

R162-2c-301a 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; and
 - (v) comply with a division request for information within 10 business days of the date of the request.
 - (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) Lending manager.
 - (a) Affirmative duties. A lending manager who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405.
 - (b) An LM who is designated in the nationwide database as the principal lending manager of an entity 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; and
 - (ix) (A) actively supervise:
 - (I) any ALM sponsored by the entity; and
 - (II) any BLM who is assigned to oversee the mortgage loan origination activities of a branch office; and
 (B) remain personally responsible and accountable for adequate supervision of all sponsored mortgage loan originators, unlicensed staff, and entity operations throughout all locations.
- (c) An LM who is designated as a branch lending manager in the nationwide database shall:
- (i) work from the branch office the LM is assigned to manage;
 - (ii) personally oversee all mortgage loan origination activities conducted through the branch office; and
 - (iii) personally supervise all mortgage loan originators and unlicensed staff affiliated with the branch office.
- (d) Prohibited conduct. An LM who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. An LM 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;
 - (iv) (A) notify the division of the location from which the entity's PLM will work; and
 - (B) if the entity originates Utah loans from a location where the PLM is not present to oversee and supervise activities related to the business of residential mortgage loans, assign a separate LM to serve as the BLM per Section 61-2c-102(1)(e); and
 - (v) if using an incentive program, strictly comply with Subsection R162-2c-301b.
- (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 final disciplinary action taken against a licensee for unprofessional conduct.
 - (b) 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-301b Employee Incentive Program.

- (1) (a) Under this Subsection R162-2c-301b, a licensed entity may pay an incentive to a mortgage loan originator who is sponsored by the entity and licensed in:
 - (i) Utah; or
 - (ii) another state.
- (b) A licensed entity may not pay an incentive to an unlicensed employee.
- (2) A PLM or entity that uses an incentive program shall:
 - (a) prior to paying any incentive to an individual, specifically describe in the individual's contract for employment:
 - (i) the methodology by which any incentive will be calculated, including the limitation specified in Subsection (2)(b); and
 - (ii) the circumstances under which an incentive will be paid, including the limitation specified in this Subsection (2)(c); and
 - (b) limit the dollar amount or value of any single incentive to \$300 or less;
 - (c) limit the sponsored mortgage loan originator to receiving no more than three incentive payments in a calendar year; and
 - (d) (i) keep complete records of all incentive payments made, including:
 - (A) borrower name;
 - (B) property address;
 - (C) transaction closing date;
 - (D) date of incentive payment;
 - (E) name of employee receiving incentive payment; and
 - (F) amount paid; and
 - (ii) make such records available to the division for audit or inspection upon request.
- (3) Before paying an incentive to a mortgage loan originator who is not licensed in Utah, the PLM or entity shall ensure that the individual did not:
 - (a) solicit or advertise to the client regarding financing for a Utah property; or

- (b) perform any other activity that constitutes the business of residential mortgage loans pursuant to Section 61-2c-102(1)(h).