

REGULATION OF REVERSE MORTGAGES

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: _____

LONG TITLE

General Description:

This bill enacts and modifies provisions relating to reverse mortgages.

Highlighted Provisions:

This bill:

- ▶ enacts the Utah Reverse Mortgage Act;
- ▶ defines terms;
- ▶ provides requirements for a reverse mortgage in the state;
- ▶ addresses the treatment of loan proceeds, priority, foreclosure, and lender default in the context of a reverse mortgage; and
- ▶ addresses the enforcement of the provisions of this bill.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

61-2c-301, as last amended by Laws of Utah 2012, Chapter 166

70D-3-402, as last amended by Laws of Utah 2011, Chapter 342

ENACTS:

57-28-101, Utah Code Annotated 1953



- 28 [57-28-102](#), Utah Code Annotated 1953
- 29 [57-28-201](#), Utah Code Annotated 1953
- 30 [57-28-202](#), Utah Code Annotated 1953
- 31 [57-28-203](#), Utah Code Annotated 1953
- 32 [57-28-204](#), Utah Code Annotated 1953
- 33 [57-28-205](#), Utah Code Annotated 1953
- 34 [57-28-206](#), Utah Code Annotated 1953
- 35 [57-28-207](#), Utah Code Annotated 1953
- 36 [57-28-208](#), Utah Code Annotated 1953
- 37 [57-28-301](#), Utah Code Annotated 1953
- 38 [57-28-302](#), Utah Code Annotated 1953
- 39 [57-28-303](#), Utah Code Annotated 1953
- 40 [57-28-304](#), Utah Code Annotated 1953
- 41 [57-28-305](#), Utah Code Annotated 1953

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

44 Section 1. Section **57-28-101** is enacted to read:

45 **CHAPTER 28. UTAH REVERSE MORTGAGE ACT**

46 **Part 1. General Provisions**

47 **57-28-101. Title.**

48 (1) This chapter is known as the "Utah Reverse Mortgage Act."

49 (2) This part is known as "General Provisions."

50 Section 2. Section **57-28-102** is enacted to read:

51 **57-28-102. Definitions.**

52 (1) "Borrower" means an individual who executes an agreement for a reverse
 53 mortgage.

54 (2) "Dwelling" means:

55 (a) a one- to four-family residence in which the borrower occupies at least one unit;

56 (b) a condominium project approved by the United States Department of Housing and
 57 Urban Development; or

58 (c) a manufactured home built after June 1976.

59 (3) "Independent housing counselor" means a person who is listed on the United States
60 Department of Housing and Urban Development's Home Equity Conversion Mortgage
61 Counselor Roster described in 24 C.F.R. Part 206.

62 (4) "Lender" means a person who makes a reverse mortgage.

63 (5) "Line of credit payment option" means a loan disbursement plan for a reverse
64 mortgage under which the lender pays the loan proceeds to the borrower at times and in
65 amounts determined by the borrower.

66 (6) "Means-test program of aid to individuals" means any law or program that relates
67 payments, allowances, benefits, or services that are provided on a means-tested basis by the
68 state.

69 (7) "Principal residence" means the dwelling:

70 (a) that an individual maintains as the individual's permanent place of abode; and

71 (b) where the individual typically spends the majority of the calendar year.

72 (8) "Reverse mortgage" means a nonrecourse loan that:

73 (a) is secured by the borrower's principal residence;

74 (b) provides cash advances to the borrower based on the borrower's equity in the
75 borrower's principal residence; and

76 (c) does not require payment of principal or interest until:

77 (i) each borrower dies;

78 (ii) the borrower's principal residence is transferred;

79 (iii) the dwelling that secures the loan is no longer the borrower's principal residence;

80 (iv) (A) the borrower fails to occupy the property that secures the loan for more than 12
81 months because of physical or mental illness; and

82 (B) no other borrower maintains the property as a principal residence; or

83 (v) the borrower defaults.

84 (9) "Tenure payment option" means a loan disbursement plan for a reverse mortgage
85 under which the lender pays the loan proceeds to the borrower in equal monthly installments
86 for as long as the dwelling that secures the reverse mortgage remains the borrower's principal
87 residence.

88 (10) "Term payment option" means a loan disbursement plan for a reverse mortgage
89 under which the lender pays the loan proceeds to the borrower in equal monthly installments

90 for a fixed term that is chosen by the lender.

91 Section 3. Section **57-28-201** is enacted to read:

92 **Part 2. Reverse Mortgage Requirements**

93 **57-28-201. Title.**

94 This part is known as "Reverse Mortgage Requirements."

95 Section 4. Section **57-28-202** is enacted to read:

96 **57-28-202. Borrower requirements.**

97 A borrower shall:

98 (1) be 62 years of age or older; and

99 (2) occupy the dwelling that secures the reverse mortgage as a principal residence.

100 Section 5. Section **57-28-203** is enacted to read:

101 **57-28-203. Disclosures to borrower.**

102 A lender shall give a prospective borrower or a borrower the following written
103 disclosures:

104 (1) at the time the lender provides an application for a reverse mortgage to a
105 prospective borrower:

106 (a) a disclosure that explains any adjustable interest rate feature of the reverse
107 mortgage, including:

108 (i) the circumstances under which the interest rate may increase;

109 (ii) any limitation on the amount that the interest rate may increase; and

110 (iii) the effect of an increase in the interest rate; and

111 (b) a list of at least five independent housing counselors that includes each independent
112 housing counselor's name, address, and telephone number;

113 (2) at least 10 days before the day on which a reverse mortgage closes, a disclosure that
114 describes:

115 (a) that the prospective borrower's liability under the reverse mortgage is limited;

116 (b) the prospective borrower's rights, obligations, and remedies that relate to:

117 (i) temporary absences, late payments, and payment default by the lender; and

118 (ii) each condition that requires satisfaction of the reverse mortgage; and

119 (c) the projected total cost of the reverse mortgage to the prospective borrower, based
120 on the projected total future loan balance;

121 (3) on an annual basis, on or before January 31 of each year, a statement that
122 summarizes:

123 (a) the total principal amount paid to the borrower under the reverse mortgage;

124 (b) the total amount of deferred interest added to the principal; and

125 (c) the outstanding loan balance at the end of the preceding year; and

126 (4) if applicable, at least 25 days before the day on which the lender adjusts the interest
127 rate on a reverse mortgage, a disclosure that states:

128 (a) the current index amount;

129 (b) the publication date of the index; and

130 (c) the new interest rate.

131 Section 6. Section **57-28-204** is enacted to read:

132 **57-28-204. Independent counseling.**

133 (1) Before a prospective borrower signs a reverse mortgage application, the prospective
134 borrower shall meet with an independent housing counselor.

135 (2) During the meeting described in Subsection (1):

136 (a) the prospective borrower and the independent housing counselor shall discuss the
137 financial impacts of a reverse mortgage, including:

138 (i) options other than a reverse mortgage that are or may become available to the
139 prospective borrower;

140 (ii) other home equity conversion options that are or may become available to the
141 prospective borrower, including sale-leaseback financing, a deferred payment loan, and a
142 property tax deferral; and

143 (iii) the financial implications, specific to the prospective borrower, of entering into a
144 reverse mortgage; and

145 (b) the independent housing counselor shall give the prospective borrower a written
146 disclosure that states that a reverse mortgage may:

147 (i) have tax consequences;

148 (ii) affect the prospective borrower's eligibility for assistance under certain state and
149 federal programs; and

150 (iii) impact the prospective borrower's estate and heirs.

151 Section 7. Section **57-28-205** is enacted to read:

152 **57-28-205. Costs and repayment.**

153 A lender may collect the following charges and fees in connection with the origination
154 of a reverse mortgage:

155 (1) the actual expenses that the lender incurs in originating and closing the reverse
156 mortgage, including a mortgage broker's fee if the mortgage broker and the lender do not share
157 any pecuniary interests; and

158 (2) the actual amount that the lender paid for:

159 (a) a recording fee;

160 (b) a credit report;

161 (c) a survey, if required by the lender or the borrower;

162 (d) a title examination;

163 (e) the lender's title insurance; and

164 (f) an initial appraisal of the real property that secures the reverse mortgage.

165 Section 8. Section **57-28-206** is enacted to read:

166 **57-28-206. Disbursement.**

167 (1) Subject to Subsection (2) and except as provided in Subsection (3), a lender shall
168 pay the loan proceeds of a reverse mortgage under a term payment option, a tenure payment
169 option, or a line of credit payment option.

170 (2) Under a term payment option or a tenure payment option, upon a borrower's
171 request, the lender shall disburse a portion of the loan proceeds under a line of credit payment
172 option.

173 (3) If a reverse mortgage is a fixed interest rate loan, the lender may pay the loan
174 proceeds in a lump sum.

175 Section 9. Section **57-28-207** is enacted to read:

176 **57-28-207. Cooling off period -- Closing.**

177 (1) After a prospective borrower accepts, in writing, a lender's written commitment to
178 make a reverse mortgage, the lender may not bind the prospective borrower to the reverse
179 mortgage earlier than seven days after the day on which the prospective borrower gives the
180 written acceptance to the lender.

181 (2) During the seven-day period described in Subsection (1), the lender may not require
182 the prospective borrower to close or otherwise proceed with the reverse mortgage.

183 (3) A prospective borrower may not waive the provisions of this section.

184 Section 10. Section **57-28-208** is enacted to read:

185 **57-28-208. Federally insured reverse mortgages.**

186 When a lender makes a reverse mortgage that is federally insured by the United States
187 Department of Housing and Urban Development, the lender satisfies the requirements
188 described in Sections 57-28-202 through 57-28-206 if the lender complies with the federal
189 requirements described in 12 U.S.C. Sec. 1715z-20 and 24 C.F.R. Part 206.

190 Section 11. Section **57-28-301** is enacted to read:

191 **Part 3. Reverse Mortgage Proceeds, Priority, Foreclosure, and Lender Default**
192 **57-28-301. Title.**

193 This part is known as "Reverse Mortgage Proceeds, Priority, Foreclosure, and Lender
194 Default."

195 Section 12. Section **57-28-302** is enacted to read:

196 **57-28-302. Treatment of loan proceeds -- Effect on assistance eligibility.**

197 For purposes of determining a borrower's eligibility and benefits for a means-tested
198 program of aid to individuals:

199 (1) a reverse mortgage loan payment made to a borrower shall be treated as proceeds
200 from a loan and not as income; and

201 (2) undisbursed funds under a reverse mortgage shall be treated as equity in the
202 borrower's home and not as proceeds from a loan.

203 Section 13. Section **57-28-303** is enacted to read:

204 **57-28-303. Priority.**

205 (1) The full amount secured by a reverse mortgage has priority over any other liens on
206 the real property that secures the reverse mortgage as of the date of the first disbursement.

207 (2) For purposes of Subsection (1), the amount secured by the reverse mortgage
208 includes any payment to the borrower from the loan proceeds, regardless of the purpose of the
209 payment.

210 Section 14. Section **57-28-304** is enacted to read:

211 **57-28-304. Foreclosure.**

212 Before a person initiates foreclosure proceedings on a reverse mortgage, the person
213 shall:

214 (1) give the borrower written notice that states the grounds for default and foreclosure;
215 and

216 (2) provide the borrower at least 30 days after the day on which the borrower receives
217 the notice described in Subsection (1) to cure the borrower's default.

218 Section 15. Section **57-28-305** is enacted to read:

219 **57-28-305. Lender default.**

220 (1) A lender who fails to make a loan advance on a non-federally insured reverse
221 mortgage in accordance with the reverse mortgage agreement shall forfeit any right to
222 repayment of the outstanding loan balance.

223 (2) After a lender forfeits the lender's right to repayment under Subsection (1), the
224 reverse mortgage loan agreement is void.

225 Section 16. Section **61-2c-301** is amended to read:

226 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

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

229 (a) give or receive a referral fee, other compensation, or anything of value in exchange
230 for a referral of residential mortgage loan business;

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

232 (i) that is excessive; or

233 (ii) without providing to the loan applicant a written statement signed by the loan
234 applicant:

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

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

238 (c) give or receive compensation or anything of value in exchange for a referral of
239 settlement or loan closing services related to a residential mortgage loan transaction;

240 (d) do any of the following to induce a lender to extend credit as part of a residential
241 mortgage loan transaction:

242 (i) make a false statement or representation;

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

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

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

251 (f) violate or not comply with:

252 (i) this chapter;

253 (ii) an order of the commission or division; or

254 (iii) a rule made by the division;

255 (g) fail to respond within the required time period to:

256 (i) a notice or complaint of the division; or

257 (ii) a request for information from the division;

258 (h) make false representations to the division, including in a licensure statement;

259 (i) for a residential mortgage loan transaction beginning on or after January 1, 2004,

260 engage in the business of residential mortgage loans with respect to the transaction if the

261 person also acts in any of the following capacities with respect to the same residential mortgage

262 loan transaction:

263 (i) appraiser;

264 (ii) escrow agent;

265 (iii) real estate agent;

266 (iv) general contractor; or

267 (v) title insurance producer;

268 (j) order a title insurance report or hold a title insurance policy unless the person

269 provides to the title insurer a copy of a valid, current license under this chapter;

270 (k) engage in unprofessional conduct as defined by rule;

271 (l) engage in an act or omission in transacting the business of residential mortgage

272 loans that constitutes dishonesty, fraud, or misrepresentation;

273 (m) engage in false or misleading advertising;

274 (n) (i) fail to account for money received in connection with a residential mortgage

275 loan;

- 276 (ii) use money for a different purpose from the purpose for which the money is
277 received; or
- 278 (iii) except as provided in Subsection (4), retain money paid for services if the services
279 are not performed;
- 280 (o) fail, within 90 calendar days of a request from a borrower who has paid for an
281 appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;
- 282 (p) engage in an act that is performed to:
- 283 (i) evade this chapter; or
- 284 (ii) assist another person to evade this chapter;
- 285 (q) recommend or encourage default, delinquency, or continuation of an existing
286 default or delinquency, by a mortgage applicant on an existing indebtedness before the closing
287 of a residential mortgage loan that will refinance all or part of the indebtedness;
- 288 (r) in the case of the lending manager of an entity or a branch office of an entity, fail to
289 exercise reasonable supervision over the activities of:
- 290 (i) unlicensed staff; and
- 291 (ii) a mortgage loan originator who is affiliated with the lending manager;
- 292 (s) pay or offer to pay an individual who does not hold a license under this chapter for
293 work that requires the individual to hold a license under this chapter;
- 294 (t) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
- 295 (i) provide a title insurance product or service without the approval required by Section
296 31A-2-405; or
- 297 (ii) knowingly provide false or misleading information in the statement required by
298 Subsection 31A-2-405(2);
- 299 (u) represent to the public that the person can or will perform any act of a mortgage
300 loan originator if that person is not licensed under this chapter because the person is exempt
301 under Subsection 61-2c-102(1)(h)(ii)(A), including through:
- 302 (i) advertising;
- 303 (ii) a business card;
- 304 (iii) stationery;
- 305 (iv) a brochure;
- 306 (v) a sign;

- 307 (vi) a rate list; or
- 308 (vii) other promotional item; [~~or~~]
- 309 (v) (i) engage in an act of loan modification assistance without being licensed under
- 310 this chapter;
- 311 (ii) engage in an act of foreclosure rescue that requires licensure as a real estate agent
- 312 or real estate broker under Chapter 2, Division of Real Estate, without being licensed under
- 313 that chapter;
- 314 (iii) engage in an act of loan modification assistance without entering into a written
- 315 agreement specifying which one or more acts of loan modification assistance will be
- 316 completed;
- 317 (iv) request or require a person to pay a fee before obtaining:
- 318 (A) a written offer for a loan modification from the person's lender or servicer; and
- 319 (B) the person's written acceptance of the offer from the lender or servicer;
- 320 (v) induce a person seeking a loan modification to hire the licensee to engage in an act
- 321 of loan modification assistance by:
- 322 (A) suggesting to the person that the licensee has a special relationship with the
- 323 person's lender or loan servicer; or
- 324 (B) falsely representing or advertising that the licensee is acting on behalf of:
- 325 (I) a government agency;
- 326 (II) the person's lender or loan servicer; or
- 327 (III) a nonprofit or charitable institution;
- 328 (vi) recommend or participate in a loan modification that requires a person to:
- 329 (A) transfer title to real property to the licensee or to a third-party with whom the
- 330 licensee has a business relationship or financial interest;
- 331 (B) make a mortgage payment to a person other than the person's loan servicer; or
- 332 (C) refrain from contacting the person's:
- 333 (I) lender;
- 334 (II) loan servicer;
- 335 (III) attorney;
- 336 (IV) credit counselor; or
- 337 (V) housing counselor; or

338 (vii) for an agreement for loan modification assistance entered into on or after May 11,
339 2010, engage in an act of loan modification assistance without offering in writing to the person
340 entering into the agreement for loan modification assistance a right to cancel the agreement
341 within three business days after the day on which the person enters the agreement[-]; or
342 (w) violate or fail to comply with a provision of Title 57, Chapter 28, Utah Reverse
343 Mortgage Act.

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

- 347 (a) be convicted;
- 348 (b) plead guilty or nolo contendere;
- 349 (c) enter a plea in abeyance; or
- 350 (d) be subjected to a criminal disposition similar to the ones described in Subsections
351 (2)(a) through (c).

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

- 353 (a) in contravention of the lending manager's written policies and instructions, an
354 affiliated licensee of the lending manager violates:
 - 355 (i) this chapter; or
 - 356 (ii) rules made by the division under this chapter;
- 357 (b) the lending manager established and followed reasonable procedures to ensure that
358 affiliated licensees receive adequate supervision;
- 359 (c) upon learning of a violation by an affiliated licensee, the lending manager
360 attempted to prevent or mitigate the damage;
- 361 (d) the lending manager did not participate in or ratify the violation by an affiliated
362 licensee; and
- 363 (e) the lending manager did not attempt to avoid learning of the violation.

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

367 Section 17. Section 70D-3-402 is amended to read:

368 **70D-3-402. Prohibited acts.**

- 369 (1) An individual transacting the business of a loan originator in this state may not:
- 370 (a) violate or not comply with:
- 371 (i) this chapter;
- 372 (ii) an order of the commissioner under this chapter;
- 373 (iii) a rule made by the commissioner under this chapter;
- 374 (iv) Title 70C, Utah Consumer Credit Code, if subject to that title; or
- 375 (v) Chapter 2, Mortgage Lending and Servicing Act, if subject to that chapter;
- 376 (b) engage in an act that is performed to:
- 377 (i) evade this chapter; or
- 378 (ii) assist another person to evade this chapter;
- 379 (c) do any of the following to induce a lender to extend credit as part of a residential
- 380 mortgage loan transaction:
- 381 (i) make a false statement or representation;
- 382 (ii) cause a false document to be generated; or
- 383 (iii) knowingly permit false information to be submitted by a person in a transaction;
- 384 (d) fail to respond within the required time period to:
- 385 (i) a notice or complaint of the commissioner; or
- 386 (ii) a request for information from the commissioner;
- 387 (e) make a false representation to the commissioner, including in a licensure
- 388 application;
- 389 (f) engage in the business of a loan originator with respect to a residential mortgage
- 390 loan transaction if the individual also acts in any of the following capacities with respect to the
- 391 same residential mortgage loan transaction:
- 392 (i) appraiser;
- 393 (ii) escrow agent;
- 394 (iii) real estate agent;
- 395 (iv) general contractor; or
- 396 (v) title insurance agent;
- 397 (g) engage in an act or omission in transacting the business of a loan originator that
- 398 constitutes dishonesty, fraud, or misrepresentation;
- 399 (h) engage in false or misleading advertising;

400 (i) (i) fail to account for money received in connection with a residential mortgage
401 loan;

402 (ii) use money for a different purpose than the purpose for which the money is
403 received; or

404 (iii) subject to Subsection (3), retain money paid for services if the services are not
405 performed;

406 (j) fail, within 90 calendar days of a request from a borrower who has paid for an
407 appraisal, to give a copy of an appraisal ordered and used for a residential mortgage loan to the
408 borrower;

409 (k) recommend or encourage default, delinquency, or continuation of an existing
410 default or delinquency, by a mortgage applicant on an existing indebtedness before the closing
411 of a residential mortgage loan that will refinance all or part of the indebtedness; ~~[or]~~

412 (l) pay or offer to pay an individual who does not hold a license under this chapter for
413 services that require the individual to hold a license under this chapter~~[-];~~ or

414 (m) violate or fail to comply with a provision of Title 57, Chapter 28, Utah Reverse
415 Mortgage Act.

416 (2) (a) An individual engaging solely in loan processor or underwriter activities, may
417 not represent to the public that the individual can or will perform any act of a loan originator.

418 (b) A representation prohibited under this Subsection (2) includes an advertisement or
419 other means of communicating or providing information including the use of:

420 (i) a business card;

421 (ii) stationery;

422 (iii) a brochure;

423 (iv) a sign;

424 (v) a rate list; or

425 (vi) another promotional item.

426 (3) Notwithstanding Subsection (1)(i)(iii), if a licensee complies with Section
427 [70D-2-305](#), the licensee may charge a reasonable cancellation fee for services completed to
428 originate a residential mortgage loan if the residential mortgage loan is not closed.

Legislative Review Note
as of 1-28-15 12:18 PM

Office of Legislative Research and General Counsel