

**Representative Gage Froerer** proposes the following substitute bill:

**REAL ESTATE RELATED AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gage Froerer**

Senate Sponsor: J. Stuart Adams

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to real estate in general and the Division of Real Estate to address the regulation of activities involving real estate.

**Highlighted Provisions:**

This bill:

- ▶ amends the Utah Uniform Land Sales Practices Act, including:
  - modifying penalties; and
  - repealing extradition proceedings;
- ▶ modifies the Utah Residential Mortgage Practices and Licensing Act, including:
  - modifying the definition provisions;
  - addressing payments to the division that are dishonored;
  - addressing the establishment of fees;
  - addressing qualifications for licensure and criminal histories;
  - providing for enforcement of reporting requirements;
  - modifying prohibited conduct;
  - addressing recordkeeping requirements; and
  - allowing for de novo review under certain circumstances;
- ▶ modifies the Appraisal Management Company Registration and Regulation Act,



26 including:

- 27 • modifying the definition provisions;
- 28 • addressing when board action is taken with the concurrence of the division;
- 29 • addressing payments to the division that are dishonored;
- 30 • expanding provisions related to criminal histories;
- 31 • allowing the board to delegate to the division certain hearings;
- 32 • providing for the extension of the term of a license;

33 ~~H→ [—•—addressing adherence to standards;] ←H~~

- 34 • modifying prohibited conduct;
- 35 • providing for the payment of certain costs related to investigations;
- 36 • increasing the amount of a civil penalty; and
- 37 • addressing the contents and affect of an order;

38 ▶ modifies the Real Estate Licensing and Practices Act, including:

- 39 • modifying the definition provisions;
- 40 • addressing payments to the division that are dishonored;
- 41 • providing for de novo review in certain circumstances;
- 42 • addressing criminal histories;
- 43 • addressing when the division may extend the term of a license;
- 44 • providing for the enforcement of reporting requirements;
- 45 • addressing exclusive brokerage agreements; and
- 46 • modifying grounds for disciplinary conduct;

47 ▶ renumbers and amends the Real Estate Appraiser Licensing and Certification Act,

48 including:

- 49 • addressing when the board may take action with the concurrence of the division;
- 50 • addressing criminal histories;
- 51 • addressing when the division may extend the term of a license;
- 52 • modifying reinstatement requirements; and
- 53 • allowing the board to delegate certain actions to the division; and
- 54 ▶ makes technical and conforming amendments.

55 **Money Appropriated in this Bill:**

56 None

57 **Other Special Clauses:**

58 None

59 **Utah Code Sections Affected:**

60 AMENDS:

61 7-5-1, as last amended by Laws of Utah 2003, Chapter 301

62 13-21-2, as last amended by Laws of Utah 2008, Chapter 250

63 16-11-2, as last amended by Laws of Utah 2010, Chapter 379

64 17-17-2, as last amended by Laws of Utah 2010, Chapter 131

65 31A-2-402, as last amended by Laws of Utah 2010, Chapter 379

66 31A-23a-402, as last amended by Laws of Utah 2008, Chapter 382

67 48-2c-1502, as last amended by Laws of Utah 2010, Chapter 379

68 53C-4-103, as enacted by Laws of Utah 2008, Chapter 203

69 57-11-16, as last amended by Laws of Utah 2009, Chapter 352

70 59-1-404, as last amended by Laws of Utah 2008, Chapter 382

71 59-2-701, as last amended by Laws of Utah 2001, Chapter 214

72 61-2-201, as renumbered and amended by Laws of Utah 2010, Chapter 379

73 61-2c-102, as last amended by Laws of Utah 2010, Chapters 184, 379 and last amended

74 by Coordination Clause, Laws of Utah 2010, Chapter 379

75 61-2c-103, as last amended by Laws of Utah 2010, Chapter 379

76 61-2c-202, as last amended by Laws of Utah 2010, Chapter 379

77 61-2c-203, as last amended by Laws of Utah 2010, Chapter 379

78 61-2c-205, as last amended by Laws of Utah 2010, Chapter 379

79 61-2c-301, as last amended by Laws of Utah 2010, Chapters 184 and 379

80 61-2c-302, as last amended by Laws of Utah 2010, Chapter 379

81 61-2c-402, as last amended by Laws of Utah 2010, Chapter 379

82 61-2c-501.5, as enacted by Laws of Utah 2010, Chapter 379

83 61-2c-507, as last amended by Laws of Utah 2010, Chapter 379

84 61-2e-102, as enacted by Laws of Utah 2009, Chapter 269

85 61-2e-103, as enacted by Laws of Utah 2009, Chapter 269

86 61-2e-202, as enacted by Laws of Utah 2009, Chapter 269

87 61-2e-203, as enacted by Laws of Utah 2009, Chapter 269

- 88           **61-2e-204**, as enacted by Laws of Utah 2009, Chapter 269
- 89           **61-2e-301**, as enacted by Laws of Utah 2009, Chapter 269
- 90   ~~Ĥ→ [ **61-2e-302**, as enacted by Laws of Utah 2009, Chapter 269 ] ←Ĥ~~
- 91           **61-2e-307**, as enacted by Laws of Utah 2009, Chapter 269
- 92           **61-2e-401**, as enacted by Laws of Utah 2009, Chapter 269
- 93           **61-2e-402**, as enacted by Laws of Utah 2009, Chapter 269
- 94           **61-2f-102**, as last amended by Laws of Utah 2010, Chapter 184 and renumbered and
- 95 amended by Laws of Utah 2010, Chapter 379 and last amended by Coordination
- 96 Clause, Laws of Utah 2010, Chapter 379
- 97           **61-2f-105**, as enacted by Laws of Utah 2010, Chapter 379
- 98           **61-2f-202**, as last amended by Laws of Utah 2010, Chapter 184 and renumbered and
- 99 amended by Laws of Utah 2010, Chapter 379
- 100           **61-2f-203**, as renumbered and amended by Laws of Utah 2010, Chapter 379
- 101           **61-2f-204**, as renumbered and amended by Laws of Utah 2010, Chapter 379
- 102           **61-2f-206**, as enacted by Laws of Utah 2010, Chapter 379
- 103           **61-2f-301**, as renumbered and amended by Laws of Utah 2010, Chapter 379
- 104           **61-2f-401**, as last amended by Laws of Utah 2010, Chapter 184 and renumbered and
- 105 amended by Laws of Utah 2010, Chapter 379
- 106           **63A-5-220**, as last amended by Laws of Utah 2010, Chapter 278
- 107           **63A-5-401**, as enacted by Laws of Utah 2008, Chapter 203
- 108           **70D-1-102**, as renumbered and amended by Laws of Utah 2009, Chapter 72
- 109           **72-5-117**, as enacted by Laws of Utah 2008, Chapter 203
- 110           **79-2-403**, as renumbered and amended by Laws of Utah 2009, Chapter 344

111 ENACTS:

- 112           **61-2g-302**, Utah Code Annotated 1953
- 113           **61-2g-303**, Utah Code Annotated 1953

114 RENUMBERS AND AMENDS:

- 115           **61-2g-101**, (Renumbered from 61-2b-1, as last amended by Laws of Utah 1999,
- 116 Chapter 117)
- 117           **61-2g-102**, (Renumbered from 61-2b-2, as last amended by Laws of Utah 2010,
- 118 Chapter 379)

- 119           **61-2g-103**, (Renumbered from 61-2b-25, as last amended by Laws of Utah 2010,  
120 Chapter 379)
- 121           **61-2g-201**, (Renumbered from 61-2b-6, as last amended by Laws of Utah 2010,  
122 Chapter 379)
- 123           **61-2g-202**, (Renumbered from 61-2b-37, as last amended by Laws of Utah 2009,  
124 Chapter 183)
- 125           **61-2g-203**, (Renumbered from 61-2b-38, as last amended by Laws of Utah 2005,  
126 Chapter 199)
- 127           **61-2g-204**, (Renumbered from 61-2b-7, as last amended by Laws of Utah 2010,  
128 Chapter 286)
- 129           **61-2g-205**, (Renumbered from 61-2b-8, as last amended by Laws of Utah 2010,  
130 Chapter 379)
- 131           **61-2g-301**, (Renumbered from 61-2b-3, as last amended by Laws of Utah 2010,  
132 Chapter 379)
- 133           **61-2g-304**, (Renumbered from 61-2b-18, as last amended by Laws of Utah 2010,  
134 Chapter 379)
- 135           **61-2g-305**, (Renumbered from 61-2b-19, as last amended by Laws of Utah 2010,  
136 Chapter 379)
- 137           **61-2g-306**, (Renumbered from 61-2b-20, as last amended by Laws of Utah 2010,  
138 Chapter 379)
- 139           **61-2g-307**, (Renumbered from 61-2b-40, as last amended by Laws of Utah 2010,  
140 Chapter 379)
- 141           **61-2g-308**, (Renumbered from 61-2b-22, as last amended by Laws of Utah 2008,  
142 Chapters 382 and 387)
- 143           **61-2g-309**, (Renumbered from 61-2b-21, as last amended by Laws of Utah 2008,  
144 Chapters 382 and 387)
- 145           **61-2g-310**, (Renumbered from 61-2b-23, as last amended by Laws of Utah 1999,  
146 Chapter 117)
- 147           **61-2g-311**, (Renumbered from 61-2b-10, as last amended by Laws of Utah 2010,  
148 Chapter 379)
- 149           **61-2g-312**, (Renumbered from 61-2b-13, as last amended by Laws of Utah 2001,

150 Chapter 214)  
151 **61-2g-313**, (Renumbered from 61-2b-14, as last amended by Laws of Utah 2010,  
152 Chapter 379)  
153 **61-2g-314**, (Renumbered from 61-2b-15, as last amended by Laws of Utah 2010,  
154 Chapter 379)  
155 **61-2g-315**, (Renumbered from 61-2b-24, as last amended by Laws of Utah 2008,  
156 Chapter 387)  
157 **61-2g-401**, (Renumbered from 61-2b-17, as last amended by Laws of Utah 2010,  
158 Chapter 379)  
159 **61-2g-402**, (Renumbered from 61-2b-26, as last amended by Laws of Utah 2008,  
160 Chapter 387)  
161 **61-2g-403**, (Renumbered from 61-2b-27, as last amended by Laws of Utah 2009,  
162 Chapter 352)  
163 **61-2g-404**, (Renumbered from 61-2b-32, as last amended by Laws of Utah 2010,  
164 Chapter 379)  
165 **61-2g-405**, (Renumbered from 61-2b-34, as last amended by Laws of Utah 2005,  
166 Chapter 199)  
167 **61-2g-406**, (Renumbered from 61-2b-36, as last amended by Laws of Utah 2010,  
168 Chapter 379)  
169 **61-2g-407**, (Renumbered from 61-2b-41, as enacted by Laws of Utah 1996, Chapter  
170 131)  
171 **61-2g-501**, (Renumbered from 61-2b-28, as last amended by Laws of Utah 2010,  
172 Chapter 379)  
173 **61-2g-502**, (Renumbered from 61-2b-29, as last amended by Laws of Utah 2010,  
174 Chapter 379)  
175 **61-2g-503**, (Renumbered from 61-2b-30.5, as last amended by Laws of Utah 2010,  
176 Chapter 379)  
177 **61-2g-504**, (Renumbered from 61-2b-31, as last amended by Laws of Utah 2008,  
178 Chapters 3 and 387)  
179 **61-2g-505**, (Renumbered from 61-2b-33, as last amended by Laws of Utah 2010,  
180 Chapter 379)

181 REPEALS:

182 57-11-19, as enacted by Laws of Utah 1973, Chapter 158

183 61-2b-5, as enacted by Laws of Utah 1990, Chapter 212

184 61-2b-9, as last amended by Laws of Utah 2005, Chapter 199

185 61-2b-30, as last amended by Laws of Utah 2008, Chapter 382

186 61-2b-39, as last amended by Laws of Utah 2010, Chapter 379

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

189 Section 1. Section 7-5-1 is amended to read:

190 **7-5-1. Definitions -- Allowable trust companies -- Exceptions.**

191 (1) As used in this chapter:

192 (a) "Business trust" means an entity engaged in a trade or business that is created by a  
193 declaration of trust that transfers property to trustees, to be held and managed by them for the  
194 benefit of persons holding certificates representing the beneficial interest in the trust estate and  
195 assets.

196 (b) "Trust business" means, except as provided in Subsection (1)(c), a business in  
197 which one acts in any agency or fiduciary capacity, including that of personal representative,  
198 executor, administrator, conservator, guardian, assignee, receiver, depository, or trustee under  
199 appointment as trustee for any purpose permitted by law, including the definition of "trust" set  
200 forth in Subsection 75-1-201[(53)](55).

201 (c) "Trust business" does not include the following means of holding [funds] money,  
202 assets, or other property:

203 (i) [funds] money held in a client trust account by an attorney authorized to practice  
204 law in this state;

205 (ii) [funds] money held in connection with the purchase or sale of real estate by a  
206 person [~~authorized to act as a real estate broker in this state~~] licensed as a principal broker in  
207 accordance with Title 61, Chapter 2f, Real Estate Licensing and Practices Act;

208 (iii) [funds] money or other assets held in escrow by a person authorized by the  
209 department in accordance with Chapter 22, Regulation of Independent Escrow Agents, or by  
210 the Utah Insurance Department to act as an escrow agent in this state;

211 (iv) [funds] money held by a homeowners' association or similar organization to pay

212 maintenance and other related costs for commonly owned property;

213 (v) [~~funds~~] money held in connection with the collection of debts or payments on loans  
214 by a person acting solely as the agent or representative or otherwise at the sole direction of the  
215 person to which the debt or payment is owed, including [~~funds~~] money held by an escrow agent  
216 for payment of taxes or insurance;

217 (vi) [~~funds~~] money and other assets held in trust on an occasional or isolated basis by a  
218 person who does not represent that [~~he~~] the person is engaged in the trust business in Utah;

219 (vii) [~~funds~~] money or other assets found by a court to be held in an implied, resulting,  
220 or constructive trust;

221 (viii) [~~funds~~] money or other assets held by a court appointed conservator, guardian,  
222 receiver, trustee, or other fiduciary if:

223 (A) the conservator, receiver, guardian, trustee, or other fiduciary is responsible to the  
224 court in the same manner as a personal representative under Title 75, Chapter 3, Part 5,  
225 Supervised Administration, or as a receiver under Rule 66, Utah Rules of Civil Procedure;

226 (B) the conservator, trustee, or other fiduciary is a certified public accountant or has  
227 qualified for and received a designation as a certified financial planner, chartered financial  
228 consultant, certified financial analyst, or similar designation suitable to the court, that  
229 evidences the conservator's, trustee's, or other fiduciary's professional competence to manage  
230 financial matters;

231 (C) no trust company is willing or eligible to serve as conservator, guardian, trustee, or  
232 receiver after notice has been given pursuant to Section 75-1-401 to all trust companies doing  
233 business in this state, including a statement of the value of the assets to be managed[~~-That~~],  
234 that notice need not be provided, however, if a trust company has been employed by the  
235 fiduciary to manage the assets; and

236 (D) in the event guardianship services are needed, the person seeking appointment as a  
237 guardian under this Subsection (1) is a specialized care professional, as that term is defined in  
238 Section 75-5-311, or a business or state agency that employs the services of one of those  
239 professionals for the purpose of caring for the incapacitated person, so long as the specialized  
240 care professional, business, or state agency does not:

241 (I) profit financially or otherwise from, or receive compensation for acting in that  
242 capacity, except for the direct costs of providing guardianship or conservatorship services; or

- 243 (II) otherwise have a conflict of interest in providing those services;
- 244 (ix) [~~funds~~] money or other assets held by a credit services organization operating in  
245 compliance with Title 13, Chapter 21, Credit Services Organizations Act;
- 246 (x) [~~funds~~] money, securities, or other assets held in a customer account in connection  
247 with the purchase or sale of securities by a regulated securities broker, dealer, or transfer agent;  
248 or
- 249 (xi) [~~funds~~] money, assets, and other property held in a business trust for the benefit of  
250 holders of certificates of beneficial interest if the fiduciary activities of the business trust are  
251 merely incidental to conducting business in the business trust form.
- 252 (d) "Trust company" means an institution authorized to engage in the trust business  
253 under this chapter. Only the following may be a trust company:
- 254 (i) a Utah depository institution or its wholly owned subsidiary;
- 255 (ii) an out-of-state depository institution authorized to engage in business as a  
256 depository institution in Utah or its wholly owned subsidiary;
- 257 (iii) a corporation, including a credit union service organization, owned entirely by one  
258 or more federally insured depository institutions as defined in Subsection 7-1-103(8);
- 259 (iv) a direct or indirect subsidiary of a depository institution holding company that also  
260 has a direct or indirect subsidiary authorized to engage in business as a depository institution in  
261 Utah; and
- 262 (v) any other corporation continuously and lawfully engaged in the trust business in  
263 this state since before July 1, 1981.
- 264 (2) Only a trust company may engage in the trust business in this state.
- 265 (3) The requirements of this chapter do not apply to:
- 266 (a) an institution authorized to engage in a trust business in another state that is  
267 engaged in trust activities in this state solely to fulfill its duties as a trustee of a trust created  
268 and administered in another state;
- 269 (b) a national bank, federal savings bank, federal savings and loan association, or  
270 federal credit union authorized to engage in business as a depository institution in Utah, or any  
271 wholly owned subsidiary of any of these, to the extent the institution is authorized by its  
272 primary federal regulator to engage in the trust business in this state; or
- 273 (c) a state agency that is otherwise authorized by statute to act as a conservator,

274 receiver, guardian, trustee, or in any other fiduciary capacity.

275 Section 2. Section 13-21-2 is amended to read:

276 **13-21-2. Definitions -- Exemptions.**

277 As used in this chapter:

278 (1) "Buyer" means an individual who is solicited to purchase or who purchases the  
279 services of a credit services organization.

280 (2) "Credit reporting agency" means a person who, for a monetary fee, dues, or on a  
281 cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling  
282 or evaluating consumer credit information or other information on consumers for the purpose  
283 of furnishing consumer reports to third persons.

284 (3) (a) "Credit services organization" means a person who represents that the person or  
285 an employee is a debt professional or credit counselor, or, with respect to the extension of  
286 credit by others, sells, provides, or performs, or represents that the person can or will sell,  
287 provide, or perform, in return for the payment of money or other valuable consideration any of  
288 the following services:

289 (i) improving a buyer's credit record, history, or rating;

290 (ii) providing advice, assistance, instruction, or instructional materials to a buyer with  
291 regard to Subsection (3)(a)(i); or

292 (iii) debt reduction or debt management plans.

293 (b) "Credit services organization" does not include:

294 (i) a person authorized to make loans or extensions of credit under the laws of this state  
295 or the United States who is subject to regulation and supervision by this state or the United  
296 States and who derives at least 35% of the person's income from making loans and extensions  
297 of credit;

298 (ii) a depository institution:

299 (A) as defined in Section 7-1-103; or

300 (B) that is regulated or supervised by the Federal Deposit Insurance Corporation or the  
301 National Credit Union Administration;

302 (iii) a person licensed as a [~~real estate broker by this state~~] principal broker under Title  
303 61, Chapter 2f, Real Estate Licensing and Practices Act, if the person is acting within the  
304 course and scope of that license;

- 305 (iv) a person licensed to practice law in this state if:
- 306 (A) the person renders the services described in Subsection (3)(a) within the course and
- 307 scope of the person's practice as an attorney; and
- 308 (B) the services described in Subsection (3)(a) are incidental to the person's practice as
- 309 an attorney;
- 310 (v) a broker-dealer registered with the Securities and Exchange Commission or the
- 311 Commodity Futures Trading Commission if the broker-dealer is acting within the course and
- 312 scope of that regulation;
- 313 (vi) a credit reporting agency if the services described in Subsection (3)(a) are
- 314 incidental to the credit reporting agency's services; or
- 315 (vii) a person who provides debt-management services and is required to be registered
- 316 under Title 13, Chapter 42, Uniform Debt-Management Services Act.
- 317 (4) "Extension of credit" means the right to defer payment of debt or to incur debt and
- 318 defer its payment, offered or granted primarily for personal, family, or household purposes.

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

320 **16-11-2. Definitions.**

321 As used in this chapter:

- 322 (1) "Filed" means the division has received and approved, as to form, a document
- 323 submitted under ~~[the provisions of]~~ this chapter, and has marked on the face of the document a
- 324 stamp or seal indicating the time of day and date of approval, the name of the division, the
- 325 division director's signature and division seal, or facsimiles of the signature or seal.
- 326 (2) "Professional corporation" means a corporation organized under this chapter.
- 327 (3) "Professional service" means the personal service rendered by:
- 328 (a) a physician, surgeon, or doctor of medicine holding a license under Title 58,
- 329 Chapter 67, Utah Medical Practice Act, and any subsequent laws regulating the practice of
- 330 medicine;
- 331 (b) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentist and
- 332 Dental Hygienist Practice Act, and any subsequent laws regulating the practice of dentistry;
- 333 (c) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68,
- 334 Utah Osteopathic Medical Practice Act, and any subsequent laws regulating the practice of
- 335 osteopathy;

336 (d) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician  
337 Practice Act, and any subsequent laws regulating the practice of [~~chiropractic~~] chiropractics;

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

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

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

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

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

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

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

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

354 (i) the Utah Supreme Court; or

355 (ii) the Supreme Court, other court, agency, instrumentality, or regulating board that  
356 licenses or regulates the authority to practice law in any state or territory of the United States  
357 other than Utah;

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

360 (n) a principal broker, associate broker, or sales agent holding a license under Title 61,  
361 Chapter 2f, Real Estate Licensing and Practices Act, and any subsequent laws regulating the  
362 selling, exchanging, purchasing, renting, or leasing of real estate;

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

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

367 work;

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

370 (r) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58,  
371 Chapter 44a, Nurse Midwife Practice Act;

372 (s) a landscape architect licensed under Title 58, Chapter 53, Landscape Architects  
373 Licensing Act, and any subsequent laws regulating landscape architects; or

374 (t) an individual licensed, certified, or registered under Title 61, Chapter [2b] 2g, Real  
375 Estate Appraiser Licensing and Certification Act, and any subsequent laws regulating the  
376 practice of appraising real estate.

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

381 Section 4. Section **17-17-2** is amended to read:

382 **17-17-2. Assessor to be state qualified -- Vacancy -- Filling vacancy.**

383 (1) (a) Except as provided in Subsection (1)(b), in addition to the requirements of  
384 Section 17-16-1, any person elected to the office of county assessor after November 1, 1993,  
385 shall be a state-licensed or state-certified appraiser as defined in Title 61, Chapter [2b] 2g, Real  
386 Estate Appraiser Licensing and Certification Act, [~~prior to~~] before the expiration of 36 months  
387 from the day on which [~~his~~] the person's term of office begins.

388 (b) Notwithstanding Subsection (1)(a), a county assessor of a county of the first  
389 through third class shall be a state-licensed or state-certified appraiser as defined in Title 61,  
390 Chapter [2b] 2g, Real Estate Appraiser Licensing and Certification Act, [~~prior to~~] before filing  
391 for office if the county assessor is:

392 (i) elected to the office of county assessor on or after January 1, 2010; or

393 (ii) selected to fill the vacancy of a county assessor as described in Subsection (2).

394 (2) (a) If an assessor fails to meet the requirement of this section, the assessor's office  
395 is automatically vacant.

396 (b) (i) (A) If a vacancy occurs under this section, the county legislative body shall fill  
397 the vacancy in the manner provided in Sections 17-53-104 and 20A-1-508.

398 (B) A person selected to fill the vacancy shall be a state-licensed or state-certified  
399 appraiser before assuming the office of county assessor.

400 (ii) If a state-licensed or state-certified appraiser cannot be found to fill a vacancy  
401 which resulted from the requirements of this section, the county legislative body may contract  
402 with a state-licensed or state-certified appraiser from outside the county to fill the remainder of  
403 the term in the office of county assessor.

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

405 **31A-2-402. Definitions.**

406 As used in this part:

407 (1) "Commission" means the Title and Escrow Commission created in Section  
408 31A-2-403.

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

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

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

413 (b) a license or certificate under:

414 (i) Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act;

415 ~~(i)~~ (ii) Title 61, Chapter 2f, Real Estate Licensing and Practices Act; or

416 ~~(ii)~~ (iii) Title 61, Chapter ~~2b~~ 2g, Real Estate Appraiser Licensing and Certification  
417 Act; ~~or~~.

418 ~~[(iii) Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act.]~~

419 (4) "Real Estate Commission" means the Real Estate Commission created in Section  
420 61-2f-103.

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

422 (a) an agency with a title insurance line of authority;

423 (b) a producer with:

424 (i) a general title insurance line of authority; or

425 (ii) a specific category of authority for title insurance; or

426 (c) a title insurance adjuster.

427 Section 6. Section **31A-23a-402** is amended to read:

428 **31A-23a-402. Unfair marketing practices -- Communication -- Inducement --**

429 **Unfair discrimination -- Coercion or intimidation -- Restriction on choice.**

430 (1) (a) (i) Any of the following may not make or cause to be made any communication  
431 that contains false or misleading information, relating to an insurance product or contract, any  
432 insurer, or any licensee under this title, including information that is false or misleading  
433 because it is incomplete:

434 (A) a person who is or should be licensed under this title;

435 (B) an employee or producer of a person described in Subsection (1)(a)(i)(A);

436 (C) a person whose primary interest is as a competitor of a person licensed under this  
437 title; and

438 (D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

439 (ii) As used in this Subsection (1), "false or misleading information" includes:

440 (A) assuring the nonobligatory payment of future dividends or refunds of unused  
441 premiums in any specific or approximate amounts, but reporting fully and accurately past  
442 experience is not false or misleading information; and

443 (B) with intent to deceive a person examining it:

444 (I) filing a report;

445 (II) making a false entry in a record; or

446 (III) wilfully refraining from making a proper entry in a record.

447 (iii) A licensee under this title may not:

448 (A) use any business name, slogan, emblem, or related device that is misleading or  
449 likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee  
450 already in business; or

451 (B) use any advertisement or other insurance promotional material that would cause a  
452 reasonable person to mistakenly believe that a state or federal government agency:

453 (I) is responsible for the insurance sales activities of the person;

454 (II) stands behind the credit of the person;

455 (III) guarantees any returns on insurance products of or sold by the person; or

456 (IV) is a source of payment of any insurance obligation of or sold by the person.

457 (iv) A person who is not an insurer may not assume or use any name that deceptively  
458 implies or suggests that person is an insurer.

459 (v) A person other than persons licensed as health maintenance organizations under

460 Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to  
461 itself.

462 (b) A licensee's violation creates a rebuttable presumption that the violation was also  
463 committed by the insurer if:

464 (i) the licensee under this title distributes cards or documents, exhibits a sign, or  
465 publishes an advertisement that violates Subsection (1)(a), with reference to a particular  
466 insurer:

467 (A) that the licensee represents; or

468 (B) for whom the licensee processes claims; and

469 (ii) the cards, documents, signs, or advertisements are supplied or approved by that  
470 insurer.

471 (2) (a) (i) A licensee under this title, or an officer or employee of a licensee may not  
472 induce any person to enter into or continue an insurance contract or to terminate an existing  
473 insurance contract by offering benefits not specified in the policy to be issued or continued,  
474 including premium or commission rebates.

475 (ii) An insurer may not make or knowingly allow any agreement of insurance that is  
476 not clearly expressed in the policy to be issued or renewed.

477 (iii) This Subsection (2)(a) does not preclude:

478 (A) an insurer from reducing premiums because of expense savings;

479 (B) an insurer from providing to a policyholder or insured one or more incentives to  
480 participate in programs or activities designed to reduce claims or claim expenses;

481 (C) the usual kinds of social courtesies not related to particular transactions; or

482 (D) an insurer from receiving premiums under an installment payment plan.

483 (iv) The commissioner may adopt rules in accordance with Title 63G, Chapter 3, Utah  
484 Administrative Rulemaking Act, to define what constitutes an incentive described in  
485 Subsection (2)(a)(iii)(B).

486 (b) A licensee under this title may not absorb the tax under Section 31A-3-301.

487 (c) (i) A title insurer or producer or any officer or employee of either may not pay,  
488 allow, give, or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining  
489 any title insurance business:

490 (A) any rebate, reduction, or abatement of any rate or charge made incident to the

491 issuance of the title insurance;

492 (B) any special favor or advantage not generally available to others; [or]

493 (C) any money or other consideration, except if approved under Section 31A-2-405; or

494 (D) material inducement.

495 (ii) "Charge made incident to the issuance of the title insurance" includes escrow  
496 charges, and any other services that are prescribed in rule by the Title and Escrow Commission  
497 after consultation with the commissioner and subject to Section 31A-2-404.

498 (iii) An insured or any other person connected, directly or indirectly, with the  
499 transaction[~~including a mortgage lender, real estate broker, builder, attorney, or any officer,  
500 employee, or agent of any of them,~~] may not knowingly receive or accept, directly or indirectly,  
501 any benefit referred to in Subsection (2)(c)(i)[~~;~~], including:

502 (A) a person licensed under Title 61, Chapter 2c, Utah Residential Mortgage Practices  
503 and Licensing Act;

504 (B) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices  
505 Act;

506 (C) a builder;

507 (D) an attorney; or

508 (E) an officer, employee, or agent of a person listed in this Subsection (2)(c)(iii).

509 (3) (a) An insurer may not unfairly discriminate among policyholders by charging  
510 different premiums or by offering different terms of coverage, except on the basis of  
511 classifications related to the nature and the degree of the risk covered or the expenses involved.

512 (b) Rates are not unfairly discriminatory if they are averaged broadly among persons  
513 insured under a group, blanket, or franchise policy, and the terms of those policies are not  
514 unfairly discriminatory merely because they are more favorable than in similar individual  
515 policies.

516 (4) (a) This Subsection (4) applies to:

517 (i) a person who is or should be licensed under this title;

518 (ii) an employee of that licensee or person who should be licensed;

519 (iii) a person whose primary interest is as a competitor of a person licensed under this  
520 title; and

521 (iv) one acting on behalf of any person described in Subsections (4)(a)(i) through (iii).

522 (b) A person described in Subsection (4)(a) may not commit or enter into any  
523 agreement to participate in any act of boycott, coercion, or intimidation that:

524 (i) tends to produce:

525 (A) an unreasonable restraint of the business of insurance; or

526 (B) a monopoly in that business; or

527 (ii) results in an applicant purchasing or replacing an insurance contract.

528 (5) (a) (i) Subject to Subsection (5)(a)(ii), a person may not restrict in the choice of an  
529 insurer or licensee under this chapter, another person who is required to pay for insurance as a  
530 condition for the conclusion of a contract or other transaction or for the exercise of any right  
531 under a contract.

532 (ii) A person requiring coverage may reserve the right to disapprove the insurer or the  
533 coverage selected on reasonable grounds.

534 (b) The form of corporate organization of an insurer authorized to do business in this  
535 state is not a reasonable ground for disapproval, and the commissioner may by rule specify  
536 additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from  
537 declining an application for insurance.

538 (6) A person may not make any charge other than insurance premiums and premium  
539 financing charges for the protection of property or of a security interest in property, as a  
540 condition for obtaining, renewing, or continuing the financing of a purchase of the property or  
541 the lending of money on the security of an interest in the property.

542 (7) (a) A licensee under this title may not refuse or fail to return promptly all indicia of  
543 agency to the principal on demand.

544 (b) A licensee whose license is suspended, limited, or revoked under Section  
545 31A-2-308, 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the  
546 commissioner on demand.

547 (8) (a) A person may not engage in any other unfair method of competition or any other  
548 unfair or deceptive act or practice in the business of insurance, as defined by the commissioner  
549 by rule, after a finding that they:

550 (i) are misleading;

551 (ii) are deceptive;

552 (iii) are unfairly discriminatory;

553 (iv) provide an unfair inducement; or

554 (v) unreasonably restrain competition.

555 (b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the  
556 Title and Escrow Commission shall make rules, subject to Section 31A-2-404, that define any  
557 other unfair method of competition or any other unfair or deceptive act or practice after a  
558 finding that they:

559 (i) are misleading;

560 (ii) are deceptive;

561 (iii) are unfairly discriminatory;

562 (iv) provide an unfair inducement; or

563 (v) unreasonably restrain competition.

564 Section 7. Section **48-2c-1502** is amended to read:

565 **48-2c-1502. Definitions.**

566 As used in this part:

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

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

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

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

573 (i) Supreme Court of Utah; or

574 (ii) the Supreme Court, other court, agency, instrumentality, or regulating board that  
575 licenses or regulates the authority to practice law in any state or territory of the United States  
576 other than Utah;

577 (c) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician  
578 Practice Act, and any subsequent laws regulating the practice of [~~chiropractic~~] chiropractics;

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

581 (e) a professional engineer registered under Title 58, Chapter 22, Professional  
582 Engineers and Professional Land Surveyors Licensing Act;

583 (f) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician

584 Practice Act, and any subsequent laws regulating the practice of naturopathy;  
585 (g) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58,  
586 Chapter 44a, Nurse Midwife Practice Act;  
587 (h) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry  
588 Practice Act, and any subsequent laws regulating the practice of optometry;  
589 (i) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68,  
590 Utah Osteopathic Medical Practice Act, and any subsequent laws regulating the practice of  
591 osteopathy;  
592 (j) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice Act,  
593 and any subsequent laws regulating the practice of pharmacy;  
594 (k) a physician, surgeon, or doctor of medicine holding a license under Title 58,  
595 Chapter 67, Utah Medical Practice Act, and any subsequent laws regulating the practice of  
596 medicine;  
597 (l) a physical therapist holding a license under Title 58, Chapter 24b, Physical Therapy  
598 Practice Act, and any subsequent laws regulating the practice of physical therapy;  
599 (m) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric  
600 Physician Licensing Act, and any subsequent laws regulating the practice of podiatry;  
601 (n) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing  
602 Act, and any subsequent laws regulating the practice of psychology;  
603 (o) a public accountant holding a license under Title 58, Chapter 26a, Certified Public  
604 Accountant Licensing Act, and any subsequent laws regulating the practice of public  
605 accounting;  
606 (p) a principal broker, associate broker, or sales agent holding a license under Title 61,  
607 Chapter 2f, Real Estate Licensing and Practices Act, and any subsequent laws regulating the  
608 sale, exchange, purchase, rental, or leasing of real estate;  
609 (q) a clinical or certified social worker holding a license under Title 58, Chapter 60,  
610 Part 2, Social Worker Licensing Act, and any subsequent laws regulating the practice of social  
611 work;  
612 (r) a mental health therapist holding a license under Title 58, Chapter 60, Mental  
613 Health Professional Practice Act, and any subsequent laws regulating the practice of mental  
614 health therapy;

615 (s) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act,  
616 and any subsequent laws regulating the practice of veterinary medicine; or

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

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

623 Section 8. Section **53C-4-103** is amended to read:

624 **53C-4-103. Rulemaking for sale of real property -- Licensed or certified**  
625 **appraisers -- Exceptions.**

626 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if  
627 the administration buys, sells, or exchanges real property, the administration shall make rules  
628 to ensure that the value of the real property is congruent with the proposed price and other  
629 terms of the purchase, sale, or exchange.

630 (2) The rules:

631 (a) shall establish procedures for determining the value of the real property;

632 (b) may provide that an appraisal, as defined under Section ~~[61-2b-2]~~ 61-2g-102,  
633 demonstrates the real property's value; and

634 (c) may require that the appraisal be completed by a state-certified general appraiser, as  
635 defined under Section ~~[61-2b-2]~~ 61-2g-102.

636 (3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or  
637 to an interest in real property:

638 (a) that is under a contract or other written agreement ~~[prior to]~~ before May 5, 2008; or

639 (b) with a value of less than \$100,000, as estimated by the state agency.

640 Section 9. Section **57-11-16** is amended to read:

641 **57-11-16. Violations -- Duties of attorney general, county attorney, or district**  
642 **attorney.**

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

644 ~~[(i) violates this chapter or a rule adopted under this chapter; or]~~

645 ~~[(ii) in an application for registration under this chapter or under the federal act, makes~~

646 any untrue statement of a material fact or omits to state a material fact.]

647 [~~(b) A person described in Subsection (1)(a) may be:~~]

648 [~~(i) fined a civil penalty not to exceed the greater of:~~]

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

650 [~~(B) double the amount of any gain or economic benefit derived from each violation;]~~

651 [~~(ii) imprisoned for not more than two years; or]~~

652 [~~(iii) both fined or imprisoned.]~~

653 [~~(c) An indictment or information may not be returned or a complaint filed under this~~

654 chapter more than five years after the alleged violation.]

655 (1) (a) A person who violates this chapter is guilty of a class B misdemeanor, except as  
656 provided in Subsection (1)(b).

657 (b) A person who knowingly makes an untrue statement or knowingly omits a material  
658 fact in an application for registration under this chapter or under the federal act is guilty of a  
659 class A misdemeanor.

660 (2) (a) The attorney general shall advise the division and the division's staff in matters  
661 requiring legal counsel or services in the exercise of the division's power or performance of the  
662 division's duties.

663 (b) In the prosecution or defense of an action under this section, the attorney general,  
664 the county attorney, or the district attorney of the appropriate county shall perform [att] the  
665 necessary legal services without compensation other than their regular salaries.

666 Section 10. Section ~~59-1-404~~ is amended to read:

667 **59-1-404. Definitions -- Confidentiality of commercial information obtained from**  
668 **a property taxpayer or derived from the commercial information -- Rulemaking**  
669 **authority -- Exceptions -- Written explanation -- Signature requirements -- Retention of**  
670 **signed explanation by employer -- Penalty.**

671 (1) As used in this section:

672 (a) "Appraiser" means an individual who holds an appraiser's certificate or license  
673 issued by the Division of Real Estate under Title 61, Chapter [2b] 2g, Real Estate Appraiser  
674 Licensing and Certification Act and includes an individual associated with an appraiser who  
675 assists the appraiser in preparing an appraisal.

676 (b) "Appraisal" [~~means an appraisal~~] is as defined in Section [61-2b-2] 61-2g-102.

- 677 (c) (i) "Commercial information" means:
- 678 (A) information of a commercial nature obtained from a property taxpayer regarding
- 679 the property taxpayer's property; or
- 680 (B) information derived from the information described in this Subsection (1)(c)(i).
- 681 (ii) (A) "Commercial information" does not include information regarding a property
- 682 taxpayer's property if the information is intended for public use.
- 683 (B) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
- 684 purposes of Subsection (1)(c)(ii)(A), the commission may by rule prescribe the circumstances
- 685 under which information is intended for public use.
- 686 (d) "Consultation service" [~~means a consultation service~~] is as defined in Section
- 687 [~~61-2b-2~~] 61-2g-102.
- 688 (e) "Locally assessed property" means property that is assessed by a county assessor in
- 689 accordance with Chapter 2, Part 3, County Assessment.
- 690 (f) "Property taxpayer" means a person that:
- 691 (i) is a property owner; or
- 692 (ii) has in effect a contract with a property owner to:
- 693 (A) make filings on behalf of the property owner;
- 694 (B) process appeals on behalf of the property owner; or
- 695 (C) pay a tax under Chapter 2, Property Tax Act, on the property owner's property.
- 696 (g) "Property taxpayer's property" means property with respect to which a property
- 697 taxpayer:
- 698 (i) owns the property;
- 699 (ii) makes filings relating to the property;
- 700 (iii) processes appeals relating to the property; or
- 701 (iv) pays a tax under Chapter 2, Property Tax Act, on the property.
- 702 (h) "Protected commercial information" means commercial information that:
- 703 (i) identifies a specific property taxpayer; or
- 704 (ii) would reasonably lead to the identity of a specific property taxpayer.
- 705 (2) An individual listed under Subsection 59-1-403(1)(a) may not disclose commercial
- 706 information:
- 707 (a) obtained in the course of performing any duty that the individual listed under

708 Subsection 59-1-403(1)(a) performs under Chapter 2, Property Tax Act; or  
709 (b) relating to an action or proceeding:  
710 (i) with respect to a tax imposed on property in accordance with Chapter 2, Property  
711 Tax Act; and  
712 (ii) that is filed in accordance with:  
713 (A) this chapter;  
714 (B) Chapter 2, Property Tax Act; or  
715 (C) this chapter and Chapter 2, Property Tax Act.  
716 (3) (a) Notwithstanding Subsection (2) and subject to Subsection (3)(b), an individual  
717 listed under Subsection 59-1-403(1)(a) may disclose the following information:  
718 (i) the assessed value of property;  
719 (ii) the tax rate imposed on property;  
720 (iii) a legal description of property;  
721 (iv) the physical description or characteristics of property, including a street address or  
722 parcel number for the property;  
723 (v) the square footage or acreage of property;  
724 (vi) the square footage of improvements on property;  
725 (vii) the name of a property taxpayer;  
726 (viii) the mailing address of a property taxpayer;  
727 (ix) the amount of a property tax:  
728 (A) assessed on property;  
729 (B) due on property;  
730 (C) collected on property;  
731 (D) abated on property; or  
732 (E) deferred on property;  
733 (x) the amount of the following relating to property taxes due on property:  
734 (A) interest;  
735 (B) costs; or  
736 (C) other charges;  
737 (xi) the tax status of property, including:  
738 (A) an exemption;

- 739 (B) a property classification;
- 740 (C) a bankruptcy filing; or
- 741 (D) whether the property is the subject of an action or proceeding under this title;
- 742 (xii) information relating to a tax sale of property; or
- 743 (xiii) information relating to single-family residential property.
- 744 (b) (i) Subject to Subsection (3)(b)(ii), a person may receive the information described
- 745 in Subsection (3)(a) in written format.
- 746 (ii) The following may charge a reasonable fee to cover the actual cost of providing the
- 747 information described in Subsection (3)(a) in written format:
- 748 (A) the commission;
- 749 (B) a county;
- 750 (C) a city; or
- 751 (D) a town.
- 752 (4) (a) Notwithstanding Subsection (2) and except as provided in Subsection (4)(c), an
- 753 individual listed under Subsection 59-1-403(1)(a) shall disclose commercial information:
- 754 (i) in accordance with judicial order;
- 755 (ii) on behalf of the commission in any action or proceeding:
- 756 (A) under this title;
- 757 (B) under another law under which a property taxpayer is required to disclose
- 758 commercial information; or
- 759 (C) to which the commission is a party;
- 760 (iii) on behalf of any party to any action or proceeding under this title if the commercial
- 761 information is directly involved in the action or proceeding; or
- 762 (iv) if the requirements of Subsection (4)(b) are met, that is:
- 763 (A) relevant to an action or proceeding:
- 764 (I) filed in accordance with this title; and
- 765 (II) involving property; or
- 766 (B) in preparation for an action or proceeding involving property.
- 767 (b) Commercial information shall be disclosed in accordance with Subsection
- 768 (4)(a)(iv):
- 769 (i) if the commercial information is obtained from:

770 (A) a real estate agent if the real estate agent is not a property taxpayer of the property  
771 that is the subject of the action or proceeding;

772 (B) an appraiser if the appraiser:

773 (I) is not a property taxpayer of the property that is the subject of the action or  
774 proceeding; and

775 (II) did not receive the commercial information pursuant to Subsection (8);

776 (C) a property manager if the property manager is not a property taxpayer of the  
777 property that is the subject of the action or proceeding; or

778 (D) a property taxpayer other than a property taxpayer of the property that is the subject  
779 of the action or proceeding;

780 (ii) regardless of whether the commercial information is disclosed in more than one  
781 action or proceeding; and

782 (iii) (A) if a county board of equalization conducts the action or proceeding, the county  
783 board of equalization takes action to provide that any commercial information disclosed during  
784 the action or proceeding may not be disclosed by any person conducting or participating in the  
785 action or proceeding except as specifically allowed by this section;

786 (B) if the commission conducts the action or proceeding, the commission enters a  
787 protective order or, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking  
788 Act, makes rules specifying that any commercial information disclosed during the action or  
789 proceeding may not be disclosed by any person conducting or participating in the action or  
790 proceeding except as specifically allowed by this section; or

791 (C) if a court of competent jurisdiction conducts the action or proceeding, the court  
792 enters a protective order specifying that any commercial information disclosed during the  
793 action or proceeding may not be disclosed by any person conducting or participating in the  
794 action or proceeding except as specifically allowed by this section.

795 (c) Notwithstanding Subsection (4)(a), a court may require the production of, and may  
796 admit in evidence, commercial information that is specifically pertinent to the action or  
797 proceeding.

798 (5) Notwithstanding Subsection (2), this section does not prohibit:

799 (a) the following from receiving a copy of any commercial information relating to the  
800 basis for assessing a tax that is charged to a property taxpayer:

- 801 (i) the property taxpayer;
- 802 (ii) a duly authorized representative of the property taxpayer;
- 803 (iii) a person that has in effect a contract with the property taxpayer to:
  - 804 (A) make filings on behalf of the property taxpayer;
  - 805 (B) process appeals on behalf of the property taxpayer; or
  - 806 (C) pay a tax under Chapter 2, Property Tax Act, on the property taxpayer's property;
- 807 (iv) a property taxpayer that purchases property from another property taxpayer; or
- 808 (v) a person that the property taxpayer designates in writing as being authorized to
- 809 receive the commercial information;
- 810 (b) the publication of statistics as long as the statistics are classified to prevent the
- 811 identification of a particular property taxpayer's commercial information; or
- 812 (c) the inspection by the attorney general or other legal representative of the state or a
- 813 legal representative of a political subdivision of the state of the commercial information of a
- 814 property taxpayer:
  - 815 (i) that brings action to set aside or review a tax or property valuation based on the
  - 816 commercial information;
  - 817 (ii) against which an action or proceeding is contemplated or has been instituted under
  - 818 this title; or
  - 819 (iii) against which the state or a political subdivision of the state has an unsatisfied
  - 820 money judgment.
- 821 (6) Notwithstanding Subsection (2), in accordance with Title 63G, Chapter 3, Utah
- 822 Administrative Rulemaking Act, the commission may by rule establish standards authorizing
- 823 an individual listed under Subsection 59-1-403(1)(a) to disclose commercial information:
  - 824 (a) (i) in a published decision; or
  - 825 (ii) in carrying out official duties; and
  - 826 (b) if that individual listed under Subsection 59-1-403(1)(a) consults with the property
  - 827 taxpayer that provided the commercial information.
- 828 (7) Notwithstanding Subsection (2):
  - 829 (a) an individual listed under Subsection 59-1-403(1)(a) may share commercial
  - 830 information with the following:
    - 831 (i) another individual listed in Subsection 59-1-403(1)(a)(i) or (ii); or

832 (ii) a representative, agent, clerk, or other officer or employee of a county as required  
833 to fulfill an obligation created by Chapter 2, Property Tax Act;

834 (b) an individual listed under Subsection 59-1-403(1)(a) may perform the following to  
835 fulfill an obligation created by Chapter 2, Property Tax Act:

836 (i) publish notice;

837 (ii) provide notice; or

838 (iii) file a lien; or

839 (c) the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah  
840 Administrative Rulemaking Act, share commercial information gathered from returns and other  
841 written statements with the federal government, any other state, any of the political  
842 subdivisions of another state, or any political subdivision of this state, if these political  
843 subdivisions or the federal government grant substantially similar privileges to this state.

844 (8) Notwithstanding Subsection (2):

845 (a) subject to the limitations in this section, an individual described in Subsection  
846 59-1-403(1)(a) may share the following commercial information with an appraiser:

847 (i) the sales price of locally assessed property and the related financing terms;

848 (ii) capitalization rates and related rates and ratios related to the valuation of locally  
849 assessed property; and

850 (iii) income and expense information related to the valuation of locally assessed  
851 property; and

852 (b) except as provided in Subsection (4), an appraiser who receives commercial  
853 information:

854 (i) may disclose the commercial information:

855 (A) to an individual described in Subsection 59-1-403(1)(a);

856 (B) to an appraiser;

857 (C) in an appraisal if protected commercial information is removed to protect its  
858 confidential nature; or

859 (D) in performing a consultation service if protected commercial information is not  
860 disclosed; and

861 (ii) may not use the commercial information:

862 (A) for a purpose other than to prepare an appraisal or perform a consultation service;

863 or

864 (B) for a purpose intended to be, or which could reasonably be foreseen to be,  
865 anti-competitive to a property taxpayer.

866 (9) (a) The commission shall:

867 (i) prepare a written explanation of this section; and

868 (ii) make the written explanation described in Subsection (9)(a)(i) available to the  
869 public.

870 (b) An employer of a person described in Subsection 59-1-403(1)(a) shall:

871 (i) provide the written explanation described in Subsection (9)(a)(i) to each person  
872 described in Subsection 59-1-403(1)(a) who is reasonably likely to receive commercial  
873 information;

874 (ii) require each person who receives a written explanation in accordance with  
875 Subsection (9)(b)(i) to:

876 (A) read the written explanation; and

877 (B) sign the written explanation; and

878 (iii) retain each written explanation that is signed in accordance with Subsection  
879 (9)(b)(ii) for a time period:

880 (A) beginning on the day on which a person signs the written explanation in  
881 accordance with Subsection (9)(b)(ii); and

882 (B) ending six years after the day on which the employment of the person described in  
883 Subsection (9)(b)(iii)(A) by the employer terminates.

884 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
885 commission shall by rule define "employer."

886 (10) (a) An individual described in Subsection (1)(a) or 59-1-403(1)(a), or an  
887 individual that violates a protective order or similar limitation entered pursuant to Subsection  
888 (4)(b)(iii), is guilty of a class A misdemeanor if that person:

889 (i) intentionally discloses commercial information in violation of this section; and

890 (ii) knows that the disclosure described in Subsection (10)(a)(i) is prohibited by this  
891 section.

892 (b) If the individual described in Subsection (10)(a) is an officer or employee of the  
893 state or a county and is convicted of violating this section, the individual shall be dismissed

894 from office and be disqualified from holding public office in this state for a period of five years  
895 thereafter.

896 (c) If the individual described in Subsection (10)(a) is an appraiser, the appraiser shall  
897 forfeit any certification or license received under Title 61, [~~Section 2b~~] Chapter 2g, Real Estate  
898 Appraiser Licensing and Certification Act, for a period of five years.

899 (d) If the individual described in Subsection (10)(a) is an individual associated with an  
900 appraiser who assists the appraiser in preparing appraisals, the individual shall be prohibited  
901 from becoming licensed or certified under Title 61, [~~Section 2b~~] Chapter 2g, Real Estate  
902 Appraiser Licensing and Certification Act, for a period of five years.

903 Section 11. Section **59-2-701** is amended to read:

904 **59-2-701. Appraisal by certified or licensed appraisers only -- Certification of**  
905 **elected county assessors.**

906 (1) Any person performing an appraisal for purposes of establishing fair market value  
907 of real estate or real property for the assessment roll shall be the holder of an appraiser's  
908 certificate or license issued by the Division of Real Estate under Title 61, Chapter [~~2b~~] 2g, Real  
909 Estate Appraiser Licensing and Certification Act, except uncertified or unlicensed appraiser  
910 trainees may, for up to 36 months after the date of hire or appointment as an appraiser trainee,  
911 appraise property under the direction of a holder of an appraiser's certificate or license issued  
912 by the division.

913 (2) The limitations on appraisal authority under Subsections [~~61-2b-10~~] 61-2g-311(1)  
914 and (2) and Section [~~61-2b-13~~] 61-2g-312 do not apply to a person performing an appraisal for  
915 purposes of establishing fair market value for the assessment roll.

916 (3) The commission may prescribe additional requirements for any person performing  
917 an appraisal for purposes of establishing fair market value for the assessment roll.

918 (4) The commission may, by rule, establish qualifications for personal property  
919 appraisers exempt from licensure under Title 61, Chapter [~~2b~~] 2g, Real Estate Appraiser  
920 Licensing and Certification Act.

921 (5) It is the duty of a county assessor, as established in Section 17-17-1, to ensure that  
922 the assessor's office is in compliance with this section and any additional rules or requirements  
923 for property appraisers established by the commission.

924 Section 12. Section **61-2-201** is amended to read:

925 **61-2-201. Division of Real Estate created -- Director appointed -- Personnel.**

926 (1) There is created within the department a Division of Real Estate. The division is  
927 responsible for the administration and enforcement of:

928 (a) this chapter;

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

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

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

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

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

934 [(~~g~~)] (f) Chapter 2e, Appraisal Management Company Registration and Regulation  
935 Act; [~~and~~]

936 [(~~h~~)] (g) Chapter 2f, Real Estate Licensing and Practices Act[-]; and

937 (h) Chapter 2g, Real Estate Appraiser Licensing and Certification Act.

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

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

944 Section 13. Section **61-2c-102** is amended to read:

945 **61-2c-102. Definitions.**

946 (1) As used in this chapter:

947 (a) "Affiliation" means that a mortgage loan originator is associated with a principal  
948 lending manager in accordance with Section 61-2c-209.

949 (b) "Applicant" means a person applying for a license under this chapter.

950 (c) "Approved examination provider" means a person approved by the nationwide  
951 database as an approved test provider.

952 (d) "Associate lending manager" means an individual who:

953 (i) qualifies under this chapter as a principal lending manager; and

954 (ii) works by or on behalf of another principal lending manager in transacting the  
955 business of residential mortgage loans.

- 956 (e) "Branch office" means a licensed entity's office:  
957 (i) for the transaction of the business of residential mortgage loans regulated under this  
958 chapter;  
959 (ii) other than the main office of the licensed entity; and  
960 (iii) that operates under:  
961 (A) the same business name as the licensed entity[-]; or  
962 (B) another trade name that is registered with the division under the entity license.  
963 (f) "Business day" means a day other than:  
964 (i) a Saturday;  
965 (ii) a Sunday; or  
966 (iii) a federal or state holiday.  
967 (g) (i) "Business of residential mortgage loans" means for compensation or in the  
968 expectation of compensation to:  
969 (A) engage in an act that makes an individual a mortgage loan originator;  
970 (B) make or originate a residential mortgage loan;  
971 (C) directly or indirectly solicit a residential mortgage loan for another;  
972 (D) unless excluded under Subsection (1)(g)(ii), render services related to the  
973 origination of a residential mortgage loan including:  
974 (I) preparing a loan package;  
975 (II) communicating with the borrower [~~and~~] or lender; or  
976 (III) advising on a loan term; or  
977 (E) engage in loan modification assistance.  
978 (ii) "Business of residential mortgage loans" does not include:  
979 (A) if working as an employee under the direction of and subject to the supervision and  
980 instruction of a person licensed under this chapter, the performance of a clerical or support duty  
981 such as:  
982 (I) the receipt, collection, or distribution of information common for the processing or  
983 underwriting of a loan in the mortgage industry other than taking an application;  
984 (II) communicating with a consumer to obtain information necessary for the processing  
985 or underwriting of a residential mortgage loan;  
986 (III) word processing;

987 (IV) sending correspondence; or  
988 (V) assembling files;  
989 (B) ownership of an entity that engages in the business of residential mortgage loans if  
990 the owner does not personally perform the acts listed in Subsection (1)(g)(i); or

991 (C) except if an individual will engage in an activity as a mortgage loan originator,  
992 acting in one or more of the following capacities:

993 (I) a loan wholesaler;

994 (II) an account executive for a loan wholesaler;

995 (III) a loan underwriter;

996 (IV) a loan closer; or

997 (V) funding a loan; or

998 (D) if employed by a person who owns or services an [~~existing~~] existing residential  
999 mortgage loan[~~, as defined in Section 70D-2-102~~], the direct negotiation with the borrower for  
1000 the purpose of loan modification.

1001 (h) "Certified education provider" means a person who is certified under Section  
1002 61-2c-204.1 to provide one or more of the following:

1003 (i) Utah-specific prelicensing education; or

1004 (ii) Utah-specific continuing education.

1005 (i) "Closed-end" means a loan:

1006 (i) with a fixed amount borrowed; and

1007 (ii) that does not permit additional borrowing secured by the same collateral.

1008 (j) "Commission" means the Residential Mortgage Regulatory Commission created in  
1009 Section 61-2c-104.

1010 (k) "Compensation" means anything of economic value that is paid, loaned, granted,  
1011 given, donated, or transferred to an individual or entity for or in consideration of:

1012 (i) services;

1013 (ii) personal or real property; or

1014 (iii) another thing of value.

1015 (l) "Concurrence" means that entities given a concurring [~~rule~~] role must jointly agree  
1016 for the action to be taken.

1017 (m) "Continuing education" means education taken by an individual licensed under this

1018 chapter in order to meet the education requirements imposed by Sections 61-2c-204.1 and  
1019 61-2c-205 to renew a license under this chapter.

1020 (n) "Control," as used in Subsection 61-2c-105(2)(f), means the power to directly or  
1021 indirectly:

1022 (i) direct or exercise a controlling interest over:

1023 (A) the management or policies of an entity; or

1024 (B) the election of a majority of the directors, officers, managers, or managing partners  
1025 of an entity;

1026 (ii) vote 20% or more of a class of voting securities of an entity by an individual; or

1027 (iii) vote more than 5% of a class of voting securities of an entity by another entity.

1028 (o) (i) "Control person" means an individual identified by an entity registered with the  
1029 nationwide database as being [the] an individual [~~primarily responsible for~~] directing the  
1030 management or policies of the entity.

1031 (ii) "Control person" may include one of the following who is identified as provided in  
1032 Subsection (1)(o)(i):

1033 (A) a manager;

1034 (B) a managing partner;

1035 (C) a director;

1036 (D) an executive officer; or

1037 (E) an individual who performs a function similar to an individual listed in this

1038 Subsection (1)(o)(ii).

1039 (p) "Depository institution" is as defined in Section 7-1-103.

1040 (q) "Director" means the director of the division.

1041 (r) "Division" means the Division of Real Estate.

1042 (s) "Dwelling" means a residential structure attached to real property that contains one  
1043 to four units including any of the following if used as a residence:

1044 (i) a condominium unit;

1045 (ii) a cooperative unit;

1046 (iii) a manufactured home; or

1047 (iv) a house.

1048 (t) "Entity" means:

- 1049 (i) a corporation;
- 1050 (ii) a limited liability company;
- 1051 (iii) a partnership;
- 1052 (iv) a company;
- 1053 (v) an association;
- 1054 (vi) a joint venture;
- 1055 (vii) a business trust;
- 1056 (viii) a trust; or
- 1057 (ix) another organization.
- 1058 (u) "Executive director" means the executive director of the Department of Commerce.
- 1059 (v) "Federal licensing requirements" means Secure and Fair Enforcement for Mortgage  
1060 Licensing, 12 U.S.C. Sec. 5101 et seq.
- 1061 (w) "Foreclosure rescue" means, for compensation or with the expectation of receiving  
1062 valuable consideration, to:
  - 1063 (i) engage, or offer to engage, in an act that:
    - 1064 (A) the person represents will assist a borrower in preventing a foreclosure; and
    - 1065 (B) relates to a transaction involving the transfer of title to residential real property; or
  - 1066 (ii) as an employee or agent of another person:
    - 1067 (A) solicit, or offer that the other person will engage in an act described in Subsection  
1068 (1)(w)(i); or
    - 1069 (B) negotiate terms in relationship to an act described in Subsection (1)(w)(i).
  - 1070 (x) "Inactive status" means a dormant status into which an unexpired license is placed  
1071 when the holder of the license is not currently engaging in the business of residential mortgage  
1072 loans.
  - 1073 (y) "Licensee" means a person licensed with the division under this chapter.
  - 1074 (z) "Licensing examination" means the examination required by Section 61-2c-204.1 or  
1075 61-2c-206 for an individual to obtain a license under this chapter.
  - 1076 (aa) "Loan modification assistance" means, for compensation or with the expectation  
1077 of receiving valuable consideration, to:
    - 1078 (i) act, or offer to act, on behalf of a person to:
      - 1079 (A) obtain a loan term of a residential mortgage loan that is different from an existing

- 1080 loan term including:
- 1081 (I) an increase or decrease in an interest rate;
  - 1082 (II) a change to the type of interest rate;
  - 1083 (III) an increase or decrease in the principal amount of the residential mortgage loan;
  - 1084 (IV) a change in the number of required period payments;
  - 1085 (V) an addition of collateral;
  - 1086 (VI) a change to, or addition of, a prepayment penalty;
  - 1087 (VII) an addition of a cosigner; or
  - 1088 (VIII) a change in persons obligated under the existing residential mortgage loan; or
- 1089 (B) substitute a new residential mortgage loan for an existing residential mortgage
- 1090 loan; or
- 1091 (ii) as an employee or agent of another person:
- 1092 (A) solicit, or offer that the other person will engage in an act described in Subsection
  - 1093 (1)(aa)(i); or
  - 1094 (B) negotiate terms in relationship to an act described in Subsection (1)(aa)(i).
- 1095 (bb) (i) Except as provided in Subsection (1)(bb)(ii), "mortgage loan originator" means
  - 1096 an individual who for compensation or in expectation of compensation:
- 1097 (A) (I) takes a residential mortgage loan application; or
  - 1098 (II) offers or negotiates terms of a residential mortgage loan for the purpose of:
- 1099 (Aa) a purchase;
  - 1100 (Bb) a refinance;
  - 1101 (Cc) a loan modification assistance; or
  - 1102 (Dd) a foreclosure rescue; and
- 1103 (B) is licensed as a mortgage loan originator in accordance with this chapter.
- 1104 (ii) "Mortgage loan originator" does not include a person who:
- 1105 (A) is described in Subsection (1)(bb)(i), but who performs exclusively administrative
  - 1106 or clerical tasks as described in Subsection (1)(g)(ii)(A);
  - 1107 (B) (I) is licensed under Chapter 2f, Real Estate Licensing and Practices Act;
  - 1108 (II) performs only real estate brokerage activities; and
  - 1109 (III) receives no compensation from:
- 1110 (Aa) a lender;

- 1111 (Bb) a principal lending manager; or
- 1112 (Cc) an agent of a lender or principal lending manager; or
- 1113 (C) is solely involved in extension of credit relating to a timeshare plan, as defined in
- 1114 11 U.S.C. Sec. 101(53D).
- 1115 (cc) "Nationwide database" means the Nationwide Mortgage Licensing System and
- 1116 Registry, authorized under federal licensing requirements.
- 1117 (dd) "Nontraditional mortgage product" means a mortgage product other than a 30-year
- 1118 fixed rate mortgage.
- 1119 (ee) "Person" means an individual or entity.
- 1120 (ff) "Prelicensing education" means education taken by an individual seeking to be
- 1121 licensed under this chapter in order to meet the education requirements imposed by Section
- 1122 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.
- 1123 (gg) (i) "Principal lending manager" means an individual licensed as a principal
- 1124 lending manager under Section 61-2c-206 to transact the business of residential mortgage
- 1125 loans.
- 1126 (ii) An individual who is a principal lending manager may transact the business of
- 1127 residential mortgage loans as a mortgage loan originator.
- 1128 (hh) "Record" means information that is:
- 1129 (i) prepared, owned, received, or retained by a person; and
- 1130 (ii) (A) inscribed on a tangible medium; or
- 1131 (B) (I) stored in an electronic or other medium; and
- 1132 (II) in a perceivable and reproducible form.
- 1133 (ii) "Residential mortgage loan" means an extension of credit, if:
- 1134 (i) the loan or extension of credit is secured by a:
- 1135 (A) mortgage;
- 1136 (B) deed of trust; or
- 1137 (C) consensual security interest;
- 1138 (ii) the mortgage, deed of trust, or consensual security interest described in Subsection
- 1139 (1)(ii)(i):
- 1140 (A) is on a dwelling located in the state; and
- 1141 (B) is created with the consent of the owner of the residential real property; and

1142 (iii) solely for the purposes of defining "mortgage loan originator," the extension of  
1143 credit is primarily for personal, family, or household use.

1144 (jj) "Sponsorship" means an association in accordance with Section 61-2c-209 between  
1145 an individual licensed under this chapter and an entity licensed under this chapter.

1146 (kk) "State" means:

1147 (i) a state, territory, or possession of the United States;

1148 (ii) the District of Columbia; or

1149 (iii) the Commonwealth of Puerto Rico.

1150 (ll) "Unique identifier" is as defined in 12 U.S.C. Sec. 5102.

1151 (mm) "Utah-specific" means an educational or examination requirement under this  
1152 chapter that relates specifically to Utah.

1153 (2) (a) If a term not defined in this section is defined by rule, the term shall have the  
1154 meaning established by the division by rule made in accordance with Title 63G, Chapter 3,  
1155 Utah Administrative Rulemaking Act.

1156 (b) If a term not defined in this section is not defined by rule, the term shall have the  
1157 meaning commonly accepted in the business community.

1158 Section 14. Section **61-2c-103** is amended to read:

1159 **61-2c-103. Powers and duties of the division.**

1160 (1) The division shall administer this chapter.

1161 (2) In addition to a power or duty expressly provided in this chapter, the division may:

1162 (a) receive and act on a complaint including:

1163 (i) taking action designed to obtain voluntary compliance with this chapter; or

1164 (ii) commencing an administrative or judicial proceeding on the division's own  
1165 initiative;

1166 (b) establish one or more programs for the education of consumers with respect to  
1167 residential mortgage loans;

1168 (c) (i) make one or more studies appropriate to effectuate the purposes and policies of  
1169 this chapter; and

1170 (ii) make the results of the studies described in Subsection (2)(c)(i) available to the  
1171 public;

1172 (d) visit and investigate a person licensed under this chapter, regardless of whether the

1173 person is located in Utah; ~~and~~  
1174 (e) employ one or more necessary hearing examiners, investigators, clerks, and other  
1175 employees and agents[-]; and  
1176 (f) establish fees under Section 63J-1-504 for:  
1177 (i) processing an application for licensing or certification; and  
1178 (ii) any other function required or permitted by this chapter.  
1179 (3) The division shall make rules for the administration of this chapter in accordance  
1180 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including:  
1181 (a) licensure procedures for:  
1182 (i) a person required by this chapter to obtain a license with the division; and  
1183 (ii) the establishment of a branch office by an entity;  
1184 (b) proper handling of money received by a licensee;  
1185 (c) record-keeping requirements by a licensee, including proper disposal of a record;  
1186 (d) certification procedures for certifying an education provider; and  
1187 (e) standards of conduct for a licensee or certified education provider.  
1188 (4) The division may by rule made in accordance with Title 63G, Chapter 3, Utah  
1189 Administrative Rulemaking Act, require as a condition of maintaining a license or certification  
1190 under this chapter that a person comply with a requirement of the nationwide database if:  
1191 (a) required for uniformity amongst states; and  
1192 (b) not inconsistent with this chapter.  
1193 (5) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah  
1194 Administrative Rulemaking Act, provide a process under which an individual may challenge  
1195 information contained in the nationwide database.  
1196 (6) The division shall annually:  
1197 (a) review the requirements related to the nationwide database imposed by federal  
1198 licensing requirements or the nationwide database on:  
1199 (i) the division;  
1200 (ii) a licensee under this chapter;  
1201 (iii) a certified education provider; or  
1202 (iv) an approved examination provider; and  
1203 (b) after the review required by Subsection (6)(a):

1204 (i) report to the Business and Labor Interim Committee the impact of the requirements  
1205 on the implementation by the division of this chapter; and

1206 (ii) recommend legislation, if any, to the Business and Labor Interim Committee  
1207 related to how the division should coordinate with the nationwide database.

1208 (7) The division may enter into a relationship or contract with the nationwide database  
1209 or another entity designated by the nationwide database to do the following related to a licensee  
1210 or other person subject to this chapter:

1211 (a) collect or maintain a record; and

1212 (b) process a transaction fee or other fee.

1213 (8) The division shall regularly report the following to the nationwide database:

1214 (a) a violation of this chapter;

1215 (b) disciplinary action under this chapter; and

1216 (c) other information relevant to this chapter.

1217 (9) If a person pays a fee or costs to the division with a negotiable instrument [~~and the~~  
1218 ~~negotiable instrument~~] or any other method that is not honored for payment:

1219 (a) the transaction for which the payment is submitted is voidable by the division;

1220 (b) the division may reverse the transaction if payment of the applicable fee or costs is  
1221 not received in full; and

1222 (c) the person's license, certification, or registration is automatically suspended:

1223 (i) beginning the day on which the payment is due; and

1224 (ii) ending the day on which payment is made in full.

1225 Section 15. Section **61-2c-202** is amended to read:

1226 **61-2c-202. Licensure procedures.**

1227 (1) To apply for licensure under this chapter an applicant shall in a manner provided by  
1228 the division by rule:

1229 (a) if the applicant is an entity, submit a licensure statement that:

1230 (i) lists any name under which the entity will transact business in this state;

1231 (ii) lists the address of the principal business location of the entity;

1232 (iii) identifies the principal lending manager of the entity;

1233 (iv) contains the signature of the principal lending manager;

1234 (v) identifies the one or more control persons for the entity;

- 1235 (vi) identifies the jurisdictions in which the entity is registered, licensed, or otherwise  
1236 regulated in the business of residential mortgage loans;
- 1237 (vii) discloses any adverse administrative action taken by an administrative agency  
1238 against:
- 1239 (A) the entity; or  
1240 (B) any control person for the entity;
- 1241 (viii) discloses any history of criminal proceedings involving any control person for the  
1242 entity; and
- 1243 (ix) includes any information required by the division by rule;
- 1244 (b) if the applicant is an individual:
- 1245 (i) submit a licensure statement that identifies the entity with which the applicant is  
1246 sponsored;
- 1247 (ii) authorize a criminal background check through the nationwide database accessing:  
1248 (A) the Utah Bureau of Criminal Identification, if the nationwide database is able to  
1249 obtain information from the Utah Bureau of Criminal Identification; and
- 1250 (B) the Federal Bureau of Investigation;
- 1251 (iii) submit evidence using a method approved by the division by rule of having  
1252 successfully completed approved prelicensing education in accordance with Section  
1253 61-2c-204.1;
- 1254 (iv) submit evidence using a method approved by the division by rule of having  
1255 successfully passed any required licensing examination in accordance with Section  
1256 61-2c-204.1; and
- 1257 (v) submit evidence using a method approved by the division by rule of having  
1258 successfully registered in the nationwide database, including paying a fee required by the  
1259 nationwide database; and
- 1260 (c) pay to the division:
- 1261 (i) an application fee established by the division in accordance with Section 63J-1-504;  
1262 and
- 1263 (ii) the reasonable expenses incurred by the division in processing the application for  
1264 licensure.
- 1265 (2) (a) Upon receiving an application, the division, with the concurrence of the

1266 commission, shall determine whether the applicant:

1267 (i) meets the qualifications for licensure; and

1268 (ii) complies with this section.

1269 (b) If the division, with the concurrence of the commission, determines that an  
1270 applicant meets the qualifications for licensure and complies with this section, the division  
1271 shall issue the applicant a license.

1272 (c) If the division, with the concurrence of the commission, determines that the  
1273 division requires more information to make a determination under Subsection (2)(a), the  
1274 division may:

1275 (i) hold the application pending further information about an applicant's criminal  
1276 background or history related to adverse administrative action in any jurisdiction; or

1277 (ii) issue a conditional license:

1278 (A) pending the completion of a criminal background check; and

1279 (B) subject to probation, suspension, or revocation if the criminal background check  
1280 reveals that the applicant did not truthfully or accurately disclose on the licensing application a  
1281 criminal history or other history related to adverse administrative action.

1282 (3) (a) The commission may delegate to the division the authority to:

1283 (i) review a class or category of application for an initial or renewed license;

1284 (ii) determine whether an applicant meets the qualifications for licensure;

1285 (iii) conduct a necessary hearing on an application; and

1286 (iv) approve or deny a license application without concurrence by the commission.

1287 (b) If the commission delegates to the division the authority to approve or deny an  
1288 application without concurrence by the commission and the division denies an application for  
1289 licensure, the applicant who is denied licensure may petition the commission for a de novo  
1290 review of the [~~denial~~] application.

1291 (c) An applicant who is denied licensure under Subsection (3)(b) may seek agency  
1292 review by the executive director only after the commission reviews the division's denial of the  
1293 applicant's application.

1294 (d) Subject to Subsection (3)(c) and in accordance with Title 63G, Chapter 4,  
1295 Administrative Procedures Act, an applicant who is denied licensure under this chapter may  
1296 submit a request for agency review to the executive director within 30 days following the day

1297 on which the commission order denying the licensure is issued.

1298 Section 16. Section **61-2c-203** is amended to read:

1299 **61-2c-203. General qualifications for licensure.**

1300 (1) To qualify for licensure under this chapter, a person shall demonstrate through  
1301 procedures established by rule made by the division in accordance with Title 63G, Chapter 3,  
1302 Utah Administrative Rulemaking Act:

1303 (a) financial responsibility;

1304 (b) good moral character, honesty, integrity, and truthfulness; and

1305 (c) the competence to transact the business of residential mortgage loans, including  
1306 general fitness such as to command the confidence of the community and to warrant a  
1307 determination that the person will operate honestly, fairly, and efficiently within the purposes  
1308 of this chapter.

1309 [~~(2) If an applicant is an individual, the applicant may not have:]~~

1310 [~~(a) been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner  
1311 to, or resolved by diversion or its equivalent:]~~

1312 [~~(i) a felony involving an act of fraud, dishonesty, a breach of trust, or money  
1313 laundering; or]~~

1314 [~~(ii) a felony in the seven years preceding the day on which an application is submitted  
1315 to the division;]~~

1316 [~~(b) in the five years preceding the day on which an application is submitted to the  
1317 division, been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner  
1318 to, or resolved by diversion its equivalent:]~~

1319 [~~(i) a class B or class C misdemeanor involving moral turpitude; or]~~

1320 [~~(ii) a crime in another jurisdiction that is the equivalent of a class B or class C  
1321 misdemeanor involving moral turpitude;]~~

1322 [~~(c) had a license as a mortgage loan originator revoked by a governmental jurisdiction  
1323 at any time;]~~

1324 [~~(d) had a license or registration suspended, surrendered, canceled, or denied in the five  
1325 years preceding the date the individual applies for licensure if:]~~

1326 [~~(i) the registration or license is issued by this state or another jurisdiction; and]~~

1327 [~~(ii) the suspension, surrender, cancellation, or denial is based on misconduct in a~~

1328 ~~professional capacity that relates to moral character, honesty, integrity, truthfulness, or the~~  
1329 ~~competency to transact the business of residential mortgage loans;]~~

1330 ~~[(e) been the subject of a bar by the Securities and Exchange Commission, the New~~  
1331 ~~York Stock Exchange, or the National Association of Securities Dealers within the five years~~  
1332 ~~preceding the date the individual applies for registration; or]~~

1333 ~~[(f) had a permanent injunction entered against the individual:]~~

1334 ~~[(i) by a court or administrative agency; and]~~

1335 ~~[(ii) on the basis of:]~~

1336 ~~[(A) conduct or a practice involving the business of residential mortgage loans; or]~~

1337 ~~[(B) conduct involving fraud, misrepresentation, or deceit.]~~

1338 ~~[(3)]~~ (2) If an applicant is an entity, the applicant may not have a control person who  
1339 fails to meet the requirements of Subsection ~~[(2)]~~ (1) for an individual applicant.

1340 Section 17. Section **61-2c-205** is amended to read:

1341 **61-2c-205. Term of licensure -- Renewal -- Reporting of changes.**

1342 (1) (a) A license issued under this chapter expires as follows:

1343 (i) for the calendar year the license is issued:

1344 (A) if the license is issued on or before October 31, the license expires on December 31  
1345 of the same calendar year; and

1346 (B) if the license is issued on or after November 1, the license expires on December 31  
1347 of the following calendar year; and

1348 (ii) after the December 31 on which a license expires under Subsection (1)(a)(i), a  
1349 license expires annually on December 31.

1350 (b) Notwithstanding Subsection (1)(a), the time period of a license may be extended or  
1351 shortened by as much as one year to maintain or change a renewal cycle established by rule by  
1352 the division.

1353 (2) To renew a license, no later than the date the license expires, a licensee shall in a  
1354 manner provided by the division by rule:

1355 (a) file a renewal statement;

1356 (b) furnish the information required by Subsection 61-2c-202(1);

1357 (c) renew the licensee's registration with the nationwide database, including the  
1358 payment of a fee required by the nationwide database;

1359 (d) pay a fee to the division established by the division in accordance with Section  
1360 63J-1-504; and

1361 (e) if the licensee is an individual and the individual's license is in active status at the  
1362 time of application for renewal, submit proof of having completed during the year before  
1363 application the continuing education required under Section 61-2c-204.1.

1364 (3) (a) A licensee under this chapter shall notify the division in a manner provided by  
1365 the division by rule within 10 days of the date on which there is a change in:

1366 (i) a name under which the licensee transacts the business of residential mortgage loans  
1367 in this state;

1368 (ii) (A) if the licensee is an entity, the business location of the licensee; or

1369 (B) if the licensee is an individual, the home and business addresses of the individual;

1370 (iii) the principal lending manager of the entity;

1371 (iv) the entity with which an individual licensee is licensed to conduct the business of  
1372 residential mortgage loans; or

1373 (v) any other information that is defined as material by rule made by the division.

1374 (b) Failure to notify the division of a change described in Subsection (3)(a) is separate  
1375 grounds for disciplinary action against a licensee.

1376 (c) The division may charge a fee established in accordance with Section 63J-1-504 for  
1377 processing a change that a licensee is required to report to the division under Subsection (3)(a).

1378 (4) (a) A licensee shall notify the division by sending the division a signed statement  
1379 within 10 business days of:

1380 [~~(a)~~] (i) (A) a conviction of a [~~criminal offense~~] felony, class A misdemeanor, or class  
1381 B misdemeanor;

1382 [~~(ii)~~] (B) the entry of a plea in abeyance to a [~~criminal offense~~] felony, class A  
1383 misdemeanor, or class B misdemeanor; or

1384 [~~(iii)~~] (C) the potential resolution of a [~~criminal case~~] felony, class A misdemeanor, or  
1385 class B misdemeanor by [~~:(A)~~] a diversion agreement[;], or [~~(B)~~] any other agreement under  
1386 which a criminal charge is held in suspense for a period of time;

1387 [~~(b)~~] (ii) filing a personal bankruptcy or bankruptcy of a business that transacts the  
1388 business of residential mortgage loans;

1389 [~~(c)~~] (iii) the suspension, revocation, surrender, cancellation, or denial of a professional

1390 license or professional registration of the licensee, whether the license or registration is issued  
1391 by this state or another jurisdiction; or

1392 ~~[(d)]~~ (iv) the entry of a cease and desist order or a temporary or permanent injunction:

1393 ~~[(i)]~~ (A) against the licensee by a court or licensing agency; and

1394 ~~[(i)]~~ (B) based on~~[-(A)]~~ conduct or a practice involving the business of residential  
1395 mortgage loans~~[-];~~ or ~~[(B)]~~ conduct involving fraud, misrepresentation, or deceit.

1396 (b) The commission, with the concurrence of the division, shall enforce the reporting  
1397 requirement under this Subsection (4) pursuant to Section 61-2c-402.

1398 (5) (a) A license under this chapter expires if the licensee does not apply to renew the  
1399 license on or before the expiration date of the license.

1400 (b) A licensee whose license has expired may apply to reinstate the expired license, in  
1401 a manner provided by the division by rule by:

1402 (i) requesting reinstatement;

1403 (ii) paying to the division a renewal fee and a late fee determined by the division under  
1404 Section 63J-1-504; and

1405 (iii) reinstating the licensee's registration with the nationwide database, including the  
1406 payment of a fee required by the nationwide database.

1407 Section 18. Section **61-2c-301** is amended to read:

1408 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

1409 (1) A person transacting the business of residential mortgage loans in this state may  
1410 not:

1411 (a) give or receive compensation or anything of value in exchange for a referral of  
1412 residential mortgage loan business;

1413 (b) charge a fee in connection with a residential mortgage loan transaction:

1414 (i) that is excessive; or

1415 ~~[(ii) if the person does not comply with Section 70D-2-305;]~~

1416 (ii) without providing to the loan applicant a written statement signed by the loan  
1417 applicant:

1418 (A) stating whether or not the fee or deposit is refundable; and

1419 (B) describing the conditions, if any, under which all or a portion of the fee or deposit  
1420 will be refunded to the applicant;

- 1421 (c) give or receive compensation or anything of value in exchange for a referral of  
1422 settlement or loan closing services related to a residential mortgage loan transaction;
- 1423 (d) do any of the following to induce a lender to extend credit as part of a residential  
1424 mortgage loan transaction:
- 1425 (i) make a false statement or representation;
- 1426 (ii) cause false documents to be generated; or
- 1427 (iii) knowingly permit false information to be submitted by any party;
- 1428 (e) give or receive compensation or anything of value, or withhold or threaten to  
1429 withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in  
1430 reaching a value conclusion in a residential mortgage loan transaction, except that it is not a  
1431 violation of this section for a licensee to withhold payment because of a bona fide dispute  
1432 regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards  
1433 of Professional Appraisal Practice;
- 1434 (f) violate or not comply with:
- 1435 (i) this chapter;
- 1436 (ii) an order of the commission or division; or
- 1437 (iii) a rule made by the division;
- 1438 (g) fail to respond within the required time period to:
- 1439 (i) a notice or complaint of the division; or
- 1440 (ii) a request for information from the division;
- 1441 (h) make false representations to the division, including in a licensure statement;
- 1442 (i) for a residential mortgage loan transaction beginning on or after January 1, 2004,  
1443 engage in the business of residential mortgage loans with respect to the transaction if the  
1444 person also acts in any of the following capacities with respect to the same residential mortgage  
1445 loan transaction:
- 1446 (i) appraiser;
- 1447 (ii) escrow agent;
- 1448 (iii) real estate agent;
- 1449 (iv) general contractor; or
- 1450 (v) title insurance producer;
- 1451 (j) order a title insurance report or hold a title insurance policy unless the person

1452 provides to the title insurer a copy of a valid, current license under this chapter;

1453 (k) engage in unprofessional conduct as defined by rule;

1454 (l) engage in an act or omission in transacting the business of residential mortgage

1455 loans that constitutes dishonesty, fraud, or misrepresentation;

1456 (m) engage in false or misleading advertising;

1457 (n) (i) fail to account for money received in connection with a residential mortgage

1458 loan;

1459 (ii) use money for a different purpose from the purpose for which the money is

1460 received; or

1461 (iii) except as provided in Subsection (4), retain money paid for services if the services

1462 are not performed;

1463 (o) fail, within 90 calendar days of a request from a borrower who has paid for an

1464 appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;

1465 (p) engage in an act that is performed to:

1466 (i) evade this chapter; or

1467 (ii) assist another person to evade this chapter;

1468 (q) recommend or encourage default, delinquency, or continuation of an existing

1469 default or delinquency, by a mortgage applicant on an existing indebtedness before the closing

1470 of a residential mortgage loan that will refinance all or part of the indebtedness;

1471 (r) in the case of the principal lending manager of an entity or a branch office of an

1472 entity, fail to exercise reasonable supervision over the activities of:

1473 (i) unlicensed staff; and

1474 (ii) a mortgage loan originator who is affiliated with the principal lending manager;

1475 (s) pay or offer to pay an individual who does not hold a license under this chapter for

1476 work that requires the individual to hold a license under this chapter;

1477 (t) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

1478 (i) provide a title insurance product or service without the approval required by Section

1479 31A-2-405; or

1480 (ii) knowingly provide false or misleading information in the statement required by

1481 Subsection 31A-2-405(2);

1482 (u) represent to the public that the person can or will perform any act of a mortgage

1483 loan originator if that person is not licensed under this chapter because the person is exempt  
 1484 under Subsection 61-2c-102(1)(g)(ii)(A), including through:

- 1485 (i) advertising;
- 1486 (ii) a business card;
- 1487 (iii) stationery;
- 1488 (iv) a brochure;
- 1489 (v) a sign;
- 1490 (vi) a rate list; or
- 1491 (vii) other promotional item; or

1492 (v) (i) engage in an act of loan modification assistance without being licensed under  
 1493 this chapter;

- 1494 (ii) engage in an act of foreclosure rescue that requires licensure as a real estate agent  
 1495 or real estate broker under Chapter 2, Division of Real Estate, without being licensed under  
 1496 that chapter;
- 1497 (iii) engage in an act of loan modification assistance without entering into a written  
 1498 agreement specifying which one or more acts of loan modification assistance will be  
 1499 completed;

- 1500 [~~(iii)~~] (iv) request or require a person to pay a fee [~~if:~~] before obtaining:  
 1501 [~~(A) the person is required to pay the fee before entering into a written agreement~~  
 1502 ~~specifying what one or more acts of loan modification assistance will be completed if the fee is~~  
 1503 ~~paid; or]~~
- 1504 [~~(B) in a case when the residential mortgage loan that is the subject of the loan~~  
 1505 ~~modification assistance is foreclosed within one year of the day on which the person enters into~~  
 1506 ~~a written agreement, the person is required to forfeit the fee for any reason;]~~
- 1507 (A) a written offer for a loan modification from the person's lender or servicer; and  
 1508 (B) the person's written acceptance of the offer from the lender or servicer;

1509 [~~(iv)~~] (v) induce a person seeking a loan modification to hire the licensee to engage in  
 1510 an act of loan modification assistance by:

- 1511 (A) suggesting to the person that the licensee has a special relationship with the  
 1512 person's lender or loan servicer; or
- 1513 (B) falsely representing or advertising that the licensee is acting on behalf of:

- 1514 (I) a government agency;
- 1515 (II) the person's lender or loan servicer; or
- 1516 (III) a nonprofit or charitable institution;
- 1517 [~~(v)~~] (vi) recommend or participate in a loan modification that requires a person to:
- 1518 (A) transfer title to real property to the licensee or to a [~~third party~~] third-party with
- 1519 whom the licensee has a business relationship or financial interest;
- 1520 (B) make a mortgage payment to a person other than the person's loan servicer; or
- 1521 (C) refrain from contacting the person's:
- 1522 (I) lender;
- 1523 (II) loan servicer;
- 1524 (III) attorney;
- 1525 (IV) credit counselor; or
- 1526 (V) housing counselor; or
- 1527 [~~(vi)~~] (vii) for an agreement for loan modification assistance entered into on or after
- 1528 May 11, 2010, engage in an act of loan modification assistance without offering in writing to
- 1529 the person entering into the agreement for loan modification assistance a right to cancel the
- 1530 agreement within three business days after the day on which the person enters the agreement.
- 1531 (2) Whether or not the crime is related to the business of residential mortgage loans, it
- 1532 is a violation of this chapter for a licensee or a person who is a certified education provider to
- 1533 do any of the following with respect to a criminal offense that involves moral turpitude:
- 1534 (a) be convicted;
- 1535 (b) plead guilty or nolo contendere;
- 1536 (c) enter a plea in abeyance; or
- 1537 (d) be subjected to a criminal disposition similar to the ones described in Subsections
- 1538 (2)(a) through (c).
- 1539 (3) A principal lending manager does not violate Subsection (1)(r) if:
- 1540 (a) in contravention of the principal lending manager's written policies and
- 1541 instructions, an affiliated licensee of the principal lending manager violates:
- 1542 (i) this chapter; or
- 1543 (ii) rules made by the division under this chapter;
- 1544 (b) the principal lending manager established and followed reasonable procedures to

1545 ensure that affiliated licensees receive adequate supervision;

1546 (c) upon learning of a violation by an affiliated licensee, the principal lending manager  
1547 attempted to prevent or mitigate the damage;

1548 (d) the principal lending manager did not participate in or ratify the violation by an  
1549 affiliated licensee; and

1550 (e) the principal lending manager did not attempt to avoid learning of the violation.

1551 (4) Notwithstanding Subsection (1)(n)(iii), a licensee may, upon compliance with  
1552 Section 70D-2-305, charge a reasonable cancellation fee for work done originating a mortgage  
1553 if the mortgage is not closed.

1554 Section 19. Section **61-2c-302** is amended to read:

1555 **61-2c-302. Record requirements.**

1556 (1) For the time period specified in Subsection (2), a licensee shall make or possess any  
1557 record required for that licensee by a rule made by the division.

1558 (2) A licensee shall maintain and safeguard in its possession a record described in  
1559 Subsection (1) for four years from the last to occur of the following:

1560 (a) the final entry on a residential mortgage loan is made by that licensee;

1561 (b) if the residential mortgage loan is serviced by the licensee:

1562 (i) the residential mortgage loan is paid in full; or

1563 (ii) the licensee ceases to service the residential mortgage loan; or

1564 (c) if the residential mortgage loan is not serviced by the licensee, the residential  
1565 mortgage loan is closed.

1566 (3) A licensee shall:

1567 (a) make available to the division for inspection and copying during normal business  
1568 hours all records required to be maintained under this chapter; and

1569 (b) upon reasonable notice from the division to a licensee, produce all records  
1570 described in Subsection (3)(a) that are related to an investigation being conducted by the  
1571 division at the division office for inspection and copying by the division.

1572 (4) A licensee who is an entity shall maintain and produce for inspection by the  
1573 division a current list of all individuals whose licenses are sponsored by the entity.

1574 (5) (a) A licensee who engages in an activity as a mortgage loan originator shall  
1575 maintain a report of condition submitted to the nationwide database as required by 12 U.S.C.

1576 Sec. 5104(e) for at least four years from the day on which the licensee submits the report of  
1577 condition to the nationwide database.

1578 (b) Upon request by the division, a mortgage loan originator shall produce a report of  
1579 condition for inspection by the division.

1580 Section 20. Section **61-2c-402** is amended to read:

1581 **61-2c-402. Disciplinary action.**

1582 (1) Subject to the requirements of Section 61-2c-402.1, the commission, with the  
1583 concurrence of the division, may impose a sanction described in Subsection (2) against a  
1584 person if the person:

1585 (a) (i) is a licensee or person required to be licensed under this chapter; and

1586 (ii) violates this chapter; or

1587 (b) (i) is a certified education provider or person required to be certified to provide  
1588 prelicensing or continuing education under this chapter; and

1589 (ii) violates this chapter.

1590 (2) The commission, with the concurrence of the director, may against a person  
1591 described in Subsection (1):

1592 (a) impose an educational requirement;

1593 (b) impose a civil penalty against the individual or entity in an amount not to exceed  
1594 the greater of:

1595 (i) \$5,000 for each violation; or

1596 (ii) the amount equal to any gain or economic benefit derived from each violation;

1597 (c) deny an application for an original license;

1598 (d) do any of the following to a license under this chapter:

1599 (i) suspend;

1600 (ii) revoke;

1601 (iii) place on probation;

1602 (iv) deny renewal;

1603 (v) deny reinstatement; or

1604 (vi) in the case of a denial of a license or a suspension that extends to the expiration  
1605 date of a license, set a waiting period for a person to apply for a license under this chapter;

1606 (e) issue a cease and desist order;

1607 (f) require the reimbursement of the division of costs incurred by the division related to  
1608 the recovery, storage, or destruction of a record that the person disposes of in a manner that  
1609 violates this chapter or a rule made under this chapter;

1610 (g) modify a sanction described in Subsections (2)(a) through (f) if the commission  
1611 finds that the person complies with court ordered restitution; or

1612 (h) impose any combination of sanctions described in this Subsection (2).

1613 (3) (a) If the commission, with the concurrence of the division, issues an order that  
1614 orders a fine or educational requirements as part of a disciplinary action against a person,  
1615 including a stipulation and order, the commission shall state in the order the deadline by which  
1616 the person shall comply with the fine or educational requirements.

1617 (b) If a person fails to comply with a stated deadline:

1618 (i) the person's license or certificate is automatically suspended:

1619 (A) beginning the day specified in the order as the deadline for compliance; and

1620 (B) ending the day on which the person complies in full with the order; and

1621 (ii) if the person fails to pay a fine required by an order, the division may begin a  
1622 collection process:

1623 (A) established by the division by rule made in accordance with Title 63G, Chapter 3,  
1624 Utah Administrative Rulemaking Act; and

1625 (B) subject to Title 63A, Chapter 8, Office of State Debt Collection.

1626 (4) (a) A person whose license was revoked under this chapter before May 11, 2010,  
1627 may request that the revocation be converted to a suspension under this Subsection (4):

1628 (i) if the revocation was not as a result of a felony conviction involving fraud,  
1629 misrepresentation, [or] deceit, dishonesty, breach of trust, or money laundering; and

1630 (ii) by filing a written request with the division.

1631 (b) Upon receipt of a request to convert a revocation under this Subsection (4), the  
1632 commission, with the concurrence of the director, shall determine whether to convert the  
1633 revocation.

1634 (c) The commission may delegate to the division the authority to make a decision on  
1635 whether to convert a revocation.

1636 (d) If the division, acting under Subsection (4)(c), denies a request to convert a  
1637 revocation, the person who requests the conversion may appeal the decision in a hearing

1638 conducted by the commission:

1639 (i) after the division denies the request to convert the revocation; and

1640 (ii) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

1641 (e) The commission may delegate to the division or an administrative law judge the

1642 authority to conduct a hearing described in Subsection (4)(d).

1643 Section 21. Section **61-2c-501.5** is amended to read:

1644 **61-2c-501.5. Definitions.**

1645 As used in this part:

1646 (1) "Civil judgment" means a judgment in a civil action that:

1647 (a) is awarded in an action brought against a [~~real estate licensee~~] person licensed  
1648 under this chapter on the basis of fraud, misrepresentation, or deceit in a residential mortgage  
1649 loan transaction; and

1650 (b) awards actual damages.

1651 (2) "Criminal restitution judgment" means a judgment that, in accordance with the

1652 Utah Code of Criminal Procedure, orders criminal restitution to a person and against a [~~real~~

1653 ~~estate licensee~~] person licensed under this chapter for a criminal offense involving fraud,

1654 misrepresentation, or deceit in a residential mortgage loan transaction.

1655 (3) "Final judgment" means one of the following judgments upon termination of the

1656 proceedings related to the judgment, including appeals:

1657 (a) a civil judgment; or

1658 (b) a criminal restitution judgment.

1659 (4) "Fund" means the Residential Mortgage Loan Education, Research, and Recovery

1660 Fund created in Section 61-2c-501.

1661 Section 22. Section **61-2c-507** is amended to read:

1662 **61-2c-507. Division subrogated -- Authority to revoke license.**

1663 (1) If the division pays a person from the fund in accordance with this part:

1664 (a) the division is subrogated to the rights of that person for the amounts paid out of the  
1665 fund; and

1666 (b) any amount and interest recovered by the division shall be deposited in the fund.

1667 (2) (a) Subject to Subsection (2)(b), the license of a licensee for whom payment from

1668 the fund is made under this part is automatically revoked as of the earlier of the day on which:

- 1669 (i) the division is ordered by a court to pay from the fund; or  
 1670 (ii) the division pays from the fund.
- 1671 (b) (i) A person whose license is revoked under Subsection (2)(a) may appeal the  
 1672 revocation in a de novo hearing conducted by the commission:
- 1673 (A) after the revocation; and  
 1674 (B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- 1675 (ii) The commission may delegate:
- 1676 (A) to the division or an administrative law judge the authority to conduct a hearing  
 1677 described in Subsection (2)(b)(i); or  
 1678 (B) to the division the authority to make a decision on whether relief from a revocation  
 1679 should be granted.
- 1680 (3) Unless the revocation is not upheld after a hearing described in Subsection (2)(b), a  
 1681 licensee whose license is revoked pursuant to Subsection (2) may not apply for a new license  
 1682 until the licensee pays into the fund:
- 1683 (a) the amount paid out of the fund on behalf of the licensee; and  
 1684 (b) interest at a rate determined by the division with the concurrence of the  
 1685 commission.
- 1686 Section 23. Section **61-2e-102** is amended to read:
- 1687 **61-2e-102. Definitions.**
- 1688 As used in this chapter:
- 1689 (1) "Applicable appraisal standards" means:
- 1690 (a) the Uniform Standards for Professional Appraisal Practice:
- 1691 (i) published by the Appraisal Foundation; and  
 1692 (ii) as adopted under Section [~~61-2b-27~~] 61-2g-403;
- 1693 (b) Chapter [~~2b~~] 2g, Real Estate Appraiser Licensing and Certification Act; and  
 1694 (c) rules made by the board under Chapter [~~2b~~] 2g, Real Estate Appraiser Licensing  
 1695 and Certification Act.
- 1696 (2) "Appraisal" is as defined in Section [~~61-2b-2~~] 61-2g-102.
- 1697 (3) "Appraisal foundation" is as defined in Section [~~61-2b-2~~] 61-2g-102.
- 1698 (4) "Appraisal management company" means an entity that serves as a third-party  
 1699 broker of an appraisal service between a client and an appraiser by:

1700 (a) [~~administers~~] administering a network of appraisers to perform real estate appraisal  
1701 activities for one or more clients;

1702 (b) (i) [~~receives~~] receiving a request for a real estate appraisal activity from a client;  
1703 and

1704 (ii) for a fee paid by the client, [~~enters~~] entering into an agreement with one or more  
1705 appraisers to perform the real estate appraisal activity contained in the request; or

1706 [~~(c) otherwise serves as a third-party broker of an appraisal management service  
1707 between a client and an appraiser.~~]

1708 (c) any other means.

1709 (5) "Appraisal management service" means a process of:

1710 (a) receiving a request for the performance of a real estate appraisal activity from a  
1711 client; and

1712 (b) for a fee paid by the client, entering into an agreement with one or more appraisers  
1713 to perform the real estate appraisal activity contained in the request.

1714 (6) "Appraisal report" is as defined in Section [~~61-2b-2~~] 61-2g-102.

1715 (7) "Appraiser" means an individual who engages in a real estate appraisal activity.

1716 (8) "Appraiser panel" means a group of appraisers that are selected by an appraisal  
1717 management company to perform real estate appraisal activities for the appraisal management  
1718 company.

1719 (9) "Board" means the Real Estate Appraiser Licensing and Certification Board that is  
1720 created in Section [~~61-2b-7~~] 61-2g-204.

1721 (10) "Client" means a person that enters into an agreement with an appraisal  
1722 management company for the performance of a real estate appraisal activity.

1723 (11) "Concurrence" means that the entities that are given a concurring role must jointly  
1724 agree before an action may be taken.

1725 [~~(11)~~] (12) "Controlling person" means:

1726 (a) an owner, officer, or director of an entity seeking to offer appraisal management  
1727 services;

1728 (b) an individual employed, appointed, or authorized by an appraisal management  
1729 company who has the authority to:

1730 (i) enter into a contractual relationship with a client for the performance of an appraisal

1731 management service; and

1732 (ii) enter into an agreement with an appraiser for the performance of a real estate  
1733 appraisal activity; or

1734 (c) an individual who possesses, directly or indirectly, the power to direct or cause the  
1735 direction of the management or policies of an appraisal management company.

1736 ~~[(12)]~~ (13) "Director" means the director of the division.

1737 ~~[(13)]~~ (14) "Division" means the Division of Real Estate of the Department of  
1738 Commerce.

1739 ~~[(14)]~~ (15) "Entity" means:

1740 (a) a corporation;

1741 (b) a partnership;

1742 (c) a sole proprietorship;

1743 (d) a limited liability company;

1744 (e) another business entity; or

1745 (f) a subsidiary or unit of an entity described in Subsections ~~[(14)]~~ (15)(a) through (e).

1746 ~~[(15)]~~ (16) "Person" means an individual or an entity.

1747 ~~[(16)]~~ (17) "Real estate appraisal activity" is as defined in Section ~~[61-2b-2]~~

1748 61-2g-102.

1749 Section 24. Section **61-2e-103** is amended to read:

1750 **61-2e-103. Rulemaking.**

1751 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1752 board may make rules, with the concurrence of the division, that are:

1753 (1) consistent with this chapter; and

1754 (2) necessary to implement this chapter.

1755 Section 25. Section **61-2e-202** is amended to read:

1756 **61-2e-202. Initial registration process.**

1757 (1) (a) To register under this chapter as an appraisal management company, an entity  
1758 shall:

1759 (i) file with the division a registration application in a form prescribed by the division;

1760 (ii) pay to the division a fee determined in accordance with Section 63J-1-504;

1761 (iii) if the entity is not a resident of this state, submit an irrevocable consent for service

1762 of process meeting the requirements of Subsection (3); and  
1763 (iv) have the application for registration approved by the division.  
1764 (b) The division shall approve an application if the division finds that the entity:  
1765 (i) complies with this Subsection (1); and  
1766 (ii) meets the qualifications under Section 61-2e-201.  
1767 (c) The division may, upon compliance with Title 63G, Chapter 4, Administrative  
1768 Procedures Act, deny the issuance of a registration to an applicant on any ground enumerated  
1769 in this chapter.  
1770 (d) If an entity pays a fee or costs to the division with a negotiable instrument or other  
1771 method that is not honored for payment:  
1772 (i) the transaction for which the payment is submitted is voidable by the division;  
1773 (ii) the division may reverse the transaction if payment of the applicable fee or costs is  
1774 not received in full; and  
1775 (iii) the entity's registration is automatically suspended:  
1776 (A) beginning the day on which the payment is due; and  
1777 (B) ending the day on which payment is made in full.  
1778 (2) A registration application shall include the following:  
1779 (a) the name of the entity seeking registration;  
1780 (b) a business address of the entity seeking registration;  
1781 (c) telephone contact information of the entity seeking registration;  
1782 (d) if the entity is not an entity domiciled in this state, the name and contact  
1783 information for the entity's agent for service of process in this state;  
1784 (e) for each individual who owns 10% or more of the entity:  
1785 (i) the individual's name, address, and contact information;  
1786 (ii) a statement of whether or not the individual has had a license or certificate to  
1787 engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or  
1788 revoked in this state or in another state; and  
1789 (iii) (A) fingerprint cards in a form acceptable to the division at the time the  
1790 registration application is filed; and  
1791 (B) consent to a criminal background check by the Utah Bureau of Criminal  
1792 Identification and the Federal Bureau of Investigation regarding the application;

1793 (f) the name, address, and contact information for each controlling person;  
1794 (g) for the controlling person designated as the contact as required by Section  
1795 61-2e-201:

1796 (i) a statement of whether or not the individual has had a license or certificate to  
1797 engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or  
1798 revoked in this state or in another state; and

1799 (ii) (A) fingerprint cards in a form acceptable to the division at the time the registration  
1800 application is filed; and

1801 (B) consent to a criminal background check by the Utah Bureau of Criminal  
1802 Identification and the Federal Bureau of Investigation regarding the application;

1803 (h) provide an explanation required by:

1804 (i) Section 61-2e-301, related to adding an individual to an appraiser panel;  
1805 (ii) Section 61-2e-302, related to the review of the work of an appraiser; and  
1806 (iii) Section 61-2e-303, related to recordkeeping; and

1807 (i) any other information required by the board.

1808 (3) An irrevocable consent for service of process required to be filed under Subsection  
1809 (1) shall provide that process may be served on the entity by delivering the process to the  
1810 director if:

1811 (a) the service of process is for an action:

1812 (i) in a court of this state against an entity; and  
1813 (ii) arising out of an act governed by this chapter; and

1814 (b) a plaintiff cannot, in the exercise of due diligence, obtain personal service upon the  
1815 entity.

1816 Section 26. Section **61-2e-203** is amended to read:

1817 **61-2e-203. Criminal background check -- Conditional registration -- Changes in**  
1818 **ownership or controlling person.**

1819 (1) The division shall request the Department of Public Safety to complete a Federal  
1820 Bureau of Investigation criminal background check for an individual described in Subsection  
1821 61-2e-202~~(+)~~(2)(e) or (g) through the national criminal history system or any successor  
1822 system.

1823 (2) (a) The entity filing the application under Section 61-2e-202 shall pay the cost of

1824 the criminal background check and the fingerprinting.

1825 (b) [~~Monies~~] Money paid to the division by an entity for the cost of a criminal  
1826 background check [~~are~~] is nonlapsing.

1827 (3) (a) A registration issued under Section 61-2e-202 is conditional, pending  
1828 completion of a criminal background check.

1829 (b) [~~H~~] (i) A registration shall be immediately and automatically revoked if a criminal  
1830 background check discloses that an individual described in Subsection 61-2e-202[~~(1)~~](2)(e) or

1831 (g) fails to accurately disclose a criminal history[~~, the registration is immediately and~~  
1832 ~~automatically revoked.~~] involving:

1833 (A) the appraisal industry;

1834 (B) the appraisal management industry; or

1835 (C) a felony conviction on the basis of an allegation of fraud, misrepresentation, or  
1836 deceit.

1837 (ii) If a criminal background check discloses that an individual described in Subsection  
1838 61-2e-202(2)(e) or (g) fails to accurately disclose a criminal history other than that described in

1839 Subsection (3)(b)(i), the division shall review the application, and in accordance with rules  
1840 made by the division pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

1841 may:

1842 (A) place a condition on a registration;

1843 (B) place a restriction on a registration;

1844 (C) revoke a registration; or

1845 (D) refer the application to the board for a decision.

1846 (c) An entity whose conditional registration is revoked under [~~this~~] Subsection (3)(b)(i)  
1847 or whose license is conditioned, restricted, or revoked under Subsection (3)(b)(ii) is entitled to

1848 a post-revocation hearing conducted in accordance with Title 63G, Chapter 4, Administrative  
1849 Procedures Act, to challenge the revocation.

1850 (d) The board shall decide whether relief from the revocation of a registration under  
1851 this Subsection (3) will be granted, except that relief from [~~a~~] an automatic revocation under

1852 [~~this~~] Subsection (3)(b)(i) may be granted only if:

1853 (i) the criminal history upon which the revocation is based:

1854 (A) did not occur; or

1855 (B) is the criminal history of another individual;  
1856 (ii) (A) the revocation is based on a failure to accurately disclose a criminal history;  
1857 and  
1858 (B) the entity has a reasonable good faith belief at the time of application that there is  
1859 no criminal history to be disclosed; or  
1860 (iii) the division fails to follow the prescribed procedure for the revocation.  
1861 (e) The board may delegate to the division the authority to conduct a post-revocation  
1862 hearing under Subsection (3)(d).  
1863 [~~(f)~~] (f) If a registration is revoked or a revocation under this Subsection (3) is upheld  
1864 after a post-revocation hearing, the entity may not apply for a new registration until at least 12  
1865 months after the day on which the registration is revoked.  
1866 (4) (a) An appraisal management company shall comply with this Subsection (4) if  
1867 there is a change in:  
1868 (i) an individual who owns 10% or more of the entity; or  
1869 (ii) the controlling person designated as the contact as required by Section 61-2e-201.  
1870 (b) If there is a change in an individual described in Subsection (4)(a), within 30 days  
1871 of the day on which the change occurs, the appraisal management company shall file with the  
1872 division:  
1873 (i) the individual's name, address, and contact information;  
1874 (ii) a statement of whether or not the individual has had a license or certificate to  
1875 engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or  
1876 revoked in this state or in another state; and  
1877 (iii) (A) fingerprint cards in a form acceptable to the division at the time the  
1878 registration application is filed; and  
1879 (B) consent to a criminal background check by the Utah Bureau of Criminal  
1880 Identification and the Federal Bureau of Investigation regarding the application.  
1881 Section 27. Section **61-2e-204** is amended to read:  
1882 **61-2e-204. Renewal of a registration.**  
1883 (1) (a) A registration under this chapter expires two years from the day on which the  
1884 registration is filed.  
1885 (b) Notwithstanding Subsection (1)(a), the time period of a registration may be

1886 extended or shortened by as much as one year to maintain or change a renewal cycle  
1887 established by rule by the division.

1888 (2) To renew a registration under this chapter, before the day on which the registration  
1889 expires, an appraisal management company shall:

1890 (a) file with the division a renewal registration application on a form prescribed by the  
1891 division; and

1892 (b) pay to the division a fee determined in accordance with Section 63J-1-504.

1893 (3) A renewal registration application shall include substantially similar information to  
1894 the information required under Section 61-2e-202, except that for an individual described in  
1895 Subsection 61-2e-202~~(1)~~(2)(e) or (g), the entity is required to report whether the individual  
1896 has had:

1897 (a) (i) a conviction of a criminal offense;

1898 (ii) the entry of a plea in abeyance to a criminal offense; or

1899 (iii) the potential resolution of a criminal case by:

1900 (A) a diversion agreement; or

1901 (B) another agreement under which a criminal charge is held in suspense for a period  
1902 of time;

1903 (b) a filing of personal bankruptcy or bankruptcy of a business that transacts the  
1904 appraisal management services;

1905 (c) the suspension, revocation, surrender, cancellation, or denial of a professional  
1906 license or certification, whether the license or registration is issued by this state or another  
1907 jurisdiction; or

1908 (d) the entry of a cease and desist order or a temporary or permanent injunction:

1909 (i) against the individual by a court or government agency; and

1910 (ii) on the basis of:

1911 (A) conduct or a practice involving the business of appraisal management services; or

1912 (B) conduct involving fraud, misrepresentation, or deceit.

1913 (4) A registration expires if it is not renewed on or before its expiration date, except  
1914 that for a period of 30 days after the expiration date, the registration may be reinstated upon  
1915 compliance with this section, including payment of a renewal fee and a late fee determined by  
1916 the division and the board.

1917 (5) Notwithstanding Subsection (4), the division may extend the term of a license that  
 1918 would expire under Subsection (4) except for the extension if:

1919 (a) (i) the person complies with the requirements of this section to renew the  
 1920 registration; and

1921 (ii) the renewal application remains pending at the time of the extension; or

1922 (b) at the time of the extension, there is pending under this chapter a disciplinary  
 1923 action.

1924 Section 28. Section **61-2e-301** is amended to read:

1925 **61-2e-301. Use of licensed or certified appraisers.**

1926 (1) An appraisal management company required to be registered under this chapter  
 1927 may not enter into an agreement with an appraiser for the performance of a real estate appraisal  
 1928 activity unless the appraiser is licensed or certified in good standing pursuant to Chapter [2b]  
 1929 2g, Real Estate Appraiser Licensing and Certification Act.

1930 (2) (a) An appraisal management company required to be registered under this chapter  
 1931 shall have a system to verify that an individual added to the appraiser panel of the appraisal  
 1932 management company holds a license or certificate in good standing in this state pursuant to  
 1933 Chapter [2b] 2g, Real Estate Appraiser Licensing and Certification Act.

1934 (b) As part of the registration process under Part 2, Registration, an appraisal  
 1935 management company shall biennially provide an explanation of the system described in  
 1936 Subsection (2)(a) in the form prescribed by the division.

1937 ~~H→ [Section 29. Section 61-2e-302 is amended to read:~~

1938 ~~61-2e-302. Adherence to standards:~~

1939 ~~(1) An appraisal management company required to be registered under this chapter~~  
 1940 ~~shall have a system in place to review the work of an appraiser who performs a real estate~~  
 1941 ~~appraisal activity for the appraisal management company on a periodic basis to ensure that a~~  
 1942 ~~real estate appraisal activity is conducted in accordance with applicable appraisal standards:~~

1943 ~~(2) As part of the registration process under Part 2, Registration, an appraisal~~  
 1944 ~~management company shall biennially provide an explanation of the system described in~~  
 1945 ~~Subsection (1) in the form prescribed by the division:~~

1946 ~~(3) The board may make rules, made in accordance with Title 63G, Chapter 3, Utah~~  
 1947 ~~Administrative Rulemaking Act, as necessary to implement the requirements of 15 U.S.C. Sec.~~

1948 ~~1639e(i), except that the rules may not apply to an appraisal management company that is a~~  
 1949 ~~subsidiary owned and controlled by a financial institution regulated by a federal financial~~  
 1950 ~~institution regulatory agency.] ←Ĥ~~

1951 Section ~~Ĥ→~~ [30] 29 ←Ĥ . Section 61-2e-307 is amended to read:

1952 **61-2e-307. Prohibitions related to an appraiser.**

1953 (1) An appraisal management company required to be registered under this chapter, or  
 1954 a controlling person, employee, or agent of the appraisal management company may not  
 1955 influence or attempt to influence the development, reporting, or review of an appraisal through:

1956 (a) coercion;

1957 (b) extortion;

1958 (c) collusion;

1959 (d) compensation;

1960 (e) instruction;

1961 (f) inducement;

1962 (g) intimidation;

1963 (h) bribery; or

1964 (i) any other manner that would constitute undue influence.

1965 (2) A violation of Subsection (1) includes doing one or more of the following for a  
 1966 purpose listed in Subsection (1):

1967 (a) withholding or threatening to withhold timely payment for an appraisal;

1968 (b) withholding or threatening to withhold future business for an appraiser;

1969 (c) taking adverse action or threatening to take adverse action against an appraiser  
 1970 regarding use of the appraiser for a real estate appraisal activity;

1971 (d) expressly or by implication promising future business or increased compensation  
 1972 for an appraiser;

1973 (e) conditioning one or more of the following on the opinion, conclusion, or valuation  
 1974 to be reached, or on a preliminary estimate or opinion requested from an appraiser:

1975 (i) a request for a real estate appraisal activity; or

1976 (ii) the payment of consideration;

1977 (f) requesting that an appraiser provide at any time before the appraiser's completion of  
 1978 a real estate appraisal activity:

- 1979 (i) an estimated, predetermined, or desired valuation in an appraisal report; or  
1980 (ii) an estimated value or comparable sale;  
1981 (g) except for a copy of a sales contract for a purchase transaction, providing to an  
1982 appraiser:  
1983 (i) an anticipated, estimated, encouraged, or desired value for a subject property; or  
1984 (ii) a proposed or target amount to be loaned to the borrower;  
1985 (h) providing to an appraiser, or an individual related to the appraiser, stock or other  
1986 financial or non-financial benefits;  
1987 (i) allowing the removal of an appraiser from an appraiser panel, without prior written  
1988 notice to the appraiser as required by Section 61-2e-306;  
1989 (j) obtaining, using, or paying for a subsequent appraisal or ordering an automated  
1990 valuation model in connection with a mortgage financing transaction unless:  
1991 (i) (A) there is a reasonable basis to believe that the initial appraisal does not meet  
1992 applicable appraisal standards; and  
1993 (B) the reasonable basis is noted in the loan file; or  
1994 (ii) the subsequent appraisal or automated valuation model is done pursuant to a pre- or  
1995 post-funding appraisal review or quality control process in accordance with applicable  
1996 appraisal standards;  
1997 (k) compensating an appraiser in a manner that the person should reasonably have  
1998 known would result in the appraiser not conducting a real estate appraisal activity in a manner  
1999 consistent with applicable appraisal standards;  
2000 (l) engaging in the business of an appraisal management company under an assumed or  
2001 fictitious name not properly registered in this state;  
2002 (m) accepting a contingent fee for performing an appraisal management service if the  
2003 fee is contingent on:  
2004 (i) the appraiser report having a predetermined analysis, opinion, or conclusion;  
2005 (ii) the analysis, opinion, conclusion, or valuation reached in an appraisal report; or  
2006 (iii) the consequences resulting from the appraisal assignment; or  
2007 (n) any other act or practice that impairs or attempts to impair an appraiser's  
2008 independence, objectivity, or impartiality.  
2009 (3) An appraisal management company required to be registered under this chapter, or

2010 a controlling person, employee, or agent of the appraisal management company, may not  
2011 require an appraiser to indemnify the appraisal management company against liability except  
2012 liability for errors and omissions by the appraiser.

2013 [~~3~~] (4) This section may not be construed to prohibit an appraisal management  
2014 company from requesting that an appraiser:

2015 (a) provide additional information about the basis for a valuation; or

2016 (b) correct an objective factual error in an appraisal report.

2017 [~~4~~] (5) An appraisal management company required to be registered under this  
2018 chapter, or a controlling person, employee, or agent of the appraisal management company may  
2019 not alter, modify, or otherwise change a completed appraisal report submitted by an appraiser.

2020 Section 31. Section **61-2e-401** is amended to read:

2021 **61-2e-401. Division authority -- Immunity.**

2022 (1) (a) In addition to a power or duty expressly provided in this chapter, the division  
2023 may:

2024 (i) receive and act on a complaint including:

2025 (A) taking action designed to obtain voluntary compliance with this chapter; or

2026 (B) commencing an administrative or judicial proceeding on the division's own  
2027 initiative;

2028 (ii) investigate an entity required to be registered under this chapter, regardless of  
2029 whether the entity is located in Utah; and

2030 (iii) employ one or more investigators, clerks, or other employees or agents if:

2031 (A) approved by the executive director; and

2032 (B) within the budget of the division.

2033 (b) A failure to respond to a request by the division in an investigation under this  
2034 chapter is considered to be a separate violation of this chapter, including:

2035 (i) failing to respond to a subpoena;

2036 (ii) withholding evidence; or

2037 (iii) failing to produce a document or record.

2038 (2) (a) If a person is found to have violated this chapter or a rule made under this  
2039 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,  
2040 document, or record required under this chapter, including the costs incurred to copy an

2041 electronic book, paper, contract, document, or record in a universally readable format.

2042 (b) If a person fails to pay the costs described in Subsection (2)(a) when due, the  
2043 person's registration is automatically suspended:

2044 (i) beginning the day on which the payment of costs is due; and

2045 (ii) ending the day on which the costs are paid.

2046 [~~2~~] (3) The division is immune from a civil action or criminal prosecution for  
2047 initiating or assisting in a lawful investigation of an act or participating in a disciplinary  
2048 proceeding under this chapter if the division takes the action:

2049 (a) without malicious intent; and

2050 (b) in the reasonable belief that the action is taken pursuant to the powers and duties  
2051 vested in the division under this chapter.

2052 Section 32. Section **61-2e-402** is amended to read:

2053 **61-2e-402. Enforcement -- Immunity for board.**

2054 (1) (a) The board may order disciplinary action, with the concurrence of the division,  
2055 against:

2056 (i) an entity registered under this chapter;

2057 (ii) an entity required to be registered under this chapter; or

2058 (iii) a controlling person of an entity described in this Subsection (1)(a).

2059 (b) If the board, with the concurrence of the division, makes a finding described in  
2060 Subsection (2) pursuant to an adjudicative proceeding conducted in accordance with Title 63G,  
2061 Chapter 4, Administrative Procedures Act, the board, with the concurrence of the division,  
2062 may:

2063 (i) revoke, suspend, or place an entity's registration on probation;

2064 (ii) deny an entity's original registration;

2065 (iii) deny an entity's renewal registration;

2066 (iv) in the case of denial or revocation of a registration, set a waiting period for an  
2067 applicant to apply for a registration under this chapter;

2068 (v) order remedial education;

2069 (vi) impose a civil penalty upon a person not to exceed the greater of:

2070 (A) [~~\$2,500~~] \$5,000 for each violation; or

2071 (B) the amount of any gain or economic benefit from a violation;

2072 (vii) issue a cease and desist order; or  
 2073 (viii) do a combination of Subsections (1)(b)(i) through (vii).

2074 (2) Subsection (1) applies if the board finds, with the concurrence of the division, that a  
 2075 person has engaged in, is attempting to, or has attempted to engage in:

2076 (a) an act that violates this chapter;

2077 (b) an act that violates a rule made [~~by the board~~] under this chapter;

2078 (c) procuring a registration for the person or another person by fraud,  
 2079 misrepresentation, or deceit;

2080 (d) paying money or attempting to pay money other than a fee provided for by this  
 2081 chapter to an employee of the division to procure a registration under this chapter;

2082 (e) an act or omission in the business of an appraisal management company that  
 2083 constitutes dishonesty, fraud, or misrepresentation;

2084 (f) unprofessional conduct as defined by statute or rule; or

2085 (g) other conduct that constitutes dishonest dealing.

2086 (3) (a) If the board, with the concurrence of the director, issues an order that orders a  
 2087 fine or remedial education as part of a disciplinary action against a person, including a  
 2088 stipulation and order, the board shall state in the order the deadline by which the person shall  
 2089 comply with the fine or remedial education requirements.

2090 (b) If a person fails to comply by the stated deadline, the person's registration shall be  
 2091 immediately and automatically suspended:

2092 (i) beginning the day specified in the order as the deadline for compliance; and

2093 (ii) ending the day on which the person complies in full with the order.

2094 (c) If a person fails to pay a fine required by an order, the division shall begin a  
 2095 collection process:

2096 (i) established by the division by rule made in accordance with Title 63G, Chapter 3,  
 2097 Utah Administrative Rulemaking Act; and

2098 (ii) subject to Title 63A, Chapter 8, Office of State Debt Collection.

2098a **Ĥ→ (4) To the extent permitted by federal law, the board, with the concurrence of the**  
 2098b **division, may bring a disciplinary proceeding under this chapter for a violation of 15 U.S.C.**  
 2098c **Sec. 1639e(i). ←Ĥ**

2099 [~~(3)~~] **Ĥ→ [(4)] (5) ←Ĥ** A member of the board is immune from a civil action or  
 2099a criminal prosecution

2100 for a disciplinary proceeding under this chapter if:

2101 (a) the action is taken without malicious intent; and

2102 (b) in the reasonable belief that the action taken was taken pursuant to the powers and

2103 duties vested in a member of the board under this chapter.

2104 Section 33. Section **61-2f-102** is amended to read:

2105 **61-2f-102. Definitions.**

2106 As used in this chapter:

2107 (1) "Associate broker" means an individual who is:

2108 (a) employed or engaged as an independent contractor by or on behalf of a principal  
2109 broker to perform an act set out in Subsection [~~(17)~~] (18) for valuable consideration; and

2110 (b) licensed under this chapter as an associate broker.

2111 (2) "Branch office" means a principal broker's real estate brokerage office that is not  
2112 the principal broker's main office.

2113 (3) "Business day" means a day other than:

2114 (a) a Saturday;

2115 (b) a Sunday; or

2116 (c) a federal or state holiday.

2117 (4) "Business opportunity" means the sale, lease, or exchange of any business that  
2118 includes an interest in real estate.

2119 [~~(4)~~] (5) "Commission" means the Real Estate Commission established under this  
2120 chapter.

2121 [~~(5)~~] (6) "Concurrence" means the entities given a concurring role must jointly agree  
2122 for action to be taken.

2123 [~~(6)~~] (7) "Condominium unit" is as defined in Section 57-8-3.

2124 [~~(7)~~] (8) "Condominium homeowners' association" means the condominium unit  
2125 owners acting as a group in accordance with declarations and bylaws.

2126 [~~(8)~~] (9) (a) "Condominium hotel" means one or more condominium units that are  
2127 operated as a hotel.

2128 (b) "Condominium hotel" does not mean a hotel consisting of condominium units, all  
2129 of which are owned by a single entity.

2130 [~~(9)~~] (10) "Director" means the director of the Division of Real Estate.

2131 [~~(10)~~] (11) "Division" means the Division of Real Estate.

2132 [~~(11)~~] (12) "Entity" means:

2133 (a) a corporation;

- 2134 (b) a partnership;
- 2135 (c) a limited liability company;
- 2136 (d) a company;
- 2137 (e) an association;
- 2138 (f) a joint venture;
- 2139 (g) a business trust;
- 2140 (h) a trust; or
- 2141 (i) any organization similar to an entity described in Subsections [~~(11)~~] (12)(a) through
- 2142 (h).
- 2143 [~~(12)~~] (13) "Executive director" means the director of the Department of Commerce.
- 2144 [~~(13)~~] (14) "Foreclosure rescue" means, for compensation or with the expectation of
- 2145 receiving valuable consideration, to:
  - 2146 (a) engage, or offer to engage, in an act that:
    - 2147 (i) the person represents will assist a borrower in preventing a foreclosure; and
    - 2148 (ii) relates to a transaction involving the transfer of title to residential real property; or
  - 2149 (b) as an employee or agent of another person:
    - 2150 (i) solicit, or offer that the other person will engage in an act described in Subsection
    - 2151 [~~(13)~~] (14)(a); or
    - 2152 (ii) negotiate terms in relationship to an act described in Subsection [~~(13)~~] (14)(a).
- 2153 [~~(14)~~] (15) "Loan modification assistance" means, for compensation or with the
- 2154 expectation of receiving valuable consideration, to:
  - 2155 (a) act, or offer to act, on behalf of a person to:
    - 2156 (i) obtain a loan term of a residential mortgage loan that is different from an existing
    - 2157 loan term including:
      - 2158 (A) an increase or decrease in an interest rate;
      - 2159 (B) a change to the type of interest rate;
      - 2160 (C) an increase or decrease in the principal amount of the residential mortgage loan;
      - 2161 (D) a change in the number of required period payments;
      - 2162 (E) an addition of collateral;
      - 2163 (F) a change to, or addition of, a prepayment penalty;
      - 2164 (G) an addition of a cosigner; or

- 2165 (H) a change in persons obligated under the existing residential mortgage loan; or  
2166 (ii) substitute a new residential mortgage loan for an existing residential mortgage loan;  
2167 or  
2168 (b) as an employee or agent of another person:  
2169 (i) solicit, or offer that the other person will engage in an act described in Subsection  
2170 ~~[(14)]~~ (15)(a); or  
2171 (ii) negotiate terms in relationship to an act described in Subsection ~~[(14)]~~ (15)(a).  
2172 ~~[(15)]~~ (16) "Main office" means the address which a principal broker designates with  
2173 the division as the principal broker's primary brokerage office.  
2174 ~~[(16)]~~ (17) "Person" means an individual or entity.  
2175 ~~[(17)]~~ (18) "Principal broker" means an individual who is licensed as a principal broker  
2176 under this chapter and who:  
2177 (a) (i) sells or lists real estate or a business opportunity for sale with the expectation of  
2178 receiving valuable consideration;  
2179 (ii) buys, exchanges, or auctions real estate, ~~[options]~~ an option on real estate, a  
2180 business opportunity, or ~~[improvements]~~ an improvement on real estate with the expectation of  
2181 receiving valuable consideration; or  
2182 (iii) ~~[who]~~ advertises, offers, attempts, or otherwise holds the individual out to be  
2183 engaged in the business described in Subsection ~~[(17)]~~ (18)(a)(i) or (ii);  
2184 (b) is employed by or on behalf of the owner of real estate or by a prospective  
2185 purchaser of real estate and performs an act described in Subsection ~~[(17)]~~ (18)(a), whether the  
2186 individual's compensation is at a stated salary, a commission basis, upon a salary and  
2187 commission basis, or otherwise;  
2188 (c) (i) with the expectation of receiving valuable consideration, manages property  
2189 owned by another person; or  
2190 (ii) advertises or otherwise holds the individual out to be engaged in property  
2191 management;  
2192 (d) with the expectation of receiving valuable consideration, assists or directs in the  
2193 procurement of prospects for or the negotiation of a transaction listed in Subsections ~~[(17)]~~  
2194 (18)(a) and (c);  
2195 (e) except for a mortgage lender, title insurance producer, or an employee of a

2196 mortgage lender or title insurance producer, assists or directs in the closing of a real estate  
2197 transaction with the expectation of receiving valuable consideration; or

2198 (f) (i) engages in foreclosure rescue; or

2199 (ii) advertises, offers, attempts, or otherwise holds the person out as being engaged in  
2200 foreclosure rescue~~;~~ and].

2201 [~~(g) is licensed as a principal broker under this chapter.~~]

2202 [~~(18)~~] (19) (a) "Property management" means engaging in, with the expectation of  
2203 receiving valuable consideration, the management of real estate owned by another person or  
2204 advertising or otherwise claiming to be engaged in property management by:

2205 (i) advertising for, arranging, negotiating, offering, or otherwise attempting or  
2206 participating in a transaction calculated to secure the rental or leasing of real estate;

2207 (ii) collecting, agreeing, offering, or otherwise attempting to collect rent for the real  
2208 estate and accounting for and disbursing the money collected; or

2209 (iii) authorizing expenditures for repairs to the real estate.

2210 (b) "Property management" does not include:

2211 (i) hotel or motel management;

2212 (ii) rental of tourist accommodations, including hotels, motels, tourist homes,  
2213 condominiums, condominium hotels, mobile home park accommodations, campgrounds, or  
2214 similar public accommodations for a period of less than 30 consecutive days, and the  
2215 management activities associated with these rentals; or

2216 (iii) the leasing or management of surface or subsurface minerals or oil and gas  
2217 interests, if the leasing or management is separate from a sale or lease of the surface estate.

2218 [~~(19)~~] (20) "Real estate" includes leaseholds and business opportunities involving real  
2219 property.

2220 [~~(20)~~] (21) (a) "Regular salaried employee" means an individual who performs a  
2221 service for wages or other remuneration, whose employer withholds federal employment taxes  
2222 under a contract of hire, written or oral, express or implied.

2223 (b) "Regular salaried employee" does not include an individual who performs services  
2224 on a project-by-project basis or on a commission basis.

2225 [~~(21)~~] (22) "Reinstatement" means restoring a license that has expired or has been  
2226 suspended.

2227            [~~(22)~~] (23) "Reissuance" means the process by which a licensee may obtain a license  
2228 following revocation of the license.

2229            [~~(23)~~] (24) "Renewal" means extending a license for an additional licensing period on  
2230 or before the date the license expires.

2231            [~~(24)~~] (25) "Sales agent" means an individual who is:

2232            (a) affiliated with a principal broker, either as an independent contractor or an  
2233 employee as provided in Section 61-2f-303, to perform for valuable consideration an act  
2234 described in Subsection [~~(17)~~] (18); and

2235            (b) licensed under this chapter as a sales agent.

2236            [~~(25)~~] (26) (a) "Undivided fractionalized long-term estate" means an ownership interest  
2237 in real property by two or more persons that is:

2238            (i) a tenancy in common; or

2239            (ii) any other legal form of undivided estate in real property including:

2240            (A) a fee estate;

2241            (B) a life estate; or

2242            (C) other long-term estate.

2243            (b) "Undivided fractionalized long-term estate" does not include a joint tenancy.

2244            Section 34. Section **61-2f-105** is amended to read:

2245            **61-2f-105. Fees.**

2246            (1) In addition to when expressly authorized in another provision of this chapter, the  
2247 division may charge and collect reasonable fees determined by the commission with the  
2248 concurrence of the division under Section 63J-1-504 to cover the costs for:

2249            (a) issuing a new or duplicate license;

2250            (b) registering an entity or branch office;

2251            (c) certifying a real estate school, course, or instructor;

2252            (d) providing a history of a license, registration, or certification; [~~and~~]

2253            (e) producing a certified copy of an official document, order, or other paper or  
2254 transcript; and

2255            (f) other duties required by this chapter.

2256            (2) Notwithstanding Section 13-1-2, a fee collected under Subsection (1)(c) shall be  
2257 deposited in the Real Estate Education, Research, and Recovery Fund.

2258 (3) If a person pays a fee or costs to the division with a negotiable instrument [~~and the~~  
2259 ~~negotiable instrument~~] or other payment method that is not honored for payment:

2260 (a) the transaction for which the payment is submitted is voidable by the division;

2261 (b) the division may reverse the transaction if payment of the applicable fee or costs is  
2262 not received in full; and

2263 (c) the person's license, certification, or registration is automatically suspended:

2264 (i) beginning the day on which the payment is due; and

2265 (ii) ending the day on which payment is made in full.

2266 (4) (a) A fee under this chapter is in lieu of all other license fees or assessments that  
2267 might otherwise be imposed or charged by the state or any of its political subdivisions upon, or  
2268 as a condition of, the privilege of conducting the business regulated by this chapter, except that  
2269 a political subdivision within the state may charge a business license fee on a principal broker  
2270 if the principal broker maintains a place of business within the jurisdiction of the political  
2271 subdivision.

2272 (b) Unless otherwise exempt, a licensee under this chapter is subject to the taxes  
2273 imposed under Title 59, Revenue and Taxation.

2274 Section 35. Section **61-2f-202** is amended to read:

2275 **61-2f-202. Exempt persons and transactions.**

2276 (1) (a) Except as provided in Subsection (1)(b), a license under this chapter is not  
2277 required for:

2278 (i) an individual who as owner or lessor performs an act described in Subsection  
2279 61-2f-102[~~(17)~~](18) with reference to real estate owned or leased by that individual;

2280 (ii) a regular salaried employee of the owner or lessor of real estate who, with reference  
2281 to nonresidential real estate owned or leased by the employer, performs an act described in  
2282 Subsection 61-2f-102[~~(17)~~](18)(a) or (b);

2283 (iii) a regular salaried employee of the owner of real estate who performs property  
2284 management services with reference to real estate owned by the employer, except that the  
2285 employee may only manage real estate for one employer;

2286 (iv) an individual who performs property management services for the apartments at  
2287 which that individual resides in exchange for free or reduced rent on that individual's  
2288 apartment;

2289 (v) a regular salaried employee of a condominium homeowners' association who  
2290 manages real estate subject to the declaration of condominium that established the  
2291 condominium homeowners' association, except that the employee may only manage real estate  
2292 for one condominium homeowners' association; and

2293 (vi) a regular salaried employee of a licensed property management company who  
2294 performs support services, as prescribed by rule, for the property management company.

2295 (b) Subsection (1)(a) does not exempt from licensing:

2296 (i) an employee engaged in the sale of real estate regulated under:

2297 (A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; ~~and~~ or

2298 (B) Title 57, Chapter 19, Timeshare and Camp Resort Act;

2299 (ii) an employee engaged in the sale of cooperative interests regulated under Title 57,  
2300 Chapter 23, Real Estate Cooperative Marketing Act; or

2301 (iii) an individual whose interest as an owner or lessor is obtained by that individual or  
2302 transferred to that individual for the purpose of evading the application of this chapter, and not  
2303 for another legitimate business reason.

2304 (2) A license under this chapter is not required for:

2305 (a) an isolated transaction by an individual holding a duly executed power of attorney  
2306 from an owner;

2307 (b) services rendered by an attorney in performing the attorney's duties as an attorney;

2308 (c) a receiver, trustee in bankruptcy, administrator, executor, or an individual acting  
2309 under order of a court;

2310 (d) a trustee or employee of a trustee under a deed of trust or a will;

2311 (e) a public utility, officer of a public utility, or regular salaried employee of a public  
2312 utility, unless performance of an act described in Subsection 61-2f-102~~(17)~~(18) is in  
2313 connection with the sale, purchase, lease, or other disposition of real estate or investment in  
2314 real estate unrelated to the principal business activity of that public utility;

2315 (f) a regular salaried employee or authorized agent working under the oversight of the  
2316 Department of Transportation when performing an act on behalf of the Department of  
2317 Transportation in connection with one or more of the following:

2318 (i) the acquisition of real estate pursuant to Section 72-5-103;

2319 (ii) the disposal of real estate pursuant to Section 72-5-111;

- 2320 (iii) services that constitute property management; or  
2321 (iv) the leasing of real estate; and  
2322 (g) a regular salaried employee of a county, city, or town when performing an act on  
2323 behalf of the county, city, or town:  
2324 (i) in accordance with:  
2325 (A) if a regular salaried employee of a city or town:  
2326 (I) Title 10, Utah Municipal Code; or  
2327 (II) Title 11, Cities, Counties, and Local Taxing Units; and  
2328 (B) if a regular salaried employee of a county:  
2329 (I) Title 11, Cities, Counties, and Local Taxing Units; and  
2330 (II) Title 17, Counties; and  
2331 (ii) in connection with one or more of the following:  
2332 (A) the acquisition of real estate, including by eminent domain;  
2333 (B) the disposal of real estate;  
2334 (C) services that constitute property management; or  
2335 (D) the leasing of real estate.  
2336 (3) A license under this chapter is not required for an individual registered to act as a  
2337 broker-dealer, agent, or investment adviser under the Utah and federal securities laws in the  
2338 sale or the offer for sale of real estate if:  
2339 (a) (i) the real estate is a necessary element of a "security" as that term is defined by the  
2340 Securities Act of 1933 and the Securities Exchange Act of 1934; and  
2341 (ii) the security is registered for sale in accordance with:  
2342 (A) the Securities Act of 1933; or  
2343 (B) Title 61, Chapter 1, Utah Uniform Securities Act; or  
2344 (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec.  
2345 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation  
2346 D, Rule 506, 17 C.F.R. Sec. 230.506; and  
2347 (ii) the selling agent and the purchaser are not residents of this state.  
2348 Section 36. Section **61-2f-203** is amended to read:  
2349 **61-2f-203. Licensing requirements.**  
2350 (1) (a) Except as provided in Subsection (5), the commission shall determine the

2351 qualifications and requirements of an applicant for:

- 2352 (i) a principal broker license;
- 2353 (ii) an associate broker license; or
- 2354 (iii) a sales agent license.

2355 (b) The division, with the concurrence of the commission, shall require and pass upon  
2356 proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency of  
2357 each applicant for an initial license or for renewal of an existing license.

2358 (c) (i) The division, with the concurrence of the commission, shall require an applicant  
2359 for:

2360 (A) a sales agent license to complete an approved educational program consisting of  
2361 the number of hours designated by rule made by the commission with the concurrence of the  
2362 division, except that the rule may not require less than 120 hours; and

2363 (B) an associate broker or a principal broker license to complete an approved  
2364 educational program consisting of the number of hours designated by rule made by the  
2365 commission with the concurrence of the division, except that the rule may not require less than  
2366 120 hours.

2367 (ii) An hour required by this section means 50 minutes of instruction in each 60  
2368 minutes.

2369 (iii) The maximum number of program hours available to an individual is eight hours  
2370 per day.

2371 (d) The division, with the concurrence of the commission, shall require the applicant to  
2372 pass an examination approved by the commission covering:

2373 (i) the fundamentals of:

2374 (A) the English language;

2375 (B) arithmetic;

2376 (C) bookkeeping; and

2377 (D) real estate principles and practices;

2378 (ii) ~~the provisions of~~ this chapter;

2379 (iii) the rules established by the commission; and

2380 (iv) any other aspect of Utah real estate license law considered appropriate.

2381 (e) (i) Three years' full-time experience as a sales agent or its equivalent is required

2382 before an applicant may apply for, and secure a principal broker or associate broker license in  
2383 this state.

2384 (ii) The commission shall establish by rule, made in accordance with Title 63G,  
2385 Chapter 3, Utah Administrative Rulemaking Act, the criteria by which the commission will  
2386 accept experience or special education in similar fields of business in lieu of the three years'  
2387 experience.

2388 (2) (a) The division, with the concurrence of the commission, may require an applicant  
2389 to furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's  
2390 reputation and competency as set forth by rule.

2391 (b) The division shall require an applicant to provide the applicant's Social Security  
2392 number, which is a private record under Subsection 63G-2-302(1)(h).

2393 (3) (a) An individual who is not a resident of this state may be licensed in this state if  
2394 the person complies with ~~[all the provisions of]~~ this chapter.

2395 (b) An individual who is not a resident of this state may be licensed as an associate  
2396 broker or sales agent in this state by:

2397 (i) complying with ~~[all the provisions of]~~ this chapter; and

2398 (ii) being employed or engaged as an independent contractor by or on behalf of a  
2399 principal broker who is licensed in this state, regardless of whether the principal broker is a  
2400 resident of this state.

2401 (4) (a) ~~[Except as provided in Subsection 61-2f-204(1)(e)(vi), the]~~ The division and  
2402 commission shall treat an application to be relicensed of an applicant whose real estate license  
2403 is revoked as an original application.

2404 (b) In the case of an applicant for a new license as a principal broker or associate  
2405 broker, the applicant is not entitled to credit for experience gained before the revocation of a  
2406 real estate license.

2407 (5) (a) Notwithstanding Subsection (1), the commission may delegate to the division  
2408 the authority to:

2409 (i) review a class or category of applications for initial or renewed licenses;

2410 (ii) determine whether an applicant meets the licensing criteria in Subsection (1); and

2411 (iii) approve or deny a license application without concurrence by the commission.

2412 (b) (i) If the commission delegates to the division the authority to approve or deny an

2413 application without concurrence by the commission and the division denies an application for  
2414 licensure, the applicant who is denied licensure may petition the commission for de novo  
2415 review of the [~~denial of licensure~~] application.

2416 (ii) An applicant who is denied licensure pursuant to this Subsection (5) may seek  
2417 agency review by the executive director only after the commission has reviewed the division's  
2418 denial of the applicant's application.

2419 Section 37. Section **61-2f-204** is amended to read:

2420 **61-2f-204. Licensing fees and procedures -- Renewal fees and procedures.**

2421 (1) (a) Upon filing an application for an examination for a license under this chapter,  
2422 the applicant shall pay a nonrefundable fee as determined by the commission with the  
2423 concurrence of the division under Section 63J-1-504 for admission to the examination.

2424 (b) An applicant for a principal broker, associate broker, or sales agent license shall  
2425 pay a nonrefundable fee as determined by the commission with the concurrence of the division  
2426 under Section 63J-1-504 for issuance of an initial license or license renewal.

2427 (c) A license issued under this Subsection (1) shall be issued for a period of not less  
2428 than two years as determined by the division with the concurrence of the commission.

2429 (d) (i) Any of the following applicants shall comply with this Subsection (1)(d):

2430 (A) a new sales agent applicant;

2431 (B) a principal broker applicant; or

2432 (C) an associate broker applicant.

2433 (ii) An applicant described in this Subsection (1)(d) shall:

2434 (A) submit fingerprint cards in a form acceptable to the division at the time the license  
2435 application is filed; and

2436 (B) consent to a criminal background check by the Utah Bureau of Criminal  
2437 Identification and the Federal Bureau of Investigation regarding the application.

2438 (iii) The division shall request the Department of Public Safety to complete a Federal  
2439 Bureau of Investigation criminal background check for each applicant described in this  
2440 Subsection (1)(d) through the national criminal history system or any successor system.

2441 (iv) The applicant shall pay the cost of the criminal background check and the  
2442 fingerprinting.

2443 (v) Money paid to the division by an applicant for the cost of the criminal background

2444 check is nonlapsing.

2445 (e) (i) A license issued under Subsection (1)(d) is conditional, pending completion of  
2446 the criminal background check.

2447 (ii) A license is immediately and automatically revoked if the criminal background  
2448 check discloses the applicant fails to accurately disclose a criminal history involving:

2449 (A) the real estate industry; or

2450 [~~(B) fraud;~~]

2451 [~~(C) misrepresentation; or~~]

2452 [~~(D) deceit.~~]

2453 (B) a felony conviction on the basis of an allegation of fraud, misrepresentation, or  
2454 deceit.

2455 (iii) If a criminal background check discloses that an applicant fails to accurately  
2456 disclose a criminal history other than one described in Subsection (1)(e)(ii), the division:

2457 (A) shall review the application; and

2458 (B) in accordance with rules made by the division pursuant to Title 63G, Chapter 3,  
2459 Utah Administrative Rulemaking Act, may:

2460 (I) place a condition on a license;

2461 (II) place a restriction on a license;

2462 (III) revoke a license; or

2463 (IV) refer the application to the commission for a decision.

2464 (iv) A person whose conditional license is automatically revoked under Subsection  
2465 (1)(e)(ii) or whose license is conditioned, restricted, or revoked under Subsection (1)(e)(iii)  
2466 may have a hearing after the action is taken to challenge the action. The hearing shall be  
2467 conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

2468 (v) The director shall designate one of the following to act as the presiding officer in a  
2469 hearing described in Subsection (1)(e)(iv):

2470 (A) the division; or

2471 (B) the division with the concurrence of the commission.

2472 (vi) The decision on whether relief from an action under this Subsection (1)(e) will be  
2473 granted shall be made by the presiding officer.

2474 (vii) Relief from an automatic revocation under Subsection (1)(e)(ii) may be granted

2475 only if:

2476 (A) the criminal history upon which the division based the revocation:

2477 (I) did not occur; or

2478 (II) is the criminal history of another person;

2479 (B) (I) the revocation is based on a failure to accurately disclose a criminal history; and

2480 (II) the applicant has a reasonable good faith belief at the time of application that there

2481 was no criminal history to be disclosed; or

2482 (C) the division fails to follow the prescribed procedure for the revocation.

2483 (viii) If a license is revoked or a revocation under this Subsection (1)(e) is upheld after

2484 a hearing, the individual may not apply for a new license until at least 12 months after the day

2485 on which the license is revoked.

2486 (2) (a) (i) A license expires if it is not renewed on or before its expiration date.

2487 (ii) As a condition of renewal, an active licensee shall demonstrate competence by

2488 completing 18 hours of continuing education within a two-year renewal period subject to rules

2489 made by the commission, with the concurrence of the division.

2490 (iii) In making a rule described in Subsection (2)(c)(ii), the division and commission

2491 shall consider:

2492 (A) evaluating continuing education on the basis of competency, rather than course

2493 time;

2494 (B) allowing completion of courses in a significant variety of topic areas that the

2495 division and commission determine are valuable in assisting an individual licensed under this

2496 chapter to increase the individual's competency; and

2497 (C) allowing completion of courses that will increase a licensee's professional

2498 competency in the area of practice of the licensee.

2499 (iv) The division may award credit to a licensee for a continuing education requirement

2500 of this Subsection (2)(a) for a reasonable period of time upon a finding of reasonable cause,

2501 including:

2502 (A) military service; or

2503 (B) if an individual is elected or appointed to government service, the individual's

2504 government service during which the individual spends a substantial time addressing real estate

2505 issues subject to conditions established by rule made in accordance with Title 63G, Chapter 3,

2506 Utah Administrative Rulemaking Act.

2507 (b) For a period of 30 days after the expiration date of a license, the license may be  
2508 reinstated upon:

2509 (i) payment of a renewal fee and a late fee determined by the commission with the  
2510 concurrence of the division under Section 63J-1-504; and

2511 (ii) providing proof acceptable to the division and the commission of the licensee  
2512 having:

2513 (A) completed the hours of education required by Subsection (2)(a); or

2514 (B) demonstrated competence as required under Subsection (2)(a).

2515 (c) After the 30-day period described in Subsection (2)(b), and until six months after  
2516 the expiration date, the license may be reinstated by:

2517 (i) paying a renewal fee and a late fee determined by the commission with the  
2518 concurrence of the division under Section 63J-1-504;

2519 (ii) providing to the division proof of satisfactory completion of six hours of continuing  
2520 education:

2521 (A) in addition to the requirements for a timely renewal; and

2522 (B) on a subject determined by the commission by rule made in accordance with Title  
2523 63G, Chapter 3, Utah Administrative Rulemaking Act; and

2524 (iii) providing proof acceptable to the division and the commission of the licensee  
2525 having:

2526 (A) completed the hours of education required under Subsection (2)(a); or

2527 (B) demonstrated competence as required under Subsection (2)(a).

2528 (d) After the six-month period described in Subsection (2)(c), and until one year after  
2529 the expiration date, the license may be reinstated by:

2530 (i) paying a renewal fee and a late fee determined by the commission with the  
2531 concurrence of the division under Section 63J-1-504;

2532 (ii) providing to the division proof of satisfactory completion of 24 hours of continuing  
2533 education:

2534 (A) in addition to the requirements for a timely renewal; and

2535 (B) on a subject determined by the commission by rule made in accordance with Title  
2536 63G, Chapter 3, Utah Administrative Rulemaking Act; and

2537 (iii) providing proof acceptable to the division and the commission of the licensee  
2538 having:

2539 (A) completed the hours of education required by Subsection (2)(a); or

2540 (B) demonstrated competence as required under Subsection (2)(a).

2541 (e) The division shall relicense a person who does not renew that person's license  
2542 within one year as prescribed for an original application.

2543 (f) Notwithstanding Subsection (2)(a), the division may extend the term of a license  
2544 that would expire under Subsection (2)(a) except for the extension if:

2545 (i) (A) the person complies with the requirements of this section to renew the license;  
2546 and

2547 [~~(i)~~] (B) the renewal application remains pending at the time of the extension~~[- there is~~  
2548 ~~pending under this chapter.]; or~~

2549 [~~(A) the application for renewal of the license; or]~~

2550 [~~(B)~~] (ii) at the time of the extension, there is pending a disciplinary action under this  
2551 chapter.

2552 (3) (a) As a condition for the activation of an inactive license that was in an inactive  
2553 status at the time of the licensee's most recent renewal, the licensee shall supply the division  
2554 with proof of:

2555 (i) successful completion of the respective sales agent or principal broker licensing  
2556 examination within six months [~~prior to~~] before applying to activate the license; or

2557 (ii) the successful completion of the hours of continuing education that the licensee  
2558 would have been required to complete under Subsection (2)(a) if the license had been on active  
2559 status at the time of the licensee's most recent renewal.

2560 (b) The commission may, in accordance with Title 63G, Chapter 3, Utah  
2561 Administrative Rulemaking Act, establish by rule:

2562 (i) the nature or type of continuing education required for reactivation of a license; and

2563 (ii) how long before reactivation the continuing education must be completed.

2564 Section 38. Section **61-2f-206** is amended to read:

2565 **61-2f-206. Registration of entity or branch office -- Certification of education**  
2566 **providers and courses -- Specialized licenses.**

2567 (1) (a) An entity may not engage in an activity described in Section 61-2f-201, unless it

2568 is registered with the division.

2569 (b) To register with the division under this Subsection (1), an entity shall submit to the  
2570 division:

2571 (i) an application in a form required by the division;

2572 (ii) evidence of an affiliation with a principal broker;

2573 (iii) evidence that the entity is registered and in good standing with the Division of  
2574 Corporations and Commercial Code; and

2575 (iv) a registration fee established by the commission with the concurrence of the  
2576 division under Section 63J-1-504.

2577 (2) (a) A principal broker shall register with the division each of the principal broker's  
2578 branch offices.

2579 (b) To register a branch office with the division under this Subsection (2), a principal  
2580 broker shall submit to the division:

2581 (i) an application in a form required by the division; and

2582 (ii) a registration fee established by the commission with the concurrence of the  
2583 division under Section 63J-1-504.

2584 (3) (a) In accordance with rules made by the commission, the division shall certify:

2585 (i) a real estate school;

2586 (ii) a course provider; or

2587 (iii) an instructor.

2588 (b) In accordance with rules made by the commission, and with the concurrence of the  
2589 commission, the division shall certify a continuing education course that is required under this  
2590 [section] chapter.

2591 (4) (a) Except as provided by rule, a principal broker may not be responsible for more  
2592 than one registered entity at the same time.

2593 (b) (i) In addition to issuing a principal broker license, associate broker license, or sales  
2594 agent license authorizing the performance of an act set forth in Section 61-2f-201, the division  
2595 may issue a specialized sales license or specialized property management license with the  
2596 scope of practice limited to the specialty.

2597 (ii) An individual may hold a specialized license in addition to a license as a principal  
2598 broker, associate broker, or a sales agent.

2599 (iii) The commission may adopt rules pursuant to Title 63G, Chapter 3, Utah  
 2600 Administrative Rulemaking Act, for the administration of this Subsection (4), including:

- 2601 (A) prelicensing and postlicensing education requirements;  
 2602 (B) examination requirements;  
 2603 (C) affiliation with real estate brokerages or property management companies; and  
 2604 (D) other licensing procedures.

2605 Section 39. Section **61-2f-301** is amended to read:

2606 **61-2f-301. Reporting requirements.**

2607 (1) A licensee shall notify the division of the following by sending the division a  
 2608 signed statement within 10 business days of:

2609 [~~(1)~~] (a) (i) a conviction of a [~~criminal offense~~] felony, class A misdemeanor, or class  
 2610 B misdemeanor;

2611 [~~(2)~~] (ii) the entry of a plea in abeyance to a [~~criminal offense~~] felony, class A  
 2612 misdemeanor, or class B misdemeanor; or

2613 [~~(3)~~] (iii) the potential resolution of a [~~criminal case~~] felony, class A misdemeanor, or  
 2614 class B misdemeanor by:

2615 [~~(4)~~] (A) a diversion agreement; or

2616 [~~(5)~~] (B) another agreement under which a criminal charge is held in suspense for a  
 2617 period of time;

2618 [~~(6)~~] (b) filing a personal or brokerage bankruptcy;

2619 [~~(7)~~] (c) the suspension, revocation, surrender, cancellation, or denial of a license or  
 2620 registration of the licensee that is necessary to engage in an occupation or profession,  
 2621 regardless of whether the license or registration is issued by this state or another jurisdiction; or

2622 [~~(8)~~] (d) the entry of a cease and desist order or a temporary or permanent injunction:

2623 [~~(9)~~] (i) against the licensee by a court or administrative agency; and

2624 [~~(10)~~] (ii) on the basis of:

2625 [~~(11)~~] (A) conduct or a practice involving the business of real estate; or

2626 [~~(12)~~] (B) conduct involving fraud, misrepresentation, or deceit.

2627 (2) The commission, with the concurrence of the director, shall enforce the reporting  
 2628 requirement under this section pursuant to Section 61-2f-404.

2629 Section 40. Section **61-2f-401** is amended to read:

2630 **61-2f-401. Grounds for disciplinary action.**

2631 The following acts are unlawful for a person required to be licensed under this chapter:

2632 (1) (a) making a substantial misrepresentation;

2633 (b) making an intentional misrepresentation;

2634 (c) pursuing a continued and flagrant course of misrepresentation;

2635 (d) making a false representation or promise through an agent, sales agent, advertising,

2636 or otherwise; or

2637 (e) making a false representation or promise of a character likely to influence,

2638 persuade, or induce;

2639 (2) acting for more than one party in a transaction without the informed consent of [aH]

2640 the parties;

2641 (3) (a) acting as an associate broker or sales agent while not affiliated with a principal

2642 broker;

2643 (b) representing or attempting to represent a principal broker other than the principal

2644 broker with whom the person is affiliated; or

2645 (c) representing as sales agent or having a contractual relationship similar to that of

2646 sales agent with a person other than a principal broker;

2647 (4) (a) failing, within a reasonable time, to account for or to remit money that belongs

2648 to another and comes into the person's possession;

2649 (b) commingling money described in Subsection (4)(a) with the person's own money;

2650 or

2651 (c) diverting money described in Subsection (4)(a) from the purpose for which the

2652 money is received;

2653 (5) paying or offering to pay valuable consideration, as defined by the commission, to a

2654 person not licensed under this chapter, except that valuable consideration may be shared:

2655 (a) with a principal broker of another jurisdiction; or

2656 (b) as provided under:

2657 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;

2658 (ii) Title 16, Chapter 11, Professional Corporation Act; or

2659 (iii) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act;

2660 (6) being incompetent to act as a principal broker, associate broker, or sales agent in

- 2661 such manner as to safeguard the interests of the public;
- 2662 (7) failing to voluntarily furnish a copy of a document to ~~all~~ the parties before and  
2663 after the execution of a document;
- 2664 (8) failing to keep and make available for inspection by the division a record of each  
2665 transaction, including:
- 2666 (a) the names of buyers and sellers or lessees and lessors;
- 2667 (b) the identification of real estate;
- 2668 (c) the sale or rental price;
- 2669 (d) money received in trust;
- 2670 (e) agreements or instructions from buyers and sellers or lessees and lessors; and
- 2671 (f) any other information required by rule;
- 2672 (9) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether  
2673 the purchase, sale, or rental is made for that person or for an undisclosed principal;
- 2674 (10) being convicted of a criminal offense involving moral turpitude within five years  
2675 of the most recent application:
- 2676 (a) regardless of whether the criminal offense is related to real estate; and
- 2677 (b) including:
- 2678 (i) a conviction based upon a plea of nolo contendere; or
- 2679 (ii) a plea held in abeyance to a criminal offense involving moral turpitude;
- 2680 (11) advertising the availability of real estate or the services of a licensee in a false,  
2681 misleading, or deceptive manner;
- 2682 (12) in the case of a principal broker or a licensee who is a branch manager, failing to  
2683 exercise reasonable supervision over the activities of the principal broker's or branch manager's  
2684 licensed or unlicensed staff;
- 2685 (13) violating or disregarding:
- 2686 (a) this chapter;
- 2687 (b) an order of the commission; or
- 2688 (c) the rules adopted by the commission and the division;
- 2689 (14) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real  
2690 estate transaction;
- 2691 (15) any other conduct which constitutes dishonest dealing;

- 2692 (16) unprofessional conduct as defined by statute or rule;
- 2693 (17) having one of the following suspended, revoked, surrendered, or cancelled on the  
2694 basis of misconduct in a professional capacity that relates to character, honesty, integrity, or  
2695 truthfulness:
- 2696 (a) a real estate license, registration, or certificate issued by another jurisdiction; or  
2697 (b) another license, registration, or certificate to engage in an occupation or profession  
2698 issued by this state or another jurisdiction;
- 2699 (18) failing to respond to a request by the division in an investigation authorized under  
2700 this chapter, including:
- 2701 (a) failing to respond to a subpoena;
- 2702 (b) withholding evidence; or
- 2703 (c) failing to produce documents or records;
- 2704 (19) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
- 2705 (a) providing a title insurance product or service without the approval required by  
2706 Section 31A-2-405; or
- 2707 (b) knowingly providing false or misleading information in the statement required by  
2708 Subsection 31A-2-405(2);
- 2709 (20) violating an independent contractor agreement between a principal broker and a  
2710 sales agent or associate broker as evidenced by a final judgment of a court;
- 2711 (21) (a) engaging in a foreclosure rescue if not licensed under this chapter;
- 2712 (b) engaging in an act of loan modification assistance that requires licensure as a  
2713 mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing Act,  
2714 without being licensed under that chapter;
- 2715 (c) engaging in an act of foreclosure rescue without entering into a written agreement  
2716 specifying what one or more acts of foreclosure rescue will be completed;
- 2717 ~~[(e)]~~ (d) requesting or requiring a person to pay a fee ~~[if:]~~ for a foreclosure rescue  
2718 service before obtaining a written agreement:
- 2719 ~~[(i) the person is required to pay the fee before entering into a written agreement~~  
2720 ~~specifying what one or more acts of foreclosure rescue will be completed if the fee is paid; or]~~
- 2721 ~~[(ii) in a case when the financing that is the subject of the foreclosure rescue is~~  
2722 ~~foreclosed within one year from the day on which the person enters into a written agreement,~~

2723 the person is required to forfeit the fee for any reason;]

2724 (i) between the person and the person's lender or servicer; and

2725 (ii) by which title to the residential real estate at risk of foreclosure will be transferred;

2726 [~~(d)~~] (e) inducing a person who is at risk of foreclosure to hire the licensee to engage in

2727 an act of foreclosure rescue by:

2728 (i) suggesting to the person that the licensee has a special relationship with the person's

2729 lender or loan servicer; or

2730 (ii) falsely representing or advertising that the licensee is acting on behalf of:

2731 (A) a government agency;

2732 (B) the person's lender or loan servicer; or

2733 (C) a nonprofit or charitable institution; or

2734 [~~(e)~~] (f) recommending or participating in a foreclosure rescue that requires a person

2735 to:

2736 (i) transfer title to real ~~[property]~~ estate to the licensee or to a ~~[third party]~~ third-party

2737 with whom the licensee has a business relationship or financial interest;

2738 (ii) make a mortgage payment to a person other than the person's loan servicer; or

2739 (iii) refrain from contacting the person's:

2740 (A) lender;

2741 (B) loan servicer;

2742 (C) attorney;

2743 (D) credit counselor; or

2744 (E) housing counselor; or

2745 (22) for an agreement for foreclosure rescue entered into on or after May 11, 2010,

2746 engaging in an act of foreclosure rescue without offering in writing to the person entering into

2747 the agreement for foreclosure rescue a right to cancel the agreement within three business days

2748 after the day on which the person enters the agreement.

2749 Section 41. Section **61-2g-101**, which is renumbered from Section 61-2b-1 is

2750 renumbered and amended to read:

2751 **CHAPTER 2g. REAL ESTATE APPRAISER LICENSING AND CERTIFICATION**

2752 **ACT**

2753 **Part 1. General Provisions**

2754 ~~[61-2b-1]~~. 61-2g-101. Title.

2755 This chapter is known as the "Real Estate Appraiser Licensing and Certification Act."

2756 Section 42. Section 61-2g-102, which is renumbered from Section 61-2b-2 is

2757 renumbered and amended to read:

2758 ~~[61-2b-2]~~. 61-2g-102. Definitions.

2759 (1) As used in this chapter:

2760 (a) (i) "Appraisal" means an unbiased analysis, opinion, or conclusion relating to the  
2761 nature, quality, value, or utility of a specified interest in, or aspect of, identified real estate or  
2762 identified real property.

2763 (ii) An appraisal is classified by the nature of the assignment as a valuation appraisal,  
2764 an analysis assignment, or a review assignment in accordance with the following definitions:

2765 (A) "Analysis assignment" means an unbiased analysis, opinion, or conclusion that  
2766 relates to the nature, quality, or utility of identified real estate or identified real property.

2767 (B) "Review assignment" means an unbiased analysis, opinion, or conclusion that  
2768 forms an opinion as to the adequacy and appropriateness of a valuation appraisal or an analysis  
2769 assignment.

2770 (C) "Valuation appraisal" means an unbiased analysis, opinion, or conclusion that  
2771 estimates the value of an identified parcel of real estate or identified real property at a particular  
2772 point in time.

2773 (b) "Appraisal Foundation" means the Appraisal Foundation that was incorporated as  
2774 an Illinois not-for-profit corporation on November 30, 1987.

2775 (c) (i) "Appraisal report" means a communication, written or oral, of an appraisal.

2776 (ii) An appraisal report is classified by the nature of the assignment as a valuation  
2777 report, analysis report, or review report in accordance with the definitions provided in  
2778 Subsection (1)(a)(ii).

2779 (iii) The testimony of a person relating to the person's analyses, conclusions, or  
2780 opinions concerning identified real estate or identified real property is considered to be an oral  
2781 appraisal report.

2782 (d) "Appraisal Qualification Board" means the Appraisal Qualification Board of the  
2783 Appraisal Foundation.

2784 (e) "Board" means the Real Estate Appraiser Licensing and Certification Board that is

2785 established in Section [~~61-2b-7~~] 61-2g-204.

2786 (f) "Certified appraisal report" means a written or oral appraisal report that is certified  
2787 by a state-certified general appraiser or state-certified residential appraiser.

2788 (g) "Concurrence" means that the entities that are given a concurring role jointly agree  
2789 to an action.

2790 (h) (i) (A) "Consultation service" means an engagement to provide a real estate  
2791 valuation service analysis, opinion, conclusion, or other service that does not fall within the  
2792 definition of appraisal.

2793 (B) "Consultation service" does not mean a valuation appraisal, analysis assignment, or  
2794 review assignment.

2795 (ii) Regardless of the intention of the client or employer, if a person prepares an  
2796 unbiased analysis, opinion, or conclusion, the analysis, opinion, or conclusion is considered to  
2797 be an appraisal and not a consultation service.

2798 (i) "Contingent fee" means a fee or other form of compensation, payment of which is  
2799 dependent on or conditioned by:

2800 (i) the reporting of a predetermined analysis, opinion, or conclusion by the person  
2801 performing the analysis, opinion, or conclusion; or

2802 (ii) achieving a result specified by the person requesting the analysis, opinion, or  
2803 conclusion.

2804 (j) "Division" means the Division of Real Estate of the Department of Commerce.

2805 (k) "Federally related transaction" means a real estate related transaction that is  
2806 required by federal law or by federal regulation to be supported by an appraisal prepared by:

2807 (i) a state-licensed appraiser; or

2808 (ii) a state-certified appraiser.

2809 (l) "Real estate" means an identified parcel or tract of land including improvements if  
2810 any.

2811 (m) "Real estate appraisal activity" means the act or process of making an appraisal of  
2812 real estate or real property and preparing an appraisal report.

2813 (n) "Real estate related transaction" means:

2814 (i) the sale, lease, purchase, investment in, or exchange of real property or an interest in  
2815 real property, or the financing of such a transaction;

2816 (ii) the refinancing of real property or an interest in real property; or  
2817 (iii) the use of real property or an interest in real property as security for a loan or  
2818 investment, including mortgage-backed securities.

2819 (o) "Real property" means one or more defined interests, benefits, or rights inherent in  
2820 the ownership of real estate.

2821 (p) "State-certified general appraiser" means a person who holds a current, valid  
2822 certification as a state-certified general appraiser issued under this chapter.

2823 (q) "State-certified residential appraiser" means a person who holds a current, valid  
2824 certification as a state-certified residential real estate appraiser issued under this chapter.

2825 (r) "State-licensed appraiser" means a person who holds a current, valid license as a  
2826 state-licensed appraiser issued under this chapter.

2827 (s) "Trainee" means an individual who:

2828 (i) does not hold an appraiser license or appraiser certification issued under this  
2829 chapter;

2830 (ii) works under the direct supervision of a state-certified appraiser to earn experience  
2831 for licensure; and

2832 (iii) is registered as a trainee under this chapter.

2833 (t) "Unbiased analysis, opinion, or conclusion" means an analysis, opinion, or  
2834 conclusion relating to the nature, quality, value, or utility of identified real estate or identified  
2835 real property that is prepared by a person who is employed or retained to act, or would be  
2836 perceived by third parties or the public as acting, as a disinterested [~~third party~~] third-party in  
2837 rendering the analysis, opinion, or conclusion.

2838 (2) (a) If a term not defined in this section is defined by rule, the term shall have the  
2839 meaning established by the division by rule made in accordance with Title 63G, Chapter 3,  
2840 Utah Administrative Rulemaking Act.

2841 (b) If a term not defined in this section is not defined by rule, the term shall have the  
2842 meaning commonly accepted in the business community.

2843 Section 43. Section **61-2g-103**, which is renumbered from Section 61-2b-25 is  
2844 renumbered and amended to read:

2845 **[61-2b-25]. 61-2g-103. Other law unaffected.**

2846 This chapter may not be considered to prohibit a person approved, licensed, certified, or

2847 registered under this chapter from engaging in the practice of real estate appraising as a  
 2848 professional corporation or a limited liability company in accordance with:

- 2849 (1) Title 16, Chapter 11, Professional Corporation Act; or  
 2850 (2) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act.  
 2851 Section 44. Section **61-2g-201**, which is renumbered from Section 61-2b-6 is  
 2852 renumbered and amended to read:

2853 **Part 2. Division and Board**

2854 **~~61-2b-6~~. 61-2g-201. Duties and powers of division in general.**

2855 (1) The division shall administer and enforce this chapter.

2856 ~~[(1)]~~ (2) The division has the following powers and duties ~~[listed in this Subsection~~  
 2857 ~~(1)]~~:

2858 (a) The division shall:

2859 (i) receive an application for licensing, certification, or registration;

2860 (ii) establish appropriate administrative procedures for the processing of an application  
 2861 for licensure, certification, or registration;

2862 (iii) issue a license or certification to a qualified applicant pursuant to this chapter; and

2863 (iv) register an individual who applies and qualifies for registration as a trainee under  
 2864 this chapter.

2865 ~~[(b)(i) The division shall require an individual to register with the division as a trainee~~  
 2866 ~~before the individual acts in the capacity of a trainee earning experience for licensure.]~~

2867 ~~[(ii) Subject to Subsection (4), the board shall adopt rules in accordance with Title~~  
 2868 ~~63G, Chapter 3, Utah Administrative Rulemaking Act, for:]~~

2869 ~~[(A) the trainee registration required by this Subsection (1)(b); and]~~

2870 ~~[(B) renewal of the trainee registration required by this Subsection (1)(b).]~~

2871 ~~[(c)]~~ (b) The division shall hold public hearings under the direction of the board.

2872 ~~[(d)]~~ (c) The division may:

2873 (i) solicit bids and enter into contracts with one or more educational testing services or  
 2874 organizations for the preparation of a bank of questions and answers; and

2875 (ii) administer or contract for the administration of licensing and certification  
 2876 examinations as may be required to carry out the division's responsibilities under this chapter.

2877 ~~[(e)]~~ (d) The division shall provide administrative assistance to the board by providing

2878 to the board the facilities, equipment, supplies, and personnel that are required to enable the  
2879 board to carry out the board's responsibilities under this chapter.

2880 ~~[(f)]~~ (e) The division shall assist the board in improving the quality of the continuing  
2881 education available to a person licensed, certified, or registered under this chapter.

2882 ~~[(g)]~~ (f) The division shall assist the board with respect to the proper interpretation or  
2883 explanation of the Uniform Standards of Professional Appraisal Practice as required by Section  
2884 ~~[61-2b-27]~~ 61-2g-403 when an interpretation or explanation becomes necessary in the  
2885 enforcement of this chapter.

2886 ~~[(h) The division shall establish fees in accordance with Section 63J-1-504.]~~

2887 ~~[(i) for processing:]~~

2888 ~~[(A) an application for licensing, certification, or registration; and]~~

2889 ~~[(B) approval of an expert witness; and]~~

2890 ~~[(ii) for any other function required or permitted by this chapter.]~~

2891 ~~[(i) If a person pays a fee or costs to the division with a negotiable instrument and the  
2892 negotiable instrument is not honored for payment:]~~

2893 ~~[(i) the transaction for which the payment is submitted is voidable by the division;]~~

2894 ~~[(ii) the division may reverse the transaction if payment of the applicable fee or costs is  
2895 not received in full; and]~~

2896 ~~[(iii) the person's license, certification, or registration is automatically suspended:]~~

2897 ~~[(A) beginning the day on which the payment is due; and]~~

2898 ~~[(B) ending the day on which payment is made in full.]~~

2899 ~~[(j) The division may:]~~

2900 ~~[(i) investigate a complaint against:]~~

2901 ~~[(A) a person licensed, certified, or registered under this chapter; or]~~

2902 ~~[(B) a person required to be licensed, certified, or registered under this chapter;]~~

2903 ~~[(ii) subpoena a witness;]~~

2904 ~~[(iii) subpoena the production of a book, paper, document, record, contract, or  
2905 evidence;]~~

2906 ~~[(iv) administer an oath; and]~~

2907 ~~[(v) take testimony and receive evidence concerning a matter within the division's  
2908 jurisdiction.]~~

2909           ~~[(k)]~~ (g) The division may:

2910           (i) promote research and conduct studies relating to the profession of real estate  
2911 appraising; and

2912           (ii) sponsor real estate appraisal educational activities.

2913           ~~[(h)]~~ (h) The division shall adopt, with the concurrence of the board, rules for the  
2914 administration of this chapter pursuant to Title 63G, Chapter 3, Utah Administrative  
2915 Rulemaking Act, that are not inconsistent with this chapter or the constitution and laws of this  
2916 state or of the United States.

2917           ~~[(m)]~~ (i) The division shall employ an appropriate staff to investigate allegations that a  
2918 person required to be licensed, certified, or registered under this chapter fails to comply with  
2919 this chapter.

2920           ~~[(n)]~~ (j) The division may employ other professional, clerical, and technical staff as  
2921 may be necessary to properly administer the work of the division under this chapter.

2922           ~~[(o)]~~ (k) (i) Upon request, the division shall make available, either directly or through a  
2923 ~~[third party]~~ third-party, a list of the names and addresses of the persons licensed, registered, or  
2924 certified by the division under this chapter.

2925           (ii) A person who requests a list under this Subsection (1)~~[(o)]~~(k) shall pay the costs  
2926 incurred by the division to make the list available.

2927           ~~[(2)(a)]~~ ~~The division shall approve an expert witness who is not otherwise licensed or~~  
2928 ~~certified under this chapter to appear in an administrative or judicial tax proceeding to provide~~  
2929 ~~evidence related to the valuation of real property that is assessed by the State Tax Commission,~~  
2930 ~~if the:]~~

2931           ~~[(i)]~~ ~~approval is limited to a specific proceeding;]~~

2932           ~~[(ii)]~~ ~~approval is valid until the proceeding becomes final;]~~

2933           ~~[(iii)]~~ ~~applicant pays to the division an approval fee set by the division in accordance~~  
2934 ~~with Section 63J-1-504;]~~

2935           ~~[(iv)]~~ ~~applicant provides the applicant's name, address, occupation, and professional~~  
2936 ~~credentials; and]~~

2937           ~~[(v)]~~ ~~applicant provides a notarized statement that:]~~

2938           ~~[(A)]~~ ~~the applicant is competent to render an appraisal and to testify as an expert~~  
2939 ~~witness in the proceeding; and]~~

2940 ~~[(B) the appraisal and testimony to be offered shall be in accordance with the Uniform~~  
2941 ~~Standards of Professional Appraisal Practice adopted by the board.]~~

2942 ~~[(b) Subsection (2)(a) applies to an administrative or judicial property tax proceeding~~  
2943 ~~related to the valuation of real property that is assessed by the State Tax Commission.]~~

2944 ~~[(3)]~~ (2) (a) If the conditions of Subsection ~~[(3)]~~ (2)(b) are met, the division is immune  
2945 from any civil action or criminal prosecution for initiating or assisting in a lawful investigation  
2946 of an act of, or participating in a disciplinary proceeding concerning:

2947 (i) a person required to be licensed, certified, or registered pursuant to this chapter; or

2948 (ii) a person approved as an expert witness pursuant to this chapter.

2949 (b) This Subsection ~~[(3)]~~ (2) applies if the division takes the action:

2950 (i) without malicious intent; and

2951 (ii) in the reasonable belief that the action is taken pursuant to the powers and duties  
2952 vested in the division under this chapter.

2953 ~~[(4) (a) An individual applying to register as a trainee under this chapter shall:]~~

2954 ~~[(i) submit a fingerprint card in a form acceptable to the division at the time of~~  
2955 ~~applying for registration; and]~~

2956 ~~[(ii) consent to a criminal background check by:]~~

2957 ~~[(A) the Utah Bureau of Criminal Identification; and]~~

2958 ~~[(B) the Federal Bureau of Investigation.]~~

2959 ~~[(b) The division shall request the Department of Public Safety to complete a Federal~~  
2960 ~~Bureau of Investigation criminal background check for an applicant through a national criminal~~  
2961 ~~history system.]~~

2962 ~~[(c) The applicant shall pay the cost of:]~~

2963 ~~[(i) the fingerprinting required by this section; and]~~

2964 ~~[(ii) the criminal background check required by this section.]~~

2965 ~~[(d) (i) A registration as a trainee under this chapter is conditional pending completion~~  
2966 ~~of the criminal background check required by this Subsection (4).]~~

2967 ~~[(ii) A registration is immediately and automatically revoked if a criminal background~~  
2968 ~~check discloses that the applicant fails to accurately disclose a criminal history involving:]~~

2969 ~~[(A) the appraisal industry;]~~

2970 ~~[(B) fraud;]~~

2971 ~~[(C) misrepresentation; or]~~  
2972 ~~[(D) deceit.]~~  
2973 ~~[(iii) If a criminal background check discloses that an applicant fails to accurately~~  
2974 ~~disclose a criminal history other than one described in Subsection (4)(d)(ii), the division:]~~  
2975 ~~[(A) shall review the application; and]~~  
2976 ~~[(B) in accordance with rules made by the division pursuant to Title 63G, Chapter 3,~~  
2977 ~~Utah Administrative Rulemaking Act, may:]~~  
2978 ~~[(I) place one or more conditions on a registration;]~~  
2979 ~~[(II) place one or more restrictions on a registration;]~~  
2980 ~~[(III) revoke a registration; or]~~  
2981 ~~[(IV) refer the application to the board for a decision.]~~  
2982 ~~[(iv) An individual whose conditional registration is automatically revoked under~~  
2983 ~~Subsection (4)(d)(ii) or whose registration is conditioned, restricted, or revoked under~~  
2984 ~~Subsection (4)(d)(iii) may appeal the action in a hearing conducted by the board:]~~  
2985 ~~[(A) after the action is taken; and]~~  
2986 ~~[(B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.]~~  
2987 ~~[(v) The board may delegate to the division or an administrative law judge the~~  
2988 ~~authority to conduct a hearing described in Subsection (4)(d)(iv).]~~  
2989 ~~[(vi) Relief from an automatic revocation under Subsection (4)(d)(ii) may be granted~~  
2990 ~~only if:]~~  
2991 ~~[(A) the criminal history upon which the division bases the revocation:]~~  
2992 ~~[(I) did not occur; or]~~  
2993 ~~[(II) is the criminal history of another person;]~~  
2994 ~~[(B) (I) the revocation is based on a failure to accurately disclose a criminal history;~~  
2995 ~~and]~~  
2996 ~~[(II) the applicant has a reasonable good faith belief at the time of application that there~~  
2997 ~~was no criminal history to be disclosed; or]~~  
2998 ~~[(C) the division fails to follow the prescribed procedure for the revocation.]~~  
2999 ~~[(e) If a registration is revoked or a revocation is upheld after a hearing described in~~  
3000 ~~Subsection (4)(d)(iv), the individual may not apply for a new registration for a period of 12~~  
3001 ~~months after the day on which the registration is revoked.]~~

3002           ~~[(f) The board may delegate to the division the authority to make a decision on whether~~  
3003 ~~relief from a revocation should be granted.]~~

3004           ~~[(g) Money paid by an applicant for the cost of the criminal background check is~~  
3005 ~~nonlapsing.]~~

3006           Section 45. Section **61-2g-202**, which is renumbered from Section 61-2b-37 is  
3007 renumbered and amended to read:

3008           ~~[61-2b-37].~~   **61-2g-202. Division service fees -- Federal registry fees.**

3009           (1) The division, with the concurrence of the board, shall establish and collect fees in  
3010 accordance with Section 63J-1-504 for its services under this chapter.

3011           (2) The division shall collect the annual registry fee established by the Federal  
3012 Financial Institutions Examinations Council from those certificate holders who seek to perform  
3013 appraisals in federally related transactions. The division shall transmit the fees to the federal  
3014 Appraisal Subcommittee at least annually.

3015           (3) If a person pays a fee or costs to the division with a negotiable instrument or any  
3016 other payment method that is not honored:

3017           (a) the transaction for which the payment is submitted is voidable by the division;

3018           (b) the division may reverse the transaction if payment of the applicable fee or costs is  
3019 not received in full; and

3020           (c) the person's license, certification, or registration is automatically suspended:

3021           (i) beginning the day on which the payment is due; and

3022           (ii) ending the day on which payment is made in full.

3023           Section 46. Section **61-2g-203**, which is renumbered from Section 61-2b-38 is  
3024 renumbered and amended to read:

3025           ~~[61-2b-38].~~   **61-2g-203. Division to publish roster of appraisers.**

3026           (1) The division shall prepare and issue at least once each calendar year a roster of  
3027 appraisers containing the information required by the Federal Financial Institutions  
3028 Examination Council. The division shall transmit the roster to the Federal Financial  
3029 Institutions Examinations Council at least annually.

3030           (2) The division may, upon payment of a fee established by the division in accordance  
3031 with Section 63J-1-504, issue to a person a verified history of a person:

3032           (a) licensed, certified, or registered under this chapter; or

3033 (b) previously registered, licensed, or certified under this chapter.

3034 Section 47. Section **61-2g-204**, which is renumbered from Section 61-2b-7 is  
3035 renumbered and amended to read:

3036 ~~[61-2b-7].~~ **61-2g-204. Real Estate Appraiser Licensing and Certification**  
3037 **Board.**

3038 (1) (a) There is established a Real Estate Appraiser Licensing and Certification Board  
3039 ~~[which shall consist]~~ that consists of five regular members as follows:

3040 (i) one state-licensed or state-certified appraiser who may be either a residential or  
3041 general licensee or certificate holder;

3042 (ii) one state-certified residential appraiser;

3043 (iii) one state-certified general appraiser;

3044 (iv) one member who is certified as either a state-certified residential appraiser or a  
3045 state-certified general appraiser; and

3046 (v) one member of the general public.

3047 (b) A state-licensed or state-certified appraiser may be appointed as an alternate  
3048 member of the board.

3049 (c) The governor shall appoint all members of the board with the consent of the Senate.

3050 (2) (a) Except as required by Subsection (2)(b), as terms of current board members  
3051 expire, the governor shall appoint each new member or reappointed member to a four-year  
3052 term beginning on July 1.

3053 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the  
3054 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
3055 board members are staggered so that approximately half of the board is appointed every two  
3056 years.

3057 (c) Upon the expiration of a member's term, a member of the board shall continue to  
3058 hold office until the appointment and qualification of the member's successor.

3059 (d) A person may not serve as a member of the board for more than two consecutive  
3060 terms.

3061 (3) (a) When a vacancy occurs in the membership for any reason, the replacement shall  
3062 be appointed for the unexpired term.

3063 (b) The governor may remove a ~~[board]~~ member for cause.

3064 (4) The public member of the board may not be licensed or certified under this chapter.

3065 (5) The board shall meet at least quarterly to conduct its business. ~~[Public notice shall~~  
3066 ~~be given for all board meetings.]~~ The division shall give public notice of a board meeting.

3067 (6) The members of the board shall elect a chair annually from among the members to  
3068 preside at board meetings.

3069 (7) A member may not receive compensation or benefits for the member's service, but  
3070 may receive per diem and travel expenses in accordance with:

3071 (a) Section 63A-3-106;

3072 (b) Section 63A-3-107; and

3073 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
3074 63A-3-107.

3075 (8) (a) Three members of the board shall constitute a quorum for the transaction of  
3076 business.

3077 (b) If a quorum of members is unavailable for any meeting, the alternate member of the  
3078 board, if any, shall serve as a regular member of the board for that meeting if with the presence  
3079 of the alternate member a quorum is present at the meeting.

3080 Section 48. Section **61-2g-205**, which is renumbered from Section 61-2b-8 is  
3081 renumbered and amended to read:

3082 **~~[61-2b-8].~~ 61-2g-205. Duties of board.**

3083 (1) (a) The board shall provide technical assistance to the division relating to real estate  
3084 appraisal standards and real estate appraiser qualifications.

3085 (b) The board has the powers and duties listed in this section.

3086 (2) The board shall:

3087 (a) determine the experience and education requirements appropriate for a person  
3088 licensed under this chapter;

3089 (b) determine the experience and education requirements appropriate for a person  
3090 certified under this chapter:

3091 (i) in compliance with the minimum requirements of Financial Institutions Reform,  
3092 Recovery, and Enforcement Act of 1989; and

3093 (ii) consistent with the intent of this chapter;

3094 (c) determine the appraisal related acts that may be performed by:

- 3095 (i) a trainee on the basis of the trainee's education and experience;
- 3096 (ii) clerical staff; and
- 3097 (iii) a person who:
- 3098 (A) does not hold a license or certification; and
- 3099 (B) assists an appraiser licensed or certified under this chapter in providing appraisal
- 3100 services or consultation services;
- 3101 (d) determine the procedures for a trainee to register and to renew a registration with
- 3102 the division; and
- 3103 (e) develop one or more programs to upgrade and improve the experience, education,
- 3104 and examinations as required under this chapter.
- 3105 (3) (a) The experience and education requirements established by the board for a
- 3106 person licensed or certified under this chapter shall be the minimum criteria established by the
- 3107 Appraisal Qualification Board, unless, after notice and a public hearing held in accordance with
- 3108 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board finds that the minimum
- 3109 criteria are not appropriate for a state-licensed appraiser or a state-certified appraiser in this
- 3110 state.
- 3111 (b) If under Subsection (3)(a) the board makes a finding that the minimum criteria are
- 3112 not appropriate, the board shall recommend appropriate criteria to the Legislature.
- 3113 (4) The board shall:
- 3114 (a) determine the continuing education requirements appropriate for the renewal of a
- 3115 license, certification, or registration issued under this chapter, except that the continuing
- 3116 education requirements established by the board shall at least meet the minimum criteria
- 3117 established by the Appraisal Qualification Board;
- 3118 (b) develop one or more programs to upgrade and improve continuing education; and
- 3119 (c) recommend to the division one or more available continuing education courses that
- 3120 meet the requirements of this chapter.
- 3121 (5) (a) The board shall consider the proper interpretation or explanation of the Uniform
- 3122 Standards of Professional Appraisal Practice as required by Section [~~61-2b-27~~] 61-2g-403
- 3123 when:
- 3124 (i) an interpretation or explanation is necessary in the enforcement of this chapter; and
- 3125 (ii) the Appraisal Standards Board of the Appraisal Foundation has not issued an

3126 interpretation or explanation.

3127 (b) If the conditions of Subsection (5)(a) are met, the board shall recommend to the  
3128 division the appropriate interpretation or explanation that the division should adopt as a rule  
3129 under this chapter.

3130 (c) The board may by rule made in accordance with Title 63G, Chapter 3, Utah  
3131 Administrative Rulemaking Act, and Section [~~61-2b-27~~] 61-2g-403, and with the concurrence  
3132 of the division, provide for an exemption from a provision of the Uniform Standards of  
3133 Professional Appraisal Practice for an activity engaged in on behalf of a governmental entity.

3134 (6) (a) The board shall conduct an administrative hearing, not delegated by the board to  
3135 an administrative law judge, in connection with a disciplinary proceeding under [~~Sections~~  
3136 ~~61-2b-30 and 61-2b-31~~] Section 61-2f-504 concerning:

3137 (i) a person required to be licensed, certified, or registered under this chapter; and

3138 (ii) the person's failure to comply with this chapter and the Uniform Standards of  
3139 Professional Appraisal Practice as adopted under Section [~~61-2b-27~~] 61-2g-403.

3140 (b) The board, with the concurrence of the division, shall issue in an administrative  
3141 hearing a decision that contains findings of fact and conclusions of law.

3142 (c) When a determination is made that a person required to be licensed, certified, or  
3143 registered under this chapter has violated this chapter, the division shall implement disciplinary  
3144 action determined [~~by~~] through concurrence of the board and the division.

3145 (7) A member of the board is immune from a civil action or criminal prosecution for a  
3146 disciplinary proceeding concerning a person required to be registered, licensed, certified, or  
3147 approved as an expert under this chapter if the action is taken without malicious intent and in  
3148 the reasonable belief that the action taken was taken pursuant to the powers and duties vested  
3149 in a member of the board under this chapter.

3150 (8) The board shall require and pass upon proof necessary to determine the honesty,  
3151 competency, integrity, and truthfulness of an applicant for:

3152 (a) original licensure, certification, or registration; and

3153 (b) renewal licensure, certification, or registration.

3154 Section 49. Section **61-2g-301**, which is renumbered from Section 61-2b-3 is  
3155 renumbered and amended to read:

3156 **Part 3. Licensure, Certification, or Registration**

3157 ~~[61-2b-3].~~ **61-2g-301. License or certification required.**

3158 (1) Except as provided in Subsection (2) and in [~~Subsection 61-2b-6(2)~~] Section  
3159 61-2g-303, it is unlawful for a person to prepare, for valuable consideration, an appraisal, an  
3160 appraisal report, a certified appraisal report, or perform a consultation service relating to real  
3161 estate or real property in this state without first being licensed or certified in accordance with  
3162 this chapter.

3163 (2) This section does not apply to:

3164 (a) a principal broker, associate broker, or sales agent as defined by Section 61-2f-102  
3165 licensed by this state who, in the ordinary course of the broker's or sales agent's business, gives  
3166 an opinion:

3167 (i) regarding the value of real estate;

3168 (ii) to a potential seller or [~~third party~~] third-party recommending a listing price of real  
3169 estate; or

3170 (iii) to a potential buyer or [~~third party~~] third-party recommending a purchase price of  
3171 real estate;

3172 (b) an employee of a company who states an opinion of value or prepares a report  
3173 containing value conclusions relating to real estate or real property solely for the company's  
3174 use;

3175 (c) an official or employee of a government agency while acting solely within the scope  
3176 of the official's or employee's duties, unless otherwise required by Utah law;

3177 (d) an auditor or accountant who states an opinion of value or prepares a report  
3178 containing value conclusions relating to real estate or real property while performing an audit;

3179 (e) an individual, except an individual who is required to be licensed or certified under  
3180 this chapter, who states an opinion about the value of property in which the person has an  
3181 ownership interest;

3182 (f) an individual who states an opinion of value if no consideration is paid or agreed to  
3183 be paid for the opinion and no other party is reasonably expected to rely on the individual's  
3184 appraisal expertise;

3185 (g) an individual, such as a researcher or a secretary, who does not render significant  
3186 professional assistance, as defined by the board, in arriving at a real estate appraisal analysis,  
3187 opinion, or conclusion; or

3188 (h) an attorney authorized to practice law in this state who, in the course of the  
3189 attorney's practice, uses an appraisal report governed by this chapter or who states an opinion  
3190 of the value of real estate.

3191 (3) An opinion of value or report containing value conclusions exempt under  
3192 Subsection (2) may not be referred to as an appraisal.

3193 (4) Except as provided in Subsection (2) and Section 61-2g-303, to prepare or cause to  
3194 be prepared in this state an appraisal, an appraisal report, or a certified appraisal report an  
3195 individual shall:

3196 (a) apply in writing for licensure or certification as provided in this chapter in the form  
3197 as the division may prescribe; and

3198 (b) become licensed or certified under this chapter.

3199 Section 50. Section **61-2g-302** is enacted to read:

3200 **61-2g-302. Registration as trainee.**

3201 (1) (a) An individual is required to register with the division as a trainee before the  
3202 individual acts in the capacity of a trainee earning experience for licensure.

3203 (b) Subject to Subsection (2), the board, with the concurrence of the division, shall  
3204 adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for:

3205 (i) the trainee registration required by this Subsection (1); and

3206 (ii) renewal of the trainee registration required by this Subsection (1).

3207 (2) (a) An individual applying to register as a trainee under this chapter shall:

3208 (i) submit a fingerprint card in a form acceptable to the division at the time of applying  
3209 for registration; and

3210 (ii) consent to a criminal background check by:

3211 (A) the Utah Bureau of Criminal Identification; and

3212 (B) the Federal Bureau of Investigation.

3213 (b) The division shall request the Department of Public Safety to complete a Federal  
3214 Bureau of Investigation criminal background check for an applicant through a national criminal  
3215 history system.

3216 (c) The applicant shall pay the cost of:

3217 (i) the fingerprinting required by this section; and

3218 (ii) the criminal background check required by this section.

3219 (d) (i) A registration as a trainee under this chapter is conditional pending completion  
3220 of the criminal background check required by this Subsection (2).

3221 (ii) A registration is immediately and automatically revoked if a criminal background  
3222 check discloses that the applicant fails to accurately disclose a criminal history involving:

3223 (A) the appraisal industry; or

3224 (B) a felony conviction on the basis of an allegation of fraud, misrepresentation, or  
3225 deceit.

3226 (iii) If a criminal background check discloses that an applicant fails to accurately  
3227 disclose a criminal history other than one described in Subsection (2)(d)(ii), the division shall  
3228 review the application, and in accordance with rules made by the division pursuant to Title  
3229 63G, Chapter 3, Utah Administrative Rulemaking Act, may:

3230 (A) place one or more conditions on a registration;

3231 (B) place one or more restrictions on a registration;

3232 (C) revoke a registration; or

3233 (D) refer the application to the board for a decision.

3234 (iv) An individual whose conditional registration is automatically revoked under  
3235 Subsection (2)(d)(ii) or whose registration is conditioned, restricted, or revoked under  
3236 Subsection (2)(d)(iii) may appeal the action in a hearing conducted by the board:

3237 (A) after the action is taken; and

3238 (B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

3239 (v) The board may delegate to the division or an administrative law judge the authority  
3240 to conduct a hearing described in Subsection (2)(d)(iv).

3241 (vi) Relief from an automatic revocation under Subsection (2)(d)(ii) may be granted  
3242 only if:

3243 (A) the criminal history upon which the division bases the revocation did not occur or  
3244 is the criminal history of another person;

3245 (B) the revocation is based on a failure to accurately disclose a criminal history, and the  
3246 applicant has a reasonable good faith belief at the time of application that there was no criminal  
3247 history to be disclosed; or

3248 (C) the division fails to follow the prescribed procedure for the revocation.

3249 (e) If a registration is revoked or a revocation is upheld after a hearing described in

3250 Subsection (2)(d)(iv), the individual may not apply for a new registration for a period of 12  
3251 months after the day on which the registration is revoked.

3252 (f) The board may delegate to the division the authority to make a decision on whether  
3253 relief from a revocation should be granted.

3254 (g) Money paid by an applicant for the cost of the criminal background check is  
3255 nonlapsing.

3256 Section 51. Section **61-2g-303** is enacted to read:

3257 **61-2g-303. Approval of an expert.**

3258 (1) The division shall approve an expert witness who is not otherwise licensed or  
3259 certified under this chapter to appear in an administrative or judicial tax proceeding to provide  
3260 evidence related to the valuation of real property that is assessed by the State Tax Commission,  
3261 if the:

3262 (a) approval is limited to a specific proceeding;

3263 (b) approval is valid until the proceeding becomes final;

3264 (c) applicant pays to the division an approval fee set by the division in accordance with  
3265 Section 63J-1-504;

3266 (d) applicant provides the applicant's name, address, occupation, and professional  
3267 credentials; and

3268 (e) applicant provides a notarized statement that:

3269 (i) the applicant is competent to render an appraisal and to testify as an expert witness  
3270 in the proceeding; and

3271 (ii) the appraisal and testimony to be offered shall be in accordance with the Uniform  
3272 Standards of Professional Appraisal Practice adopted by the board.

3273 (2) Subsection (1) applies to an administrative or judicial property tax proceeding  
3274 related to the valuation of real property that is assessed by the State Tax Commission.

3275 Section 52. Section **61-2g-304**, which is renumbered from Section 61-2b-18 is  
3276 renumbered and amended to read:

3277 **[61-2b-18]. 61-2g-304. Application for licensure, certification, or registration --**  
3278 **Approval as an expert witness.**

3279 (1) An application for the following shall be sent to the division on a form approved by  
3280 the division:

3281 (a) original certification, licensure, or registration;

3282 (b) approval as an expert witness; and

3283 (c) renewal of certification, licensure, or registration.

3284 (2) The payment of the appropriate fee, as established by the division, with the  
3285 concurrence of the board, in accordance with Section 63J-1-504, must accompany an  
3286 application for:

3287 (a) approval as an expert witness;

3288 (b) original certification, licensure, or registration; and

3289 (c) renewal of certification, licensure, or registration.

3290 (3) At the time of filing an application described in Subsection (1), an applicant shall:

3291 (a) sign a pledge to comply with the Uniform Standards of Professional Appraisal

3292 Practice and the ethical rules to be observed by an appraiser that are established under Section  
3293 [~~61-2b-27~~] 61-2g-403 for:

3294 (i) a certified or licensed appraiser;

3295 (ii) a trainee; or

3296 (iii) an expert witness approved under this chapter; and

3297 (b) certify that the applicant understands the types of misconduct, as set forth in this  
3298 chapter, for which a disciplinary proceeding may be initiated against a person certified,  
3299 licensed, or registered under this chapter.

3300 Section 53. Section **61-2g-305**, which is renumbered from Section 61-2b-19 is  
3301 renumbered and amended to read:

3302 **[~~61-2b-19~~]. 61-2g-305. Expiration of license, certification, or registration.**

3303 (1) An initial license, certification, or registration issued under this chapter expires on  
3304 the expiration date indicated on the license, certificate, or registration.

3305 (2) A renewal license, certification, or registration issued under this chapter expires  
3306 two years from the date of issuance.

3307 (3) (a) The scheduled expiration date of a license, certification, or registration shall  
3308 appear on the license, certification, or registration document.

3309 (b) (i) The division shall mail a holder of a license, certification, or registration notice  
3310 of its expiration to the last address stated on the division's records as the holder's current  
3311 address.

3312 (ii) To be mailed a notice under this Subsection (3)(b), a holder of a license,  
3313 certification, or registration shall provide to the division in writing the holder's current address.

3314 (iii) A holder's license, certification, or registration expires if not renewed by the holder  
3315 notwithstanding whether the holder receives a notice of its expiration by the division under this  
3316 Subsection (3)(b).

3317 Section 54. Section **61-2g-306**, which is renumbered from Section 61-2b-20 is  
3318 renumbered and amended to read:

3319 ~~[61-2b-20]~~. **61-2g-306. Renewal of license, certification, or registration.**

3320 (1) To renew a license, certification, or registration, before the license, certification, or  
3321 registration expires, the holder of the license, certification, or registration shall submit to the  
3322 division in compliance with procedures set ~~[by]~~ through the concurrence of the division and the  
3323 board:

3324 (a) an application for renewal;

3325 (b) a fee established by the division and the board, in accordance with Section  
3326 63J-1-504; and

3327 (c) evidence in the form prescribed by the division of having completed the continuing  
3328 education requirements for renewal specified in this chapter.

3329 (2) (a) A license, certification, or registration expires if it is not renewed on or before  
3330 its expiration date.

3331 (b) For a period of 30 days after the expiration date, a license, certification, or  
3332 registration may be reinstated upon:

3333 (i) payment of a renewal fee and a late fee determined ~~[by]~~ through the concurrence of  
3334 the division and the board; and

3335 (ii) satisfying the continuing education requirements specified in Section ~~[61-2b-40]~~  
3336 61-2g-307.

3337 (c) After the 30-day period described in Subsection (2)(b), and until six months after  
3338 the expiration date, a license, certification, or registration may be reinstated by:

3339 (i) paying a renewal fee and a reinstatement fee determined ~~[by]~~ through the  
3340 concurrence of the division and the board; and

3341 (ii) satisfying the continuing education requirements specified in Section ~~[61-2b-40]~~  
3342 61-2g-307.

3343 (d) After the six-month period described in Subsection (2)(c), and until one year after  
3344 the expiration date, a license, certification, or registration may be reinstated by:

3345 (i) paying a renewal fee and a reinstatement fee determined ~~[by]~~ through the  
3346 concurrence of the division and the board in accordance with Section 63J-1-504;

3347 (ii) providing proof acceptable to the division ~~[and]~~, with the concurrence of the board,  
3348 of the person having satisfied the continuing education requirements of Section ~~[61-2b-40]~~  
3349 61-2g-307; and

3350 (iii) providing proof acceptable to the division ~~[and]~~, with the concurrence of the  
3351 board, of the person completing 24 hours of continuing education:

3352 (A) in addition to the requirements in Section ~~[61-2b-40]~~ 61-2g-307; and

3353 (B) on a subject determined by the division by rule made in accordance with Title 63G,  
3354 Chapter 3, Utah Administrative Rulemaking Act.

3355 (e) The division shall relicense, recertify, or reregister a person who does not renew  
3356 that person's license, certification, or registration within one year after the expiration date as  
3357 prescribed for an original application.

3358 (f) Notwithstanding Subsection (2)(a), the division may extend the term of a license,  
3359 certification, or registration that would expire under Subsection (2)(a) except for the extension  
3360 if:

3361 (i) (A) the person complies with the requirements of this section to renew the license,  
3362 certification, or registration; and

3363 ~~[(ii)]~~ (B) the application for renewal remains pending at the time of the extension~~;~~  
3364 ~~there is pending under this chapter.]; or~~

3365 ~~[(A) the application for renewal of the license, certification, or registration; or]~~

3366 ~~[(B)]~~ (ii) at the time of the extension, there is pending under this chapter a disciplinary  
3367 action.

3368 (3) A person who is licensed, certified, or registered under this chapter shall notify the  
3369 division of the following by sending the division a signed statement within 10 business days of:

3370 (a) (i) a conviction of a ~~[criminal offense];~~

3371 (A) felony;

3372 (B) class A misdemeanor; or

3373 (C) class B misdemeanor;

- 3374 (ii) the entry of a plea in abeyance to a [~~criminal offense; or~~];
- 3375 (A) felony;
- 3376 (B) class A misdemeanor; or
- 3377 (C) class B misdemeanor; or
- 3378 (iii) the potential resolution of a [~~criminal case~~] felony, class A misdemeanor, or class
- 3379 B misdemeanor by:
- 3380 (A) a diversion agreement; or
- 3381 (B) any other agreement under which a criminal charge is suspended for a period of
- 3382 time;
- 3383 (b) filing a personal bankruptcy or business bankruptcy;
- 3384 (c) the suspension, revocation, surrender, cancellation, or denial of a professional
- 3385 license, certification, or registration of the person, whether the license, certification, or
- 3386 registration is issued by this state or another jurisdiction; or
- 3387 (d) the entry of a cease and desist order or a temporary or permanent injunction:
- 3388 (i) against the person by a court or administrative agency; and
- 3389 (ii) on the basis of:
- 3390 (A) conduct or a practice involving an act regulated by this chapter; or
- 3391 (B) conduct involving fraud, misrepresentation, or deceit.
- 3392 (4) The board, with the concurrence of the division, shall enforce the reporting
- 3393 requirement of Subsection (3) pursuant to Section 61-2g-502.

3394 Section 55. Section **61-2g-307**, which is renumbered from Section 61-2b-40 is

3395 renumbered and amended to read:

3396 ~~[61-2b-40]~~. **61-2g-307. Continuing education requirements.**

3397 (1) As a prerequisite to renewal of a license, certification, or registration, the applicant

3398 for renewal shall present evidence satisfactory to the division of having met the continuing

3399 education requirements of this section.

3400 (2) A person licensed, certified, or registered under this chapter shall complete during

3401 the two-year period immediately preceding the filing of an application for renewal not less than

3402 28 classroom hours of instruction in courses or seminars that have received the approval of the

3403 division.

3404 (3) (a) The division, with the concurrence of the board, may adopt rules for the

3405 implementation of this section to assure that ~~each~~ a person renewing that person's license,  
3406 certification, or registration under this chapter has a working knowledge of current real estate  
3407 appraisal theories, practices, and techniques that will enable the person to provide competent  
3408 real estate appraisal services to the members of the public with whom that person deals in a  
3409 professional relationship under the authority of that person's license, certificate, or registration.

3410 ~~[(4)]~~ (b) An amendment or repeal of a rule adopted by the division under this section,  
3411 with the concurrence of the board, does not operate to deprive a person of credit toward  
3412 renewal of that person's license, certification, or registration for a course of instruction that is  
3413 successfully completed by the applicant before the date of the amendment or repeal of the rule.

3414 (c) The rules made under this Subsection (3) shall prescribe:

3415 (i) policies and procedures to be followed in obtaining division approval of courses of  
3416 instruction and seminars;

3417 (ii) standards, policies, and procedures to be used by the division in evaluating an  
3418 applicant's claims of equivalency; and

3419 (iii) standards, monitoring methods, and systems for recording attendance to be  
3420 employed by course and seminar sponsors as a prerequisite to division approval of courses and  
3421 seminars for credit.

3422 ~~[(5)]~~ (4) In lieu of meeting the requirements set forth in Subsection (2) and applicable  
3423 rules, an applicant for renewal may satisfy all or part of the continuing education requirements  
3424 that are imposed by the board in excess of the minimum requirements of the Appraisal  
3425 Qualification Board by presenting evidence of the following:

3426 (a) completion of an educational program of study determined by the board to be  
3427 equivalent, for continuing education purposes, to courses or seminars approved by the board; or

3428 (b) participation other than as a student in educational processes and programs  
3429 approved by the board that relate to real property appraisal theory, practices, or techniques  
3430 including teaching, program development, and preparation of textbooks, monographs, articles,  
3431 and other instructional materials.

3432 ~~[(6) The board shall develop and propose to the division rules described in Subsection~~  
3433 ~~(3). The rules developed and proposed by the board under this Subsection (6) shall prescribe:]~~

3434 ~~[(a) policies and procedures to be followed in obtaining division approval of courses of~~  
3435 ~~instruction and seminars;]~~

3436 ~~[(b) standards, policies, and procedures to be used by the division in evaluating an~~  
3437 ~~applicant's claims of equivalency; and]~~

3438 ~~[(c) standards, monitoring methods, and systems for recording attendance to be~~  
3439 ~~employed by course and seminar sponsors as a prerequisite to division approval of courses and~~  
3440 ~~seminars for credit.]~~

3441 ~~[(7)(a)] (5) A person whose license, certification, or registration is [revoked or]~~  
3442 ~~suspended as the result of a disciplinary action taken [by the board] under this chapter may not~~  
3443 ~~apply for reinstatement unless the person presents evidence of completion of the continuing~~  
3444 ~~education requirement that is required by this chapter for renewal.~~

3445 ~~[(b) The continuing education required under Subsection (7) (5)(a) may not be imposed~~  
3446 ~~upon an applicant for reinstatement who has been required by the division to successfully~~  
3447 ~~complete the examination for licensure or certification required by Section 61-2b-20 as a~~  
3448 ~~condition to reinstatement.]~~

3449 Section 56. Section **61-2g-308**, which is renumbered from Section 61-2b-22 is  
3450 renumbered and amended to read:

3451 ~~[61-2b-22].~~ **61-2g-308. Licensing, certification, registration, or expert witness**  
3452 **requirements for nonresidents -- Temporary license or certificate -- Revocation.**

3453 (1) An applicant for one of the following who is not a resident of this state shall submit  
3454 with the applicant's application an irrevocable consent that service of process upon the  
3455 applicant may be made by delivery of the process to the director of the division if, in an action  
3456 against the applicant in a court of this state arising out of the applicant's activities governed by  
3457 this chapter in this state, the plaintiff cannot, in the exercise of due diligence, obtain personal  
3458 service upon the applicant:

3459 (a) approval as an expert witness; or

3460 (b) licensure, certification, or registration under this chapter.

3461 (2) A nonresident of this state who complies with Subsection (1) may obtain approval  
3462 as an expert witness, a license, a certification, or a registration in this state by complying with  
3463 ~~[the provisions of]~~ this chapter relating to approval as an expert witness, licensure,  
3464 certification, or registration.

3465 (3) A nonresident of this state who complies with Subsection (1) may obtain a  
3466 temporary permit for a license or certification to perform a contract relating to the appraisal of

3467 real estate or real property in this state. To qualify for the issuance of a temporary permit for a  
3468 license or certification, an applicant must:

3469 (a) submit an application on a form approved by the division;

3470 (b) submit evidence that the applicant is licensed or certified in the state in which the  
3471 applicant primarily conducts business;

3472 (c) certify that no formal charges alleging violation of state appraisal licensing or  
3473 certification laws have been filed against the applicant by the applicant's state of domicile; and

3474 (d) pay an application fee in an amount established by the division with the  
3475 concurrence of the board.

3476 (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
3477 division, with the concurrence of the board, shall make rules establishing:

3478 (a) the duration of a temporary permit; and

3479 (b) procedures for renewal of a temporary permit.

3480 (5) A temporary permit issued under this section shall be immediately and  
3481 automatically revoked if the appraiser's license or certification is suspended or revoked in the  
3482 appraiser's state of domicile.

3483 (6) A person whose temporary permit for a license or certification is revoked under  
3484 Subsection (5) is entitled to a postrevocation hearing to challenge the revocation. The hearing  
3485 shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

3486 Section 57. Section **61-2g-309**, which is renumbered from Section 61-2b-21 is  
3487 renumbered and amended to read:

3488 **~~[61-2b-21]~~. 61-2g-309. Denial of licensure, certification, or registration.**

3489 The division may, upon compliance with Title 63G, Chapter 4, Administrative  
3490 Procedures Act, deny the issuance of a license, certification, or registration to an applicant on  
3491 any of the grounds enumerated in this chapter.

3492 Section 58. Section **61-2g-310**, which is renumbered from Section 61-2b-23 is  
3493 renumbered and amended to read:

3494 **~~[61-2b-23]~~. 61-2g-310. Reciprocal licensure.**

3495 An applicant for licensure or certification in this state who is licensed or certified under  
3496 the laws of any other state, territory, or district may obtain a license or certification in this state  
3497 upon the terms and conditions determined by the division and the board, if, in the

3498 determination of the division and the board:

3499 (1) the state, territory, or the District of Columbia is considered to have substantially  
3500 equivalent licensing laws for real estate appraisers;

3501 (2) the laws of that state, territory, or the District of Columbia accord substantially  
3502 equal reciprocal rights to a person licensed or certified and in good standing in this state; and

3503 (3) no formal charges alleging violation of state appraisal licensing or certification laws  
3504 have been filed against the applicant by the applicant's state of domicile.

3505 Section 59. Section **61-2g-311**, which is renumbered from Section 61-2b-10 is  
3506 renumbered and amended to read:

3507 ~~[61-2b-10]~~. **61-2g-311. State-licensed appraiser -- Authority and qualifications.**

3508 (1) A state-licensed appraiser is authorized to appraise complex and noncomplex 1-4  
3509 family residential units in this state having a transaction value permitted under the Financial  
3510 Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations.

3511 (2) A state-licensed appraiser is authorized to appraise vacant or unimproved land  
3512 having a transaction value permitted under the Financial Institutions Reform, Recovery, and  
3513 Enforcement Act of 1989, and related federal regulations that is utilized for 1-4 family  
3514 purposes or for which the highest and best use is 1-4 family purposes and subdivisions for  
3515 which a development analysis/appraisal is not necessary.

3516 (3) A state-licensed appraiser may not issue a certified appraisal report.

3517 (4) To qualify as a state-licensed appraiser, an applicant must:

3518 (a) be of good moral character;

3519 (b) demonstrate honesty, competency, integrity, and truthfulness;

3520 (c) pass the licensing examination with a satisfactory score as determined by the  
3521 Appraisal Qualification Board;

3522 (d) successfully complete not less than 150 classroom hours in courses of study that  
3523 relate to:

3524 (i) real estate appraisal;

3525 (ii) the Uniform Standards of Professional Appraisal Practice; and

3526 (iii) ethical rules to be observed by a real estate appraiser as required by Section  
3527 ~~[61-2b-27]~~ **61-2g-403**; and

3528 (e) possess the minimum number of hours of experience in real property appraisal as

3529 established by rule.

3530 (5) The courses of study under Subsection (4)(d) shall be conducted by:

3531 (a) a college or university;

3532 (b) a community or junior college;

3533 (c) a real estate appraisal or real estate related organization;

3534 (d) a state or federal agency or commission;

3535 (e) a proprietary school;

3536 (f) a provider approved by a state certification and licensing agency; or

3537 (g) the Appraisal Foundation or its boards.

3538 Section 60. Section **61-2g-312**, which is renumbered from Section 61-2b-13 is

3539 renumbered and amended to read:

3540 **[61-2b-13]. 61-2g-312. State-certified appraisers -- Authority.**

3541 (1) A state-certified residential appraiser is authorized to appraise ~~[aH]~~ the types of real  
3542 estate which a state-licensed appraiser is authorized to appraise.

3543 (2) A state-certified residential appraiser is also authorized to appraise 1-4 unit  
3544 residential real estate without regard to transaction value or complexity.

3545 (3) A state-certified residential appraiser is not authorized to appraise subdivisions for  
3546 which a development analysis/appraisal is necessary.

3547 (4) A state-certified general appraiser is authorized to appraise ~~[aH]~~ the types of real  
3548 estate and real property.

3549 Section 61. Section **61-2g-313**, which is renumbered from Section 61-2b-14 is

3550 renumbered and amended to read:

3551 **[61-2b-14]. 61-2g-313. State-certified residential appraiser -- Authority and  
3552 qualifications.**

3553 (1) An applicant for certification as a residential appraiser shall provide to the division  
3554 evidence of:

3555 (a) the applicant's good moral character, honesty, competency, integrity, and  
3556 truthfulness;

3557 (b) completion of the certification examination with a satisfactory score as determined  
3558 by the Appraisal Qualification Board;

3559 (c) (i) an associate degree or higher degree from an accredited:

- 3560 (A) college;
- 3561 (B) junior college;
- 3562 (C) community college; or
- 3563 (D) university; or
- 3564 (ii) successfully passing a curriculum determined by rule of collegiate level subject
- 3565 matter courses from an accredited:
- 3566 (A) college;
- 3567 (B) junior college;
- 3568 (C) community college; or
- 3569 (D) university;
- 3570 (d) satisfactory completion of not less than 200 classroom hours in a curriculum:
- 3571 (i) of specific appraisal education determined by rule made by the board, with the
- 3572 concurrence of the division; and
- 3573 (ii) that includes a course in the Uniform Standards of Professional Practice or its
- 3574 equivalent that is approved by the Appraisal Qualification Board;
- 3575 (e) the minimum number of hours of experience in real property appraisal as
- 3576 established by rule; and
- 3577 (f) acquiring the experience required under Subsection (1)(e) within a reasonable
- 3578 period, as determined by rule, immediately preceding the filing of the application for
- 3579 certification.
- 3580 (2) Upon request by the division, an applicant shall make available to the division for
- 3581 examination:
- 3582 (a) a detailed listing of the real estate appraisal reports or file memoranda for each year
- 3583 for which experience is claimed; and
- 3584 (b) a sample selected by the division of appraisal reports that the applicant has prepared
- 3585 in the course of the applicant's appraisal practice.
- 3586 (3) The classroom hours required by Subsection (1)(d) shall be provided by:
- 3587 (a) a college or university;
- 3588 (b) a community or junior college;
- 3589 (c) a real estate appraisal or real estate related organization;
- 3590 (d) a state or federal agency or commission;

- 3591 (e) a proprietary school;
- 3592 (f) a provider approved by a state certification and licensing agency; or
- 3593 (g) the Appraisal Foundation or its boards.

3594 Section 62. Section **61-2g-314**, which is renumbered from Section 61-2b-15 is  
3595 renumbered and amended to read:

3596 **~~61-2b-15~~. 61-2g-314. State-certified general appraiser -- Application --**  
3597 **Qualifications.**

3598 (1) An applicant for certification as a general appraiser shall provide to the division  
3599 evidence of:

- 3600 (a) the applicant's good moral character, honesty, competency, integrity, and  
3601 truthfulness;
- 3602 (b) completion of the certification examination with a satisfactory score as determined  
3603 by the Appraisal Qualification Board;
- 3604 (c) (i) a bachelors degree or higher degree from an accredited college or university; or  
3605 (ii) successfully passing a curriculum determined by rule of collegiate level subject  
3606 matter courses from an accredited:
  - 3607 (A) college;
  - 3608 (B) junior college;
  - 3609 (C) community college; or
  - 3610 (D) university;
- 3611 (d) satisfactory completion of not less than 300 classroom hours in a curriculum:
  - 3612 (i) of specific appraisal education determined by rule; and
  - 3613 (ii) that includes a course in the Uniform Standards of Professional Practice or its  
3614 equivalent that has been approved by the Appraisal Qualification Board;
- 3615 (e) the minimum number of hours of experience in real property appraisal as  
3616 established by rule; and
- 3617 (f) acquiring the experience required under Subsection (1)(e) within a reasonable  
3618 period, as determined by rule, immediately preceding the filing of the application for  
3619 certification.

3620 (2) Upon request by the division, an applicant shall make available to the division for  
3621 examination:

3622 (a) a detailed listing of the real estate appraisal reports or file memoranda for each year  
3623 for which experience is claimed; and

3624 (b) a sample selected by the division of appraisal reports that the applicant has prepared  
3625 in the course of the applicant's appraisal practice.

3626 (3) The classroom hours required by Subsection (1)(d) shall be provided by:

3627 (a) a college or university;

3628 (b) a community or junior college;

3629 (c) a real estate appraisal or real estate related organization;

3630 (d) a state or federal agency or commission;

3631 (e) a proprietary school;

3632 (f) a provider approved by a state certification and licensing agency; or

3633 (g) the Appraisal Foundation or its boards.

3634 Section 63. Section **61-2g-315**, which is renumbered from Section 61-2b-24 is  
3635 renumbered and amended to read:

3636 **[61-2b-24]. 61-2g-315. Expert witness, licensing, certification, and registration**  
3637 **documents -- Assigned number to be used on contracts -- Surrender of documents upon**  
3638 **suspension.**

3639 (1) The division shall issue to a person approved as an expert witness, licensed,  
3640 certified, or registered under this chapter a document:

3641 (a) stating that the person is approved as an expert witness, licensed, certified, or  
3642 registered under this chapter; and

3643 (b) specifying the expiration date of a license or certification.

3644 (2) (a) An approval as an expert witness, a license, a certification, or a registration  
3645 document issued under this chapter shall bear an approval, license, certification, or registration  
3646 number assigned by the division.

3647 (b) An assigned number shall be used in a statement of qualification, a contract, or  
3648 another instrument used by the holder of the approval, license, certificate, or registration when  
3649 reference is made to the holder's status as being approved, licensed, certified, or registered  
3650 under this chapter.

3651 (3) (a) An approval, license, certification, or registration document is the property of  
3652 the state.

3653 (b) Upon a suspension or revocation of a license, certification, or registration under this  
3654 chapter, the individual holding the applicable document shall immediately return the document  
3655 to the division.

3656 Section 64. Section **61-2g-401**, which is renumbered from Section 61-2b-17 is  
3657 renumbered and amended to read:

3658 **Part 4. Operational Restrictions**

3659 **[61-2b-17]. 61-2g-401. State-certified and state-licensed appraisers --**  
3660 **Restrictions on use of terms -- Conduct prohibited or required -- Trainee.**

3661 (1) (a) The terms "state-certified general appraiser," "state-certified residential  
3662 appraiser," and "state-licensed appraiser":

3663 (i) may only be used to refer to an individual who is certified or licensed under this  
3664 chapter; and

3665 (ii) may not be used following, or immediately in connection with, the name or  
3666 signature of a firm, partnership, corporation, or group, or in any manner that it might be  
3667 interpreted as referring to a firm, partnership, corporation, group, or to anyone other than the  
3668 individual who is certified or licensed under this chapter.

3669 (b) The requirement of this Subsection (1) may not be construed to prevent a  
3670 state-certified general appraiser from signing an appraisal report on behalf of a corporation,  
3671 partnership, firm, or group practice if it is clear that:

3672 (i) only the individual is certified; and

3673 (ii) the corporation, partnership, firm, or group practice is not certified.

3674 (c) Except as provided in Section [~~61-2b-25~~] 61-2g-103, a certificate or license may  
3675 not be issued under this chapter to a corporation, partnership, firm, or group.

3676 (2) (a) A person other than a state-certified general appraiser or state-certified  
3677 residential appraiser, may not assume or use any title, designation, or abbreviation likely to  
3678 create the impression of certification in this state as a real estate appraiser.

3679 (b) A person other than a state-licensed appraiser may not assume or use any title,  
3680 designation, or abbreviation likely to create the impression of licensure in this state as a real  
3681 estate appraiser.

3682 (3) (a) Only an individual who has qualified under the certification requirements of this  
3683 chapter is authorized to prepare and sign a certified appraisal report relating to real estate or

3684 real property in this state.

3685 (b) If a certified appraisal report is prepared and signed by a state-certified residential  
3686 appraiser, the certified appraisal report shall state, immediately following the signature on the  
3687 report, "State-Certified Residential Appraiser."

3688 (c) If a certified appraisal report is prepared and signed by a state-certified general  
3689 appraiser, the certified appraisal report shall state, immediately following the signature on the  
3690 report, "State-Certified General Appraiser."

3691 (d) An appraisal report prepared by a state-licensed appraiser shall state, immediately  
3692 following the signature on the report, "State-Licensed Appraiser."

3693 (e) When signing a certified appraisal report, a state-certified appraiser shall also place  
3694 on the report, immediately below the state-certified appraiser's signature the state-certified  
3695 appraiser's certificate number and its expiration date.

3696 (f) A state-certified residential appraiser may not prepare a certified appraisal report  
3697 outside the state-certified residential appraiser's authority as defined in Section ~~61-2b-13~~  
3698 61-2g-312.

3699 (g) A state-licensed appraiser who assisted in the preparation of a certified appraisal  
3700 report is authorized to cosign the certified appraisal report.

3701 (4) A person who has not qualified under this chapter may not describe or refer to any  
3702 appraisal or appraisal report relating to real estate or real property in this state by the terms  
3703 "certified appraisal" or "certified appraisal report."

3704 (5) If a trainee assists a state-certified appraiser in the preparation of an appraisal  
3705 report, the appraisal report shall disclose:

3706 (a) the trainee's name; and

3707 (b) the extent to which the trainee assists in the preparation of the appraisal report.

3708 Section 65. Section **61-2g-402**, which is renumbered from Section 61-2b-26 is  
3709 renumbered and amended to read:

3710 ~~[61-2b-26]~~. **61-2g-402**. **Principal place of business -- Display of documents --**  
3711 **Notify of changes -- Nonresidents.**

3712 (1) A person licensed or certified under this chapter shall:

3713 (a) designate and maintain a principal place of business; and

3714 (b) conspicuously display the person's license or certification.

3715 (2) (a) Upon a change of a person's principal business location or home address, a  
3716 person licensed or certified under this chapter shall promptly send the division a signed  
3717 statement notifying the division of the change within 10 business days of the change.

3718 (b) Upon a change of an expert witness's address listed on the expert witness's  
3719 application for approval, the expert witness shall send the division a signed statement notifying  
3720 the division of the change within 10 business days of the change.

3721 (3) A nonresident licensee or certificate holder, or a nonresident approved as an expert  
3722 witness is not required to maintain a place of business in this state if the nonresident maintains  
3723 an active place of business in the nonresident's state of domicile.

3724 Section 66. Section **61-2g-403**, which is renumbered from Section 61-2b-27 is  
3725 renumbered and amended to read:

3726 **[61-2b-27]. 61-2g-403. Professional conduct -- Uniform standards.**

3727 (1) (a) A person licensed, certified, registered, or approved as an expert witness under  
3728 this chapter [~~must~~] shall comply with:

3729 (i) generally accepted standards of professional appraisal practice; and

3730 (ii) generally accepted ethical rules to be observed by a real estate appraiser.

3731 (b) Subject to [~~Subsection (1)(c)] the other provisions of this Subsection (1), generally  
3732 accepted standards of professional appraisal practice are evidenced by the Uniform Standards  
3733 of Professional Appraisal Practice promulgated by the Appraisal Foundation.~~

3734 (c) After a public hearing held in accordance with Title 63G, Chapter 3, Utah  
3735 Administrative Rulemaking Act, the board, with the concurrence of the division:

3736 (i) shall adopt and may make modifications of or additions to the Uniform Standards of  
3737 Professional Appraisal Practice as the board considers appropriate to comply with the Financial  
3738 Institutions Reform, Recovery, and Enforcement Act of 1989; or

3739 (ii) may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
3740 Rulemaking Act, exempt a person licensed, certified, registered, or approved as an expert  
3741 witness from complying with a provision of the Uniform Standards of Professional Appraisal  
3742 Practice for an activity that the person engages in on behalf of a governmental entity.

3743 (d) When an individual is a state-licensed appraiser or state-certified appraiser and also  
3744 holds a license issued under Chapter 2f, Real Estate Licensing and Practices Act, the individual  
3745 may provide an opinion of price of real estate without complying with the Uniform Standards

3746 of Professional Appraisal Practice if the individual provides the opinion of price as a licensee  
3747 under Chapter 2f.

3748 (2) [~~The~~] When instructed by the board, the division shall schedule a public hearing  
3749 pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the purpose of  
3750 deciding whether or not the board should require a modified or supplemental standard or the  
3751 ethical rule to be observed by a person licensed, certified, registered, or approved as an expert  
3752 witness under this chapter if the Appraisal Standards Board of the Appraisal Foundation:

3753 (a) (i) modifies the Uniform Standards of Professional Appraisal Practice;  
3754 (ii) issues a supplemental appraisal standard which it considers appropriate for:  
3755 (A) a residential real estate appraiser; or  
3756 (B) a general real estate appraiser; or  
3757 (iii) issues an ethical rule to be observed by a real estate appraiser; and  
3758 (b) requests the board to consider the adoption of the modified or supplemental  
3759 standard or ethical rule.

3760 (3) If, after the notice and public hearing described in Subsection (2), the board finds  
3761 that a modified or supplemental standard or the ethical rule issued by the Appraisal Standards  
3762 Board of the Appraisal Foundation is appropriate for a person licensed, certified, registered, or  
3763 approved as an expert witness under this chapter, the board shall recommend a rule requiring a  
3764 person licensed, certified, registered, or approved as an expert witness under this chapter to  
3765 observe the modified or supplemental standard or the ethical rule.

3766 Section 67. Section **61-2g-404**, which is renumbered from Section 61-2b-32 is  
3767 renumbered and amended to read:

3768 **[61-2b-32]. 61-2g-404. Registration, licensure, or certification prerequisite to**  
3769 **suit for compensation.**

3770 A person engaged in the business of real estate appraising in this state or acting in the  
3771 capacity of a real estate appraiser in this state may not bring or maintain an action as a plaintiff  
3772 in a court of this state to collect compensation for the performance of real estate appraisal  
3773 services for which registration, licensure, or certification is required by this chapter without  
3774 alleging and proving that the person was the holder of a valid registration, license, or  
3775 certification in this state at all times during the performance of the real estate appraisal  
3776 services.

3777 Section 68. Section **61-2g-405**, which is renumbered from Section 61-2b-34 is  
3778 renumbered and amended to read:

3779 ~~[61-2b-34]~~. **61-2g-405. Recordkeeping requirements.**

3780 (1) Subject to Subsection (2), a person licensed or certified under this chapter and a  
3781 person required to be registered under this chapter before May 3, 2001, shall retain for a period  
3782 of five years the original or a true copy of:

3783 (a) each written contract engaging the person's services for real estate or real property  
3784 appraisal work;

3785 (b) each appraisal report prepared or signed by the person; and

3786 (c) ~~[aH]~~ the supporting data assembled and formulated by the appraiser in preparing  
3787 each appraisal report.

3788 (2) The five-year period for retention of records is applicable to each engagement of  
3789 the services of the appraiser and begins upon the date of the delivery of each appraisal report to  
3790 the client unless, within the five-year period, the appraiser is notified that the appraisal or the  
3791 appraisal report is involved in litigation, in which event the records must be maintained for the  
3792 longer of:

3793 (a) five years; or

3794 (b) two years following the date of the final disposition of the litigation.

3795 (3) Upon reasonable notice, a person licensed or certified under this chapter and a  
3796 person required to be registered under this chapter before May 3, 2001, shall make ~~[aH]~~ the  
3797 records required to be maintained under this chapter available to the division for inspection and  
3798 copying.

3799 Section 69. Section **61-2g-406**, which is renumbered from Section 61-2b-36 is  
3800 renumbered and amended to read:

3801 ~~[61-2b-36]~~. **61-2g-406. Contingent fees.**

3802 (1) A person licensed or certified under this chapter who enters into an agreement to  
3803 perform an appraisal may not accept a contingent fee.

3804 (2) A person licensed or certified under this chapter who enters into an agreement to  
3805 provide consultation services may be paid a fixed fee or a contingent fee.

3806 (3) (a) If a person licensed or certified under this chapter enters into an agreement to  
3807 perform consultation services for a contingent fee, this fact shall be clearly stated in each oral

3808 statement.

3809 (b) In addition to the requirements of Subsection (3)(a), if a person licensed or certified  
3810 under this chapter prepares a written consultation report or summary, letter of transmittal, or  
3811 certification statement for a contingent fee, the person shall clearly state in the report,  
3812 summary, letter of transmittal, or certification statement that the report is prepared under a  
3813 contingent fee arrangement.

3814 Section 70. Section **61-2g-407**, which is renumbered from Section 61-2b-41 is  
3815 renumbered and amended to read:

3816 ~~[61-2b-41]~~. **61-2g-407. Consultation reports -- Restrictions on use of terms.**

3817 A person who prepares a written or oral consultation report may not refer to the  
3818 consultation report as an appraisal, an appraisal report, or in any manner that may be  
3819 interpreted as referring to an appraisal or an appraisal report.

3820 Section 71. Section **61-2g-501**, which is renumbered from Section 61-2b-28 is  
3821 renumbered and amended to read:

3822 **Part 5. Enforcement**

3823 ~~[61-2b-28]~~. **61-2g-501. Enforcement -- Investigation -- Orders -- Hearings.**

3824 (1) (a) The division may investigate the actions of:

3825 (i) a person registered, licensed, or certified under this chapter;

3826 (ii) an applicant for registration, licensure, or certification;

3827 (iii) an applicant for renewal of registration, licensure, or certification; or

3828 (iv) a person required to be registered, licensed, or certified under this chapter.

3829 (b) The division may initiate an agency action against a person described in Subsection

3830 (1)(a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to:

3831 (i) impose disciplinary action;

3832 (ii) deny issuance to an applicant of:

3833 (A) an original registration, license, or certification; or

3834 (B) a renewal of a registration, license, or certification; or

3835 (iii) issue a cease and desist order as provided in Subsection (3).

3836 (2) (a) The division may:

3837 (i) administer an oath or affirmation;

3838 (ii) subpoena a witness or evidence;

- 3839 (iii) take evidence; and
- 3840 (iv) require the production of a book, paper, contract, record, document, information,
- 3841 or evidence relevant to the investigation described in Subsection (1).
- 3842 (b) The division may serve a subpoena by certified mail.
- 3843 (c) A failure to respond to a request by the division in an investigation authorized
- 3844 under this chapter is considered to be a separate violation of this chapter, including:
- 3845 (i) failing to respond to a subpoena as a witness;
- 3846 (ii) withholding evidence; or
- 3847 (iii) failing to produce a book, paper, contract, document, information, or record.
- 3848 (d) (i) If a person is found to have violated this chapter or a rule made under this
- 3849 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,
- 3850 document, information, or record required under this chapter, including the costs incurred to
- 3851 copy an electronic book, paper, contract, document, information, or record in a universally
- 3852 readable format.
- 3853 (ii) If a person fails to pay the costs described in Subsection (2)(d)(i) when due, the
- 3854 person's license, certification, or registration is automatically suspended:
- 3855 (A) beginning the day on which the payment of costs is due; and
- 3856 (B) ending the day on which the costs are paid.
- 3857 (3) (a) The director shall issue and serve upon a person an order directing that person to
- 3858 cease and desist from an act if:
- 3859 (i) the director has reason to believe that the person has been engaging, is about to
- 3860 engage, or is engaging in the act constituting a violation of this chapter; and
- 3861 (ii) it appears to the director that it would be in the public interest to stop the act.
- 3862 (b) Within 10 days after receiving the order, the person upon whom the order is served
- 3863 may request a hearing.
- 3864 (c) Pending a hearing requested under Subsection (3)(b), a cease and desist order shall
- 3865 remain in effect.
- 3866 (d) If a request for hearing is made, the division shall follow the procedures and
- 3867 requirements of Title 63G, Chapter 4, Administrative Procedures Act.
- 3868 (4) (a) After a hearing requested under Subsection (3), if the board [~~agrees~~] and
- 3869 division concur that an act of the person violates this chapter, the board, with the concurrence

3870 of the division:

- 3871 (i) shall issue an order making the cease and desist order permanent; and
- 3872 (ii) may impose another disciplinary action under Section [~~61-2b-29~~] 61-2g-502.

3873 (b) The director shall commence an action in the name of the Department of  
3874 Commerce and Division of Real Estate, in the district court in the county in which an act  
3875 described in Subsection (3) occurs or where the person resides or carries on business, to enjoin  
3876 and restrain the person from violating this chapter if:

- 3877 (i) (A) a hearing is not requested under Subsection (3); and
- 3878 (B) the person fails to cease the act described in Subsection (3); or
- 3879 (ii) after discontinuing the act described in Subsection (3), the person again

3880 commences the act.

3881 (5) A remedy or action provided in this section does not limit, interfere with, or prevent  
3882 the prosecution of another remedy or action, including a criminal proceeding.

3883 Section 72. Section **61-2g-502**, which is renumbered from Section 61-2b-29 is  
3884 renumbered and amended to read:

3885 [~~61-2b-29~~]. **61-2g-502. Disciplinary action -- Grounds.**

3886 (1) (a) The board may order disciplinary action, with the concurrence of the division,  
3887 against a person:

- 3888 (i) registered, licensed, or certified under this chapter; or
- 3889 (ii) required to be registered, licensed, or certified under this chapter.

3890 (b) On the basis of a ground listed in Subsection (2) for disciplinary action, board  
3891 action may include:

3892 (i) revoking, suspending, or placing a person's registration, license, or certification on  
3893 probation;

3894 (ii) denying a person's original registration, license, or certification;

3895 (iii) denying a person's renewal license, certification, or registration;

3896 (iv) in the case of denial or revocation of a registration, license, or certification, setting  
3897 a waiting period for an applicant to apply for a registration, license, or certification under this  
3898 chapter;

3899 (v) ordering remedial education;

3900 (vi) imposing a civil penalty upon a person not to exceed the greater of:

3901 (A) \$5,000 for each violation; or  
3902 (B) the amount of any gain or economic benefit from a violation;  
3903 (vii) issuing a cease and desist order;  
3904 (viii) modifying an action described in Subsections (1)(b)(i) through (vii) if the board,  
3905 with the concurrence of the division, finds that the person complies with court ordered  
3906 restitution; or  
3907 (ix) doing any combination of Subsections (1)(b)(i) through (viii).  
3908 (c) (i) If the board or division issues an order that orders a fine or educational  
3909 requirements as part of the disciplinary action against a person, including a stipulation and  
3910 order, the board or division shall state in the order the deadline by which the person shall  
3911 comply with the fine or educational requirements.  
3912 (ii) If a person fails to comply with a stated deadline:  
3913 (A) the person's license, certificate, or registration is automatically suspended:  
3914 (I) beginning on the day specified in the order as the deadline for compliance; and  
3915 (II) ending the day on which the person complies in full with the order; and  
3916 (B) if the person fails to pay a fine required by an order, the division may begin a  
3917 collection process:  
3918 (I) established by the division by rule made in accordance with Title 63G, Chapter 3,  
3919 Utah Administrative Rulemaking Act; and  
3920 (II) subject to Title 63A, Chapter 8, Office of State Debt Collection.  
3921 (2) The following are grounds for disciplinary action under this section:  
3922 (a) procuring or attempting to procure a registration, license, or certification under this  
3923 chapter:  
3924 (i) by fraud; or  
3925 (ii) by making a false statement, submitting false information, or making a material  
3926 misrepresentation in an application filed with the division;  
3927 (b) paying money or attempting to pay money other than a fee provided for by this  
3928 chapter to a member or employee of the division to procure a registration, license, or  
3929 certification under this chapter;  
3930 (c) an act or omission in the practice of real estate appraising that constitutes  
3931 dishonesty, fraud, or misrepresentation;

3932 (d) entry of a judgment against a registrant, licensee, or certificate holder on grounds of  
3933 fraud, misrepresentation, or deceit in the making of an appraisal of real estate;

3934 (e) a guilty plea to a criminal offense involving moral turpitude that is held in  
3935 abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo  
3936 contendere, of a criminal offense involving moral turpitude;

3937 (f) engaging in the business of real estate appraising under an assumed or fictitious  
3938 name not properly registered in this state;

3939 (g) paying a finder's fee or a referral fee to a person not licensed or certified under this  
3940 chapter in connection with an appraisal of real estate or real property in this state;

3941 (h) making a false or misleading statement in:

3942 (i) that portion of a written appraisal report that deals with professional qualifications;

3943 or

3944 (ii) testimony concerning professional qualifications;

3945 (i) violating or disregarding:

3946 (i) this chapter;

3947 (ii) an order of;

3948 (A) the board; or

3949 (B) the division, in a case when the board delegates to the division the authority to  
3950 make a decision on behalf of the board; or

3951 (iii) a rule issued under this chapter;

3952 (j) violating the confidential nature of governmental records to which a person  
3953 registered, licensed, certified, or approved as an expert under this chapter gained access  
3954 through employment or engagement as an appraiser by a governmental agency;

3955 (k) accepting a contingent fee for performing an appraisal if in fact the fee is or was  
3956 contingent upon:

3957 (i) the appraiser reporting a predetermined analysis, opinion, or conclusion;

3958 (ii) the analysis, opinion, conclusion, or valuation reached; or

3959 (iii) the consequences resulting from the appraisal assignment;

3960 (l) unprofessional conduct as defined by statute or rule;

3961 (m) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

3962 (i) providing a title insurance product or service without the approval required by

3963 Section 31A-2-405; or

3964 (ii) knowingly providing false or misleading information in the statement required by

3965 Subsection 31A-2-405(2); or

3966 (n) other conduct that constitutes dishonest dealing.

3967 Section 73. Section **61-2g-503**, which is renumbered from Section 61-2b-30.5 is

3968 renumbered and amended to read:

3969 ~~[61-2b-30.5].~~ **61-2g-503. Reinstatement of license, certification,**  
 3970 **registration, and approval -- Expert witness -- Trainee.**

3971 (1) An individual whose license, certification, registration, or approval is revoked  
 3972 under this chapter:

3973 (a) may not apply for renewal or reinstatement of that license, certification,  
 3974 registration, or approval; and

3975 (b) may apply for licensure, certification, registration, or approval as prescribed for an  
 3976 original license, certification, registration, or approval subject to the limitations in Subsection  
 3977 (2).

3978 (2) An applicant for licensure, certification, registration, or approval as an expert  
 3979 witness under Subsection (1) [~~:(a) may not apply for licensure, certification, registration, or~~  
 3980 ~~approval until at least five years after the date of revocation of the applicant's original license,~~  
 3981 ~~certification, registration, or approval; and (b)] is not entitled to credit for experience gained  
 3982 [~~prior to~~] before the date of revocation in determining whether the applicant meets the  
 3983 experience requirement for licensure, certification, registration, or approval.~~

3984 [~~(3) A person whose license or certification is revoked may not act as a trainee until at~~  
 3985 ~~least four years after the day on which the person's license or certification is revoked.]~~

3986 Section 74. Section **61-2g-504**, which is renumbered from Section 61-2b-31 is  
 3987 renumbered and amended to read:

3988 ~~[61-2b-31].~~ **61-2g-504. Disciplinary hearing process.**

3989 (1) The division and board shall comply with Title 63G, Chapter 4, Administrative  
 3990 Procedures Act, in conducting any disciplinary proceedings under this chapter.

3991 [~~(1)~~] (2) Before disciplinary action may be taken [~~by the board~~] under this chapter, the  
 3992 division shall:

3993 (a) notify the person against whom [~~the board seeks to take~~] disciplinary action is

3994 sought; and

3995 (b) commence an adjudicative proceeding.

3996 [~~(2)~~] (3) If, after the hearing, the board determines, with the concurrence of the  
3997 division, that a person described in Subsection [~~(1)~~] (2) violated this chapter, the board may  
3998 impose disciplinary action, with the concurrence of the division, by written order as provided in  
3999 Section [~~61-2b-29~~] 61-2g-502.

4000 [~~(3)~~] (4) (a) The board may:

4001 (i) conduct hearings with the assistance of an administrative law judge; or

4002 (ii) delegate hearings to an administrative law judge.

4003 (b) If a hearing is delegated by the board to an administrative law judge, the  
4004 administrative law judge shall submit to the board and the director for [~~its~~] their consideration:

4005 (i) written findings of fact;

4006 (ii) written conclusions of law; and

4007 (iii) a recommended order.

4008 [~~(4)~~] (5) (a) An applicant, licensee, certificate holder, registrant, or person aggrieved,  
4009 including the complainant, may obtain judicial review of an adverse ruling, order, or decision  
4010 [~~of the board~~].

4011 (b) If an applicant, licensee, certificate holder, or registrant prevails in an appeal and  
4012 the court finds that the state action is undertaken without substantial justification, the court may  
4013 award reasonable litigation expenses to the applicant, licensee, certificate holder, or registrant  
4014 as provided under Title 78B, Chapter 8, Part 5, Small Business Equal Access to Justice Act.

4015 Section 75. Section **61-2g-505**, which is renumbered from Section 61-2b-33 is  
4016 renumbered and amended to read:

4017 [~~61-2b-33~~]. **61-2g-505. Penalty for violating this chapter -- Automatic**  
4018 **revocation.**

4019 (1) In addition to being subject to a disciplinary action [~~by the board~~], a person  
4020 required to be licensed, certified, or registered under this chapter who violates this chapter:

4021 (a) is guilty of a class A misdemeanor, upon a conviction of a first violation of this  
4022 chapter; and

4023 (b) is guilty of a third degree felony, upon conviction of a second or subsequent  
4024 violation of this chapter.

4025 (2) A license, certification, or registration issued by the division to a person convicted  
4026 of a violation of Section 76-6-1203 is automatically revoked.

4027 Section 76. Section **63A-5-220** is amended to read:

4028 **63A-5-220. Definitions -- Creation of Account for People with Disabilities -- Use**  
4029 **of restricted account.**

4030 (1) As used in this section:

4031 (a) "Developmental center" means the Utah State Developmental Center described in  
4032 Section 62A-5-201.

4033 (b) "DSPD" means the Division of Services for People with Disabilities within the  
4034 Department of Human Services.

4035 (c) "Long-term lease" means:

4036 (i) a lease with a term of five years or more; or

4037 (ii) a lease with a term of less than five years that may be unilaterally renewed by the  
4038 lessee.

4039 (2) Notwithstanding [~~the provisions of~~] Section 63A-5-215, any money received by the  
4040 division or DSPD from the sale, lease, except any lease existing on May 1, 1995, or other  
4041 disposition of real property associated with the developmental center shall be deposited in the  
4042 restricted account created in Subsection (3).

4043 (3) (a) There is created a restricted account within the General Fund known as the  
4044 "Account for People with Disabilities."

4045 (b) The Division of Finance shall deposit the following revenues into the restricted  
4046 account:

4047 (i) revenue from the sale, lease, except any lease existing on May 1, 1995, or other  
4048 disposition of real property associated with the developmental center;

4049 (ii) revenue from the sale, lease, or other disposition of water rights associated with the  
4050 developmental center; and

4051 (iii) revenue from voluntary contributions made to the restricted account.

4052 (c) The state treasurer shall invest money in the fund according to the procedures and  
4053 requirements of Title 51, Chapter 7, State Money Management Act, and [aH] the interest shall  
4054 remain with the restricted account.

4055 (d) (i) Except as provided in Subsection (3)(d)(ii), [~~no~~] an expenditure or appropriation

4056 may not be made from the restricted account.

4057 (ii) (A) The Legislature may appropriate interest earned on restricted account money  
4058 invested pursuant to this Subsection (3)(d), leases from real property and improvements, leases  
4059 from water, rents, and fees to DSPD for programs described in Title 62A, Chapter 5, Services  
4060 [~~to~~] for People with Disabilities.

4061 (B) Restricted account money appropriated each year under Subsection (3)(d)(ii)(A)  
4062 may not be expended unless approved by the director of the Division of Services for People  
4063 with Disabilities within the Department of Human Services in consultation with the executive  
4064 director of the department.

4065 (4) (a) Notwithstanding [~~the provisions of~~] Section 65A-4-1, any sale or disposition of  
4066 real property or water rights associated with the developmental center shall be conducted as  
4067 provided in this Subsection (4).

4068 (b) The division shall secure the concurrence of DSPD and the approval of the  
4069 governor before making the sale or other disposition of land or water rights.

4070 (c) In addition to the concurrences required by Subsection (4)(b), the division shall  
4071 secure the approval of the Legislature before offering the land or water rights for sale,  
4072 exchange, or long-term lease.

4073 (d) The division shall sell or otherwise dispose of the land or water rights as directed  
4074 by the governor.

4075 (e) The division may not sell, exchange, or enter into a long-term lease of the land or  
4076 water rights for a price or estimated value below the average of two appraisals conducted by an  
4077 appraiser who holds an appraiser's certificate or license issued by the Division of Real Estate  
4078 under Title 61, Chapter [~~2b~~] 2g, Real Estate Appraiser Licensing and Certification Act.

4079 Section 77. Section **63A-5-401** is amended to read:

4080 **63A-5-401. Rulemaking for sale of real property -- Licensed or certified**  
4081 **appraisers -- Exceptions.**

4082 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if  
4083 the division buys, sells, or exchanges real property, the division shall make rules to ensure that  
4084 the value of the real property is congruent with the proposed price and other terms of the  
4085 purchase, sale, or exchange.

4086 (2) The rules:

- 4087 (a) shall establish procedures for determining the value of the real property;
- 4088 (b) may provide that an appraisal, as defined under Section [~~61-2b-2~~] 61-2g-102,
- 4089 demonstrates the real property's value; and
- 4090 (c) may require that the appraisal be completed by a state-certified general appraiser, as
- 4091 defined under Section [~~61-2b-2~~] 61-2g-102.

4092 (3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or

4093 to an interest in real property:

- 4094 (a) that is under a contract or other written agreement [~~prior to~~] before May 5, 2008; or
- 4095 (b) with a value of less than \$100,000, as estimated by the state agency.

4096 Section 78. Section **70D-1-102** is amended to read:

4097 **70D-1-102. Definitions.**

4098 As used in this title:

- 4099 (1) "Commissioner" means the commissioner of the department.
- 4100 (2) "Department" means the Department of Financial Institutions.
- 4101 (3) "Depository institution" is as defined in Section 7-1-103.
- 4102 (4) "Dwelling" means a residential structure attached to real property that contains one
- 4103 to four units including any of the following if used as a residence:
  - 4104 (a) a condominium unit;
  - 4105 (b) a cooperative unit;
  - 4106 (c) a manufactured home; or
  - 4107 (d) a house.
- 4108 (5) "Mortgage" means a mortgage or deed of trust affecting real property located in this
- 4109 state.
  - 4110 (6) (a) "Mortgage loan" means a loan:
    - 4111 (i) secured by a mortgage; and
    - 4112 (ii) made for personal, family, or household purposes.
  - 4113 (b) "Mortgage loan" does not include a loan:
    - 4114 (i) made by an individual to a member of the individual's family; or
    - 4115 (ii) subject to Title 70C, Utah Consumer Credit Code.
- 4116 (7) "Mortgagor" means a person who:
  - 4117 (a) executes a mortgage; or

- 4118 (b) is obligated to pay a mortgage loan.
- 4119 (8) "Record" means information that is:
- 4120 (a) inscribed on a tangible medium; or
- 4121 (b) stored in an electronic or other medium and is retrievable in perceivable form.
- 4122 (9) "Real estate brokerage activity" means an act that involves offering or providing
- 4123 real estate brokerage services to the public, including:
- 4124 (a) acting as a real estate ~~[agent or real estate broker]~~ principal broker, associate broker,
- 4125 or sales agent, as defined in Section 61-2f-102, for a buyer, seller, lessor, or lessee of real
- 4126 property;
- 4127 (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange
- 4128 of real property;
- 4129 (c) negotiating, on behalf of a party, a portion of a contract relating to the sale,
- 4130 purchase, lease, rental, or exchange of real property, other than in connection with providing
- 4131 financing with respect to the transaction;
- 4132 (d) engaging in an act for which a person engaged in the activity is required to be
- 4133 registered or licensed as a real estate agent or real estate broker under applicable law; and
- 4134 (e) offering to engage in an activity, or act in a capacity, described in Subsections (9)(a)
- 4135 through (d).
- 4136 (10) "State" means:
- 4137 (a) a state, territory, or possession of the United States;
- 4138 (b) the District of Columbia; or
- 4139 (c) the Commonwealth of Puerto Rico.
- 4140 Section 79. Section **72-5-117** is amended to read:
- 4141 **72-5-117. Rulemaking for sale of real property -- Licensed or certified appraisers**
- 4142 **-- Exceptions.**
- 4143 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if
- 4144 the department buys, sells, or exchanges real property, the department shall make rules to
- 4145 ensure that the value of the real property is congruent with the proposed price and other terms
- 4146 of the purchase, sale, or exchange.
- 4147 (2) The rules:
- 4148 (a) shall establish procedures for determining the value of the real property;

4149 (b) may provide that an appraisal, as defined under Section ~~[61-2b-2]~~ 61-2g-102,  
4150 demonstrates the real property's value; and

4151 (c) may require that the appraisal be completed by a state-certified general appraiser, as  
4152 defined under Section ~~[61-2b-2]~~ 61-2g-102.

4153 (3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or  
4154 to an interest in real property:

4155 (a) that is under a contract or other written agreement ~~[prior to]~~ before May 5, 2008; or

4156 (b) with a value of less than \$100,000, as estimated by the state agency.

4157 Section 80. Section **79-2-403** is amended to read:

4158 **79-2-403. Rulemaking for sale of real property -- Licensed or certified appraisers**  
4159 **-- Exceptions.**

4160 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if  
4161 the department buys, sells, or exchanges real property, the department shall make rules to  
4162 ensure that the value of the real property is congruent with the proposed price and other terms  
4163 of the purchase, sale, or exchange.

4164 (2) The rules:

4165 (a) shall establish procedures for determining the value of the real property;

4166 (b) may provide that an appraisal, as defined under Section ~~[61-2b-2]~~ 61-2g-102,  
4167 demonstrates the real property's value; and

4168 (c) may require that the appraisal be completed by a state-certified general appraiser, as  
4169 defined under Section ~~[61-2b-2]~~ 61-2g-102.

4170 (3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or  
4171 to an interest in real property:

4172 (a) that is under a contract or other written agreement ~~[prior to]~~ before May 5, 2008; or

4173 (b) with a value of less than \$100,000, as estimated by the state agency.

4174 Section 81. **Repealer.**

4175 This bill repeals:

4176 Section **57-11-19, Extradition proceedings against person charged with crime.**

4177 Section **61-2b-5, Chapter administration.**

4178 Section **61-2b-9, Licensure or certification required -- Application.**

4179 Section **61-2b-30, Compliance with Administrative Procedures Act.**

4180

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

# FISCAL NOTE

H.B. 91 1st Sub. (Buff)

SHORT TITLE: Real Estate Related Amendments

SPONSOR: Froerer, G.

2011 GENERAL SESSION, STATE OF UTAH

## STATE GOVERNMENT (UCA 36-12-13(2)(b))

While this bill increases the penalties for specific violations, no additional revenue is anticipated, based on last years' history of no assessments. Any impact to the Courts is expected to be minimal and can be handled within existing budgets.

## LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

## DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

This bill creates a new misdemeanor. Violators of the law would be subject to the penalties.