

DIVISION OF REAL ESTATE AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill modifies provisions related to the Division of Real Estates' regulation of the appraisal, mortgage, and real estate industries.

Highlighted Provisions:

This bill:

- ▶ recodifies Title 61, Chapter 2, Division of Real Estate, and Chapter 2a, Real Estate Recovery Fund Act, and as part of the recodification creates Chapter 2f, Real Estate Licensing and Practices Act;
- ▶ addresses definitions and consistency of terminology;
- ▶ addresses powers under appraisal, mortgage, and real estate statutes, including:
 - providing for the suspension of a license, registration, or certification for payment of a fee with a dishonored instrument;
 - addressing investigatory powers and costs;
 - addressing the division providing lists of licensees, registrants, and certificate holders;
 - addressing the effect of a failure to accurately disclose a criminal history; and
 - requiring deadlines for compliance with disciplinary actions;
- ▶ increases certain fines;
- ▶ clarifies procedures related to the renewal of a registration as a trainee under appraisal statutes;
- ▶ modifies the powers of the Real Estate Appraiser Licensing and Certification Board with regard to examinations and education;

- 30 ▶ modifies requirements for licensing and certification under appraisal statutes;
- 31 ▶ corrects references to trainees under appraisal statutes;
- 32 ▶ addresses ability of persons licensed, certified, or registered under appraisal statutes
- 33 to operate as a professional corporation or limited liability company;
- 34 ▶ requires that an individual licensed under mortgage statutes be sponsored by a
- 35 licensed entity;
- 36 ▶ addresses education and examination requirements under mortgage statutes that are
- 37 specific to obtaining a license in Utah;
- 38 ▶ addresses the process and requirements to obtain a license, renew a license, or
- 39 notify the division of changes in certain information;
- 40 ▶ provides for certain past revocations of a license under mortgage statutes to be
- 41 converted to a suspension of the license;
- 42 ▶ modifies criminal penalties;
- 43 ▶ clarifies procedures for making claims against the mortgage and real estate
- 44 recovery funds; and
- 45 ▶ makes technical and conforming amendments.

46 **Monies Appropriated in this Bill:**

47 None

48 **Other Special Clauses:**

49 This bill coordinates with H.B. 53, Foreclosure Rescue and Loan Modification

50 Amendments, to technically merge changes.

51 **Utah Code Sections Affected:**

52 AMENDS:

53 **10-3-1110**, as last amended by Laws of Utah 2008, Chapter 169

54 **13-25a-111**, as last amended by Laws of Utah 2005, Chapter 18

55 **16-11-2**, as last amended by Laws of Utah 2009, Chapter 220

56 **17-50-106**, as enacted by Laws of Utah 2008, Chapter 169

57 **31A-2-402**, as last amended by Laws of Utah 2009, Chapter 372

- 58 **34-44-102**, as enacted by Laws of Utah 2007, Chapter 65
- 59 **34A-2-104**, as last amended by Laws of Utah 2009, Chapter 185
- 60 **41-1a-422**, as last amended by Laws of Utah 2009, Chapters 183, 348, and 380
- 61 **48-2c-1502**, as last amended by Laws of Utah 2009, Chapter 141
- 62 **57-11-2**, as last amended by Laws of Utah 2009, Chapter 352
- 63 **57-11-14**, as last amended by Laws of Utah 2009, Chapter 352
- 64 **57-19-14**, as last amended by Laws of Utah 1990, Chapter 199
- 65 **57-21-2**, as last amended by Laws of Utah 2008, Chapter 382
- 66 **57-23-5**, as enacted by Laws of Utah 1991, Chapter 262
- 67 **57-27-102**, as enacted by Laws of Utah 2009, Chapter 194
- 68 **58-56-16**, as last amended by Laws of Utah 2009, Chapter 183
- 69 **61-1-13**, as last amended by Laws of Utah 2009, Chapters 351 and 355
- 70 **61-2b-2**, as last amended by Laws of Utah 2008, Chapters 382 and 387
- 71 **61-2b-3**, as last amended by Laws of Utah 2005, Chapter 199
- 72 **61-2b-6**, as last amended by Laws of Utah 2009, Chapters 183 and 352
- 73 **61-2b-8**, as last amended by Laws of Utah 2009, Chapter 352
- 74 **61-2b-10**, as last amended by Laws of Utah 2005, Chapter 199
- 75 **61-2b-14**, as last amended by Laws of Utah 2005, Chapter 199
- 76 **61-2b-15**, as last amended by Laws of Utah 2005, Chapter 199
- 77 **61-2b-17**, as last amended by Laws of Utah 2007, Chapter 325
- 78 **61-2b-18**, as last amended by Laws of Utah 2009, Chapter 183
- 79 **61-2b-19**, as last amended by Laws of Utah 2005, Chapter 199
- 80 **61-2b-20**, as last amended by Laws of Utah 2009, Chapter 352
- 81 **61-2b-25**, as last amended by Laws of Utah 2008, Chapter 387
- 82 **61-2b-28**, as last amended by Laws of Utah 2008, Chapters 382 and 387
- 83 **61-2b-29**, as last amended by Laws of Utah 2009, Chapter 352
- 84 **61-2b-30.5**, as last amended by Laws of Utah 2008, Chapter 387
- 85 **61-2b-32**, as last amended by Laws of Utah 1999, Chapter 117

- 86 **61-2b-33**, as last amended by Laws of Utah 2009, Chapter 352
87 **61-2b-36**, as last amended by Laws of Utah 2005, Chapter 199
88 **61-2b-39**, as last amended by Laws of Utah 2005, Chapter 199
89 **61-2b-40**, as last amended by Laws of Utah 2005, Chapter 199
90 **61-2c-102**, as last amended by Laws of Utah 2009, Chapter 372
91 **61-2c-103**, as last amended by Laws of Utah 2009, Chapters 183, 352, and 372
92 **61-2c-104**, as last amended by Laws of Utah 2009, Chapters 352 and 372
93 **61-2c-105**, as last amended by Laws of Utah 2009, Chapter 372
94 **61-2c-106**, as last amended by Laws of Utah 2009, Chapter 372
95 **61-2c-201**, as last amended by Laws of Utah 2009, Chapters 183 and 372
96 **61-2c-202**, as last amended by Laws of Utah 2009, Chapters 183 and 372
97 **61-2c-203**, as last amended by Laws of Utah 2009, Chapter 372
98 **61-2c-204.1**, as enacted by Laws of Utah 2009, Chapter 372
99 **61-2c-205**, as last amended by Laws of Utah 2009, Chapters 183, 352, and 372
100 **61-2c-205.1**, as enacted by Laws of Utah 2009, Chapter 372
101 **61-2c-206**, as last amended by Laws of Utah 2009, Chapters 183 and 372
102 **61-2c-301**, as last amended by Laws of Utah 2009, Chapters 72 and 372
103 **61-2c-302**, as last amended by Laws of Utah 2009, Chapter 372
104 **61-2c-401**, as last amended by Laws of Utah 2007, Chapter 325
105 **61-2c-402**, as last amended by Laws of Utah 2009, Chapters 352 and 372
106 **61-2c-404**, as last amended by Laws of Utah 2007, Chapter 325
107 **61-2c-501**, as last amended by Laws of Utah 2009, Chapter 352
108 **61-2c-502**, as last amended by Laws of Utah 2009, Chapters 352 and 372
109 **61-2c-503**, as last amended by Laws of Utah 2009, Chapter 352
110 **61-2c-505**, as enacted by Laws of Utah 2004, Chapter 297
111 **61-2c-507**, as last amended by Laws of Utah 2009, Chapter 372
112 **63G-2-302**, as last amended by Laws of Utah 2009, Chapters 126, 349, and 379
113 **63J-1-602**, as enacted by Laws of Utah 2009, Chapter 368

114 **70D-3-102**, as enacted by Laws of Utah 2009, Chapter 72

115 **72-5-116**, as last amended by Laws of Utah 2008, Chapter 169

116 ENACTS:

117 **61-2-101**, Utah Code Annotated 1953

118 **61-2-102**, Utah Code Annotated 1953

119 **61-2-202**, Utah Code Annotated 1953

120 **61-2c-209**, Utah Code Annotated 1953

121 **61-2c-501.5**, Utah Code Annotated 1953

122 **61-2f-101**, Utah Code Annotated 1953

123 **61-2f-105**, Utah Code Annotated 1953

124 **61-2f-206**, Utah Code Annotated 1953

125 **61-2f-305**, Utah Code Annotated 1953

126 RENUMBERS AND AMENDS:

127 **61-2-201**, (Renumbered from 61-2-5, as last amended by Laws of Utah 2009, Chapters
128 269 and 372)

129 **61-2-203**, (Renumbered from 61-2-5.1, as last amended by Laws of Utah 2008,
130 Chapter 382)

131 **61-2-204**, (Renumbered from 61-2-28, as last amended by Laws of Utah 2008,
132 Chapters 216 and 382)

133 **61-2f-102**, (Renumbered from 61-2-2, as last amended by Laws of Utah 2005, Chapter
134 257)

135 **61-2f-103**, (Renumbered from 61-2-5.5, as last amended by Laws of Utah 2008,
136 Chapter 387)

137 **61-2f-104**, (Renumbered from 61-2-14, as last amended by Laws of Utah 1983,
138 Chapter 257)

139 **61-2f-106**, (Renumbered from 61-2-22, as last amended by Laws of Utah 1985,
140 Chapter 162)

141 **61-2f-201**, (Renumbered from 61-2-1, as last amended by Laws of Utah 1996, Chapter

142 102)
143 **61-2f-202**, (Renumbered from 61-2-3, as last amended by Laws of Utah 2009, Chapter
144 356)
145 **61-2f-203**, (Renumbered from 61-2-6, as last amended by Laws of Utah 2009, Chapter
146 352)
147 **61-2f-204**, (Renumbered from 61-2-9, as last amended by Laws of Utah 2009,
148 Chapters 183 and 352)
149 **61-2f-205**, (Renumbered from 61-2-7, as last amended by Laws of Utah 1991, Chapter
150 165)
151 **61-2f-207**, (Renumbered from 61-2-7.1, as last amended by Laws of Utah 2009,
152 Chapter 183)
153 **61-2f-301**, (Renumbered from 61-2-7.2, as last amended by Laws of Utah 2009,
154 Chapter 352)
155 **61-2f-302**, (Renumbered from 61-2-10, as last amended by Laws of Utah 2009,
156 Chapter 352)
157 **61-2f-303**, (Renumbered from 61-2-25, as enacted by Laws of Utah 2003, Chapter
158 264)
159 **61-2f-304**, (Renumbered from 61-2-8, as last amended by Laws of Utah 2000, Chapter
160 86)
161 **61-2f-306**, (Renumbered from 61-2-20, as last amended by Laws of Utah 2008,
162 Chapter 387)
163 **61-2f-307**, (Renumbered from 61-2-26, as last amended by Laws of Utah 2008,
164 Chapter 382)
165 **61-2f-308**, (Renumbered from 61-2-27, as enacted by Laws of Utah 2005, Chapter
166 252)
167 **61-2f-401**, (Renumbered from 61-2-11, as last amended by Laws of Utah 2009,
168 Chapter 352)
169 **61-2f-402**, (Renumbered from 61-2-11.5, as last amended by Laws of Utah 2007,

170 Chapter 325)
171 **61-2f-403**, (Renumbered from 61-2-24, as enacted by Laws of Utah 1996, Chapter
172 102)
173 **61-2f-404**, (Renumbered from 61-2-12, as last amended by Laws of Utah 2009,
174 Chapter 352)
175 **61-2f-405**, (Renumbered from 61-2-17, as last amended by Laws of Utah 2009,
176 Chapter 352)
177 **61-2f-406**, (Renumbered from 61-2-13, as last amended by Laws of Utah 2008,
178 Chapter 387)
179 **61-2f-407**, (Renumbered from 61-2-21, as last amended by Laws of Utah 2008,
180 Chapters 370, 382, and 387)
181 **61-2f-408**, (Renumbered from 61-2-13.5, as enacted by Laws of Utah 1997, Chapter
182 232)
183 **61-2f-409**, (Renumbered from 61-2-18, as last amended by Laws of Utah 1985,
184 Chapter 162)
185 **61-2f-501**, (Renumbered from 61-2a-1, as enacted by Laws of Utah 1975, Chapter
186 172)
187 **61-2f-502**, (Renumbered from 61-2a-2, as last amended by Laws of Utah 2009,
188 Chapter 352)
189 **61-2f-503**, (Renumbered from 61-2a-3, as last amended by Laws of Utah 2009,
190 Chapter 352)
191 **61-2f-504**, (Renumbered from 61-2a-12, as last amended by Laws of Utah 2009,
192 Chapter 352)
193 **61-2f-505**, (Renumbered from 61-2a-4, as last amended by Laws of Utah 2009,
194 Chapter 352)
195 **61-2f-506**, (Renumbered from 61-2a-5, as last amended by Laws of Utah 2009,
196 Chapter 352)
197 **61-2f-507**, (Renumbered from 61-2a-6, as last amended by Laws of Utah 2009,

198 Chapter 352)

199 **61-2f-508**, (Renumbered from 61-2a-7, as last amended by Laws of Utah 2009,
200 Chapter 352)

201 **61-2f-509**, (Renumbered from 61-2a-8, as last amended by Laws of Utah 1983,
202 Chapter 256)

203 **61-2f-510**, (Renumbered from 61-2a-9, as last amended by Laws of Utah 2009,
204 Chapter 352)

205 **61-2f-511**, (Renumbered from 61-2a-11, as last amended by Laws of Utah 2009,
206 Chapter 352)

207 **61-2f-512**, (Renumbered from 61-2a-10, as last amended by Laws of Utah 1983,
208 Chapter 256)

209 REPEALS:

210 **61-2-4**, as last amended by Laws of Utah 1996, Chapter 102

211 **61-2b-11**, as last amended by Laws of Utah 1999, Chapter 117

212 **61-2b-16**, as last amended by Laws of Utah 1999, Chapter 117

213 **61-2c-207**, as last amended by Laws of Utah 2009, Chapter 372

214 **61-2c-208**, as last amended by Laws of Utah 2009, Chapters 183 and 372

215 **Utah Code Sections Affected by Coordination Clause:**

216 **61-2c-102**, as last amended by Laws of Utah 2009, Chapter 372

217 **61-2f-102**, Utah Code Annotated 1953



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

220 Section 1. Section **10-3-1110** is amended to read:

221 **10-3-1110. Exemption from state licensure by Division of Real Estate.**

222 In accordance with Section [~~61-2-3~~] 61-2f-202, an employee of a municipality is
223 exempt from licensure under Title 61, Chapter [~~2, Division of Real Estate~~] 2f, Real Estate
224 Licensing and Practices Act:

225 (1) when engaging in an act on behalf of the municipality in accordance with:

- 226 (a) this title; or
- 227 (b) Title 11, Cities, Counties, and Local Taxing Units; and
- 228 (2) if the act described in Subsection (1) is related to one or more of the following:
- 229 (a) acquiring real [~~property~~] estate, including by eminent domain;
- 230 (b) disposing of real [~~property~~] estate;
- 231 (c) providing services that constitute property management, as defined in Section
- 232 [~~61-2-2~~] 61-2f-102; or
- 233 (d) leasing real [~~property~~] estate.

234 Section 2. Section **13-25a-111** is amended to read:

235 **13-25a-111. Exemptions.**

236 Notwithstanding any other provision of this chapter, Sections 13-25a-103 and
237 13-25a-108 do not apply to:

- 238 (1) a telephone call made for a charitable purpose as defined in Section 13-22-2;
- 239 (2) a charitable solicitation as defined in Section 13-22-2; or
- 240 (3) a person who holds a license or registration:
- 241 (a) under Title 31A, Insurance Code;
- 242 (b) issued by the Division of Real Estate established in Section [~~61-2-5~~] 61-2-201; or
- 243 (c) issued by the National Association of Securities Dealers.

244 Section 3. Section **16-11-2** is amended to read:

245 **16-11-2. Definitions.**

246 As used in this chapter:

- 247 (1) "Filed" means the division has received and approved, as to form, a document
- 248 submitted under the provisions of this chapter, and has marked on the face of the document a
- 249 stamp or seal indicating the time of day and date of approval, the name of the division, the
- 250 division director's signature and division seal, or facsimiles of the signature or seal.
- 251 (2) "Professional corporation" means a corporation organized under this chapter.
- 252 (3) "Professional service" means the personal service rendered by:
- 253 (a) a physician, surgeon, or doctor of medicine holding a license under Title 58,

254 Chapter 67, Utah Medical Practice Act, and any subsequent laws regulating the practice of
255 medicine;

256 (b) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentist and
257 Dental Hygienist Practice Act, and any subsequent laws regulating the practice of dentistry;

258 (c) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68,
259 Utah Osteopathic Medical Practice Act, and any subsequent laws regulating the practice of
260 osteopathy;

261 (d) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician
262 Practice Act, and any subsequent laws regulating the practice of chiropractic;

263 (e) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric
264 Physician Licensing Act, and any subsequent laws regulating the practice of podiatry;

265 (f) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry
266 Practice Act, and any subsequent laws regulating the practice of optometry;

267 (g) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice
268 Act, and any subsequent laws regulating the practice of veterinary medicine;

269 (h) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act,
270 and any subsequent laws regulating the practice of architecture;

271 (i) a public accountant holding a license under Title 58, Chapter 26a, Certified Public
272 Accountant Licensing Act, and any subsequent laws regulating the practice of public
273 accounting;

274 (j) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician
275 Practice Act, and any subsequent laws regulating the practice of naturopathy;

276 (k) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice
277 Act, and any subsequent laws regulating the practice of pharmacy;

278 (l) an attorney granted the authority to practice law by:

279 (i) the Utah Supreme Court; or

280 (ii) the Supreme Court, other court, agency, instrumentality, or regulating board that
281 licenses or regulates the authority to practice law in any state or territory of the United States

282 other than Utah;

283 (m) a professional engineer registered under Title 58, Chapter 22, Professional
284 Engineers and Professional Land Surveyors Licensing Act;

285 (n) a ~~[real estate broker or real estate]~~ principal broker, associate broker, or sales agent
286 holding a license under Title 61, Chapter ~~[2, Division of Real Estate]~~ 2f, Real Estate Licensing
287 and Practices Act, and any subsequent laws regulating the selling, exchanging, purchasing,
288 renting, or leasing of real estate;

289 (o) a psychologist holding a license under Title 58, Chapter 61, Psychologist
290 Licensing Act, and any subsequent laws regulating the practice of psychology;

291 (p) a clinical or certified social worker holding a license under Title 58, Chapter 60,
292 Part 2, Social Worker Licensing Act, and any subsequent laws regulating the practice of social
293 work;

294 (q) a physical therapist holding a license under Title 58, Chapter 24b, Physical
295 Therapy Practice Act, and any subsequent laws regulating the practice of physical therapy;

296 (r) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58,
297 Chapter 44a, Nurse Midwife Practice Act; ~~[or]~~

298 (s) a landscape architect licensed under Title 58, Chapter 53, Landscape Architects
299 Licensing Act, and any subsequent laws regulating landscape architects~~[-];~~ or

300 (t) an individual licensed, certified, or registered under Title 61, Chapter 2b, Real
301 Estate Appraiser Licensing and Certification Act, and any subsequent laws regulating the
302 practice of appraising real estate.

303 (4) "Regulating board" means the board that is charged with the licensing and
304 regulation of the practice of the profession which the professional corporation is organized to
305 render. The definitions of Title 16, Chapter 10a, Utah Revised Business Corporation Act,
306 apply to this chapter unless the context clearly indicates that a different meaning is intended.

307 Section 4. Section **17-50-106** is amended to read:

308 **17-50-106. Exemption from state licensure by Division of Real Estate.**

309 In accordance with Section ~~[61-2-3]~~ 61-2f-202, an employee of a county is exempt

310 from licensure under Title 61, Chapter [~~2, Division of Real Estate~~] 2f, Real Estate Licensing
311 and Practices Act:

312 (1) when engaging in an act on behalf of the county in accordance with:

313 (a) this title; or

314 (b) Title 11, Cities, Counties, and Local Taxing Units; and

315 (2) if the act described in Subsection (1) is related to one or more of the following:

316 (a) acquiring real [~~property~~] estate, including by eminent domain;

317 (b) disposing of real [~~property~~] estate;

318 (c) providing services that constitute property management, as defined in Section

319 [~~61-2-2~~] 61-2f-102; or

320 (d) leasing real [~~property~~] estate.

321 Section 5. Section **31A-2-402** is amended to read:

322 **31A-2-402. Definitions.**

323 As used in this part:

324 (1) "Commission" means the Title and Escrow Commission created in Section

325 31A-2-403.

326 (2) "Concurrence" means the entities given a concurring role must jointly agree for the
327 action to be taken.

328 (3) "Dual licensed title licensee" means a title licensee who holds:

329 (a) a producer license as a title licensee; and

330 (b) a license or certificate under:

331 (i) Title 61, Chapter [~~2, Division of Real Estate~~] 2f, Real Estate Licensing and

332 Practices Act;

333 (ii) Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification Act; or

334 (iii) Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act.

335 (4) "Real Estate Commission" means the Real Estate Commission created in Section

336 [~~61-2-5.5~~] 61-2f-103.

337 (5) "Title licensee" means a person licensed under this title as:

- 338 (a) an agency with a title insurance line of authority;
- 339 (b) a producer with:
- 340 (i) a general title insurance line of authority; or
- 341 (ii) a specific category of authority for title insurance; or
- 342 (c) a title insurance adjuster.

343 Section 6. Section **34-44-102** is amended to read:

344 **34-44-102. Definitions.**

345 As used in this chapter:

- 346 (1) "Business relationship" means an agreement that governs the relationship of
- 347 principal and sales representative.
- 348 (2) "Commission" means:
- 349 (a) compensation:
- 350 (i) that accrues to a sales representative;
- 351 (ii) for payment by a principal; and
- 352 (iii) at a rate expressed as a percentage of the dollar amount of sales, orders, or profits;
- 353 or
- 354 (b) any other method of compensation agreed to between a sales representative and a
- 355 principal including:
- 356 (i) fees for services; and
- 357 (ii) a retainer.
- 358 (3) "Principal" means a person who:
- 359 (a) engages in any of the following activities with regard to a product or service:
- 360 (i) manufactures;
- 361 (ii) produces;
- 362 (iii) imports;
- 363 (iv) sells; or
- 364 (v) distributes;
- 365 (b) establishes a business relationship with a sales representative to solicit orders for a

366 product or a service described in Subsection (3)(a); and

367 (c) agrees to compensate a sales representative, in whole or in part, by commission.

368 (4) (a) Except as provided in Subsection (4)(b), "sales representative" means a person
369 who enters into a business relationship with a principal:

370 (i) to solicit orders for a product or a service described in Subsection (3)(a); and

371 (ii) under which the person is compensated, in whole or in part, by commission.

372 (b) "Sales representative" does not include:

373 (i) an employee of a principal;

374 (ii) a person licensed under Title 31A, Insurance Code;

375 (iii) a person licensed under Title 41, Chapter 3, Part 2, Licensing;

376 (iv) a person licensed under Title 61, Chapter [~~2, Division of Real Estate~~] 2f, Real
377 Estate Licensing and Practices Act;

378 (v) a person who provides a product or service under a business relationship with a
379 principal that is incident to the purchase or sale of real property; or

380 (vi) a person who places an order or purchases a product or service for that person's
381 own account for resale.

382 (5) "Terminates" or "termination" means the end of a business relationship between a
383 sales representative and a principal, whether by:

384 (a) agreement;

385 (b) expiration of a time period; or

386 (c) exercise of a right of termination by either the principal or the sales representative.

387 Section 7. Section **34A-2-104** is amended to read:

388 **34A-2-104. "Employee," "worker," and "operative" defined -- Specific**
389 **circumstances -- Exemptions.**

390 (1) As used in this chapter and Chapter 3, Utah Occupational Disease Act,
391 "employee," "worker," and "operative" mean:

392 (a) (i) an elective or appointive officer and any other person:

393 (A) in the service of:

- 394 (I) the state;
- 395 (II) a county, city, or town within the state; or
- 396 (III) a school district within the state;
- 397 (B) serving the state, or any county, city, town, or school district under:
 - 398 (I) an election;
 - 399 (II) appointment; or
 - 400 (III) any contract of hire, express or implied, written or oral; and
 - 401 (ii) including:
 - 402 (A) an officer or employee of the state institutions of learning; and
 - 403 (B) a member of the National Guard while on state active duty; and
 - 404 (b) a person in the service of any employer, as defined in Section 34A-2-103, who
 - 405 employs one or more workers or operatives regularly in the same business, or in or about the
 - 406 same establishment:
 - 407 (i) under any contract of hire:
 - 408 (A) express or implied; and
 - 409 (B) oral or written;
 - 410 (ii) including aliens and minors, whether legally or illegally working for hire; and
 - 411 (iii) not including any person whose employment:
 - 412 (A) is casual; and
 - 413 (B) not in the usual course of the trade, business, or occupation of the employee's
 - 414 employer.
- 415 (2) (a) Unless a lessee provides coverage as an employer under this chapter and
- 416 Chapter 3, any lessee in mines or of mining property and each employee and sublessee of the
- 417 lessee shall be:
 - 418 (i) covered for compensation by the lessor under this chapter and Chapter 3;
 - 419 (ii) subject to this chapter and Chapter 3; and
 - 420 (iii) entitled to the benefits of this chapter and Chapter 3, to the same extent as if the
 - 421 lessee, employee, or sublessee were employees of the lessor drawing the wages paid employees

422 for substantially similar work.

423 (b) The lessor may deduct from the proceeds of ores mined by the lessees an amount
424 equal to the insurance premium for that type of work.

425 (3) (a) A partnership or sole proprietorship may elect to include any partner of the
426 partnership or owner of the sole proprietorship as an employee of the partnership or sole
427 proprietorship under this chapter and Chapter 3.

428 (b) If a partnership or sole proprietorship makes an election under Subsection (3)(a),
429 the partnership or sole proprietorship shall serve written notice upon its insurance carrier
430 naming the persons to be covered.

431 (c) A partner of a partnership or owner of a sole proprietorship may not be considered
432 an employee of the partner's partnership or the owner's sole proprietorship under this chapter
433 or Chapter 3 until the notice described in Subsection (3)(b) is given.

434 (d) For premium rate making, the insurance carrier shall assume the salary or wage of
435 the partner or sole proprietor electing coverage under Subsection (3)(a) to be 100% of the
436 state's average weekly wage.

437 (4) (a) A corporation may elect not to include any director or officer of the corporation
438 as an employee under this chapter and Chapter 3.

439 (b) If a corporation makes an election under Subsection (4)(a), the corporation shall
440 serve written notice upon its insurance carrier naming the persons to be excluded from
441 coverage.

442 (c) A director or officer of a corporation is considered an employee under this chapter
443 and Chapter 3 until the notice described in Subsection (4)(b) is given.

444 (5) As used in this chapter and Chapter 3, "employee," "worker," and "operative" do
445 not include:

446 (a) a ~~[real estate]~~ sales agent or ~~[real estate]~~ associate broker, as defined in Section
447 ~~[61-2-2]~~ 61-2f-102, who performs services in that capacity for a ~~[real estate]~~ principal broker
448 if:

449 (i) substantially all of the ~~[real estate]~~ sales agent's or ~~[associated]~~ associate broker's

450 income for services is from real estate commissions; and

451 (ii) ~~[the services of the real estate sales agent or associated broker]~~ the sales agent's or
452 associate broker's services are performed under a written contract that provides that:

453 (A) the real estate agent is an independent contractor; and

454 (B) the ~~[real estate]~~ sales agent or ~~[associated]~~ associate broker is not to be treated as
455 an employee for federal income tax purposes;

456 (b) an offender performing labor under Section 64-13-16 or 64-13-19, except as
457 required by federal statute or regulation;

458 (c) an individual who for an insurance producer, as defined in Section 31A-1-301,
459 solicits, negotiates, places or procures insurance if:

460 (i) substantially all of the individual's income from those services is from insurance
461 commissions; and

462 (ii) the services of the individual are performed under a written contract that states that
463 the individual:

464 (A) is an independent contractor;

465 (B) is not to be treated as an employee for federal income tax purposes; and

466 (C) can derive income from more than one insurance company;

467 (d) notwithstanding Subsection 34A-2-103(4), an individual who provides domestic
468 work for a person if:

469 (i) the person for whom the domestic work is being provided receives or is eligible to
470 receive the domestic work under a state or federal program designed to pay the costs of
471 domestic work to prevent the person from being placed in:

472 (A) an institution; or

473 (B) a more restrictive placement than where that person resides at the time the person
474 receives the domestic work;

475 (ii) the individual is paid by a person designated by the Secretary of the Treasury in
476 accordance with Section 3504, Internal Revenue Code, as a fiduciary, agent, or other person
477 that has the control, receipt, custody, or disposal of, or pays the wages of the individual; and

478 (iii) the domestic work is performed under a written contract that notifies the
479 individual that the individual is not an employee under this chapter or Chapter 3; or
480 (e) subject to Subsections (6) and (7), an individual who:
481 (i) (A) owns a motor vehicle; or
482 (B) leases a motor vehicle to a motor carrier;
483 (ii) personally operates the motor vehicle described in Subsection (5)(e)(i);
484 (iii) operates the motor vehicle described in Subsection (5)(e)(i) under a written
485 agreement with the motor carrier that states that the individual operates the motor vehicle as
486 an independent contractor; and

487 (iv) provides to the motor carrier at the time the written agreement described in
488 Subsection (5)(e)(iii) is executed or as soon after the execution as provided by an insurer:

489 (A) a copy of a workers' compensation coverage waiver issued pursuant to Section
490 31A-22-1011 by an insurer to the individual; and

491 (B) proof that the individual is covered by occupational accident related insurance.

492 (6) An individual described in Subsection (5)(d) or (e) may become an employee
493 under this chapter and Chapter 3 if the employer of the individual complies with:

494 (a) this chapter and Chapter 3; and

495 (b) commission rules.

496 (7) For purposes of Subsection (5)(e):

497 (a) "Motor carrier" means a person engaged in the business of transporting freight,
498 merchandise, or other property by a commercial vehicle on a highway within this state.

499 (b) "Motor vehicle" means a self-propelled vehicle intended primarily for use and
500 operation on the highways, including a trailer or semitrailer designed for use with another
501 motorized vehicle.

502 (c) "Occupational accident related insurance" means insurance that provides the
503 following coverage for an injury sustained in the course of working under a written agreement
504 described in Subsection (5)(e)(iii):

505 (i) disability benefits;

- 506 (ii) death benefits;
- 507 (iii) medical expense benefits, which include:
- 508 (A) hospital coverage;
- 509 (B) surgical coverage;
- 510 (C) prescription drug coverage; and
- 511 (D) dental coverage.

512 Section 8. Section **41-1a-422** is amended to read:

513 **41-1a-422. Support special group license plates -- Contributor -- Voluntary**
514 **contribution collection procedures.**

515 (1) As used in this section:

516 (a) (i) Except as provided in Subsection (1)(a)(ii), "contributor" means a person who
517 has donated or in whose name at least \$25 has been donated to:

- 518 (A) a scholastic scholarship fund of a single named institution;
- 519 (B) the Department of Veterans' Affairs for veterans' programs;
- 520 (C) the Division of Wildlife Resources for the Wildlife Resources Account created in
521 Section 23-14-13, for conservation of wildlife and the enhancement, preservation, protection,
522 access, and management of wildlife habitat;
- 523 (D) the Department of Agriculture and Food for the benefit of conservation districts;
- 524 (E) the Division of Parks and Recreation for the benefit of snowmobile programs;
- 525 (F) the Guardian Ad Litem Services Account and the Children's Museum of Utah,
526 with the donation evenly divided between the two;
- 527 (G) the Boy Scouts of America for the benefit of a Utah Boy Scouts of America
528 council as specified by the contributor;
- 529 (H) No More Homeless Pets in Utah for distribution to organizations or individuals
530 that provide spay and neuter programs that subsidize the sterilization of domestic animals;
- 531 (I) the Utah Alliance of Boys and Girls Clubs, Inc. to provide and enhance youth
532 development programs;
- 533 (J) the Utah Association of Public School Foundations to support public education;

534 (K) the Utah Housing Opportunity Restricted Account created in Section [~~61-2-28~~
535 61-2-204 to assist people who have severe housing needs;

536 (L) the Public Safety Honoring Heroes Restricted Account created in Section 53-1-118
537 to support the families of fallen Utah Highway Patrol troopers and other Department of Public
538 Safety employees;

539 (M) the Division of Parks and Recreation for distribution to organizations that provide
540 support for Zion National Park;

541 (N) the Firefighter Support Restricted Account created in Section 53-7-109 to support
542 firefighter organizations; or

543 (O) the Share the Road Bicycle Support Restricted Account created in Section
544 72-2-127 to support bicycle operation and safety awareness programs.

545 (ii) (A) For a veterans' special group license plate, "contributor" means a person who
546 has donated or in whose name at least a \$25 donation at the time of application and \$10
547 annual donation thereafter has been made.

548 (B) For a Utah Housing Opportunity special group license plate, "contributor" means a
549 person who:

550 (I) has donated or in whose name at least \$30 has been donated at the time of
551 application and annually after the time of application; and

552 (II) is a member of a trade organization for real estate licensees that has more than
553 15,000 Utah members.

554 (C) For an Honoring Heroes special group license plate, "contributor" means a person
555 who has donated or in whose name at least \$35 has been donated at the time of application
556 and annually thereafter.

557 (D) For a firefighter support special group license plate, "contributor" means a person
558 who:

559 (I) has donated or in whose name at least \$15 has been donated at the time of
560 application and annually after the time of application; and

561 (II) is a currently employed, volunteer, or retired firefighter.

562 (b) "Institution" means a state institution of higher education as defined under Section
563 53B-3-102 or a private institution of higher education in the state accredited by a regional or
564 national accrediting agency recognized by the United States Department of Education.

565 (2) (a) An applicant for original or renewal collegiate special group license plates
566 under Subsection (1)(a)(i) must be a contributor to the institution named in the application and
567 present the original contribution verification form under Subsection (2)(b) or make a
568 contribution to the division at the time of application under Subsection (3).

569 (b) An institution with a support special group license plate shall issue to a contributor
570 a verification form designed by the commission containing:

- 571 (i) the name of the contributor;
- 572 (ii) the institution to which a donation was made;
- 573 (iii) the date of the donation; and
- 574 (iv) an attestation that the donation was for a scholastic scholarship.

575 (c) The state auditor may audit each institution to verify that the moneys collected by
576 the institutions from contributors are used for scholastic scholarships.

577 (d) After an applicant has been issued collegiate license plates or renewal decals, the
578 commission shall charge the institution whose plate was issued, a fee determined in
579 accordance with Section 63J-1-504 for management and administrative expenses incurred in
580 issuing and renewing the collegiate license plates.

581 (e) If the contribution is made at the time of application, the contribution shall be
582 collected, treated, and deposited as provided under Subsection (3).

583 (3) (a) An applicant for original or renewal support special group license plates under
584 this section must be a contributor to the sponsoring organization associated with the license
585 plate.

586 (b) This contribution shall be:

- 587 (i) unless collected by the named institution under Subsection (2), collected by the
588 division;
- 589 (ii) considered a voluntary contribution for the funding of the activities specified

590 under this section and not a motor vehicle registration fee;

591 (iii) deposited into the appropriate account less actual administrative costs associated
592 with issuing the license plates; and

593 (iv) for a firefighter special group license plate, deposited into the appropriate account
594 less:

595 (A) the costs of reordering firefighter special group license plate decals; and

596 (B) the costs of replacing recognition special group license plates with new license
597 plates under Subsection 41-1a-1211(13).

598 (c) The donation described in Subsection (1)(a) must be made in the 12 months prior
599 to registration or renewal of registration.

600 (d) The donation described in Subsection (1)(a) shall be a one-time donation made to
601 the division when issuing original:

602 (i) snowmobile license plates; or

603 (ii) conservation license plates.

604 (4) Veterans' license plates shall display one of the symbols representing the Army,
605 Navy, Air Force, Marines, Coast Guard, or American Legion.

606 Section 9. Section **48-2c-1502** is amended to read:

607 **48-2c-1502. Definitions.**

608 As used in this part:

609 (1) "Professional services company" means a limited liability company organized
610 under this part to render professional services.

611 (2) "Professional services" means the personal services rendered by:

612 (a) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act,
613 and any subsequent laws regulating the practice of architecture;

614 (b) an attorney granted the authority to practice law by the:

615 (i) Supreme Court of Utah; or

616 (ii) the Supreme Court, other court, agency, instrumentality, or regulating board that
617 licenses or regulates the authority to practice law in any state or territory of the United States

- 618 other than Utah;
- 619 (c) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician
620 Practice Act, and any subsequent laws regulating the practice of chiropractic;
- 621 (d) a doctor of dentistry holding a license under Title 58, Chapter 69, [~~Dentists~~]
622 Dentist and Dental [~~Hygienists~~] Hygienist Practice Act, and any subsequent laws, regulating
623 the practice of dentistry;
- 624 (e) a professional engineer registered under Title 58, Chapter 22, Professional
625 Engineers and Professional Land Surveyors Licensing Act;
- 626 (f) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician
627 Practice Act, and any subsequent laws regulating the practice of naturopathy;
- 628 (g) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58,
629 Chapter 44a, Nurse Midwife Practice Act;
- 630 (h) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry
631 Practice Act, and any subsequent laws regulating the practice of optometry;
- 632 (i) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68,
633 Utah Osteopathic Medical Practice Act, and any subsequent laws regulating the practice of
634 osteopathy;
- 635 (j) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice Act,
636 and any subsequent laws regulating the practice of pharmacy;
- 637 (k) a physician, surgeon, or doctor of medicine holding a license under Title 58,
638 Chapter 67, Utah Medical Practice Act, and any subsequent laws regulating the practice of
639 medicine;
- 640 (l) a physical therapist holding a license under Title 58, Chapter 24b, Physical Therapy
641 Practice Act, and any subsequent laws regulating the practice of physical therapy;
- 642 (m) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric
643 Physician Licensing Act, and any subsequent laws regulating the practice of podiatry;
- 644 (n) a psychologist holding a license under Title 58, Chapter 61, Psychologist
645 Licensing Act, and any subsequent laws regulating the practice of psychology;

646 (o) a public accountant holding a license under Title 58, Chapter 26a, Certified Public
647 Accountant Licensing Act, and any subsequent laws regulating the practice of public
648 accounting;

649 (p) a ~~[real estate broker or real estate]~~ principal broker, associate broker, or sales agent
650 holding a license under Title 61, Chapter ~~[2, Division of Real Estate]~~ 2f, Real Estate Licensing
651 and Practices Act, and any subsequent laws regulating the sale, exchange, purchase, rental, or
652 leasing of real estate;

653 (q) a clinical or certified social worker holding a license under Title 58, Chapter 60,
654 Part 2, Social Worker Licensing Act, and any subsequent laws regulating the practice of social
655 work;

656 (r) a mental health therapist holding a license under Title 58, Chapter 60, Mental
657 Health Professional Practice Act, and any subsequent laws regulating the practice of mental
658 health therapy; ~~[and]~~

659 (s) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice
660 Act, and any subsequent laws regulating the practice of veterinary medicine~~[-]; or~~

661 (t) an individual licensed, certified, or registered under Title 61, Chapter 2b, Real
662 Estate Appraiser Licensing and Certification Act, and any subsequent laws regulating the
663 practice of appraising real estate.

664 (3) "Regulating board" means the board or agency organized pursuant to state law that
665 is charged with the licensing and regulation of the practice of the profession that a company is
666 organized to render.

667 Section 10. Section **57-11-2** is amended to read:

668 **57-11-2. Definitions.**

669 As used in this chapter:

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

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

674 (2) "Division" means the Division of Real Estate created in Section [~~61-2-5~~] 61-2-201.

675 (3) "Federal act" means the federal Interstate Land Sales Full Disclosure Act, 15
676 U.S.C. Sec. 1701, et seq., or any successor federal act.

677 (4) (a) "Industrial park" means a subdivision or subdivided lands offered as a part of a
678 common promotional plan of advertising and sale zoned for office, manufacturing,
679 warehousing, commercial, industrial, distribution, or wholesale use and utilized for one or
680 more of those purposes.

681 (b) "Industrial park" does not include land offered for sale that is designed or intended
682 to be used for recreational, residential, including multiple family dwellings, or agricultural
683 purposes.

684 (5) "Offer" includes an inducement, solicitation, or attempt to encourage a person to
685 acquire an interest in land if undertaken for gain or profit.

686 (6) "Person" includes:

687 (a) a business trust;

688 (b) an estate;

689 (c) a trust;

690 (d) a partnership;

691 (e) an unincorporated association;

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

693 (g) any other legal or commercial entity.

694 (7) "Purchaser" means a person who acquires or attempts to acquire or succeeds to an
695 interest in land.

696 (8) "Residential building" means a structure intended for occupation as a residence
697 which, at the time of an offer or disposition of the unit on which it is situated, or on which
698 there is a legal obligation on the part of the seller to complete construction of it within two
699 years from date of disposition, has, or if completed would have, ready access to water, gas,
700 electricity, and roads.

701 (9) "Subdivider" means:

702 (a) an owner of an interest in subdivided lands who offers the subdivided lands for
703 disposition; or

704 (b) a principal agent of an owner of an interest in subdivided lands if the owner is
705 inactive.

706 (10) (a) "Subdivision" and "subdivided lands" means land that is divided or is
707 proposed to be divided for the purpose of disposition into 10 or more units including land,
708 whether contiguous or not, if 10 or more units are offered as a part of a common promotional
709 plan of advertising and sale.

710 (b) If a subdivision is offered by a developer or group of developers, and the land is
711 contiguous or is known, designated, or advertised as a common tract or by a common name,
712 that land is presumed, without regard to the number of units covered by each individual
713 offering, to be part of a common promotional plan.

714 (11) "Unit" includes a lot, parcel, or other interest in land separately offered for
715 disposition.

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

717 **57-11-14. Revocation, suspension, or denial of registration -- Grounds --**
718 **Suspension or revocation of real estate license.**

719 (1) (a) If the division makes a written finding of fact that a subdivider engages in one
720 or more acts described in Subsection (1)(b), the division may:

721 (i) deny an application for registration;

722 (ii) revoke, suspend, or deny reissuance of a registration; or

723 (iii) impose a civil penalty not to exceed the greater of:

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

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

726 (b) Subsection (1)(a) applies if the division makes a written finding of fact that a
727 subdivider:

728 (i) fails to comply with the terms of a cease and desist order;

729 (ii) is convicted in a court prior or subsequent to the filing of the application for

730 registration of a crime involving:
731 (A) fraud;
732 (B) deception;
733 (C) false pretenses;
734 (D) misrepresentation;
735 (E) false advertising; or
736 (F) dishonest dealing in real estate transactions;
737 (iii) is subject to an injunction or administrative order restraining a false or misleading
738 promotional plan involving land dispositions;
739 (iv) disposes of, conceals, or diverts funds or assets of any person so as to defeat the
740 rights of subdivision purchasers;
741 (v) fails to perform faithfully a stipulation or agreement made with the division as an
742 inducement to:
743 (A) grant a registration;
744 (B) reinstate a registration;
745 (C) revoke a cease and desist order; or
746 (D) approve any promotional plan or public offering statement;
747 (vi) makes an intentional misrepresentation, or conceals a material fact, in an
748 application for registration;
749 (vii) violates this chapter or the rules adopted under this chapter;
750 (viii) directly or through an agent or employee knowingly engages in false, deceptive,
751 or misleading advertising, promotional, or sales methods to offer or dispose of an interest in
752 subdivided lands;
753 (ix) engages in the offering of subdivided lands that has constituted or that may
754 constitute a fraud upon purchasers or prospective purchasers of the subdivided lands; or
755 (x) engages in a dishonest practice in any industry involving sales to consumers.
756 (c) The division shall accompany with a finding of fact required by this Subsection (1)
757 a concise and explicit statement of the underlying facts supporting the finding.

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

761 (3) (a) The division shall suspend or revoke the license of a [~~real estate~~] principal
762 broker, associate broker, or [~~real estate~~] sales agent who violates this chapter for the period of
763 time the director determines to be justified under the circumstances.

764 (b) A suspension or revocation under this section is in addition to any other penalty
765 that may be imposed under this chapter, subject to [~~the provisions of~~] Section [~~61-2-12~~]
766 61-2f-404.

767 Section 12. Section **57-19-14** is amended to read:

768 **57-19-14. Registration of salesperson.**

769 (1) Unless the transaction is exempt under Section 57-19-26, it is unlawful for any
770 person to act as a salesperson marketing a project in this state without first registering under
771 this chapter as a salesperson.

772 (2) The fee for registration as a salesperson is waived by the division for persons
773 licensed by the division under Title 61, Chapter [~~2~~] 2f, Real Estate Licensing and Practices
774 Act.

775 Section 13. Section **57-21-2** is amended to read:

776 **57-21-2. Definitions.**

777 As used in this chapter:

778 (1) "Aggrieved person" includes any person who:

779 (a) claims to have been injured by a discriminatory housing practice; or

780 (b) believes that the person will be injured by a discriminatory housing practice that is
781 about to occur.

782 (2) "Commission" means the Labor Commission.

783 (3) "Complainant" means an aggrieved person, including the director, who has
784 commenced a complaint with the division.

785 (4) "Conciliation" means the attempted resolution of issues raised by a complaint of

786 discriminatory housing practices by the investigation of the complaint through informal
787 negotiations involving the complainant, the respondent, and the division.

788 (5) "Conciliation agreement" means a written agreement setting forth the resolution of
789 the issues in conciliation.

790 (6) "Conciliation conference" means the attempted resolution of issues raised by a
791 complaint or by the investigation of a complaint through informal negotiations involving the
792 complainant, the respondent, and the division. The conciliation conference is not subject to
793 Title 63G, Chapter 4, Administrative Procedures Act.

794 (7) "Covered multifamily dwellings" means:

795 (a) buildings consisting of four or more dwelling units if the buildings have one or
796 more elevators; and

797 (b) ground floor units in other buildings consisting of four or more dwelling units.

798 (8) "Director" means the director of the division or a designee.

799 (9) (a) "Disability" means a physical or mental impairment that substantially limits
800 one or more of a person's major life activities, including a person having a record of such an
801 impairment or being regarded as having such an impairment.

802 (b) "Disability" does not include current illegal use of, or addiction to, any federally
803 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.
804 Sec. 802.

805 (10) "Discriminate" includes segregate or separate.

806 (11) "Discriminatory housing practice" means an act that is unlawful under this
807 chapter.

808 (12) "Division" means the Division of Antidiscrimination and Labor established under
809 the commission.

810 (13) (a) "Dwelling" means any building or structure, or a portion of a building or
811 structure, occupied as, or designed or intended for occupancy as, a residence of one or more
812 families.

813 (b) "Dwelling" also includes vacant land that is offered for sale or lease for the

814 construction or location of a dwelling as described in Subsection (13)(a).

815 (14) (a) "Familial status" means one or more individuals who have not attained the age
816 of 18 years being domiciled with:

817 (i) a parent or another person having legal custody of the individual or individuals; or

818 (ii) the designee of the parent or other person having custody, with the written
819 permission of the parent or other person.

820 (b) The protections afforded against discrimination on the basis of familial status shall
821 apply to any person who:

822 (i) is pregnant;

823 (ii) is in the process of securing legal custody of any individual who has not attained
824 the age of 18 years; or

825 (iii) is a single individual.

826 (15) "National origin" means the place of birth of an individual or of any lineal
827 ancestors.

828 (16) "Person" includes one or more individuals, corporations, limited liability
829 companies, partnerships, associations, labor organizations, legal representatives, mutual
830 companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in
831 cases under the United States Bankruptcy Code, receivers, and fiduciaries.

832 (17) "Presiding officer" has the same meaning as provided in Section 63G-4-103.

833 (18) "Real estate broker" or "salesperson" means a principal [~~real estate~~] broker, an
834 associate [~~real estate~~] broker, or a [~~real estate~~] sales agent as those terms are defined in Section
835 [~~61-2-2~~] 61-2f-102.

836 (19) "Respondent" means a person against whom a complaint of housing
837 discrimination has been initiated.

838 (20) "Sex" means gender and includes pregnancy, childbirth, and disabilities related to
839 pregnancy or childbirth.

840 (21) "Source of income" means the verifiable condition of being a recipient of federal,
841 state, or local assistance, including medical assistance, or of being a tenant receiving federal,

842 state, or local subsidies, including rental assistance or rent supplements.

843 Section 14. Section **57-23-5** is amended to read:

844 **57-23-5. License required.**

845 Except as provided by Section [~~61-2-3~~] 61-2f-202, an individual may not offer, sell, or
846 otherwise dispose of a cooperative interest in this state unless ~~[he]~~ the individual is licensed by
847 the division under Title 61, Chapter [~~2, Division of Real Estate~~] 2f, Real Estate Licensing and
848 Practices Act, as a principal [~~real-estate~~] broker, associate [~~real-estate~~] broker, or [~~real-estate~~]
849 sales agent.

850 Section 15. Section **57-27-102** is amended to read:

851 **57-27-102. Definitions.**

852 As used in this chapter:

853 (1) "Contaminated" or "contamination" is as defined in Section 19-6-902.

854 (2) "Decontaminated" or "decontamination" is as defined in Section 19-6-902.

855 (3) (a) "Owner" means the holder of a legal or equitable title or interest in real
856 property.

857 (b) "Owner" includes a shareholder, partner, operator, or other legal entity.

858 (4) "Real estate professional" means a licensee under Title 61, Chapter [~~2, Division of~~
859 ~~Real Estate~~] 2f, Real Estate Licensing and Practices Act.

860 Section 16. Section **58-56-16** is amended to read:

861 **58-56-16. Registration of dealers -- Bonding requirements -- Renewal --**
862 **Exemptions -- Discipline.**

863 (1) Each person engaged in the sale of factory built housing in the state, except as
864 provided in Subsection (4), shall register with the division as a dealer.

865 (2) Each applicant for registration under this section shall:

866 (a) submit an application in a form prescribed by the division;

867 (b) pay a fee determined by the department under Section 63J-1-504; and

868 (c) provide the division with a registration bond in accordance with rules established
869 by the division.

870 (3) (a) The division shall issue each registration under this section in accordance with
871 a two-year renewal cycle established by rule.

872 (b) The division may by rule extend or shorten a renewal cycle by as much as one year
873 to stagger the renewal cycles it administers.

874 (c) Each registration under this section automatically expires on the expiration date on
875 the certificate of registration unless the registrant renews it in accordance with Section
876 58-1-308.

877 (4) Subsection (1) does not apply to:

878 (a) a person not regularly engaged in the sale of factory built housing who is selling a
879 unit the person owns for the person's own account;

880 (b) a principal broker licensed under Title 61, Chapter [~~2, Division of Real Estate~~] 2f,
881 Real Estate Licensing and Practices Act; or

882 (c) a sales agent or associate broker licensed under Title 61, Chapter [~~2, Division of~~
883 Real Estate] 2f, Real Estate Licensing and Practices Act, who sells factory built housing as an
884 agent for, and under the supervision of, the [~~licensed~~] principal broker with whom the sales
885 agent or associate broker is affiliated.

886 (5) Grounds for refusing to issue a registration, for refusing to renew a registration, for
887 revoking, suspending, restricting, or placing on probation a registration, for issuing a public or
888 private reprimand to a registrant, and for issuing a cease and desist order shall be in
889 accordance with Section 58-1-401.

890 Section 17. Section **61-1-13** is amended to read:

891 **61-1-13. Definitions.**

892 (1) As used in this chapter:

893 (a) "Affiliate" means a person that, directly or indirectly, through one or more
894 intermediaries, controls or is controlled by, or is under common control with a person
895 specified.

896 (b) (i) "Agent" means an individual other than a broker-dealer who represents a
897 broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

- 898 (ii) "Agent" does not include an individual who represents:
899 (A) an issuer, who receives no commission or other remuneration, directly or
900 indirectly, for effecting or attempting to effect purchases or sales of securities in this state, and
901 who effects transactions:
902 (I) in securities exempted by Subsection 61-1-14(1)(a), (b), (c), or (g);
903 (II) exempted by Subsection 61-1-14(2);
904 (III) in a covered security as described in Sections 18(b)(3) and 18(b)(4)(D) of the
905 Securities Act of 1933; or
906 (IV) with existing employees, partners, officers, or directors of the issuer; or
907 (B) a broker-dealer in effecting transactions in this state limited to those transactions
908 described in Section 15(h)(2) of the Securities Exchange Act of 1934.
909 (iii) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a
910 similar status or performing similar functions, is an agent only if the partner, officer, director,
911 or person otherwise comes within the definition of "agent."
912 (iv) "Agent" does not include a person described in Subsection (3).
913 (c) (i) "Broker-dealer" means a person engaged in the business of effecting
914 transactions in securities for the account of others or for the person's own account.
915 (ii) "Broker-dealer" does not include:
916 (A) an agent;
917 (B) an issuer;
918 (C) a depository institution or trust company;
919 (D) a person who has no place of business in this state if:
920 (I) the person effects transactions in this state exclusively with or through:
921 (Aa) the issuers of the securities involved in the transactions;
922 (Bb) other broker-dealers;
923 (Cc) a depository institution, whether acting for itself or as a trustee;
924 (Dd) a trust company, whether acting for itself or as a trustee;
925 (Ee) an insurance company, whether acting for itself or as a trustee;

- 926 (Ff) an investment company, as defined in the Investment Company Act of 1940,
927 whether acting for itself or as a trustee;
- 928 (Gg) a pension or profit-sharing trust, whether acting for itself or as a trustee; or
929 (Hh) another financial institution or institutional buyer, whether acting for itself or as
930 a trustee; or
- 931 (Ii) during any period of 12 consecutive months the person does not direct more than
932 15 offers to sell or buy into this state in any manner to persons other than those specified in
933 Subsection (1)(c)(ii)(D)(I), whether or not the offeror or an offeree is then present in this state;
- 934 (E) a general partner who organizes and effects transactions in securities of three or
935 fewer limited partnerships, of which the person is the general partner, in any period of 12
936 consecutive months;
- 937 (F) a person whose participation in transactions in securities is confined to those
938 transactions made by or through a broker-dealer licensed in this state;
- 939 (G) a person who is a [~~real-estate~~] principal broker or associate broker licensed in this
940 state and who effects transactions in a bond or other evidence of indebtedness secured by a
941 real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or
942 chattels, if the entire mortgage, deed [~~or~~] of trust, or agreement, together with all the bonds or
943 other evidences of indebtedness secured thereby, is offered and sold as a unit;
- 944 (H) a person effecting transactions in commodity contracts or commodity options;
- 945 (I) a person described in Subsection (3); or
- 946 (J) other persons as the division, by rule or order, may designate, consistent with the
947 public interest and protection of investors, as not within the intent of this Subsection (1)(c).
- 948 (d) "Buy" or "purchase" means a contract for purchase of, contract to buy, or
949 acquisition of a security or interest in a security for value.
- 950 (e) "Commission" means the Securities Commission created in Section 61-1-18.5.
- 951 (f) "Commodity" means, except as otherwise specified by the division by rule:
- 952 (i) an agricultural, grain, or livestock product or byproduct, except real property or a
953 timber, agricultural, or livestock product grown or raised on real property and offered or sold

954 by the owner or lessee of the real property;

955 (ii) a metal or mineral, including a precious metal, except a numismatic coin whose
956 fair market value is at least 15% greater than the value of the metal it contains;

957 (iii) a gem or gemstone, whether characterized as precious, semi-precious, or
958 otherwise;

959 (iv) a fuel, whether liquid, gaseous, or otherwise;

960 (v) a foreign currency; and

961 (vi) all other goods, articles, products, or items of any kind, except a work of art
962 offered or sold by art dealers, at public auction or offered or sold through a private sale by the
963 owner of the work.

964 (g) (i) "Commodity contract" means an account, agreement, or contract for the
965 purchase or sale, primarily for speculation or investment purposes and not for use or
966 consumption by the offeree or purchaser, of one or more commodities, whether for immediate
967 or subsequent delivery or whether delivery is intended by the parties, and whether
968 characterized as a cash contract, deferred shipment or deferred delivery contract, forward
969 contract, futures contract, installment or margin contract, leverage contract, or otherwise.

970 (ii) A commodity contract offered or sold shall, in the absence of evidence to the
971 contrary, be presumed to be offered or sold for speculation or investment purposes.

972 (iii) (A) A commodity contract may not include a contract or agreement that requires,
973 and under which the purchaser receives, within 28 calendar days from the payment in good
974 funds any portion of the purchase price, physical delivery of the total amount of each
975 commodity to be purchased under the contract or agreement.

976 (B) A purchaser is not considered to have received physical delivery of the total
977 amount of each commodity to be purchased under the contract or agreement when the
978 commodity or commodities are held as collateral for a loan or are subject to a lien of any
979 person when the loan or lien arises in connection with the purchase of each commodity or
980 commodities.

981 (h) (i) "Commodity option" means an account, agreement, or contract giving a party to

982 the option the right but not the obligation to purchase or sell one or more commodities or one
983 or more commodity contracts, or both whether characterized as an option, privilege,
984 indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

985 (ii) "Commodity option" does not include an option traded on a national securities
986 exchange registered:

987 (A) with the Securities and Exchange Commission; or

988 (B) on a board of trade designated as a contract market by the Commodity Futures
989 Trading Commission.

990 (i) "Depository institution" is as defined in Section 7-1-103.

991 (j) "Director" means the director of the division appointed in accordance with Section
992 61-1-18.

993 (k) "Division" means the Division of Securities established by Section 61-1-18.

994 (l) "Executive director" means the executive director of the Department of Commerce.

995 (m) "Federal covered adviser" means a person who:

996 (i) is registered under Section 203 of the Investment Advisers Act of 1940; or

997 (ii) is excluded from the definition of "investment adviser" under Section 202(a)(11)
998 of the Investment Advisers Act of 1940.

999 (n) "Federal covered security" means a security that is a covered security under
1000 Section 18(b) of the Securities Act of 1933 or rules or regulations promulgated under Section
1001 18(b) of the Securities Act of 1933.

1002 (o) "Fraud," "deceit," and "defraud" are not limited to their common-law meanings.

1003 (p) "Guaranteed" means guaranteed as to payment of principal or interest as to debt
1004 securities, or dividends as to equity securities.

1005 (q) (i) "Investment adviser" means a person who:

1006 (A) for compensation, engages in the business of advising others, either directly or
1007 through publications or writings, as to the value of securities or as to the advisability of
1008 investing in, purchasing, or selling securities; or

1009 (B) for compensation and as a part of a regular business, issues or promulgates

1010 analyses or reports concerning securities.

1011 (ii) "Investment adviser" includes a financial planner or other person who:

1012 (A) as an integral component of other financially related services, provides the

1013 investment advisory services described in Subsection (1)(q)(i) to others for compensation and

1014 as part of a business; or

1015 (B) holds the person out as providing the investment advisory services described in

1016 Subsection (1)(q)(i) to others for compensation.

1017 (iii) "Investment adviser" does not include:

1018 (A) an investment adviser representative;

1019 (B) a depository institution or trust company;

1020 (C) a lawyer, accountant, engineer, or teacher whose performance of these services is

1021 solely incidental to the practice of the profession;

1022 (D) a broker-dealer or its agent whose performance of these services is solely

1023 incidental to the conduct of its business as a broker-dealer and who receives no special

1024 compensation for the services;

1025 (E) a publisher of a bona fide newspaper, news column, news letter, news magazine,

1026 or business or financial publication or service, of general, regular, and paid circulation,

1027 whether communicated in hard copy form, or by electronic means, or otherwise, that does not

1028 consist of the rendering of advice on the basis of the specific investment situation of each

1029 client;

1030 (F) a person who is a federal covered adviser;

1031 (G) a person described in Subsection (3); or

1032 (H) such other persons not within the intent of this Subsection (1)(q) as the division

1033 may by rule or order designate.

1034 (r) (i) "Investment adviser representative" means a partner, officer, director of, or a

1035 person occupying a similar status or performing similar functions, or other individual, except

1036 clerical or ministerial personnel, who:

1037 (A) (I) is employed by or associated with an investment adviser who is licensed or

1038 required to be licensed under this chapter; or

1039 (II) has a place of business located in this state and is employed by or associated with
1040 a federal covered adviser; and

1041 (B) does any of the following:

1042 (I) makes a recommendation or otherwise renders advice regarding securities;

1043 (II) manages accounts or portfolios of clients;

1044 (III) determines which recommendation or advice regarding securities should be given;

1045 (IV) solicits, offers, or negotiates for the sale of or sells investment advisory services;

1046 or

1047 (V) supervises employees who perform any of the acts described in this Subsection

1048 (1)(r)(i)(B).

1049 (ii) "Investment adviser representative" does not include a person described in
1050 Subsection (3).

1051 (s) "Investment contract" includes:

1052 (i) an investment in a common enterprise with the expectation of profit to be derived
1053 through the essential managerial efforts of someone other than the investor; or

1054 (ii) an investment by which:

1055 (A) an offeree furnishes initial value to an offerer;

1056 (B) a portion of the initial value is subjected to the risks of the enterprise;

1057 (C) the furnishing of the initial value is induced by the offerer's promises or

1058 representations that give rise to a reasonable understanding that a valuable benefit of some

1059 kind over and above the initial value will accrue to the offeree as a result of the operation of

1060 the enterprise; and

1061 (D) the offeree does not receive the right to exercise practical or actual control over the
1062 managerial decisions of the enterprise.

1063 (t) "Isolated transaction" means not more than a total of two transactions that occur
1064 anywhere during six consecutive months.

1065 (u) (i) "Issuer" means a person who issues or proposes to issue a security or has

1066 outstanding a security that it has issued.

1067 (ii) With respect to a preorganization certificate or subscription, "issuer" means the
1068 one or more promoters of the person to be organized.

1069 (iii) "Issuer" means the one or more persons performing the acts and assuming duties
1070 of a depositor or manager under the provisions of the trust or other agreement or instrument
1071 under which the security is issued with respect to:

1072 (A) interests in trusts, including collateral trust certificates, voting trust certificates,
1073 and certificates of deposit for securities; or

1074 (B) shares in an investment company without a board of directors.

1075 (iv) With respect to an equipment trust certificate, a conditional sales contract, or
1076 similar securities serving the same purpose, "issuer" means the person by whom the equipment
1077 or property is to be used.

1078 (v) With respect to interests in partnerships, general or limited, "issuer" means the
1079 partnership itself and not the general partner or partners.

1080 (vi) With respect to certificates of interest or participation in oil, gas, or mining titles
1081 or leases or in payment out of production under the titles or leases, "issuer" means the owner
1082 of the title or lease or right of production, whether whole or fractional, who creates fractional
1083 interests therein for the purpose of sale.

1084 (v) (i) "Life settlement interest" means the entire interest or a fractional interest in any
1085 of the following that is the subject of a life settlement:

1086 (A) a policy; or

1087 (B) the death benefit under a policy.

1088 (ii) "Life settlement interest" does not include the initial purchase from the owner by a
1089 life settlement provider.

1090 (w) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

1091 (x) "Person" means:

1092 (i) an individual;

1093 (ii) a corporation;

- 1094 (iii) a partnership;
- 1095 (iv) a limited liability company;
- 1096 (v) an association;
- 1097 (vi) a joint-stock company;
- 1098 (vii) a joint venture;
- 1099 (viii) a trust where the interests of the beneficiaries are evidenced by a security;
- 1100 (ix) an unincorporated organization;
- 1101 (x) a government; or
- 1102 (xi) a political subdivision of a government.
- 1103 (y) "Precious metal" means the following, whether in coin, bullion, or other form:
 - 1104 (i) silver;
 - 1105 (ii) gold;
 - 1106 (iii) platinum;
 - 1107 (iv) palladium;
 - 1108 (v) copper; and
 - 1109 (vi) such other substances as the division may specify by rule.
- 1110 (z) "Promoter" means a person who, acting alone or in concert with one or more
- 1111 persons, takes initiative in founding or organizing the business or enterprise of a person.
- 1112 (aa) (i) Except as provided in Subsection (1)(aa)(ii), "record" means information that
- 1113 is:
 - 1114 (A) inscribed in a tangible medium; or
 - 1115 (B) (I) stored in an electronic or other medium; and
 - 1116 (II) retrievable in perceivable form.
- 1117 (ii) This Subsection (1)(aa) does not apply when the context requires otherwise,
- 1118 including when "record" is used in the following phrases:
 - 1119 (A) "of record";
 - 1120 (B) "official record"; or
 - 1121 (C) "public record."

1122 (bb) (i) "Sale" or "sell" includes a contract for sale of, contract to sell, or disposition
1123 of, a security or interest in a security for value.

1124 (ii) "Offer" or "offer to sell" includes an attempt or offer to dispose of, or solicitation
1125 of an offer to buy, a security or interest in a security for value.

1126 (iii) The following are examples of the definitions in Subsection (1)(bb)(i) or (ii):

1127 (A) a security given or delivered with or as a bonus on account of a purchase of a
1128 security or any other thing, is part of the subject of the purchase, and is offered and sold for
1129 value;

1130 (B) a purported gift of assessable stock is an offer or sale as is each assessment levied
1131 on the stock;

1132 (C) an offer or sale of a security that is convertible into, or entitles its holder to acquire
1133 or subscribe to another security of the same or another issuer is an offer or sale of that security,
1134 and also an offer of the other security, whether the right to convert or acquire is exercisable
1135 immediately or in the future;

1136 (D) a conversion or exchange of one security for another constitutes an offer or sale of
1137 the security received in a conversion or exchange, and the offer to buy or the purchase of the
1138 security converted or exchanged;

1139 (E) securities distributed as a dividend wherein the person receiving the dividend
1140 surrenders the right, or the alternative right, to receive a cash or property dividend is an offer
1141 or sale;

1142 (F) a dividend of a security of another issuer is an offer or sale; or

1143 (G) the issuance of a security under a merger, consolidation, reorganization,
1144 recapitalization, reclassification, or acquisition of assets constitutes the offer or sale of the
1145 security issued as well as the offer to buy or the purchase of a security surrendered in
1146 connection therewith, unless the sole purpose of the transaction is to change the issuer's
1147 domicile.

1148 (iv) The terms defined in Subsections (1)(bb)(i) and (ii) do not include:

1149 (A) a good faith gift;

- 1150 (B) a transfer by death;
- 1151 (C) a transfer by termination of a trust or of a beneficial interest in a trust;
- 1152 (D) a security dividend not within Subsection (1)(bb)(iii)(E) or (F); or
- 1153 (E) a securities split or reverse split.
- 1154 (cc) "Securities Act of 1933," "Securities Exchange Act of 1934," and "Investment
- 1155 Company Act of 1940" mean the federal statutes of those names as amended before or after
- 1156 the effective date of this chapter.
- 1157 (dd) "Securities Exchange Commission" means the United States Securities Exchange
- 1158 Commission created by the Securities Exchange Act of 1934.
- 1159 (ee) (i) "Security" means a:
- 1160 (A) note;
- 1161 (B) stock;
- 1162 (C) treasury stock;
- 1163 (D) bond;
- 1164 (E) debenture;
- 1165 (F) evidence of indebtedness;
- 1166 (G) certificate of interest or participation in a profit-sharing agreement;
- 1167 (H) collateral-trust certificate;
- 1168 (I) preorganization certificate or subscription;
- 1169 (J) transferable share;
- 1170 (K) investment contract;
- 1171 (L) burial certificate or burial contract;
- 1172 (M) voting-trust certificate;
- 1173 (N) certificate of deposit for a security;
- 1174 (O) certificate of interest or participation in an oil, gas, or mining title or lease or in
- 1175 payments out of production under such a title or lease;
- 1176 (P) commodity contract or commodity option;
- 1177 (Q) interest in a limited liability company;

1178 (R) life settlement interest; or
1179 (S) in general, an interest or instrument commonly known as a "security," or a
1180 certificate of interest or participation in, temporary or interim certificate for, receipt for,
1181 guarantee of, or warrant or right to subscribe to or purchase an item listed in Subsections
1182 (1)(ee)(i)(A) through (R).
1183 (ii) "Security" does not include:
1184 (A) an insurance or endowment policy or annuity contract under which an insurance
1185 company promises to pay money in a lump sum or periodically for life or some other specified
1186 period;
1187 (B) an interest in a limited liability company in which the limited liability company is
1188 formed as part of an estate plan where all of the members are related by blood or marriage, or
1189 the person claiming this exception can prove that all of the members are actively engaged in
1190 the management of the limited liability company; or
1191 (C) (I) a whole long-term estate in real property;
1192 (II) an undivided fractionalized long-term estate in real property that consists of 10 or
1193 fewer owners; or
1194 (III) an undivided fractionalized long-term estate in real property that consists of more
1195 than 10 owners if, when the real property estate is subject to a management agreement:
1196 (Aa) the management agreement permits a simple majority of owners of the real
1197 property estate to not renew or to terminate the management agreement at the earlier of the end
1198 of the management agreement's current term, or 180 days after the day on which the owners
1199 give notice of termination to the manager;
1200 (Bb) the management agreement prohibits, directly or indirectly, the lending of the
1201 proceeds earned from the real property estate or the use or pledge of its assets to a person or
1202 entity affiliated with or under common control of the manager; and
1203 (Cc) the management agreement complies with any other requirement imposed by rule
1204 by the Real Estate Commission under Section [~~61-2-26~~] 61-2f-103.
1205 (iii) For purposes of Subsection (1)(ee)(ii)(B), evidence that members vote or have the

1206 right to vote, or the right to information concerning the business and affairs of the limited
1207 liability company, or the right to participate in management, may not establish, without more,
1208 that all members are actively engaged in the management of the limited liability company.

1209 (ff) "State" means a state, territory, or possession of the United States, the District of
1210 Columbia, and Puerto Rico.

1211 (gg) (i) "Undivided fractionalized long-term estate" means an ownership interest in
1212 real property by two or more persons that is a:

1213 (A) tenancy in common; or

1214 (B) any other legal form of undivided estate in real property including:

1215 (I) a fee estate;

1216 (II) a life estate; or

1217 (III) other long-term estate.

1218 (ii) "Undivided fractionalized long-term estate" does not include a joint tenancy.

1219 (hh) "Whole long-term estate" means a person owns or persons through joint tenancy
1220 own real property through:

1221 (i) a fee estate;

1222 (ii) a life estate; or

1223 (iii) other long-term estate.

1224 (ii) "Working days" means 8 a.m. to 5 p.m., Monday through Friday, exclusive of
1225 legal holidays listed in Section 63G-1-301.

1226 (2) A term not defined in this section shall have the meaning as established by
1227 division rule. The meaning of a term neither defined in this section nor by rule of the division
1228 shall be the meaning commonly accepted in the business community.

1229 (3) (a) This Subsection (3) applies to:

1230 (i) the offer or sale of a real property estate exempted from the definition of security
1231 under Subsection (1)(ee)(ii)(C); or

1232 (ii) the offer or sale of an undivided fractionalized long-term estate that is the offer of
1233 a security.

1234 (b) A person who, directly or indirectly receives compensation in connection with the
1235 offer or sale as provided in this Subsection (3) of a real property estate is not an agent,
1236 broker-dealer, investment adviser, or investment adviser representative under this chapter if
1237 that person is licensed under Chapter ~~[2, Division of Real Estate]~~ 2f, Real Estate Licensing
1238 and Practices Act, as:

- 1239 (i) a principal [~~real estate~~] broker;
- 1240 (ii) an associate [~~real estate~~] broker; or
- 1241 (iii) a [~~real estate~~] sales agent.

1242 (4) The list of real property estates excluded from the definition of securities under
1243 Subsection (1)(ee)(ii)(C) is not an exclusive list of real property estates or interests that are not
1244 a security.

1245 Section 18. Section **61-2-101** is enacted to read:

1246 **CHAPTER 2. DIVISION OF REAL ESTATE**

1247 **Part 1. General Provisions**

1248 **61-2-101. Title.**

1249 This chapter is known as the "Division of Real Estate."

1250 Section 19. Section **61-2-102** is enacted to read:

1251 **61-2-102. Definitions.**

1252 As used in this chapter:

- 1253 (1) "Department" means the Department of Commerce.
- 1254 (2) "Director" means the director of the division appointed under Section 61-2-201.
- 1255 (3) "Division" means the Division of Real Estate created in Section 61-2-201.
- 1256 (4) "Executive director" means the executive director of the department appointed

1257 under Section 13-1-3.

1258 Section 20. Section **61-2-201**, which is renumbered from Section 61-2-5 is
1259 renumbered and amended to read:

1260 **Part 2. Organization**

1261 ~~[61-2-5].~~ **61-2-201. Division of Real Estate created -- Director appointed --**

1262 **Personnel.**

1263 (1) There is created within the [~~Department of Commerce~~] department a Division of
 1264 Real Estate. [~~H~~] The division is responsible for the administration and enforcement of:

1265 (a) this chapter;

1266 (b) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;

1267 (c) Title 57, Chapter 19, Timeshare and Camp Resort Act;

1268 (d) Title 57, Chapter 23, Real Estate Cooperative Marketing Act;

1269 [~~(e) Chapter 2a, Real Estate Recovery Fund Act;~~]

1270 [~~(f)~~] (e) Chapter 2b, Real Estate Appraiser Licensing and Certification Act;

1271 [~~(g)~~] (f) Chapter 2c, Utah Residential Mortgage Practices and Licensing Act; [~~and~~]

1272 [~~(h)~~] (g) Chapter 2e, Appraisal Management Company Registration and Regulation
 1273 Act[-]; and

1274 (h) Chapter 2f, Real Estate Licensing and Practices Act.

1275 (2) The division is under the direction and control of a director appointed by the
 1276 executive director of the department with the approval of the governor. The director holds the
 1277 office of director at the pleasure of the governor.

1278 (3) The director, with the approval of the executive director, may employ personnel
 1279 necessary to discharge the duties of the division at salaries to be fixed by the director
 1280 according to standards established by the Department of Administrative Services.

1281 [~~(4) On or before October 1 of each year, the director shall, in conjunction with the~~
 1282 ~~department, report to the governor and the Legislature concerning the division's work for the~~
 1283 ~~preceding fiscal year ending June 30.]~~

1284 [~~(5) The director, in conjunction with the executive director, shall prepare and submit~~
 1285 ~~to the governor and the Legislature a budget for the fiscal year next following the convening of~~
 1286 ~~the Legislature.]~~

1287 Section 21. Section **61-2-202** is enacted to read:

1288 **61-2-202. Powers and duties of the director or division.**

1289 (1) On or before October 1 of each year, in conjunction with the department, the

1290 director shall report to the governor and the Legislature concerning the division's work for the
 1291 fiscal year immediately preceding the report.

1292 (2) In conjunction with the executive director, the director shall prepare and submit to
 1293 the governor and the Legislature a budget for the fiscal year that follows the convening of the
 1294 Legislature.

1295 Section 22. Section **61-2-203**, which is renumbered from Section 61-2-5.1 is
 1296 renumbered and amended to read:

1297 **[61-2-5.1]. 61-2-203. Adjudicative proceedings.**

1298 The [~~Division of Real Estate~~] division shall comply with [~~the procedures and~~
 1299 ~~requirements of~~] Title 63G, Chapter 4, Administrative Procedures Act, in [~~its~~] an adjudicative
 1300 [~~proceedings~~] proceeding under a chapter the division administers.

1301 Section 23. Section **61-2-204**, which is renumbered from Section 61-2-28 is
 1302 renumbered and amended to read:

1303 **[61-2-28]. 61-2-204. Utah Housing Opportunity Restricted Account.**

1304 (1) For purposes of this section, "account" means the Utah Housing Opportunity
 1305 Restricted Account created by this section.

1306 [~~(1)~~] (2) There is created in the General Fund a restricted account known as the "Utah
 1307 Housing Opportunity Restricted Account."

1308 [~~(2)~~] (3) The account shall be funded by:

1309 (a) contributions deposited into the [~~Utah Housing Opportunity Restricted Account~~]
 1310 account in accordance with Section 41-1a-422;

1311 (b) private contributions; and

1312 (c) donations or grants from public or private entities.

1313 [~~(3) Funds~~] (4) Money in the account [~~are~~] is nonlapsing.

1314 [~~(4)~~] (5) (a) The state treasurer shall invest [~~monies~~] money in the account according
 1315 to Title 51, Chapter 7, State Money Management Act.

1316 (b) The Division of Finance shall deposit interest or other earnings derived from
 1317 investment of account [~~monies~~] money into the General Fund.

1318 ~~[(5)]~~ (6) The Legislature shall appropriate money in the account to the division.

1319 ~~[(6)]~~ (7) The division shall distribute the ~~[funds]~~ money in the account to one or more
1320 charitable organizations that:

1321 (a) ~~[qualify as being]~~ are tax exempt under Section 501(c)(3), Internal Revenue Code;
1322 and

1323 (b) have as a primary part of their mission to provide support to organizations that
1324 create affordable housing for those in severe need.

1325 ~~[(7)]~~ (8) The division may ~~[only consider proposals that are]~~ consider a proposal only
1326 if it is:

1327 (a) proposed by an organization ~~[under]~~ described in Subsection ~~[(6)]~~ (7); and

1328 (b) designed to provide support to organizations that create affordable housing for
1329 those in severe need.

1330 ~~[(8)]~~ (9) (a) An organization described in Subsection ~~[(6)]~~ (7) may apply to the
1331 division to receive a distribution in accordance with Subsection ~~[(6)]~~ (7).

1332 (b) An organization that receives a distribution from the division in accordance with
1333 Subsection ~~[(6)]~~ (7) shall expend the distribution only to provide support to organizations that
1334 create affordable housing for those in severe need.

1335 ~~[(9)]~~ (10) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
1336 Act, the division shall make rules providing procedures for an organization to apply to receive
1337 ~~[funds]~~ money under this section.

1338 Section 24. Section **61-2b-2** is amended to read:

1339 **61-2b-2. Definitions.**

1340 (1) As used in this chapter:

1341 (a) (i) "Appraisal" means an unbiased analysis, opinion, or conclusion relating to the
1342 nature, quality, value, or utility of a specified interest in, or aspect of, identified real estate or
1343 identified real property.

1344 (ii) An appraisal is classified by the nature of the assignment as a valuation appraisal,
1345 an analysis assignment, or a review assignment in accordance with the following definitions:

1346 (A) "Analysis assignment" means an unbiased analysis, opinion, or conclusion that
1347 relates to the nature, quality, or utility of identified real estate or identified real property.

1348 (B) "Review assignment" means an unbiased analysis, opinion, or conclusion that
1349 forms an opinion as to the adequacy and appropriateness of a valuation appraisal or an
1350 analysis assignment.

1351 (C) "Valuation appraisal" means an unbiased analysis, opinion, or conclusion that
1352 estimates the value of an identified parcel of real estate or identified real property at a
1353 particular point in time.

1354 (b) "Appraisal Foundation" means the Appraisal Foundation that was incorporated as
1355 an Illinois not-for-profit corporation on November 30, 1987.

1356 (c) (i) "Appraisal report" means a communication, written or oral, of an appraisal.

1357 (ii) An appraisal report is classified by the nature of the assignment as a valuation
1358 report, analysis report, or review report in accordance with the definitions provided in
1359 Subsection (1)(a)(ii).

1360 (iii) The testimony of a person relating to the person's analyses, conclusions, or
1361 opinions concerning identified real estate or identified real property is considered to be an oral
1362 appraisal report.

1363 (d) "Appraisal Qualification Board" means the Appraisal Qualification Board of the
1364 Appraisal Foundation.

1365 [~~(d)~~] (e) "Board" means the Real Estate Appraiser Licensing and Certification Board
1366 that is established in Section 61-2b-7.

1367 [~~(e)~~] (f) "Certified appraisal report" means a written or oral appraisal report that is
1368 certified by a state-certified general appraiser or state-certified residential appraiser.

1369 (g) "Concurrence" means that the entities that are given a concurring role jointly agree
1370 to an action.

1371 [~~(f)~~] (h) (i) (A) "Consultation service" means an engagement to provide a real estate
1372 valuation service analysis, opinion, conclusion, or other service that does not fall within the
1373 definition of appraisal.

1374 (B) "Consultation service" does not mean a valuation appraisal, analysis assignment,
1375 or review assignment.

1376 (ii) Regardless of the intention of the client or employer, if a person prepares an
1377 unbiased analysis, opinion, or conclusion, the analysis, opinion, or conclusion is considered to
1378 be an appraisal and not a consultation service.

1379 ~~(g)~~ (i) "Contingent fee" means a fee or other form of compensation, payment of
1380 which is dependent on or conditioned by:

1381 (i) the reporting of a predetermined analysis, opinion, or conclusion by the person
1382 performing the analysis, opinion, or conclusion; or

1383 (ii) achieving a result specified by the person requesting the analysis, opinion, or
1384 conclusion.

1385 ~~(h)~~ (j) "Division" means the Division of Real Estate of the Department of
1386 Commerce.

1387 ~~(i)~~ (k) "Federally related transaction" means a real estate related transaction that is
1388 required by federal law or by federal regulation to be supported by an appraisal prepared by:

1389 (i) a state-licensed appraiser; or

1390 (ii) a state-certified appraiser.

1391 ~~(j)~~ (l) "Real estate" means an identified parcel or tract of land including
1392 improvements if any.

1393 ~~(k)~~ (m) "Real estate appraisal activity" means the act or process of making an
1394 appraisal of real estate or real property and preparing an appraisal report.

1395 ~~(l)~~ (n) "Real estate related transaction" means:

1396 (i) the sale, lease, purchase, investment in, or exchange of real property or an interest
1397 in real property, or the financing of such a transaction;

1398 (ii) the refinancing of real property or an interest in real property; or

1399 (iii) the use of real property or an interest in real property as security for a loan or
1400 investment, including mortgage-backed securities.

1401 ~~(m)~~ (o) "Real property" means one or more defined interests, benefits, or rights

1402 inherent in the ownership of real estate.

1403 ~~[(n)]~~ (p) "State-certified general appraiser" means a person who holds a current, valid
1404 certification as a state-certified general appraiser issued under this chapter.

1405 ~~[(o)]~~ (q) "State-certified residential appraiser" means a person who holds a current,
1406 valid certification as a state-certified residential real estate appraiser issued under this chapter.

1407 ~~[(p)]~~ (r) "State-licensed appraiser" means a person who holds a current, valid license
1408 as a state-licensed appraiser issued under this chapter.

1409 ~~[(q)]~~ (s) "Trainee" means an individual who:

1410 (i) does not hold an appraiser license or appraiser certification issued under this
1411 chapter;

1412 (ii) works under the direct supervision of a state-certified appraiser to earn experience
1413 for licensure; and

1414 (iii) is registered as a trainee under this chapter.

1415 ~~[(r)]~~ (t) "Unbiased analysis, opinion, or conclusion" means an analysis, opinion, or
1416 conclusion relating to the nature, quality, value, or utility of identified real estate or identified
1417 real property that is prepared by a person who is employed or retained to act, or would be
1418 perceived by third parties or the public as acting, as a disinterested third party in rendering the
1419 analysis, opinion, or conclusion.

1420 (2) (a) If a term not defined in this section is defined by rule, the term shall have the
1421 meaning established by the division by rule made in accordance with Title 63G, Chapter 3,
1422 Utah Administrative Rulemaking Act.

1423 (b) If a term not defined in this section is not defined by rule, the term shall have the
1424 meaning commonly accepted in the business community.

1425 Section 25. Section **61-2b-3** is amended to read:

1426 **61-2b-3. License or certification required.**

1427 (1) Except as provided in Subsection (2) and in Subsection 61-2b-6(2), it is unlawful
1428 for ~~[anyone]~~ a person to prepare, for valuable consideration, an appraisal, an appraisal report,
1429 a certified appraisal report, or perform a consultation service relating to real estate or real

1430 property in this state without first being licensed or certified in accordance with this chapter.

1431 (2) This section does not apply to:

1432 (a) a ~~[real estate broker]~~ principal broker, associate broker, or sales agent as defined by
1433 Section ~~[61-2-2]~~ 61-2f-102 licensed by this state who, in the ordinary course of the ~~[real~~
1434 ~~estate]~~ broker's or sales agent's business, gives an opinion:

1435 (i) regarding the value of real estate;

1436 (ii) to a potential seller or third party recommending a listing price of real estate; or

1437 (iii) to a potential buyer or third party recommending a purchase price of real estate;

1438 (b) an employee of a company who states an opinion of value or prepares a report
1439 containing value conclusions relating to real estate or real property solely for the company's
1440 use;

1441 (c) ~~[any]~~ an official or employee of a government agency while acting solely within
1442 the scope of the official's or employee's duties, unless otherwise required by Utah law;

1443 (d) an auditor or accountant who states an opinion of value or prepares a report
1444 containing value conclusions relating to real estate or real property while performing an audit;

1445 (e) an individual, except an individual who is required to be licensed or certified under
1446 this chapter, who states an opinion about the value of property in which the person has an
1447 ownership interest;

1448 (f) an individual who states an opinion of value if no consideration is paid or agreed to
1449 be paid for the opinion and no other party is reasonably expected to rely on the individual's
1450 appraisal expertise;

1451 (g) an individual, such as a researcher or a secretary, who does not render significant
1452 professional assistance, as defined by the board, in arriving at a real estate appraisal analysis,
1453 opinion, or conclusion; or

1454 (h) an attorney authorized to practice law in this state who, in the course of the
1455 attorney's practice, uses an appraisal report governed by this chapter or who states an opinion
1456 of the value of real estate.

1457 (3) An opinion of value or report containing value conclusions exempt under

1458 Subsection (2) may not be referred to as an appraisal.

1459 Section 26. Section **61-2b-6** is amended to read:

1460 **61-2b-6. Duties and powers of division.**

1461 (1) The division has the powers and duties listed in this Subsection (1).

1462 (a) The division shall:

1463 (i) receive an application for licensing, certification, or registration;

1464 (ii) establish appropriate administrative procedures for the processing of an
1465 application for licensure, certification, or registration;

1466 (iii) issue a license or certification to a qualified applicant pursuant to this chapter;

1467 and

1468 (iv) register an individual who applies and qualifies for registration as a trainee under
1469 this chapter.

1470 (b) (i) The division shall require an individual to register with the division as a trainee
1471 [~~with the division~~] before the individual acts in the capacity of a trainee earning experience for
1472 licensure.

1473 (ii) Subject to Subsection (4), the board shall adopt rules in accordance with Title
1474 63G, Chapter 3, Utah Administrative Rulemaking Act, for:

1475 (A) the trainee registration required by this Subsection (1)(b); and

1476 (B) renewal of the trainee registration required by this Subsection (1)(b).

1477 (c) The division shall hold public hearings under the direction of the board.

1478 (d) The division may:

1479 (i) solicit bids and enter into contracts with one or more educational testing services or
1480 organizations for the preparation of a bank of questions and answers [~~approved by the board~~
1481 ~~for licensing and certification examinations~~]; and

1482 (ii) administer or contract for the administration of licensing and certification
1483 examinations as may be required to carry out the division's responsibilities under this chapter.

1484 (e) The division shall provide administrative assistance to the board by providing to
1485 the board the facilities, equipment, supplies, and personnel that are required to enable the

1486 board to carry out the board's responsibilities under this chapter.

1487 ~~[(f) The division shall assist the board in upgrading and improving the quality of the~~
1488 ~~education and examinations required under this chapter.]~~

1489 ~~[(g)]~~ (f) The division shall assist the board in improving the quality of the continuing
1490 education available to a person licensed ~~[and]~~, certified, or registered under this chapter.

1491 ~~[(h)]~~ (g) The division shall assist the board with respect to the proper interpretation or
1492 explanation of the Uniform Standards of Professional Appraisal Practice as required by
1493 Section 61-2b-27 when an interpretation or explanation becomes necessary in the enforcement
1494 of this chapter.

1495 ~~[(i)]~~ (h) The division shall establish fees in accordance with Section 63J-1-504:

1496 (i) for processing:

1497 ~~[(A) a trainee registration;]~~

1498 ~~[(B)]~~ (A) an application for licensing ~~[and]~~, certification, or registration; and

1499 ~~[(C)]~~ (B) approval of an expert witness; and

1500 (ii) for ~~[all other functions]~~ any other function required or permitted by this chapter.

1501 (i) If a person pays a fee or costs to the division with a negotiable instrument and the
1502 negotiable instrument is not honored for payment:

1503 (i) the transaction for which the payment is submitted is voidable by the division;

1504 (ii) the division may reverse the transaction if payment of the applicable fee or costs is
1505 not received in full; and

1506 (iii) the person's license, certification, or registration is automatically suspended:

1507 (A) beginning the day on which the payment is due; and

1508 (B) ending the day on which payment is made in full.

1509 (j) The division may:

1510 (i) investigate a complaint against:

1511 ~~[(A) a trainee;]~~

1512 ~~[(B)]~~ (A) a person licensed ~~[or]~~, certified, or registered under this chapter; or

1513 ~~[(C)]~~ (B) a person required to be licensed, certified, or registered under this chapter;

- 1514 (ii) subpoena a witness;
- 1515 (iii) subpoena the production of a book, paper, document, record, [~~or other paper~~]
- 1516 contract, or evidence;
- 1517 (iv) administer an oath; and
- 1518 (v) take testimony and receive evidence concerning a matter within the division's
- 1519 jurisdiction.
- 1520 (k) The division may:
- 1521 (i) promote research and conduct studies relating to the profession of real estate
- 1522 appraising; and
- 1523 (ii) sponsor real estate appraisal educational activities.
- 1524 (l) The division shall adopt, with the concurrence of the board, rules for the
- 1525 administration of this chapter pursuant to Title 63G, Chapter 3, Utah Administrative
- 1526 Rulemaking Act, that are not inconsistent with this chapter or the constitution and laws of this
- 1527 state or of the United States.
- 1528 (m) The division shall employ an appropriate staff to investigate allegations that a
- 1529 person required to be licensed, certified, or registered under this chapter fails to comply with
- 1530 this chapter.
- 1531 (n) The division may employ other professional, clerical, and technical staff as may be
- 1532 necessary to properly administer the work of the division under this chapter.
- 1533 (o) [~~The division may~~] (i) Upon request, the division shall make available[~~, at a~~
- 1534 ~~reasonable cost determined by the division~~], either directly or through a third party, a list of
- 1535 the names and addresses of [~~all~~] the persons licensed, registered, or certified by the division
- 1536 under this chapter [~~to the extent the information is a public record under Title 63G, Chapter 2,~~
- 1537 ~~Government Records Access and Management Act~~].
- 1538 (ii) A person who requests a list under this Subsection (1)(o) shall pay the costs
- 1539 incurred by the division to make the list available.
- 1540 (2) (a) The division shall approve an expert witness who is not otherwise licensed or
- 1541 certified under this chapter to appear in an administrative or judicial tax proceeding to provide

1542 evidence related to the valuation of real property that is assessed by the State Tax
1543 Commission, ~~[provided that]~~ if the:

- 1544 (i) approval is limited to a specific proceeding;
- 1545 (ii) approval is valid until the proceeding becomes final;
- 1546 (iii) applicant pays to the division an approval fee ~~[to]~~ set by the division in
1547 accordance with Section 63J-1-504;
- 1548 (iv) applicant provides the applicant's name, address, occupation, and professional
1549 credentials; and
- 1550 (v) applicant provides a notarized statement that:
 - 1551 (A) the applicant is competent to render an appraisal and to testify as an expert witness
1552 in the proceeding; and
 - 1553 (B) the appraisal and testimony to be offered shall be in accordance with the Uniform
1554 Standards of Professional Appraisal Practice adopted by the board.
- 1555 (b) Subsection (2)(a) ~~[is effective for]~~ applies to an administrative or judicial property
1556 tax proceeding related to the valuation of real property that is assessed by the State Tax
1557 Commission.
- 1558 (3) (a) If the conditions of Subsection (3)(b) are met, the division is immune from any
1559 civil action or criminal prosecution for initiating or assisting in a lawful investigation of an act
1560 of, or participating in a disciplinary proceeding concerning:
 - 1561 (i) a person required to be licensed, certified, or registered pursuant to this chapter; or
 - 1562 (ii) a person approved as an expert witness pursuant to this chapter.
- 1563 (b) This Subsection (3) applies if the division takes the action:
 - 1564 (i) without malicious intent; and
 - 1565 (ii) in the reasonable belief that the action is taken pursuant to the powers and duties
1566 vested in the division under this chapter.
- 1567 (4) (a) An individual applying to register as a trainee under this chapter shall:
 - 1568 (i) submit a fingerprint card in a form acceptable to the division at the time of
1569 applying for registration; and

- 1570 (ii) consent to a criminal background check by:
- 1571 (A) the Utah Bureau of Criminal Identification; and
- 1572 (B) the Federal Bureau of Investigation.
- 1573 (b) The division shall request the Department of Public Safety to complete a Federal
- 1574 Bureau of Investigation criminal background check for an applicant through a national
- 1575 criminal history system.
- 1576 (c) The applicant shall pay the cost of:
- 1577 (i) the fingerprinting required by this section; and
- 1578 (ii) the criminal background check required by this section.
- 1579 (d) (i) A registration as a trainee under this chapter is conditional pending completion
- 1580 of the criminal background check required by this Subsection (4).
- 1581 (ii) ~~[If a criminal background check discloses that an applicant fails to accurately~~
- 1582 ~~disclose a criminal history, the] A registration is immediately and automatically revoked[-] if a~~
- 1583 criminal background check discloses that the applicant fails to accurately disclose a criminal
- 1584 history involving:
- 1585 (A) the appraisal industry;
- 1586 (B) fraud;
- 1587 (C) misrepresentation; or
- 1588 (D) deceit.
- 1589 (iii) If a criminal background check discloses that an applicant fails to accurately
- 1590 disclose a criminal history other than one described in Subsection (4)(d)(ii), the division:
- 1591 (A) shall review the application; and
- 1592 (B) in accordance with rules made by the division pursuant to Title 63G, Chapter 3,
- 1593 Utah Administrative Rulemaking Act, may:
- 1594 (I) place one or more conditions on a registration;
- 1595 (II) place one or more restrictions on a registration;
- 1596 (III) revoke a registration; or
- 1597 (IV) refer the application to the board for a decision.

1598 ~~[(iii)]~~ (iv) An individual whose conditional registration is automatically revoked under
1599 Subsection (4)(d)(ii) or whose registration is conditioned, restricted, or revoked under
1600 Subsection (4)(d)(iii) may appeal the ~~[revocation]~~ action in a hearing conducted by the board:

1601 (A) after the ~~[revocation]~~ action is taken; and

1602 (B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

1603 ~~[(iv)]~~ (v) The board may delegate to the division or an administrative law judge the
1604 authority to conduct a hearing described in Subsection (4)(d)~~[(iii)]~~(iv).

1605 ~~[(v)]~~ (vi) Relief from ~~[a]~~ an automatic revocation under Subsection (4)(d)(ii) may be
1606 granted only if:

1607 (A) the criminal history upon which the division ~~[based]~~ bases the revocation:

1608 (I) did not occur; or

1609 (II) is the criminal history of another person;

1610 (B) (I) the revocation is based on a failure to accurately disclose a criminal history;

1611 and

1612 (II) the applicant has a reasonable good faith belief at the time of application that there
1613 was no criminal history to be disclosed; or

1614 (C) the division fails to follow the prescribed procedure for the revocation.

1615 (e) If a registration is revoked or a revocation is upheld after a hearing described in
1616 Subsection (4)(d)~~[(iii)]~~(iv), the individual may not apply for a new ~~[license]~~ registration for a
1617 period of 12 months after the day on which the registration is revoked.

1618 (f) The board may delegate to the division the authority to make a decision on whether
1619 relief from a revocation should be granted.

1620 (g) ~~[The funds]~~ Money paid by an applicant for the cost of the criminal background
1621 check ~~[shall be]~~ is nonlapsing.

1622 Section 27. Section **61-2b-8** is amended to read:

1623 **61-2b-8. Duties of board.**

1624 (1) (a) The board shall provide technical assistance to the division relating to real
1625 estate appraisal standards and real estate appraiser qualifications.

- 1626 (b) The board has the powers and duties listed in this section.
- 1627 (2) The board shall:
- 1628 (a) determine the experience[;] and education[; ~~and examination~~] requirements
- 1629 appropriate for a person licensed under this chapter;
- 1630 (b) determine the experience[;] and education[; ~~and examination~~] requirements
- 1631 appropriate for a person certified under this chapter:
- 1632 (i) in compliance with the minimum requirements of Financial Institutions Reform,
- 1633 Recovery, and Enforcement Act of 1989; and
- 1634 (ii) consistent with the intent of this chapter;
- 1635 (c) determine the appraisal related acts that may be performed by:
- 1636 (i) a trainee on the basis of the trainee's education and experience;
- 1637 (ii) clerical staff; and
- 1638 (iii) a person who:
- 1639 (A) does not hold a license or certification; and
- 1640 (B) assists an appraiser licensed or certified under this chapter in providing appraisal
- 1641 services or consultation services;
- 1642 (d) determine the procedures for a trainee to register and to renew a registration with
- 1643 the division; and
- 1644 (e) develop one or more programs to upgrade and improve the experience, education,
- 1645 and examinations as required under this chapter.
- 1646 (3) (a) The experience[;] and education[; ~~and examination~~] requirements established
- 1647 by the board for a person licensed or certified under this chapter shall be the minimum criteria
- 1648 established by the [~~Appraiser~~] Appraisal Qualification Board [~~of the Appraisal Foundation~~],
- 1649 unless, after notice and a public hearing held in accordance with Title 63G, Chapter 3, Utah
- 1650 Administrative Rulemaking Act, the board finds that the minimum criteria are not appropriate
- 1651 for a state-licensed appraiser or a state-certified appraiser in this state.
- 1652 (b) If under Subsection (3)(a) the board makes a finding that the minimum criteria are
- 1653 not appropriate, the board shall recommend appropriate criteria to the Legislature.

1654 (4) The board shall:

1655 (a) determine the continuing education requirements appropriate for the renewal of a
1656 license, certification, or registration issued under this chapter, except that the continuing
1657 education requirements established by the board shall at least meet the minimum criteria
1658 established by the Appraisal Qualification Board;

1659 (b) develop one or more programs to upgrade and improve continuing education; and

1660 (c) recommend to the division one or more available continuing education courses that
1661 meet the requirements of this chapter.

1662 (5) (a) The board shall consider the proper interpretation or explanation of the
1663 Uniform Standards of Professional Appraisal Practice as required by Section 61-2b-27 when:

1664 (i) an interpretation or explanation is necessary in the enforcement of this chapter; and

1665 (ii) the Appraisal Standards Board of the Appraisal Foundation has not issued an
1666 interpretation or explanation.

1667 (b) If the conditions of Subsection (5)(a) are met, the board shall recommend to the
1668 division the appropriate interpretation or explanation that the division should adopt as a rule
1669 under this chapter.

1670 (c) The board may by rule made in accordance with Title 63G, Chapter 3, Utah
1671 Administrative Rulemaking Act, and Section 61-2b-27 provide for an exemption from a
1672 provision of the Uniform Standards of Professional Appraisal Practice for an activity engaged
1673 in on behalf of a governmental entity.

1674 ~~[(6) The board shall develop and establish or approve the examination specifications~~
1675 ~~and the minimum score required to pass an examination for licensure or certification.]~~

1676 ~~[(7) The board may review the:]~~

1677 ~~[(a) bank of questions and answers that comprise the examination for a person~~
1678 ~~licensed and certified under this chapter;]~~

1679 ~~[(b) procedure that is established for selecting individual questions from the bank of~~
1680 ~~questions for use in each scheduled examination; and]~~

1681 ~~[(c) questions in the bank of questions and the related answers to determine whether~~

1682 ~~they meet the examination specifications established by the board.]~~

1683 ~~[(8)]~~ (6) (a) The board shall conduct an administrative hearing, not delegated by the
1684 board to an administrative law judge, in connection with a disciplinary proceeding under
1685 Sections 61-2b-30 and 61-2b-31 concerning:

1686 (i) a person required to be licensed, certified, or registered under this chapter; and

1687 (ii) the person's failure to comply with this chapter and the Uniform Standards of
1688 Professional Appraisal Practice as adopted under Section 61-2b-27.

1689 (b) The board shall issue in an administrative hearing a decision that contains findings
1690 of fact and conclusions of law.

1691 (c) When a determination is made that a person required to be licensed, certified, or
1692 registered under this chapter has violated this chapter, the division shall implement
1693 disciplinary action determined by the board.

1694 ~~[(9)]~~ (7) A member of the board is immune from a civil action or criminal prosecution
1695 for a disciplinary proceeding concerning a person required to be registered, licensed, certified,
1696 or approved as an expert under this chapter if the action is taken without malicious intent and
1697 in the reasonable belief that the action taken was taken pursuant to the powers and duties
1698 vested in a member of the board under this chapter.

1699 ~~[(10)]~~ (8) The board shall require and pass upon proof necessary to determine the
1700 honesty, competency, integrity, and truthfulness of an applicant for:

1701 (a) original licensure, certification, or registration; and

1702 (b) renewal licensure ~~[or]~~, certification, or registration.

1703 Section 28. Section **61-2b-10** is amended to read:

1704 **61-2b-10. State-licensed appraiser -- Authority and qualifications.**

1705 (1) A state-licensed appraiser is authorized to appraise complex and noncomplex 1-4
1706 family residential units in this state having a transaction value permitted under the Financial
1707 Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations.

1708 (2) A state-licensed appraiser is authorized to appraise vacant or unimproved land
1709 having a transaction value permitted under the Financial Institutions Reform, Recovery, and

1710 Enforcement Act of 1989, and related federal regulations that is utilized for 1-4 family
1711 purposes or for which the highest and best use is 1-4 family purposes and subdivisions for
1712 which a development analysis/appraisal is not necessary.

1713 (3) A state-licensed appraiser may not issue a certified appraisal report.

1714 (4) To qualify as a state-licensed appraiser, an applicant must:

1715 (a) be of good moral character;

1716 (b) demonstrate honesty, competency, integrity, and truthfulness;

1717 ~~[(b)]~~ (c) pass the licensing examination with a satisfactory score as determined by the
1718 ~~[board]~~ Appraisal Qualification Board;

1719 ~~[(c)]~~ (d) successfully complete not less than 150 classroom hours in courses of study
1720 ~~[approved by the board]~~ that relate to:

1721 (i) real estate appraisal;

1722 (ii) the Uniform Standards of Professional Appraisal Practice; and

1723 (iii) ethical rules to be observed by a real estate appraiser as required by Section
1724 61-2b-27; and

1725 ~~[(d)]~~ (e) possess the minimum number of hours of experience in real property
1726 appraisal as established by rule.

1727 (5) The courses of study under Subsection (4)~~[(c)]~~(d) shall be conducted by:

1728 (a) a college or university;

1729 (b) a community or junior college;

1730 (c) a real estate appraisal or real estate related organization;

1731 (d) a state or federal agency or commission;

1732 (e) a proprietary school;

1733 (f) a provider approved by a state certification and licensing agency; or

1734 (g) the Appraisal Foundation or its boards.

1735 ~~[(6) The board shall require and pass upon proof necessary to determine the honesty,~~
1736 ~~competency, integrity, and truthfulness of each applicant.]~~

1737 Section 29. Section **61-2b-14** is amended to read:

1738 **61-2b-14. State-certified residential appraiser -- Application.**
1739 (1) ~~[Each]~~ An applicant for certification as a residential appraiser shall provide to the
1740 division evidence of:
1741 (a) the applicant's good moral character, honesty, competency, integrity, and
1742 truthfulness;
1743 ~~[(a) of]~~ (b) completion of the certification examination with a satisfactory score as
1744 determined by the ~~[board]~~ Appraisal Qualification Board;
1745 ~~[(b) (i) of]~~ (c) (i) an associate degree or higher degree from an accredited:
1746 (A) college;
1747 (B) junior college;
1748 (C) community college; or
1749 (D) university; or
1750 ~~(ii) [of]~~ successfully passing a curriculum determined by rule of collegiate level
1751 subject matter courses from an accredited:
1752 (A) college;
1753 (B) junior college;
1754 (C) community college; or
1755 (D) university;
1756 ~~[(c) of]~~ (d) satisfactory completion of not less than 200 classroom hours in a
1757 curriculum:
1758 (i) of specific appraisal education determined by rule made by the board; and
1759 (ii) that includes a course in the Uniform Standards of Professional Practice or its
1760 equivalent that ~~[has been]~~ is approved by the Appraisal ~~[Qualifications]~~ Qualification Board
1761 ~~[of the federal Appraisal Foundation authorized by Title XI of the Financial Institutions~~
1762 ~~Reform, Recovery, and Enforcement Act of 1989];~~
1763 ~~[(d) of]~~ (e) the minimum number of hours of experience in real property appraisal as
1764 established by rule; and
1765 ~~[(e) that]~~ (f) acquiring the experience required under Subsection ~~[(1)(d) was acquired]~~

1766 (1)(e) within a reasonable period, as determined by rule, immediately preceding the filing of
1767 the application for certification.

1768 (2) Upon request by the division, ~~the~~ an applicant shall make available to the
1769 division for examination:

1770 (a) a detailed listing of the real estate appraisal reports or file memoranda for each year
1771 for which experience is claimed; and

1772 (b) a sample selected by the division of appraisal reports that the applicant has
1773 prepared in the course of the applicant's appraisal practice.

1774 (3) The classroom hours required by Subsection (1)~~(c)~~(d) shall be provided by:

1775 (a) a college or university;

1776 (b) a community or junior college;

1777 (c) a real estate appraisal or real estate related organization;

1778 (d) a state or federal agency or commission;

1779 (e) a proprietary school;

1780 (f) a provider approved by a state certification and licensing agency; or

1781 (g) the Appraisal Foundation or its boards.

1782 Section 30. Section **61-2b-15** is amended to read:

1783 **61-2b-15. State-certified general appraiser -- Application -- Qualifications.**

1784 (1) ~~Each~~ An applicant for certification as a general appraiser shall provide to the
1785 division evidence of:

1786 (a) the applicant's good moral character, honesty, competency, integrity, and
1787 truthfulness;

1788 ~~(a) of~~ (b) completion of the certification examination with a satisfactory score as
1789 determined by the ~~board~~ Appraisal Qualification Board;

1790 ~~(b)~~ (c) (i) ~~of~~ a bachelors degree or higher degree from an accredited college or
1791 university; or

1792 (ii) ~~of~~ successfully passing a curriculum determined by rule of collegiate level
1793 subject matter courses from an accredited:

- 1794 (A) college;
- 1795 (B) junior college;
- 1796 (C) community college; or
- 1797 (D) university;
- 1798 [~~(e)~~ of] (d) satisfactory completion of not less than 300 classroom hours in a
- 1799 curriculum:
- 1800 (i) of specific appraisal education determined by rule; and
- 1801 (ii) that includes a course in the Uniform Standards of Professional Practice or its
- 1802 equivalent that has been approved by the Appraisal [~~Qualifications~~] Qualification Board [~~of~~
- 1803 ~~the Appraisal Foundation authorized by Title XI of the Financial Institutions Reform,~~
- 1804 ~~Recovery, and Enforcement Act of 1989~~];
- 1805 [~~(d)~~ of] (e) the minimum number of hours of experience in real property appraisal as
- 1806 established by rule; and
- 1807 [~~(e)~~ that] (f) acquiring the experience required under Subsection [~~(1)(d) is acquired~~]
- 1808 (1)(e) within a reasonable period, as determined by rule, immediately preceding the filing of
- 1809 the application for certification.
- 1810 (2) Upon request by the division, [~~the~~] an applicant shall make available to the
- 1811 division for examination:
- 1812 (a) a detailed listing of the real estate appraisal reports or file memoranda for each year
- 1813 for which experience is claimed; and
- 1814 (b) a sample selected by the division of appraisal reports that the applicant has
- 1815 prepared in the course of the applicant's appraisal practice.
- 1816 (3) The classroom hours required by Subsection (1)[~~(e)~~](d) shall be provided by:
- 1817 (a) a college or university;
- 1818 (b) a community or junior college;
- 1819 (c) a real estate appraisal or real estate related organization;
- 1820 (d) a state or federal agency or commission;
- 1821 (e) a proprietary school;

1822 (f) a provider approved by a state certification and licensing agency; or

1823 (g) the Appraisal Foundation or its boards.

1824 Section 31. Section **61-2b-17** is amended to read:

1825 **61-2b-17. State-certified and state-licensed appraisers -- Restrictions on use of**
1826 **terms -- Conduct prohibited or required -- Trainee.**

1827 (1) (a) The terms "state-certified general appraiser," "state-certified residential
1828 appraiser," and "state-licensed appraiser":

1829 (i) may only be used to refer to an individual who is certified or licensed under this
1830 chapter; and

1831 (ii) may not be used following, or immediately in connection with, the name or
1832 signature of a firm, partnership, corporation, or group, or in any manner that it might be
1833 interpreted as referring to a firm, partnership, corporation, group, or to anyone other than the
1834 individual who is certified or licensed under this chapter.

1835 (b) The requirement of this Subsection (1) may not be construed to prevent a
1836 state-certified general appraiser from signing an appraisal report on behalf of a corporation,
1837 partnership, firm, or group practice if it is clear that:

1838 (i) only the individual is certified; and

1839 (ii) the corporation, partnership, firm, or group practice is not certified.

1840 (c) Except as provided in Section 61-2b-25, a certificate or license may not be issued
1841 under this chapter to a corporation, partnership, firm, or group.

1842 (2) (a) A person other than a state-certified general appraiser or state-certified
1843 residential appraiser, may not assume or use any title, designation, or abbreviation likely to
1844 create the impression of certification in this state as a real estate appraiser.

1845 (b) A person other than a state-licensed appraiser may not assume or use any title,
1846 designation, or abbreviation likely to create the impression of licensure in this state as a real
1847 estate appraiser.

1848 (3) (a) Only an individual who has qualified under the certification requirements of
1849 this chapter is authorized to prepare and sign a certified appraisal report relating to real estate

1850 or real property in this state.

1851 (b) If a certified appraisal report is prepared and signed by a state-certified residential
1852 appraiser, the certified appraisal report shall state, immediately following the signature on the
1853 report, "State-Certified Residential Appraiser."

1854 (c) If a certified appraisal report is prepared and signed by a state-certified general
1855 appraiser, the certified appraisal report shall state, immediately following the signature on the
1856 report, "State-Certified General Appraiser."

1857 (d) An appraisal report prepared by a state-licensed appraiser shall state, immediately
1858 following the signature on the report, "State-Licensed Appraiser."

1859 (e) When signing a certified appraisal report, a state-certified appraiser shall also place
1860 on the report, immediately below the state-certified appraiser's signature the state-certified
1861 appraiser's certificate number and its expiration date.

1862 (f) A state-certified residential appraiser may not prepare a certified appraisal report
1863 outside the state-certified residential appraiser's authority as defined in Section 61-2b-13.

1864 (g) A state-licensed appraiser who assisted in the preparation of a certified appraisal
1865 report is authorized to cosign the certified appraisal report.

1866 (4) A person who has not qualified under this chapter may not describe or refer to any
1867 appraisal or appraisal report relating to real estate or real property in this state by the terms
1868 "certified appraisal" or "certified appraisal report."

1869 (5) If a trainee assists [~~a state-licensed appraiser or~~] a state-certified appraiser in the
1870 preparation of an appraisal report, the appraisal report shall disclose:

1871 (a) the trainee's name; and

1872 (b) the extent to which the trainee assists in the preparation of the appraisal report.

1873 Section 32. Section **61-2b-18** is amended to read:

1874 **61-2b-18. Application for licensure, certification, or registration -- Approval as**
1875 **an expert witness.**

1876 (1) An application for the following shall be sent to the division on a form approved
1877 by the division:

- 1878 (a) original certification, licensure, or registration;
- 1879 (b) approval as an expert witness; and
- 1880 (c) renewal of certification [~~or~~], licensure, or registration.

1881 (2) The payment of the appropriate fee, as [~~fixed~~] established by the division, with the
 1882 concurrence of the board, in accordance with Section 63J-1-504, must accompany an
 1883 application for:

- 1884 (a) approval as an expert witness;
- 1885 (b) original certification, licensure, or registration; and
- 1886 (c) renewal of certification [~~or~~], licensure, or registration.

1887 (3) At the time of filing an application described in Subsection (1), an applicant shall:

1888 (a) sign a pledge to comply with the Uniform Standards of Professional Appraisal
 1889 Practice and the ethical rules to be observed by an appraiser that are established under Section
 1890 61-2b-27 for:

- 1891 (i) a certified or licensed appraiser;
- 1892 (ii) a trainee; or
- 1893 (iii) an expert witness approved under this chapter; and

1894 (b) certify that the applicant understands the types of misconduct, as set forth in this
 1895 chapter, for which a disciplinary proceeding may be initiated against a person certified,
 1896 licensed, or registered under this chapter.

1897 Section 33. Section **61-2b-19** is amended to read:

1898 **61-2b-19. Expiration of license, certification, or registration.**

1899 (1) [~~The~~] An initial license [~~or~~], certification, or registration issued under this chapter
 1900 expires on the expiration date indicated on the license [~~or~~], certificate, or registration.

1901 (2) A renewal license [~~or~~], certification, or registration issued under this chapter
 1902 expires two years from the date of issuance.

1903 (3) (a) The scheduled expiration date of [~~the~~] a license [~~or~~], certification, or
 1904 registration shall appear on the license [~~or~~], certification, or registration document [~~and no~~
 1905 ~~other notice of its expiration need be given to its holder~~].

1906 (b) (i) The division shall mail a holder of a license, certification, or registration notice
 1907 of its expiration to the last address stated on the division's records as the holder's current
 1908 address.

1909 (ii) To be mailed a notice under this Subsection (3)(b), a holder of a license,
 1910 certification, or registration shall provide to the division in writing the holder's current address.

1911 (iii) A holder's license, certification, or registration expires if not renewed by the
 1912 holder notwithstanding whether the holder receives a notice of its expiration by the division
 1913 under this Subsection (3)(b).

1914 Section 34. Section **61-2b-20** is amended to read:

1915 **61-2b-20. Renewal of license, certification, or registration.**

1916 ~~[(1) To obtain a renewal of a license or certification under this chapter, the holder of a~~
 1917 ~~current, valid license or certification shall, in compliance with procedures established by the~~
 1918 ~~division and the board, make application and pay the prescribed fee to the division before the~~
 1919 ~~expiration date of the license or certification.]~~

1920 ~~[(2) An application for renewal of a license or certification shall be accompanied by]~~

1921 (1) To renew a license, certification, or registration, before the license, certification, or
 1922 registration expires, the holder of the license, certification, or registration shall submit to the
 1923 division in compliance with procedures set by the division and the board:

1924 (a) an application for renewal;

1925 (b) a fee established by the division and the board, in accordance with Section
 1926 63J-1-504; and

1927 (c) evidence in the form prescribed by the division of having completed the continuing
 1928 education requirements for renewal specified in this chapter.

1929 ~~[(3)]~~ (2) (a) A license [or], certification, or registration expires if it is not renewed on
 1930 or before its expiration date.

1931 (b) For a period of 30 days after the expiration date, a license [or], certification, or
 1932 registration may be reinstated upon:

1933 (i) payment of a renewal fee and a late fee determined by the division and the board;

1934 and

1935 (ii) satisfying the continuing education requirements specified in Section 61-2b-40.

1936 (c) After the 30-day period described in Subsection [~~(3)~~] (2)(b), and until six months

1937 after the expiration date, ~~the~~ a license ~~or~~, certification, or registration may be reinstated by:

1938 (i) paying a renewal fee and a reinstatement fee determined by the division and the

1939 board; and

1940 (ii) satisfying the continuing education requirements specified in Section 61-2b-40.

1941 (d) After the six-month period described in Subsection [~~(3)~~] (2)(c), and until one year

1942 after the expiration date, ~~the~~ a license ~~or~~, certification, or registration may be reinstated by:

1943 (i) paying a renewal fee and a reinstatement fee determined by the division and the

1944 board in accordance with Section 63J-1-504;

1945 (ii) providing proof acceptable to the division and the board of the person having

1946 satisfied the continuing education requirements of Section 61-2b-40; and

1947 (iii) providing proof acceptable to the division and the board of the person completing

1948 24 hours of continuing education:

1949 (A) in addition to the requirements in Section 61-2b-40; and

1950 (B) on a subject determined by the division by rule made in accordance with Title

1951 63G, Chapter 3, Utah Administrative Rulemaking Act.

1952 (e) The division shall relicense ~~or~~, recertify, or reregister a person who does not

1953 renew that person's license ~~or~~, certification, or registration within one year after the

1954 expiration date as prescribed for an original application.

1955 (f) Notwithstanding Subsection [~~(3)~~] (2)(a), the division may extend the term of a

1956 license, certification, or registration that would expire under Subsection [~~(3)~~] (2)(a) except for

1957 the extension if:

1958 (i) the person complies with the requirements of this section to renew the license,

1959 certification, or registration; and

1960 (ii) at the time of the extension, there is pending under this chapter:

1961 (A) the application for renewal of the license, certification, or registration; or

1962 (B) a disciplinary action.
1963 [~~(4)~~] (3) A person who is licensed, certified, or registered under this chapter shall
1964 notify the division of the following by sending the division a signed statement within 10
1965 business days of:

- 1966 (a) (i) a conviction of a criminal offense;
- 1967 (ii) the entry of a plea in abeyance to a criminal offense; or
- 1968 (iii) the potential resolution of a criminal case by:
 - 1969 (A) a diversion agreement; or
 - 1970 (B) any other agreement under which a criminal charge is suspended for a period of
1971 time;
- 1972 (b) filing a personal bankruptcy or business bankruptcy;
- 1973 (c) the suspension, revocation, surrender, cancellation, or denial of a professional
1974 license, certification, or registration of the person, whether the license, certification, or
1975 registration is issued by this state or another jurisdiction; or
- 1976 (d) the entry of a cease and desist order or a temporary or permanent injunction:
 - 1977 (i) against the person by a court or [~~licensing~~] administrative agency; and
 - 1978 (ii) on the basis of:
 - 1979 (A) conduct or a practice involving an act regulated by this chapter; or
 - 1980 (B) conduct involving fraud, misrepresentation, or deceit.

1981 Section 35. Section **61-2b-25** is amended to read:

1982 **61-2b-25. Other law unaffected.**

1983 [~~Nothing contained in this~~] This chapter [~~shall~~] may not be considered to prohibit a
1984 person approved, licensed, [~~or~~] certified, or registered under this chapter from engaging in the
1985 practice of real estate appraising as a professional corporation or a limited liability company in
1986 accordance with:

- 1987 (1) Title 16, Chapter 11, Professional Corporation Act; or
- 1988 (2) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act.

1989 Section 36. Section **61-2b-28** is amended to read:

- 1990 **61-2b-28. Enforcement -- Investigation -- Orders -- Hearings.**
- 1991 (1) (a) The division may investigate the actions of:
- 1992 (i) a person registered, licensed, or certified under this chapter;
- 1993 (ii) an applicant for registration, licensure, or certification;
- 1994 (iii) an applicant for renewal of registration, licensure, or certification; or
- 1995 (iv) a person required to be registered, licensed, or certified under this chapter.
- 1996 (b) The division may initiate an agency action against a person described in
- 1997 Subsection (1)(a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to:
- 1998 (i) impose disciplinary action;
- 1999 (ii) deny issuance to an applicant of:
- 2000 (A) an original registration, license, or certification; or
- 2001 (B) a renewal of a registration, license, or certification; or
- 2002 (iii) issue a cease and desist order as provided in Subsection (3).
- 2003 (2) (a) The division may:
- 2004 (i) administer an oath or affirmation;
- 2005 (ii) subpoena a witness or evidence;
- 2006 (iii) take evidence; and
- 2007 (iv) require the production of a book, paper, contract, record, [~~other~~] document, [~~or~~]
- 2008 information, or evidence relevant to the investigation described in Subsection (1).
- 2009 (b) The division may serve a subpoena by certified mail.
- 2010 (c) A failure to respond to a request by the division in an investigation authorized
- 2011 under this chapter is considered to be a separate violation of this chapter, including:
- 2012 (i) failing to respond to a subpoena as a witness;
- 2013 (ii) withholding evidence; or
- 2014 (iii) failing to produce a book, paper, contract, document, information, or record.
- 2015 (d) (i) If a person is found to have violated this chapter or a rule made under this
- 2016 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,
- 2017 document, information, or record required under this chapter, including the costs incurred to

2018 copy an electronic book, paper, contract, document, information, or record in a universally
2019 readable format.

2020 (ii) If a person fails to pay the costs described in Subsection (2)(d)(i) when due, the
2021 person's license, certification, or registration is automatically suspended:

2022 (A) beginning the day on which the payment of costs is due; and

2023 (B) ending the day on which the costs are paid.

2024 (3) (a) The director shall issue and serve upon a person an order directing that person
2025 to cease and desist from an act if:

2026 (i) the director has reason to believe that the person has been engaging, is about to
2027 engage, or is engaging in the act constituting a violation of this chapter; and

2028 (ii) it appears to the director that it would be in the public interest to stop the act.

2029 (b) Within 10 days after receiving the order, the person upon whom the order is served
2030 may request a hearing.

2031 (c) Pending a hearing requested under Subsection (3)(b), a cease and desist order shall
2032 remain in effect.

2033 (d) If a request for hearing is made, the division shall follow the procedures and
2034 requirements of Title 63G, Chapter 4, Administrative Procedures Act.

2035 (4) (a) After a hearing requested under Subsection (3), if the board agrees that an act
2036 of the person violates this chapter, the board:

2037 (i) shall issue an order making the cease and desist order permanent; and

2038 (ii) may impose another disciplinary action under Section 61-2b-29.

2039 (b) The director shall commence an action in the name of the Department of
2040 Commerce and Division of Real Estate, in the district court in the county in which an act
2041 described in Subsection (3) occurs or where the person resides or carries on business, to enjoin
2042 and restrain the person from violating this chapter if:

2043 (i) (A) a hearing is not requested under Subsection (3); and

2044 (B) the person fails to cease the act described in Subsection (3); or

2045 (ii) after discontinuing the act described in Subsection (3), the person again

2046 commences the act.

2047 (5) A remedy or action provided in this section does not limit, interfere with, or prevent
2048 the prosecution of another remedy or action, including a criminal proceeding.

2049 Section 37. Section **61-2b-29** is amended to read:

2050 **61-2b-29. Disciplinary action -- Grounds.**

2051 (1) (a) The board may order disciplinary action against a person:

2052 (i) registered, licensed, or certified under this chapter; or

2053 (ii) required to be registered, licensed, or certified under this chapter.

2054 (b) On the basis of a ground listed in Subsection (2) for disciplinary action, board
2055 action may include:

2056 (i) revoking, suspending, or placing a person's registration, license, or certification on
2057 probation;

2058 (ii) denying a person's original registration, license, or certification;

2059 (iii) denying a person's renewal license ~~[or]~~, certification, or registration;

2060 (iv) in the case of denial or revocation of a registration, license, or certification, setting
2061 a waiting period for an applicant to apply for a registration, license, or certification under this
2062 chapter;

2063 (v) ordering remedial education;

2064 (vi) imposing a civil penalty upon a person not to exceed the greater of:

2065 (A) ~~[\$2,500]~~ \$5,000 for each violation; or

2066 (B) the amount of any gain or economic benefit from a violation;

2067 (vii) issuing a cease and desist order;

2068 (viii) modifying an action described in Subsections (1)(b)(i) through (vii) if the board
2069 finds that the person complies with court ordered restitution; or

2070 (ix) doing any combination of Subsections (1)(b)(i) through (viii).

2071 (c) (i) If the board or division issues an order that orders a fine or educational
2072 requirements as part of the disciplinary action against a person, including a stipulation and
2073 order, the board or division shall state in the order the deadline by which the person shall

2074 comply with the fine or educational requirements.

2075 (ii) If a person fails to comply with a stated deadline:

2076 (A) the person's license, certificate, or registration is automatically suspended:

2077 (I) beginning on the day specified in the order as the deadline for compliance; and

2078 (II) ending the day on which the person complies in full with the order; and

2079 (B) if the person fails to pay a fine required by an order, the division may begin a

2080 collection process:

2081 (I) established by the division by rule made in accordance with Title 63G, Chapter 3,

2082 Utah Administrative Rulemaking Act; and

2083 (II) subject to Title 63A, Chapter 8, Office of State Debt Collection.

2084 (2) The following are grounds for disciplinary action under this section:

2085 (a) procuring or attempting to procure a registration, license, or certification under this

2086 chapter:

2087 (i) by fraud; or

2088 (ii) by making a false statement, submitting false information, or making a material

2089 misrepresentation in an application filed with the division;

2090 (b) paying money or attempting to pay money other than a fee provided for by this

2091 chapter to a member or employee of the division to procure a registration, license, or

2092 certification under this chapter;

2093 (c) an act or omission in the practice of real estate appraising that constitutes

2094 dishonesty, fraud, or misrepresentation;

2095 (d) entry of a judgment against a registrant, licensee, or certificate holder on grounds

2096 of fraud, misrepresentation, or deceit in the making of an appraisal of real estate;

2097 (e) a guilty plea to a criminal offense involving moral turpitude that is held in

2098 abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo

2099 contendere, of a criminal offense involving moral turpitude;

2100 (f) engaging in the business of real estate appraising under an assumed or fictitious

2101 name not properly registered in this state;

2102 (g) paying a finder's fee or a referral fee to a person not licensed or certified under this
2103 chapter in connection with an appraisal of real estate or real property in this state;

2104 (h) making a false or misleading statement in:

2105 (i) that portion of a written appraisal report that deals with professional qualifications;

2106 or

2107 (ii) testimony concerning professional qualifications;

2108 (i) violating or disregarding:

2109 (i) ~~[a provision of]~~ this chapter;

2110 (ii) an order of the board; or

2111 (iii) a rule issued under this chapter;

2112 (j) violating the confidential nature of governmental records to which a person
2113 registered, licensed, certified, or approved as an expert under this chapter gained access
2114 through employment or engagement as an appraiser by a governmental agency;

2115 (k) accepting a contingent fee for performing an appraisal ~~[as defined in Subsection~~
2116 ~~61-2b-2(1)(a)]~~ if in fact the fee is or was contingent upon:

2117 (i) the appraiser reporting a predetermined analysis, opinion, or conclusion;

2118 (ii) the analysis, opinion, conclusion, or valuation reached; or

2119 (iii) the consequences resulting from the appraisal assignment;

2120 (l) unprofessional conduct as defined by statute or rule;

2121 (m) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

2122 (i) providing a title insurance product or service without the approval required by
2123 Section 31A-2-405; or

2124 (ii) knowingly providing false or misleading information in the statement required by
2125 Subsection 31A-2-405(2); or

2126 (n) other conduct that constitutes dishonest dealing.

2127 Section 38. Section **61-2b-30.5** is amended to read:

2128 **61-2b-30.5. Reinstatement of license, certification, registration, approval --**
2129 **Expert witness -- Trainee.**

2130 (1) An individual [~~who has had a~~] whose license, certification, registration, or
2131 approval is revoked under this chapter:

2132 (a) may not apply for renewal of that license, certification, registration, or approval;
2133 and

2134 (b) may apply for licensure, certification, registration, or approval as prescribed for an
2135 original license [~~or~~], certification, registration, or approval subject to the limitations in
2136 Subsection (2).

2137 (2) An applicant for licensure, certification, registration, or approval as an expert
2138 witness under Subsection (1):

2139 (a) may not apply for licensure, certification, registration, or approval until at least five
2140 years after the date of revocation of the applicant's original license, certification, registration,
2141 or approval; and

2142 (b) is not entitled to credit for experience gained prior to the date of revocation in
2143 determining whether the applicant meets the experience requirement for licensure,
2144 certification, registration, or approval.

2145 (3) A person whose license or certification is revoked may not act as a trainee until at
2146 least four years after the day on which the person's license or certification is revoked.

2147 Section 39. Section **61-2b-32** is amended to read:

2148 **61-2b-32. Registration, licensure, or certification prerequisite to suit for**
2149 **compensation.**

2150 [~~No~~] A person engaged in the business of real estate appraising in this state or acting in
2151 the capacity of a real estate appraiser in this state may not bring or maintain [~~any~~] an action
2152 [~~in any~~] as a plaintiff in a court of this state to collect compensation for the performance of
2153 real estate appraisal services for which registration, licensure, or certification is required by
2154 this chapter without alleging and proving that [~~he~~] the person was the holder of a valid
2155 registration, license, or certification in this state at all times during the performance of [~~such~~]
2156 the real estate appraisal services.

2157 Section 40. Section **61-2b-33** is amended to read:

2158 **61-2b-33. Penalty for violating this chapter -- Automatic revocation.**

2159 (1) In addition to being subject to a disciplinary action by the board, a person required
2160 to be licensed, certified, or registered under this chapter who violates this chapter:

2161 (a) is guilty of a class A misdemeanor, upon a conviction of a first violation of this
2162 chapter; and

2163 (b) is guilty of a third degree felony, upon conviction of a second or subsequent
2164 violation of this chapter.

2165 (2) A license ~~[or]~~, certification, or registration issued by the division to a person
2166 convicted of a violation of Section 76-6-1203 is automatically revoked.

2167 Section 41. Section **61-2b-36** is amended to read:

2168 **61-2b-36. Contingent fees.**

2169 (1) A person licensed or certified under this chapter who enters into an agreement to
2170 perform an appraisal ~~[as defined in Subsection 61-2b-2(1)(a)]~~ may not accept a contingent fee.

2171 (2) A person licensed or certified under this chapter who enters into an agreement to
2172 provide consultation services ~~[as defined in Subsection 61-2b-2(1)(f)(i)(A)]~~ may be paid a
2173 fixed fee or a contingent fee.

2174 (3) (a) If a person licensed or certified under this chapter enters into an agreement to
2175 perform consultation services for a contingent fee, this fact shall be clearly stated in each oral
2176 statement.

2177 (b) In addition to the requirements of Subsection (3)(a), if a person licensed or
2178 certified under this chapter prepares a written consultation report or summary, letter of
2179 transmittal, or certification statement for a contingent fee, the person shall clearly state in the
2180 report, summary, letter of transmittal, or certification statement that the report is prepared
2181 under a contingent fee arrangement.

2182 Section 42. Section **61-2b-39** is amended to read:

2183 **61-2b-39. Registration, licensure, or certification history.**

2184 The division may, upon payment of a fee ~~[in an amount specified in rule]~~ established
2185 by the division in accordance with Section 63J-1-504, issue to ~~[any]~~ a person a verified

2186 [license] history of:

2187 (1) [any] a person licensed [or], certified, or registered under this chapter; or

2188 (2) [any] a person previously registered, licensed, or certified under this chapter.

2189 Section 43. Section **61-2b-40** is amended to read:

2190 **61-2b-40. Continuing education requirements.**

2191 (1) As a prerequisite to renewal of a license [or], certification, or registration, the
 2192 applicant for renewal shall present evidence satisfactory to the division of having met the
 2193 continuing education requirements of this section.

2194 (2) [~~For any~~] A person licensed [or], certified, or registered under this chapter [~~the~~
 2195 ~~continuing education requirement for renewal of licensure or certification shall be the~~
 2196 ~~completion by the applicant;~~] shall complete during the two-year period immediately
 2197 preceding the filing of an application for renewal [~~of~~] not less than 28 classroom hours of
 2198 instruction in courses or seminars that have received the approval of the [board] division.

2199 (3) The division may adopt rules for the implementation of this section to assure that
 2200 each person renewing that person's license [or], certification, or registration under this chapter
 2201 has a working knowledge of current real estate appraisal theories, practices, and techniques
 2202 that will enable the person to provide competent real estate appraisal services to the members
 2203 of the public with whom that person deals in a professional relationship under the authority of
 2204 that person's license [or], certificate, or registration.

2205 (4) An amendment or repeal of a rule adopted by the division under this section [~~shall~~]
 2206 does not operate to deprive a person of credit toward renewal of that person's license [or],
 2207 certification, or registration for [any] a course of instruction that is successfully completed by
 2208 the applicant [~~prior to~~] before the date of the amendment or repeal of the rule.

2209 (5) In lieu of meeting the requirements set forth in Subsection (2) and applicable rules,
 2210 an applicant for renewal may satisfy all or part of the continuing education requirements that
 2211 are imposed by the board in excess of the minimum requirements of the Appraisal
 2212 Qualification Board by presenting evidence of the following:

2213 (a) completion of an educational program of study determined by the board to be

2214 equivalent, for continuing education purposes, to courses or seminars approved by the board;
2215 or

2216 (b) participation other than as a student in educational processes and programs
2217 approved by the board that relate to real property appraisal theory, practices, or techniques
2218 including teaching, program development, and preparation of textbooks, monographs, articles,
2219 and other instructional materials.

2220 (6) The board shall develop and propose to the division rules [~~for the implementation~~
2221 ~~of this section to assure that a person who renews that person's license or certification has a~~
2222 ~~working knowledge of current real estate appraisal theories, practices, and techniques that will~~
2223 ~~enable the person to provide competent real estate appraisal services to the members of the~~
2224 ~~public with whom that person deals in a professional relationship under the authority of that~~
2225 ~~person's license or certification. These rules] described in Subsection (3). The rules
2226 developed and proposed by the board under this Subsection (6) shall prescribe:~~

2227 (a) policies and procedures to be followed in obtaining [~~board~~] division approval of
2228 courses of instruction and seminars;

2229 (b) standards, policies, and procedures to be used by the division in evaluating an
2230 applicant's claims of equivalency; and

2231 (c) standards, monitoring methods, and systems for recording attendance to be
2232 employed by course and seminar sponsors as a prerequisite to division approval of courses and
2233 seminars for credit.

2234 (7) (a) A person whose license [~~or~~], certification [~~has been~~], or registration is revoked
2235 or suspended as the result of a disciplinary action taken by the board may not apply for
2236 reinstatement unless the person presents evidence of completion of the continuing education
2237 requirement that is [~~provided in~~] required by this chapter for renewal.

2238 (b) The continuing education required under Subsection (7)(a) [~~shall~~] may not be
2239 imposed upon an applicant for reinstatement who has been required by the division to
2240 successfully complete the examination for licensure or certification required by Section
2241 61-2b-20 as a condition to reinstatement.

2242 Section 44. Section **61-2c-102** is amended to read:

2243 **61-2c-102. Definitions.**

2244 (1) As used in this chapter:

2245 ~~[(a) "Affiliate" means a person who directly, or indirectly through one or more~~
2246 ~~intermediaries, controls or is controlled by, or is under common control with, a specified~~
2247 ~~individual or entity.]~~

2248 (a) "Affiliation" means that a mortgage loan originator is associated with a principal
2249 lending manager in accordance with Section 61-2c-209.

2250 (b) "Applicant" means a person applying for a license under this chapter.

2251 (c) "Approved examination provider" means a person approved by the nationwide
2252 database as an approved test provider.

2253 (d) "Associate lending manager" means an individual who:

2254 (i) qualifies under this chapter as a principal lending manager; and

2255 (ii) works by or on behalf of another principal lending manager in transacting the
2256 business of residential mortgage loans.

2257 (e) "Branch office" means a licensed entity's office:

2258 (i) for the transaction of the business of residential mortgage loans regulated under this
2259 chapter;

2260 (ii) other than the main office of the licensed entity; and

2261 (iii) that operates under the same business name as the licensed entity.

2262 (f) (i) "Business of residential mortgage loans" means for compensation or in the
2263 expectation of compensation to:

2264 (A) engage in an act that makes an individual a mortgage loan originator;

2265 (B) make or originate a residential mortgage loan;

2266 (C) directly or indirectly solicit a residential mortgage loan for another; or

2267 (D) unless excluded under Subsection (1)(f)(ii), render services related to the
2268 origination of a residential mortgage loan including:

2269 (I) preparing a loan package;

- 2270 (II) communicating with the borrower and lender; or
2271 (III) advising on a loan term.
2272 (ii) "Business of residential mortgage loans" does not include:
2273 (A) if working as an employee under the direction of and subject to the supervision
2274 and instruction of a person licensed under this chapter, the performance of a clerical or support
2275 duty such as:
2276 (I) the receipt, collection, or distribution of information common for the processing or
2277 underwriting of a loan in the mortgage industry other than taking an application;
2278 (II) communicating with a consumer to obtain information necessary for the
2279 processing or underwriting of a residential mortgage loan;
2280 (III) word processing;
2281 (IV) sending correspondence; or
2282 (V) assembling files;
2283 (B) ownership of an entity that engages in the business of residential mortgage loans if
2284 the owner does not personally perform the acts listed in Subsection (1)(f)(i); or
2285 (C) except if an individual will engage in an activity as a mortgage loan originator,
2286 acting in one or more of the following capacities:
2287 (I) a loan wholesaler;
2288 (II) an account executive for a loan wholesaler;
2289 (III) a loan underwriter;
2290 (IV) a loan closer; or
2291 (V) funding a loan.
2292 (g) "Certified education provider" means a person who is certified under Section
2293 61-2c-204.1 to provide one or more of the following:
2294 (i) Utah-specific prelicensing education; or
2295 (ii) Utah-specific continuing education.
2296 (h) "Closed-end" means a loan:
2297 (i) with a fixed amount borrowed; and

- 2298 (ii) that does not permit additional borrowing secured by the same collateral.
- 2299 (i) "Commission" means the Residential Mortgage Regulatory Commission created in
- 2300 Section 61-2c-104.
- 2301 (j) "Compensation" means anything of economic value that is paid, loaned, granted,
- 2302 given, donated, or transferred to an individual or entity for or in consideration of:
- 2303 (i) services;
- 2304 (ii) personal or real property; or
- 2305 (iii) another thing of value.
- 2306 (k) "Concurrence" means that entities given a concurring rule must jointly agree for
- 2307 the action to be taken.
- 2308 [~~(k)~~] (l) "Continuing education" means education taken by an individual licensed
- 2309 under this chapter in order to meet the education requirements imposed by Sections
- 2310 61-2c-204.1 and 61-2c-205 to renew a license under this chapter.
- 2311 [~~(l)~~] (m) "Control," as used in Subsection [~~(l)~~]~~(a)~~] 61-2c-105(2)(f), means the power to
- 2312 directly or indirectly:
- 2313 (i) direct or exercise a controlling interest over:
- 2314 (A) the management or policies of an entity; or
- 2315 (B) the election of a majority of the directors, officers, managers, or managing partners
- 2316 of an entity;
- 2317 (ii) vote 20% or more of a class of voting securities of an entity by an individual; or
- 2318 (iii) vote more than 5% of a class of voting securities of an entity by another entity.
- 2319 (n) (i) "Control person" means an individual identified by an entity registered with the
- 2320 nationwide database as being the individual primarily responsible for directing the
- 2321 management or policies of the entity.
- 2322 (ii) "Control person" may include one of the following who is identified as provided in
- 2323 Subsection (1)(n)(i):
- 2324 (A) a manager;
- 2325 (B) a managing partner;

- 2326 (C) a director;
- 2327 (D) an executive officer; or
- 2328 (E) an individual who performs a function similar to an individual listed in this

2329 Subsection (1)(n)(ii).

2330 [~~(m)~~] (o) "Depository institution" is as defined in Section 7-1-103.

2331 [~~(n)~~] (p) "Director" means the director of the division.

2332 [~~(o)~~] (q) "Division" means the Division of Real Estate.

2333 [~~(p)~~] (r) "Dwelling" means a residential structure attached to real property that
2334 contains one to four units including any of the following if used as a residence:

- 2335 (i) a condominium unit;
- 2336 (ii) a cooperative unit;
- 2337 (iii) a manufactured home; or
- 2338 (iv) a house.

2339 [~~(q)~~] (s) "Entity" means:

- 2340 (i) a corporation;
- 2341 (ii) a limited liability company;
- 2342 (iii) a partnership;
- 2343 (iv) a company;
- 2344 (v) an association;
- 2345 (vi) a joint venture;
- 2346 (vii) a business trust;
- 2347 (viii) a trust; or
- 2348 (ix) another organization.

2349 [~~(r)~~] (t) "Executive director" means the executive director of the Department of
2350 Commerce.

2351 (u) "Federal licensing requirements" means Secure and Fair Enforcement for Mortgage
2352 Licensing, 12 U.S.C. Sec. 5101 et seq.

2353 [~~(s)~~] (v) "Inactive status" means a dormant status into which an unexpired license is

2354 placed when the holder of the license is not currently engaging in the business of residential
2355 mortgage loans.

2356 ~~[(t)]~~ (w) "Licensee" means a person licensed with the division under this chapter.

2357 ~~[(u)]~~ (x) "Licensing examination" means the examination required by Section
2358 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

2359 ~~[(v)]~~ (y) (i) Except as provided in Subsection (1)~~[(v)]~~(y)(ii), "mortgage loan
2360 originator" means an individual who for compensation or in expectation of compensation:

2361 (A) (I) takes a residential mortgage loan application; or

2362 ~~[(B)]~~ (II) offers or negotiates terms of a residential mortgage loan[-]; and

2363 (B) is licensed as a mortgage loan originator in accordance with this chapter.

2364 (ii) "~~[Loan]~~ Mortgage loan originator" does not include a person who:

2365 (A) is described in Subsection (1)~~[(v)]~~(y)(i), but who performs exclusively
2366 administrative or clerical tasks as described in Subsection (1)(f)(ii)(A);

2367 ~~[(B) unless compensated by a lender, a principal lending manager, or an agent of a~~
2368 ~~lender or principal lending manager:]~~

2369 ~~[(F) only performs real estate brokerage activities; and]~~

2370 ~~[(H) is licensed under Chapter 2, Division of Real Estate; and]~~

2371 (B) (I) is licensed under Chapter 2f, Real Estate Licensing and Practices Act;

2372 (II) performs only real estate brokerage activities; and

2373 (III) receives no compensation from:

2374 (Aa) a lender;

2375 (Bb) a principal lending manager; or

2376 (Cc) an agent of a lender or principal lending manager; or

2377 (C) is solely involved in extension of credit relating to a timeshare plan, as defined in
2378 11 U.S.C. Sec. 101(53D).

2379 ~~[(w) "Mortgage officer" means an individual who is licensed with the division to~~
2380 ~~transact the business of residential mortgage loans through a principal lending manager.]~~

2381 ~~[(x)]~~ (z) "Nationwide database" means the Nationwide Mortgage Licensing System

2382 and Registry, authorized under [~~Secure and Fair Enforcement for Mortgage Licensing, 12~~
 2383 ~~U.S.C. Sec. 5101, et seq~~] federal licensing requirements.

2384 [~~(y)~~] (aa) "Nontraditional mortgage product" means a mortgage product other than a
 2385 30-year fixed rate mortgage.

2386 [~~(z)~~] (bb) "Person" means an individual or entity.

2387 [~~(aa)~~] (cc) "Prelicensing education" means education taken by an individual seeking to
 2388 be licensed under this chapter in order to meet the education requirements imposed by Section
 2389 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

2390 [~~(bb)~~] (dd) (i) "Principal lending manager" means an individual licensed as a principal
 2391 lending manager under Section 61-2c-206 to transact the business of residential mortgage
 2392 loans.

2393 (ii) An individual [~~licensed as~~] who is a principal lending manager may transact the
 2394 business of residential mortgage loans as a mortgage [~~officer~~] loan originator.

2395 [~~(cc)~~] (ee) "Record" means information that is:

2396 (i) prepared, owned, received, or retained by a person; and

2397 (ii) (A) inscribed on a tangible medium; or

2398 (B) (I) stored in an electronic or other medium; and

2399 (II) [~~retrievable~~] in a perceivable and reproducible form.

2400 [~~(dd)~~] (ff) "Residential mortgage loan" means an extension of credit, if:

2401 (i) the loan or extension of credit is secured by a:

2402 (A) mortgage;

2403 (B) deed of trust; or

2404 (C) consensual security interest;

2405 (ii) the mortgage, deed of trust, or consensual security interest described in Subsection

2406 (1)[~~(dd)~~](ff)(i):

2407 (A) is on a dwelling located in the state; and

2408 (B) is created with the consent of the owner of the residential real property; and

2409 (iii) solely for the purposes of defining "mortgage loan originator," the extension of

2410 credit is primarily for personal, family, or household use.

2411 (gg) "Sponsorship" means an association in accordance with Section 61-2c-209
2412 between an individual licensed under this chapter and an entity licensed under this chapter.

2413 [~~ee~~] (hh) "State" means:

2414 (i) a state, territory, or possession of the United States;

2415 (ii) the District of Columbia; or

2416 (iii) the Commonwealth of Puerto Rico.

2417 [~~ff~~] (ii) "Unique identifier" is as defined in 12 U.S.C. Sec. 5102.

2418 (jj) "Utah-specific" means an educational or examination requirement under this
2419 chapter that relates specifically to Utah.

2420 (2) (a) If a term not defined in this section is defined by rule, the term shall have the
2421 meaning established by the division by rule made in accordance with Title 63G, Chapter 3,
2422 Utah Administrative Rulemaking Act.

2423 (b) If a term not defined in this section is not defined by rule, the term shall have the
2424 meaning commonly accepted in the business community.

2425 Section 45. Section **61-2c-103** is amended to read:

2426 **61-2c-103. Powers and duties of the division.**

2427 (1) The division shall administer this chapter.

2428 (2) In addition to a power or duty expressly provided in this chapter, the division may:

2429 (a) receive and act on a complaint including:

2430 (i) taking action designed to obtain voluntary compliance with this chapter; or

2431 (ii) commencing an administrative or judicial proceeding on the division's own
2432 initiative;

2433 (b) establish one or more programs for the education of consumers with respect to
2434 residential mortgage loans;

2435 (c) (i) make one or more studies appropriate to effectuate the purposes and policies of
2436 this chapter; and

2437 (ii) make the results of the studies described in Subsection (2)(c)(i) available to the

2438 public;

2439 (d) visit and investigate a person licensed under this chapter, regardless of whether the
2440 person is located in Utah; and

2441 (e) employ one or more necessary hearing examiners, investigators, clerks, and other
2442 employees and agents.

2443 (3) The division shall make rules for the administration of this chapter in accordance
2444 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including:

2445 (a) licensure procedures for:

2446 (i) a person required by this chapter to obtain a license with the division; and

2447 (ii) the establishment of a branch office by an entity;

2448 (b) proper handling of [~~monies~~] money received by a licensee;

2449 (c) record-keeping requirements by a licensee, including proper disposal of a record;

2450 (d) certification procedures for certifying an education provider; and

2451 (e) standards of conduct for a licensee or certified education provider.

2452 (4) The division may by rule made in accordance with Title 63G, Chapter 3, Utah
2453 Administrative Rulemaking Act, require as a condition of maintaining a license or
2454 certification under this chapter that a person comply with a requirement of the nationwide
2455 database if:

2456 (a) required for uniformity amongst states; and

2457 (b) not inconsistent with this chapter.

2458 (5) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah
2459 Administrative Rulemaking Act, provide a process under which an individual may challenge
2460 information contained in the nationwide database.

2461 [~~(6) The division may make available to the public a list of the names and mailing
2462 addresses of licensees:]~~

2463 [~~(a) either directly or through a third party; and]~~

2464 [~~(b) at a reasonable cost.]~~

2465 [~~(7)~~] (6) The division shall annually:

- 2466 (a) review the requirements related to the nationwide database imposed by federal
2467 [~~law~~] licensing requirements or the nationwide database on:
- 2468 (i) the division;
 - 2469 (ii) a licensee under this chapter;
 - 2470 (iii) a certified education provider; or
 - 2471 (iv) an approved examination provider; and
- 2472 (b) after the review required by Subsection [~~(7)~~] (6)(a):
- 2473 (i) report to the Business and Labor Interim Committee the impact of the requirements
2474 on the implementation by the division of this chapter; and
 - 2475 (ii) recommend legislation, if any, to the Business and Labor Interim Committee
2476 related to how the division should coordinate with the nationwide database.
- 2477 [~~(8)~~] (7) The division may enter into a relationship or contract with the nationwide
2478 database or another entity designated by the nationwide database to do the following related to
2479 a licensee or other person subject to this chapter:
- 2480 (a) collect or maintain a record; and
 - 2481 (b) process a transaction fee or other fee.
- 2482 [~~(9)~~] (8) The division shall regularly report the following to the nationwide database:
- 2483 (a) a violation of this chapter;
 - 2484 (b) disciplinary action under this chapter; and
 - 2485 (c) other information relevant to this chapter.
- 2486 (9) If a person pays a fee or costs to the division with a negotiable instrument and the
2487 negotiable instrument is not honored for payment:
- 2488 (a) the transaction for which the payment is submitted is voidable by the division;
 - 2489 (b) the division may reverse the transaction if payment of the applicable fee or costs is
2490 not received in full; and
 - 2491 (c) the person's license, certification, or registration is automatically suspended:
- 2492 (i) beginning the day on which the payment is due; and
 - 2493 (ii) ending the day on which payment is made in full.

2494 Section 46. Section **61-2c-104** is amended to read:

2495 **61-2c-104. Residential Mortgage Regulatory Commission.**

2496 (1) (a) There is created within the division the "Residential Mortgage Regulatory
2497 Commission" consisting of the following members appointed by the executive director with
2498 the approval of the governor:

2499 (i) four members who:

2500 (A) have at least three years of experience in transacting the business of residential
2501 mortgage loans; and

2502 (B) are licensed under this chapter at the time of and during appointment; and

2503 (ii) one member from the general public.

2504 (b) (i) The executive director with the approval of the governor may appoint an
2505 alternate member to the board.

2506 (ii) The alternate member shall:

2507 (A) at the time of the appointment, have at least three years of experience in
2508 transacting the business of residential mortgage loans; and

2509 (B) be licensed under this chapter at the time of and during appointment.

2510 (2) (a) Except as required by Subsection (2)(b), the executive director shall appoint a
2511 new member or reappointed member subject to appointment by the executive director to a
2512 four-year term ending June 30.

2513 (b) Notwithstanding the requirements of Subsection (2)(a), the executive director
2514 shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the
2515 terms of commission members are staggered so that approximately half of the commission is
2516 appointed every two years.

2517 (c) If a vacancy occurs in the membership of the commission for any reason, the
2518 executive director shall appoint a replacement for the unexpired term.

2519 (d) A member shall remain on the commission until the member's successor is
2520 appointed and qualified.

2521 (3) Members of the commission shall annually select one member to serve as chair.

- 2522 (4) (a) The commission shall meet at least quarterly.
- 2523 (b) The director may call a meeting in addition to the meetings required by Subsection
- 2524 (4)(a):
- 2525 (i) at the discretion of the director;
- 2526 (ii) at the request of the chair of the commission; or
- 2527 (iii) at the written request of three or more commission members.
- 2528 (5) (a) Three members of the commission constitute a quorum for the transaction of
- 2529 business.
- 2530 (b) If a quorum of members is unavailable for any meeting and an alternate member is
- 2531 appointed to the commission by the executive director with the approval of the governor, the
- 2532 alternate member shall serve as a regular member of the commission for that meeting if with
- 2533 the presence of the alternate member there is a quorum present at the meeting.
- 2534 (c) The action of a majority of a quorum present is an action of the commission.
- 2535 (6) (a) (i) A member who is not a government employee may not receive compensation
- 2536 or benefits for the member's services, but may receive per diem and expenses incurred in the
- 2537 performance of the member's official duties at the rates established by the Division of Finance
- 2538 under Sections 63A-3-106 and 63A-3-107.
- 2539 (ii) A member who is not a government employee may decline to receive per diem and
- 2540 expenses for the member's service.
- 2541 (b) (i) A state government officer and employee member who does not receive salary,
- 2542 per diem, or expenses from the member's agency for the member's service may receive per
- 2543 diem and expenses incurred in the performance of the member's official duties from the
- 2544 commission at the rates established by the Division of Finance under Sections 63A-3-106 and
- 2545 63A-3-107.
- 2546 (ii) A state government officer and employee member may decline to receive per diem
- 2547 and expenses for the member's service.
- 2548 (7) In addition to a duty or power expressly provided for elsewhere in this chapter, the
- 2549 commission shall:

2550 (a) except as provided in Subsection 61-2c-202[~~(2)~~](3), concur in the licensure or
2551 denial of licensure of a person under this chapter in accordance with Part 2, Licensure;

2552 (b) take disciplinary action with the concurrence of the director in accordance with
2553 Part 4, Enforcement; and

2554 (c) advise the division concerning matters related to the administration and
2555 enforcement of this chapter.

2556 Section 47. Section **61-2c-105** is amended to read:

2557 **61-2c-105. Scope of chapter -- Exemptions.**

2558 (1) (a) Except as to an individual who will engage in an activity as a mortgage loan
2559 originator, this chapter applies to a closed-end residential mortgage loan secured by a first lien
2560 or equivalent security interest on a dwelling.

2561 (b) This chapter does not apply to a transaction covered by Title 70C, Utah Consumer
2562 Credit Code.

2563 (2) The following are exempt from this chapter:

2564 (a) the federal government;

2565 (b) a state;

2566 (c) a political subdivision of a state;

2567 (d) an agency of or entity created by a governmental entity described in Subsections
2568 (2)(a) through (c) including:

2569 (i) the Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing
2570 Corporation Act;

2571 (ii) the Federal National Mortgage Corporation;

2572 (iii) the Federal Home Loan Mortgage Corporation;

2573 (iv) the Federal Deposit Insurance Corporation;

2574 (v) the Resolution Trust Corporation;

2575 (vi) the Government National Mortgage Association;

2576 (vii) the Federal Housing Administration;

2577 (viii) the National Credit Union Administration;

- 2578 (ix) the Farmers Home Administration; and
- 2579 (x) the United States Department of Veterans Affairs;
- 2580 (e) a depository institution;
- 2581 (f) an ~~[affiliate of]~~ entity that controls, is controlled by, or is under common control
- 2582 with a depository institution;
- 2583 (g) an employee or agent of an entity described in Subsections (2)(a) through (f):
- 2584 (i) when that person acts on behalf of the entity described in Subsections (2)(a)
- 2585 through (f); and
- 2586 (ii) including an employee of:
- 2587 (A) a depository institution;
- 2588 (B) a subsidiary of a depository institution that is:
- 2589 (I) owned and controlled by the depository institution; and
- 2590 (II) regulated by a federal banking agency, as defined in 12 U.S.C. Sec. 5102; or
- 2591 (C) an institution regulated by the Farm Credit Administration;
- 2592 (h) except as provided in Subsection (3), a person who:
- 2593 (i) makes a loan:
- 2594 (A) secured by an interest in real property;
- 2595 (B) with the person's own money; and
- 2596 (C) for the person's own investment; and
- 2597 (ii) that does not engage in the business of making loans secured by an interest in real
- 2598 property;
- 2599 (i) except as provided in Subsection (3), a person who receives a mortgage, deed of
- 2600 trust, or consensual security interest on real property if the individual or entity:
- 2601 (i) is the seller of real property; and
- 2602 (ii) receives the mortgage, deed of trust, or consensual security interest on real
- 2603 property as security for a separate money obligation;
- 2604 (j) a person who receives a mortgage, deed of trust, or consensual security interest on
- 2605 real property if:

2606 (i) the person receives the mortgage, deed of trust, or consensual security interest as
2607 security for an obligation payable on an installment or deferred payment basis;

2608 (ii) the obligation described in Subsection (2)(j)(i) arises from a person providing
2609 materials or services used in the improvement of the real property that is the subject of the
2610 mortgage, deed of trust, or consensual security interest; and

2611 (iii) the mortgage, deed of trust, or consensual security interest is created without the
2612 consent of the owner of the real property that is the subject of the mortgage, deed of trust, or
2613 consensual security interest;

2614 (k) a nonprofit corporation that:

2615 (i) is exempt from paying federal income taxes;

2616 (ii) is certified by the United States Small Business Administration as a small business
2617 investment company;

2618 (iii) is organized to promote economic development in this state; and

2619 (iv) has as its primary activity providing financing for business expansion;

2620 (l) except as provided in Subsection (3), a court appointed fiduciary; or

2621 (m) an attorney admitted to practice law in this state:

2622 (i) if the attorney is not principally engaged in the business of negotiating residential
2623 mortgage loans; and

2624 (ii) when the attorney renders services in the course of the attorney's practice as an
2625 attorney.

2626 (3) An individual who will engage in an activity as a mortgage loan originator is
2627 exempt from this chapter only if the individual is an employee or agent exempt under
2628 Subsection (2)(g).

2629 (4) (a) Notwithstanding Subsection (2)(m), an attorney exempt from this chapter may
2630 not engage in conduct described in Section 61-2c-301 when transacting business of residential
2631 mortgage loans.

2632 (b) If an attorney exempt from this chapter violates Subsection (4)(a), the attorney:

2633 (i) is not subject to enforcement by the division under Part 4, Enforcement; and

2634 (ii) is subject to disciplinary action generally applicable to an attorney admitted to
2635 practice law in this state.

2636 (c) If the division receives a complaint alleging an attorney exempt from this chapter is
2637 in violation of Subsection (4)(a), the division shall forward the complaint to the Utah State Bar
2638 for disciplinary action.

2639 (5) (a) An individual who is exempt under Subsection (2) or (3) may voluntarily
2640 obtain a license under this chapter by complying with Part 2, Licensure.

2641 (b) An individual who voluntarily obtains a license pursuant to this Subsection (5)
2642 shall comply with all the provisions of this chapter.

2643 Section 48. Section **61-2c-106** is amended to read:

2644 **61-2c-106. Addresses provided the division.**

2645 (1) (a) ~~[In providing an address to the division under this chapter, a]~~ A person shall
2646 provide a physical location or street address when the person provides the nationwide database
2647 an address required by the division.

2648 (b) The following when provided under this chapter is public information:

2649 (i) a business address; or

2650 (ii) a mailing address.

2651 (2) A licensee is considered to have received a notification that is mailed to the last
2652 mailing address furnished to the ~~[division]~~ nationwide database by:

2653 (a) if the licensee is an individual, the individual; or

2654 (b) if the licensee is an entity, the principal lending manager of the entity.

2655 Section 49. Section **61-2c-201** is amended to read:

2656 **61-2c-201. Licensure required of person engaged in the business of residential**
2657 **mortgage loans.**

2658 (1) Unless exempt from this chapter under Section 61-2c-105, a person may not
2659 transact the business of residential mortgage loans without obtaining a license under this
2660 chapter.

2661 (2) For purposes of this chapter, a person transacts business in this state if:

2662 (a) (i) the person engages in an act that constitutes the business of residential mortgage
2663 loans; and

2664 (ii) (A) the act described in Subsection (2)(a)(i) is directed to or received in this state;
2665 and

2666 (B) the real property that is the subject of the act described in Subsection (2)(a)(i) is
2667 located in this state; or

2668 (b) a representation is made by the person that the person transacts the business of
2669 residential mortgage loans in this state.

2670 (3) An individual who has an ownership interest in an entity required to be licensed
2671 under this chapter is not required to obtain an individual license under this chapter unless the
2672 individual transacts the business of residential mortgage loans.

2673 (4) Unless otherwise exempted under this chapter, licensure under this chapter is
2674 required of both:

2675 (a) the individual who directly transacts the business of residential mortgage loans;
2676 and

2677 (b) if the individual transacts business as an employee or agent of an entity or
2678 individual, the entity or individual for whom the employee or agent transacts the business of
2679 residential mortgage loans.

2680 [~~(5) (a) An individual licensed under this chapter may not engage in the business of
2681 residential mortgage loans on behalf of more than one entity at the same time.~~]

2682 [~~(b) This Subsection (5) does not restrict the number of:~~]

2683 [~~(i) different lenders a person may use as a funding source for residential mortgage
2684 loans; or]~~

2685 [~~(ii) entities in which an individual may have an ownership interest, regardless of
2686 whether the entities are:]~~

2687 [~~(A) licensed under this chapter; or]~~

2688 [~~(B) exempt under Section 61-2c-105.]~~

2689 [~~(6) An individual licensed under this chapter may not transact the business of~~

2690 residential mortgage loans for the following at the same time:]
 2691 [(a) an entity licensed under this chapter; and]
 2692 [(b) an entity that is exempt from licensure under Section 61-2c-105.]
 2693 [(7) A mortgage officer may not receive consideration for transacting the business of
 2694 residential mortgage loans from any person or entity except the principal lending manager with
 2695 whom the mortgage officer is licensed.]
 2696 [(8) A mortgage officer shall conduct all business of residential mortgage loans:]
 2697 [(a) through the principal lending manager with which the individual is licensed; and]
 2698 [(b) in the business name under which the principal lending manager is authorized by
 2699 the division to do business.]
 2700 [(9)] (5) (a) If an entity that is [~~authorized by this chapter~~] licensed to transact the
 2701 business of residential mortgage loans transacts the business of residential mortgage loans
 2702 under an assumed business name, the entity shall in accordance with rules made by the
 2703 division:
 2704 (i) register the assumed name [~~with the division~~] under this chapter; and
 2705 (ii) furnish [~~the division~~] proof that the assumed business name is filed with the
 2706 Division of Corporations and Commercial Code pursuant to Title 42, Chapter 2, Conducting
 2707 Business Under Assumed Name.
 2708 (b) The division may charge a fee established in accordance with Section 63J-1-504
 2709 for registering an assumed name pursuant to this Subsection [(9)] (5).
 2710 [(10) A licensee whose license is in inactive status may not transact the business of
 2711 residential mortgage loans.]
 2712 Section 50. Section **61-2c-202** is amended to read:
 2713 **61-2c-202. Licensure procedures.**
 2714 (1) To apply for licensure under this chapter an applicant shall in a manner provided
 2715 by the division by rule:
 2716 (a) if the applicant is an entity, submit [~~to the division~~] a licensure statement that:
 2717 (i) lists any name under which the [~~applicant~~] entity will transact business in this state;

2718 (ii) lists the address of the principal business location of the [applicant] entity;

2719 ~~[(iii) if the applicant is an entity:]~~

2720 ~~[(A) lists]~~ (iii) identifies the principal lending manager of the entity; ~~[and]~~

2721 ~~[(B)]~~ (iv) contains the signature of the principal lending manager;

2722 ~~[(iv) demonstrates that the applicant meets the qualifications listed in Section~~

2723 ~~61-2c-203;]~~

2724 ~~[(v) if the applicant is an entity, lists:]~~

2725 ~~[(A) all jurisdictions in which the entity is registered, licensed, or otherwise regulated~~

2726 ~~in the business of residential mortgage loans; and]~~

2727 ~~[(B) the history of any disciplinary action or adverse administrative action taken~~

2728 ~~against the entity by a regulatory agency; and]~~

2729 (v) identifies the one or more control persons for the entity;

2730 (vi) identifies the jurisdictions in which the entity is registered, licensed, or otherwise

2731 regulated in the business of residential mortgage loans;

2732 (vii) discloses any adverse administrative action taken by an administrative agency

2733 against:

2734 (A) the entity; or

2735 (B) any control person for the entity;

2736 (viii) discloses any history of criminal proceedings involving any control person for

2737 the entity; and

2738 ~~[(vi)]~~ (ix) includes any information required by the division by rule;

2739 (b) if the applicant is an individual~~[-the applicant shall provide]:~~

2740 ~~[(i) (A) a fingerprint card in a form acceptable to the division; and]~~

2741 ~~[(B) consent to a criminal background check by:]~~

2742 ~~[(f) the Utah Bureau of Criminal Identification; and]~~

2743 (i) submit a licensure statement that identifies the entity with which the applicant is

2744 sponsored;

2745 (ii) authorize a criminal background check through the nationwide database accessing:

2746 (A) the Utah Bureau of Criminal Identification, if the nationwide database is able to
 2747 obtain information from the Utah Bureau of Criminal Identification; and
 2748 ~~[(H)] (B) the Federal Bureau of Investigation;~~
 2749 ~~[(ii)] (iii) submit~~ evidence using a method approved by the division by rule of having
 2750 successfully completed approved prelicensing education in accordance with Section
 2751 61-2c-204.1;
 2752 ~~[(iii)] (iv) submit~~ evidence using a method approved by the division by rule of having
 2753 successfully passed [a] any required licensing examination in accordance with Section
 2754 61-2c-204.1; and
 2755 ~~[(iv) if the applicant will engage in an activity as a loan originator:]~~
 2756 ~~[(A) the individual's unique identifier;]~~
 2757 ~~[(B) any other evidence required by the division by rule demonstrating that the~~
 2758 ~~individual has submitted the following to the nationwide database:]~~
 2759 ~~[(I) a fingerprint card in a form acceptable to the nationwide database;]~~
 2760 ~~[(H) consent to a criminal background check by:]~~
 2761 ~~[(Aa) the Utah Bureau of Criminal Identification; and]~~
 2762 ~~[(Bb) the Federal Bureau of Investigation; and]~~
 2763 ~~[(H) information requested by the nationwide database regarding personal history and~~
 2764 ~~experience including authorization for the nationwide database and division to obtain:]~~
 2765 ~~[(Aa) an independent credit report obtained from a consumer reporting agency~~
 2766 ~~described in 15 U.S.C. Sec. 1681 et seq.; and]~~
 2767 ~~[(Bb) information related to an administrative, civil, or criminal finding of a~~
 2768 ~~governmental jurisdiction; and]~~
 2769 (v) submit evidence using a method approved by the division by rule of having
 2770 successfully registered in the nationwide database, including paying a fee required by the
 2771 nationwide database; and
 2772 (c) pay to the division:
 2773 (i) an application fee established by the division in accordance with Section

2774 63J-1-504; and

2775 (ii) the reasonable expenses incurred by the division in processing the application for
2776 licensure~~[, including the costs incurred by the division under Subsection (4)].~~

2777 ~~[(2) (a) The division shall issue a license to an applicant if the division, with the
2778 concurrence of the commission, finds that the applicant:]~~

2779 ~~[(i) meets the qualifications of Sections 61-2c-203 and 61-2c-204.1; and]~~

2780 ~~[(ii) complies with this section.]~~

2781 (2) (a) Upon receiving an application, the division, with the concurrence of the
2782 commission, shall determine whether the applicant:

2783 (i) meets the qualifications for licensure; and

2784 (ii) complies with this section.

2785 (b) If the division, with the concurrence of the commission, determines that an
2786 applicant meets the qualifications for licensure and complies with this section, the division
2787 shall issue the applicant a license.

2788 (c) If the division, with the concurrence of the commission, determines that the
2789 division requires more information to make a determination under Subsection (2)(a), the
2790 division may:

2791 (i) hold the application pending further information about an applicant's criminal
2792 background or history related to adverse administrative action in any jurisdiction; or

2793 (ii) issue a conditional license:

2794 (A) pending the completion of a criminal background check; and

2795 (B) subject to suspension or revocation if the criminal background check reveals that
2796 the applicant did not truthfully or accurately disclose on the licensing application a criminal
2797 history or other history related to adverse administrative action.

2798 ~~[(b)]~~ (3) (a) The commission may delegate to the division the authority to:

2799 (i) review a class or category of application for an initial or renewed license;

2800 (ii) determine whether an applicant meets the [licensing criteria in Sections 61-2c-203
2801 and 61-2c-204.1] qualifications for licensure;

2802 (iii) conduct a necessary hearing on an application; and
 2803 (iv) approve or deny a license application without concurrence by the commission.
 2804 ~~[(c)]~~ (b) If the commission delegates to the division the authority to approve or deny
 2805 an application without concurrence by the commission and the division denies an application
 2806 for licensure, the applicant who is denied licensure may petition the commission for review of
 2807 the denial.

2808 ~~[(d)]~~ (c) An applicant who is denied licensure under Subsection ~~[(2)]~~ (3)(b) may seek
 2809 agency review by the executive director only after the commission reviews the division's
 2810 denial of the applicant's application.

2811 ~~[(3)]~~ (d) Subject to Subsection ~~[(2)(d)]~~(3)(c) and in accordance with Title 63G,
 2812 Chapter 4, Administrative Procedures Act, an applicant who is denied licensure under this
 2813 chapter may submit a request for agency review to the executive director within 30 days
 2814 following the day on which the commission order denying the licensure is issued.

2815 ~~[(4)(a) The division shall request the Department of Public Safety to complete:]~~

2816 ~~[(i) for an applicant who will engage in an activity as a loan originator, a criminal
 2817 background check by the Utah Bureau of Criminal Identification; or]~~

2818 ~~[(ii) for an applicant who will not engage in an activity as a loan originator, a Federal
 2819 Bureau of Investigation criminal background check through a national criminal history
 2820 system.]~~

2821 ~~[(b) An applicant shall pay the cost of:]~~

2822 ~~[(i) the fingerprinting required by this section; and]~~

2823 ~~[(ii) the criminal background check required by this section.]~~

2824 ~~[(c) The funds paid by an applicant for the cost of the criminal background check shall
 2825 be nonlapsing.]~~

2826 Section 51. Section **61-2c-203** is amended to read:

2827 **61-2c-203. General qualifications for licensure.**

2828 (1) To qualify for licensure under this chapter, ~~[an individual:]~~ a person shall
 2829 demonstrate through procedures established by rule made by the division in accordance with

2830 Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

2831 [~~(a) shall demonstrate:~~]

2832 [~~(i)~~] (a) financial responsibility;

2833 [~~(ii)~~] (b) good moral character, honesty, integrity, and truthfulness; and

2834 [~~(iii)~~] (c) the competence to transact the business of residential mortgage loans,

2835 including general fitness such as to command the confidence of the community and to warrant

2836 a determination that the [~~individual~~] person will operate honestly, fairly, and efficiently within

2837 the purposes of this chapter[;].

2838 [~~(b) except as provided in Subsection (3), may not have]~~

2839 (2) If an applicant is an individual, the applicant may not have:

2840 (a) been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner
2841 to, or resolved by diversion or its equivalent:

2842 (i) a felony involving an act of fraud, dishonesty, a breach of trust, or money

2843 laundering; or

2844 (ii) a felony in the seven years preceding the day on which an application is submitted

2845 to the division;

2846 [~~(iii) in the 10 years preceding the day on which an application is submitted to the~~

2847 ~~division of:]~~

2848 [~~(A) a felony or class A misdemeanor involving moral turpitude; or]~~

2849 [~~(B) a crime in another jurisdiction that is the equivalent of a felony or class A~~

2850 ~~misdemeanor involving moral turpitude;]~~

2851 [~~(iv)~~] (b) in the five years preceding the day on which an application is submitted to

2852 the division, been convicted of, pled guilty to, pled no contest to, pled guilty in a similar

2853 manner to, or resolved by diversion its equivalent:

2854 [~~(A)~~] (i) a class B or class C misdemeanor involving moral turpitude; or

2855 [~~(B)~~] (ii) a crime in another jurisdiction that is the equivalent of a class B or class C

2856 misdemeanor involving moral turpitude;

2857 (c) [~~if the applicant will engage in an activity as a loan originator, may not have]~~ had a

2858 license as a mortgage loan originator revoked by a governmental jurisdiction at any time;

2859 (d) ~~[except as provided in Subsection (3), may not have]~~ had a license or registration
2860 suspended, ~~[revoked,]~~ surrendered, canceled, or denied in the five years preceding the date the
2861 individual applies for licensure if:

2862 (i) the registration or license is issued by this state or another jurisdiction; and

2863 (ii) the suspension, ~~[revocation,]~~ surrender, ~~[probation, fine,]~~ cancellation, or denial is
2864 based on misconduct in a professional capacity that relates to moral character, honesty,
2865 integrity, truthfulness, or the competency to transact the business of residential mortgage
2866 loans;

2867 (e) ~~[except as provided in Subsection (3), may not have]~~ been the subject of a bar by
2868 the Securities and Exchange Commission, the New York Stock Exchange, or the National
2869 Association of Securities Dealers within the five years preceding the date the individual
2870 applies for registration; ~~[and]~~ or

2871 (f) ~~[may not have]~~ had a ~~[temporary or]~~ permanent injunction entered against the
2872 individual:

2873 (i) by a court or ~~[licensing]~~ administrative agency; and

2874 (ii) on the basis of:

2875 (A) conduct or a practice involving the business of residential mortgage loans; or

2876 (B) conduct involving fraud, misrepresentation, or deceit.

2877 ~~[(2) To qualify for licensure under this chapter an entity may not have:]~~

2878 ~~[(a) any of the following individuals in management]~~

2879 (3) If an applicant is an entity, the applicant may not have a control person who fails
2880 to meet the requirements of Subsection [(1)] (2) for an individual [who will engage in an
2881 activity as a loan originator:] applicant.

2882 ~~[(i) a manager or a managing partner;]~~

2883 ~~[(ii) a director;]~~

2884 ~~[(iii) an executive officer; or]~~

2885 ~~[(iv) an individual occupying a position or performing functions similar to those~~

2886 described in Subsections (2)(a)(i) through (iii); or]

2887 [~~(b) a principal lending manager who fails to meet the requirements of Subsection (1)~~
2888 ~~for an individual who will engage in an activity as a loan originator.]~~

2889 [~~(3) (a) Notwithstanding the failure to meet the requirements of Subsections (1)(b)(iii),~~
2890 ~~(b)(iv), (d), (e), and (f) and except as provided in Subsection (3)(b), the division may permit a~~
2891 ~~person to be licensed under this chapter if the individual applicant or a person listed in~~
2892 ~~Subsection (2):]~~

2893 [~~(i) fails to meet the requirements of Subsections (1)(b)(iii), (b)(iv), (d), (e), and (f);]~~

2894 [~~(ii) otherwise meets the qualifications for licensure; and]~~

2895 [~~(iii) provides evidence satisfactory to the division with the concurrence of the~~
2896 ~~commission that the individual applicant or person described in Subsection (2):]~~

2897 [~~(A) is of good moral character;]~~

2898 [~~(B) is honest;]~~

2899 [~~(C) has integrity;]~~

2900 [~~(D) is truthful; and]~~

2901 [~~(E) has the competency to transact the business of residential mortgage loans.]~~

2902 [~~(b) The division may not license an individual under this Subsection (3) if that~~
2903 ~~individual will engage in an activity as a loan originator.]~~

2904 Section 52. Section **61-2c-204.1** is amended to read:

2905 **61-2c-204.1. Education providers -- Education requirements -- Examination**
2906 **requirements.**

2907 (1) As used in this section:

2908 (a) "Approved continuing education course" means a course of continuing education
2909 that is approved by the nationwide database.

2910 (b) "Approved prelicensing education course" means a course of prelicensing
2911 education that is approved by the nationwide database.

2912 (2) (a) A person may not provide Utah-specific prelicensing education or
2913 Utah-specific continuing education if that person is not certified by the division under this

2914 chapter.

2915 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
2916 the division shall make rules establishing:

2917 (i) certification criteria and procedures to become a certified education provider; and

2918 (ii) standards of conduct for a certified education provider.

2919 (c) In accordance with the rules described in Subsection (2)(b), the division shall
2920 certify a person to provide [~~one or more of the following:~~] the education described in

2921 Subsection (2)(a).

2922 [~~(i) prelicensing education; or~~]

2923 [~~(ii) continuing education.~~]

2924 (d) [~~The~~] (i) Upon request, the division shall make available to the public a list of the
2925 names and addresses of certified education providers either directly or through a third party.

2926 (ii) A person who requests a list under this Subsection (2)(d) shall pay the costs
2927 incurred by the division to make the list available.

2928 (e) In certifying [~~an~~] a person as a certified education provider, the division by rule
2929 may:

2930 (i) distinguish between an individual instructor and an entity that provides education;

2931 or

2932 (ii) approve:

2933 (A) Utah-specific prelicensing education; or

2934 (B) Utah-specific continuing education courses.

2935 (3) (a) The division may not:

2936 (i) license an individual under this chapter as a mortgage [~~officer~~] loan originator who
2937 has not completed the prelicensing education required by this section:

2938 (A) before taking the one or more licensing [~~examination~~] examinations required by
2939 Subsection (4); [~~and~~]

2940 (B) in the number of hours, not to exceed 90 hours, required by rule made by the
2941 division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act[;

2942 except that the division shall require that a person who will engage in an activity as a loan
2943 originator complete at least 20 hours of approved prelicensing education courses that include
2944 at least:]; and
2945 ~~[(F) three hours of federal law and regulation;]~~
2946 ~~[(H) three hours of ethics that includes instruction on fraud, consumer protection, and~~
2947 ~~fair lending issues; and]~~
2948 ~~[(H) two hours of training related to lending standards for the nontraditional mortgage~~
2949 ~~product marketplace;]~~
2950 (C) that includes the prelicensing education required by federal licensing regulations;
2951 (ii) subject to Subsection (6), renew a license of an individual who has not completed
2952 the continuing education required by this section and Section 61-2c-205~~[-or]~~;
2953 (A) in the number of hours required by rule made by the division in accordance with
2954 Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
2955 (B) that includes the continuing education required by federal licensing regulations; or
2956 (iii) ~~[the division may not]~~ license an individual under this chapter as a principal
2957 lending manager who has not completed the prelicensing education required by Section
2958 61-2c-206 before taking the licensing examination required by Section 61-2c-206.
2959 (b) Subject to Subsection (3)(a) and with the concurrence of the division, the
2960 commission shall determine:
2961 (i) except as provided in Subsection 61-2c-206(1)~~[(c)]~~(b), the appropriate number of
2962 hours of prelicensing education required to obtain a license;
2963 (ii) the subject matters of the prelicensing education required under this section and
2964 Section 61-2c-206, including online education or distance learning options;
2965 (iii) the appropriate number of hours of continuing education required to renew a
2966 license~~[-, except that at a minimum the continuing education required for a person who~~
2967 ~~engages in an activity as a loan originator shall include at least eight hours annually of~~
2968 ~~approved continuing education courses that include at least:]; and~~
2969 ~~[(A) three hours of federal law and regulations;]~~

2970 ~~[(B) two hours of ethics, that include instruction on fraud, consumer protection, and~~
2971 ~~fair lending issues; and]~~

2972 ~~[(C) two hours of training related to lending standards for the nontraditional mortgage~~
2973 ~~product marketplace; and]~~

2974 (iv) the subject matter of courses the division may accept for continuing education
2975 purposes.

2976 (c) The commission may appoint a committee to make recommendations to the
2977 commission concerning approval of prelicensing education and continuing education courses,
2978 except that the commission shall appoint at least one member to the committee to represent
2979 each association that represents a significant number of individuals licensed under this
2980 chapter.

2981 (d) The division may by rule made in accordance with Title 63G, Chapter 3, Utah
2982 Administrative Rulemaking Act, provide for the calculation of continuing education credits,
2983 except that the rules shall be consistent with 12 U.S.C. Sec. 5105.

2984 (4) (a) The division may not license an individual under this chapter unless that
2985 individual first passes ~~[a licensing examination]~~ the one or more licensing examinations that:

2986 (i) are adopted by the division in accordance with Title 63G, Chapter 3, Utah
2987 Administrative Rulemaking Act;

2988 (ii) meet the minimum federal licensing requirements; and

2989 (iii) are administered by an approved examination provider.

2990 (b) The commission, with the concurrence of the division, shall determine the
2991 requirements for:

2992 (i) a licensing examination that at least:

2993 ~~[(A) includes the qualified written test developed by the nationwide database; and]~~

2994 (A) meets the minimum federal licensing requirements; and

2995 (B) tests knowledge of the:

2996 (I) fundamentals of the English language;

2997 (II) arithmetic;

2998 (III) provisions of this chapter;
 2999 (IV) rules adopted under this chapter;
 3000 (V) basic residential mortgage principles and practices; and
 3001 (VI) any other aspect of Utah law the commission determines is appropriate; and
 3002 (ii) a licensing examination required under Section 61-2c-206 that:
 3003 [~~(A) includes the qualified written test developed by the nationwide database; and~~]
 3004 (A) meets the requirements of Subsection (4)(b)(i); and
 3005 (B) tests knowledge of the:
 3006 (I) advanced residential mortgage principles and practices; and
 3007 (II) other aspects of Utah law the commission, with the concurrence of the division,
 3008 determines appropriate.

3009 (c) An individual who will engage in an activity as a mortgage loan originator, is not
 3010 considered to have passed a licensing examination if that individual has not met the minimum
 3011 competence requirements of 12 U.S.C. Sec. 5104(d)(3).

3012 (5) When reasonably practicable, the commission and the division shall make the
 3013 [~~licensing examination, prelicensing education, and continuing education~~] Utah-specific
 3014 education requirements described in this section available electronically through one or more
 3015 distance education methods approved by the commission and division.

3016 (6) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
 3017 the commission, with the concurrence of the division, shall make rules establishing procedures
 3018 under which a licensee may be exempted from a Utah-specific continuing education
 3019 [~~requirements~~] requirement:

- 3020 (i) for a period not to exceed four years; and
- 3021 (ii) upon a finding of reasonable cause.

3022 (b) An individual who engages in an activity as a mortgage loan originator may not
 3023 under this Subsection (6) be exempted from the [~~eight hours of~~] minimum continuing
 3024 education required under [~~Subsection (3)(b)(iii)~~] federal licensing regulations for an individual
 3025 who engages in an activity as a mortgage loan originator.

3026 Section 53. Section **61-2c-205** is amended to read:

3027 **61-2c-205. Term of licensure -- Renewal -- Reporting of changes.**

3028 (1) (a) A license issued under this chapter [~~is valid for one year.~~] expires as follows:

3029 (i) for the calendar year the license is issued:

3030 (A) if the license is issued on or before October 31, the license expires on December
3031 31 of the same calendar year; and

3032 (B) if the license is issued on or after November 1, the license expires on December 31
3033 of the following calendar year; and

3034 (ii) after the December 31 on which a license expires under Subsection (1)(a)(i), a
3035 license expires annually on December 31.

3036 (b) Notwithstanding Subsection (1)(a), the time period of a license may be extended or
3037 shortened by as much as one year to maintain or change a renewal cycle established by rule by
3038 the division.

3039 (2) To renew a license, no later than the date the license expires, a licensee shall in a
3040 manner provided by the division by rule:

3041 [~~(a) (i) file the renewal form required by the division; and~~]

3042 (a) file a renewal statement;

3043 [~~(ii)~~] (b) furnish the information required by Subsection 61-2c-202(1);

3044 (c) renew the licensee's registration with the nationwide database, including the
3045 payment of a fee required by the nationwide database;

3046 [~~(b)~~] (d) pay a fee to the division established by the division in accordance with
3047 Section 63J-1-504; and

3048 [~~(c)~~] (e) if the licensee is an individual and the individual's license is in active status at
3049 the time of application for renewal, submit proof [~~using forms approved by the division~~] of
3050 having completed during the year before application the continuing education required under
3051 Section 61-2c-204.1.

3052 (3) (a) A licensee under this chapter shall notify the division [~~using the form required~~
3053 ~~by the division~~] in a manner provided by the division by rule within 10 days of the date on

3054 which there is a change in:

3055 (i) a name under which the licensee transacts the business of residential mortgage
3056 loans in this state;

3057 (ii) (A) if the licensee is an entity, the business location of the licensee; or

3058 (B) if the licensee is an individual, the home and business addresses of the individual;

3059 (iii) the principal lending manager of the entity;

3060 (iv) the entity with which an individual licensee is licensed to conduct the business of
3061 residential mortgage loans; or

3062 (v) any other information that is defined as material by rule made by the division.

3063 (b) Failure to notify the division of a change described in Subsection (3)(a) is separate
3064 grounds for disciplinary action against a licensee.

3065 (c) The division may charge a fee established in accordance with Section 63J-1-504
3066 for processing a change that a licensee is required to report to the division under Subsection
3067 (3)(a).

3068 (4) A licensee shall notify the division by sending the division a signed statement
3069 within 10 business days of:

3070 (a) (i) a conviction of a criminal offense;

3071 (ii) the entry of a plea in abeyance to a criminal offense; or

3072 (iii) the potential resolution of a criminal case by:

3073 (A) a diversion agreement; or

3074 (B) any other agreement under which a criminal charge is held in suspense for a
3075 period of time;

3076 (b) filing a personal bankruptcy or bankruptcy of a business that transacts the business
3077 of residential mortgage loans;

3078 (c) the suspension, revocation, surrender, cancellation, or denial of a professional
3079 license or professional registration of the licensee, whether the license or registration is issued
3080 by this state or another jurisdiction; or

3081 (d) the entry of a cease and desist order or a temporary or permanent injunction:

3082 (i) against the licensee by a court or licensing agency; and
3083 (ii) based on:
3084 (A) conduct or a practice involving the business of residential mortgage loans; or
3085 (B) conduct involving fraud, misrepresentation, or deceit.
3086 (5) (a) A license under this chapter expires if the licensee does not apply to renew the
3087 license on or before the expiration date of the license.
3088 (b) ~~[Within 30 calendar days after the expiration date, a]~~ A licensee whose license has
3089 expired may apply to reinstate the expired license, in a manner provided by the division by
3090 rule by:
3091 (i) requesting reinstatement;
3092 ~~[(†)]~~ (ii) paying to the division a renewal fee and a late fee determined by the division
3093 under Section 63J-1-504; and
3094 ~~[(ii) if the licensee is an individual and is applying to reinstate a license to active~~
3095 ~~status, providing proof using forms approved by the division of having completed, during the~~
3096 ~~year before application, the continuing education required under Section 61-2c-204.1.]~~
3097 ~~[(c) After the 30 calendar days described in Subsection (5)(b) and within six months~~
3098 ~~after the expiration date, a licensee whose license has expired may apply to reinstate an~~
3099 ~~expired license by:]~~
3100 ~~[(i) paying a renewal fee and a late fee determined by the division under Section~~
3101 ~~63J-1-504;]~~
3102 ~~[(ii) if the licensee is an individual and is applying to reinstate a license to active~~
3103 ~~status, providing proof using forms approved by the division of having completed, during the~~
3104 ~~year before application, the continuing education required under Section 61-2c-204.1; and]~~
3105 ~~[(iii) in addition to the continuing education described in Subsection (5)(c)(ii);~~
3106 ~~providing proof of completing an additional 12 hours of continuing education meeting the~~
3107 ~~requirements of Section 61-2c-204.1.]~~
3108 ~~[(d) The division shall issue a license to a licensee whose license expires under this~~
3109 ~~Subsection (5) for more than six months as if the licensee is a new applicant filing an~~

3110 application for an original license under Section 61-2c-202.]

3111 [~~(e) Notwithstanding Subsection (5)(a), the division may extend the term of a license~~
3112 ~~that would expire under Subsection (5)(a) except for the extension if:]~~

3113 [~~(i) the person complies with the requirements of this section to renew the license;~~
3114 ~~and]~~

3115 [~~(ii) at the time of the extension, there is pending under this chapter:]~~

3116 [~~(A) the application for renewal of the license; or]~~

3117 [~~(B) a disciplinary action.]~~

3118 [~~(6) The division may charge a fee established in accordance with Section 63J-1-504~~
3119 ~~for processing a change that a licensee is required to report to the division under this section.]~~

3120 (iii) reinstating the licensee's registration with the nationwide database, including the
3121 payment of a fee required by the nationwide database.

3122 Section 54. Section **61-2c-205.1** is amended to read:

3123 **61-2c-205.1. Transition to use of nationwide database.**

3124 (1) An individual not required to be licensed under this chapter as in effect on
3125 December 31, 2010, who is required to be licensed under this chapter as in effect on January
3126 1, 2011, may not engage in the business of residential mortgage loans on or after January 1,
3127 2011 without holding a license under this chapter.

3128 (2) An individual who applies for a license under this chapter on or after January 1,
3129 2011, shall meet the requirements of this chapter as in effect on January 1, 2011.

3130 (3) (a) This Subsection (3) applies to a licensee who:

3131 (i) will engage in an activity as a mortgage loan originator on or after January 1, 2011;
3132 and

3133 (ii) holds an active license under this chapter on December 31, 2010.

3134 (b) A licensee shall comply with the requirements of this chapter as in effect on
3135 January 1, 2011, by no later than January 1, 2011, in order to hold an active license on or after
3136 January 1, 2011.

3137 (c) The license of a licensee that fails to comply with this section on or before January

3138 1, 2011 becomes inactive on January 1, 2011 until:

3139 (i) the day on which the licensee complies with the requirements of this chapter; or

3140 (ii) the license expires.

3141 (4) (a) A license of an individual who will engage in an activity as a mortgage loan
3142 originator that is inactive on December 31, 2010, terminates as of January 1, 2011 unless that
3143 licensee provides on or before January 1, 2011, evidence satisfactory to the division that the
3144 licensee has complied with the requirements for registration under the nationwide database.

3145 (b) The division may by rule, made in accordance with Title 63G, Chapter 3, Utah
3146 Administrative Rulemaking Act, [~~proscribe~~] prescribe:

3147 (i) the "requirements for registration under the nationwide database" described in
3148 Subsection (4)(a);

3149 (ii) the evidence required by this Subsection (4); and

3150 (iii) the procedure for submitting the evidence required by this Subsection (4).

3151 (5) The division may make rules in accordance with Title 63G, Chapter 3, Utah
3152 Administrative Rulemaking Act, providing a process:

3153 (a) that is consistent with this section to transition the licensing of individuals engaged
3154 in the business of residential mortgage loans to the license requirements under this chapter as
3155 in effect on January 1, 2011; or

3156 (b) to suspend a requirement for holding a license under this chapter that is related to
3157 the nationwide database if:

3158 (i) the suspension is related to changes made to [~~Secure and Fair Enforcement for~~
3159 ~~Mortgage Licensing, 12 U.S.C. Sec. 5105, et seq.,~~] federal licensing requirements on or after
3160 January 1, 2009; and

3161 (ii) the suspension ends on or before December 31, 2011.

3162 (6) The division may report or provide recommendations to the Legislature regarding
3163 changes, if any, that could be made to this chapter in response to changes made to the
3164 nationwide database or under [~~Secure and Fair Enforcement for Mortgage Licensing, 12~~
3165 ~~U.S.C. Sec. 5101, et seq.~~] federal licensing requirements, including changes related to

3166 grandfathering.

3167 Section 55. Section **61-2c-206** is amended to read:

3168 **61-2c-206. Principal lending manager licenses.**

3169 (1) To qualify for licensure as a principal lending manager under this chapter, an
3170 individual shall ~~[, in addition to meeting];~~

3171 ~~(a) meet~~ the standards in Section 61-2c-203~~[;];~~

3172 ~~[(a) submit an application on a form approved by the division;]~~

3173 ~~[(b) pay a fee determined by the division under Section 63J-1-504;]~~

3174 ~~[(c) submit proof of having successfully completed]~~

3175 (b) successfully complete the following education:

3176 (i) mortgage loan originator prelicensing education as required by federal licensing
3177 regulations; and

3178 (ii) 40 hours of Utah-specific prelicensing education for a principal lending manager
3179 that is approved by the [commission] division under Section 61-2c-204.1;

3180 ~~[(d) submit proof of having successfully completed]~~

3181 (c) successfully complete the following examinations:

3182 (i) the mortgage loan originator licensing examination as approved by the nationwide
3183 database; and

3184 (ii) the principal lending manager licensing examination approved by the commission
3185 under Section 61-2c-204.1;

3186 ~~[(e)]~~ (d) submit proof on a form approved by the division of three years of full-time
3187 active experience as a mortgage [officer] loan originator licensed in any state in the five years
3188 preceding the day on which the application is submitted~~[, or its equivalent as approved by the~~
3189 commission; and];

3190 (e) submit an application in a manner established by the division by rule;

3191 (f) establish sponsorship with an entity licensed under this chapter;

3192 ~~[(f)]~~ (g) if the individual is not [licensed under this chapter] registered in the
3193 nationwide database as a mortgage loan originator at the time of application, submit to the

3194 criminal background check required by Subsection 61-2c-202(1)(b)[-]; and

3195 (h) pay a fee determined by the division under Section 63J-1-504.

3196 (2) A principal lending manager may not:

3197 (a) engage in the business of residential mortgage loans on behalf of more than one

3198 entity at the same time[-]; or

3199 (b) be sponsored by more than one entity at the same time.

3200 Section 56. Section **61-2c-209** is enacted to read:

3201 **61-2c-209. Sponsorship -- Affiliation.**

3202 (1) (a) The division may not license an individual, and an individual licensed under

3203 this chapter may not conduct the business of residential mortgage loans unless:

3204 (i) if licensed as a mortgage loan originator, the individual:

3205 (A) is sponsored by an entity licensed under this chapter; and

3206 (B) is affiliated with a principal lending manager; or

3207 (ii) if licensed as a principal lending manager, the individual is sponsored by an entity

3208 licensed under this chapter.

3209 (b) The division may not license any entity and an entity licensed under this chapter

3210 may not conduct the business of residential mortgage loans unless the entity:

3211 (i) sponsors a principal lending manager;

3212 (ii) identifies at least one control person for the entity; and

3213 (iii) provides a list of the mortgage loan originators sponsored by the entity.

3214 (2) (a) A mortgage loan originator's license automatically becomes inactive the day on

3215 which:

3216 (i) the mortgage loan originator is not sponsored by an entity licensed under this

3217 chapter;

3218 (ii) the license of the entity with which the mortgage loan originator is sponsored

3219 becomes inactive or terminates;

3220 (iii) the mortgage loan originator is not affiliated with a principal lending manager; or

3221 (iv) the license of the principal lending manager with whom the mortgage loan

3222 originator is affiliated becomes inactive or terminates.

3223 (b) A principal lending manager's license automatically becomes inactive the day on
3224 which:

3225 (i) the principal lending manager is not sponsored by an entity licensed under this
3226 chapter; or

3227 (ii) the license of the entity with which the principal lending manager is sponsored
3228 becomes inactive or terminates.

3229 (c) A entity licensed under this chapter automatically becomes inactive the day on
3230 which the entity's sponsorship with its principal lending manager terminates.

3231 (3) (a) A person whose license is inactive may not transact the business of residential
3232 mortgage loans.

3233 (b) To activate an inactive mortgage loan originator license, an individual shall:

3234 (i) provide evidence that the individual:

3235 (A) is sponsored by an entity that holds an active license under this chapter; and

3236 (B) is affiliated with a principal lending manager who holds an active license under
3237 this chapter; and

3238 (ii) pay a fee to the division set in accordance with Section 63J-1-504.

3239 (c) To activate an inactive principal lending manager license, an individual shall:

3240 (i) provide evidence that the individual is sponsored by an entity that holds an active
3241 license under this chapter; and

3242 (ii) pay a fee to the division set in accordance with Section 63J-1-504.

3243 (d) To activate an inactive license held by an entity, an entity shall:

3244 (i) provide evidence of the entity's sponsorship of a principal lending manager; and

3245 (ii) pay a fee to the division set in accordance with Section 63J-1-504.

3246 (4) (a) A mortgage loan originator shall conduct the business of residential mortgage
3247 loans only:

3248 (i) through the principal lending manager with whom the individual is affiliated; and

3249 (ii) in the business name under which the principal lending manager is authorized by

3250 the division to do business.

3251 (b) An individual licensed under this chapter may not:

3252 (i) engage in the business of residential mortgage loans on behalf of more than one

3253 entity at the same time;

3254 (ii) be sponsored by more than one entity at the same time;

3255 (iii) transact the business of residential mortgage loans for the following at the same

3256 time:

3257 (A) an entity licensed under this chapter; and

3258 (B) an entity that is exempt from licensure under Section 61-2c-105; or

3259 (iv) if the individual is a mortgage loan originator, receive consideration for

3260 transacting the business of residential mortgage loans from any person except the principal

3261 lending manager with whom the mortgage loan originator is affiliated.

3262 (c) This Subsection (4) does not restrict the number of:

3263 (i) different lenders a person may use as a funding source for a residential mortgage

3264 loan; or

3265 (ii) entities in which an individual may have an ownership interest, regardless of

3266 whether the entities are:

3267 (A) licensed under this chapter; or

3268 (B) exempt under Section 61-2c-105.

3269 (5) The division by rule made in accordance with Title 63G, Chapter 3, Utah

3270 Administrative Rulemaking Act, may make rules that:

3271 (a) define what constitutes:

3272 (i) affiliation; or

3273 (ii) sponsorship; and

3274 (b) provide procedures by which:

3275 (i) an individual who is licensed under this chapter may provide evidence of

3276 sponsorship by an entity that is licensed under this chapter;

3277 (ii) a mortgage loan originator may provide evidence of affiliation with a principal

3278 lending manager; and

3279 (iii) an entity licensed under this chapter may:

3280 (A) provide evidence of its sponsorship of a principal lending manager;

3281 (B) identify at least one control person for the entity; and

3282 (C) provide a list of the one or more mortgage loan originators that the entity sponsors.

3283 Section 57. Section **61-2c-301** is amended to read:

3284 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

3285 (1) A person transacting the business of residential mortgage loans in this state may

3286 not:

3287 (a) give or receive compensation or anything of value in exchange for a referral of

3288 residential mortgage loan business;

3289 (b) charge a fee in connection with a residential mortgage loan transaction:

3290 (i) that is excessive; or

3291 (ii) if the person does not comply with Section 70D-2-305;

3292 (c) give or receive compensation or anything of value in exchange for a referral of

3293 settlement or loan closing services related to a residential mortgage loan transaction;

3294 (d) do any of the following to induce a lender to extend credit as part of a residential

3295 mortgage loan transaction:

3296 (i) make a false statement or representation;

3297 (ii) cause false documents to be generated; or

3298 (iii) knowingly permit false information to be submitted by any party;

3299 (e) give or receive compensation or anything of value, or withhold or threaten to

3300 withhold payment of an appraiser fee, to influence the independent judgment of an appraiser

3301 in reaching a value conclusion in a residential mortgage loan transaction, except that it is not a

3302 violation of this section for a licensee to withhold payment because of a bona fide dispute

3303 regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards

3304 of Professional Appraisal Practice;

3305 (f) violate or not comply with:

- 3306 (i) this chapter;
- 3307 (ii) an order of the commission or division; or
- 3308 (iii) a rule made by the division;
- 3309 (g) fail to respond within the required time period to:
- 3310 (i) a notice or complaint of the division; or
- 3311 (ii) a request for information from the division;
- 3312 (h) make false representations to the division, including in a licensure statement;
- 3313 (i) for a residential mortgage loan transaction beginning on or after January 1, 2004,
- 3314 engage in the business of residential mortgage loans with respect to the transaction if the
- 3315 person also acts in any of the following capacities with respect to the same residential
- 3316 mortgage loan transaction:
- 3317 (i) appraiser;
- 3318 (ii) escrow agent;
- 3319 (iii) real estate agent;
- 3320 (iv) general contractor; or
- 3321 (v) title insurance ~~[agent]~~ producer;
- 3322 (j) order a title insurance report or hold a title insurance policy unless the person
- 3323 provides to the title insurer a copy of a valid, current license under this chapter;
- 3324 (k) engage in unprofessional conduct as defined by rule;
- 3325 (l) engage in an act or omission in transacting the business of residential mortgage
- 3326 loans that constitutes dishonesty, fraud, or misrepresentation;
- 3327 (m) engage in false or misleading advertising;
- 3328 (n) (i) fail to account for ~~[monies]~~ money received in connection with a residential
- 3329 mortgage loan;
- 3330 (ii) use ~~[monies]~~ money for a different purpose from the purpose for which the
- 3331 ~~[monies are]~~ money is received; or
- 3332 (iii) except as provided in Subsection (4), retain ~~[monies]~~ money paid for services if
- 3333 the services are not performed;

- 3334 (o) fail, within 90 calendar days of a request from a borrower who has paid for an
3335 appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;
- 3336 (p) engage in an act that is performed to:
- 3337 (i) evade this chapter; or
- 3338 (ii) assist another person to evade this chapter;
- 3339 (q) recommend or encourage default, delinquency, or continuation of an existing
3340 default or delinquency, by a mortgage applicant on an existing indebtedness before the closing
3341 of a residential mortgage loan that will refinance all or part of the indebtedness;
- 3342 (r) in the case of the principal lending manager of an entity or a branch office of an
3343 entity, fail to exercise reasonable supervision over the activities of:
- 3344 (i) unlicensed staff; and
- 3345 (ii) a mortgage ~~officer~~ loan originator who is ~~licensed~~ affiliated with the principal
3346 lending manager;
- 3347 (s) pay or offer to pay an individual who does not hold a license under this chapter for
3348 work that requires the individual to hold a license under this chapter;
- 3349 (t) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
- 3350 (i) provide a title insurance product or service without the approval required by
3351 Section 31A-2-405; or
- 3352 (ii) knowingly provide false or misleading information in the statement required by
3353 Subsection 31A-2-405(2); or
- 3354 (u) represent to the public that the person can or will perform any act of a mortgage
3355 loan originator if that person is not licensed under this chapter because the person is exempt
3356 under Subsection 61-2c-102(1)(f)(ii)(A), including through:
- 3357 (i) advertising;
- 3358 (ii) a business card;
- 3359 (iii) ~~stationary~~ stationery;
- 3360 (iv) a brochure;
- 3361 (v) a sign;

- 3362 (vi) a rate list; or
- 3363 (vii) other promotional item.
- 3364 (2) Whether or not the crime is related to the business of residential mortgage loans, it
- 3365 is a violation of this chapter for a licensee or a person who is a certified education provider to
- 3366 do any of the following with respect to a criminal offense that involves moral turpitude:
- 3367 (a) be convicted;
- 3368 (b) plead guilty or nolo contendere;
- 3369 (c) enter a plea in abeyance; or
- 3370 (d) be subjected to a criminal disposition similar to the ones described in Subsections
- 3371 (2)(a) through (c).
- 3372 (3) A principal lending manager does not violate Subsection (1)(r) if:
- 3373 (a) in contravention of the principal lending manager's written policies and
- 3374 instructions, an affiliated licensee of the principal lending manager violates:
- 3375 (i) this chapter; or
- 3376 (ii) rules made by the division under this chapter;
- 3377 (b) the principal lending manager established and followed reasonable procedures to
- 3378 ensure that affiliated licensees receive adequate supervision;
- 3379 (c) upon learning of a violation by an affiliated licensee, the principal lending manager
- 3380 attempted to prevent or mitigate the damage;
- 3381 (d) the principal lending manager did not participate in or ratify the violation by an
- 3382 affiliated licensee; and
- 3383 (e) the principal lending manager did not attempt to avoid learning of the violation.
- 3384 (4) Notwithstanding Subsection (1)(n)(iii), a licensee may, upon compliance with
- 3385 Section 70D-2-305, charge a reasonable cancellation fee for work done originating a mortgage
- 3386 if the mortgage is not closed.
- 3387 Section 58. Section **61-2c-302** is amended to read:
- 3388 **61-2c-302. Record requirements.**
- 3389 (1) For the time period specified in Subsection (2), a licensee shall make or possess

3390 any record required for that licensee by a rule made by the division.

3391 (2) A licensee shall maintain in its possession a record described in Subsection (1) for
3392 four years from the last to occur of the following:

3393 (a) the final entry on a residential mortgage loan is made by that licensee;

3394 (b) if the residential mortgage loan is serviced by the licensee:

3395 (i) the residential mortgage loan is paid in full; or

3396 (ii) the licensee ceases to service the residential mortgage loan; or

3397 (c) if the residential mortgage loan is not serviced by the licensee, the residential
3398 mortgage loan is closed.

3399 (3) A licensee shall:

3400 (a) make available to the division for inspection and copying during normal business
3401 hours all records required to be maintained under this chapter; and

3402 (b) upon reasonable notice from the division to a licensee, produce all records
3403 described in Subsection (3)(a) that are related to an investigation being conducted by the
3404 division at the division office for inspection and copying by the division.

3405 (4) A licensee who is an entity shall maintain and produce for inspection by the
3406 division a current list of all individuals whose licenses are ~~[affiliated with]~~ sponsored by the
3407 entity.

3408 (5) (a) A licensee who engages in an activity as a mortgage loan originator shall
3409 maintain ~~[and produce for inspection by the division]~~ a report of condition submitted to the
3410 nationwide database as required by 12 U.S.C. Sec. 5104(e) for at least four years from the day
3411 on which the licensee submits the report of condition to the nationwide database.

3412 (b) Upon request by the division, a mortgage loan originator shall produce a report of
3413 condition for inspection by the division.

3414 Section 59. Section **61-2c-401** is amended to read:

3415 **61-2c-401. Investigations.**

3416 (1) The division may investigate or cause to be investigated the actions of:

3417 (a) (i) a licensee;

- 3418 (ii) a person required to be licensed under this chapter; or
- 3419 (iii) the following with respect to an entity that is a licensee or an entity required to be
- 3420 licensed under this chapter:
 - 3421 (A) a manager;
 - 3422 (B) a managing partner;
 - 3423 (C) a director;
 - 3424 (D) an executive officer; or
 - 3425 (E) an individual who performs a function similar to an individual listed in this
 - 3426 Subsection (1)(a)(iii);
- 3427 (b) (i) an applicant for licensure or renewal of licensure under this chapter; or
- 3428 (ii) the following with respect to an entity that has applied for a license or renewal of
- 3429 licensure under this chapter:
 - 3430 (A) a manager;
 - 3431 (B) a managing partner;
 - 3432 (C) a director;
 - 3433 (D) an executive officer; or
 - 3434 (E) an individual who performs a function similar to an individual listed in this
 - 3435 Subsection (1)(b)(ii); or
- 3436 (c) ~~[any individual or entity that]~~ a person who transacts the business of residential
- 3437 mortgage loans within this state.
- 3438 (2) In conducting investigations, records inspections, and adjudicative proceedings,
- 3439 the division may:
 - 3440 (a) administer an oath or affirmation;
 - 3441 (b) subpoena witnesses and evidence;
 - 3442 (c) take evidence;
 - 3443 (d) require the production of [~~books, papers, contracts, records, other documents,~~] a
 - 3444 record or information relevant to an investigation; and
 - 3445 (e) serve a subpoena by certified mail.

3446 (3) A failure to respond to a request by the division in an investigation authorized
3447 under this chapter is considered as a separate violation of this chapter, including:

- 3448 (a) failing to respond to a subpoena;
- 3449 (b) withholding evidence; or
- 3450 (c) failing to produce [~~documents or records~~] a record.

3451 (4) The division may inspect and copy [~~all records~~] a record related to the business of
3452 residential mortgage loans by a licensee under this chapter, regardless of whether the [~~records~~
3453 ~~are~~] record is maintained at a business location in Utah, in conducting:

- 3454 (a) investigations of complaints; or
- 3455 (b) inspections of the [~~records~~] record required to be maintained under:
 - 3456 (i) this chapter; or
 - 3457 (ii) rules adopted by the division under this chapter.

3458 (5) (a) If a licensee maintains [~~the records~~] a record required by this chapter and the
3459 rules adopted by the division under this chapter outside Utah, the licensee is responsible for all
3460 reasonable costs, including reasonable travel costs, incurred by the division in inspecting
3461 [~~those records~~] the record.

3462 (b) Upon receipt of notification from the division that [~~records~~] a record maintained
3463 outside Utah [~~are~~] is to be examined in connection with an investigation or an examination,
3464 the licensee shall deposit with the division a deposit of \$500 to cover the division's expenses
3465 in connection with the examination of the [~~records~~] record.

3466 (c) If the deposit described in Subsection (5)(b) is insufficient to meet the estimated
3467 costs and expenses of examination of the [~~records~~] record, the licensee shall make an
3468 additional deposit to cover the estimated costs and expenses of the division.

3469 (d) (i) [~~All deposits~~] A deposit under this Subsection (5) shall be deposited in the
3470 General Fund as a dedicated credit to be used by the division under Subsection (5)(a).

3471 (ii) The division, with the concurrence of the executive director, may use [~~the deposit~~
3472 ~~monies deposited in the General Fund under this Subsection (5)(d)~~] a deposit as a dedicated
3473 credit for the records inspection costs under Subsection (5)(a).

3474 (iii) A deposit under this Subsection (5) shall be refunded to the licensee to the extent
3475 it is not used, together with an itemized statement from the division of all amounts it has used.

3476 (e) ~~[All deposits]~~ A deposit under this Subsection (5) ~~[shall be]~~ is nonlapsing.

3477 (6) Failure to deposit with the division a deposit required to cover the costs of
3478 examination of ~~[records]~~ a record that ~~[are]~~ is maintained outside Utah shall result in
3479 automatic suspension of a license until the deposit is made.

3480 (7) (a) If a person is found to have violated this chapter or a rule made under this
3481 chapter, the person shall pay the costs incurred by the division to copy a record required under
3482 this chapter, including the costs incurred to copy an electronic record in a universally readable
3483 format.

3484 (b) If a person fails to pay the costs described in Subsection (7)(a) when due, the
3485 person's license or certification is automatically suspended:

3486 (i) beginning the day on which the payment of costs is due; and

3487 (ii) ending the day on which the costs are paid.

3488 Section 60. Section **61-2c-402** is amended to read:

3489 **61-2c-402. Disciplinary action.**

3490 (1) Subject to the requirements of Section 61-2c-402.1, the commission, with the
3491 concurrence of the division, may impose a sanction described in Subsection (2) against a
3492 person if the person:

3493 (a) (i) is a licensee or person required to be licensed under this chapter; and

3494 (ii) violates this chapter; or

3495 (b) (i) is a certified education provider or person required to be certified to provide
3496 prelicensing or continuing education under this chapter; and

3497 (ii) violates this chapter.

3498 (2) The commission, with the concurrence of the director, may against a person
3499 described in Subsection (1):

3500 (a) impose an educational requirement;

3501 (b) impose a civil penalty against the individual or entity in an amount not to exceed

- 3502 the greater of:
- 3503 (i) [~~\$2,500~~] \$5,000 for each violation; or
 - 3504 (ii) the amount equal to any gain or economic benefit derived from each violation;
 - 3505 (c) deny an application for an original license;
 - 3506 (d) do any of the following to a license under this chapter:
 - 3507 (i) suspend;
 - 3508 (ii) revoke;
 - 3509 (iii) place on probation;
 - 3510 (iv) deny renewal;
 - 3511 (v) deny reinstatement; or
 - 3512 (vi) in the case of a denial [~~or revocation~~] of a license or a suspension that extends to
 - 3513 the expiration date of a license, set a waiting period for a person to apply for a license under
 - 3514 this chapter;
 - 3515 (e) issue a cease and desist order;
 - 3516 (f) require the reimbursement of the division of costs incurred by the division related
 - 3517 to the recovery, storage, or destruction of a record that the person disposes of in a manner that
 - 3518 violates this chapter or a rule made under this chapter;
 - 3519 (g) modify a sanction described in Subsections (2)(a) through (f) if the commission
 - 3520 finds that the person complies with court ordered restitution; or
 - 3521 (h) impose any combination of sanctions described in this Subsection (2).
 - 3522 (3) (a) If the commission, with the concurrence of the division, issues an order that
 - 3523 orders a fine or educational requirements as part of a disciplinary action against a person,
 - 3524 including a stipulation and order, the commission shall state in the order the deadline by
 - 3525 which the person shall comply with the fine or educational requirements.
 - 3526 (b) If a person fails to comply with a stated deadline:
 - 3527 (i) the person's license or certificate is automatically suspended:
 - 3528 (A) beginning the day specified in the order as the deadline for compliance; and
 - 3529 (B) ending the day on which the person complies in full with the order; and

3530 (ii) if the person fails to pay a fine required by an order, the division may begin a
3531 collection process:

3532 (A) established by the division by rule made in accordance with Title 63G, Chapter 3,
3533 Utah Administrative Rulemaking Act; and

3534 (B) subject to Title 63A, Chapter 8, Office of State Debt Collection.

3535 (4) (a) A person whose license was revoked under this chapter before May 11, 2010,
3536 may request that the revocation be converted to a suspension under this Subsection (4):

3537 (i) if the revocation was not as a result of fraud, misrepresentation, or deceit; and
3538 (ii) by filing a written request with the division.

3539 (b) Upon receipt of a request to convert a revocation under this Subsection (4), the
3540 commission, with the concurrence of the director, shall determine whether to convert the
3541 revocation.

3542 (c) The commission may delegate to the division the authority to make a decision on
3543 whether to convert a revocation.

3544 (d) If the division, acting under Subsection (4)(c), denies a request to convert a
3545 revocation, the person who requests the conversion may appeal the decision in a hearing
3546 conducted by the commission:

3547 (i) after the division denies the request to convert the revocation; and
3548 (ii) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

3549 (e) The commission may delegate to the division or an administrative law judge the
3550 authority to conduct a hearing described in Subsection (4)(d).

3551 Section 61. Section **61-2c-404** is amended to read:

3552 **61-2c-404. Civil actions.**

3553 (1) (a) A person who violates this chapter is liable for an additional penalty, as
3554 determined by the court, of at least the amount the person received in consequence of a
3555 violation of this chapter as:

3556 (i) commission;

3557 (ii) compensation; or

3558 (iii) profit.

3559 (b) A person aggrieved by a violation of this chapter may:

3560 (i) bring an action for a penalty described in Subsection (1)(a); and

3561 (ii) use a penalty obtained under Subsection (1)(a) for the person's own use and
3562 benefit.

3563 (2) A person who is not licensed under this chapter at the time of an act or service that
3564 requires a license under this chapter may not bring an action in court for the recovery of a
3565 commission, fee, or compensation for that act or service.

3566 (3) (a) A mortgage ~~[officer]~~ loan originator may not bring an action in the mortgage
3567 ~~[officer's]~~ loan originator's own name for the recovery of a fee, commission, or compensation
3568 for transacting the business of residential mortgage loans unless the action is brought against
3569 the principal lending manager with whom the mortgage ~~[officer]~~ loan originator is licensed at
3570 the time of the act or service that is the subject of the action.

3571 (b) An action by an entity for the recovery of a fee, commission, or other
3572 compensation shall be brought by:

3573 (i) an entity; or

3574 (ii) the principal lending manager of an entity on behalf of the entity.

3575 (4) A principal lending manager who transacts the business of residential mortgage
3576 loans on the principal lending manager's own behalf may sue in the principal lending
3577 manager's own name for the recovery of a fee, commission, or compensation for transacting
3578 the business of residential mortgage loans.

3579 Section 62. Section **61-2c-501** is amended to read:

3580 **61-2c-501. Fund created.**

3581 (1) ~~[(a)]~~ There is created a restricted special revenue fund known as the "Residential
3582 Mortgage Loan Education, Research, and Recovery Fund."

3583 ~~[(b) As used in this part, "fund" means the Residential Mortgage Loan Education,
3584 Research, and Recovery Fund.]~~

3585 (2) The interest earned on the fund shall be deposited into the fund.

3586 (3) ~~(a)~~ At the beginning of each [state] fiscal year, the division shall make available
 3587 \$100,000 ~~[shall remain available]~~ in the fund to satisfy final judgments rendered against a
 3588 person licensed under this chapter.

3589 ~~[(b) For purposes of this part, a "judgment" includes a criminal restitution judgment.]~~

3590 Section 63. Section **61-2c-501.5** is enacted to read:

3591 **61-2c-501.5. Definitions.**

3592 As used in this part:

3593 (1) "Civil judgment" means a judgment in a civil action that:

3594 (a) is awarded in an action brought against a real estate licensee on the basis of fraud,
 3595 misrepresentation, or deceit in a residential mortgage loan transaction; and

3596 (b) awards actual damages.

3597 (2) "Criminal restitution judgment" means a judgment that, in accordance with the
 3598 Utah Code of Criminal Procedure, orders criminal restitution to a person and against a real
 3599 estate licensee for a criminal offense involving fraud, misrepresentation, or deceit in a
 3600 residential mortgage loan transaction.

3601 (3) "Final judgment" means one of the following judgments upon termination of the
 3602 proceedings related to the judgment, including appeals:

3603 (a) a civil judgment; or

3604 (b) a criminal restitution judgment.

3605 (4) "Fund" means the Residential Mortgage Loan Education, Research, and Recovery
 3606 Fund created in Section 61-2c-501.

3607 Section 64. Section **61-2c-502** is amended to read:

3608 **61-2c-502. Additional license fee.**

3609 (1) An individual who applies for or renews a license shall pay, in addition to ~~[the~~
 3610 ~~application or renewal fee]~~ any other fee required under this chapter, a reasonable annual fee:

3611 (a) determined by the division with the concurrence of the commission; and

3612 (b) not to exceed \$18.

3613 (2) (a) An entity that applies for or renews an entity license shall pay, in addition to

3614 ~~[the application or renewal fee]~~ any other fee required under this chapter, a reasonable annual
3615 fee:

3616 ~~[(a)]~~ (i) determined by the division with the concurrence of the commission; and

3617 ~~[(b)]~~ (ii) not to exceed \$25.

3618 (b) This Subsection (2) applies:

3619 (i) notwithstanding that an entity is operating under an assumed name registered with
3620 the division as required by Subsection 61-2c-201(9); and

3621 (ii) to each branch office of an entity that is licensed under this chapter.

3622 (3) Notwithstanding Section 13-1-2, the following shall be paid into the fund to be
3623 used as provided in this part:

3624 (a) a fee provided in this section;

3625 (b) a fee for certifying:

3626 (i) a school as a certified education provider;

3627 (ii) a prelicensing or continuing education course; or

3628 (iii) a prelicensing or continuing education provider as an instructor; and

3629 (c) a civil penalty imposed under this chapter.

3630 (4) If the balance in the fund that is available to satisfy a judgment against a licensee
3631 decreases to less than \$100,000, the division may make an additional assessment to a licensee
3632 to maintain the balance available at \$100,000 to satisfy judgments.

3633 Section 65. Section **61-2c-503** is amended to read:

3634 **61-2c-503. Notice to division -- Judgment against mortgage licensee -- Fraud,**
3635 **misrepresentation, or deceit -- Verified petition for order directing payment from fund --**
3636 **Limitations and procedure.**

3637 (1) ~~[(a) Subject to Subsection (6), a]~~ A person may bring a claim against the fund if
3638 ~~[the person sends a signed notification to the division at the time the person files an action: (i)~~
3639 ~~against a licensee; and (ii)]:~~

3640 (a) the person obtains a final judgment;

3641 (b) the person complies with the requirements under this part;

3642 (c) the person is not complicit in the fraud, misrepresentation, or deceit that is the
3643 basis of the claim; and

3644 (d) the final judgment that is the basis for the claim:

3645 (i) has not been discharged in bankruptcy; and

3646 (ii) when a bankruptcy proceeding is open or commenced during the pendency of the
3647 claim, the person obtains an order from the bankruptcy court declaring the final judgment and
3648 related debt to be nondischargeable.

3649 (2) (a) A person may not bring a claim against the fund for money owed under a civil
3650 judgment unless, within 10 business days of the day on which the person brings the civil
3651 action that results in the civil judgment, the person sends to the division a signed notification
3652 alleging fraud, misrepresentation, or deceit.

3653 (b) Within 30 calendar days [of receipt of the notice described in Subsection (1)(a),]
3654 of the day on which the division receives a notice under Subsection (1), the division may
3655 intervene in the action.

3656 [~~(c) If a person making a claim against the fund obtains a final judgment in a court of~~
3657 ~~competent jurisdiction in Utah against a licensee based on fraud, misrepresentation, or deceit~~
3658 ~~in a residential mortgage loan transaction, the person making the claim may, upon termination~~
3659 ~~of all proceedings including appeals,]~~

3660 (3) (a) After obtaining a final judgment, to file a claim against the fund, a person shall:

3661 (i) file a verified petition in the court where the final judgment [~~was~~] is entered [~~for~~]
3662 seeking an order directing payment from the fund [~~for~~] of an amount equal to the uncollected
3663 actual damages [~~included in the judgment.~~] owed under the final judgment that are unpaid;

3664 (ii) serve a copy of the verified petition described in Subsection (3)(a)(i) on the
3665 division; and

3666 (iii) file a copy of the affidavit of service of the verified petition with the court.

3667 [~~(d)~~] (b) A recovery from the fund may not include:

3668 (i) punitive damages[;];

3669 (ii) attorney fees;

3670 (iii) interest[;]; or

3671 (iv) court costs.

3672 ~~[(e)]~~ (c) Regardless of the number of claimants or number of loans involved in a
3673 transaction, the liability of the fund may not exceed:

3674 (i) \$15,000 for a single transaction;

3675 (ii) \$45,000 for an individual licensee; or

3676 (iii) \$45,000 for an entity.

3677 ~~[(2) A person making a claim against the fund shall:]~~

3678 ~~[(a) serve a copy of the petition on the division; and]~~

3679 ~~[(b) file a copy of the affidavit of the service of the petition described in Subsection~~
3680 ~~(2)(a) with the court.]~~

3681 ~~[(3)(a) The]~~ (4) A court shall conduct a hearing on ~~[the]~~ a petition ~~[within 30~~
3682 ~~calendar days after service]~~ filed under Subsection (3) as scheduled by the court.

3683 ~~[(b) The petitioner shall recover from the fund only if the petitioner shows:]~~

3684 ~~[(i) that the petitioner is not:]~~

3685 (5) Subject to Subsection (6), a court may order payment from the fund under this
3686 section only if the person who files the petition shows that the person:

3687 (a) is not:

3688 ~~[(A)]~~ (i) in the case of a civil judgment, the spouse of the judgment debtor; ~~[or]~~

3689 (ii) in the case of a criminal judgment, the spouse of the criminal defendant; or

3690 ~~[(B) the]~~ (iii) a personal representative of [the spouse of the judgment debtor] an
3691 individual described in Subsection (5)(a)(i) or (ii);

3692 ~~[(ii) that the petitioner]~~ (b) has complied with this chapter;

3693 ~~[(iii) that the petitioner has obtained]~~

3694 (c) is owed damages under a final judgment that:

3695 (i) is issued by the court in the manner prescribed under this section~~[- indicating]; and~~

3696 (ii) indicates the amount of the final judgment awarded;

3697 ~~[(iv) that the petitioner]~~

3698 (d) has proved the amount still owing on the final judgment [~~at the date of~~] on the day
 3699 on which the petition is filed;

3700 [~~(v) (A) that:~~]

3701 [~~(f) the petitioner~~]

3702 (e) (i) (A) has a writ of execution issued upon the final judgment; and

3703 [~~(H) (B) has received a return made by~~ the officer executing the writ [~~has made a~~
 3704 ~~return~~] showing that no property subject to execution in satisfaction of the final judgment
 3705 could be found; [~~and~~] or

3706 [~~(B) (ii) if execution is levied against the property of the judgment debtor~~[-~~that~~] or
 3707 criminal defendant:

3708 [~~(f) the amount realized was insufficient~~]

3709 (A) has not realized an amount sufficient to satisfy the final judgment; and

3710 [~~(H) (B) is owed a balance~~ [~~remains~~] on the final judgment after application of the
 3711 amount realized; [~~and~~]

3712 [~~(vi) that the petitioner has:~~]

3713 [~~(A) (f) has~~ made reasonable searches and inquiries to ascertain whether the judgment
 3714 debtor or criminal defendant has any interest in property, real or personal, that may satisfy the
 3715 final judgment; and

3716 [~~(B) (g) has~~ exercised reasonable diligence to secure payment of the final judgment
 3717 from the assets of the judgment debtor or criminal defendant.

3718 [~~(4) If the petitioner~~] (6) If a person satisfies the court that it is not practicable for the
 3719 [~~petitioner~~] person to comply with one or more of the requirements in Subsections [~~(3)(b)(v)~~
 3720 ~~and (3)(b)(vi)~~] (5)(e) through (g), the court may waive those requirements.

3721 [~~(5) (a) A judgment that is the basis for a claim against the fund may not have been~~
 3722 ~~discharged in bankruptcy.~~]

3723 [~~(b) In the case of a bankruptcy proceeding that is open or that is commenced during~~
 3724 ~~the pendency of the claim, the claimant shall, prior to obtaining a claim against the fund,~~
 3725 ~~obtain an order from the bankruptcy court declaring the judgment and debt to be~~

3726 nondischargeable.]

3727 ~~[(6) A person may not bring a claim against the fund if the person is substantially~~
3728 ~~complicit in the fraud, misrepresentation, or deceit that is the basis of the claim.]~~

3729 Section 66. Section **61-2c-505** is amended to read:

3730 **61-2c-505. Court determination and order.**

3731 If the court determines that a claim should be levied against the portion of the fund
3732 allocated to carry out ~~[the provisions of]~~ this chapter, the court shall enter an order requiring
3733 the division to pay from the fund the portion of ~~[the petitioner's]~~ a final judgment that is
3734 payable from the fund under Section 61-2c-503.

3735 Section 67. Section **61-2c-507** is amended to read:

3736 **61-2c-507. Division subrogated -- Authority to revoke license.**

3737 (1) If the division pays a ~~[judgment creditor]~~ a person from the fund in accordance
3738 with this part:

3739 (a) the division is subrogated to the rights of ~~[the judgment creditor]~~ that person for
3740 the amounts paid out of the fund; and

3741 (b) any amount and interest recovered by the division shall be deposited in the fund.

3742 (2) (a) Subject to Subsection (2)(b), the license of a licensee for whom payment from
3743 the fund is made under this part is automatically revoked as of the earlier of the day on which:

3744 (i) the division is ordered by a court to pay from the fund; or

3745 (ii) the division pays from the fund.

3746 (b) (i) A person whose license is revoked under Subsection (2)(a) may appeal the
3747 revocation in a hearing conducted by the commission:

3748 (A) after the revocation; and

3749 (B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

3750 (ii) The commission may delegate:

3751 (A) to the division or an administrative law judge the authority to conduct a hearing
3752 described in Subsection (2)(b)(i); or

3753 (B) to the division the authority to make a decision on whether relief from a revocation

3754 should be granted.

3755 (3) Unless the revocation is not upheld after a hearing described in Subsection (2)(b),
3756 a licensee whose license is revoked pursuant to Subsection (2) may not apply for a new license
3757 until the licensee pays into the fund:

- 3758 (a) the amount paid out of the fund on behalf of the licensee; and
- 3759 (b) interest at a rate determined by the division with the concurrence of the
3760 commission.

3761 Section 68. Section **61-2f-101** is enacted to read:

CHAPTER 2f. REAL ESTATE LICENSING AND PRACTICES ACT

Part 1. General Provisions

61-2f-101. Title.

This chapter is known as the "Real Estate Licensing and Practices Act."

3766 Section 69. Section **61-2f-102**, which is renumbered from Section 61-2-2 is
3767 renumbered and amended to read:

[61-2-2]. 61-2f-102. Definitions.

As used in this chapter:

3770 (1) "Associate [~~real estate broker~~ and "~~associate~~] broker" means [~~any person~~] an
3771 individual who is:

3772 (a) employed or engaged as an independent contractor by or on behalf of a [~~licensed~~
3773 principal [~~real estate~~] broker to perform [~~any~~] an act set out in Subsection [~~(12)~~] (14) for
3774 valuable consideration[~~, who has qualified~~]; and

3775 (b) licensed under this chapter as [~~a principal real estate~~] an associate broker.

3776 (2) "Branch office" means a principal broker's real estate brokerage office [~~other than~~]
3777 that is not the principal broker's main office.

3778 (3) "Commission" means the Real Estate Commission established under this chapter.

3779 (4) "Concurrence" means the entities given a concurring role must jointly agree for
3780 action to be taken.

3781 (5) "Condominium[~~" or "condominium~~] unit" is as defined in Section 57-8-3.

3782 (6) "Condominium homeowners' association" means ~~[all of]~~ the condominium unit
3783 owners acting as a group in accordance with declarations and bylaws.

3784 (7) (a) "Condominium hotel" means one or more condominium units that are operated
3785 as a hotel.

3786 (b) "Condominium hotel" does not mean a hotel consisting of condominium units, all
3787 of which are owned by a single entity.

3788 (8) "Director" means the director of the Division of Real Estate.

3789 (9) "Division" means the Division of Real Estate.

3790 (10) "Entity" means:

3791 (a) a corporation;

3792 (b) a partnership;

3793 (c) a limited liability company;

3794 (d) a company;

3795 (e) an association;

3796 (f) a joint venture;

3797 (g) a business trust;

3798 (h) a trust; or

3799 (i) any organization similar to an entity described in Subsections (10)(a) through (h).

3800 ~~[(10)]~~ (11) "Executive director" means the director of the Department of Commerce.

3801 ~~[(11)]~~ (12) "Main office" means the address which a principal broker designates with
3802 the division as the principal broker's primary brokerage office.

3803 (13) "Person" means an individual or entity.

3804 ~~[(12)]~~ (14) "Principal ~~[real estate broker]~~ and ~~[principal]~~ broker" means ~~[any person]~~
3805 an individual who:

3806 (a) (i) ~~[who]~~ sells or lists real estate for sale~~;~~ with the expectation of receiving
3807 valuable consideration;

3808 (ii) buys, exchanges, or auctions real estate, options on real estate, or improvements on
3809 real estate with the expectation of receiving valuable consideration; or

3810 ~~[(ii)]~~ (iii) who advertises, offers, attempts, or otherwise holds ~~[himself]~~ the individual
3811 out to be engaged in the business described in Subsection ~~[(12)(a)(i)]~~ (14)(a)(i) or (ii);

3812 (b) is employed by or on behalf of the owner of real estate or by a prospective
3813 purchaser of real estate ~~[who performs any of the acts]~~ and performs an act described in
3814 Subsection ~~[(12)]~~ (14)(a), whether the ~~[person's]~~ individual's compensation is at a stated
3815 salary, a commission basis, upon a salary and commission basis, or otherwise;

3816 (c) ~~[who,]~~ (i) with the expectation of receiving valuable consideration, manages
3817 property owned by another person; or ~~[who]~~

3818 (ii) advertises or otherwise holds ~~[himself]~~ the individual out to be engaged in property
3819 management;

3820 (d) ~~[who,]~~ with the expectation of receiving valuable consideration, assists or directs
3821 in the procurement of prospects for or the negotiation of ~~[the transactions]~~ a transaction listed
3822 in Subsections ~~[(12)]~~ (14)(a) and (c); ~~[and]~~

3823 (e) except for ~~[mortgage lenders, title insurance agents, and their employees, who]~~ a
3824 mortgage lender, title insurance producer, or an employee of a mortgage lender or title
3825 insurance producer, assists or directs in the closing of ~~[any]~~ a real estate transaction with the
3826 expectation of receiving valuable consideration~~[-]; and~~

3827 (f) is licensed as a principal broker under this chapter.

3828 ~~[(13)]~~ (15) (a) "Property management" means engaging in, with the expectation of
3829 receiving valuable consideration, the management of ~~[property]~~ real estate owned by another
3830 person or advertising or otherwise claiming to be engaged in property management by:

3831 (i) advertising for, arranging, negotiating, offering, or otherwise attempting or
3832 participating in a transaction calculated to secure the rental or leasing of real estate;

3833 (ii) collecting, agreeing, offering, or otherwise attempting to collect rent for the real
3834 estate and accounting for and disbursing the money collected; or

3835 (iii) authorizing expenditures for repairs to the real estate.

3836 (b) "Property management" does not include:

3837 (i) hotel or motel management;

3838 (ii) rental of tourist accommodations, including hotels, motels, tourist homes,
3839 condominiums, condominium hotels, mobile home park accommodations, campgrounds, or
3840 similar public accommodations for ~~[any]~~ a period of less than 30 consecutive days, and the
3841 management activities associated with these rentals; or

3842 (iii) the leasing or management of surface or subsurface minerals or oil and gas
3843 interests, if the leasing or management is separate from a sale or lease of the surface estate.

3844 ~~[(14)]~~ (16) "Real estate" includes leaseholds and business opportunities involving real
3845 property.

3846 ~~[(15) "Real estate sales agent" and "sales agent" mean any person affiliated with a
3847 licensed principal real estate broker, either as an independent contractor or an employee as
3848 provided in Section 61-2-25, to perform for valuable consideration any act set out in
3849 Subsection (12).]~~

3850 ~~[(16)]~~ (17) (a) "Regular salaried employee" means an individual who performs a
3851 service for wages or other remuneration, whose employer withholds federal employment taxes
3852 under a contract of hire, written or oral, express or implied.

3853 (b) "Regular salaried employee" does not include ~~[a person]~~ an individual who
3854 performs services on a project-by-project basis or on a commission basis.

3855 ~~[(17)]~~ (18) "Reinstatement" means restoring a license that has expired or has been
3856 suspended.

3857 ~~[(18)]~~ (19) "Reissuance" means the process by which a licensee may obtain a license
3858 following revocation of the license.

3859 ~~[(19)]~~ (20) "Renewal" means extending a license for an additional licensing period on
3860 or before the date the license expires.

3861 (21) "Sales agent" means an individual who is:

3862 (a) affiliated with a principal broker, either as an independent contractor or an
3863 employee as provided in Section 61-2f-303, to perform for valuable consideration an act
3864 described in Subsection (14); and

3865 (b) licensed under this chapter as a sales agent.

3866 [~~20~~] (22) (a) "Undivided fractionalized long-term estate" means an ownership
3867 interest in real property by two or more persons that is [a]:

- 3868 (i) a tenancy in common; or
- 3869 (ii) any other legal form of undivided estate in real property including:
 - 3870 (A) a fee estate;
 - 3871 (B) a life estate; or
 - 3872 (C) other long-term estate.
- 3873 (b) "Undivided fractionalized long-term estate" does not include a joint tenancy.

3874 Section 70. Section **61-2f-103**, which is renumbered from Section 61-2-5.5 is
3875 renumbered and amended to read:

3876 **[61-2-5.5]. 61-2f-103. Real Estate Commission.**

3877 (1) There is created within the division a Real Estate Commission. The commission
3878 shall:

3879 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
3880 make rules for the administration of this chapter that are not inconsistent with this chapter,
3881 including:

- 3882 (i) licensing of:
 - 3883 (A) a principal [~~brokers;~~] broker;
 - 3884 (B) an associate [~~brokers~~] broker; and
 - 3885 (C) a sales [~~agents~~] agent;
 - 3886 [~~(D) real estate companies; and~~]
- 3887 (ii) registration of:
 - 3888 (A) an entity; and
 - 3889 [~~(E)~~] (B) a branch [~~offices~~] office;
 - 3890 [~~(ii)~~] (iii) prelicensing and postlicensing education curricula;
 - 3891 [~~(iii)~~] (iv) examination procedures;
 - 3892 [~~(iv)~~] (v) the certification and conduct of:
 - 3893 (A) a real estate [~~schools~~] school;

3894 (B) a course [~~providers; and~~] provider; or
3895 [~~(C) instructors~~];
3896 (C) an instructor;
3897 [~~(v)~~] (vi) proper handling of [~~funds~~] money received by [~~real estate licensees~~] a
3898 licensee under this chapter;
3899 [~~(vi)~~] (vii) brokerage office procedures and recordkeeping requirements;
3900 [~~(vii)~~] (viii) property management;
3901 [~~(viii)~~] (ix) standards of conduct for [~~real estate licensees~~] a licensee under this
3902 chapter;
3903 [~~(ix) rules~~] (x) a rule made under Section [~~61-2-26~~] 61-2f-307 regarding an undivided
3904 fractionalized long-term estate; and
3905 [~~(x)~~] (xi) if the commission determines necessary, [~~rules~~] a rule as provided in
3906 Subsection [~~61-2-20~~] 61-2f-306(3) regarding a legal [~~forms~~] form;
3907 (b) establish, with the concurrence of the division, [~~all fees as~~] a fee provided for in
3908 this chapter [~~and Title 61, Chapter 2a, Real Estate Recovery Fund Act~~], except a fee imposed
3909 under Part 5, Real Estate Education, Research, and Recovery Fund Act;
3910 (c) conduct [~~an~~] an administrative [~~hearings~~] hearing not delegated by the commission
3911 to an administrative law judge or the division relating to the:
3912 (i) licensing of [~~any~~] an applicant;
3913 (ii) conduct of [~~any~~] a licensee;
3914 (iii) the certification or conduct of [~~any~~] a real estate school, course provider, or
3915 instructor regulated under this chapter; or
3916 (iv) violation of this chapter by any person;
3917 (d) with the concurrence of the director, impose [~~sanctions~~] a sanction as provided in
3918 Section [~~61-2-12~~] 61-2f-404;
3919 (e) advise the director on the administration and enforcement of [~~any matters~~] a matter
3920 affecting the division and the real estate sales and property management industries;
3921 (f) advise the director on matters affecting the division budget;

- 3922 (g) advise and assist the director in conducting real estate seminars; and
 3923 (h) perform other duties as provided by~~[(i)]~~ this chapter~~[, and]~~.
 3924 ~~[(ii) Title 61, Chapter 2a, Real Estate Recovery Fund Act.]~~
- 3925 (2) (a) The commission shall be comprised of five members appointed by the governor
 3926 and approved by the Senate.
- 3927 (b) Four of the commission members shall:
- 3928 (i) have at least five years' experience in the real estate business; and
 3929 (ii) hold an active principal broker, associate broker, or sales agent license.
- 3930 (c) One commission member shall be a member of the general public.
- 3931 (d) ~~[No more than one]~~ The governor may not appoint a commission member
 3932 described in Subsection (2)(b) ~~[shall]~~ who, at the time of appointment ~~[reside in any given]~~,
 3933 resides in the same county in the state as another commission member.
- 3934 (e) At least one commission member described in Subsection (2)(b) shall at the time of
 3935 an appointment reside in a county that is not a county of the first or second class.
- 3936 (3) (a) Except as required by Subsection (3)(b), as terms of current commission
 3937 members expire, the governor shall appoint each new member or reappointed member to a
 3938 four-year term ending June 30.
- 3939 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the
 3940 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
 3941 commission members are staggered so that approximately half of the commission is appointed
 3942 every two years.
- 3943 (c) Upon the expiration of the term of a member of the commission, the member of the
 3944 commission shall continue to hold office until a successor is appointed and qualified.
- 3945 (d) A commission member may not serve more than two consecutive terms.
- 3946 (e) Members of the commission shall annually select one member to serve as chair.
- 3947 (4) When a vacancy occurs in the membership for any reason, ~~[the replacement shall~~
 3948 be appointed] the governor, with the consent of the Senate, shall appoint a replacement for the
 3949 unexpired term.

3950 (5) (a) A member may not receive compensation or benefits for the member's services,
3951 but may receive per diem and expenses incurred in the performance of the member's official
3952 duties at the rates established by the Division of Finance under Sections 63A-3-106 and
3953 63A-3-107.

3954 (b) A member may decline to receive per diem and expenses for the member's service.

3955 (6) (a) The commission shall meet at least monthly.

3956 (b) The director may call additional meetings:

3957 (i) at the director's discretion;

3958 (ii) upon the request of the chair; or

3959 (iii) upon the written request of three or more commission members.

3960 (7) Three members of the commission constitute a quorum for the transaction of
3961 business.

3962 Section 71. Section **61-2f-104**, which is renumbered from Section 61-2-14 is
3963 renumbered and amended to read:

3964 ~~[61-2-14].~~ **61-2f-104. List of licensees, registrants, and certificate holders to**
3965 **be available.**

3966 ~~[The]~~ (1) Upon request, the division shall make available [at reasonable cost] a list of
3967 the names and addresses of [aH] the persons licensed, registered, or certified by it under this
3968 chapter either directly or through a third party.

3969 (2) A person who requests a list under Subsection (1) shall pay the costs incurred by
3970 the division to make the list available.

3971 Section 72. Section **61-2f-105** is enacted to read:

3972 **61-2f-105. Fees.**

3973 (1) In addition to when expressly authorized in another provision of this chapter, the
3974 division may charge and collect reasonable fees determined by the commission with the
3975 concurrence of the division under Section 63J-1-504 to cover the costs for:

3976 (a) issuing a new or duplicate license;

3977 (b) registering an entity or branch office;

- 3978 (c) certifying a real estate school, course, or instructor;
- 3979 (d) providing a history of a license, registration, or certification; and
- 3980 (e) producing a certified copy of an official document, order, or other paper or
- 3981 transcript; and
- 3982 (f) other duties required by this chapter.
- 3983 (2) Notwithstanding Section 13-1-2, a fee collected under Subsection (1)(c) shall be
- 3984 deposited in the Real Estate Education, Research, and Recovery Fund.
- 3985 (3) If a person pays a fee or costs to the division with a negotiable instrument and the
- 3986 negotiable instrument is not honored for payment:
- 3987 (a) the transaction for which the payment is submitted is voidable by the division;
- 3988 (b) the division may reverse the transaction if payment of the applicable fee or costs is
- 3989 not received in full; and
- 3990 (c) the person's license, certification, or registration is automatically suspended:
- 3991 (i) beginning the day on which the payment is due; and
- 3992 (ii) ending the day on which payment is made in full.
- 3993 (4) (a) A fee under this chapter is in lieu of all other license fees or assessments that
- 3994 might otherwise be imposed or charged by the state or any of its political subdivisions upon,
- 3995 or as a condition of, the privilege of conducting the business regulated by this chapter, except
- 3996 that a political subdivision within the state may charge a business license fee on a principal
- 3997 broker if the principal broker maintains a place of business within the jurisdiction of the
- 3998 political subdivision.
- 3999 (b) Unless otherwise exempt, a licensee under this chapter is subject to the taxes
- 4000 imposed under Title 59, Revenue and Taxation.

4001 Section 73. Section **61-2f-106**, which is renumbered from Section 61-2-22 is
4002 renumbered and amended to read:

4003 **[61-2-22]. 61-2f-106. Severability.**

4004 If ~~any~~ a provision of this chapter, or the application of ~~any~~ a provision to any
4005 person or circumstance, is held invalid, the remainder of this chapter ~~shall not be affected~~

4006 ~~thereby] shall be given effect without the invalid provision or application. The provisions of~~
 4007 ~~this chapter are severable.~~

4008 Section 74. Section **61-2f-201**, which is renumbered from Section 61-2-1 is
 4009 renumbered and amended to read:

4010 **Part 2. Licensure, Registration, and Certification**

4011 ~~[61-2-1].~~ **61-2f-201. License required.**

4012 (1) ~~[It is unlawful for any person to]~~ Unless a person is licensed under this chapter, it
 4013 is unlawful for the person to do the following with respect to real estate located in this state:

- 4014 (a) engage in the business[;] of a principal broker, associate broker, or sales agent;
 4015 (b) act in the capacity of[;] a principal broker, associate broker, or sales agent;
 4016 (c) advertise[;] or assume to act as a principal [real estate] broker, associate [real
 4017 estate] broker, or a [real estate] sales agent [within this state without a license obtained under
 4018 this chapter].

4019 ~~[(2) It is unlawful for any person outside the state to engage in the business, act in the~~
 4020 ~~capacity of, advertise, or assume to act as a principal real estate broker, associate real estate~~
 4021 ~~broker, or a real estate sales agent with respect to real estate located within the state without a~~
 4022 ~~license obtained under this chapter.]~~

4023 (2) Except as provided in Section 61-2f-202, an individual is required to be licensed
 4024 as a principal broker, associate broker, or a sales agent if the individual performs, offers to
 4025 perform, or attempts to perform one act for valuable consideration of:

- 4026 (a) buying, selling, leasing, managing, or exchanging real estate for another person; or
 4027 (b) offering for another person to buy, sell, lease, manage, or exchange real estate.

4028 Section 75. Section **61-2f-202**, which is renumbered from Section 61-2-3 is
 4029 renumbered and amended to read:

4030 ~~[61-2-3].~~ **61-2f-202. Exempt persons and transactions.**

4031 (1) (a) Except as provided in Subsection (1)(b), a license under this chapter is not
 4032 required for:

- 4033 (i) ~~[a person]~~ an individual who as owner or lessor performs ~~[the acts]~~ an act described

4034 in Subsection [~~61-2-2(12)~~] 61-2f-102(14) with reference to [~~property~~] real estate owned or
4035 leased by that [~~person~~] individual;

4036 (ii) a regular salaried employee of the owner or lessor of real estate who, with
4037 reference to nonresidential real estate owned or leased by the employer, performs [~~the acts~~
4038 ~~enumerated in Subsections 61-2-2(12)(a) and (b)~~] an act described in Subsection
4039 61-2f-102(14)(a) or (b);

4040 (iii) a regular salaried employee of the owner of real estate who performs property
4041 management services with reference to real estate owned by the employer, except that the
4042 employee may only manage [~~property~~] real estate for one employer;

4043 (iv) [~~a person~~] an individual who performs property management services for the
4044 apartments at which that [~~person~~] individual resides in exchange for free or reduced rent on
4045 that [~~person's~~] individual's apartment;

4046 (v) a regular salaried employee of a condominium homeowners' association who
4047 manages real [~~property~~] estate subject to the declaration of condominium that established the
4048 condominium homeowners' association, except that the employee may only manage [~~property~~]
4049 real estate for one condominium homeowners' association; and

4050 (vi) a regular salaried employee of a licensed property management company who
4051 performs support services, as prescribed by rule, for the property management company.

4052 (b) Subsection (1)(a) does not exempt from licensing:

4053 (i) an employee engaged in the sale of [~~properties~~] real estate regulated under:

4054 (A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; and

4055 (B) Title 57, Chapter 19, Timeshare and Camp Resort Act;

4056 (ii) an employee engaged in the sale of cooperative interests regulated under Title 57,
4057 Chapter 23, Real Estate Cooperative Marketing Act; or

4058 (iii) [~~a person~~] an individual whose interest as an owner or lessor is obtained by that
4059 [~~person~~] individual or transferred to that [~~person~~] individual for the purpose of evading the
4060 application of this chapter, and not for [~~any other~~] another legitimate business reason.

4061 (2) A license under this chapter is not required for:

- 4062 (a) an isolated transaction by ~~[a person]~~ an individual holding a duly executed power
4063 of attorney from ~~[the]~~ an owner;
- 4064 (b) services rendered by an attorney in performing the attorney's duties as an attorney;
- 4065 (c) a receiver, trustee in bankruptcy, administrator, executor, or ~~[a person]~~ an
4066 individual acting under order of ~~[any]~~ a court;
- 4067 (d) a trustee or employee of a trustee under a deed of trust or a will;
- 4068 (e) a public utility, officer of a public utility, or regular salaried employee of a public
4069 utility, unless performance of ~~[any of the acts set out]~~ an act described in Subsection
4070 ~~[61-2-2(12)]~~ 61-2f-102(14) is in connection with the sale, purchase, lease, or other disposition
4071 of real estate or investment in real estate unrelated to the principal business activity of that
4072 public utility;
- 4073 (f) a regular salaried employee or authorized agent working under the oversight of the
4074 Department of Transportation when performing an act on behalf of the Department of
4075 Transportation in connection with one or more of the following:
- 4076 (i) the acquisition of real ~~[property]~~ estate pursuant to Section 72-5-103;
- 4077 (ii) the disposal of real ~~[property]~~ estate pursuant to Section 72-5-111;
- 4078 (iii) services that constitute property management; or
- 4079 (iv) the leasing of real ~~[property;]~~ estate; and
- 4080 (g) a regular salaried employee of a county, city, or town when performing an act on
4081 behalf of the county, city, or town:
- 4082 (i) in accordance with:
- 4083 (A) if a regular salaried employee of a city or town:
- 4084 (I) Title 10, Utah Municipal Code; or
- 4085 (II) Title 11, Cities, Counties, and Local Taxing Units; and
- 4086 (B) if a regular salaried employee of a county:
- 4087 (I) Title 11, Cities, Counties, and Local Taxing Units; and
- 4088 (II) Title 17, Counties; and
- 4089 (ii) in connection with one or more of the following:

- 4090 (A) the acquisition of real [~~property~~] estate, including by eminent domain;
- 4091 (B) the disposal of real [~~property~~] estate;
- 4092 (C) services that constitute property management; or
- 4093 (D) the leasing of real [~~property~~] estate.
- 4094 (3) A license under this chapter is not required for [~~a person~~] an individual registered
- 4095 to act as a broker-dealer, agent, or investment adviser under the Utah and federal securities
- 4096 laws in the sale or the offer for sale of real estate if:
- 4097 (a) (i) the real estate is a necessary element of a "security" as that term is defined by
- 4098 the Securities Act of 1933 and the Securities Exchange Act of 1934; and
- 4099 (ii) the security is registered for sale in accordance with:
- 4100 (A) [~~pursuant to~~] the Securities Act of 1933; or
- 4101 (B) [~~by~~] Title 61, Chapter 1, Utah Uniform Securities Act; or
- 4102 (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec.
- 4103 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation
- 4104 D, Rule 506, 17 C.F.R. Sec. 230.506; and
- 4105 (ii) the selling agent and the purchaser are not residents of this state.
- 4106 Section 76. Section ~~61-2f-203~~, which is renumbered from Section 61-2-6 is
- 4107 renumbered and amended to read:
- 4108 **~~[61-2-6].~~ 61-2f-203. Licensing requirements.**
- 4109 (1) (a) Except as provided in Subsection (5), the commission shall determine the
- 4110 qualifications and requirements of an applicant for:
- 4111 (i) a principal broker license;
- 4112 (ii) an associate broker license; or
- 4113 (iii) a sales agent license.
- 4114 (b) The division, with the concurrence of the commission, shall require and pass upon
- 4115 proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency
- 4116 of each applicant for an initial license or for renewal of an existing license.
- 4117 (c) (i) The division, with the concurrence of the commission, shall require an applicant

4118 for:

4119 (A) a sales agent license to complete an approved educational program consisting of
4120 the number of hours designated by rule made by the commission with the concurrence of the
4121 division, except that the rule may not require less than 120 hours; and

4122 (B) an associate broker or a principal broker license to complete an approved
4123 educational program consisting of the number of hours designated by rule made by the
4124 commission with the concurrence of the division, except that the rule may not require less than
4125 120 hours.

4126 (ii) An hour required by this section means 50 minutes of instruction in each 60
4127 minutes.

4128 (iii) The maximum number of program hours available to an individual is [~~10~~] eight
4129 hours per day.

4130 (d) The division, with the concurrence of the commission, shall require the applicant
4131 to pass an examination approved by the commission covering:

4132 (i) the fundamentals of:

4133 (A) the English language;

4134 (B) arithmetic;

4135 (C) bookkeeping; and

4136 (D) real estate principles and practices;

4137 (ii) the provisions of this chapter;

4138 (iii) the rules established by the commission; and

4139 (iv) any other aspect of Utah real estate license law considered appropriate.

4140 (e) (i) Three years' full-time experience as a [~~real estate~~] sales agent or its equivalent is
4141 required before an applicant may apply for, and secure a principal broker or associate broker
4142 license in this state.

4143 (ii) The commission shall establish by rule, made in accordance with Title 63G,
4144 Chapter 3, Utah Administrative Rulemaking Act, the criteria by which the commission will
4145 accept experience or special education in similar fields of business in lieu of the three years'

4146 experience.

4147 (2) (a) The division, with the concurrence of the commission, may require an applicant
 4148 to furnish a sworn statement setting forth evidence satisfactory to the division of the
 4149 applicant's reputation and competency as set forth by rule.

4150 (b) The division shall require an applicant to provide the applicant's Social Security
 4151 number, which is a private record under Subsection 63G-2-302(1)(h).

4152 (3) (a) ~~[A nonresident principal broker may be licensed in this state by complying]~~ An
 4153 individual who is not a resident of this state may be licensed in this state if the person
 4154 complies with all the provisions of this chapter ~~[except that of residency].~~

4155 (b) ~~[A nonresident]~~ An individual who is not a resident of this state may be licensed as
 4156 an associate broker or sales agent ~~[may become licensed]~~ in this state by:

4157 (i) complying with all the provisions of this chapter ~~[except that of residency]~~; and

4158 (ii) being employed or engaged as an independent contractor by or on behalf of a
 4159 ~~[nonresident or resident]~~ principal broker who is licensed in this state, regardless of whether
 4160 the principal broker is a resident of this state.

4161 (4) (a) Except as provided in Subsection ~~[61-2-9]~~ 61-2f-204(1)(e)(iv)(vi), the
 4162 division and commission shall treat an application to be relicensed of an applicant whose real
 4163 estate license is revoked as an original application.

4164 (b) In the case of an applicant for a new license as a principal broker or associate
 4165 broker, the applicant is not entitled to credit for experience gained before the revocation of a
 4166 real estate license.

4167 (5) (a) Notwithstanding Subsection (1), the commission may delegate to the division
 4168 the authority to:

4169 (i) review a class or category of applications for initial or renewed licenses;

4170 (ii) determine whether an applicant meets the licensing criteria in Subsection (1); and

4171 (iii) approve or deny a license application without concurrence by the commission.

4172 (b) (i) If the commission delegates to the division the authority to approve or deny an
 4173 application without concurrence by the commission and the division denies an application for

4174 licensure, the applicant who is denied licensure may petition the commission for review of the
4175 denial of licensure.

4176 (ii) An applicant who is denied licensure pursuant to this Subsection (5) may seek
4177 agency review by the executive director only after the commission has reviewed the division's
4178 denial of the applicant's application.

4179 Section 77. Section ~~61-2f-204~~, which is renumbered from Section 61-2-9 is
4180 renumbered and amended to read:

4181 ~~[61-2-9].~~ **61-2f-204. Licensing fees and procedures -- Renewal fees and**
4182 **procedures.**

4183 (1) (a) Upon filing an application for [~~a principal broker, associate broker, or sales~~
4184 ~~agent license examination~~] an examination for a license under this chapter, the applicant shall
4185 pay a nonrefundable fee as determined by the commission with the concurrence of the division
4186 under Section 63J-1-504 for admission to the examination.

4187 (b) [~~A~~] An applicant for a principal broker, associate broker, or sales agent [~~applicant~~]
4188 license shall pay a nonrefundable fee as determined by the commission with the concurrence
4189 of the division under Section 63J-1-504 for issuance of an initial license or license renewal.

4190 (c) A license issued under this Subsection (1) shall be issued for a period of not less
4191 than two years as determined by the division with the concurrence of the commission.

4192 (d) (i) Any of the following applicants shall comply with this Subsection (1)(d):

4193 (A) a new sales agent applicant; [~~or~~]

4194 (B) a principal broker applicant[~~;~~]; or

4195 (C) an associate broker applicant.

4196 (ii) An applicant described in this Subsection (1)(d) shall:

4197 (A) submit fingerprint cards in a form acceptable to the division at the time the license
4198 application is filed; and

4199 (B) consent to a criminal background check by the Utah Bureau of Criminal
4200 Identification and the Federal Bureau of Investigation regarding the application.

4201 (iii) The division shall request the Department of Public Safety to complete a Federal

4202 Bureau of Investigation criminal background check for each applicant described in this
4203 Subsection (1)(d) through the national criminal history system or any successor system.

4204 (iv) The applicant shall pay the cost of the criminal background check and the
4205 fingerprinting.

4206 (v) [~~Monies~~] Money paid to the division by an applicant for the cost of the criminal
4207 background check [~~are~~] is nonlapsing.

4208 (e) (i) A license issued under Subsection (1)(d) is conditional, pending completion of
4209 the criminal background check. [~~H~~]

4210 (ii) A license is immediately and automatically revoked if the criminal background
4211 check discloses the applicant fails to accurately disclose a criminal history[~~, the license shall~~
4212 ~~be immediately and automatically revoked.~~] involving:

4213 (A) the real estate industry;

4214 (B) fraud;

4215 (C) misrepresentation; or

4216 (D) deceit.

4217 (iii) If a criminal background check discloses that an applicant fails to accurately
4218 disclose a criminal history other than one described in Subsection (1)(e)(ii), the division:

4219 (A) shall review the application; and

4220 (B) in accordance with rules made by the division pursuant to Title 63G, Chapter 3,
4221 Utah Administrative Rulemaking Act, may:

4222 (I) place a condition on a license;

4223 (II) place a restriction on a license;

4224 (III) revoke a license; or

4225 (IV) refer the application to the commission for a decision.

4226 [~~(iv)~~] (iv) A person whose conditional license is automatically revoked under
4227 Subsection (1)(e)[~~(iv)~~](ii) or whose license is conditioned, restricted, or revoked under
4228 Subsection (1)(e)(iii) may have a [~~post-revocation~~] hearing after the action is taken to
4229 challenge the [~~revocation~~] action. The hearing shall be conducted in accordance with Title

4230 63G, Chapter 4, Administrative Procedures Act.

4231 ~~[(iii)]~~ (v) The ~~[division]~~ director shall designate one of the following to act as the
4232 presiding officer in a ~~[postrevocation]~~ hearing described in ~~[this]~~ Subsection (1)(e)~~(iv)~~:

4233 (A) the division; or

4234 (B) the division with the concurrence of the commission.

4235 ~~[(iv)]~~ (vi) The decision on whether relief from ~~[the revocation of a license]~~ an action
4236 under this Subsection (1)(e) will be granted shall be made by the presiding officer.

4237 ~~[(v)]~~ (vii) Relief from ~~[a]~~ an automatic revocation under ~~[this]~~ Subsection (1)(e)~~(ii)~~
4238 may be granted only if:

4239 (A) the criminal history upon which the division based the revocation:

4240 (I) did not occur; or

4241 (II) is the criminal history of another person;

4242 (B) (I) the revocation is based on a failure to accurately disclose a criminal history;

4243 and

4244 (II) the applicant has a reasonable good faith belief at the time of application that there
4245 was no criminal history to be disclosed; or

4246 (C) the division fails to follow the prescribed procedure for the revocation.

4247 ~~[(vi)]~~ (viii) If a license is revoked or a revocation under this Subsection (1)(e) is
4248 upheld after a ~~[post-revocation]~~ hearing, the ~~[person]~~ individual may not apply for a new
4249 license until at least 12 months after the day on which the license is revoked.

4250 (2) (a) (i) A license expires if it is not renewed on or before its expiration date.

4251 (ii) As a condition of renewal, an active licensee shall demonstrate competence by
4252 completing 18 hours of continuing education within a two-year renewal period subject to rules
4253 made by the commission, with the concurrence of the division.

4254 (iii) In making a rule described in Subsection (2)(c)(ii), the division and commission
4255 shall consider:

4256 (A) evaluating continuing education on the basis of competency, rather than course
4257 time;

4258 (B) allowing completion of courses in a significant variety of topic areas that the
4259 division and commission determine are valuable in assisting an individual licensed under this
4260 chapter to increase the individual's competency; and

4261 (C) allowing completion of courses that will increase a licensee's professional
4262 competency in the area of practice of the licensee.

4263 [~~(iv) The division with the concurrence of the commission shall certify the continuing
4264 education required under this Subsection (2)(a) which may include:~~]

4265 [~~(A) state conventions;~~]

4266 [~~(B) home study courses;~~]

4267 [~~(C) video courses; and~~]

4268 [~~(D) closed circuit television courses;~~]

4269 [~~(v)~~] (iv) The [~~commission with concurrence of the~~] division may [~~exempt~~] award
4270 credit to a licensee [~~from all or a part of the~~] for a continuing education requirement of this
4271 Subsection (2)(a) for a reasonable period of time[~~:(A)~~] upon a finding of reasonable cause,
4272 including:

4273 [~~(F)~~] (A) military service; or

4274 [~~(H)~~] (B) if an individual is elected or appointed to government service, the
4275 individual's government service during which the individual spends a substantial time
4276 addressing real estate issues[~~; and (B) under~~] subject to conditions established by rule made in
4277 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

4278 (b) For a period of 30 days after the expiration date of a license, the license may be
4279 reinstated upon:

4280 (i) payment of a renewal fee and a late fee determined by the commission with the
4281 concurrence of the division under Section 63J-1-504; and

4282 (ii) providing proof acceptable to the division and the commission of the licensee
4283 having:

4284 (A) completed the hours of education required by Subsection (2)(a); or

4285 (B) demonstrated competence as required under Subsection (2)(a).

4286 (c) After the 30-day period described in Subsection (2)(b), and until six months after
4287 the expiration date, the license may be reinstated by:

4288 (i) paying a renewal fee and a late fee determined by the commission with the
4289 concurrence of the division under Section 63J-1-504;

4290 (ii) providing to the division proof of satisfactory completion of [~~12~~] six hours of
4291 continuing education:

4292 (A) in addition to the requirements for a timely renewal; and

4293 (B) on a subject determined by the commission by rule made in accordance with Title
4294 63G, Chapter 3, Utah Administrative Rulemaking Act; and

4295 (iii) providing proof acceptable to the division and the commission of the licensee
4296 having:

4297 (A) completed the hours of education required under Subsection (2)(a); or

4298 (B) demonstrated competence as required under Subsection (2)(a).

4299 (d) After the six-month period described in Subsection (2)(c), and until one year after
4300 the expiration date, the license may be reinstated by:

4301 (i) paying a renewal fee and a late fee determined by the commission with the
4302 concurrence of the division under Section 63J-1-504;

4303 (ii) providing to the division proof of satisfactory completion of 24 hours of
4304 continuing education:

4305 (A) in addition to the requirements for a timely renewal; and

4306 (B) on a subject determined by the commission by rule made in accordance with Title
4307 63G, Chapter 3, Utah Administrative Rulemaking Act; and

4308 (iii) providing proof acceptable to the division and the commission of the licensee
4309 having:

4310 (A) completed the hours of education required by Subsection (2)(a); or

4311 (B) demonstrated competence as required under Subsection (2)(a).

4312 (e) The division shall relicense a person who does not renew that person's license
4313 within one year as prescribed for an original application.

4314 (f) Notwithstanding Subsection (2)(a), the division may extend the term of a license
4315 that would expire under Subsection (2)(a) except for the extension if:

4316 (i) the person complies with the requirements of this section to renew the license; and

4317 (ii) at the time of the extension, there is pending under this chapter:

4318 (A) the application for renewal of the license; or

4319 (B) a disciplinary action.

4320 (3) (a) As a condition for the activation of an inactive license that was in an inactive
4321 status at the time of the licensee's most recent renewal, the licensee shall supply the division
4322 with proof of:

4323 (i) successful completion of the respective sales agent or principal broker licensing
4324 examination within six months prior to applying to activate the license; or

4325 (ii) the successful completion of the hours of continuing education that the licensee
4326 would have been required to complete under Subsection (2)(a) if the license had been on
4327 active status at the time of the licensee's most recent renewal.

4328 (b) The commission may, in accordance with Title 63G, Chapter 3, Utah
4329 Administrative Rulemaking Act, establish by rule:

4330 (i) the nature or type of continuing education required for reactivation of a license; and

4331 (ii) how long before reactivation the continuing education must be completed.

4332 ~~[(4) (a) A principal broker license may be granted to a corporation, partnership, or~~
4333 ~~association if the corporation, partnership, or association has affiliated with it an individual~~
4334 ~~who:]~~

4335 ~~[(i) has qualified as a principal broker under the terms of this chapter; and]~~

4336 ~~[(ii) serves in the capacity of a principal broker.]~~

4337 ~~[(b) Application for the license described in Subsection (4)(a) shall be made in~~
4338 ~~accordance with the rules adopted by the division with the concurrence of the commission.]~~

4339 ~~[(5) The division may charge and collect reasonable fees determined by the~~
4340 ~~commission with the concurrence of the division under Section 63J-1-504 to cover the costs~~
4341 ~~for:]~~

4342 ~~[(a) issuance of a new or duplicate license;]~~
4343 ~~[(b) a license history or certification;]~~
4344 ~~[(c) a certified copy of an official document, order, or other paper or transcript;]~~
4345 ~~[(d) certifying a real estate school, course, or instructor, the fees for which shall,~~
4346 ~~notwithstanding Section 13-1-2, be deposited in the Real Estate Education, Research, and~~
4347 ~~Recovery Fund; and]~~
4348 ~~[(e) other duties required by this chapter.]~~
4349 ~~[(6) If a licensee submits or causes to be submitted a check, draft, or other negotiable~~
4350 ~~instrument to the division for payment of a fee, and the check, draft, or other negotiable~~
4351 ~~instrument is dishonored, the transaction for which the payment is submitted is void and will~~
4352 ~~be reversed by the division if payment of the applicable fee is not received in full.]~~
4353 ~~[(7) (a) A fee under this chapter and the additional license fee for the Real Estate~~
4354 ~~Education, Research, and Recovery Fund under Section 61-2a-4 are in lieu of all other license~~
4355 ~~fees or assessments that might otherwise be imposed or charged by the state or any of its~~
4356 ~~political subdivisions, upon, or as a condition of, the privilege of conducting the business~~
4357 ~~regulated by this chapter, except that a political subdivision within the state may charge a~~
4358 ~~business license fee on a principal broker if the principal broker maintains a place of business~~
4359 ~~within the jurisdiction of the political subdivision.]~~
4360 ~~[(b) Unless otherwise exempt, a licensee under this chapter is subject to all taxes~~
4361 ~~imposed under Title 59, Revenue and Taxation.]~~
4362 Section 78. Section **61-2f-205**, which is renumbered from Section 61-2-7 is
4363 renumbered and amended to read:
4364 ~~[61-2-7].~~ **61-2f-205. Form of license -- Display of license.**
4365 (1) The division shall issue to ~~[each]~~ a licensee a wall license ~~[showing]~~ that contains:
4366 (a) the name and address of the licensee~~[- The]~~;
4367 (b) the seal of the state ~~[shall be affixed to each license. Each license shall contain];~~
4368 and
4369 (c) any other matter prescribed by the division ~~[and shall be delivered or mailed to].~~

4370 (2) The division shall send the license described in Subsection (1) to the licensee at the
4371 address furnished by the licensee. [~~The wall licenses of principal brokers, associate brokers,~~
4372 ~~and sales agents who are affiliated with an office shall be kept in the office]~~

4373 (3) A principal broker shall keep the license of the principal broker and the license of
4374 any associate broker or sales agent affiliated with the principal broker in the office in which
4375 the licensee works to be made available on request.

4376 Section 79. Section **61-2f-206** is enacted to read:

4377 **61-2f-206. Registration of entity or branch office -- Certification of education**
4378 **providers and courses -- Specialized licenses.**

4379 (1) (a) An entity may not engage in an activity described in Section 61-2f-201, unless
4380 it is registered with the division.

4381 (b) To register with the division under this Subsection (1), an entity shall submit to the
4382 division:

4383 (i) an application in a form required by the division;

4384 (ii) evidence of an affiliation with a principal broker;

4385 (iii) evidence that the entity is registered and in good standing with the Division of
4386 Corporations and Commercial Code; and

4387 (iv) a registration fee established by the commission with the concurrence of the
4388 division under Section 63J-1-504.

4389 (2) (a) A principal broker shall register with the division each of the principal broker's
4390 branch offices.

4391 (b) To register a branch office with the division under this Subsection (2), a principal
4392 broker shall submit to the division:

4393 (i) an application in a form required by the division; and

4394 (ii) a registration fee established by the commission with the concurrence of the
4395 division under Section 63J-1-504.

4396 (3) (a) In accordance with rules made by the commission, the division shall certify:

4397 (i) a real estate school;

4398 (ii) a course provider; or

4399 (iii) an instructor.

4400 (b) In accordance with rules made by the commission, and with the concurrence of the
4401 commission, the division shall certify a continuing education course that is required under this
4402 section.

4403 (4) (a) Except as provided by rule, a principal broker may not be responsible for more
4404 than one registered entity at the same time.

4405 (b) (i) In addition to issuing a principal broker license, associate broker license, or
4406 sales agent license authorizing the performance of an act set forth in Section 61-2f-201, the
4407 division may issue a specialized sales license or specialized property management license with
4408 the scope of practice limited to the specialty.

4409 (ii) An individual may hold a specialized license in addition to a license as a principal
4410 broker, associate broker, or a sales agent.

4411 (iii) The commission may adopt rules pursuant to Title 63G, Chapter 3, Utah
4412 Administrative Rulemaking Act, for the administration of this Subsection (4), including:

4413 (A) prelicensing and postlicensing education requirements;

4414 (B) examination requirements;

4415 (C) affiliation with real estate brokerages or property management companies; and

4416 (D) other licensing procedures.

4417 Section 80. Section **61-2f-207**, which is renumbered from Section 61-2-7.1 is
4418 renumbered and amended to read:

4419 **[61-2-7.1]. 61-2f-207. Change of information -- Failure to notify.**

4420 (1) An applicant, licensee, registrant, or certificate holder shall send the division a
4421 signed statement in the form required by the division notifying the division within 10 business
4422 days of any change of:

4423 (a) principal broker;

4424 (b) principal business location;

4425 (c) mailing address;

4426 (d) home street address;

4427 (e) an individual's name; or

4428 (f) business name.

4429 (2) The division may charge a fee established by the commission with the concurrence
4430 of the division in accordance with Section 63J-1-504 for processing any notification of change
4431 submitted by an applicant, licensee, registrant, or certificate holder.

4432 (3) (a) When providing the division a business location or home street address, a
4433 physical location or street address must be provided.

4434 (b) When providing a mailing address, an applicant, licensee, registrant, or certificate
4435 holder may provide a post office box or other mail drop location.

4436 (4) Failure to notify the division of a change described in Subsection (1) is separate
4437 grounds for disciplinary action against ~~the~~ an applicant, licensee, registrant, or certificate
4438 holder.

4439 (5) An applicant, licensee, registrant, or certificate holder is considered to have
4440 received any notification that has been sent to the last address furnished to the division by the
4441 applicant, licensee, registrant, or certificate holder.

4442 Section 81. Section **61-2f-301**, which is renumbered from Section 61-2-7.2 is
4443 renumbered and amended to read:

4444 **Part 3. Operational Requirements**

4445 **~~61-2-7.2~~. 61-2f-301. Reporting requirements.**

4446 A licensee shall notify the division of the following by sending the division a signed
4447 statement within 10 business days of:

4448 (1) (a) a conviction of a criminal offense;

4449 (b) the entry of a plea in abeyance to a criminal offense; or

4450 (c) the potential resolution of a criminal case by:

4451 (i) a diversion agreement; or

4452 (ii) ~~any other~~ another agreement under which a criminal charge is held in suspense
4453 for a period of time; ~~or~~]

- 4454 (2) filing a personal or brokerage bankruptcy[-];
- 4455 (3) the suspension, revocation, surrender, cancellation, or denial of a license or
- 4456 registration of the licensee that is necessary to engage in an occupation or profession,
- 4457 regardless of whether the license or registration is issued by this state or another jurisdiction;
- 4458 or
- 4459 (4) the entry of a cease and desist order or a temporary or permanent injunction:
- 4460 (a) against the licensee by a court or administrative agency; and
- 4461 (b) on the basis of:
- 4462 (i) conduct or a practice involving the business of real estate; or
- 4463 (ii) conduct involving fraud, misrepresentation, or deceit.

4464 Section 82. Section **61-2f-302**, which is renumbered from Section 61-2-10 is
4465 renumbered and amended to read:

4466 ~~[61-2-10].~~ **61-2f-302. Affiliation with a principal broker.**

4467 ~~[(1)(a) Except as provided in Subsection (1)(b), an associate broker or sales agent~~
4468 ~~may not accept valuable consideration for the performance of an act specified in this chapter~~
4469 ~~from a person except the principal broker with whom the associate broker or sales agent is~~
4470 ~~affiliated and licensed.]~~

4471 ~~[(b) An associate broker or sales agent may receive valuable consideration for the~~
4472 ~~performance of an act specified in this chapter from a person other than the principal broker~~
4473 ~~with whom the associate broker or sales agent is affiliated if:]~~

4474 ~~[(i) the valuable consideration is paid with a payment instrument prepared by a title~~
4475 ~~insurance agent;]~~

4476 ~~[(ii) the title insurance agent provides the payment instrument to the principal broker;]~~

4477 ~~[(iii) the title insurance agent complies with the written instructions of the principal~~
4478 ~~broker:]~~

4479 ~~[(A) in preparing the payment instrument; and]~~

4480 ~~[(B) delivering the payment instrument to the principal broker; and]~~

4481 ~~[(iv) the principal broker directly delivers the payment instrument to the associate~~

4482 ~~broker or sales agent.]~~

4483 ~~[(c) The commission, with the concurrence of the division, shall make rules in~~
4484 ~~accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:]~~

4485 ~~[(i) defining what constitutes a "payment instrument" for purposes of this Subsection~~
4486 ~~(1); or]~~

4487 ~~[(ii) the form and contents of the written instructions required by Subsection (1)(b),~~
4488 ~~including providing that the contents of the written instructions indicate that the payment~~
4489 ~~instrument process is an assignment to the associate broker or sales agent by the principal~~
4490 ~~broker of a portion of the consideration the title insurance agent is obligated to pay the~~
4491 ~~principal broker.]~~

4492 (1) An individual who is not a principal broker may not engage in an act described in
4493 Section 61-2f-201 unless the individual is affiliated with a principal broker as:

4494 (a) an associate broker; or

4495 (b) a sales agent.

4496 (2) (a) An inactive associate broker or sales agent may not conduct a real estate
4497 transaction until the inactive associate broker or sales agent becomes affiliated with a
4498 ~~[licensed]~~ principal broker and submits the required documentation to the division.

4499 (b) An inactive principal broker may not conduct a real estate transaction until the
4500 principal broker's license is activated with the division.

4501 (3) A sales agent or associate broker may not affiliate with more than one principal
4502 broker at the same time.

4503 ~~[(4) (a) Except as provided by rule, a principal broker may not be responsible for more~~
4504 ~~than one real estate brokerage at the same time.]~~

4505 ~~[(b) (i) In addition to issuing principal broker, associate broker, and sales agent~~
4506 ~~licenses authorizing the performance of all of the acts set forth in Subsection 61-2-2(12), the~~
4507 ~~division may issue specialized sales licenses and specialized property management licenses~~
4508 ~~with the scope of practice limited to the specialty.]~~

4509 ~~[(ii) An individual may hold a specialized license in addition to a license to act as a~~

4510 ~~principal broker, an associate broker, or a sales agent.]~~

4511 ~~[(iii) The commission may adopt rules pursuant to Title 63G, Chapter 3, Utah~~
 4512 ~~Administrative Procedures Act, for the administration of this Subsection (4), including:]~~

4513 ~~[(A) prelicensing and postlicensing education requirements;]~~

4514 ~~[(B) examination requirements;]~~

4515 ~~[(C) affiliation with real estate brokerages or property management companies; and]~~

4516 ~~[(D) other licensing procedures.]~~

4517 ~~[(e)]~~ (4) An individual may not be a principal broker of ~~[a brokerage]~~ an entity and a
 4518 sales agent or associate broker for a different ~~[brokerage]~~ entity at the same time.

4519 (5) An owner, purchaser, lessor, or lessee who engages the services of a principal
 4520 broker may designate which sales agents or associate brokers affiliated with that principal
 4521 broker will also represent that owner, purchaser, lessor, or lessee in the purchase, sale, lease, or
 4522 exchange of real estate, or in exercising an option relating to real estate.

4523 Section 83. Section **61-2f-303**, which is renumbered from Section 61-2-25 is
 4524 renumbered and amended to read:

4525 ~~[61-2-25].~~ **61-2f-303. Sales agents or associate broker -- Affiliated with**
 4526 **principal broker as independent contractors or employees -- Presumption.**

4527 A sales agent or associate broker may be affiliated with a ~~[licensed]~~ principal ~~[real~~
 4528 ~~estate]~~ broker either as an independent contractor or as an employee. The relationship
 4529 between sales agent or associate broker and principal broker is presumed to be an independent
 4530 contractor relationship unless there is clear and convincing evidence that the relationship was
 4531 intended by the parties to be an employer employee relationship.

4532 Section 84. Section **61-2f-304**, which is renumbered from Section 61-2-8 is
 4533 renumbered and amended to read:

4534 ~~[61-2-8].~~ **61-2f-304. Termination of associate broker or sales agent by**
 4535 **principal broker -- Notice.**

4536 ~~[f]~~ (1) If a principal broker terminates an associate broker or sales agent ~~[is~~
 4537 ~~discharged by a principal broker]~~, the principal broker shall~~[, within three days, send]~~ by no

4538 later than three days from the day on which the principal broker terminates the associate
4539 broker or sales agent:

4540 (a) provide the division a signed statement notifying the division of the [~~discharge.~~
4541 ~~The principal broker shall address a communication]~~ termination; and

4542 (b) send to the last-known residence address of that associate broker or sales agent
4543 [~~advising him that notice of his termination has been delivered or sent to the division. It is~~
4544 ~~unlawful for any]~~ notice that the principal broker has notified the division of the termination
4545 of the associate broker or sales agent.

4546 (2) An associate broker or sales agent [~~to~~] may not perform any [~~of the acts]~~ act under
4547 this chapter, directly or indirectly, from and after the date of receipt of the termination notice
4548 by the division until [~~affiliation with a principal broker has been established]~~ the day on which
4549 the associate broker or sales agent is affiliated with a principal broker.

4550 Section 85. Section **61-2f-305** is enacted to read:

4551 **61-2f-305. Restrictions on commissions.**

4552 (1) Except as provided in Subsection (2), an associate broker or sales agent may not
4553 accept valuable consideration for the performance of an act specified in this chapter from a
4554 person except the principal broker with whom the associate broker or sales agent is affiliated.

4555 (2) An associate broker or sales agent may receive valuable consideration for the
4556 performance of an act specified in this chapter from a person other than the principal broker
4557 with whom the associate broker or sales agent is affiliated if:

4558 (a) the valuable consideration is paid with a payment instrument prepared by a title
4559 insurance agent;

4560 (b) the title insurance agent provides the payment instrument to the principal broker;

4561 (c) the title insurance agent complies with the written instructions of the principal
4562 broker;

4563 (i) in preparing the payment instrument; and

4564 (ii) delivering the payment instrument to the principal broker; and

4565 (d) the principal broker directly delivers the payment instrument to the associate

4566 broker or sales agent.

4567 (3) The commission, with the concurrence of the division, shall make rules in
4568 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

4569 (a) defining what constitutes a "payment instrument" for purposes of this section; or

4570 (b) the form and contents of the written instructions required by Subsection (2),

4571 including providing that the contents of the written instructions indicate that the payment

4572 instrument process is an assignment to the associate broker or sales agent by the principal

4573 broker of a portion of the consideration the title insurance agent is obligated to pay the

4574 principal broker.

4575 Section 86. Section **61-2f-306**, which is renumbered from Section 61-2-20 is
4576 renumbered and amended to read:

4577 **[61-2-20]. 61-2f-306. Rights and privileges of real estate licensees to fill out**
4578 **forms or documents.**

4579 (1) Except as provided in Subsection (2), a real estate licensee may fill out only those
4580 legal forms approved by the commission and the attorney general, and those forms provided
4581 by statute.

4582 (2) (a) (i) A principal broker may fill out any documents associated with the closing of
4583 a real estate transaction.

4584 (ii) A branch broker or associate broker may fill out any documents associated with
4585 the closing of a real estate transaction if designated to fill out the documents by the principal
4586 broker with whom the branch broker or associate broker is affiliated.

4587 (b) A real estate licensee may fill out real estate forms prepared by legal counsel of the
4588 buyer, seller, lessor, or lessee.

4589 (c) If the commission and the attorney general have not approved a specific form for
4590 the transaction, a principal broker, associate broker, or sales agent may fill out real estate
4591 forms prepared by any legal counsel, including legal counsel retained by the brokerage to
4592 develop these forms.

4593 (3) The commission may by rule, made in accordance with Title 63G, Chapter 3, Utah

4594 Administrative Rulemaking Act, provide a process for the approval of a legal form under this
4595 section by the commission and the attorney general.

4596 Section 87. Section **61-2f-307**, which is renumbered from Section 61-2-26 is
4597 renumbered and amended to read:

4598 **[61-2-26]. 61-2f-307. Rulemaking required for offer or sale of an undivided**
4599 **fractionalized long-term estate -- Disclosures -- Management agreement.**

4600 (1) (a) A licensee or certificate holder under this chapter who sells or offers to sell an
4601 undivided fractionalized long-term estate shall comply with the disclosure requirements
4602 imposed by rules made by the commission under this section.

4603 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
4604 the commission shall make rules as to the timing, form, and substance of disclosures required
4605 to be made by a licensee or certificate holder under this section.

4606 (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
4607 the commission shall make rules imposing requirements for a management agreement related
4608 to an undivided fractionalized long-term estate that makes the offer or sale of the undivided
4609 fractionalized long-term estate treated as a real estate transaction and not treated as an offer or
4610 sale of a security under Chapter 1, Utah Uniform Securities Act.

4611 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
4612 the commission shall make rules establishing:

4613 (a) the disclosures required in the sale or offer of an undivided fractionalized
4614 long-term estate that is subject to a master lease;

4615 (b) requirements for the management of a master lease on an undivided fractionalized
4616 long-term estate; and

4617 (c) the requirements on the structure of a master lease on an undivided fractionalized
4618 long-term estate.

4619 Section 88. Section **61-2f-308**, which is renumbered from Section 61-2-27 is
4620 renumbered and amended to read:

4621 **[61-2-27]. 61-2f-308. Exclusive brokerage agreement.**

- 4622 (1) As used in this section:
- 4623 (a) "Client" means a person who makes an exclusive brokerage agreement with a
4624 principal broker under Subsection (1)(c).
- 4625 (b) "Closed" means that:
- 4626 (i) ~~all~~ the documents required to be executed under the contract are executed;
- 4627 (ii) ~~all monies~~ the money required to be paid by either party under the contract ~~are~~
4628 is paid in the form of collected or cleared funds;
- 4629 (iii) the proceeds of any new loan are delivered by the lender to the seller; and
- 4630 (iv) ~~all~~ the applicable documents are recorded in the office of the county recorder for
4631 the county in which the ~~property~~ real estate is located.
- 4632 (c) "Exclusive brokerage agreement" means a written agreement between a client and
4633 a principal broker:
- 4634 (i) (A) to list for sale, lease, or exchange:
- 4635 (I) real estate;
- 4636 (II) an option on real estate; or
- 4637 (III) an improvement on real estate; or
- 4638 (B) for representation in the purchase, lease, or exchange of:
- 4639 (I) real estate;
- 4640 (II) an option on real estate; or
- 4641 (III) an improvement on real estate;
- 4642 (ii) that gives the principal broker the sole right to act as the agent or representative of
4643 the client for the purchase, sale, lease, or exchange of:
- 4644 (A) real estate;
- 4645 (B) an option on real estate; or
- 4646 (C) an improvement on real estate; and
- 4647 (iii) that gives the principal broker the expectation of receiving valuable consideration
4648 in exchange for the principal broker's services.
- 4649 (2) (a) Except as provided in Subsection (2)(b), a principal broker subject to an

4650 exclusive brokerage agreement shall:

4651 (i) accept delivery of and present to the client offers and counteroffers to buy, lease, or
4652 exchange the client's [~~property~~] real estate;

4653 (ii) assist the client in developing, communicating, and presenting offers,
4654 counteroffers, and notices; and

4655 (iii) answer any question the client has concerning:

4656 (A) an offer;

4657 (B) a counteroffer;

4658 (C) a notice; and

4659 (D) a contingency.

4660 (b) A principal broker subject to an exclusive brokerage agreement need not comply
4661 with Subsection (2)(a) after:

4662 (i) ~~(A)~~ an agreement for the sale, lease, or exchange of the real estate, option on real
4663 estate, or improvement on real estate is [~~-(A)~~] signed;

4664 (B) ~~[all]~~ the contingencies related to the sale, lease, or exchange are satisfied or
4665 waived; and

4666 (C) the sale, lease, or exchange is closed; or

4667 (ii) the exclusive brokerage agreement expires or terminates.

4668 (3) A principal broker who violates this section is subject to [~~Section 61-2-17~~]

4669 Sections 61-2f-404 and 61-2f-405.

4670 Section 89. Section **61-2f-401**, which is renumbered from Section 61-2-11 is

4671 renumbered and amended to read:

4672 **Part 4. Enforcement**

4673 ~~[61-2-11].~~ **61-2f-401. Grounds for disciplinary action.**

4674 The following acts are unlawful for a person required to be licensed under this chapter:

4675 (1) (a) making a substantial misrepresentation;

4676 (b) making an intentional misrepresentation;

4677 (c) pursuing a continued and flagrant course of misrepresentation;

4678 (d) making a false representation or promise through an agent, sales agent, advertising,
4679 or otherwise; or

4680 [~~(2)~~] (e) making a false representation or promise of a character likely to influence,
4681 persuade, or induce;

4682 [~~(3)~~] ~~pursuing a continued and flagrant course of misrepresentation, or of making false~~
4683 ~~promises through agents, sales agents, advertising, or otherwise;]~~

4684 [~~(4)~~] (2) acting for more than one party in a transaction without the informed consent
4685 of all parties;

4686 [~~(5)~~] (3) (a) acting as an associate broker or sales agent while not [~~licensed~~] affiliated
4687 with a [~~licensed~~] principal broker;

4688 (b) representing or attempting to represent a principal broker other than the principal
4689 broker with whom the person is affiliated; or

4690 (c) representing as sales agent or having a contractual relationship similar to that of
4691 sales agent with a person other than a [~~licensed~~] principal broker;

4692 [~~(6)~~] (4) (a) failing, within a reasonable time, to account for or to remit [~~monies~~
4693 ~~coming into the~~] money that belongs to another and comes into the person's possession [~~that~~
4694 ~~belong to others~~];

4695 (b) commingling [~~the monies~~] money described in Subsection [~~(6)~~] (4)(a) with the
4696 person's own [~~monies~~] money; or

4697 (c) diverting [~~the monies~~] money described in Subsection [~~(6)~~] (4)(a) from the purpose
4698 for which [~~they were~~] the money is received;

4699 [~~(7)~~] (5) paying or offering to pay valuable consideration, as defined by the
4700 commission, to a person not licensed under this chapter, except that valuable consideration
4701 may be shared:

4702 (a) with a [~~licensed~~] principal broker of another jurisdiction; or

4703 (b) as provided under:

4704 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;

4705 (ii) Title 16, Chapter 11, Professional Corporation Act; or

4706 (iii) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act;
 4707 ~~[(8)]~~ (6) being ~~[unworthy or]~~ incompetent to act as a principal broker, associate
 4708 broker, or sales agent in such manner as to safeguard the interests of the public;
 4709 ~~[(9)]~~ (7) failing to voluntarily furnish a copy of a document to all parties ~~[executing~~
 4710 ~~the]~~ before and after the execution of a document;
 4711 ~~[(10)]~~ (8) failing to keep and make available for inspection by the division a record of
 4712 each transaction, including:
 4713 (a) the names of buyers and sellers or lessees and lessors;
 4714 (b) the identification of ~~[the property]~~ real estate;
 4715 (c) the sale or rental price;
 4716 (d) ~~[monies]~~ money received in trust;
 4717 (e) agreements or instructions from buyers and sellers or lessees and lessors; and
 4718 (f) any other information required by rule;
 4719 ~~[(11)]~~ (9) failing to disclose, in writing, in the purchase, sale, or rental of ~~[property]~~
 4720 real estate, whether the purchase, sale, or rental is made for that person or for an undisclosed
 4721 principal;
 4722 ~~[(12) regardless of whether the crime is related to real estate,]~~
 4723 (10) being convicted of a criminal offense involving moral turpitude within five years
 4724 of the most recent application[-];
 4725 (a) regardless of whether the criminal offense is related to real estate; and
 4726 (b) including:
 4727 ~~[(a)]~~ (i) a conviction based upon a plea of nolo contendere; or
 4728 ~~[(b)]~~ (ii) a plea held in abeyance to a criminal offense involving moral turpitude;
 4729 ~~[(13)]~~ (11) advertising the availability of real estate or the services of a licensee in a
 4730 false, misleading, or deceptive manner;
 4731 ~~[(14)]~~ (12) in the case of a principal broker or a licensee who is a branch manager,
 4732 failing to exercise reasonable supervision over the activities of the principal broker's or branch
 4733 manager's ~~[licensee]~~ licensed or unlicensed staff;

- 4734 [~~(15)~~] (13) violating or disregarding:
- 4735 (a) this chapter;
- 4736 (b) an order of the commission; or
- 4737 (c) the rules adopted by the commission and the division;
- 4738 [~~(16)~~] (14) breaching a fiduciary duty owed by a licensee to the licensee's principal in
- 4739 a real estate transaction;
- 4740 [~~(17)~~] (15) any other conduct which constitutes dishonest dealing;
- 4741 [~~(18)~~] (16) unprofessional conduct as defined by statute or rule;
- 4742 [~~(19)~~ on the basis of misconduct in a professional capacity that relates to character;
- 4743 ~~honesty, integrity, or truthfulness,]~~
- 4744 (17) having one of the following suspended, revoked, surrendered, or cancelled on the
- 4745 basis of misconduct in a professional capacity that relates to character, honesty, integrity, or
- 4746 truthfulness:
- 4747 (a) a real estate license, registration, or certificate issued by another jurisdiction; or
- 4748 (b) another [~~professional~~] license, registration, or certificate to engage in an
- 4749 occupation or profession issued by this state or another jurisdiction;
- 4750 [~~(20)~~] (18) failing to respond to a request by the division in an investigation
- 4751 authorized under this chapter, including:
- 4752 (a) failing to respond to a subpoena;
- 4753 (b) withholding evidence; or
- 4754 (c) failing to produce documents or records;
- 4755 [~~(21)~~] (19) in the case of a dual licensed title licensee as defined in Section
- 4756 31A-2-402:
- 4757 (a) providing a title insurance product or service without the approval required by
- 4758 Section 31A-2-405; or
- 4759 (b) knowingly providing false or misleading information in the statement required by
- 4760 Subsection 31A-2-405(2); or
- 4761 [~~(22)~~] (20) violating an independent contractor agreement between a principal broker

4762 and a sales agent or associate broker as evidenced by a final judgment of a court.

4763 Section 90. Section **61-2f-402**, which is renumbered from Section 61-2-11.5 is
4764 renumbered and amended to read:

4765 **[61-2-11.5]. 61-2f-402. Investigations.**

4766 (1) The division may make [any] an investigation within or outside of this state as the
4767 division considers necessary to determine whether [any] a person has violated, is violating, or
4768 is about to violate this chapter or any rule or order under this chapter.

4769 (2) To aid in the enforcement of this chapter or in the prescribing of rules and forms
4770 under this chapter, the division may require or permit [any] a person to file a statement in
4771 writing, under oath or otherwise as to [all] the facts and circumstances concerning the matter
4772 to be investigated.

4773 (3) For the purpose of the investigation described in Subsection (1), the division or
4774 [any] an employee designated by the division may:

4775 (a) administer an oath or affirmation;

4776 (b) subpoena witnesses and evidence;

4777 (c) take evidence;

4778 (d) require the production of a book, paper, contract, record, other document, or
4779 information relevant to the investigation; and

4780 (e) serve a subpoena by certified mail.

4781 (4) (a) If a person is found to have violated this chapter or a rule made under this
4782 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,
4783 document, or record required under this chapter, including the costs incurred to copy an
4784 electronic book, paper, contract, document, or record in a universally readable format.

4785 (b) If a person fails to pay the costs described in Subsection (4)(a) when due, the
4786 person's license, certification, or registration is automatically suspended:

4787 (i) beginning the day on which the payment of costs is due; and

4788 (ii) ending the day on which the costs are paid.

4789 Section 91. Section **61-2f-403**, which is renumbered from Section 61-2-24 is

4790 renumbered and amended to read:

4791 ~~[61-2-24]~~. **61-2f-403. Mishandling of trust money.**

4792 (1) The division may audit principal brokers' trust accounts or other accounts in which
4793 a licensee maintains trust ~~[funds]~~ money under this chapter. If the division's audit shows, in
4794 the opinion of the division, gross mismanagement, commingling, or misuse of ~~[funds]~~ money,
4795 the division, with the concurrence of the commission, may order a complete audit of the
4796 account by a certified public accountant at the licensee's expense, or take other action in
4797 accordance with Section ~~[61-2-12]~~ 61-2f-404.

4798 (2) The licensee may obtain agency review by the executive director or judicial review
4799 of any division order.

4800 (3) (a) If it appears that a person has grossly mismanaged, commingled, or otherwise
4801 misused trust ~~[funds]~~ money, the division, with or without prior administrative proceedings,
4802 may bring an action:

4803 (i) in the district court of the district where:

4804 (A) the person resides ~~[or]~~;

4805 (B) the person maintains a place of business~~[-]~~; or ~~[where]~~

4806 (C) the act or practice occurred or is about to occur~~[-]~~; and

4807 (ii) to enjoin the ~~[acts or practices]~~ act or practice and to enforce compliance with this
4808 chapter or any rule or order under this chapter.

4809 (b) Upon a proper showing, ~~[the]~~ a court shall grant injunctive relief or a temporary
4810 restraining order, and may appoint a receiver or conservator. The division is not required to
4811 post a bond in any court proceeding.

4812 Section 92. Section **61-2f-404**, which is renumbered from Section 61-2-12 is
4813 renumbered and amended to read:

4814 ~~[61-2-12]~~. **61-2f-404. Disciplinary action -- Judicial review.**

4815 (1) (a) On the basis of a violation of this chapter, the commission with the concurrence
4816 of the director, may issue an order:

4817 (i) imposing an educational requirement;

- 4818 (ii) imposing a civil penalty not to exceed the greater of:
- 4819 (A) [~~\$2,500~~] \$5,000 for each violation; or
- 4820 (B) the amount of any gain or economic benefit derived from each violation;
- 4821 (iii) taking any of the following actions related to a license, registration, or certificate:
- 4822 (A) revoking;
- 4823 (B) suspending;
- 4824 (C) placing on probation;
- 4825 (D) denying the renewal, reinstatement, or application for an original license,
- 4826 registration, or certificate; or
- 4827 (E) in the case of denial or revocation of a license, registration, or certificate, setting a
- 4828 waiting period for an applicant to apply for a license, registration, or certificate under this title;
- 4829 (iv) issuing a cease and desist order;
- 4830 (v) modifying an action described in Subsections (1)(a)(i) through (iv) if the
- 4831 commission finds that the person complies with court ordered restitution; or
- 4832 (vi) doing any combination of Subsections (1)(a)(i) through (v).
- 4833 (b) (i) If the commission with the concurrence of the director issues an order that
- 4834 orders a fine or educational requirements as part of a disciplinary action against a person,
- 4835 including a stipulation and order, the commission shall state in the order the deadline by
- 4836 which the person shall comply with the fine or educational requirements.
- 4837 (ii) If a person fails to comply by the stated deadline:
- 4838 (A) the person's license, registration, or certificate is automatically suspended:
- 4839 (I) beginning the day specified in the order as the deadline for compliance; and
- 4840 (II) ending the day on which the person complies in full with the order; and
- 4841 (B) if the person fails to pay a fine required by an order, the division may begin a
- 4842 collection process:
- 4843 (I) established by the division, with the concurrence of the commission, by rule made
- 4844 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
- 4845 (II) subject to Title 63A, Chapter 8, Office of State Debt Collection.

4846 ~~[(b)]~~ (c) If a licensee is an active sales agent or active associate broker, the division
4847 shall inform the principal broker with whom the licensee is affiliated of the charge and of the
4848 time and place of any hearing.

4849 (2) (a) An applicant, certificate holder, licensee, registrant, or person aggrieved,
4850 including the complainant, may obtain agency review by the executive director and judicial
4851 review of any adverse ruling, order, or decision of the division.

4852 (b) If an applicant, certificate holder, registrant, or licensee prevails in the appeal and
4853 the court finds that the state action was undertaken without substantial justification, the court
4854 may award reasonable litigation expenses to the applicant, certificate holder, registrant, or
4855 licensee as provided under Title 78B, Chapter 8, Part 5, Small Business Equal Access to
4856 Justice Act.

4857 (c) (i) An order, ruling, or decision of the division shall take effect and become
4858 operative 30 days after the service of the order, ruling, or decision unless otherwise provided
4859 in the order.

4860 (ii) If an appeal is taken by a licensee, registrant, or certificate holder, the division may
4861 stay enforcement of an order, ruling, or decision in accordance with Section 63G-4-405.

4862 (iii) An appeal is governed by the Utah Rules of Appellate Procedure.

4863 (3) The commission and the director shall comply with the procedures and
4864 requirements of Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative
4865 proceeding.

4866 Section 93. Section **61-2f-405**, which is renumbered from Section 61-2-17 is
4867 renumbered and amended to read:

4868 ~~[61-2-17]~~. **61-2f-405**. **Criminal penalties for violation of chapter -- Other**
4869 **penalties.**

4870 (1) (a) An individual required to be licensed under this chapter who violates this
4871 chapter, in addition to being subject to a license sanction or a fine ordered by the commission,
4872 is, upon conviction of a first violation, guilty of a class A misdemeanor.

4873 (b) For a conviction under this Subsection (1)~~[(a)]~~, imprisonment shall be for a term

4874 not to exceed six months.

4875 ~~[(b) If a violator of this chapter is a corporation, the corporation is, upon conviction of~~
 4876 ~~a first violation, guilty of a class A misdemeanor.]~~

4877 (2) (a) Upon conviction of a second or subsequent violation, an individual is guilty of
 4878 a third degree felony.

4879 (b) Imprisonment for a conviction under this Subsection (2)(a) shall be for a term not
 4880 to exceed two years.

4881 ~~[(b) If a corporation is convicted of a second or subsequent violation, the corporation~~
 4882 ~~is guilty of a third degree felony.]~~

4883 (3) An officer or agent of a corporation, ~~[or]~~ a member or agent of a partnership or
 4884 association, or an individual in a similar position of another type of entity who personally
 4885 participates in or is an accessory to any violation of this chapter by the ~~[corporation,~~
 4886 ~~partnership, or association,]~~ entity is subject to the penalties prescribed for an individual.

4887 (4) If a person receives money or its equivalent, as commission, compensation, or
 4888 profit by or in consequence of a violation of this chapter, that person is liable for an additional
 4889 penalty of not less than the amount of the money received and not more than three times the
 4890 amount of money received, as may be determined by the court. This penalty may be sued for
 4891 in any court of competent jurisdiction, and recovered by any person aggrieved for the person's
 4892 own use and benefit.

4893 (5) A fine imposed by the commission and the director under this chapter shall,
 4894 notwithstanding Section 13-1-2, be deposited into the Real Estate Education, Research, and
 4895 Recovery Fund to be used in a manner consistent with the requirements of ~~[Chapter 2a]~~ Part 5,
 4896 Real Estate Education, Research, and Recovery Fund Act.

4897 Section 94. Section ~~61-2f-406~~, which is renumbered from Section 61-2-13 is
 4898 renumbered and amended to read:

4899 ~~[61-2-13].~~ **61-2f-406. Grounds for revocation of principal broker's license --**
 4900 **Automatic inactivation of affiliated associate brokers and sales agents licenses.**

4901 (1) (a) An unlawful act or violation of this chapter committed by a person listed in

4902 Subsection (1)(b) is cause for:

- 4903 (i) the revocation, suspension, or probation of a principal broker's license; or
- 4904 (ii) the imposition of a fine against the principal broker in an amount not to exceed
- 4905 ~~[\$2,500]~~ \$5,000 per violation.

4906 (b) Subsection (1)(a) applies to an act or violation by any of the following:

- 4907 (i) a ~~[real estate]~~ sales agent or associate broker employed by a ~~[licensed]~~ principal
- 4908 broker;
- 4909 (ii) a ~~[real estate]~~ sales agent or associate broker engaged as an independent contractor
- 4910 by or on behalf of a ~~[licensed]~~ principal broker; or
- 4911 (iii) an employee, officer, or member of a ~~[licensed]~~ principal broker.

4912 (2) (a) The revocation or suspension of a principal broker license automatically

4913 inactivates an associate broker or sales agent license granted to ~~[a person]~~ an individual by

4914 reason of that ~~[person's]~~ individual's affiliation with the principal broker whose license is

4915 revoked or suspended, pending a change of principal broker affiliation.

4916 (b) A principal broker shall, before the effective date of a suspension or revocation of

4917 the principal broker's license, notify in writing every licensee affiliated with the principal

4918 broker of the revocation or suspension of the principal broker license.

4919 Section 95. Section ~~61-2f-407~~, which is renumbered from Section 61-2-21 is

4920 renumbered and amended to read:

4921 ~~[61-2-21]~~. 61-2f-407. Remedies and action for violations.

4922 (1) (a) The director shall issue and serve upon a person an order directing that person

4923 to cease and desist from an act if:

- 4924 (i) the director has reason to believe that the person has been engaging, is about to
- 4925 engage, or is engaging in the act constituting a violation of this chapter; and
- 4926 (ii) it appears to the director that it would be in the public interest to stop the act.

4927 (b) Within 10 days after receiving the order, the person upon whom the order is served

4928 may request a hearing.

4929 (c) Pending a hearing requested under Subsection (1)(b), a cease and desist order shall

4930 remain in effect.

4931 (d) If a request for a hearing is made, the division shall follow the procedures and
4932 requirements of Title 63G, Chapter 4, Administrative Procedures Act.

4933 (2) (a) After a hearing requested under Subsection (1), if the commission and the
4934 director agree that an act of the person violates this chapter, the director:

4935 (i) shall issue an order making the order issued under Subsection (1) permanent; and

4936 (ii) may impose another disciplinary action under Section [~~61-2-12~~] 61-2f-404.

4937 (b) The director shall file suit in the name of the Department of Commerce and the
4938 Division of Real Estate, in the district court in the county in which an act described in
4939 Subsection (1) occurs or where the person resides or carries on business, to enjoin and restrain
4940 the person from violating this chapter if:

4941 (i) (A) a hearing is not requested under Subsection (1); and

4942 (B) the person fails to cease the act described in Subsection (1); or

4943 (ii) after discontinuing the act described in Subsection (1), the person again
4944 commences the act.

4945 (c) A district court of this state has jurisdiction of an action brought under this section.

4946 (d) Upon a proper showing in an action brought under this section or upon a
4947 conviction under Section 76-6-1203, the court may:

4948 (i) issue a permanent or temporary, prohibitory or mandatory injunction;

4949 (ii) issue a restraining order or writ of mandamus;

4950 (iii) enter a declaratory judgment;

4951 (iv) appoint a receiver or conservator for the defendant or the defendant's assets;

4952 (v) order disgorgement;

4953 (vi) order rescission;

4954 (vii) impose a civil penalty not to exceed the greater of:

4955 (A) [~~\$2,500~~] \$5,000 for each violation; or

4956 (B) the amount of any gain or economic benefit derived from a violation; and

4957 (viii) enter any other relief the court considers just.

4958 (e) The court may not require the division to post a bond in an action brought under
4959 this Subsection (2).

4960 (3) ~~Any~~ A license, certificate, or registration issued by the division to any person [or
4961 entity] convicted of a violation of Section 76-6-1203 is automatically revoked.

4962 (4) A remedy or action provided in this section does not limit, interfere with, or
4963 prevent the prosecution of another remedy or action, including a criminal proceeding.

4964 Section 96. Section **61-2f-408**, which is renumbered from Section 61-2-13.5 is
4965 renumbered and amended to read:

4966 **[61-2-13.5]. 61-2f-408. Court-ordered discipline.**

4967 The division shall promptly withhold, suspend, restrict, or reinstate the use of a license
4968 issued under this chapter if so ordered by a court.

4969 Section 97. Section **61-2f-409**, which is renumbered from Section 61-2-18 is
4970 renumbered and amended to read:

4971 **[61-2-18]. 61-2f-409. Actions for recovery of compensation restricted.**

4972 (1) ~~No~~ A person may not bring or maintain an action in any court of this state for the
4973 recovery of a commission, fee, or compensation for any act done or service rendered which is
4974 prohibited under this chapter to other than [licensed] principal brokers, unless the person was
4975 [duly] licensed as a principal broker at the time of the doing of the act or rendering the service.

4976 (2) ~~No~~ (a) A sales agent or associate broker may not sue in [his] that individual's
4977 own name for the recovery of a fee, commission, or compensation for services as a sales agent
4978 or associate broker unless the action is against the principal broker with whom [he] the sales
4979 agent or associate broker is or was [licensed. Any] affiliated.

4980 (b) An action for the recovery of a fee, commission, or other compensation may only
4981 be instituted and brought by the principal broker with whom ~~the~~ a sales agent or associate
4982 broker is affiliated.

4983 Section 98. Section **61-2f-501**, which is renumbered from Section 61-2a-1 is
4984 renumbered and amended to read:

4985 **Part 5. Real Estate Education, Research, and Recovery Fund Act**

4986 ~~[61-2a-1].~~ **61-2f-501. Title.**

4987 This ~~[act shall be known and may be cited]~~ part is known as the "Real Estate
4988 Education, Research, and Recovery Fund Act."

4989 Section 99. Section **61-2f-502**, which is renumbered from Section 61-2a-2 is
4990 renumbered and amended to read:

4991 ~~[61-2a-2].~~ **61-2f-502. Definitions.**

4992 ~~[(1) The purposes of this chapter are as follows:]~~

4993 ~~[(a) (i) This chapter creates the Real Estate Education, Research, and Recovery Fund~~
4994 ~~to reimburse the public out of the fund for damages up to \$15,000 caused by a real estate~~
4995 ~~licensee in a real estate transaction as provided in Subsection 61-2a-5(1).]~~

4996 ~~[(ii) This chapter applies to damages caused by an individual licensee.~~

4997 ~~Reimbursement may not be made for a judgment against a corporation, partnership,~~
4998 ~~association, or other legal entity.]~~

4999 ~~[(b) This chapter provides revenue for improving the real estate profession through~~
5000 ~~education and research with the goal of making licensees more responsible to the public.]~~

5001 ~~[(2) For purposes of this chapter:]~~

5002 ~~[(a) "Commission" means the Real Estate Commission.]~~

5003 ~~[(b) "Division" means the Division of Real Estate.]~~

5004 For purposes of this part:

5005 (1) "Civil judgment" means a judgment in a civil action that:

5006 (a) is awarded in an action brought against a real estate licensee on the basis of fraud,
5007 misrepresentation, or deceit in a real estate transaction; and

5008 (b) awards actual damages.

5009 (2) "Criminal restitution judgment" means a judgment that, in accordance with the
5010 Utah Code of Criminal Procedure, orders criminal restitution to a person and against a real
5011 estate licensee for a criminal offense involving fraud, misrepresentation, or deceit in a real
5012 estate transaction.

5013 (3) "Final judgment" means one of the following judgments upon termination of the

5014 proceedings related to the judgment, including appeals:

5015 (a) a civil judgment; or

5016 (b) a criminal restitution judgment.

5017 ~~[(c)]~~ (4) "Fund" means the Real Estate Education, Research, and Recovery Fund

5018 created in Section ~~[61-2a-3]~~ 61-2f-503.

5019 ~~[(d) "Judgment" includes a criminal restitution judgment award.]~~

5020 Section 100. Section **61-2f-503**, which is renumbered from Section 61-2a-3 is

5021 renumbered and amended to read:

5022 **~~[61-2a-3].~~ 61-2f-503. Education, Research, and Recovery Fund.**

5023 (1) (a) There is created a restricted special revenue fund ~~[to be]~~ known as the "Real
5024 Estate Education, Research, and Recovery Fund."

5025 (b) The actual interest earned on the fund shall be deposited into the fund.

5026 ~~[(2) At the commencement of each fiscal year, \$100,000 shall be available in the fund
5027 for satisfying judgments rendered against a person licensed under Title 61, Chapter 2, Division
5028 of Real Estate.]~~

5029 (2) The money in the fund includes:

5030 (a) a fee imposed under Section 61-2f-505; and

5031 (b) interest described in Subsection (1)(b).

5032 (3) The division shall administer the fund to:

5033 (a) reimburse the public for damages caused in a real estate transaction by an
5034 individual licensed under this chapter; and

5035 (b) in accordance with Section 61-2f-504:

5036 (i) investigate violations of this chapter related to fraud, misrepresentation, or deceit;

5037 or

5038 (ii) provide revenue for improving the real estate profession through education and
5039 research with the goal of making licensees more responsible to the public.

5040 (4) This part applies to damages caused by an individual licensee. Reimbursement
5041 may not be made for a final judgment against an entity.

5042 (5) At the beginning of each fiscal year, the division shall make available \$100,000 in
 5043 the fund to satisfy final judgments rendered against a person licensed under this chapter.

5044 Section 101. Section **61-2f-504**, which is renumbered from Section 61-2a-12 is
 5045 renumbered and amended to read:

5046 ~~[61-2a-12].~~ **61-2f-504. Use of money.**

5047 (1) Money accumulated in the fund in excess of \$100,000 shall be set aside and
 5048 segregated to be used by the division to:

5049 (a) investigate violations of this chapter [~~or Chapter 2, Division of Real Estate;~~]
 5050 related to fraud, misrepresentation, or deceit; and

5051 (b) advance education and research in the field of real estate.

5052 (2) The division may [~~only~~] use the [~~excess monies~~] money described in Subsection
 5053 (1) only in a manner consistent with Subsection (1), including for [~~courses~~] a course:

5054 (a) sponsored by the division;

5055 (b) offered by the division in conjunction with any university or college in the state; or

5056 (c) provided for by contracting for a particular research project in the field of real
 5057 estate for the state.

5058 Section 102. Section **61-2f-505**, which is renumbered from Section 61-2a-4 is
 5059 renumbered and amended to read:

5060 ~~[61-2a-4].~~ **61-2f-505. Additional license fee.**

5061 (1) [~~A person~~] An individual who applies for or renews a [~~real estate~~] principal broker
 5062 or associate broker license shall pay, in addition to the application or renewal fee, a reasonable
 5063 annual fee of up to \$18, as determined by the division with the concurrence of the
 5064 commission.

5065 (2) [~~A person~~] An individual who applies for or renews a [~~real estate~~] sales agent
 5066 license shall pay in addition to the application or renewal fee a reasonable annual fee of up to
 5067 \$12, as determined by the division with the concurrence of the commission.

5068 (3) Notwithstanding Section 13-1-2, the additional fees under this section shall be
 5069 paid into the fund [~~to be used for the purposes of this chapter~~].

5070 Section 103. Section ~~61-2f-506~~, which is renumbered from Section 61-2a-5 is
5071 renumbered and amended to read:

5072 ~~[61-2a-5].~~ **61-2f-506. Procedure to make a claim against the fund.**

5073 (1) ~~[(a) Except as provided in Subsection (6), a]~~ A person may bring a claim against
5074 the fund ~~[only if the person sends]~~ if:

5075 (a) the person obtains a final judgment;

5076 (b) the person complies with the requirements under this part;

5077 (c) the person is not complicit in the fraud, misrepresentation, or deceit that is the
5078 basis of the claim; and

5079 (d) the final judgment that is the basis for the claim:

5080 (i) has not been discharged in bankruptcy; and

5081 (ii) when a bankruptcy proceeding is open or commenced during the pendency of the
5082 claim, the person obtains an order from the bankruptcy court declaring the final judgment and
5083 related debt to be nondischargeable.

5084 (2) (a) A person may not bring a claim against the fund for money owed under a civil
5085 judgment unless, within 10 business days of the day on which the person brings the civil
5086 action that results in the civil judgment, the person sends to the division a signed notification
5087 [to the division at the time the person files an action against a real estate licensee] alleging
5088 fraud, misrepresentation, or deceit by a real estate licensee.

5089 (b) Within 30 days [of receipt of the notice,] of the day on which the division receives
5090 a notice under Subsection (1), the division has an unconditional right to intervene in the civil
5091 action.

5092 ~~[(c) If the person making a claim against the fund obtains a final judgment in a court~~
5093 ~~of competent jurisdiction in this state against the licensee based upon fraud, misrepresentation,~~
5094 ~~or deceit in a real estate transaction, the person making the claim may, upon termination of all~~
5095 ~~proceedings including appeals, file]~~

5096 (3) (a) After obtaining a final judgment, to file a claim against the fund, a person shall:

5097 (i) file a verified petition in the court where the final judgment [was] is entered [for]

5098 seeking an order directing payment from the fund [for the] of an amount equal to the
5099 uncollected actual damages [included in the judgment and unpaid:] owed under the final
5100 judgment that are unpaid;

5101 (ii) serve a copy of the verified petition described in Subsection (3)(a)(i) on the
5102 division; and

5103 (iii) file a copy of the affidavit of service of the verified petition with the court.

5104 ~~[(d)]~~ (b) Recovery from the fund may not include:

5105 (i) punitive damages;

5106 (ii) attorney fees;

5107 (iii) interest; or

5108 (iv) court costs.

5109 ~~[(e)]~~ (c) Regardless of the number of claimants or parcels of real estate involved in a
5110 real estate transaction, the liability of the fund may not exceed:

5111 (i) \$15,000 for a single transaction; and

5112 (ii) \$50,000 for one licensee.

5113 ~~[(2) A copy of the petition shall be served upon the division, and an affidavit of the~~
5114 ~~service shall be filed with the court.]~~

5115 ~~[(3) The] (4) A court shall conduct a hearing on [the] a petition [within 30 days after~~
5116 ~~service. The petitioner shall recover from the fund only if the petitioner shows all of the~~
5117 ~~following:]~~ filed under Subsection (3) as scheduled by the court.

5118 (5) Subject to Subsection (6), a court may order payment from the fund under this
5119 section only if the person who files the petition shows that the person:

5120 (a) [the petitioner] is not;

5121 (i) in the case of a civil judgment, the spouse of the judgment debtor [or the];

5122 (ii) in the case of a criminal judgment, the spouse of the criminal defendant; or

5123 (iii) a personal representative of [the spouse] an individual described in Subsection

5124 (5)(a)(i) or (ii);

5125 (b) [the petitioner has complied] is in compliance with this chapter;

5126 (c) ~~[the petitioner has obtained]~~ is owed damages under a final judgment that:
5127 (i) is issued by the court in the manner prescribed under this section~~[-indicating]; and~~
5128 (ii) indicates the amount of the final judgment awarded;
5129 (d) ~~[the petitioner]~~ has proved the amount still owing on the final judgment ~~[at]~~ on the
5130 date ~~[of]~~ the petition is filed;
5131 (e) (i) (A) ~~[the petitioner]~~ has had a writ of execution issued upon the final
5132 judgment~~[-]~~; and
5133 (B) has received a return made by the officer executing the writ ~~[has made a return]~~
5134 showing that no property subject to execution in satisfaction of the final judgment could be
5135 found; or
5136 ~~[(f)]~~ (ii) if execution is levied against the property of the judgment debtor or criminal
5137 defendant:
5138 ~~[(i) that the amount realized was insufficient]~~
5139 (A) has not realized an amount sufficient to satisfy the final judgment; and
5140 ~~[(ii) the amount realized and the]~~
5141 (B) is owed a specific balance remaining on the final judgment after application of the
5142 amount realized;
5143 ~~[(g) the petitioner]~~ (f) has made reasonable searches and inquiries to ascertain
5144 whether the judgment debtor or criminal defendant has any interest in property, real or
5145 personal, that may satisfy the final judgment; and
5146 ~~[(h) the petitioner]~~ (g) has exercised reasonable diligence to secure payment of the
5147 final judgment from the assets of the judgment debtor or criminal defendant.
5148 ~~[(4)]~~ (6) If ~~[the petitioner]~~ a person satisfies the court under Subsection (5) that it is
5149 not practicable for the petitioner to comply with one or more of the requirements enumerated
5150 in Subsections ~~[(3)]~~ (5)(e) through ~~[(h)]~~ (g), the court may waive those requirements.
5151 ~~[(5)(a) A judgment that is the basis for a claim against the fund may not have been~~
5152 ~~discharged in bankruptcy.]~~
5153 ~~[(b) In the case of a bankruptcy proceeding that is still open or that is commenced~~

5154 ~~during the pendency of the claim, the claimant shall obtain an order from the bankruptcy court~~
 5155 ~~declaring the judgment and debt to be nondischargeable.]~~

5156 ~~[(6) A person may not bring a claim against the fund if the person is substantially~~
 5157 ~~complicit in the fraud, misrepresentation, or deceit that is the basis of the claim.]~~

5158 Section 104. Section **61-2f-507**, which is renumbered from Section 61-2a-6 is
 5159 renumbered and amended to read:

5160 **~~[61-2a-6].~~ 61-2f-507. Division authority to act upon receipt of petition.**

5161 ~~[(1) Upon receipt of a petition as required by Section 61-2a-5, the division may~~
 5162 ~~answer, initiate review proceedings of its own, or]~~

5163 (1) When the division is served a petition under Section 61-2f-506, the division may:

5164 (a) file an answer to the petition in the court;

5165 (b) initiate a review proceeding conducted by the division; or

5166 (c) appear in any proceeding in the name of the defendant to the action or on behalf of
 5167 the fund.

5168 ~~[(2) The division may, subject to court approval, compromise a claim based upon the~~
 5169 ~~application of a petitioner.]~~

5170 (2) The division may settle a claim against the fund if:

5171 (a) the person who brings the claim requests a settlement; and

5172 (b) the court in which the petition is filed approves the settlement.

5173 Section 105. Section **61-2f-508**, which is renumbered from Section 61-2a-7 is
 5174 renumbered and amended to read:

5175 **~~[61-2a-7].~~ 61-2f-508. Court determination and order.**

5176 If ~~[the]~~ a court determines that ~~[a claim should be levied against that portion of the~~
 5177 ~~fund allocated for the purpose of carrying out the provisions of this chapter;]~~ the fund should
 5178 pay a claim under this part, in its order the court shall ~~[enter an order directed to]~~ direct the
 5179 division ~~[requiring payment from the fund of]~~ to pay from the fund that portion of the
 5180 ~~[petitioner's]~~ final judgment that is payable from the fund ~~[pursuant to Section 61-2a-5]~~ in
 5181 accordance with Section 61-2f-506.

5182 Section 106. Section **61-2f-509**, which is renumbered from Section 61-2a-8 is
5183 renumbered and amended to read:

5184 ~~[61-2a-8].~~ **61-2f-509. Insufficient funds to satisfy judgments -- Procedure and**
5185 **interest.**

5186 If ~~[the]~~ money deposited in the fund and allotted for satisfying ~~[judgments against~~
5187 ~~licensees]~~ a final judgment against a real estate licensee is insufficient to satisfy ~~[any~~
5188 ~~authorized claim for payment, the division shall,]~~ an order issued in accordance with Section
5189 61-2f-508, when sufficient money ~~[has been]~~ is deposited in the fund, the division shall:

5190 (1) satisfy the unpaid claims in the order that ~~[they were]~~ the unpaid claims are
5191 originally filed~~[, together with]; and~~

5192 (2) pay with the claim accumulated interest at the rate of 8% per annum.

5193 Section 107. Section **61-2f-510**, which is renumbered from Section 61-2a-9 is
5194 renumbered and amended to read:

5195 ~~[61-2a-9].~~ **61-2f-510. Division subrogated to judgment creditor -- Authority to**
5196 **revoke license.**

5197 (1) (a) If the division ~~[makes payment from the fund to a judgment creditor, the~~
5198 ~~division shall be]~~ pays a claim against the fund in accordance with this chapter, the division is
5199 subrogated to the rights of the ~~[judgment creditor]~~ person who is paid the claim for the
5200 amounts paid out of the fund ~~[and any amount and]~~.

5201 (b) The division shall deposit in the fund any amount and interest recovered by the
5202 division ~~[shall be deposited in the fund]~~ under this part.

5203 (2) (a) The license of a real estate licensee for whom payment from the fund is made
5204 under this chapter shall be automatically revoked.

5205 (b) ~~[A licensee]~~ A person whose real estate license is revoked under Subsection (2)(a)
5206 may not apply for a new license ~~[until]~~ under this chapter until the person pays in full:

5207 (i) the amount paid ~~[out on the licensee's account, plus]~~ by the fund for a claim that is
5208 based on a final judgment against the person; and

5209 (ii) interest at a rate determined by the division with the concurrence of the

5210 commission[, is repaid in full].

5211 Section 108. Section **61-2f-511**, which is renumbered from Section 61-2a-11 is
5212 renumbered and amended to read:

5213 ~~[61-2a-11].~~ **61-2f-511. Authority to take disciplinary action.**

5214 (1) ~~[Nothing contained in this chapter shall]~~ This part does not limit the authority of
5215 the director of the division to take disciplinary action against a real estate licensee for a
5216 violation of ~~[Chapter 2, Division of Real Estate;]~~ this chapter or of the rules of the commission
5217 and division.

5218 (2) ~~[The repayment in full of all obligations to the fund by a licensee]~~ A real estate
5219 licensee's payment of all the obligations of the real estate licensee to the fund does not nullify
5220 or modify the effect of any other disciplinary proceeding brought pursuant to ~~[Chapter 2,~~
5221 ~~Division of Real Estate;]~~ this chapter or the rules of the commission.

5222 Section 109. Section **61-2f-512**, which is renumbered from Section 61-2a-10 is
5223 renumbered and amended to read:

5224 ~~[61-2a-10].~~ **61-2f-512. Failure to comply with provisions constitutes a waiver.**

5225 ~~[The failure of any person]~~ A person's failure to comply with ~~[the provisions of this~~
5226 ~~chapter shall constitute]~~ this part constitutes a waiver of any ~~[rights provided under it]~~ right
5227 under this part.

5228 Section 110. Section **63G-2-302** is amended to read:

5229 **63G-2-302. Private records.**

5230 (1) The following records are private:

5231 (a) records concerning an individual's eligibility for unemployment insurance benefits,
5232 social services, welfare benefits, or the determination of benefit levels;

5233 (b) records containing data on individuals describing medical history, diagnosis,
5234 condition, treatment, evaluation, or similar medical data;

5235 (c) records of publicly funded libraries that when examined alone or with other records
5236 identify a patron;

5237 (d) records received or generated for a Senate or House Ethics Committee concerning

5238 any alleged violation of the rules on legislative ethics, prior to the meeting, and after the
5239 meeting, if the ethics committee meeting was closed to the public;

5240 (e) records received or generated for a Senate confirmation committee concerning
5241 character, professional competence, or physical or mental health of an individual:

5242 (i) if prior to the meeting, the chair of the committee determines release of the records:
5243 (A) reasonably could be expected to interfere with the investigation undertaken by the
5244 committee; or
5245 (B) would create a danger of depriving a person of a right to a fair proceeding or
5246 impartial hearing; and
5247 (ii) after the meeting, if the meeting was closed to the public;

5248 (f) employment records concerning a current or former employee of, or applicant for
5249 employment with, a governmental entity that would disclose that individual's home address,
5250 home telephone number, Social Security number, insurance coverage, marital status, or payroll
5251 deductions;

5252 (g) records or parts of records under Section 63G-2-303 that a current or former
5253 employee identifies as private according to the requirements of that section;

5254 (h) that part of a record indicating a person's Social Security number or federal
5255 employer identification number if provided under Section 31A-23a-104, 31A-25-202,
5256 31A-26-202, 58-1-301, 61-1-4, or [~~61-2-6~~] 61-2f-203;

5257 (i) that part of a voter registration record identifying a voter's driver license or
5258 identification card number, Social Security number, or last four digits of the Social Security
5259 number;

5260 (j) a record that:

5261 (i) contains information about an individual;

5262 (ii) is voluntarily provided by the individual; and

5263 (iii) goes into an electronic database that:

5264 (A) is designated by and administered under the authority of the Chief Information
5265 Officer; and

5266 (B) acts as a repository of information about the individual that can be electronically
5267 retrieved and used to facilitate the individual's online interaction with a state agency;

5268 (k) information provided to the Commissioner of Insurance under:

5269 (i) Subsection 31A-23a-115(2)(a);

5270 (ii) Subsection 31A-23a-302(3); or

5271 (iii) Subsection 31A-26-210(3);

5272 (l) information obtained through a criminal background check under Title 11, Chapter
5273 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

5274 (m) information provided by an offender that is:

5275 (i) required by the registration requirements of Section 77-27-21.5; and

5276 (ii) not required to be made available to the public under Subsection 77-27-21.5(27);

5277 and

5278 (n) a statement and any supporting documentation filed with the attorney general in
5279 accordance with Section 34-45-107, if the federal law or action supporting the filing involves
5280 homeland security.

5281 (2) The following records are private if properly classified by a governmental entity:

5282 (a) records concerning a current or former employee of, or applicant for employment
5283 with a governmental entity, including performance evaluations and personal status information
5284 such as race, religion, or disabilities, but not including records that are public under
5285 Subsection 63G-2-301(2)(b) or 63G-2-301(3)(o), or private under Subsection (1)(b);

5286 (b) records describing an individual's finances, except that the following are public:

5287 (i) records described in Subsection 63G-2-301(2);

5288 (ii) information provided to the governmental entity for the purpose of complying with
5289 a financial assurance requirement; or

5290 (iii) records that must be disclosed in accordance with another statute;

5291 (c) records of independent state agencies if the disclosure of those records would
5292 conflict with the fiduciary obligations of the agency;

5293 (d) other records containing data on individuals the disclosure of which constitutes a

5294 clearly unwarranted invasion of personal privacy;

5295 (e) records provided by the United States or by a government entity outside the state
5296 that are given with the requirement that the records be managed as private records, if the
5297 providing entity states in writing that the record would not be subject to public disclosure if
5298 retained by it; and

5299 (f) any portion of a record in the custody of the Division of Aging and Adult Services,
5300 created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a
5301 person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult.

5302 (3) (a) As used in this Subsection (3), "medical records" means medical reports,
5303 records, statements, history, diagnosis, condition, treatment, and evaluation.

5304 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
5305 doctors, or affiliated entities are not private records or controlled records under Section
5306 63G-2-304 when the records are sought:

5307 (i) in connection with any legal or administrative proceeding in which the patient's
5308 physical, mental, or emotional condition is an element of any claim or defense; or

5309 (ii) after a patient's death, in any legal or administrative proceeding in which any party
5310 relies upon the condition as an element of the claim or defense.

5311 (c) Medical records are subject to production in a legal or administrative proceeding
5312 according to state or federal statutes or rules of procedure and evidence as if the medical
5313 records were in the possession of a nongovernmental medical care provider.

5314 Section 111. Section **63J-1-602** is amended to read:

5315 **63J-1-602. Nonlapsing accounts and funds.**

5316 (1) The following revenue collections, appropriations from a fund or account, and
5317 appropriations to a program are nonlapsing:

5318 (a) appropriations made to the Legislature and its committees;

5319 (b) funds collected by the grain grading program, as provided in Section 4-2-2;

5320 (c) the Salinity Offset Fund created in Section 4-2-8.5;

5321 (d) the Invasive Species Mitigation Fund created in Section 4-2-8.7;

- 5322 (e) funds collected by pesticide dealer license registration fees, as provided in Section
5323 4-14-3;
- 5324 (f) funds collected by pesticide applicator business registration fees, as provided in
5325 Section 4-14-13;
- 5326 (g) the Rangeland Improvement Fund created in Section 4-20-2;
- 5327 (h) funds deposited as dedicated credits under the Insect Infestation Emergency
5328 Control Act, as provided in Section 4-35-6;
- 5329 (i) the Percent-for-Art Program created in Section 9-6-404;
- 5330 (j) the Centennial History Fund created in Section 9-8-604;
- 5331 (k) the Uintah Basin Revitalization Fund, as provided in Section 9-10-108;
- 5332 (l) the Navajo Revitalization Fund created in Section 9-11-104;
- 5333 (m) the LeRay McAllister Critical Land Conservation Program created in Section
5334 11-38-301;
- 5335 (n) the Clean Fuels and Vehicle Technology Fund created in Section 19-1-403;
- 5336 (o) fees deposited as dedicated credits for hazardous waste plan reviews, as provided
5337 in Section 19-6-120;
- 5338 (p) an appropriation made to the Division of Wildlife Resources for the appraisal and
5339 purchase of lands under the Pelican Management Act, as provided in Section 23-21a-6;
- 5340 (q) award monies under the Crime Reduction Assistance Program, as provided under
5341 Section 24-1-19;
- 5342 (r) funds collected from the emergency medical services grant program, as provided in
5343 Section 26-8a-207;
- 5344 (s) fees and other funding available to purchase training equipment and to administer
5345 tests and conduct quality assurance reviews, as provided in Section 26-8a-208;
- 5346 (t) funds collected as a result of a sanction under Section 1919 of Title XIX of the
5347 federal Social Security Act, as provided in Section 26-18-3;
- 5348 (u) the Utah Health Care Workforce Financial Assistance Program created in Section
5349 26-46-102;

5350 (v) monies collected from subscription fees for publications prepared or distributed by
5351 the insurance commissioner, as provided in Section 31A-2-208;

5352 (w) monies received by the Insurance Department for administering, investigating
5353 under, and enforcing the Insurance Fraud Act, as provided in Section 31A-31-108;

5354 (x) certain monies received for penalties paid under the Insurance Fraud Act, as
5355 provided in Section 31A-31-109;

5356 (y) the fund for operating the state's Federal Health Care Tax Credit Program, as
5357 provided in Section 31A-38-104;

5358 (z) certain funds in the Department of Workforce Services' program for the education,
5359 training, and transitional counseling of displaced homemakers, as provided in Section
5360 35A-3-114;

5361 (aa) the Employment Security Administration Fund created in Section 35A-4-505;

5362 (bb) the Special Administrative Expense Fund created in Section 35A-4-506;

5363 (cc) funding for a new program or agency that is designated as nonlapsing under
5364 Section 36-24-101;

5365 (dd) the Oil and Gas Conservation Account created in Section 40-6-14.5;

5366 (ee) funds available to the State Tax Commission for purchase and distribution of
5367 license plates and decals, as provided in Section 41-1a-1201;

5368 (ff) certain fees for the cost of electronic payments under the Motor Vehicle Act, as
5369 provided in Section 41-1a-1221;

5370 (gg) certain fees collected for administering and enforcing the Motor Vehicle Business
5371 Regulation Act, as provided in Section 41-3-601;

5372 (hh) certain fees for the cost of electronic payments under the Motor Vehicle Business
5373 Regulation Act, as provided in Section 41-3-604;

5374 (ii) the Off-Highway Access and Education Restricted Account created in Section
5375 41-22-19.5;

5376 (jj) certain fees for the cost of electronic payments under the Motor Vehicle Act, as
5377 provided in Section 41-22-36;

5378 (kk) monies collected under the Notaries Public Reform Act, as provided under
5379 46-1-23;

5380 (ll) certain funds associated with the Law Enforcement Operations Account, as
5381 provided in Section 51-9-411;

5382 (mm) the Public Safety Honoring Heroes Restricted Account created in Section
5383 53-1-118;

5384 (nn) funding for the Search and Rescue Financial Assistance Program, as provided in
5385 Section 53-2-107;

5386 (oo) appropriations made to the Department of Public Safety from the Department of
5387 Public Safety Restricted Account, as provided in Section 53-3-106;

5388 (pp) appropriations to the Motorcycle Rider Education Program, as provided in
5389 Section 53-3-905;

5390 (qq) fees collected by the State Fire Marshal Division under the Utah Fire Prevention
5391 and Safety Act, as provided in Section 53-7-314;

5392 (rr) the DNA Specimen Restricted Account created in Section 53-10-407;

5393 (ss) the minimum school program, as provided in Section 53A-17a-105;

5394 (tt) certain funds appropriated from the Uniform School Fund to the State Board of
5395 Education for new teacher bonus and performance-based compensation plans, as provided in
5396 Section 53A-17a-148;

5397 (uu) certain funds appropriated from the Uniform School Fund to the State Board of
5398 Education for implementation of proposals to improve mathematics achievement test scores,
5399 as provided in Section 53A-17a-152;

5400 (vv) the School Building Revolving Account created in Section 53A-21-401;

5401 (ww) monies received by the State Office of Rehabilitation for the sale of certain
5402 products or services, as provided in Section 53A-24-105;

5403 (xx) the State Board of Regents, as provided in Section 53B-6-104;

5404 (yy) certain funds appropriated from the General Fund to the State Board of Regents
5405 for teacher preparation programs, as provided in Section 53B-6-104;

5406 (zz) a certain portion of monies collected for administrative costs under the School
5407 Institutional Trust Lands Management Act, as provided under Section 53C-3-202;

5408 (aaa) certain surcharges on residence and business telecommunications access lines
5409 imposed by the Public Service Commission, as provided in Section 54-8b-10;

5410 (bbb) certain fines collected by the Division of Occupational and Professional
5411 Licensing for violation of unlawful or unprofessional conduct that are used for education and
5412 enforcement purposes, as provided in Section 58-17b-505;

5413 (ccc) the Nurse Education and Enforcement Fund created in Section 58-31b-103;

5414 (ddd) funding of the controlled substance database, as provided in Section 58-37-7.7;

5415 (eee) the Certified Nurse Midwife Education and Enforcement Fund created in Section
5416 58-44a-103;

5417 (fff) funding for the building inspector's education program, as provided in Section
5418 58-56-9;

5419 (ggg) certain fines collected by the Division of Occupational and Professional
5420 Licensing for use in education and enforcement of the Security Personnel Licensing Act, as
5421 provided in Section 58-63-103;

5422 (hhh) the Professional Geologist Education and Enforcement Fund created in Section
5423 58-76-103;

5424 (iii) certain monies in the Water Resources Conservation and Development Fund, as
5425 provided in Section 59-12-103;

5426 (jjj) funds paid to the Division of Real Estate for the cost of a criminal background
5427 check for principal broker, associate broker, and sales agent licenses, as provided in Section
5428 [~~61-2-9~~] 61-2f-204;

5429 (kkk) the Utah Housing Opportunity Restricted Account created in Section [~~61-2-28~~]
5430 61-2-204;

5431 (lll) funds paid to the Division of Real Estate for the cost of a criminal background
5432 check for a mortgage loan license, as provided in Section 61-2c-202;

5433 (mmm) funds paid to the Division of Real Estate in relation to examination of records

5434 in an investigation, as provided in Section 61-2c-401;

5435 (nnn) certain funds donated to the Department of Human Services, as provided in
5436 Section 62A-1-111;

5437 (ooo) certain funds donated to the Division of Child and Family Services, as provided
5438 in Section 62A-4a-110;

5439 (ppp) the Mental Health Therapist Grant and Scholarship Program, as provided in
5440 Section 62A-13-109;

5441 (qqq) assessments for DUI violations that are forwarded to an account created by a
5442 county treasurer, as provided in Section 62A-15-503;

5443 (rrr) appropriations to the Division of Services for People with Disabilities, as
5444 provided in Section 62A-5-102;

5445 (sss) certain donations to the Division of Substance Abuse and Mental Health, as
5446 provided in Section 62A-15-103;

5447 (ttt) certain funds received by the Division of Parks and Recreation from the sale or
5448 disposal of buffalo, as provided under Section 63-11-19.2;

5449 (uuu) revenue for golf user fees at the Wasatch Mountain State Park, Palisades State
5450 Park, or Jordan River State Park, as provided under Section 63-11-19.5;

5451 (vvv) revenue for golf user fees at the Green River State Park, as provided under
5452 Section 63-11-19.6;

5453 (www) the Centennial Nonmotorized Paths and Trail Crossings Program created under
5454 Section 63-11a-503;

5455 (xxx) the Bonneville Shoreline Trail Program created under Section 63-11a-504;

5456 (yyy) the account for the Utah Geological Survey, as provided in Section 63-73-10;

5457 (zzz) the Risk Management Fund created under Section 63A-4-201;

5458 (aaaa) the Child Welfare Parental Defense Fund created in Section 63A-11-203;

5459 (bbbb) the Constitutional Defense Restricted Account created in Section 63C-4-103;

5460 (cccc) a portion of the funds appropriated to the Utah Seismic Safety Commission, as
5461 provided in Section 63C-6-104;

5462 (dddd) funding for the Medical Education Program administered by the Medical
5463 Education Council, as provided in Section 63C-8-102;

5464 (eeee) certain monies payable for commission expenses of the Pete Suazo Utah
5465 Athletic Commission, as provided under Section 63C-11-301;

5466 (ffff) funds collected for publishing the Division of Administrative Rules'
5467 publications, as provided in Section 63G-3-402;

5468 (gggg) the appropriation to fund the Governor's Office of Economic Development's
5469 Enterprise Zone Act, as provided in Section 63M-1-416;

5470 (hhhh) the Tourism Marketing Performance Account, as provided in Section
5471 63M-1-1406;

5472 (iiii) certain funding for rural development provided to the Office of Rural
5473 Development in the Governor's Office of Economic Development, as provided in Section
5474 63M-1-1604;

5475 (jjjj) certain monies in the Development for Disadvantaged Rural Communities
5476 Restricted Account, as provided in Section 63M-1-2003;

5477 (kkkk) appropriations to the Utah Science Technology and Research Governing
5478 Authority, created under Section 63M-2-301, as provided under Section 63M-3-302;

5479 (llll) certain monies in the Rural Broadband Service Fund, as provided in Section
5480 63M-1-2303;

5481 (mmmm) funds collected from monthly offender supervision fees, as provided in
5482 Section 64-13-21.2;

5483 (nnnn) funds collected by the housing of state probationary inmates or state parole
5484 inmates, as provided in Subsection 64-13e-104(2);

5485 (oooo) the Sovereign Lands Management account created in Section 65A-5-1;

5486 (pppp) certain forestry and fire control funds utilized by the Division of Forestry, Fire,
5487 and State Lands, as provided in Section 65A-8-103;

5488 (qqqq) the Department of Human Resource Management user training program, as
5489 provided in Section 67-19-6;

5490 (rrrr) funds for the University of Utah Poison Control Center program, as provided in
5491 Section 69-2-5.5;

5492 (ssss) appropriations to the Transportation Corridor Preservation Revolving Loan
5493 Fund, as provided in Section 72-2-117;

5494 (tttt) appropriations to the Local Transportation Corridor Preservation Fund, as
5495 provided in Section 72-2-117.5;

5496 (uuuu) appropriations to the Tollway Restricted Special Revenue Fund, as provided in
5497 Section 77-2-120;

5498 (vvvv) appropriations to the Aeronautics Construction Revolving Loan Fund, as
5499 provided in Section 77-2-122;

5500 (wwww) appropriations to the State Park Access Highways Improvement Program, as
5501 provided in Section 72-3-207;

5502 (xxxx) the Traffic Noise Abatement Program created in Section 72-6-112;

5503 (yyyy) certain funds received by the Office of the State Engineer for well drilling fines
5504 or bonds, as provided in Section 73-3-25;

5505 (zzzz) certain monies appropriated to increase the carrying capacity of the Jordan
5506 River that are transferred to the Division of Parks and Recreation, as provided in Section
5507 73-10e-1;

5508 (aaaa) certain fees for the cost of electronic payments under the State Boating Act, as
5509 provided in Section 73-18-25;

5510 (bbbb) certain monies appropriated from the Water Resources Conservation and
5511 Development Fund, as provided in Section 73-23-2;

5512 (cccc) the Lake Powell Pipeline Project Operation and Maintenance Fund created in
5513 Section 73-28-404;

5514 (dddd) certain funds in the Water Development and Flood Mitigation Reserve
5515 Account, as provided in Section 73-103-1;

5516 (eeee) certain funds appropriated for compensation for special prosecutors, as
5517 provided in Section 77-10a-19;

5518 (ffff) the Indigent Aggravated Murder Defense Trust Fund created in Section
5519 77-32-601;

5520 (ggggg) the Indigent Felony Defense Trust Fund created in Section 77-32-701;

5521 (hhhhh) funds donated or paid to a juvenile court by private sources, as provided in
5522 Subsection 78A-6-203(1)(c);

5523 (iiii) a state rehabilitative employment program, as provided in Section 78A-6-210;

5524 and

5525 (jjjj) fees from the issuance and renewal of licenses for certified court interpreters, as
5526 provided in Section 78B-1-146.

5527 (2) No revenue collection, appropriation from a fund or account, or appropriation to a
5528 program may be treated as nonlapsing unless:

5529 (a) it is expressly referenced by this section;

5530 (b) it is designated in a condition of appropriation in the appropriations bill; or

5531 (c) nonlapsing authority is granted under Section 63J-1-603.

5532 (3) Each legislative appropriations subcommittee shall review the accounts and funds
5533 that have been granted nonlapsing authority under this section or Section 63J-1-603.

5534 Section 112. Section **70D-3-102** is amended to read:

5535 **70D-3-102. Definitions.**

5536 As used in this chapter:

5537 (1) "Administrative or clerical tasks" means:

5538 (a) the receipt, collection, and distribution of information common for the process or
5539 underwriting of a loan in the mortgage industry; and

5540 (b) a communication with a consumer to obtain information necessary for the
5541 processing or underwriting of a residential mortgage loan.

5542 (2) "Affiliate" shall be defined by the commissioner by rule made in accordance with
5543 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

5544 (3) "Applicant" means an individual applying for a license under this chapter.

5545 (4) "Approved examination provider" means a person approved by the nationwide

5546 database as an approved test provider.

5547 (5) "Business as a loan originator" means for compensation or in the expectation of
5548 compensation to engage in an act that makes an individual a loan originator.

5549 (6) "Clerical or support duties" includes after the receipt of an application for a
5550 residential mortgage loan:

5551 (a) the receipt, collection, distribution, and analysis of information common for the
5552 processing or underwriting of a residential mortgage loan; and

5553 (b) communicating with a consumer to obtain the information necessary for the
5554 processing or underwriting of the residential mortgage loan, to the extent that the
5555 communication does not include:

5556 (i) offering or negotiating a residential mortgage loan rate or term; or

5557 (ii) counseling a consumer about a residential mortgage loan rate or term.

5558 (7) "Compensation" means anything of economic value that is paid, loaned, granted,
5559 given, donated, or transferred to an individual or entity for or in consideration of:

5560 (a) services;

5561 (b) personal or real property; or

5562 (c) another thing of value.

5563 (8) "Continuing education" means education taken by an individual licensed under
5564 this chapter in order to meet the education requirements imposed by Section 70D-3-303 to
5565 renew a license under this chapter.

5566 (9) "Covered subsidiary" means a subsidiary that is:

5567 (a) owned and controlled by a depository institution; and

5568 (b) regulated by a federal banking agency.

5569 (10) "Federal banking agency" means:

5570 (a) the Board of Governors of the Federal Reserve System;

5571 (b) the Comptroller of the Currency;

5572 (c) the Director of the Office of Thrift Supervision;

5573 (d) the National Credit Union Administration; or

5574 (e) the Federal Deposit Insurance Corporation.

5575 (11) "Licensee" means an individual licensed under this chapter.

5576 (12) (a) Except as provided in Subsection (12)(b), "loan originator" means an
5577 individual who for compensation or in the expectation of compensation:

5578 (i) takes a residential mortgage loan application; or

5579 (ii) offers or negotiates a term of a residential mortgage loan.

5580 (b) "Loan originator" does not include:

5581 (i) an individual who is engaged solely as a loan processor or underwriter;

5582 (ii) unless compensated by a lender, broker, other loan originator, or an agent of a
5583 lender, broker, or other loan originator, a person who:

5584 (A) only performs real estate brokerage activities; and

5585 (B) is licensed under Title 61, Chapter [~~2, Division of Real Estate~~] 2f, Real Estate
5586 Licensing and Practices Act;

5587 (iii) a person who is solely involved in extension of credit relating to a timeshare plan,
5588 as defined in 11 U.S.C. Sec. 101(53D); or

5589 (iv) an attorney licensed to practice law in this state who, in the course of the
5590 attorney's practice as an attorney, assists a person in obtaining a residential mortgage loan.

5591 (13) "Loan processor or underwriter" means an individual who as an employee
5592 performs clerical or support duties:

5593 (a) at the direction of and subject to the supervision and instruction of:

5594 (i) a licensee; or

5595 (ii) a registered loan originator; and

5596 (b) as an employee of:

5597 (i) the licensee; or

5598 (ii) a registered loan originator.

5599 (14) "Nationwide database" means the Nationwide Mortgage Licensing System and
5600 Registry, authorized under Secure and Fair Enforcement for Mortgage Licensing, 12 U.S.C.
5601 Sec. 5101[;] et seq.

5602 (15) "Nontraditional mortgage product" means a mortgage product other than a
5603 30-year fixed rate mortgage.

5604 (16) "Owned and controlled by a depository institution" may be defined by rule made
5605 by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative
5606 Rulemaking Act.

5607 (17) "Prelicensing education" means education taken by an individual seeking to be
5608 licensed under this chapter in order to meet the education requirements imposed by Section
5609 70D-3-301 for an individual to obtain a license under this chapter.

5610 (18) "Registered loan originator" means an individual who:

5611 (a) engages in an act as a loan originator only as an employee of:

5612 (i) a depository institution;

5613 (ii) a covered subsidiary; or

5614 (iii) an institution regulated by the Farm Credit Administration; and

5615 (b) is registered with, and maintains a unique identifier through, the nationwide
5616 database.

5617 (19) (a) Subject to Subsection (19)(b), "residential mortgage loan" means:

5618 (i) a mortgage loan; or

5619 (ii) a loan that is:

5620 (A) secured by a mortgage; and

5621 (B) subject to Title 70C, Utah Consumer Credit Code.

5622 (b) A loan described in Subsection (19)(a) is a "residential mortgage loan" only if the
5623 mortgage securing the loan is on:

5624 (i) a dwelling located in the state; or

5625 (ii) real property located in the state, upon which is constructed or intended to be
5626 constructed a dwelling.

5627 (20) "Unique identifier" is as defined in 12 U.S.C. Sec. 5102.

5628 Section 113. Section **72-5-116** is amended to read:

5629 **72-5-116. Exemption from state licensure.**

5630 In accordance with Section ~~[61-2-3]~~ 61-2f-202, an employee or authorized agent
 5631 working under the oversight of the department when engaging in an act on behalf of the
 5632 department related to one or more of the following is exempt from licensure under Title 61,
 5633 Chapter ~~[2, Division of Real Estate]~~ 2f, Real Estate Licensing and Practices Act:

- 5634 (1) acquiring real ~~[property]~~ estate pursuant to Section 72-5-103;
 5635 (2) disposing of real ~~[property]~~ estate pursuant to Section 72-5-111;
 5636 (3) providing services that constitute property management, as defined in Section
 5637 ~~[61-2-2]~~ 61-2f-102; or
 5638 (4) leasing of real ~~[property]~~ estate.

5639 Section 114. **Repealer.**

5640 This bill repeals:

5641 Section **61-2-4, One act for compensation qualifies person as broker or sales**
 5642 **agent.**

5643 Section **61-2b-11, Curriculum to be determined by board.**

5644 Section **61-2b-16, Certification and licensing examinations.**

5645 Section **61-2c-207, Reciprocal licensure.**

5646 Section **61-2c-208, Activation and inactivation of license.**

5647 Section 115. **Coordinating H.B. 275 with H.B. 53 -- Technical amendments.**

5648 If this H.B. 275 and H.B. 53, Foreclosure Rescue and Loan Modification Amendments,
 5649 both pass, it is the intent of the Legislature that the Office of Legislative Research and General
 5650 Counsel in preparing the Utah Code database for publication:

5651 (1) modify Subsection 61-2c-102(1)(y) as amended in this bill to read as follows:

5652 "[~~(v)~~] (y) (i) Except as provided in Subsection (1)[~~(v)~~](y)(ii), "mortgage loan
 5653 originator" means an individual who for compensation or in expectation of compensation:

5654 (A) (I) takes a residential mortgage loan application; or

5655 [~~(B)~~] (II) offers or negotiates terms of a residential mortgage loan[-] for the purpose of:

5656 (Aa) a purchase;

5657 (Bb) a refinance;

5658 (Cc) a loan modification assistance; or
5659 (Dd) a foreclosure rescue; and
5660 (B) is licensed as a mortgage loan originator in accordance with this chapter."; and
5661 (2) treat the amendments in this bill to Subsections 61-2f-102(1) and (14) as
5662 superseding the amendments in H.B. 53 to the corresponding subsections, except that the
5663 Office of Legislative Research and General Counsel shall correct the internal subsection cites
5664 in Section 61-2f-102 accordingly.