

DIVISION OF REAL ESTATE RELATED

AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: Sheldon L. Killpack

LONG TITLE

General Description:

This bill amends provisions administered or enforced by the Division of Real Estate.

Highlighted Provisions:

This bill:

- ▶ increases a civil penalty that the division may impose under the Utah Uniform Land Sales Practices Act;
- ▶ addresses exemptions under the Utah Uniform Land Sales Practices Act;
- ▶ modifies provisions related to registration of a salesperson under the Timeshare and Camp Resort Act;
- ▶ addresses grounds under which the division may take action under the Timeshare and Camp Resort Act;
- ▶ modifies education requirements for a real estate broker or sales agent;
- ▶ modifies reporting requirements for a real estate broker or sales agent;
- ▶ modifies provisions related to renewal of a real estate license;
- ▶ provides for the modification of sanctions for a real estate licensee complying with court ordered restitution;
- ▶ addresses what constitutes grounds for disciplinary action;
- ▶ clarifies criminal penalties against a person required to be licensed as a real estate licensee;



- 28 ▶ provides definitions related to the Real Estate Education, Research, and Recovery
29 Fund, including what constitutes a judgment;
- 30 ▶ increases caps on recovery from the Real Estate Education, Research, and Recovery
31 Fund;
- 32 ▶ clarifies notice requirements for the Real Estate Education, Research, and Recovery
33 Fund;
- 34 ▶ requires criminal background checks and addresses other requirements for trainees
35 registered under appraisal provisions;
- 36 ▶ provides for conditional registration of a trainee pending the criminal background
37 check;
- 38 ▶ modifies renewal requirements for a license or certificate under appraisal
39 provisions;
- 40 ▶ addresses rulemaking of the appraisal board related to the Uniform Standards of
41 Professional Appraisal Practices;
- 42 ▶ requires notification of the division of certain events by a person licensed, certified,
43 or registered under appraisal provisions;
- 44 ▶ provides for the modification of sanctions under appraisal provisions for a person
45 complying with court ordered restitution;
- 46 ▶ clarifies criminal penalties against a person required to be licensed, certified, or
47 registered under appraisal provisions;
- 48 ▶ addresses disposal of records by a residential mortgage licensee;
- 49 ▶ repeals a requirement that the division by rule provide for certain licensing
50 processes;
- 51 ▶ provides for the modification of sanctions under residential mortgage provisions for
52 a person complying with court ordered restitution;
- 53 ▶ clarifies criminal penalties against a person required to be licensed or certified under
54 residential mortgage provisions;
- 55 ▶ provides that criminal restitution judgments may be recovered from the Residential
56 Mortgage Loan Education, Research, and Recovery Fund;
- 57 ▶ modifies notification requirements related to the Residential Mortgage Loan
58 Education, Research, and Recovery Fund;

- 59 ▶ restricts recovery by a lender from the Residential Mortgage Loan Education,
- 60 Research, and Recovery Fund; and
- 61 ▶ makes technical and conforming amendments.

62 **Monies Appropriated in this Bill:**

63 None

64 **Other Special Clauses:**

65 None

66 **Utah Code Sections Affected:**

67 AMENDS:

- 68 **57-11-2**, as last amended by Laws of Utah 1987, Chapter 73
- 69 **57-11-3**, as last amended by Laws of Utah 1989, Chapter 225
- 70 **57-11-4**, as last amended by Laws of Utah 2003, Chapter 292
- 71 **57-11-14**, as last amended by Laws of Utah 2008, Chapter 382
- 72 **57-11-16**, as last amended by Laws of Utah 1993, Chapter 38
- 73 **57-19-5**, as last amended by Laws of Utah 1990, Chapter 199
- 74 **57-19-15**, as last amended by Laws of Utah 1990, Chapter 199
- 75 **57-19-16**, as enacted by Laws of Utah 1987, Chapter 73
- 76 **61-2-6**, as last amended by Laws of Utah 2008, Chapter 382
- 77 **61-2-7.2**, as last amended by Laws of Utah 2000, Chapter 86
- 78 **61-2-9**, as last amended by Laws of Utah 2008, Chapter 382
- 79 **61-2-11**, as last amended by Laws of Utah 2007, Chapter 325
- 80 **61-2-12**, as last amended by Laws of Utah 2008, Chapters 3 and 382
- 81 **61-2-17**, as last amended by Laws of Utah 1993, Chapter 146
- 82 **61-2a-2**, as last amended by Laws of Utah 1989, Chapter 227
- 83 **61-2a-3**, as last amended by Laws of Utah 2002, Chapter 256
- 84 **61-2a-4**, as last amended by Laws of Utah 1993, Chapter 146
- 85 **61-2a-5**, as last amended by Laws of Utah 2000, Chapter 86
- 86 **61-2a-6**, as enacted by Laws of Utah 1975, Chapter 172
- 87 **61-2a-7**, as enacted by Laws of Utah 1975, Chapter 172
- 88 **61-2b-8**, as last amended by Laws of Utah 2008, Chapters 382 and 387
- 89 **61-2a-9**, as last amended by Laws of Utah 1989, Chapter 227

- 90 **61-2a-11**, as last amended by Laws of Utah 1989, Chapter 225
- 91 **61-2a-12**, as last amended by Laws of Utah 2007, Chapter 325
- 92 **61-2b-6**, as last amended by Laws of Utah 2008, Chapters 382 and 387
- 93 **61-2b-20**, as last amended by Laws of Utah 2005, Chapter 199
- 94 **61-2b-27**, as last amended by Laws of Utah 2008, Chapters 382 and 387
- 95 **61-2b-29**, as last amended by Laws of Utah 2008, Chapter 387
- 96 **61-2b-33**, as last amended by Laws of Utah 2008, Chapters 370 and 387
- 97 **61-2c-103**, as last amended by Laws of Utah 2008, Chapters 158 and 382
- 98 **61-2c-104**, as last amended by Laws of Utah 2008, Chapter 382
- 99 **61-2c-402**, as last amended by Laws of Utah 2007, Chapter 325
- 100 **61-2c-405**, as enacted by Laws of Utah 2008, Chapters 370 and 387
- 101 **61-2c-501**, as enacted by Laws of Utah 2004, Chapter 297
- 102 **61-2c-502**, as last amended by Laws of Utah 2008, Chapter 387
- 103 **61-2c-503**, as enacted by Laws of Utah 2004, Chapter 297

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

Section 1. Section **57-11-2** is amended to read:

57-11-2. Definitions.

As used in this chapter:

(1) (a) "Disposition" includes sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision, if undertaken for gain or profit. ~~[(t)]~~

(b) "Disposition" does not include the sale or lease of land held by railroads for right of way if the land is within 400 feet of the center line of ~~[any]~~ a railroad tract.

(2) "Division" means the Division of Real Estate created in Section 61-2-5.

~~[(2)]~~ (3) "Federal act" means the federal Interstate Land Sales Full Disclosure Act ~~[(f)]~~, 15 U.S.C.~~[(7)]~~ Sec. 1701, et seq.~~[(7)]~~, or any successor federal act.

~~[(3)]~~ (4) (a) "Industrial park" means ~~[any]~~ a subdivision or subdivided lands offered as a part of a common promotional plan of advertising and sale zoned for office, manufacturing, warehousing, commercial, industrial, distribution, or wholesale use and utilized for one or more of those purposes. ~~[(t)]~~

(b) "Industrial park" does not include ~~[any]~~ land offered for sale ~~[which]~~ that is

121 designed or intended to be used for recreational, residential, including multiple family
122 dwellings, or agricultural purposes.

123 ~~[(4)]~~ (5) "Offer" includes ~~[every]~~ an inducement, solicitation, or attempt to encourage a
124 person to acquire an interest in land if undertaken for gain or profit.

125 ~~[(5)]~~ (6) "Person" includes:

126 (a) a business trust~~;~~;

127 (b) an estate~~;~~;

128 (c) a trust~~;~~;

129 (d) a partnership~~;~~;

130 (e) an unincorporated association~~;~~;

131 (f) two or more of any entity having a joint or common interest~~;~~; or

132 (g) any other legal or commercial entity.

133 ~~[(6)]~~ (7) "Purchaser" means a person who acquires or attempts to acquire or succeeds
134 to an interest in land.

135 ~~[(7)]~~ (8) "Residential building" means ~~[any]~~ a structure intended for occupation as a
136 residence which, at the time of an offer or disposition of the unit on which it is situated, or on
137 which there is a legal obligation on the part of the seller to complete construction of it within
138 two years from date of disposition, has, or if completed would have, ready access to water, gas,
139 electricity, and roads.

140 ~~[(8)]~~ (9) "Subdivider" means ~~[the]~~:

141 (a) an owner of ~~[any]~~ an interest in subdivided lands who offers ~~[them]~~ the subdivided
142 lands for disposition; or ~~[the]~~

143 (b) a principal agent of an ~~[inactive]~~ owner of an interest in subdivided lands if the
144 owner is inactive.

145 ~~[(9)]~~ (10) (a) "Subdivision" and "subdivided lands" means land ~~[which]~~ that is divided
146 or is proposed to be divided for the purpose of disposition into ten or more units including
147 land, whether contiguous or not, if ten or more units are offered as a part of a common
148 promotional plan of advertising and sale.

149 (b) If a subdivision is offered by a developer or group of developers, and the land is
150 contiguous or is known, designated, or advertised as a common tract or by a common name,
151 that land is presumed, without regard to the number of units covered by each individual

152 offering, to be part of a common promotional plan.

153 ~~[(10)]~~ (11) "Unit" includes ~~[any]~~ a lot, parcel, or other interest in land separately
154 offered for disposition.

155 Section 2. Section 57-11-3 is amended to read:

156 **57-11-3. Administration by division.**

157 ~~[This]~~ The division shall administer this chapter ~~[shall be administered by the Division~~
158 ~~of Real Estate of the Department of Commerce, which hereinafter is referred to as the~~
159 ~~division].~~

160 Section 3. Section 57-11-4 is amended to read:

161 **57-11-4. Exemptions.**

162 (1) Unless the method of disposition is adopted for the purpose of evasion of this
163 chapter or the federal act, this chapter does not apply to ~~[offers or dispositions]~~ an offer or
164 disposition of an interest in land:

165 (a) by a purchaser of subdivided lands for ~~[his]~~ the person's own account in a single or
166 isolated transaction;

167 (b) (i) on ~~[each]~~ a unit of which there is a residential, commercial, or industrial
168 building~~[-];~~ or

169 (ii) on ~~[each]~~ a unit of which there is a legal obligation on the part of the seller to
170 complete construction of ~~[such]~~ a residential, commercial, or industrial building within two
171 years from date of disposition;

172 (c) ~~[to any person who acquires that interest for use in the business of constructing~~
173 ~~residential, commercial, or industrial buildings, or to any person who acquires that type of land~~
174 ~~for the purpose of disposition to a person engaged in that business;]~~ unless ~~[the]~~ a person who
175 acquires land for ~~[these]~~ one of the following purposes sells that land to one or more
176 individuals as unimproved lots with no legal obligation on the part of the seller to construct a
177 residential, commercial, or industrial building on that lot within two years from the date of
178 disposition~~[-];~~

179 (i) if the person acquires an interest in the land for use in the business of constructing
180 residential, commercial, or industrial buildings; or

181 (ii) if the person acquires the type of land described in Subsection (1)(c)(i) for the
182 purpose of disposition to a person engaged in the business of constructing residential,

183 commercial, or industrial buildings;
 184 (d) pursuant to court order;
 185 (e) by ~~[any]~~ a government or government agency;
 186 (f) ~~(i)~~ if ~~[at the time of the offer or disposition the subdivider furnishes satisfactory~~
 187 ~~assurance of completion of the improvements described in Subsections (1)(f)(ii) and (iii) and]~~
 188 the interest lies within the boundaries of a city or a county which:

189 ~~[(i)]~~ (A) has a planning and zoning board ~~[utilizing or employing]~~ using at least one
 190 professional planner;

191 ~~[(ii)]~~ (B) enacts ordinances that require approval of planning, zoning, and plats,
 192 including the approval of plans for streets, culinary water, sanitary sewer, and flood control;
 193 and

194 ~~[(iii) in which the interest in land]~~

195 (C) will have the improvements described in Subsection (1)(f)~~[(ii)]~~(i)(B) plus
 196 telephone and electricity; and

197 (ii) if at the time of the offer or disposition the subdivider furnishes satisfactory
 198 assurance of completion of the improvements described in Subsection (1)(f)(i)(C);

199 (g) in an industrial park;

200 (h) as cemetery lots; or

201 (i) if the interest is offered as part of a camp resort as defined in Section 57-19-2 or a
 202 timeshare development as defined in Section 57-19-2.

203 (2) Unless the method of disposition is adopted for the purpose of evasion of this
 204 chapter or the provisions of the federal act, ~~[the provisions of]~~ this chapter, except as
 205 specifically designated, ~~[do]~~ does not apply to an offer or disposition of:

206 (a) ~~[offers or dispositions of evidences of]~~ indebtedness secured by a mortgage or deed
 207 of trust on real estate;

208 (b) ~~[offers or dispositions of securities or units]~~ a security or unit of interest issued by a
 209 real estate investment trust regulated under any state or federal statute;

210 (c) ~~[offers or dispositions of]~~ subject to Subsection (5), subdivided lands registered
 211 under the federal act and which the division finds to be in the public interest to exempt from
 212 the registration requirements of this chapter[-]; ~~[A subdivider seeking to qualify under this~~
 213 ~~exemption shall file with the division a copy of an effective statement of record filed with the~~

214 secretary of the Department of Housing and Urban Development together with a filing fee of
215 \$100. In the event the subdivider does not qualify under this exemption, this amount shall be
216 credited to the filing fee required for registration under this chapter. Nothing in this Subsection
217 (2)(c) exempts a subdivider from the provisions of Sections 57-11-16 and 57-11-17 or the
218 requirement to file an annual report with the division under Section 57-11-10;

219 (d) ~~[offers or dispositions of securities]~~ a security currently registered with the
220 ~~[Securities]~~ Division of Securities; or

221 (e) ~~[offers or dispositions of any]~~ an interest in oil, gas, or other minerals or ~~[any]~~ a
222 royalty interest in these assets if the ~~[offers or dispositions of those interests are regulated as~~
223 ~~securities by the United States or by the Securities Division]~~ offer or disposition of the interest
224 is regulated as a security by the federal government or by the Division of Securities.

225 (3) (a) Notwithstanding the exemptions in Subsections (1) and (2), ~~[any]~~ a person
226 making an offer or disposition of an interest in land ~~[which]~~ that is located in Utah shall apply
227 to the division for an exemption before the offer or disposition is made if:

228 (i) the person is representing, in connection with the offer or disposition, the
229 availability of culinary water service to or on the subdivided land; and

230 (ii) the culinary water service is provided by a water corporation as defined in Section
231 54-2-1.

232 (b) A subdivider seeking to qualify under this exemption shall file with the division ~~[an~~
233 ~~application for exemption together with]~~ a filing fee of \$50 and an application containing:

234 (i) information required by the division to show that the offer or disposition is exempt
235 under ~~[the provisions of]~~ this section;

236 (ii) a statement as to what entity will be providing culinary water service and the nature
237 of that entity; and

238 (iii) (A) a copy of the entity's certificate of convenience and necessity issued by the
239 Public Service Commission~~;~~; or

240 (B) evidence that the entity providing water service is exempt from the jurisdiction of
241 the Public Service Commission.

242 (4) (a) The director may by rule or order exempt ~~[any]~~ a person from ~~[any]~~ a
243 requirement of this chapter if the director finds that the offering of an interest in a subdivision
244 is essentially noncommercial.

245 (b) For purposes of this section, the bulk sale of subdivided lands by a subdivider to
 246 another person who will become the subdivider of those lands is considered essentially
 247 noncommercial.

248 (5) (a) A subdivider seeking to qualify under the exemption described in Subsection
 249 (2)(c) shall file with the division:

250 (i) a copy of an effective statement of record filed with the secretary of the Department
 251 of Housing and Urban Development; and

252 (ii) a filing fee of \$100.

253 (b) If a subdivider does not qualify under the exemption described in Subsection (2)(c),
 254 the division shall credit the filing fee described in Subsection (2)(c) to the filing fee required
 255 for registration under this chapter.

256 (c) Nothing in this Subsection (5) exempts a subdivider from:

257 (i) Sections 57-11-16 and 57-11-17; or

258 (ii) the requirement to file an annual report with the division under Section 57-11-10.

259 (6) Notwithstanding an exemption under this section, the division:

260 (a) retains jurisdiction over an offer or disposition of an interest in land to determine
 261 whether or not the exemption continues to apply; and

262 (b) may require compliance with this chapter if an exemption no longer applies.

263 Section 4. Section **57-11-14** is amended to read:

264 **57-11-14. Revocation, suspension, or denial of registration -- Grounds --**

265 **Suspension or revocation of real estate license.**

266 (1) (a) [~~The~~] If the division makes a written finding of fact that a subdivider engages in
 267 one or more acts described in Subsection (1)(b), the division may:

268 (i) deny an application for registration [~~or may~~];

269 (ii) revoke, suspend, or deny reissuance of a registration[;]; or [may]

270 (iii) impose a [~~fine of not more than \$500 per violation, by following the procedures~~
 271 and requirements of Title 63G, Chapter 4, Administrative Procedures Act, and by making a
 272 written finding of fact that the subdivider has:] civil penalty not to exceed the greater of:

273 (A) \$2,500 for each violation; or

274 (B) the amount of any gain or economic benefit derived from each violation.

275 (b) Subsection (1)(a) applies if the division makes a written finding of fact that a

276 subdivider:

277 (i) ~~[failed]~~ fails to comply with the terms of a cease and desist order;

278 (ii) ~~[been]~~ is convicted in ~~[any]~~ a court prior or subsequent to the filing of the
279 application for registration of a crime involving:

280 (A) fraud[-];

281 (B) deception[-];

282 (C) false pretenses[-];

283 (D) misrepresentation[-];

284 (E) false advertising[-]; or

285 (F) dishonest dealing in a real estate transactions[-, or has been];

286 (iii) is subject to ~~[any]~~ an injunction or administrative order restraining a false or
287 misleading promotional plan involving land dispositions[-, and that the public interest requires
288 revocation];

289 ~~[(iii) disposed of, concealed, or diverted any]~~

290 (iv) disposes of, conceals, or diverts funds or assets of any person so as to defeat the
291 rights of subdivision purchasers;

292 ~~[(iv) failed]~~ (v) fails to perform faithfully ~~[any]~~ a stipulation or agreement made with
293 the division as an inducement to:

294 (A) grant ~~[any]~~ a registration[-, to];

295 (B) reinstate ~~[any]~~ a registration[-, to];

296 (C) revoke ~~[any]~~ a cease and desist order[-]; or [to]

297 (D) approve any promotional plan or public offering statement;

298 ~~[(v) made]~~ (vi) makes an intentional ~~[misrepresentations]~~ misrepresentation, or
299 ~~[concealed]~~ conceals a material ~~[facts]~~ fact, in an application for registration;

300 ~~[(vi) violated any provision of]~~

301 (vii) violates this chapter or the rules adopted under this chapter;

302 ~~[(vii)]~~ (viii) directly or through an agent or employee knowingly ~~[engaged]~~ engages in
303 ~~[any]~~ false, deceptive, or misleading advertising, promotional, or sales methods to offer or
304 dispose of an interest in subdivided lands;

305 ~~[(viii) engaged]~~ (ix) engages in the offering of subdivided lands ~~[which]~~ that has
306 constituted or ~~[which]~~ that may constitute a fraud upon purchasers or prospective purchasers of

307 the subdivided lands; or

308 ~~[(ix) engaged]~~ (x) engages in a dishonest ~~[practices]~~ practice in any industry involving
309 sales to consumers.

310 ~~[(b)] (c) [Findings of fact shall be accompanied by]~~ The division shall accompany with
311 a finding of fact required by this Subsection (1) a concise and explicit statement of the
312 underlying facts supporting the [findings] finding.

313 (2) As an alternative to revoking the registration of a subdivider, the director may issue
314 a cease and desist order if after notice and a hearing the director finds that the subdivider is
315 guilty of a violation for which revocation may be ordered.

316 (3) ~~[Any] (a) The division shall suspend or revoke the license of a real estate broker or~~
317 ~~[salesman violating any provisions of]~~ real estate sales agent who violates this chapter ~~[shall~~
318 ~~have the real estate broker or salesman's license suspended or revoked by the division]~~ for the
319 period of time the director determines to be justified under the circumstances. ~~[The]~~

320 (b) A suspension or revocation [shall be] under this section is in addition to any other
321 penalty ~~[which]~~ that may be imposed under this chapter, subject to the provisions of Section
322 61-2-12.

323 Section 5. Section **57-11-16** is amended to read:

324 **57-11-16. Violations -- Criminal penalty -- Limitation -- Duties of attorney**
325 **general, county attorney, or district attorney.**

326 (1) (a) ~~[Any]~~ This Subsection (1) applies to a person who willfully:

327 (i) violates [any provision of this act] this chapter or [of] a rule adopted under [it or any
328 person who willfully;] this chapter; or

329 (ii) in an application for registration under this [act] chapter or under the federal act,
330 makes any untrue statement of a material fact or omits to state a material fact [may be fined not
331 less than \$1,000 or double the amount of gain from the transaction, whichever is the larger, but
332 not more than \$50,000; or he may be].

333 (b) A person described in Subsection (1)(a) may be:

334 (i) fined a civil penalty not to exceed the greater of:

335 (A) \$2,500 for each violation; or

336 (B) double the amount of any gain or economic benefit derived from each violation;

337 (ii) imprisoned for not more than two years; or

338 (iii) both fined or imprisoned. [~~No~~]

339 (c) An indictment or information may not be returned or a complaint filed under this
340 [~~act~~] chapter more than five years after the alleged violation.

341 (2) (a) The attorney general shall advise the division and [~~its~~] the division's staff in
342 matters requiring legal counsel or services in the exercise of the division's power or
343 performance of [~~its~~] the division's duties.

344 (b) In the prosecution or defense of [~~any~~] an action under this section, the attorney
345 general, the county attorney, or the district attorney of the appropriate county shall perform all
346 necessary legal services without compensation other than their regular salaries.

347 Section 6. Section **57-19-5** is amended to read:

348 **57-19-5. Registration -- Filing application.**

349 (1) A person may apply for registration of a project by filing with the director:

350 (a) an application in the form prescribed by the director;

351 (b) the written disclosure required to be furnished to prospective purchasers by Section
352 57-19-11; and

353 (c) financial statements and other information that the director may by rule require as
354 being reasonably necessary to determine whether the requirements of this chapter have been
355 met and whether any of the events specified in Subsection 57-19-13(1)(g) have occurred.

356 (2) Interests in a project which are encumbered by liens, mortgages, or other
357 encumbrances may not be accepted for registration or offered for disposition to the public
358 unless:

359 (a) adequate release or nondisturbance clauses are contained in the encumbering
360 instruments to reasonably assure that the purchaser's interest in the project will not be defeated;
361 or

362 (b) the division has accepted other equivalent assurances which, in the opinion of the
363 division, meet the purposes of this Subsection (2).

364 (3) (a) Each application for registration of a project shall be accompanied by:

365 [~~(a)~~] (i) a filing fee of \$500 for up to 100 interests, plus an additional \$3 per interest for
366 each interest over 100, up to a maximum of \$2,500 for each application; and

367 [~~(b)~~] (ii) subject to Subsection (3)(b), a deposit of \$300 to cover all on-site inspection
368 costs and expenses incurred by the division.

369 **(b) (i)** If the \$300 deposit is insufficient to meet the estimated costs and expenses of the
 370 on-site inspection, the applicant shall make an additional deposit sufficient to cover the
 371 estimated costs and expenses before the division will inspect the subdivided lands.

372 **(ii)** The deposit shall be refunded to the extent it is not used, together with an itemized
 373 statement from the division of all amounts it has used.

374 (4) If a person registers additional interests to be offered for disposition, ~~he~~ the
 375 person may consolidate the subsequent registration with any earlier registration offering
 376 interests for disposition in the same project by filing an application for consolidation
 377 accompanied by an additional fee of \$200 plus \$3 for each additional interest, up to a
 378 maximum of \$1,250 for each application, if at the time the person makes the application all of
 379 the information required by Subsection (1) has been brought current and covers the additional
 380 interests.

381 Section 7. Section **57-19-15** is amended to read:

382 **57-19-15. Application for registration of salesperson.**

383 (1) A person may apply for registration as a salesperson under this chapter by filing
 384 with the director an application in the form prescribed by the director, including~~[-but not~~
 385 ~~limited to]~~:

386 (a) a statement of whether or not the applicant has ever been:

387 (i) convicted of:

388 (A) a felony~~[-];~~ or ~~[any]~~

389 (B) a misdemeanor involving theft, fraud, or dishonesty; or

390 (ii) enjoined from, assessed a civil penalty for, or found to have engaged in the
 391 violation of ~~[any]~~ a law designed to protect ~~[consumers]~~ a consumer;

392 (b) (i) a statement describing the applicant's employment history for the ~~[previous]~~ five
 393 years immediately preceding the day on which the application is filed; and

394 (ii) a statement of whether or not ~~[any]~~ a termination of employment during ~~[that]~~ the
 395 period ~~[was occasioned by any]~~ described in Subsection (1)(b)(i) is as a result of theft, fraud, or
 396 an act of dishonesty; and

397 (c) any other information that the director, by rule, considers necessary to protect the
 398 interests of ~~[purchasers]~~ a purchaser.

399 (2) ~~[The]~~ Notwithstanding the requirements for a regulatory fee under Section

400 63J-1-303, at the time an applicant files an application, the applicant shall ~~[be accompanied by]~~
 401 pay to the division a fee of ~~[\$50]~~ \$100.

402 (3) (a) Registration as a salesperson is effective for a period for ~~[one year]~~ two years,
 403 unless the director specifies otherwise. ~~[Registration as]~~

404 (b) To renew a registration a salesperson ~~[may be renewed by the filing of]~~ shall:

405 (i) file a form prescribed by the director for that purpose; and ~~[the payment of]~~

406 (ii) pay a renewal fee of ~~[\$50]~~ \$100.

407 Section 8. Section **57-19-16** is amended to read:

408 **57-19-16. Denial, revocation, or suspension of registration of salesperson -- Fine.**

409 (1) Subject to Section 57-19-17, if the director finds that an applicant or salesperson
 410 has engaged in an act described in Subsection (2), the director may:

411 (a) deny an application for registration as a salesperson ~~[may be denied];~~

412 (b) suspend or revoke an existing registration ~~[may be revoked or suspended];~~ or ~~[a~~
 413 ~~fine not to exceed \$500 may be imposed by the director, if he]~~

414 (c) impose a civil penalty not to exceed \$500.

415 (2) Subsection (1) applies if the director finds that the applicant or salesperson ~~[has]:~~

416 ~~[(1) filed, or caused]~~

417 (a) files, or causes to be filed, with the director ~~[any]~~ a document ~~[which]~~ that contains
 418 ~~[any]~~ an untrue or misleading information;

419 ~~[(2) made any]~~

420 (b) makes an untrue or misleading statement of material fact~~[-, or failed];~~

421 (c) fails to state a material fact ~~[which]~~ that is necessary in order to make the
 422 statements made not misleading in light of the circumstances under which ~~[they]~~ the statements
 423 are made;

424 ~~[(3) employed any]~~

425 (d) employs a device, scheme, or artifice to defraud, or ~~[engaged]~~ engages in ~~[any]~~ an
 426 act, practice, or course of business ~~[which]~~ that operates or would operate as a fraud or deceit
 427 upon ~~[any]~~ a person;

428 ~~[(4)]~~ (e) subsequent to the effective date of registration as a salesperson, ~~[has been]~~ is:

429 ~~[(a)]~~ (i) convicted of:

430 (A) a felony~~[-];~~ or ~~[any]~~

431 (B) a misdemeanor involving theft, fraud, or dishonesty; or
 432 ~~[(b)]~~ (ii) enjoined from, assessed a civil penalty for, or found to have engaged in ~~[any]~~
 433 a violation of any law designed to protect consumers;
 434 ~~[(5) violated any provision of]~~
 435 (f) violates this chapter; ~~[or]~~
 436 ~~[(6) engaged in any]~~
 437 (g) engages in an activity ~~[which]~~ that constitutes dishonest dealing~~[-]; or~~
 438 (h) engages in unprofessional conduct as defined by statute or rule made by the
 439 director.

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

441 **61-2-6. Licensing procedures and requirements.**

442 (1) (a) Except as provided in Subsection (5), the commission shall determine the
 443 qualifications and requirements of ~~[applicants]~~ an applicant for:

- 444 (i) a principal broker license;
 445 (ii) an associate broker license; or
 446 (iii) a sales agent license.

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

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

452 (A) a sales agent license to complete an approved educational program ~~[not to exceed~~
 453 ~~90 hours]~~ consisting of the number of hours designated by rule made by the commission with
 454 the concurrence of the division, except that the rule may not require less than 120 hours; and

455 (B) an associate broker or principal broker license to complete an approved educational
 456 program ~~[not to exceed]~~ consisting of the number of hours designated by rule made by the
 457 commission with the concurrence of the division, except that the rule may not require less than
 458 120 hours.

459 (ii) ~~[The hours]~~ An hour required by this section ~~[mean]~~ means 50 minutes of
 460 instruction in each 60 minutes.

461 (iii) The maximum number of program hours available to an individual is ten hours per

462 day.

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

465 (i) the fundamentals of:

466 (A) the English language;

467 (B) arithmetic;

468 (C) bookkeeping; and

469 (D) real estate principles and practices;

470 (ii) the provisions of this chapter;

471 (iii) the rules established by the commission; and

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

473 (e) (i) Three years' full-time experience as a real estate sales agent or its equivalent is
474 required before ~~[any]~~ an applicant may apply for, and secure a principal broker or associate
475 broker license in this state.

476 (ii) The commission shall establish by rule, made in accordance with Title 63G,
477 Chapter 3, Utah Administrative Rulemaking Act, the criteria by which the commission will
478 accept experience or special education in similar fields of business in lieu of the three years'
479 experience.

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

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

485 (3) (a) A nonresident principal broker may be licensed in this state by ~~[conforming to]~~
486 complying with all the provisions of this chapter except that of residency.

487 (b) A nonresident associate broker or sales agent may become licensed in this state by:

488 (i) ~~[conforming to]~~ complying with all the provisions of this chapter except that of
489 residency; and

490 (ii) being employed or engaged as an independent contractor by or on behalf of a
491 nonresident or resident principal broker who is licensed in this state.

492 (4) (a) Except as provided in Subsection 61-2-9(1)(e)(iv), ~~[the]~~ the division and

493 commission shall treat an application to be relicensed of an applicant [~~who has had a~~] whose
 494 real estate license is revoked [~~shall be treated~~] as an original application.

495 (b) In the case of an applicant for a new license as a principal broker or associate
 496 broker, the applicant is not entitled to credit for experience gained [~~prior to~~] before the
 497 revocation of a real estate license.

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

- 500 (i) review a class or category of applications for initial or renewed licenses;
- 501 (ii) determine whether an applicant meets the licensing criteria in Subsection (1); and
- 502 (iii) approve or deny a license application without concurrence by the commission.

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

507 (ii) An applicant who is denied licensure pursuant to this Subsection (5) may seek
 508 agency review by the executive director only after the commission has reviewed the division's
 509 denial of the applicant's application.

510 Section 10. Section **61-2-7.2** is amended to read:

511 **61-2-7.2. Reporting requirements.**

512 [~~Principal brokers, associate brokers, and sales agents~~] A licensee shall [send] notify the
 513 division of the following by sending the division a signed statement [~~notifying the division of~~
 514 ~~the following~~] within ten business days of:

- 515 (1) (a) a conviction of [any] a criminal offense; [or]
- 516 (b) the entry of a plea in abeyance to a criminal offense; or
- 517 (c) the potential resolution of a criminal case by:
 - 518 (i) a diversion agreement; or
 - 519 (ii) any other agreement under which a criminal charge is held in suspense for a period
 520 of time; or

521 (2) filing a personal or brokerage bankruptcy.

522 Section 11. Section **61-2-9** is amended to read:

523 **61-2-9. Examination and license fees -- Criminal background check -- Renewal of**

524 licenses -- Education requirements -- Activation of inactive licenses -- Recertification --
525 Licenses of firm, partnership, or association -- Miscellaneous fees.

526 (1) (a) Upon filing an application for a principal broker, associate broker, or sales agent
527 license examination, the applicant shall pay a nonrefundable fee as determined by the
528 commission with the concurrence of the division under Section 63J-1-303 for admission to the
529 examination.

530 (b) A principal broker, associate broker, or sales agent applicant shall pay a
531 nonrefundable fee as determined by the commission with the concurrence of the division under
532 Section 63J-1-303 for issuance of an initial license or license renewal.

533 (c) ~~[Each]~~ A license issued under this Subsection (1) shall be issued for a period of not
534 less than two years as determined by the division with the concurrence of the commission.

535 (d) (i) Any of the following applicants shall comply with this Subsection (1)(d):

536 (A) a new sales agent applicant; or

537 (B) ~~[an out-of-state]~~ a broker applicant.

538 (ii) An applicant described in this Subsection (1)(d) shall:

539 (A) submit fingerprint cards in a form acceptable to the division at the time the license
540 application is filed; and

541 (B) consent to a criminal background check by the Utah Bureau of Criminal
542 Identification and the Federal Bureau of Investigation regarding the application.

543 (iii) The division shall request the Department of Public Safety to complete a Federal
544 Bureau of Investigation criminal background check for each applicant described in this
545 Subsection (1)(d) through the national criminal history system or any successor system.

546 (iv) The applicant shall pay the cost of the criminal background check and the
547 fingerprinting ~~[shall be borne by the applicant]~~.

548 (v) ~~[Funds]~~ Monies paid to the division by an applicant for the cost of the criminal
549 background check ~~[shall be]~~ are nonlapsing.

550 (e) (i) ~~[Any]~~ A license issued under Subsection (1)(d) ~~[shall be]~~ is conditional, pending
551 completion of the criminal background check. If the criminal background check discloses the
552 applicant ~~[has failed]~~ fails to accurately disclose a criminal history, the license shall be
553 immediately and automatically revoked.

554 (ii) ~~[Any]~~ A person whose conditional license ~~[has been]~~ is revoked under Subsection

555 (1)(e)(i) ~~[shall be entitled to]~~ may have a post-revocation hearing to challenge the revocation.
 556 The hearing shall be conducted in accordance with Title 63G, Chapter 4, Administrative
 557 Procedures Act.

558 (iii) The division director shall designate one of the following to act as the presiding
 559 officer in a postrevocation hearing described in this Subsection (1)(e):

560 (A) the division; or

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

562 (iv) The decision on whether relief from the revocation of a license under this

563 Subsection (1)(e) will be granted shall be made by the presiding officer.

564 (v) Relief from a revocation under this Subsection (1)(e) may be granted only if:

565 (A) the criminal history upon which the division based the revocation:

566 (I) did not occur; or

567 (II) is the criminal history of another person;

568 (B) (I) the revocation is based on a failure to accurately disclose a criminal history; and

569 (II) the applicant ~~[had]~~ has a reasonable good faith belief at the time of application that
 570 there was no criminal history to be disclosed; or

571 (C) the division ~~[failed]~~ fails to follow the prescribed procedure for the revocation.

572 (vi) If a license is revoked or a revocation under this Subsection (1)(e) is upheld after a
 573 post-revocation hearing, the person may not apply for a new license until at least 12 months
 574 after the day on which the license is revoked.

575 (2) (a) (i) A license expires if it is not renewed on or before its expiration date.

576 (ii) As a condition of renewal, ~~[each]~~ an active licensee shall demonstrate competence[:

577 ~~(A) by viewing an approved real estate education video program and completing a~~

578 ~~supplementary workbook; or (B)]~~ by completing ~~[12]~~ the hours of ~~[professional]~~ continuing

579 education ~~[approved by the division and commission]~~ within ~~[each]~~ a two-year renewal period

580 designated by rule made by the commission with the concurrence of the division, and subject to

581 the requirements of Subsection (2)(a)(iii).

582 (iii) (A) A rule described in Subsection (2)(a)(ii) may not require less than 18 hours
 583 within a two-year period.

584 (B) In making a rule described in Subsection (2)(c)(ii), the division and commission
 585 shall consider:

586 (I) evaluating continuing education on the basis of competency, rather than course
587 time; and

588 (II) allowing completion of courses in a significant variety of topic areas that the
589 division and commission determine are valuable in assisting an individual licensed under this
590 chapter to increase the individual's competency.

591 ~~[(iii)]~~ (iv) The division with the concurrence of the commission shall certify the
592 continuing education required under this Subsection (2)(a) which may include:

- 593 (A) state conventions;
- 594 (B) home study courses;
- 595 (C) video courses; and
- 596 (D) closed circuit television courses.

597 ~~[(iv)]~~ (v) The commission with concurrence of the division may exempt a licensee
598 from all or a part of the continuing education requirement of this Subsection (2)(a) for a
599 reasonable period ~~[not to exceed four years]~~ of time:

600 (A) upon a finding of reasonable cause, including:

601 (I) military service; [and] or

602 (II) if an individual is elected or appointed to government service, the individual's
603 government service during which the individual spends a substantial time addressing real estate
604 issues; and

605 (B) under conditions established by rule made in accordance with Title 63G, Chapter 3,
606 Utah Administrative Rulemaking Act.

607 (b) For a period of 30 days after the expiration date of a license, the license may be
608 reinstated upon:

609 (i) payment of a renewal fee and a late fee determined by the commission with the
610 concurrence of the division under Section 63J-1-303; and

611 (ii) providing proof acceptable to the division and the commission of the licensee
612 having:

613 (A) completed the hours of education required by Subsection (2)(a); or

614 (B) demonstrated competence as required under Subsection (2)(a).

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

- 617 (i) paying a renewal fee and a late fee determined by the commission with the
618 concurrence of the division under Section 63J-1-303;
- 619 (ii) providing to the division proof of satisfactory completion of 12 hours of continuing
620 education:
- 621 (A) in addition to the requirements for a timely renewal; and
622 (B) on a subject determined by the commission by rule made in accordance with Title
623 63G, Chapter 3, Utah Administrative Rulemaking Act; and
- 624 (iii) providing proof acceptable to the division and the commission of the licensee
625 having:
- 626 (A) completed the hours of education required under Subsection (2)(a); or
627 (B) demonstrated competence as required under Subsection (2)(a).
- 628 (d) After the six-month period described in Subsection (2)(c), and until one year after
629 the expiration date, the license may be reinstated by:
- 630 (i) paying a renewal fee and a late fee determined by the commission with the
631 concurrence of the division under Section 63J-1-303;
- 632 (ii) providing to the division proof of satisfactory completion of 24 hours of continuing
633 education:
- 634 (A) in addition to the requirements for a timely renewal; and
635 (B) on a subject determined by the commission by rule made in accordance with Title
636 63G, Chapter 3, Utah Administrative Rulemaking Act; and
- 637 (iii) providing proof acceptable to the division and the commission of the licensee
638 having:
- 639 (A) completed the hours of education required by Subsection (2)(a); or
640 (B) demonstrated competence as required under Subsection (2)(a).
- 641 ~~[(d) A]~~ (e) The division shall relicense a person who does not renew that person's
642 license within [six months after the expiration date shall be relicensed] one year as prescribed
643 for an original application.
- 644 (3) (a) As a condition for the activation of an inactive license that was in an inactive
645 status at the time of the licensee's most recent renewal, the licensee shall supply the division
646 with proof of:
- 647 (i) successful completion of the respective sales agent or broker licensing examination

648 within six months prior to applying to activate the license; or

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

652 (b) The commission may, in accordance with Title 63G, Chapter 3, Utah
653 Administrative Rulemaking Act, establish by rule:

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

655 (ii) how long [~~prior to~~] before reactivation the continuing education must [~~have been~~]
656 be completed.

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

660 (i) has qualified as a principal broker under the terms of this chapter; and

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

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

664 (5) The division may charge and collect reasonable fees determined by the commission
665 with the concurrence of the division under Section 63J-1-303 to cover the costs for:

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

667 (b) a license [~~histories or certifications~~] history or certification;

668 (c) a certified [~~copies~~] copy of an official [~~documents, orders, and~~] document, order, or
669 other [~~papers and transcripts~~] paper or transcript;

670 (d) certifying a real estate [~~schools, courses, and instructors~~] school, course, or
671 instructor, the fees for which shall, notwithstanding Section 13-1-2, be deposited in the Real
672 Estate Education, Research, and Recovery Fund; and

673 (e) other duties required by this chapter.

674 (6) If a licensee submits or causes to be submitted a check, draft, or other negotiable
675 instrument to the division for payment of [~~fees~~] a fee, and the check, draft, or other negotiable
676 instrument is dishonored, the transaction for which the payment [~~was~~] is submitted is void and
677 will be reversed by the division if payment of the applicable fee is not received in full.

678 (7) (a) [~~The fees~~] A fee under this chapter and the additional license fee for the Real

679 Estate Education, Research, and Recovery Fund under Section 61-2a-4 are in lieu of all other
680 license fees or assessments that might otherwise be imposed or charged by the state or any of
681 its political subdivisions, upon, or as a condition of, the privilege of conducting the business
682 regulated by this chapter, except that a political subdivision within the state may charge a
683 business license fee on a principal broker if the principal broker maintains a place of business
684 within the jurisdiction of the political subdivision.

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

687 Section 12. Section **61-2-11** is amended to read:

688 **61-2-11. Grounds for disciplinary action.**

689 The following acts are unlawful for a person required to be licensed under this chapter:

690 (1) making ~~any~~ a substantial misrepresentation;

691 (2) making ~~any~~ a false ~~promises~~ promise of a character likely to influence,
692 persuade, or induce;

693 (3) pursuing a continued and flagrant course of misrepresentation, or of making false
694 promises through agents, sales agents, advertising, or otherwise;

695 (4) acting for more than one party in a transaction without the informed consent of all
696 parties;

697 (5) (a) acting as an associate broker or sales agent while not licensed with a licensed
698 principal broker;

699 (b) representing or attempting to represent a broker other than the principal broker with
700 whom the person is affiliated; or

701 (c) representing as sales agent or having a contractual relationship similar to that of
702 sales agent with other than a licensed principal broker;

703 (6) (a) failing, within a reasonable time, to account for or to remit ~~any~~ monies coming
704 into the person's possession that belong to others;

705 (b) commingling the ~~funds~~ monies described in Subsection (6)(a) with the person's
706 own ~~funds~~ monies; or

707 (c) diverting the ~~funds~~ monies described in Subsection (6)(a) from the purpose for
708 which they were received;

709 (7) paying or offering to pay valuable consideration, as defined by the commission, to

710 ~~[any]~~ a person not licensed under this chapter, except that valuable consideration may be
711 shared:

712 (a) with a licensed principal broker of another jurisdiction; or

713 (b) as provided under:

714 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;

715 (ii) Title 16, Chapter 11, Professional Corporation Act; or

716 (iii) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act;

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

719 (9) failing to voluntarily furnish ~~[copies of all documents]~~ a copy of a document to all
720 parties executing the ~~[documents]~~ document;

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

723 (a) the names of buyers and sellers or lessees and lessors;

724 (b) the identification of the property;

725 (c) the sale or rental price;

726 (d) ~~[any]~~ monies received in trust;

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

728 (f) any other information required by rule;

729 (11) failing to disclose, in writing, in the purchase, sale, or rental of property, whether
730 the purchase, sale, or rental is made for that person or for an undisclosed principal;

731 (12) regardless of whether the crime ~~[was]~~ is related to real estate, being convicted of a
732 criminal offense involving moral turpitude within five years of the most recent application,
733 including:

734 (a) a conviction based upon a plea of nolo contendere~~[;]~~; or

735 (b) a plea held in abeyance to a criminal offense involving moral turpitude;

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

738 (14) in the case of a principal broker or a licensee who is a branch manager, failing to
739 exercise reasonable supervision over the activities of the principal broker's or branch manager's
740 ~~[licensees and any]~~ licensee or unlicensed staff;

- 741 (15) violating or disregarding:
- 742 (a) this chapter[;];
- 743 (b) an order of the commission[;]; or
- 744 (c) the rules adopted by the commission and the division;
- 745 (16) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real
- 746 estate transaction;
- 747 (17) any other conduct which constitutes dishonest dealing;
- 748 (18) unprofessional conduct as defined by statute or rule;
- 749 (19) on the basis of misconduct in a professional capacity that relates to character,
- 750 honesty, integrity, or truthfulness, having one of the following suspended, revoked,
- 751 surrendered, or cancelled:
- 752 (a) a real estate license issued by another jurisdiction; or
- 753 (b) another professional license issued by this or another jurisdiction;
- 754 (20) failing to respond to a request by the division in an investigation authorized under
- 755 this chapter, including:
- 756 (a) failing to respond to a subpoena;
- 757 (b) withholding evidence; or
- 758 (c) failing to produce documents or records; [or]
- 759 (21) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
- 760 (a) providing a title insurance product or service without the approval required by
- 761 Section 31A-2-405; or
- 762 (b) knowingly providing false or misleading information in the statement required by
- 763 Subsection 31A-2-405(2)[;]; or
- 764 (22) violating an independent contractor agreement between a principal broker and a
- 765 sales agent as evidenced by a final judgment of a court.
- 766 Section 13. Section **61-2-12** is amended to read:
- 767 **61-2-12. Disciplinary action -- Judicial review.**
- 768 (1) (a) On the basis of a violation of this chapter, the commission with the concurrence
- 769 of the director, may issue an order:
- 770 (i) imposing an educational requirement;
- 771 (ii) imposing a civil penalty not to exceed the greater of:

772 (A) \$2,500 for each violation; or
773 (B) the amount of any gain or economic benefit derived from each violation;
774 (iii) taking any of the following actions related to a license or certificate:
775 (A) revoking;
776 (B) suspending;
777 (C) placing on probation;
778 (D) denying the renewal, reinstatement, or application for an original license or
779 certificate; or
780 (E) in the case of denial or revocation of a license or certificate, setting a waiting
781 period for an applicant to apply for a license or certificate under this title;
782 (iv) issuing a cease and desist order; ~~or~~
783 (v) modifying an action described in Subsections (1)(a)(i) through (iv) if the
784 commission finds that the person complies with court ordered restitution; or
785 ~~(v)~~ (vi) doing any combination of Subsections (1)(a)(i) through (iv) (v).
786 (b) If ~~the~~ a licensee is an active sales agent or active associate broker, the division
787 shall inform the principal broker with whom the licensee is affiliated of the charge and of the
788 time and place of any hearing.
789 (2) (a) ~~Any~~ An applicant, certificate holder, licensee, or person aggrieved, including
790 the complainant, may obtain agency review by the executive director and judicial review of any
791 adverse ruling, order, or decision of the division.
792 (b) If ~~the~~ an applicant, certificate holder, or licensee prevails in the appeal and the
793 court finds that the state action was undertaken without substantial justification, the court may
794 award reasonable litigation expenses to the applicant, certificate holder, or licensee as provided
795 under Title 78B, Chapter 8, Part 5, Small Business Equal Access to Justice Act.
796 (c) (i) An order, ruling, or decision of the division shall take effect and become
797 operative 30 days after the service of the order, ruling, or decision unless otherwise provided in
798 the order.
799 (ii) If an appeal is taken by a licensee, the division may stay enforcement of an order,
800 ruling, or decision in accordance with Section 63G-4-405.
801 (iii) ~~The~~ An appeal ~~shall be~~ is governed by the Utah Rules of Appellate Procedure.
802 (3) The commission and the director shall comply with the procedures and

803 requirements of Title 63G, Chapter 4, Administrative Procedures Act, in ~~[all]~~ an adjudicative
804 ~~[proceedings]~~ proceeding.

805 Section 14. Section **61-2-17** is amended to read:

806 **61-2-17. Penalty for violation of chapter.**

807 (1) ~~[Any individual violating]~~ (a) An individual required to be licensed under this
808 chapter who violates this chapter, in addition to being subject to a license sanction or a fine
809 ordered by the commission, is, upon conviction of a first violation, guilty of a class A
810 misdemeanor. ~~[Any]~~ For a conviction under this Subsection (1)(a), imprisonment shall be for a
811 term not to exceed six months.

812 (b) If ~~[the]~~ a violator of this chapter is a corporation, ~~[it]~~ the corporation is, upon
813 conviction of a first violation, guilty of a class A misdemeanor.

814 (2) (a) Upon conviction of a second or subsequent violation, an individual is guilty of a
815 third degree felony. Imprisonment for a conviction under this Subsection (2)(a) shall be for a
816 term not to exceed two years.

817 (b) If a corporation is convicted of a second or subsequent violation, ~~[it]~~ the
818 corporation is guilty of a third degree felony.

819 (3) ~~[Any]~~ An officer or agent of a corporation, or ~~[any]~~ a member or agent of a
820 partnership or association, who personally participates in or is an accessory to any violation of
821 this chapter by ~~[such]~~ the corporation, partnership, or association, is subject to the penalties
822 prescribed for ~~[individuals]~~ an individual.

823 (4) If ~~[any]~~ a person receives ~~[any]~~ money or its equivalent, as commission,
824 compensation, or profit by or in consequence of a violation of this chapter, that person is liable
825 for an additional penalty of not less than the amount of the money received and not more than
826 three times the amount of money received, as may be determined by the court. This penalty
827 may be sued for in any court of competent jurisdiction, and recovered by any person aggrieved
828 for ~~[his]~~ the person's own use and benefit.

829 (5) ~~[All fines]~~ A fine imposed by the commission and the director under this chapter
830 shall, notwithstanding Section 13-1-2, be deposited into the Real Estate Education, Research,
831 and Recovery Fund to be used in a manner consistent with the requirements of ~~[the]~~ Chapter
832 2a, Real Estate Recovery Fund Act.

833 Section 15. Section **61-2a-2** is amended to read:

834 **61-2a-2. Purpose -- Definitions.**

835 (1) The purposes of this chapter are as follows:

836 ~~[(1) To establish a]~~ (a)(i) This chapter creates the Real Estate Education, Research,
837 and Recovery Fund [that shall] to reimburse the public out of the fund for damages up to
838 [\$10,000] \$15,000 caused by a real estate [licensees] licensee in a real estate transaction as
839 provided in Subsection 61-2a-5(1).840 (ii) This chapter applies to damages caused by an individual [licensees] licensee.
841 Reimbursement may not be made for [judgments] a judgment against [corporations,
842 partnerships, associations, or other legal entities] a corporation, partnership, association, or
843 other legal entity.844 ~~[(2) To provide]~~ (b) This chapter provides revenue for improving the real estate
845 profession through education and research with the goal of making [real estate salesmen]
846 licensees more responsible to the public.847 (2) For purposes of this chapter:848 (a) "Commission" means the Real Estate Commission.849 (b) "Division" means the Division of Real Estate.850 (c) "Fund" means the Real Estate Education, Research, and Recovery Fund created in
851 Section 61-2a-3.852 (d) "Judgment" includes a criminal restitution judgment award.853 Section 16. Section **61-2a-3** is amended to read:854 **61-2a-3. Education, Research, and Recovery Fund.**855 (1) (a) There is created a restricted special revenue fund to be known as the "Real
856 Estate Education, Research, and Recovery Fund."857 (b) The actual interest earned on the [Real Estate Education, Research, and Recovery
858 Fund] fund shall be deposited into the fund.859 (2) At the commencement of each fiscal year, \$100,000 shall be available in the fund
860 for satisfying judgments rendered against [persons] a person licensed under Title 61, Chapter 2,
861 Division of Real Estate.862 Section 17. Section **61-2a-4** is amended to read:863 **61-2a-4. Additional license fee -- Purpose.**864 (1) ~~[Each]~~ A person who applies for or renews a real estate principal broker or

865 associate broker license shall pay, in addition to the application or renewal fee, a reasonable
 866 annual fee of up to \$18, as determined by the [~~Division of Real Estate~~] division with the
 867 concurrence of the [~~Real Estate Commission~~] commission.

868 (2) [~~Each~~] A person who applies for or renews a real estate sales agent license shall pay
 869 in addition to the application or renewal fee a reasonable annual fee of up to \$12, as determined
 870 by the division with the concurrence of the commission.

871 (3) Notwithstanding Section 13-1-2, the additional fees under this section shall be paid
 872 into the [~~Real Estate Education, Research, and Recovery Fund~~] fund to be used for the
 873 purposes of this chapter.

874 Section 18. Section **61-2a-5** is amended to read:

875 **61-2a-5. Notice to division -- Judgment against real estate licensee -- Fraud,**
 876 **misrepresentation, or deceit -- Verified petition for order directing payment from fund --**
 877 **Limitations and procedure.**

878 (1) [~~A~~] (a) Except as provided in Subsection (6), a person may bring a claim against
 879 the [~~Real Estate Education, Research, and Recovery Fund~~] fund only if [~~he~~] the person sends a
 880 signed notification to the [~~Division of Real Estate~~] division at the time [~~he~~] the person files an
 881 action against a real estate licensee alleging fraud, misrepresentation, or deceit.

882 (b) Within 30 days of receipt of the notice, the division [~~shall have~~] has an
 883 unconditional right to intervene in the action.

884 (c) If the person making a claim against the fund obtains a final judgment in a court of
 885 competent jurisdiction in this state against the licensee based upon fraud, misrepresentation, or
 886 deceit in [~~any~~] a real estate transaction, the person making the claim may, upon termination of
 887 all proceedings including appeals, file a verified petition in the court where the judgment was
 888 entered for an order directing payment from the [~~Real Estate Education, Research, and~~
 889 ~~Recovery Fund~~] fund for the uncollected actual damages included in the judgment and unpaid.

890 (d) Recovery from the fund may not include:

891 (i) punitive damages[~~, attorney's~~];

892 (ii) attorney fees[~~;~~];

893 (iii) interest[~~;~~]; or

894 (iv) court costs.

895 (e) Regardless of the number of claimants or parcels of real estate involved in a

896 transaction, the liability of the fund may not exceed [~~\$10,000~~]:

897 (i) \$15,000 for a single transaction; and

898 (ii) \$50,000 for [~~any~~] one licensee.

899 (2) A copy of the petition shall be served upon the [~~Division of Real Estate of the~~
900 ~~Department of Commerce~~] division, and an affidavit of the service shall be filed with the court.

901 (3) The court shall conduct a hearing on the petition within 30 days after service. The
902 petitioner shall recover from the fund only if [~~he~~] the petitioner shows all of the following:

903 (a) [~~He~~] the petitioner is not the spouse of the judgment debtor or the personal
904 representative of the spouse[-];

905 (b) [~~He~~] the petitioner has complied with this chapter[-];

906 (c) [~~He~~] the petitioner has obtained a final judgment in the manner prescribed under
907 this section, indicating the amount of the judgment awarded[-];

908 (d) [~~He~~] the petitioner has proved the amount still owing on the judgment at the date of
909 the petition[-];

910 (e) [~~He~~] the petitioner has had a writ of execution issued upon the judgment, and the
911 officer executing the writ has made a return showing that no property subject to execution in
912 satisfaction of the judgment could be found[~~-H~~];

913 (f) if execution is levied against the property of the judgment debtor[~~, the petitioner~~
914 ~~shall show~~];

915 (i) that the amount realized was insufficient to satisfy the judgment[-]; and [~~shall~~
916 ~~indicate~~]

917 (ii) the amount realized and the balance remaining on the judgment after application of
918 the amount realized[-];

919 [~~(f) He~~] (g) the petitioner has made reasonable searches and inquiries to ascertain
920 whether the judgment debtor has any interest in property, real or personal, that may satisfy the
921 judgment[-]; and [~~he~~]

922 (h) the petitioner has exercised reasonable diligence to secure payment of the judgment
923 from the assets of the judgment debtor.

924 (4) If the petitioner satisfies the court that it is not practicable for [~~him~~] the petitioner to
925 comply with one or more of the requirements enumerated in Subsections (3)(e) [~~and (f)~~]
926 through (h), the court may waive those requirements.

927 (5) (a) A judgment that is the basis for a claim against the fund may not have been
928 discharged in bankruptcy.

929 (b) In the case of a bankruptcy proceeding that is still open or that is commenced
930 during the pendency of the claim, the claimant shall obtain an order from the bankruptcy court
931 declaring the judgment and debt to be nondischargeable.

932 (6) A person may not bring a claim against the fund if the person is substantially
933 complicit in the fraud, misrepresentation, or deceit that is the basis of the claim.

934 Section 19. Section **61-2a-6** is amended to read:

935 **61-2a-6. Real Estate Division -- Authority to act upon receipt of petition.**

936 (1) Upon receipt of a petition as required by Section 61-2a-5, the [~~Real Estate Division~~]
937 division may answer, initiate review proceedings of its own, or appear in any proceeding in the
938 name of the defendant to the action or on behalf of the fund.

939 (2) The division may, subject to court approval, compromise a claim based upon the
940 application of a petitioner.

941 Section 20. Section **61-2a-7** is amended to read:

942 **61-2a-7. Court determination and order.**

943 If the court determines that a claim should be levied against that portion of the fund
944 allocated for the purpose of carrying out the provisions of this [~~act~~] chapter, the court shall
945 enter an order directed to the division requiring payment from the fund of that portion of the
946 petitioner's judgment that is payable from the fund pursuant to [~~the provisions of and in~~
947 ~~accordance with the limitations contained in~~] Section 61-2a-5.

948 Section 21. Section **61-2a-9** is amended to read:

949 **61-2a-9. Division subrogated to judgment creditor -- Authority to revoke license.**

950 (1) If the division makes payment from the fund to a judgment creditor, the division
951 shall be subrogated to [~~all~~] the rights of the judgment creditor for the amounts paid out of the
952 fund and any amount and interest recovered by the division shall be deposited in the fund.

953 (2) (a) The license of [~~any~~] a real estate licensee for whom payment from the fund is
954 made under this chapter shall be automatically revoked. [~~The~~]

955 (b) A licensee may not apply for a new license until the amount paid out on [~~his~~] the
956 licensee's account, plus interest at a rate determined by the [~~Division of Real Estate~~] division
957 with the concurrence of the commission, [~~has been~~] is repaid in full.

958 Section 22. Section **61-2a-11** is amended to read:

959 **61-2a-11. Authority to take disciplinary action.**

960 (1) Nothing contained in this chapter shall limit the authority of the director of the
961 [~~Department of Commerce~~] division to take disciplinary action against a licensee for a
962 violation of [~~any of the provisions of Title 61,~~] Chapter 2, Division of Real Estate, or of the
963 rules [~~and regulations of the Division of Real Estate~~] of the commission and division.

964 (2) The repayment in full of all obligations to the fund by [~~any~~] a licensee does not
965 nullify or modify the effect of any other disciplinary proceeding brought pursuant to [~~the~~
966 ~~provisions of Title 61,~~] Chapter 2, Division of Real Estate, or the rules [~~and regulations~~
967 ~~promulgated by the commission~~] of the commission.

968 Section 23. Section **61-2a-12** is amended to read:

969 **61-2a-12. Moneys accumulated -- Excess set aside -- Purpose.**

970 (1) [~~Any of the money~~] Money accumulated in the [~~Real Estate Education, Research~~
971 ~~and Recovery Fund~~] fund in excess of \$100,000 shall be set aside and segregated to be used by
972 the [~~Division of Real Estate~~] division to:

973 (a) investigate violations of this chapter or Chapter 2, Division of Real Estate, related
974 to fraud; and

975 (b) advance education and research in the field of real estate.

976 (2) The division may only use the excess monies described in Subsection (1) only in a
977 manner consistent with Subsection (1), including for courses:

978 (a) sponsored by the division;

979 (b) offered by the division in conjunction with any university or college in the state; or

980 (c) provided for by contracting for a particular research project in the field of real estate
981 for the state.

982 Section 24. Section **61-2b-6** is amended to read:

983 **61-2b-6. Duties and powers of division.**

984 (1) The division has the powers and duties listed in this Subsection (1).

985 (a) The division shall:

986 (i) receive an application for licensing, certification, or registration;

987 (ii) establish appropriate administrative procedures for the processing of an application
988 for licensure, certification, or registration;

989 (iii) issue a license or certification to a qualified applicant pursuant to this chapter; and

990 (iv) register an individual who applies and qualifies for registration as a trainee under

991 this chapter.

992 (b) (i) The division shall require an individual to register as a trainee with the division

993 before the individual acts in the capacity of a trainee earning experience for licensure.

994 (ii) [~~The~~] Subject to Subsection (4), the board shall adopt rules in accordance with

995 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for:

996 (A) the trainee registration required by this Subsection (1)(b)[-]; and

997 (B) renewal of the trainee registration required by this Subsection (1)(b).

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

999 (d) The division may:

1000 (i) solicit bids and enter into contracts with one or more educational testing services or

1001 organizations for the preparation of a bank of questions and answers approved by the board for

1002 licensing and certification examinations; and

1003 (ii) administer or contract for the administration of licensing and certification

1004 examinations as may be required to carry out the division's responsibilities under this chapter.

1005 (e) The division shall provide administrative assistance to the board by providing to the

1006 board the facilities, equipment, supplies, and personnel that are required to enable the board to

1007 carry out the board's responsibilities under this chapter.

1008 (f) The division shall assist the board in upgrading and improving the quality of the

1009 education and examinations required under this chapter.

1010 (g) The division shall assist the board in improving the quality of the continuing

1011 education available to a person licensed and certified under this chapter.

1012 (h) The division shall assist the board with respect to the proper interpretation or

1013 explanation of the Uniform Standards of Professional Appraisal Practice as required by Section

1014 61-2b-27 when an interpretation or explanation becomes necessary in the enforcement of this

1015 chapter.

1016 (i) The division shall establish fees in accordance with Section 63J-1-303:

1017 (i) for processing:

1018 (A) a trainee registration;

1019 (B) an application for licensing and certification; and

- 1020 (C) approval of an expert witness; and
- 1021 (ii) for all other functions required or permitted by this chapter.
- 1022 (j) The division may:
- 1023 (i) investigate a complaint against:
- 1024 (A) a trainee;
- 1025 (B) a person licensed or certified under this chapter; or
- 1026 (C) a person required to be licensed, certified, or registered under this chapter;
- 1027 (ii) subpoena a witness;
- 1028 (iii) subpoena the production of a book, document, record, or other paper;
- 1029 (iv) administer an oath; and
- 1030 (v) take testimony and receive evidence concerning a matter within the division's
- 1031 jurisdiction.
- 1032 (k) The division may:
- 1033 (i) promote research and conduct studies relating to the profession of real estate
- 1034 appraising; and
- 1035 (ii) sponsor real estate appraisal educational activities.
- 1036 (l) The division shall adopt, with the concurrence of the board, rules for the
- 1037 administration of this chapter pursuant to Title 63G, Chapter 3, Utah Administrative
- 1038 Rulemaking Act, that are not inconsistent with this chapter or the constitution and laws of this
- 1039 state or of the United States.
- 1040 (m) The division shall employ an appropriate staff to investigate allegations that a
- 1041 person required to be licensed, certified, or registered under this chapter fails to comply with
- 1042 this chapter.
- 1043 (n) The division may employ other professional, clerical, and technical staff as may be
- 1044 necessary to properly administer the work of the division under this chapter.
- 1045 (o) The division may make available, at a reasonable cost determined by the division, a
- 1046 list of the names and addresses of all persons licensed or certified by the division under this
- 1047 chapter to the extent the information is a public record under Title 63G, Chapter 2,
- 1048 Government Records Access and Management Act.
- 1049 (2) (a) The division shall approve an expert witness who is not otherwise licensed or
- 1050 certified under this chapter to appear in an administrative or judicial tax proceeding to provide

1051 evidence related to the valuation of real property that is assessed by the [~~tax commission~~] State
1052 Tax Commission, provided that the:

1053 (i) approval is limited to a specific proceeding;

1054 (ii) approval is valid until the proceeding becomes final;

1055 (iii) applicant pays an approval fee to the division;

1056 (iv) applicant provides the applicant's name, address, occupation, and professional
1057 credentials; and

1058 (v) applicant provides a notarized statement that:

1059 (A) the applicant is competent to render an appraisal and to testify as an expert witness
1060 in the proceeding; and

1061 (B) the appraisal and testimony to be offered shall be in accordance with the Uniform
1062 Standards of Professional Appraisal Practice adopted by the board.

1063 (b) Subsection (2)(a) is effective for an administrative or judicial property tax
1064 proceeding related to the valuation of real property that is assessed by the [~~tax commission,~~
1065 ~~including those filed but which are not final as of May 3, 1994~~] State Tax Commission.

1066 (3) (a) If the conditions of Subsection (3)(b) are met, the division is immune from any
1067 civil action or criminal prosecution for initiating or assisting in a lawful investigation of an act
1068 of, or participating in a disciplinary proceeding concerning:

1069 (i) a person required to be licensed, certified, or registered pursuant to this chapter; or

1070 (ii) a person approved as an expert witness pursuant to this chapter.

1071 (b) This Subsection (3) applies if the division takes the action:

1072 (i) without malicious intent; and

1073 (ii) in the reasonable belief that the action is taken pursuant to the powers and duties
1074 vested in the division under this chapter.

1075 (4) (a) An individual applying to register as a trainee under this chapter shall:

1076 (i) submit a fingerprint card in a form acceptable to the division at the time of applying
1077 for registration; and

1078 (ii) consent to a criminal background check by:

1079 (A) the Utah Bureau of Criminal Identification; and

1080 (B) the Federal Bureau of Investigation.

1081 (b) The division shall request the Department of Public Safety to complete a Federal

1082 Bureau of Investigation criminal background check for an applicant through a national criminal
1083 history system.

1084 (c) The applicant shall pay the cost of:

1085 (i) the fingerprinting required by this section; and

1086 (ii) the criminal background check required by this section.

1087 (d) (i) A registration as a trainee under this chapter is conditional pending completion
1088 of the criminal background check required by this Subsection (4).

1089 (ii) If a criminal background check discloses that an applicant fails to accurately
1090 disclose a criminal history, the registration is immediately and automatically revoked.

1091 (iii) An individual whose conditional registration is revoked under Subsection (4)(d)(ii)
1092 may appeal the revocation in a hearing conducted by the board:

1093 (A) after the revocation; and

1094 (B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

1095 (iv) The board may delegate to the division or an administrative law judge the authority
1096 to conduct a hearing described in Subsection (4)(d)(iii).

1097 (v) Relief from a revocation may be granted only if:

1098 (A) the criminal history upon which the division based the revocation:

1099 (I) did not occur; or

1100 (II) is the criminal history of another person;

1101 (B) (I) the revocation is based on a failure to accurately disclose a criminal history; and

1102 (II) the applicant has a reasonable good faith belief at the time of application that there
1103 was no criminal history to be disclosed; or

1104 (C) the division fails to follow the prescribed procedure for the revocation.

1105 (e) If a registration is revoked or a revocation is upheld after a hearing described in
1106 Subsection (4)(d)(iii), the individual may not apply for a new license for a period of 12 months
1107 after the day on which the registration is revoked.

1108 (f) The board may delegate to the division the authority to make a decision on whether
1109 relief from a revocation should be granted.

1110 (g) The funds paid by an applicant for the cost of the criminal background check shall
1111 be nonlapsing.

1112 Section 25. Section **61-2b-8** is amended to read:

1113 **61-2b-8. Duties of board.**

1114 (1) (a) The board shall provide technical assistance to the division relating to real estate
1115 appraisal standards and real estate appraiser qualifications.

1116 (b) The board has the powers and duties listed in this section.

1117 (2) The board shall:

1118 (a) determine the experience, education, and examination requirements appropriate for
1119 a person licensed under this chapter;

1120 (b) determine the experience, education, and examination requirements appropriate for
1121 a person certified under this chapter;

1122 (i) in compliance with the minimum requirements of Financial Institutions Reform,
1123 Recovery, and Enforcement Act of 1989[~~7~~]; and

1124 (ii) consistent with the intent of this chapter;

1125 (c) determine the appraisal related acts that may be performed by:

1126 (i) a trainee on the basis of the trainee's education and experience;

1127 (ii) clerical staff; and

1128 (iii) a person who:

1129 (A) does not hold a license or certification; and

1130 (B) assists an appraiser licensed or certified under this chapter in providing appraisal
1131 services or consultation services;

1132 (d) determine the procedures for a trainee to register with the division; and

1133 (e) develop one or more programs to upgrade and improve the experience, education,
1134 and examinations as required under this chapter.

1135 (3) (a) The experience, education, and examination requirements established by the
1136 board for a person licensed or certified under this chapter shall be the minimum criteria
1137 established by the Appraiser Qualification Board of the Appraisal Foundation, unless, after
1138 notice and a public hearing held in accordance with Title 63G, Chapter 3, Utah Administrative
1139 Rulemaking Act, the board finds that the minimum criteria are not appropriate for a
1140 state-licensed appraiser or a state-certified appraiser in this state.

1141 (b) If under Subsection (3)(a) the board makes a finding that the minimum criteria are
1142 not appropriate, the board shall recommend appropriate criteria to the Legislature.

1143 (4) The board shall:

1144 (a) determine the continuing education requirements appropriate for the renewal of a
1145 license ~~[or]~~, certification, or registration issued under this chapter;

1146 (b) develop one or more programs to upgrade and improve continuing education; and

1147 (c) recommend to the division one or more available continuing education courses that
1148 meet the requirements of this chapter.

1149 (5) (a) The board shall consider the proper interpretation or explanation of the Uniform
1150 Standards of Professional Appraisal Practice as required by Section 61-2b-27 when:

1151 (i) an interpretation or explanation is necessary in the enforcement of this chapter; and

1152 (ii) the Appraisal Standards Board of the Appraisal Foundation has not issued an
1153 interpretation or explanation.

1154 (b) If the conditions of Subsection (5)(a) are met, the board shall recommend to the
1155 division the appropriate interpretation or explanation that the division should adopt as a rule
1156 under this chapter.

1157 (c) The board may by rule made in accordance with Title 63G, Chapter 3, Utah
1158 Administrative Rulemaking Act, and Section 61-2b-27 provide for an exemption from a
1159 provision of the Uniform Standards of Professional Appraisal Practice for an activity engaged
1160 in on behalf of a governmental entity.

1161 (6) The board shall develop and establish or approve the examination specifications
1162 and the minimum score required to pass an examination for licensure or certification.

1163 (7) The board may review the:

1164 (a) bank of questions and answers that comprise the examination for a person licensed
1165 and certified under this chapter;

1166 (b) procedure that is established for selecting individual questions from the bank of
1167 questions for use in each scheduled examination; and

1168 (c) questions in the bank of questions and the related answers to determine whether
1169 they meet the examination specifications established by the board.

1170 (8) (a) The board shall conduct an administrative hearing, not delegated by the board to
1171 an administrative law judge, in connection with a disciplinary proceeding under Sections
1172 61-2b-30 and 61-2b-31 concerning:

1173 (i) a person required to be licensed, certified, or registered under this chapter; and

1174 (ii) the person's failure to comply with this chapter and the Uniform Standards of

1175 Professional Appraisal Practice as adopted under Section 61-2b-27.

1176 (b) The board shall issue in an administrative hearing a decision that contains findings
1177 of fact and conclusions of law.

1178 (c) When a determination is made that a person required to be licensed, certified, or
1179 registered under this chapter has violated this chapter, the division shall implement disciplinary
1180 action determined by the board.

1181 (9) A member of the board is immune from a civil action or criminal prosecution for a
1182 disciplinary proceeding concerning a person required to be registered, licensed, certified, or
1183 approved as an expert under this chapter if the action is taken without malicious intent and in
1184 the reasonable belief that the action taken was taken pursuant to the powers and duties vested
1185 in a member of the board under this chapter.

1186 (10) The board shall require and pass upon proof necessary to determine the honesty,
1187 competency, integrity, and truthfulness of an applicant for:

1188 (a) original licensure, certification, or registration; and

1189 (b) renewal licensure or certification.

1190 Section 26. Section **61-2b-20** is amended to read:

1191 **61-2b-20. Renewal of license or certification.**

1192 (1) To obtain a renewal of a license or certification under this chapter, the holder of a
1193 current, valid license or certification shall, in compliance with procedures established by the
1194 division and the board, make application and pay the prescribed fee to the division [~~prior to~~
1195 before the expiration date of the license or certification [~~then held~~].

1196 (2) [~~The~~] An application for renewal of a license or certification shall be accompanied
1197 by evidence in the form prescribed by the division of having completed the continuing
1198 education requirements for renewal specified in this chapter.

1199 (3) (a) A license or certification expires if it is not renewed on or before its expiration
1200 date.

1201 [~~(a)~~] (b) For a period of 30 days after the expiration date, a license or certification may
1202 be reinstated upon:

1203 (i) payment of a renewal fee and a late fee determined by the division and the board;

1204 and

1205 (ii) satisfying the continuing education requirements specified in Section 61-2b-40.

1206 ~~[(b)]~~ (c) After the 30-day period described in Subsection (3)~~[(a)]~~(b), and until six
1207 months after the expiration date, the license or certification may be reinstated by:

1208 (i) paying a renewal fee and a reinstatement fee determined by the division and the
1209 board; and

1210 (ii) satisfying the continuing education requirements specified in Section 61-2b-40.

1211 (d) After the six-month period described in Subsection (3)(c), and until one year after
1212 the expiration date, the license or certification may be reinstated by:

1213 (i) paying a renewal fee and a reinstatement fee determined by the division and the
1214 board;

1215 (ii) providing proof acceptable to the division and the board of the person having
1216 satisfied the continuing education requirements of Section 61-2b-40; and

1217 (iii) providing proof acceptable to the division and the board of the person completing
1218 24 hours of continuing education:

1219 (A) in addition to the requirements in Section 61-2b-40; and

1220 (B) on a subject determined by the division by rule made in accordance with Title 63G,
1221 Chapter 3, Utah Administrative Rulemaking Act.

1222 ~~[(4) A]~~ (e) The division shall relicense or recertify a person who does not renew that
1223 person's license or certification within ~~[six months]~~ one year after the expiration date ~~[shall be~~
1224 relicensed or recertified] as prescribed for an original application.

1225 (4) A person who is licensed, certified, or registered under this chapter shall notify the
1226 division of the following by sending the division a signed statement within ten business days
1227 of:

1228 (a) (i) a conviction of a criminal offense;

1229 (ii) the entry of a plea in abeyance to a criminal offense; or

1230 (iii) the potential resolution of a criminal case by:

1231 (A) a diversion agreement; or

1232 (B) any other agreement under which a criminal charge is suspended for a period of
1233 time;

1234 (b) filing a personal bankruptcy or business bankruptcy;

1235 (c) the suspension, revocation, surrender, cancellation, or denial of a professional
1236 license, certification, or registration of the person, whether the license, certification, or

1237 registration is issued by this state or another jurisdiction; or

1238 (d) the entry of a cease and desist order or a temporary or permanent injunction:

1239 (i) against the person by a court or licensing agency; and

1240 (ii) on the basis of:

1241 (A) conduct or a practice involving an act regulated by this chapter; or

1242 (B) conduct involving fraud, misrepresentation, or deceit.

1243 Section 27. Section **61-2b-27** is amended to read:

1244 **61-2b-27. Professional conduct -- Uniform standards.**

1245 (1) (a) A person licensed, certified, registered, or approved as an expert witness under
1246 this chapter must comply with:

1247 (i) generally accepted standards of professional appraisal practice; and

1248 (ii) generally accepted ethical rules to be observed by a real estate appraiser.

1249 (b) [~~Generally~~] Subject to Subsection (1)(c), generally accepted standards of
1250 professional appraisal practice are evidenced by the Uniform Standards of Professional
1251 Appraisal Practice promulgated by the Appraisal Foundation.

1252 (c) After a public hearing held in accordance with Title 63G, Chapter 3, Utah
1253 Administrative Rulemaking Act, the board:

1254 (i) shall adopt and may make modifications of or additions to the Uniform Standards of
1255 Professional Appraisal Practice as the board considers appropriate to comply with the Financial
1256 Institutions Reform, Recovery, and Enforcement Act of 1989[-]; or

1257 (ii) may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1258 Rulemaking Act, exempt a person licensed, certified, registered, or approved as an expert
1259 witness from complying with a provision of the Uniform Standards of Professional Appraisal
1260 Practice for an activity that the person engages in on behalf of a governmental entity.

1261 (2) The board shall schedule a public hearing pursuant to Title 63G, Chapter 3, Utah
1262 Administrative Rulemaking Act, for the purpose of deciding whether or not the board should
1263 require a modified or supplemental standard or the ethical rule to be observed by a person
1264 licensed, certified, registered, or approved as an expert witness under this chapter if the
1265 Appraisal Standards Board of the Appraisal Foundation:

1266 (a) (i) modifies the Uniform Standards of Professional Appraisal Practice;

1267 (ii) issues a supplemental appraisal standard which it considers appropriate for:

- 1268 (A) a residential real estate appraiser; or
- 1269 (B) a general real estate appraiser; or
- 1270 (iii) issues an ethical rule to be observed by a real estate appraiser; and
- 1271 (b) requests the board to consider the adoption of the modified or supplemental
- 1272 standard or ethical rule.

1273 (3) If, after the notice and public hearing described in Subsection (2), the board finds
1274 that a modified or supplemental standard or the ethical rule issued by the Appraisal Standards
1275 Board of the Appraisal Foundation is appropriate for a person licensed, certified, registered, or
1276 approved as an expert witness under this chapter, the board shall recommend a rule requiring a
1277 person licensed, certified, registered, or approved as an expert witness under this chapter to
1278 observe the modified or supplemental standard or the ethical rule.

1279 Section 28. Section **61-2b-29** is amended to read:

1280 **61-2b-29. Disciplinary action -- Grounds.**

- 1281 (1) (a) The board may order disciplinary action against a person:
 - 1282 (i) registered, licensed, or certified under this chapter; or
 - 1283 (ii) required to be registered, licensed, or certified under this chapter.
- 1284 (b) On the basis of a ground listed in Subsection (2) for disciplinary action, board
- 1285 action may include:
 - 1286 (i) revoking, suspending, or placing a person's registration, license, or certification on
 - 1287 probation;
 - 1288 (ii) denying a person's original registration, license, or certification;
 - 1289 (iii) denying a person's renewal license or certification;
 - 1290 (iv) in the case of denial or revocation of a registration, license, or certification, setting
 - 1291 a waiting period for an applicant to apply for a registration, license, or certification under this
 - 1292 chapter;
 - 1293 (v) ordering remedial education;
 - 1294 (vi) imposing a civil penalty upon a person not to exceed the greater of:
 - 1295 (A) \$2,500 for each violation; or
 - 1296 (B) the amount of any gain or economic benefit from a violation;
 - 1297 (vii) issuing a cease and desist order; [or]
 - 1298 (viii) modifying an action described in Subsections (1)(b)(i) through (vii) if the board

1299 finds that the person complies with court ordered restitution; or
1300 [~~viii~~] (ix) doing any combination of Subsections (1)(b)(i) through [~~vii~~] (viii).
1301 (2) The following are grounds for disciplinary action under this section:
1302 (a) procuring or attempting to procure a registration, license, or certification under this
1303 chapter:
1304 (i) by fraud; or
1305 (ii) by making a false statement, submitting false information, or making a material
1306 misrepresentation in an application filed with the division;
1307 (b) paying money or attempting to pay money other than a fee provided for by this
1308 chapter to a member or employee of the division to procure a registration, license, or
1309 certification under this chapter;
1310 (c) an act or omission in the practice of real estate appraising that constitutes
1311 dishonesty, fraud, or misrepresentation;
1312 (d) entry of a judgment against a registrant, licensee, or certificate holder on grounds of
1313 fraud, misrepresentation, or deceit in the making of an appraisal of real estate;
1314 (e) a guilty plea to a criminal offense involving moral turpitude that is held in
1315 abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo
1316 contendere, of a criminal offense involving moral turpitude;
1317 (f) engaging in the business of real estate appraising under an assumed or fictitious
1318 name not properly registered in this state;
1319 (g) paying a finder's fee or a referral fee to a person not licensed or certified under this
1320 chapter in connection with an appraisal of real estate or real property in this state;
1321 (h) making a false or misleading statement in:
1322 (i) that portion of a written appraisal report that deals with professional qualifications;
1323 or
1324 (ii) testimony concerning professional qualifications;
1325 (i) violating or disregarding:
1326 (i) a provision of this chapter;
1327 (ii) an order of the board; or
1328 (iii) a rule issued under this chapter;
1329 (j) violating the confidential nature of governmental records to which a person

1330 registered, licensed, certified, or approved as an expert under this chapter gained access
1331 through employment or engagement as an appraiser by a governmental agency;

1332 (k) accepting a contingent fee for performing an appraisal as defined in Subsection
1333 61-2b-2(1)(a) if in fact the fee is or was contingent upon:

1334 (i) the appraiser reporting a predetermined analysis, opinion, or conclusion;

1335 (ii) the analysis, opinion, conclusion, or valuation reached; or

1336 (iii) the consequences resulting from the appraisal assignment;

1337 (l) unprofessional conduct as defined by statute or rule;

1338 (m) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

1339 (i) providing a title insurance product or service without the approval required by
1340 Section 31A-2-405; or

1341 (ii) knowingly providing false or misleading information in the statement required by
1342 Subsection 31A-2-405(2); or

1343 (n) other conduct that constitutes dishonest dealing.

1344 Section 29. Section **61-2b-33** is amended to read:

1345 **61-2b-33. Penalty for violating this chapter -- Automatic revocation.**

1346 (1) In addition to being subject to a disciplinary action by the board, a person required
1347 to be licensed, certified, or registered under this chapter who violates this chapter:

1348 (a) is guilty of a class A misdemeanor, upon a conviction of a first violation of this
1349 chapter; and

1350 (b) is guilty of a third degree felony, upon conviction of a second or subsequent
1351 violation of this chapter.

1352 (2) [~~Any~~] A license or registration issued by the division to [~~any~~] a person [~~or entity~~]
1353 convicted of a violation of Section 76-6-1203 is automatically revoked.

1354 Section 30. Section **61-2c-103** is amended to read:

1355 **61-2c-103. Powers and duties of the division.**

1356 (1) The division shall administer this chapter.

1357 (2) In addition to any power or duty expressly provided in this chapter, the division
1358 may:

1359 (a) receive and act on a complaint including:

1360 (i) taking action designed to obtain voluntary compliance with this chapter; or

- 1361 (ii) commencing an administrative or judicial proceeding on the division's own
1362 initiative;
- 1363 (b) establish one or more programs for the education of consumers with respect to
1364 residential mortgage loans;
- 1365 (c) (i) make one or more studies appropriate to effectuate the purposes and policies of
1366 this chapter; and
- 1367 (ii) make the results of the studies described in Subsection (2)(c)(i) available to the
1368 public;
- 1369 (d) visit and investigate an entity licensed under this chapter, regardless of whether the
1370 entity is located in Utah; and
- 1371 (e) employ one or more necessary hearing examiners, investigators, clerks, and other
1372 employees and agents.
- 1373 (3) The division shall make rules for the administration of this chapter in accordance
1374 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including:
- 1375 (a) licensure procedures for:
- 1376 (i) an individual or entity required by this chapter to obtain a license with the division;
1377 and
- 1378 (ii) the establishment of a branch office by an entity;
- 1379 (b) proper handling of funds received by a licensee;
- 1380 (c) record-keeping requirements by a licensee, including proper disposal of a record;
1381 and
- 1382 (d) standards of conduct for a licensee.
- 1383 (4) The division may make available to the public a list of the names and mailing
1384 addresses of all licensees:
- 1385 (a) either directly or through a third party; and
- 1386 (b) at a reasonable cost.
- 1387 (5) The division shall:
- 1388 (a) certify an education provider who offers:
- 1389 (i) prelicensing education to candidates for licensure under this chapter; or
- 1390 (ii) continuing education to individuals licensed under this chapter; and
- 1391 (b) make available to the public, licensees, and candidates for licensure a list of the

1392 names and addresses of all education providers certified under this Subsection (5).

1393 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1394 division shall make rules establishing:

1395 (a) certification criteria and procedures for a provider of prelicensing education and
1396 continuing education; and

1397 (b) standards of conduct for a certified education provider.

1398 (7) The division may charge a fee established in accordance with Section 63J-1-303 for
1399 processing a change that a licensee is required by Section 61-2c-205 to report to the division.

1400 ~~[(8)(a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~
1401 ~~and this Subsection (8), the division shall make rules establishing a licensure procedure for~~
1402 ~~obtaining both a principal lending manager license and an entity license at the same time that~~
1403 ~~applies if the principal lending manager is the only individual that transacts the business of~~
1404 ~~residential mortgage loans on behalf of the entity, including as an employee or agent of the~~
1405 ~~entity.]~~

1406 ~~[(b) A rule made under this Subsection (8) shall require that to obtain or renew both a~~
1407 ~~principal lending manager license and an entity license, an individual described in Subsection~~
1408 ~~(8)(a) is required to only:]~~

1409 ~~[(i) complete one licensing process for the term of a license; and]~~

1410 ~~[(ii) pay one licensing fee for the term of a license.]~~

1411 Section 31. Section **61-2c-104** is amended to read:

1412 **61-2c-104. Residential Mortgage Regulatory Commission.**

1413 (1) (a) There is created within the division the "Residential Mortgage Regulatory
1414 Commission" consisting of the following members appointed by the executive director with the
1415 approval of the governor:

1416 (i) four members;

1417 (A) having at least three years of experience in transacting the business of residential
1418 mortgage loans; and

1419 (B) who are [~~currently~~] licensed under this chapter at the time of and during
1420 appointment; and

1421 (ii) one member from the general public.

1422 (b) (i) The executive director with the approval of the governor may appoint an

1423 alternate member to the board.

1424 (ii) The alternate member shall:

1425 (A) at the time of the appointment, have at least three years of experience in transacting
1426 the business of residential mortgage loans; and

1427 (B) be licensed under this chapter at the time of and during appointment.

1428 (2) (a) Except as required by Subsection (2)(b), the executive director shall appoint
1429 each new member or reappointed member subject to appointment by the executive director to a
1430 four-year term ending June 30.

1431 (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall,
1432 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms
1433 of commission members are staggered so that approximately half of the commission is
1434 appointed every two years.

1435 (c) If a vacancy occurs in the membership of the commission for any reason, the
1436 ~~[replacement shall be appointed]~~ executive director shall appoint a replacement for the
1437 unexpired term.

1438 (d) A member shall remain on the commission until the member's successor is
1439 appointed and qualified.

1440 (3) Members of the commission shall annually select one member to serve as chair.

1441 (4) (a) The commission shall meet at least quarterly.

1442 (b) The director may call a meeting in addition to the meetings required by Subsection
1443 (4)(a):

1444 (i) at the discretion of the director;

1445 (ii) at the request of the chair of the commission; or

1446 (iii) at the written request of three or more commission members.

1447 (5) (a) Three members of the commission constitute a quorum for the transaction of
1448 business.

1449 (b) If a quorum of members is unavailable for any meeting and an alternate member
1450 has been appointed to the commission by the executive director with the approval of the
1451 governor, the alternate member shall serve as a regular member of the commission for that
1452 meeting if with the presence of the alternate member there is a quorum present at the meeting.

1453 (c) The action of a majority of a quorum present is an action of the commission.

1454 (6) (a) (i) A member who is not a government employee [~~shall~~] may not receive [~~no~~]
1455 compensation or benefits for the member's services, but may receive per diem and expenses
1456 incurred in the performance of the member's official duties at the rates established by the
1457 Division of Finance under Sections 63A-3-106 and 63A-3-107.

1458 (ii) A member who is not a government employee may decline to receive per diem and
1459 expenses for the member's service.

1460 (b) (i) A state government officer and employee member who does not receive salary,
1461 per diem, or expenses from the member's agency for the member's service may receive per
1462 diem and expenses incurred in the performance of the member's official duties from the
1463 commission at the rates established by the Division of Finance under Sections 63A-3-106 and
1464 63A-3-107.

1465 (ii) A state government officer and employee member may decline to receive per diem
1466 and expenses for the member's service.

1467 (7) The commission shall:

1468 (a) except as provided in Subsection 61-2c-202(2), concur in the licensure or denial of
1469 licensure of individuals and entities under this chapter in accordance with Part 2, Licensure;

1470 (b) take disciplinary action with the concurrence of the director in accordance with Part
1471 4, Enforcement;

1472 (c) advise the division concerning matters related to the administration and
1473 enforcement of this chapter; and

1474 (d) with the concurrence of the division, determine the requirements for:

1475 (i) the examination required under Section 61-2c-202, covering at least:

1476 (A) the fundamentals of the English language;

1477 (B) arithmetic;

1478 (C) the provisions of this chapter;

1479 (D) rules adopted by the division;

1480 (E) basic residential mortgage principles and practices; and

1481 (F) any other aspect of Utah law the commission determines is appropriate;

1482 (ii) [~~with the concurrence of the division;~~] the continuing education requirements under
1483 Section 61-2c-205, including:

1484 (A) except as provided in Subsection 61-2c-202(4)(a)(iii) and Subsection

1485 61-2c-206(1)(c), the appropriate number of hours of prelicensing education and required
1486 continuing education; and

1487 (B) the subject matter of courses the division may accept for continuing education
1488 purposes;

1489 (iii) with the concurrence of the division, the prelicensing education required under
1490 Sections 61-2c-202 and 61-2c-206, including online education or distance learning options; and

1491 (iv) the examination required under Section 61-2c-206 covering:

1492 (A) advanced residential mortgage principles and practices; and

1493 (B) other aspects of Utah law the commission, with the concurrence of the division,
1494 determines appropriate.

1495 (8) The commission may appoint a committee to make recommendations to the
1496 commission concerning approval of prelicensing education and continuing education courses.

1497 (9) The commission and the division shall make the examination and prelicensing
1498 education and continuing education requirements described in this section available through
1499 the Internet or other distance education methods approved by the commission and division
1500 when reasonably practicable.

1501 (10) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
1502 the commission, with the concurrence of the division, shall make rules establishing procedures
1503 under which a licensee may be exempted from continuing education requirements:

1504 (a) for a period not to exceed four years; and

1505 (b) upon a finding of reasonable cause.

1506 Section 32. Section **61-2c-402** is amended to read:

1507 **61-2c-402. Disciplinary action.**

1508 Subject to the requirements of Section 61-2c-402.1, if [~~an individual or entity~~] a person
1509 required to be licensed under this chapter violates this chapter, or an education provider
1510 required to be certified under this chapter violates this chapter, the commission, with the
1511 concurrence of the director, may:

1512 (1) impose an educational requirement;

1513 (2) impose a civil penalty against the individual or entity in an amount not to exceed
1514 the greater of:

1515 (a) \$2,500 for each violation; or

1516 (b) the amount equal to any gain or economic benefit derived from each violation;

1517 (3) deny an application for an original license;

1518 (4) do any of the following to a license under this chapter:

1519 (a) suspend;

1520 (b) revoke;

1521 (c) place on probation;

1522 (d) deny renewal;

1523 (e) deny reinstatement; or

1524 (f) in the case of a denial or revocation of a license, set a waiting period for an
1525 applicant to apply for a license under this chapter;

1526 (5) issue a cease and desist order; [~~or~~]

1527 (6) require the reimbursement of the division of costs incurred by the division related
1528 to the recovery, storage, or destruction of a record that the person disposes of in a manner that
1529 violates this chapter or a rule made under this chapter;

1530 (7) modify a sanction described in Subsections (1) through (6) if the commission finds
1531 that the person complies with court ordered restitution; or

1532 [~~(6)~~] (8) do any combination of Subsections (1) through [~~(5)~~] (7).

1533 Section 33. Section **61-2c-405** is amended to read:

1534 **61-2c-405. Penalty for violating this chapter -- Automatic revocation.**

1535 (1) In addition to being subject to a disciplinary action by the commission, a person
1536 required to be licensed or certified under this chapter who violates this chapter:

1537 (a) is guilty of a class A misdemeanor upon conviction of a first violation of this
1538 chapter; and

1539 (b) is guilty of a third degree felony upon conviction of a second or subsequent
1540 violation of this chapter.

1541 (2) [~~Any~~] A license or [~~registration~~] certification issued by the division to [~~any~~] a
1542 person [~~or entity~~] convicted of a violation of Section 76-6-1203 is automatically revoked.

1543 Section 34. Section **61-2c-501** is amended to read:

1544 **61-2c-501. Fund created -- Minimum balance.**

1545 (1) (a) There is created a restricted special revenue fund known as the "Residential
1546 Mortgage Loan Education, Research, and Recovery Fund."

1547 (b) As used in this part, "fund" means the Residential Mortgage Loan Education,
1548 Research, and Recovery Fund.

1549 (2) The interest earned on the fund shall be deposited into the fund.

1550 (3) (a) At the beginning of each state fiscal year, \$100,000 shall remain available in the
1551 fund to satisfy judgments rendered against [~~individuals and entities~~] a person licensed under
1552 this chapter.

1553 (b) For purposes of this part, a "judgment" includes a criminal restitution judgment.

1554 Section 35. Section **61-2c-502** is amended to read:

1555 **61-2c-502. Additional license fee.**

1556 (1) An individual who applies for or renews a license shall pay, in addition to the
1557 application or renewal fee, a reasonable annual fee:

1558 (a) determined by the division with the concurrence of the commission; and

1559 (b) not to exceed \$18.

1560 (2) An entity that applies for or renews an entity license shall pay, in addition to the
1561 application or renewal fee, a reasonable annual fee:

1562 (a) determined by the division with the concurrence of the commission; and

1563 (b) not to exceed \$25.

1564 (3) Notwithstanding Section 13-1-2, the following shall be paid into the [~~Residential~~
1565 ~~Mortgage Loan Education, Research, and Recovery Fund~~] fund to be used as provided in this
1566 part:

1567 (a) a fee provided in this section;

1568 (b) a fee for certifying:

1569 (i) a mortgage school;

1570 (ii) a mortgage course; or

1571 (iii) a mortgage instructor; and

1572 (c) a civil penalty imposed under this chapter.

1573 (4) If the balance in the [~~Residential Mortgage Loan Education, Research, and~~
1574 ~~Recovery Fund~~] fund that is available to satisfy a judgment against a licensee decreases to less
1575 than \$100,000, the division may make an additional assessment to a licensee to maintain the
1576 balance available at \$100,000 to satisfy judgments.

1577 Section 36. Section **61-2c-503** is amended to read:

1578 **61-2c-503. Notice to division -- Judgment against mortgage licensee -- Fraud,**
1579 **misrepresentation, or deceit -- Verified petition for order directing payment from fund --**
1580 **Limitations and procedure.**

1581 (1) (a) [~~A~~] Subject to Subsection (6), a person may bring a claim against the fund if the
1582 person sends a signed notification to the division at the time the person files an action:

1583 (i) against a licensee; and

1584 (ii) alleging fraud, misrepresentation, or deceit.

1585 (b) Within 30 calendar days of receipt of the notice described in Subsection (1)(a), the
1586 division may intervene in the action.

1587 (c) If a person making a claim against the fund obtains a final judgment in a court of
1588 competent jurisdiction in Utah against a licensee based on fraud, misrepresentation, or deceit in
1589 a residential mortgage loan transaction, the person making the claim may, upon termination of
1590 all proceedings including appeals, file a verified petition in the court where the judgment was
1591 entered for an order directing payment from the fund for the uncollected actual damages
1592 included in the judgment.

1593 (d) A recovery from the fund may not include punitive damages, interest, or court
1594 costs.

1595 (e) Regardless of the number of claimants or number of loans involved in a transaction,
1596 the liability of the fund may not exceed:

1597 (i) \$15,000 for a single transaction;

1598 (ii) \$45,000 for an individual licensee; or

1599 (iii) \$45,000 for an entity.

1600 (2) A person making a claim against the fund shall:

1601 (a) serve a copy of the petition on the division; and

1602 (b) file a copy of the affidavit of the service of the petition described in Subsection
1603 (2)(a) with the court.

1604 (3) (a) The court shall conduct a hearing on the petition within 30 calendar days after
1605 service.

1606 (b) The petitioner shall recover from the fund only if the petitioner shows:

1607 (i) that the petitioner is not:

1608 (A) the spouse of the judgment debtor; or

1609 (B) the personal representative of the spouse of the judgment debtor;
1610 (ii) that the petitioner has complied with this chapter;
1611 (iii) that the petitioner has obtained a final judgment in the manner prescribed under
1612 this section, indicating the amount of the judgment awarded;
1613 (iv) that the petitioner has proved the amount still owing on the judgment at the date of
1614 the petition;
1615 (v) (A) that:
1616 (I) the petitioner has a writ of execution issued upon the judgment; and
1617 (II) the officer executing the writ has made a return showing that no property subject to
1618 execution in satisfaction of the judgment could be found; and
1619 (B) if execution is levied against the property of the judgment debtor, that:
1620 (I) the amount realized was insufficient to satisfy the judgment; and
1621 (II) a balance remains on the judgment after application of the amount realized; and
1622 (vi) that the petitioner has:
1623 (A) made reasonable searches and inquiries to ascertain whether the judgment debtor
1624 has any interest in property, real or personal, that may satisfy the judgment; and
1625 (B) has exercised reasonable diligence to secure payment of the judgment from the
1626 assets of the judgment debtor.
1627 (4) If the petitioner satisfies the court that it is not practicable for the petitioner to
1628 comply with one or more of the requirements in Subsections (3)(b)(v) and (3)(b)(vi), the court
1629 may waive those requirements.
1630 (5) (a) A judgment that is the basis for a claim against the fund may not have been
1631 discharged in bankruptcy.
1632 (b) In the case of a bankruptcy proceeding that is open or that is commenced during the
1633 pendency of the claim, the claimant shall, prior to obtaining a claim against the fund, obtain an
1634 order from the bankruptcy court declaring the judgment and debt to be nondischargeable.
1635 (6) (a) The division may not make a payment from the fund to a lender who:
1636 (i) makes a residential mortgage loan originated by a licensee; or
1637 (ii) acquires a residential mortgage loan originated by a licensee.
1638 (b) A person may not bring a claim against the fund if the person is substantially
1639 complicit in the fraud, misrepresentation, or deceit that is the basis of the claim.

Legislative Review Note
as of 12-29-08 1:35 PM

Office of Legislative Research and General Counsel

H.B. 86 - Division of Real Estate Related Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for businesses and local governments. Individuals may be affected due to changes in filing and education requirements for professional and occupational licenses. Additionally, individuals may be affected due to changes dealing with restitution for claims filed for civil or criminal judgments.
