduct. A PLM who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A PLM may not engage in any activity that is prohibited for a mortgage loan originator or a mortgage entity.

(e) A BLM:

(i) shall be subject to the same affirmative duties as a PLM; and

(ii) may not engage in any activity that is prohibited for a mortgage loan originator or a mortgage entity.

(3) Mortgage entity.

(a) Affirmative duties. A mortgage entity that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage entity shall:

(i) remit to any third party service provider the fee(s) that have been collected from a borrower on behalf of the third party service provider, including:

(A) appraisal fees;

(B) inspection fees;

(C) credit reporting fees; and

(D) insurance premiums;

(ii) retain and dispose of records according to R162-2c-302; and

(iii) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. A mortgage entity shall be subject to discipline under Sections 61-2c-401 through 405 if:

(i) any sponsored mortgage loan originator or PLM engages in any prohibited conduct; or

(ii) any unlicensed employee performs an activity for which licensure is required.

(4) Reporting unprofessional conduct.
(a) The division shall report in the nationwide database any disciplinary action taken against a licensee for unprofessional conduct.
(b) The division may report in the nationwide database a complaint that the division has assigned for investigation.
(c) A licensee may challenge the information entered by the division into the nationwide database pursuant to Section 63G-2-603.

(5) School.
(a) Affirmative duties. A school that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A school shall:
(i) within 15 calendar days of any material change in the information outlined in R162-2c-203(1)(b), provide to the division written notice of the change;
(ii) with regard to the criminal history disclosure required under R162-2c-203(1)(b)(xii),
(A) obtain each student's signature before allowing the student to participate in course instruction;
(B) retain each signed criminal history disclosure for a minimum of two years; and
(C) make any signed criminal history disclosure available to the division upon request;
(iii) maintain a record of each student's attendance for a minimum of five years after enrollment;
(iv) upon request of the division, substantiate any claim made in advertising materials;
(v) maintain a high quality of instruction;
(vi) adhere to all state laws and regulations regarding school and instructor certification;
(vii) provide the instructor(s) for each course with the required course content outline;
(viii) require instructors to adhere to the approved course content;
(ix) (A) at the conclusion of each class, require each student to complete a standard evaluation form as provided by the division; and
(B) return the completed evaluation forms to the division in a sealed envelope within 10 days of the last class session; and
(x) comply with a division request for information within 10 business days of the date of the request.
(b) Prohibited conduct. A school that engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A school may not:
(i) accept payment from a student without first providing to that student the information outlined in R162-2c-203(1)(b)(ix) through (xii);

(ii) continue to operate after the expiration date of the school certification and without renewing;
(iii) continue to offer a course after its expiration date and without renewing;
(iv) allow an instructor whose instructor certification has expired to continue teaching;
(v) allow an individual student to earn more than eight credit hours of education in a single day;
(vi) award credit to a student who has not complied with the minimum attendance requirements;
(vii) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course;
(viii) give valuable consideration to a person licensed with the division under Section 61-2c for referring students to the school;
(ix) accept valuable consideration from a person licensed with the division under Section 61-2c for referring students to a licensed mortgage entity;
(x) allow licensed mortgage entities to solicit prospective mortgage loan originators at the school during class time or during the 10-minute break that is permitted during each hour of instruction;
(xi) require a student to attend any program organized for the purpose of solicitation;
(xii) make a misrepresentation in its advertising;
(xiii) advertise in any manner that denigrates the mortgage profession;
(xiv) advertise in any manner that disparages a competitor's services or methods of operation;
(xv) advertise or teach any course that has not been certified by the division;
(xvi) advertise a course with language that indicates division approval is pending or otherwise forthcoming; or
(xvii) attempt by any means to obtain or to use in its educational offerings the questions from any mortgage examination unless the questions have been dropped from the current bank of exam questions.

(6) Instructor.
(a) Affirmative duties. An instructor who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. An instructor shall:
(i) adhere to the approved outline for any course taught;
(ii) (A) at the conclusion of each class, require each student to complete a standard evaluation form as provided by the division; and
(B) return the completed evaluation forms to the division in a sealed envelope within 10 days of the last class session; and
(iii) comply with a division request for information within 10 business days of the date of the request.
(b) Prohibited conduct. An instructor who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. An instructor may not:

(i) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or
(ii) continue to teach any course after the course has expired and without renewing the course certification.

R162-2c-302 Requirements for Record Retention and Disposal

(1) Record Retention.
(a) An entity licensed under the Utah Residential Mortgage Practices Act shall maintain for the period set forth in Section 61-2c-302 the following records:
(i) application forms;
(ii) disclosure forms;
(iii) truth-in-lending forms;
(iv) credit reports and the explanations therefor;
(v) conversation logs;
(vi) verifications of employment, paycheck stubs, and tax returns;
(vii) proof of legal residency, if applicable;
(viii) appraisals, appraisal addenda, and records of communications between the appraiser and the registrant, licensee, and lender;
(ix) underwriter denials;
(x) notices of adverse action;
(xi) loan approval; and
(xii) all other records required by underwriters involved with the transaction or provided to a lender.
(b) Records may be maintained electronically if the storage system complies with Title 46 Chapter 04, Utah Uniform Electronic Transactions Act.
(c) A licensed entity shall make all records available to the division pursuant to Section 61-2c-302(3).
(d) An individual who terminates sponsorship with an entity shall turn over to the entity any records in the individual's possession at the time of termination.

(2) Record Disposal. A person who disposes of records at the end of the retention period shall take reasonable measures to safeguard personal information as that term is defined in Section 13-44-102.

(3) Responsible Party.
(a) If a licensed entity is actively engaged in the business of residential mortgage loans, the PLM is responsible for proper retention and disposal of records.
(b) If a licensed entity ceases doing business in Utah, the control person(s) as of its last day of operation are responsible for proper retention and disposal of records.

R162-2c-401 Administrative Proceedings

(1) Request for agency action.

(a) If completed in full and submitted in compliance with the rules promulgated by the division, the following shall be deemed a request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq.:
  (i) an original or renewal application for a license;
  (ii) an original or renewal application for a school certification;
  (iii) an original or renewal application for a course certification; and
  (iv) an original or renewal application for an instructor certification.
(b) Any other request for agency action shall:
  (i) be in writing;
  (ii) be signed by the requestor; and
  (iii) comply with Utah Administrative Procedures Act, Section 63G-4-201(3).
(c) The following shall not be deemed a request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq., even if submitted in compliance with this Subsection (1)(b):
  (i) a complaint against a licensee; and
  (ii) a request that the division commence an investigation or a disciplinary action against a licensee.

(2) Formal adjudicative proceedings. An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted as a formal adjudicative proceeding.

(3) Informal adjudicative proceedings.
(a) All adjudicative proceedings as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as informal adjudicative proceedings. These informal proceedings shall include:
  (i) a proceeding on an original or renewal application for a license;
  (ii) a proceeding on an original or renewal application for a school, instructor, or course certification; and
  (iii) except as provided in Section 63G-4-502, a proceeding for disciplinary action commenced by the division pursuant to Section 63G-4-201(2) following investigation of a complaint.
(b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Residential Mortgage Practices and Licensing Act or by these rules.

(4) Hearings not allowed. A hearing may not be held in the following informal adjudicative proceedings:
(a) the issuance of an original or renewed license when the application has been approved by the division;
(b) the issuance of an original or renewed school certification, instructor certification, or course certification when the application has been approved by the division;
(c) the issuance of any interpretation of statute, rule, or order, or the issuance of any written opinion or declaratory order determining the applicability of a

statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the division;

(d) the denial of an application for an original or renewed license on the ground that it is incomplete;

(e) the denial of an application for an original or renewed school, instructor, or course certification on the ground that it does not comply with the requirements stated in these rules; or

(f) a proceeding on an application for an exemption from a continuing education requirement.

(5) Hearings required. A hearing before the commission shall be held in the following circumstances:

(a) a proceeding commenced by the division for disciplinary action pursuant to Section 61-2c-402 and Section 63G-4-201(2);

(b) an appeal of a division order denying or restricting a license; and

(c) an application that presents unusual circumstances such that the division determines that the application should be heard by the commission.

(6) Procedures for hearings in informal adjudicative proceedings.

(a) The division director shall be the presiding officer for any informal adjudicative proceeding unless the matter has been delegated to the chairperson of the commission or an administrative law judge.

(b) All informal adjudicative proceedings shall adhere to procedures as outlined in:

(i) Utah Administrative Procedures Act Title 63G, Chapter 4;

(ii) Utah Administrative Code Section R151-46b; and

(iii) the rules promulgated by the division.

(c) Except as provided in Subsection 7(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(d) In any proceeding under this Subsection, the commission and the division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the commission and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(e) Upon the scheduling of a hearing by the division and at least ten days prior to the hearing, the division shall, by first class postage pre-paid delivery, mail to the address last provided to the division pursuant to Section 61-2c-106 written notice of the date, time, and place scheduled for the hearing.

(f) Formal discovery is prohibited.

(g) The division may issue subpoenas or other orders to compel production of necessary and relevant evidence:

(i) on its own behalf; or

(ii) on behalf of a party where:

(A) the party makes a written request;

(B) assumes responsibility for effecting service of the subpoena; and

(C) bears the costs of the service, any witness fee, and any mileage to be paid to the witness.

(h) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.

(i) The division shall adhere to Title 63G, Chapter 2, Government Records Access and Management Act in addressing a request for information obtained by the division through an investigation.

(j) The division may decline to provide a party with information that it has previously provided to that party.

(k) Intervention is prohibited.

(l) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:

(i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or

(ii) Title 52, Chapter 4, the Open and Public Meetings Act.

(m) Upon filing a proper entry of appearance with the division pursuant to R151-46b-6, an attorney may represent a respondent.

(7) Additional procedures for disciplinary proceedings.

(a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:

(i) a notice of agency action;

(ii) a petition setting forth the allegations made by the division;

(iii) a witness list, if applicable; and

(iv) an exhibit list, if applicable.

(b) Answer.

(i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.

(ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.

(iii) Any answer shall be filed with the division within thirty days after the mailing date of the notice of agency action and petition.

(c) Witness and exhibit lists.

(i) The division shall provide its witness and exhibit list to the respondent at the time it mails its notice of hearing.

(ii) The respondent shall provide its witness and exhibit list to the division no later than thirty days after the mailing date of the division's notice of agency action and petition.

(iii) Any witness list shall contain:

(A) the name, address, and telephone number of each witness; and

(B) a summary of the testimony expected from each witness.

(iv) Any exhibit list:

(A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and

(B) shall be accompanied by copies of the exhibits.

(d) Pre-hearing motions.

(i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.
(ii) The division director shall receive and rule upon any pre-hearing motions.

R162-2c-402 Disciplinary Action. In reviewing a request to convert a revocation to a suspension pursuant to Section 61-2c-402(4)(a):

(1) The commission may not convert a revocation that was based on a felony conviction involving fraud, misrepresentation, deceit or dishonesty, breach of trust, or money laundering.

(2) The commission may consider converting a revocation that was based on other criminal history, including:
   (a) a plea in abeyance, diversion agreement, or similar disposition of a felony charge; and
   (b) a misdemeanor offense, regardless of the nature of the charge or the disposition of the case.

KEY: residential mortgage, loan origination, licensing, enforcement
Date of Enactment or Last Substantive Amendment: April 12, 2010
Notice of Continuation:
Authorizing, and Implemented or Interpreted Law: 61-2c-103(3)