

REAL ESTATE APPRAISER AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Gerry A. Adair

AN ACT RELATING TO REAL ESTATE; REVISING AND RENAMING THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT; REVISING AND RENAMING THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION BOARD; PHASING OUT STATE-REGISTERED APPRAISERS; CREATING A CLASSIFICATION OF STATE-LICENSED APPRAISERS; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

61-2b-1, as enacted by Chapter 212, Laws of Utah 1990

61-2b-2, as last amended by Chapter 199, Laws of Utah 1998

61-2b-3, as last amended by Chapter 131, Laws of Utah 1996

61-2b-6, as last amended by Chapter 131, Laws of Utah 1996

61-2b-7, as last amended by Chapters 131 and 243, Laws of Utah 1996

61-2b-8, as last amended by Chapter 245, Laws of Utah 1991

61-2b-9, as enacted by Chapter 212, Laws of Utah 1990

61-2b-10, as last amended by Chapter 162, Laws of Utah 1993

61-2b-11, as enacted by Chapter 212, Laws of Utah 1990

61-2b-13, as last amended by Chapter 131, Laws of Utah 1996

61-2b-14, as last amended by Chapter 131, Laws of Utah 1996

61-2b-15, as last amended by Chapter 131, Laws of Utah 1996

61-2b-16, as last amended by Chapter 162, Laws of Utah 1993

61-2b-17, as last amended by Chapter 131, Laws of Utah 1996

61-2b-18, as enacted by Chapter 212, Laws of Utah 1990

61-2b-19, as enacted by Chapter 212, Laws of Utah 1990

61-2b-20, as enacted by Chapter 212, Laws of Utah 1990
61-2b-21, as enacted by Chapter 212, Laws of Utah 1990
61-2b-22, as last amended by Chapter 199, Laws of Utah 1998
61-2b-23, as enacted by Chapter 212, Laws of Utah 1990
61-2b-24, as enacted by Chapter 212, Laws of Utah 1990
61-2b-25, as enacted by Chapter 212, Laws of Utah 1990
61-2b-26, as last amended by Chapter 245, Laws of Utah 1991
61-2b-27, as enacted by Chapter 212, Laws of Utah 1990
61-2b-28, as last amended by Chapter 199, Laws of Utah 1998
61-2b-29, as last amended by Chapter 199, Laws of Utah 1998
61-2b-31, as last amended by Chapter 199, Laws of Utah 1998
61-2b-32, as enacted by Chapter 212, Laws of Utah 1990
61-2b-33, as enacted by Chapter 212, Laws of Utah 1990
61-2b-34, as last amended by Chapter 245, Laws of Utah 1991
61-2b-36, as last amended by Chapter 131, Laws of Utah 1996
61-2b-38, as last amended by Chapter 245, Laws of Utah 1991
61-2b-39, as enacted by Chapter 212, Laws of Utah 1990
61-2b-40, as last amended by Chapter 131, Laws of Utah 1996

ENACTS:

61-2b-10.5, Utah Code Annotated 1953
61-2b-15.6, Utah Code Annotated 1953
61-2b-30.5, Utah Code Annotated 1953

REPEALS:

61-2b-15.5, as last amended by Chapter 131, Laws of Utah 1996

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

Section 1. Section **61-2b-1** is amended to read:

61-2b-1. Title.

This chapter is known as the "Real Estate Appraiser [Registration] Licensing and Certification Act."

Section 2. Section **61-2b-2** is amended to read:

61-2b-2. Definitions.

As used in this chapter:

(1) (a) "Appraisal" means an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate or identified real property.

(b) Appraisals shall be classified by the nature of the assignment as a valuation appraisal, an analysis assignment, or a review assignment in accordance with the following definitions:

(i) "Valuation appraisal" means an unbiased analysis, opinion, or conclusion that estimates the value of an identified parcel of real estate or identified real property at a particular point in time.

(ii) "Analysis assignment" means an unbiased analysis, opinion, or conclusion that relates to the nature, quality, or utility of identified real estate or identified real property.

(iii) "Review assignment" means an unbiased analysis, opinion, or conclusion that forms an opinion as to the adequacy and appropriateness of a valuation appraisal or an analysis assignment.

(2) "Appraisal Foundation" means the Appraisal Foundation that was incorporated as an Illinois not-for-profit corporation on November 30, 1987.

(3) (a) "Appraisal report" means any communication, written or oral, of an appraisal.

(b) An appraisal report shall be classified by the nature of the assignment as a valuation report, analysis report, or review report in accordance with the definitions provided in Subsection (1)(b).

(c) The testimony of a person relating to the person's analyses, conclusions, or opinions concerning identified real estate or identified real property is considered to be an oral appraisal report.

(4) "Board" means the Real Estate Appraiser ~~[Registration]~~ Licensing and Certification Board that is established ~~[under this chapter to provide technical assistance and make recommendations to the division and perform certain ancillary functions]~~ in Section 61-2b-7.

(5) "Certified appraisal report" means a written or oral appraisal report that is certified [as such] by a state-certified general appraiser or state-certified residential appraiser. ~~[The certification of an appraisal report by a state-certified real estate appraiser represents to the public that the appraisal report meets the appraisal standards established under this chapter.]~~

(6) (a) (i) "Consultation service" means an engagement to provide a real estate valuation

90 service analysis, opinion, conclusion, or other service that does not fall within the definition of
91 appraisal.

92 (ii) "Consultation service" does not mean a valuation appraisal, analysis assignment, or
93 review assignment [as provided in Subsection (1)(b)].

94 (b) Regardless of the intention of the client or employer, if a person prepares an unbiased
95 analysis, opinion, or conclusion, the analysis, opinion, or conclusion is considered to be an
96 appraisal and not a consultation service.

97 (7) "Contingent fee" means a fee or other form of compensation, payment of which is
98 dependent on or conditioned by:

99 (a) the reporting of a predetermined analysis, opinion, or conclusion by the person
100 performing the analysis, opinion, or conclusion; or

101 (b) achieving a result specified by the person requesting the analysis, opinion, or
102 conclusion.

103 (8) "Division" means the Division of Real Estate of the Department of Commerce.

104 (9) "Federally related transaction" means any real estate related transaction which is
105 required by federal law or by federal regulation to be supported by an appraisal prepared by a state
106 certified appraiser.

107 (10) "Real estate" means an identified parcel or tract of land including improvements if
108 any.

109 (11) "Real estate appraisal activity" means the act or process of making an appraisal of real
110 estate or real property and preparing an appraisal report.

111 (12) "Real estate related transaction" means:

112 (a) the sale, lease, purchase, investment in, or exchange of real property or an interest in
113 real property, or the financing of such a transaction;

114 (b) the refinancing of real property or an interest in real property; or

115 (c) the use of real property or an interest in real property as security for a loan or
116 investment, including mortgage-backed securities.

117 (13) "Real property" means one or more defined interests, benefits, or rights inherent in
118 the ownership of real estate.

119 (14) "Senior appraiser" means a person grandfathered under this chapter who holds a
120 current, valid state registration as a real estate appraiser whose registration was issued to the person

based on the person's experience or designation as a member in good standing in an appraisal organization that is a member of the Appraisal Foundation.

(15) "State-certified general appraiser" means a person who holds a current, valid certification as a state-certified general appraiser issued [to him] under the provisions of this chapter. ~~[The state-certified general appraiser classification consists of those persons who meet the requirements for certification relating to the appraisal of all types of real estate.]~~

(16) "State-certified residential appraiser" means a person who holds a current, valid certification as a state-certified residential real estate appraiser issued [to him] under the provisions of this chapter. ~~[The state-certified residential appraiser classification consists of those persons who meet the requirements for certification that relate to the appraisal of residential real estate in federally related transactions.]~~

(17) "State-licensed appraiser" means a person who holds a current, valid license as a state-licensed appraiser issued under the provisions of this chapter.

~~[(17)]~~ (18) "State-registered appraiser" means a person who holds a current, valid state registration as a real estate appraiser issued [to him] under the provisions of this chapter. ~~[The state-registered appraiser classification consists of those persons who meet the requirements for registration that relate to the appraisal of all types of real estate in transactions that are not federally related transactions.]~~

~~[(18)]~~ (19) "Unbiased analysis, opinion, or conclusion" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility or identified real estate or identified real property that is prepared by a person who is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering the analysis, opinion, or conclusion.

Section 3. Section **61-2b-3** is amended to read:

61-2b-3. License or certification required.

(1) [It] Except as provided in Subsection (2), it is unlawful for anyone to prepare, for valuable consideration, an appraisal, an appraisal report, a certified appraisal report, or perform a consultation service relating to real estate or real property in this state without first being registered, licensed, or certified in accordance with the provisions of this chapter.

(2) This section does not apply to:

(a) a real estate broker or sales agent as defined by Section 61-2-2 licensed by this state

who, in the ordinary course of his business, gives an opinion:

- (i) regarding the value of real estate;
- (ii) to a potential seller or third party recommending a listing price of real estate; or
- (iii) to a potential buyer or third party recommending a purchase price of real estate;
- (b) an employee of a company who states an opinion of value or prepares a report containing value conclusions relating to real estate or real property solely for the company's use;
- (c) any official or employee of a government agency while acting solely within the scope of his duties, unless otherwise required by Utah law;
- (d) an auditor or accountant who states an opinion of value or prepares a report containing value conclusions relating to real estate or real property while performing an audit;
- (e) an individual, except an individual who is required to be registered, licensed, or certified under this chapter, who states an opinion about the value of property in which he has an ownership interest;
- (f) an individual who states an opinion of value if no consideration is paid or agreed to be paid for the opinion and no other party is reasonably expected to rely on the individual's appraisal expertise;
- (g) an individual, such as a researcher or a secretary, who does not render significant professional assistance, as defined by the board, in arriving at a real estate appraisal analysis, opinion, or conclusion; or
- (h) an attorney authorized to practice law in this state who, in the course of his practice, utilizes an appraisal report governed by this chapter or who states an opinion of the value of real estate.

(3) No opinion of value or report containing value conclusions exempt under Subsection (2) may be referred to as an appraisal.

Section 4. Section **61-2b-6** is amended to read:

61-2b-6. Duties and powers of division.

(1) The division shall have the following powers and duties:

(a) The division shall:

- (i) receive applications for [~~registration~~] licensing as a [~~state-registered~~] state-licensed appraiser;
- (ii) establish appropriate administrative procedures for the processing of [~~such~~] licensing

183 applications;

184 (iii) issue [~~registrations~~] licenses to qualified applicants pursuant to the provisions of this

185 chapter; and

186 (iv) maintain a registry of the names and addresses of individuals who are currently

187 [~~registered~~] licensed as [~~state-registered~~] state-licensed appraisers under this chapter.

188 (b) The division shall:

189 (i) receive applications for certification as a state-certified general appraiser[~~;~~] or

190 state-certified residential appraiser[~~, or senior appraiser~~] under this chapter;

191 (ii) establish appropriate administrative procedures for the processing of [~~such~~]

192 certification applications;

193 (iii) issue certificates to qualified applicants pursuant to the provisions of this chapter; and

194 (iv) maintain a registry of the names and addresses of individuals who are currently

195 registered, licensed, or certified [~~as state-certified general appraisers, state-certified residential~~

196 ~~appraisers, or senior appraisers~~] under this chapter.

197 (c) The division shall hold public hearings under the direction of the board.

198 (d) (i) The division shall, at its option, solicit bids and enter into contracts with one or

199 more educational testing services or organizations for the preparation of a bank of questions and

200 answers approved by the board for [~~registration~~] licensing and certification examinations; and

201 (ii) administer or contract for the administration of licensing and certification examinations

202 as may be required to carry out its responsibilities under this chapter.

203 (e) The division shall provide administrative assistance to the board by providing to the

204 board the facilities, equipment, supplies, and personnel that are required to enable the board to

205 carry out its responsibilities under this chapter.

206 (f) The division shall assist the board in upgrading and improving the quality of the

207 education and examinations required under this chapter.

208 (g) The division shall assist the board in improving the quality of the continuing education

209 available to persons registered, licensed, and certified under this chapter.

210 (h) The division shall assist the board with respect to the proper interpretation or

211 explanation of the Uniform Standards of Professional Appraisal Practice as required by Section

212 61-2b-27 when an interpretation or explanation becomes necessary in the enforcement of this

213 chapter.

(i) The division shall collect all registration, licensing, and certification fees required or permitted by this chapter.

(j) The division may:

(i) investigate complaints against persons registered, licensed, or certified under this chapter;

(ii) subpoena witnesses and the production of books, documents, records, and other papers;

(iii) administer oaths; and

(iv) take testimony and receive evidence concerning all matters within its jurisdiction.

(k) The division may promote research and conduct studies relating to the profession of real estate appraising and sponsor real estate appraisal educational activities.

(l) The division shall adopt, with the concurrence of the board, rules for the administration of this chapter pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, that are not inconsistent with the provisions of this chapter or the constitution and laws of this state or of the United States.

(m) The division shall employ an appropriate staff to investigate allegations that persons registered, licensed, or certified under this chapter failed to comply with the terms and provisions of this chapter.

(n) The division may employ such other professional, clerical, and technical staff as may be necessary to properly administer the work of the division under this chapter.

(2) (a) The division shall register expert witnesses who are not otherwise registered, licensed, or certified under this chapter to appear in all administrative and judicial tax proceedings to provide evidence related to the valuation of real property that is assessed by the tax commission, provided that the:

(i) registration is limited to a specific proceeding;

(ii) registration is valid until the proceeding becomes final;

(iii) applicant pays ~~[the standard]~~ a registration fee ~~[charged by]~~ to the division;

(iv) applicant provides the applicant's name, address, occupation, and professional credentials; and

(v) applicant signs a sworn statement that:

(A) the applicant is competent to render an appraisal and to testify as an expert witness in the proceeding; and

(B) the appraisal and testimony to be offered shall be in accordance with the Uniform Standards of Professional Appraisal Practice adopted by the board.

(b) The provisions of [this subsection] Subsection (2)(a) shall be effective for all administrative and judicial property tax proceedings related to the valuation of real property that is assessed by the tax commission, including those filed but which are not final as of May 3, 1994.

(3) The division shall be immune from any civil action or criminal prosecution for initiating or assisting in any lawful investigation of the actions of or participating in any disciplinary proceeding concerning a person registered, licensed, or certified pursuant to this chapter if the action is taken without malicious intent and in the reasonable belief that the action was taken pursuant to the powers and duties vested in the members of the division under this chapter.

Section 5. Section **61-2b-7** is amended to read:

61-2b-7. Board established -- Composition -- Qualifications -- Terms of office -- Expenses.

(1) (a) There is established a Real Estate Appraiser [~~Registration~~] Licensing and Certification Board which shall consist of seven members[~~, two of whom shall be public members, three of whom shall be state-certified appraisers, one of whom shall be a state-registered appraiser, and~~] as follows:

(i) one state-licensed appraiser;

(ii) three state-certified appraisers;

(iii) two members of the general public; and

(iv) the Commissioner of the Department of Financial Institutions or his designee.

(b) All members of the board shall be appointed by the governor with the advice and consent of the Senate.

~~[(2) The appraisers appointed to the first board shall possess a minimum of five years of active experience as real estate appraisers or shall be designated members in good standing of a real estate appraisal organization that is a member of the Appraisal Foundation or an appraisal organization whose standards and requirements of membership are approved by the Appraisal Foundation and that as of January 1, 1990, required appraisal experience, appraisal education, and testing to become a designated member, and adherence to generally accepted standards of professional appraisal practice in order to retain that designation.]~~

276 ~~[(3) The board member who is the state-registered appraiser shall be a state-registered~~
277 ~~appraiser at the time of that person's appointment, but shall not be precluded from becoming a~~
278 ~~state-certified appraiser during his term.]~~

279 ~~[(4)]~~ (2) (a) Except as required by Subsection (2)(b), as terms of current board members
280 expire, the governor shall appoint each new member or reappointed member to a four-year term
281 beginning on July 1.

282 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time
283 of appointment or reappointment, adjust the length of terms to ensure that the terms of board
284 members are staggered so that approximately half of the board is appointed every two years.

285 (c) Upon the expiration of his term, a member of the board shall continue to hold office
286 until the appointment and qualification of his successor.

287 (d) No person may serve as a member of the board for more than two consecutive terms.

288 ~~[(5)]~~ (3) (a) When a vacancy occurs in the membership for any reason, the replacement
289 shall be appointed for the unexpired term.

290 (b) The governor may remove a board member for cause.

291 ~~[(6)]~~ (4) The public members of the board may not be ~~[registered]~~ licensed or certified
292 under this chapter.

293 ~~[(7)]~~ (5) The board shall meet at least quarterly to conduct its business. Public notice shall
294 be given for all board meetings.

295 ~~[(8)]~~ (6) The members of the board shall elect a chair annually from among the members
296 to preside at board meetings. A quorum of the board shall be four members.

297 ~~[(9)]~~ (7) (a) (i) Members who are not government employees shall receive no
298 compensation or benefits for their services, but may receive per diem and expenses incurred in the
299 performance of the member's official duties at the rates established by the Division of Finance
300 under Sections 63A-3-106 and 63A-3-107.

301 (ii) Members may decline to receive per diem and expenses for their service.

302 (b) (i) State government officer and employee members who do not receive salary, per
303 diem, or expenses from their agency for their service may receive per diem and expenses incurred
304 in the performance of their official duties from the commission at the rates established by the
305 Division of Finance under Sections 63A-3-106 and 63A-3-107.

306 (ii) State government officer and employee members may decline to receive per diem and

expenses for their service.

Section 6. Section **61-2b-8** is amended to read:

61-2b-8. Duties of board.

The board shall provide technical assistance to the division relating to real estate appraisal standards and real estate appraiser qualifications and shall have the following responsibilities, powers, and duties:

(1) The board shall:

(a) determine the experience, education, and examination requirements appropriate for persons registered or licensed under this chapter;

(b) determine the experience, education, and examination requirements appropriate for persons certified under this chapter in compliance with the minimum requirements of Financial Institutions Reform, Recovery, and Enforcement Act of 1989, ~~[except for the education requirements of Sections 61-2b-10 and 61-2b-14,]~~ and consistent with the intent of this chapter; and

(c) develop programs to upgrade and improve the experience, education, and examinations as required under this chapter~~[-and]~~.

~~[(d) determine the experience, education, and examinations that should be required and implemented by the division.]~~

(2) The experience, education, and examination requirements established by the board for persons certified under this chapter shall be the minimum criteria established by the Appraiser Qualification Board of the Appraisal Foundation, ~~[except for the education requirements of Sections 61-2b-10 and 61-2b-14]~~ unless, after notice and a public hearing held in accordance with the provisions of Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the board has found that the minimum criteria are not appropriate for state-certified appraisers in this state in which case the board shall recommend appropriate criteria to the Legislature.

(3) The board shall determine the continuing education requirements appropriate for the renewal of licenses and certifications issued under this chapter, develop programs to upgrade and improve continuing education, and recommend to the division available continuing education courses that meet the requirements of this chapter.

(4) The board shall consider the proper interpretation or explanation of the Uniform Standards of Professional Appraisal Practice as required by Section 61-2b-27 when an

interpretation or explanation becomes necessary in the enforcement of this chapter, and when the Appraisal Standards Board of the Appraisal Foundation has not as yet issued an interpretation or explanation, and shall recommend to the division the appropriate interpretation or explanation that the division should adopt as a rule under this chapter.

(5) The board shall develop and establish or approve the examination specifications and the minimum score required to pass the examinations for licensure and certification.

(6) The board shall review the:

(a) bank of questions and answers that comprise the examination for persons licensed and certified under this chapter;

(b) procedure that is established for selecting individual questions from the bank of questions for use in each scheduled examination; and

(c) questions in the bank of questions and the related answers to determine whether they meet the examination specifications established by the board.

(7) (a) The board shall conduct administrative hearings, not delegated by the board to an administrative law judge, in connection with all disciplinary proceedings under Sections 61-2b-30 and 61-2b-31 concerning persons registered, licensed, or certified under this chapter and their failure to comply with the provisions of this chapter and the Uniform Standards of Professional Appraisal Practice as adopted under Section 61-2b-27.

(b) The board shall issue in each administrative hearing a decision that contains findings of fact and conclusions of law.

(c) When a determination is made that a person registered, licensed, or certified under this chapter has violated any provision of this chapter, the division shall implement disciplinary action determined by the board.

(8) The members of the board shall be immune from any civil action or criminal prosecution for any disciplinary proceeding concerning a person registered, licensed, or certified under this chapter if the action is taken without malicious intent and in the reasonable belief that the action taken was taken pursuant to the powers and duties vested in the members of the board under this chapter.

(9) The board shall require and pass upon proof necessary to determine the honesty, competency, integrity, and truthfulness of each applicant for original or renewal registration, licensure, or certification.

Section 7. Section **61-2b-9** is amended to read:

61-2b-9. Licensure or certification required -- Application.

Any individual who prepares or causes to be prepared an appraisal, an appraisal report, or a certified appraisal report in this state, in order to lawfully engage in such activity in this state, shall:

(1) make application in writing for registration, licensure, or certification as provided in this chapter in the form as the division may prescribe; and

(2) become registered, licensed, or certified under this chapter.

Section 8. Section **61-2b-10** is amended to read:

61-2b-10. State-licensed appraiser -- Authority and qualifications.

(1) A ~~[state-registered]~~ state-licensed appraiser is authorized to appraise all types of real property in this state if the appraisal:

(a) is not performed in conjunction with a federally related transaction; or

(b) does not exceed the ~~[dollar amount]~~ transaction value permitted under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations.

(2) A ~~[state-registered]~~ state-licensed appraiser may not issue a certified appraisal report.

(3) To qualify as a ~~[state-registered]~~ state-licensed appraiser, an applicant must:

(a) be of good moral character; ~~[and]~~

(b) pass the licensing examination with a satisfactory score as determined by the board;

~~[(b)]~~ (c) successfully complete not less than [75] 90 classroom hours in courses of study approved by the board that relate to:

(i) real estate appraisal;

(ii) the Uniform Standards of Professional Appraisal Practice; and

(iii) ethical rules to be observed by a real estate appraiser as required by Section 61-2b-27~~[-]~~; and

(d) possess the minimum number of hours of experience in real property appraisal as established by rule.

(4) The courses of study under Subsection (3)~~(b)~~ shall be conducted by:

(a) an accredited university, college, or junior college;

(b) an approved appraisal society, institute, or association; or

(c) such other school as the board may approve.

(5) The board shall require and pass upon proof necessary to determine the honesty, competency, integrity, and truthfulness of each applicant.

Section 9. Section **61-2b-10.5** is enacted to read:

61-2b-10.5. State-registered appraisers -- Authority -- Transition to state-licensed or state-certified appraisers.

(1) Any person who was registered as a state-registered appraiser under this chapter prior to May 3, 1999, shall have the same authority as a state-licensed appraiser under this chapter for as long as the registration of that person remains current but in no event after May 3, 2001.

(2) No new registrations shall be issued by the division except as provided in Subsection 61-2b-6(2).

(3) The division may renew registrations of persons who were previously registered as state-registered appraisers under this chapter until May 3, 2001. All registrations renewed under this Subsection (3) shall expire on May 3, 2001.

(4) Any person who was registered as a state-registered appraiser under this chapter prior to May 3, 1999, may have that registration converted to a license or certification if that person meets the requirements for licensure or certification under this chapter.

Section 10. Section **61-2b-11** is amended to read:

61-2b-11. Curriculum to be determined by board.

In making its determinations with respect to the courses of study required by Section 61-2b-10, the board shall give weight to courses which teach one or more of the following:

(1) knowledge of technical terms commonly used in or related to real estate appraising, appraisal report writing, and economic concepts applicable to real estate;

(2) an understanding of the basic principles of land economics, the basic principles of the real estate appraisal process, and the problems likely to be encountered in gathering, interpreting, and processing the data required in the real estate appraisal process;

(3) an understanding of the standards for the development and communication of real estate appraisals as provided in this chapter;

(4) an understanding of the ethical rules that a real estate appraiser is required to observe;

(5) knowledge of theories of depreciation, cost estimating, methods of capitalization, and the mathematics of real estate appraisal;

(6) an understanding of basic real estate law; and

(7) an understanding of the types of misconduct for which disciplinary proceedings may be initiated against a person [registered] licensed under this chapter.

Section 11. Section **61-2b-13** is amended to read:

61-2b-13. State-certified appraisers -- Authority.

~~[(1) A senior appraiser is authorized to appraise all types of real property in this state if the appraisal either:]~~

~~[(a) is not performed in conjunction with a federally related transaction;]~~

~~[(b) does not exceed the dollar amount permitted under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations; or]~~

~~[(c) is one which may be performed by a state registered appraiser under this chapter.]~~

~~[(2)]~~ (1) A state-certified residential appraiser is authorized to appraise all types of real estate which a ~~a~~~~[state-registered]~~ state-licensed appraiser is authorized to appraise. In addition, a state-certified residential appraiser is authorized to appraise 1-4 unit residential real estate in federally related transactions so long as net income capitalization analysis is not required by the terms of the assignment. A state-certified residential appraiser is also authorized to appraise building lots, vacant land, and subdivisions in federally related transactions so long as discounted cash flow analysis is not required by the terms of the assignment.

~~[(3)]~~ (2) A state-certified general appraiser is authorized to appraise all types of ~~[residential and nonresidential]~~ real estate and real property.

Section 12. Section **61-2b-14** is amended to read:

61-2b-14. State-certified residential appraiser -- Application.

(1) Each applicant for certification as a residential appraiser shall provide to the division evidence ~~[of]~~:

(a) of completion of the certification examination with a satisfactory score as determined by the board; ~~[and]~~

(b) of satisfactory completion of not less than 120 classroom hours of education or their equivalent as required under this chapter~~[-]~~;

~~[(2) (a) For applicants applying for certification on or before December 31, 1997, as a prerequisite to taking the examination for state-certified residential appraiser, an applicant shall present evidence satisfactory to the division that the applicant possesses the equivalent of two years of full-time experience in real property appraisal, as defined by the board.]~~

[~~(b)~~ For applicants applying for certification on or after January 1, 1998, the applicant shall provide to the division evidence that:]

[~~(i)~~] ~~(c)~~ that the applicant possesses ~~[2,500 or more]~~ the minimum number of hours of experience in real property appraisal~~[, or its equivalent as defined by the board]~~ as established by rule; and

[~~(ii)~~] ~~(d)~~ that the experience required under Subsection ~~[(2)(b)]~~ (1)(a), or the equivalent, was acquired within a reasonable period, as determined by the board, immediately preceding the filing of the application for certification.

[~~(3)~~] (2) Upon request by the division, the applicant shall also make available to the division for examination, a detailed listing of the real estate appraisal reports, or file memoranda for each year for which experience is claimed and a sample of appraisal reports which the applicant has prepared in the course of his appraisal practice.

[~~(4)~~] (3) (a) To meet the 120 classroom hours required by Subsection (1)(b), an applicant must successfully complete courses of study approved by the board which relate to real estate appraisal theory and practice, including a course of study approved by the board which relates specifically to the Uniform Standards of Professional Appraisal Practice adopted under Section 61-2b-27, to the ethical rules to be observed by a real estate appraiser, and to the provisions of this chapter.

(b) The courses of study referred to in ~~[this section]~~ Subsection (3)(a) must be conducted by:

- (i) an accredited university, college, or junior college;
- (ii) an approved appraisal society, institute, or association; or
- (iii) such other school as may be approved by the board.

Section 13. Section **61-2b-15** is amended to read:

61-2b-15. State-certified general appraiser -- Application -- Qualifications.

(1) Each applicant for certification as a general appraiser shall provide to the division evidence ~~[of]~~:

(a) of completion of the certification examination with a satisfactory score as determined by the board; ~~[and]~~

(b) of satisfactory completion of ~~[the education required under this chapter:]~~ not less than 180 classroom hours of education or their equivalent as required under this chapter;

[~~(2) (a) For applicants applying for certification on or before December 31, 1997, as a prerequisite to taking the examination for state-certified general appraiser, an applicant shall present evidence satisfactory to the division that the applicant possesses the equivalent of two years of full-time experience in real property appraisals, as defined by the board.]~~

[~~(b) For applicants applying for certification on or after January 1, 1998, the applicant shall provide to the division evidence that:~~]

[~~(i) (c) that the applicant possesses [3,000] the minimum number of hours of experience in real property appraisal[, or its equivalent as defined by the board] as established by rule; and~~

[~~(ii) (d) that the experience required under Subsection [(2)(b)] (1)(c), or the equivalent, was acquired within a reasonable period, as determined by the board, immediately preceding the filing of the application for certification.~~

[~~(3) (a) (i) An applicant for state-certified general appraiser who submits an application on or before December 31, 1997, shall provide to the division evidence of satisfactory completion of not less than 165 classroom hours approved by the board or their equivalent as determined by the board.]~~

[~~(ii) An applicant applying for state-certified general appraiser who submits an application on or after January 1, 1998, shall provide to the division evidence of satisfactory completion of not less than 180 classroom hours approved by the board, or their equivalent as determined by the board.]~~

[~~(b) The classroom hours described in Subsections (3)(a)(i) and (ii) shall include a course of study that relates]~~

(2) To meet the 180 classroom hours required by Subsection(1)(b), an applicant must successfully complete courses of study approved by the board which relate to real estate appraisal theory and practice, including a course of study approved by the board which relates specifically to the Uniform Standards of Professional Appraisal Practice adopted under Section 61-2b-27, to the ethical rules to be observed by a real estate appraiser, and to the provisions of this chapter.

Section 14. Section **61-2b-15.6** is enacted to read:

61-2b-15.6. Conversion of senior appraisers to state-licensed appraisers.

(1) Any person who was registered under this chapter as a senior appraiser prior to May 3, 1999, shall automatically have his registration converted to a license as a state-licensed appraiser.

(2) The division shall issue licenses to all persons qualified under Subsection (1).

(3) The division may not issue any new registrations as senior appraisers.

Section 15. Section **61-2b-16** is amended to read:

61-2b-16. Certification and licensing examinations.

(1) [Except as provided in Section 61-2b-15.5, an] An original certification or license may only be issued to a person who is of good moral character and has demonstrated through a written examination process that he possesses:

(a) knowledge of technical terms commonly used in or related to real estate appraising, appraisal report writing, and economic concepts applicable to real estate;

(b) an understanding of the basic principles of land economics, the basic principles of the real estate appraisal process, and the problems likely to be encountered in gathering, interpreting, and processing the data that is required in the real estate appraisal process;

(c) an understanding of the standards for the development and communication of real estate appraisals as provided in this chapter;

(d) an understanding of the ethical rules that a real estate appraiser is required to observe;

(e) knowledge of theories of depreciation, cost estimating, methods of capitalization, and the mathematics of real estate appraisal that are appropriate for the classification of certification or licensure for which the applicant has applied;

(f) knowledge of other principles and procedures appropriate for the classification of certification or licensure for which the applicant has applied;

(g) an understanding of basic real estate law; and

(h) an understanding of the types of misconduct for which disciplinary proceedings may be initiated against a person certified or licensed under this chapter.

(2) The board shall require and pass upon proof necessary to determine the honesty, competency, integrity, and truthfulness of each applicant.

Section 16. Section **61-2b-17** is amended to read:

61-2b-17. State-certified and state-licensed appraisers -- Restrictions on use of terms -- Conduct prohibited.

(1) (a) The terms "state-certified general appraiser," "state-certified residential appraiser," "state-licensed appraiser," "state-registered appraiser," and "senior appraiser" may only be used to refer to an individual who is certified, licensed, or registered under this chapter and may not be

used following, or immediately in connection with, the name or signature of a firm, partnership, corporation, or group, or in any manner that it might be interpreted as referring to a firm, partnership, corporation, group, or to anyone other than the individual who is certified, registered, or licensed under this chapter.

(b) This requirement shall not be construed to prevent a state-certified general appraiser from signing an appraisal report on behalf of a corporation, partnership, firm, or group practice if it is clear that only the individual is certified and that the corporation, partnership, firm, or group practice is not.

(c) Except as provided in Section 61-2b-25, no certificate, registration, or license may be issued under the provisions of this chapter to a corporation, partnership, firm, or group.

(2) (a) No person other than a state-certified general appraiser[;] or state-certified residential appraiser, [or senior appraiser as defined in this chapter] may assume or use [that title or] any title, designation, or abbreviation likely to create the impression of certification in this state as a [state-certified] real estate appraiser.

(b) No person other than a state-licensed appraiser may assume or use any title, designation, or abbreviation likely to create the impression of licensure in this state as a real estate appraiser.

(3) (a) Only an individual who has qualified under the certification requirements of Sections 61-2b-14 and 61-2b-15 is authorized to prepare and sign a certified appraisal report relating to real estate or real property in this state.

(b) If a certified appraisal report is prepared and signed by a state-certified residential appraiser, the certified appraisal report shall state, immediately following the signature on the report, "State-Certified Residential Appraiser."

(c) If a certified appraisal report is prepared and signed by a state-certified general appraiser, the certified appraisal report shall state, immediately following the signature on the report, "State-Certified General Appraiser."

(d) An appraisal report prepared by a [senior] state-licensed appraiser shall state, immediately following the signature on the report, ["Senior] "State-licensed Appraiser," along with [the explanation of limitations regarding] a disclosure that the appraisal may not qualify for federally related transactions [~~required under Subsection 61-2b-15.5 (3)(b)~~].

(e) When signing a certified appraisal report, a state-certified appraiser shall also place on

the report, immediately below his signature, a seal on the report showing his certificate number and its expiration date.

(f) A state-certified residential appraiser may not prepare a certified appraisal report outside his area of expertise as defined in Section 61-2b-13. However, a state-certified residential appraiser may prepare an appraisal report for any type property for which a ~~[state-registered]~~ state-licensed appraiser is authorized to appraise under Section 61-2b-10.

(g) ~~[A person registered under Section 61-2b-10 or certified under Section 61-2b-15.5]~~ A state-licensed appraiser or state-registered appraiser who assisted in the preparation of a certified appraisal report is authorized to cosign the certified appraisal report.

(4) A person who has not qualified under either Section 61-2b-14 or 61-2b-15 may not describe or refer to any appraisal or appraisal report relating to real estate or real property in this state by the terms "certified appraisal" or "certified appraisal report."

Section 17. Section **61-2b-18** is amended to read:

61-2b-18. Application for certification, registration, or licensure.

(1) Applications for original certification, registration as an expert witness, or licensure and renewal of certification, registration, or licensure shall be made in writing to the division on forms approved by the division.

(2) The payment of the appropriate fee, as fixed by the division with the concurrence of the board in accordance with Section 63-38-3.2, must accompany all applications for original certification, registration as an expert witness, or licensure and renewal of certification, registration, or licensure.

(3) (a) At the time of filing an application for original certification, registration as an expert witness, or licensure or for renewal of certification, registration, or licensure, each applicant shall sign a pledge to comply with the Uniform Standards of Professional Appraisal Practice and the ethical rules to be observed by an appraiser that are established under Section 61-2b-27 for ~~[state-certified general appraisers and state-certified residential]~~ certified, registered, or licensed appraisers under this chapter.

(b) Each applicant shall also certify that he understands the types of misconduct, as set forth in this chapter, for which disciplinary proceedings may be initiated against persons certified, registered, or licensed under this chapter.

Section 18. Section **61-2b-19** is amended to read:

61-2b-19. Expiration of registration, license, or certification.

(1) The initial registration, license, or certification issued under this chapter expires on the expiration date indicated on the registration, license, or certificate.

(2) A renewal registration, license, or certification issued under this chapter expires two years from the date of issuance except as provided in Section 61-2b-10.5.

(3) The scheduled expiration date of the registration, license, or certification shall appear on the registration, license, or certification document and no other notice of its expiration need be given to its holder.

Section 19. Section **61-2b-20** is amended to read:

61-2b-20. Renewal of registration, license, or certification.

(1) To obtain a renewal of a registration, license, or certification under this chapter, the holder of a current, valid registration, license, or certification shall, in compliance with procedures established by the division and the board, make application and pay the prescribed fee to the division prior to the expiration date of the registration, license, or certification then held.

(2) The application for renewal of a registration, license, or certification shall be accompanied by evidence in the form prescribed by the division of having completed the continuing education requirements for renewal specified in this chapter.

(3) A registration, license, or certification expires if it is not renewed on or before its expiration date.

(a) For a period of 30 days after the expiration date, a registration, license, or certification may be reinstated upon payment of a renewal fee and a late fee determined by the division and the board in addition to satisfying the continuing education requirements specified in Section 61-2b-40 [~~for certified appraisers~~].

(b) After the 30-day period, and until six months after the expiration date, the registration, license, or certification may be reinstated by paying a renewal fee and a reinstatement fee determined by the division and the board in addition to satisfying the continuing education requirements specified in Section 61-2b-40 [~~for certified appraisers~~].

(4) A person who does not renew his registration, license, or certification within six months after the expiration date shall be [~~reregistered~~] relicensed or recertified as prescribed for an original application.

Section 20. Section **61-2b-21** is amended to read:

61-2b-21. Denial of licensure or certification.

The division may, upon compliance with the provisions of Title 63, Chapter 46b, [the] Administrative Procedures Act, deny the issuance of a registration, license, or certification to an applicant on any of the grounds enumerated in this chapter.

Section 21. Section **61-2b-22** is amended to read:

61-2b-22. Licensing or certification requirements for nonresidents -- Temporary permits -- Revocation.

(1) Each applicant for registration, licensure, or [for] certification under this chapter who is not a resident of this state shall submit with his application an irrevocable consent that service of process upon him may be made by delivery of the process to the director of the division if, in an action against the applicant in a court of this state arising out of the applicant's activities as a real estate appraiser in this state, the plaintiff cannot, in the exercise of due diligence, obtain personal service upon the applicant.

(2) A nonresident of this state who has complied with the provisions of Subsection (1) may obtain a registration, license, or certification in this state by complying with all of the provisions of this chapter relating to registration, licensure, or certification.

(3) A nonresident of this state who has complied with the provisions of Subsection (1) may obtain a temporary [registration] license or certification to perform a contract relating to the appraisal of real estate or real property in this state. To qualify for the issuance of a temporary [registration] license or certification, an applicant must:

(a) submit an application on a form approved by the division;

(b) submit evidence that he is [registered] licensed or certified in the state in which he primarily conducts business;

(c) certify that no formal charges alleging violation of state appraisal [registration] licensing or certification laws have been filed against the applicant by the applicant's state of domicile; and

(d) pay an application fee in an amount established by the division with the concurrence of the board.

(4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division, with the concurrence of the board, shall make rules establishing the duration of a temporary permit and procedures for renewal of a temporary permit.

(5) A temporary permit issued under this section shall be immediately and automatically revoked if the appraiser's license or certification is suspended or revoked in the appraiser's state of domicile.

(6) Any person whose license or certification has been revoked under Subsection (5) is entitled to a postrevocation hearing to challenge the revocation. The hearing shall be conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

Section 22. Section **61-2b-23** is amended to read:

61-2b-23. Reciprocal licensure.

An applicant for [registration] licensure or certification in this state who is [registered] licensed or certified under the [law] laws of any other state, territory, or district may obtain a [registration] license or certification in this state upon the terms and conditions determined by the division and the board, if, in the determination of the division and the board:

(1) the state, territory, or the District of Columbia is considered to have substantially equivalent [licensure] licensing laws for real estate appraisers;

(2) the laws of that state, territory, or the District of Columbia accord substantially equal reciprocal rights to a person [registered] licensed or certified and in good standing in this state; and

(3) no formal charges alleging violation of state appraisal [registration] licensing or certification laws have been filed against the applicant by the applicant's state of domicile.

Section 23. Section **61-2b-24** is amended to read:

61-2b-24. Licensing or certification documents -- Assigned number to be used on contracts -- Surrender of documents upon suspension -- Inspection of documents.

(1) The division shall issue to each person registered, licensed, or certified under this chapter a document stating that the person has been registered, licensed, or certified under this chapter and specifying the expiration date of the registration, license, or certification.

(2) (a) A registration, license, or certification document issued under this chapter shall bear a registration, license, or certification number assigned by the division.

(b) The [certificate] assigned number shall be used in all statements of qualification, contracts, or other instruments used by the registration, license, or certificate holder when reference is made to his status as [a] being registered, licensed, or certified under this chapter.

(3) Registration, licensing, and certification documents remain the property of the state. Upon any suspension or revocation of a registration, license, or certification under this chapter, the

individual holding the respective documents shall immediately return the document to the division, together with any stamps or seals used for certified appraisal reports.

(4) The division shall maintain and keep open for public inspection during office hours a complete and properly indexed record of all registration, licensing, and certification documents issued, registrations, licenses, and certifications renewed, and registrations, licenses, and certifications revoked, cancelled, or suspended under the provisions of this chapter. A copy of any such record shall be made available to the public, upon application to the division, at a price per copy as fixed by the division.

Section 24. Section **61-2b-25** is amended to read:

61-2b-25. Other law unaffected.

Nothing contained in this chapter shall be considered to prohibit any person registered, licensed, or certified under this chapter from engaging in the practice of real estate appraising as a professional corporation or a limited liability company in accordance with the provisions of Title 16, Chapter 11, [the] Professional Corporation Act or Title 48, Chapter 2b, Utah Limited Liability Company Act.

Section 25. Section **61-2b-26** is amended to read:

61-2b-26. Principal place of business -- Display of documents.

(1) Each person registered, licensed, or certified under this chapter shall designate and maintain a principal place of business and shall conspicuously display his registration, license, or certification.

(2) Upon any change of his principal business location or home address, a person registered, licensed, or certified under this chapter shall promptly give notice in writing to the division within ten business days of the change.

(3) A nonresident registrant, licensee, or certificate holder [may] is not [be] required to maintain a place of business in this state if he maintains an active place of business in his state of domicile.

Section 26. Section **61-2b-27** is amended to read:

61-2b-27. Professional conduct -- Uniform standards.

(1) (a) Each person registered, licensed, or certified under this chapter must comply with generally accepted standards of professional appraisal practice and generally accepted ethical rules to be observed by a real estate appraiser.

(b) Generally accepted standards of professional appraisal practice are currently evidenced by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Foundation.

(c) After a public hearing held in accordance with provisions of Title 63, Chapter 46a, [the] Utah Administrative Rulemaking Act, the board shall adopt and may make modifications of or additions to the Uniform Standards of Professional Appraisal Practice as the board considers appropriate to comply with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(2) If the Appraisal Standards Board of the Appraisal Foundation modifies the Uniform Standards of Professional Appraisal Practice, issues supplemental appraisal standards which it considers appropriate for residential real estate appraisers or for general real estate appraisers, or issues ethical rules to be observed by a real estate appraiser and requests the board to consider the adoption of the modified or supplemental standards or ethical rules, the board shall schedule a public hearing pursuant to the provisions of Title 63, Chapter 46a, [the] Utah Administrative Rulemaking Act, for the purpose of deciding whether or not it should require the modified or supplemental standards or the ethical rules to be observed by persons registered, licensed, or certified under this chapter.

(3) If, after the notice and public hearing the board finds that the modified or supplemental standards or the ethical rules issued by the Appraisal Standards Board of the Appraisal Foundation are appropriate for persons registered, licensed, or certified under this chapter, the board shall recommend rules requiring all persons registered, licensed, or certified under this chapter to observe the modified or supplemental standards or the ethical rules.

(4) A copy of each such rule adopted by the division shall be mailed to the business address of each person currently registered, licensed, or certified under this chapter.

Section 27. Section **61-2b-28** is amended to read:

61-2b-28. Enforcement -- Investigation -- Orders -- Hearings.

(1) The division may investigate the actions of any person registered, licensed, or certified under this chapter, or an applicant for registration, licensure, certification, or renewal, and may initiate an agency action in accordance with Title 63, Chapter 46b, Administrative Procedures Act, to impose disciplinary action on a person registered, licensed, or certified under this chapter or to deny issuance to an applicant of an original or renewal registration, license, or certification.

(2) The division may subpoena witnesses, take evidence, and require by subpoena duces tecum the production of books, papers, contracts, records, other documents, or information relevant to the investigation. The division may serve subpoenas by certified mail. Each failure to respond to a subpoena by a person registered, licensed, or certified under this chapter is considered to be a separate violation of this chapter.

(3) (a) If the director has reason to believe that any person has been or is engaging in acts constituting violations of this chapter, and if it appears to the director that it would be in the public interest to stop these acts, he shall issue and serve upon the person an order directing that person to cease and desist from those acts.

(b) Within ten days after receiving the order, the person upon whom the order is served may request an adjudicative proceeding.

(c) Pending the hearing, the cease and desist order shall remain in effect.

(d) If a request for hearing is made, the division shall follow the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

(4) (a) After the hearing, if the board agrees that the acts of the person violate this chapter, the board shall issue an order making the cease and desist order permanent.

(b) If no hearing is requested and if the person fails to cease the acts, or after discontinuing the acts, again commences the acts, the [executive] director shall commence an action in the name of the Department of Commerce and Division of Real Estate, in the district court in the county in which the acts occurred or where the person resides or carries on business, to enjoin and restrain the person from violating this chapter.

(5) The remedies and action provided in this section do not limit, interfere with, or prevent the prosecution of any other remedies or actions including criminal proceedings.

Section 28. Section **61-2b-29** is amended to read:

61-2b-29. Disciplinary action -- Grounds.

The board may order disciplinary action against any person registered, licensed, or certified under this chapter. Board action may include revoking, suspending, or placing a person's registration, license, or certification on probation, denying a person's original or renewal registration, license, or certification, ordering remedial education, and imposing a civil penalty upon a person not to exceed \$1,000 per violation based on any of the following grounds for disciplinary action:

(1) procuring or attempting to procure a registration, license, or certification under this chapter by fraud or by making a false statement, submitting false information, or making a material misrepresentation in an application filed with the division;

(2) paying money or attempting to pay money other than the fees provided for by this chapter to any member or employee of the division to procure a registration, license, or certification under this chapter;

(3) an act or omission in the practice of real estate appraising which constitutes dishonesty, fraud, or misrepresentation;

(4) entry of a judgment against a registrant, licensee, or certificate holder on grounds of fraud, misrepresentation, or deceit in the making of an appraisal of real estate;

(5) a guilty plea to a criminal offense involving moral turpitude which is held in abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo contendere, of a criminal offense involving moral turpitude;

(6) engaging in the business of real estate appraising under an assumed or fictitious name not properly registered in this state;

(7) paying a finder's fee or a referral fee to a person not registered, licensed, or certified under this chapter in connection with an appraisal of real estate or real property in this state;

(8) making a false or misleading statement in that portion of a written appraisal report that deals with professional qualifications or in any testimony concerning professional qualifications;

(9) violating or disregarding any provision of this chapter, an order of the board, or any rule issued under this chapter;

(10) violation of the confidential nature of governmental records to which a person registered, licensed, or certified under this chapter gained access through employment or engagement as an appraiser by a governmental agency;

(11) acceptance of a contingent fee for performing an appraisal as defined in Subsection 61-2b-2(1) if in fact the fee is or was contingent upon the appraiser reporting a predetermined analysis, opinion, or conclusion or is or was contingent upon the analysis, opinion, conclusion, or valuation reached or upon the consequences resulting from the appraisal assignment;

(12) unprofessional conduct as defined by statute or rule; or

(13) any other conduct which constitutes dishonest dealing.

Section 29. Section **61-2b-30.5** is enacted to read:

834 **61-2b-30.5. Reinstatement of license or certification.**

835 (1) An individual who has had an appraiser registration, license, or certification revoked
836 under this chapter may not apply for renewal of that registration, license, or certification, but may
837 apply for licensure or certification as prescribed for an original license or certification subject to
838 the limitations in Subsection (2).

839 (2) An applicant for licensure, certification, or for registration as an expert witness under
840 Subsection (1):

841 (a) may not apply for licensure or certification until at least five years after the date of
842 revocation of the applicant's original registration, license, or certification; and

843 (b) is not entitled to credit for experience gained prior to the date of revocation in
844 determining whether the applicant meets the experience requirement for licensure or certification.

845 Section 30. Section **61-2b-31** is amended to read:

846 **61-2b-31. Disciplinary hearing process.**

847 (1) Before disciplinary action may be taken by the board against a registrant, licensee, or
848 certificate holder, the division shall notify the registrant, licensee, or certificate holder and
849 commence an adjudicative proceeding.

850 (2) If, after the hearing, the board determines that the registrant, licensee, or certificate
851 holder has violated this chapter, the board may impose disciplinary action by written order as
852 provided in Section 61-2b-29.

853 (3) The board may conduct hearings with the assistance of an administrative law judge or
854 may delegate hearings to an administrative law judge. If the hearing is delegated by the board to
855 an administrative law judge, the judge shall submit written findings of fact, conclusions of law,
856 and a recommended order to the board for its consideration.

857 (4) (a) Any applicant, registrant, licensee, certificate holder, or person aggrieved, including
858 the complainant, may obtain judicial review of any adverse ruling, order, or decision of the board.
859 Any appeal shall be governed by the Utah Rules of Appellate Procedure.

860 (b) If the applicant, registrant, licensee, or certificate holder prevails in the appeal and the
861 court finds that the state action was undertaken without substantial justification, the court may
862 award reasonable litigation expenses to the applicant, registrant, licensee, or certificate holder as
863 provided under Title 78, Chapter 27a, Small Business Equal Access to Justice Act.

864 Section 31. Section **61-2b-32** is amended to read:

61-2b-32. Licensure or certification prerequisite to suit for compensation.

No person engaged in the business of real estate appraising in this state or acting in the capacity of a real estate appraiser in this state may bring or maintain any action in any court of this state to collect compensation for the performance of real estate appraisal services for which registration, licensure, or certification is required by this chapter without alleging and proving that he was the holder of a valid registration, license, or certification in this state at all times during the performance of such services.

Section 32. Section **61-2b-33** is amended to read:

61-2b-33. Criminal penalty -- Licensure or certification following conviction.

(1) Any person required by this chapter to be registered, licensed, or certified who engages in real estate appraisal activity in this state without obtaining a registration, license, or certification or who violates any provision of this chapter is guilty of a class B misdemeanor punishable by a \$1,000 fine and up to six months in jail and shall be ineligible to apply for a registration, license, or certificate for a period of one year from the date of his conviction of the offense.

(2) The division, in its discretion, may grant a registration, license, or certification to a person ineligible pursuant to Subsection (1) within the one-year period upon application and after an administrative hearing.

Section 33. Section **61-2b-34** is amended to read:

61-2b-34. Recordkeeping requirements.

(1) All persons registered, licensed, or certified under this chapter shall retain for a period of five years the original or a true copy of:

(a) each written contract engaging his services for real estate or real property appraisal work;

(b) each appraisal report prepared or signed by him; and

(c) all supporting data assembled and formulated by the appraiser in preparing each appraisal report.

(2) The five-year period for retention of records is applicable to each engagement of the services of the appraiser and begins upon the date of the delivery of each appraisal report to the client unless, within the five-year period, the appraiser is notified that the appraisal or the appraisal report is involved in litigation, in which event the records must be maintained for five years, or two years following the date of the final disposition of the litigation, whichever is longer.

(3) Upon reasonable notice, all persons registered, licensed, or certified under this chapter shall make all records required to be maintained under this chapter available to the division for inspection and copying.

Section 34. Section **61-2b-36** is amended to read:

61-2b-36. Contingent fees.

(1) A person registered, licensed, or certified under this chapter who enters into an agreement to perform an appraisal as defined in Subsection 61-2b-2(1) may not accept a contingent fee.

(2) A person registered, licensed, or certified under this chapter who enters into an agreement to provide consultation services as defined in Subsection 61-2b-2(6)(a)(i) may be paid a fixed fee or a contingent fee.

(3) (a) If a person registered, licensed, or certified under this chapter enters into an agreement to perform consultation services for a contingent fee, this fact shall be clearly stated in each oral statement.

(b) In addition to the requirements of Subsection (3)(a), if a person registered, licensed, or certified under this chapter prepares a written consultation report or summary, letter of transmittal, or certification statement for a contingent fee, the person shall clearly state in the report, summary, letter of transmittal, or certification statement that the report is prepared under a contingent fee arrangement.

Section 35. Section **61-2b-38** is amended to read:

61-2b-38. Division to publish roster of appraisers.

The division shall prepare and issue at least once each calendar year a roster [~~showing the name and place of business of each person registered or certified under this chapter~~] of appraisers containing the information required by the Federal Financial Institutions Examination Council.

A copy of the roster shall be made available to the public, upon application to the division, at a reasonable price per copy, as determined by the division. The division shall transmit the roster to the Federal Financial Institutions Examinations Council at least annually.

Section 36. Section **61-2b-39** is amended to read:

61-2b-39. License history.

The division may, upon payment of a fee in an amount specified in rule, issue a [Certificate of Standing] verified license history to any person registered, licensed, or certified under this

chapter.

Section 37. Section **61-2b-40** is amended to read:

61-2b-40. Continuing education requirements.

(1) As a prerequisite to renewal of a registration, license, or certification, [a person certified under this chapter] the applicant for renewal shall present evidence satisfactory to the division of having met the continuing education requirements of this section. [~~On or after January 1, 1998, a person registered under this chapter shall also meet the continuing education requirements of this section.~~]

~~[(2) (a) For any person certified under this chapter whose certification expires on or before December 31, 1997, the continuing education requirement for renewal of certification shall be the completion by the applicant, during the two-year period immediately preceding the filing of an application for renewal, of not less than 20 classroom hours of instruction in courses or seminars that have received the approval of the board.]~~

~~[(b)] (2) For any person registered, licensed, or certified under this chapter [whose registration or certification expires on or after January 1, 1998], the continuing education requirement for renewal of registration, licensure, or certification shall be the completion by the applicant, during the two-year period immediately preceding the filing of an application for renewal, of not less than 28 classroom hours of instruction in courses or seminars that have received the approval of the board.~~

(3) The division may adopt rules for the implementation of the provisions of this section to assure that each person renewing his registration, license, or certification under this chapter has a working knowledge of current real estate appraisal theories, practices, and techniques that will enable the person to provide competent real estate appraisal services to the members of the public with whom that person deals in a professional relationship under the authority of that person's registration, license, or certificate.

(4) An amendment or repeal of a rule adopted by the division under this section shall not operate to deprive a person [certified] of credit toward renewal of that person's registration, license, or certification for any course of instruction that is successfully completed by the applicant prior to the date of the amendment or repeal of the [regulation] rule.

(5) In lieu of meeting the requirements set forth in [this section] Subsection (2) and applicable rules, an applicant for [recertification] renewal may satisfy all or part of the continuing

958 education requirements by presenting evidence of the following:

959 (a) completion of an educational program of study determined by the board to be
960 equivalent, for continuing education purposes, to courses or seminars approved by the board; or

961 (b) participation other than as a student in educational processes and programs approved
962 by the board that relate to real property appraisal theory, practices, or techniques including
963 teaching, program development, and preparation of textbooks, monographs, articles, and other
964 instructional materials.

965 (6) The board shall develop and propose to the division rules for the implementation of
966 the provisions of this section to assure that a person who renews his registration, license, or
967 certification has a working knowledge of current real estate appraisal theories, practices, and
968 techniques that will enable the person to provide competent real estate appraisal services to the
969 members of the public with whom that person deals in a professional relationship under the
970 authority of that person's registration, license, or certification. These rules shall prescribe:

971 (a) policies and procedures to be followed in obtaining board approval of courses of
972 instruction and seminars;

973 (b) standards, policies, and procedures to be used by the division in evaluating an
974 applicant's claims of equivalency; and

975 (c) standards, monitoring methods, and systems for recording attendance to be employed
976 by course and seminar sponsors as a prerequisite to division approval of courses and seminars for
977 credit.

978 (7) (a) A person whose registration, license, or certification has been revoked or suspended
979 as the result of a disciplinary action taken by the board may not apply for reinstatement unless the
980 person presents evidence of completion of the continuing education requirement that is provided
981 in this chapter for renewal.

982 (b) The continuing education required under Subsection (7)(a) shall not be imposed upon
983 an applicant for reinstatement who has been required by the division to successfully complete the
984 examination for licensure or certification required by Section 61-2b-20 as a condition to
985 reinstatement.

986 Section 38. **Repealer.**

987 This act repeals:

988 Section **61-2b-15.5, Senior appraisers.**

Legislative Review Note
as of 2-2-99 7:54 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel