

R162. Commerce, Real Estate.

R162-202. Initial Application.

R162-202-1. Licensing Examination.

202.1 Except as provided in Subsection 202-8, an individual applying for an initial license is required to have passed the licensing examination approved by the commission before making application to the division for a license.

202.1.1 The licensing examination will be a multiple choice examination and will consist of a national portion and a Utah-specific portion. An applicant will be required to pass both portions of the examination within a six-month period of time.

202.1.2 In order to register for the licensing examination, the applicant shall deliver an application to take the examination, together with the applicable examination fee to the testing service designated by the division. If the applicant registers for the examination, the examination fee will be forfeited unless the applicant has complied with the Change/Cancel Policy in the candidate handbook furnished to the applicant by the examination provider.

202.1.3 All examination results are valid for 90 days after the date of the examination. If the applicant does not submit an application for licensure within 90 days after successful completion of the examination, the examination results shall lapse and the applicant shall be required to retake and successfully pass the examination again in order to apply for a license.

R162-202-2. Form of Application.

202.2 All applications must be made in the form required by the division and shall include the following information:

202.2.1 Any name under which the individual will transact business in this state;

202.2.2 The address of the principal business location of the applicant;

202.2.3 The home street address and home telephone number of any individual applicant;

202.2.4 A mailing address for the applicant;

202.2.5 The date of birth and social security number of any individual applicant;

202.2.6 Answers to a "Licensing Questionnaire" supplying information about present or past mortgage licensure in other jurisdictions, past license sanctions or surrenders, pending disciplinary actions, pending investigations, past criminal convictions or pleas, and/or civil judgments based on fraud, misrepresentation, or deceit;

202.2.7 A "Letter of Waiver" authorizing the division to obtain the fingerprints of the applicant, review past and present employment and education records, and to conduct a criminal history background check;

202.2.8 If an individual applicant or a director, executive officer, manager, or a managing partner of an entity applicant, or anyone who occupies a position or performs functions similar to a director, executive officer, manager or managing partner of an entity that has applied for a license, has been convicted of any felonies or misdemeanors involving moral turpitude within the ten

years preceding application, the charging document, the judgment and sentencing document, and the case docket on each such conviction must be provided with the application; and

202.2.9 If an individual or entity applicant or a director, executive officer, manager, or a managing partner of an entity applicant, or anyone who occupies a position or performs functions similar to a director, executive officer, manager or managing partner of an entity that has applied for a license, has had a license or registration suspended, revoked, surrendered, canceled or denied in the five years preceding application based on misconduct in a professional capacity that relates to good moral character or the competency to transact the business of residential mortgage loans, the documents stating the sanction taken against the license or registration and the reasons therefore must be provided with the application.

202.2.10 Applicants for a mortgage officer license shall submit proof in the form required by the Division of successful completion of the [20] hours of approved prelicensing education required by Section 61-2c-202(4) (a) [~~(i)-(C)~~] (iii) (B) and R162-202-10 taken within one year prior to application; or

202.2.11 [~~Except as provided in Section 61-2c-206(2)(b), applicants~~] An applicant for a principal lending manager license shall submit proof in the form required by the Division of successful completion of the 40 hours of approved prelicensing education required by Section 61-2c-206(1)(c) taken within one year prior to application.

R162-202-3. Incomplete Application.

202.3 If an applicant for a license makes a good faith attempt to submit a completed application within 90 days after passing the examination, but the application is incomplete, the Division may grant an extension of the validity of the examination results for a period not to exceed 30 days to enable the applicant to provide the missing documents or information necessary to complete the application. Following the extension period, the application will be denied as incomplete if the applicant has not supplied the missing documents or information.

R162-202-4. Nonrefundable Fees.

202.4 All fees required in conjunction with an application for a license are nonrefundable and will not be refunded if the applicant fails to complete an application or if a completed application is denied for failure to meet the licensing criteria.

R162-202-5. Determining Fitness for Licensure.

202.5.1 Qualifications of Applicants. All mortgage officer and principal lending manager applicants, and all directors, executive officers, and managing partners of any entity applicant, and anyone who occupies a position or performs functions similar to a director, executive officer, manager or managing partner of an entity applicant, shall meet the following qualifications. None of these persons may have:

(a) been convicted of, entered a plea in abeyance to, or completed any sentence of confinement on account of, any felony

within five years preceding the application; or

(b) been convicted of, entered a plea in abeyance to, or completed any sentence of confinement on account of, any misdemeanor involving fraud, misrepresentation, theft, or dishonesty within three years preceding the application.

202.5.2 In determining whether an individual who has not been disqualified by Subsection 202.5.1 meets the requirements of good moral character, honesty, integrity, and truthfulness, the Commission and the Division will consider information which may include the following in addition to whether the individual has been convicted of a felony or misdemeanor involving moral turpitude in the ten years preceding the application:

(a) The circumstances that led to any criminal convictions considered by the Commission and the Division;

(b) The amount of time that has passed since the individual's last criminal conviction;

(c) Any character testimony presented at the hearing and any character references submitted by the individual;

(d) Past acts related to honesty or moral character involving the business of residential mortgage loans;

(e) Whether the individual has been guilty of dishonest conduct in the five years preceding the application that would have been grounds under Utah law for revocation or suspension of a registration or license had the individual then been registered or licensed;

(f) Whether a civil judgment based on fraud, misrepresentation, or deceit has been entered against the individual, or whether a finding of fraud, misrepresentation or deceit by the individual has been made in a civil suit, regardless of whether related to the residential mortgage loan business, and whether any money judgment has been fully satisfied;

(g) Whether fines and restitution ordered by a court in a criminal proceeding have been fully satisfied, and whether the individual has complied with court orders in the criminal proceeding;

(h) Whether a probation agreement, plea in abeyance, or diversion agreement entered into in a criminal proceeding in the ten years preceding the application has been successfully completed;

(i) Whether any tax and child support arrearages have been paid; and

(j) Whether there has been good conduct on the part of the individual subsequent to the individual's offenses.

202.5.3 Competency to Transact the Business of Residential Mortgage Loans. The Commission and the Division will consider information necessary to determine whether an applicant for a license or director, executive officer, manager, or a managing partner of an entity that has applied for a license, or anyone who occupies a position or performs functions similar to a director, executive officer, manager or managing partner of an entity that has applied for a license, meets the requirement of competency to transact the business of residential mortgage loans, which shall include the following:

(a) Past acts related to competency to transact the business

of residential mortgage loans;

(b) Whether a civil judgment involving the business of mortgage loans has been entered against the individual, and whether the judgment has been fully satisfied, unless the judgment has been discharged in bankruptcy;

(c) The failure of any previous mortgage loan business in which the individual engaged, and the reasons for any failure;

(d) The individual's management and employment practices in any previous mortgage loan business, including whether or not employees were paid the amounts owed to them;

(e) The individual's training and education in mortgage lending, if any was available to the applicant;

(f) The individual's training, education, and experience in the mortgage loan business or in management of a mortgage loan business, if any was available to the individual;

(g) A lack of knowledge of the Utah Residential Mortgage Practices Act on the part of the individual;

(h) A history of disregard for licensing laws;

(i) A prior history of drug or alcohol dependency within the last five years, and any subsequent period of sobriety; and

(j) Whether the individual has demonstrated competency in business subsequent to any past incompetence by the individual in the mortgage loan business.

202.5.4 Age. All mortgage officer and principal lending manager applicants shall be at least 18 years old.

R162-202-6. Registration of Assumed Business Name.

202.6.1 An individual or entity licensed to engage in the business of residential mortgage loans who intends to conduct business under an assumed business name instead of the individual's own name shall register the assumed business name with the Division.

202.6.2 To register an assumed business name, the applicant shall pay the applicable non-refundable fee and submit proof in the form required by the Division of a current filing of that assumed business name with the Division of Corporations and Commercial Code.

202.6.3 Misleading or deceptive business names. The Division shall not register an assumed business name if there is a substantial likelihood that the public will be misled by the name into thinking that they are not dealing with an individual or entity engaged in the residential mortgage loan business.

R162-202-7. Reciprocal Licenses.

202.7.1 An applicant who is a legal resident of a state with which the Division has entered into a written reciprocity agreement and who applies for a Utah license shall submit to the Division:

(a) An application for a reciprocal license on the form required by the Division;

(b) All applicable licensing fees and the Residential Mortgage Loan Education, Research, and Recovery Fund fee;

(c) An official license history from the licensing agency in the applicant's state of legal residence containing the dates of

the applicant's licensure and any complaint or disciplinary history; and

(d) The information required by Subsections 202.2.1 through 202.2.9.

202.7.2 An applicant who is a legal resident of a state with which the Division has not entered into a written reciprocity agreement and who applies for a Utah license shall submit to the Division:

(a) An application for a reciprocal license on the form required by the Division;

(b) All applicable licensing fees and the Residential Mortgage Loan Education, Research, and Recovery Fund fee;

(c) A signed, notarized affidavit attesting that the applicant has at least five years experience in the business of residential mortgage loans;

(d) An official license history from the licensing agency in the applicant's state of legal residence, and any other state(s) in which the experience referred to in Subsection 202.7.2(c) was obtained, that includes the dates of the applicant's licensure and any complaint or disciplinary history; and

(e) Proof of having successfully completed state-required pre-licensing education and having passed a state-required competency examination; and

(f) Those items required by Subsections 202.2.1 through 202.2.9.

R162-202-8. Branch Office.

202.8 A branch office shall be registered with the Division prior to operation. To register the branch office, the principal lending manager of the entity must submit to the Division, on the forms required by the Division, the location of the branch office and the names of all licensees assigned to the branch, along with the fee for registering the branch office.

R162-202-9. Principal Lending Manager Experience Requirement.

202.9 Equivalent Experience. Experience in originating loans or directly supervising individuals who originate loans shall be considered to be "equivalent experience" for the purposes of Section 61-2c-206(1)(e).

R162-202-10. Prelicensing Education Requirements.

202.10.1 Beginning January 1, 2010, an applicant for a mortgage officer license shall submit proof of completing 60 hours of prelicense education that complies with the course content outline adopted by the Residential Mortgage Regulatory Commission and the Division.

KEY: residential mortgage loan origination

Date of Enactment or Last Substantive Amendment: May 1, 2007

Notice of Continuation: December 13, 2006

Authorizing, and Implemented or Interpreted Law: 61-2c-103(3)