

HB0091S01 compared with HB0091

~~{deleted text}~~ shows text that was in HB0091 but was deleted in HB0091S01.

inserted text shows text that was not in HB0091 but was inserted into HB0091S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

Representative Gage Froerer proposes the following substitute bill:

REAL ESTATE RELATED AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ amends the Utah Uniform Land Sales Practices Act, including:
 - modifying penalties; and
 - repealing extradition proceedings;

~~{~~ → rennumbers and amends the Timeshare and Camp Resort Act, including:

- ~~modifying the definition provision;~~
- ~~addressing the powers and duties of the division and the director;~~
- ~~addressing payments to the division that are not honored;~~

HB0091S01 compared with HB0091

- ~~• providing restrictions on use of a registration;~~
 - ~~• modifying registration processes and requirements;~~
 - ~~• providing for developer and salesperson reporting requirements;~~
 - ~~• addressing renewal, reinstatement, consolidations, and amendments of registrations;~~
 - ~~• addressing the effect of an application and prohibitions on misleading statements;~~
 - ~~• addressing disclosure requirements;~~
 - ~~• addressing a purchaser's right to cancel;~~
 - ~~• addressing unprofessional conduct for a developer or salesperson;~~
 - ~~• increasing fine amounts;~~
 - ~~• modifying review procedures;~~
 - ~~• modifying provisions related to investigations;~~
 - ~~• providing for cease and desist orders; and~~
 - ~~• modifying exemption provisions;~~
- †
- ▶ modifies the Utah Residential Mortgage Practices and Licensing Act, including:
 - modifying the definition provisions;
 - addressing payments to the division that are dishonored;
 - addressing the establishment of fees;
 - addressing qualifications for licensure and criminal histories;
 - providing for enforcement of reporting requirements;
 - modifying prohibited conduct;
 - addressing recordkeeping requirements; and
 - allowing for de novo review under certain circumstances;
 - ▶ modifies the Appraisal Management Company Registration and Regulation Act, including:
 - modifying the definition provisions;
 - addressing when board action is taken with the concurrence of the division;
 - addressing payments to the division that are dishonored;
 - expanding provisions related to criminal histories;
 - allowing the board to delegate to the division certain hearings;

HB0091S01 compared with HB0091

- providing for the extension of the term of a license;
- addressing adherence to standards;
- modifying prohibited conduct;
- providing for the payment of certain costs related to investigations;
- increasing the amount of a civil penalty; and
- addressing the contents and affect of an order;
- ▶ modifies the Real Estate Licensing and Practices Act, including:
 - modifying the definition provisions;
 - addressing payments to the division that are dishonored;
 - providing for de novo review in certain circumstances;
 - addressing criminal histories;
 - addressing when the division may extend the term of a license;
 - providing for the enforcement of reporting requirements;
 - addressing exclusive brokerage agreements; and
 - modifying grounds for disciplinary conduct;
- ▶ renumbers and amends the Real Estate Appraiser Licensing and Certification Act, including:
 - addressing when the board may take action with the concurrence of the division;
 - addressing criminal histories;
 - addressing when the division may extend the term of a license;
 - modifying reinstatement requirements; and
 - allowing the board to delegate certain actions to the division; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

HB0091S01 compared with HB0091

- 16-11-2, as last amended by Laws of Utah 2010, Chapter 379
- 17-17-2, as last amended by Laws of Utah 2010, Chapter 131
- 31A-2-402, as last amended by Laws of Utah 2010, Chapter 379
- 31A-23a-402, as last amended by Laws of Utah 2008, Chapter 382
- 48-2c-1502, as last amended by Laws of Utah 2010, Chapter 379
- 53C-4-103, as enacted by Laws of Utah 2008, Chapter 203
- ~~{ 57-3-105, as last amended by Laws of Utah 2008, Chapter 97~~
- ~~— 57-8-3, as last amended by Laws of Utah 2008, Chapter 291~~
- ~~— 57-8-10, as last amended by Laws of Utah 2009, Chapter 178~~
- ~~— 57-8-27, as last amended by Laws of Utah 2007, Chapters 268 and 329~~
- ~~— 57-8a-209, as enacted by Laws of Utah 2009, Chapter 178~~
- ~~— 57-11-4, as last amended by Laws of Utah 2009, Chapter 352~~
- ‡ 57-11-16, as last amended by Laws of Utah 2009, Chapter 352
- ~~{ 57-23-4, as enacted by Laws of Utah 1991, Chapter 262~~
- ‡ 59-1-404, as last amended by Laws of Utah 2008, Chapter 382
- 59-2-701, as last amended by Laws of Utah 2001, Chapter 214
- ~~{ 61-1-14, as last amended by Laws of Utah 2010, Chapter 218~~
- ‡ 61-2-201, as renumbered and amended by Laws of Utah 2010, Chapter 379
- 61-2c-102, as last amended by Laws of Utah 2010, Chapters 184, 379 and last amended by Coordination Clause, Laws of Utah 2010, Chapter 379
- 61-2c-103, as last amended by Laws of Utah 2010, Chapter 379
- 61-2c-202, as last amended by Laws of Utah 2010, Chapter 379
- 61-2c-203, as last amended by Laws of Utah 2010, Chapter 379
- 61-2c-205, as last amended by Laws of Utah 2010, Chapter 379
- 61-2c-301, as last amended by Laws of Utah 2010, Chapters 184 and 379
- 61-2c-302, as last amended by Laws of Utah 2010, Chapter 379
- 61-2c-402, as last amended by Laws of Utah 2010, Chapter 379
- 61-2c-501.5, as enacted by Laws of Utah 2010, Chapter 379
- 61-2c-507, as last amended by Laws of Utah 2010, Chapter 379
- 61-2e-102, as enacted by Laws of Utah 2009, Chapter 269
- 61-2e-103, as enacted by Laws of Utah 2009, Chapter 269

HB0091S01 compared with HB0091

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

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

61-2e-204, as enacted by Laws of Utah 2009, Chapter 269

61-2e-301, as enacted by Laws of Utah 2009, Chapter 269

61-2e-302, as enacted by Laws of Utah 2009, Chapter 269

61-2e-307, as enacted by Laws of Utah 2009, Chapter 269

61-2e-401, as enacted by Laws of Utah 2009, Chapter 269

61-2e-402, as enacted by Laws of Utah 2009, Chapter 269

61-2f-102, as last amended by Laws of Utah 2010, Chapter 184 and renumbered and amended by Laws of Utah 2010, Chapter 379 and last amended by Coordination Clause, Laws of Utah 2010, Chapter 379

61-2f-105, as enacted by Laws of Utah 2010, Chapter 379

61-2f-202, as last amended by Laws of Utah 2010, Chapter 184 and renumbered and amended by Laws of Utah 2010, Chapter 379

61-2f-203, as renumbered and amended by Laws of Utah 2010, Chapter 379

61-2f-204, as renumbered and amended by Laws of Utah 2010, Chapter 379

61-2f-206, as enacted by Laws of Utah 2010, Chapter 379

61-2f-301, as renumbered and amended by Laws of Utah 2010, Chapter 379

~~{ 61-2f-308, as renumbered and amended by Laws of Utah 2010, Chapter 379~~

+ 61-2f-401, as last amended by Laws of Utah 2010, Chapter 184 and renumbered and amended by Laws of Utah 2010, Chapter 379

63A-5-220, as last amended by Laws of Utah 2010, Chapter 278

63A-5-401, as enacted by Laws of Utah 2008, Chapter 203

70D-1-102, as renumbered and amended by Laws of Utah 2009, Chapter 72

72-5-117, as enacted by Laws of Utah 2008, Chapter 203

~~{ 78B-6-1101, as last amended by Laws of Utah 2010, Chapter 193~~

+ 79-2-403, as renumbered and amended by Laws of Utah 2009, Chapter 344

ENACTS:

~~{ 57-19a-303, Utah Code Annotated 1953~~

~~— 57-19a-505, Utah Code Annotated 1953~~

+ 61-2g-302, Utah Code Annotated 1953

HB0091S01 compared with HB0091

61-2g-303, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

- ~~{ 57-19a-101, (Renumbered from 57-19-1, as enacted by Laws of Utah 1987, Chapter 73)~~
- ~~57-19a-102, (Renumbered from 57-19-2, as last amended by Laws of Utah 1989, Chapter 225)~~
- ~~57-19a-103, (Renumbered from 57-19-3, as enacted by Laws of Utah 1987, Chapter 73)~~
- ~~57-19a-201, (Renumbered from 57-19-4, as enacted by Laws of Utah 1987, Chapter 73)~~
- ~~57-19a-202, (Renumbered from 57-19-5, as last amended by Laws of Utah 2009, Chapter 352)~~
- ~~57-19a-203, (Renumbered from 57-19-6, as last amended by Laws of Utah 2000, Chapter 86)~~
- ~~57-19a-204, (Renumbered from 57-19-9, as last amended by Laws of Utah 2000, Chapter 86)~~
- ~~57-19a-205, (Renumbered from 57-19-10, as enacted by Laws of Utah 1987, Chapter 73)~~
- ~~57-19a-206, (Renumbered from 57-19-26, as enacted by Laws of Utah 1987, Chapter 73)~~
- ~~57-19a-301, (Renumbered from 57-19-14, as last amended by Laws of Utah 2010, Chapter 379)~~
- ~~57-19a-302, (Renumbered from 57-19-15, as last amended by Laws of Utah 2009, Chapter 352)~~
- ~~57-19a-401, (Renumbered from 57-19-8, as last amended by Laws of Utah 1991, Chapter 165)~~
- ~~57-19a-402, (Renumbered from 57-19-11, as last amended by Laws of Utah 1991, Chapter 165)~~
- ~~57-19a-403, (Renumbered from 57-19-12, as enacted by Laws of Utah 1987, Chapter 73)~~
- ~~57-19a-501, (Renumbered from 57-19-13, as enacted by Laws of Utah 1987, Chapter 73)~~
- ~~57-19a-502, (Renumbered from 57-19-16, as last amended by Laws of Utah 2009, Chapter 352)~~

HB0091S01 compared with HB0091

- ~~57-19a-503~~, (Renumbered from ~~57-19-17~~, as last amended by Laws of Utah 1989, Chapter 225)
- ~~57-19a-504~~, (Renumbered from ~~57-19-18~~, as enacted by Laws of Utah 1987, Chapter 73)
- ~~57-19a-506~~, (Renumbered from ~~57-19-21~~, as enacted by Laws of Utah 1987, Chapter 73)
- ~~57-19a-507~~, (Renumbered from ~~57-19-22~~, as last amended by Laws of Utah 1991, Chapter 241)
- ~~57-19a-508~~, (Renumbered from ~~57-19-23~~, as enacted by Laws of Utah 1987, Chapter 73)
- ~~57-19a-509~~, (Renumbered from ~~57-19-24~~, as enacted by Laws of Utah 1987, Chapter 73)
- ~~57-19a-510~~, (Renumbered from ~~57-19-25~~, as enacted by Laws of Utah 1987, Chapter 73)
- † **61-2g-101**, (Renumbered from 61-2b-1, as last amended by Laws of Utah 1999, Chapter 117)
- 61-2g-102**, (Renumbered from 61-2b-2, as last amended by Laws of Utah 2010, Chapter 379)
- 61-2g-103**, (Renumbered from 61-2b-25, as last amended by Laws of Utah 2010, Chapter 379)
- 61-2g-201**, (Renumbered from 61-2b-6, as last amended by Laws of Utah 2010, Chapter 379)
- 61-2g-202**, (Renumbered from 61-2b-37, as last amended by Laws of Utah 2009, Chapter 183)
- 61-2g-203**, (Renumbered from 61-2b-38, as last amended by Laws of Utah 2005, Chapter 199)
- 61-2g-204**, (Renumbered from 61-2b-7, as last amended by Laws of Utah 2010, Chapter 286)
- 61-2g-205**, (Renumbered from 61-2b-8, as last amended by Laws of Utah 2010, Chapter 379)
- 61-2g-301**, (Renumbered from 61-2b-3, as last amended by Laws of Utah 2010,

HB0091S01 compared with HB0091

Chapter 379)

61-2g-304, (Renumbered from 61-2b-18, as last amended by Laws of Utah 2010,
Chapter 379)

61-2g-305, (Renumbered from 61-2b-19, as last amended by Laws of Utah 2010,
Chapter 379)

61-2g-306, (Renumbered from 61-2b-20, as last amended by Laws of Utah 2010,
Chapter 379)

61-2g-307, (Renumbered from 61-2b-40, as last amended by Laws of Utah 2010,
Chapter 379)

61-2g-308, (Renumbered from 61-2b-22, as last amended by Laws of Utah 2008,
Chapters 382 and 387)

61-2g-309, (Renumbered from 61-2b-21, as last amended by Laws of Utah 2008,
Chapters 382 and 387)

61-2g-310, (Renumbered from 61-2b-23, as last amended by Laws of Utah 1999,
Chapter 117)

61-2g-311, (Renumbered from 61-2b-10, as last amended by Laws of Utah 2010,
Chapter 379)

61-2g-312, (Renumbered from 61-2b-13, as last amended by Laws of Utah 2001,
Chapter 214)

61-2g-313, (Renumbered from 61-2b-14, as last amended by Laws of Utah 2010,
Chapter 379)

61-2g-314, (Renumbered from 61-2b-15, as last amended by Laws of Utah 2010,
Chapter 379)

61-2g-315, (Renumbered from 61-2b-24, as last amended by Laws of Utah 2008,
Chapter 387)

61-2g-401, (Renumbered from 61-2b-17, as last amended by Laws of Utah 2010,
Chapter 379)

61-2g-402, (Renumbered from 61-2b-26, as last amended by Laws of Utah 2008,
Chapter 387)

61-2g-403, (Renumbered from 61-2b-27, as last amended by Laws of Utah 2009,
Chapter 352)

HB0091S01 compared with HB0091

- 61-2g-404**, (Renumbered from 61-2b-32, as last amended by Laws of Utah 2010, Chapter 379)
- 61-2g-405**, (Renumbered from 61-2b-34, as last amended by Laws of Utah 2005, Chapter 199)
- 61-2g-406**, (Renumbered from 61-2b-36, as last amended by Laws of Utah 2010, Chapter 379)
- 61-2g-407**, (Renumbered from 61-2b-41, as enacted by Laws of Utah 1996, Chapter 131)
- 61-2g-501**, (Renumbered from 61-2b-28, as last amended by Laws of Utah 2010, Chapter 379)
- 61-2g-502**, (Renumbered from 61-2b-29, as last amended by Laws of Utah 2010, Chapter 379)
- 61-2g-503**, (Renumbered from 61-2b-30.5, as last amended by Laws of Utah 2010, Chapter 379)
- 61-2g-504**, (Renumbered from 61-2b-31, as last amended by Laws of Utah 2008, Chapters 3 and 387)
- 61-2g-505**, (Renumbered from 61-2b-33, as last amended by Laws of Utah 2010, Chapter 379)

REPEALS:

- 57-11-19**, as enacted by Laws of Utah 1973, Chapter 158
- ~~†~~ ~~**57-19-7**, as enacted by Laws of Utah 1987, Chapter 73~~
- ~~**57-19-19**, as last amended by Laws of Utah 2008, Chapter 3~~
- ~~**57-19-20**, as last amended by Laws of Utah 2008, Chapter 382~~
- † **61-2b-5**, as enacted by Laws of Utah 1990, Chapter 212
- 61-2b-9**, as last amended by Laws of Utah 2005, Chapter 199
- 61-2b-30**, as last amended by Laws of Utah 2008, Chapter 382
- 61-2b-39**, as last amended by Laws of Utah 2010, Chapter 379

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

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

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

HB0091S01 compared with HB0091

(1) As used in this chapter:

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

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

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

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

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

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

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

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

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

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

(viii) ~~[funds]~~ money or other assets held by a court appointed conservator, guardian,

HB0091S01 compared with HB0091

receiver, trustee, or other fiduciary if:

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

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

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

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

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

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

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

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

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

(d) "Trust company" means an institution authorized to engage in the trust business

HB0091S01 compared with HB0091

under this chapter. Only the following may be a trust company:

- (i) a Utah depository institution or its wholly owned subsidiary;
- (ii) an out-of-state depository institution authorized to engage in business as a depository institution in Utah or its wholly owned subsidiary;
- (iii) a corporation, including a credit union service organization, owned entirely by one or more federally insured depository institutions as defined in Subsection 7-1-103(8);
- (iv) a direct or indirect subsidiary of a depository institution holding company that also has a direct or indirect subsidiary authorized to engage in business as a depository institution in Utah; and
- (v) any other corporation continuously and lawfully engaged in the trust business in this state since before July 1, 1981.

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

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

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

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

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

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

13-21-2. Definitions -- Exemptions.

As used in this chapter:

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

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

HB0091S01 compared with HB0091

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

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

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

(iii) debt reduction or debt management plans.

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

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

(ii) a depository institution:

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

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

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

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

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

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

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

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

HB0091S01 compared with HB0091

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

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

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

16-11-2. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

HB0091S01 compared with HB0091

- (i) a public accountant holding a license under Title 58, Chapter 26a, Certified Public Accountant Licensing Act, and any subsequent laws regulating the practice of public accounting;
- (j) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician Practice Act, and any subsequent laws regulating the practice of naturopathy;
- (k) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice Act, and any subsequent laws regulating the practice of pharmacy;
- (l) an attorney granted the authority to practice law by:
 - (i) the Utah Supreme Court; or
 - (ii) the Supreme Court, other court, agency, instrumentality, or regulating board that licenses or regulates the authority to practice law in any state or territory of the United States other than Utah;
- (m) a professional engineer registered under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;
- (n) a principal broker, associate broker, or sales agent holding a license under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, and any subsequent laws regulating the selling, exchanging, purchasing, renting, or leasing of real estate;
- (o) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing Act, and any subsequent laws regulating the practice of psychology;
- (p) a clinical or certified social worker holding a license under Title 58, Chapter 60, Part 2, Social Worker Licensing Act, and any subsequent laws regulating the practice of social work;
- (q) a physical therapist holding a license under Title 58, Chapter 24b, Physical Therapy Practice Act, and any subsequent laws regulating the practice of physical therapy;
- (r) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 44a, Nurse Midwife Practice Act;
- (s) a landscape architect licensed under Title 58, Chapter 53, Landscape Architects Licensing Act, and any subsequent laws regulating landscape architects; or
- (t) an individual licensed, certified, or registered under Title 61, Chapter ~~2b~~ 2g, Real Estate Appraiser Licensing and Certification Act, and any subsequent laws regulating the practice of appraising real estate.

HB0091S01 compared with HB0091

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

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

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

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

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

- (i) elected to the office of county assessor on or after January 1, 2010; or
- (ii) selected to fill the vacancy of a county assessor as described in Subsection (2).

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

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

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

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

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

31A-2-402. Definitions.

As used in this part:

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

HB0091S01 compared with HB0091

31A-2-403.

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

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

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

(b) a license or certificate under:

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

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

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

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

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

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

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

(b) a producer with:

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

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

(c) a title insurance adjuster.

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

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

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

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

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

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

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

HB0091S01 compared with HB0091

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

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

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

(I) filing a report;

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

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

(iii) A licensee under this title may not:

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

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

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

(II) stands behind the credit of the person;

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

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

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

(v) A person other than persons licensed as health maintenance organizations under Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to itself.

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

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

(A) that the licensee represents; or

(B) for whom the licensee processes claims; and

(ii) the cards, documents, signs, or advertisements are supplied or approved by that

HB0091S01 compared with HB0091

insurer.

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) material inducement.

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

(iii) An insured or any other person connected, directly or indirectly, with the transaction[, including a mortgage lender, real estate broker, builder, attorney, or any officer, employee, or agent of any of them,] may not knowingly receive or accept, directly or indirectly,

HB0091S01 compared with HB0091

any benefit referred to in Subsection (2)(c)(i)[-], including:

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

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

(C) a builder;

(D) an attorney; or

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

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

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

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

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

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

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

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

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

(i) tends to produce:

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

(B) a monopoly in that business; or

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

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

HB0091S01 compared with HB0091

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

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

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

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

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

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

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

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

- (i) are misleading;
- (ii) are deceptive;
- (iii) are unfairly discriminatory;
- (iv) provide an unfair inducement; or

HB0091S01 compared with HB0091

(v) unreasonably restrain competition.

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

48-2c-1502. Definitions.

As used in this part:

- (1) "Professional services company" means a limited liability company organized under this part to render professional services.
- (2) "Professional services" means the personal services rendered by:
 - (a) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act, and any subsequent laws regulating the practice of architecture;
 - (b) an attorney granted the authority to practice law by the:
 - (i) Supreme Court of Utah; or
 - (ii) the Supreme Court, other court, agency, instrumentality, or regulating board that licenses or regulates the authority to practice law in any state or territory of the United States other than Utah;
 - (c) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician Practice Act, and any subsequent laws regulating the practice of [~~chiropractic~~] chiropractics;
 - (d) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, and any subsequent laws, regulating the practice of dentistry;
 - (e) a professional engineer registered under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;
 - (f) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician Practice Act, and any subsequent laws regulating the practice of naturopathy;
 - (g) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 44a, Nurse Midwife Practice Act;
 - (h) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry Practice Act, and any subsequent laws regulating the practice of optometry;
 - (i) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, and any subsequent laws regulating the practice of osteopathy;
 - (j) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice Act, and any subsequent laws regulating the practice of pharmacy;

HB0091S01 compared with HB0091

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

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

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

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

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

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

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

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

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

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

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

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

53C-4-103. Rulemaking for sale of real property -- Licensed or certified

HB0091S01 compared with HB0091

appraisers -- Exceptions.

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

(2) The rules:

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

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

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

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

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

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

Section 9. Section ~~{57-3-105}~~ 57-11-16 is amended to read:

~~{~~ **57-3-105. Legal description of real property and names and addresses required in documents.**

~~_____ (1) Except as otherwise provided by statute, a person may not present a document for recording unless the document complies with this section.~~

~~_____ (2) A document executed after July 1, 1983, is entitled to be recorded in the office of the recorder of the county in which the property described in the document is located only if the document contains a legal description of the real property.~~

~~_____ (3) (a) A document conveying title to real property presented for recording after July 1, 1981, is entitled to be recorded in the office of the recorder of the county in which the property described in the document is located only if the document contains the names and mailing addresses of the grantees in addition to the legal description required under Subsection (2).~~

~~_____ (b) The address of the management committee may be used as the mailing address of a grantee as required in Subsection (3)(a) if the interest conveyed is a timeshare interest, as defined by Section ~~[57-19-2]~~ 57-19a-102.~~

~~_____ (4) A person may not present and a county recorder may refuse to accept a document~~

HB0091S01 compared with HB0091

~~for recording if the document does not conform to this section:~~

~~—— (5) Notwithstanding Subsections (2), (3), and (4), a master form, as defined in Section 57-3-201, that does not meet the requirements of Subsections (2) and (3) is entitled to be recorded in the office of the recorder of the county in which the property described in the master form is located if it complies with Part 2, Master Mortgage and Trust Deeds:~~

~~—— Section 10. Section 57-8-3 is amended to read:~~

~~—— **57-8-3. Definitions:**~~

~~—— As used in this chapter:~~

~~—— (1) "Assessment" means any charge imposed by the association, including common expenses on or against a unit owner pursuant to [the provisions of] the declaration, bylaws, or this chapter:~~

~~—— (2) "Association of unit owners" means all of the unit owners:~~

~~—— (a) acting as a group in accordance with the declaration and bylaws; or~~

~~—— (b) organized as a legal entity in accordance with the declaration.~~

~~—— (3) "Building" means a building, containing units, and comprising a part of the property:~~

~~—— (4) "Common areas and facilities" unless otherwise provided in the declaration or lawful amendments to the declaration means:~~

~~—— (a) the land included within the condominium project, whether leasehold or in fee simple;~~

~~—— (b) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of the building;~~

~~—— (c) the basements, yards, gardens, parking areas, and storage spaces;~~

~~—— (d) the premises for lodging of janitors or persons in charge of the property;~~

~~—— (e) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerating;~~

~~—— (f) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;~~

~~—— (g) such community and commercial facilities as may be provided for in the declaration; and~~

~~—— (h) all other parts of the property necessary or convenient to its existence, maintenance;~~

HB0091S01 compared with HB0091

~~and safety, or normally in common use:~~

~~—— (5) "Common expenses" means:~~

~~—— (a) all sums lawfully assessed against the unit owners;~~

~~—— (b) expenses of administration, maintenance, repair, or replacement of the common areas and facilities;~~

~~—— (c) expenses agreed upon as common expenses by the association of unit owners; and~~

~~—— (d) expenses declared common expenses by this chapter, or by the declaration or the bylaws.~~

~~—— (6) "Common profits," unless otherwise provided in the declaration or lawful amendments to the declaration, means the balance of all income, rents, profits, and revenues from the common areas and facilities remaining after the deduction of the common expenses.~~

~~—— (7) "Condominium" means the ownership of a single unit in a multiunit project together with an undivided interest in common in the common areas and facilities of the property.~~

~~—— (8) "Condominium plat" means a plat or plats of survey of land and units prepared in accordance with Section 57-8-13.~~

~~—— (9) "Condominium project" means a real estate condominium project; a plan or project whereby two or more units, whether contained in existing or proposed apartments, commercial or industrial buildings or structures, or otherwise, are separately offered or proposed to be offered for sale. Condominium project also means the property when the context so requires.~~

~~—— (10) "Condominium unit" means a unit together with the undivided interest in the common areas and facilities appertaining to that unit. Any reference in this chapter to a condominium unit includes both a physical unit together with its appurtenant undivided interest in the common areas and facilities and a time period unit together with its appurtenant undivided interest, unless the reference is specifically limited to a time period unit.~~

~~—— (11) "Contractible condominium" means a condominium project from which one or more portions of the land within the project may be withdrawn in accordance with [provisions of] the declaration and of this chapter. If the withdrawal can occur only by the expiration or termination of one or more leases, then the condominium project is not a contractible condominium within the meaning of this chapter.~~

~~—— (12) "Convertible land" means a building site which is a portion of the common areas~~

HB0091S01 compared with HB0091

~~and facilities, described by metes and bounds, within which additional units or limited common areas and facilities may be created in accordance with this chapter.~~

~~—— (13) "Convertible space" means a portion of the structure within the condominium project, which portion may be converted into one or more units or common areas and facilities, including limited common areas and facilities in accordance with this chapter.~~

~~—— (14) "Declarant" means all persons who execute the declaration or on whose behalf the declaration is executed. From the time of the recordation of any amendment to the declaration expanding an expandable condominium, all persons who execute that amendment or on whose behalf that amendment is executed shall also come within this definition. Any successors of the persons referred to in this subsection who come to stand in the same relation to the condominium project as their predecessors also come within this definition.~~

~~—— (15) "Declaration" means the instrument by which the property is submitted to [the provisions of this act] this chapter, as it from time to time may be lawfully amended.~~

~~—— (16) "Expandable condominium" means a condominium project to which additional land or an interest in it may be added in accordance with the declaration and this chapter.~~

~~—— (17) "Leasehold condominium" means a condominium project in all or any portion of which each unit owner owns an estate for years in [his] the unit owner's unit, or in the land upon which that unit is situated, or both, with all those leasehold interests to expire naturally at the same time. A condominium project including leased land, or an interest in the land, upon which no units are situated or to be situated is not a leasehold condominium within the meaning of this chapter.~~

~~—— (18) "Limited common areas and facilities" means those common areas and facilities designated in the declaration as reserved for use of a certain unit or units to the exclusion of the other units.~~

~~—— (19) "Majority" or "majority of the unit owners," unless otherwise provided in the declaration or lawful amendments to the declaration, means the owners of more than 50% in the aggregate in interest of the undivided ownership of the common areas and facilities.~~

~~—— (20) "Management committee" means the committee as provided in the declaration charged with and having the responsibility and authority to make and to enforce all of the reasonable rules covering the operation and maintenance of the property.~~

~~—— (21) "Par value" means a number of dollars or points assigned to each unit by the~~

HB0091S01 compared with HB0091

~~declaration. Substantially identical units shall be assigned the same par value, but units located at substantially different heights above the ground, or having substantially different views, or having substantially different amenities or other characteristics that might result in differences in market value, may be considered substantially identical within the meaning of this subsection. If par value is stated in terms of dollars, that statement may not be considered to reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or fair market transaction at a different figure may affect the par value of any unit, or any undivided interest in the common areas and facilities, voting rights in the unit owners' association, liability for common expenses, or right to common profits, assigned on the basis thereof.~~

~~——— (22) "Person" means an individual, corporation, partnership, association, trustee, or other legal entity.~~

~~——— (23) "Property" means the land, whether leasehold or in fee simple, the building, if any, all improvements and structures thereon, all easements, rights, and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.~~

~~——— (24) "Record," "recording," "recorded," and "recorder" have the meaning stated in Title 57, Chapter 3, Recording of Documents.~~

~~——— (25) "Size" means the number of cubic feet, or the number of square feet of ground or floor space, within each unit as computed by reference to the record of survey map and rounded off to a whole number. Certain spaces within the units including attic, basement, or garage space may be omitted from the calculation or be partially discounted by the use of a ratio, if the same basis of calculation is employed for all units in the condominium project and if that basis is described in the declaration.~~

~~——— (26) "Time period unit" means an annually recurring part or parts of a year specified in the declaration as a period for which a unit is separately owned and includes a timeshare estate as defined in [Subsection 57-19-2(17)] Section 57-19a-102.~~

~~——— (27) "Unit" means either a separate physical part of the property intended for any type of independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in a building or a time period unit, as the context may require. A convertible space shall be treated as a unit in accordance with Subsection 57-8-13.4(3). A proposed condominium unit under an expandable condominium project, not constructed, is a~~

HB0091S01 compared with HB0091

unit two years after the date the recording requirements of Section 57-8-13.6 are met.

—— (28) "Unit number" means the number, letter, or combination of numbers and letters designating the unit in the declaration and in the record of survey map.

—— (29) "Unit owner" means the person or persons owning a unit in fee simple and an undivided interest in the fee simple estate of the common areas and facilities in the percentage specified and established in the declaration or, in the case of a leasehold condominium project, the person or persons whose leasehold interest or interests in the condominium unit extend for the entire balance of the unexpired term or terms.

—— Section 11. Section 57-8-10 is amended to read:

—— **57-8-10. Contents of declaration.**

—— (1) [Prior to] Before the conveyance of any unit in a condominium project, a declaration shall be recorded that contains the covenants, conditions, and restrictions relating to the project that shall be enforceable equitable servitudes, where reasonable, and which shall run with the land. Unless otherwise provided, these servitudes may be enforced by any unit owner and [his] the unit owner's successors in interest.

—— (2) (a) For every condominium project:

—— (i) The declaration shall include a description of the land or interests in real property included within the project:

—— (ii) The declaration shall contain a description of any buildings, which states the number of storeys and basements, the number of units, the principal materials of which the building is or is to be constructed, and a description of all other significant improvements contained or to be contained in the project:

—— (iii) The declaration shall contain the unit number of each unit, the square footage of each unit, and any other description or information necessary to properly identify each unit:

—— (iv) The declaration shall describe the common areas and facilities of the project:

—— (v) The declaration shall describe any limited common areas and facilities and shall state to which units the use of the common areas and facilities is reserved:

—— (b) Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, or other apparatus intended to serve a single unit, but located outside the boundaries of the unit, shall constitute a limited common area and facility appertaining to that unit exclusively, whether or not the declaration makes such a provision.

HB0091S01 compared with HB0091

~~—— (c) The condominium plat recorded with the declaration may provide or supplement the information required under Subsections (2)(a) and (b):~~

~~—— (d) (i) The declaration shall include the percentage or fraction of undivided interest in the common areas and facilities appurtenant to each unit and its owner for all purposes, including voting, derived and allocated in accordance with Subsection 57-8-7(2):~~

~~—— (ii) If any use restrictions are to apply, the declaration shall state the purposes for which the units are intended and restricted as to use:~~

~~—— (iii) (A) The declaration shall include the name of a person to receive service of process on behalf of the project, in the cases provided by this chapter, together with the residence or place of business of that person:~~

~~—— (B) The person described in Subsection (2)(d)(iii)(A) shall be a resident of, or shall maintain a place of business within, this state:~~

~~—— (iv) The declaration shall describe the method by which it may be amended consistent with this chapter:~~

~~—— (v) Any further matters in connection with the property may be included in the declaration, which the person or persons executing the declaration may consider desirable consistent with this chapter:~~

~~—— (vi) The declaration shall contain a statement of intention that this chapter applies to the property:~~

~~—— (3) (a) If the condominium project contains any convertible land:~~

~~—— (i) The declaration shall contain a legal description by metes and bounds of each area of convertible land within the condominium project:~~

~~—— (ii) The declaration shall state the maximum number of units that may be created within each area of convertible land:~~

~~—— (iii) (A) The declaration shall state, with respect to each area of convertible land, the maximum percentage of the aggregate land and floor area of all units that may be created and the use of which will not or may not be restricted exclusively to residential purposes:~~

~~—— (B) The statements described in Subsection (3)(a)(iii)(A) need not be supplied if none of the units on other portions of the land within the project are restricted exclusively to residential use:~~

~~—— (iv) The declaration shall state the extent to which any structure erected on any~~

HB0091S01 compared with HB0091

~~convertible land will be compatible with structures on other portions of the land within the condominium project in terms of quality of construction, the principal materials to be used, and architectural style.~~

~~—— (v) The declaration shall describe all other improvements that may be made on each area of convertible land within the condominium project.~~

~~—— (vi) The declaration shall state that any units created within each area of convertible land will be substantially identical to the units on other portions of the land within the project or it shall describe in detail what other type of units may be created.~~

~~—— (vii) The declaration shall describe the declarant's reserved right, if any, to create limited common areas and facilities within any convertible land in terms of the types, sizes, and maximum number of the limited common areas within each convertible land.~~

~~—— (b) The condominium plat recorded with the declaration may provide or supplement the information required under Subsection (3)(a).~~

~~—— (4) If the condominium is an expandable condominium project:~~

~~—— (a) (i) (A) The declaration shall contain an explicit reservation of an option to expand the project.~~

~~—— (B) The declaration shall include a statement of any limitations on the option to expand, including a statement as to whether the consent of any unit owners shall be required and, a statement as to the method by which consent shall be ascertained, or a statement that there are no such limitations.~~

~~—— (ii) The declaration shall include a time limit, not exceeding seven years from the date of the recording of the declaration, upon which the option to expand the condominium project shall expire, together with a statement of any circumstances which will terminate the option [prior to] before expiration of the specified time limits.~~

~~—— (iii) The declaration shall contain a legal description by metes and bounds of all land that may be added to the condominium project, which is known as additional land.~~

~~—— (iv) The declaration shall state:~~

~~—— (A) if any of the additional land is added to the condominium project, whether all of it or any particular portion of it must be added;~~

~~—— (B) any limitations as to what portions may be added; or~~

~~—— (C) a statement that there are no such limitations.~~

HB0091S01 compared with HB0091

~~—— (v) The declaration shall include a statement as to whether portions of the additional land may be added to the condominium project at different times, together with any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds of these lands and regulating the order in which they may be added to the condominium project.~~

~~—— (vi) The declaration shall include a statement of any limitations as to the locations of any improvements that may be made on any portions of the additional land added to the condominium project, or a statement that no assurances are made in that regard.~~

~~—— (vii) The declaration shall state the maximum number of units that may be created on the additional land. If portions of the additional land may be added to the condominium project and the boundaries of those portions are fixed in accordance with Subsection (4)(a)(v), the declaration shall also state the maximum number of units that may be created on each portion added to the condominium project. If portions of the additional land may be added to the condominium project and the boundaries of those portions are not fixed in accordance with Subsection (4)(a)(v), then the declaration shall also state the maximum number of units per acre that may be created on any portion added to the condominium project.~~

~~—— (viii) With respect to the additional land and to any portion of it that may be added to the condominium project, the declaration shall state the maximum percentage of the aggregate land and floor area of all units that may be created on it, the use of which will not or may not be restricted exclusively to residential purposes. However, these statements need not be supplied if none of the units on the land originally within the project are restricted exclusively to residential use.~~

~~—— (ix) The declaration shall state the extent to which any structures erected on any portion of the additional land added to the condominium project will be compatible with structures on the land originally within the project in terms of quality of construction, the principal materials to be used, and architectural style. The declaration may also state that no assurances are made in those regards.~~

~~—— (x) The declaration shall describe all other improvements that will be made on any portion of the additional land added to the condominium project, or it shall contain a statement of any limitations as to what other improvements may be made on it. The declaration may also state that no assurances are made in that regard.~~

HB0091S01 compared with HB0091

~~—— (xi) The declaration shall contain a statement that any units created on any portion of the additional land added to the condominium project will be substantially identical to the units on the land originally within the project, or a statement of any limitations as to what types of units may be created on it. The declaration may also contain a statement that no assurances are made in that regard.~~

~~—— (xii) The declaration shall describe the declarant's reserved right, if any, to create limited common areas and facilities within any portion of the additional land added to the condominium project, in terms of the types, sizes, and maximum number of limited common areas within each portion. The declaration may also state that no assurances are made in those regards.~~

~~—— (b) The condominium plat recorded with the declaration may provide or supplement the information required under Subsections (4)(a)(iii) through (a)(vi) and (a)(ix) through (a)(xii).~~

~~—— (5) If the condominium project is a contractible condominium:~~

~~—— (a) (i) The declaration shall contain an explicit reservation of an option to contract the condominium project.~~

~~—— (ii) The declaration shall contain a statement of any limitations on the option to contract, including a statement as to whether the consent of any unit owners shall be required, and if so, a statement as to the method by which this consent shall be ascertained. The declaration may also contain a statement that there are no such limitations.~~

~~—— (iii) The declaration shall state the time limit, not exceeding seven years from the recording of the declaration, upon which the option to contract the condominium project shall expire, together with a statement of any circumstances which will terminate this option [prior to] before expiration of the specified time limit.~~

~~—— (b) (i) The declaration shall include a legal description by metes and bounds of all land that may be withdrawn from the condominium project, which is known as withdrawable land.~~

~~—— (ii) The declaration shall include a statement as to whether portions of the withdrawable land may be withdrawn from the condominium project at different times, together with any limitations fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds and regulating the order in which they may be withdrawn from the condominium project.~~

HB0091S01 compared with HB0091

~~—— (iii) The declaration shall include a legal description by metes and bounds of all of the land within the condominium project to which the option to contract the project does not extend.~~

~~—— (c) The condominium plat recorded with the declaration may provide or supplement the information required under Subsection (5)(b).~~

~~—— (6) (a) If the condominium project is a leasehold condominium, then with respect to any ground lease or other leases the expiration or termination of which will or may terminate or contract the condominium project:~~

~~—— (i) The declaration shall include recording information enabling the location of each lease in the official records of the county recorder.~~

~~—— (ii) The declaration shall include the date upon which each lease is due to expire.~~

~~—— (iii) The declaration shall state whether any land or improvements will be owned by the unit owners in fee simple. If there is to be fee simple ownership, the declaration shall include:~~

~~—— (A) a description of the land or improvements, including without limitation, a legal description by metes and bounds of the land; or~~

~~—— (B) a statement of any rights the unit owners have to remove these improvements within a reasonable time after the expiration or termination of the lease or leases involved, or a statement that they shall have no such rights.~~

~~—— (iv) The declaration shall include a statement of the rights the unit owners have to extend or renew any of the leases or to redeem or purchase any of the reversions, or a statement that they have no such rights.~~

~~—— (b) After the recording of the declaration, no lessor who executed the declaration, and no successor in interest to this lessor, has any right or power to terminate any part of the leasehold interest of any unit owner who:~~

~~—— (i) makes timely payment of [his] the unit owner's share of the rent to the persons designated in the declaration for the receipt of the rent; and~~

~~—— (ii) otherwise complies with all covenants which would entitle the lessor to terminate the lease if they were violated.~~

~~—— (7) (a) If the condominium project contains time period units, the declaration shall also contain the location of each condominium unit in the calendar year. This information shall be set out in a fourth column of the exhibit or schedule referred to in Subsection 57-8-7(2), if the~~

HB0091S01 compared with HB0091

~~exhibit or schedule accompanies the declaration:~~

~~—— (b) The declaration shall also put timeshare owners on notice that tax notices will be sent to the management committee, not each timeshare owner.~~

~~—— (c) The time period units created with respect to any given physical unit shall be such that the aggregate of the durations involved constitute a full calendar year.~~

~~—— (8) (a) The declaration, bylaws, and condominium plat shall be duly executed and acknowledged by all of the owners and any lessees of the land which is made subject to this chapter.~~

~~—— (b) As used in Subsection (8)(a), "owners and lessees" does not include, in their respective capacities, any mortgagee, any trustee or beneficiary under a deed of trust, any other lien holder, any person having an equitable interest under any contract for the sale or lease of a condominium unit, or any lessee whose leasehold interest does not extend to any portion of the common areas and facilities:~~

~~—— (9) (a) As used in this section, "rentals" or "rental unit" means:~~

~~—— (i) a unit owned by an individual not described in Subsection (9)(a)(ii) that is occupied by someone while no unit owner occupies the unit as the unit owner's primary residence; and~~

~~—— (ii) a unit owned by an entity or trust, regardless of who occupies the unit.~~

~~—— (b) (i) Subject to Subsections (9)(c), (f), and (g), an association of unit owners may:~~

~~—— (A) create restrictions on the number and term of rentals in a condominium project; or~~

~~—— (B) prohibit rentals in the condominium project.~~

~~—— (ii) An association of unit owners that creates a rental restriction or prohibition in accordance with Subsection (9)(b)(i) shall create the rental restriction or prohibition in a declaration or by amending the declaration.~~

~~—— (c) If an association of unit owners prohibits or imposes restrictions on the number and term of rentals, the restrictions shall include:~~

~~—— (i) a provision that requires a condominium project to exempt from the rental restrictions the following unit owner and the unit owner's unit:~~

~~—— (A) a unit owner in the military for the period of the unit owner's deployment;~~

~~—— (B) a unit occupied by a unit owner's parent, child, or sibling;~~

~~—— (C) a unit owner whose employer has relocated the unit owner for no less than two years; or~~

HB0091S01 compared with HB0091

~~—— (D) a unit owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for the estate of:~~

~~—— (I) a current resident of the unit; or~~

~~—— (II) the parent, child, or sibling of the current resident of the unit;~~

~~—— (ii) a provision allowing a unit owner who has a rental in the condominium project before the time the rental restriction described in Subsection (9)(b)(i) is recorded with the county recorder of the county in which the condominium project is located to continue renting until:~~

~~—— (A) the unit owner occupies the unit; or~~

~~—— (B) an officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the unit, occupies the unit; and~~

~~—— (iii) a requirement that the association of unit owners create, by rule or resolution, procedures to:~~

~~—— (A) determine and track the number of rentals and units in the condominium project subject to the provisions described in Subsections (9)(c)(i) and (ii); and~~

~~—— (B) ensure consistent administration and enforcement of the rental restrictions.~~

~~—— (d) For purposes of Subsection (9)(c)(ii), a transfer occurs when one or more of the following occur:~~

~~—— (i) the conveyance, sale, or other transfer of a unit by deed;~~

~~—— (ii) the granting of a life estate in the unit; or~~

~~—— (iii) if the unit is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity's share, stock, membership interests, or partnership interests in a 12-month period.~~

~~—— (e) This section does not limit or affect residency age requirements for an association of unit owners that complies with the requirements of the Housing for Older Persons Act, 42 U.S.C. Sec. 3607.~~

~~—— (f) A declaration or amendment to a declaration recorded [prior to] before transfer of the first unit from the initial declarant may prohibit or restrict rentals without providing for the exceptions, provisions, and procedures required under Subsection (9)(c).~~

~~—— (g) This section does not apply to:~~

HB0091S01 compared with HB0091

~~—— (i) a condominium project containing a time period unit as defined in Section 57-8-3;
—— (ii) any other form of timeshare interest as defined in Section [57-19-2] 57-19a-102; or
—— (iii) a condominium project in which the initial declaration is recorded before May 12, 2009.~~

~~—— (h) Notwithstanding this section, an association of unit owners may, upon unanimous approval by all unit owners, restrict or prohibit rentals without an exception described in Subsection (9)(c).~~

~~—— Section 12. Section 57-8-27 is amended to read:~~

~~—— **57-8-27. Separate taxation:**~~

~~—— (1) Each unit and its percentage of undivided interest in the common or community areas and facilities shall be considered to be a parcel and shall be subject to separate assessment and taxation by each assessing unit, local district, and special service district for all types of taxes authorized by law, including ad valorem levies and special assessments. Neither the building or buildings, the property, nor any of the common areas and facilities may be considered a parcel.~~

~~—— (2) In the event any of the interests in real property made subject to this chapter by the declaration are leasehold interests, if the lease creating these interests is of record in the office of the county recorder, if the balance of the term remaining under the lease is at least 40 years at the time the leasehold interest is made subject to this chapter, if units are situated or are to be situated on or within the real property covered by the lease, and if the lease provides that the lessee shall pay all taxes and assessments imposed by governmental authority, then until 10 years [prior to] before the date that the leasehold is to expire or until the lease is terminated, whichever first occurs, all taxes and assessments on the real property covered by the lease shall be levied against the owner of the lessee's interest. If the owner of the reversion under the lease has executed the declaration and condominium plat, until 10 years [prior to] before the date that the leasehold is to expire, or until the lease is terminated, whichever first occurs, all taxes and assessments on the real property covered by the lease shall be separately levied against the unit owners having an interest in the lease, with each unit owner for taxation purposes being considered the owner of a parcel consisting of [his] the unit owner's undivided condominium interest in the fee of the real property affected by the lease.~~

~~—— (3) No forfeiture or sale of the improvements or the property as a whole for delinquent~~

HB0091S01 compared with HB0091

~~real estate taxes, special assessments, or charges shall divest or in anywise affect the title to an individual unit if the real estate taxes or duly levied share of the assessments and charges on the individual unit are currently paid.~~

~~—— (4) Any exemption from taxes that may exist on real property or the ownership of the property may not be denied by virtue of the submission of the property to this chapter.~~

~~—— (5) Timeshare interests and timeshare estates, as defined in [Subsection 57-19-2(17)] Section 57-19a-102, may not be separately taxed but shall be valued, assessed, and taxed at the unit level. The value of timeshare interests and timeshare estates, for purposes of ad valorem taxation, shall be determined by valuing the real property interest associated with the timeshare interest or timeshare estate, exclusive of the value of any intangible property and rights associated with the acquisition, operation, ownership, and use of the timeshare interest or timeshare estate, including the fees and costs associated with the sale of timeshare interests and timeshare estates that exceed those fees and costs normally incurred in the sale of other similar properties, the fees and costs associated with the operation, ownership, and use of timeshare interests and timeshare estates, vacation exchange rights, vacation conveniences and services, club memberships, and any other intangible rights and benefits available to a timeshare unit owner. Nothing in this section shall be construed as requiring the assessment of any real property interest associated with a timeshare interest or timeshare estate at less than its fair market value. Notice of assessment, delinquency, sale, or any other purpose required by law is considered sufficient for all purposes if the notice is given to the management committee.~~

~~—— Section 13. Section 57-8a-209 is amended to read:~~

~~—— 57-8a-209. Rental restrictions.~~

~~—— (1) As used in this section, "rentals" or "rental lot" means:~~

~~—— (a) a lot owned by an individual not described in Subsection (1)(b) that is occupied by someone while no lot owner occupies the lot as the lot owner's primary residence; and~~

~~—— (b) a lot owned by an entity or trust, regardless of who occupies the lot.~~

~~—— (2) (a) Subject to Subsections (2)(b), (6), and (7), an association may:~~

~~—— (i) create restrictions on the number and term of rentals in an association; or~~

~~—— (ii) prohibit rentals in the association.~~

~~—— (b) An association that creates a rental restriction or prohibition in accordance with Subsection (1)(a)(i) shall create the rental restriction or prohibition in a recorded declaration of~~

HB0091S01 compared with HB0091

~~covenants, conditions, and restrictions, or by amending the recorded declaration of covenants, conditions, and restrictions:~~

~~—— (3) If an association prohibits or imposes restrictions on the number and term of rentals, the restrictions shall include:~~

~~—— (a) a provision that requires the association to exempt from the rental restrictions the following lot owner and the lot owner's lot:~~

~~—— (i) a lot owner in the military for the period of the lot owner's deployment;~~

~~—— (ii) a lot occupied by a lot owner's parent, child, or sibling;~~

~~—— (iii) a lot owner whose employer has relocated the lot owner for no less than two years;~~

~~or~~

~~—— (iv) a lot owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for:~~

~~—— (A) the estate of a current resident of the lot; or~~

~~—— (B) the parent, child, or sibling of the current resident of the lot;~~

~~—— (b) a provision allowing a lot owner who has a rental in the association before the time the rental restriction described in Subsection (2)(a) is recorded with the county recorder of the county in which the association is located to continue renting until:~~

~~—— (i) the lot owner occupies the lot; or~~

~~—— (ii) an officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the lot, occupies the lot; and~~

~~—— (c) a requirement that the association create, by rule or resolution, procedures to:~~

~~—— (i) determine and track the number of rentals and lots in the association subject to the provisions described in Subsections (3)(a) and (b); and~~

~~—— (ii) ensure consistent administration and enforcement of the rental restrictions.~~

~~—— (4) For purposes of Subsection (3)(b), a transfer occurs when one or more of the following occur:~~

~~—— (a) the conveyance, sale, or other transfer of a lot by deed;~~

~~—— (b) the granting of a life estate in the lot; or~~

~~—— (c) if the lot is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity's share, stock,~~

HB0091S01 compared with HB0091

~~membership interests, or partnership interests in a 12-month period:~~

~~—— (5) This section does not limit or affect residency age requirements for an association that complies with the requirements of the Housing for Older Persons Act, 42 U.S.C. Sec. 3607.~~

~~—— (6) The declaration of covenants, conditions, and restrictions or amendments to the declaration of covenants, conditions, and restrictions recorded [prior to] before the transfer of the first lot from the initial declarant may prohibit or restrict rentals without providing for the exceptions, provisions, and procedures required under Subsection (3)(a):~~

~~—— (7) This section does not apply to:~~

~~—— (a) an association containing a time period unit as defined in Section 57-8-3;~~

~~—— (b) any other form of timeshare interest as defined in Section [57-19-2] 57-19a-102; or~~

~~—— (c) an association in which the initial declaration of covenants, conditions, and restrictions is recorded before May 12, 2009:~~

~~—— (8) Notwithstanding this section, an association may, upon unanimous approval by all lot owners, restrict or prohibit rentals without an exception described in Subsection (3):~~

~~—— Section 14. Section 57-11-4 is amended to read:~~

~~57-11-4. Exemptions:~~

~~—— (1) Unless the method of disposition is adopted for the purpose of evasion of this chapter or the federal act, this chapter does not apply to an offer or disposition of an interest in land:~~

~~—— (a) by a purchaser of subdivided lands for the person's own account in a single or isolated transaction;~~

~~—— (b) (i) on a unit of which there is a residential, commercial, or industrial building; or~~

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

~~—— (c) unless a person who acquires land for one of the following purposes sells that land to one or more individuals as unimproved lots with no legal obligation on the part of the seller to construct a residential, commercial, or industrial building on that lot within two years from the date of disposition:~~

~~—— (i) if the person acquires an interest in the land for use in the business of constructing~~

HB0091S01 compared with HB0091

~~residential, commercial, or industrial buildings; or~~

~~—— (ii) if the person acquires the type of land described in Subsection (1)(c)(i) for the purpose of disposition to a person engaged in the business of constructing residential, commercial, or industrial buildings;~~

~~—— (d) pursuant to court order;~~

~~—— (e) by a government or government agency;~~

~~—— (f) (i) if the interest lies within the boundaries of a city or a county which:~~

~~—— (A) has a planning and zoning board using at least one professional planner;~~

~~—— (B) enacts ordinances that require approval of planning, zoning, and plats, including the approval of plans for streets, culinary water, sanitary sewer, and flood control; and~~

~~—— (C) will have the improvements described in Subsection (1)(f)(i)(B) plus telephone and electricity; and~~

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

~~—— (g) in an industrial park;~~

~~—— (h) as cemetery lots; or~~

~~—— (i) if the interest is offered as part of a camp resort, as defined in Section [57-19-2] 57-19a-102 or a timeshare development, as defined in Section [57-19-2] 57-19a-102.~~

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

~~—— (a) indebtedness secured by a mortgage or deed of trust on real estate;~~

~~—— (b) a security or unit of interest issued by a real estate investment trust regulated under any state or federal statute;~~

~~—— (c) subject to Subsection (5), subdivided lands registered under the federal act and which the division finds to be in the public interest to exempt from the registration requirements of this chapter;~~

~~—— (d) a security currently registered with the Division of Securities; or~~

~~—— (e) an interest in oil, gas, or other minerals or a royalty interest in these assets if the offer or disposition of the interest is regulated as a security by the federal government or by the Division of Securities.~~

HB0091S01 compared with HB0091

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

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

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

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

~~—— (i) information required by the division to show that the offer or disposition is exempt under this section;~~

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

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

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

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

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

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

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

~~—— (ii) a filing fee of \$100.~~

~~—— (b) If a subdivider does not qualify under the exemption described in Subsection (2)(c), the division shall credit the filing fee described in Subsection (5)(a) to the filing fee required for registration under this chapter.~~

HB0091S01 compared with HB0091

- ~~— (c) Nothing in this Subsection (5) exempts a subdivider from:~~
- ~~— (i) Sections 57-11-16 and 57-11-17; or~~
- ~~— (ii) the requirement to file an annual report with the division under Section 57-11-10.~~
- ~~— (6) Notwithstanding an exemption under this section, the division:~~
- ~~— (a) retains jurisdiction over an offer or disposition of an interest in land to determine whether or not the exemption continues to apply; and~~
- ~~— (b) may require compliance with this chapter if an exemption no longer applies.~~
- ~~— Section 15. Section 57-11-16 is amended to read:~~

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

- ~~[(1)(a) This Subsection (1) applies to a person who willfully:]~~
- ~~[(i) violates this chapter or a rule adopted under this chapter; or]~~
- ~~[(ii) in an application for registration under this chapter or under the federal act, makes any untrue statement of a material fact or omits to state a material fact.]~~
- ~~[(b) A person described in Subsection (1)(a) may be:]~~
- ~~[(i) fined a civil penalty not to exceed the greater of:]~~
- ~~[(A) \$2,500 for each violation; or]~~
- ~~[(B) double the amount of any gain or economic benefit derived from each violation;]~~
- ~~[(ii) imprisoned for not more than two years; or]~~
- ~~[(iii) both fined or imprisoned.]~~
- ~~[(c) An indictment or information may not be returned or a complaint filed under this chapter more than five years after the alleged violation.]~~

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

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

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

(b) In the prosecution or defense of an action under this section, the attorney general,

HB0091S01 compared with HB0091

the county attorney, or the district attorney of the appropriate county shall perform ~~[att]~~ the necessary legal services without compensation other than their regular salaries.

Section ~~{16. Section 57-19a-101, which is renumbered from Section 57-19-1 is renumbered and amended to read:~~

~~CHAPTER 19a. TIMESHARE AND CAMP RESORT ACT~~

~~Part 1. General Provisions~~

~~_____ [57-19-1]. _____ 57-19a-101. Title:~~

~~_____ This chapter is known [and may be cited] as the "Timeshare and Camp Resort Act."~~

~~_____ Section 17. Section 57-19a-102, which is renumbered from Section 57-19-2 is renumbered and amended to read:~~

~~_____ [57-19-2]. _____ 57-19a-102. Definitions:~~

~~_____ As used in this chapter, unless the context clearly requires otherwise:~~

~~_____ (1) "Accommodations" includes:~~

~~_____ (a) a hotel or motel [rooms,] room;~~

~~_____ (b) a condominium or cooperative [units, cabins, lodges, apartments, and] unit;~~

~~_____ (c) a cabin;~~

~~_____ (d) a lodge;~~

~~_____ (e) an apartment; or~~

~~_____ (f) a private or commercial [structures] structure designed for occupancy by one or more individuals;~~

~~_____ (2) "Advertisement" means a written, printed, audio, or visual offer made by general solicitation.~~

~~_____ (3) "Affiliation" means an employment or independent contractor relationship between a salesperson and a developer.~~

~~_____ (4) "Amendment" means a change to an original registration that is required to be reported to the division pursuant to:~~

~~_____ (a) Section 57-19a-204; or~~

~~_____ (b) rules made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~

~~_____ (5) "Business day" means a day other than a:~~

~~_____ (a) Saturday;~~

HB0091S01 compared with HB0091

~~_____ (b) Sunday; or~~

~~_____ (c) state or federal holiday.~~

~~_____ [(3)] (6) "Camp resort" means [any] an enterprise that has as its primary purpose the offering of a camp resort interest.~~

~~_____ [(4)] (7) "Camp resort interest" means the right to use and occupy a fixed or variable camping site according to a fixed or variable time schedule.~~

~~_____ [(5)] (8) "Camping site" means a space designed or promoted for the purpose of locating a trailer, tent, tent trailer, pickup camper, or other similar device used for land-based portable housing.~~

~~_____ (9) "Consolidation" means the registration of one or more additional interests in a project after the division approves a registration.~~

~~_____ (10) "Deeded ownership" means the acquisition by a purchaser of an interest:~~

~~_____ (a) through transfer of title to the one or more real properties to which the interest attaches; and~~

~~_____ (b) regardless of whether title is transferred to:~~

~~_____ (i) the purchaser; or~~

~~_____ (ii) a trust in which the purchaser is granted a beneficial interest.~~

~~_____ [(6)] (11) "Developer" means a person who:~~

~~_____ (a) establishes, promotes, owns, or operates a timeshare development or camp resort;
or~~

~~_____ (b) sells one or more interests in one or more projects.~~

~~_____ (12) "Direct sales presentation" means a meeting in which a salesperson or developer provides information to one or more prospective purchasers about:~~

~~_____ (a) one or more projects; or~~

~~_____ (b) one or more interests.~~

~~_____ [(7)] (13) "Director" means the director of the division.~~

~~_____ [(8)] (14) "Division" means the Division of Real Estate of the Department of Commerce.~~

~~_____ (15) "Entity" means:~~

~~_____ (a) a corporation;~~

~~_____ (b) a limited liability company;~~

HB0091S01 compared with HB0091

~~_____ (c) a partnership;~~

~~_____ (d) a company;~~

~~_____ (e) an association;~~

~~_____ (f) a joint venture;~~

~~_____ (g) a business trust;~~

~~_____ (h) a trust; or~~

~~_____ (i) another organization;~~

~~_____ [(9)] (16) "Executive director" means the executive director of the Department of Commerce;~~

~~_____ [(10)] (17) "Interest" means a camp resort interest or a timeshare interest;~~

~~_____ (18) (a) "Marketing of interests" means implementing a plan under which multiple interests are advertised, offered, or both advertised and offered, for disposition, regardless of whether:~~

~~_____ (i) the multiple interests are in the same location; or~~

~~_____ (ii) the ownership of the interests is differentiated or distinguished;~~

~~_____ (b) "Marketing of interests" does not mean:~~

~~_____ (i) creating or providing material to be disseminated to a prospective purchaser through an advertisement or at a direct sales presentation; or~~

~~_____ (ii) disseminating an advertisement through means that do not involve:~~

~~_____ (A) speaking directly with a prospective purchaser; or~~

~~_____ (B) sending to, or receiving from, a prospective purchaser a personalized email, text message, or other communication;~~

~~_____ (19) "Notice of defect" means a written communication from the division informing an applicant that the applicant must submit additional information to clarify, complete, or correct an application for:~~

~~_____ (a) registration;~~

~~_____ (b) consolidation; or~~

~~_____ (c) renewal;~~

~~_____ [(11)] (20) "Offer" means a solicitation intended to result in a person purchasing an interest in a project;~~

~~_____ (21) "Person" means an individual or an entity;~~

HB0091S01 compared with HB0091

- ~~[(12)] (22) "Project" means a camp resort or timeshare development.~~
- ~~(23) "Prospective purchaser" means a person who:~~
- ~~(a) attends a direct sales presentation;~~
 - ~~(b) communicates with a developer or salesperson to obtain information about a project;~~
 - ~~(c) provides personal information to a developer or salesperson; or~~
 - ~~(d) is solicited by a developer or salesperson through any type of advertisement or marketing.~~
- ~~(24) "Property report" means a document that includes:~~
- ~~(a) the disclosures required under Section 57-19a-402;~~
 - ~~(b) a cover sheet as provided by the division; and~~
 - ~~(c) a receipt provided by the division.~~
- ~~[(13)] (25) "Purchaser" means a person who purchases an interest in a project.~~
- ~~(26) "Registration":~~
- ~~(a) for a project, means that the division approves an application for registration as provided in Section 57-19a-202; and~~
 - ~~(b) for a salesperson, means the division approves an application for registration of a person to engage as a salesperson in the sale and marketing of interests on behalf of a developer as provided in Section 57-19a-301.~~
- ~~(27) "Renewal" means extending a registration for an additional period on or before the date the registration expires.~~
- ~~[(14) "Sale" or "sell" means selling an interest in a project for value. It does not include charging a reasonable fee to offset the administrative costs of transferring an interest in a project.]~~
- ~~(28) "Resale" may be defined by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~
- ~~(29) (a) "Sale" or "sell" means the transfer of an interest in a project for value.~~
 - ~~(b) "Sale" or "sell" includes a transfer of an interest in a project as part of a resale.~~
 - ~~(c) "Sale" or "sell" does not include the transfer of an interest by a developer or homeowners' association that charges only a reasonable fee to offset the administrative costs of a transfer described in Subsection (29)(a).~~

HB0091S01 compared with HB0091

~~— (15) (30) (a) "Salesperson" means an individual who~~;

~~— (i) is affiliated with a developer; and~~

~~— (ii) for compensation and as agent for [another, is engaged] the developer, engages in obtaining commitments of one or more persons to purchase an interest in a project by:~~

~~— (A) making direct sales presentations to those persons[. It does not include purchasers or members engaged in the referral of persons]; or~~

~~— (B) engaging in any other activity that constitutes the marketing of interests.~~

~~— (b) "Salesperson" does not include a purchaser who refers another person to the developer without making a direct sales presentation to [them] that person.~~

~~— (31) "Temporary permit" means authorization from the division under Section 57-19a-203 for a developer to engage in the marketing of interests for a period not to exceed 30 days.~~

~~— (16) (32) "Timeshare development" means [any] an enterprise that has as its primary purpose the offering of a timeshare interest.~~

~~— (33) "Timeshare estate" means a small undivided fractional fee interest in real property by which the purchaser does not receive any right to use accommodations except as provided by contract, declaration, or other instrument defining a legal right.~~

~~— (17) (34) (a) "Timeshare interest" means a right to occupy fixed or variable accommodations during three or more separate fixed or variable time periods over a period of at least three years[, including renewal options,];~~

~~— (b) "Timeshare interest" includes:~~

~~— (i) a renewal option, whether or not coupled with an estate in land[. It includes what is commonly known as a "timeshare estate," which is a small undivided fractional fee interest in real property by which the purchaser does not receive any right to use accommodations except as provided by contract, declaration, or other instrument defining a legal right.]; or~~

~~— (ii) a time share estate.~~

~~— Section 18. Section ~~57-19a-103~~, which is renumbered from Section 57-19-3 is renumbered and amended to read:~~

~~— ~~[57-19-3].~~ 57-19a-103. Powers and duties of director and division -- Fees.~~

~~— (1) The [director] division may make, amend, and repeal [rules, forms, and orders] a rule, form, or order when necessary to carry out [the provisions of] this chapter. The division~~

HB0091S01 compared with HB0091

~~shall make a rule under this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:~~

~~—— (2) The division may charge and collect a fee determined by the division under Section 63J-1-504 for:~~

~~—— (a) approving a new, renewed, duplicate, or consolidated registration;~~

~~—— (b) processing an amendment to a registration;~~

~~—— (c) completing an inspection of a project;~~

~~—— (d) issuing a temporary permit;~~

~~—— (e) producing a certified copy of an official document, order, or other paper or transcript; or~~

~~—— (f) performing another duty of the division under this chapter.~~

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

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

~~—— (b) the division may reverse the transaction if payment of the applicable fee or cost is not received in full; and~~

~~—— (c) the person's registration is automatically suspended:~~

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

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

~~Section 19. Section 57-19a-201, which is renumbered from Section 57-19-4 is renumbered and amended to read:~~

Part 2. Registration of Project

~~—— [57-19-4]. **57-19a-201. Unregistered sales prohibited -- Restrictions on use of registration.**~~

~~—— (1) Except [for transactions exempt under] as provided in Subsection (3) or Section [57-19-26] 57-19a-206, it is unlawful for [any] a person to sell or offer [or] to sell in this state an interest in a project unless:~~

~~—— (a) the project is registered under this chapter[.]; and~~

~~—— (b) any individual that advertises or markets the interest is:~~

~~—— (i) the project developer; or~~

~~—— (ii) registered as a salesperson under this chapter.~~

HB0091S01 compared with HB0091

- ~~(2) A developer who uses another person to promote or operate a project shall:~~
- ~~(a) actively supervise the activities of the person so as to ensure compliance with:~~
 - ~~(i) this chapter; and~~
 - ~~(ii) rules made under this chapter; and~~
 - ~~(b) ensure that the person is registered as a salesperson, if the person is an individual.~~
- ~~(3) An individual who is licensed and on active status as a sales agent, associate broker, or principal broker pursuant to Title 61, Chapter 2f, Real Estate Licensing and Practices Act, is not required to register under this chapter to sell or offer to sell an interest owned by a purchaser, if the individual operates in accordance with any restriction as to sales volume that the division may impose under this chapter by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~
- ~~(4) A permit to market a project issued by the division before April 27, 1987, is considered to be an effective registration, but is subject to the renewal provisions of this chapter upon the anniversary date of the issuance of the original permit.~~
- ~~Section 20. Section 57-19a-202, which is renumbered from Section 57-19-5 is renumbered and amended to read:~~
- ~~[57-19-5]. **57-19a-202. Registration -- Filing application.**~~
- ~~(1) (a) A developer shall register a project. To register a project a developer shall demonstrate good moral character.~~
 - ~~(b) In evaluating a developer's moral character, the division shall consider whether the developer or an officer, partner, director, or owner of the developer has:~~
 - ~~(i) been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner to, or resolved by diversion or its equivalent:~~
 - ~~(A) a felony; or~~
 - ~~(B) a misdemeanor involving theft, fraud, or dishonesty;~~
 - ~~(ii) been enjoined from, assessed a civil penalty for, or found to have engaged in the violation of a law designed to protect a consumer; or~~
 - ~~(iii) engaged in a dishonest practice in an industry involving sales to a consumer.~~
 - ~~(c) Unless exempted by this chapter or by the division through rule or order, a developer that engages in the resale of an interest previously registered by a different developer shall register the interest as a new project.~~

HB0091S01 compared with HB0091

~~— (d) The developer who registers a project is considered the "applicant" or "registrant" for the purposes of this chapter.~~

~~— [(1)] (2) A [person] developer may apply for registration of a project by:~~

~~— (a) filing with the [director] division:~~

~~— [(a)] (i) an application in the form prescribed by the [director] division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;~~

~~— [(b)] (ii) the written disclosure required to be furnished to prospective purchasers by Section [57-19-11] 57-19a-402; and~~

~~— [(c)] (iii) financial statements and other information that the [director] division may, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, require as being reasonably necessary to determine whether:~~

~~— (A) the requirements of this chapter have been met; and [whether any of the events]~~

~~— (B) an event specified in Subsection [57-19-13(1)(g)] 57-19a-303(1) occurs; and~~

~~— [(2) Interests in a project which are encumbered by liens, mortgages, or other encumbrances may not be accepted for registration or offered for]~~

~~— (b) paying a fee determined by the division under Section 63J-1-504.~~

~~— (3) The division may not accept an interest that is encumbered by a lien, mortgage, or other encumbrance for registration, and a person may not offer the interest for disposition to the public unless:~~

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

~~— (b) the division has accepted other equivalent assurances [which] that, in the opinion of the division, meet the purposes of this Subsection [(2)] (3).~~

~~— [(3) (a) Each application for registration of a project shall be accompanied by:]~~

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

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

~~— [(b) (i) If the \$300 deposit is insufficient to meet the estimated costs and expenses of~~

HB0091S01 compared with HB0091

~~the on-site inspection, the applicant shall make an additional deposit sufficient to cover the estimated costs and expenses before the division will inspect the subdivided lands.]~~

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

~~—— (4) (a) Within a reasonable time after an initial or consolidated registration is approved, the developer shall cooperate with the division in making arrangements for an inspector appointed by the division to travel to and inspect the project site.~~

~~—— (b) The developer shall bear the costs for the inspection required under this Subsection (4), including:~~

~~—— (i) travel expenses;~~

~~—— (ii) food and lodging;~~

~~—— (iii) rental car, if applicable; and~~

~~—— (iv) per diem.~~

~~—— (c) If a developer fails to comply with this Subsection (4), the division may revoke the initial project registration through an informal proceeding conducted pursuant to Title 63G, Chapter 4, Administrative Procedures Act.~~

~~—— [(4)] (5) If a person registers additional interests to be offered for disposition, the person may consolidate the subsequent registration with any earlier registration offering interests for disposition in the same project by:~~

~~—— (a) filing an application for consolidation [accompanied by an additional fee of \$200 plus \$3 for each additional interest, up to a maximum of \$1,250 for each application, if at the time the person makes the application all of the information required by Subsection (1) has been brought current and covers the additional interests.] in a form prescribed by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;~~

~~—— (b) filing updates, as applicable, to the information required by Subsection (2); and~~

~~—— (c) paying a fee determined by the division under Section 63J-1-504.~~

~~—— Section 21. Section ~~57-19a-203~~, which is renumbered from Section 57-19-6 is renumbered and amended to read:~~

~~—— ~~[57-19-6].~~ **57-19a-203. Approval of application for registration.**~~

~~—— (1) An application for registration filed pursuant to Section [57-19-5 is effective upon the expiration of 30 business days following its filing with the director, unless] ~~57-19a-202~~ is~~

HB0091S01 compared with HB0091

~~considered approved by the division on the day on which the division issues:~~

~~—— [(a) an order denying the application pursuant to Section 57-19-13 is in effect;]~~

~~—— [(b) a prior effective date has been ordered by the director; or]~~

~~—— [(c) the director has, prior to that date, notified the applicant of a defect in the registration application.]~~

~~—— [(2) An applicant may consent to the delay of effectiveness until the director by order declares the registration to be effective.]~~

~~—— (a) a cover page:~~

~~—— (i) that states the term for which a purchaser is obligated to maintain the interest; and~~

~~—— (ii) which the developer shall attach, without alteration, to the property report as the first page of the property report; and~~

~~—— (b) a receipt for the property report, which the developer shall attach to the property report as the last page of the property report.~~

~~—— [(3)] (2) (a) Notwithstanding Section [57-19-4] 57-19a-201, the division may grant a temporary permit allowing [the] a developer to begin [a sales program] the sale and marketing of interests while the registration is in process.~~

~~—— (b) To obtain a temporary permit, [the] a developer shall:~~

~~—— [(a) submit an application to the division for a temporary permit in the form required by the division;]~~

~~—— [(b) submit a substantially complete application for registration to the division, including all appropriate fees and exhibits required under Section 57-19-5, plus a temporary permit fee of \$100;]~~

~~—— (i) submit to the division:~~

~~—— (A) an application for a temporary permit in the form required by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and~~

~~—— (B) the information required under Section 57-19a-202, including any information required by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;~~

~~—— (ii) pay:~~

~~—— (A) a fee required under Subsection 57-19a-202(2)(b) for registration; and~~

~~—— (B) a temporary permit fee determined by the division under Section 63J-1-504;~~

HB0091S01 compared with HB0091

~~—— [(c) (iii) provide evidence acceptable to the division that [all funds] money received by the developer or [marketing agent] salesperson will be placed into an independent escrow with instructions that [funds] the money will not be released until a final registration [has been granted] is approved;~~

~~—— [(d) give to each purchaser and]~~

~~—— (iv) describe the information and documents that the developer will supply to complete the registration process;~~

~~—— (v) provide a purchaser or potential purchaser a copy of the proposed property report that the developer has submitted to the division with the [initial] application for registration; and~~

~~—— [(e) give to each purchaser]~~

~~—— (vi) provide a purchaser:~~

~~—— (A) the opportunity to cancel the purchase in accordance with Section [57-19-12. The purchaser shall have] 57-19a-403;~~

~~—— (B) an additional opportunity to cancel upon the issuance of an approved registration if the division determines that there is a substantial difference [in] between the disclosures contained in the final property report and those given to the [purchase] purchaser in the proposed property report[.]; and~~

~~—— (C) an additional opportunity to cancel if the division does not issue an approved registration under this chapter.~~

~~—— Section 22. Section 57-19a-204, which is renumbered from Section 57-19-9 is renumbered and amended to read:~~

~~—— [57-19-9]. 57-19a-204. Duration of registration -- Amendment and renewal -- Supplemental disclosure -- Notice of amendment.~~

~~—— (1) (a) Registration of a project is effective for a period of one year [and may, upon application, be renewed].~~

~~—— (b) A developer may renew a project for successive periods of one year each by applying with the division and complying with the rules made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~

~~—— [(2) A registration may be amended at any time, for any reason, by filing an amended application for registration, which]~~

HB0091S01 compared with HB0091

~~—— (2) A developer who fails to file a timely renewal may apply for reinstatement of the expired registration within 30 days following the date of expiration by:~~

~~—— (a) complying with the requirements for a timely renewal; and~~

~~—— (b) paying an additional late fee determined by the division under Section 63J-1-504.~~

~~—— (3) Notwithstanding Subsection (1), the division may extend the term of a project registration that would expire under Subsection (1) except for the extension if:~~

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

~~—— (ii) the renewal application remains pending at the time of expiration; or~~

~~—— (b) at the time of extension, there is pending under this chapter an investigation or a disciplinary action against the developer.~~

~~—— (4) (a) If an event that has a material adverse effect on the operation of a project occurs, the developer shall, within 10 business days of the occurrence of the event, file an amendment with the division.~~

~~—— (b) The division may define, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, what constitutes an "event that has a material adverse effect on the operation of a project" for purposes of this Subsection (4).~~

~~—— (c) An amended registration [shall become effective in the manner provided in Section 57-19-6] becomes effective if approved by the division in the manner provided in Section 57-19a-203.~~

~~—— [(3) The] (5) (a) A developer shall supplement a written disclosure required to be furnished to a prospective [purchasers pursuant to Section 57-19-11 shall be supplemented] purchaser under Section 57-19a-402 as often as is necessary to keep the required information reasonably current. [These supplements shall be filed with the director] A developer shall file a supplement with the division as provided in Section [57-19-8] 57-19a-401.~~

~~—— [(4) Every developer shall provide timely notice sent to the director of any event which has occurred which may have a material adverse effect on the conduct of the operation of the project. In addition to this notification, the developer shall, within 30 days of the occurrence of that event, file an amendment to the registration disclosing the information previously provided.]~~

~~—— [(5) Each application for renewal of a registration and each supplementary filing as~~

HB0091S01 compared with HB0091

~~provided in this section shall be accompanied by a fee of \$200.]~~

~~—— (b) A developer shall pay with a supplementary filing a fee determined by the division under Section 63J-1-504.~~

~~—— Section 23. Section 57-19a-205, which is renumbered from Section 57-19-10 is renumbered and amended to read:~~

~~—— [57-19-10]. **57-19a-205. Misleading statements -- Effect of application or registration.**~~

~~—— [Neither the fact that an application for registration or the written disclosures required by this chapter have been filed, nor the fact that a project has been effectively registered or exempted, constitutes a finding by the director that the]~~

~~—— (1) It is a class A misdemeanor to make or cause to be made to a purchaser or prospective purchaser an offering or document filed under this chapter that is untrue, incomplete, or misleading.~~

~~—— (2) When registering a project, the division does not certify or otherwise ensure to a purchaser or potential purchaser that:~~

~~—— (a) an offering or any document filed under this chapter is true, complete, [and] or not misleading[, nor does either of these facts mean that the director has determined in any way the];~~

~~—— (b) a project has any specific merits or qualifications [of, or recommended or given approval to,]; or~~

~~—— (c) any person, developer, or transaction involving an interest in a project[. It is a class A misdemeanor to make or cause to be made to any purchaser or prospective purchaser any offering or document filed under this chapter which is untrue, incomplete, or misleading] is recommended or endorsed by the division.~~

~~—— (3) A developer may not claim that the division endorses, recommends, or certifies an offering, document, project, or interest because of the following:~~

~~—— (a) the filing of an application for registration;~~

~~—— (b) the submission to the division of a written disclosure required by this chapter; or~~

~~—— (c) the division issuing a registration.~~

~~—— Section 24. Section 57-19a-206, which is renumbered from Section 57-19-26 is renumbered and amended to read:~~

HB0091S01 compared with HB0091

~~_____ [57-19-26]. 57-19a-206. Exemptions.~~

~~_____ (1) Unless entered into for the purpose of evading [the provisions of] this chapter, the following transactions are exempt from registration by operation of law:~~

~~_____ (a) an isolated [transactions] transaction by an owner of an interest in a project, or by a person holding [such an owner's] an executed power of attorney of an owner described in this Subsection (1)(a):~~

~~_____ (b) an offer or sale by a [governmental] government entity; and~~

~~_____ (c) a bona fide pledge of interest in a project.~~

~~_____ (2) (a) The [director may, by rule or order, exempt any] division may exempt a person from [any or all] one or more of the requirements of this chapter [if the director finds that the offering of an interest in a project is essentially noncommercial. For purposes of this subsection, the offering of fewer than 10 interests in a project is considered essentially noncommercial.] under procedures established by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~

~~_____ (b) An application for an exemption shall be accompanied by a nonrefundable fee determined by the division under Section 63J-1-504.~~

~~_____ (c) An exemption granted by order under this Subsection (2) is valid for one year from the date on which the order is issued by the division and expires unless renewed through reapplication to the division.~~

~~_____ (3) A purchaser of an interest in a project that is exempt from registration under this chapter may bring a private cause of action against a developer for unprofessional conduct as provided in Section 57-19a-501.~~

~~_____ Section 25. Section 57-19a-301, which is renumbered from Section 57-19-14 is renumbered and amended to read:~~

~~**Part 3. Registration of Salesperson**~~

~~_____ [57-19-14]. 57-19a-301. Registration of salesperson.~~

~~_____ (1) Unless the transaction is exempt under Section [57-19-26] 57-19a-206, it is unlawful for [any] a person to act as a salesperson selling or marketing an interest or a project in this state without first registering under this chapter as a salesperson.~~

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

HB0091S01 compared with HB0091

~~Section 26. Section 57-19a-302, which is renumbered from Section 57-19-15 is renumbered and amended to read:~~

~~[57-19-15]. 57-19a-302. Application for registration of salesperson.~~

~~[(1) A person may apply for registration as a salesperson under this chapter by filing with the director an application in the form prescribed by the director, including:]~~

~~[(a) a statement of whether or not the applicant has ever been:]~~

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

~~[(A) a felony; or]~~

~~(1) (a) An individual applying for registration as a salesperson under this chapter shall demonstrate good moral character.~~

~~(b) In evaluating an applicant's moral character, the division may consider any evidence, including:~~

~~(i) whether an applicant has been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner to, or resolved by diversion or its equivalent:~~

~~(A) a felony; or~~

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

~~(ii) whether an applicant has been enjoined from, assessed a civil penalty for, or found to have engaged in the violation of a law designed to protect a consumer[.];~~

~~(2) To apply for registration as a salesperson, an individual shall:~~

~~(a) submit to the division an application in the form prescribed by the division, including:~~

~~(i) a questionnaire addressing issues that the division will consider in evaluating the applicant's moral character;~~

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

~~[(ii)] (iii) a statement of whether or not a termination of employment during the period described in Subsection [(1)(b)(i)] (2)(a)(ii) is as a result of theft, fraud, or an act of dishonesty; and~~

~~[(c)] (iv) any other information that the [director] division, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, considers necessary to protect the interests of a purchaser[.]; and~~

HB0091S01 compared with HB0091

~~— (2) Notwithstanding the requirements for a regulatory fee under Section 63J-1-504, at the time an applicant files an application, the applicant shall pay to the division a fee of \$100.~~

~~— (b) pay a fee determined by the division under Section 63J-1-504.~~

~~— (3) (a) Registration as a salesperson is effective for a period [for] of two years, unless the [director] division specifies otherwise.~~

~~— (b) To renew a registration a salesperson shall:~~

~~— (i) [file a] submit a renewal application in the form prescribed by the [director for that purpose] division; and~~

~~— (ii) pay a renewal fee [of \$100] determined by the division under Section 63J-1-504.~~

~~— (c) An individual who fails to file a timely renewal may apply for reinstatement of the salesperson registration within 30 days following the date of expiration by:~~

~~— (i) complying with the requirements for a timely renewal; and~~

~~— (ii) paying an additional late fee determined by the division under Section 63J-1-504.~~

~~— (d) Notwithstanding Subsection (3)(a), the division may extend the term of a salesperson registration that would expire under Subsection (3)(a) except for the extension if:~~

~~— (i) (A) the individual complies with the requirements of this section to renew the license; and~~

~~— (B) the renewal application remains pending at the time of expiration; or~~

~~— (ii) at the time of extension, there is pending under this chapter an investigation or a disciplinary action against the individual.~~

~~— (e) A salesperson who fails to reinstate an expired registration within the time period provided in this Subsection (3) shall reapply with the division as a new applicant.~~

~~— Section 27. Section 57-19a-303 is enacted to read:~~

~~— **57-19a-303. Reporting requirements for developer and salesperson.**~~

~~— (1) A developer shall notify the division within 10 business days if an officer, partner, director, or owner of the developer:~~

~~— (a) is convicted in a court of a:~~

~~— (i) felony;~~

~~— (ii) class A misdemeanor; or~~

~~— (iii) class B misdemeanor; or~~

~~— (b) is subject to an injunction or administrative order restraining a false or misleading~~

HB0091S01 compared with HB0091

~~promotional plan involving the sale or marketing of an interest.~~

~~— (2) A developer shall notify the division within 10 business days if:~~

~~— (a) the developer files a petition in bankruptcy; or~~

~~— (b) any other event occurs that might have a material adverse effect on a project.~~

~~— (3) If a developer is sued in, or brings, a civil action involving an allegation related to the marketing of an interest or management of a project, the developer shall, within 10 days of the civil action being filed:~~

~~— (a) notify the division of the civil action; and~~

~~— (b) provide the division a copy of the pleadings.~~

~~— (4) A developer's failure to comply with Subsection (1), (2), or (3) is grounds for discipline under Section 57-19a-501.~~

~~— (5) (a) A registered salesperson shall notify the division in writing within 10 business days after the day on which the salesperson:~~

~~— (i) enters a plea in abeyance to, or is convicted of:~~

~~— (A) a felony; or~~

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

~~— (ii) is enjoined from, assessed a civil penalty for, or found to have engaged in a violation of any law designed to protect consumers.~~

~~— (b) On receiving a notification pursuant to this section, the director may:~~

~~— (i) conduct a hearing pursuant to Section 57-19a-503; and~~

~~— (ii) if the director finds that the salesperson does not maintain the good moral character required for registration, take an action contemplated under Section 57-19a-502.~~

~~— (c) In enforcing the reporting requirement of this section, the division may, following a hearing, take an action contemplated under Section 57-19a-502.~~

~~— Section 28. Section 57-19a-401, which is renumbered from Section 57-19-8 is renumbered and amended to read:~~

Part 4. Operational Provisions

~~— [57-19-8]. 57-19a-401. Filing proposed documents -- Sales contracts.~~

~~— (1) [Every] A developer shall file the following with the [director] division at least five business days [prior to using any of the following in this state] before providing the document to a prospective purchaser:~~

HB0091S01 compared with HB0091

~~—— [(a) copies or the proposed text of all advertisements and sales promotion literature;]~~

~~—— [(b) the proposed form of its sales contracts; and]~~

~~—— [(c) copies or the text of any supplements]~~

~~—— (a) a sales contract; and~~

~~—— (b) a supplement to the written disclosure required to be furnished to prospective purchasers pursuant to Section [57-19-11] 57-19a-402.~~

~~—— [(2) If the text, rather than copies, of the materials specified in Subsection (1) are filed, copies of these materials shall be filed with the director within five business days following the date the materials are first used.]~~

~~—— [(3) The developer shall notify the division within five working days if he is convicted in any court of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions, or has been subject to any injunction or administrative order restraining a false or misleading promotional plan involving land dispositions.]~~

~~—— [(4) The developer must notify the division within five working days if the developer files a petition in bankruptcy or if any other event occurs which may have a material adverse effect on the subdivision.]~~

~~—— [(5) In any suit by or against the developer involving camp resorts or timeshare developments, the developer promptly shall furnish the division notice of the suit and copies of all pleadings. Failure to provide notice may, in the discretion of the division, constitute grounds for the division withholding any approval required by this act.]~~

~~—— (2) (a) The division may not approve a registration of a project if a developer proposes to use a sales contract that commits a purchaser by means other than deeded ownership to maintain an interest into perpetuity.~~

~~—— (b) This Subsection (2) applies to a sales contract that is entered into on or after May 10, 2011.~~

~~—— Section 29. Section 57-19a-402, which is renumbered from Section 57-19-11 is renumbered and amended to read:~~

~~—— [57-19-11]. 57-19a-402. Disclosure to prospective purchaser required.~~

~~—— (1) Except in a transaction exempt under Section [57-19-26, any] 57-19a-206, this section applies to a person who:~~

HB0091S01 compared with HB0091

~~_____ (a) sells or offers to sell an interest in a project located in this state[.]; or [who]~~
~~_____ (b) sells or offers to sell in this state an interest in a project located outside of this state[, shall provide to the prospective purchaser, before the prospective purchaser signs an agreement to purchase an interest in a project or gives any item of value for the purchase of an interest in a project, a written statement which provides];~~
~~_____ (2) A person subject to this section shall provide to a prospective purchaser the disclosure described in Subsection (3):~~
~~_____ (a) at the beginning of a direct sales presentation; or~~
~~_____ (b) if the prospective purchaser does not attend a direct sales presentation, at least three days before obtaining the prospective purchaser's signature on a sales contract.~~
~~_____ (3) The disclosure required by Subsection (2) shall:~~
~~_____ (a) be in the form of a written statement required by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;~~
~~_____ (b) provide a full and fair disclosure of information regarding the project and the purchaser's rights and obligations associated with the purchase of an interest in a project[. The written disclosure shall be on the property report form required by the division and shall include:]; and~~
~~_____ (c) at a minimum, include:~~
~~_____ [(1)] (i) the name and address of the developer;~~
~~_____ [(2)] (ii) a statement as to whether [or not] the developer, or an officer, partner, director, or owner of the developer has [ever] been:~~
~~_____ [(a)] (A) convicted of a felony[, or any];~~
~~_____ (B) convicted of a misdemeanor involving theft, fraud, or dishonesty; or~~
~~_____ [(b)] (C) enjoined from, assessed [any] a civil penalty for, or found to have engaged in the violation of any law designed to protect consumers;~~
~~_____ [(3)] (iii) a brief description of the developer's experience in timeshare, camp resort, or any other real estate development;~~
~~_____ [(4)] (iv) a brief description of the interest [which] that is being offered in the project;~~
~~_____ [(5) a description of any provisions]~~
~~_____ (v) a brief description of any provision to protect the purchaser's interest from loss due to foreclosure on [any] an underlying financial obligation of the project;~~

HB0091S01 compared with HB0091

~~_____ [(6)] (vi) a statement of the maximum number of interests in the project to be marketed, and a commitment that this maximum number will not be exceeded unless disclosed by filing an amendment to the registration as provided in Section [57-19-9 prior to] 57-19a-204 before the amendment becoming effective;~~

~~_____ [(7) any event which has]~~

~~_____ (vii) any event that:~~

~~_____ (A) occurred as of the date of the offer [which may]; and~~

~~_____ (B) might have a material adverse effect on the operation of the project; and~~

~~_____ [(8)] (viii) any other information the [director] division considers necessary for the protection of purchasers:~~

~~_____ Section 30. Section 57-19a-403, which is renumbered from Section 57-19-12 is renumbered and amended to read:~~

~~_____ [57-19-12]. 57-19a-403. Purchaser's right to cancel.~~

~~_____ (1) (a) An agreement to purchase an interest in a project may be cancelled, at the option of the purchaser, if:~~

~~_____ (i) the purchaser provides to the developer, by hand delivery or certified mail, written notice of the cancellation; and~~

~~_____ (ii) the notice is delivered or postmarked not later than midnight of the fifth [calendar] business day following the day on which the agreement is signed.~~

~~_____ (b) In computing the [number of calendar days for purposes of this section] time period described in Subsection (1)(a), the day on which the agreement [was] is signed [and legal holidays are] is not included [as "calendar days."];~~

~~_____ (c) Within 30 days after receipt of timely notice of cancellation, the developer shall refund [any] in full money or other consideration paid by the purchaser for purchase of an interest.~~

~~_____ (2) [Every] An agreement to purchase an interest in a project [which] that is subject to this chapter shall include the following statement in at least 10 point bold upper-case type, immediately preceding the space for the purchaser's signature:~~

~~_____ "PURCHASER'S RIGHT TO CANCEL: YOU MAY CANCEL THIS AGREEMENT WITHOUT ANY CANCELLATION FEE OR OTHER PENALTY BY HAND DELIVERING OR SENDING BY CERTIFIED MAIL WRITTEN NOTICE OF CANCELLATION TO:—~~

HB0091S01 compared with HB0091

~~_____ [(NAME AND ADDRESS OF DEVELOPER)]. THE NOTICE MUST BE DELIVERED OR POSTMARKED BY MIDNIGHT OF THE FIFTH [CALENDAR] BUSINESS DAY FOLLOWING THE DAY ON WHICH THE AGREEMENT IS SIGNED. IN COMPUTING [THE NUMBER OF CALENDAR DAYS] THIS TIME PERIOD, THE DAY ON WHICH THE CONTRACT IS SIGNED [AND LEGAL HOLIDAYS ARE] IS NOT INCLUDED."~~

~~_____ Section 31. Section 57-19a-501, which is renumbered from Section 57-19-13 is renumbered and amended to read:~~

~~Part 5. Violations and Enforcement~~

~~_____ [57-19-13]. 57-19a-501. Unprofessional conduct -- Suspension, revocation, or denial of registration -- Fine.~~

~~_____ (1) Subject to Section [57-19-17, an application for registration of a project may be denied, an existing registration may be suspended or revoked, or a fine of not more than \$500 may be imposed by the director, if he finds that:] 57-19a-503, the division may take one or more of the following actions if the division makes a finding described in Subsection (2):~~

~~_____ [(a) the developer's]~~

~~_____ (a) deny an application for a registration;~~

~~_____ (b) suspend or revoke an existing registration;~~

~~_____ (c) impose a fine not to exceed \$5,000 per violation; or~~

~~_____ (d) take a combination of actions under this Subsection (1);~~

~~_____ (2) The division may take an action described in Subsection (1) if the division finds that the developer has engaged in unprofessional conduct, including:~~

~~_____ (a) deceptive, false, or misleading advertising [or], sales techniques, or trade practices [have been or are deceptive, false, or misleading];~~

~~_____ [(b) the developer has failed to file copies of its advertisements, promotion literature, or sales contract forms as required by Section 57-19-8;]~~

~~_____ (b) failure to file with the division information or documentation required by:~~

~~_____ (i) this chapter; or~~

~~_____ (ii) rules made by the division under this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;~~

~~_____ (c) [the developer has failed] failure to comply with [any provision of] this chapter or~~

HB0091S01 compared with HB0091

~~the rules [adopted] made under this chapter [that materially affect or would affect the rights of purchasers or prospective purchasers of an interest in a project, or that materially affect the administration of this chapter];~~

~~—— (d) [the developer's] offering of an interest in a project [has worked or would] in a manner to work a fraud upon purchasers or prospective purchasers of such an interest;~~

~~—— [(e) the developer's application or any amendment to an application is incomplete in any material respect;]~~

~~—— [(f) the developer's application or any amendment to an application contains material misrepresentations or omissions of material fact which are necessary to make the statements contained in the application or amendment not misleading;]~~

~~—— [(g) the developer or any officer or director of the developer has been:]~~

~~—— [(i) convicted of a felony, or any misdemeanor involving theft, fraud, or dishonesty;]~~

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

~~—— [(iii) engaged in dishonest practices in any industry involving sales to consumers;]~~

~~—— [(h) the developer has represented or is]~~

~~—— (c) making a material misrepresentation or omission in an application or an amendment to an application;~~

~~—— (f) representing to [purchasers] a purchaser in connection with the offer or sale of an interest in a project that [any accommodations, related facilities, or amenities are] an accommodation, related facility, or amenity is planned, without reasonable grounds to believe that [they] it will be completed within a reasonable time;~~

~~—— [(i) the developer has disposed of, concealed, or diverted any funds]~~

~~—— (g) disposal, concealment, or diversion of money or assets so as to defeat the rights of [purchasers] a purchaser; or~~

~~—— [(j) the developer has failed to provide to purchasers copies]~~

~~—— (h) failure to provide to a purchaser a copy of the written disclosure required by Section [57-19-11] 57-19a-402.~~

~~—— [(2) The authority to impose fines as provided in this section does not apply to Subsection (1)(c).]~~

~~—— Section 32. Section 57-19a-502, which is renumbered from Section 57-19-16 is~~

HB0091S01 compared with HB0091

renumbered and amended to read:

~~———— [57-19-16]. — 57-19a-502. Unprofessional conduct -- Denial, revocation, or suspension of registration of salesperson -- Fine.~~

~~———— (1) Subject to Section [57-19-17, if the director] 57-19a-503, if the division finds that an applicant or salesperson has engaged in an act described in Subsection (2), the [director] division may do one or more of the following:~~

~~———— (a) deny an application for registration as a salesperson;~~

~~———— (b) suspend or revoke an existing registration; [or]~~

~~———— (c) impose a civil penalty not to exceed [\$500.] \$5,000 per violation; or~~

~~———— (d) take a combination of actions under this Subsection (1).~~

~~———— (2) Subsection (1) applies if the [director] division finds that the applicant or salesperson has engaged in unprofessional conduct, including:~~

~~———— (a) [files, or causes] filing, or causing to be filed, with the [director] division a document that contains [an] untrue or misleading information;~~

~~———— (b) [makes] making an untrue or misleading statement of material fact;~~

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

~~———— (d) [employs] employing a device, scheme, or artifice to defraud[, or engages];~~

~~———— (e) engaging in an act, practice, or course of business that operates or would operate as a fraud or deceit upon a person;~~

~~———— [(e) subsequent to the effective date of registration as a salesperson, is:]~~

~~———— [(i) convicted of:]~~

~~———— [(A) a felony; or]~~

~~———— [(B) a misdemeanor involving theft, fraud, or dishonesty; or]~~

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

~~———— (f) [violates] violating this chapter;~~

~~———— (g) [engages] engaging in an activity that constitutes dishonest dealing; or~~

~~———— (h) [engages] engaging in unprofessional conduct as defined by statute or rule made by the [director] division in accordance with Title 63G, Chapter 3, Utah Administrative~~

HB0091S01 compared with HB0091

Rulemaking Act.

Section 33. Section ~~57-19a-503~~, which is renumbered from Section 57-19-17 is renumbered and amended to read:

~~[57-19-17].~~ 57-19a-503. Administrative procedures -- Review -- Publication.

~~(1) The [director] division may summarily deny an application for registration [under any of the provisions of Section 57-19-13 or 57-19-16.];~~

~~(a) on a finding that:~~

~~(i) the application is incomplete or fails in any other way to meet the requirements for registration; or~~

~~(ii) the applicant does not demonstrate good moral character; or~~

~~(b) under Section 57-19a-501 or 57-19a-502.~~

~~(2) (a) If a registration is denied under Subsection (1), the applicant may, within 10 days after receipt of notice of the denial, request a hearing before [an administrative law judge] the director.~~

~~(b) The director shall schedule [the] a hearing under this Subsection (2) within 30 days after receipt of the applicant's request and [give notice of the hearing in writing to the applicant, specifying the reasons for denial of the registration. If, as a result of the hearing, it is determined that the applicant is qualified to be registered, the registration shall be issued] comply with Title 63G, Chapter 4, Administrative Procedures Act, in providing notice of the hearing to the applicant.~~

~~[(2)] (3) Before an existing registration is suspended or revoked, or a fine imposed, the director shall [schedule] conduct a hearing [before an administrative law judge and give notice in writing to the affected person as prescribed in Title 13, Chapter 1, and the rules of procedure for hearings before the Department of Commerce. If, as a result of the hearing, the administrative law judge finds that there has been a violation of this chapter, the registration shall be suspended or revoked, or a fine imposed, by written order of the director in concurrence with the executive director] in accordance with Title 63G, Chapter 4, Administrative Procedures Act.~~

~~(3) The developer or salesperson has the right to appear at the hearing, in person or by counsel, to be heard and to examine witnesses appearing in connection with the complaint. At the hearing, all witnesses shall be sworn by the administrative law judge, and stenographic~~

HB0091S01 compared with HB0091

~~notes or a tape recording of the proceeding shall be taken and filed as a part of the record in the case. Any party to the proceeding shall be furnished a copy of the stenographic notes or tape recording at a reasonable cost. The administrative law judge shall render a decision within 60 days after the completion of the hearing. The executive director and the director shall concurrently make the final decision and promptly notify the parties to the proceedings, in writing, of the ruling, order, or decision.]~~

~~——— [(4) The developer or salesperson, or any person aggrieved, may appeal any adverse ruling, order, or decision of the executive director and the director to the district court for the county in which the hearing was held, within 30 days from the date of service of notice of the ruling, order, or decision upon him. At the time of filing the notice of appeal, the appellant shall file with the notice a bond for costs on appeal in the amount of \$200, conditioned to secure the payment of costs if the appeal is dismissed or the judgment affirmed.]~~

~~——— (4) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, a person against whom action is taken under this section may seek review of the action by the executive director.~~

~~——— (5) The division may publish information concerning a violation of this chapter or a rule or order under this chapter.~~

~~——— Section 34. Section ~~57-19a-504~~, which is renumbered from Section 57-19-18 is renumbered and amended to read:~~

~~——— ~~[57-19-18].~~ **57-19a-504. Investigation.**~~

~~——— (1) The ~~[director may make any investigations or requests for]~~ division may investigate or request information, within or outside of this state, that ~~[he]~~ the division considers necessary:~~

~~——— (a) to determine whether ~~[any]~~ a registration under this chapter should be ~~[granted]~~ approved, denied, suspended, or revoked;~~

~~——— (b) to determine whether ~~[any]~~ a person has violated or is about to violate ~~[any of the provisions of]~~ this chapter or ~~[any]~~ a rule or order under this chapter; ~~[or]~~~~

~~——— (c) to determine whether a registrant maintains the moral character required by Section 57-19a-202 or 57-19a-302, as applicable; or~~

~~——— ~~[(c)]~~ (d) to aid in the enforcement of this chapter.~~

~~——— (2) The director may publish information concerning any violation of this chapter or~~

HB0091S01 compared with HB0091

~~any rule or order under this chapter.]~~

~~—— (2) For the purposes of an investigation or proceeding under this chapter, the director, or the director's designee may:~~

~~—— (a) administer an oath or affirmation;~~

~~—— (b) subpoena witnesses and evidence;~~

~~—— (c) take evidence;~~

~~—— (d) require the production of a record or information relevant or material to the inquiry;~~

~~and~~

~~—— (e) serve a subpoena by certified mail.~~

~~—— (3) A failure to respond to a request by the division in an investigation authorized under this chapter is considered as a separate violation of this chapter, including:~~

~~—— (a) failing to respond to a subpoena;~~

~~—— (b) withholding evidence; or~~

~~—— (c) failing to produce a record.~~

~~—— (4) The division may inspect and copy a record related to the sale or marketing of interests by a developer or salesperson under this chapter, regardless of whether the record is maintained at a business location in Utah, in conducting:~~

~~—— (a) an investigation of a complaint; or~~

~~—— (b) an inspection of a record required to be maintained under this chapter or a rule made under this chapter.~~

~~—— (5) (a) If a person is found to have violated this chapter or a rule made under this chapter, the person shall pay the costs incurred by the division to copy a record required under this chapter, including the costs incurred to copy an electronic record in a universally readable format:~~

~~—— (b) If a person fails to pay the costs described in Subsection (5)(a) when due, the person's registration is automatically suspended:~~

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

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

~~—— Section 35. Section 57-19a-505 is enacted to read:~~

~~—— **57-19a-505. Cease and desist.**~~

~~—— (1) (a) The division may issue and serve by certified mail, or by personal service, on a~~

HB0091S01 compared with HB0091

~~person an order to cease and desist from an act if:~~

~~—— (i) the division has reason to believe that the person has been engaged, is engaging, or is about to engage in an act constituting a violation of this chapter; and~~

~~—— (ii) it appears to the division that it would be in the public interest to stop the act.~~

~~—— (b) Within 10 days after service of the order, the person named in the order may request a hearing to be held before an administrative law judge in accordance with Title 63G, Chapter 4, Administrative Procedures Act.~~

~~—— (c) Pending a hearing requested under Subsection (1)(b), a cease and desist order remains in effect.~~

~~—— (2) (a) After the hearing described in Subsection (1), if the administrative law judge finds that an act of the person violates this chapter, the administrative law judge:~~

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

~~—— (ii) may impose another disciplinary action under Section 57-19a-501 or 57-19a-502, as applicable.~~

~~—— (b) The director may file suit in the name of the division to enjoin and restrain a person on whom an order is served under this section from violating this chapter if:~~

~~—— (i) (A) the person does not request a hearing under Subsection (1); or~~

~~—— (B) a permanent cease and desist order is issued against the person following a hearing or stipulation; and~~

~~—— (ii) (A) the person fails to cease the act; or~~

~~—— (B) after discontinuing the act, the person again commences the act.~~

~~—— (c) The suit described in Subsection (2)(b) shall be filed in the district court in the county:~~

~~—— (i) in which the act occurs;~~

~~—— (ii) where the individual resides; or~~

~~—— (iii) where the individual or entity carries on business.~~

~~—— (3) A cease and desist order issued under this section may not interfere with or prevent the prosecution of a remedy or enforcement action under this chapter.~~

~~—— (4) An individual who violates a cease and desist order issued under this section is guilty of a class A misdemeanor.~~

~~—— Section 36. Section 57-19a-506, which is renumbered from Section 57-19-21 is~~

HB0091S01 compared with HB0091

renumbered and amended to read:

~~_____ [57-19-21]. 57-19a-506. Voidable agreements.~~

~~_____ [Any] (1) Subject to Subsection (2), an agreement to purchase an interest in a project entered into in violation of Section [57-19-4 or 57-19-14] 57-19a-201 or 57-19a-301 may, at the option of the purchaser, be voided and the purchaser's entire consideration recovered together with:~~

~~_____ (a) interest at the legal rate[,];~~

~~_____ (b) costs[,]; and~~

~~_____ (c) reasonable [attorney's] attorney fees. [However, no suit under this section may]~~

~~_____ (2) A suit under this section may not be brought more than two years after:~~

~~_____ [(1)] (a) the date the agreement is signed; or~~

~~_____ [(2)] (b) the date the purchaser knew or reasonably should have known of the violation.~~

~~_____ Section 37. Section 57-19a-507, which is renumbered from Section 57-19-22 is renumbered and amended to read:~~

~~_____ [57-19-22]. 57-19a-507. Violation a misdemeanor.~~

~~_____ Any person who willfully violates [any provision of] this chapter is guilty of a class B misdemeanor.~~

~~_____ Section 38. Section 57-19a-508, which is renumbered from Section 57-19-23 is renumbered and amended to read:~~

~~_____ [57-19-23]. 57-19a-508. Prosecution.~~

~~_____ The [director] division may refer [any] available evidence concerning violations of this chapter or of [any] a rule or order under this chapter to the attorney general or the proper prosecuting attorney, who may[, in his] exercise discretion, with or without [such a] the referral, [institute the] in instituting an appropriate civil or criminal [proceedings] proceeding under this chapter.~~

~~_____ Section 39. Section 57-19a-509, which is renumbered from Section 57-19-24 is renumbered and amended to read:~~

~~_____ [57-19-24]. 57-19a-509. Violation of Consumer Sales Practice Act.~~

~~_____ For purposes of applying Title 13, Chapter 11, [the] Utah Consumer Sales Practices Act, any material violation of [the provisions of] this chapter constitutes an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce.~~

HB0091S01 compared with HB0091

~~Section 40. Section 57-19a-510, which is renumbered from Section 57-19-25 is renumbered and amended to read:~~

~~[57-19-25]. 57-19a-510. Remedies nonexclusive:~~

~~The remedies provided in this chapter:~~

~~(1) are cumulative and nonexclusive[,] and~~

~~(2) do not affect any other remedy available at law.~~

~~Section 41. Section 57-23-4 is amended to read:~~

~~57-23-4. Exclusions:~~

~~This chapter does not apply to:~~

~~(1) an interest in real estate regulated under Title 57, Chapter [19] 19a, Timeshare and Camp Resort Act;~~

~~(2) an offering for an interest in real estate which is regulated under:~~

~~(a) Title 61, Chapter 1, Utah Uniform Securities Act;~~

~~(b) the securities laws of any state; or~~

~~(c) federal securities laws; or~~

~~(3) a sale of manufactured housing licensed under Title 58, Chapter 56, Utah Uniform Building Standards Act, unless the sale is made in conjunction with an offering or sale of a cooperative interest under this chapter.~~

~~Section 42} 10. Section 59-1-404 is amended to read:~~

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

(1) As used in this section:

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

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

(c) (i) "Commercial information" means:

(A) information of a commercial nature obtained from a property taxpayer regarding

HB0091S01 compared with HB0091

the property taxpayer's property; or

(B) information derived from the information described in this Subsection (1)(c)(i).

(ii) (A) "Commercial information" does not include information regarding a property taxpayer's property if the information is intended for public use.

(B) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of Subsection (1)(c)(ii)(A), the commission may by rule prescribe the circumstances under which information is intended for public use.

(d) "Consultation service" [~~means a consultation service~~] is as defined in Section [~~61-2b-2~~] 61-2g-102.

(e) "Locally assessed property" means property that is assessed by a county assessor in accordance with Chapter 2, Part 3, County Assessment.

(f) "Property taxpayer" means a person that:

(i) is a property owner; or

(ii) has in effect a contract with a property owner to:

(A) make filings on behalf of the property owner;

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

(C) pay a tax under Chapter 2, Property Tax Act, on the property owner's property.

(g) "Property taxpayer's property" means property with respect to which a property taxpayer:

(i) owns the property;

(ii) makes filings relating to the property;

(iii) processes appeals relating to the property; or

(iv) pays a tax under Chapter 2, Property Tax Act, on the property.

(h) "Protected commercial information" means commercial information that:

(i) identifies a specific property taxpayer; or

(ii) would reasonably lead to the identity of a specific property taxpayer.

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

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

(b) relating to an action or proceeding:

HB0091S01 compared with HB0091

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

(ii) that is filed in accordance with:

(A) this chapter;

(B) Chapter 2, Property Tax Act; or

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

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

(i) the assessed value of property;

(ii) the tax rate imposed on property;

(iii) a legal description of property;

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

(v) the square footage or acreage of property;

(vi) the square footage of improvements on property;

(vii) the name of a property taxpayer;

(viii) the mailing address of a property taxpayer;

(ix) the amount of a property tax:

(A) assessed on property;

(B) due on property;

(C) collected on property;

(D) abated on property; or

(E) deferred on property;

(x) the amount of the following relating to property taxes due on property:

(A) interest;

(B) costs; or

(C) other charges;

(xi) the tax status of property, including:

(A) an exemption;

(B) a property classification;

(C) a bankruptcy filing; or

HB0091S01 compared with HB0091

(D) whether the property is the subject of an action or proceeding under this title;

(xii) information relating to a tax sale of property; or

(xiii) information relating to single-family residential property.

(b) (i) Subject to Subsection (3)(b)(ii), a person may receive the information described in Subsection (3)(a) in written format.

(ii) The following may charge a reasonable fee to cover the actual cost of providing the information described in Subsection (3)(a) in written format:

(A) the commission;

(B) a county;

(C) a city; or

(D) a town.

(4) (a) Notwithstanding Subsection (2) and except as provided in Subsection (4)(c), an individual listed under Subsection 59-1-403(1)(a) shall disclose commercial information:

(i) in accordance with judicial order;

(ii) on behalf of the commission in any action or proceeding:

(A) under this title;

(B) under another law under which a property taxpayer is required to disclose commercial information; or

(C) to which the commission is a party;

(iii) on behalf of any party to any action or proceeding under this title if the commercial information is directly involved in the action or proceeding; or

(iv) if the requirements of Subsection (4)(b) are met, that is:

(A) relevant to an action or proceeding:

(I) filed in accordance with this title; and

(II) involving property; or

(B) in preparation for an action or proceeding involving property.

(b) Commercial information shall be disclosed in accordance with Subsection (4)(a)(iv):

(i) if the commercial information is obtained from:

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

HB0091S01 compared with HB0091

(B) an appraiser if the appraiser:

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

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

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

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

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

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

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

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

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

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

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

(i) the property taxpayer;

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

HB0091S01 compared with HB0091

- (iii) a person that has in effect a contract with the property taxpayer to:
 - (A) make filings on behalf of the property taxpayer;
 - (B) process appeals on behalf of the property taxpayer; or
 - (C) pay a tax under Chapter 2, Property Tax Act, on the property taxpayer's property;
- (iv) a property taxpayer that purchases property from another property taxpayer; or
- (v) a person that the property taxpayer designates in writing as being authorized to receive the commercial information;
- (b) the publication of statistics as long as the statistics are classified to prevent the identification of a particular property taxpayer's commercial information; or
- (c) the inspection by the attorney general or other legal representative of the state or a legal representative of a political subdivision of the state of the commercial information of a property taxpayer:
 - (i) that brings action to set aside or review a tax or property valuation based on the commercial information;
 - (ii) against which an action or proceeding is contemplated or has been instituted under this title; or
 - (iii) against which the state or a political subdivision of the state has an unsatisfied money judgment.
- (6) Notwithstanding Subsection (2), in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule establish standards authorizing an individual listed under Subsection 59-1-403(1)(a) to disclose commercial information:
 - (a) (i) in a published decision; or
 - (ii) in carrying out official duties; and
 - (b) if that individual listed under Subsection 59-1-403(1)(a) consults with the property taxpayer that provided the commercial information.
- (7) Notwithstanding Subsection (2):
 - (a) an individual listed under Subsection 59-1-403(1)(a) may share commercial information with the following:
 - (i) another individual listed in Subsection 59-1-403(1)(a)(i) or (ii); or
 - (ii) a representative, agent, clerk, or other officer or employee of a county as required to fulfill an obligation created by Chapter 2, Property Tax Act;

HB0091S01 compared with HB0091

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

- (i) publish notice;
- (ii) provide notice; or
- (iii) file a lien; or

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

(8) Notwithstanding Subsection (2):

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

- (i) the sales price of locally assessed property and the related financing terms;
- (ii) capitalization rates and related rates and ratios related to the valuation of locally assessed property; and
- (iii) income and expense information related to the valuation of locally assessed property; and

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

- (i) may disclose the commercial information:
 - (A) to an individual described in Subsection 59-1-403(1)(a);
 - (B) to an appraiser;
 - (C) in an appraisal if protected commercial information is removed to protect its confidential nature; or

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

- (ii) may not use the commercial information:
 - (A) for a purpose other than to prepare an appraisal or perform a consultation service;

or

- (B) for a purpose intended to be, or which could reasonably be foreseen to be,

HB0091S01 compared with HB0091

anti-competitive to a property taxpayer.

(9) (a) The commission shall:

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

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

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

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

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

(A) read the written explanation; and

(B) sign the written explanation; and

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

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

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

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

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

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

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

(b) If the individual described in Subsection (10)(a) is an officer or employee of the state or a county and is convicted of violating this section, the individual shall be dismissed from office and be disqualified from holding public office in this state for a period of five years thereafter.

HB0091S01 compared with HB0091

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

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

Section ~~{43}~~ 11. Section **59-2-701** is amended to read:

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

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

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

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

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

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

Section ~~{44}~~ 12. Section ~~{61-1-14}~~ 61-2-201 is amended to read:

~~{~~ 61-1-14. Exemptions:

~~———— (1) The following securities are exempt from Sections 61-1-7 and 61-1-15:~~

HB0091S01 compared with HB0091

~~—— (a) a security, including a revenue obligation, issued or guaranteed by the United States, a state, a political subdivision of a state, or an agency or corporate or other instrumentality of one or more of the foregoing, or a certificate of deposit for any of the foregoing;~~

~~—— (b) a security issued or guaranteed by Canada, a Canadian province, a political subdivision of a Canadian province, an agency or corporate or other instrumentality of one or more of the foregoing, or another foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;~~

~~—— (c) a security issued by and representing an interest in or a debt of, or guaranteed by, a depository institution organized under the laws of the United States, or a depository institution or trust company supervised under the laws of a state;~~

~~—— (d) a security issued or guaranteed by a public utility or a security regulated in respect of its rates or in its issuance by a governmental authority of the United States, a state, Canada, or a Canadian province;~~

~~—— (e) (i) a federal covered security specified in the Securities Act of 1933, Section 18(b)(1), 15 U.S.C. [Section] Sec. 77r(b)(1), or by rule adopted under that provision;~~

~~—— (ii) a security listed or approved for listing on another securities market specified by rule under this chapter;~~

~~—— (iii) any of the following with respect to a security described in Subsection (1)(e)(i) or (ii):~~

~~—— (A) a put or a call option contract;~~

~~—— (B) a warrant; or~~

~~—— (C) a subscription right on or with respect to the security;~~

~~—— (iv) an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency that is:~~

~~—— (A) registered under the Securities Exchange Act of 1934; and~~

~~—— (B) listed or designated for trading on a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934;~~

~~—— (v) an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was~~

HB0091S01 compared with HB0091

~~written or issued; or~~

~~—— (vi) an option or a derivative security designated by the Securities and Exchange Commission under Securities Exchange Act of 1934, Section 9(b), 15 U.S.C. [Section] Sec. 78i(b);~~

~~—— (f) (i) a security issued by a person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association; and~~

~~—— (ii) a security issued by a corporation organized under Title 3, Chapter 1, General Provisions Relating to Agricultural Cooperative Associations, and a security issued by a corporation to which that chapter is made applicable by compliance with Section 3-1-21;~~

~~—— (g) an investment contract issued in connection with an employees' stock purchase, option, savings, pension, profit-sharing, or similar benefit plan;~~

~~—— (h) a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940; and~~

~~—— (i) a security as to which the director, by rule or order, finds that registration is not necessary or appropriate for the protection of investors.~~

~~—— (2) The following transactions are exempt from Sections 61-1-7 and 61-1-15:~~

~~—— (a) an isolated nonissuer transaction, whether effected through a broker-dealer or not;~~

~~—— (b) a nonissuer transaction in an outstanding security, if as provided by rule of the division:~~

~~—— (i) information about the issuer of the security as required by the division is currently listed in a securities manual recognized by the division, and the listing is based upon such information as required by rule of the division; or~~

~~—— (ii) the security has a fixed maturity or a fixed interest or dividend provision and there is no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security;~~

~~—— (c) a nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy;~~

~~—— (d) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;~~

HB0091S01 compared with HB0091

~~—— (e) a transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;~~

~~—— (f) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;~~

~~—— (g) a transaction executed by a bona fide pledgee without a purpose of evading this chapter;~~

~~—— (h) an offer or sale to one of the following whether the purchaser is acting for itself or in a fiduciary capacity:~~

~~—— (i) a depository institution;~~

~~—— (ii) a trust company;~~

~~—— (iii) an insurance company;~~

~~—— (iv) an investment company as defined in the Investment Company Act of 1940;~~

~~—— (v) a pension or profit-sharing trust;~~

~~—— (vi) other financial institution or institutional investor; or~~

~~—— (vii) a broker-dealer;~~

~~—— (i) an offer or sale of a preorganization certificate or subscription if:~~

~~—— (i) no commission or other remuneration is paid or given directly or indirectly for soliciting a prospective subscriber;~~

~~—— (ii) the number of subscribers acquiring a legal or beneficial interest therein does not exceed 10;~~

~~—— (iii) there is no general advertising or solicitation in connection with the offer or sale; and~~

~~—— (iv) no payment is made by a subscriber;~~

~~—— (j) subject to Subsection (6), a transaction pursuant to an offer by an issuer of its securities to its existing securities holders, if:~~

~~—— (i) no commission or other remuneration, other than a standby commission is paid or given directly or indirectly for soliciting a security holder in this state; and~~

~~—— (ii) the transaction constitutes:~~

~~—— (A) the conversion of convertible securities;~~

HB0091S01 compared with HB0091

- ~~—— (B) the exercise of nontransferable rights or warrants;~~
- ~~—— (C) the exercise of transferable rights or warrants if the rights or warrants are exercisable not more than 90 days after their issuance;~~
- ~~—— (D) the purchase of securities under a preemptive right; or~~
- ~~—— (E) a transaction other than one specified in Subsections (2)(j)(ii)(A) through (D) if:~~
- ~~—— (F) the division is furnished with:~~
 - ~~—— (Aa) a general description of the transaction;~~
 - ~~—— (Bb) the disclosure materials to be furnished to the issuer's securities holders in the transaction; and~~
 - ~~—— (Cc) a non-refundable fee; and~~
- ~~—— (H) the division does not, by order, deny or revoke the exemption within 20 working days after the day on which the filing required by Subsection (2)(j)(ii)(E)(F) is complete;~~
- ~~—— (k) an offer, but not a sale, of a security for which a registration statement is filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending;~~
- ~~—— (l) a distribution of securities as a dividend if the person distributing the dividend is the issuer of the securities distributed;~~
- ~~—— (m) a nonissuer transaction effected by or through a registered broker-dealer where the broker-dealer or issuer files with the division, and the broker-dealer maintains in the broker-dealer's records, and makes reasonably available upon request to a person expressing an interest in a proposed transaction in the security with the broker-dealer information prescribed by the division under its rules;~~
- ~~—— (n) a transaction not involving a public offering;~~
- ~~—— (o) an offer or sale of "condominium units" or "time period units" as those terms are defined in Title 57, Chapter 8, Condominium Ownership Act, whether or not to be sold by installment contract, if the following are complied with:~~
 - ~~—— (i) Title 57, Chapter 8, Condominium Ownership Act, or if the units are located in another state, the condominium act of that state;~~
 - ~~—— (ii) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;~~
 - ~~—— (iii) Title 57, Chapter [19] 19a, Timeshare and Camp Resort Act; and~~
 - ~~—— (iv) Title 70C, Utah Consumer Credit Code;~~

HB0091S01 compared with HB0091

- ~~—— (p) a transaction or series of transactions involving a merger, consolidation, reorganization, recapitalization, reclassification, or sale of assets, if the consideration for which, in whole or in part, is the issuance of securities of a person or persons, and if:~~
- ~~—— (i) the transaction or series of transactions is incident to a vote of the securities holders of each person involved or by written consent or resolution of some or all of the securities holders of each person involved;~~
- ~~—— (ii) the vote, consent, or resolution is given under a provision in:~~
- ~~—— (A) the applicable corporate statute or other controlling statute;~~
- ~~—— (B) the controlling articles of incorporation, trust indenture, deed of trust, or partnership agreement; or~~
- ~~—— (C) the controlling agreement among securities holders;~~
- ~~—— (iii) (A) one person involved in the transaction is required to file proxy or informational materials under Section 14(a) or (c) of the Securities Exchange Act of 1934 or Section 20 of the Investment Company Act of 1940 and has so filed;~~
- ~~—— (B) one person involved in the transaction is an insurance company that is exempt from filing under Section 12(g)(2)(G) of the Securities Exchange Act of 1934, and has filed proxy or informational materials with the appropriate regulatory agency or official of its domiciliary state; or~~
- ~~—— (C) [all] the persons involved in the transaction are exempt from filing under Section 12(g)(1) of the Securities Exchange Act of 1934, and file with the division such proxy or informational material as the division requires by rule;~~
- ~~—— (iv) the proxy or informational material is filed with the division and distributed to [all] the securities holders entitled to vote in the transaction or series of transactions at least 10 working days [prior to] before any necessary vote by the securities holders or action on any necessary consent or resolution; and~~
- ~~—— (v) the division does not, by order, deny or revoke the exemption within 10 working days after filing of the proxy or informational materials;~~
- ~~—— (q) subject to Subsection (7), a transaction pursuant to an offer to sell securities of an issuer if:~~
- ~~—— (i) the transaction is part of an issue in which there are not more than 15 purchasers in this state, other than those designated in Subsection (2)(h), during any 12 consecutive months;~~

HB0091S01 compared with HB0091

- ~~—— (ii) no general solicitation or general advertising is used in connection with the offer to sell or sale of the securities;~~
- ~~—— (iii) no commission or other similar compensation is given, directly or indirectly, to a person other than a broker-dealer or agent licensed under this chapter, for soliciting a prospective purchaser in this state;~~
- ~~—— (iv) the seller reasonably believes that all the purchasers in this state are purchasing for investment; and~~
- ~~—— (v) the transaction is part of an aggregate offering that does not exceed \$1,000,000, or a greater amount as prescribed by a division rule, during any 12 consecutive months;~~
- ~~—— (r) a transaction involving a commodity contract or commodity option;~~
- ~~—— (s) a transaction in a security, whether or not the security or transaction is otherwise exempt if:~~
 - ~~—— (i) the transaction is:~~
 - ~~—— (A) in exchange for one or more outstanding securities, claims, or property interests; or~~
 - ~~—— (B) partly for cash and partly in exchange for one or more outstanding securities, claims, or property interests; and~~
 - ~~—— (ii) the terms and conditions are approved by the director after a hearing under Section 61-1-11.1;~~
 - ~~—— (t) a transaction incident to a judicially approved reorganization in which a security is issued:~~
 - ~~—— (i) in exchange for one or more outstanding securities, claims, or property interests; or~~
 - ~~—— (ii) partly for cash and partly in exchange for one or more outstanding securities, claims, or property interests;~~
 - ~~—— (u) a nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others; and~~
 - ~~—— (v) a transaction as to which the division finds that registration is not necessary or appropriate for the protection of investors.~~
- ~~—— (3) A person filing an exemption notice or application shall pay a filing fee as determined under Section 61-1-18.4.~~
- ~~—— (4) Upon approval by a majority of the commission, the director, by means of an~~

HB0091S01 compared with HB0091

~~adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, may deny or revoke an exemption specified in Subsection (1)(f) or (g) or in Subsection (2) with respect to:~~

- ~~—— (a) a specific security, transaction, or series of transactions; or~~
- ~~—— (b) a person or issuer, an affiliate or successor to a person or issuer, or an entity subsequently organized by or on behalf of a person or issuer generally and may impose a fine if the director finds that the order is in the public interest and that:~~
 - ~~—— (i) the application for or notice of exemption filed with the division is incomplete in a material respect or contains a statement which was, in the light of the circumstances under which it was made, false or misleading with respect to a material fact;~~
 - ~~—— (ii) this chapter, or a rule, order, or condition lawfully imposed under this chapter has been willfully violated in connection with the offering or exemption by:~~
 - ~~—— (A) the person filing an application for or notice of exemption;~~
 - ~~—— (B) the issuer, a partner, officer, or director of the issuer, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling or controlled by the issuer, but only if the person filing the application for or notice of exemption is directly or indirectly controlled by or acting for the issuer; or~~
 - ~~—— (C) an underwriter;~~
 - ~~—— (iii) subject to Subsection (8), the security for which the exemption is sought is the subject of an administrative stop order or similar order, or a permanent or temporary injunction or a court of competent jurisdiction entered under another federal or state act applicable to the offering or exemption;~~
 - ~~—— (iv) the issuer's enterprise or method of business includes or would include activities that are illegal where performed;~~
 - ~~—— (v) the offering has worked, has tended to work, or would operate to work a fraud upon purchasers;~~
 - ~~—— (vi) the offering is or was made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options;~~
 - ~~—— (vii) an exemption is sought for a security or transaction that is not eligible for the exemption; or~~

HB0091S01 compared with HB0091

~~—— (viii) the proper filing fee, if required, has not been paid.~~

~~—— (5) (a) An order under Subsection (4) may not operate retroactively.~~

~~—— (b) A person may not be considered to have violated Section 61-1-7 or 61-1-15 by reason of an offer or sale effected after the entry of an order under this Subsection (5) if the person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the order.~~

~~—— (6) The exemption created by Subsection (2)(j) is not available for an offer or sale of a security to an existing securities holder who has acquired the holder's security from the issuer in a transaction in violation of Section 61-1-7.~~

~~—— (7) As to a security, a transaction, or a type of security or transaction, the division may:~~

~~—— (a) withdraw or further condition the exemption described in Subsection (2)(q); or~~

~~—— (b) waive one or more of the conditions described in Subsection (2)(q).~~

~~—— (8) (a) The director may not institute a proceeding against an effective exemption under Subsection (4)(b) more than one year from the day on which the order or injunction on which the director relies is issued.~~

~~—— (b) The director may not enter an order under Subsection (4)(b) on the basis of an order or injunction entered under another state act unless that order or injunction is issued on the basis of facts that would constitute a ground for a stop order under this section at the time the director enters the order.~~

~~—— Section 45. Section 61-2-201 is amended to read:~~

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

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

(a) this chapter;

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

(c) Title 57, Chapter ~~{}~~19~~{}~~ ~~{}~~19a~~{}~~, Timeshare and Camp Resort Act;

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

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

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

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

Act; [and]

HB0091S01 compared with HB0091

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

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

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

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

Section ~~{46}~~13. Section **61-2c-102** is amended to read:

61-2c-102. Definitions.

(1) As used in this chapter:

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

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

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

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

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

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

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

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

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

(iii) that operates under:

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

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

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

(i) a Saturday;

(ii) a Sunday; or

(iii) a federal or state holiday.

HB0091S01 compared with HB0091

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

- (A) engage in an act that makes an individual a mortgage loan originator;
- (B) make or originate a residential mortgage loan;
- (C) directly or indirectly solicit a residential mortgage loan for another;
- (D) unless excluded under Subsection (1)(g)(ii), render services related to the

origination of a residential mortgage loan including:

- (I) preparing a loan package;
- (II) communicating with the borrower [~~and~~] or lender; or
- (III) advising on a loan term; or
- (E) engage in loan modification assistance.

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

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

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

(II) communicating with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan;

- (III) word processing;
- (IV) sending correspondence; or
- (V) assembling files;

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

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

- (I) a loan wholesaler;
- (II) an account executive for a loan wholesaler;
- (III) a loan underwriter;
- (IV) a loan closer; or
- (V) funding a loan; or

HB0091S01 compared with HB0091

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

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

(i) Utah-specific prelicensing education; or

(ii) Utah-specific continuing education.

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

(i) with a fixed amount borrowed; and

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

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

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

(i) services;

(ii) personal or real property; or

(iii) another thing of value.

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

(m) "Continuing education" means education taken by an individual licensed under this chapter in order to meet the education requirements imposed by Sections 61-2c-204.1 and 61-2c-205 to renew a license under this chapter.

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

(i) direct or exercise a controlling interest over:

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

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

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

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

(o) (i) "Control person" means an individual identified by an entity registered with the

HB0091S01 compared with HB0091

nationwide database as being ~~the~~ an individual ~~[primarily responsible for]~~ directing the management or policies of the entity.

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

- (A) a manager;
- (B) a managing partner;
- (C) a director;
- (D) an executive officer; or
- (E) an individual who performs a function similar to an individual listed in this

Subsection (1)(o)(ii).

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

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

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

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

- (i) a condominium unit;
- (ii) a cooperative unit;
- (iii) a manufactured home; or
- (iv) a house.

(t) "Entity" means:

- (i) a corporation;
- (ii) a limited liability company;
- (iii) a partnership;
- (iv) a company;
- (v) an association;
- (vi) a joint venture;
- (vii) a business trust;
- (viii) a trust; or
- (ix) another organization.

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

(v) "Federal licensing requirements" means Secure and Fair Enforcement for Mortgage

HB0091S01 compared with HB0091

Licensing, 12 U.S.C. Sec. 5101 et seq.

(w) "Foreclosure rescue" means, for compensation or with the expectation of receiving valuable consideration, to:

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

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

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

(ii) as an employee or agent of another person:

(A) solicit, or offer that the other person will engage in an act described in Subsection (1)(w)(i); or

(B) negotiate terms in relationship to an act described in Subsection (1)(w)(i).

(x) "Inactive status" means a dormant status into which an unexpired license is placed when the holder of the license is not currently engaging in the business of residential mortgage loans.

(y) "Licensee" means a person licensed with the division under this chapter.

(z) "Licensing examination" means the examination required by Section 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

(aa) "Loan modification assistance" means, for compensation or with the expectation of receiving valuable consideration, to:

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

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

(I) an increase or decrease in an interest rate;

(II) a change to the type of interest rate;

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

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

(V) an addition of collateral;

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

(VII) an addition of a cosigner; or

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

(B) substitute a new residential mortgage loan for an existing residential mortgage loan; or

HB0091S01 compared with HB0091

(ii) as an employee or agent of another person:

(A) solicit, or offer that the other person will engage in an act described in Subsection (1)(aa)(i); or

(B) negotiate terms in relationship to an act described in Subsection (1)(aa)(i).

(bb) (i) Except as provided in Subsection (1)(bb)(ii), "mortgage loan originator" means an individual who for compensation or in expectation of compensation:

(A) (I) takes a residential mortgage loan application; or

(II) offers or negotiates terms of a residential mortgage loan for the purpose of:

(Aa) a purchase;

(Bb) a refinance;

(Cc) a loan modification assistance; or

(Dd) a foreclosure rescue; and

(B) is licensed as a mortgage loan originator in accordance with this chapter.

(ii) "Mortgage loan originator" does not include a person who:

(A) is described in Subsection (1)(bb)(i), but who performs exclusively administrative or clerical tasks as described in Subsection (1)(g)(ii)(A);

(B) (I) is licensed under Chapter 2f, Real Estate Licensing and Practices Act;

(II) performs only real estate brokerage activities; and

(III) receives no compensation from:

(Aa) a lender;

(Bb) a principal lending manager; or

(Cc) an agent of a lender or principal lending manager; or

(C) is solely involved in extension of credit relating to a timeshare plan, as defined in 11 U.S.C. Sec. 101(53D).

(cc) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry, authorized under federal licensing requirements.

(dd) "Nontraditional mortgage product" means a mortgage product other than a 30-year fixed rate mortgage.

(ee) "Person" means an individual or entity.

(ff) "Prelicensing education" means education taken by an individual seeking to be licensed under this chapter in order to meet the education requirements imposed by Section

HB0091S01 compared with HB0091

61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

(gg) (i) "Principal lending manager" means an individual licensed as a principal lending manager under Section 61-2c-206 to transact the business of residential mortgage loans.

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

(hh) "Record" means information that is:

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

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

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

(II) in a perceivable and reproducible form.

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

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

(A) mortgage;

(B) deed of trust; or

(C) consensual security interest;

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

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

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

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

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

(kk) "State" means:

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

(ii) the District of Columbia; or

(iii) the Commonwealth of Puerto Rico.

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

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

HB0091S01 compared with HB0091

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

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

Section ~~{47}~~14. Section **61-2c-103** is amended to read:

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

(1) The division shall administer this chapter.

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

(a) receive and act on a complaint including:

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

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

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

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

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

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

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

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

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

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

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

(a) licensure procedures for:

(i) a person required by this chapter to obtain a license with the division; and

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

HB0091S01 compared with HB0091

- (b) proper handling of money received by a licensee;
- (c) record-keeping requirements by a licensee, including proper disposal of a record;
- (d) certification procedures for certifying an education provider; and
- (e) standards of conduct for a licensee or certified education provider.

(4) The division may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, require as a condition of maintaining a license or certification under this chapter that a person comply with a requirement of the nationwide database if:

- (a) required for uniformity amongst states; and
- (b) not inconsistent with this chapter.

(5) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide a process under which an individual may challenge information contained in the nationwide database.

(6) The division shall annually:

(a) review the requirements related to the nationwide database imposed by federal licensing requirements or the nationwide database on:

- (i) the division;
 - (ii) a licensee under this chapter;
 - (iii) a certified education provider; or
 - (iv) an approved examination provider; and
- (b) after the review required by Subsection (6)(a):

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

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

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

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

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

- (a) a violation of this chapter;

HB0091S01 compared with HB0091

(b) disciplinary action under this chapter; and

(c) other information relevant to this chapter.

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

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

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

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

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

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

Section ~~{48}~~15. Section **61-2c-202** is amended to read:

61-2c-202. Licensure procedures.

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

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

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

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

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

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

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

(vi) identifies the jurisdictions in which the entity is registered, licensed, or otherwise regulated in the business of residential mortgage loans;

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

(A) the entity; or

(B) any control person for the entity;

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

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

(b) if the applicant is an individual:

(i) submit a licensure statement that identifies the entity with which the applicant is

HB0091S01 compared with HB0091

sponsored;

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

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

(B) the Federal Bureau of Investigation;

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

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

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

(c) pay to the division:

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

and

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

(2) (a) Upon receiving an application, the division, with the concurrence of the commission, shall determine whether the applicant:

(i) meets the qualifications for licensure; and

(ii) complies with this section.

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

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

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

HB0091S01 compared with HB0091

(ii) issue a conditional license:

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

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

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

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

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

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

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

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

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

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

Section ~~{49}~~16. Section **61-2c-203** is amended to read:

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

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

(a) financial responsibility;

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

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

HB0091S01 compared with HB0091

of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(3)]~~ (2) If an applicant is an entity, the applicant may not have a control person who

HB0091S01 compared with HB0091

fails to meet the requirements of Subsection [~~(2)~~] (1) for an individual applicant.

Section ~~{50}~~17. Section **61-2c-205** is amended to read:

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

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

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

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

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

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

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

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

(a) file a renewal statement;

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

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

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

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

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

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

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

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

HB0091S01 compared with HB0091

(iii) the principal lending manager of the entity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A licensee whose license has expired may apply to reinstate the expired license, in

HB0091S01 compared with HB0091

a manner provided by the division by rule by:

- (i) requesting reinstatement;
- (ii) paying to the division a renewal fee and a late fee determined by the division under

Section 63J-1-504; and

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

Section ~~{51}~~18. Section **61-2c-301** is amended to read:

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

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

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

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

(i) that is excessive; or

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

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

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

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

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

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

(i) make a false statement or representation;

(ii) cause false documents to be generated; or

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

(e) give or receive compensation or anything of value, or withhold or threaten to withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in reaching a value conclusion in a residential mortgage loan transaction, except that it is not a violation of this section for a licensee to withhold payment because of a bona fide dispute

HB0091S01 compared with HB0091

regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards of Professional Appraisal Practice;

(f) violate or not comply with:

(i) this chapter;

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

(iii) a rule made by the division;

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

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

(ii) a request for information from the division;

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

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

engage in the business of residential mortgage loans with respect to the transaction if the person also acts in any of the following capacities with respect to the same residential mortgage loan transaction:

(i) appraiser;

(ii) escrow agent;

(iii) real estate agent;

(iv) general contractor; or

(v) title insurance producer;

(j) order a title insurance report or hold a title insurance policy unless the person provides to the title insurer a copy of a valid, current license under this chapter;

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

(l) engage in an act or omission in transacting the business of residential mortgage loans that constitutes dishonesty, fraud, or misrepresentation;

(m) engage in false or misleading advertising;

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

(ii) use money for a different purpose from the purpose for which the money is received; or

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

HB0091S01 compared with HB0091

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

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

(i) evade this chapter; or

(ii) assist another person to evade this chapter;

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

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

(i) unlicensed staff; and

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

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

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

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

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

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

(i) advertising;

(ii) a business card;

(iii) stationery;

(iv) a brochure;

(v) a sign;

(vi) a rate list; or

(vii) other promotional item; or

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

HB0091S01 compared with HB0091

(ii) engage in an act of foreclosure rescue that requires licensure as a real estate agent or real estate broker under Chapter 2, Division of Real Estate, without being licensed under that chapter;

(iii) engage in an act of loan modification assistance without entering into a written agreement specifying which one or more acts of loan modification assistance will be completed;

~~[(iii)]~~ (iv) request or require a person to pay a fee ~~[if:]~~ before obtaining:

~~[(A) the person is required to pay the fee before entering into a written agreement specifying what one or more acts of loan modification assistance will be completed if the fee is paid; or]~~

~~[(B) in a case when the residential mortgage loan that is the subject of the loan modification assistance is foreclosed within one year of the day on which the person enters into a written agreement, the person is required to forfeit the fee for any reason;]~~

(A) a written offer for a loan modification from the person's lender or servicer; and

(B) the person's written acceptance of the offer from the lender or servicer;

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

(A) suggesting to the person that the licensee has a special relationship with the person's lender or loan servicer; or

(B) falsely representing or advertising that the licensee is acting on behalf of:

(I) a government agency;

(II) the person's lender or loan servicer; or

(III) a nonprofit or charitable institution;

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

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

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

(C) refrain from contacting the person's:

(I) lender;

(II) loan servicer;

(III) attorney;

HB0091S01 compared with HB0091

(IV) credit counselor; or

(V) housing counselor; or

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

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

(a) be convicted;

(b) plead guilty or nolo contendere;

(c) enter a plea in abeyance; or

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

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

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

(i) this chapter; or

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

(b) the principal lending manager established and followed reasonable procedures to ensure that affiliated licensees receive adequate supervision;

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

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

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

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

Section ~~52~~19. Section **61-2c-302** is amended to read:

61-2c-302. Record requirements.

HB0091S01 compared with HB0091

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

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

- (a) the final entry on a residential mortgage loan is made by that licensee;
- (b) if the residential mortgage loan is serviced by the licensee:
 - (i) the residential mortgage loan is paid in full; or
 - (ii) the licensee ceases to service the residential mortgage loan; or
- (c) if the residential mortgage loan is not serviced by the licensee, the residential mortgage loan is closed.

(3) A licensee shall:

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

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

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

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

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

Section ~~53~~20. Section **61-2c-402** is amended to read:

61-2c-402. Disciplinary action.

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

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

HB0091S01 compared with HB0091

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

(ii) violates this chapter.

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

(a) impose an educational requirement;

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

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

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

(c) deny an application for an original license;

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

(i) suspend;

(ii) revoke;

(iii) place on probation;

(iv) deny renewal;

(v) deny reinstatement; or

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

(e) issue a cease and desist order;

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

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

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

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

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

HB0091S01 compared with HB0091

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section ~~54~~21. Section **61-2c-501.5** is amended to read:

61-2c-501.5. Definitions.

As used in this part:

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

(a) is awarded in an action brought against a [real estate licensee] person licensed under this chapter on the basis of fraud, misrepresentation, or deceit in a residential mortgage

HB0091S01 compared with HB0091

loan transaction; and

(b) awards actual damages.

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

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

(a) a civil judgment; or

(b) a criminal restitution judgment.

(4) "Fund" means the Residential Mortgage Loan Education, Research, and Recovery Fund created in Section 61-2c-501.

Section ~~55~~22. Section **61-2c-507** is amended to read:

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

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

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

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

(2) (a) Subject to Subsection (2)(b), the license of a licensee for whom payment from the fund is made under this part is automatically revoked as of the earlier of the day on which:

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

(ii) the division pays from the fund.

(b) (i) A person whose license is revoked under Subsection (2)(a) may appeal the revocation in a de novo hearing conducted by the commission:

(A) after the revocation; and

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

(ii) The commission may delegate:

(A) to the division or an administrative law judge the authority to conduct a hearing described in Subsection (2)(b)(i); or

(B) to the division the authority to make a decision on whether relief from a revocation should be granted.

HB0091S01 compared with HB0091

(3) Unless the revocation is not upheld after a hearing described in Subsection (2)(b), a licensee whose license is revoked pursuant to Subsection (2) may not apply for a new license until the licensee pays into the fund:

- (a) the amount paid out of the fund on behalf of the licensee; and
- (b) interest at a rate determined by the division with the concurrence of the commission.

Section ~~56~~23. Section **61-2e-102** is amended to read:

61-2e-102. Definitions.

As used in this chapter:

- (1) "Applicable appraisal standards" means:
 - (a) the Uniform Standards for Professional Appraisal Practice:
 - (i) published by the Appraisal Foundation; and
 - (ii) as adopted under Section [~~61-2b-27~~] 61-2g-403;
 - (b) Chapter [~~2b~~] 2g, Real Estate Appraiser Licensing and Certification Act; and
 - (c) rules made by the board under Chapter [~~2b~~] 2g, Real Estate Appraiser Licensing and Certification Act.
- (2) "Appraisal" is as defined in Section [~~61-2b-2~~] 61-2g-102.
- (3) "Appraisal foundation" is as defined in Section [~~61-2b-2~~] 61-2g-102.
- (4) "Appraisal management company" means an entity that serves as a third-party broker of an appraisal service between a client and an appraiser by:
 - (a) [~~administers~~] administering a network of appraisers to perform real estate appraisal activities for one or more clients;
 - (b) (i) [~~receives~~] receiving a request for a real estate appraisal activity from a client; and
 - (ii) for a fee paid by the client, [~~enters~~] entering into an agreement with one or more appraisers to perform the real estate appraisal activity contained in the request; or
 - ~~[(c) otherwise serves as a third-party broker of an appraisal management service between a client and an appraiser.]~~
 - (c) any other means.
- (5) "Appraisal management service" means a process of:
 - (a) receiving a request for the performance of a real estate appraisal activity from a

HB0091S01 compared with HB0091

client; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) a corporation;

(b) a partnership;

HB0091S01 compared with HB0091

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

61-2g-102.

Section ~~{57}~~24. Section **61-2e-103** is amended to read:

61-2e-103. Rulemaking.

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

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

Section ~~{58}~~25. Section **61-2e-202** is amended to read:

61-2e-202. Initial registration process.

- (1) (a) To register under this chapter as an appraisal management company, an entity shall:
- (i) file with the division a registration application in a form prescribed by the division;
 - (ii) pay to the division a fee determined in accordance with Section 63J-1-504;
 - (iii) if the entity is not a resident of this state, submit an irrevocable consent for service of process meeting the requirements of Subsection (3); and
 - (iv) have the application for registration approved by the division.
- (b) The division shall approve an application if the division finds that the entity:
- (i) complies with this Subsection (1); and
 - (ii) meets the qualifications under Section 61-2e-201.
- (c) The division may, upon compliance with Title 63G, Chapter 4, Administrative Procedures Act, deny the issuance of a registration to an applicant on any ground enumerated in this chapter.
- (d) If an entity pays a fee or costs to the division with a negotiable instrument or other method that is not honored for payment:
- (i) the transaction for which the payment is submitted is voidable by the division;

HB0091S01 compared with HB0091

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

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

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

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

(2) A registration application shall include the following:

(a) the name of the entity seeking registration;

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

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

(d) if the entity is not an entity domiciled in this state, the name and contact information for the entity's agent for service of process in this state;

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

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

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

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

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

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

(g) for the controlling person designated as the contact as required by Section 61-2e-201:

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

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

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

(h) provide an explanation required by:

HB0091S01 compared with HB0091

- (i) Section 61-2e-301, related to adding an individual to an appraiser panel;
- (ii) Section 61-2e-302, related to the review of the work of an appraiser; and
- (iii) Section 61-2e-303, related to recordkeeping; and
- (i) any other information required by the board.

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

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

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

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

Section ~~59~~26. Section **61-2e-203** is amended to read:

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

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

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

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

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

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

(A) the appraisal industry;

(B) the appraisal management industry; or

HB0091S01 compared with HB0091

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

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

(A) place a condition on a registration;

(B) place a restriction on a registration;

(C) revoke a registration; or

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

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

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

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

(A) did not occur; or

(B) is the criminal history of another individual;

(ii) (A) the revocation is based on a failure to accurately disclose a criminal history;

and

(B) the entity has a reasonable good faith belief at the time of application that there is no criminal history to be disclosed; or

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

(e) The board may delegate to the division the authority to conduct a post-revocation hearing under Subsection (3)(d).

[~~(e)~~] (f) If a registration is revoked or a revocation under this Subsection (3) is upheld after a post-revocation hearing, the entity may not apply for a new registration until at least 12 months after the day on which the registration is revoked.

HB0091S01 compared with HB0091

(4) (a) An appraisal management company shall comply with this Subsection (4) if there is a change in:

- (i) an individual who owns 10% or more of the entity; or
- (ii) the controlling person designated as the contact as required by Section 61-2e-201.

(b) If there is a change in an individual described in Subsection (4)(a), within 30 days of the day on which the change occurs, the appraisal management company shall file with the division:

- (i) the individual's name, address, and contact information;
- (ii) a statement of whether or not the individual has had a license or certificate to engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or revoked in this state or in another state; and
- (iii) (A) fingerprint cards in a form acceptable to the division at the time the registration application is filed; and
- (B) consent to a criminal background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application.

Section ~~60~~27. Section **61-2e-204** is amended to read:

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

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

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

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

- (a) file with the division a renewal registration application on a form prescribed by the division; and
- (b) pay to the division a fee determined in accordance with Section 63J-1-504.

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

HB0091S01 compared with HB0091

- (a) (i) a conviction of a criminal offense;
- (ii) the entry of a plea in abeyance to a criminal offense; or
- (iii) the potential resolution of a criminal case by:
 - (A) a diversion agreement; or
 - (B) another agreement under which a criminal charge is held in suspense for a period of time;
- (b) a filing of personal bankruptcy or bankruptcy of a business that transacts the appraisal management services;
- (c) the suspension, revocation, surrender, cancellation, or denial of a professional license or certification, whether the license or registration is issued by this state or another jurisdiction; or
- (d) the entry of a cease and desist order or a temporary or permanent injunction:
 - (i) against the individual by a court or government agency; and
 - (ii) on the basis of:
 - (A) conduct or a practice involving the business of appraisal management services; or
 - (B) conduct involving fraud, misrepresentation, or deceit.
- (4) A registration expires if it is not renewed on or before its expiration date, except that for a period of 30 days after the expiration date, the registration may be reinstated upon compliance with this section, including payment of a renewal fee and a late fee determined by the division and the board.

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

- (a) (i) the person complies with the requirements of this section to renew the registration; and
- (ii) the renewal application remains pending at the time of the extension; or
- (b) at the time of the extension, there is pending under this chapter a disciplinary action.

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

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

- (1) An appraisal management company required to be registered under this chapter may not enter into an agreement with an appraiser for the performance of a real estate appraisal

HB0091S01 compared with HB0091

activity unless the appraiser is licensed or certified in good standing pursuant to Chapter [2b] 2g, Real Estate Appraiser Licensing and Certification Act.

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

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

Section ~~62~~29. Section 61-2e-302 is amended to read:

61-2e-302. Adherence to standards.

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

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

(3) ~~An appraisal management company shall pay an appraiser who performs a real estate appraisal activity an amount that adheres to the standards for determining customary and reasonable fees, as defined by rule.~~ The board may make rules, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to implement the requirements of 15 U.S.C. Sec. 1639e(i), except that the rules may not apply to an appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a federal financial institution regulatory agency.

Section ~~63~~30. Section 61-2e-307 is amended to read:

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

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

(a) coercion;

HB0091S01 compared with HB0091

- (b) extortion;
- (c) collusion;
- (d) compensation;
- (e) instruction;
- (f) inducement;
- (g) intimidation;
- (h) bribery; or
- (i) any other manner that would constitute undue influence.

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

- (a) withholding or threatening to withhold timely payment for an appraisal;
- (b) withholding or threatening to withhold future business for an appraiser;
- (c) taking adverse action or threatening to take adverse action against an appraiser regarding use of the appraiser for a real estate appraisal activity;
- (d) expressly or by implication promising future business or increased compensation for an appraiser;
- (e) conditioning one or more of the following on the opinion, conclusion, or valuation to be reached, or on a preliminary estimate or opinion requested from an appraiser:
 - (i) a request for a real estate appraisal activity; or
 - (ii) the payment of consideration;
- (f) requesting that an appraiser provide at any time before the appraiser's completion of a real estate appraisal activity:
 - (i) an estimated, predetermined, or desired valuation in an appraisal report; or
 - (ii) an estimated value or comparable sale;
- (g) except for a copy of a sales contract for a purchase transaction, providing to an appraiser:
 - (i) an anticipated, estimated, encouraged, or desired value for a subject property; or
 - (ii) a proposed or target amount to be loaned to the borrower;
- (h) providing to an appraiser, or an individual related to the appraiser, stock or other financial or non-financial benefits;
- (i) allowing the removal of an appraiser from an appraiser panel, without prior written

HB0091S01 compared with HB0091

notice to the appraiser as required by Section 61-2e-306;

(j) obtaining, using, or paying for a subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction unless:

(i) (A) there is a reasonable basis to believe that the initial appraisal does not meet applicable appraisal standards; and

(B) the reasonable basis is noted in the loan file; or

(ii) the subsequent appraisal or automated valuation model is done pursuant to a pre- or post-funding appraisal review or quality control process in accordance with applicable appraisal standards;

(k) compensating an appraiser in a manner that the person should reasonably have known would result in the appraiser not conducting a real estate appraisal activity in a manner consistent with applicable appraisal standards;

(l) engaging in the business of an appraisal management company under an assumed or fictitious name not properly registered in this state;

(m) accepting a contingent fee for performing an appraisal management service if the fee is contingent on:

(i) the appraiser report having a predetermined analysis, opinion, or conclusion;

(ii) the analysis, opinion, conclusion, or valuation reached in an appraisal report; or

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

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

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

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

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

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

~~(4)~~ (5) An appraisal management company required to be registered under this chapter, or a controlling person, employee, or agent of the appraisal management company may

HB0091S01 compared with HB0091

not alter, modify, or otherwise change a completed appraisal report submitted by an appraiser.

Section ~~{64}~~31. Section **61-2e-401** is amended to read:

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

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

(i) receive and act on a complaint including:

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

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

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

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

(A) approved by the executive director; and

(B) within the budget of the division.

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

(i) failing to respond to a subpoena;

(ii) withholding evidence; or

(iii) failing to produce a document or record.

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

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

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

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

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

(a) without malicious intent; and

HB0091S01 compared with HB0091

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

Section ~~65~~32. Section **61-2e-402** is amended to read:

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

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

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

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

- (i) revoke, suspend, or place an entity's registration on probation;
- (ii) deny an entity's original registration;
- (iii) deny an entity's renewal registration;
- (iv) in the case of denial or revocation of a registration, set a waiting period for an applicant to apply for a registration under this chapter;
- (v) order remedial education;
- (vi) impose a civil penalty upon a person not to exceed the greater of:
 - (A) [~~\$2,500~~] \$5,000 for each violation; or
 - (B) the amount of any gain or economic benefit from a violation;
- (vii) issue a cease and desist order; or
- (viii) do a combination of Subsections (1)(b)(i) through (vii).

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

- (a) an act that violates this chapter;
- (b) an act that violates a rule made ~~[by the board]~~ under this chapter;
- (c) procuring a registration for the person or another person by fraud, misrepresentation, or deceit;
- (d) paying money or attempting to pay money other than a fee provided for by this

HB0091S01 compared with HB0091

chapter to an employee of the division to procure a registration under this chapter;

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

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

(g) other conduct that constitutes dishonest dealing.

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

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

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

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

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

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

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

~~[(3)]~~ (4) A member of the board is immune from a civil action or criminal prosecution for a disciplinary proceeding under this chapter if:

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

(b) in the reasonable belief that the action taken was taken pursuant to the powers and duties vested in a member of the board under this chapter.

Section ~~66~~33. Section **61-2f-102** is amended to read:

61-2f-102. Definitions.

As used in this chapter:

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

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

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

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

HB0091S01 compared with HB0091

the principal broker's main office.

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

- (a) a Saturday;
- (b) a Sunday; or
- (c) a federal or state holiday.

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

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

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

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

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

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

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

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

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

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

- (a) a corporation;
- (b) a partnership;
- (c) a limited liability company;
- (d) a company;
- (e) an association;
- (f) a joint venture;
- (g) a business trust;
- (h) a trust; or
- (i) any organization similar to an entity described in Subsections ~~[(11)]~~ (12)(a) through

(h).

HB0091S01 compared with HB0091

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) an addition of collateral;

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

(G) an addition of a cosigner; or

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

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

or

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

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

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

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

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

HB0091S01 compared with HB0091

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HB0091S01 compared with HB0091

- (i) advertising for, arranging, negotiating, offering, or otherwise attempting or participating in a transaction calculated to secure the rental or leasing of real estate;
- (ii) collecting, agreeing, offering, or otherwise attempting to collect rent for the real estate and accounting for and disbursing the money collected; or
- (iii) authorizing expenditures for repairs to the real estate.

(b) "Property management" does not include:

- (i) hotel or motel management;
- (ii) rental of tourist accommodations, including hotels, motels, tourist homes, condominiums, condominium hotels, mobile home park accommodations, campgrounds, or similar public accommodations for a period of less than 30 consecutive days, and the management activities associated with these rentals; or
- (iii) the leasing or management of surface or subsurface minerals or oil and gas interests, if the leasing or management is separate from a sale or lease of the surface estate.

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

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

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

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

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

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

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

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

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

HB0091S01 compared with HB0091

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

- (i) a tenancy in common; or
- (ii) any other legal form of undivided estate in real property including:
 - (A) a fee estate;
 - (B) a life estate; or
 - (C) other long-term estate.
- (b) "Undivided fractionalized long-term estate" does not include a joint tenancy.

Section ~~{67}~~34. Section **61-2f-105** is amended to read:

61-2f-105. Fees.

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

- (a) issuing a new or duplicate license;
- (b) registering an entity or branch office;
- (c) certifying a real estate school, course, or instructor;
- (d) providing a history of a license, registration, or certification; ~~[and]~~
- (e) producing a certified copy of an official document, order, or other paper or transcript; and
- (f) other duties required by this chapter.

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

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

- (a) the transaction for which the payment is submitted is voidable by the division;
- (b) the division may reverse the transaction if payment of the applicable fee or costs is not received in full; and
- (c) the person's license, certification, or registration is automatically suspended:
 - (i) beginning the day on which the payment is due; and
 - (ii) ending the day on which payment is made in full.

(4) (a) A fee under this chapter is in lieu of all other license fees or assessments that

HB0091S01 compared with HB0091

might otherwise be imposed or charged by the state or any of its political subdivisions upon, or as a condition of, the privilege of conducting the business regulated by this chapter, except that a political subdivision within the state may charge a business license fee on a principal broker if the principal broker maintains a place of business within the jurisdiction of the political subdivision.

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

Section ~~68~~35. Section **61-2f-202** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

HB0091S01 compared with HB0091

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

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

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

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

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

(b) services rendered by an attorney in performing the attorney's duties as an attorney;

(c) a receiver, trustee in bankruptcy, administrator, executor, or an individual acting under order of a court;

(d) a trustee or employee of a trustee under a deed of trust or a will;

(e) a public utility, officer of a public utility, or regular salaried employee of a public utility, unless performance of an act described in Subsection 61-2f-102~~(+7)~~(18) is in connection with the sale, purchase, lease, or other disposition of real estate or investment in real estate unrelated to the principal business activity of that public utility;

(f) a regular salaried employee or authorized agent working under the oversight of the Department of Transportation when performing an act on behalf of the Department of Transportation in connection with one or more of the following:

(i) the acquisition of real estate pursuant to Section 72-5-103;

(ii) the disposal of real estate pursuant to Section 72-5-111;

(iii) services that constitute property management; or

(iv) the leasing of real estate; and

(g) a regular salaried employee of a county, city, or town when performing an act on behalf of the county, city, or town:

(i) in accordance with:

(A) if a regular salaried employee of a city or town:

(I) Title 10, Utah Municipal Code; or

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

(B) if a regular salaried employee of a county:

HB0091S01 compared with HB0091

- (I) Title 11, Cities, Counties, and Local Taxing Units; and
- (II) Title 17, Counties; and
- (ii) in connection with one or more of the following:
 - (A) the acquisition of real estate, including by eminent domain;
 - (B) the disposal of real estate;
 - (C) services that constitute property management; or
 - (D) the leasing of real estate.

(3) A license under this chapter is not required for an individual registered to act as a broker-dealer, agent, or investment adviser under the Utah and federal securities laws in the sale or the offer for sale of real estate if:

(a) (i) the real estate is a necessary element of a "security" as that term is defined by the Securities Act of 1933 and the Securities Exchange Act of 1934; and

(ii) the security is registered for sale in accordance with:

- (A) the Securities Act of 1933; or
- (B) Title 61, Chapter 1, Utah Uniform Securities Act; or

(b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec. 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation D, Rule 506, 17 C.F.R. Sec. 230.506; and

(ii) the selling agent and the purchaser are not residents of this state.

Section ~~69~~36. Section **61-2f-203** is amended to read:

61-2f-203. Licensing requirements.

(1) (a) Except as provided in Subsection (5), the commission shall determine the qualifications and requirements of an applicant for:

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

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

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

HB0091S01 compared with HB0091

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

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

(i) An hour required by this section means 50 minutes of instruction in each 60 minutes.

(ii) The maximum number of program hours available to an individual is eight hours per day.

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

(i) the fundamentals of:

(A) the English language;

(B) arithmetic;

(C) bookkeeping; and

(D) real estate principles and practices;

(ii) ~~the provisions of~~ this chapter;

(iii) the rules established by the commission; and

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

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

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

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

HB0091S01 compared with HB0091

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

(3) (a) An individual who is not a resident of this state may be licensed in this state if the person complies with ~~[all the provisions of]~~ this chapter.

(b) An individual who is not a resident of this state may be licensed as an associate broker or sales agent in this state by:

(i) complying with ~~[all the provisions of]~~ this chapter; and

(ii) being employed or engaged as an independent contractor by or on behalf of a principal broker who is licensed in this state, regardless of whether the principal broker is a resident of this state.

(4) (a) ~~[Except as provided in Subsection 61-2f-204(1)(e)(vi), the]~~ The division and commission shall treat an application to be relicensed of an applicant whose real estate license is revoked as an original application.

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

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

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

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

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

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

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

Section ~~70~~37. Section **61-2f-204** is amended to read:

61-2f-204. Licensing fees and procedures -- Renewal fees and procedures.

(1) (a) Upon filing an application for an examination for a license under this chapter,

HB0091S01 compared with HB0091

the applicant shall pay a nonrefundable fee as determined by the commission with the concurrence of the division under Section 63J-1-504 for admission to the examination.

(b) An applicant for a principal broker, associate broker, or sales agent license shall pay a nonrefundable fee as determined by the commission with the concurrence of the division under Section 63J-1-504 for issuance of an initial license or license renewal.

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

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

- (A) a new sales agent applicant;
- (B) a principal broker applicant; or
- (C) an associate broker applicant.

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

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

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

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

(iv) The applicant shall pay the cost of the criminal background check and the fingerprinting.

(v) Money paid to the division by an applicant for the cost of the criminal background check is nonlapsing.

(e) (i) A license issued under Subsection (1)(d) is conditional, pending completion of the criminal background check.

(ii) A license is immediately and automatically revoked if the criminal background check discloses the applicant fails to accurately disclose a criminal history involving:

- (A) the real estate industry; or
- ~~[(B) fraud;]~~
- ~~[(C) misrepresentation; or]~~
- ~~[(D) deceit.]~~

HB0091S01 compared with HB0091

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

(iii) If a criminal background check discloses that an applicant fails to accurately disclose a criminal history other than one described in Subsection (1)(e)(ii), the division:

(A) shall review the application; and

(B) in accordance with rules made by the division pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may:

(I) place a condition on a license;

(II) place a restriction on a license;

(III) revoke a license; or

(IV) refer the application to the commission for a decision.

(iv) A person whose conditional license is automatically revoked under Subsection (1)(e)(ii) or whose license is conditioned, restricted, or revoked under Subsection (1)(e)(iii) may have a hearing after the action is taken to challenge the action. The hearing shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(v) The director shall designate one of the following to act as the presiding officer in a hearing described in Subsection (1)(e)(iv):

(A) the division; or

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

(vi) The decision on whether relief from an action under this Subsection (1)(e) will be granted shall be made by the presiding officer.

(vii) Relief from an automatic revocation under Subsection (1)(e)(ii) may be granted only if:

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

(I) did not occur; or

(II) is the criminal history of another person;

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

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

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

(viii) If a license is revoked or a revocation under this Subsection (1)(e) is upheld after

HB0091S01 compared with HB0091

a hearing, the individual may not apply for a new license until at least 12 months after the day on which the license is revoked.

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

(ii) As a condition of renewal, an active licensee shall demonstrate competence by completing 18 hours of continuing education within a two-year renewal period subject to rules made by the commission, with the concurrence of the division.

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

(A) evaluating continuing education on the basis of competency, rather than course time;

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

(C) allowing completion of courses that will increase a licensee's professional competency in the area of practice of the licensee.

(iv) The division may award credit to a licensee for a continuing education requirement of this Subsection (2)(a) for a reasonable period of time upon a finding of reasonable cause, including:

(A) military service; or

(B) if an individual is elected or appointed to government service, the individual's government service during which the individual spends a substantial time addressing real estate issues subject to conditions established by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

(i) payment of a renewal fee and a late fee determined by the commission with the concurrence of the division under Section 63J-1-504; and

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

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

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

HB0091S01 compared with HB0091

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

(i) paying a renewal fee and a late fee determined by the commission with the concurrence of the division under Section 63J-1-504;

(ii) providing to the division proof of satisfactory completion of six hours of continuing education:

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

(B) on a subject determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(iii) providing proof acceptable to the division and the commission of the licensee having:

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

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

(d) After the six-month period described in Subsection (2)(c), and until one year after the expiration date, the license may be reinstated by:

(i) paying a renewal fee and a late fee determined by the commission with the concurrence of the division under Section 63J-1-504;

(ii) providing to the division proof of satisfactory completion of 24 hours of continuing education:

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

(B) on a subject determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(iii) providing proof acceptable to the division and the commission of the licensee having:

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

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

(e) The division shall relicense a person who does not renew that person's license within one year as prescribed for an original application.

(f) Notwithstanding Subsection (2)(a), the division may extend the term of a license that would expire under Subsection (2)(a) except for the extension if:

(i) (A) the person complies with the requirements of this section to renew the license;

HB0091S01 compared with HB0091

and

~~[(ii)] (B) the renewal application remains pending at the time of the extension~~~~[, there is pending under this chapter.]; or~~

~~[(A) the application for renewal of the license; or]~~

~~[(B)] (ii) at the time of the extension, there is pending a disciplinary action under this chapter.~~

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

(i) successful completion of the respective sales agent or principal broker licensing examination within six months ~~[prior to]~~ before applying to activate the license; or

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

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

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

(ii) how long before reactivation the continuing education must be completed.

Section ~~71~~38. Section **61-2f-206** is amended to read:

61-2f-206. Registration of entity or branch office -- Certification of education providers and courses -- Specialized licenses.

(1) (a) An entity may not engage in an activity described in Section 61-2f-201, unless it is registered with the division.

(b) To register with the division under this Subsection (1), an entity shall submit to the division:

(i) an application in a form required by the division;

(ii) evidence of an affiliation with a principal broker;

(iii) evidence that the entity is registered and in good standing with the Division of Corporations and Commercial Code; and

(iv) a registration fee established by the commission with the concurrence of the division under Section 63J-1-504.

HB0091S01 compared with HB0091

(2) (a) A principal broker shall register with the division each of the principal broker's branch offices.

(b) To register a branch office with the division under this Subsection (2), a principal broker shall submit to the division:

(i) an application in a form required by the division; and

(ii) a registration fee established by the commission with the concurrence of the division under Section 63J-1-504.

(3) (a) In accordance with rules made by the commission, the division shall certify:

(i) a real estate school;

(ii) a course provider; or

(iii) an instructor.

(b) In accordance with rules made by the commission, and with the concurrence of the commission, the division shall certify a continuing education course that is required under this ~~[section]~~ chapter.

(4) (a) Except as provided by rule, a principal broker may not be responsible for more than one registered entity at the same time.

(b) (i) In addition to issuing a principal broker license, associate broker license, or sales agent license authorizing the performance of an act set forth in Section 61-2f-201, the division may issue a specialized sales license or specialized property management license with the scope of practice limited to the specialty.

(ii) An individual may hold a specialized license in addition to a license as a principal broker, associate broker, or a sales agent.

(iii) The commission may adopt rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the administration of this Subsection (4), including:

(A) prelicensing and postlicensing education requirements;

(B) examination requirements;

(C) affiliation with real estate brokerages or property management companies; and

(D) other licensing procedures.

Section ~~{72}~~39. Section **61-2f-301** is amended to read:

61-2f-301. Reporting requirements.

(1) A licensee shall notify the division of the following by sending the division a

HB0091S01 compared with HB0091

signed statement within 10 business days of:

~~[(1)]~~ (a) ~~(i)~~ a conviction of a ~~[criminal offense]~~ felony, class A misdemeanor, or class B misdemeanor;

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

~~[(c)]~~ ~~(iii)~~ the potential resolution of a ~~[criminal case]~~ felony, class A misdemeanor, or class B misdemeanor by:

~~[(1)]~~ ~~(A)~~ a diversion agreement; or

~~[(1)]~~ ~~(B)~~ another agreement under which a criminal charge is held in suspense for a period of time;

~~[(2)]~~ ~~(b)~~ filing a personal or brokerage bankruptcy;

~~[(3)]~~ ~~(c)~~ the suspension, revocation, surrender, cancellation, or denial of a license or registration of the licensee that is necessary to engage in an occupation or profession, regardless of whether the license or registration is issued by this state or another jurisdiction; or

~~[(4)]~~ ~~(d)~~ the entry of a cease and desist order or a temporary or permanent injunction:

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

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

~~[(1)]~~ ~~(A)~~ conduct or a practice involving the business of real estate; or

~~[(1)]~~ ~~(B)~~ conduct involving fraud, misrepresentation, or deceit.

(2) The commission, with the concurrence of the director, shall enforce the reporting requirement under this section pursuant to Section 61-2f-404.

Section ~~{73}~~40. Section ~~{61-2f-308}~~61-2f-401 is amended to read:

~~{~~ ~~61-2f-308. Exclusive brokerage agreement.~~

~~_____ (1) As used in this section:~~

~~_____ (a) "Client" means a person who makes an exclusive brokerage agreement with a principal broker under Subsection (1)(c).~~

~~_____ (b) "Closed" means that:~~

~~_____ (i) the documents required to be executed under the contract are executed;~~

~~_____ (ii) the money required to be paid by either party under the contract is paid in the form of collected or cleared funds;~~

~~_____ (iii) the proceeds of any new loan are delivered by the lender to the seller; and~~

HB0091S01 compared with HB0091

~~—— (iv) the applicable documents are recorded in the office of the county recorder for the county in which the real estate is located:~~

~~—— (c) "Exclusive brokerage agreement" means a written agreement between a client and a principal broker:~~

~~—— (i) (A) to list for sale, lease, or exchange:~~

~~—— (I) real estate;~~

~~—— (II) an option on real estate; or~~

~~—— (III) an improvement on real estate; or~~

~~—— (B) for representation in the purchase, lease, or exchange of:~~

~~—— (I) real estate;~~

~~—— (II) an option on real estate; or~~

~~—— (III) an improvement on real estate;~~

~~—— (ii) that gives the principal broker the sole right to act as the agent or representative of the client for the purchase, sale, lease, or exchange of:~~

~~—— (A) real estate;~~

~~—— (B) an option on real estate; or~~

~~—— (C) an improvement on real estate; and~~

~~—— (iii) that gives the principal broker the expectation of receiving valuable consideration in exchange for the principal broker's services:~~

~~—— (2) (a) Except as provided in Subsection (2)(b), a principal broker subject to an exclusive brokerage agreement shall:~~

~~—— (i) accept delivery of and present to the client offers and counteroffers to buy, lease, or exchange the client's real estate;~~

~~—— (ii) assist the client in developing, communicating, and presenting offers, counteroffers, and notices; and~~

~~—— (iii) answer any question the client has concerning:~~

~~—— (A) an offer;~~

~~—— (B) a counteroffer;~~

~~—— (C) a notice; and~~

~~—— (D) a contingency.~~

~~—— (b) A principal broker subject to an exclusive brokerage agreement need not comply~~

HB0091S01 compared with HB0091

with Subsection (2)(a) after:

- ~~—— (i) (A) an agreement for the sale, lease, or exchange of the real estate, option on real estate, or improvement on real estate is signed;~~
- ~~—— (B) the contingencies related to the sale, lease, or exchange are satisfied or waived; and~~
- ~~—— (C) the sale, lease, or exchange is closed; or~~
- ~~—— (ii) the exclusive brokerage agreement expires or terminates.~~
- ~~—— (3) A principal broker who contracts with a person for services under an agreement that is not an exclusive brokerage agreement shall:~~
 - ~~—— (a) provide the person with a written disclosure of the specific services that the principal broker will provide; and~~
 - ~~—— (b) obtain the person's acknowledgment of receipt on the written disclosure.~~
- ~~—— (4) (a) A principal broker who represents a client under an exclusive brokerage agreement may negotiate a transaction with a person who, pursuant to Subsection (3), does not have an exclusive brokerage agreement with another principal broker if the principal broker provides a written disclosure to the person that states clearly that the principal broker:~~
 - ~~—— (i) does not act as the person's agent; and~~
 - ~~—— (ii) will not assist the person to:~~
 - ~~—— (A) complete a form;~~
 - ~~—— (B) negotiate the terms of the transaction; or~~
 - ~~—— (C) review or execute a closing document.~~
- ~~—— (b) The division may not subject a principal broker who complies with this Subsection (4) to discipline for engaging in activities for which an agency agreement is required.~~
- ~~—— [(3)] (5) A principal broker who violates this section is subject to Sections 61-2f-404 and 61-2f-405.~~

~~—— Section 74. Section **61-2f-401** is amended to read:~~

‡ **61-2f-401. Grounds for disciplinary action.**

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

- (1) (a) making a substantial misrepresentation;
- (b) making an intentional misrepresentation;
- (c) pursuing a continued and flagrant course of misrepresentation;
- (d) making a false representation or promise through an agent, sales agent, advertising,

HB0091S01 compared with HB0091

or otherwise; or

(e) making a false representation or promise of a character likely to influence, persuade, or induce;

(2) acting for more than one party in a transaction without the informed consent of [att] the parties;

(3) (a) acting as an associate broker or sales agent while not affiliated with a principal broker;

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

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

(4) (a) failing, within a reasonable time, to account for or to remit money that belongs to another and comes into the person's possession;

(b) commingling money described in Subsection (4)(a) with the person's own money; or

(c) diverting money described in Subsection (4)(a) from the purpose for which the money is received;

(5) paying or offering to pay valuable consideration, as defined by the commission, to a person not licensed under this chapter, except that valuable consideration may be shared:

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

(b) as provided under:

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

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

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

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

(7) failing to voluntarily furnish a copy of a document to [att] the parties before and after the execution of a document;

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

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

HB0091S01 compared with HB0091

- (b) the identification of real estate;
- (c) the sale or rental price;
- (d) money received in trust;
- (e) agreements or instructions from buyers and sellers or lessees and lessors; and
- (f) any other information required by rule;
- (9) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether the purchase, sale, or rental is made for that person or for an undisclosed principal;
- (10) being convicted of a criminal offense involving moral turpitude within five years of the most recent application:
 - (a) regardless of whether the criminal offense is related to real estate; and
 - (b) including:
 - (i) a conviction based upon a plea of nolo contendere; or
 - (ii) a plea held in abeyance to a criminal offense involving moral turpitude;
- (11) advertising the availability of real estate or the services of a licensee in a false, misleading, or deceptive manner;
- (12) in the case of a principal broker or a licensee who is a branch manager, failing to exercise reasonable supervision over the activities of the principal broker's or branch manager's licensed or unlicensed staff;
- (13) violating or disregarding:
 - (a) this chapter;
 - (b) an order of the commission; or
 - (c) the rules adopted by the commission and the division;
- (14) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real estate transaction;
- (15) any other conduct which constitutes dishonest dealing;
- (16) unprofessional conduct as defined by statute or rule;
- (17) having one of the following suspended, revoked, surrendered, or cancelled on the basis of misconduct in a professional capacity that relates to character, honesty, integrity, or truthfulness:
 - (a) a real estate license, registration, or certificate issued by another jurisdiction; or
 - (b) another license, registration, or certificate to engage in an occupation or profession

HB0091S01 compared with HB0091

issued by this state or another jurisdiction;

(18) failing to respond to a request by the division in an investigation authorized under this chapter, including:

- (a) failing to respond to a subpoena;
- (b) withholding evidence; or
- (c) failing to produce documents or records;

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

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

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

(20) violating an independent contractor agreement between a principal broker and a sales agent or associate broker as evidenced by a final judgment of a court;

(21) (a) engaging in a foreclosure rescue if not licensed under this chapter;

(b) engaging in an act of loan modification assistance that requires licensure as a mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing Act, without being licensed under that chapter;

(c) engaging in an act of foreclosure rescue without entering into a written agreement specifying what one or more acts of foreclosure rescue will be completed;

~~[(c)]~~ (d) requesting or requiring a person to pay a fee [if:] for a foreclosure rescue service before obtaining a written agreement:

~~[(i) the person is required to pay the fee before entering into a written agreement specifying what one or more acts of foreclosure rescue will be completed if the fee is paid; or]~~

~~[(ii) in a case when the financing that is the subject of the foreclosure rescue is foreclosed within one year from the day on which the person enters into a written agreement, the person is required to forfeit the fee for any reason;]~~

(i) between the person and the person's lender or servicer; and

(ii) by which title to the residential real estate at risk of foreclosure will be transferred;

~~[(d)]~~ (e) inducing a person who is at risk of foreclosure to hire the licensee to engage in an act of foreclosure rescue by:

(i) suggesting to the person that the licensee has a special relationship with the person's

HB0091S01 compared with HB0091

lender or loan servicer; or

- (ii) falsely representing or advertising that the licensee is acting on behalf of:
 - (A) a government agency;
 - (B) the person's lender or loan servicer; or
 - (C) a nonprofit or charitable institution; or
- ~~(e)~~ (f) recommending or participating in a foreclosure rescue that requires a person

to:

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

- (ii) make a mortgage payment to a person other than the person's loan servicer; or
- (iii) refrain from contacting the person's:
 - (A) lender;
 - (B) loan servicer;
 - (C) attorney;
 - (D) credit counselor; or
 - (E) housing counselor; or

(22) for an agreement for foreclosure rescue entered into on or after May 11, 2010, engaging in an act of foreclosure rescue without offering in writing to the person entering into the agreement for foreclosure rescue a right to cancel the agreement within three business days after the day on which the person enters the agreement.

Section ~~{75}~~41. Section **61-2g-101**, which is renumbered from Section 61-2b-1 is 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."

Section ~~{76}~~42. Section **61-2g-102**, which is renumbered from Section 61-2b-2 is renumbered and amended to read:

~~[61-2b-2]~~. **61-2g-102. Definitions.**

- (1) As used in this chapter:

HB0091S01 compared with HB0091

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

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

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

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

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

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

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

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

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

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

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

(f) "Certified appraisal report" means a written or oral appraisal report that is certified by a state-certified general appraiser or state-certified residential appraiser.

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

(h) (i) (A) "Consultation service" means an engagement to provide a real estate

HB0091S01 compared with HB0091

valuation service analysis, opinion, conclusion, or other service that does not fall within the definition of appraisal.

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

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

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

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

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

(j) "Division" means the Division of Real Estate of the Department of Commerce.

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

(i) a state-licensed appraiser; or

(ii) a state-certified appraiser.

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

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

(n) "Real estate related transaction" means:

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

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

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

(o) "Real property" means one or more defined interests, benefits, or rights inherent in the ownership of real estate.

(p) "State-certified general appraiser" means a person who holds a current, valid

HB0091S01 compared with HB0091

certification as a state-certified general appraiser issued under this chapter.

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

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

(s) "Trainee" means an individual who:

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

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

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

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

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

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

Section ~~{77}~~43. Section **61-2g-103**, which is renumbered from Section 61-2b-25 is renumbered and amended to read:

~~[61-2b-25]~~. **61-2g-103**. **Other law unaffected.**

This chapter may not be considered to prohibit a person approved, licensed, certified, or registered under this chapter from engaging in the practice of real estate appraising as a professional corporation or a limited liability company in accordance with:

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

(2) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act.

Section ~~{78}~~44. Section **61-2g-201**, which is renumbered from Section 61-2b-6 is renumbered and amended to read:

HB0091S01 compared with HB0091

Part 2. Division and Board

~~[61-2b-6].~~ 61-2g-201. Duties and powers of division in general.

(1) The division shall administer and enforce this chapter.

~~(1)~~ (2) The division has the following powers and duties [~~listed in this Subsection~~]:

(a) The division shall:

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

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

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

(iv) register an individual who applies and qualifies for registration as a trainee under this chapter.

~~[(b) (i) The division shall require an individual to register with the division as a trainee before the individual acts in the capacity of a trainee earning experience for licensure.]~~

~~[(ii) Subject to Subsection (4), the board shall adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for:]~~

~~[(A) the trainee registration required by this Subsection (1)(b); and]~~

~~[(B) renewal of the trainee registration required by this Subsection (1)(b).]~~

~~(c)~~ (b) The division shall hold public hearings under the direction of the board.

~~(d)~~ (c) The division may:

(i) solicit bids and enter into contracts with one or more educational testing services or organizations for the preparation of a bank of questions and answers; and

(ii) administer or contract for the administration of licensing and certification examinations as may be required to carry out the division's responsibilities under this chapter.

~~(e)~~ (d) The division shall provide administrative assistance to the board by providing to the board the facilities, equipment, supplies, and personnel that are required to enable the board to carry out the board's responsibilities under this chapter.

~~(f)~~ (e) The division shall assist the board in improving the quality of the continuing education available to a person licensed, certified, or registered under this chapter.

~~(g)~~ (f) The division shall assist the board with respect to the proper interpretation or explanation of the Uniform Standards of Professional Appraisal Practice as required by Section

HB0091S01 compared with HB0091

~~[61-2b-27]~~ 61-2g-403 when an interpretation or explanation becomes necessary in the enforcement of this chapter.

~~[(h) The division shall establish fees in accordance with Section 63J-1-504:]~~

~~[(i) for processing:]~~

~~[(A) an application for licensing, certification, or registration; and]~~

~~[(B) approval of an expert witness; and]~~

~~[(ii) for any other function required or permitted by this chapter:]~~

~~[(i) If a person pays a fee or costs to the division with a negotiable instrument and the negotiable instrument is not honored for payment:]~~

~~[(i) the transaction for which the payment is submitted is voidable by the division;]~~

~~[(ii) the division may reverse the transaction if payment of the applicable fee or costs is not received in full; and]~~

~~[(iii) the person's license, certification, or registration is automatically suspended:]~~

~~[(A) beginning the day on which the payment is due; and]~~

~~[(B) ending the day on which payment is made in full.]~~

~~[(j) The division may:]~~

~~[(i) investigate a complaint against:]~~

~~[(A) a person licensed, certified, or registered under this chapter; or]~~

~~[(B) a person required to be licensed, certified, or registered under this chapter;]~~

~~[(ii) subpoena a witness;]~~

~~[(iii) subpoena the production of a book, paper, document, record, contract, or evidence;]~~

~~[(iv) administer an oath; and]~~

~~[(v) take testimony and receive evidence concerning a matter within the division's jurisdiction.]~~

~~[(k)]~~ (g) The division may:

(i) promote research and conduct studies relating to the profession of real estate appraising; and

(ii) sponsor real estate appraisal educational activities.

~~[(t)]~~ (h) The division shall adopt, with the concurrence of the board, rules for the administration of this chapter pursuant to Title 63G, Chapter 3, Utah Administrative

HB0091S01 compared with HB0091

Rulemaking Act, that are not inconsistent with this chapter or the constitution and laws of this state or of the United States.

~~[(m)]~~ (i) The division shall employ an appropriate staff to investigate allegations that a person required to be licensed, certified, or registered under this chapter fails to comply with this chapter.

~~[(n)]~~ (j) The division may employ other professional, clerical, and technical staff as may be necessary to properly administer the work of the division under this chapter.

~~[(o)]~~ (k) (i) Upon request, the division shall make available, either directly or through a ~~[third party]~~ third-party, a list of the names and addresses of the persons licensed, registered, or certified by the division under this chapter.

(ii) A person who requests a list under this Subsection (1)~~[(o)]~~(k) shall pay the costs incurred by the division to make the list available.

~~[(2)(a)]~~ The division shall approve an expert witness who is not otherwise licensed or certified under this chapter to appear in an administrative or judicial tax proceeding to provide evidence related to the valuation of real property that is assessed by the State Tax Commission, if the:]

~~[(i)] approval is limited to a specific proceeding;~~

~~[(ii)] approval is valid until the proceeding becomes final;~~

~~[(iii)] applicant pays to the division an approval fee set by the division in accordance with Section 63J-1-504;~~

~~[(iv)] applicant provides the applicant's name, address, occupation, and professional credentials; and]~~

~~[(v)] applicant provides a notarized statement that:]~~

~~[(A)] the applicant is competent to render an appraisal and to testify as an expert witness in the proceeding; and]~~

~~[(B)] the appraisal and testimony to be offered shall be in accordance with the Uniform Standards of Professional Appraisal Practice adopted by the board.]~~

~~[(b)] Subsection (2)(a) applies to an administrative or judicial property tax proceeding related to the valuation of real property that is assessed by the State Tax Commission.]~~

~~[(3)]~~ (2) (a) If the conditions of Subsection ~~[(3)]~~ (2)(b) are met, the division is immune from any civil action or criminal prosecution for initiating or assisting in a lawful investigation

HB0091S01 compared with HB0091

of an act of, or participating in a disciplinary proceeding concerning:

- (i) a person required to be licensed, certified, or registered pursuant to this chapter; or
- (ii) a person approved as an expert witness pursuant to this chapter.

(b) This Subsection ~~[(3)]~~ (2) applies if the division takes the action:

- (i) without malicious intent; and
- (ii) in the reasonable belief that the action is taken pursuant to the powers and duties

vested in the division under this chapter.

~~[(4)(a) An individual applying to register as a trainee under this chapter shall:]~~

~~[(i) submit a fingerprint card in a form acceptable to the division at the time of applying for registration; and]~~

~~[(ii) consent to a criminal background check by:]~~

~~[(A) the Utah Bureau of Criminal Identification; and]~~

~~[(B) the Federal Bureau of Investigation.]~~

~~[(b) The division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for an applicant through a national criminal history system.]~~

~~[(c) The applicant shall pay the cost of:]~~

~~[(i) the fingerprinting required by this section; and]~~

~~[(ii) the criminal background check required by this section.]~~

~~[(d)(i) A registration as a trainee under this chapter is conditional pending completion of the criminal background check required by this Subsection (4).]~~

~~[(ii) A registration is immediately and automatically revoked if a criminal background check discloses that the applicant fails to accurately disclose a criminal history involving:]~~

~~[(A) the appraisal industry;]~~

~~[(B) fraud;]~~

~~[(C) misrepresentation; or]~~

~~[(D) deceit.]~~

~~[(iii) If a criminal background check discloses that an applicant fails to accurately disclose a criminal history other than one described in Subsection (4)(d)(ii), the division:]~~

~~[(A) shall review the application; and]~~

~~[(B) in accordance with rules made by the division pursuant to Title 63G, Chapter 3,~~

HB0091S01 compared with HB0091

~~Utah Administrative Rulemaking Act, may:]~~

~~[(I) place one or more conditions on a registration;]~~

~~[(H) place one or more restrictions on a registration;]~~

~~[(HH) revoke a registration; or]~~

~~[(IV) refer the application to the board for a decision.]~~

~~[(iv) An individual whose conditional registration is automatically revoked under Subsection (4)(d)(ii) or whose registration is conditioned, restricted, or revoked under Subsection (4)(d)(iii) may appeal the action in a hearing conducted by the board:]~~

~~[(A) after the action is taken; and]~~

~~[(B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.]~~

~~[(v) The board may delegate to the division or an administrative law judge the authority to conduct a hearing described in Subsection (4)(d)(iv).:]~~

~~[(vi) Relief from an automatic revocation under Subsection (4)(d)(ii) may be granted only if:]~~

~~[(A) the criminal history upon which the division bases the revocation:]~~

~~[(I) did not occur; or]~~

~~[(H) is the criminal history of another person;]~~

~~[(B) (I) the revocation is based on a failure to accurately disclose a criminal history; and]~~

~~[(H) the applicant has a reasonable good faith belief at the time of application that there was no criminal history to be disclosed; or]~~

~~[(C) the division fails to follow the prescribed procedure for the revocation.]~~

~~[(e) If a registration is revoked or a revocation is upheld after a hearing described in Subsection (4)(d)(iv), the individual may not apply for a new registration for a period of 12 months after the day on which the registration is revoked.]~~

~~[(f) The board may delegate to the division the authority to make a decision on whether relief from a revocation should be granted.]~~

~~[(g) Money paid by an applicant for the cost of the criminal background check is nonlapsing.]~~

Section ~~{79}~~45. Section **61-2g-202**, which is renumbered from Section 61-2b-37 is renumbered and amended to read:

HB0091S01 compared with HB0091

~~[61-2b-37]~~. 61-2g-202. **Division service fees -- Federal registry fees.**

(1) The division, with the concurrence of the board, shall establish and collect fees in accordance with Section 63J-1-504 for its services under this chapter.

(2) The division shall collect the annual registry fee established by the Federal Financial Institutions Examinations Council from those certificate holders who seek to perform appraisals in federally related transactions. The division shall transmit the fees to the federal Appraisal Subcommittee at least annually.

(3) If a person pays a fee or costs to the division with a negotiable instrument or any other payment method that is not honored:

(a) the transaction for which the payment is submitted is voidable by the division;

(b) the division may reverse the transaction if payment of the applicable fee or costs is not received in full; and

(c) the person's license, certification, or registration is automatically suspended:

(i) beginning the day on which the payment is due; and

(ii) ending the day on which payment is made in full.

Section ~~{80}~~46. Section **61-2g-203**, which is renumbered from Section 61-2b-38 is renumbered and amended to read:

~~[61-2b-38]~~. 61-2g-203. **Division to publish roster of appraisers.**

(1) The division shall prepare and issue at least once each calendar year a roster of appraisers containing the information required by the Federal Financial Institutions Examination Council. The division shall transmit the roster to the Federal Financial Institutions Examinations Council at least annually.

(2) The division may, upon payment of a fee established by the division in accordance with Section 63J-1-504, issue to a person a verified history of a person:

(a) licensed, certified, or registered under this chapter; or

(b) previously registered, licensed, or certified under this chapter.

Section ~~{81}~~47. Section **61-2g-204**, which is renumbered from Section 61-2b-7 is renumbered and amended to read:

~~[61-2b-7]~~. 61-2g-204. **Real Estate Appraiser Licensing and Certification Board.**

(1) (a) There is established a Real Estate Appraiser Licensing and Certification Board

HB0091S01 compared with HB0091

~~[which shall consist]~~ that consists of five regular members as follows:

(i) one state-licensed or state-certified appraiser who may be either a residential or general licensee or certificate holder;

(ii) one state-certified residential appraiser;

(iii) one state-certified general appraiser;

(iv) one member who is certified as either a state-certified residential appraiser or a state-certified general appraiser; and

(v) one member of the general public.

(b) A state-licensed or state-certified appraiser may be appointed as an alternate member of the board.

(c) The governor shall appoint all members of the board with the consent of the Senate.

(2) (a) Except as required by Subsection (2)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term beginning on July 1.

(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) Upon the expiration of a member's term, a member of the board shall continue to hold office until the appointment and qualification of the member's successor.

(d) A person may not serve as a member of the board for more than two consecutive terms.

(3) (a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(b) The governor may remove a ~~[board]~~ member for cause.

(4) The public member of the board may not be licensed or certified under this chapter.

(5) The board shall meet at least quarterly to conduct its business. ~~[Public notice shall be given for all board meetings.]~~ The division shall give public notice of a board meeting.

(6) The members of the board shall elect a chair annually from among the members to preside at board meetings.

(7) A member may not receive compensation or benefits for the member's service, but

HB0091S01 compared with HB0091

may receive per diem and travel expenses in accordance with:

- (a) Section 63A-3-106;
- (b) Section 63A-3-107; and
- (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

63A-3-107.

(8) (a) Three members of the board shall constitute a quorum for the transaction of business.

(b) If a quorum of members is unavailable for any meeting, the alternate member of the board, if any, shall serve as a regular member of the board for that meeting if with the presence of the alternate member a quorum is present at the meeting.

Section ~~{82}~~48. Section **61-2g-205**, which is renumbered from Section 61-2b-8 is renumbered and amended to read:

~~[61-2b-8]~~. **61-2g-205. Duties of board.**

(1) (a) The board shall provide technical assistance to the division relating to real estate appraisal standards and real estate appraiser qualifications.

(b) The board has the powers and duties listed in this section.

(2) The board shall:

(a) determine the experience and education requirements appropriate for a person licensed under this chapter;

(b) determine the experience and education requirements appropriate for a person certified under this chapter:

(i) in compliance with the minimum requirements of Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

(ii) consistent with the intent of this chapter;

(c) determine the appraisal related acts that may be performed by:

(i) a trainee on the basis of the trainee's education and experience;

(ii) clerical staff; and

(iii) a person who:

(A) does not hold a license or certification; and

(B) assists an appraiser licensed or certified under this chapter in providing appraisal services or consultation services;

HB0091S01 compared with HB0091

(d) determine the procedures for a trainee to register and to renew a registration with the division; and

(e) develop one or more programs to upgrade and improve the experience, education, and examinations as required under this chapter.

(3) (a) The experience and education requirements established by the board for a person licensed or certified under this chapter shall be the minimum criteria established by the Appraisal Qualification Board, unless, after notice and a public hearing held in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board finds that the minimum criteria are not appropriate for a state-licensed appraiser or a state-certified appraiser in this state.

(b) If under Subsection (3)(a) the board makes a finding that the minimum criteria are not appropriate, the board shall recommend appropriate criteria to the Legislature.

(4) The board shall:

(a) determine the continuing education requirements appropriate for the renewal of a license, certification, or registration issued under this chapter, except that the continuing education requirements established by the board shall at least meet the minimum criteria established by the Appraisal Qualification Board;

(b) develop one or more programs to upgrade and improve continuing education; and

(c) recommend to the division one or more available continuing education courses that meet the requirements of this chapter.

(5) (a) The board shall consider the proper interpretation or explanation of the Uniform Standards of Professional Appraisal Practice as required by Section [~~61-2b-27~~] 61-2g-403 when:

(i) an interpretation or explanation is necessary in the enforcement of this chapter; and

(ii) the Appraisal Standards Board of the Appraisal Foundation has not issued an interpretation or explanation.

(b) If the conditions of Subsection (5)(a) are met, the board shall recommend to the division the appropriate interpretation or explanation that the division should adopt as a rule under this chapter.

(c) The board may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and Section [~~61-2b-27~~] 61-2g-403, and with the concurrence

HB0091S01 compared with HB0091

of the division, provide for an exemption from a provision of the Uniform Standards of Professional Appraisal Practice for an activity engaged in on behalf of a governmental entity.

(6) (a) The board shall conduct an administrative hearing, not delegated by the board to an administrative law judge, in connection with a disciplinary proceeding under [~~Sections 61-2b-30 and 61-2b-31~~] Section 61-2f-504 concerning:

(i) a person required to be licensed, certified, or registered under this chapter; and
(ii) the person's failure to comply with this chapter and the Uniform Standards of Professional Appraisal Practice as adopted under Section [~~61-2b-27~~] 61-2g-403.

(b) The board, with the concurrence of the division, shall issue in an administrative hearing a decision that contains findings of fact and conclusions of law.

(c) When a determination is made that a person required to be licensed, certified, or registered under this chapter has violated this chapter, the division shall implement disciplinary action determined [~~by~~] through concurrence of the board and the division.

(7) A member of the board is immune from a civil action or criminal prosecution for a disciplinary proceeding concerning a person required to be registered, licensed, certified, or approved as an expert under this chapter if the action is taken without malicious intent and in the reasonable belief that the action taken was taken pursuant to the powers and duties vested in a member of the board under this chapter.

(8) The board shall require and pass upon proof necessary to determine the honesty, competency, integrity, and truthfulness of an applicant for:

- (a) original licensure, certification, or registration; and
- (b) renewal licensure, certification, or registration.

Section ~~{83}~~49. Section **61-2g-301**, which is renumbered from Section 61-2b-3 is renumbered and amended to read:

Part 3. Licensure, Certification, or Registration

~~[61-2b-3]~~. **61-2g-301. License or certification required.**

(1) Except as provided in Subsection (2) and in [~~Subsection 61-2b-6(2)~~] Section 61-2g-303, it is unlawful for a person to prepare, for valuable consideration, an appraisal, an appraisal report, a certified appraisal report, or perform a consultation service relating to real estate or real property in this state without first being licensed or certified in accordance with this chapter.

HB0091S01 compared with HB0091

(2) This section does not apply to:

(a) a principal broker, associate broker, or sales agent as defined by Section 61-2f-102 licensed by this state who, in the ordinary course of the broker's or sales agent's business, gives an opinion:

(i) regarding the value of real estate;

(ii) to a potential seller or [~~third party~~] third-party recommending a listing price of real estate; or

(iii) to a potential buyer or [~~third party~~] third-party recommending a purchase price of real estate;

(b) an employee of a company who states an opinion of value or prepares a report containing value conclusions relating to real estate or real property solely for the company's use;

(c) an official or employee of a government agency while acting solely within the scope of the official's or employee's duties, unless otherwise required by Utah law;

(d) an auditor or accountant who states an opinion of value or prepares a report containing value conclusions relating to real estate or real property while performing an audit;

(e) an individual, except an individual who is required to be licensed or certified under this chapter, who states an opinion about the value of property in which the person has an ownership interest;

(f) an individual who states an opinion of value if no consideration is paid or agreed to be paid for the opinion and no other party is reasonably expected to rely on the individual's appraisal expertise;

(g) an individual, such as a researcher or a secretary, who does not render significant professional assistance, as defined by the board, in arriving at a real estate appraisal analysis, opinion, or conclusion; or

(h) an attorney authorized to practice law in this state who, in the course of the attorney's practice, uses an appraisal report governed by this chapter or who states an opinion of the value of real estate.

(3) An opinion of value or report containing value conclusions exempt under Subsection (2) may not be referred to as an appraisal.

(4) Except as provided in Subsection (2) and Section 61-2g-303, to prepare or cause to

HB0091S01 compared with HB0091

be prepared in this state an appraisal, an appraisal report, or a certified appraisal report an individual shall:

(a) apply in writing for licensure or certification as provided in this chapter in the form as the division may prescribe; and

(b) become licensed or certified under this chapter.

Section ~~†84†~~50. Section **61-2g-302** is enacted to read:

61-2g-302. Registration as trainee.

(1) (a) An individual is required to register with the division as a trainee before the individual acts in the capacity of a trainee earning experience for licensure.

(b) Subject to Subsection (2), the board, with the concurrence of the division, shall adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for:

(i) the trainee registration required by this Subsection (1); and

(ii) renewal of the trainee registration required by this Subsection (1).

(2) (a) An individual applying to register as a trainee under this chapter shall:

(i) submit a fingerprint card in a form acceptable to the division at the time of applying for registration; and

(ii) consent to a criminal background check by:

(A) the Utah Bureau of Criminal Identification; and

(B) the Federal Bureau of Investigation.

(b) The division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for an applicant through a national criminal history system.

(c) The applicant shall pay the cost of:

(i) the fingerprinting required by this section; and

(ii) the criminal background check required by this section.

(d) (i) A registration as a trainee under this chapter is conditional pending completion of the criminal background check required by this Subsection (2).

(ii) A registration is immediately and automatically revoked if a criminal background check discloses that the applicant fails to accurately disclose a criminal history involving:

(A) the appraisal industry; or

(B) a felony conviction on the basis of an allegation of fraud, misrepresentation, or

HB0091S01 compared with HB0091

deceit.

(iii) If a criminal background check discloses that an applicant fails to accurately disclose a criminal history other than one described in Subsection (2)(d)(ii), the division shall review the application, and in accordance with rules made by the division pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may:

- (A) place one or more conditions on a registration;
- (B) place one or more restrictions on a registration;
- (C) revoke a registration; or
- (D) refer the application to the board for a decision.

(iv) An individual whose conditional registration is automatically revoked under Subsection (2)(d)(ii) or whose registration is conditioned, restricted, or revoked under Subsection (2)(d)(iii) may appeal the action in a hearing conducted by the board:

- (A) after the action is taken; and
- (B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(v) The board may delegate to the division or an administrative law judge the authority to conduct a hearing described in Subsection (2)(d)(iv).

(vi) Relief from an automatic revocation under Subsection (2)(d)(ii) may be granted only if:

(A) the criminal history upon which the division bases the revocation did not occur or is the criminal history of another person;

(B) the revocation is based on a failure to accurately disclose a criminal history, and the applicant has a reasonable good faith belief at the time of application that there was no criminal history to be disclosed; or

(C) the division fails to follow the prescribed procedure for the revocation.

(e) If a registration is revoked or a revocation is upheld after a hearing described in Subsection (2)(d)(iv), the individual may not apply for a new registration for a period of 12 months after the day on which the registration is revoked.

(f) The board may delegate to the division the authority to make a decision on whether relief from a revocation should be granted.

(g) Money paid by an applicant for the cost of the criminal background check is nonlapsing.

HB0091S01 compared with HB0091

Section ~~†85†~~51. Section **61-2g-303** is enacted to read:

61-2g-303. Approval of an expert.

(1) The division shall approve an expert witness who is not otherwise licensed or certified under this chapter to appear in an administrative or judicial tax proceeding to provide evidence related to the valuation of real property that is assessed by the State Tax Commission, if the:

(a) approval is limited to a specific proceeding;

(b) approval is valid until the proceeding becomes final;

(c) applicant pays to the division an approval fee set by the division in accordance with Section 63J-1-504;

(d) applicant provides the applicant's name, address, occupation, and professional credentials; and

(e) applicant provides a notarized statement that:

(i) the applicant is competent to render an appraisal and to testify as an expert witness in the proceeding; and

(ii) the appraisal and testimony to be offered shall be in accordance with the Uniform Standards of Professional Appraisal Practice adopted by the board.

(2) Subsection (1) applies to an administrative or judicial property tax proceeding related to the valuation of real property that is assessed by the State Tax Commission.

Section ~~†86†~~52. Section **61-2g-304**, which is renumbered from Section 61-2b-18 is renumbered and amended to read:

[61-2b-18]. 61-2g-304. Application for licensure, certification, or registration -- Approval as an expert witness.

(1) An application for the following shall be sent to the division on a form approved by the division:

(a) original certification, licensure, or registration;

(b) approval as an expert witness; and

(c) renewal of certification, licensure, or registration.

(2) The payment of the appropriate fee, as established by the division, with the concurrence of the board, in accordance with Section 63J-1-504, must accompany an application for:

HB0091S01 compared with HB0091

- (a) approval as an expert witness;
 - (b) original certification, licensure, or registration; and
 - (c) renewal of certification, licensure, or registration.
- (3) At the time of filing an application described in Subsection (1), an applicant shall:
- (a) sign a pledge to comply with the Uniform Standards of Professional Appraisal

Practice and the ethical rules to be observed by an appraiser that are established under Section ~~[61-2b-27]~~ 61-2g-403 for:

- (i) a certified or licensed appraiser;
- (ii) a trainee; or
- (iii) an expert witness approved under this chapter; and

(b) certify that the applicant understands the types of misconduct, as set forth in this chapter, for which a disciplinary proceeding may be initiated against a person certified, licensed, or registered under this chapter.

Section ~~{87}~~53. Section **61-2g-305**, which is renumbered from Section 61-2b-19 is renumbered and amended to read:

~~[61-2b-19]~~. 61-2g-305. Expiration of license, certification, or registration.

(1) An initial license, certification, or registration issued under this chapter expires on the expiration date indicated on the license, certificate, or registration.

(2) A renewal license, certification, or registration issued under this chapter expires two years from the date of issuance.

(3) (a) The scheduled expiration date of a license, certification, or registration shall appear on the license, certification, or registration document.

(b) (i) The division shall mail a holder of a license, certification, or registration notice of its expiration to the last address stated on the division's records as the holder's current address.

(ii) To be mailed a notice under this Subsection (3)(b), a holder of a license, certification, or registration shall provide to the division in writing the holder's current address.

(iii) A holder's license, certification, or registration expires if not renewed by the holder notwithstanding whether the holder receives a notice of its expiration by the division under this Subsection (3)(b).

Section ~~{88}~~54. Section **61-2g-306**, which is renumbered from Section 61-2b-20 is

HB0091S01 compared with HB0091

renumbered and amended to read:

~~[61-2b-20]~~. **61-2g-306. Renewal of license, certification, or registration.**

(1) To renew a license, certification, or registration, before the license, certification, or registration expires, the holder of the license, certification, or registration shall submit to the division in compliance with procedures set ~~[by]~~ through the concurrence of the division and the board:

(a) an application for renewal;

(b) a fee established by the division and the board, in accordance with Section 63J-1-504; and

(c) evidence in the form prescribed by the division of having completed the continuing education requirements for renewal specified in this chapter.

(2) (a) A license, certification, or registration expires if it is not renewed on or before its expiration date.

(b) For a period of 30 days after the expiration date, a license, certification, or registration may be reinstated upon:

(i) payment of a renewal fee and a late fee determined ~~[by]~~ through the concurrence of the division and the board; and

(ii) satisfying the continuing education requirements specified in Section ~~[61-2b-40]~~ 61-2g-307.

(c) After the 30-day period described in Subsection (2)(b), and until six months after the expiration date, a license, certification, or registration may be reinstated by:

(i) paying a renewal fee and a reinstatement fee determined ~~[by]~~ through the concurrence of the division and the board; and

(ii) satisfying the continuing education requirements specified in Section ~~[61-2b-40]~~ 61-2g-307.

(d) After the six-month period described in Subsection (2)(c), and until one year after the expiration date, a license, certification, or registration may be reinstated by:

(i) paying a renewal fee and a reinstatement fee determined ~~[by]~~ through the concurrence of the division and the board in accordance with Section 63J-1-504;

(ii) providing proof acceptable to the division ~~[and]~~, with the concurrence of the board, of the person having satisfied the continuing education requirements of Section ~~[61-2b-40]~~

HB0091S01 compared with HB0091

61-2g-307; and

(iii) providing proof acceptable to the division [~~and~~], with the concurrence of the board, of the person completing 24 hours of continuing education:

(A) in addition to the requirements in Section [~~61-2b-40~~] 61-2g-307; and

(B) on a subject determined by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(e) The division shall relicense, recertify, or reregister a person who does not renew that person's license, certification, or registration within one year after the expiration date as prescribed for an original application.

(f) Notwithstanding Subsection (2)(a), the division may extend the term of a license, certification, or registration that would expire under Subsection (2)(a) except for the extension if:

(i) (A) the person complies with the requirements of this section to renew the license, certification, or registration; and

~~[(ii)]~~ (B) the application for renewal remains pending at the time of the extension [~~;~~ there is pending under this chapter]; or

~~[(A) the application for renewal of the license, certification, or registration; or]~~

~~[(B)]~~ (ii) at the time of the extension, there is pending under this chapter a disciplinary action.

(3) A person who is licensed, certified, or registered under this chapter shall notify the division of the following by sending the division a signed statement within 10 business days of:

(a) (i) a conviction of a [~~criminal offense~~];

(A) felony;

(B) class A misdemeanor; or

(C) class B misdemeanor;

(ii) the entry of a plea in abeyance to a [~~criminal offense~~; or];

(A) felony;

(B) class A misdemeanor; or

(C) class B misdemeanor; or

(iii) the potential resolution of a [~~criminal case~~] felony, class A misdemeanor, or class B misdemeanor by:

HB0091S01 compared with HB0091

- (A) a diversion agreement; or
 - (B) any other agreement under which a criminal charge is suspended for a period of time;
 - (b) filing a personal bankruptcy or business bankruptcy;
 - (c) the suspension, revocation, surrender, cancellation, or denial of a professional license, certification, or registration of the person, whether the license, certification, or registration is issued by this state or another jurisdiction; or
 - (d) the entry of a cease and desist order or a temporary or permanent injunction:
 - (i) against the person by a court or administrative agency; and
 - (ii) on the basis of:
 - (A) conduct or a practice involving an act regulated by this chapter; or
 - (B) conduct involving fraud, misrepresentation, or deceit.
- (4) The board, with the concurrence of the division, shall enforce the reporting requirement of Subsection (3) pursuant to Section 61-2g-502.

Section ~~{89}~~55. Section **61-2g-307**, which is renumbered from Section 61-2b-40 is renumbered and amended to read:

~~[61-2b-40]~~. 61-2g-307. Continuing education requirements.

- (1) As a prerequisite to renewal of a license, certification, or registration, the applicant for renewal shall present evidence satisfactory to the division of having met the continuing education requirements of this section.
- (2) A person licensed, certified, or registered under this chapter shall complete during the two-year period immediately preceding the filing of an application for renewal not less than 28 classroom hours of instruction in courses or seminars that have received the approval of the division.
- (3) (a) The division, with the concurrence of the board, may adopt rules for the implementation of this section to assure that ~~[each]~~ a person renewing that person's license, certification, or registration under this chapter has a working knowledge of current real estate appraisal theories, practices, and techniques that will enable the person to provide competent real estate appraisal services to the members of the public with whom that person deals in a professional relationship under the authority of that person's license, certificate, or registration.
- ~~(4)~~ (b) An amendment or repeal of a rule adopted by the division under this section,

HB0091S01 compared with HB0091

with the concurrence of the board, does not operate to deprive a person of credit toward renewal of that person's license, certification, or registration for a course of instruction that is successfully completed by the applicant before the date of the amendment or repeal of the rule.

(c) The rules made under this Subsection (3) shall prescribe:

(i) policies and procedures to be followed in obtaining division approval of courses of instruction and seminars;

(ii) standards, policies, and procedures to be used by the division in evaluating an applicant's claims of equivalency; and

(iii) standards, monitoring methods, and systems for recording attendance to be employed by course and seminar sponsors as a prerequisite to division approval of courses and seminars for credit.

~~[(5)]~~ (4) In lieu of meeting the requirements set forth in Subsection (2) and applicable rules, an applicant for renewal may satisfy all or part of the continuing education requirements that are imposed by the board in excess of the minimum requirements of the Appraisal Qualification Board by presenting evidence of the following:

(a) completion of an educational program of study determined by the board to be equivalent, for continuing education purposes, to courses or seminars approved by the board; or

(b) participation other than as a student in educational processes and programs approved by the board that relate to real property appraisal theory, practices, or techniques including teaching, program development, and preparation of textbooks, monographs, articles, and other instructional materials.

~~[(6) The board shall develop and propose to the division rules described in Subsection (3). The rules developed and proposed by the board under this Subsection (6) shall prescribe:]~~

~~[(a) policies and procedures to be followed in obtaining division approval of courses of instruction and seminars;]~~

~~[(b) standards, policies, and procedures to be used by the division in evaluating an applicant's claims of equivalency; and]~~

~~[(c) standards, monitoring methods, and systems for recording attendance to be employed by course and seminar sponsors as a prerequisite to division approval of courses and seminars for credit.]~~

~~[(7)(a)]~~ (5) A person whose license, certification, or registration is ~~[revoked or]~~

HB0091S01 compared with HB0091

suspended as the result of a disciplinary action taken ~~[by the board]~~ under this chapter may not apply for reinstatement unless the person presents evidence of completion of the continuing education requirement that is required by this chapter for renewal.

~~[(b) The continuing education required under Subsection (7) (5)(a) may not be imposed upon an applicant for reinstatement who has been required by the division to successfully complete the examination for licensure or certification required by Section 61-2b-20 as a condition to reinstatement.]~~

Section ~~90~~56. Section **61-2g-308**, which is renumbered from Section 61-2b-22 is renumbered and amended to read:

~~[61-2b-22].~~ **61-2g-308. Licensure, certification, registration, or expert witness requirements for nonresidents -- Temporary license or certificate -- Revocation.**

(1) An applicant for one of the following who is not a resident of this state shall submit with the applicant's application an irrevocable consent that service of process upon the applicant may be made by delivery of the process to the director of the division if, in an action against the applicant in a court of this state arising out of the applicant's activities governed by this chapter in this state, the plaintiff cannot, in the exercise of due diligence, obtain personal service upon the applicant:

- (a) approval as an expert witness; or
- (b) licensure, certification, or registration under this chapter.

(2) A nonresident of this state who complies with Subsection (1) may obtain approval as an expert witness, a license, a certification, or a registration in this state by complying with ~~[the provisions of]~~ this chapter relating to approval as an expert witness, licensure, certification, or registration.

(3) A nonresident of this state who complies with Subsection (1) may obtain a temporary permit for a license or certification to perform a contract relating to the appraisal of real estate or real property in this state. To qualify for the issuance of a temporary permit for a license or certification, an applicant must:

- (a) submit an application on a form approved by the division;
- (b) submit evidence that the applicant is licensed or certified in the state in which the applicant primarily conducts business;
- (c) certify that no formal charges alleging violation of state appraisal licensing or

HB0091S01 compared with HB0091

certification laws have been filed against the applicant by the applicant's state of domicile; and

(d) pay an application fee in an amount established by the division with the concurrence of the board.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division, with the concurrence of the board, shall make rules establishing:

(a) the duration of a temporary permit; and

(b) procedures for renewal of a temporary permit.

(5) A temporary permit issued under this section shall be immediately and automatically revoked if the appraiser's license or certification is suspended or revoked in the appraiser's state of domicile.

(6) A person whose temporary permit for a license or certification is revoked under Subsection (5) is entitled to a postrevocation hearing to challenge the revocation. The hearing shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

Section ~~{91}~~57. Section **61-2g-309**, which is renumbered from Section 61-2b-21 is renumbered and amended to read:

~~{61-2b-21}~~. 61-2g-309. Denial of licensure, certification, or registration.

The division may, upon compliance with Title 63G, Chapter 4, Administrative Procedures Act, deny the issuance of a license, certification, or registration to an applicant on any of the grounds enumerated in this chapter.

Section ~~{92}~~58. Section **61-2g-310**, which is renumbered from Section 61-2b-23 is renumbered and amended to read:

~~{61-2b-23}~~. 61-2g-310. Reciprocal licensure.

An applicant for licensure or certification in this state who is licensed or certified under the laws of any other state, territory, or district may obtain a license or certification in this state upon the terms and conditions determined by the division and the board, if, in the determination of the division and the board:

(1) the state, territory, or the District of Columbia is considered to have substantially equivalent licensing laws for real estate appraisers;

(2) the laws of that state, territory, or the District of Columbia accord substantially equal reciprocal rights to a person licensed or certified and in good standing in this state; and

(3) no formal charges alleging violation of state appraisal licensing or certification laws

HB0091S01 compared with HB0091

have been filed against the applicant by the applicant's state of domicile.

Section ~~{93}~~59. Section **61-2g-311**, which is renumbered from Section 61-2b-10 is renumbered and amended to read:

~~[61-2b-10]~~. **61-2g-311. State-licensed appraiser -- Authority and qualifications.**

(1) A state-licensed appraiser is authorized to appraise complex and noncomplex 1-4 family residential units in this state having a transaction value permitted under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations.

(2) A state-licensed appraiser is authorized to appraise vacant or unimproved land having a transaction value permitted under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations that is utilized for 1-4 family purposes or for which the highest and best use is 1-4 family purposes and subdivisions for which a development analysis/appraisal is not necessary.

(3) A state-licensed appraiser may not issue a certified appraisal report.

(4) To qualify as a state-licensed appraiser, an applicant must:

(a) be of good moral character;

(b) demonstrate honesty, competency, integrity, and truthfulness;

(c) pass the licensing examination with a satisfactory score as determined by the Appraisal Qualification Board;

(d) successfully complete not less than 150 classroom hours in courses of study that relate to:

(i) real estate appraisal;

(ii) the Uniform Standards of Professional Appraisal Practice; and

(iii) ethical rules to be observed by a real estate appraiser as required by Section ~~[61-2b-27]~~ 61-2g-403; and

(e) possess the minimum number of hours of experience in real property appraisal as established by rule.

(5) The courses of study under Subsection (4)(d) shall be conducted by:

(a) a college or university;

(b) a community or junior college;

(c) a real estate appraisal or real estate related organization;

(d) a state or federal agency or commission;

HB0091S01 compared with HB0091

- (e) a proprietary school;
- (f) a provider approved by a state certification and licensing agency; or
- (g) the Appraisal Foundation or its boards.

Section ~~{94}~~60. Section **61-2g-312**, which is renumbered from Section 61-2b-13 is renumbered and amended to read:

~~[61-2b-13]~~. 61-2g-312. State-certified appraisers -- Authority.

(1) A state-certified residential appraiser is authorized to appraise ~~[a]]~~ the types of real estate which a state-licensed appraiser is authorized to appraise.

(2) A state-certified residential appraiser is also authorized to appraise 1-4 unit residential real estate without regard to transaction value or complexity.

(3) A state-certified residential appraiser is not authorized to appraise subdivisions for which a development analysis/appraisal is necessary.

(4) A state-certified general appraiser is authorized to appraise ~~[a]]~~ the types of real estate and real property.

Section ~~{95}~~61. Section **61-2g-313**, which is renumbered from Section 61-2b-14 is renumbered and amended to read:

~~[61-2b-14]~~. 61-2g-313. State-certified residential appraiser -- Authority and qualifications.

(1) An applicant for certification as a residential appraiser shall provide to the division evidence of:

(a) the applicant's good moral character, honesty, competency, integrity, and truthfulness;

(b) completion of the certification examination with a satisfactory score as determined by the Appraisal Qualification Board;

(c) (i) an associate degree or higher degree from an accredited:

(A) college;

(B) junior college;

(C) community college; or

(D) university; or

(ii) successfully passing a curriculum determined by rule of collegiate level subject matter courses from an accredited:

HB0091S01 compared with HB0091

- (A) college;
 - (B) junior college;
 - (C) community college; or
 - (D) university;
 - (d) satisfactory completion of not less than 200 classroom hours in a curriculum:
 - (i) of specific appraisal education determined by rule made by the board, with the concurrence of the division; and
 - (ii) that includes a course in the Uniform Standards of Professional Practice or its equivalent that is approved by the Appraisal Qualification Board;
 - (e) the minimum number of hours of experience in real property appraisal as established by rule; and
 - (f) acquiring the experience required under Subsection (1)(e) within a reasonable period, as determined by rule, immediately preceding the filing of the application for certification.
- (2) Upon request by the division, an applicant shall make available to the division for examination:
- (a) a detailed listing of the real estate appraisal reports or file memoranda for each year for which experience is claimed; and
 - (b) a sample selected by the division of appraisal reports that the applicant has prepared in the course of the applicant's appraisal practice.
- (3) The classroom hours required by Subsection (1)(d) shall be provided by:
- (a) a college or university;
 - (b) a community or junior college;
 - (c) a real estate appraisal or real estate related organization;
 - (d) a state or federal agency or commission;
 - (e) a proprietary school;
 - (f) a provider approved by a state certification and licensing agency; or
 - (g) the Appraisal Foundation or its boards.

Section ~~96~~62. Section **61-2g-314**, which is renumbered from Section 61-2b-15 is renumbered and amended to read:

~~[61-2b-15]~~. **61-2g-314**. **State-certified general appraiser -- Application --**

HB0091S01 compared with HB0091

Qualifications.

(1) An applicant for certification as a general appraiser shall provide to the division evidence of:

(a) the applicant's good moral character, honesty, competency, integrity, and truthfulness;

(b) completion of the certification examination with a satisfactory score as determined by the Appraisal Qualification Board;

(c) (i) a bachelors degree or higher degree from an accredited college or university; or

(ii) successfully passing a curriculum determined by rule of collegiate level subject matter courses from an accredited:

(A) college;

(B) junior college;

(C) community college; or

(D) university;

(d) satisfactory completion of not less than 300 classroom hours in a curriculum:

(i) of specific appraisal education determined by rule; and

(ii) that includes a course in the Uniform Standards of Professional Practice or its equivalent that has been approved by the Appraisal Qualification Board;

(e) the minimum number of hours of experience in real property appraisal as established by rule; and

(f) acquiring the experience required under Subsection (1)(e) within a reasonable period, as determined by rule, immediately preceding the filing of the application for certification.

(2) Upon request by the division, an applicant shall make available to the division for examination:

(a) a detailed listing of the real estate appraisal reports or file memoranda for each year for which experience is claimed; and

(b) a sample selected by the division of appraisal reports that the applicant has prepared in the course of the applicant's appraisal practice.

(3) The classroom hours required by Subsection (1)(d) shall be provided by:

(a) a college or university;

HB0091S01 compared with HB0091

- (b) a community or junior college;
- (c) a real estate appraisal or real estate related organization;
- (d) a state or federal agency or commission;
- (e) a proprietary school;
- (f) a provider approved by a state certification and licensing agency; or
- (g) the Appraisal Foundation or its boards.

Section ~~{97}~~63. Section **61-2g-315**, which is renumbered from Section 61-2b-24 is renumbered and amended to read:

~~[61-2b-24]. 61-2g-315. Expert witness, licensing, certification, and registration documents -- Assigned number to be used on contracts -- Surrender of documents upon suspension.~~

(1) The division shall issue to a person approved as an expert witness, licensed, certified, or registered under this chapter a document:

(a) stating that the person is approved as an expert witness, licensed, certified, or registered under this chapter; and

(b) specifying the expiration date of a license or certification.

(2) (a) An approval as an expert witness, a license, a certification, or a registration document issued under this chapter shall bear an approval, license, certification, or registration number assigned by the division.

(b) An assigned number shall be used in a statement of qualification, a contract, or another instrument used by the holder of the approval, license, certificate, or registration when reference is made to the holder's status as being approved, licensed, certified, or registered under this chapter.

(3) (a) An approval, license, certification, or registration document is the property of the state.

(b) Upon a suspension or revocation of a license, certification, or registration under this chapter, the individual holding the applicable document shall immediately return the document to the division.

Section ~~{98}~~64. Section **61-2g-401**, which is renumbered from Section 61-2b-17 is renumbered and amended to read:

Part 4. Operational Restrictions

HB0091S01 compared with HB0091

~~[61-2b-17]~~. 61-2g-401. State-certified and state-licensed appraisers -- Restrictions on use of terms -- Conduct prohibited or required -- Trainee.

(1) (a) The terms "state-certified general appraiser," "state-certified residential appraiser," and "state-licensed appraiser":

(i) may only be used to refer to an individual who is certified or licensed under this chapter; and

(ii) may not be used following, or immediately in connection with, the name or signature of a firm, partnership, corporation, or group, or in any manner that it might be interpreted as referring to a firm, partnership, corporation, group, or to anyone other than the individual who is certified or licensed under this chapter.

(b) The requirement of this Subsection (1) may not be construed to prevent a state-certified general appraiser from signing an appraisal report on behalf of a corporation, partnership, firm, or group practice if it is clear that:

(i) only the individual is certified; and

(ii) the corporation, partnership, firm, or group practice is not certified.

(c) Except as provided in Section ~~[61-2b-25]~~ 61-2g-103, a certificate or license may not be issued under this chapter to a corporation, partnership, firm, or group.

(2) (a) A person other than a state-certified general appraiser or state-certified residential appraiser, may not assume or use any title, designation, or abbreviation likely to create the impression of certification in this state as a real estate appraiser.

(b) A person other than a state-licensed appraiser may not assume or use any title, designation, or abbreviation likely to create the impression of licensure in this state as a real estate appraiser.

(3) (a) Only an individual who has qualified under the certification requirements of this chapter is authorized to prepare and sign a certified appraisal report relating to real estate or real property in this state.

(b) If a certified appraisal report is prepared and signed by a state-certified residential appraiser, the certified appraisal report shall state, immediately following the signature on the report, "State-Certified Residential Appraiser."

(c) If a certified appraisal report is prepared and signed by a state-certified general appraiser, the certified appraisal report shall state, immediately following the signature on the

HB0091S01 compared with HB0091

report, "State-Certified General Appraiser."

(d) An appraisal report prepared by a state-licensed appraiser shall state, immediately following the signature on the report, "State-Licensed Appraiser."

(e) When signing a certified appraisal report, a state-certified appraiser shall also place on the report, immediately below the state-certified appraiser's signature the state-certified appraiser's certificate number and its expiration date.

(f) A state-certified residential appraiser may not prepare a certified appraisal report outside the state-certified residential appraiser's authority as defined in Section ~~[61-2b-13]~~ 61-2g-312.

(g) A state-licensed appraiser who assisted in the preparation of a certified appraisal report is authorized to cosign the certified appraisal report.

(4) A person who has not qualified under this chapter may not describe or refer to any appraisal or appraisal report relating to real estate or real property in this state by the terms "certified appraisal" or "certified appraisal report."

(5) If a trainee assists a state-certified appraiser in the preparation of an appraisal report, the appraisal report shall disclose:

- (a) the trainee's name; and
- (b) the extent to which the trainee assists in the preparation of the appraisal report.

Section ~~699~~65. Section **61-2g-402**, which is renumbered from Section 61-2b-26 is renumbered and amended to read:

~~[61-2b-26]~~. **61-2g-402. Principal place of business -- Display of documents -- Notify of changes -- Nonresidents.**

- (1) A person licensed or certified under this chapter shall:
 - (a) designate and maintain a principal place of business; and
 - (b) conspicuously display the person's license or certification.

(2) (a) Upon a change of a person's principal business location or home address, a person licensed or certified under this chapter shall promptly send the division a signed statement notifying the division of the change within 10 business days of the change.

(b) Upon a change of an expert witness's address listed on the expert witness's application for approval, the expert witness shall send the division a signed statement notifying the division of the change within 10 business days of the change.

HB0091S01 compared with HB0091

(3) A nonresident licensee or certificate holder, or a nonresident approved as an expert witness is not required to maintain a place of business in this state if the nonresident maintains an active place of business in the nonresident's state of domicile.

Section ~~{100}66~~. Section **61-2g-403**, which is renumbered from Section 61-2b-27 is renumbered and amended to read:

~~[61-2b-27]~~. **61-2g-403. Professional conduct -- Uniform standards.**

(1) (a) A person licensed, certified, registered, or approved as an expert witness under this chapter ~~[must]~~ shall comply with:

- (i) generally accepted standards of professional appraisal practice; and
- (ii) generally accepted ethical rules to be observed by a real estate appraiser.

(b) Subject to ~~[Subsection (1)(c)]~~ the other provisions of this Subsection (1), generally accepted standards of professional appraisal practice are evidenced by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Foundation.

(c) After a public hearing held in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board, with the concurrence of the division:

(i) shall adopt and may make modifications of or additions to the Uniform Standards of Professional Appraisal Practice as the board considers appropriate to comply with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; or

(ii) may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, exempt a person licensed, certified, registered, or approved as an expert witness from complying with a provision of the Uniform Standards of Professional Appraisal Practice for an activity that the person engages in on behalf of a governmental entity.

(d) When an individual is a state-licensed appraiser or state-certified appraiser and also holds a license issued under Chapter 2f, Real Estate Licensing and Practices Act, the individual may provide an opinion of price of real estate without complying with the Uniform Standards of Professional Appraisal Practice if the individual provides the opinion of price as a licensee under Chapter 2f.

(2) ~~[The]~~ When instructed by the board, the division shall schedule a public hearing pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the purpose of deciding whether or not the board should require a modified or supplemental standard or the ethical rule to be observed by a person licensed, certified, registered, or approved as an expert

HB0091S01 compared with HB0091

witness under this chapter if the Appraisal Standards Board of the Appraisal Foundation:

- (a) (i) modifies the Uniform Standards of Professional Appraisal Practice;
- (ii) issues a supplemental appraisal standard which it considers appropriate for:
 - (A) a residential real estate appraiser; or
 - (B) a general real estate appraiser; or
- (iii) issues an ethical rule to be observed by a real estate appraiser; and
- (b) requests the board to consider the adoption of the modified or supplemental

standard or ethical rule.

(3) If, after the notice and public hearing described in Subsection (2), the board finds that a modified or supplemental standard or the ethical rule issued by the Appraisal Standards Board of the Appraisal Foundation is appropriate for a person licensed, certified, registered, or approved as an expert witness under this chapter, the board shall recommend a rule requiring a person licensed, certified, registered, or approved as an expert witness under this chapter to observe the modified or supplemental standard or the ethical rule.

Section ~~{101}~~67. Section **61-2g-404**, which is renumbered from Section 61-2b-32 is renumbered and amended to read:

~~[61-2b-32]. 61-2g-404. Registration, licensure, or certification prerequisite to suit for compensation.~~

A person engaged in the business of real estate appraising in this state or acting in the capacity of a real estate appraiser in this state may not bring or maintain an action as a plaintiff in a court of this state to collect compensation for the performance of real estate appraisal services for which registration, licensure, or certification is required by this chapter without alleging and proving that the person was the holder of a valid registration, license, or certification in this state at all times during the performance of the real estate appraisal services.

Section ~~{102}~~68. Section **61-2g-405**, which is renumbered from Section 61-2b-34 is renumbered and amended to read:

~~[61-2b-34]. 61-2g-405. Recordkeeping requirements.~~

(1) Subject to Subsection (2), a person licensed or certified under this chapter and a person required to be registered under this chapter before May 3, 2001, shall retain for a period of five years the original or a true copy of:

HB0091S01 compared with HB0091

(a) each written contract engaging the person's services for real estate or real property appraisal work;

(b) each appraisal report prepared or signed by the person; and

(c) ~~[aH]~~ the supporting data assembled and formulated by the appraiser in preparing each appraisal report.

(2) The five-year period for retention of records is applicable to each engagement of the services of the appraiser and begins upon the date of the delivery of each appraisal report to the client unless, within the five-year period, the appraiser is notified that the appraisal or the appraisal report is involved in litigation, in which event the records must be maintained for the longer of:

(a) five years; or

(b) two years following the date of the final disposition of the litigation.

(3) Upon reasonable notice, a person licensed or certified under this chapter and a person required to be registered under this chapter before May 3, 2001, shall make ~~[aH]~~ the records required to be maintained under this chapter available to the division for inspection and copying.

Section ~~{103}~~69. Section **61-2g-406**, which is renumbered from Section 61-2b-36 is renumbered and amended to read:

~~[61-2b-36]~~. **61-2g-406**. **Contingent fees.**

(1) A person licensed or certified under this chapter who enters into an agreement to perform an appraisal may not accept a contingent fee.

(2) A person licensed or certified under this chapter who enters into an agreement to provide consultation services may be paid a fixed fee or a contingent fee.

(3) (a) If a person licensed or certified under this chapter enters into an agreement to perform consultation services for a contingent fee, this fact shall be clearly stated in each oral statement.

(b) In addition to the requirements of Subsection (3)(a), if a person licensed or certified under this chapter prepares a written consultation report or summary, letter of transmittal, or certification statement for a contingent fee, the person shall clearly state in the report, summary, letter of transmittal, or certification statement that the report is prepared under a contingent fee arrangement.

HB0091S01 compared with HB0091

Section ~~{104}~~70. Section **61-2g-407**, which is renumbered from Section 61-2b-41 is renumbered and amended to read:

~~[61-2b-41]~~. 61-2g-407. Consultation reports -- Restrictions on use of terms.

A person who prepares a written or oral consultation report may not refer to the consultation report as an appraisal, an appraisal report, or in any manner that may be interpreted as referring to an appraisal or an appraisal report.

Section ~~{105}~~71. Section **61-2g-501**, which is renumbered from Section 61-2b-28 is renumbered and amended to read:

Part 5. Enforcement

~~[61-2b-28]~~. 61-2g-501. Enforcement -- Investigation -- Orders -- Hearings.

(1) (a) The division may investigate the actions of:

- (i) a person registered, licensed, or certified under this chapter;
- (ii) an applicant for registration, licensure, or certification;
- (iii) an applicant for renewal of registration, licensure, or certification; or
- (iv) a person required to be registered, licensed, or certified under this chapter.

(b) The division may initiate an agency action against a person described in Subsection

(1)(a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to:

- (i) impose disciplinary action;
- (ii) deny issuance to an applicant of:
 - (A) an original registration, license, or certification; or
 - (B) a renewal of a registration, license, or certification; or
- (iii) issue a cease and desist order as provided in Subsection (3).

(2) (a) The division may:

- (i) administer an oath or affirmation;
- (ii) subpoena a witness or evidence;
- (iii) take evidence; and
- (iv) require the production of a book, paper, contract, record, document, information, or evidence relevant to the investigation described in Subsection (1).

(b) The division may serve a subpoena by certified mail.

(c) A failure to respond to a request by the division in an investigation authorized under this chapter is considered to be a separate violation of this chapter, including:

HB0091S01 compared with HB0091

- (i) failing to respond to a subpoena as a witness;
- (ii) withholding evidence; or
- (iii) failing to produce a book, paper, contract, document, information, or record.

(d) (i) If a person is found to have violated this chapter or a rule made under this chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract, document, information, or record required under this chapter, including the costs incurred to copy an electronic book, paper, contract, document, information, or record in a universally readable format.

(ii) If a person fails to pay the costs described in Subsection (2)(d)(i) when due, the person's license, certification, or registration is automatically suspended:

- (A) beginning the day on which the payment of costs is due; and
- (B) ending the day on which the costs are paid.

(3) (a) The director shall issue and serve upon a person an order directing that person to cease and desist from an act if:

(i) the director has reason to believe that the person has been engaging, is about to engage, or is engaging in the act constituting a violation of this chapter; and

(ii) it appears to the director that it would be in the public interest to stop the act.

(b) Within 10 days after receiving the order, the person upon whom the order is served may request a hearing.

(c) Pending a hearing requested under Subsection (3)(b), a cease and desist order shall remain in effect.

(d) If a request for hearing is made, the division shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(4) (a) After a hearing requested under Subsection (3), if the board [~~agrees~~] and division concur that an act of the person violates this chapter, the board, with the concurrence of the division:

- (i) shall issue an order making the cease and desist order permanent; and
- (ii) may impose another disciplinary action under Section [~~61-2b-29~~] 61-2g-502.

(b) The director shall commence an action in the name of the Department of Commerce and Division of Real Estate, in the district court in the county in which an act described in Subsection (3) occurs or where the person resides or carries on business, to enjoin

HB0091S01 compared with HB0091

and restrain the person from violating this chapter if:

- (i) (A) a hearing is not requested under Subsection (3); and
- (B) the person fails to cease the act described in Subsection (3); or
- (ii) after discontinuing the act described in Subsection (3), the person again

commences the act.

(5) A remedy or action provided in this section does not limit, interfere with, or prevent the prosecution of another remedy or action, including a criminal proceeding.

Section ~~{106}~~72. Section **61-2g-502**, which is renumbered from Section 61-2b-29 is renumbered and amended to read:

~~[61-2b-29]~~. 61-2g-502. Disciplinary action -- Grounds.

(1) (a) The board may order disciplinary action, with the concurrence of the division, against a person:

- (i) registered, licensed, or certified under this chapter; or
- (ii) required to be registered, licensed, or certified under this chapter.

(b) On the basis of a ground listed in Subsection (2) for disciplinary action, board action may include:

(i) revoking, suspending, or placing a person's registration, license, or certification on probation;

(ii) denying a person's original registration, license, or certification;

(iii) denying a person's renewal license, certification, or registration;

(iv) in the case of denial or revocation of a registration, license, or certification, setting a waiting period for an applicant to apply for a registration, license, or certification under this chapter;

(v) ordering remedial education;

(vi) imposing a civil penalty upon a person not to exceed the greater of:

(A) \$5,000 for each violation; or

(B) the amount of any gain or economic benefit from a violation;

(vii) issuing a cease and desist order;

(viii) modifying an action described in Subsections (1)(b)(i) through (vii) if the board, with the concurrence of the division, finds that the person complies with court ordered restitution; or

HB0091S01 compared with HB0091

(ix) doing any combination of Subsections (1)(b)(i) through (viii).

(c) (i) If the board or division issues an order that orders a fine or educational requirements as part of the disciplinary action against a person, including a stipulation and order, the board or division shall state in the order the deadline by which the person shall comply with the fine or educational requirements.

(ii) If a person fails to comply with a stated deadline:

(A) the person's license, certificate, or registration is automatically suspended:

(I) beginning on the day specified in the order as the deadline for compliance; and

(II) ending the day on which the person complies in full with the order; and

(B) if the person fails to pay a fine required by an order, the division may begin a collection process:

(I) established by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(II) subject to Title 63A, Chapter 8, Office of State Debt Collection.

(2) The following are grounds for disciplinary action under this section:

(a) procuring or attempting to procure a registration, license, or certification under this chapter:

(i) by fraud; or

(ii) by making a false statement, submitting false information, or making a material misrepresentation in an application filed with the division;

(b) paying money or attempting to pay money other than a fee provided for by this chapter to a member or employee of the division to procure a registration, license, or certification under this chapter;

(c) an act or omission in the practice of real estate appraising that constitutes dishonesty, fraud, or misrepresentation;

(d) entry of a judgment against a registrant, licensee, or certificate holder on grounds of fraud, misrepresentation, or deceit in the making of an appraisal of real estate;

(e) a guilty plea to a criminal offense involving moral turpitude that is held in abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo contendere, of a criminal offense involving moral turpitude;

(f) engaging in the business of real estate appraising under an assumed or fictitious

HB0091S01 compared with HB0091

name not properly registered in this state;

(g) paying a finder's fee or a referral fee to a person not licensed or certified under this chapter in connection with an appraisal of real estate or real property in this state;

(h) making a false or misleading statement in:

(i) that portion of a written appraisal report that deals with professional qualifications;

or

(ii) testimony concerning professional qualifications;

(i) violating or disregarding:

(i) this chapter;

(ii) an order of:

(A) the board; or

(B) the division, in a case when the board delegates to the division the authority to make a decision on behalf of the board; or

(iii) a rule issued under this chapter;

(j) violating the confidential nature of governmental records to which a person registered, licensed, certified, or approved as an expert under this chapter gained access through employment or engagement as an appraiser by a governmental agency;

(k) accepting a contingent fee for performing an appraisal if in fact the fee is or was contingent upon:

(i) the appraiser reporting a predetermined analysis, opinion, or conclusion;

(ii) the analysis, opinion, conclusion, or valuation reached; or

(iii) the consequences resulting from the appraisal assignment;

(l) unprofessional conduct as defined by statute or rule;

(m) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

(i) providing a title insurance product or service without the approval required by Section 31A-2-405; or

(ii) knowingly providing false or misleading information in the statement required by Subsection 31A-2-405(2); or

(n) other conduct that constitutes dishonest dealing.

Section ~~{107}~~73. Section **61-2g-503**, which is renumbered from Section 61-2b-30.5 is renumbered and amended to read:

HB0091S01 compared with HB0091

~~[61-2b-30.5].~~ **61-2g-503. Reinstatement of license, certification, registration, and approval -- Expert witness -- Trainee.**

(1) An individual whose license, certification, registration, or approval is revoked under this chapter:

(a) may not apply for renewal or reinstatement of that license, certification, registration, or approval; and

(b) may apply for licensure, certification, registration, or approval as prescribed for an original license, certification, registration, or approval subject to the limitations in Subsection (2).

(2) An applicant for licensure, certification, registration, or approval as an expert witness under Subsection (1) [~~:(a) may not apply for licensure, certification, registration, or approval until at least five years after the date of revocation of the applicant's original license, certification, registration, or approval; and (b)~~] is not entitled to credit for experience gained [~~prior to~~] before the date of revocation in determining whether the applicant meets the experience requirement for licensure, certification, registration, or approval.

~~[(3) A person whose license or certification is revoked may not act as a trainee until at least four years after the day on which the person's license or certification is revoked.]~~

Section ~~{108}~~74. Section **61-2g-504**, which is renumbered from Section 61-2b-31 is renumbered and amended to read:

~~[61-2b-31].~~ **61-2g-504. Disciplinary hearing process.**

(1) The division and board shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in conducting any disciplinary proceedings under this chapter.

~~[(1)]~~ (2) Before disciplinary action may be taken [~~by the board~~] under this chapter, the division shall:

(a) notify the person against whom [~~the board seeks to take~~] disciplinary action is sought; and

(b) commence an adjudicative proceeding.

~~[(2)]~~ (3) If, after the hearing, the board determines, with the concurrence of the division, that a person described in Subsection ~~[(1)]~~ (2) violated this chapter, the board may impose disciplinary action, with the concurrence of the division, by written order as provided in Section ~~[61-2b-29]~~ 61-2g-502.

HB0091S01 compared with HB0091

~~[(3)]~~ (4) (a) The board may:

- (i) conduct hearings with the assistance of an administrative law judge; or
- (ii) delegate hearings to an administrative law judge.

(b) If a hearing is delegated by the board to an administrative law judge, the administrative law judge shall submit to the board and the director for ~~[its]~~ their consideration:

- (i) written findings of fact;
- (ii) written conclusions of law; and
- (iii) a recommended order.

~~[(4)]~~ (5) (a) An applicant, licensee, certificate holder, registrant, or person aggrieved, including the complainant, may obtain judicial review of an adverse ruling, order, or decision ~~[of the board]~~.

(b) If an applicant, licensee, certificate holder, or registrant prevails in an appeal and the court finds that the state action is undertaken without substantial justification, the court may award reasonable litigation expenses to the applicant, licensee, certificate holder, or registrant as provided under Title 78B, Chapter 8, Part 5, Small Business Equal Access to Justice Act.

Section ~~{109}~~75. Section **61-2g-505**, which is renumbered from Section 61-2b-33 is renumbered and amended to read:

~~[61-2b-33]~~. **61-2g-505. Penalty for violating this chapter -- Automatic revocation.**

(1) In addition to being subject to a disciplinary action ~~[by the board]~~, a person required to be licensed, certified, or registered under this chapter who violates this chapter:

- (a) is guilty of a class A misdemeanor, upon a conviction of a first violation of this chapter; and
- (b) is guilty of a third degree felony, upon conviction of a second or subsequent violation of this chapter.

(2) A license, certification, or registration issued by the division to a person convicted of a violation of Section 76-6-1203 is automatically revoked.

Section ~~{110}~~76. Section **63A-5-220** is amended to read:

63A-5-220. Definitions -- Creation of Account for People with Disabilities -- Use of restricted account.

(1) As used in this section:

HB0091S01 compared with HB0091

(a) "Developmental center" means the Utah State Developmental Center described in Section 62A-5-201.

(b) "DSPD" means the Division of Services for People with Disabilities within the Department of Human Services.

(c) "Long-term lease" means:

(i) a lease with a term of five years or more; or

(ii) a lease with a term of less than five years that may be unilaterally renewed by the lessee.

(2) Notwithstanding [~~the provisions of~~] Section 63A-5-215, any money received by the division or DSPD from the sale, lease, except any lease existing on May 1, 1995, or other disposition of real property associated with the developmental center shall be deposited in the restricted account created in Subsection (3).

(3) (a) There is created a restricted account within the General Fund known as the "Account for People with Disabilities."

(b) The Division of Finance shall deposit the following revenues into the restricted account:

(i) revenue from the sale, lease, except any lease existing on May 1, 1995, or other disposition of real property associated with the developmental center;

(ii) revenue from the sale, lease, or other disposition of water rights associated with the developmental center; and

(iii) revenue from voluntary contributions made to the restricted account.

(c) The state treasurer shall invest money in the fund according to the procedures and requirements of Title 51, Chapter 7, State Money Management Act, and [~~and~~] the interest shall remain with the restricted account.

(d) (i) Except as provided in Subsection (3)(d)(ii), [~~no~~] an expenditure or appropriation may not be made from the restricted account.

(ii) (A) The Legislature may appropriate interest earned on restricted account money invested pursuant to this Subsection (3)(d), leases from real property and improvements, leases from water, rents, and fees to DSPD for programs described in Title 62A, Chapter 5, Services [~~to~~] for People with Disabilities.

(B) Restricted account money appropriated each year under Subsection (3)(d)(ii)(A)

HB0091S01 compared with HB0091

may not be expended unless approved by the director of the Division of Services for People with Disabilities within the Department of Human Services in consultation with the executive director of the department.

(4) (a) Notwithstanding [~~the provisions of~~] Section 65A-4-1, any sale or disposition of real property or water rights associated with the developmental center shall be conducted as provided in this Subsection (4).

(b) The division shall secure the concurrence of DSPD and the approval of the governor before making the sale or other disposition of land or water rights.

(c) In addition to the concurrences required by Subsection (4)(b), the division shall secure the approval of the Legislature before offering the land or water rights for sale, exchange, or long-term lease.

(d) The division shall sell or otherwise dispose of the land or water rights as directed by the governor.

(e) The division may not sell, exchange, or enter into a long-term lease of the land or water rights for a price or estimated value below the average of two appraisals conducted by an appraiser who holds an appraiser's certificate or license issued by the Division of Real Estate under Title 61, Chapter [~~2b~~] 2g, Real Estate Appraiser Licensing and Certification Act.

Section ~~{111}~~77. Section **63A-5-401** is amended to read:

63A-5-401. Rulemaking for sale of real property -- Licensed or certified appraisers -- Exceptions.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if the division buys, sells, or exchanges real property, the division shall make rules to ensure that the value of the real property is congruent with the proposed price and other terms of the purchase, sale, or exchange.

(2) The rules:

(a) shall establish procedures for determining the value of the real property;

(b) may provide that an appraisal, as defined under Section [~~61-2b-2~~] 61-2g-102, demonstrates the real property's value; and

(c) may require that the appraisal be completed by a state-certified general appraiser, as defined under Section [~~61-2b-2~~] 61-2g-102.

(3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or

HB0091S01 compared with HB0091

to an interest in real property:

- (a) that is under a contract or other written agreement [~~prior to~~] before May 5, 2008; or
- (b) with a value of less than \$100,000, as estimated by the state agency.

Section ~~78~~⁷⁸. Section **70D-1-102** is amended to read:

70D-1-102. Definitions.

As used in this title:

- (1) "Commissioner" means the commissioner of the department.
- (2) "Department" means the Department of Financial Institutions.
- (3) "Depository institution" is as defined in Section 7-1-103.
- (4) "Dwelling" means a residential structure attached to real property that contains one

to four units including any of the following if used as a residence:

- (a) a condominium unit;
- (b) a cooperative unit;
- (c) a manufactured home; or
- (d) a house.
- (5) "Mortgage" means a mortgage or deed of trust affecting real property located in this

state.

- (6) (a) "Mortgage loan" means a loan:
 - (i) secured by a mortgage; and
 - (ii) made for personal, family, or household purposes.
- (b) "Mortgage loan" does not include a loan:
 - (i) made by an individual to a member of the individual's family; or
 - (ii) subject to Title 70C, Utah Consumer Credit Code.
- (7) "Mortgagor" means a person who:
 - (a) executes a mortgage; or
 - (b) is obligated to pay a mortgage loan.
- (8) "Record" means information that is:
 - (a) inscribed on a tangible medium; or
 - (b) stored in an electronic or other medium and is retrievable in perceivable form.
- (9) "Real estate brokerage activity" means an act that involves offering or providing

real estate brokerage services to the public, including:

HB0091S01 compared with HB0091

(a) acting as a real estate [~~agent or real estate broker~~] principal broker, associate broker, or sales agent, as defined in Section 61-2f-102, for a buyer, seller, lessor, or lessee of real property;

(b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) negotiating, on behalf of a party, a portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to the transaction;

(d) engaging in an act for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under applicable law; and

(e) offering to engage in an activity, or act in a capacity, described in Subsections (9)(a) through (d).

(10) "State" means:

(a) a state, territory, or possession of the United States;

(b) the District of Columbia; or

(c) the Commonwealth of Puerto Rico.

Section ~~{113}~~79. Section **72-5-117** is amended to read:

72-5-117. Rulemaking for sale of real property -- Licensed or certified appraisers -- Exceptions.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if the department buys, sells, or exchanges real property, the department shall make rules to ensure that the value of the real property is congruent with the proposed price and other terms of the purchase, sale, or exchange.

(2) The rules:

(a) shall establish procedures for determining the value of the real property;

(b) may provide that an appraisal, as defined under Section [~~61-2b-2~~] 61-2g-102, demonstrates the real property's value; and

(c) may require that the appraisal be completed by a state-certified general appraiser, as defined under Section [~~61-2b-2~~] 61-2g-102.

(3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or to an interest in real property:

HB0091S01 compared with HB0091

- (a) that is under a contract or other written agreement [~~prior to~~] before May 5, 2008; or
- (b) with a value of less than \$100,000, as estimated by the state agency.

Section ~~{114}~~ 80. Section ~~{78B-6-1101}~~ 79-2-403 is amended to read:

~~{~~ **78B-6-1101. Definitions -- Nuisance -- Right of action.**

- ~~_____~~ (1) A nuisance is anything which is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. A nuisance may be the subject of an action:
- ~~_____~~ (2) A nuisance may include the following:
 - ~~_____~~ (a) drug houses and drug dealing as provided in Section 78B-6-1107;
 - ~~_____~~ (b) gambling as provided in Title 76, Chapter 10, Part 11, Gambling;
 - ~~_____~~ (c) criminal activity committed in concert with two or more persons as provided in Section 76-3-203.1;
 - ~~_____~~ (d) criminal activity committed for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802;
 - ~~_____~~ (e) criminal activity committed to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802;
 - ~~_____~~ (f) party houses which frequently create conditions defined in Subsection (1); and
 - ~~_____~~ (g) prostitution as provided in Title 76, Chapter 10, Part 13, Prostitution.
- ~~_____~~ (3) A nuisance under this part includes tobacco smoke that drifts into any residential unit a person rents, leases, or owns, from another residential or commercial unit and the smoke:
 - ~~_____~~ (a) drifts in more than once in each of two or more consecutive seven-day periods; and
 - ~~_____~~ (b) creates any of the conditions under Subsection (1).
- ~~_____~~ (4) Subsection (3) does not apply to:
 - ~~_____~~ (a) residential rental units available for temporary rental, such as for vacations, or available for only 30 or fewer days at a time; or
 - ~~_____~~ (b) hotel or motel rooms.
- ~~_____~~ (5) Subsection (3) does not apply to any unit that is part of a timeshare development, as defined in Section ~~[57-19-2]~~ 57-19a-102, or subject to a timeshare interest as defined in Section ~~[57-19-2]~~ 57-19a-102.
- ~~_____~~ (6) An action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance.

HB0091S01 compared with HB0091

~~(7) "Agricultural operation" means any activity engaged in the commercial production of crops, orchards, aquaculture, livestock, poultry, livestock products, poultry products, and the facilities, equipment, and property used to facilitate the activity.~~

~~(8) "Manufacturing facility" means any factory, plant, or other facility including its appurtenances, where the form of raw materials, processed materials, commodities, or other physical objects is converted or otherwise changed into other materials, commodities, or physical objects or where such materials, commodities, or physical objects are combined to form a new material, commodity, or physical object.~~

~~Section 115. Section 79-2-403 is amended to read:~~

~~†~~ **79-2-403. Rulemaking for sale of real property -- Licensed or certified appraisers -- Exceptions.**

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if the department buys, sells, or exchanges real property, the department shall make rules to ensure that the value of the real property is congruent with the proposed price and other terms of the purchase, sale, or exchange.

(2) The rules:

(a) shall establish procedures for determining the value of the real property;

(b) may provide that an appraisal, as defined under Section ~~[61-2b-2]~~ 61-2g-102, demonstrates the real property's value; and

(c) may require that the appraisal be completed by a state-certified general appraiser, as defined under Section ~~[61-2b-2]~~ 61-2g-102.

(3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or to an interest in real property:

(a) that is under a contract or other written agreement ~~[prior to]~~ before May 5, 2008; or

(b) with a value of less than \$100,000, as estimated by the state agency.

Section ~~{116}~~ 81. **Repealer.**

This bill repeals:

Section **57-11-19, Extradition proceedings against person charged with crime.**

~~{~~ ~~Section 57-19-7, Prior permits.~~

~~Section 57-19-19, Subpoenas -- Evidence.~~

~~Section 57-19-20, Injunctive relief -- Cease and desist order.~~

HB0091S01 compared with HB0091

- † Section **61-2b-5, Chapter administration.**
- Section **61-2b-9, Licensure or certification required -- Application.**
- Section **61-2b-30, Compliance with Administrative Procedures Act.**
- Section **61-2b-39, Registration, licensure, or certification history.**

†

Legislative Review Note

_____ as of ~~1-26-11 3:50 PM~~

_____ ~~Office of Legislative Research and General Counsel~~}