

1 **REAL ESTATE RELATED AMENDMENTS**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gage Froerer**

5 Senate Sponsor: J. Stuart Adams

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ amends the Utah Uniform Land Sales Practices Act, including:
 - 14 • modifying penalties; and
 - 15 • repealing extradition proceedings;
- 16 ▶ modifies the Utah Residential Mortgage Practices and Licensing Act, including:
 - 17 • modifying the definition provisions;
 - 18 • addressing payments to the division that are dishonored;
 - 19 • addressing the establishment of fees;
 - 20 • addressing qualifications for licensure and criminal histories;
 - 21 • providing for enforcement of reporting requirements;
 - 22 • modifying prohibited conduct;
 - 23 • addressing recordkeeping requirements; and
 - 24 • allowing for de novo review under certain circumstances;
- 25 ▶ 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 • modifying prohibited conduct;
- 34 • providing for the payment of certain costs related to investigations;
- 35 • increasing the amount of a civil penalty; and
- 36 • addressing the contents and affect of an order;
- 37 ▶ modifies the Real Estate Licensing and Practices Act, including:
 - 38 • modifying the definition provisions;
 - 39 • addressing payments to the division that are dishonored;
 - 40 • providing for de novo review in certain circumstances;
 - 41 • addressing criminal histories;
 - 42 • addressing when the division may extend the term of a license;
 - 43 • providing for the enforcement of reporting requirements; and
 - 44 • modifying grounds for disciplinary conduct;
- 45 ▶ renumbers and amends the Real Estate Appraiser Licensing and Certification Act,
- 46 including:
 - 47 • addressing when the board may take action with the concurrence of the division;
 - 48 • addressing criminal histories;
 - 49 • addressing when the division may extend the term of a license;
 - 50 • modifying reinstatement requirements; and
 - 51 • allowing the board to delegate certain actions to the division; and
- 52 ▶ makes technical and conforming amendments.

53 Money Appropriated in this Bill:

54 None

55 Other Special Clauses:

56 None

57 Utah Code Sections Affected:

58 AMENDS:

- 59 **7-5-1**, as last amended by Laws of Utah 2003, Chapter 301
- 60 **13-21-2**, as last amended by Laws of Utah 2008, Chapter 250
- 61 **16-11-2**, as last amended by Laws of Utah 2010, Chapter 379
- 62 **17-17-2**, as last amended by Laws of Utah 2010, Chapter 131
- 63 **31A-2-402**, as last amended by Laws of Utah 2010, Chapter 379
- 64 **31A-23a-402**, as last amended by Laws of Utah 2008, Chapter 382
- 65 **48-2c-1502**, as last amended by Laws of Utah 2010, Chapter 379
- 66 **53C-4-103**, as enacted by Laws of Utah 2008, Chapter 203
- 67 **57-11-16**, as last amended by Laws of Utah 2009, Chapter 352
- 68 **59-1-404**, as last amended by Laws of Utah 2008, Chapter 382
- 69 **59-2-701**, as last amended by Laws of Utah 2001, Chapter 214
- 70 **61-2-201**, as renumbered and amended by Laws of Utah 2010, Chapter 379
- 71 **61-2c-102**, as last amended by Laws of Utah 2010, Chapters 184, 379 and last amended
- 72 by Coordination Clause, Laws of Utah 2010, Chapter 379
- 73 **61-2c-103**, as last amended by Laws of Utah 2010, Chapter 379
- 74 **61-2c-202**, as last amended by Laws of Utah 2010, Chapter 379
- 75 **61-2c-203**, as last amended by Laws of Utah 2010, Chapter 379
- 76 **61-2c-205**, as last amended by Laws of Utah 2010, Chapter 379
- 77 **61-2c-301**, as last amended by Laws of Utah 2010, Chapters 184 and 379
- 78 **61-2c-302**, as last amended by Laws of Utah 2010, Chapter 379
- 79 **61-2c-402**, as last amended by Laws of Utah 2010, Chapter 379
- 80 **61-2c-501.5**, as enacted by Laws of Utah 2010, Chapter 379
- 81 **61-2c-507**, as last amended by Laws of Utah 2010, Chapter 379
- 82 **61-2e-102**, as enacted by Laws of Utah 2009, Chapter 269
- 83 **61-2e-103**, as enacted by Laws of Utah 2009, Chapter 269
- 84 **61-2e-202**, as enacted by Laws of Utah 2009, Chapter 269
- 85 **61-2e-203**, as enacted by Laws of Utah 2009, Chapter 269

- 86 **61-2e-204**, as enacted by Laws of Utah 2009, Chapter 269
- 87 **61-2e-301**, as enacted by Laws of Utah 2009, Chapter 269
- 88 **61-2e-307**, as enacted by Laws of Utah 2009, Chapter 269
- 89 **61-2e-401**, as enacted by Laws of Utah 2009, Chapter 269
- 90 **61-2e-402**, as enacted by Laws of Utah 2009, Chapter 269
- 91 **61-2f-102**, as last amended by Laws of Utah 2010, Chapter 184 and renumbered and
- 92 amended by Laws of Utah 2010, Chapter 379 and last amended by Coordination
- 93 Clause, Laws of Utah 2010, Chapter 379
- 94 **61-2f-105**, as enacted by Laws of Utah 2010, Chapter 379
- 95 **61-2f-202**, as last amended by Laws of Utah 2010, Chapter 184 and renumbered and
- 96 amended by Laws of Utah 2010, Chapter 379
- 97 **61-2f-203**, as renumbered and amended by Laws of Utah 2010, Chapter 379
- 98 **61-2f-204**, as renumbered and amended by Laws of Utah 2010, Chapter 379
- 99 **61-2f-206**, as enacted by Laws of Utah 2010, Chapter 379
- 100 **61-2f-301**, as renumbered and amended by Laws of Utah 2010, Chapter 379
- 101 **61-2f-401**, as last amended by Laws of Utah 2010, Chapter 184 and renumbered and
- 102 amended by Laws of Utah 2010, Chapter 379
- 103 **63A-5-220**, as last amended by Laws of Utah 2010, Chapter 278
- 104 **63A-5-401**, as enacted by Laws of Utah 2008, Chapter 203
- 105 **70D-1-102**, as renumbered and amended by Laws of Utah 2009, Chapter 72
- 106 **72-5-117**, as enacted by Laws of Utah 2008, Chapter 203
- 107 **79-2-403**, as renumbered and amended by Laws of Utah 2009, Chapter 344
- 108 ENACTS:
- 109 **61-2g-302**, Utah Code Annotated 1953
- 110 **61-2g-303**, Utah Code Annotated 1953
- 111 RENUMBERS AND AMENDS:
- 112 **61-2g-101**, (Renumbered from 61-2b-1, as last amended by Laws of Utah 1999,
- 113 Chapter 117)

- 114 **61-2g-102**, (Renumbered from 61-2b-2, as last amended by Laws of Utah 2010,
115 Chapter 379)
- 116 **61-2g-103**, (Renumbered from 61-2b-25, as last amended by Laws of Utah 2010,
117 Chapter 379)
- 118 **61-2g-201**, (Renumbered from 61-2b-6, as last amended by Laws of Utah 2010,
119 Chapter 379)
- 120 **61-2g-202**, (Renumbered from 61-2b-37, as last amended by Laws of Utah 2009,
121 Chapter 183)
- 122 **61-2g-203**, (Renumbered from 61-2b-38, as last amended by Laws of Utah 2005,
123 Chapter 199)
- 124 **61-2g-204**, (Renumbered from 61-2b-7, as last amended by Laws of Utah 2010,
125 Chapter 286)
- 126 **61-2g-205**, (Renumbered from 61-2b-8, as last amended by Laws of Utah 2010,
127 Chapter 379)
- 128 **61-2g-301**, (Renumbered from 61-2b-3, as last amended by Laws of Utah 2010,
129 Chapter 379)
- 130 **61-2g-304**, (Renumbered from 61-2b-18, as last amended by Laws of Utah 2010,
131 Chapter 379)
- 132 **61-2g-305**, (Renumbered from 61-2b-19, as last amended by Laws of Utah 2010,
133 Chapter 379)
- 134 **61-2g-306**, (Renumbered from 61-2b-20, as last amended by Laws of Utah 2010,
135 Chapter 379)
- 136 **61-2g-307**, (Renumbered from 61-2b-40, as last amended by Laws of Utah 2010,
137 Chapter 379)
- 138 **61-2g-308**, (Renumbered from 61-2b-22, as last amended by Laws of Utah 2008,
139 Chapters 382 and 387)
- 140 **61-2g-309**, (Renumbered from 61-2b-21, as last amended by Laws of Utah 2008,
141 Chapters 382 and 387)

142 **61-2g-310**, (Renumbered from 61-2b-23, as last amended by Laws of Utah 1999,
143 Chapter 117)
144 **61-2g-311**, (Renumbered from 61-2b-10, as last amended by Laws of Utah 2010,
145 Chapter 379)
146 **61-2g-312**, (Renumbered from 61-2b-13, as last amended by Laws of Utah 2001,
147 Chapter 214)
148 **61-2g-313**, (Renumbered from 61-2b-14, as last amended by Laws of Utah 2010,
149 Chapter 379)
150 **61-2g-314**, (Renumbered from 61-2b-15, as last amended by Laws of Utah 2010,
151 Chapter 379)
152 **61-2g-315**, (Renumbered from 61-2b-24, as last amended by Laws of Utah 2008,
153 Chapter 387)
154 **61-2g-401**, (Renumbered from 61-2b-17, as last amended by Laws of Utah 2010,
155 Chapter 379)
156 **61-2g-402**, (Renumbered from 61-2b-26, as last amended by Laws of Utah 2008,
157 Chapter 387)
158 **61-2g-403**, (Renumbered from 61-2b-27, as last amended by Laws of Utah 2009,
159 Chapter 352)
160 **61-2g-404**, (Renumbered from 61-2b-32, as last amended by Laws of Utah 2010,
161 Chapter 379)
162 **61-2g-405**, (Renumbered from 61-2b-34, as last amended by Laws of Utah 2005,
163 Chapter 199)
164 **61-2g-406**, (Renumbered from 61-2b-36, as last amended by Laws of Utah 2010,
165 Chapter 379)
166 **61-2g-407**, (Renumbered from 61-2b-41, as enacted by Laws of Utah 1996, Chapter
167 131)
168 **61-2g-501**, (Renumbered from 61-2b-28, as last amended by Laws of Utah 2010,
169 Chapter 379)

170 **61-2g-502**, (Renumbered from 61-2b-29, as last amended by Laws of Utah 2010,
171 Chapter 379)

172 **61-2g-503**, (Renumbered from 61-2b-30.5, as last amended by Laws of Utah 2010,
173 Chapter 379)

174 **61-2g-504**, (Renumbered from 61-2b-31, as last amended by Laws of Utah 2008,
175 Chapters 3 and 387)

176 **61-2g-505**, (Renumbered from 61-2b-33, as last amended by Laws of Utah 2010,
177 Chapter 379)

178 REPEALS:

179 **57-11-19**, as enacted by Laws of Utah 1973, Chapter 158

180 **61-2b-5**, as enacted by Laws of Utah 1990, Chapter 212

181 **61-2b-9**, as last amended by Laws of Utah 2005, Chapter 199

182 **61-2b-30**, as last amended by Laws of Utah 2008, Chapter 382

183 **61-2b-39**, as last amended by Laws of Utah 2010, Chapter 379

184

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

186 Section 1. Section **7-5-1** is amended to read:

187 **7-5-1. Definitions -- Allowable trust companies -- Exceptions.**

188 (1) As used in this chapter:

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

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

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

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

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

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

208 (iv) ~~[funds]~~ money held by a homeowners' association or similar organization to pay
209 maintenance and other related costs for commonly owned property;

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

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

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

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

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

223 (B) the conservator, trustee, or other fiduciary is a certified public accountant or has
224 qualified for and received a designation as a certified financial planner, chartered financial
225 consultant, certified financial analyst, or similar designation suitable to the court, that

226 evidences the conservator's, trustee's, or other fiduciary's professional competence to manage
227 financial matters;

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

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

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

240 (II) otherwise have a conflict of interest in providing those services;

241 (ix) ~~[funds]~~ money or other assets held by a credit services organization operating in
242 compliance with Title 13, Chapter 21, Credit Services Organizations Act;

243 (x) ~~[funds]~~ money, securities, or other assets held in a customer account in connection
244 with the purchase or sale of securities by a regulated securities broker, dealer, or transfer agent;
245 or

246 (xi) ~~[funds]~~ money, assets, and other property held in a business trust for the benefit of
247 holders of certificates of beneficial interest if the fiduciary activities of the business trust are
248 merely incidental to conducting business in the business trust form.

249 (d) "Trust company" means an institution authorized to engage in the trust business
250 under this chapter. Only the following may be a trust company:

251 (i) a Utah depository institution or its wholly owned subsidiary;

252 (ii) an out-of-state depository institution authorized to engage in business as a
253 depository institution in Utah or its wholly owned subsidiary;

254 (iii) a corporation, including a credit union service organization, owned entirely by one
255 or more federally insured depository institutions as defined in Subsection 7-1-103(8);

256 (iv) a direct or indirect subsidiary of a depository institution holding company that also
257 has a direct or indirect subsidiary authorized to engage in business as a depository institution in
258 Utah; and

259 (v) any other corporation continuously and lawfully engaged in the trust business in
260 this state since before July 1, 1981.

261 (2) Only a trust company may engage in the trust business in this state.

262 (3) The requirements of this chapter do not apply to:

263 (a) an institution authorized to engage in a trust business in another state that is
264 engaged in trust activities in this state solely to fulfill its duties as a trustee of a trust created
265 and administered in another state;

266 (b) a national bank, federal savings bank, federal savings and loan association, or
267 federal credit union authorized to engage in business as a depository institution in Utah, or any
268 wholly owned subsidiary of any of these, to the extent the institution is authorized by its
269 primary federal regulator to engage in the trust business in this state; or

270 (c) a state agency that is otherwise authorized by statute to act as a conservator,
271 receiver, guardian, trustee, or in any other fiduciary capacity.

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

273 **13-21-2. Definitions -- Exemptions.**

274 As used in this chapter:

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

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

281 (3) (a) "Credit services organization" means a person who represents that the person or

282 an employee is a debt professional or credit counselor, or, with respect to the extension of
283 credit by others, sells, provides, or performs, or represents that the person can or will sell,
284 provide, or perform, in return for the payment of money or other valuable consideration any of
285 the following services:

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

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

289 (iii) debt reduction or debt management plans.

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

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

295 (ii) a depository institution:

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

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

299 (iii) a person licensed as a [~~real estate broker by this state~~] principal broker under Title
300 61, Chapter 2f, Real Estate Licensing and Practices Act, if the person is acting within the
301 course and scope of that license;

302 (iv) a person licensed to practice law in this state if:

303 (A) the person renders the services described in Subsection (3)(a) within the course and
304 scope of the person's practice as an attorney; and

305 (B) the services described in Subsection (3)(a) are incidental to the person's practice as
306 an attorney;

307 (v) a broker-dealer registered with the Securities and Exchange Commission or the
308 Commodity Futures Trading Commission if the broker-dealer is acting within the course and
309 scope of that regulation;

310 (vi) a credit reporting agency if the services described in Subsection (3)(a) are
311 incidental to the credit reporting agency's services; or

312 (vii) a person who provides debt-management services and is required to be registered
313 under Title 13, Chapter 42, Uniform Debt-Management Services Act.

314 (4) "Extension of credit" means the right to defer payment of debt or to incur debt and
315 defer its payment, offered or granted primarily for personal, family, or household purposes.

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

317 **16-11-2. Definitions.**

318 As used in this chapter:

319 (1) "Filed" means the division has received and approved, as to form, a document
320 submitted under [~~the provisions of~~] this chapter, and has marked on the face of the document a
321 stamp or seal indicating the time of day and date of approval, the name of the division, the
322 division director's signature and division seal, or facsimiles of the signature or seal.

323 (2) "Professional corporation" means a corporation organized under this chapter.

324 (3) "Professional service" means the personal service rendered by:

325 (a) a physician, surgeon, or doctor of medicine holding a license under Title 58,
326 Chapter 67, Utah Medical Practice Act, and any subsequent laws regulating the practice of
327 medicine;

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

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

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

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

337 (f) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry

- 338 Practice Act, and any subsequent laws regulating the practice of optometry;
- 339 (g) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act,
340 and any subsequent laws regulating the practice of veterinary medicine;
- 341 (h) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act,
342 and any subsequent laws regulating the practice of architecture;
- 343 (i) a public accountant holding a license under Title 58, Chapter 26a, Certified Public
344 Accountant Licensing Act, and any subsequent laws regulating the practice of public
345 accounting;
- 346 (j) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician
347 Practice Act, and any subsequent laws regulating the practice of naturopathy;
- 348 (k) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice Act,
349 and any subsequent laws regulating the practice of pharmacy;
- 350 (l) an attorney granted the authority to practice law by:
- 351 (i) the Utah Supreme Court; or
- 352 (ii) the Supreme Court, other court, agency, instrumentality, or regulating board that
353 licenses or regulates the authority to practice law in any state or territory of the United States
354 other than Utah;
- 355 (m) a professional engineer registered under Title 58, Chapter 22, Professional
356 Engineers and Professional Land Surveyors Licensing Act;
- 357 (n) a principal broker, associate broker, or sales agent holding a license under Title 61,
358 Chapter 2f, Real Estate Licensing and Practices Act, and any subsequent laws regulating the
359 selling, exchanging, purchasing, renting, or leasing of real estate;
- 360 (o) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing
361 Act, and any subsequent laws regulating the practice of psychology;
- 362 (p) a clinical or certified social worker holding a license under Title 58, Chapter 60,
363 Part 2, Social Worker Licensing Act, and any subsequent laws regulating the practice of social
364 work;
- 365 (q) a physical therapist holding a license under Title 58, Chapter 24b, Physical Therapy

366 Practice Act, and any subsequent laws regulating the practice of physical therapy;

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

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

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

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

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

379 **17-17-2. Assessor to be state qualified -- Vacancy -- Filling vacancy.**

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

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

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

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

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

393 (b) (i) (A) If a vacancy occurs under this section, the county legislative body shall fill

394 the vacancy in the manner provided in Sections 17-53-104 and 20A-1-508.

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

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

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

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

403 As used in this part:

404 (1) "Commission" means the Title and Escrow Commission created in Section
405 31A-2-403.

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

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

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

410 (b) a license or certificate under:

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

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

413 ~~[(ii)]~~ (iii) Title 61, Chapter ~~[2b]~~ 2g, Real Estate Appraiser Licensing and Certification
414 Act[; or].

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

416 (4) "Real Estate Commission" means the Real Estate Commission created in Section
417 61-2f-103.

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

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

420 (b) a producer with:

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

- 422 (ii) a specific category of authority for title insurance; or
- 423 (c) a title insurance adjuster.

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

425 **31A-23a-402. Unfair marketing practices -- Communication -- Inducement --**
426 **Unfair discrimination -- Coercion or intimidation -- Restriction on choice.**

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

- 431 (A) a person who is or should be licensed under this title;
- 432 (B) an employee or producer of a person described in Subsection (1)(a)(i)(A);
- 433 (C) a person whose primary interest is as a competitor of a person licensed under this
434 title; and
- 435 (D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

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

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

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

- 441 (I) filing a report;
- 442 (II) making a false entry in a record; or
- 443 (III) wilfully refraining from making a proper entry in a record.

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

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

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

- 450 (I) is responsible for the insurance sales activities of the person;
- 451 (II) stands behind the credit of the person;
- 452 (III) guarantees any returns on insurance products of or sold by the person; or
- 453 (IV) is a source of payment of any insurance obligation of or sold by the person.
- 454 (iv) A person who is not an insurer may not assume or use any name that deceptively
- 455 implies or suggests that person is an insurer.
- 456 (v) A person other than persons licensed as health maintenance organizations under
- 457 Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to
- 458 itself.
- 459 (b) A licensee's violation creates a rebuttable presumption that the violation was also
- 460 committed by the insurer if:
- 461 (i) the licensee under this title distributes cards or documents, exhibits a sign, or
- 462 publishes an advertisement that violates Subsection (1)(a), with reference to a particular
- 463 insurer:
- 464 (A) that the licensee represents; or
- 465 (B) for whom the licensee processes claims; and
- 466 (ii) the cards, documents, signs, or advertisements are supplied or approved by that
- 467 insurer.
- 468 (2) (a) (i) A licensee under this title, or an officer or employee of a licensee may not
- 469 induce any person to enter into or continue an insurance contract or to terminate an existing
- 470 insurance contract by offering benefits not specified in the policy to be issued or continued,
- 471 including premium or commission rebates.
- 472 (ii) An insurer may not make or knowingly allow any agreement of insurance that is
- 473 not clearly expressed in the policy to be issued or renewed.
- 474 (iii) This Subsection (2)(a) does not preclude:
- 475 (A) an insurer from reducing premiums because of expense savings;
- 476 (B) an insurer from providing to a policyholder or insured one or more incentives to
- 477 participate in programs or activities designed to reduce claims or claim expenses;

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

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

480 (iv) The commissioner may adopt rules in accordance with Title 63G, Chapter 3, Utah

481 Administrative Rulemaking Act, to define what constitutes an incentive described in

482 Subsection (2)(a)(iii)(B).

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

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

487 (A) any rebate, reduction, or abatement of any rate or charge made incident to the
488 issuance of the title insurance;

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

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

491 (D) material inducement.

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

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

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

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

503 (C) a builder;

504 (D) an attorney; or

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

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

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

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

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

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

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

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

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

521 (i) tends to produce:

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

523 (B) a monopoly in that business; or

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

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

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

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

534 declining an application for insurance.

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

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

541 (b) A licensee whose license is suspended, limited, or revoked under Section
542 31A-2-308, 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the
543 commissioner on demand.

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

- 547 (i) are misleading;
- 548 (ii) are deceptive;
- 549 (iii) are unfairly discriminatory;
- 550 (iv) provide an unfair inducement; or
- 551 (v) unreasonably restrain competition.

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

- 556 (i) are misleading;
- 557 (ii) are deceptive;
- 558 (iii) are unfairly discriminatory;
- 559 (iv) provide an unfair inducement; or
- 560 (v) unreasonably restrain competition.

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

562 **48-2c-1502. Definitions.**

563 As used in this part:

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

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

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

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

570 (i) Supreme Court of Utah; or

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

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

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

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

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

582 (g) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58,
583 Chapter 44a, Nurse Midwife Practice Act;

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

586 (i) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68,
587 Utah Osteopathic Medical Practice Act, and any subsequent laws regulating the practice of
588 osteopathy;

589 (j) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice Act,

590 and any subsequent laws regulating the practice of pharmacy;

591 (k) a physician, surgeon, or doctor of medicine holding a license under Title 58,
592 Chapter 67, Utah Medical Practice Act, and any subsequent laws regulating the practice of
593 medicine;

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

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

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

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

603 (p) a principal broker, associate broker, or sales agent holding a license under Title 61,
604 Chapter 2f, Real Estate Licensing and Practices Act, and any subsequent laws regulating the
605 sale, exchange, purchase, rental, or leasing of real estate;

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

609 (r) a mental health therapist holding a license under Title 58, Chapter 60, Mental
610 Health Professional Practice Act, and any subsequent laws regulating the practice of mental
611 health therapy;

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

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

617 (3) "Regulating board" means the board or agency organized pursuant to state law that

618 is charged with the licensing and regulation of the practice of the profession that a company is
619 organized to render.

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

621 **53C-4-103. Rulemaking for sale of real property -- Licensed or certified**
622 **appraisers -- Exceptions.**

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

627 (2) The rules:

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

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

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

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

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

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

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

638 **57-11-16. Violations -- Duties of attorney general, county attorney, or district**
639 **attorney.**

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

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

642 ~~[(ii) in an application for registration under this chapter or under the federal act, makes~~
643 ~~any untrue statement of a material fact or omits to state a material fact.]]~~

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

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

646 ~~[(A) \$2,500 for each violation; or]~~
 647 ~~[(B) double the amount of any gain or economic benefit derived from each violation;]~~
 648 ~~[(ii) imprisoned for not more than two years; or]~~
 649 ~~[(iii) both fined or imprisoned.]~~
 650 ~~[(c) An indictment or information may not be returned or a complaint filed under this~~
 651 ~~chapter more than five years after the alleged violation.]~~

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

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

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

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

663 Section 10. Section **59-1-404** is amended to read:

664 **59-1-404. Definitions -- Confidentiality of commercial information obtained from**
 665 **a property taxpayer or derived from the commercial information -- Rulemaking**
 666 **authority -- Exceptions -- Written explanation -- Signature requirements -- Retention of**
 667 **signed explanation by employer -- Penalty.**

668 (1) As used in this section:

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

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

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

702 (2) An individual listed under Subsection 59-1-403(1)(a) may not disclose commercial
703 information:

704 (a) obtained in the course of performing any duty that the individual listed under
705 Subsection 59-1-403(1)(a) performs under Chapter 2, Property Tax Act; or

706 (b) relating to an action or proceeding:

707 (i) with respect to a tax imposed on property in accordance with Chapter 2, Property
708 Tax Act; and

709 (ii) that is filed in accordance with:

710 (A) this chapter;

711 (B) Chapter 2, Property Tax Act; or

712 (C) this chapter and Chapter 2, Property Tax Act.

713 (3) (a) Notwithstanding Subsection (2) and subject to Subsection (3)(b), an individual
714 listed under Subsection 59-1-403(1)(a) may disclose the following information:

715 (i) the assessed value of property;

716 (ii) the tax rate imposed on property;

717 (iii) a legal description of property;

718 (iv) the physical description or characteristics of property, including a street address or
719 parcel number for the property;

720 (v) the square footage or acreage of property;

721 (vi) the square footage of improvements on property;

722 (vii) the name of a property taxpayer;

723 (viii) the mailing address of a property taxpayer;

724 (ix) the amount of a property tax:

725 (A) assessed on property;

726 (B) due on property;

727 (C) collected on property;

728 (D) abated on property; or

729 (E) deferred on property;

- 730 (x) the amount of the following relating to property taxes due on property:
- 731 (A) interest;
- 732 (B) costs; or
- 733 (C) other charges;
- 734 (xi) the tax status of property, including:
- 735 (A) an exemption;
- 736 (B) a property classification;
- 737 (C) a bankruptcy filing; or
- 738 (D) whether the property is the subject of an action or proceeding under this title;
- 739 (xii) information relating to a tax sale of property; or
- 740 (xiii) information relating to single-family residential property.
- 741 (b) (i) Subject to Subsection (3)(b)(ii), a person may receive the information described
- 742 in Subsection (3)(a) in written format.
- 743 (ii) The following may charge a reasonable fee to cover the actual cost of providing the
- 744 information described in Subsection (3)(a) in written format:
- 745 (A) the commission;
- 746 (B) a county;
- 747 (C) a city; or
- 748 (D) a town.
- 749 (4) (a) Notwithstanding Subsection (2) and except as provided in Subsection (4)(c), an
- 750 individual listed under Subsection 59-1-403(1)(a) shall disclose commercial information:
- 751 (i) in accordance with judicial order;
- 752 (ii) on behalf of the commission in any action or proceeding:
- 753 (A) under this title;
- 754 (B) under another law under which a property taxpayer is required to disclose
- 755 commercial information; or
- 756 (C) to which the commission is a party;
- 757 (iii) on behalf of any party to any action or proceeding under this title if the commercial

758 information is directly involved in the action or proceeding; or
759 (iv) if the requirements of Subsection (4)(b) are met, that is:
760 (A) relevant to an action or proceeding:
761 (I) filed in accordance with this title; and
762 (II) involving property; or
763 (B) in preparation for an action or proceeding involving property.
764 (b) Commercial information shall be disclosed in accordance with Subsection
765 (4)(a)(iv):
766 (i) if the commercial information is obtained from:
767 (A) a real estate agent if the real estate agent is not a property taxpayer of the property
768 that is the subject of the action or proceeding;
769 (B) an appraiser if the appraiser:
770 (I) is not a property taxpayer of the property that is the subject of the action or
771 proceeding; and
772 (II) did not receive the commercial information pursuant to Subsection (8);
773 (C) a property manager if the property manager is not a property taxpayer of the
774 property that is the subject of the action or proceeding; or
775 (D) a property taxpayer other than a property taxpayer of the property that is the subject
776 of the action or proceeding;
777 (ii) regardless of whether the commercial information is disclosed in more than one
778 action or proceeding; and
779 (iii) (A) if a county board of equalization conducts the action or proceeding, the county
780 board of equalization takes action to provide that any commercial information disclosed during
781 the action or proceeding may not be disclosed by any person conducting or participating in the
782 action or proceeding except as specifically allowed by this section;
783 (B) if the commission conducts the action or proceeding, the commission enters a
784 protective order or, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
785 Act, makes rules specifying that any commercial information disclosed during the action or

786 proceeding may not be disclosed by any person conducting or participating in the action or
787 proceeding except as specifically allowed by this section; or

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

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

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

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

798 (i) the property taxpayer;

799 (ii) a duly authorized representative of the property taxpayer;

800 (iii) a person that has in effect a contract with the property taxpayer to:

801 (A) make filings on behalf of the property taxpayer;

802 (B) process appeals on behalf of the property taxpayer; or

803 (C) pay a tax under Chapter 2, Property Tax Act, on the property taxpayer's property;

804 (iv) a property taxpayer that purchases property from another property taxpayer; or

805 (v) a person that the property taxpayer designates in writing as being authorized to
806 receive the commercial information;

807 (b) the publication of statistics as long as the statistics are classified to prevent the
808 identification of a particular property taxpayer's commercial information; or

809 (c) the inspection by the attorney general or other legal representative of the state or a
810 legal representative of a political subdivision of the state of the commercial information of a
811 property taxpayer:

812 (i) that brings action to set aside or review a tax or property valuation based on the
813 commercial information;

814 (ii) against which an action or proceeding is contemplated or has been instituted under
815 this title; or

816 (iii) against which the state or a political subdivision of the state has an unsatisfied
817 money judgment.

818 (6) Notwithstanding Subsection (2), in accordance with Title 63G, Chapter 3, Utah
819 Administrative Rulemaking Act, the commission may by rule establish standards authorizing
820 an individual listed under Subsection 59-1-403(1)(a) to disclose commercial information:

821 (a) (i) in a published decision; or

822 (ii) in carrying out official duties; and

823 (b) if that individual listed under Subsection 59-1-403(1)(a) consults with the property
824 taxpayer that provided the commercial information.

825 (7) Notwithstanding Subsection (2):

826 (a) an individual listed under Subsection 59-1-403(1)(a) may share commercial
827 information with the following:

828 (i) another individual listed in Subsection 59-1-403(1)(a)(i) or (ii); or

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

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

833 (i) publish notice;

834 (ii) provide notice; or

835 (iii) file a lien; or

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

841 (8) Notwithstanding Subsection (2):

842 (a) subject to the limitations in this section, an individual described in Subsection
843 59-1-403(1)(a) may share the following commercial information with an appraiser:

844 (i) the sales price of locally assessed property and the related financing terms;
845 (ii) capitalization rates and related rates and ratios related to the valuation of locally
846 assessed property; and

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

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

851 (i) may disclose the commercial information:

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

853 (B) to an appraiser;

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

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

858 (ii) may not use the commercial information:

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

860 or

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

863 (9) (a) The commission shall:

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

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

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

868 (i) provide the written explanation described in Subsection (9)(a)(i) to each person
869 described in Subsection 59-1-403(1)(a) who is reasonably likely to receive commercial

870 information;

871 (ii) require each person who receives a written explanation in accordance with

872 Subsection (9)(b)(i) to:

873 (A) read the written explanation; and

874 (B) sign the written explanation; and

875 (iii) retain each written explanation that is signed in accordance with Subsection

876 (9)(b)(ii) for a time period:

877 (A) beginning on the day on which a person signs the written explanation in

878 accordance with Subsection (9)(b)(ii); and

879 (B) ending six years after the day on which the employment of the person described in

880 Subsection (9)(b)(iii)(A) by the employer terminates.

881 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

882 commission shall by rule define "employer."

883 (10) (a) An individual described in Subsection (1)(a) or 59-1-403(1)(a), or an

884 individual that violates a protective order or similar limitation entered pursuant to Subsection

885 (4)(b)(iii), is guilty of a class A misdemeanor if that person:

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

887 (ii) knows that the disclosure described in Subsection (10)(a)(i) is prohibited by this

888 section.

889 (b) If the individual described in Subsection (10)(a) is an officer or employee of the

890 state or a county and is convicted of violating this section, the individual shall be dismissed

891 from office and be disqualified from holding public office in this state for a period of five years

892 thereafter.

893 (c) If the individual described in Subsection (10)(a) is an appraiser, the appraiser shall

894 forfeit any certification or license received under Title 61, [~~Section 2b~~] Chapter 2g, Real Estate

895 Appraiser Licensing and Certification Act, for a period of five years.

896 (d) If the individual described in Subsection (10)(a) is an individual associated with an

897 appraiser who assists the appraiser in preparing appraisals, the individual shall be prohibited

898 from becoming licensed or certified under Title 61, [~~Section 2b~~] Chapter 2g, Real Estate
899 Appraiser Licensing and Certification Act, for a period of five years.

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

901 **59-2-701. Appraisal by certified or licensed appraisers only -- Certification of**
902 **elected county assessors.**

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

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

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

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

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

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

922 **61-2-201. Division of Real Estate created -- Director appointed -- Personnel.**

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

925 (a) this chapter;

- 926 (b) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;
- 927 (c) Title 57, Chapter 19, Timeshare and Camp Resort Act;
- 928 (d) Title 57, Chapter 23, Real Estate Cooperative Marketing Act;
- 929 [~~(e) Chapter 2b, Real Estate Appraiser Licensing and Certification Act;~~]
- 930 [~~(f)~~ (e) Chapter 2c, Utah Residential Mortgage Practices and Licensing Act;
- 931 [~~(g)~~ (f) Chapter 2e, Appraisal Management Company Registration and Regulation
- 932 Act; ~~and~~]
- 933 [~~(h)~~ (g) Chapter 2f, Real Estate Licensing and Practices Act[:]; and
- 934 (h) Chapter 2g, Real Estate Appraiser Licensing and Certification Act.

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

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

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

942 **61-2c-102. Definitions.**

943 (1) As used in this chapter:

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

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

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

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

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

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

953 (e) "Branch office" means a licensed entity's office:

954 (i) for the transaction of the business of residential mortgage loans regulated under this
955 chapter;

956 (ii) other than the main office of the licensed entity; and

957 (iii) that operates under;

958 (A) the same business name as the licensed entity[-]; or

959 (B) another trade name that is registered with the division under the entity license.

960 (f) "Business day" means a day other than:

961 (i) a Saturday;

962 (ii) a Sunday; or

963 (iii) a federal or state holiday.

964 (g) (i) "Business of residential mortgage loans" means for compensation or in the
965 expectation of compensation to:

966 (A) engage in an act that makes an individual a mortgage loan originator;

967 (B) make or originate a residential mortgage loan;

968 (C) directly or indirectly solicit a residential mortgage loan for another;

969 (D) unless excluded under Subsection (1)(g)(ii), render services related to the
970 origination of a residential mortgage loan including:

971 (I) preparing a loan package;

972 (II) communicating with the borrower [~~and~~] or lender; or

973 (III) advising on a loan term; or

974 (E) engage in loan modification assistance.

975 (ii) "Business of residential mortgage loans" does not include:

976 (A) if working as an employee under the direction of and subject to the supervision and
977 instruction of a person licensed under this chapter, the performance of a clerical or support duty
978 such as:

979 (I) the receipt, collection, or distribution of information common for the processing or
980 underwriting of a loan in the mortgage industry other than taking an application;

981 (II) communicating with a consumer to obtain information necessary for the processing

982 or underwriting of a residential mortgage loan;

983 (III) word processing;

984 (IV) sending correspondence; or

985 (V) assembling files;

986 (B) ownership of an entity that engages in the business of residential mortgage loans if
987 the owner does not personally perform the acts listed in Subsection (1)(g)(i); or

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

990 (I) a loan wholesaler;

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

992 (III) a loan underwriter;

993 (IV) a loan closer; or

994 (V) funding a loan; or

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

998 (h) "Certified education provider" means a person who is certified under Section
999 61-2c-204.1 to provide one or more of the following:

1000 (i) Utah-specific prelicensing education; or

1001 (ii) Utah-specific continuing education.

1002 (i) "Closed-end" means a loan:

1003 (i) with a fixed amount borrowed; and

1004 (ii) that does not permit additional borrowing secured by the same collateral.

1005 (j) "Commission" means the Residential Mortgage Regulatory Commission created in
1006 Section 61-2c-104.

1007 (k) "Compensation" means anything of economic value that is paid, loaned, granted,
1008 given, donated, or transferred to an individual or entity for or in consideration of:

1009 (i) services;

- 1010 (ii) personal or real property; or
- 1011 (iii) another thing of value.
- 1012 (l) "Concurrence" means that entities given a concurring ~~[rule]~~ role must jointly agree
- 1013 for the action to be taken.
- 1014 (m) "Continuing education" means education taken by an individual licensed under this
- 1015 chapter in order to meet the education requirements imposed by Sections 61-2c-204.1 and
- 1016 61-2c-205 to renew a license under this chapter.
- 1017 (n) "Control," as used in Subsection 61-2c-105(2)(f), means the power to directly or
- 1018 indirectly:
 - 1019 (i) direct or exercise a controlling interest over:
 - 1020 (A) the management or policies of an entity; or
 - 1021 (B) the election of a majority of the directors, officers, managers, or managing partners
 - 1022 of an entity;
 - 1023 (ii) vote 20% or more of a class of voting securities of an entity by an individual; or
 - 1024 (iii) vote more than 5% of a class of voting securities of an entity by another entity.
- 1025 (o) (i) "Control person" means an individual identified by an entity registered with the
- 1026 nationwide database as being ~~[the]~~ an individual ~~[primarily responsible for]~~ directing the
- 1027 management or policies of the entity.
 - 1028 (ii) "Control person" may include one of the following who is identified as provided in
 - 1029 Subsection (1)(o)(i):
 - 1030 (A) a manager;
 - 1031 (B) a managing partner;
 - 1032 (C) a director;
 - 1033 (D) an executive officer; or
 - 1034 (E) an individual who performs a function similar to an individual listed in this
 - 1035 Subsection (1)(o)(ii).
- 1036 (p) "Depository institution" is as defined in Section 7-1-103.
- 1037 (q) "Director" means the director of the division.

- 1038 (r) "Division" means the Division of Real Estate.
- 1039 (s) "Dwelling" means a residential structure attached to real property that contains one
- 1040 to four units including any of the following if used as a residence:
- 1041 (i) a condominium unit;
- 1042 (ii) a cooperative unit;
- 1043 (iii) a manufactured home; or
- 1044 (iv) a house.
- 1045 (t) "Entity" means:
- 1046 (i) a corporation;
- 1047 (ii) a limited liability company;
- 1048 (iii) a partnership;
- 1049 (iv) a company;
- 1050 (v) an association;
- 1051 (vi) a joint venture;
- 1052 (vii) a business trust;
- 1053 (viii) a trust; or
- 1054 (ix) another organization.
- 1055 (u) "Executive director" means the executive director of the Department of Commerce.
- 1056 (v) "Federal licensing requirements" means Secure and Fair Enforcement for Mortgage
- 1057 Licensing, 12 U.S.C. Sec. 5101 et seq.
- 1058 (w) "Foreclosure rescue" means, for compensation or with the expectation of receiving
- 1059 valuable consideration, to:
- 1060 (i) engage, or offer to engage, in an act that:
- 1061 (A) the person represents will assist a borrower in preventing a foreclosure; and
- 1062 (B) relates to a transaction involving the transfer of title to residential real property; or
- 1063 (ii) as an employee or agent of another person:
- 1064 (A) solicit, or offer that the other person will engage in an act described in Subsection
- 1065 (1)(w)(i); or

1066 (B) negotiate terms in relationship to an act described in Subsection (1)(w)(i).
1067 (x) "Inactive status" means a dormant status into which an unexpired license is placed
1068 when the holder of the license is not currently engaging in the business of residential mortgage
1069 loans.
1070 (y) "Licensee" means a person licensed with the division under this chapter.
1071 (z) "Licensing examination" means the examination required by Section 61-2c-204.1 or
1072 61-2c-206 for an individual to obtain a license under this chapter.
1073 (aa) "Loan modification assistance" means, for compensation or with the expectation
1074 of receiving valuable consideration, to:
1075 (i) act, or offer to act, on behalf of a person to:
1076 (A) obtain a loan term of a residential mortgage loan that is different from an existing
1077 loan term including:
1078 (I) an increase or decrease in an interest rate;
1079 (II) a change to the type of interest rate;
1080 (III) an increase or decrease in the principal amount of the residential mortgage loan;
1081 (IV) a change in the number of required period payments;
1082 (V) an addition of collateral;
1083 (VI) a change to, or addition of, a prepayment penalty;
1084 (VII) an addition of a cosigner; or
1085 (VIII) a change in persons obligated under the existing residential mortgage loan; or
1086 (B) substitute a new residential mortgage loan for an existing residential mortgage
1087 loan; or
1088 (ii) as an employee or agent of another person:
1089 (A) solicit, or offer that the other person will engage in an act described in Subsection
1090 (1)(aa)(i); or
1091 (B) negotiate terms in relationship to an act described in Subsection (1)(aa)(i).
1092 (bb) (i) Except as provided in Subsection (1)(bb)(ii), "mortgage loan originator" means
1093 an individual who for compensation or in expectation of compensation:

- 1094 (A) (I) takes a residential mortgage loan application; or
- 1095 (II) offers or negotiates terms of a residential mortgage loan for the purpose of:
- 1096 (Aa) a purchase;
- 1097 (Bb) a refinance;
- 1098 (Cc) a loan modification assistance; or
- 1099 (Dd) a foreclosure rescue; and
- 1100 (B) is licensed as a mortgage loan originator in accordance with this chapter.
- 1101 (ii) "Mortgage loan originator" does not include a person who:
- 1102 (A) is described in Subsection (1)(bb)(i), but who performs exclusively administrative
- 1103 or clerical tasks as described in Subsection (1)(g)(ii)(A);
- 1104 (B) (I) is licensed under Chapter 2f, Real Estate Licensing and Practices Act;
- 1105 (II) performs only real estate brokerage activities; and
- 1106 (III) receives no compensation from:
- 1107 (Aa) a lender;
- 1108 (Bb) a principal lending manager; or
- 1109 (Cc) an agent of a lender or principal lending manager; or
- 1110 (C) is solely involved in extension of credit relating to a timeshare plan, as defined in
- 1111 11 U.S.C. Sec. 101(53D).
- 1112 (cc) "Nationwide database" means the Nationwide Mortgage Licensing System and
- 1113 Registry, authorized under federal licensing requirements.
- 1114 (dd) "Nontraditional mortgage product" means a mortgage product other than a 30-year
- 1115 fixed rate mortgage.
- 1116 (ee) "Person" means an individual or entity.
- 1117 (ff) "Prelicensing education" means education taken by an individual seeking to be
- 1118 licensed under this chapter in order to meet the education requirements imposed by Section
- 1119 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.
- 1120 (gg) (i) "Principal lending manager" means an individual licensed as a principal
- 1121 lending manager under Section 61-2c-206 to transact the business of residential mortgage

1122 loans.

1123 (ii) An individual who is a principal lending manager may transact the business of
1124 residential mortgage loans as a mortgage loan originator.

1125 (hh) "Record" means information that is:

1126 (i) prepared, owned, received, or retained by a person; and

1127 (ii) (A) inscribed on a tangible medium; or

1128 (B) (I) stored in an electronic or other medium; and

1129 (II) in a perceivable and reproducible form.

1130 (ii) "Residential mortgage loan" means an extension of credit, if:

1131 (i) the loan or extension of credit is secured by a:

1132 (A) mortgage;

1133 (B) deed of trust; or

1134 (C) consensual security interest;

1135 (ii) the mortgage, deed of trust, or consensual security interest described in Subsection
1136 (1)(ii)(i):

1137 (A) is on a dwelling located in the state; and

1138 (B) is created with the consent of the owner of the residential real property; and

1139 (iii) solely for the purposes of defining "mortgage loan originator," the extension of
1140 credit is primarily for personal, family, or household use.

1141 (jj) "Sponsorship" means an association in accordance with Section 61-2c-209 between
1142 an individual licensed under this chapter and an entity licensed under this chapter.

1143 (kk) "State" means:

1144 (i) a state, territory, or possession of the United States;

1145 (ii) the District of Columbia; or

1146 (iii) the Commonwealth of Puerto Rico.

1147 (ll) "Unique identifier" is as defined in 12 U.S.C. Sec. 5102.

1148 (mm) "Utah-specific" means an educational or examination requirement under this
1149 chapter that relates specifically to Utah.

1150 (2) (a) If a term not defined in this section is defined by rule, the term shall have the
1151 meaning established by the division by rule made in accordance with Title 63G, Chapter 3,
1152 Utah Administrative Rulemaking Act.

1153 (b) If a term not defined in this section is not defined by rule, the term shall have the
1154 meaning commonly accepted in the business community.

1155 Section 14. Section **61-2c-103** is amended to read:

1156 **61-2c-103. Powers and duties of the division.**

1157 (1) The division shall administer this chapter.

1158 (2) In addition to a power or duty expressly provided in this chapter, the division may:

1159 (a) receive and act on a complaint including:

1160 (i) taking action designed to obtain voluntary compliance with this chapter; or

1161 (ii) commencing an administrative or judicial proceeding on the division's own
1162 initiative;

1163 (b) establish one or more programs for the education of consumers with respect to
1164 residential mortgage loans;

1165 (c) (i) make one or more studies appropriate to effectuate the purposes and policies of
1166 this chapter; and

1167 (ii) make the results of the studies described in Subsection (2)(c)(i) available to the
1168 public;

1169 (d) visit and investigate a person licensed under this chapter, regardless of whether the
1170 person is located in Utah; ~~and~~

1171 (e) employ one or more necessary hearing examiners, investigators, clerks, and other
1172 employees and agents~~[-]; and~~

1173 (f) establish fees under Section 63J-1-504 for:

1174 (i) processing an application for licensing or certification; and

1175 (ii) any other function required or permitted by this chapter.

1176 (3) The division shall make rules for the administration of this chapter in accordance
1177 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including:

- 1178 (a) licensure procedures for:
- 1179 (i) a person required by this chapter to obtain a license with the division; and
- 1180 (ii) the establishment of a branch office by an entity;
- 1181 (b) proper handling of money received by a licensee;
- 1182 (c) record-keeping requirements by a licensee, including proper disposal of a record;
- 1183 (d) certification procedures for certifying an education provider; and
- 1184 (e) standards of conduct for a licensee or certified education provider.
- 1185 (4) The division may by rule made in accordance with Title 63G, Chapter 3, Utah
- 1186 Administrative Rulemaking Act, require as a condition of maintaining a license or certification
- 1187 under this chapter that a person comply with a requirement of the nationwide database if:
- 1188 (a) required for uniformity amongst states; and
- 1189 (b) not inconsistent with this chapter.
- 1190 (5) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah
- 1191 Administrative Rulemaking Act, provide a process under which an individual may challenge
- 1192 information contained in the nationwide database.
- 1193 (6) The division shall annually:
- 1194 (a) review the requirements related to the nationwide database imposed by federal
- 1195 licensing requirements or the nationwide database on:
- 1196 (i) the division;
- 1197 (ii) a licensee under this chapter;
- 1198 (iii) a certified education provider; or
- 1199 (iv) an approved examination provider; and
- 1200 (b) after the review required by Subsection (6)(a):
- 1201 (i) report to the Business and Labor Interim Committee the impact of the requirements
- 1202 on the implementation by the division of this chapter; and
- 1203 (ii) recommend legislation, if any, to the Business and Labor Interim Committee
- 1204 related to how the division should coordinate with the nationwide database.
- 1205 (7) The division may enter into a relationship or contract with the nationwide database

1206 or another entity designated by the nationwide database to do the following related to a licensee
1207 or other person subject to this chapter:

- 1208 (a) collect or maintain a record; and
- 1209 (b) process a transaction fee or other fee.

1210 (8) The division shall regularly report the following to the nationwide database:

- 1211 (a) a violation of this chapter;
- 1212 (b) disciplinary action under this chapter; and
- 1213 (c) other information relevant to this chapter.

1214 (9) If a person pays a fee or costs to the division with a negotiable instrument [~~and the~~
1215 ~~negotiable instrument~~] or any other method that is not honored for payment:

- 1216 (a) the transaction for which the payment is submitted is voidable by the division;
- 1217 (b) the division may reverse the transaction if payment of the applicable fee or costs is
1218 not received in full; and

1219 (c) the person's license, certification, or registration is automatically suspended:

- 1220 (i) beginning the day on which the payment is due; and
- 1221 (ii) ending the day on which payment is made in full.

1222 Section 15. Section **61-2c-202** is amended to read:

1223 **61-2c-202. Licensure procedures.**

1224 (1) To apply for licensure under this chapter an applicant shall in a manner provided by
1225 the division by rule:

- 1226 (a) if the applicant is an entity, submit a licensure statement that:
 - 1227 (i) lists any name under which the entity will transact business in this state;
 - 1228 (ii) lists the address of the principal business location of the entity;
 - 1229 (iii) identifies the principal lending manager of the entity;
 - 1230 (iv) contains the signature of the principal lending manager;
 - 1231 (v) identifies the one or more control persons for the entity;
 - 1232 (vi) identifies the jurisdictions in which the entity is registered, licensed, or otherwise
1233 regulated in the business of residential mortgage loans;

1234 (vii) discloses any adverse administrative action taken by an administrative agency
1235 against:

1236 (A) the entity; or
1237 (B) any control person for the entity;

1238 (viii) discloses any history of criminal proceedings involving any control person for the
1239 entity; and

1240 (ix) includes any information required by the division by rule;

1241 (b) if the applicant is an individual:

1242 (i) submit a licensure statement that identifies the entity with which the applicant is
1243 sponsored;

1244 (ii) authorize a criminal background check through the nationwide database accessing:

1245 (A) the Utah Bureau of Criminal Identification, if the nationwide database is able to
1246 obtain information from the Utah Bureau of Criminal Identification; and

1247 (B) the Federal Bureau of Investigation;

1248 (iii) submit evidence using a method approved by the division by rule of having
1249 successfully completed approved prelicensing education in accordance with Section
1250 61-2c-204.1;

1251 (iv) submit evidence using a method approved by the division by rule of having
1252 successfully passed any required licensing examination in accordance with Section
1253 61-2c-204.1; and

1254 (v) submit evidence using a method approved by the division by rule of having
1255 successfully registered in the nationwide database, including paying a fee required by the
1256 nationwide database; and

1257 (c) pay to the division:

1258 (i) an application fee established by the division in accordance with Section 63J-1-504;
1259 and

1260 (ii) the reasonable expenses incurred by the division in processing the application for
1261 licensure.

1262 (2) (a) Upon receiving an application, the division, with the concurrence of the
1263 commission, shall determine whether the applicant:
1264 (i) meets the qualifications for licensure; and
1265 (ii) complies with this section.
1266 (b) If the division, with the concurrence of the commission, determines that an
1267 applicant meets the qualifications for licensure and complies with this section, the division
1268 shall issue the applicant a license.
1269 (c) If the division, with the concurrence of the commission, determines that the
1270 division requires more information to make a determination under Subsection (2)(a), the
1271 division may:
1272 (i) hold the application pending further information about an applicant's criminal
1273 background or history related to adverse administrative action in any jurisdiction; or
1274 (ii) issue a conditional license:
1275 (A) pending the completion of a criminal background check; and
1276 (B) subject to probation, suspension, or revocation if the criminal background check
1277 reveals that the applicant did not truthfully or accurately disclose on the licensing application a
1278 criminal history or other history related to adverse administrative action.
1279 (3) (a) The commission may delegate to the division the authority to:
1280 (i) review a class or category of application for an initial or renewed license;
1281 (ii) determine whether an applicant meets the qualifications for licensure;
1282 (iii) conduct a necessary hearing on an application; and
1283 (iv) approve or deny a license application without concurrence by the commission.
1284 (b) If the commission delegates to the division the authority to approve or deny an
1285 application without concurrence by the commission and the division denies an application for
1286 licensure, the applicant who is denied licensure may petition the commission for a de novo
1287 review of the [~~denial~~] application.
1288 (c) An applicant who is denied licensure under Subsection (3)(b) may seek agency
1289 review by the executive director only after the commission reviews the division's denial of the

1290 applicant's application.

1291 (d) Subject to Subsection (3)(c) and in accordance with Title 63G, Chapter 4,
1292 Administrative Procedures Act, an applicant who is denied licensure under this chapter may
1293 submit a request for agency review to the executive director within 30 days following the day
1294 on which the commission order denying the licensure is issued.

1295 Section 16. Section **61-2c-203** is amended to read:

1296 **61-2c-203. General qualifications for licensure.**

1297 (1) To qualify for licensure under this chapter, a person shall demonstrate through
1298 procedures established by rule made by the division in accordance with Title 63G, Chapter 3,
1299 Utah Administrative Rulemaking Act:

1300 (a) financial responsibility;

1301 (b) good moral character, honesty, integrity, and truthfulness; and

1302 (c) the competence to transact the business of residential mortgage loans, including
1303 general fitness such as to command the confidence of the community and to warrant a
1304 determination that the person will operate honestly, fairly, and efficiently within the purposes
1305 of this chapter.

1306 [~~(2) If an applicant is an individual, the applicant may not have:~~]

1307 [~~(a) been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner
1308 to, or resolved by diversion or its equivalent:]~~]

1309 [~~(i) a felony involving an act of fraud, dishonesty, a breach of trust, or money
1310 laundering; or]~~]

1311 [~~(ii) a felony in the seven years preceding the day on which an application is submitted
1312 to the division;]~~]

1313 [~~(b) in the five years preceding the day on which an application is submitted to the
1314 division, been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner
1315 to, or resolved by diversion its equivalent:]~~]

1316 [~~(i) a class B or class C misdemeanor involving moral turpitude; or]~~]

1317 [~~(ii) a crime in another jurisdiction that is the equivalent of a class B or class C~~]

1318 ~~misdemeanor involving moral turpitude;]~~

1319 ~~[(e) had a license as a mortgage loan originator revoked by a governmental jurisdiction~~
1320 ~~at any time;]~~

1321 ~~[(d) had a license or registration suspended, surrendered, canceled, or denied in the five~~
1322 ~~years preceding the date the individual applies for licensure if:]~~

1323 ~~[(i) the registration or license is issued by this state or another jurisdiction; and]~~

1324 ~~[(ii) the suspension, surrender, cancellation, or denial is based on misconduct in a~~
1325 ~~professional capacity that relates to moral character, honesty, integrity, truthfulness, or the~~
1326 ~~competency to transact the business of residential mortgage loans;]~~

1327 ~~[(e) been the subject of a bar by the Securities and Exchange Commission, the New~~
1328 ~~York Stock Exchange, or the National Association of Securities Dealers within the five years~~
1329 ~~preceding the date the individual applies for registration; or]~~

1330 ~~[(f) had a permanent injunction entered against the individual:]~~

1331 ~~[(i) by a court or administrative agency; and]~~

1332 ~~[(ii) on the basis of:]~~

1333 ~~[(A) conduct or a practice involving the business of residential mortgage loans; or]~~

1334 ~~[(B) conduct involving fraud, misrepresentation, or deceit.]~~

1335 ~~[(3)]~~ (2) If an applicant is an entity, the applicant may not have a control person who
1336 fails to meet the requirements of Subsection ~~[(2)]~~ (1) for an individual applicant.

1337 Section 17. Section **61-2c-205** is amended to read:

1338 **61-2c-205. Term of licensure -- Renewal -- Reporting of changes.**

1339 (1) (a) A license issued under this chapter expires as follows:

1340 (i) for the calendar year the license is issued:

1341 (A) if the license is issued on or before October 31, the license expires on December 31
1342 of the same calendar year; and

1343 (B) if the license is issued on or after November 1, the license expires on December 31
1344 of the following calendar year; and

1345 (ii) after the December 31 on which a license expires under Subsection (1)(a)(i), a

1346 license expires annually on December 31.

1347 (b) Notwithstanding Subsection (1)(a), the time period of a license may be extended or
1348 shortened by as much as one year to maintain or change a renewal cycle established by rule by
1349 the division.

1350 (2) To renew a license, no later than the date the license expires, a licensee shall in a
1351 manner provided by the division by rule:

1352 (a) file a renewal statement;

1353 (b) furnish the information required by Subsection 61-2c-202(1);

1354 (c) renew the licensee's registration with the nationwide database, including the
1355 payment of a fee required by the nationwide database;

1356 (d) pay a fee to the division established by the division in accordance with Section
1357 63J-1-504; and

1358 (e) if the licensee is an individual and the individual's license is in active status at the
1359 time of application for renewal, submit proof of having completed during the year before
1360 application the continuing education required under Section 61-2c-204.1.

1361 (3) (a) A licensee under this chapter shall notify the division in a manner provided by
1362 the division by rule within 10 days of the date on which there is a change in:

1363 (i) a name under which the licensee transacts the business of residential mortgage loans
1364 in this state;

1365 (ii) (A) if the licensee is an entity, the business location of the licensee; or

1366 (B) if the licensee is an individual, the home and business addresses of the individual;

1367 (iii) the principal lending manager of the entity;

1368 (iv) the entity with which an individual licensee is licensed to conduct the business of
1369 residential mortgage loans; or

1370 (v) any other information that is defined as material by rule made by the division.

1371 (b) Failure to notify the division of a change described in Subsection (3)(a) is separate
1372 grounds for disciplinary action against a licensee.

1373 (c) The division may charge a fee established in accordance with Section 63J-1-504 for

1374 processing a change that a licensee is required to report to the division under Subsection (3)(a).

1375 (4) (a) A licensee shall notify the division by sending the division a signed statement
1376 within 10 business days of:

1377 [~~(a)~~] (i) (A) a conviction of a [~~criminal offense~~] felony, class A misdemeanor, or class
1378 B misdemeanor;

1379 [~~(ii)~~] (B) the entry of a plea in abeyance to a [~~criminal offense~~] felony, class A
1380 misdemeanor, or class B misdemeanor; or

1381 [~~(iii)~~] (C) the potential resolution of a [~~criminal case~~] felony, class A misdemeanor, or
1382 class B misdemeanor by [~~:(A)~~] a diversion agreement[;], or [~~(B)~~] any other agreement under
1383 which a criminal charge is held in suspense for a period of time;

1384 [~~(b)~~] (ii) filing a personal bankruptcy or bankruptcy of a business that transacts the
1385 business of residential mortgage loans;

1386 [~~(c)~~] (iii) the suspension, revocation, surrender, cancellation, or denial of a professional
1387 license or professional registration of the licensee, whether the license or registration is issued
1388 by this state or another jurisdiction; or

1389 [~~(d)~~] (iv) the entry of a cease and desist order or a temporary or permanent injunction:

1390 [~~(i)~~] (A) against the licensee by a court or licensing agency; and

1391 [~~(ii)~~] (B) based on [~~:(A)~~] conduct or a practice involving the business of residential
1392 mortgage loans[;], or [~~(B)~~] conduct involving fraud, misrepresentation, or deceit.

1393 (b) The commission, with the concurrence of the division, shall enforce the reporting
1394 requirement under this Subsection (4) pursuant to Section 61-2c-402.

1395 (5) (a) A license under this chapter expires if the licensee does not apply to renew the
1396 license on or before the expiration date of the license.

1397 (b) A licensee whose license has expired may apply to reinstate the expired license, in
1398 a manner provided by the division by rule by:

1399 (i) requesting reinstatement;

1400 (ii) paying to the division a renewal fee and a late fee determined by the division under
1401 Section 63J-1-504; and

1402 (iii) reinstating the licensee's registration with the nationwide database, including the
1403 payment of a fee required by the nationwide database.

1404 Section 18. Section **61-2c-301** is amended to read:

1405 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

1406 (1) A person transacting the business of residential mortgage loans in this state may
1407 not:

1408 (a) give or receive compensation or anything of value in exchange for a referral of
1409 residential mortgage loan business;

1410 (b) charge a fee in connection with a residential mortgage loan transaction:

1411 (i) that is excessive; or

1412 [~~(ii) if the person does not comply with Section 70D-2-305;~~]

1413 (ii) without providing to the loan applicant a written statement signed by the loan
1414 applicant:

1415 (A) stating whether or not the fee or deposit is refundable; and

1416 (B) describing the conditions, if any, under which all or a portion of the fee or deposit
1417 will be refunded to the applicant;

1418 (c) give or receive compensation or anything of value in exchange for a referral of
1419 settlement or loan closing services related to a residential mortgage loan transaction;

1420 (d) do any of the following to induce a lender to extend credit as part of a residential
1421 mortgage loan transaction:

1422 (i) make a false statement or representation;

1423 (ii) cause false documents to be generated; or

1424 (iii) knowingly permit false information to be submitted by any party;

1425 (e) give or receive compensation or anything of value, or withhold or threaten to
1426 withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in
1427 reaching a value conclusion in a residential mortgage loan transaction, except that it is not a
1428 violation of this section for a licensee to withhold payment because of a bona fide dispute
1429 regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards

1430 of Professional Appraisal Practice;

1431 (f) violate or not comply with:

1432 (i) this chapter;

1433 (ii) an order of the commission or division; or

1434 (iii) a rule made by the division;

1435 (g) fail to respond within the required time period to:

1436 (i) a notice or complaint of the division; or

1437 (ii) a request for information from the division;

1438 (h) make false representations to the division, including in a licensure statement;

1439 (i) for a residential mortgage loan transaction beginning on or after January 1, 2004,

1440 engage in the business of residential mortgage loans with respect to the transaction if the

1441 person also acts in any of the following capacities with respect to the same residential mortgage

1442 loan transaction:

1443 (i) appraiser;

1444 (ii) escrow agent;

1445 (iii) real estate agent;

1446 (iv) general contractor; or

1447 (v) title insurance producer;

1448 (j) order a title insurance report or hold a title insurance policy unless the person

1449 provides to the title insurer a copy of a valid, current license under this chapter;

1450 (k) engage in unprofessional conduct as defined by rule;

1451 (l) engage in an act or omission in transacting the business of residential mortgage

1452 loans that constitutes dishonesty, fraud, or misrepresentation;

1453 (m) engage in false or misleading advertising;

1454 (n) (i) fail to account for money received in connection with a residential mortgage

1455 loan;

1456 (ii) use money for a different purpose from the purpose for which the money is

1457 received; or

1458 (iii) except as provided in Subsection (4), retain money paid for services if the services
1459 are not performed;

1460 (o) fail, within 90 calendar days of a request from a borrower who has paid for an
1461 appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;

1462 (p) engage in an act that is performed to:

1463 (i) evade this chapter; or

1464 (ii) assist another person to evade this chapter;

1465 (q) recommend or encourage default, delinquency, or continuation of an existing
1466 default or delinquency, by a mortgage applicant on an existing indebtedness before the closing
1467 of a residential mortgage loan that will refinance all or part of the indebtedness;

1468 (r) in the case of the principal lending manager of an entity or a branch office of an
1469 entity, fail to exercise reasonable supervision over the activities of:

1470 (i) unlicensed staff; and

1471 (ii) a mortgage loan originator who is affiliated with the principal lending manager;

1472 (s) pay or offer to pay an individual who does not hold a license under this chapter for
1473 work that requires the individual to hold a license under this chapter;

1474 (t) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

1475 (i) provide a title insurance product or service without the approval required by Section
1476 31A-2-405; or

1477 (ii) knowingly provide false or misleading information in the statement required by
1478 Subsection 31A-2-405(2);

1479 (u) represent to the public that the person can or will perform any act of a mortgage
1480 loan originator if that person is not licensed under this chapter because the person is exempt
1481 under Subsection 61-2c-102(1)(g)(ii)(A), including through:

1482 (i) advertising;

1483 (ii) a business card;

1484 (iii) stationery;

1485 (iv) a brochure;

- 1486 (v) a sign;
- 1487 (vi) a rate list; or
- 1488 (vii) other promotional item; or
- 1489 (v) (i) engage in an act of loan modification assistance without being licensed under
- 1490 this chapter;
- 1491 (ii) engage in an act of foreclosure rescue that requires licensure as a real estate agent
- 1492 or real estate broker under Chapter 2, Division of Real Estate, without being licensed under
- 1493 that chapter;
- 1494 (iii) engage in an act of loan modification assistance without entering into a written
- 1495 agreement specifying which one or more acts of loan modification assistance will be
- 1496 completed;
- 1497 [~~(iii)~~] (iv) request or require a person to pay a fee [~~if:~~] before obtaining:
- 1498 [~~(A) the person is required to pay the fee before entering into a written agreement~~
- 1499 ~~specifying what one or more acts of loan modification assistance will be completed if the fee is~~
- 1500 ~~paid; or]~~
- 1501 [~~(B) in a case when the residential mortgage loan that is the subject of the loan~~
- 1502 ~~modification assistance is foreclosed within one year of the day on which the person enters into~~
- 1503 ~~a written agreement, the person is required to forfeit the fee for any reason;]~~
- 1504 (A) a written offer for a loan modification from the person's lender or servicer; and
- 1505 (B) the person's written acceptance of the offer from the lender or servicer;
- 1506 [~~(iv)~~] (v) induce a person seeking a loan modification to hire the licensee to engage in
- 1507 an act of loan modification assistance by:
- 1508 (A) suggesting to the person that the licensee has a special relationship with the
- 1509 person's lender or loan servicer; or
- 1510 (B) falsely representing or advertising that the licensee is acting on behalf of:
- 1511 (I) a government agency;
- 1512 (II) the person's lender or loan servicer; or
- 1513 (III) a nonprofit or charitable institution;

1514 [~~(v)~~] (vi) recommend or participate in a loan modification that requires a person to:

1515 (A) transfer title to real property to the licensee or to a [~~third-party~~] third-party with
1516 whom the licensee has a business relationship or financial interest;

1517 (B) make a mortgage payment to a person other than the person's loan servicer; or

1518 (C) refrain from contacting the person's:

1519 (I) lender;

1520 (II) loan servicer;

1521 (III) attorney;

1522 (IV) credit counselor; or

1523 (V) housing counselor; or

1524 [~~(vi)~~] (vii) for an agreement for loan modification assistance entered into on or after
1525 May 11, 2010, engage in an act of loan modification assistance without offering in writing to
1526 the person entering into the agreement for loan modification assistance a right to cancel the
1527 agreement within three business days after the day on which the person enters the agreement.

1528 (2) Whether or not the crime is related to the business of residential mortgage loans, it
1529 is a violation of this chapter for a licensee or a person who is a certified education provider to
1530 do any of the following with respect to a criminal offense that involves moral turpitude:

1531 (a) be convicted;

1532 (b) plead guilty or nolo contendere;

1533 (c) enter a plea in abeyance; or

1534 (d) be subjected to a criminal disposition similar to the ones described in Subsections
1535 (2)(a) through (c).

1536 (3) A principal lending manager does not violate Subsection (1)(r) if:

1537 (a) in contravention of the principal lending manager's written policies and
1538 instructions, an affiliated licensee of the principal lending manager violates:

1539 (i) this chapter; or

1540 (ii) rules made by the division under this chapter;

1541 (b) the principal lending manager established and followed reasonable procedures to

1542 ensure that affiliated licensees receive adequate supervision;

1543 (c) upon learning of a violation by an affiliated licensee, the principal lending manager
1544 attempted to prevent or mitigate the damage;

1545 (d) the principal lending manager did not participate in or ratify the violation by an
1546 affiliated licensee; and

1547 (e) the principal lending manager did not attempt to avoid learning of the violation.

1548 (4) Notwithstanding Subsection (1)(n)(iii), a licensee may, upon compliance with
1549 Section 70D-2-305, charge a reasonable cancellation fee for work done originating a mortgage
1550 if the mortgage is not closed.

1551 Section 19. Section **61-2c-302** is amended to read:

1552 **61-2c-302. Record requirements.**

1553 (1) For the time period specified in Subsection (2), a licensee shall make or possess any
1554 record required for that licensee by a rule made by the division.

1555 (2) A licensee shall maintain and safeguard in its possession a record described in
1556 Subsection (1) for four years from the last to occur of the following:

1557 (a) the final entry on a residential mortgage loan is made by that licensee;

1558 (b) if the residential mortgage loan is serviced by the licensee:

1559 (i) the residential mortgage loan is paid in full; or

1560 (ii) the licensee ceases to service the residential mortgage loan; or

1561 (c) if the residential mortgage loan is not serviced by the licensee, the residential
1562 mortgage loan is closed.

1563 (3) A licensee shall:

1564 (a) make available to the division for inspection and copying during normal business
1565 hours all records required to be maintained under this chapter; and

1566 (b) upon reasonable notice from the division to a licensee, produce all records
1567 described in Subsection (3)(a) that are related to an investigation being conducted by the
1568 division at the division office for inspection and copying by the division.

1569 (4) A licensee who is an entity shall maintain and produce for inspection by the

1570 division a current list of all individuals whose licenses are sponsored by the entity.

1571 (5) (a) A licensee who engages in an activity as a mortgage loan originator shall
1572 maintain a report of condition submitted to the nationwide database as required by 12 U.S.C.
1573 Sec. 5104(e) for at least four years from the day on which the licensee submits the report of
1574 condition to the nationwide database.

1575 (b) Upon request by the division, a mortgage loan originator shall produce a report of
1576 condition for inspection by the division.

1577 Section 20. Section **61-2c-402** is amended to read:

1578 **61-2c-402. Disciplinary action.**

1579 (1) Subject to the requirements of Section 61-2c-402.1, the commission, with the
1580 concurrence of the division, may impose a sanction described in Subsection (2) against a
1581 person if the person:

1582 (a) (i) is a licensee or person required to be licensed under this chapter; and

1583 (ii) violates this chapter; or

1584 (b) (i) is a certified education provider or person required to be certified to provide
1585 prelicensing or continuing education under this chapter; and

1586 (ii) violates this chapter.

1587 (2) The commission, with the concurrence of the director, may against a person
1588 described in Subsection (1):

1589 (a) impose an educational requirement;

1590 (b) impose a civil penalty against the individual or entity in an amount not to exceed
1591 the greater of:

1592 (i) \$5,000 for each violation; or

1593 (ii) the amount equal to any gain or economic benefit derived from each violation;

1594 (c) deny an application for an original license;

1595 (d) do any of the following to a license under this chapter:

1596 (i) suspend;

1597 (ii) revoke;

- 1598 (iii) place on probation;
- 1599 (iv) deny renewal;
- 1600 (v) deny reinstatement; or
- 1601 (vi) in the case of a denial of a license or a suspension that extends to the expiration
- 1602 date of a license, set a waiting period for a person to apply for a license under this chapter;
- 1603 (e) issue a cease and desist order;
- 1604 (f) require the reimbursement of the division of costs incurred by the division related to
- 1605 the recovery, storage, or destruction of a record that the person disposes of in a manner that
- 1606 violates this chapter or a rule made under this chapter;
- 1607 (g) modify a sanction described in Subsections (2)(a) through (f) if the commission
- 1608 finds that the person complies with court ordered restitution; or
- 1609 (h) impose any combination of sanctions described in this Subsection (2).
- 1610 (3) (a) If the commission, with the concurrence of the division, issues an order that
- 1611 orders a fine or educational requirements as part of a disciplinary action against a person,
- 1612 including a stipulation and order, the commission shall state in the order the deadline by which
- 1613 the person shall comply with the fine or educational requirements.
- 1614 (b) If a person fails to comply with a stated deadline:
- 1615 (i) the person's license or certificate is automatically suspended:
- 1616 (A) beginning the day specified in the order as the deadline for compliance; and
- 1617 (B) ending the day on which the person complies in full with the order; and
- 1618 (ii) if the person fails to pay a fine required by an order, the division may begin a
- 1619 collection process:
- 1620 (A) established by the division by rule made in accordance with Title 63G, Chapter 3,
- 1621 Utah Administrative Rulemaking Act; and
- 1622 (B) subject to Title 63A, Chapter 8, Office of State Debt Collection.
- 1623 (4) (a) A person whose license was revoked under this chapter before May 11, 2010,
- 1624 may request that the revocation be converted to a suspension under this Subsection (4):
- 1625 (i) if the revocation was not as a result of a felony conviction involving fraud,

1626 misrepresentation, ~~[or]~~ deceit, dishonesty, breach of trust, or money laundering; and

1627 (ii) by filing a written request with the division.

1628 (b) Upon receipt of a request to convert a revocation under this Subsection (4), the
1629 commission, with the concurrence of the director, shall determine whether to convert the
1630 revocation.

1631 (c) The commission may delegate to the division the authority to make a decision on
1632 whether to convert a revocation.

1633 (d) If the division, acting under Subsection (4)(c), denies a request to convert a
1634 revocation, the person who requests the conversion may appeal the decision in a hearing
1635 conducted by the commission:

1636 (i) after the division denies the request to convert the revocation; and

1637 (ii) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

1638 (e) The commission may delegate to the division or an administrative law judge the
1639 authority to conduct a hearing described in Subsection (4)(d).

1640 Section 21. Section **61-2c-501.5** is amended to read:

1641 **61-2c-501.5. Definitions.**

1642 As used in this part:

1643 (1) "Civil judgment" means a judgment in a civil action that:

1644 (a) is awarded in an action brought against a ~~[real estate licensee]~~ person licensed
1645 under this chapter on the basis of fraud, misrepresentation, or deceit in a residential mortgage
1646 loan transaction; and

1647 (b) awards actual damages.

1648 (2) "Criminal restitution judgment" means a judgment that, in accordance with the
1649 Utah Code of Criminal Procedure, orders criminal restitution to a person and against a ~~[real~~
1650 ~~estate licensee]~~ person licensed under this chapter for a criminal offense involving fraud,
1651 misrepresentation, or deceit in a residential mortgage loan transaction.

1652 (3) "Final judgment" means one of the following judgments upon termination of the
1653 proceedings related to the judgment, including appeals:

- 1654 (a) a civil judgment; or
- 1655 (b) a criminal restitution judgment.
- 1656 (4) "Fund" means the Residential Mortgage Loan Education, Research, and Recovery
- 1657 Fund created in Section 61-2c-501.

1658 Section 22. Section **61-2c-507** is amended to read:

1659 **61-2c-507. Division subrogated -- Authority to revoke license.**

1660 (1) If the division pays a person from the fund in accordance with this part:

1661 (a) the division is subrogated to the rights of that person for the amounts paid out of the

1662 fund; and

1663 (b) any amount and interest recovered by the division shall be deposited in the fund.

1664 (2) (a) Subject to Subsection (2)(b), the license of a licensee for whom payment from

1665 the fund is made under this part is automatically revoked as of the earlier of the day on which:

1666 (i) the division is ordered by a court to pay from the fund; or

1667 (ii) the division pays from the fund.

1668 (b) (i) A person whose license is revoked under Subsection (2)(a) may appeal the

1669 revocation in a de novo hearing conducted by the commission:

1670 (A) after the revocation; and

1671 (B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

1672 (ii) The commission may delegate:

1673 (A) to the division or an administrative law judge the authority to conduct a hearing

1674 described in Subsection (2)(b)(i); or

1675 (B) to the division the authority to make a decision on whether relief from a revocation

1676 should be granted.

1677 (3) Unless the revocation is not upheld after a hearing described in Subsection (2)(b), a

1678 licensee whose license is revoked pursuant to Subsection (2) may not apply for a new license

1679 until the licensee pays into the fund:

1680 (a) the amount paid out of the fund on behalf of the licensee; and

1681 (b) interest at a rate determined by the division with the concurrence of the

1682 commission.

1683 Section 23. Section **61-2e-102** is amended to read:

1684 **61-2e-102. Definitions.**

1685 As used in this chapter:

1686 (1) "Applicable appraisal standards" means:

1687 (a) the Uniform Standards for Professional Appraisal Practice:

1688 (i) published by the Appraisal Foundation; and

1689 (ii) as adopted under Section ~~[61-2b-27]~~ 61-2g-403;

1690 (b) Chapter ~~[2b]~~ 2g, Real Estate Appraiser Licensing and Certification Act; and

1691 (c) rules made by the board under Chapter ~~[2b]~~ 2g, Real Estate Appraiser Licensing
1692 and Certification Act.

1693 (2) "Appraisal" is as defined in Section ~~[61-2b-2]~~ 61-2g-102.

1694 (3) "Appraisal foundation" is as defined in Section ~~[61-2b-2]~~ 61-2g-102.

1695 (4) "Appraisal management company" means an entity that serves as a third-party
1696 broker of an appraisal service between a client and an appraiser by:

1697 (a) ~~[administers]~~ administering a network of appraisers to perform real estate appraisal
1698 activities for one or more clients;

1699 (b) (i) ~~[receives]~~ receiving a request for a real estate appraisal activity from a client;
1700 and

1701 (ii) for a fee paid by the client, ~~[enters]~~ entering into an agreement with one or more
1702 appraisers to perform the real estate appraisal activity contained in the request; or

1703 ~~[(c) otherwise serves as a third-party broker of an appraisal management service~~
1704 ~~between a client and an appraiser.]~~

1705 (c) any other means.

1706 (5) "Appraisal management service" means a process of:

1707 (a) receiving a request for the performance of a real estate appraisal activity from a
1708 client; and

1709 (b) for a fee paid by the client, entering into an agreement with one or more appraisers

1710 to perform the real estate appraisal activity contained in the request.

1711 (6) "Appraisal report" is as defined in Section ~~[61-2b-2]~~ 61-2g-102.

1712 (7) "Appraiser" means an individual who engages in a real estate appraisal activity.

1713 (8) "Appraiser panel" means a group of appraisers that are selected by an appraisal
1714 management company to perform real estate appraisal activities for the appraisal management
1715 company.

1716 (9) "Board" means the Real Estate Appraiser Licensing and Certification Board that is
1717 created in Section ~~[61-2b-7]~~ 61-2g-204.

1718 (10) "Client" means a person that enters into an agreement with an appraisal
1719 management company for the performance of a real estate appraisal activity.

1720 (11) "Concurrence" means that the entities that are given a concurring role must jointly
1721 agree before an action may be taken.

1722 ~~[(11)]~~ (12) "Controlling person" means:

1723 (a) an owner, officer, or director of an entity seeking to offer appraisal management
1724 services;

1725 (b) an individual employed, appointed, or authorized by an appraisal management
1726 company who has the authority to:

1727 (i) enter into a contractual relationship with a client for the performance of an appraisal
1728 management service; and

1729 (ii) enter into an agreement with an appraiser for the performance of a real estate
1730 appraisal activity; or

1731 (c) an individual who possesses, directly or indirectly, the power to direct or cause the
1732 direction of the management or policies of an appraisal management company.

1733 ~~[(12)]~~ (13) "Director" means the director of the division.

1734 ~~[(13)]~~ (14) "Division" means the Division of Real Estate of the Department of
1735 Commerce.

1736 ~~[(14)]~~ (15) "Entity" means:

1737 (a) a corporation;

- 1738 (b) a partnership;
- 1739 (c) a sole proprietorship;
- 1740 (d) a limited liability company;
- 1741 (e) another business entity; or
- 1742 (f) a subsidiary or unit of an entity described in Subsections [~~(14)~~] (15)(a) through (e).
- 1743 [~~(15)~~] (16) "Person" means an individual or an entity.
- 1744 [~~(16)~~] (17) "Real estate appraisal activity" is as defined in Section [~~61-2b-2~~]

1745 61-2g-102.

1746 Section 24. Section **61-2e-103** is amended to read:

1747 **61-2e-103. Rulemaking.**

1748 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1749 board may make rules, with the concurrence of the division, that are:

- 1750 (1) consistent with this chapter; and
- 1751 (2) necessary to implement this chapter.

1752 Section 25. Section **61-2e-202** is amended to read:

1753 **61-2e-202. Initial registration process.**

1754 (1) (a) To register under this chapter as an appraisal management company, an entity
1755 shall:

- 1756 (i) file with the division a registration application in a form prescribed by the division;
- 1757 (ii) pay to the division a fee determined in accordance with Section 63J-1-504;
- 1758 (iii) if the entity is not a resident of this state, submit an irrevocable consent for service
1759 of process meeting the requirements of Subsection (3); and
- 1760 (iv) have the application for registration approved by the division.

1761 (b) The division shall approve an application if the division finds that the entity:

- 1762 (i) complies with this Subsection (1); and
- 1763 (ii) meets the qualifications under Section 61-2e-201.

1764 (c) The division may, upon compliance with Title 63G, Chapter 4, Administrative
1765 Procedures Act, deny the issuance of a registration to an applicant on any ground enumerated

1766 in this chapter.

1767 (d) If an entity pays a fee or costs to the division with a negotiable instrument or other
1768 method that is not honored for payment:

1769 (i) the transaction for which the payment is submitted is voidable by the division;

1770 (ii) the division may reverse the transaction if payment of the applicable fee or costs is
1771 not received in full; and

1772 (iii) the entity's registration is automatically suspended:

1773 (A) beginning the day on which the payment is due; and

1774 (B) ending the day on which payment is made in full.

1775 (2) A registration application shall include the following:

1776 (a) the name of the entity seeking registration;

1777 (b) a business address of the entity seeking registration;

1778 (c) telephone contact information of the entity seeking registration;

1779 (d) if the entity is not an entity domiciled in this state, the name and contact

1780 information for the entity's agent for service of process in this state;

1781 (e) for each individual who owns 10% or more of the entity:

1782 (i) the individual's name, address, and contact information;

1783 (ii) a statement of whether or not the individual has had a license or certificate to
1784 engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or
1785 revoked in this state or in another state; and

1786 (iii) (A) fingerprint cards in a form acceptable to the division at the time the
1787 registration application is filed; and

1788 (B) consent to a criminal background check by the Utah Bureau of Criminal
1789 Identification and the Federal Bureau of Investigation regarding the application;

1790 (f) the name, address, and contact information for each controlling person;

1791 (g) for the controlling person designated as the contact as required by Section

1792 61-2e-201:

1793 (i) a statement of whether or not the individual has had a license or certificate to

1794 engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or
1795 revoked in this state or in another state; and

1796 (ii) (A) fingerprint cards in a form acceptable to the division at the time the registration
1797 application is filed; and

1798 (B) consent to a criminal background check by the Utah Bureau of Criminal
1799 Identification and the Federal Bureau of Investigation regarding the application;

1800 (h) provide an explanation required by:

1801 (i) Section 61-2e-301, related to adding an individual to an appraiser panel;

1802 (ii) Section 61-2e-302, related to the review of the work of an appraiser; and

1803 (iii) Section 61-2e-303, related to recordkeeping; and

1804 (i) any other information required by the board.

1805 (3) An irrevocable consent for service of process required to be filed under Subsection
1806 (1) shall provide that process may be served on the entity by delivering the process to the
1807 director if:

1808 (a) the service of process is for an action:

1809 (i) in a court of this state against an entity; and

1810 (ii) arising out of an act governed by this chapter; and

1811 (b) a plaintiff cannot, in the exercise of due diligence, obtain personal service upon the
1812 entity.

1813 Section 26. Section **61-2e-203** is amended to read:

1814 **61-2e-203. Criminal background check -- Conditional registration -- Changes in**
1815 **ownership or controlling person.**

1816 (1) The division shall request the Department of Public Safety to complete a Federal
1817 Bureau of Investigation criminal background check for an individual described in Subsection
1818 61-2e-202~~(+)~~(2)(e) or (g) through the national criminal history system or any successor
1819 system.

1820 (2) (a) The entity filing the application under Section 61-2e-202 shall pay the cost of
1821 the criminal background check and the fingerprinting.

1822 (b) [~~Monies~~] Money paid to the division by an entity for the cost of a criminal
1823 background check [~~are~~] is nonlapsing.

1824 (3) (a) A registration issued under Section 61-2e-202 is conditional, pending
1825 completion of a criminal background check.

1826 (b) [~~H~~] (i) A registration shall be immediately and automatically revoked if a criminal
1827 background check discloses that an individual described in Subsection 61-2e-202[~~(1)~~](2)(e) or
1828 (g) fails to accurately disclose a criminal history[~~, the registration is immediately and~~
1829 automatically revoked.] involving:

1830 (A) the appraisal industry;

1831 (B) the appraisal management industry; or

1832 (C) a felony conviction on the basis of an allegation of fraud, misrepresentation, or
1833 deceit.

1834 (ii) If a criminal background check discloses that an individual described in Subsection
1835 61-2e-202(2)(e) or (g) fails to accurately disclose a criminal history other than that described in
1836 Subsection (3)(b)(i), the division shall review the application, and in accordance with rules
1837 made by the division pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
1838 may:

1839 (A) place a condition on a registration;

1840 (B) place a restriction on a registration;

1841 (C) revoke a registration; or

1842 (D) refer the application to the board for a decision.

1843 (c) An entity whose conditional registration is revoked under [~~this~~] Subsection (3)(b)(i)
1844 or whose license is conditioned, restricted, or revoked under Subsection (3)(b)(ii) is entitled to
1845 a post-revocation hearing conducted in accordance with Title 63G, Chapter 4, Administrative
1846 Procedures Act, to challenge the revocation.

1847 (d) The board shall decide whether relief from the revocation of a registration under
1848 this Subsection (3) will be granted, except that relief from [~~a~~] an automatic revocation under
1849 [~~this~~] Subsection (3)(b)(i) may be granted only if:

1850 (i) the criminal history upon which the revocation is based:
1851 (A) did not occur; or
1852 (B) is the criminal history of another individual;
1853 (ii) (A) the revocation is based on a failure to accurately disclose a criminal history;
1854 and
1855 (B) the entity has a reasonable good faith belief at the time of application that there is
1856 no criminal history to be disclosed; or
1857 (iii) the division fails to follow the prescribed procedure for the revocation.
1858 (e) The board may delegate to the division the authority to conduct a post-revocation
1859 hearing under Subsection (3)(d).
1860 [~~(e)~~] (f) If a registration is revoked or a revocation under this Subsection (3) is upheld
1861 after a post-revocation hearing, the entity may not apply for a new registration until at least 12
1862 months after the day on which the registration is revoked.
1863 (4) (a) An appraisal management company shall comply with this Subsection (4) if
1864 there is a change in:
1865 (i) an individual who owns 10% or more of the entity; or
1866 (ii) the controlling person designated as the contact as required by Section 61-2e-201.
1867 (b) If there is a change in an individual described in Subsection (4)(a), within 30 days
1868 of the day on which the change occurs, the appraisal management company shall file with the
1869 division:
1870 (i) the individual's name, address, and contact information;
1871 (ii) a statement of whether or not the individual has had a license or certificate to
1872 engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or
1873 revoked in this state or in another state; and
1874 (iii) (A) fingerprint cards in a form acceptable to the division at the time the
1875 registration application is filed; and
1876 (B) consent to a criminal background check by the Utah Bureau of Criminal
1877 Identification and the Federal Bureau of Investigation regarding the application.

1878 Section 27. Section **61-2e-204** is amended to read:

1879 **61-2e-204. Renewal of a registration.**

1880 (1) (a) A registration under this chapter expires two years from the day on which the
1881 registration is filed.

1882 (b) Notwithstanding Subsection (1)(a), the time period of a registration may be
1883 extended or shortened by as much as one year to maintain or change a renewal cycle
1884 established by rule by the division.

1885 (2) To renew a registration under this chapter, before the day on which the registration
1886 expires, an appraisal management company shall:

1887 (a) file with the division a renewal registration application on a form prescribed by the
1888 division; and

1889 (b) pay to the division a fee determined in accordance with Section 63J-1-504.

1890 (3) A renewal registration application shall include substantially similar information to
1891 the information required under Section 61-2e-202, except that for an individual described in
1892 Subsection 61-2e-202~~(1)~~(2)(e) or (g), the entity is required to report whether the individual
1893 has had:

1894 (a) (i) a conviction of a criminal offense;

1895 (ii) the entry of a plea in abeyance to a criminal offense; or

1896 (iii) the potential resolution of a criminal case by:

1897 (A) a diversion agreement; or

1898 (B) another agreement under which a criminal charge is held in suspense for a period
1899 of time;

1900 (b) a filing of personal bankruptcy or bankruptcy of a business that transacts the
1901 appraisal management services;

1902 (c) the suspension, revocation, surrender, cancellation, or denial of a professional
1903 license or certification, whether the license or registration is issued by this state or another
1904 jurisdiction; or

1905 (d) the entry of a cease and desist order or a temporary or permanent injunction:

- 1906 (i) against the individual by a court or government agency; and
- 1907 (ii) on the basis of:
- 1908 (A) conduct or a practice involving the business of appraisal management services; or
- 1909 (B) conduct involving fraud, misrepresentation, or deceit.

1910 (4) A registration expires if it is not renewed on or before its expiration date, except
1911 that for a period of 30 days after the expiration date, the registration may be reinstated upon
1912 compliance with this section, including payment of a renewal fee and a late fee determined by
1913 the division and the board.

1914 (5) Notwithstanding Subsection (4), the division may extend the term of a license that
1915 would expire under Subsection (4) except for the extension if:

1916 (a) (i) the person complies with the requirements of this section to renew the
1917 registration; and

1918 (ii) the renewal application remains pending at the time of the extension; or

1919 (b) at the time of the extension, there is pending under this chapter a disciplinary
1920 action.

1921 Section 28. Section **61-2e-301** is amended to read:

1922 **61-2e-301. Use of licensed or certified appraisers.**

1923 (1) An appraisal management company required to be registered under this chapter
1924 may not enter into an agreement with an appraiser for the performance of a real estate appraisal
1925 activity unless the appraiser is licensed or certified in good standing pursuant to Chapter [2b]
1926 2g, Real Estate Appraiser Licensing and Certification Act.

1927 (2) (a) An appraisal management company required to be registered under this chapter
1928 shall have a system to verify that an individual added to the appraiser panel of the appraisal
1929 management company holds a license or certificate in good standing in this state pursuant to
1930 Chapter [2b] 2g, Real Estate Appraiser Licensing and Certification Act.

1931 (b) As part of the registration process under Part 2, Registration, an appraisal
1932 management company shall biennially provide an explanation of the system described in
1933 Subsection (2)(a) in the form prescribed by the division.

1934 Section 29. Section **61-2e-307** is amended to read:

1935 **61-2e-307. Prohibitions related to an appraiser.**

1936 (1) An appraisal management company required to be registered under this chapter, or
1937 a controlling person, employee, or agent of the appraisal management company may not
1938 influence or attempt to influence the development, reporting, or review of an appraisal through:

1939 (a) coercion;

1940 (b) extortion;

1941 (c) collusion;

1942 (d) compensation;

1943 (e) instruction;

1944 (f) inducement;

1945 (g) intimidation;

1946 (h) bribery; or

1947 (i) any other manner that would constitute undue influence.

1948 (2) A violation of Subsection (1) includes doing one or more of the following for a
1949 purpose listed in Subsection (1):

1950 (a) withholding or threatening to withhold timely payment for an appraisal;

1951 (b) withholding or threatening to withhold future business for an appraiser;

1952 (c) taking adverse action or threatening to take adverse action against an appraiser
1953 regarding use of the appraiser for a real estate appraisal activity;

1954 (d) expressly or by implication promising future business or increased compensation
1955 for an appraiser;

1956 (e) conditioning one or more of the following on the opinion, conclusion, or valuation
1957 to be reached, or on a preliminary estimate or opinion requested from an appraiser:

1958 (i) a request for a real estate appraisal activity; or

1959 (ii) the payment of consideration;

1960 (f) requesting that an appraiser provide at any time before the appraiser's completion of
1961 a real estate appraisal activity:

- 1962 (i) an estimated, predetermined, or desired valuation in an appraisal report; or
- 1963 (ii) an estimated value or comparable sale;
- 1964 (g) except for a copy of a sales contract for a purchase transaction, providing to an
- 1965 appraiser:
 - 1966 (i) an anticipated, estimated, encouraged, or desired value for a subject property; or
 - 1967 (ii) a proposed or target amount to be loaned to the borrower;
 - 1968 (h) providing to an appraiser, or an individual related to the appraiser, stock or other
 - 1969 financial or non-financial benefits;
 - 1970 (i) allowing the removal of an appraiser from an appraiser panel, without prior written
 - 1971 notice to the appraiser as required by Section 61-2e-306;
 - 1972 (j) obtaining, using, or paying for a subsequent appraisal or ordering an automated
 - 1973 valuation model in connection with a mortgage financing transaction unless:
 - 1974 (i) (A) there is a reasonable basis to believe that the initial appraisal does not meet
 - 1975 applicable appraisal standards; and
 - 1976 (B) the reasonable basis is noted in the loan file; or
 - 1977 (ii) the subsequent appraisal or automated valuation model is done pursuant to a pre- or
 - 1978 post-funding appraisal review or quality control process in accordance with applicable
 - 1979 appraisal standards;
 - 1980 (k) compensating an appraiser in a manner that the person should reasonably have
 - 1981 known would result in the appraiser not conducting a real estate appraisal activity in a manner
 - 1982 consistent with applicable appraisal standards;
 - 1983 (l) engaging in the business of an appraisal management company under an assumed or
 - 1984 fictitious name not properly registered in this state;
 - 1985 (m) accepting a contingent fee for performing an appraisal management service if the
 - 1986 fee is contingent on:
 - 1987 (i) the appraiser report having a predetermined analysis, opinion, or conclusion;
 - 1988 (ii) the analysis, opinion, conclusion, or valuation reached in an appraisal report; or
 - 1989 (iii) the consequences resulting from the appraisal assignment; or

1990 (n) any other act or practice that impairs or attempts to impair an appraiser's
1991 independence, objectivity, or impartiality.

1992 (3) An appraisal management company required to be registered under this chapter, or
1993 a controlling person, employee, or agent of the appraisal management company, may not
1994 require an appraiser to indemnify the appraisal management company against liability except
1995 liability for errors and omissions by the appraiser.

1996 [~~3~~] (4) This section may not be construed to prohibit an appraisal management
1997 company from requesting that an appraiser:

- 1998 (a) provide additional information about the basis for a valuation; or
- 1999 (b) correct an objective factual error in an appraisal report.

2000 [~~4~~] (5) An appraisal management company required to be registered under this
2001 chapter, or a controlling person, employee, or agent of the appraisal management company may
2002 not alter, modify, or otherwise change a completed appraisal report submitted by an appraiser.

2003 Section 30. Section **61-2e-401** is amended to read:

2004 **61-2e-401. Division authority -- Immunity.**

2005 (1) (a) In addition to a power or duty expressly provided in this chapter, the division
2006 may:

- 2007 (i) receive and act on a complaint including:
 - 2008 (A) taking action designed to obtain voluntary compliance with this chapter; or
 - 2009 (B) commencing an administrative or judicial proceeding on the division's own
2010 initiative;

2011 (ii) investigate an entity required to be registered under this chapter, regardless of
2012 whether the entity is located in Utah; and

2013 (iii) employ one or more investigators, clerks, or other employees or agents if:

- 2014 (A) approved by the executive director; and
- 2015 (B) within the budget of the division.

2016 (b) A failure to respond to a request by the division in an investigation under this
2017 chapter is considered to be a separate violation of this chapter, including:

- 2018 (i) failing to respond to a subpoena;
- 2019 (ii) withholding evidence; or
- 2020 (iii) failing to produce a document or record.

2021 (2) (a) If a person is found to have violated this chapter or a rule made under this
 2022 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,
 2023 document, or record required under this chapter, including the costs incurred to copy an
 2024 electronic book, paper, contract, document, or record in a universally readable format.

2025 (b) If a person fails to pay the costs described in Subsection (2)(a) when due, the
 2026 person's registration is automatically suspended:

- 2027 (i) beginning the day on which the payment of costs is due; and
- 2028 (ii) ending the day on which the costs are paid.

2029 ~~[(2)]~~ (3) The division is immune from a civil action or criminal prosecution for
 2030 initiating or assisting in a lawful investigation of an act or participating in a disciplinary
 2031 proceeding under this chapter if the division takes the action:

- 2032 (a) without malicious intent; and
- 2033 (b) in the reasonable belief that the action is taken pursuant to the powers and duties
 2034 vested in the division under this chapter.

2035 Section 31. Section **61-2e-402** is amended to read:

2036 **61-2e-402. Enforcement -- Immunity for board.**

2037 (1) (a) The board may order disciplinary action, with the concurrence of the division,
 2038 against:

- 2039 (i) an entity registered under this chapter;
- 2040 (ii) an entity required to be registered under this chapter; or
- 2041 (iii) a controlling person of an entity described in this Subsection (1)(a).

2042 (b) If the board, with the concurrence of the division, makes a finding described in
 2043 Subsection (2) pursuant to an adjudicative proceeding conducted in accordance with Title 63G,
 2044 Chapter 4, Administrative Procedures Act, the board, with the concurrence of the division,
 2045 may:

- 2046 (i) revoke, suspend, or place an entity's registration on probation;
- 2047 (ii) deny an entity's original registration;
- 2048 (iii) deny an entity's renewal registration;
- 2049 (iv) in the case of denial or revocation of a registration, set a waiting period for an
- 2050 applicant to apply for a registration under this chapter;
- 2051 (v) order remedial education;
- 2052 (vi) impose a civil penalty upon a person not to exceed the greater of:
- 2053 (A) [~~\$2,500~~] \$5,000 for each violation; or
- 2054 (B) the amount of any gain or economic benefit from a violation;
- 2055 (vii) issue a cease and desist order; or
- 2056 (viii) do a combination of Subsections (1)(b)(i) through (vii).
- 2057 (2) Subsection (1) applies if the board finds, with the concurrence of the division, that a
- 2058 person has engaged in, is attempting to, or has attempted to engage in:
- 2059 (a) an act that violates this chapter;
- 2060 (b) an act that violates a rule made [~~by the board~~] under this chapter;
- 2061 (c) procuring a registration for the person or another person by fraud,
- 2062 misrepresentation, or deceit;
- 2063 (d) paying money or attempting to pay money other than a fee provided for by this
- 2064 chapter to an employee of the division to procure a registration under this chapter;
- 2065 (e) an act or omission in the business of an appraisal management company that
- 2066 constitutes dishonesty, fraud, or misrepresentation;
- 2067 (f) unprofessional conduct as defined by statute or rule; or
- 2068 (g) other conduct that constitutes dishonest dealing.
- 2069 (3) (a) If the board, with the concurrence of the director, issues an order that orders a
- 2070 fine or remedial education as part of a disciplinary action against a person, including a
- 2071 stipulation and order, the board shall state in the order the deadline by which the person shall
- 2072 comply with the fine or remedial education requirements.
- 2073 (b) If a person fails to comply by the stated deadline, the person's registration shall be

2074 immediately and automatically suspended:

2075 (i) beginning the day specified in the order as the deadline for compliance; and

2076 (ii) ending the day on which the person complies in full with the order.

2077 (c) If a person fails to pay a fine required by an order, the division shall begin a

2078 collection process:

2079 (i) established by the division by rule made in accordance with Title 63G, Chapter 3,

2080 Utah Administrative Rulemaking Act; and

2081 (ii) subject to Title 63A, Chapter 8, Office of State Debt Collection.

2082 (4) To the extent permitted by federal law, the board, with the concurrence of the

2083 division, may bring a disciplinary proceeding under this chapter for a violation of 15 U.S.C.

2084 Sec. 1639e(i).

2085 [~~(3)~~] (5) A member of the board is immune from a civil action or criminal prosecution

2086 for a disciplinary proceeding under this chapter if:

2087 (a) the action is taken without malicious intent; and

2088 (b) in the reasonable belief that the action taken was taken pursuant to the powers and

2089 duties vested in a member of the board under this chapter.

2090 Section 32. Section **61-2f-102** is amended to read:

2091 **61-2f-102. Definitions.**

2092 As used in this chapter:

2093 (1) "Associate broker" means an individual who is:

2094 (a) employed or engaged as an independent contractor by or on behalf of a principal

2095 broker to perform an act set out in Subsection [~~(17)~~] (18) for valuable consideration; and

2096 (b) licensed under this chapter as an associate broker.

2097 (2) "Branch office" means a principal broker's real estate brokerage office that is not

2098 the principal broker's main office.

2099 (3) "Business day" means a day other than:

2100 (a) a Saturday;

2101 (b) a Sunday; or

2102 (c) a federal or state holiday.

2103 (4) "Business opportunity" means the sale, lease, or exchange of any business that
2104 includes an interest in real estate.

2105 [~~4~~] (5) "Commission" means the Real Estate Commission established under this
2106 chapter.

2107 [~~5~~] (6) "Concurrence" means the entities given a concurring role must jointly agree
2108 for action to be taken.

2109 [~~6~~] (7) "Condominium unit" is as defined in Section 57-8-3.

2110 [~~7~~] (8) "Condominium homeowners' association" means the condominium unit
2111 owners acting as a group in accordance with declarations and bylaws.

2112 [~~8~~] (9) (a) "Condominium hotel" means one or more condominium units that are
2113 operated as a hotel.

2114 (b) "Condominium hotel" does not mean a hotel consisting of condominium units, all
2115 of which are owned by a single entity.

2116 [~~9~~] (10) "Director" means the director of the Division of Real Estate.

2117 [~~10~~] (11) "Division" means the Division of Real Estate.

2118 [~~11~~] (12) "Entity" means:

2119 (a) a corporation;

2120 (b) a partnership;

2121 (c) a limited liability company;

2122 (d) a company;

2123 (e) an association;

2124 (f) a joint venture;

2125 (g) a business trust;

2126 (h) a trust; or

2127 (i) any organization similar to an entity described in Subsections [~~11~~] (12)(a) through

2128 (h).

2129 [~~12~~] (13) "Executive director" means the director of the Department of Commerce.

2130 [~~(13)~~] (14) "Foreclosure rescue" means, for compensation or with the expectation of
2131 receiving valuable consideration, to:

2132 (a) engage, or offer to engage, in an act that:

2133 (i) the person represents will assist a borrower in preventing a foreclosure; and

2134 (ii) relates to a transaction involving the transfer of title to residential real property; or

2135 (b) as an employee or agent of another person:

2136 (i) solicit, or offer that the other person will engage in an act described in Subsection

2137 [~~(13)~~] (14)(a); or

2138 (ii) negotiate terms in relationship to an act described in Subsection [~~(13)~~] (14)(a).

2139 [~~(14)~~] (15) "Loan modification assistance" means, for compensation or with the
2140 expectation of receiving valuable consideration, to:

2141 (a) act, or offer to act, on behalf of a person to:

2142 (i) obtain a loan term of a residential mortgage loan that is different from an existing
2143 loan term including:

2144 (A) an increase or decrease in an interest rate;

2145 (B) a change to the type of interest rate;

2146 (C) an increase or decrease in the principal amount of the residential mortgage loan;

2147 (D) a change in the number of required period payments;

2148 (E) an addition of collateral;

2149 (F) a change to, or addition of, a prepayment penalty;

2150 (G) an addition of a cosigner; or

2151 (H) a change in persons obligated under the existing residential mortgage loan; or

2152 (ii) substitute a new residential mortgage loan for an existing residential mortgage loan;

2153 or

2154 (b) as an employee or agent of another person:

2155 (i) solicit, or offer that the other person will engage in an act described in Subsection

2156 [~~(14)~~] (15)(a); or

2157 (ii) negotiate terms in relationship to an act described in Subsection [~~(14)~~] (15)(a).

2158 ~~[(15)]~~ (16) "Main office" means the address which a principal broker designates with
2159 the division as the principal broker's primary brokerage office.

2160 ~~[(16)]~~ (17) "Person" means an individual or entity.

2161 ~~[(17)]~~ (18) "Principal broker" means an individual who is licensed as a principal broker
2162 under this chapter and who:

2163 (a) (i) sells or lists real estate or a business opportunity for sale with the expectation of
2164 receiving valuable consideration;

2165 (ii) buys, exchanges, or auctions real estate, ~~[options]~~ an option on real estate, a
2166 business opportunity, or ~~[improvements]~~ an improvement on real estate with the expectation of
2167 receiving valuable consideration; or

2168 (iii) ~~[who]~~ advertises, offers, attempts, or otherwise holds the individual out to be
2169 engaged in the business described in Subsection ~~[(17)]~~ (18)(a)(i) or (ii);

2170 (b) is employed by or on behalf of the owner of real estate or by a prospective
2171 purchaser of real estate and performs an act described in Subsection ~~[(17)]~~ (18)(a), whether the
2172 individual's compensation is at a stated salary, a commission basis, upon a salary and
2173 commission basis, or otherwise;

2174 (c) (i) with the expectation of receiving valuable consideration, manages property
2175 owned by another person; or

2176 (ii) advertises or otherwise holds the individual out to be engaged in property
2177 management;

2178 (d) with the expectation of receiving valuable consideration, assists or directs in the
2179 procurement of prospects for or the negotiation of a transaction listed in Subsections ~~[(17)]~~
2180 (18)(a) and (c);

2181 (e) except for a mortgage lender, title insurance producer, or an employee of a
2182 mortgage lender or title insurance producer, assists or directs in the closing of a real estate
2183 transaction with the expectation of receiving valuable consideration; or

2184 (f) (i) engages in foreclosure rescue; or

2185 (ii) advertises, offers, attempts, or otherwise holds the person out as being engaged in

2186 foreclosure rescue~~;~~ and].
2187 ~~[(g) is licensed as a principal broker under this chapter.]~~
2188 ~~[(18)]~~ (19) (a) "Property management" means engaging in, with the expectation of
2189 receiving valuable consideration, the management of real estate owned by another person or
2190 advertising or otherwise claiming to be engaged in property management by:
2191 (i) advertising for, arranging, negotiating, offering, or otherwise attempting or
2192 participating in a transaction calculated to secure the rental or leasing of real estate;
2193 (ii) collecting, agreeing, offering, or otherwise attempting to collect rent for the real
2194 estate and accounting for and disbursing the money collected; or
2195 (iii) authorizing expenditures for repairs to the real estate.
2196 (b) "Property management" does not include:
2197 (i) hotel or motel management;
2198 (ii) rental of tourist accommodations, including hotels, motels, tourist homes,
2199 condominiums, condominium hotels, mobile home park accommodations, campgrounds, or
2200 similar public accommodations for a period of less than 30 consecutive days, and the
2201 management activities associated with these rentals; or
2202 (iii) the leasing or management of surface or subsurface minerals or oil and gas
2203 interests, if the leasing or management is separate from a sale or lease of the surface estate.
2204 ~~[(19)]~~ (20) "Real estate" includes leaseholds and business opportunities involving real
2205 property.
2206 ~~[(20)]~~ (21) (a) "Regular salaried employee" means an individual who performs a
2207 service for wages or other remuneration, whose employer withholds federal employment taxes
2208 under a contract of hire, written or oral, express or implied.
2209 (b) "Regular salaried employee" does not include an individual who performs services
2210 on a project-by-project basis or on a commission basis.
2211 ~~[(21)]~~ (22) "Reinstatement" means restoring a license that has expired or has been
2212 suspended.
2213 ~~[(22)]~~ (23) "Reissuance" means the process by which a licensee may obtain a license

2214 following revocation of the license.

2215 ~~[(23)]~~ (24) "Renewal" means extending a license for an additional licensing period on
2216 or before the date the license expires.

2217 ~~[(24)]~~ (25) "Sales agent" means an individual who is:

2218 (a) affiliated with a principal broker, either as an independent contractor or an
2219 employee as provided in Section 61-2f-303, to perform for valuable consideration an act
2220 described in Subsection ~~[(17)]~~ (18); and

2221 (b) licensed under this chapter as a sales agent.

2222 ~~[(25)]~~ (26) (a) "Undivided fractionalized long-term estate" means an ownership interest
2223 in real property by two or more persons that is:

2224 (i) a tenancy in common; or

2225 (ii) any other legal form of undivided estate in real property including:

2226 (A) a fee estate;

2227 (B) a life estate; or

2228 (C) other long-term estate.

2229 (b) "Undivided fractionalized long-term estate" does not include a joint tenancy.

2230 Section 33. Section **61-2f-105** is amended to read:

2231 **61-2f-105. Fees.**

2232 (1) In addition to when expressly authorized in another provision of this chapter, the
2233 division may charge and collect reasonable fees determined by the commission with the
2234 concurrence of the division under Section 63J-1-504 to cover the costs for:

2235 (a) issuing a new or duplicate license;

2236 (b) registering an entity or branch office;

2237 (c) certifying a real estate school, course, or instructor;

2238 (d) providing a history of a license, registration, or certification; ~~[and]~~

2239 (e) producing a certified copy of an official document, order, or other paper or
2240 transcript; and

2241 (f) other duties required by this chapter.

2242 (2) Notwithstanding Section 13-1-2, a fee collected under Subsection (1)(c) shall be
2243 deposited in the Real Estate Education, Research, and Recovery Fund.

2244 (3) If a person pays a fee or costs to the division with a negotiable instrument [~~and the~~
2245 ~~negotiable instrument~~] or other payment method that is not honored for payment:

2246 (a) the transaction for which the payment is submitted is voidable by the division;

2247 (b) the division may reverse the transaction if payment of the applicable fee or costs is
2248 not received in full; and

2249 (c) the person's license, certification, or registration is automatically suspended:

2250 (i) beginning the day on which the payment is due; and

2251 (ii) ending the day on which payment is made in full.

2252 (4) (a) A fee under this chapter is in lieu of all other license fees or assessments that
2253 might otherwise be imposed or charged by the state or any of its political subdivisions upon, or
2254 as a condition of, the privilege of conducting the business regulated by this chapter, except that
2255 a political subdivision within the state may charge a business license fee on a principal broker
2256 if the principal broker maintains a place of business within the jurisdiction of the political
2257 subdivision.

2258 (b) Unless otherwise exempt, a licensee under this chapter is subject to the taxes
2259 imposed under Title 59, Revenue and Taxation.

2260 Section 34. Section **61-2f-202** is amended to read:

2261 **61-2f-202. Exempt persons and transactions.**

2262 (1) (a) Except as provided in Subsection (1)(b), a license under this chapter is not
2263 required for:

2264 (i) an individual who as owner or lessor performs an act described in Subsection
2265 61-2f-102[~~(17)~~](18) with reference to real estate owned or leased by that individual;

2266 (ii) a regular salaried employee of the owner or lessor of real estate who, with reference
2267 to nonresidential real estate owned or leased by the employer, performs an act described in
2268 Subsection 61-2f-102[~~(17)~~](18)(a) or (b);

2269 (iii) a regular salaried employee of the owner of real estate who performs property

2270 management services with reference to real estate owned by the employer, except that the
2271 employee may only manage real estate for one employer;

2272 (iv) an individual who performs property management services for the apartments at
2273 which that individual resides in exchange for free or reduced rent on that individual's
2274 apartment;

2275 (v) a regular salaried employee of a condominium homeowners' association who
2276 manages real estate subject to the declaration of condominium that established the
2277 condominium homeowners' association, except that the employee may only manage real estate
2278 for one condominium homeowners' association; and

2279 (vi) a regular salaried employee of a licensed property management company who
2280 performs support services, as prescribed by rule, for the property management company.

2281 (b) Subsection (1)(a) does not exempt from licensing:

2282 (i) an employee engaged in the sale of real estate regulated under:

2283 (A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; ~~and~~ or

2284 (B) Title 57, Chapter 19, Timeshare and Camp Resort Act;

2285 (ii) an employee engaged in the sale of cooperative interests regulated under Title 57,
2286 Chapter 23, Real Estate Cooperative Marketing Act; or

2287 (iii) an individual whose interest as an owner or lessor is obtained by that individual or
2288 transferred to that individual for the purpose of evading the application of this chapter, and not
2289 for another legitimate business reason.

2290 (2) A license under this chapter is not required for:

2291 (a) an isolated transaction by an individual holding a duly executed power of attorney
2292 from an owner;

2293 (b) services rendered by an attorney in performing the attorney's duties as an attorney;

2294 (c) a receiver, trustee in bankruptcy, administrator, executor, or an individual acting
2295 under order of a court;

2296 (d) a trustee or employee of a trustee under a deed of trust or a will;

2297 (e) a public utility, officer of a public utility, or regular salaried employee of a public

2298 utility, unless performance of an act described in Subsection 61-2f-102[(17)](18) is in
2299 connection with the sale, purchase, lease, or other disposition of real estate or investment in
2300 real estate unrelated to the principal business activity of that public utility;

2301 (f) a regular salaried employee or authorized agent working under the oversight of the
2302 Department of Transportation when performing an act on behalf of the Department of
2303 Transportation in connection with one or more of the following:

2304 (i) the acquisition of real estate pursuant to Section 72-5-103;

2305 (ii) the disposal of real estate pursuant to Section 72-5-111;

2306 (iii) services that constitute property management; or

2307 (iv) the leasing of real estate; and

2308 (g) a regular salaried employee of a county, city, or town when performing an act on
2309 behalf of the county, city, or town:

2310 (i) in accordance with:

2311 (A) if a regular salaried employee of a city or town:

2312 (I) Title 10, Utah Municipal Code; or

2313 (II) Title 11, Cities, Counties, and Local Taxing Units; and

2314 (B) if a regular salaried employee of a county:

2315 (I) Title 11, Cities, Counties, and Local Taxing Units; and

2316 (II) Title 17, Counties; and

2317 (ii) in connection with one or more of the following:

2318 (A) the acquisition of real estate, including by eminent domain;

2319 (B) the disposal of real estate;

2320 (C) services that constitute property management; or

2321 (D) the leasing of real estate.

2322 (3) A license under this chapter is not required for an individual registered to act as a
2323 broker-dealer, agent, or investment adviser under the Utah and federal securities laws in the
2324 sale or the offer for sale of real estate if:

2325 (a) (i) the real estate is a necessary element of a "security" as that term is defined by the

2326 Securities Act of 1933 and the Securities Exchange Act of 1934; and

2327 (ii) the security is registered for sale in accordance with:

2328 (A) the Securities Act of 1933; or

2329 (B) Title 61, Chapter 1, Utah Uniform Securities Act; or

2330 (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec.

2331 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation

2332 D, Rule 506, 17 C.F.R. Sec. 230.506; and

2333 (ii) the selling agent and the purchaser are not residents of this state.

2334 Section 35. Section **61-2f-203** is amended to read:

2335 **61-2f-203. Licensing requirements.**

2336 (1) (a) Except as provided in Subsection (5), the commission shall determine the

2337 qualifications and requirements of an applicant for:

2338 (i) a principal broker license;

2339 (ii) an associate broker license; or

2340 (iii) a sales agent license.

2341 (b) The division, with the concurrence of the commission, shall require and pass upon

2342 proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency of

2343 each applicant for an initial license or for renewal of an existing license.

2344 (c) (i) The division, with the concurrence of the commission, shall require an applicant

2345 for:

2346 (A) a sales agent license to complete an approved educational program consisting of

2347 the number of hours designated by rule made by the commission with the concurrence of the

2348 division, except that the rule may not require less than 120 hours; and

2349 (B) an associate broker or a principal broker license to complete an approved

2350 educational program consisting of the number of hours designated by rule made by the

2351 commission with the concurrence of the division, except that the rule may not require less than

2352 120 hours.

2353 (ii) An hour required by this section means 50 minutes of instruction in each 60

2354 minutes.

2355 (iii) The maximum number of program hours available to an individual is eight hours
2356 per day.

2357 (d) The division, with the concurrence of the commission, shall require the applicant to
2358 pass an examination approved by the commission covering:

2359 (i) the fundamentals of:

2360 (A) the English language;

2361 (B) arithmetic;

2362 (C) bookkeeping; and

2363 (D) real estate principles and practices;

2364 (ii) ~~[the provisions of]~~ this chapter;

2365 (iii) the rules established by the commission; and

2366 (iv) any other aspect of Utah real estate license law considered appropriate.

2367 (e) (i) Three years' full-time experience as a sales agent or its equivalent is required
2368 before an applicant may apply for, and secure a principal broker or associate broker license in
2369 this state.

2370 (ii) The commission shall establish by rule, made in accordance with Title 63G,
2371 Chapter 3, Utah Administrative Rulemaking Act, the criteria by which the commission will
2372 accept experience or special education in similar fields of business in lieu of the three years'
2373 experience.

2374 (2) (a) The division, with the concurrence of the commission, may require an applicant
2375 to furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's
2376 reputation and competency as set forth by rule.

2377 (b) The division shall require an applicant to provide the applicant's Social Security
2378 number, which is a private record under Subsection 63G-2-302(1)(h).

2379 (3) (a) An individual who is not a resident of this state may be licensed in this state if
2380 the person complies with ~~[all the provisions of]~~ this chapter.

2381 (b) An individual who is not a resident of this state may be licensed as an associate

2382 broker or sales agent in this state by:

2383 (i) complying with ~~[all the provisions of]~~ this chapter; and

2384 (ii) being employed or engaged as an independent contractor by or on behalf of a
2385 principal broker who is licensed in this state, regardless of whether the principal broker is a
2386 resident of this state.

2387 (4) (a) ~~[Except as provided in Subsection 61-2f-204(1)(c)(vi), the]~~ The division and
2388 commission shall treat an application to be relicensed of an applicant whose real estate license
2389 is revoked as an original application.

2390 (b) In the case of an applicant for a new license as a principal broker or associate
2391 broker, the applicant is not entitled to credit for experience gained before the revocation of a
2392 real estate license.

2393 (5) (a) Notwithstanding Subsection (1), the commission may delegate to the division
2394 the authority to:

- 2395 (i) review a class or category of applications for initial or renewed licenses;
- 2396 (ii) determine whether an applicant meets the licensing criteria in Subsection (1); and
- 2397 (iii) approve or deny a license application without concurrence by the commission.

2398 (b) (i) If the commission delegates to the division the authority to approve or deny an
2399 application without concurrence by the commission and the division denies an application for
2400 licensure, the applicant who is denied licensure may petition the commission for de novo
2401 review of the ~~[denial of licensure]~~ application.

2402 (ii) An applicant who is denied licensure pursuant to this Subsection (5) may seek
2403 agency review by the executive director only after the commission has reviewed the division's
2404 denial of the applicant's application.

2405 Section 36. Section **61-2f-204** is amended to read:

2406 **61-2f-204. Licensing fees and procedures -- Renewal fees and procedures.**

2407 (1) (a) Upon filing an application for an examination for a license under this chapter,
2408 the applicant shall pay a nonrefundable fee as determined by the commission with the
2409 concurrence of the division under Section 63J-1-504 for admission to the examination.

2410 (b) An applicant for a principal broker, associate broker, or sales agent license shall
2411 pay a nonrefundable fee as determined by the commission with the concurrence of the division
2412 under Section 63J-1-504 for issuance of an initial license or license renewal.

2413 (c) A license issued under this Subsection (1) shall be issued for a period of not less
2414 than two years as determined by the division with the concurrence of the commission.

2415 (d) (i) Any of the following applicants shall comply with this Subsection (1)(d):

2416 (A) a new sales agent applicant;

2417 (B) a principal broker applicant; or

2418 (C) an associate broker applicant.

2419 (ii) An applicant described in this Subsection (1)(d) shall:

2420 (A) submit fingerprint cards in a form acceptable to the division at the time the license
2421 application is filed; and

2422 (B) consent to a criminal background check by the Utah Bureau of Criminal
2423 Identification and the Federal Bureau of Investigation regarding the application.

2424 (iii) The division shall request the Department of Public Safety to complete a Federal
2425 Bureau of Investigation criminal background check for each applicant described in this
2426 Subsection (1)(d) through the national criminal history system or any successor system.

2427 (iv) The applicant shall pay the cost of the criminal background check and the
2428 fingerprinting.

2429 (v) Money paid to the division by an applicant for the cost of the criminal background
2430 check is nonlapsing.

2431 (e) (i) A license issued under Subsection (1)(d) is conditional, pending completion of
2432 the criminal background check.

2433 (ii) A license is immediately and automatically revoked if the criminal background
2434 check discloses the applicant fails to accurately disclose a criminal history involving:

2435 (A) the real estate industry; or

2436 [~~(B) fraud;~~]

2437 [~~(C) misrepresentation; or~~]

2438 ~~[(D) deceit.]~~
2439 (B) a felony conviction on the basis of an allegation of fraud, misrepresentation, or
2440 deceit.
2441 (iii) If a criminal background check discloses that an applicant fails to accurately
2442 disclose a criminal history other than one described in Subsection (1)(e)(ii), the division:
2443 (A) shall review the application; and
2444 (B) in accordance with rules made by the division pursuant to Title 63G, Chapter 3,
2445 Utah Administrative Rulemaking Act, may:
2446 (I) place a condition on a license;
2447 (II) place a restriction on a license;
2448 (III) revoke a license; or
2449 (IV) refer the application to the commission for a decision.
2450 (iv) A person whose conditional license is automatically revoked under Subsection
2451 (1)(e)(ii) or whose license is conditioned, restricted, or revoked under Subsection (1)(e)(iii)
2452 may have a hearing after the action is taken to challenge the action. The hearing shall be
2453 conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
2454 (v) The director shall designate one of the following to act as the presiding officer in a
2455 hearing described in Subsection (1)(e)(iv):
2456 (A) the division; or
2457 (B) the division with the concurrence of the commission.
2458 (vi) The decision on whether relief from an action under this Subsection (1)(e) will be
2459 granted shall be made by the presiding officer.
2460 (vii) Relief from an automatic revocation under Subsection (1)(e)(ii) may be granted
2461 only if:
2462 (A) the criminal history upon which the division based the revocation:
2463 (I) did not occur; or
2464 (II) is the criminal history of another person;
2465 (B) (I) the revocation is based on a failure to accurately disclose a criminal history; and

2466 (II) the applicant has a reasonable good faith belief at the time of application that there
2467 was no criminal history to be disclosed; or

2468 (C) the division fails to follow the prescribed procedure for the revocation.

2469 (viii) If a license is revoked or a revocation under this Subsection (1)(e) is upheld after
2470 a hearing, the individual may not apply for a new license until at least 12 months after the day
2471 on which the license is revoked.

2472 (2) (a) (i) A license expires if it is not renewed on or before its expiration date.

2473 (ii) As a condition of renewal, an active licensee shall demonstrate competence by
2474 completing 18 hours of continuing education within a two-year renewal period subject to rules
2475 made by the commission, with the concurrence of the division.

2476 (iii) In making a rule described in Subsection (2)(c)(ii), the division and commission
2477 shall consider:

2478 (A) evaluating continuing education on the basis of competency, rather than course
2479 time;

2480 (B) allowing completion of courses in a significant variety of topic areas that the
2481 division and commission determine are valuable in assisting an individual licensed under this
2482 chapter to increase the individual's competency; and

2483 (C) allowing completion of courses that will increase a licensee's professional
2484 competency in the area of practice of the licensee.

2485 (iv) The division may award credit to a licensee for a continuing education requirement
2486 of this Subsection (2)(a) for a reasonable period of time upon a finding of reasonable cause,
2487 including:

2488 (A) military service; or

2489 (B) if an individual is elected or appointed to government service, the individual's
2490 government service during which the individual spends a substantial time addressing real estate
2491 issues subject to conditions established by rule made in accordance with Title 63G, Chapter 3,
2492 Utah Administrative Rulemaking Act.

2493 (b) For a period of 30 days after the expiration date of a license, the license may be

2494 reinstated upon:

2495 (i) payment of a renewal fee and a late fee determined by the commission with the
2496 concurrence of the division under Section 63J-1-504; and

2497 (ii) providing proof acceptable to the division and the commission of the licensee
2498 having:

2499 (A) completed the hours of education required by Subsection (2)(a); or

2500 (B) demonstrated competence as required under Subsection (2)(a).

2501 (c) After the 30-day period described in Subsection (2)(b), and until six months after
2502 the expiration date, the license may be reinstated by:

2503 (i) paying a renewal fee and a late fee determined by the commission with the
2504 concurrence of the division under Section 63J-1-504;

2505 (ii) providing to the division proof of satisfactory completion of six hours of continuing
2506 education:

2507 (A) in addition to the requirements for a timely renewal; and

2508 (B) on a subject determined by the commission by rule made in accordance with Title
2509 63G, Chapter 3, Utah Administrative Rulemaking Act; and

2510 (iii) providing proof acceptable to the division and the commission of the licensee
2511 having:

2512 (A) completed the hours of education required under Subsection (2)(a); or

2513 (B) demonstrated competence as required under Subsection (2)(a).

2514 (d) After the six-month period described in Subsection (2)(c), and until one year after
2515 the expiration date, the license may be reinstated by:

2516 (i) paying a renewal fee and a late fee determined by the commission with the
2517 concurrence of the division under Section 63J-1-504;

2518 (ii) providing to the division proof of satisfactory completion of 24 hours of continuing
2519 education:

2520 (A) in addition to the requirements for a timely renewal; and

2521 (B) on a subject determined by the commission by rule made in accordance with Title

2522 63G, Chapter 3, Utah Administrative Rulemaking Act; and

2523 (iii) providing proof acceptable to the division and the commission of the licensee
2524 having:

2525 (A) completed the hours of education required by Subsection (2)(a); or

2526 (B) demonstrated competence as required under Subsection (2)(a).

2527 (e) The division shall relicense a person who does not renew that person's license
2528 within one year as prescribed for an original application.

2529 (f) Notwithstanding Subsection (2)(a), the division may extend the term of a license
2530 that would expire under Subsection (2)(a) except for the extension if:

2531 (i) (A) the person complies with the requirements of this section to renew the license;
2532 and

2533 [~~(ii)~~] (B) the renewal application remains pending at the time of the extension[~~, there is~~
2534 ~~pending under this chapter.~~]; or

2535 [~~(A) the application for renewal of the license; or~~

2536 [~~(B)~~] (ii) at the time of the extension, there is pending a disciplinary action under this
2537 chapter.

2538 (3) (a) As a condition for the activation of an inactive license that was in an inactive
2539 status at the time of the licensee's most recent renewal, the licensee shall supply the division
2540 with proof of:

2541 (i) successful completion of the respective sales agent or principal broker licensing
2542 examination within six months [~~prior to~~] before applying to activate the license; or

2543 (ii) the successful completion of the hours of continuing education that the licensee
2544 would have been required to complete under Subsection (2)(a) if the license had been on active
2545 status at the time of the licensee's most recent renewal.

2546 (b) The commission may, in accordance with Title 63G, Chapter 3, Utah
2547 Administrative Rulemaking Act, establish by rule:

2548 (i) the nature or type of continuing education required for reactivation of a license; and

2549 (ii) how long before reactivation the continuing education must be completed.

2550 Section 37. Section **61-2f-206** is amended to read:

2551 **61-2f-206. Registration of entity or branch office -- Certification of education**
2552 **providers and courses -- Specialized licenses.**

2553 (1) (a) An entity may not engage in an activity described in Section 61-2f-201, unless it
2554 is registered with the division.

2555 (b) To register with the division under this Subsection (1), an entity shall submit to the
2556 division:

2557 (i) an application in a form required by the division;

2558 (ii) evidence of an affiliation with a principal broker;

2559 (iii) evidence that the entity is registered and in good standing with the Division of
2560 Corporations and Commercial Code; and

2561 (iv) a registration fee established by the commission with the concurrence of the
2562 division under Section 63J-1-504.

2563 (2) (a) A principal broker shall register with the division each of the principal broker's
2564 branch offices.

2565 (b) To register a branch office with the division under this Subsection (2), a principal
2566 broker shall submit to the division:

2567 (i) an application in a form required by the division; and

2568 (ii) a registration fee established by the commission with the concurrence of the
2569 division under Section 63J-1-504.

2570 (3) (a) In accordance with rules made by the commission, the division shall certify:

2571 (i) a real estate school;

2572 (ii) a course provider; or

2573 (iii) an instructor.

2574 (b) In accordance with rules made by the commission, and with the concurrence of the
2575 commission, the division shall certify a continuing education course that is required under this
2576 ~~[section]~~ chapter.

2577 (4) (a) Except as provided by rule, a principal broker may not be responsible for more

2578 than one registered entity at the same time.

2579 (b) (i) In addition to issuing a principal broker license, associate broker license, or sales
2580 agent license authorizing the performance of an act set forth in Section 61-2f-201, the division
2581 may issue a specialized sales license or specialized property management license with the
2582 scope of practice limited to the specialty.

2583 (ii) An individual may hold a specialized license in addition to a license as a principal
2584 broker, associate broker, or a sales agent.

2585 (iii) The commission may adopt rules pursuant to Title 63G, Chapter 3, Utah
2586 Administrative Rulemaking Act, for the administration of this Subsection (4), including:

- 2587 (A) prelicensing and postlicensing education requirements;
- 2588 (B) examination requirements;
- 2589 (C) affiliation with real estate brokerages or property management companies; and
- 2590 (D) other licensing procedures.

2591 Section 38. Section **61-2f-301** is amended to read:

2592 **61-2f-301. Reporting requirements.**

2593 (1) A licensee shall notify the division of the following by sending the division a
2594 signed statement within 10 business days of:

2595 [~~(1)~~] (a) (i) a conviction of a [~~criminal offense~~] felony, class A misdemeanor, or class
2596 B misdemeanor;

2597 [~~(2)~~] (ii) the entry of a plea in abeyance to a [~~criminal offense~~] felony, class A
2598 misdemeanor, or class B misdemeanor; or

2599 [~~(3)~~] (iii) the potential resolution of a [~~criminal case~~] felony, class A misdemeanor, or
2600 class B misdemeanor by:

2601 [~~(i)~~] (A) a diversion agreement; or

2602 [~~(ii)~~] (B) another agreement under which a criminal charge is held in suspense for a
2603 period of time;

2604 [~~(3)~~] (b) filing a personal or brokerage bankruptcy;

2605 [~~(4)~~] (c) the suspension, revocation, surrender, cancellation, or denial of a license or

2606 registration of the licensee that is necessary to engage in an occupation or profession,
2607 regardless of whether the license or registration is issued by this state or another jurisdiction; or

2608 [~~(4)~~] (d) the entry of a cease and desist order or a temporary or permanent injunction:

2609 [~~(a)~~] (i) against the licensee by a court or administrative agency; and

2610 [~~(b)~~] (ii) on the basis of:

2611 [~~(i)~~] (A) conduct or a practice involving the business of real estate; or

2612 [~~(ii)~~] (B) conduct involving fraud, misrepresentation, or deceit.

2613 (2) The commission, with the concurrence of the director, shall enforce the reporting
2614 requirement under this section pursuant to Section 61-2f-404.

2615 Section 39. Section **61-2f-401** is amended to read:

2616 **61-2f-401. Grounds for disciplinary action.**

2617 The following acts are unlawful for a person required to be licensed under this chapter:

2618 (1) (a) making a substantial misrepresentation;

2619 (b) making an intentional misrepresentation;

2620 (c) pursuing a continued and flagrant course of misrepresentation;

2621 (d) making a false representation or promise through an agent, sales agent, advertising,
2622 or otherwise; or

2623 (e) making a false representation or promise of a character likely to influence,
2624 persuade, or induce;

2625 (2) acting for more than one party in a transaction without the informed consent of [~~an~~]
2626 the parties;

2627 (3) (a) acting as an associate broker or sales agent while not affiliated with a principal
2628 broker;

2629 (b) representing or attempting to represent a principal broker other than the principal
2630 broker with whom the person is affiliated; or

2631 (c) representing as sales agent or having a contractual relationship similar to that of
2632 sales agent with a person other than a principal broker;

2633 (4) (a) failing, within a reasonable time, to account for or to remit money that belongs

2634 to another and comes into the person's possession;

2635 (b) commingling money described in Subsection (4)(a) with the person's own money;

2636 or

2637 (c) diverting money described in Subsection (4)(a) from the purpose for which the

2638 money is received;

2639 (5) paying or offering to pay valuable consideration, as defined by the commission, to a

2640 person not licensed under this chapter, except that valuable consideration may be shared:

2641 (a) with a principal broker of another jurisdiction; or

2642 (b) as provided under:

2643 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;

2644 (ii) Title 16, Chapter 11, Professional Corporation Act; or

2645 (iii) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act;

2646 (6) being incompetent to act as a principal broker, associate broker, or sales agent in

2647 such manner as to safeguard the interests of the public;

2648 (7) failing to voluntarily furnish a copy of a document to ~~att~~ the parties before and

2649 after the execution of a document;

2650 (8) failing to keep and make available for inspection by the division a record of each

2651 transaction, including:

2652 (a) the names of buyers and sellers or lessees and lessors;

2653 (b) the identification of real estate;

2654 (c) the sale or rental price;

2655 (d) money received in trust;

2656 (e) agreements or instructions from buyers and sellers or lessees and lessors; and

2657 (f) any other information required by rule;

2658 (9) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether

2659 the purchase, sale, or rental is made for that person or for an undisclosed principal;

2660 (10) being convicted of a criminal offense involving moral turpitude within five years

2661 of the most recent application:

- 2662 (a) regardless of whether the criminal offense is related to real estate; and
- 2663 (b) including:
- 2664 (i) a conviction based upon a plea of nolo contendere; or
- 2665 (ii) a plea held in abeyance to a criminal offense involving moral turpitude;
- 2666 (11) advertising the availability of real estate or the services of a licensee in a false,
- 2667 misleading, or deceptive manner;
- 2668 (12) in the case of a principal broker or a licensee who is a branch manager, failing to
- 2669 exercise reasonable supervision over the activities of the principal broker's or branch manager's
- 2670 licensed or unlicensed staff;
- 2671 (13) violating or disregarding:
- 2672 (a) this chapter;
- 2673 (b) an order of the commission; or
- 2674 (c) the rules adopted by the commission and the division;
- 2675 (14) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real
- 2676 estate transaction;
- 2677 (15) any other conduct which constitutes dishonest dealing;
- 2678 (16) unprofessional conduct as defined by statute or rule;
- 2679 (17) having one of the following suspended, revoked, surrendered, or cancelled on the
- 2680 basis of misconduct in a professional capacity that relates to character, honesty, integrity, or
- 2681 truthfulness:
- 2682 (a) a real estate license, registration, or certificate issued by another jurisdiction; or
- 2683 (b) another license, registration, or certificate to engage in an occupation or profession
- 2684 issued by this state or another jurisdiction;
- 2685 (18) failing to respond to a request by the division in an investigation authorized under
- 2686 this chapter, including:
- 2687 (a) failing to respond to a subpoena;
- 2688 (b) withholding evidence; or
- 2689 (c) failing to produce documents or records;

2690 (19) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

2691 (a) providing a title insurance product or service without the approval required by
2692 Section 31A-2-405; or

2693 (b) knowingly providing false or misleading information in the statement required by
2694 Subsection 31A-2-405(2);

2695 (20) violating an independent contractor agreement between a principal broker and a
2696 sales agent or associate broker as evidenced by a final judgment of a court;

2697 (21) (a) engaging in a foreclosure rescue if not licensed under this chapter;

2698 (b) engaging in an act of loan modification assistance that requires licensure as a
2699 mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing Act,
2700 without being licensed under that chapter;

2701 (c) engaging in an act of foreclosure rescue without entering into a written agreement
2702 specifying what one or more acts of foreclosure rescue will be completed;

2703 ~~[(c)]~~ (d) requesting or requiring a person to pay a fee [if:] for a foreclosure rescue
2704 service before obtaining a written agreement:

2705 ~~[(i) the person is required to pay the fee before entering into a written agreement~~
2706 ~~specifying what one or more acts of foreclosure rescue will be completed if the fee is paid; or]~~

2707 ~~[(ii) in a case when the financing that is the subject of the foreclosure rescue is~~
2708 ~~foreclosed within one year from the day on which the person enters into a written agreement,~~
2709 ~~the person is required to forfeit the fee for any reason;]~~

2710 (i) between the person and the person's lender or servicer; and

2711 (ii) by which title to the residential real estate at risk of foreclosure will be transferred;

2712 ~~[(d)]~~ (e) inducing a person who is at risk of foreclosure to hire the licensee to engage in
2713 an act of foreclosure rescue by:

2714 (i) suggesting to the person that the licensee has a special relationship with the person's
2715 lender or loan servicer; or

2716 (ii) falsely representing or advertising that the licensee is acting on behalf of:

2717 (A) a government agency;

2718 (B) the person's lender or loan servicer; or
 2719 (C) a nonprofit or charitable institution; or
 2720 [~~e~~] (f) recommending or participating in a foreclosure rescue that requires a person

2721 to:

2722 (i) transfer title to real [~~property~~] estate to the licensee or to a [~~third-party~~] third-party
 2723 with whom the licensee has a business relationship or financial interest;

2724 (ii) make a mortgage payment to a person other than the person's loan servicer; or

2725 (iii) refrain from contacting the person's:

2726 (A) lender;

2727 (B) loan servicer;

2728 (C) attorney;

2729 (D) credit counselor; or

2730 (E) housing counselor; or

2731 (22) for an agreement for foreclosure rescue entered into on or after May 11, 2010,
 2732 engaging in an act of foreclosure rescue without offering in writing to the person entering into
 2733 the agreement for foreclosure rescue a right to cancel the agreement within three business days
 2734 after the day on which the person enters the agreement.

2735 Section 40. Section **61-2g-101**, which is renumbered from Section 61-2b-1 is
 2736 renumbered and amended to read:

CHAPTER 2g. REAL ESTATE APPRAISER LICENSING AND CERTIFICATION

ACT

Part 1. General Provisions

[~~61-2b-1~~]. 61-2g-101. Title.

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

2742 Section 41. Section **61-2g-102**, which is renumbered from Section 61-2b-2 is
 2743 renumbered and amended to read:

[~~61-2b-2~~]. 61-2g-102. Definitions.

(1) As used in this chapter:

2746 (a) (i) "Appraisal" means an unbiased analysis, opinion, or conclusion relating to the
2747 nature, quality, value, or utility of a specified interest in, or aspect of, identified real estate or
2748 identified real property.

2749 (ii) An appraisal is classified by the nature of the assignment as a valuation appraisal,
2750 an analysis assignment, or a review assignment in accordance with the following definitions:

2751 (A) "Analysis assignment" means an unbiased analysis, opinion, or conclusion that
2752 relates to the nature, quality, or utility of identified real estate or identified real property.

2753 (B) "Review assignment" means an unbiased analysis, opinion, or conclusion that
2754 forms an opinion as to the adequacy and appropriateness of a valuation appraisal or an analysis
2755 assignment.

2756 (C) "Valuation appraisal" means an unbiased analysis, opinion, or conclusion that
2757 estimates the value of an identified parcel of real estate or identified real property at a particular
2758 point in time.

2759 (b) "Appraisal Foundation" means the Appraisal Foundation that was incorporated as
2760 an Illinois not-for-profit corporation on November 30, 1987.

2761 (c) (i) "Appraisal report" means a communication, written or oral, of an appraisal.

2762 (ii) An appraisal report is classified by the nature of the assignment as a valuation
2763 report, analysis report, or review report in accordance with the definitions provided in
2764 Subsection (1)(a)(ii).

2765 (iii) The testimony of a person relating to the person's analyses, conclusions, or
2766 opinions concerning identified real estate or identified real property is considered to be an oral
2767 appraisal report.

2768 (d) "Appraisal Qualification Board" means the Appraisal Qualification Board of the
2769 Appraisal Foundation.

2770 (e) "Board" means the Real Estate Appraiser Licensing and Certification Board that is
2771 established in Section ~~[61-2b-7]~~ 61-2g-204.

2772 (f) "Certified appraisal report" means a written or oral appraisal report that is certified
2773 by a state-certified general appraiser or state-certified residential appraiser.

2774 (g) "Concurrence" means that the entities that are given a concurring role jointly agree
2775 to an action.

2776 (h) (i) (A) "Consultation service" means an engagement to provide a real estate
2777 valuation service analysis, opinion, conclusion, or other service that does not fall within the
2778 definition of appraisal.

2779 (B) "Consultation service" does not mean a valuation appraisal, analysis assignment, or
2780 review assignment.

2781 (ii) Regardless of the intention of the client or employer, if a person prepares an
2782 unbiased analysis, opinion, or conclusion, the analysis, opinion, or conclusion is considered to
2783 be an appraisal and not a consultation service.

2784 (i) "Contingent fee" means a fee or other form of compensation, payment of which is
2785 dependent on or conditioned by:

2786 (i) the reporting of a predetermined analysis, opinion, or conclusion by the person
2787 performing the analysis, opinion, or conclusion; or

2788 (ii) achieving a result specified by the person requesting the analysis, opinion, or
2789 conclusion.

2790 (j) "Division" means the Division of Real Estate of the Department of Commerce.

2791 (k) "Federally related transaction" means a real estate related transaction that is
2792 required by federal law or by federal regulation to be supported by an appraisal prepared by:

2793 (i) a state-licensed appraiser; or

2794 (ii) a state-certified appraiser.

2795 (l) "Real estate" means an identified parcel or tract of land including improvements if
2796 any.

2797 (m) "Real estate appraisal activity" means the act or process of making an appraisal of
2798 real estate or real property and preparing an appraisal report.

2799 (n) "Real estate related transaction" means:

2800 (i) the sale, lease, purchase, investment in, or exchange of real property or an interest in
2801 real property, or the financing of such a transaction;

2802 (ii) the refinancing of real property or an interest in real property; or
2803 (iii) the use of real property or an interest in real property as security for a loan or
2804 investment, including mortgage-backed securities.

2805 (o) "Real property" means one or more defined interests, benefits, or rights inherent in
2806 the ownership of real estate.

2807 (p) "State-certified general appraiser" means a person who holds a current, valid
2808 certification as a state-certified general appraiser issued under this chapter.

2809 (q) "State-certified residential appraiser" means a person who holds a current, valid
2810 certification as a state-certified residential real estate appraiser issued under this chapter.

2811 (r) "State-licensed appraiser" means a person who holds a current, valid license as a
2812 state-licensed appraiser issued under this chapter.

2813 (s) "Trainee" means an individual who:
2814 (i) does not hold an appraiser license or appraiser certification issued under this
2815 chapter;
2816 (ii) works under the direct supervision of a state-certified appraiser to earn experience
2817 for licensure; and
2818 (iii) is registered as a trainee under this chapter.

2819 (t) "Unbiased analysis, opinion, or conclusion" means an analysis, opinion, or
2820 conclusion relating to the nature, quality, value, or utility of identified real estate or identified
2821 real property that is prepared by a person who is employed or retained to act, or would be
2822 perceived by third parties or the public as acting, as a disinterested [~~third party~~] third-party in
2823 rendering the analysis, opinion, or conclusion.

2824 (2) (a) If a term not defined in this section is defined by rule, the term shall have the
2825 meaning established by the division by rule made in accordance with Title 63G, Chapter 3,
2826 Utah Administrative Rulemaking Act.

2827 (b) If a term not defined in this section is not defined by rule, the term shall have the
2828 meaning commonly accepted in the business community.

2829 Section 42. Section **61-2g-103**, which is renumbered from Section 61-2b-25 is

2830 renumbered and amended to read:

2831 ~~[61-2b-25].~~ **61-2g-103. Other law unaffected.**

2832 This chapter may not be considered to prohibit a person approved, licensed, certified, or
 2833 registered under this chapter from engaging in the practice of real estate appraising as a
 2834 professional corporation or a limited liability company in accordance with:

2835 (1) Title 16, Chapter 11, Professional Corporation Act; or

2836 (2) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act.

2837 Section 43. Section **61-2g-201**, which is renumbered from Section 61-2b-6 is

2838 renumbered and amended to read:

2839 **Part 2. Division and Board**

2840 ~~[61-2b-6].~~ **61-2g-201. Duties and powers of division in general.**

2841 (1) The division shall administer and enforce this chapter.

2842 ~~[(+)]~~ (2) The division has the following powers and duties ~~[listed in this Subsection~~

2843 ~~(+)]~~;

2844 (a) The division shall:

2845 (i) receive an application for licensing, certification, or registration;

2846 (ii) establish appropriate administrative procedures for the processing of an application
 2847 for licensure, certification, or registration;

2848 (iii) issue a license or certification to a qualified applicant pursuant to this chapter; and

2849 (iv) register an individual who applies and qualifies for registration as a trainee under
 2850 this chapter.

2851 ~~[(b) (i) The division shall require an individual to register with the division as a trainee
 2852 before the individual acts in the capacity of a trainee earning experience for licensure.]~~

2853 ~~[(ii) Subject to Subsection (4), the board shall adopt rules in accordance with Title
 2854 63G, Chapter 3, Utah Administrative Rulemaking Act, for:]~~

2855 ~~[(A) the trainee registration required by this Subsection (1)(b); and]~~

2856 ~~[(B) renewal of the trainee registration required by this Subsection (1)(b);]~~

2857 ~~[(c)]~~ (b) The division shall hold public hearings under the direction of the board.

2858 ~~[(d)]~~ (c) The division may:

2859 (i) solicit bids and enter into contracts with one or more educational testing services or

2860 organizations for the preparation of a bank of questions and answers; and

2861 (ii) administer or contract for the administration of licensing and certification

2862 examinations as may be required to carry out the division's responsibilities under this chapter.

2863 ~~[(e)]~~ (d) The division shall provide administrative assistance to the board by providing

2864 to the board the facilities, equipment, supplies, and personnel that are required to enable the

2865 board to carry out the board's responsibilities under this chapter.

2866 ~~[(f)]~~ (e) The division shall assist the board in improving the quality of the continuing

2867 education available to a person licensed, certified, or registered under this chapter.

2868 ~~[(g)]~~ (f) The division shall assist the board with respect to the proper interpretation or

2869 explanation of the Uniform Standards of Professional Appraisal Practice as required by Section

2870 ~~[61-2b-27]~~ 61-2g-403 when an interpretation or explanation becomes necessary in the

2871 enforcement of this chapter.

2872 ~~[(h) The division shall establish fees in accordance with Section 63J-1-504:]~~

2873 ~~[(i) for processing:]~~

2874 ~~[(A) an application for licensing, certification, or registration; and]~~

2875 ~~[(B) approval of an expert witness; and]~~

2876 ~~[(ii) for any other function required or permitted by this chapter.]~~

2877 ~~[(i) If a person pays a fee or costs to the division with a negotiable instrument and the~~

2878 ~~negotiable instrument is not honored for payment:]~~

2879 ~~[(i) the transaction for which the payment is submitted is voidable by the division;]~~

2880 ~~[(ii) the division may reverse the transaction if payment of the applicable fee or costs is~~

2881 ~~not received in full; and]~~

2882 ~~[(iii) the person's license, certification, or registration is automatically suspended:]~~

2883 ~~[(A) beginning the day on which the payment is due; and]~~

2884 ~~[(B) ending the day on which payment is made in full.]~~

2885 ~~[(j) The division may:]~~

2886 [~~(i) investigate a complaint against;~~]
2887 [~~(A) a person licensed, certified, or registered under this chapter; or~~]
2888 [~~(B) a person required to be licensed, certified, or registered under this chapter;~~]
2889 [~~(ii) subpoena a witness;~~]
2890 [~~(iii) subpoena the production of a book, paper, document, record, contract, or~~
2891 ~~evidence;~~]
2892 [~~(iv) administer an oath; and~~]
2893 [~~(v) take testimony and receive evidence concerning a matter within the division's~~
2894 ~~jurisdiction.~~]
2895 [~~(k)~~] (g) The division may:
2896 (i) promote research and conduct studies relating to the profession of real estate
2897 appraising; and
2898 (ii) sponsor real estate appraisal educational activities.
2899 [~~(f)~~] (h) The division shall adopt, with the concurrence of the board, rules for the
2900 administration of this chapter pursuant to Title 63G, Chapter 3, Utah Administrative
2901 Rulemaking Act, that are not inconsistent with this chapter or the constitution and laws of this
2902 state or of the United States.
2903 [~~(m)~~] (i) The division shall employ an appropriate staff to investigate allegations that a
2904 person required to be licensed, certified, or registered under this chapter fails to comply with
2905 this chapter.
2906 [~~(n)~~] (j) The division may employ other professional, clerical, and technical staff as
2907 may be necessary to properly administer the work of the division under this chapter.
2908 [~~(o)~~] (k) (i) Upon request, the division shall make available, either directly or through a
2909 [~~third party~~] third-party, a list of the names and addresses of the persons licensed, registered, or
2910 certified by the division under this chapter.
2911 (ii) A person who requests a list under this Subsection [~~(1)(o)~~] (2)(k) shall pay the costs
2912 incurred by the division to make the list available.
2913 [~~(2)(a) The division shall approve an expert witness who is not otherwise licensed or~~

2914 certified under this chapter to appear in an administrative or judicial tax proceeding to provide
2915 evidence related to the valuation of real property that is assessed by the State Tax Commission;
2916 if the:]

2917 ~~[(i) approval is limited to a specific proceeding;]~~

2918 ~~[(ii) approval is valid until the proceeding becomes final;]~~

2919 ~~[(iii) applicant pays to the division an approval fee set by the division in accordance
2920 with Section 63J-1-504;]~~

2921 ~~[(iv) applicant provides the applicant's name, address, occupation, and professional
2922 credentials; and]~~

2923 ~~[(v) applicant provides a notarized statement that:]~~

2924 ~~[(A) the applicant is competent to render an appraisal and to testify as an expert
2925 witness in the proceeding; and]~~

2926 ~~[(B) the appraisal and testimony to be offered shall be in accordance with the Uniform
2927 Standards of Professional Appraisal Practice adopted by the board.]~~

2928 ~~[(b) Subsection (2)(a) applies to an administrative or judicial property tax proceeding
2929 related to the valuation of real property that is assessed by the State Tax Commission.]~~

2930 (3) (a) If the conditions of Subsection (3)(b) are met, the division is immune from any
2931 civil action or criminal prosecution for initiating or assisting in a lawful investigation of an act
2932 of, or participating in a disciplinary proceeding concerning:

2933 (i) a person required to be licensed, certified, or registered pursuant to this chapter; or

2934 (ii) a person approved as an expert witness pursuant to this chapter.

2935 (b) This Subsection (3) applies if the division takes the action:

2936 (i) without malicious intent; and

2937 (ii) in the reasonable belief that the action is taken pursuant to the powers and duties
2938 vested in the division under this chapter.

2939 ~~[(4) (a) An individual applying to register as a trainee under this chapter shall:]~~

2940 ~~[(i) submit a fingerprint card in a form acceptable to the division at the time of
2941 applying for registration; and]~~

2942 ~~[(ii) consent to a criminal background check by:]~~
2943 ~~[(A) the Utah Bureau of Criminal Identification; and]~~
2944 ~~[(B) the Federal Bureau of Investigation.]~~
2945 ~~[(b) The division shall request the Department of Public Safety to complete a Federal~~
2946 ~~Bureau of Investigation criminal background check for an applicant through a national criminal~~
2947 ~~history system.]~~
2948 ~~[(c) The applicant shall pay the cost of:]~~
2949 ~~[(i) the fingerprinting required by this section; and]~~
2950 ~~[(ii) the criminal background check required by this section.]~~
2951 ~~[(d) (i) A registration as a trainee under this chapter is conditional pending completion~~
2952 ~~of the criminal background check required by this Subsection (4).]~~
2953 ~~[(ii) A registration is immediately and automatically revoked if a criminal background~~
2954 ~~check discloses that the applicant fails to accurately disclose a criminal history involving:]~~
2955 ~~[(A) the appraisal industry;]~~
2956 ~~[(B) fraud;]~~
2957 ~~[(C) misrepresentation; or]~~
2958 ~~[(D) deceit.]~~
2959 ~~[(iii) If a criminal background check discloses that an applicant fails to accurately~~
2960 ~~disclose a criminal history other than one described in Subsection (4)(d)(ii), the division:]~~
2961 ~~[(A) shall review the application; and]~~
2962 ~~[(B) in accordance with rules made by the division pursuant to Title 63G, Chapter 3,~~
2963 ~~Utah Administrative Rulemaking Act, may:]~~
2964 ~~[(I) place one or more conditions on a registration;]~~
2965 ~~[(II) place one or more restrictions on a registration;]~~
2966 ~~[(III) revoke a registration; or]~~
2967 ~~[(IV) refer the application to the board for a decision.]~~
2968 ~~[(iv) An individual whose conditional registration is automatically revoked under~~
2969 ~~Subsection (4)(d)(ii) or whose registration is conditioned, restricted, or revoked under~~

2970 Subsection (4)(d)(iii) may appeal the action in a hearing conducted by the board:]
 2971 [~~(A) after the action is taken; and~~]
 2972 [~~(B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.~~]
 2973 [~~(v) The board may delegate to the division or an administrative law judge the~~
 2974 ~~authority to conduct a hearing described in Subsection (4)(d)(iv).]~~
 2975 [~~(vi) Relief from an automatic revocation under Subsection (4)(d)(ii) may be granted~~
 2976 ~~only if:~~]
 2977 [~~(A) the criminal history upon which the division bases the revocation:]~~
 2978 [~~(F) did not occur; or~~]
 2979 [~~(H) is the criminal history of another person;]~~
 2980 [~~(B) (F) the revocation is based on a failure to accurately disclose a criminal history;~~
 2981 ~~and]~~
 2982 [~~(H) the applicant has a reasonable good faith belief at the time of application that there~~
 2983 ~~was no criminal history to be disclosed; or]~~
 2984 [~~(C) the division fails to follow the prescribed procedure for the revocation.]~~
 2985 [~~(e) If a registration is revoked or a revocation is upheld after a hearing described in~~
 2986 ~~Subsection (4)(d)(iv), the individual may not apply for a new registration for a period of 12~~
 2987 ~~months after the day on which the registration is revoked.]~~
 2988 [~~(f) The board may delegate to the division the authority to make a decision on whether~~
 2989 ~~relief from a revocation should be granted.]~~
 2990 [~~(g) Money paid by an applicant for the cost of the criminal background check is~~
 2991 ~~nontaxing.]~~

2992 Section 44. Section **61-2g-202**, which is renumbered from Section 61-2b-37 is
 2993 renumbered and amended to read:

2994 **~~61-2b-37~~. 61-2g-202. Division service fees -- Federal registry fees.**

2995 (1) The division, with the concurrence of the board, shall establish and collect fees in
 2996 accordance with Section 63J-1-504 for its services under this chapter.

2997 (2) The division shall collect the annual registry fee established by the Federal

2998 Financial Institutions Examinations Council from those certificate holders who seek to perform
 2999 appraisals in federally related transactions. The division shall transmit the fees to the federal
 3000 Appraisal Subcommittee at least annually.

3001 (3) If a person pays a fee or costs to the division with a negotiable instrument or any
 3002 other payment method that is not honored:

3003 (a) the transaction for which the payment is submitted is voidable by the division;

3004 (b) the division may reverse the transaction if payment of the applicable fee or costs is
 3005 not received in full; and

3006 (c) the person's license, certification, or registration is automatically suspended:

3007 (i) beginning the day on which the payment is due; and

3008 (ii) ending the day on which payment is made in full.

3009 Section 45. Section **61-2g-203**, which is renumbered from Section 61-2b-38 is
 3010 renumbered and amended to read:

3011 **[61-2b-38]. 61-2g-203. Division to publish roster of appraisers.**

3012 (1) The division shall prepare and issue at least once each calendar year a roster of
 3013 appraisers containing the information required by the Federal Financial Institutions
 3014 Examination Council. The division shall transmit the roster to the Federal Financial
 3015 Institutions Examinations Council at least annually.

3016 (2) The division may, upon payment of a fee established by the division in accordance
 3017 with Section 63J-1-504, issue to a person a verified history of a person:

3018 (a) licensed, certified, or registered under this chapter; or

3019 (b) previously registered, licensed, or certified under this chapter.

3020 Section 46. Section **61-2g-204**, which is renumbered from Section 61-2b-7 is
 3021 renumbered and amended to read:

3022 **[61-2b-7]. 61-2g-204. Real Estate Appraiser Licensing and Certification**
 3023 **Board.**

3024 (1) (a) There is established a Real Estate Appraiser Licensing and Certification Board
 3025 [~~which shall consist~~] that consists of five regular members as follows:

- 3026 (i) one state-licensed or state-certified appraiser who may be either a residential or
3027 general licensee or certificate holder;
- 3028 (ii) one state-certified residential appraiser;
- 3029 (iii) one state-certified general appraiser;
- 3030 (iv) one member who is certified as either a state-certified residential appraiser or a
3031 state-certified general appraiser; and
- 3032 (v) one member of the general public.
- 3033 (b) A state-licensed or state-certified appraiser may be appointed as an alternate
3034 member of the board.
- 3035 (c) The governor shall appoint all members of the board with the consent of the Senate.
- 3036 (2) (a) Except as required by Subsection (2)(b), as terms of current board members
3037 expire, the governor shall appoint each new member or reappointed member to a four-year
3038 term beginning on July 1.
- 3039 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the
3040 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
3041 board members are staggered so that approximately half of the board is appointed every two
3042 years.
- 3043 (c) Upon the expiration of a member's term, a member of the board shall continue to
3044 hold office until the appointment and qualification of the member's successor.
- 3045 (d) A person may not serve as a member of the board for more than two consecutive
3046 terms.
- 3047 (3) (a) When a vacancy occurs in the membership for any reason, the replacement shall
3048 be appointed for the unexpired term.
- 3049 (b) The governor may remove a [board] member for cause.
- 3050 (4) The public member of the board may not be licensed or certified under this chapter.
- 3051 (5) The board shall meet at least quarterly to conduct its business. ~~[Public notice shall~~
3052 ~~be given for all board meetings.]~~ The division shall give public notice of a board meeting.
- 3053 (6) The members of the board shall elect a chair annually from among the members to

3054 preside at board meetings.

3055 (7) A member may not receive compensation or benefits for the member's service, but
3056 may receive per diem and travel expenses in accordance with:

3057 (a) Section 63A-3-106;

3058 (b) Section 63A-3-107; and

3059 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
3060 63A-3-107.

3061 (8) (a) Three members of the board shall constitute a quorum for the transaction of
3062 business.

3063 (b) If a quorum of members is unavailable for any meeting, the alternate member of the
3064 board, if any, shall serve as a regular member of the board for that meeting if with the presence
3065 of the alternate member a quorum is present at the meeting.

3066 Section 47. Section **61-2g-205**, which is renumbered from Section 61-2b-8 is
3067 renumbered and amended to read:

3068 **~~61-2b-8~~. 61-2g-205. Duties of board.**

3069 (1) (a) The board shall provide technical assistance to the division relating to real estate
3070 appraisal standards and real estate appraiser qualifications.

3071 (b) The board has the powers and duties listed in this section.

3072 (2) The board shall:

3073 (a) determine the experience and education requirements appropriate for a person
3074 licensed under this chapter;

3075 (b) determine the experience and education requirements appropriate for a person
3076 certified under this chapter:

3077 (i) in compliance with the minimum requirements of Financial Institutions Reform,
3078 Recovery, and Enforcement Act of 1989; and

3079 (ii) consistent with the intent of this chapter;

3080 (c) determine the appraisal related acts that may be performed by:

3081 (i) a trainee on the basis of the trainee's education and experience;

3082 (ii) clerical staff; and
3083 (iii) a person who:
3084 (A) does not hold a license or certification; and
3085 (B) assists an appraiser licensed or certified under this chapter in providing appraisal
3086 services or consultation services;
3087 (d) determine the procedures for a trainee to register and to renew a registration with
3088 the division; and
3089 (e) develop one or more programs to upgrade and improve the experience, education,
3090 and examinations as required under this chapter.
3091 (3) (a) The experience and education requirements established by the board for a
3092 person licensed or certified under this chapter shall be the minimum criteria established by the
3093 Appraisal Qualification Board, unless, after notice and a public hearing held in accordance with
3094 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board finds that the minimum
3095 criteria are not appropriate for a state-licensed appraiser or a state-certified appraiser in this
3096 state.
3097 (b) If under Subsection (3)(a) the board makes a finding that the minimum criteria are
3098 not appropriate, the board shall recommend appropriate criteria to the Legislature.
3099 (4) The board shall:
3100 (a) determine the continuing education requirements appropriate for the renewal of a
3101 license, certification, or registration issued under this chapter, except that the continuing
3102 education requirements established by the board shall at least meet the minimum criteria
3103 established by the Appraisal Qualification Board;
3104 (b) develop one or more programs to upgrade and improve continuing education; and
3105 (c) recommend to the division one or more available continuing education courses that
3106 meet the requirements of this chapter.
3107 (5) (a) The board shall consider the proper interpretation or explanation of the Uniform
3108 Standards of Professional Appraisal Practice as required by Section [~~61-2b-27~~] 61-2g-403
3109 when:

3110 (i) an interpretation or explanation is necessary in the enforcement of this chapter; and
3111 (ii) the Appraisal Standards Board of the Appraisal Foundation has not issued an
3112 interpretation or explanation.

3113 (b) If the conditions of Subsection (5)(a) are met, the board shall recommend to the
3114 division the appropriate interpretation or explanation that the division should adopt as a rule
3115 under this chapter.

3116 (c) The board may by rule made in accordance with Title 63G, Chapter 3, Utah
3117 Administrative Rulemaking Act, and Section [~~61-2b-27~~] 61-2g-403, and with the concurrence
3118 of the division, provide for an exemption from a provision of the Uniform Standards of
3119 Professional Appraisal Practice for an activity engaged in on behalf of a governmental entity.

3120 (6) (a) The board shall conduct an administrative hearing, not delegated by the board to
3121 an administrative law judge, in connection with a disciplinary proceeding under [~~Sections~~
3122 ~~61-2b-30 and 61-2b-31~~] Section 61-2g-504 concerning:

3123 (i) a person required to be licensed, certified, or registered under this chapter; and
3124 (ii) the person's failure to comply with this chapter and the Uniform Standards of
3125 Professional Appraisal Practice as adopted under Section [~~61-2b-27~~] 61-2g-403.

3126 (b) The board, with the concurrence of the division, shall issue in an administrative
3127 hearing a decision that contains findings of fact and conclusions of law.

3128 (c) When a determination is made that a person required to be licensed, certified, or
3129 registered under this chapter has violated this chapter, the division shall implement disciplinary
3130 action determined [~~by~~] through concurrence of the board and the division.

3131 (7) A member of the board is immune from a civil action or criminal prosecution for a
3132 disciplinary proceeding concerning a person required to be registered, licensed, certified, or
3133 approved as an expert under this chapter if the action is taken without malicious intent and in
3134 the reasonable belief that the action taken was taken pursuant to the powers and duties vested
3135 in a member of the board under this chapter.

3136 (8) The board shall require and pass upon proof necessary to determine the honesty,
3137 competency, integrity, and truthfulness of an applicant for:

3138 (a) original licensure, certification, or registration; and

3139 (b) renewal licensure, certification, or registration.

3140 Section 48. Section **61-2g-301**, which is renumbered from Section 61-2b-3 is

3141 renumbered and amended to read:

3142 **Part 3. Licensure, Certification, or Registration**

3143 ~~[61-2b-3]~~. **61-2g-301. License or certification required.**

3144 (1) Except as provided in Subsection (2) and in [~~Subsection 61-2b-6(2)~~] Section
3145 61-2g-303, it is unlawful for a person to prepare, for valuable consideration, an appraisal, an
3146 appraisal report, a certified appraisal report, or perform a consultation service relating to real
3147 estate or real property in this state without first being licensed or certified in accordance with
3148 this chapter.

3149 (2) This section does not apply to:

3150 (a) a principal broker, associate broker, or sales agent as defined by Section 61-2f-102
3151 licensed by this state who, in the ordinary course of the broker's or sales agent's business, gives
3152 an opinion:

3153 (i) regarding the value of real estate;

3154 (ii) to a potential seller or [~~third party~~] third-party recommending a listing price of real
3155 estate; or

3156 (iii) to a potential buyer or [~~third party~~] third-party recommending a purchase price of
3157 real estate;

3158 (b) an employee of a company who states an opinion of value or prepares a report
3159 containing value conclusions relating to real estate or real property solely for the company's
3160 use;

3161 (c) an official or employee of a government agency while acting solely within the scope
3162 of the official's or employee's duties, unless otherwise required by Utah law;

3163 (d) an auditor or accountant who states an opinion of value or prepares a report
3164 containing value conclusions relating to real estate or real property while performing an audit;

3165 (e) an individual, except an individual who is required to be licensed or certified under

3166 this chapter, who states an opinion about the value of property in which the person has an
3167 ownership interest;

3168 (f) an individual who states an opinion of value if no consideration is paid or agreed to
3169 be paid for the opinion and no other party is reasonably expected to rely on the individual's
3170 appraisal expertise;

3171 (g) an individual, such as a researcher or a secretary, who does not render significant
3172 professional assistance, as defined by the board, in arriving at a real estate appraisal analysis,
3173 opinion, or conclusion; or

3174 (h) an attorney authorized to practice law in this state who, in the course of the
3175 attorney's practice, uses an appraisal report governed by this chapter or who states an opinion
3176 of the value of real estate.

3177 (3) An opinion of value or report containing value conclusions exempt under
3178 Subsection (2) may not be referred to as an appraisal.

3179 (4) Except as provided in Subsection (2) and Section 61-2g-303, to prepare or cause to
3180 be prepared in this state an appraisal, an appraisal report, or a certified appraisal report an
3181 individual shall:

3182 (a) apply in writing for licensure or certification as provided in this chapter in the form
3183 as the division may prescribe; and

3184 (b) become licensed or certified under this chapter.

3185 Section 49. Section **61-2g-302** is enacted to read:

3186 **61-2g-302. Registration as trainee.**

3187 (1) (a) An individual is required to register with the division as a trainee before the
3188 individual acts in the capacity of a trainee earning experience for licensure.

3189 (b) Subject to Subsection (2), the board, with the concurrence of the division, shall
3190 adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for:

3191 (i) the trainee registration required by this Subsection (1); and

3192 (ii) renewal of the trainee registration required by this Subsection (1).

3193 (2) (a) An individual applying to register as a trainee under this chapter shall:

3194 (i) submit a fingerprint card in a form acceptable to the division at the time of applying
3195 for registration; and

3196 (ii) consent to a criminal background check by:

3197 (A) the Utah Bureau of Criminal Identification; and

3198 (B) the Federal Bureau of Investigation.

3199 (b) The division shall request the Department of Public Safety to complete a Federal

3200 Bureau of Investigation criminal background check for an applicant through a national criminal
3201 history system.

3202 (c) The applicant shall pay the cost of:

3203 (i) the fingerprinting required by this section; and

3204 (ii) the criminal background check required by this section.

3205 (d) (i) A registration as a trainee under this chapter is conditional pending completion
3206 of the criminal background check required by this Subsection (2).

3207 (ii) A registration is immediately and automatically revoked if a criminal background
3208 check discloses that the applicant fails to accurately disclose a criminal history involving:

3209 (A) the appraisal industry; or

3210 (B) a felony conviction on the basis of an allegation of fraud, misrepresentation, or
3211 deceit.

3212 (iii) If a criminal background check discloses that an applicant fails to accurately
3213 disclose a criminal history other than one described in Subsection (2)(d)(ii), the division shall
3214 review the application, and in accordance with rules made by the division pursuant to Title
3215 63G, Chapter 3, Utah Administrative Rulemaking Act, may:

3216 (A) place one or more conditions on a registration;

3217 (B) place one or more restrictions on a registration;

3218 (C) revoke a registration; or

3219 (D) refer the application to the board for a decision.

3220 (iv) An individual whose conditional registration is automatically revoked under
3221 Subsection (2)(d)(ii) or whose registration is conditioned, restricted, or revoked under

3222 Subsection (2)(d)(iii) may appeal the action in a hearing conducted by the board:

3223 (A) after the action is taken; and

3224 (B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

3225 (v) The board may delegate to the division or an administrative law judge the authority
3226 to conduct a hearing described in Subsection (2)(d)(iv).

3227 (vi) Relief from an automatic revocation under Subsection (2)(d)(ii) may be granted
3228 only if:

3229 (A) the criminal history upon which the division bases the revocation did not occur or
3230 is the criminal history of another person;

3231 (B) the revocation is based on a failure to accurately disclose a criminal history, and the
3232 applicant has a reasonable good faith belief at the time of application that there was no criminal
3233 history to be disclosed; or

3234 (C) the division fails to follow the prescribed procedure for the revocation.

3235 (e) If a registration is revoked or a revocation is upheld after a hearing described in
3236 Subsection (2)(d)(iv), the individual may not apply for a new registration for a period of 12
3237 months after the day on which the registration is revoked.

3238 (f) The board may delegate to the division the authority to make a decision on whether
3239 relief from a revocation should be granted.

3240 (g) Money paid by an applicant for the cost of the criminal background check is
3241 nonlapsing.

3242 Section 50. Section **61-2g-303** is enacted to read:

3243 **61-2g-303. Approval of an expert.**

3244 (1) The division shall approve an expert witness who is not otherwise licensed or
3245 certified under this chapter to appear in an administrative or judicial tax proceeding to provide
3246 evidence related to the valuation of real property that is assessed by the State Tax Commission,
3247 if the:

3248 (a) approval is limited to a specific proceeding;

3249 (b) approval is valid until the proceeding becomes final;

3250 (c) applicant pays to the division an approval fee set by the division in accordance with
3251 Section 63J-1-504;

3252 (d) applicant provides the applicant's name, address, occupation, and professional
3253 credentials; and

3254 (e) applicant provides a notarized statement that:

3255 (i) the applicant is competent to render an appraisal and to testify as an expert witness
3256 in the proceeding; and

3257 (ii) the appraisal and testimony to be offered shall be in accordance with the Uniform
3258 Standards of Professional Appraisal Practice adopted by the board.

3259 (2) Subsection (1) applies to an administrative or judicial property tax proceeding
3260 related to the valuation of real property that is assessed by the State Tax Commission.

3261 Section 51. Section **61-2g-304**, which is renumbered from Section 61-2b-18 is
3262 renumbered and amended to read:

3263 **[61-2b-18]. 61-2g-304. Application for licensure, certification, or registration --**
3264 **Approval as an expert witness.**

3265 (1) An application for the following shall be sent to the division on a form approved by
3266 the division:

3267 (a) original certification, licensure, or registration;

3268 (b) approval as an expert witness; and

3269 (c) renewal of certification, licensure, or registration.

3270 (2) The payment of the appropriate fee, as established by the division, with the
3271 concurrence of the board, in accordance with Section 63J-1-504, must accompany an
3272 application for:

3273 (a) approval as an expert witness;

3274 (b) original certification, licensure, or registration; and

3275 (c) renewal of certification, licensure, or registration.

3276 (3) At the time of filing an application described in Subsection (1), an applicant shall:

3277 (a) sign a pledge to comply with the Uniform Standards of Professional Appraisal

3278 Practice and the ethical rules to be observed by an appraiser that are established under Section
3279 [~~61-2b-27~~] 61-2g-403 for:

- 3280 (i) a certified or licensed appraiser;
 - 3281 (ii) a trainee; or
 - 3282 (iii) an expert witness approved under this chapter; and
- 3283 (b) certify that the applicant understands the types of misconduct, as set forth in this
3284 chapter, for which a disciplinary proceeding may be initiated against a person certified,
3285 licensed, or registered under this chapter.

3286 Section 52. Section **61-2g-305**, which is renumbered from Section 61-2b-19 is
3287 renumbered and amended to read:

3288 **[~~61-2b-19~~]. 61-2g-305. Expiration of license, certification, or registration.**

3289 (1) An initial license, certification, or registration issued under this chapter expires on
3290 the expiration date indicated on the license, certificate, or registration.

3291 (2) A renewal license, certification, or registration issued under this chapter expires
3292 two years from the date of issuance.

3293 (3) (a) The scheduled expiration date of a license, certification, or registration shall
3294 appear on the license, certification, or registration document.

3295 (b) (i) The division shall mail a holder of a license, certification, or registration notice
3296 of its expiration to the last address stated on the division's records as the holder's current
3297 address.

3298 (ii) To be mailed a notice under this Subsection (3)(b), a holder of a license,
3299 certification, or registration shall provide to the division in writing the holder's current address.

3300 (iii) A holder's license, certification, or registration expires if not renewed by the holder
3301 notwithstanding whether the holder receives a notice of its expiration by the division under this
3302 Subsection (3)(b).

3303 Section 53. Section **61-2g-306**, which is renumbered from Section 61-2b-20 is
3304 renumbered and amended to read:

3305 **[~~61-2b-20~~]. 61-2g-306. Renewal of license, certification, or registration.**

3306 (1) To renew a license, certification, or registration, before the license, certification, or
3307 registration expires, the holder of the license, certification, or registration shall submit to the
3308 division in compliance with procedures set ~~[by]~~ through the concurrence of the division and the
3309 board:

3310 (a) an application for renewal;

3311 (b) a fee established by the division and the board, in accordance with Section
3312 63J-1-504; and

3313 (c) evidence in the form prescribed by the division of having completed the continuing
3314 education requirements for renewal specified in this chapter.

3315 (2) (a) A license, certification, or registration expires if it is not renewed on or before
3316 its expiration date.

3317 (b) For a period of 30 days after the expiration date, a license, certification, or
3318 registration may be reinstated upon:

3319 (i) payment of a renewal fee and a late fee determined ~~[by]~~ through the concurrence of
3320 the division and the board; and

3321 (ii) satisfying the continuing education requirements specified in Section ~~[61-2b-40]~~
3322 61-2g-307.

3323 (c) After the 30-day period described in Subsection (2)(b), and until six months after
3324 the expiration date, a license, certification, or registration may be reinstated by:

3325 (i) paying a renewal fee and a reinstatement fee determined ~~[by]~~ through the
3326 concurrence of the division and the board; and

3327 (ii) satisfying the continuing education requirements specified in Section ~~[61-2b-40]~~
3328 61-2g-307.

3329 (d) After the six-month period described in Subsection (2)(c), and until one year after
3330 the expiration date, a license, certification, or registration may be reinstated by:

3331 (i) paying a renewal fee and a reinstatement fee determined ~~[by]~~ through the
3332 concurrence of the division and the board in accordance with Section 63J-1-504;

3333 (ii) providing proof acceptable to the division ~~[and]~~, with the concurrence of the board,

3334 of the person having satisfied the continuing education requirements of Section [~~61-2b-40~~]
3335 61-2g-307; and

3336 (iii) providing proof acceptable to the division [~~and~~], with the concurrence of the
3337 board, of the person completing 24 hours of continuing education:

3338 (A) in addition to the requirements in Section [~~61-2b-40~~] 61-2g-307; and

3339 (B) on a subject determined by the division by rule made in accordance with Title 63G,
3340 Chapter 3, Utah Administrative Rulemaking Act.

3341 (e) The division shall relicense, recertify, or reregister a person who does not renew
3342 that person's license, certification, or registration within one year after the expiration date as
3343 prescribed for an original application.

3344 (f) Notwithstanding Subsection (2)(a), the division may extend the term of a license,
3345 certification, or registration that would expire under Subsection (2)(a) except for the extension
3346 if:

3347 (i) (A) the person complies with the requirements of this section to renew the license,
3348 certification, or registration; and

3349 [~~(ii)~~] (B) the application for renewal remains pending at the time of the extension[
3350 ~~there is pending under this chapter~~]; or

3351 [~~(A) the application for renewal of the license, certification, or registration; or~~]

3352 [~~(B)~~] (ii) at the time of the extension, there is pending under this chapter a disciplinary
3353 action.

3354 (3) A person who is licensed, certified, or registered under this chapter shall notify the
3355 division of the following by sending the division a signed statement within 10 business days of:

3356 (a) (i) a conviction of a [~~criminal offense~~];

3357 (A) felony;

3358 (B) class A misdemeanor; or

3359 (C) class B misdemeanor;

3360 (ii) the entry of a plea in abeyance to a [~~criminal offense; or~~];

3361 (A) felony;

- 3362 (B) class A misdemeanor; or
- 3363 (C) class B misdemeanor; or
- 3364 (iii) the potential resolution of a [~~criminal case~~] felony, class A misdemeanor, or class
- 3365 B misdemeanor by:
- 3366 (A) a diversion agreement; or
- 3367 (B) any other agreement under which a criminal charge is suspended for a period of
- 3368 time;
- 3369 (b) filing a personal bankruptcy or business bankruptcy;
- 3370 (c) the suspension, revocation, surrender, cancellation, or denial of a professional
- 3371 license, certification, or registration of the person, whether the license, certification, or
- 3372 registration is issued by this state or another jurisdiction; or
- 3373 (d) the entry of a cease and desist order or a temporary or permanent injunction:
- 3374 (i) against the person by a court or administrative agency; and
- 3375 (ii) on the basis of:
- 3376 (A) conduct or a practice involving an act regulated by this chapter; or
- 3377 (B) conduct involving fraud, misrepresentation, or deceit.
- 3378 (4) The board, with the concurrence of the division, shall enforce the reporting
- 3379 requirement of Subsection (3) pursuant to Section 61-2g-502.

3380 Section 54. Section **61-2g-307**, which is renumbered from Section 61-2b-40 is

3381 renumbered and amended to read:

3382 ~~[61-2b-40]~~. **61-2g-307. Continuing education requirements.**

- 3383 (1) As a prerequisite to renewal of a license, certification, or registration, the applicant
- 3384 for renewal shall present evidence satisfactory to the division of having met the continuing
- 3385 education requirements of this section.
- 3386 (2) A person licensed, certified, or registered under this chapter shall complete during
- 3387 the two-year period immediately preceding the filing of an application for renewal not less than
- 3388 28 classroom hours of instruction in courses or seminars that have received the approval of the
- 3389 division.

3390 (3) (a) The division, with the concurrence of the board, may adopt rules for the
3391 implementation of this section to assure that ~~[each]~~ a person renewing that person's license,
3392 certification, or registration under this chapter has a working knowledge of current real estate
3393 appraisal theories, practices, and techniques that will enable the person to provide competent
3394 real estate appraisal services to the members of the public with whom that person deals in a
3395 professional relationship under the authority of that person's license, certificate, or registration.

3396 ~~[(4)]~~ (b) An amendment or repeal of a rule adopted by the division under this section,
3397 with the concurrence of the board, does not operate to deprive a person of credit toward
3398 renewal of that person's license, certification, or registration for a course of instruction that is
3399 successfully completed by the applicant before the date of the amendment or repeal of the rule.

3400 (c) The rules made under this Subsection (3) shall prescribe:

3401 (i) policies and procedures to be followed in obtaining division approval of courses of
3402 instruction and seminars;

3403 (ii) standards, policies, and procedures to be used by the division in evaluating an
3404 applicant's claims of equivalency; and

3405 (iii) standards, monitoring methods, and systems for recording attendance to be
3406 employed by course and seminar sponsors as a prerequisite to division approval of courses and
3407 seminars for credit.

3408 ~~[(5)]~~ (4) In lieu of meeting the requirements set forth in Subsection (2) and applicable
3409 rules, an applicant for renewal may satisfy all or part of the continuing education requirements
3410 that are imposed by the board in excess of the minimum requirements of the Appraisal
3411 Qualification Board by presenting evidence of the following:

3412 (a) completion of an educational program of study determined by the board to be
3413 equivalent, for continuing education purposes, to courses or seminars approved by the board; or

3414 (b) participation other than as a student in educational processes and programs
3415 approved by the board that relate to real property appraisal theory, practices, or techniques
3416 including teaching, program development, and preparation of textbooks, monographs, articles,
3417 and other instructional materials.

3418 ~~[(6) The board shall develop and propose to the division rules described in Subsection~~
3419 ~~(3). The rules developed and proposed by the board under this Subsection (6) shall prescribe:]~~

3420 ~~[(a) policies and procedures to be followed in obtaining division approval of courses of~~
3421 ~~instruction and seminars;]~~

3422 ~~[(b) standards, policies, and procedures to be used by the division in evaluating an~~
3423 ~~applicant's claims of equivalency; and]~~

3424 ~~[(c) standards, monitoring methods, and systems for recording attendance to be~~
3425 ~~employed by course and seminar sponsors as a prerequisite to division approval of courses and~~
3426 ~~seminars for credit.]~~

3427 ~~[(7)(a)]~~ (5) A person whose license, certification, or registration is ~~[revoked or]~~
3428 suspended as the result of a disciplinary action taken ~~[by the board]~~ under this chapter may not
3429 apply for reinstatement unless the person presents evidence of completion of the continuing
3430 education requirement that is required by this chapter for renewal.

3431 ~~[(b) The continuing education required under Subsection (7) (5)(a) may not be imposed~~
3432 ~~upon an applicant for reinstatement who has been required by the division to successfully~~
3433 ~~complete the examination for licensure or certification required by Section 61-2b-20 as a~~
3434 ~~condition to reinstatement.]~~

3435 Section 55. Section **61-2g-308**, which is renumbered from Section 61-2b-22 is
3436 renumbered and amended to read:

3437 ~~[61-2b-22].~~ **61-2g-308. Licensing, certification, registration, or expert witness**
3438 **requirements for nonresidents -- Temporary license or certificate -- Revocation.**

3439 (1) An applicant for one of the following who is not a resident of this state shall submit
3440 with the applicant's application an irrevocable consent that service of process upon the
3441 applicant may be made by delivery of the process to the director of the division if, in an action
3442 against the applicant in a court of this state arising out of the applicant's activities governed by
3443 this chapter in this state, the plaintiff cannot, in the exercise of due diligence, obtain personal
3444 service upon the applicant:

3445 (a) approval as an expert witness; or

3446 (b) licensure, certification, or registration under this chapter.

3447 (2) A nonresident of this state who complies with Subsection (1) may obtain approval
3448 as an expert witness, a license, a certification, or a registration in this state by complying with
3449 ~~[the provisions of]~~ this chapter relating to approval as an expert witness, licensure,
3450 certification, or registration.

3451 (3) A nonresident of this state who complies with Subsection (1) may obtain a
3452 temporary permit for a license or certification to perform a contract relating to the appraisal of
3453 real estate or real property in this state. To qualify for the issuance of a temporary permit for a
3454 license or certification, an applicant must:

3455 (a) submit an application on a form approved by the division;

3456 (b) submit evidence that the applicant is licensed or certified in the state in which the
3457 applicant primarily conducts business;

3458 (c) certify that no formal charges alleging violation of state appraisal licensing or
3459 certification laws have been filed against the applicant by the applicant's state of domicile; and

3460 (d) pay an application fee in an amount established by the division with the
3461 concurrence of the board.

3462 (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3463 division, with the concurrence of the board, shall make rules establishing:

3464 (a) the duration of a temporary permit; and

3465 (b) procedures for renewal of a temporary permit.

3466 (5) A temporary permit issued under this section shall be immediately and
3467 automatically revoked if the appraiser's license or certification is suspended or revoked in the
3468 appraiser's state of domicile.

3469 (6) A person whose temporary permit for a license or certification is revoked under
3470 Subsection (5) is entitled to a postrevocation hearing to challenge the revocation. The hearing
3471 shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

3472 Section 56. Section **61-2g-309**, which is renumbered from Section 61-2b-21 is
3473 renumbered and amended to read:

3474 ~~[61-2b-21]~~. 61-2g-309. **Denial of licensure, certification, or registration.**

3475 The division may, upon compliance with Title 63G, Chapter 4, Administrative
3476 Procedures Act, deny the issuance of a license, certification, or registration to an applicant on
3477 any of the grounds enumerated in this chapter.

3478 Section 57. Section **61-2g-310**, which is renumbered from Section 61-2b-23 is
3479 renumbered and amended to read:

3480 ~~[61-2b-23]~~. 61-2g-310. **Reciprocal licensure.**

3481 An applicant for licensure or certification in this state who is licensed or certified under
3482 the laws of any other state, territory, or district may obtain a license or certification in this state
3483 upon the terms and conditions determined by the division and the board, if, in the
3484 determination of the division and the board:

3485 (1) the state, territory, or the District of Columbia is considered to have substantially
3486 equivalent licensing laws for real estate appraisers;

3487 (2) the laws of that state, territory, or the District of Columbia accord substantially
3488 equal reciprocal rights to a person licensed or certified and in good standing in this state; and

3489 (3) no formal charges alleging violation of state appraisal licensing or certification laws
3490 have been filed against the applicant by the applicant's state of domicile.

3491 Section 58. Section **61-2g-311**, which is renumbered from Section 61-2b-10 is
3492 renumbered and amended to read:

3493 ~~[61-2b-10]~~. 61-2g-311. **State-licensed appraiser -- Authority and qualifications.**

3494 (1) A state-licensed appraiser is authorized to appraise complex and noncomplex 1-4
3495 family residential units in this state having a transaction value permitted under the Financial
3496 Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations.

3497 (2) A state-licensed appraiser is authorized to appraise vacant or unimproved land
3498 having a transaction value permitted under the Financial Institutions Reform, Recovery, and
3499 Enforcement Act of 1989, and related federal regulations that is utilized for 1-4 family
3500 purposes or for which the highest and best use is 1-4 family purposes and subdivisions for
3501 which a development analysis/appraisal is not necessary.

- 3502 (3) A state-licensed appraiser may not issue a certified appraisal report.
- 3503 (4) To qualify as a state-licensed appraiser, an applicant must:
- 3504 (a) be of good moral character;
- 3505 (b) demonstrate honesty, competency, integrity, and truthfulness;
- 3506 (c) pass the licensing examination with a satisfactory score as determined by the
- 3507 Appraisal Qualification Board;
- 3508 (d) successfully complete not less than 150 classroom hours in courses of study that
- 3509 relate to:
- 3510 (i) real estate appraisal;
- 3511 (ii) the Uniform Standards of Professional Appraisal Practice; and
- 3512 (iii) ethical rules to be observed by a real estate appraiser as required by Section
- 3513 ~~[61-2b-27]~~ 61-2g-403; and
- 3514 (e) possess the minimum number of hours of experience in real property appraisal as
- 3515 established by rule.
- 3516 (5) The courses of study under Subsection (4)(d) shall be conducted by:
- 3517 (a) a college or university;
- 3518 (b) a community or junior college;
- 3519 (c) a real estate appraisal or real estate related organization;
- 3520 (d) a state or federal agency or commission;
- 3521 (e) a proprietary school;
- 3522 (f) a provider approved by a state certification and licensing agency; or
- 3523 (g) the Appraisal Foundation or its boards.

3524 Section 59. Section **61-2g-312**, which is renumbered from Section 61-2b-13 is

3525 renumbered and amended to read:

3526 ~~[61-2b-13]~~. **61-2g-312. State-certified appraisers -- Authority.**

- 3527 (1) A state-certified residential appraiser is authorized to appraise ~~[a]t~~ the types of real
- 3528 estate which a state-licensed appraiser is authorized to appraise.
- 3529 (2) A state-certified residential appraiser is also authorized to appraise 1-4 unit

3530 residential real estate without regard to transaction value or complexity.

3531 (3) A state-certified residential appraiser is not authorized to appraise subdivisions for
3532 which a development analysis/appraisal is necessary.

3533 (4) A state-certified general appraiser is authorized to appraise ~~aff~~ the types of real
3534 estate and real property.

3535 Section 60. Section **61-2g-313**, which is renumbered from Section 61-2b-14 is
3536 renumbered and amended to read:

3537 **~~61-2b-14~~. 61-2g-313. State-certified residential appraiser -- Authority and**
3538 **qualifications.**

3539 (1) An applicant for certification as a residential appraiser shall provide to the division
3540 evidence of:

3541 (a) the applicant's good moral character, honesty, competency, integrity, and
3542 truthfulness;

3543 (b) completion of the certification examination with a satisfactory score as determined
3544 by the Appraisal Qualification Board;

3545 (c) (i) an associate degree or higher degree from an accredited:

3546 (A) college;

3547 (B) junior college;

3548 (C) community college; or

3549 (D) university; or

3550 (ii) successfully passing a curriculum determined by rule of collegiate level subject
3551 matter courses from an accredited:

3552 (A) college;

3553 (B) junior college;

3554 (C) community college; or

3555 (D) university;

3556 (d) satisfactory completion of not less than 200 classroom hours in a curriculum:

3557 (i) of specific appraisal education determined by rule made by the board, with the

3558 concurrence of the division; and

3559 (ii) that includes a course in the Uniform Standards of Professional Practice or its
3560 equivalent that is approved by the Appraisal Qualification Board;

3561 (e) the minimum number of hours of experience in real property appraisal as
3562 established by rule; and

3563 (f) acquiring the experience required under Subsection (1)(e) within a reasonable
3564 period, as determined by rule, immediately preceding the filing of the application for
3565 certification.

3566 (2) Upon request by the division, an applicant shall make available to the division for
3567 examination:

3568 (a) a detailed listing of the real estate appraisal reports or file memoranda for each year
3569 for which experience is claimed; and

3570 (b) a sample selected by the division of appraisal reports that the applicant has prepared
3571 in the course of the applicant's appraisal practice.

3572 (3) The classroom hours required by Subsection (1)(d) shall be provided by:

3573 (a) a college or university;

3574 (b) a community or junior college;

3575 (c) a real estate appraisal or real estate related organization;

3576 (d) a state or federal agency or commission;

3577 (e) a proprietary school;

3578 (f) a provider approved by a state certification and licensing agency; or

3579 (g) the Appraisal Foundation or its boards.

3580 Section 61. Section **61-2g-314**, which is renumbered from Section 61-2b-15 is
3581 renumbered and amended to read:

3582 **~~61-2b-15~~. 61-2g-314. State-certified general appraiser -- Application --**
3583 **Qualifications.**

3584 (1) An applicant for certification as a general appraiser shall provide to the division
3585 evidence of:

- 3586 (a) the applicant's good moral character, honesty, competency, integrity, and
3587 truthfulness;
- 3588 (b) completion of the certification examination with a satisfactory score as determined
3589 by the Appraisal Qualification Board;
- 3590 (c) (i) a bachelors degree or higher degree from an accredited college or university; or
3591 (ii) successfully passing a curriculum determined by rule of collegiate level subject
3592 matter courses from an accredited:
- 3593 (A) college;
- 3594 (B) junior college;
- 3595 (C) community college; or
- 3596 (D) university;
- 3597 (d) satisfactory completion of not less than 300 classroom hours in a curriculum:
- 3598 (i) of specific appraisal education determined by rule; and
3599 (ii) that includes a course in the Uniform Standards of Professional Practice or its
3600 equivalent that has been approved by the Appraisal Qualification Board;
- 3601 (e) the minimum number of hours of experience in real property appraisal as
3602 established by rule; and
- 3603 (f) acquiring the experience required under Subsection (1)(e) within a reasonable
3604 period, as determined by rule, immediately preceding the filing of the application for
3605 certification.
- 3606 (2) Upon request by the division, an applicant shall make available to the division for
3607 examination:
- 3608 (a) a detailed listing of the real estate appraisal reports or file memoranda for each year
3609 for which experience is claimed; and
- 3610 (b) a sample selected by the division of appraisal reports that the applicant has prepared
3611 in the course of the applicant's appraisal practice.
- 3612 (3) The classroom hours required by Subsection (1)(d) shall be provided by:
- 3613 (a) a college or university;

- 3614 (b) a community or junior college;
- 3615 (c) a real estate appraisal or real estate related organization;
- 3616 (d) a state or federal agency or commission;
- 3617 (e) a proprietary school;
- 3618 (f) a provider approved by a state certification and licensing agency; or
- 3619 (g) the Appraisal Foundation or its boards.

3620 Section 62. Section **61-2g-315**, which is renumbered from Section 61-2b-24 is
3621 renumbered and amended to read:

3622 **~~61-2b-24~~. 61-2g-315. Expert witness, licensing, certification, and registration**
3623 **documents -- Assigned number to be used on contracts -- Surrender of documents upon**
3624 **suspension.**

3625 (1) The division shall issue to a person approved as an expert witness, licensed,
3626 certified, or registered under this chapter a document:

3627 (a) stating that the person is approved as an expert witness, licensed, certified, or
3628 registered under this chapter; and

3629 (b) specifying the expiration date of a license or certification.

3630 (2) (a) An approval as an expert witness, a license, a certification, or a registration
3631 document issued under this chapter shall bear an approval, license, certification, or registration
3632 number assigned by the division.

3633 (b) An assigned number shall be used in a statement of qualification, a contract, or
3634 another instrument used by the holder of the approval, license, certificate, or registration when
3635 reference is made to the holder's status as being approved, licensed, certified, or registered
3636 under this chapter.

3637 (3) (a) An approval, license, certification, or registration document is the property of
3638 the state.

3639 (b) Upon a suspension or revocation of a license, certification, or registration under this
3640 chapter, the individual holding the applicable document shall immediately return the document
3641 to the division.

3642 Section 63. Section **61-2g-401**, which is renumbered from Section 61-2b-17 is
3643 renumbered and amended to read:

3644 **Part 4. Operational Restrictions**

3645 **~~[61-2b-17]~~. 61-2g-401. State-certified and state-licensed appraisers --**
3646 **Restrictions on use of terms -- Conduct prohibited or required -- Trainee.**

3647 (1) (a) The terms "state-certified general appraiser," "state-certified residential
3648 appraiser," and "state-licensed appraiser":

3649 (i) may only be used to refer to an individual who is certified or licensed under this
3650 chapter; and

3651 (ii) may not be used following, or immediately in connection with, the name or
3652 signature of a firm, partnership, corporation, or group, or in any manner that it might be
3653 interpreted as referring to a firm, partnership, corporation, group, or to anyone other than the
3654 individual who is certified or licensed under this chapter.

3655 (b) The requirement of this Subsection (1) may not be construed to prevent a
3656 state-certified general appraiser from signing an appraisal report on behalf of a corporation,
3657 partnership, firm, or group practice if it is clear that:

3658 (i) only the individual is certified; and

3659 (ii) the corporation, partnership, firm, or group practice is not certified.

3660 (c) Except as provided in Section ~~[61-2b-25]~~ 61-2g-103, a certificate or license may
3661 not be issued under this chapter to a corporation, partnership, firm, or group.

3662 (2) (a) A person other than a state-certified general appraiser or state-certified
3663 residential appraiser, may not assume or use any title, designation, or abbreviation likely to
3664 create the impression of certification in this state as a real estate appraiser.

3665 (b) A person other than a state-licensed appraiser may not assume or use any title,
3666 designation, or abbreviation likely to create the impression of licensure in this state as a real
3667 estate appraiser.

3668 (3) (a) Only an individual who has qualified under the certification requirements of this
3669 chapter is authorized to prepare and sign a certified appraisal report relating to real estate or

3670 real property in this state.

3671 (b) If a certified appraisal report is prepared and signed by a state-certified residential
3672 appraiser, the certified appraisal report shall state, immediately following the signature on the
3673 report, "State-Certified Residential Appraiser."

3674 (c) If a certified appraisal report is prepared and signed by a state-certified general
3675 appraiser, the certified appraisal report shall state, immediately following the signature on the
3676 report, "State-Certified General Appraiser."

3677 (d) An appraisal report prepared by a state-licensed appraiser shall state, immediately
3678 following the signature on the report, "State-Licensed Appraiser."

3679 (e) When signing a certified appraisal report, a state-certified appraiser shall also place
3680 on the report, immediately below the state-certified appraiser's signature the state-certified
3681 appraiser's certificate number and its expiration date.

3682 (f) A state-certified residential appraiser may not prepare a certified appraisal report
3683 outside the state-certified residential appraiser's authority as defined in Section [~~61-2b-13~~]
3684 61-2g-312.

3685 (g) A state-licensed appraiser who assisted in the preparation of a certified appraisal
3686 report is authorized to cosign the certified appraisal report.

3687 (4) A person who has not qualified under this chapter may not describe or refer to any
3688 appraisal or appraisal report relating to real estate or real property in this state by the terms
3689 "certified appraisal" or "certified appraisal report."

3690 (5) If a trainee assists a state-certified appraiser in the preparation of an appraisal
3691 report, the appraisal report shall disclose:

3692 (a) the trainee's name; and

3693 (b) the extent to which the trainee assists in the preparation of the appraisal report.

3694 Section 64. Section **61-2g-402**, which is renumbered from Section 61-2b-26 is
3695 renumbered and amended to read:

3696 [~~61-2b-26~~]. **61-2g-402. Principal place of business -- Display of documents --**
3697 **Notify of changes -- Nonresidents.**

3698 (1) A person licensed or certified under this chapter shall:

3699 (a) designate and maintain a principal place of business; and

3700 (b) conspicuously display the person's license or certification.

3701 (2) (a) Upon a change of a person's principal business location or home address, a
3702 person licensed or certified under this chapter shall promptly send the division a signed
3703 statement notifying the division of the change within 10 business days of the change.

3704 (b) Upon a change of an expert witness's address listed on the expert witness's
3705 application for approval, the expert witness shall send the division a signed statement notifying
3706 the division of the change within 10 business days of the change.

3707 (3) A nonresident licensee or certificate holder, or a nonresident approved as an expert
3708 witness is not required to maintain a place of business in this state if the nonresident maintains
3709 an active place of business in the nonresident's state of domicile.

3710 Section 65. Section **61-2g-403**, which is renumbered from Section 61-2b-27 is
3711 renumbered and amended to read:

3712 ~~[61-2b-27]~~. **61-2g-403. Professional conduct -- Uniform standards.**

3713 (1) (a) A person licensed, certified, registered, or approved as an expert witness under
3714 this chapter ~~[must]~~ shall comply with:

3715 (i) generally accepted standards of professional appraisal practice; and

3716 (ii) generally accepted ethical rules to be observed by a real estate appraiser.

3717 (b) Subject to ~~[Subsection (1)(c)]~~ the other provisions of this Subsection (1), generally
3718 accepted standards of professional appraisal practice are evidenced by the Uniform Standards
3719 of Professional Appraisal Practice promulgated by the Appraisal Foundation.

3720 (c) After a public hearing held in accordance with Title 63G, Chapter 3, Utah
3721 Administrative Rulemaking Act, the board, with the concurrence of the division:

3722 (i) shall adopt and may make modifications of or additions to the Uniform Standards of
3723 Professional Appraisal Practice as the board considers appropriate to comply with the Financial
3724 Institutions Reform, Recovery, and Enforcement Act of 1989; or

3725 (ii) may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative

3726 Rulemaking Act, exempt a person licensed, certified, registered, or approved as an expert
3727 witness from complying with a provision of the Uniform Standards of Professional Appraisal
3728 Practice for an activity that the person engages in on behalf of a governmental entity.

3729 (d) When an individual is a state-licensed appraiser or state-certified appraiser and also
3730 holds a license issued under Chapter 2f, Real Estate Licensing and Practices Act, the individual
3731 may provide an opinion of price of real estate without complying with the Uniform Standards
3732 of Professional Appraisal Practice if the individual provides the opinion of price as a licensee
3733 under Chapter 2f.

3734 (2) [~~The~~] When instructed by the board, the division shall schedule a public hearing
3735 pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the purpose of
3736 deciding whether or not the board should require a modified or supplemental standard or the
3737 ethical rule to be observed by a person licensed, certified, registered, or approved as an expert
3738 witness under this chapter if the Appraisal Standards Board of the Appraisal Foundation:

3739 (a) (i) modifies the Uniform Standards of Professional Appraisal Practice;
3740 (ii) issues a supplemental appraisal standard which it considers appropriate for:
3741 (A) a residential real estate appraiser; or
3742 (B) a general real estate appraiser; or
3743 (iii) issues an ethical rule to be observed by a real estate appraiser; and
3744 (b) requests the board to consider the adoption of the modified or supplemental
3745 standard or ethical rule.

3746 (3) If, after the notice and public hearing described in Subsection (2), the board finds
3747 that a modified or supplemental standard or the ethical rule issued by the Appraisal Standards
3748 Board of the Appraisal Foundation is appropriate for a person licensed, certified, registered, or
3749 approved as an expert witness under this chapter, the board shall recommend a rule requiring a
3750 person licensed, certified, registered, or approved as an expert witness under this chapter to
3751 observe the modified or supplemental standard or the ethical rule.

3752 Section 66. Section **61-2g-404**, which is renumbered from Section 61-2b-32 is
3753 renumbered and amended to read:

3754 ~~[61-2b-32].~~ 61-2g-404. **Registration, licensure, or certification prerequisite to**
3755 **suit for compensation.**

3756 A person engaged in the business of real estate appraising in this state or acting in the
3757 capacity of a real estate appraiser in this state may not bring or maintain an action as a plaintiff
3758 in a court of this state to collect compensation for the performance of real estate appraisal
3759 services for which registration, licensure, or certification is required by this chapter without
3760 alleging and proving that the person was the holder of a valid registration, license, or
3761 certification in this state at all times during the performance of the real estate appraisal
3762 services.

3763 Section 67. Section **61-2g-405**, which is renumbered from Section 61-2b-34 is
3764 renumbered and amended to read:

3765 ~~[61-2b-34].~~ 61-2g-405. **Recordkeeping requirements.**

3766 (1) Subject to Subsection (2), a person licensed or certified under this chapter and a
3767 person required to be registered under this chapter before May 3, 2001, shall retain for a period
3768 of five years the original or a true copy of:

3769 (a) each written contract engaging the person's services for real estate or real property
3770 appraisal work;

3771 (b) each appraisal report prepared or signed by the person; and

3772 (c) ~~[att]~~ the supporting data assembled and formulated by the appraiser in preparing
3773 each appraisal report.

3774 (2) The five-year period for retention of records is applicable to each engagement of
3775 the services of the appraiser and begins upon the date of the delivery of each appraisal report to
3776 the client unless, within the five-year period, the appraiser is notified that the appraisal or the
3777 appraisal report is involved in litigation, in which event the records must be maintained for the
3778 longer of:

3779 (a) five years; or

3780 (b) two years following the date of the final disposition of the litigation.

3781 (3) Upon reasonable notice, a person licensed or certified under this chapter and a

3782 person required to be registered under this chapter before May 3, 2001, shall make ~~all~~ the
3783 records required to be maintained under this chapter available to the division for inspection and
3784 copying.

3785 Section 68. Section **61-2g-406**, which is renumbered from Section 61-2b-36 is
3786 renumbered and amended to read:

3787 ~~[61-2b-36].~~ **61-2g-406. Contingent fees.**

3788 (1) A person licensed or certified under this chapter who enters into an agreement to
3789 perform an appraisal may not accept a contingent fee.

3790 (2) A person licensed or certified under this chapter who enters into an agreement to
3791 provide consultation services may be paid a fixed fee or a contingent fee.

3792 (3) (a) If a person licensed or certified under this chapter enters into an agreement to
3793 perform consultation services for a contingent fee, this fact shall be clearly stated in each oral
3794 statement.

3795 (b) In addition to the requirements of Subsection (3)(a), if a person licensed or certified
3796 under this chapter prepares a written consultation report or summary, letter of transmittal, or
3797 certification statement for a contingent fee, the person shall clearly state in the report,
3798 summary, letter of transmittal, or certification statement that the report is prepared under a
3799 contingent fee arrangement.

3800 Section 69. Section **61-2g-407**, which is renumbered from Section 61-2b-41 is
3801 renumbered and amended to read:

3802 ~~[61-2b-41].~~ **61-2g-407. Consultation reports -- Restrictions on use of terms.**

3803 A person who prepares a written or oral consultation report may not refer to the
3804 consultation report as an appraisal, an appraisal report, or in any manner that may be
3805 interpreted as referring to an appraisal or an appraisal report.

3806 Section 70. Section **61-2g-501**, which is renumbered from Section 61-2b-28 is
3807 renumbered and amended to read:

3808 **Part 5. Enforcement**

3809 ~~[61-2b-28].~~ **61-2g-501. Enforcement -- Investigation -- Orders -- Hearings.**

3810 (1) (a) The division may investigate the actions of:
3811 (i) a person registered, licensed, or certified under this chapter;
3812 (ii) an applicant for registration, licensure, or certification;
3813 (iii) an applicant for renewal of registration, licensure, or certification; or
3814 (iv) a person required to be registered, licensed, or certified under this chapter.
3815 (b) The division may initiate an agency action against a person described in Subsection
3816 (1)(a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to:
3817 (i) impose disciplinary action;
3818 (ii) deny issuance to an applicant of:
3819 (A) an original registration, license, or certification; or
3820 (B) a renewal of a registration, license, or certification; or
3821 (iii) issue a cease and desist order as provided in Subsection (3).
3822 (2) (a) The division may:
3823 (i) administer an oath or affirmation;
3824 (ii) subpoena a witness or evidence;
3825 (iii) take evidence; and
3826 (iv) require the production of a book, paper, contract, record, document, information,
3827 or evidence relevant to the investigation described in Subsection (1).
3828 (b) The division may serve a subpoena by certified mail.
3829 (c) A failure to respond to a request by the division in an investigation authorized
3830 under this chapter is considered to be a separate violation of this chapter, including:
3831 (i) failing to respond to a subpoena as a witness;
3832 (ii) withholding evidence; or
3833 (iii) failing to produce a book, paper, contract, document, information, or record.
3834 (d) (i) If a person is found to have violated this chapter or a rule made under this
3835 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,
3836 document, information, or record required under this chapter, including the costs incurred to
3837 copy an electronic book, paper, contract, document, information, or record in a universally

3838 readable format.

3839 (ii) If a person fails to pay the costs described in Subsection (2)(d)(i) when due, the
3840 person's license, certification, or registration is automatically suspended:

3841 (A) beginning the day on which the payment of costs is due; and

3842 (B) ending the day on which the costs are paid.

3843 (3) (a) The director shall issue and serve upon a person an order directing that person to
3844 cease and desist from an act if:

3845 (i) the director has reason to believe that the person has been engaging, is about to
3846 engage, or is engaging in the act constituting a violation of this chapter; and

3847 (ii) it appears to the director that it would be in the public interest to stop the act.

3848 (b) Within 10 days after receiving the order, the person upon whom the order is served
3849 may request a hearing.

3850 (c) Pending a hearing requested under Subsection (3)(b), a cease and desist order shall
3851 remain in effect.

3852 (d) If a request for hearing is made, the division shall follow the procedures and
3853 requirements of Title 63G, Chapter 4, Administrative Procedures Act.

3854 (4) (a) After a hearing requested under Subsection (3), if the board [~~agrees~~] and
3855 division concur that an act of the person violates this chapter, the board, with the concurrence
3856 of the division:

3857 (i) shall issue an order making the cease and desist order permanent; and

3858 (ii) may impose another disciplinary action under Section [~~61-2b-29~~] 61-2g-502.

3859 (b) The director shall commence an action in the name of the Department of
3860 Commerce and Division of Real Estate, in the district court in the county in which an act
3861 described in Subsection (3) occurs or where the person resides or carries on business, to enjoin
3862 and restrain the person from violating this chapter if:

3863 (i) (A) a hearing is not requested under Subsection (3); and

3864 (B) the person fails to cease the act described in Subsection (3); or

3865 (ii) after discontinuing the act described in Subsection (3), the person again

3866 commences the act.

3867 (5) A remedy or action provided in this section does not limit, interfere with, or prevent
3868 the prosecution of another remedy or action, including a criminal proceeding.

3869 Section 71. Section **61-2g-502**, which is renumbered from Section 61-2b-29 is
3870 renumbered and amended to read:

3871 **[61-2b-29]. 61-2g-502. Disciplinary action -- Grounds.**

3872 (1) (a) The board may order disciplinary action, with the concurrence of the division,
3873 against a person:

3874 (i) registered, licensed, or certified under this chapter; or

3875 (ii) required to be registered, licensed, or certified under this chapter.

3876 (b) On the basis of a ground listed in Subsection (2) for disciplinary action, board
3877 action may include:

3878 (i) revoking, suspending, or placing a person's registration, license, or certification on
3879 probation;

3880 (ii) denying a person's original registration, license, or certification;

3881 (iii) denying a person's renewal license, certification, or registration;

3882 (iv) in the case of denial or revocation of a registration, license, or certification, setting
3883 a waiting period for an applicant to apply for a registration, license, or certification under this
3884 chapter;

3885 (v) ordering remedial education;

3886 (vi) imposing a civil penalty upon a person not to exceed the greater of:

3887 (A) \$5,000 for each violation; or

3888 (B) the amount of any gain or economic benefit from a violation;

3889 (vii) issuing a cease and desist order;

3890 (viii) modifying an action described in Subsections (1)(b)(i) through (vii) if the board,
3891 with the concurrence of the division, finds that the person complies with court ordered
3892 restitution; or

3893 (ix) doing any combination of Subsections (1)(b)(i) through (viii).

3894 (c) (i) If the board or division issues an order that orders a fine or educational
3895 requirements as part of the disciplinary action against a person, including a stipulation and
3896 order, the board or division shall state in the order the deadline by which the person shall
3897 comply with the fine or educational requirements.

3898 (ii) If a person fails to comply with a stated deadline:

3899 (A) the person's license, certificate, or registration is automatically suspended:

3900 (I) beginning on the day specified in the order as the deadline for compliance; and

3901 (II) ending the day on which the person complies in full with the order; and

3902 (B) if the person fails to pay a fine required by an order, the division may begin a
3903 collection process:

3904 (I) established by the division by rule made in accordance with Title 63G, Chapter 3,
3905 Utah Administrative Rulemaking Act; and

3906 (II) subject to Title 63A, Chapter 8, Office of State Debt Collection.

3907 (2) The following are grounds for disciplinary action under this section:

3908 (a) procuring or attempting to procure a registration, license, or certification under this
3909 chapter:

3910 (i) by fraud; or

3911 (ii) by making a false statement, submitting false information, or making a material
3912 misrepresentation in an application filed with the division;

3913 (b) paying money or attempting to pay money other than a fee provided for by this
3914 chapter to a member or employee of the division to procure a registration, license, or
3915 certification under this chapter;

3916 (c) an act or omission in the practice of real estate appraising that constitutes
3917 dishonesty, fraud, or misrepresentation;

3918 (d) entry of a judgment against a registrant, licensee, or certificate holder on grounds of
3919 fraud, misrepresentation, or deceit in the making of an appraisal of real estate;

3920 (e) a guilty plea to a criminal offense involving moral turpitude that is held in
3921 abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo

3922 contendere, of a criminal offense involving moral turpitude;

3923 (f) engaging in the business of real estate appraising under an assumed or fictitious

3924 name not properly registered in this state;

3925 (g) paying a finder's fee or a referral fee to a person not licensed or certified under this

3926 chapter in connection with an appraisal of real estate or real property in this state;

3927 (h) making a false or misleading statement in:

3928 (i) that portion of a written appraisal report that deals with professional qualifications;

3929 or

3930 (ii) testimony concerning professional qualifications;

3931 (i) violating or disregarding:

3932 (i) this chapter;

3933 (ii) an order of:

3934 (A) the board; or

3935 (B) the division, in a case when the board delegates to the division the authority to

3936 make a decision on behalf of the board; or

3937 (iii) a rule issued under this chapter;

3938 (j) violating the confidential nature of governmental records to which a person

3939 registered, licensed, certified, or approved as an expert under this chapter gained access

3940 through employment or engagement as an appraiser by a governmental agency;

3941 (k) accepting a contingent fee for performing an appraisal if in fact the fee is or was

3942 contingent upon:

3943 (i) the appraiser reporting a predetermined analysis, opinion, or conclusion;

3944 (ii) the analysis, opinion, conclusion, or valuation reached; or

3945 (iii) the consequences resulting from the appraisal assignment;

3946 (l) unprofessional conduct as defined by statute or rule;

3947 (m) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

3948 (i) providing a title insurance product or service without the approval required by

3949 Section 31A-2-405; or

3950 (ii) knowingly providing false or misleading information in the statement required by
3951 Subsection 31A-2-405(2); or

3952 (n) other conduct that constitutes dishonest dealing.

3953 Section 72. Section **61-2g-503**, which is renumbered from Section 61-2b-30.5 is
3954 renumbered and amended to read:

3955 ~~[61-2b-30.5].~~ **61-2g-503. Reinstatement of license, certification,**
3956 **registration, and approval.**

3957 (1) An individual whose license, certification, registration, or approval is revoked
3958 under this chapter:

3959 (a) may not apply for renewal or reinstatement of that license, certification,
3960 registration, or approval; and

3961 (b) may apply for licensure, certification, registration, or approval as prescribed for an
3962 original license, certification, registration, or approval subject to the limitations in Subsection
3963 (2).

3964 (2) An applicant for licensure, certification, registration, or approval as an expert
3965 witness under Subsection (1) ~~[-(a) may not apply for licensure, certification, registration, or~~
3966 ~~approval until at least five years after the date of revocation of the applicant's original license,~~
3967 ~~certification, registration, or approval; and (b)]~~ is not entitled to credit for experience gained
3968 ~~[prior to]~~ before the date of revocation in determining whether the applicant meets the
3969 experience requirement for licensure, certification, registration, or approval.

3970 ~~[(3) A person whose license or certification is revoked may not act as a trainee until at~~
3971 ~~least four years after the day on which the person's license or certification is revoked.]~~

3972 Section 73. Section **61-2g-504**, which is renumbered from Section 61-2b-31 is
3973 renumbered and amended to read:

3974 ~~[61-2b-31].~~ **61-2g-504. Disciplinary hearing process.**

3975 (1) The division and board shall comply with Title 63G, Chapter 4, Administrative
3976 Procedures Act, in conducting any disciplinary proceedings under this chapter.

3977 ~~[(1)]~~ (2) Before disciplinary action may be taken [by the board] under this chapter, the

3978 division shall:

3979 (a) notify the person against whom [~~the board seeks to take~~] disciplinary action is
3980 sought; and

3981 (b) commence an adjudicative proceeding.

3982 [~~(2)~~] (3) If, after the hearing, the board determines, with the concurrence of the
3983 division, that a person described in Subsection [~~(1)~~] (2) violated this chapter, the board may
3984 impose disciplinary action, with the concurrence of the division, by written order as provided in
3985 Section [~~61-2b-29~~] 61-2g-502.

3986 [~~(3)~~] (4) (a) The board may:

3987 (i) conduct hearings with the assistance of an administrative law judge; or

3988 (ii) delegate hearings to an administrative law judge.

3989 (b) If a hearing is delegated by the board to an administrative law judge, the
3990 administrative law judge shall submit to the board and the director for [~~its~~] their consideration:

3991 (i) written findings of fact;

3992 (ii) written conclusions of law; and

3993 (iii) a recommended order.

3994 [~~(4)~~] (5) (a) An applicant, licensee, certificate holder, registrant, or person aggrieved,
3995 including the complainant, may obtain judicial review of an adverse ruling, order, or decision
3996 [~~of the board~~].

3997 (b) If an applicant, licensee, certificate holder, or registrant prevails in an appeal and
3998 the court finds that the state action is undertaken without substantial justification, the court may
3999 award reasonable litigation expenses to the applicant, licensee, certificate holder, or registrant
4000 as provided under Title 78B, Chapter 8, Part 5, Small Business Equal Access to Justice Act.

4001 Section 74. Section **61-2g-505**, which is renumbered from Section 61-2b-33 is
4002 renumbered and amended to read:

4003 [~~61-2b-33~~]. **61-2g-505. Penalty for violating this chapter -- Automatic**
4004 **revocation.**

4005 (1) In addition to being subject to a disciplinary action [~~by the board~~], a person

4006 required to be licensed, certified, or registered under this chapter who violates this chapter:

4007 (a) is guilty of a class A misdemeanor, upon a conviction of a first violation of this
4008 chapter; and

4009 (b) is guilty of a third degree felony, upon conviction of a second or subsequent
4010 violation of this chapter.

4011 (2) A license, certification, or registration issued by the division to a person convicted
4012 of a violation of Section 76-6-1203 is automatically revoked.

4013 Section 75. Section **63A-5-220** is amended to read:

4014 **63A-5-220. Definitions -- Creation of Account for People with Disabilities -- Use**
4015 **of restricted account.**

4016 (1) As used in this section:

4017 (a) "Developmental center" means the Utah State Developmental Center described in
4018 Section 62A-5-201.

4019 (b) "DSPD" means the Division of Services for People with Disabilities within the
4020 Department of Human Services.

4021 (c) "Long-term lease" means:

4022 (i) a lease with a term of five years or more; or

4023 (ii) a lease with a term of less than five years that may be unilaterally renewed by the
4024 lessee.

4025 (2) Notwithstanding [~~the provisions of~~] Section 63A-5-215, any money received by the
4026 division or DSPD from the sale, lease, except any lease existing on May 1, 1995, or other
4027 disposition of real property associated with the developmental center shall be deposited in the
4028 restricted account created in Subsection (3).

4029 (3) (a) There is created a restricted account within the General Fund known as the
4030 "Account for People with Disabilities."

4031 (b) The Division of Finance shall deposit the following revenues into the restricted
4032 account:

4033 (i) revenue from the sale, lease, except any lease existing on May 1, 1995, or other

4034 disposition of real property associated with the developmental center;

4035 (ii) revenue from the sale, lease, or other disposition of water rights associated with the
4036 developmental center; and

4037 (iii) revenue from voluntary contributions made to the restricted account.

4038 (c) The state treasurer shall invest money in the fund according to the procedures and
4039 requirements of Title 51, Chapter 7, State Money Management Act, and ~~and~~ the interest shall
4040 remain with the restricted account.

4041 (d) (i) Except as provided in Subsection (3)(d)(ii), ~~no~~ an expenditure or appropriation
4042 may not be made from the restricted account.

4043 (ii) (A) The Legislature may appropriate interest earned on restricted account money
4044 invested pursuant to this Subsection (3)(d), leases from real property and improvements, leases
4045 from water, rents, and fees to DSPD for programs described in Title 62A, Chapter 5, Services
4046 ~~for~~ for People with Disabilities.

4047 (B) Restricted account money appropriated each year under Subsection (3)(d)(ii)(A)
4048 may not be expended unless approved by the director of the Division of Services for People
4049 with Disabilities within the Department of Human Services in consultation with the executive
4050 director of the department.

4051 (4) (a) Notwithstanding ~~the provisions of~~ Section 65A-4-1, any sale or disposition of
4052 real property or water rights associated with the developmental center shall be conducted as
4053 provided in this Subsection (4).

4054 (b) The division shall secure the concurrence of DSPD and the approval of the
4055 governor before making the sale or other disposition of land or water rights.

4056 (c) In addition to the concurrences required by Subsection (4)(b), the division shall
4057 secure the approval of the Legislature before offering the land or water rights for sale,
4058 exchange, or long-term lease.

4059 (d) The division shall sell or otherwise dispose of the land or water rights as directed
4060 by the governor.

4061 (e) The division may not sell, exchange, or enter into a long-term lease of the land or

4062 water rights for a price or estimated value below the average of two appraisals conducted by an
4063 appraiser who holds an appraiser's certificate or license issued by the Division of Real Estate
4064 under Title 61, Chapter ~~2b~~ 2g, Real Estate Appraiser Licensing and Certification Act.

4065 Section 76. Section **63A-5-401** is amended to read:

4066 **63A-5-401. Rulemaking for sale of real property -- Licensed or certified**
4067 **appraisers -- Exceptions.**

4068 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if
4069 the division buys, sells, or exchanges real property, the division shall make rules to ensure that
4070 the value of the real property is congruent with the proposed price and other terms of the
4071 purchase, sale, or exchange.

4072 (2) The rules:

4073 (a) shall establish procedures for determining the value of the real property;

4074 (b) may provide that an appraisal, as defined under Section ~~61-2b-2~~ 61-2g-102,
4075 demonstrates the real property's value; and

4076 (c) may require that the appraisal be completed by a state-certified general appraiser, as
4077 defined under Section ~~61-2b-2~~ 61-2g-102.

4078 (3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or
4079 to an interest in real property:

4080 (a) that is under a contract or other written agreement ~~[prior to]~~ before May 5, 2008; or

4081 (b) with a value of less than \$100,000, as estimated by the state agency.

4082 Section 77. Section **70D-1-102** is amended to read:

4083 **70D-1-102. Definitions.**

4084 As used in this title:

4085 (1) "Commissioner" means the commissioner of the department.

4086 (2) "Department" means the Department of Financial Institutions.

4087 (3) "Depository institution" is as defined in Section 7-1-103.

4088 (4) "Dwelling" means a residential structure attached to real property that contains one
4089 to four units including any of the following if used as a residence:

- 4090 (a) a condominium unit;
- 4091 (b) a cooperative unit;
- 4092 (c) a manufactured home; or
- 4093 (d) a house.
- 4094 (5) "Mortgage" means a mortgage or deed of trust affecting real property located in this
- 4095 state.
- 4096 (6) (a) "Mortgage loan" means a loan:
- 4097 (i) secured by a mortgage; and
- 4098 (ii) made for personal, family, or household purposes.
- 4099 (b) "Mortgage loan" does not include a loan:
- 4100 (i) made by an individual to a member of the individual's family; or
- 4101 (ii) subject to Title 70C, Utah Consumer Credit Code.
- 4102 (7) "Mortgagor" means a person who:
- 4103 (a) executes a mortgage; or
- 4104 (b) is obligated to pay a mortgage loan.
- 4105 (8) "Record" means information that is:
- 4106 (a) inscribed on a tangible medium; or
- 4107 (b) stored in an electronic or other medium and is retrievable in perceivable form.
- 4108 (9) "Real estate brokerage activity" means an act that involves offering or providing
- 4109 real estate brokerage services to the public, including:
- 4110 (a) acting as a real estate [~~agent or real estate broker~~] principal broker, associate broker,
- 4111 or sales agent, as defined in Section 61-2f-102, for a buyer, seller, lessor, or lessee of real
- 4112 property;
- 4113 (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange
- 4114 of real property;
- 4115 (c) negotiating, on behalf of a party, a portion of a contract relating to the sale,
- 4116 purchase, lease, rental, or exchange of real property, other than in connection with providing
- 4117 financing with respect to the transaction;

4118 (d) engaging in an act for which a person engaged in the activity is required to be
4119 registered or licensed as a real estate agent or real estate broker under applicable law; and

4120 (e) offering to engage in an activity, or act in a capacity, described in Subsections (9)(a)
4121 through (d).

4122 (10) "State" means:

4123 (a) a state, territory, or possession of the United States;

4124 (b) the District of Columbia; or

4125 (c) the Commonwealth of Puerto Rico.

4126 Section 78. Section **72-5-117** is amended to read:

4127 **72-5-117. Rulemaking for sale of real property -- Licensed or certified appraisers**

4128 **-- Exceptions.**

4129 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if
4130 the department buys, sells, or exchanges real property, the department shall make rules to
4131 ensure that the value of the real property is congruent with the proposed price and other terms
4132 of the purchase, sale, or exchange.

4133 (2) The rules:

4134 (a) shall establish procedures for determining the value of the real property;

4135 (b) may provide that an appraisal, as defined under Section [~~61-2b-2~~] 61-2g-102,
4136 demonstrates the real property's value; and

4137 (c) may require that the appraisal be completed by a state-certified general appraiser, as
4138 defined under Section [~~61-2b-2~~] 61-2g-102.

4139 (3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or
4140 to an interest in real property:

4141 (a) that is under a contract or other written agreement [~~prior to~~] before May 5, 2008; or

4142 (b) with a value of less than \$100,000, as estimated by the state agency.

4143 Section 79. Section **79-2-403** is amended to read:

4144 **79-2-403. Rulemaking for sale of real property -- Licensed or certified appraisers**

4145 **-- Exceptions.**

4146 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if
4147 the department buys, sells, or exchanges real property, the department shall make rules to
4148 ensure that the value of the real property is congruent with the proposed price and other terms
4149 of the purchase, sale, or exchange.

4150 (2) The rules:

4151 (a) shall establish procedures for determining the value of the real property;

4152 (b) may provide that an appraisal, as defined under Section [~~61-2b-2~~] 61-2g-102,
4153 demonstrates the real property's value; and

4154 (c) may require that the appraisal be completed by a state-certified general appraiser, as
4155 defined under Section [~~61-2b-2~~] 61-2g-102.

4156 (3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or
4157 to an interest in real property:

4158 (a) that is under a contract or other written agreement [~~prior to~~] before May 5, 2008; or

4159 (b) with a value of less than \$100,000, as estimated by the state agency.

4160 **Section 80. Repealer.**

4161 This bill repeals:

4162 **Section 57-11-19, Extradition proceedings against person charged with crime.**

4163 **Section 61-2b-5, Chapter administration.**

4164 **Section 61-2b-9, Licensure or certification required -- Application.**

4165 **Section 61-2b-30, Compliance with Administrative Procedures Act.**

4166 **Section 61-2b-39, Registration, licensure, or certification history.**