



# Bankers Advisory

## COMPLIANCE MONITOR

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### *Utah Enacts Various Mortgage Lending Laws*

By Emily Ross, Esq.

The Utah General Session and Senate have passed a series of bills over the past month that affect many financial institutions in relation to the practice of mortgage lending. These bills include basic changes such as yearly fee adjustments as well as larger changes affecting the licensing schemes of mortgage loan originators as well as appraisers and real estate professionals. They also placed restrictions on foreclosure practices and created a new commission to oversee electronic record processes.

#### House Bill 332

Utah House Bill 332, which goes into effect on May 12, 2014, made multiple substantive changes to *Title 61, Securities-Real Estate Division*. These changes include modifications in definitions to limit the "business of residential mortgage loans" as well as creating a mechanism for the voluntary surrender of a mortgage lending license. The new changes added two provisions to the list of activities that are excluded from the definition of "business of residential mortgage loans:"

- 1) A person acting as an **underwriter** while working under the supervision of an employer licensed by the Division of Real Estate is no longer considered to be practicing in the "business of residential mortgage loans" and therefore does not require an independent mortgage lending license.
- 2) An underwriter working as an employee of a **depository institution** does not fall under this definition.

The bill also added a provision allowing for the Division of Real Estate to accept the voluntary surrender of a person licensed under the Utah Residential Mortgage Practices and Licensing Act. The voluntary surrender of a license does not preclude the Division of Real Estate from pursuing disciplinary action relating to the surrendered license. The only way to get a license back after voluntary surrender is to reapply and be accepted through the standard application process. Any documentation related to the surrender is a matter of public record.

The legislature also placed a limit on the amount of time the Division of Real Estate has to begin a disciplinary action under the Residential Mortgage Practices and Licensing Act. The new requirement states that the action must commence no later than either four years after the day on which the violation is reported or ten years after the day on which the violation occurred. They included an exception to this rule in that they have additional time if the action is in response to a civil or criminal judgment or settlement. In this case, the division can commence a disciplinary action no later than one year after the judgment or settlement date. The division can also commence a disciplinary action after the stated deadline if the division and subject of the action enter into a written stipulation to extend the time.

House Bill 322 also added a provision to *Utah 61-2f-103* governing the actions of the Real Estate Commission. This revision limits other state entities from making any rule that changes the "rights, duties or obligation of buyers, sellers or persons licensed" under the Residential Mortgage Practices Act without concurrence of the Real Estate Commission. The Real Estate Commission is a division of the Real Estate Division.

In addition to the substantial changes made to the mortgage licensing scheme in Utah, this bill also made significant changes to Real Estate Licensing and Practices act governing the licensing of Real Estate Brokers as well as to the Real Estate Appraiser Licensing and Certification Act governing the licensing of Real Estate Appraisers. The most significant change effecting Appraisal Licensing is the addition of a background check as a condition of licensure. Every applicant must now submit a fingerprint card and submit to a criminal background check by the Utah Bureau of Criminal Identification as well as the Federal Bureau of Investigation.

### **Senate Bill 130**

With Senate Bill 130, the Utah state legislature amended the regulations governing the sale of property in default by a trustee. *Utah 7-1-24.3*. These changes primarily focused on the definition and the duties of a "Single Point of Contact." Language was added to the definition to state that this "Single Point of Contact" represents the beneficiary or servicer when dealing with anything related to the foreclosure of delinquent property. The new regulation also further defines that notices sent to a borrower in default must be in writing and must be sent to the borrower's current address of record or the address of the defaulted property. They also added a concrete time limit for how much time a lender must give a borrower to cure a default by paying the owed balance. The lender or servicer must now give a borrower at least 30 days to cure the default before proceeding with foreclosure proceedings. These provisions are effective on May 12, 2014.

### **House Bill 316**

This bill resulted in small changes such as reductions of certain fees and technical changes. For instance, the annual fee paid by a depository institution to the commissioner dropped a very small amount, as little as two cents per \$1,000 dollars in assets. This same bill also modified the regulations that govern what happens to unexpended balances accruing to the department. These unexpended funds must be placed into a separate account within the General Fund. The commissioner, after consultation with the Board of Financial Institutions and the approval of the director of Division of Finance can withdraw these funds for limited purposes such as to "promote, protect and encourage" state-chartered institutions and the dual banking system. The new fees and other revisions of this bill are effective May 12, 2014.

## Senate Bill 79

With Senate Bill 79, the Utah Senate recently passed a series of measures allowing the electronic recording of official documents. Under this new *Uniform Real Property Electronic Recording Act*, any document that needs to be filed as an "original" can now be filed electronically. *Utah 17-21a-101*. This new legislation also allows official signatures to be captured via electronic signature. The new recording standards require county recorders to accept both electronic and paper documents and index them into the same system. Additionally, this legislation creates the Utah Electronic Recording Commission, made up of six members, to develop standards to implement the requirements of this new legislation. The new provisions establishing the Electronic Recording Commission go into effect on May 13, 2014 while the remaining provisions take effect on July 1, 2015.



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