

1 **DIVISION OF REAL ESTATE AMENDMENTS**

2 2005 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Michael G. Waddoups**

5

LONG TITLE

6 **General Description:**

7
8 This bill modifies provisions related to the regulation of the real estate, appraiser, and
9 mortgage industries by the Division of Real Estate.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies the Real Estate provisions including:
- 13 • permitting a member of the Real Estate Commission to continue to hold office
 - 14 until a successor is appointed and qualified;
 - 15 • allowing the Real Estate Commission to delegate functions to the division
 - 16 related to licensing;
 - 17 • addressing changes in information provided to the division;
 - 18 • making certain funds nonlapsing;
 - 19 • addressing revocation of licenses;
 - 20 • modifying grounds for disciplinary action; and
 - 21 • addressing disciplinary action and judicial review;
 - 22 ▶ modifies the Real Estate Appraiser Licensing and Certification Act including:
 - 23 • modifying references to registration;
 - 24 • amending definition provisions;
 - 25 • repealing references to senior appraisers;
 - 26 • addressing when licensing and certification is required;
 - 27 • modifying the duties of the division including determining fees;



- 28 • providing for trainees;
- 29 • addressing registration of expert witnesses;
- 30 • addressing when division is to make available certain information;
- 31 • modifying provisions related to the Real Estate Appraiser Licensing and
- 32 Certification Board including makeup and duties of the board;
- 33 • addressing applying for licensure or certification;
- 34 • effective January 1, 2008, modifying the authority and qualifications of a
- 35 state-licensed appraiser;
- 36 • effective January 1, 2008, modifying provisions related to state-certified
- 37 residential appraisers;
- 38 • effective January 1, 2008, modifying provisions related to state-certified general
- 39 appraisers;
- 40 • modifying restrictions on use of terms and provisions related to appraisal
- 41 reports;
- 42 • providing limits on a person acting as a trainee if the person's license or
- 43 certification is revoked;
- 44 • addressing recordkeeping; and
- 45 • addressing the duty of the division to provide the public information concerning
- 46 appraisers;
- 47 ▶ modifies the Utah Residential Mortgage Practices Act including:
- 48 • modifying definition provisions;
- 49 • addressing fees charged by the division;
- 50 • making permissive providing a list of names and mailing addresses of licensees;
- 51 • providing for an alternate member to the Residential Mortgage Regulatory
- 52 Commission;
- 53 • allowing the commission to delegate to the division authority related to
- 54 licensing including outlining procedures in case of a denial of license;
- 55 • addressing when address information is public;
- 56 • addressing use of an assumed business name;
- 57 • providing for conversion of registrations to licenses;
- 58 • providing that certain fees are nonlapsing;

- 59 • addressing post-revocation hearings and ability to apply for a new license;
- 60 • modifying qualifications for licensure related to criminal history;
- 61 • addressing renewal of licensing;
- 62 • requiring reporting of changes;
- 63 • addressing lending manager licenses;
- 64 • including title insurance agent in the list of capacities that a licensee cannot
- 65 engage in with respect to the same residential mortgage loan transaction;
- 66 • clarifying language applicable to disciplinary action and adjudicative
- 67 proceedings; and
- 68 • extending the implementation of the principal lender manager licensing; and
- 69 ▶ makes technical changes.

70 **Monies Appropriated in this Bill:**

71 None

72 **Other Special Clauses:**

73 This bill provides an effective date.

74 **Utah Code Sections Affected:**

75 AMENDS:

- 76 **61-2-5.5**, as last amended by Chapters 102 and 243, Laws of Utah 1996
- 77 **61-2-6**, as last amended by Chapter 90, Laws of Utah 2004
- 78 **61-2-7.1**, as last amended by Chapter 86, Laws of Utah 2000
- 79 **61-2-9**, as last amended by Chapter 129, Laws of Utah 2004
- 80 **61-2-11**, as last amended by Chapter 351, Laws of Utah 1997
- 81 **61-2-12**, as last amended by Chapter 173, Laws of Utah 1999
- 82 **61-2b-2**, as last amended by Chapter 117, Laws of Utah 1999
- 83 **61-2b-3**, as last amended by Chapter 117, Laws of Utah 1999
- 84 **61-2b-6**, as last amended by Chapter 86, Laws of Utah 2000
- 85 **61-2b-7**, as last amended by Chapter 176, Laws of Utah 2002
- 86 **61-2b-8**, as last amended by Chapter 117, Laws of Utah 1999
- 87 **61-2b-9**, as last amended by Chapter 117, Laws of Utah 1999
- 88 **61-2b-10**, as last amended by Chapter 214, Laws of Utah 2001
- 89 **61-2b-14**, as last amended by Chapter 117, Laws of Utah 1999

90 **61-2b-15**, as last amended by Chapter 117, Laws of Utah 1999
91 **61-2b-17**, as last amended by Chapter 214, Laws of Utah 2001
92 **61-2b-18**, as last amended by Chapter 86, Laws of Utah 2000
93 **61-2b-19**, as last amended by Chapter 117, Laws of Utah 1999
94 **61-2b-20**, as last amended by Chapter 117, Laws of Utah 1999
95 **61-2b-21**, as last amended by Chapter 117, Laws of Utah 1999
96 **61-2b-22**, as last amended by Chapter 117, Laws of Utah 1999
97 **61-2b-24**, as last amended by Chapter 117, Laws of Utah 1999
98 **61-2b-26**, as last amended by Chapter 86, Laws of Utah 2000
99 **61-2b-27**, as last amended by Chapter 86, Laws of Utah 2000
100 **61-2b-28**, as last amended by Chapter 117, Laws of Utah 1999
101 **61-2b-29**, as last amended by Chapter 117, Laws of Utah 1999
102 **61-2b-30.5**, as enacted by Chapter 117, Laws of Utah 1999
103 **61-2b-31**, as last amended by Chapter 117, Laws of Utah 1999
104 **61-2b-33**, as last amended by Chapter 117, Laws of Utah 1999
105 **61-2b-34**, as last amended by Chapter 117, Laws of Utah 1999
106 **61-2b-36**, as last amended by Chapter 117, Laws of Utah 1999
107 **61-2b-38**, as last amended by Chapter 117, Laws of Utah 1999
108 **61-2b-39**, as last amended by Chapter 117, Laws of Utah 1999
109 **61-2b-40**, as last amended by Chapter 117, Laws of Utah 1999
110 **61-2c-102**, as last amended by Chapter 297, Laws of Utah 2004
111 **61-2c-103**, as last amended by Chapter 297, Laws of Utah 2004
112 **61-2c-104**, as last amended by Chapters 297 and 297, Laws of Utah 2004
113 **61-2c-106 (Superseded 01/01/06)**, as last amended by Chapter 243, Laws of Utah 2003
114 **61-2c-106 (Effective 01/01/06)**, as last amended by Chapter 297, Laws of Utah 2004
115 **61-2c-201**, as last amended by Chapter 297, Laws of Utah 2004
116 **61-2c-202**, as last amended by Chapter 297, Laws of Utah 2004
117 **61-2c-203**, as last amended by Chapter 297, Laws of Utah 2004
118 **61-2c-205**, as last amended by Chapter 297, Laws of Utah 2004
119 **61-2c-206**, as enacted by Chapter 297, Laws of Utah 2004
120 **61-2c-208**, as enacted by Chapter 297, Laws of Utah 2004

121 **61-2c-301**, as last amended by Chapter 297, Laws of Utah 2004

122 **61-2c-402**, as last amended by Chapter 297, Laws of Utah 2004

123 **61-2c-404**, as enacted by Chapter 297, Laws of Utah 2004

124 ENACTS:

125 **61-2c-201.1**, Utah Code Annotated 1953

126 **61-2c-402.1**, Utah Code Annotated 1953

127 REPEALS:

128 **61-2b-15.6**, as enacted by Chapter 117, Laws of Utah 1999

129 **Uncodified Material Affected:**

130 AMENDS UNCODIFIED MATERIAL:

131 **Uncodified Section 32, Chapter 297, Laws of Utah 2004**



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

134 Section 1. Section **61-2-5.5** is amended to read:

135 **61-2-5.5. Real Estate Commission created -- Functions -- Appointment --**

136 **Qualification and terms of members -- Expenses -- Meetings.**

137 (1) There is created within the division a Real Estate Commission. The commission
138 shall:

139 (a) make rules for the administration of this chapter [~~which~~] that are not inconsistent
140 with this chapter, including:

141 (i) licensing of:

142 (A) principal brokers[;];

143 (B) associate brokers[;];

144 (C) sales agents[;];

145 (D) real estate companies[;]; and

146 (E) branch offices;

147 (ii) prelicensing and postlicensing education curricula[;];

148 (iii) examination procedures[~~;~~and];

149 (iv) the certification and conduct of:

150 (A) real estate schools[;];

151 (B) course providers[;]; and

- 152 (C) instructors;
- 153 [(iii)] (v) proper handling of funds received by real estate licensees~~[-and]~~;
- 154 (vi) brokerage office procedures and recordkeeping requirements;
- 155 [(iv)] (vii) property management; and
- 156 [~~v~~] (viii) standards of conduct for real estate licensees;
- 157 (b) establish, with the concurrence of the division, all fees as provided in this chapter
- 158 and Title 61, Chapter 2a, Real Estate Recovery Fund Act;
- 159 (c) conduct all administrative hearings not delegated by [it] the commission to an
- 160 administrative law judge or the division relating to the:
- 161 (i) licensing of any applicant~~[-]~~;
- 162 (ii) conduct of any licensee~~[-]~~; or
- 163 (iii) the certification or conduct of any real estate school, course provider, or instructor
- 164 regulated under this chapter;
- 165 (d) with the concurrence of the director, impose sanctions against licensees and
- 166 certificate holders as provided in Section 61-2-11;
- 167 (e) advise the director on the administration and enforcement of any matters affecting
- 168 the division and the real estate sales and property management industries;
- 169 (f) advise the director on matters affecting the division budget;
- 170 (g) advise and assist the director in conducting real estate seminars; and
- 171 (h) perform other duties as provided by:
- 172 (i) this chapter; and
- 173 (ii) Title 61, Chapter 2a, Real Estate Recovery Fund Act.
- 174 (2) (a) The commission shall be comprised of five members appointed by the governor
- 175 and approved by the Senate.
- 176 (b) Four of the commission members shall:
- 177 (i) have at least five years' experience in the real estate business; and [~~shall~~]
- 178 (ii) hold an active principal broker, associate broker, or sales agent license.
- 179 (c) One commission member shall be a member of the general public.
- 180 (d) No more than one commission member may be appointed from any given county in
- 181 the state.
- 182 (3) (a) Except as required by Subsection (3)(b), as terms of current commission

183 members expire, the governor shall appoint each new member or reappointed member to a
 184 four-year term ending June 30.

185 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the
 186 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
 187 commission members are staggered so that approximately half of the commission is appointed
 188 every two years.

189 (c) Upon the expiration of the term of a member of the commission, the member of the
 190 commission shall continue to hold office until a successor is appointed and qualified.

191 ~~(c)~~ (d) A commission member may not serve more than one consecutive term.

192 ~~(d)~~ (e) Members of the commission shall annually select one member to serve as
 193 chair.

194 (4) When a vacancy occurs in the membership for any reason, the replacement shall be
 195 appointed for the unexpired term.

196 (5) (a) ~~Members~~ A member shall receive no compensation or benefits for ~~their~~ the
 197 member's services, but may receive per diem and expenses incurred in the performance of the
 198 member's official duties at the rates established by the Division of Finance under Sections
 199 63A-3-106 and 63A-3-107.

200 (b) ~~Members~~ A member may decline to receive per diem and expenses for ~~their~~ the
 201 member's service.

202 (6) (a) The commission shall meet at least monthly.

203 (b) The director may call additional meetings:

204 (i) at ~~his~~ the director's discretion ~~or~~;

205 (ii) upon the request of the chair; or

206 (iii) upon the written request of three or more commission members.

207 (7) Three members of the commission constitute a quorum for the transaction of
 208 business.

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

210 **61-2-6. Licensing procedures and requirements.**

211 (1) (a) ~~The Real Estate Commission~~ Except as provided in Subsection (5), the
 212 commission shall determine the qualifications and requirements of applicants for:

213 (i) a principal broker license[-];

214 (ii) an associate broker[;] license; or

215 (iii) a sales agent license.

216 (b) The division, with the concurrence of the commission, shall require and pass upon
217 proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency of
218 each applicant for an initial license or for renewal of an existing license.

219 (c) (i) The division, with the concurrence of the commission, shall require an applicant
220 for:

221 (A) a sales agent license to complete an approved educational program not to exceed
222 90 hours[;]; and [~~an applicant for~~]

223 (B) an associate broker or principal broker license to complete an approved educational
224 program not to exceed 120 hours.

225 (ii) The hours required by this section mean 50 minutes of instruction in each 60
226 minutes[; ~~and the~~].

227 (iii) ~~The~~ maximum number of program hours available to an individual is ten hours per
228 day.

229 (d) The division, with the concurrence of the commission, shall require the applicant to
230 pass an examination approved by the commission covering:

231 (i) the fundamentals of:

232 (A) the English language[;];

233 (B) arithmetic[;];

234 (C) bookkeeping[;]; and

235 (D) real estate principles and practices[;];

236 (ii) the provisions of this chapter[;];

237 (iii) the rules established by the [~~Real Estate Commission;~~] commission; and

238 (iv) any other aspect of Utah real estate license law considered appropriate.

239 (e) (i) Three years' full-time experience as a real estate sales agent or its equivalent is
240 required before any applicant may apply for, and secure a principal broker or associate broker
241 license in this state.

242 (ii) The commission shall establish by rule, made in accordance with Title 63, Chapter
243 46a, Utah Administrative Rulemaking Act, the criteria by which [~~it~~] the commission will
244 accept experience or special education in similar fields of business in lieu of the three years'

245 experience.

246 (2) (a) The division, with the concurrence of the commission, may require an applicant
247 to furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's
248 reputation and competency as set forth by rule.

249 (b) The division shall require an applicant to provide ~~his~~ the applicant's Social
250 Security number, which is a private record under Subsection 63-2-302(1)(h).

251 (3) (a) A nonresident principal broker may be licensed in this state by conforming to all
252 the provisions of this chapter except that of residency.

253 (b) A nonresident associate broker or sales agent may become licensed in this state by:
254 (i) conforming to all the provisions of this chapter except that of residency; and ~~by~~
255 (ii) being employed or engaged as an independent contractor by or on behalf of a
256 nonresident or resident principal broker who is licensed in this state.

257 (4) ~~An~~ (a) Except as provided in Subsection 61-2-9(1)(e)(iv), an applicant who has
258 had a real estate license revoked;

259 (i) shall be relicensed as prescribed for an original application~~;~~ ~~but~~; and

260 (ii) may not apply for a new license until at least five years after the ~~revocation~~ day
261 on which the license is revoked.

262 (b) In the case of an applicant for a new license as a principal broker or associate
263 broker, the applicant is not entitled to credit for experience gained prior to the revocation of a
264 real estate license.

265 (5) (a) Notwithstanding Subsection (1), the commission may delegate to the division
266 the authority to:

267 (i) review a class or category of applications for initial or renewed licenses;

268 (ii) determine whether an applicant meets the licensing criteria in Subsection (1); and

269 (iii) approve or deny a license application without concurrence by the commission.

270 (b) (i) If the commission delegates to the division the authority to approve or deny an
271 application without concurrence by the commission and the division denies an application for
272 licensure, the applicant who is denied licensure may petition the commission for review of the
273 denial of licensure.

274 (ii) An applicant who is denied licensure pursuant to this Subsection (5) may seek
275 agency review by the executive director only after the commission has reviewed the division's

276 denial of the applicant's application.

277 Section 3. Section **61-2-7.1** is amended to read:

278 **61-2-7.1. Change of information -- Failure to notify -- Notification to an**
279 **applicant, licensee, or certificate holder.**

280 ~~[Each] (1) An applicant, licensee, or certificate holder shall send the division a signed~~
281 ~~statement in the form required by the division notifying the division within ten business days of~~
282 ~~any change of [principal business location or home street address within ten business days of~~
283 ~~the change. In providing an address to the division];~~

284 (a) principal broker;

285 (b) principal business location;

286 (c) mailing address;

287 (d) home street address;

288 (e) an individual's name; or

289 (f) business name.

290 (2) The division may charge a fee established in accordance with Section 63-38-3.2 for
291 processing any notification of change submitted by an applicant, licensee, or certificate holder.

292 (3) (a) When providing the division a business location or home street address, a
293 physical location or street address must be provided.

294 (b) When providing a mailing address, an applicant, licensee, or certificate holder may
295 provide a post office box or other mail drop location.

296 (4) Failure to notify the division of a change [~~of business location~~] described in
297 Subsection (1) is separate grounds for disciplinary action against the applicant, licensee, or
298 certificate holder. [A]

299 (5) An applicant, licensee, or certificate holder [~~will be~~] is considered to have received
300 any notification [~~which~~] that has been sent to the last address furnished to the division by the
301 applicant, licensee, or certificate holder.

302 Section 4. Section **61-2-9** is amended to read:

303 **61-2-9. Examination and license fees -- Background check -- Renewal of licenses**
304 **-- Education requirements -- Activation of inactive licenses -- Recertification -- Licenses**
305 **of firm, partnership, or association -- Miscellaneous fees.**

306 (1) (a) Upon filing an application for a principal broker, associate broker, or sales agent

307 license examination, the applicant shall pay a nonrefundable fee as determined by the
308 commission with the concurrence of the division under Section 63-38-3.2 for admission to the
309 examination.

310 (b) A principal broker, associate broker, or sales agent applicant shall pay a
311 nonrefundable fee as determined by the commission with the concurrence of the division under
312 Section 63-38-3.2 for issuance of an initial license or license renewal.

313 (c) Each license issued under this Subsection (1) shall be issued for a period of not less
314 than two years as determined by the division with the concurrence of the commission.

315 (d) (i) Any new sales agent applicant shall:

316 (A) submit fingerprint cards in a form acceptable to the division at the time the license
317 application is filed; and ~~[shall]~~

318 (B) consent to a fingerprint background check by the Utah Bureau of Criminal
319 Identification and the Federal Bureau of Investigation regarding the application.

320 (ii) The division shall request the Department of Public Safety to complete a Federal
321 Bureau of Investigation criminal background check for each new sales agent applicant through
322 the national criminal history system (NCIC) or any successor system.

323 (iii) The cost of the background check and the fingerprinting shall be borne by the
324 applicant.

325 (iv) Funds paid to the division by an applicant for the cost of the background check
326 shall be nonlapsing.

327 (e) (i) Any new sales agent license issued under this section shall be conditional,
328 pending completion of the criminal background check. If the criminal background check
329 discloses the applicant has failed to accurately disclose a criminal history, the license shall be
330 immediately and automatically revoked.

331 (ii) Any person whose conditional license has been revoked under Subsection (1)(e)(i)
332 shall be entitled to a post-revocation hearing to challenge the revocation. The hearing shall be
333 conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

334 (iii) The division director shall designate one of the following to act as the presiding
335 officer in a post-revocation hearing described in this Subsection (1)(e):

336 (A) the division; or

337 (B) the division with the concurrence of the commission.

- 338 (iv) The decision on whether relief from the revocation of a license under this
339 Subsection (1)(e) will be granted shall be made by the presiding officer.
- 340 (v) Relief from a revocation under this Subsection (1)(e) may be granted only if:
341 (A) the criminal history upon which the division based the revocation:
342 (I) did not occur; or
343 (II) is the criminal history of another person;
344 (B) (I) the revocation is based on a failure to accurately disclose a criminal history; and
345 (II) the applicant had a reasonable good faith belief at the time of application that there
346 was no criminal history to be disclosed; or
347 (C) the division failed to follow the prescribed procedure for the revocation.
348 (vi) If a revocation under this Subsection (1)(e) is upheld after a post-revocation
349 hearing, the person may not apply for a new license until at least 12 months after the day on
350 which the final decision upholding the revocation is issued.
- 351 (2) (a) (i) A license expires if it is not renewed on or before its expiration date.
352 (ii) As [as] a condition of renewal, each active licensee shall demonstrate competence:
353 (A) by viewing an approved real estate education video program and completing a
354 supplementary workbook; or
355 (B) by completing 12 hours of professional education approved by the division and
356 commission within each two-year renewal period.
357 (iii) The division with the concurrence of the commission shall certify education which
358 may include:
359 (A) state conventions[;];
360 (B) home study courses[;];
361 (C) video courses[;]; and
362 (D) closed circuit television courses.
- 363 (iv) The commission with concurrence of the division may exempt a licensee from
364 [~~this~~] the education requirement of this Subsection (2)(a) for a period not to exceed four years:
365 (A) upon a finding of reasonable cause, including military service; and
366 (B) under conditions established by rule made in accordance with Title 63, Chapter
367 46a, Utah Administrative Rulemaking Act.
368 (b) For a period of 30 days after the expiration date of a license, [a] the license may be

369 reinstated upon:

370 (i) payment of a renewal fee and a late fee determined by the commission with the
371 concurrence of the division under Section 63-38-3.2; and ~~upon~~

372 (ii) providing proof acceptable to the division and the commission of the licensee
373 having completed the hours of education or demonstrated competence as required under
374 Subsection (2)(a).

375 (c) After ~~this~~ the 30-day period described in Subsection (2)(b), and until six months
376 after the expiration date, the license may be reinstated by:

377 (i) paying a renewal fee and a late fee determined by the commission with the
378 concurrence of the division under Section 63-38-3.2;

379 (ii) providing to the division proof of satisfactory completion of 12 hours of continuing
380 education:

381 (A) in addition to the requirements for a timely renewal; and

382 (B) on a subject determined by the commission by rule made in accordance with Title
383 63, Chapter 46a, Utah Administrative Rulemaking Act; and

384 (iii) providing proof acceptable to the division and the commission of the licensee
385 having completed the hours of education or demonstrated competence as required under
386 Subsection (2)(a).

387 (d) A person who does not renew ~~his~~ that person's license within six months after the
388 expiration date shall be relicensed as prescribed for an original application.

389 (3) (a) As a condition for the activation of an inactive license that was in an inactive
390 status at the time of the licensee's most recent renewal, the licensee shall supply the division
391 with proof of:

392 (i) successful completion of the respective sales agent or broker licensing examination
393 within six months prior to applying to activate the license; or

394 (ii) the successful completion of 12 hours of continuing education that the licensee
395 would have been required to complete under Subsection (2)(a) if the license had been on active
396 status at the time of the licensee's most recent renewal.

397 (b) The commission may, in accordance with Title 63, Chapter 46a, Utah
398 Administrative Rulemaking Act, establish by rule:

399 (i) the nature or type of continuing education required for reactivation of a license; and

400 (ii) how long prior to reactivation the continuing education must have been completed.

401 (4) (a) A principal broker license may be granted to a corporation, partnership, or
402 association if the corporation, partnership, or association has affiliated with it an individual
403 who:

404 (i) has qualified as a principal broker under the terms of this chapter~~;~~ and ~~[who]~~

405 (ii) serves in the capacity of a principal broker.

406 (b) Application for the license described in Subsection (4)(a) shall be made in
407 accordance with the rules adopted by the division with the concurrence of the commission.

408 (5) The division may charge and collect reasonable fees determined by the commission
409 with the concurrence of the division under Section 63-38-3.2 to cover the costs for:

410 (a) issuance of a new or duplicate license;

411 (b) license histories or certifications;

412 (c) certified copies of official documents, orders, and other papers and transcripts;

413 (d) certifying real estate schools, courses, and instructors, the fees for which shall,
414 notwithstanding Section 13-1-2, be deposited in the Real Estate Education, Research, and
415 Recovery Fund; and

416 (e) other duties required by this chapter.

417 (6) If a licensee submits or causes to be submitted a check, draft, or other negotiable
418 instrument to the division for payment of fees, and the check, draft, or other negotiable
419 instrument is dishonored, the transaction for which the payment was submitted is void and will
420 be reversed by the division if payment of the applicable fee is not received in full.

421 (7) (a) The fees under this chapter and the additional license fee for the Real Estate
422 Education, Research, and Recovery Fund under Section 61-2a-4 are in lieu of all other license
423 fees or assessments that might otherwise be imposed or charged by the state or any of its
424 political subdivisions, upon, or as a condition of, the privilege of conducting the business
425 regulated by this chapter, except that a political subdivision within the state may charge a
426 business license fee if the licensee maintains a place of business within the jurisdiction of the
427 political subdivision.

428 (b) Unless otherwise exempt, each licensee under this chapter is subject to all taxes
429 imposed under Title 59, Revenue and Taxation.

430 Section 5. Section **61-2-11** is amended to read:

431 **61-2-11. Investigations -- Subpoena power of division -- Grounds for disciplinary**
432 **action.**

433 The division may investigate or cause to be investigated the actions of any principal
434 broker, associate broker, sales agent, real estate school, course provider, or school instructor
435 licensed or certified by this state, or of any applicant for licensure or certification, or of any
436 person who acts in any of those capacities within this state. The division is empowered to
437 subpoena witnesses, take evidence, and require by subpoena duces tecum the production of
438 books, papers, contracts, records, other documents, or information considered relevant to the
439 investigation. The division may serve subpoenas by certified mail. Each failure to respond to a
440 subpoena is considered as a separate violation of this chapter. The commission, with the
441 concurrence of the director, may impose a civil penalty in an amount not to exceed \$500 per
442 violation, impose educational requirements, and suspend, revoke, place on probation, or deny
443 renewal, reinstatement, or reissuance of any license or any certification if at any time the
444 licensee or certificate holder, whether acting as an agent or on his own account, is found guilty
445 of:

- 446 (1) making any substantial misrepresentation;
- 447 (2) making any false promises of a character likely to influence, persuade, or induce;
- 448 (3) pursuing a continued and flagrant course of misrepresentation, or of making false
449 promises through agents, sales agents, advertising, or otherwise;
- 450 (4) acting for more than one party in a transaction without the informed consent of all
451 parties;
- 452 (5) (a) acting as an associate broker or sales agent while not licensed with a licensed
453 principal broker[;];
- 454 (b) representing or attempting to represent a broker other than the principal broker with
455 whom ~~he~~ the person is affiliated[;]; or
- 456 (c) representing as sales agent or having a contractual relationship similar to that of
457 sales agent with other than a licensed principal broker;
- 458 (6) (a) failing, within a reasonable time, to account for or to remit any monies coming
459 into ~~his~~ the person's possession that belong to others~~[-or commingling those funds with his~~
460 ~~own, or diverting those funds];~~
- 461 (b) commingling the funds described in Subsection (6)(a) with the person's own; or

462 (c) diverting the funds described in Subsection (6)(a) from the purpose for which they
463 were received;

464 (7) paying or offering to pay valuable consideration, as defined by the commission, to
465 any person not licensed under this chapter, except that:

466 (a) valuable consideration may be shared with a licensed principal broker of another
467 jurisdiction or as provided under the Professional Corporation Act or the Limited Liability
468 Company Act; and

469 (b) the valuable consideration to be paid to a licensee for the performance of any of the
470 acts specified in this chapter may be paid by the licensee's principal broker to the licensee's
471 Sub-Chapter S corporation;

472 (8) being unworthy or incompetent to act as a principal broker, associate broker, or
473 sales agent in such manner as to safeguard the interests of the public;

474 (9) failing to voluntarily furnish copies of all documents to all parties executing the
475 documents;

476 (10) failing to keep and make available for inspection by the division a record of each
477 transaction, including:

478 (a) the names of buyers and sellers or lessees and lessors[;];

479 (b) the identification of the property[;];

480 (c) the sale or rental price[;];

481 (d) any monies received in trust[;];

482 (e) any agreements or instructions from buyers and sellers or lessees and lessors[;]; and

483 (f) any other information required by rule;

484 (11) failing to disclose, in writing, in the purchase, sale, or rental of property, whether
485 the purchase, sale, or rental is made for himself or for an undisclosed principal;

486 (12) regardless of whether the crime was related to real estate, being convicted of a
487 criminal offense involving moral turpitude within five years of the most recent application,
488 including a conviction based upon a plea of nolo contendere, or a plea held in abeyance to a
489 criminal offense involving moral turpitude;

490 (13) advertising the availability of real estate or the services of a licensee in a false,
491 misleading, or deceptive manner;

492 (14) in the case of a principal broker or a licensee who is a branch manager, failing to

493 exercise reasonable supervision over the activities of [~~his~~] the principal broker's or branch
494 manager's licensees and any unlicensed staff;

495 (15) violating or disregarding this chapter, an order of the commission, or the rules
496 adopted by the commission and the division;

497 (16) breaching a fiduciary duty owed by a licensee to [~~his~~] the licensee's principal in a
498 real estate transaction;

499 (17) any other conduct which constitutes dishonest dealing;

500 (18) unprofessional conduct as defined by statute or rule; or

501 (19) suspension, revocation, surrender, or cancellation of a real estate license issued by
502 another jurisdiction, or of another professional license issued by this or another jurisdiction,
503 based on misconduct in a professional capacity that relates to character, honesty, integrity, or
504 truthfulness.

505 Section 6. Section **61-2-12** is amended to read:

506 **61-2-12. Disciplinary action -- Judicial review.**

507 (1) (a) [~~Before imposing an educational requirement, a civil penalty, revoking,~~
508 ~~suspending, placing on probation, or denying the renewal, reinstatement, or reissuance of any~~
509 ~~license or certificate based on]~~ On the basis of a violation of Section 61-2-11, the division shall
510 give notice to the licensee or certificate holder and [~~schedule~~] commence an adjudicative
511 proceeding[:] before:

512 (i) imposing an educational requirement;

513 (ii) imposing a civil penalty; or

514 (iii) taking any of the following actions related to a license or certificate:

515 (A) revoking;

516 (B) suspending;

517 (C) placing on probation; or

518 (D) denying the renewal, reinstatement, or reissuance.

519 (b) If the licensee is an active sales agent or active associate broker, the division shall
520 inform the principal broker with whom the licensee is affiliated of the charge and of the time
521 and place of [~~the~~] any hearing.

522 (c) If [~~after~~] the presiding officer at a hearing [~~the commission~~] determines that any
523 licensee or certificate holder is guilty of a violation of this chapter, the division by written order

524 may:

525 (i) with regard to the license or certificate [~~may be suspended, revoked, denied~~];

526 (A) suspend;

527 (B) revoke;

528 (C) place on probation; or

529 (D) deny renewal, reinstatement, or reissuance[;]; or

530 (ii) impose a civil penalty [~~may be imposed by written order of the commission in~~
531 ~~concurrence with the director~~].

532 (2) (a) Any applicant, certificate holder, licensee, or person aggrieved, including the
533 complainant, may obtain [~~judicial review or~~] agency review by the executive director and
534 judicial review of any adverse ruling, order, or decision of the [~~director and the commission~~]
535 division.

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

540 (c) (i) An order, [~~rule~~] ruling, or decision of the [~~director and the commission~~] division
541 shall take effect and become operative 30 days after the service [~~thereof~~] of the order, ruling, or
542 decision unless otherwise provided in the order.

543 (ii) If an appeal is taken by a licensee, the division may stay enforcement of [~~the~~
544 ~~commission's action~~] an order, ruling, or decision in accordance with [~~the provisions of~~]
545 Section 63-46b-18.

546 (iii) The appeal shall be governed by the Utah Rules of Appellate Procedure.

547 (3) The commission and the director shall comply with the procedures and
548 requirements of Title 63, Chapter 46b, Administrative Procedures Act, in [~~their~~] all
549 adjudicative proceedings.

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

551 **61-2b-2. Definitions.**

552 (1) As used in this chapter:

553 [(H)] (a) (i) "Appraisal" means an unbiased analysis, opinion, or conclusion relating to
554 the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate

555 or identified real property.

556 ~~[(b) Appraisals]~~ (ii) An appraisal shall be classified by the nature of the assignment as
557 a valuation appraisal, an analysis assignment, or a review assignment in accordance with the
558 following definitions:

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

562 ~~[(i)]~~ (B) "Analysis assignment" means an unbiased analysis, opinion, or conclusion
563 that relates to the nature, quality, or utility of identified real estate or identified real property.

564 ~~[(iii)]~~ (C) "Review assignment" means an unbiased analysis, opinion, or conclusion
565 that forms an opinion as to the adequacy and appropriateness of a valuation appraisal or an
566 analysis assignment.

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

569 ~~[(3)-(a)]~~ (c) (i) "Appraisal report" means any communication, written or oral, of an
570 appraisal.

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

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

577 ~~[(4)]~~ (d) "Board" means the Real Estate Appraiser Licensing and Certification Board
578 that is established in Section 61-2b-7.

579 ~~[(5)]~~ (e) "Certified appraisal report" means a written or oral appraisal report that is
580 certified by a state-certified general appraiser or state-certified residential appraiser.

581 ~~[(6)-(a)-(i)]~~ (f) (i) (A) "Consultation service" means an engagement to provide a real
582 estate valuation service analysis, opinion, conclusion, or other service that does not fall within
583 the definition of appraisal.

584 ~~[(i)]~~ (B) "Consultation service" does not mean a valuation appraisal, analysis
585 assignment, or review assignment.

586 ~~[(b)]~~ (ii) Regardless of the intention of the client or employer, if a person prepares an
587 unbiased analysis, opinion, or conclusion, the analysis, opinion, or conclusion is considered to
588 be an appraisal and not a consultation service.

589 ~~[(7)]~~ (g) "Contingent fee" means a fee or other form of compensation, payment of
590 which is dependent on or conditioned by:

591 ~~[(a)]~~ (i) the reporting of a predetermined analysis, opinion, or conclusion by the person
592 performing the analysis, opinion, or conclusion; or

593 ~~[(b)]~~ (ii) achieving a result specified by the person requesting the analysis, opinion, or
594 conclusion.

595 ~~[(8)]~~ (h) "Division" means the Division of Real Estate of the Department of
596 Commerce.

597 ~~[(9)]~~ (i) "Federally related transaction" means any real estate related transaction
598 ~~[which]~~ that is required by federal law or by federal regulation to be supported by an appraisal
599 prepared by:

600 (i) a state-licensed appraiser; or

601 (ii) a state-certified appraiser.

602 ~~[(10)]~~ (j) "Real estate" means an identified parcel or tract of land including
603 improvements if any.

604 ~~[(11)]~~ (k) "Real estate appraisal activity" means the act or process of making an
605 appraisal of real estate or real property and preparing an appraisal report.

606 ~~[(12)]~~ (l) "Real estate related transaction" means:

607 ~~[(a)]~~ (i) the sale, lease, purchase, investment in, or exchange of real property or an
608 interest in real property, or the financing of such a transaction;

609 ~~[(b)]~~ (ii) the refinancing of real property or an interest in real property; or

610 ~~[(c)]~~ (iii) the use of real property or an interest in real property as security for a loan or
611 investment, including mortgage-backed securities.

612 ~~[(13)]~~ (m) "Real property" means one or more defined interests, benefits, or rights
613 inherent in the ownership of real estate.

614 ~~[(14)]~~ "Senior appraiser" means a person grandfathered under this chapter who holds a
615 current, valid state registration as a real estate appraiser whose registration was issued to the
616 person based on the person's experience or designation as a member in good standing in an

617 appraisal organization that is a member of the Appraisal Foundation.]

618 [(15)] (n) "State-certified general appraiser" means a person who holds a current, valid
619 certification as a state-certified general appraiser issued under [the provisions of] this chapter.

620 [(16)] (o) "State-certified residential appraiser" means a person who holds a current,
621 valid certification as a state-certified residential real estate appraiser issued under [the
622 provisions of] this chapter.

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

625 [(18)] (q) "State-registered appraiser" means a person who [~~holds a current, valid state~~
626 ~~registration as a real estate appraiser issued under the provisions of]~~ before May 3, 1999, was
627 registered as an appraiser under this chapter.

628 (r) "Trainee" means an individual who:

629 (i) does not hold an appraiser license or appraiser certification issued under this
630 chapter; and

631 (ii) works under the direct supervision of a state-licensed appraiser or state-certified
632 appraiser to earn experience for licensure.

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

638 (2) (a) If a term not defined in this section is defined by rule, the term shall have the
639 meaning established by the division by rule made in accordance with Title 63, Chapter 46a,
640 Utah Administrative Rulemaking Act.

641 (b) If a term not defined in this section is not defined by rule, the term shall have the
642 meaning commonly accepted in the business community.

643 Section 8. Section **61-2b-3** is amended to read:

644 **61-2b-3. License or certification required.**

645 (1) Except as provided in Subsection (2) and in Subsection 61-2b-6(2), it is unlawful
646 for anyone to prepare, for valuable consideration, an appraisal, an appraisal report, a certified
647 appraisal report, or perform a consultation service relating to real estate or real property in this

648 state without first being [~~registered,~~] licensed[;] or certified in accordance with [~~the provisions~~
649 ~~of~~] this chapter.

650 (2) This section does not apply to:

651 (a) a real estate broker or sales agent as defined by Section 61-2-2 licensed by this state
652 who, in the ordinary course of [~~his~~] the real estate broker's or sales agent's business, gives an
653 opinion:

654 (i) regarding the value of real estate;

655 (ii) to a potential seller or third party recommending a listing price of real estate; or

656 (iii) to a potential buyer or third party recommending a purchase price of real estate;

657 (b) an employee of a company who states an opinion of value or prepares a report
658 containing value conclusions relating to real estate or real property solely for the company's
659 use;

660 (c) any official or employee of a government agency while acting solely within the
661 scope of [~~his~~] the official's or employee's duties, unless otherwise required by Utah law;

662 (d) an auditor or accountant who states an opinion of value or prepares a report
663 containing value conclusions relating to real estate or real property while performing an audit;

664 (e) an individual, except an individual who is required to be [~~registered,~~] licensed[;] or
665 certified under this chapter, who states an opinion about the value of property in which [~~he~~] the
666 person has an ownership interest;

667 (f) an individual who states an opinion of value if no consideration is paid or agreed to
668 be paid for the opinion and no other party is reasonably expected to rely on the individual's
669 appraisal expertise;

670 (g) an individual, such as a researcher or a secretary, who does not render significant
671 professional assistance, as defined by the board, in arriving at a real estate appraisal analysis,
672 opinion, or conclusion; or

673 (h) an attorney authorized to practice law in this state who, in the course of [~~his~~] the
674 attorney's practice, [~~utilizes~~] uses an appraisal report governed by this chapter or who states an
675 opinion of the value of real estate.

676 (3) [~~No~~] An opinion of value or report containing value conclusions exempt under
677 Subsection (2) may not be referred to as an appraisal.

678 Section 9. Section **61-2b-6** is amended to read:

679 **61-2b-6. Duties and powers of division.**

680 (1) The division shall have the [~~following~~] powers and duties[~~:~~] listed in this
 681 Subsection (1).

682 (a) The division shall:

683 (i) receive applications for licensing [~~as a state-licensed appraiser~~] and certification;

684 (ii) establish appropriate administrative procedures for the processing of [~~licensing~~]
 685 applications for licensure or certification;

686 (iii) issue licenses and certifications to qualified applicants pursuant to [~~the provisions~~
 687 ~~of~~] this chapter; and

688 (iv) maintain a registry of the names and addresses of individuals who are currently
 689 licensed [~~as state-licensed~~] or certified as appraisers under this chapter.

690 [~~(b) The division shall:~~]

691 [~~(i) receive applications for certification as a state-certified general appraiser or~~
 692 ~~state-certified residential appraiser under this chapter;~~]

693 [~~(ii) establish appropriate administrative procedures for the processing of certification~~
 694 ~~applications;~~]

695 [~~(iii) issue certificates to qualified applicants pursuant to the provisions of this chapter;~~
 696 ~~and]~~

697 [~~(iv) maintain a registry of the names and addresses of individuals who are currently~~
 698 ~~registered, licensed, or certified under this chapter.~~]

699 (b) (i) The division shall require a trainee to notify the division that the trainee is acting
 700 in the capacity of a trainee earning experience for licensure.

701 (ii) The board shall adopt rules in accordance with Title 63, Chapter 46a, Utah
 702 Administrative Rulemaking Act, for the trainee notification required by this Subsection (1)(b).

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

704 (d) [(~~†~~)] The division [~~shall, at its option,~~] may:

705 (i) solicit bids and enter into contracts with one or more educational testing services or
 706 organizations for the preparation of a bank of questions and answers approved by the board for
 707 licensing and certification examinations; and

708 (ii) administer or contract for the administration of licensing and certification
 709 examinations as may be required to carry out [its] the division's responsibilities under this

710 chapter.

711 (e) The division shall provide administrative assistance to the board by providing to the
712 board the facilities, equipment, supplies, and personnel that are required to enable the board to
713 carry out ~~[its]~~ the board's responsibilities under this chapter.

714 (f) The division shall assist the board in upgrading and improving the quality of the
715 education and examinations required under this chapter.

716 (g) The division shall assist the board in improving the quality of the continuing
717 education available to persons ~~[registered,]~~ licensed~~[-]~~ and certified under this chapter.

718 (h) The division shall assist the board with respect to the proper interpretation or
719 explanation of the Uniform Standards of Professional Appraisal Practice as required by Section
720 61-2b-27 when an interpretation or explanation becomes necessary in the enforcement of this
721 chapter.

722 (i) The division shall ~~[collect all registration, licensing, and certification fees]~~ establish
723 fees in accordance with Section 63-38-3.2:

724 (i) for processing:

725 (A) trainee notifications;

726 (B) applications for licensing and certification; and

727 (C) registration of expert witnesses; and

728 (ii) for all other functions required or permitted by this chapter.

729 (j) The division may:

730 (i) investigate complaints against:

731 (A) trainees; or

732 (B) persons ~~[registered,]~~ licensed~~[-]~~ or certified under this chapter;

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

735 (iii) administer oaths; and

736 (iv) take testimony and receive evidence concerning all matters within ~~[its]~~ the
737 division's jurisdiction.

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

740 (l) The division shall adopt, with the concurrence of the board, rules for the

741 administration of this chapter pursuant to Title 63, Chapter 46a, Utah Administrative
742 Rulemaking Act, that are not inconsistent with ~~[the provisions of]~~ this chapter or the
743 constitution and laws of this state or of the United States.

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

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

749 (o) The division may make available, at a reasonable cost determined by the division, a
750 list of the names and addresses of all persons licensed or certified by the division under this
751 chapter to the extent the information is a public record under Title 63, Chapter 2, Government
752 Records Access and Management Act.

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

- 757 (i) registration is limited to a specific proceeding;
- 758 (ii) registration is valid until the proceeding becomes final;
- 759 (iii) applicant pays a registration fee to the division;
- 760 (iv) applicant provides the applicant's name, address, occupation, and professional
761 credentials; and
- 762 (v) applicant provides a notarized statement that:

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

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

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

770 (3) The division shall be immune from any civil action or criminal prosecution for
771 initiating or assisting in any lawful investigation of the actions of or participating in any

772 disciplinary proceeding concerning a trainee or a person [~~registered,~~] licensed, [~~or~~] certified, or
773 registered as an expert witness pursuant to this chapter if the action is taken without malicious
774 intent and in the reasonable belief that the action was taken pursuant to the powers and duties
775 vested in the members of the division under this chapter.

776 Section 10. Section **61-2b-7** is amended to read:

777 **61-2b-7. Board established -- Composition -- Qualifications -- Meeting -- Chair --**
778 **Terms of office -- Expenses -- Quorum.**

779 (1) (a) There is established a Real Estate Appraiser Licensing and Certification Board
780 which shall consist of [~~seven~~] five regular members as follows:

781 (i) one state-licensed or state-certified appraiser who may be either a residential or
782 general licensee or certificate holder;

783 (ii) [~~three~~] one state-certified [~~appraisers~~] residential appraiser;

784 (iii) one state-certified general appraiser;

785 (iv) one member who is certified as either a state-certified residential appraiser or a
786 state-certified general appraiser; and

787 [~~(iii)~~] (v) [~~two members~~] one member of the general public[~~; and~~].

788 [~~(iv) the Commissioner of the Department of Financial Institutions or his designee.~~]

789 (b) The term of the longest serving general public member of the board as of May 2,
790 2005 terminates May 2, 2005.

791 (c) A state-licensed or state-certified appraiser may be appointed as an alternate
792 member of the board.

793 [~~(b) AH~~] (d) The governor shall appoint all members of the board [~~shall be appointed~~
794 ~~by the governor~~] with the consent of the Senate.

795 (2) (a) Except as required by Subsection (2)(b), as terms of current board members
796 expire, the governor shall appoint each new member or reappointed member to a four-year
797 term beginning on July 1.

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

802 (c) Upon the expiration of [~~his~~] a member's term, a member of the board shall continue

803 to hold office until the appointment and qualification of ~~[his]~~ the member's successor.

804 (d) ~~[No]~~ A person may not serve as a member of the board for more than two
805 consecutive terms.

806 (3) (a) When a vacancy occurs in the membership for any reason, the replacement shall
807 be appointed for the unexpired term.

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

809 (4) The public ~~[members]~~ member of the board may not be licensed or certified under
810 this chapter.

811 (5) The board shall meet at least quarterly to conduct its business. Public notice shall
812 be given for all board meetings.

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

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

819 ~~[(ii) Members]~~ (b) A member may decline to receive per diem and expenses for ~~[their]~~
820 the member's service.

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

825 ~~[(ii) State government officer and employee members may decline to receive per diem~~
826 ~~and expenses for their service.]~~

827 (8) (a) Three members of the board shall constitute a quorum for the transaction of
828 business.

829 (b) If a quorum of members is unavailable for any meeting, the alternate member of the
830 board, if any, shall serve as a regular member of the board for that meeting if with the presence
831 of the alternate member a quorum is present at the meeting.

832 Section 11. Section **61-2b-8** is amended to read:

833 **61-2b-8. Duties of board.**

834 The board shall provide technical assistance to the division relating to real estate
835 appraisal standards and real estate appraiser qualifications and shall have the ~~[following]~~
836 responsibilities, powers, and duties~~[:]~~ listed in this section.

837 (1) The board shall:

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

840 (b) determine the experience, education, and examination requirements appropriate for
841 persons certified under this chapter in compliance with the minimum requirements of Financial
842 Institutions Reform, Recovery, and Enforcement Act of 1989, and consistent with the intent of
843 this chapter; ~~[and]~~

844 (c) determine the appraisal related acts that may be performed by:

845 (i) a trainee on the basis of the trainee's education and experience;

846 (ii) clerical staff; and

847 (iii) a person who:

848 (A) does not hold a license or certification; and

849 (B) assists appraisers licensed or certified under this chapter in providing appraisal
850 services or consultation services;

851 (d) determine the procedures for a trainee notifying the division that the trainee will
852 assist persons licensed or certified under this chapter in providing appraisal services or
853 consultation services; and

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

856 (2) (a) The experience, education, and examination requirements established by the
857 board for persons ~~licensed or~~ certified under this chapter shall be the minimum criteria
858 established by the Appraiser Qualification Board of the Appraisal Foundation, unless, after
859 notice and a public hearing held in accordance with ~~[the provisions of]~~ Title 63, Chapter 46a,
860 Utah Administrative Rulemaking Act, the board ~~[has found]~~ finds that the minimum criteria
861 are not appropriate for state-licensed appraisers or state-certified appraisers in this state ~~[in~~
862 which case the board].

863 (b) If under Subsection (2)(a) the board makes a finding that the minimum criteria are
864 not appropriate, the board shall recommend appropriate criteria to the Legislature.

- 865 (3) The board shall:
- 866 (a) determine the continuing education requirements appropriate for the renewal of
- 867 licenses and certifications issued under this chapter[;];
- 868 (b) develop programs to upgrade and improve continuing education[;]; and
- 869 (c) recommend to the division available continuing education courses that meet the
- 870 requirements of this chapter.
- 871 (4) (a) The board shall consider the proper interpretation or explanation of the Uniform
- 872 Standards of Professional Appraisal Practice as required by Section 61-2b-27 when:
- 873 (i) an interpretation or explanation becomes necessary in the enforcement of this
- 874 chapter[~~;~~ ~~and when~~]; and
- 875 (ii) the Appraisal Standards Board of the Appraisal Foundation has not as yet issued
- 876 an interpretation or explanation[~~;~~ ~~and~~].
- 877 (b) If the conditions of Subsection (4)(a) are met, the board shall recommend to the
- 878 division the appropriate interpretation or explanation that the division should adopt as a rule
- 879 under this chapter.
- 880 (5) The board shall develop and establish or approve the examination specifications
- 881 and the minimum score required to pass the examinations for licensure and certification.
- 882 (6) The board shall review the:
- 883 (a) bank of questions and answers that comprise the examination for persons licensed
- 884 and certified under this chapter;
- 885 (b) procedure that is established for selecting individual questions from the bank of
- 886 questions for use in each scheduled examination; and
- 887 (c) questions in the bank of questions and the related answers to determine whether
- 888 they meet the examination specifications established by the board.
- 889 (7) (a) The board shall conduct administrative hearings, not delegated by the board to
- 890 an administrative law judge, in connection with all disciplinary proceedings under Sections
- 891 61-2b-30 and 61-2b-31 concerning [~~persons registered~~];
- 892 (i) a person licensed[;] or certified under this chapter; and [~~their~~]
- 893 (ii) the person's failure to comply with [~~the provisions of~~] this chapter and the Uniform
- 894 Standards of Professional Appraisal Practice as adopted under Section 61-2b-27.
- 895 (b) The board shall issue in each administrative hearing a decision that contains

896 findings of fact and conclusions of law.

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

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

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

908 Section 12. Section **61-2b-9** is amended to read:

909 **61-2b-9. Licensure or certification required -- Application.**

910 [~~Any~~] Except as provided in Subsections 61-2b-3(2) and 61-2b-6(2), any individual
911 who prepares or causes to be prepared an appraisal, an appraisal report, or a certified appraisal
912 report in this state, in order to lawfully engage in such activity in this state, shall:

913 (1) make application in writing for [~~registration;~~] licensure[;] or certification as
914 provided in this chapter in the form as the division may prescribe; and

915 (2) become [~~registered;~~] licensed[;] or certified under this chapter.

916 Section 13. Section **61-2b-10** is amended to read:

917 **61-2b-10. State-licensed appraiser -- Authority and qualifications.**

918 (1) A state-licensed appraiser is authorized to appraise complex and noncomplex 1-4
919 family residential units in this state having a transaction value permitted under the Financial
920 Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations.

921 (2) A state-licensed appraiser is [~~also~~] authorized to appraise vacant or unimproved
922 land having a transaction value permitted under the Financial Institutions Reform, Recovery,
923 and Enforcement Act of 1989, and related federal regulations that is utilized for 1-4 family
924 purposes or for which the highest and best use is 1-4 family purposes and subdivisions for
925 which a development analysis/appraisal is not necessary.

926 (3) A state-licensed appraiser may not issue a certified appraisal report.

- 927 (4) To qualify as a state-licensed appraiser, an applicant must:
- 928 (a) be of good moral character;
- 929 (b) pass the licensing examination with a satisfactory score as determined by the board;
- 930 (c) successfully complete not less than ~~[90]~~ 150 classroom hours in courses of study
- 931 approved by the board that relate to:
- 932 (i) real estate appraisal;
- 933 (ii) the Uniform Standards of Professional Appraisal Practice; and
- 934 (iii) ethical rules to be observed by a real estate appraiser as required by Section
- 935 61-2b-27; and
- 936 (d) possess the minimum number of hours of experience in real property appraisal as
- 937 established by rule.
- 938 (5) The courses of study under Subsection (4)(c) shall be conducted by:
- 939 ~~[(a) an accredited university, college, or junior college;]~~
- 940 ~~[(b) an approved appraisal society, institute, or association; or]~~
- 941 ~~[(c) such other school as the board may approve.]~~
- 942 (a) a college or university;
- 943 (b) a community or junior college;
- 944 (c) a real estate appraisal or real estate related organization;
- 945 (d) a state or federal agency or commission;
- 946 (e) a proprietary school;
- 947 (f) a provider approved by a state certification and licensing agency; or
- 948 (g) the Appraisal Foundation or its boards.
- 949 (6) The board shall require and pass upon proof necessary to determine the honesty,
- 950 competency, integrity, and truthfulness of each applicant.
- 951 Section 14. Section **61-2b-14** is amended to read:
- 952 **61-2b-14. State-certified residential appraiser -- Application.**
- 953 (1) Each applicant for certification as a residential appraiser shall provide to the
- 954 division evidence:
- 955 (a) of completion of the certification examination with a satisfactory score as
- 956 determined by the board;
- 957 ~~[(b) of satisfactory completion of not less than 120 classroom hours of education or~~

958 ~~their equivalent as required under this chapter;]~~
 959 ~~[(c) that the applicant possesses]~~
 960 (b) (i) of an associate degree or higher degree from an accredited:
 961 (A) college;
 962 (B) junior college;
 963 (C) community college; or
 964 (D) university; or
 965 (ii) of successfully passing a curriculum determined by rule of collegiate level subject
 966 matter courses from an accredited:
 967 (A) college;
 968 (B) junior college;
 969 (C) community college; or
 970 (D) university;
 971 (c) of satisfactory completion of not less than 200 classroom hours in a curriculum:
 972 (i) of specific appraisal education determined by rule made by the board; and
 973 (ii) that includes a course in the Uniform Standards of Professional Practice or its
 974 equivalent that has been approved by the Appraisal Qualifications Board of the federal
 975 Appraisal Foundation authorized by Title XI of the Financial Institutions Reform, Recovery,
 976 and Enforcement Act of 1989;
 977 (d) of the minimum number of hours of experience in real property appraisal as
 978 established by rule; and
 979 ~~[(d)]~~ (e) that the experience required under Subsection (1)(c)(d)[, or the equivalent,]
 980 was acquired within a reasonable period, as determined by [the board] rule, immediately
 981 preceding the filing of the application for certification.
 982 (2) Upon request by the division, the applicant shall ~~[also]~~ make available to the
 983 division for examination[-];
 984 (a) a detailed listing of the real estate appraisal reports[-] or file memoranda for each
 985 year for which experience is claimed [and a sample of appraisal reports which the applicant has
 986 prepared in the course of his appraisal practice.]; and
 987 ~~[(3) (a) To meet the 120 classroom hours required by Subsection (1)(b), an applicant~~
 988 ~~must successfully complete courses of study approved by the board which relate to real estate~~

989 appraisal theory and practice, including a course of study approved by the board which relates
 990 specifically to the Uniform Standards of Professional Appraisal Practice adopted under Section
 991 61-2b-27, to the ethical rules to be observed by a real estate appraiser, and to the provisions of
 992 this chapter.]

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

994 [~~(i) an accredited university, college, or junior college;~~]

995 [~~(ii) an approved appraisal society, institute, or association; or]~~

996 [~~(iii) such other school as may be approved by the board.]~~

997 (b) a sample selected by the division of appraisal reports that the applicant has prepared
 998 in the course of the applicant's appraisal practice.

999 (3) The classroom hours required by Subsection (1)(c) shall be provided by:

1000 (a) a college or university;

1001 (b) a community or junior college;

1002 (c) a real estate appraisal or real estate related organization;

1003 (d) a state or federal agency or commission;

1004 (e) a proprietary school;

1005 (f) a provider approved by a state certification and licensing agency; or

1006 (g) the Appraisal Foundation or its boards.

1007 Section 15. Section **61-2b-15** is amended to read:

1008 **61-2b-15. State-certified general appraiser -- Application -- Qualifications.**

1009 (1) Each applicant for certification as a general appraiser shall provide to the division
 1010 evidence:

1011 (a) of completion of the certification examination with a satisfactory score as
 1012 determined by the board;

1013 [~~(b) of satisfactory completion of not less than 180 classroom hours of education or~~
 1014 ~~their equivalent as required under this chapter;]~~

1015 [~~(c) that the applicant possesses]~~

1016 (b) (i) of a bachelors degree or higher degree from an accredited college or university;

1017 or

1018 (ii) of successfully passing a curriculum determined by rule of collegiate level subject
 1019 matter courses from an accredited;

- 1020 (A) college;
 1021 (B) junior college;
 1022 (C) community college; or
 1023 (D) university;
 1024 (c) of satisfactory completion of not less than 300 classroom hours in a curriculum:
 1025 (i) of specific appraisal education determined by rule; and
 1026 (ii) that includes a course in the Uniform Standards of Professional Practice or its
 1027 equivalent that has been approved by the Appraisal Qualifications Board of the Appraisal
 1028 Foundation authorized by Title XI of the Financial Institutions Reform, Recovery, and
 1029 Enforcement Act of 1989;
 1030 (d) of the minimum number of hours of experience in real property appraisal as
 1031 established by rule; and
 1032 ~~[(d)]~~ (e) that the experience required under Subsection (1)~~[(c)]~~~~[(d)]~~, or the equivalent,
 1033 was] is acquired within a reasonable period, as determined by [the board] rule, immediately
 1034 preceding the filing of the application for certification.
 1035 ~~[(2) To meet the 180 classroom hours required by Subsection (1)(b), an applicant must~~
 1036 ~~successfully complete courses of study approved by the board which relate to real estate~~
 1037 ~~appraisal theory and practice, including a course of study approved by the board which relates~~
 1038 ~~specifically to the Uniform Standards of Professional Appraisal Practice adopted under Section~~
 1039 ~~61-2b-27, to the ethical rules to be observed by a real estate appraiser, and to the provisions of~~
 1040 ~~this chapter.]~~
 1041 (2) Upon request by the division, the applicant shall make available to the division for
 1042 examination:
 1043 (a) a detailed listing of the real restate appraisal reports or file memoranda for each
 1044 year for which experience is claimed; and
 1045 (b) a sample selected by the division of appraisal reports that the applicant has prepared
 1046 in the course of the applicant's appraisal practice.
 1047 (3) The classroom hours required by Subsection (1)(c) shall be provided by:
 1048 (a) a college or university;
 1049 (b) a community or junior college;
 1050 (c) a real estate appraisal or real estate related organization;

- 1051 (d) a state or federal agency or commission;
 1052 (e) a proprietary school;
 1053 (f) a provider approved by a state certification and licensing agency; or
 1054 (g) the Appraisal Foundation or its boards.

1055 Section 16. Section **61-2b-17** is amended to read:

1056 **61-2b-17. State-certified and state-licensed appraisers -- Restrictions on use of**
 1057 **terms -- Conduct prohibited or required -- Trainee.**

1058 (1) (a) The terms "state-certified general appraiser," "state-certified residential
 1059 appraiser," and "state-licensed appraiser[;]" [~~"state-registered appraiser," and "senior~~
 1060 ~~appraiser"~~];

1061 (i) may only be used to refer to an individual who is certified[;] or licensed[; ~~or~~
 1062 ~~registered~~] under this chapter; and

1063 (ii) may not be used following, or immediately in connection with, the name or
 1064 signature of a firm, partnership, corporation, or group, or in any manner that it might be
 1065 interpreted as referring to a firm, partnership, corporation, group, or to anyone other than the
 1066 individual who is certified[; ~~registered~~;] or licensed under this chapter.

1067 (b) [~~This~~] The requirement [~~shall~~] of this Subsection (1) may not be construed to
 1068 prevent a state-certified general appraiser from signing an appraisal report on behalf of a
 1069 corporation, partnership, firm, or group practice if it is clear that only the individual is certified
 1070 and that the corporation, partnership, firm, or group practice is not certified.

1071 (c) Except as provided in Section 61-2b-25, [~~no~~] a certificate[; ~~registration~~;] or license
 1072 may not be issued under [~~the provisions of~~] this chapter to a corporation, partnership, firm, or
 1073 group.

1074 (2) (a) [~~No~~] A person other than a state-certified general appraiser or state-certified
 1075 residential appraiser, may not assume or use any title, designation, or abbreviation likely to
 1076 create the impression of certification in this state as a real estate appraiser.

1077 (b) [~~No~~] A person other than a state-licensed appraiser may not assume or use any title,
 1078 designation, or abbreviation likely to create the impression of licensure in this state as a real
 1079 estate appraiser.

1080 (3) (a) Only an individual who has qualified under the certification requirements of
 1081 Sections 61-2b-14 and 61-2b-15 is authorized to prepare and sign a certified appraisal report

1082 relating to real estate or real property in this state.

1083 (b) If a certified appraisal report is prepared and signed by a state-certified residential
1084 appraiser, the certified appraisal report shall state, immediately following the signature on the
1085 report, "State-Certified Residential Appraiser."

1086 (c) If a certified appraisal report is prepared and signed by a state-certified general
1087 appraiser, the certified appraisal report shall state, immediately following the signature on the
1088 report, "State-Certified General Appraiser."

1089 (d) An appraisal report prepared by a state-licensed appraiser shall state, immediately
1090 following the signature on the report, "State-Licensed Appraiser."

1091 (e) When signing a certified appraisal report, a state-certified appraiser shall also place
1092 on the report, immediately below ~~[his signature, a seal on the report showing his]~~ the
1093 state-certified appraiser's signature the state-certified appraiser's certificate number and its
1094 expiration date.

1095 (f) A state-certified residential appraiser may not prepare a certified appraisal report
1096 outside ~~[his area of expertise]~~ the state-certified residential appraiser's authority as defined in
1097 Section 61-2b-13. ~~[However, a state-certified residential appraiser may prepare an appraisal~~
1098 ~~report for any type property for which a state-licensed appraiser is authorized to appraise under~~
1099 ~~Section 61-2b-10.]~~

1100 (g) A state-licensed appraiser ~~[or state-registered appraiser]~~ who assisted in the
1101 preparation of a certified appraisal report is authorized to cosign the certified appraisal report.

1102 (4) A person who has not qualified under either Section 61-2b-14 or 61-2b-15 may not
1103 describe or refer to any appraisal or appraisal report relating to real estate or real property in
1104 this state by the terms "certified appraisal" or "certified appraisal report."

1105 (5) If a trainee assists a state-licensed appraiser or a state-certified appraiser in the
1106 preparation of an appraisal report, the appraisal report shall disclose:

1107 (a) the trainee's name; and

1108 (b) the extent to which the trainee assists in the preparation of the appraisal report.

1109 Section 17. Section **61-2b-18** is amended to read:

1110 **61-2b-18. Application for certification or licensure -- Registration as an expert**
1111 **witness.**

1112 (1) ~~[Applications for]~~ An application for the following shall be sent to the division on

1113 forms approved by the division:

1114 (a) original certification[;] or licensure;

1115 (b) registration as an expert witness[~~;~~ ~~or licensure~~]; and

1116 (c) renewal of certification[~~;~~ ~~registration~~]; or licensure [~~shall be sent to the division on~~
1117 ~~forms approved by the division~~].

1118 (2) The payment of the appropriate fee, as fixed by the division with the concurrence of
1119 the board in accordance with Section 63-38-3.2, must accompany [~~all applications~~] an
1120 application for:

1121 (a) registration as an expert witness;

1122 (b) original certification[~~;~~ ~~registration as an expert witness~~]; or licensure; and

1123 (c) renewal of certification[~~;~~ ~~registration~~]; or licensure.

1124 (3) [(a)] At the time of filing an application [~~for original certification, registration as an~~
1125 ~~expert witness, or licensure or for renewal of certification, registration, or licensure,~~] described
1126 in Subsection (1), each applicant shall:

1127 (a) sign a pledge to comply with the Uniform Standards of Professional Appraisal
1128 Practice and the ethical rules to be observed by an appraiser that are established under Section
1129 61-2b-27 for certified[~~;~~ ~~registered~~]; or licensed appraisers or registered expert witnesses under
1130 this chapter[;]; and

1131 (b) [~~Each applicant shall also~~] certify that [~~he~~] the applicant understands the types of
1132 misconduct, as set forth in this chapter, for which disciplinary proceedings may be initiated
1133 against persons certified[~~;~~ ~~registered~~]; or licensed under this chapter.

1134 Section 18. Section **61-2b-19** is amended to read:

1135 **61-2b-19. Expiration of license or certification.**

1136 (1) The initial [~~registration~~]; license[;] or certification issued under this chapter expires
1137 on the expiration date indicated on the [~~registration~~]; license[;] or certificate.

1138 (2) A renewal [~~registration~~]; license[;] or certification issued under this chapter expires
1139 two years from the date of issuance [~~except as provided in Section 61-2b-10.5~~].

1140 (3) The scheduled expiration date of the [~~registration~~]; license[;] or certification shall
1141 appear on the [~~registration~~]; license[;] or certification document and no other notice of its
1142 expiration need be given to its holder.

1143 Section 19. Section **61-2b-20** is amended to read:

1144 **61-2b-20. Renewal of license or certification.**

1145 (1) To obtain a renewal of a [~~registration,~~] license[;] or certification under this chapter,
1146 the holder of a current, valid [~~registration,~~] license[;] or certification shall, in compliance with
1147 procedures established by the division and the board, make application and pay the prescribed
1148 fee to the division prior to the expiration date of the [~~registration,~~] license[;] or certification
1149 then held.

1150 (2) The application for renewal of a [~~registration,~~] license[;] or certification shall be
1151 accompanied by evidence in the form prescribed by the division of having completed the
1152 continuing education requirements for renewal specified in this chapter.

1153 (3) A [~~registration,~~] license[;] or certification expires if it is not renewed on or before
1154 its expiration date.

1155 (a) For a period of 30 days after the expiration date, a [~~registration,~~] license[;] or
1156 certification may be reinstated upon:

1157 (i) payment of a renewal fee and a late fee determined by the division and the board [~~in~~
1158 ~~addition to~~]; and

1159 (ii) satisfying the continuing education requirements specified in Section 61-2b-40.

1160 (b) After the 30-day period described in Subsection (3)(a), and until six months after
1161 the expiration date, the [~~registration,~~] license[;] or certification may be reinstated by:

1162 (i) paying a renewal fee and a reinstatement fee determined by the division and the
1163 board [~~in addition to~~]; and

1164 (ii) satisfying the continuing education requirements specified in Section 61-2b-40.

1165 (4) A person who does not renew [~~his registration,~~] that person's license[;] or
1166 certification within six months after the expiration date shall be relicensed or recertified as
1167 prescribed for an original application.

1168 Section 20. Section **61-2b-21** is amended to read:

1169 **61-2b-21. Denial of licensure or certification.**

1170 The division may, upon compliance with [~~the provisions of~~] Title 63, Chapter 46b,
1171 Administrative Procedures Act, deny the issuance of a [~~registration,~~] license[;] or certification
1172 to an applicant on any of the grounds enumerated in this chapter.

1173 Section 21. Section **61-2b-22** is amended to read:

1174 **61-2b-22. Licensing, certification, or expert witness requirements for**

1175 **nonresidents -- Temporary license or certificate -- Revocation.**

1176 (1) Each applicant for registration as an expert witness, licensure, or certification under
1177 this chapter who is not a resident of this state shall submit with [~~his~~] the applicant's application
1178 an irrevocable consent that service of process upon [~~him~~] the applicant may be made by
1179 delivery of the process to the director of the division if, in an action against the applicant in a
1180 court of this state arising out of the applicant's activities as a real estate appraiser in this state,
1181 the plaintiff cannot, in the exercise of due diligence, obtain personal service upon the applicant.

1182 (2) A nonresident of this state who has complied with the provisions of Subsection (1)
1183 may obtain a registration[;] as an expert witness, a license, or a certification in this state by
1184 complying with all of the provisions of this chapter relating to registration of expert witnesses,
1185 licensure, or certification.

1186 (3) A nonresident of this state who has complied with the provisions of Subsection (1)
1187 may obtain a temporary license or certification to perform a contract relating to the appraisal of
1188 real estate or real property in this state. To qualify for the issuance of a temporary license or
1189 certification, an applicant must:

1190 (a) submit an application on a form approved by the division;

1191 (b) submit evidence that [~~he~~] the applicant is licensed or certified in the state in which
1192 [~~he~~] the applicant primarily conducts business;

1193 (c) certify that no formal charges alleging violation of state appraisal licensing or
1194 certification laws have been filed against the applicant by the applicant's state of domicile; and

1195 (d) pay an application fee in an amount established by the division with the
1196 concurrence of the board.

1197 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1198 division, with the concurrence of the board, shall make rules establishing the duration of a
1199 temporary permit and procedures for renewal of a temporary permit.

1200 (5) A temporary permit issued under this section shall be immediately and
1201 automatically revoked if the appraiser's license or certification is suspended or revoked in the
1202 appraiser's state of domicile.

1203 (6) Any person whose license or certification has been revoked under Subsection (5) is
1204 entitled to a postrevocation hearing to challenge the revocation. The hearing shall be
1205 conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

1206 Section 22. Section **61-2b-24** is amended to read:

1207 **61-2b-24. Expert witness, licensing, or certification documents -- Assigned**
1208 **number to be used on contracts -- Surrender of documents upon suspension.**

1209 (1) The division shall issue to each person registered as an expert witness, licensed, or
1210 certified under this chapter a document:

1211 (a) stating that the person [~~has been~~] is registered as an expert witness, licensed, or
1212 certified under this chapter; and

1213 (b) specifying the expiration date of the [~~registration,~~] license[;] or certification.

1214 (2) (a) A registration[;] as an expert witness, a license, or a certification document
1215 issued under this chapter shall bear a registration, license, or certification number assigned by
1216 the division.

1217 (b) The assigned number shall be used in all statements of qualification, contracts, or
1218 other instruments used by the registration, license, or certificate holder when reference is made
1219 to his status as being registered, licensed, or certified under this chapter.

1220 (3) (a) [~~Registration, licensing, and certification~~] Licensing, certification, and expert
1221 witness registration documents remain the property of the state.

1222 (b) Upon any suspension or revocation of a [~~registration,~~] license[;] or certification
1223 under this chapter, the individual holding the respective documents shall immediately return
1224 the document to the division[; ~~together with any stamps or seals used for certified appraisal~~
1225 ~~reports~~].

1226 [~~(4) The division shall maintain and keep open for public inspection during office~~
1227 ~~hours a complete and properly indexed record of all registration, licensing, and certification~~
1228 ~~documents issued, registrations, licenses, and certifications renewed, and registrations,~~
1229 ~~licenses, and certifications revoked, cancelled, or suspended under the provisions of this~~
1230 ~~chapter. A copy of any such record shall be made available to the public, upon application to~~
1231 ~~the division, at a price per copy as fixed by the division.]~~

1232 Section 23. Section **61-2b-26** is amended to read:

1233 **61-2b-26. Principal place of business -- Display of documents -- Notify of changes**
1234 **-- Nonresidents.**

1235 (1) Each person [~~registered,~~] licensed[;] or certified under this chapter shall designate
1236 and maintain a principal place of business and shall conspicuously display [~~his registration,~~]

1237 the person's license[;] or certification.

1238 (2) (a) Upon any change of [~~his~~] a person's principal business location or home
1239 address, a person [~~registered;~~] licensed[;] or certified under this chapter shall promptly send the
1240 division a signed statement notifying the division of any change within ten business days of the
1241 change.

1242 (b) Upon any change of an expert witness's address listed on the expert witness's
1243 registration application, the expert witness shall promptly send the division a signed statement
1244 notifying the division of any change within ten business days of the change.

1245 (3) A nonresident [~~registrant, licensee, or certificate holder~~] licensee or certificate
1246 holder, or a nonresident registered as an expert witness is not required to maintain a place of
1247 business in this state if [~~he~~] the nonresident maintains an active place of business in [~~his~~] the
1248 nonresident's state of domicile.

1249 Section 24. Section **61-2b-27** is amended to read:

1250 **61-2b-27. Professional conduct -- Uniform standards.**

1251 (1) (a) Each person [~~registered;~~] licensed, [~~or~~] certified, or registered as an expert
1252 witness under this chapter must comply with generally accepted standards of professional
1253 appraisal practice and generally accepted ethical rules to be observed by a real estate appraiser.

1254 (b) Generally accepted standards of professional appraisal practice are [~~currently~~]
1255 evidenced by the Uniform Standards of Professional Appraisal Practice promulgated by the
1256 Appraisal Foundation.

1257 (c) After a public hearing held in accordance with [~~the provisions of~~] Title 63, Chapter
1258 46a, Utah Administrative Rulemaking Act, the board shall adopt and may make modifications
1259 of or additions to the Uniform Standards of Professional Appraisal Practice as the board
1260 considers appropriate to comply with the Financial Institutions Reform, Recovery, and
1261 Enforcement Act of 1989.

1262 (2) If the Appraisal Standards Board of the Appraisal Foundation modifies the Uniform
1263 Standards of Professional Appraisal Practice, issues supplemental appraisal standards which it
1264 considers appropriate for residential real estate appraisers or for general real estate appraisers,
1265 or issues ethical rules to be observed by a real estate appraiser and requests the board to
1266 consider the adoption of the modified or supplemental standards or ethical rules, the board
1267 shall schedule a public hearing pursuant to [~~the provisions of~~] Title 63, Chapter 46a, Utah

1268 Administrative Rulemaking Act, for the purpose of deciding whether or not [it] the board
1269 should require the modified or supplemental standards or the ethical rules to be observed by
1270 persons [~~registered,~~] licensed, [~~or~~] certified, or registered as an expert witness under this
1271 chapter.

1272 (3) If, after the notice and public hearing, the board finds that the modified or
1273 supplemental standards or the ethical rules issued by the Appraisal Standards Board of the
1274 Appraisal Foundation are appropriate for persons [~~registered,~~] licensed, [~~or~~] certified, or
1275 registered as an expert witness under this chapter, the board shall recommend rules requiring
1276 all persons [~~registered,~~] licensed, [~~or~~] certified, or registered as an expert witness under this
1277 chapter to observe the modified or supplemental standards or the ethical rules.

1278 [~~(4) A copy of each such rule adopted by the division shall be sent to the business~~
1279 ~~address of each person currently registered, licensed, or certified under this chapter.]~~

1280 Section 25. Section **61-2b-28** is amended to read:

1281 **61-2b-28. Enforcement -- Investigation -- Orders -- Hearings.**

1282 (1) The division may investigate the actions of any person [~~registered,~~] licensed[;] or
1283 certified under this chapter, [~~or~~] an applicant for [~~registration,~~] licensure[;] or certification, or
1284 an applicant for renewal of licensure or certification, and may initiate an agency action in
1285 accordance with Title 63, Chapter 46b, Administrative Procedures Act, to:

1286 (a) impose disciplinary action on a person [~~registered,~~] licensed[;] or certified under
1287 this chapter; or [~~to~~]

1288 (b) deny issuance to an applicant of an original or renewal [~~registration,~~] license[;] or
1289 certification.

1290 (2) (a) The division may subpoena witnesses, take evidence, and require by subpoena
1291 duces tecum the production of books, papers, contracts, records, other documents, or
1292 information relevant to the investigation described in Subsection (1).

1293 (b) The division may serve subpoenas by certified mail.

1294 (c) Each failure to respond to a subpoena by a person [~~registered,~~] licensed[;] or
1295 certified under this chapter is considered to be a separate violation of this chapter.

1296 (3) (a) If the director has reason to believe that any person has been or is engaging in
1297 acts constituting violations of this chapter, and if it appears to the director that it would be in
1298 the public interest to stop these acts, [~~he~~] the director shall issue and serve upon the person an

1299 order directing that person to cease and desist from those acts.

1300 (b) Within ten days after receiving the order, the person upon whom the order is served
1301 may request an adjudicative proceeding.

1302 (c) Pending the hearing, the cease and desist order shall remain in effect.

1303 (d) If a request for hearing is made, the division shall follow the procedures and
1304 requirements of Title 63, Chapter 46b, Administrative Procedures Act.

1305 (4) (a) After the hearing, if the board agrees that the acts of the person violate this
1306 chapter, the board shall issue an order making the cease and desist order permanent.

1307 (b) If no hearing is requested and if the person fails to cease the acts, or after
1308 discontinuing the acts, again commences the acts, the director shall commence an action in the
1309 name of the Department of Commerce and Division of Real Estate, in the district court in the
1310 county in which the acts occurred or where the person resides or carries on business, to enjoin
1311 and restrain the person from violating this chapter.

1312 (5) The remedies and action provided in this section do not limit, interfere with, or
1313 prevent the prosecution of any other remedies or actions including criminal proceedings.

1314 Section 26. Section **61-2b-29** is amended to read:

1315 **61-2b-29. Disciplinary action -- Grounds.**

1316 (1) The board may order disciplinary action against any person [~~registered,~~] licensed[;]
1317 or certified under this chapter. [~~Board~~] On the basis of any of the grounds listed in Subsection
1318 (2) for disciplinary action, board action may include:

1319 (a) revoking, suspending, or placing a person's [~~registration,~~] license[;] or certification
1320 on probation[;];

1321 (b) denying a person's original or renewal [~~registration,~~] license[;] or certification[;];

1322 (c) ordering remedial education[;]; and

1323 (d) imposing a civil penalty upon a person not to exceed \$1,000 per violation [~~based on~~
1324 ~~any of the following grounds for disciplinary action~~].

1325 [(1)] (2) The following are grounds for disciplinary action under this section:

1326 (a) procuring or attempting to procure a [~~registration,~~] license[;] or certification under
1327 this chapter by fraud or by making a false statement, submitting false information, or making a
1328 material misrepresentation in an application filed with the division;

1329 [(2)] (b) paying money or attempting to pay money other than the fees provided for by

1330 this chapter to any member or employee of the division to procure a [~~registration,~~] license[;] or
1331 certification under this chapter;

1332 [~~(3)~~] (c) an act or omission in the practice of real estate appraising [~~which~~] that
1333 constitutes dishonesty, fraud, or misrepresentation;

1334 [~~(4)~~] (d) entry of a judgment against a [~~registrant,~~] licensee[;] or certificate holder on
1335 grounds of fraud, misrepresentation, or deceit in the making of an appraisal of real estate;

1336 [~~(5)~~] (e) a guilty plea to a criminal offense involving moral turpitude [~~which~~] that is
1337 held in abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo
1338 contendere, of a criminal offense involving moral turpitude;

1339 [~~(6)~~] (f) engaging in the business of real estate appraising under an assumed or
1340 fictitious name not properly registered in this state;

1341 [~~(7)~~] (g) paying a finder's fee or a referral fee to a person not [~~registered,~~] licensed[;] or
1342 certified under this chapter in connection with an appraisal of real estate or real property in this
1343 state;

1344 [~~(8)~~] (h) making a false or misleading statement in that portion of a written appraisal
1345 report that deals with professional qualifications or in any testimony concerning professional
1346 qualifications;

1347 [~~(9)~~] (i) violating or disregarding any provision of this chapter, an order of the board, or
1348 any rule issued under this chapter;

1349 [~~(10)~~] (j) violation of the confidential nature of governmental records to which a person
1350 registered, licensed, or certified under this chapter gained access through employment or
1351 engagement as an appraiser by a governmental agency;

1352 [~~(11)~~] (k) acceptance of a contingent fee for performing an appraisal as defined in
1353 Subsection 61-2b-2(1)(a) if in fact the fee is or was contingent upon the appraiser reporting a
1354 predetermined analysis, opinion, or conclusion or is or was contingent upon the analysis,
1355 opinion, conclusion, or valuation reached or upon the consequences resulting from the
1356 appraisal assignment;

1357 [~~(12)~~] (l) unprofessional conduct as defined by statute or rule; or

1358 [~~(13)~~] (m) any other conduct [~~which~~] that constitutes dishonest dealing.

1359 Section 27. Section **61-2b-30.5** is amended to read:

1360 **61-2b-30.5. Reinstatement of license, certification -- Expert witness -- Trainee.**

1361 (1) An individual who has had an appraiser registration, license, or certification
1362 revoked under this chapter may not apply for renewal of that registration, license, or
1363 certification, but may apply for licensure or certification as prescribed for an original license or
1364 certification subject to the limitations in Subsection (2).

1365 (2) An applicant for licensure, certification, or for registration as an expert witness
1366 under Subsection (1):

1367 (a) may not apply for licensure or certification until at least five years after the date of
1368 revocation of the applicant's original [~~registration,~~] license[;] or certification; and

1369 (b) is not entitled to credit for experience gained prior to the date of revocation in
1370 determining whether the applicant meets the experience requirement for licensure or
1371 certification.

1372 (3) A person whose license or certification is revoked may not act as a trainee until at
1373 least four years after the day on which the person's license or certification is revoked.

1374 Section 28. Section **61-2b-31** is amended to read:

1375 **61-2b-31. Disciplinary hearing process.**

1376 (1) Before disciplinary action may be taken by the board against a [~~registrant,~~]
1377 licensee[;] or certificate holder, the division shall notify the [~~registrant,~~] licensee[;] or
1378 certificate holder and commence an adjudicative proceeding.

1379 (2) If, after the hearing, the board determines that the [~~registrant,~~] licensee[;] or
1380 certificate holder has violated this chapter, the board may impose disciplinary action by written
1381 order as provided in Section 61-2b-29.

1382 (3) The board may conduct hearings with the assistance of an administrative law judge
1383 or may delegate hearings to an administrative law judge. If the hearing is delegated by the
1384 board to an administrative law judge, the judge shall submit written findings of fact,
1385 conclusions of law, and a recommended order to the board for its consideration.

1386 (4) (a) Any applicant, [~~registrant,~~] licensee, certificate holder, or person aggrieved,
1387 including the complainant, may obtain judicial review of any adverse ruling, order, or decision
1388 of the board. Any appeal shall be governed by the Utah Rules of Appellate Procedure.

1389 (b) If the applicant, [~~registrant,~~] licensee, or certificate holder prevails in the appeal and
1390 the court finds that the state action was undertaken without substantial justification, the court
1391 may award reasonable litigation expenses to the applicant, [~~registrant,~~] licensee, or certificate

1392 holder as provided under Title 78, Chapter 27a, Small Business Equal Access to Justice Act.

1393 Section 29. Section **61-2b-33** is amended to read:

1394 **61-2b-33. Criminal penalty -- Licensure or certification following conviction.**

1395 (1) Any person required by this chapter to be [~~registered;~~] licensed[;] or certified who
1396 engages in real estate appraisal activity in this state without obtaining a [~~registration;~~] license[;]
1397 or certification or who violates any provision of this chapter;

1398 (a) is guilty of a class B misdemeanor punishable by a \$1,000 fine and up to six months
1399 in jail; and

1400 (b) shall be ineligible to apply for a [~~registration;~~] license[;] or certificate for a period
1401 of one year from the date of [~~his~~] the person's conviction of the offense.

1402 (2) The division, in its discretion, may grant a [~~registration;~~] license[;] or certification
1403 to a person ineligible pursuant to Subsection (1) within the one-year period upon application
1404 and after an administrative hearing.

1405 Section 30. Section **61-2b-34** is amended to read:

1406 **61-2b-34. Recordkeeping requirements.**

1407 (1) [~~All persons registered;~~] Subject to Subsection (2), a person licensed[;] or certified
1408 under this chapter and a person required to be registered under this chapter before May 3, 2001,
1409 shall retain for a period of five years the original or a true copy of:

1410 (a) each written contract engaging [~~his~~] the person's services for real estate or real
1411 property appraisal work;

1412 (b) each appraisal report prepared or signed by [~~him~~] the person; and

1413 (c) all supporting data assembled and formulated by the appraiser in preparing each
1414 appraisal report.

1415 (2) The five-year period for retention of records is applicable to each engagement of
1416 the services of the appraiser and begins upon the date of the delivery of each appraisal report to
1417 the client unless, within the five-year period, the appraiser is notified that the appraisal or the
1418 appraisal report is involved in litigation, in which event the records must be maintained for the
1419 longer of:

1420 (a) five years[;]; or

1421 (b) two years following the date of the final disposition of the litigation[~~, whichever is~~
1422 ~~longer~~].

1423 (3) Upon reasonable notice, ~~[all persons registered,]~~ a person licensed[;] or certified
1424 under this chapter and a person required to be registered under this chapter before May 3, 2001,
1425 shall make all records required to be maintained under this chapter available to the division for
1426 inspection and copying.

1427 Section 31. Section **61-2b-36** is amended to read:

1428 **61-2b-36. Contingent fees.**

1429 (1) A person ~~[registered,]~~ licensed[;] or certified under this chapter who enters into an
1430 agreement to perform an appraisal as defined in Subsection 61-2b-2(1)(a) may not accept a
1431 contingent fee.

1432 (2) A person ~~[registered,]~~ licensed[;] or certified under this chapter who enters into an
1433 agreement to provide consultation services as defined in Subsection
1434 61-2b-2~~[(6)(a)(i)](1)(f)(i)(A)~~ may be paid a fixed fee or a contingent fee.

1435 (3) (a) If a person ~~[registered,]~~ licensed[;] or certified under this chapter enters into an
1436 agreement to perform consultation services for a contingent fee, this fact shall be clearly stated
1437 in each oral statement.

1438 (b) In addition to the requirements of Subsection (3)(a), if a person ~~[registered,]~~
1439 licensed[;] or certified under this chapter prepares a written consultation report or summary,
1440 letter of transmittal, or certification statement for a contingent fee, the person shall clearly state
1441 in the report, summary, letter of transmittal, or certification statement that the report is prepared
1442 under a contingent fee arrangement.

1443 Section 32. Section **61-2b-38** is amended to read:

1444 **61-2b-38. Division to publish roster of appraisers.**

1445 The division shall prepare and issue at least once each calendar year a roster of
1446 appraisers containing the information required by the Federal Financial Institutions
1447 Examination Council. ~~[A copy of the roster shall be made available to the public, upon
1448 application to the division, at a reasonable price per copy, as determined by the division.]~~ The
1449 division shall transmit the roster to the Federal Financial Institutions Examinations Council at
1450 least annually.

1451 Section 33. Section **61-2b-39** is amended to read:

1452 **61-2b-39. License history.**

1453 The division may, upon payment of a fee in an amount specified in rule, issue to any

1454 person a verified license history [~~to~~] of:

1455 (1) any person [~~registered,~~] licensed[;] or certified under this chapter[;] or

1456 (2) any person previously registered, licensed, or certified under this chapter.

1457 Section 34. Section **61-2b-40** is amended to read:

1458 **61-2b-40. Continuing education requirements.**

1459 (1) As a prerequisite to renewal of a [~~registration,~~] license[;] or certification, the
1460 applicant for renewal shall present evidence satisfactory to the division of having met the
1461 continuing education requirements of this section.

1462 (2) For any person [~~registered,~~] licensed[;] or certified under this chapter, the
1463 continuing education requirement for renewal of [~~registration,~~] licensure[;] or certification shall
1464 be the completion by the applicant, during the two-year period immediately preceding the filing
1465 of an application for renewal, of not less than 28 classroom hours of instruction in courses or
1466 seminars that have received the approval of the board.

1467 (3) The division may adopt rules for the implementation of [~~the provisions of~~] this
1468 section to assure that each person renewing [~~his registration,~~] that person's license[;] or
1469 certification under this chapter has a working knowledge of current real estate appraisal
1470 theories, practices, and techniques that will enable the person to provide competent real estate
1471 appraisal services to the members of the public with whom that person deals in a professional
1472 relationship under the authority of that person's [~~registration,~~] license[;] or certificate.

1473 (4) An amendment or repeal of a rule adopted by the division under this section shall
1474 not operate to deprive a person of credit toward renewal of that person's [~~registration,~~]
1475 license[;] or certification for any course of instruction that is successfully completed by the
1476 applicant prior to the date of the amendment or repeal of the rule.

1477 (5) In lieu of meeting the requirements set forth in Subsection (2) and applicable rules,
1478 an applicant for renewal may satisfy all or part of the continuing education requirements by
1479 presenting evidence of the following:

1480 (a) completion of an educational program of study determined by the board to be
1481 equivalent, for continuing education purposes, to courses or seminars approved by the board; or

1482 (b) participation other than as a student in educational processes and programs
1483 approved by the board that relate to real property appraisal theory, practices, or techniques
1484 including teaching, program development, and preparation of textbooks, monographs, articles,

1485 and other instructional materials.

1486 (6) The board shall develop and propose to the division rules for the implementation of
1487 ~~[the provisions of]~~ this section to assure that a person who renews ~~[his registration,]~~ that
1488 person's license~~;~~ or certification has a working knowledge of current real estate appraisal
1489 theories, practices, and techniques that will enable the person to provide competent real estate
1490 appraisal services to the members of the public with whom that person deals in a professional
1491 relationship under the authority of that person's ~~[registration,]~~ license~~;~~ or certification. These
1492 rules shall prescribe:

1493 (a) policies and procedures to be followed in obtaining board approval of courses of
1494 instruction and seminars;

1495 (b) standards, policies, and procedures to be used by the division in evaluating an
1496 applicant's claims of equivalency; and

1497 (c) standards, monitoring methods, and systems for recording attendance to be
1498 employed by course and seminar sponsors as a prerequisite to division approval of courses and
1499 seminars for credit.

1500 (7) (a) A person whose ~~[registration,]~~ license~~;~~ or certification has been revoked or
1501 suspended as the result of a disciplinary action taken by the board may not apply for
1502 reinstatement unless the person presents evidence of completion of the continuing education
1503 requirement that is provided in this chapter for renewal.

1504 (b) The continuing education required under Subsection (7)(a) shall not be imposed
1505 upon an applicant for reinstatement who has been required by the division to successfully
1506 complete the examination for licensure or certification required by Section 61-2b-20 as a
1507 condition to reinstatement.

1508 Section 35. Section **61-2c-102** is amended to read:

1509 **61-2c-102. Definitions.**

1510 (1) As used in this chapter:

1511 ~~[(1)]~~ (a) "Affiliate" means an individual or an entity that directly, or indirectly through
1512 one or more intermediaries, controls or is controlled by, or is under common control with, a
1513 specified individual or entity.

1514 ~~[(2)]~~ (b) "Applicant" means an individual or entity applying for a license under this
1515 chapter.

1516 ~~[(3)]~~ (c) "Associate lending manager" means a person who:

1517 ~~[(a)]~~ (i) has qualified under this chapter as a principal lending manager; and

1518 ~~[(b)]~~ (ii) works by or on behalf of another principal lending manager in transacting the

1519 business of residential mortgage loans.

1520 ~~[(4)]~~ (d) "Branch office" means a licensed entity's office:

1521 ~~[(a)]~~ (i) for the transaction of the business of residential mortgage loans regulated

1522 under this chapter; and

1523 ~~[(b)]~~ (ii) other than the main office of the licensed entity.

1524 ~~[(5)(a)]~~ (e)(i) "Business of residential mortgage loans" means for compensation to:

1525 ~~[(i)]~~ (A) make or originate a residential mortgage loan;

1526 ~~[(ii)]~~ (B) directly or indirectly solicit, place, or negotiate a residential mortgage loan for

1527 another; or

1528 ~~[(iii)]~~ (C) render services related to the origination ~~[or funding]~~ of a residential

1529 mortgage loan including:

1530 ~~[(A)]~~ (I) taking applications; and

1531 ~~[(B)]~~ (II) communicating with the borrower and lender.

1532 ~~[(b)]~~ (ii) "Business of residential mortgage loans" does not include:

1533 ~~[(i)]~~ (A) the performance of clerical functions such as:

1534 ~~[(A)]~~ (I) gathering information related to a residential mortgage loan on behalf of the

1535 prospective borrower or a person licensed under this chapter; or

1536 ~~[(B)]~~ (II) requesting or gathering information, word processing, sending

1537 correspondence, or assembling files by an individual who works under the instruction of a

1538 person licensed under this chapter; ~~[or]~~

1539 ~~[(ii)]~~ (B) ownership of an entity that engages in the business of residential mortgage

1540 loans if the owner does not personally perform the acts listed in Subsection ~~[(5)(a):]~~ (1)(e)(i);

1541 (C) acting as a loan wholesaler;

1542 (D) acting as an account executive for a loan wholesaler;

1543 (E) acting as a loan underwriter;

1544 (F) acting as a loan closer; or

1545 (G) funding a loan.

1546 ~~[(6)]~~ (f) "Closed-end" means a loan with a fixed amount borrowed and which does not

1547 permit additional borrowing secured by the same collateral.

1548 ~~[(7)]~~ (g) "Commission" means the Residential Mortgage Regulatory Commission
1549 created in Section 61-2c-104.

1550 ~~[(8)]~~ (h) "Compensation" means anything of economic value that is paid, loaned,
1551 granted, given, donated, or transferred to an individual or entity for or in consideration of:

1552 ~~[(a)]~~ (i) services;

1553 ~~[(b)]~~ (ii) personal or real property; or

1554 ~~[(c)]~~ (iii) other thing of value.

1555 (i) "Control," as used in Subsection (1)(a), means the power to directly or indirectly:

1556 (i) direct or exercise a controlling interest over:

1557 (A) the management or policies of an entity; or

1558 (B) the election of a majority of the directors, officers, managers, or managing partners

1559 of an entity;

1560 (ii) vote 20% or more of any class of voting securities of an entity by an individual; or

1561 (iii) vote more than 5% of any class of voting securities of any entity by another entity.

1562 ~~[(9)]~~ (j) "Control person" means an individual who is designated by an entity as the
1563 individual who directly manages or controls the entity's transaction of the business of
1564 residential mortgage loans secured by Utah dwellings.

1565 ~~[(10)]~~ (k) "Depository institution" is as defined in Section 7-1-103.

1566 ~~[(11)]~~ (l) "Director" means the director of the division.

1567 ~~[(12)]~~ (m) "Division" means the Division of Real Estate.

1568 ~~[(13)]~~ (n) "Dwelling" means a residential structure attached to real property that
1569 contains one to four units including any of the following if used as a residence:

1570 ~~[(a)]~~ (i) a condominium unit;

1571 ~~[(b)]~~ (ii) a cooperative unit;

1572 ~~[(c)]~~ (iii) a manufactured home; or

1573 ~~[(d)]~~ (iv) a house.

1574 ~~[(14)]~~ (o) "Entity" means any corporation, limited liability company, partnership,
1575 company, association, joint venture, business trust, trust, or other organization.

1576 ~~[(15)]~~ (p) "Executive director" means the executive director of the Department of
1577 Commerce.

1578 ~~[(16)]~~ (q) "Inactive status" means a dormant status into which an unexpired license is
1579 placed when the holder of the license is not currently engaging in the business of residential
1580 mortgage loans.

1581 ~~[(17)]~~ (r) "Lending manager" or "principal lending manager" means a person licensed
1582 as a principal lending manager under Section 61-2c-206.

1583 ~~[(18)]~~ (s) "Licensee" means an individual or entity licensed with the division under this
1584 chapter.

1585 ~~[(19)(a)]~~ (t) (i) Except as provided in Subsection ~~[(19)(b)]~~ (1)(t)(ii), "mortgage
1586 officer" means an individual who is licensed with the division to transact the business of
1587 residential mortgage loans through a principal lending manager.

1588 ~~[(b)]~~ (ii) "Mortgage officer" does not include a principal lending manager.

1589 ~~[(20)]~~ (u) "Record" means information that is:

1590 ~~[(a)]~~ (i) prepared, owned, received, or retained by an individual or entity; and

1591 ~~[(b)(i)]~~ (ii) (A) inscribed on a tangible medium; or

1592 ~~[(ii)(A)]~~ (B) (I) stored in an electronic or other medium; and

1593 ~~[(B)]~~ (II) retrievable in perceivable form.

1594 (v) "Registration" means the permission to engage in the business of residential
1595 mortgage loans issued by the division before January 1, 2004.

1596 ~~[(21)]~~ (w) "Residential mortgage loan" means a closed-end, first mortgage loan or
1597 extension of credit, if:

1598 ~~[(a)]~~ (i) the loan or extension of credit is secured by a:

1599 ~~[(i)]~~ (A) mortgage;

1600 ~~[(ii)]~~ (B) deed of trust; or

1601 ~~[(iii)]~~ (C) lien interest; and

1602 ~~[(b)]~~ (ii) the mortgage, deed of trust, or lien interest described in Subsection ~~[(21)(a)]~~

1603 (1)(w)(i):

1604 ~~[(i)]~~ (A) is on a dwelling located in the state; and

1605 ~~[(ii)]~~ (B) created with the consent of the owner of the residential real property.

1606 ~~[(22)]~~ (x) "State" means:

1607 ~~[(a)]~~ (i) a state, territory, or possession of the United States;

1608 ~~[(b)]~~ (ii) the District of Columbia; or

1609 [~~(e)~~] (iii) the Commonwealth of Puerto Rico.

1610 (2) (a) If a term not defined in this section is defined by rule, the term shall have the
1611 meaning established by the division by rule made in accordance with Title 63, Chapter 46a,
1612 Utah Administrative Rulemaking Act.

1613 (b) If a term not defined in this section is not defined by rule, the term shall have the
1614 meaning commonly accepted in the business community.

1615 Section 36. Section **61-2c-103** is amended to read:

1616 **61-2c-103. Powers and duties of the division.**

1617 (1) The division shall administer this chapter.

1618 (2) In addition to any power or duty expressly provided in this chapter, the division
1619 may:

1620 (a) receive and act on complaints including:

1621 (i) taking action designed to obtain voluntary compliance with this chapter; or

1622 (ii) commencing administrative or judicial proceedings on the division's own initiative;

1623 (b) establish programs for the education of consumers with respect to residential
1624 mortgage loans;

1625 (c) (i) make studies appropriate to effectuate the purposes and policies of this chapter;
1626 and

1627 (ii) make the results of the studies described in Subsection (2)(c)(i) available to the
1628 public;

1629 (d) visit and investigate an entity licensed under this chapter, regardless of whether the
1630 entity is located in Utah; and

1631 (e) employ any necessary hearing examiners, investigators, clerks, and other employees
1632 and agents.

1633 (3) The division shall make rules for the administration of this chapter in accordance
1634 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, including:

1635 (a) licensure procedures for:

1636 (i) individuals and entities required by this chapter to obtain a license with the division;
1637 and

1638 (ii) the establishment of a branch office by an entity;

1639 (b) proper handling of funds received by licensees;

1640 (c) record-keeping requirements by licensees; and

1641 (d) standards of conduct for licensees.

1642 (4) ~~[(a)]~~ The division ~~[shall]~~ may make available to the public a list of the names and
1643 mailing addresses of all licensees~~[-]~~:

1644 (a) either directly or through a third party; and

1645 (b) at a reasonable cost.

1646 ~~[(b) The division may charge a fee established by the division in accordance with~~
1647 ~~Section 63-38-3.2 for obtaining the list described in Subsection (4)(a).]~~

1648 (5) The division shall:

1649 (a) certify education providers who offer:

1650 (i) prelicensing education to candidates for licensure under this chapter; or

1651 (ii) continuing education to individuals licensed under this chapter; and

1652 (b) make available to the public, licensees, and candidates for licensure a list of the
1653 names and addresses of all education providers certified under this Subsection (5).

1654 (6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1655 division shall make rules establishing:

1656 (a) certification criteria and procedures for providers of prelicensing education and
1657 continuing education; and

1658 (b) standards of conduct for certified education providers.

1659 (7) The division may charge a fee established in accordance with Section 63-38-3.2 for
1660 processing any of the changes that a licensee is required by Subsection 61-2c-205 to report to
1661 the division.

1662 Section 37. Section **61-2c-104** is amended to read:

1663 **61-2c-104. Residential Mortgage Regulatory Commission.**

1664 (1) (a) There is created within the division the Residential Mortgage Regulatory
1665 Commission consisting of:

1666 ~~[(a)]~~ (i) the following members appointed by the executive director with the approval
1667 of the governor:

1668 ~~[(i)]~~ (A) three members having at least three years of experience in transacting the
1669 business of residential mortgage loans and who are currently licensed under this chapter; and

1670 ~~[(i)]~~ (B) one member from the general public; and

1671 ~~[(b)]~~ (ii) the commissioner of the Department of Financial Institutions or the
1672 commissioner's designee.

1673 (b) (i) The executive director with the approval of the governor may appoint an
1674 alternate member to the board.

1675 (ii) The alternate member shall:

1676 (A) at the time of the appointment, have at least three years of experience in transacting
1677 the business of residential mortgage loans; and

1678 (B) be licensed under this chapter at the time of and during appointment.

1679 (2) (a) Except as required by Subsection (2)(b), the executive director shall appoint
1680 each new member or reappointed member subject to appointment by the executive director to a
1681 four-year term ending June 30.

1682 (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall,
1683 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms
1684 of commission members are staggered so that approximately half of the commission is
1685 appointed every two years.

1686 (c) If a vacancy occurs in the membership of the commission for any reason, the
1687 replacement shall be appointed for the unexpired term.

1688 (3) Members of the commission shall annually select one member to serve as chair.

1689 (4) (a) The commission shall meet at least quarterly.

1690 (b) The director may call a meeting in addition to the meetings required by Subsection

1691 (4)(a):

1692 (i) at the discretion of the director;

1693 (ii) at the request of the chair of the commission; or

1694 (iii) at the written request of three or more commission members.

1695 (5) (a) Three members of the commission constitute a quorum for the transaction of
1696 business.

1697 (b) If a quorum of members is unavailable for any meeting and an alternate member
1698 has been appointed to the commission by the executive director with the approval of the
1699 governor, the alternate member shall serve as a regular member of the commission for that
1700 meeting if with the presence of the alternate member there is a quorum present at the meeting.

1701 ~~[(b)]~~ (c) The action of a majority of a quorum present is an action of the commission.

1702 (6) (a) (i) [~~Members~~] A member who [~~are~~] is not a government [~~employees~~] employee
1703 shall receive no compensation or benefits for [~~their~~] the member's services, but may receive per
1704 diem and expenses incurred in the performance of the member's official duties at the rates
1705 established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

1706 (ii) [~~Members~~] A member who [~~are~~] is not a government [~~employees~~] employee may
1707 decline to receive per diem and expenses for [~~their~~] the member's service.

1708 (b) (i) [~~State~~] A state government officer and employee [~~members~~] member who [~~do~~]
1709 does not receive salary, per diem, or expenses from [~~their~~] the member's agency for [~~their~~] the
1710 member's service may receive per diem and expenses incurred in the performance of [~~their~~] the
1711 member's official duties from the commission at the rates established by the Division of
1712 Finance under Sections 63A-3-106 and 63A-3-107.

1713 (ii) [~~State~~] A state government officer and employee [~~members~~] member may decline
1714 to receive per diem and expenses for [~~their~~] the member's service.

1715 (7) The commission shall:

1716 (a) except as provided in Subsection 61-2c-202(2), concur in the licensure or denial of
1717 licensure of individuals and entities under this chapter in accordance with Part 2, Licensure;

1718 (b) take disciplinary action with the concurrence of the director in accordance with Part
1719 4, Enforcement;

1720 (c) advise the division concerning matters related to the administration and
1721 enforcement of this chapter; and

1722 (d) with the concurrence of the division, determine the requirements for:

1723 (i) the examination required under Section 61-2c-202, covering at least:

1724 (A) the fundamentals of the English language;

1725 (B) arithmetic;

1726 (C) the provisions of this chapter;

1727 (D) rules adopted by the division;

1728 (E) basic residential mortgage principles and practices; and

1729 (F) any other aspect of Utah law the commission determines is appropriate;

1730 (ii) with the concurrence of the division, the continuing education requirements under
1731 Section 61-2c-205, including:

1732 (A) except as provided in Subsection 61-2c-202(4)(a)(i)(C) and Subsection

1733 61-2c-206(1)(c), the appropriate number of hours of prelicensing education and required
1734 continuing education; and

1735 (B) the subject matter of courses the division may accept for continuing education
1736 purposes;

1737 (iii) with the concurrence of the division, the prelicensing education required under
1738 Sections 61-2c-202 and 61-2c-206, including online education or distance learning options; and

1739 (iv) the examination required under Section 61-2c-206 covering:

1740 (A) advanced residential mortgage principles and practices; and

1741 (B) other aspects of Utah law the commission, with the concurrence of the division,
1742 determines appropriate.

1743 (8) The commission may appoint a committee to make recommendations to the
1744 commission concerning approval of prelicensing education and continuing education courses.

1745 (9) The commission and the division shall make the examination and prelicensing
1746 education and continuing education requirements described in this section available through
1747 the Internet or other distance education methods approved by the commission and division
1748 when reasonably practicable.

1749 (10) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
1750 the commission, with the concurrence of the division, shall make rules establishing procedures
1751 under which a licensee may be exempted from continuing education requirements:

1752 (a) for a period not to exceed four years; and

1753 (b) upon a finding of reasonable cause.

1754 Section 38. Section **61-2c-106 (Superseded 01/01/06)** is amended to read:

1755 **61-2c-106 (Superseded 01/01/06). Addresses provided the division.**

1756 (1) (a) In providing an address to the division under this chapter, a physical location or
1757 street address shall be provided.

1758 (b) The following are public information:

1759 (i) a business address; or

1760 (ii) a mailing address.

1761 (2) An individual or entity licensed under this chapter will be considered to have
1762 received any notification that is mailed to the last mailing address furnished to the division by
1763 the individual, or by a control person of the entity, licensed under this chapter.

1764 Section 39. Section **61-2c-106 (Effective 01/01/06)** is amended to read:

1765 **61-2c-106 (Effective 01/01/06). Addresses provided the division.**

1766 (1) (a) In providing an address to the division under this chapter, a physical location or
1767 street address shall be provided.

1768 (b) The following are public information:

1769 (i) a business address; or

1770 (ii) a mailing address.

1771 (2) An individual or entity licensed under this chapter will be considered to have
1772 received any notification that is mailed to the last mailing address furnished to the division by
1773 the individual, or by the principal lending manager of the entity, licensed under this chapter.

1774 Section 40. Section **61-2c-201** is amended to read:

1775 **61-2c-201. Licensure required of individuals and entities engaged in the business**
1776 **of residential mortgage loans -- Mortgage officer -- Principal lending manager.**

1777 (1) Unless exempt from this chapter under Section 61-2c-105, an individual or entity
1778 may not transact the business of residential mortgage loans, as defined in Section 61-2c-102,
1779 without obtaining a license under this chapter.

1780 (2) For purposes of this chapter, an individual or entity transacts business in this state
1781 if:

1782 (a) (i) the individual or entity engages in an act that constitutes the business of
1783 residential mortgage loans; and

1784 (ii) (A) the act described in Subsection (2)(a)(i) is directed to or received in this state;
1785 and

1786 (B) the real property that is the subject of the act described in Subsection (2)(a)(i) is
1787 located in this state; or

1788 (b) a representation is made by the individual or entity that the individual or entity
1789 transacts the business of residential mortgage loans in this state.

1790 (3) An individual who has an ownership interest in an entity required to be licensed
1791 under this chapter is not required to obtain an individual license under this chapter unless the
1792 individual transacts the business of residential mortgage loans.

1793 (4) Unless otherwise exempted under this chapter, licensure under this chapter is
1794 required of both:

1795 (a) the individual who directly transacts the business of residential mortgage loans; and
1796 (b) if the individual transacts business as an employee or agent of an entity or
1797 individual, the entity or individual for whom the employee or agent transacts the business of
1798 residential mortgage loans.

1799 (5) (a) On or after [~~January~~] May 1, 2006, a license issued under this chapter to an
1800 individual who has not obtained a license as a principal lending manager automatically
1801 converts to a mortgage officer license.

1802 (b) A mortgage officer license issued pursuant to Subsection (5)(a) shall be placed on
1803 inactive status until the holder of the license has submitted to the division the forms required to
1804 activate the license with a principal lending manager.

1805 (6) (a) An individual licensed under this chapter may not engage in the business of
1806 residential mortgage loans on behalf of more than one entity at the same time.

1807 (b) This Subsection (6) does not restrict the number of:

1808 (i) different lenders an individual or entity may use as a funding source for residential
1809 mortgage loans; or

1810 (ii) entities in which an individual may have an ownership interest, regardless of
1811 whether the entities are:

1812 (A) licensed under this chapter; or

1813 (B) exempt under Section 61-2c-105.

1814 (7) An individual licensed under this chapter may not transact the business of
1815 residential mortgage loans for the following at the same time:

1816 (a) an entity licensed under this chapter; and

1817 (b) an entity that is exempt from licensure under Section 61-2c-105.

1818 (8) On or after [~~January~~] May 1, 2006, except as provided under Title 16, Chapter 11,
1819 Professional Corporation Act or under Title 48, Chapter 2c, Utah Revised Limited Liability
1820 Company Act, a mortgage officer may not receive consideration for transacting the business of
1821 residential mortgage loans from any person or entity except the principal lending manager with
1822 whom the mortgage officer is licensed.

1823 (9) On or after [~~January~~] May 1, 2006, a mortgage officer shall conduct all business of
1824 residential mortgage loans:

1825 (a) through the principal lending manager with which the individual is licensed; and

1826 (b) in the business name under which the principal lending manager is authorized by
1827 the division to do business.

1828 (10) (a) (i) [~~H~~] Subject to Subsection (10)(a)(ii) and until May 1, 2006, if an individual
1829 who is authorized by this chapter to transact the business of residential mortgage loans as an
1830 individual transacts the business of residential mortgage loans under an assumed business
1831 name, the individual shall:

1832 (A) register the assumed business name with the division; and

1833 (B) furnish to the division proof that the assumed business name has been filed with
1834 the Division of Corporations and Commercial Code pursuant to Title 42, Chapter 2,
1835 Conducting Business Under Assumed Name.

1836 (ii) This Subsection (10)(a) does not apply to an individual who transacts the business
1837 of residential mortgage loans as an employee or agent of another individual or entity.

1838 (iii) If an entity that is authorized by this chapter to transact the business of residential
1839 mortgage loans transacts the business of residential mortgage loans under an assumed business
1840 name, the entity shall:

1841 (A) register the assumed name with the division; and

1842 (B) furnish the division proof that the assumed business name has been filed with the
1843 Division of Corporations and Commercial Code pursuant to Title 42, Chapter 2, Conducting
1844 Business Under Assumed Name.

1845 (b) The division may charge a fee established in accordance with Section 63-38-3.2 for
1846 registering an assumed name pursuant to this Subsection (10).

1847 (11) (a) A licensee whose license is in inactive status may not transact the business of
1848 residential mortgage loans.

1849 (b) On or after [~~January~~] May 1, 2006, a mortgage officer whose license has been
1850 placed in inactive status may not transact the business of residential mortgage loans until the
1851 mortgage officer has licensed with a principal lending manager by following the procedures
1852 established by the division by rule made in accordance with Title 63, Chapter 46a, Utah
1853 Administrative Rulemaking Act, including submission of all required forms and payment of all
1854 required activation fees.

1855 (12) (a) On or after May 3, 2004 and before [~~January~~] May 1, 2006, if a licensed entity
1856 terminates its control person, or if the control person of a licensed entity resigns, dies, or

1857 becomes unable to act as control person due to disability, the entity shall cease all business of
1858 residential mortgage loans until the entity has submitted all forms and fees to the division that
1859 are required to affiliate another control person with the licensed entity.

1860 (b) On or after [~~January~~] May 1, 2006, if a licensed entity terminates its principal
1861 lending manager, or if the principal lending manager of a licensed entity resigns, dies, or
1862 becomes unable to act as a principal lending manager due to disability, the entity may not
1863 transact the business of residential mortgage loans until the entity has submitted all forms and
1864 fees to the division that are required to affiliate another principal lending manager with the
1865 entity.

1866 Section 41. Section **61-2c-201.1** is enacted to read:

1867 **61-2c-201.1. Conversion of registrations.**

1868 On January 1, 2004, any unexpired registration authorizing an individual or entity to
1869 engage in the business of residential mortgage loans automatically converts from a registration
1870 to a license, retaining the expiration date of the registration as the expiration date of the
1871 converted license.

1872 Section 42. Section **61-2c-202** is amended to read:

1873 **61-2c-202. Licensure procedures.**

1874 (1) To apply for licensure under this chapter an applicant shall:

1875 (a) submit to the division a licensure statement that:

1876 (i) lists any name under which the individual or entity will transact business in this
1877 state;

1878 (ii) lists the address of the principal business location of the applicant;

1879 (iii) on or after May 3, 2004 and before [~~January~~] May 1, 2006, if the applicant is an
1880 entity:

1881 (A) lists the control person of the applicant; and

1882 (B) contains the signature of the control person;

1883 (iv) on or after [~~January~~] May 1, 2006, if the applicant is an entity:

1884 (A) lists the principal lending manager of the entity; and

1885 (B) contains the signature of the principal lending manager;

1886 (v) demonstrates [~~to the satisfaction of the division with the concurrence of the~~
1887 ~~commission~~] that the applicant meets the qualifications listed in Section 61-2c-203;

- 1888 (vi) if the applicant is an entity, lists:
- 1889 (A) all jurisdictions in which the entity is registered, licensed, or otherwise regulated in
- 1890 the business of residential mortgage loans; and
- 1891 (B) the history of any disciplinary action or adverse administrative action taken against
- 1892 the entity by any regulatory agency within the ten years preceding the application; and
- 1893 (vii) includes any information required by the division by rule;
- 1894 (b) pay to the division:
- 1895 (i) an application fee established by the division in accordance with Section 63-38-3.2;
- 1896 and
- 1897 (ii) the reasonable expenses incurred in processing the application for licensure
- 1898 including the costs incurred by the division under Subsection (4); and
- 1899 (c) comply with Subsection (4).
- 1900 (2) (a) The division~~[-with the concurrence of the commission,]~~ shall ~~[grant]~~ issue a
- 1901 license to an applicant if the division, with the concurrence of the commission, finds that the
- 1902 applicant:
- 1903 ~~[(a)]~~ (i) meets the qualifications of Section 61-2c-203; and
- 1904 ~~[(b)]~~ (ii) complies with this section.
- 1905 (b) The commission may delegate to the division the authority to:
- 1906 (i) review any class or category of application for initial or renewed licenses;
- 1907 (ii) determine whether an applicant meets the licensing criteria in Section 61-2c-203;
- 1908 (iii) conduct any necessary hearing on an application; and
- 1909 (iv) approve or deny a license application without concurrence by the commission.
- 1910 (c) If the commission delegates to the division the authority to approve or deny an
- 1911 application without concurrence by the commission and the division denies an application for
- 1912 licensure, the applicant who is denied licensure may petition the commission for review of the
- 1913 denial.
- 1914 (d) An applicant who is denied licensure under this Subsection (2)(b) may seek agency
- 1915 review by the executive director only after the commission has reviewed the division's denial of
- 1916 the applicant's application.
- 1917 (3) ~~[It]~~ Subject to Subsection (2)(d) and in accordance with Title 63, Chapter 46b,
- 1918 Administrative Procedures Act, an applicant who is denied licensure under this chapter may

1919 submit a request for agency review to the executive director within 30 days following the
1920 issuance of the commission order denying the licensure.

1921 (4) (a) (i) An individual applying for a license under this chapter and any control
1922 person of the applicant shall:

1923 (A) submit a fingerprint card in a form acceptable to the division at the time the
1924 licensure statement is filed;

1925 (B) consent to a fingerprint background check by:

1926 (I) the Utah Bureau of Criminal Identification; and

1927 (II) the Federal Bureau of Investigation;

1928 (C) on or after January 1, 2005, provide proof using methods approved by the division
1929 of having successfully completed 20 hours of approved prelicensing education required by the
1930 commission under Section 61-2c-104 before taking the examination required by Subsection
1931 (4)(a)(i)(D); and

1932 (D) provide proof using methods approved by the division of having successfully
1933 passed an examination approved by the commission under Section 61-2c-104.

1934 (ii) Notwithstanding Subsections (4)(a)(i)(C) and (4)(a)(i)(D), an individual [~~who was~~
1935 ~~registered with the division under this chapter prior to January 1, 2004~~] meeting the conditions
1936 of Subsection (4)(a)(iii) may engage in the business of residential mortgage loans until January
1937 1, 2005 without having:

1938 (A) completed the prelicensing education described in Subsection (4)(a)(i)(C); and

1939 (B) passed the examination described in Subsection (4)(a)(i)(D).

1940 (iii) Subsection (4)(a)(ii) applies to an individual:

1941 (A) who was registered with the division under this chapter prior to January 1, 2004;

1942 (B) whose registration was converted to a license under Section 61-2c-201.1; and

1943 (C) whose converted license either:

1944 (I) does not expire before January 1, 2005; or

1945 (II) is renewed prior to January 1, 2005.

1946 (b) The division shall request the Department of Public Safety to complete a Federal
1947 Bureau of Investigation criminal background check for each applicant and each control person
1948 of an applicant through a national criminal history system.

1949 (c) The applicant shall pay the cost of:

- 1950 (i) the fingerprinting required by this section; and
1951 (ii) the background check required by this section.
- 1952 (d) (i) A license under this chapter is conditional pending completion of the criminal
1953 background check required by this Subsection (4).
- 1954 (ii) If a criminal background check discloses that an applicant or an applicant's control
1955 person failed to accurately disclose a criminal history, the license shall be immediately and
1956 automatically revoked.
- 1957 (iii) An individual or entity whose conditional license is revoked under Subsection
1958 (4)(d)(ii) may appeal the revocation in a hearing conducted by the commission:
- 1959 (A) after the revocation; and
1960 (B) in accordance with Title 63, Chapter 46b, Administrative Procedures Act.
- 1961 (iv) The commission may delegate to the division or an administrative law judge the
1962 authority to conduct a hearing described in Subsection (4)(d)(iii).
- 1963 ~~(iv)~~ (v) Relief from a revocation may be granted only if:
- 1964 (A) the criminal history upon which the division based the revocation:
1965 (I) did not occur; or
1966 (II) ~~was~~ is the criminal history of another person;
1967 (B) (I) the revocation ~~was~~ is based on a failure to accurately disclose a criminal
1968 history; and
1969 (II) the applicant had a reasonable good faith belief at the time of application that there
1970 was no criminal history to be disclosed; or
1971 (C) the division failed to follow the prescribed procedure for the revocation.
- 1972 (e) If a revocation is upheld after a hearing described in Subsection (4)(d)(iii), the
1973 person may not apply for a new license for a period of 12 months or longer not to exceed five
1974 years after the revocation, as determined by the presiding officer.
- 1975 (f) The funds paid by an applicant for the cost of the background check shall be
1976 nonlapsing.
- 1977 (g) The commission may delegate to the division the authority to make a decision on
1978 whether relief from a revocation should be granted.
- 1979 Section 43. Section **61-2c-203** is amended to read:
1980 **61-2c-203. Qualifications for licensure.**

1981 (1) To qualify for licensure under this chapter, an individual:
1982 (a) shall have good moral character and the competency to transact the business of
1983 residential mortgage loans;
1984 (b) shall demonstrate honesty, integrity, and truthfulness;
1985 ~~[(c) may not have been convicted of a felony or misdemeanor involving moral~~
1986 ~~turpitude in the five years preceding the date the individual applies for a license, except as~~
1987 ~~provided in Subsection (3);]~~
1988 (c) except as provided in Subsection (3), may not have been convicted in the ten years
1989 preceding the day on which an application is submitted to the division of:
1990 (i) any felony or class A misdemeanor involving moral turpitude; or
1991 (ii) any crime in any other jurisdiction that is the equivalent of a felony or class A
1992 misdemeanor involving moral turpitude;
1993 (d) except as provided in Subsection (3), may not have been convicted in the five years
1994 preceding the day on which an application is submitted to the division of:
1995 (i) any class B or class C misdemeanor involving moral turpitude; or
1996 (ii) any crime in another jurisdiction that is the equivalent of a class B or class C
1997 misdemeanor involving moral turpitude;
1998 (e) except as provided in Subsection (3), in relationship to a crime set forth in
1999 Subsections (1)(c) and (d) during the time period set forth in Subsections (1)(c) and (d), may
2000 not have:
2001 (i) entered a guilty plea, a no contest plea, or its equivalent; and
2002 (ii) resolved by diversion or its equivalent;
2003 ~~[(f)]~~ (f) except as provided in Subsection 61-2c-202(4)(e), may not have had a license
2004 or registration suspended, revoked, surrendered, canceled, or denied in the five years preceding
2005 the date the individual applies for licensure except as provided in Subsection (3), if:
2006 (i) the registration or license is issued by this state or another jurisdiction; and
2007 (ii) the suspension, revocation, surrender, probation, fine, cancellation, or denial is
2008 based on misconduct in a professional capacity that relates to moral character, honesty,
2009 integrity, truthfulness, or the competency to transact the business of residential mortgage loans;
2010 ~~[(e)]~~ (g) except as provided in Subsection (3), may not have been the subject of a bar
2011 by the Securities and Exchange Commission, the New York Stock Exchange, or the National

2012 Association of Securities Dealers within the five years preceding the date the individual applies
2013 for registration; and

2014 ~~(f)~~ (h) may not have had any temporary or permanent injunction entered against the
2015 individual:

2016 (i) by a court or licensing agency; and

2017 (ii) based on:

2018 (A) conduct or a practice involving the business of residential mortgage loans; or

2019 (B) conduct involving fraud, misrepresentation, or deceit.

2020 (2) To qualify for licensure under this chapter an entity may not have:

2021 (a) any of the following individuals in management who fails to meet the requirements
2022 of Subsection (1):

2023 (i) a manager or a managing partner;

2024 (ii) a director;

2025 (iii) an executive officer; or

2026 (iv) an individual occupying a position or performing functions similar to those
2027 described in Subsections (2)(a)(i) through (iii); or

2028 (b) (i) before ~~January~~ May 1, 2006, a control person who fails to meet the
2029 requirements of Subsection (1); or

2030 (ii) on or after ~~January~~ May 1, 2006, a principal lending manager who fails to meet
2031 the requirements of Subsection (1).

2032 (3) Notwithstanding the failure to meet the requirements of Subsections (1)(c) through
2033 ~~(f)~~ (h), the division may permit an individual or entity to be licensed under this chapter if the
2034 individual applicant or a person listed in Subsection (2):

2035 (a) fails to meet the requirements of Subsections (1)(c) through ~~(f)~~ (h);

2036 (b) otherwise meets the qualifications for licensure; and

2037 (c) provides evidence satisfactory to the division with the concurrence of the
2038 commission that the individual applicant or person described in Subsection (2):

2039 (i) is of good moral character;

2040 (ii) is honest;

2041 (iii) has integrity;

2042 (iv) is truthful; and

- 2043 (v) has the competency to transact the business of residential mortgage loans.
- 2044 Section 44. Section **61-2c-205** is amended to read:
- 2045 **61-2c-205. Term of licensure -- Renewal -- Reporting of changes.**
- 2046 (1) (a) A license under this chapter is valid for a two-year period.
- 2047 (b) Notwithstanding Subsection (1)(a), the time period of a license may be extended or
- 2048 shortened by as much as one year to maintain or change a renewal cycle established by rule by
- 2049 the division.
- 2050 (2) To renew a license, no later than the date the license expires, a licensee shall:
- 2051 ~~[(a) file a licensure statement meeting the requirements of Section 61-2c-202;]~~
- 2052 (a) (i) file the renewal form required by the division; and
- 2053 (ii) furnish the information required by Subsection 61-2c-202(1);
- 2054 (b) pay a fee to the division established by the division in accordance with Section
- 2055 63-38-3.2; and
- 2056 (c) if the licensee is an individual and the individual's license is in active status at the
- 2057 time of application for renewal, submit proof using forms approved by the division of having
- 2058 completed during the two years prior to application the continuing education required by the
- 2059 commission under Section 61-2c-104.
- 2060 (3) (a) A licensee under this chapter shall ~~[amend its licensure statement filed with the~~
- 2061 ~~division]~~ notify the division using the form required by the division within ten days of the date
- 2062 on which there is a change in:
- 2063 (i) a name under which the licensee transacts the business of residential mortgage loans
- 2064 in this state;
- 2065 (ii) (A) if the licensee is an entity, the business location of the licensee; or
- 2066 (B) if the licensee is an individual, the home and business addresses of the individual;
- 2067 (iii) (A) on or after May 3, 2004 and before ~~[January]~~ May 1, 2006, the control person
- 2068 of the licensee; or
- 2069 (B) on or after ~~[January]~~ May 1, 2006, the principal lending manager of the entity; ~~[or]~~
- 2070 (iv) the entity with which an individual licensee is licensed to conduct the business of
- 2071 residential mortgage loans; or
- 2072 ~~[(iv)]~~ (v) any other information that is defined as material by rule made by the division.
- 2073 (b) Failure to notify the division of a change described in Subsection (3)(a) is separate

2074 grounds for disciplinary action against a licensee.

2075 (4) A licensee shall notify the division by sending the division a signed statement
2076 within ten business days of:

2077 (a) (i) a conviction of any criminal offense;

2078 (ii) the entry of a plea in abeyance to any criminal offense; or

2079 (iii) the potential resolution of any criminal case by:

2080 (A) a diversion agreement; or

2081 (B) any other agreement under which criminal charges are held in suspense for a period
2082 of time;

2083 (b) filing a personal bankruptcy or bankruptcy of a business that transacts the business
2084 of residential mortgage loans;

2085 (c) the suspension, revocation, surrender, cancellation, or denial of a professional
2086 license or professional registration of the licensee, whether the license or registration is issued
2087 by this state or another jurisdiction; or

2088 (d) the entry of a cease and desist order or a temporary or permanent injunction:

2089 (i) against the licensee by a court or licensing agency; and

2090 (ii) based on:

2091 (A) conduct or a practice involving the business of residential mortgage loans; or

2092 (B) conduct involving fraud, misrepresentation, or deceit.

2093 (5) (a) A license under this chapter expires if the licensee does not apply to renew the
2094 license on or before the expiration date of the license.

2095 (b) Within 30 calendar days after the expiration date, a licensee whose license has
2096 expired may apply to reinstate the expired license upon:

2097 (i) payment of a renewal fee and a late fee determined by the division under Section
2098 63-38-3.2; and

2099 (ii) if the licensee is an individual and is applying to reinstate a license to active status,
2100 providing proof using forms approved by the division of having completed, during the two
2101 years prior to application, the continuing education required by the commission under Section
2102 61-2c-104.

2103 (c) After the 30 calendar days described in Subsection (5)(b) and within six months
2104 after the expiration date, a licensee whose license has expired may apply to reinstate an expired

2105 license upon:

2106 (i) payment of a renewal fee and a late fee determined by the division under Section
2107 63-38-3.2;

2108 (ii) if the licensee is an individual and is applying to reinstate a license to active status,
2109 providing proof using forms approved by the division of having completed, during the two
2110 years prior to application, the continuing education required by the commission under Section
2111 61-2c-104; and

2112 (iii) in addition to the continuing education required for a timely renewal, completing
2113 an additional 12 hours of continuing education approved by the commission under Section
2114 61-2c-104.

2115 (d) A licensee whose license has been expired for more than six months shall be
2116 relicensed as prescribed for an original application under Section 61-2c-202.

2117 Section 45. Section **61-2c-206** is amended to read:

2118 **61-2c-206. Lending manager licenses.**

2119 (1) Except as provided in Subsection [~~(3)~~] (2), on or after [~~September~~] January 1,
2120 [~~2005~~] 2006, to qualify as a principal lending manager under this chapter, an individual shall,
2121 in addition to meeting the standards in Section 61-2c-203:

2122 (a) submit an application on a form approved by the division;

2123 (b) pay fees determined by the division under Section 63-38-3.2;

2124 (c) submit proof of having successfully completed 40 hours of prelicensing education
2125 approved by the commission under Section 61-2c-104;

2126 (d) submit proof of having successfully completed the principal lending manager
2127 examination approved by the commission under Section 61-2c-104;

2128 (e) submit proof on forms approved by the division of three years of full-time active
2129 experience as a mortgage officer in the five years preceding the day on which the application is
2130 submitted, or its equivalent as approved by the commission; and

2131 (f) if the individual is not licensed under this chapter at the time of application, submit
2132 to the background check required by Subsection 61-2c-202(4).

2133 (2) (a) Notwithstanding Subsection (1), an individual described in Subsection (2)(b)
2134 may qualify as a principal lending manager without:

2135 (i) meeting the requirements of Subsection (1)(c); and

2136 (ii) completing the portions of the principal lending manager examination described in
2137 Subsection (1)(d) that:

2138 (A) relate to federal law; and

2139 (B) do not relate to Utah law.

2140 (b) An individual may qualify as a principal lending manager pursuant to Subsection
2141 (2)(a) if the individual:

2142 (i) submits to the division an affidavit that the individual has five years of experience
2143 in the business of residential mortgage loans;

2144 (ii) establishes that the individual's experience described in this Subsection (2)(b) was
2145 acquired:

2146 (A) under requirements substantially equivalent to the [~~licensing~~] requirements of this
2147 chapter; and

2148 (B) in compliance with the requirements of this chapter; and

2149 (iii) provides any other information required by the division by rule under Subsection
2150 (2)(c).

2151 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
2152 division shall define the information an individual shall provide to the division pursuant to
2153 Subsection (2)(b).

2154 (3) A principal lending manager may not engage in the business of residential
2155 mortgage loans on behalf of more than one entity at the same time.

2156 Section 46. Section **61-2c-208** is amended to read:

2157 **61-2c-208. Activation and inactivation of license.**

2158 (1) (a) A licensee may request that the division place the license on inactive status by
2159 submitting an inactivation form approved by the division.

2160 (b) On or after [~~January~~] May 1, 2006, if the license of a principal lending manager is
2161 revoked, suspended, or expires, the license of any mortgage officer licensed with that principal
2162 lending manager shall automatically convert to inactive status.

2163 (2) To activate a license that has been placed on inactive status, a licensee shall:

2164 (a) submit an activation form approved by the division;

2165 (b) pay an activation fee established by the division under Section 63-38-3.2; and

2166 (c) if the licensee is an individual whose license was in inactive status at the time of the

2167 previous renewal, the licensee shall supply the division with proof of the successful completion
2168 of the number of hours of continuing education that the licensee would have been required to
2169 complete under ~~[Section]~~ Subsection 61-2c-205(2)(c) if the licensee's license had been on
2170 active status, up to a maximum of the number of hours required for two licensing periods.

2171 (3) On or after ~~[January]~~ May 1, 2006, in addition to the requirements of Subsection
2172 (2), a mortgage officer whose license has been placed on inactive status shall obtain the
2173 signature of the principal lending manager with whom the mortgage officer will be actively
2174 licensed on the form required by the division.

2175 (4) (a) On or after May 3, 2004 and before ~~[January]~~ May 1, 2006, in addition to the
2176 requirements of Subsection (2), an entity whose license has been placed on inactive status
2177 because of the termination, death, disability, or departure of its control person shall submit the
2178 forms required by the division to affiliate the license of another control person with the entity.

2179 (b) On or after ~~[January]~~ May 1, 2006, in addition to the requirements of Subsection
2180 (2), an entity whose license has been placed on inactive status because of the termination,
2181 death, disability, or departure of its principal lending manager shall submit the forms required
2182 by the division to affiliate the license of another principal lending manager with the entity.

2183 Section 47. Section **61-2c-301** is amended to read:

2184 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

2185 (1) An individual or entity transacting the business of residential mortgage loans in this
2186 state may not:

2187 (a) give or receive compensation or anything of value in exchange for a referral of
2188 residential mortgage loan business;

2189 (b) charge a fee in connection with a residential mortgage loan transaction:

2190 (i) that is excessive; or

2191 (ii) if the individual or entity does not comply with Section 70D-1-6;

2192 (c) give or receive compensation or anything of value in exchange for a referral of
2193 settlement or loan closing services related to a residential mortgage loan transaction;

2194 (d) do any of the following to induce a lender to extend credit as part of a residential
2195 mortgage loan transaction:

2196 (i) make a false statement or representation;

2197 (ii) cause false documents to be generated; or

- 2198 (iii) knowingly permit false information to be submitted by any party;
- 2199 (e) give or receive compensation or anything of value, or withhold or threaten to
2200 withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in
2201 reaching a value conclusion in a residential mortgage loan transaction, except that it is not a
2202 violation of this section for a licensee to withhold payment because of a bona fide dispute
2203 regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards
2204 of Professional Appraisal Practice;
- 2205 (f) violate or not comply with:
- 2206 (i) this chapter;
- 2207 (ii) an order of the commission or division; or
- 2208 (iii) a rule made by the division;
- 2209 (g) fail to respond within the required time period to:
- 2210 (i) a notice or complaint of the division; or
- 2211 (ii) a request for information from the division;
- 2212 (h) make false representations to the division, including in a licensure statement;
- 2213 (i) for any residential mortgage loan transaction beginning on or after January 1, 2004,
2214 engage in the business of residential mortgage loans with respect to the transaction if the
2215 individual or entity also acts in any of the following capacities with respect to the same
2216 residential mortgage loan transaction:
- 2217 (i) appraiser;
- 2218 (ii) escrow agent;
- 2219 (iii) real estate agent; ~~or~~
- 2220 (iv) general contractor; or
- 2221 (v) title insurance agent;
- 2222 (j) order a title insurance report or hold a title insurance policy unless the individual or
2223 entity provides to the title insurer a copy of a valid, current license under this chapter;
- 2224 (k) engage in unprofessional conduct as defined by rule;
- 2225 (l) engage in an act or omission in transacting the business of residential mortgage
2226 loans that constitutes dishonesty, fraud, or misrepresentation;
- 2227 (m) engage in false or misleading advertising;
- 2228 (n) (i) fail to account for all funds received in connection with a residential mortgage

2229 loan;

2230 (ii) use funds for a different purpose from the purpose for which the funds were
2231 received; or

2232 (iii) ~~[(A)]~~ except as provided in Subsection ~~[(1)(n)(iii)(B)]~~ (4), retain funds paid for
2233 services if the services were not actually performed;

2234 ~~[(B) notwithstanding Subsection (1)(n)(iii)(A), a licensee may, upon compliance with~~
2235 ~~Section 70D-1-6, charge a reasonable cancellation fee for work done originating a mortgage if~~
2236 ~~the mortgage is not closed;]~~

2237 (o) fail, within 90 calendar days of a request from a borrower who has paid for an
2238 appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;

2239 (p) engage in an act that is performed to:

2240 (i) evade this chapter; or

2241 (ii) assist another person to evade this chapter;

2242 (q) recommend or encourage default or delinquency, or continuation of an existing
2243 default or delinquency, by a mortgage applicant on an existing indebtedness prior to the closing
2244 of a residential mortgage loan that will refinance all or part of the indebtedness;

2245 (r) in the case of a control person of an entity, fail to exercise reasonable supervision
2246 over the activities of:

2247 (i) the individuals engaged in the business of residential mortgage loans on behalf of
2248 the entity; or

2249 (ii) any unlicensed staff;

2250 (s) on or after ~~[January]~~ May 1, 2006, in the case of the principal lending manager of
2251 an entity or a branch office of an entity, fail to exercise reasonable supervision over the
2252 activities of the mortgage officers who are licensed with the principal lending manager; or

2253 (t) pay or offer to pay an individual who does not hold a license under this chapter for
2254 work that requires the individual to hold a license under this chapter.

2255 (2) Whether or not the crime is related to the business of residential mortgage loans, it
2256 is a violation of this chapter for a licensee, a control person of a licensee, or a person who is a
2257 certified education provider to do any of the following with respect to a criminal offense which
2258 involves moral turpitude:

2259 (a) be convicted;

- 2260 (b) plead guilty or nolo contendere;
- 2261 (c) enter a plea in abeyance; or
- 2262 (d) be subjected to a criminal disposition similar to the ones described in Subsections
- 2263 (2)(a) through (c).
- 2264 (3) A principal lending manager does not violate Subsection (1)(s) if:
- 2265 (a) in contravention of the principal lending manager's written policies and
- 2266 instructions, an affiliated licensee of the principal lending manager violates a provision of:
- 2267 (i) this chapter; or
- 2268 (ii) rules made by the division under this chapter;
- 2269 (b) the principal lending manager established and followed reasonable procedures to
- 2270 ensure that affiliated licensees receive adequate supervision;
- 2271 (c) upon learning of a violation by an affiliated licensee, the principal lending manager
- 2272 attempted to prevent or mitigate the damage;
- 2273 (d) the principal lending manager did not participate in or ratify the violation by an
- 2274 affiliated licensee; and
- 2275 (e) the principal lending manager did not attempt to avoid learning of the violation.
- 2276 (4) Notwithstanding Subsection (1)(n)(iii), a licensee may, upon compliance with
- 2277 Section 70D-1-6, charge a reasonable cancellation fee for work done originating a mortgage if
- 2278 the mortgage is not closed.
- 2279 Section 48. Section **61-2c-402** is amended to read:
- 2280 **61-2c-402. Disciplinary action -- Reinstatement.**
- 2281 (1) Subject to the requirements of [this] Section 61-2c-402.1, if an individual or entity
- 2282 required to be licensed under this chapter violates this chapter, or an education provider
- 2283 required to be certified under this chapter violates this chapter, the commission, with the
- 2284 concurrence of the director, may:
- 2285 (a) impose a civil penalty against the individual or entity in an amount not to exceed
- 2286 \$2,500 per violation;
- 2287 (b) do any of the following to a license under this chapter:
- 2288 (i) suspend;
- 2289 (ii) revoke;
- 2290 (iii) place on probation;

2291 (iv) deny renewal; or

2292 (v) deny reinstatement; or

2293 (c) do both Subsections (1)(a) and (b).

2294 (2) (a) If a license under this chapter is revoked, the individual or entity may apply to
2295 have the license reinstated by complying with the requirements of Section 61-2c-202 for
2296 licensure.

2297 (b) Notwithstanding Subsection (2)(a) and except as provided in Subsection
2298 61-2c-202(4)(e), if a license under this chapter is revoked, the individual or entity may not
2299 apply for reinstatement of the license sooner than five years after the day on which the license
2300 is revoked in accordance with this section.

2301 (c) If an individual or entity whose license has been revoked applies for reinstatement
2302 in accordance with Subsection (2)(b), the presiding officer may grant the application for
2303 reinstatement if the presiding officer finds that:

2304 (i) (A) there has been good conduct on the part of the applicant subsequent to the
2305 events that led to the revocation; and

2306 (B) the subsequent good conduct outweighs the events that led to the revocation; and

2307 (ii) the interest of the public is not likely to be harmed by the granting of the license.

2308 (3) Subject to the requirements of Section 61-2c-402.1, if an individual or entity
2309 required to be licensed under this chapter violates this chapter, or an education provider
2310 required to be certified under this chapter violates this chapter, the presiding officer in an
2311 adjudicative proceeding commenced after a person or an entity applies for an original or
2312 renewed license may:

2313 (a) deny an application for an original license;

2314 (b) deny an application for renewal;

2315 (c) deny an application for reinstatement; or

2316 (d) issue or renew the license but:

2317 (i) place the license on probation;

2318 (ii) suspend the license for a period of time;

2319 (iii) impose a civil penalty not to exceed \$2,500 per violation; or

2320 (iv) any combination of Subsections (3)(d)(i) through (iii).

2321 ~~[(2) (a) Before the commission and the division may take an action described in~~

2322 ~~Subsection (1), the division shall:]~~

2323 ~~[(i) give notice to the individual or entity; and]~~

2324 ~~[(ii) schedule an adjudicative proceeding.]~~

2325 ~~[(b) If after the adjudicative proceeding scheduled under Subsection (2)(a), the~~
2326 ~~commission and the director determine that an individual or entity required to be licensed~~
2327 ~~under this chapter has violated this chapter, the commission may take an action described in~~
2328 ~~Subsection (1) by written order.]~~

2329 ~~[(3) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, an~~
2330 ~~individual or entity against whom disciplinary action is taken under this section may seek~~
2331 ~~review by the executive director of the disciplinary action.]~~

2332 ~~[(4) If an individual or entity prevails in a judicial appeal and the court finds that the~~
2333 ~~state action was undertaken without substantial justification, the court may award reasonable~~
2334 ~~litigation expenses to that individual or entity as provided under Title 78, Chapter 27a, Small~~
2335 ~~Business Equal Access to Justice Act.]~~

2336 ~~[(5) (a) An order issued under this section takes effect 30 days after the service of the~~
2337 ~~order unless otherwise provided in the order.]~~

2338 ~~[(b) If an appeal of an order issued under this section is taken by an individual or~~
2339 ~~entity, the division may stay enforcement of the commission's order in accordance with Section~~
2340 ~~63-46b-18.]~~

2341 ~~[(6) If ordered by the court of competent jurisdiction, the division shall promptly take~~
2342 ~~an action described in Subsection (1)(b) against a license granted under this chapter.]~~

2343 ~~[(7) (a) If a license under this chapter is revoked, the individual or entity may apply to~~
2344 ~~have the license reinstated by complying with the requirements of Section 61-2c-202 for~~
2345 ~~licensure.]~~

2346 ~~[(b) Notwithstanding Subsection (7)(a), if a license under this chapter is revoked, the~~
2347 ~~individual or entity may not apply for reinstatement of the license sooner than five years after~~
2348 ~~the date the license is revoked in accordance with this section.]~~

2349 ~~[(c) If an individual or entity whose license has been revoked applies for reinstatement~~
2350 ~~in accordance with Subsection (7)(b), the commission and the division may grant the~~
2351 ~~application for reinstatement if they find that:]~~

2352 ~~[(i) there has been good conduct on the part of the applicant subsequent to the events~~

2353 ~~that led to the revocation, and that the subsequent good conduct outweighs the events which led~~
2354 ~~to the revocation; and]~~

2355 ~~[(ii) the interest of the public is not likely to be harmed by the granting of the license.]~~

2356 Section 49. Section **61-2c-402.1** is enacted to read:

2357 **61-2c-402.1. Adjudicative proceedings -- Review.**

2358 (1) (a) Before the actions described in Section 61-2c-402 may be taken, the division
2359 shall:

2360 (i) give notice to the individual or entity; and

2361 (ii) commence an adjudicative proceeding.

2362 (b) If after the adjudicative proceeding is commenced under Subsection (1)(a) the
2363 presiding officer determines that an individual or entity required to be licensed under this
2364 chapter has violated this chapter, the division may take an action described in Section
2365 61-2c-402 by written order.

2366 (2) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, an
2367 individual or entity against whom action is taken under this section may seek review by the
2368 executive director of the action.

2369 (3) If an individual or entity prevails in a judicial appeal and the court finds that the
2370 state action was undertaken without substantial justification, the court may award reasonable
2371 litigation expenses to that individual or entity as provided under Title 78, Chapter 27a, Small
2372 Business Equal Access to Justice Act.

2373 (4) (a) An order issued under this section takes effect 30 days after the service of the
2374 order unless otherwise provided in the order.

2375 (b) If an appeal of an order issued under this section is taken by an individual or entity,
2376 the division may stay enforcement of the order in accordance with Section 63-46b-18.

2377 (5) If ordered by the court of competent jurisdiction, the division shall promptly take an
2378 action described in Section 61-2c-402 against a license granted under this chapter.

2379 Section 50. Section **61-2c-404** is amended to read:

2380 **61-2c-404. Civil actions.**

2381 (1) (a) A person who violates this chapter is liable for an additional penalty, as
2382 determined by the court, of at least the amount the person received in consequence of a
2383 violation of this chapter as:

2384 (i) commission;
2385 (ii) compensation; or
2386 (iii) profit.
2387 (b) A person aggrieved by a violation of this chapter may:
2388 (i) bring an action for a penalty described in Subsection (1)(a); and
2389 (ii) use a penalty obtained under Subsection (1)(a) for the person's own use and benefit.
2390 (2) A person who is not licensed under this chapter at the time of an act or service that
2391 requires a license under this chapter may not bring an action in court for the recovery of a
2392 commission, fee, or compensation for that act or service.
2393 (3) On or after [~~January~~] May 1, 2006:
2394 (a) a mortgage officer may not bring an action in the mortgage officer's own name for
2395 the recovery of a fee, commission, or compensation for transacting the business of residential
2396 mortgage loans unless the action is brought against the principal lending manager with whom
2397 the mortgage officer was licensed at the time of the act or service that is the subject of the
2398 action; and
2399 (b) an action by an entity for the recovery of a fee, commission, or other compensation
2400 shall be brought by:
2401 (i) an entity; or
2402 (ii) the principal lending manager of an entity on behalf of the entity.
2403 (4) On or after [~~January~~] May 1, 2006, a principal lending manager who transacts the
2404 business of residential mortgage loans on the principal lending manager's own behalf may sue
2405 in the principal lending manager's own name for the recovery of a fee, commission, or
2406 compensation for transacting the business of residential mortgage loans.
2407 Section 51. **Uncodified Section 32, Chapter 297, Laws of Utah 2004** is amended to
2408 read:
2409 Section 32. **Effective date.**
2410 This bill takes effect on May 3, 2004, except that:
2411 (1) the amendments to Section 61-2c-106 take effect on [~~January~~] May 1, 2006; and
2412 (2) the amendments to Section [~~62-2c-104~~] 61-2c-104 (Effective 07/01/04) take effect
2413 on July 1, 2004.
2414 Section 52. **Effective date.**

- 2415 (1) Except as provided in Subsection (2), this bill takes effect on May 2, 2005.
- 2416 (2) The amendments in this bill to:
- 2417 (a) Section 61-2b-10 take effect on January 1, 2008;
- 2418 (b) Section 61-2b-14 take effect on January 1, 2008;
- 2419 (c) Section 61-2b-15 take effect on January 1, 2008; and
- 2420 (d) Section 61-2c-106 (Effective January 1, 2006) take effect on May 1, 2006.
- 2421 **Section 53. Repealer.**
- 2422 This bill repeals:
- 2423 **Section 61-2b-15.6, Conversion of senior appraisers to state-licensed appraisers.**

Legislative Review Note
as of 2-4-05 1:28 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0172

Division of Real Estate Amendments

14-Feb-05

3:40 PM

State Impact

Provisions of this legislation can be handled within existing budgets.

Individual and Business Impact

Education requirement are increased for real estate appraisers. Individual impacts will vary.

Office of the Legislative Fiscal Analyst