

## HB0290S02 compared with HB0290S01

~~{deleted text}~~ shows text that was in HB0290S01 but was deleted in HB0290S02.

inserted text shows text that was not in HB0290S01 but was inserted into HB0290S02.

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~~{Representative Gage Froerer}~~Senator J. Stuart Adams proposes the following substitute bill:

### DIVISION OF REAL ESTATE AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gage Froerer**

Senate Sponsor: ~~{~~J. Stuart Adams

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#### LONG TITLE

##### General Description:

This bill modifies provisions relating to real estate.

##### Highlighted Provisions:

This bill:

- ▶ modifies the entity with which a subdivider files an effective statement of record, in accordance with federal law;
- ▶ modifies a provision regarding addresses provided to the Division of Real Estate;
- ▶ modifies a provision relating to criminal background checks of applicants for a license to transact the business of residential mortgage loans;
- ▶ modifies lending manager licensing provisions;
- ▶ increases the period of reinstatement of an expired registration;

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- ▶ exempts from the licensing requirements described in Title 61, Chapter 2f, Real Estate Licensing and Practices Act an individual who engages in isolated real estate services, if the individual holds a duly executed power of attorney from a property owner;
- ▶ modifies a provision relating to the determination of a license examination fee;~~†~~  
and†
- ▶ authorizes the Division of Real Estate to terminate the registration of an entity if the entity's registration with the Division of Corporations and Commercial Code has been expired for a specified period and the entity's license has been inactive for a specified period~~†~~.

~~†~~; and

- ▶ permits an entity that is affiliated with a principal broker to maintain an action for the recovery of a commission or fee, or for compensation for any act done or service rendered that is prohibited by the Real Estate Licensing and Practices Act.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

~~{ — None }~~ The amendments in this bill to Section 61-2f-409 have retrospective operation to May 11, 2010.

### Utah Code Sections Affected:

AMENDS:

**57-11-4**, as last amended by Laws of Utah 2009, Chapter 352

**61-2c-106**, as last amended by Laws of Utah 2012, Chapter 166

**61-2c-202**, as last amended by Laws of Utah 2011, Chapter 289

**61-2c-206**, as last amended by Laws of Utah 2012, Chapter 166

**61-2e-204**, as last amended by Laws of Utah 2012, Chapter 166

**61-2f-202**, as last amended by Laws of Utah 2011, Chapters 289 and 398

**61-2f-204**, as last amended by Laws of Utah 2011, Chapter 289

**61-2f-206**, as last amended by Laws of Utah 2011, Chapter 289

**61-2f-409**, as renumbered and amended by Laws of Utah 2010, Chapter 379

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

Section 1. 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 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);

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(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 or a timeshare development as defined in Section 57-19-2.

(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.

(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

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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~~] Consumer Financial Protection Bureau; 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.

(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 2. Section **61-2c-106** is amended to read:

### **61-2c-106. Addresses provided the division.**

(1) (a) A person shall provide a physical location or street address when the person provides the nationwide database an address required by the division.

(b) The following when provided to and maintained within the division under this chapter is public information:

(i) a business address; or

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(ii) a mailing address other than a home address, unless the person provides no other address.

(2) A licensee is considered to have received a notification that is mailed to the last mailing address furnished to the nationwide database by:

(a) the individual, if the licensee is an individual; or

(b) the lending manager who is designated within the nationwide database to act as the principal lending manager for the entity, if the licensee is an entity.

Section 3. 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 sponsored;

(ii) authorize [a] periodic criminal background [~~check~~] checks through the nationwide database, at times provided by rule that the division makes in accordance with Title 63G,

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Chapter 3, Utah Administrative Rulemaking Act, 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

(vi) authorize the division to obtain independent credit reports:

(A) through a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. Sec. 1681a; and

(B) at times provided by rule that the division makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; 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

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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

(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 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 4. Section **61-2c-206** is amended to read:

### **61-2c-206. Lending manager licenses.**

(1) To qualify for licensure as a lending manager under this chapter, an individual shall:

(a) meet the standards in Section 61-2c-203;

(b) successfully complete the following education:

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(i) mortgage loan originator prelicensing education as required by federal licensing regulations; and

(ii) 40 hours of Utah-specific prelicensing education for a lending manager that is approved by the division under Section 61-2c-204.1;

(c) successfully complete the following examinations:

(i) the mortgage loan originator licensing examination as approved by the nationwide database; and

(ii) the lending manager licensing examination approved by the commission under Section 61-2c-204.1;

(d) submit proof, on a form approved by the division, of three years of full-time active experience as a mortgage loan originator licensed in any state in the five years preceding the day on which the application is submitted, or equivalent experience as approved by the commission pursuant to rule that the division makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(e) submit an application in a manner established by the division by rule;

(f) establish sponsorship with an entity licensed under this chapter;

(g) [~~if the individual is not registered in the nationwide database as a mortgage loan originator at the time of application;~~] submit to the criminal background check required by Subsection 61-2c-202(1)(b); and

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

(2) A lending manager may not:

(a) engage in the business of residential mortgage loans on behalf of more than one entity at the same time;

(b) be sponsored by more than one entity at the same time; or

(c) act simultaneously as the principal lending manager and branch lending manager for the individual's sponsoring entity, if the entity operates from more than one office [~~located within the state~~].

(3) An individual who is a lending manager may:

(a) transact the business of residential mortgage loans as a mortgage loan originator;  
and

(b) be designated within the nationwide database to act for the individual's sponsoring

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entity as the principal lending manager, an associate lending manager, or a branch lending manager.

Section 5. 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;

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

(c) file with the division a certificate evidencing that the appraisal management company has secured and will maintain a surety bond with one or more corporate sureties authorized to do business in the state in the amount of at least \$25,000, as the division provides by rule.

(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(2)(e) or (g), the entity is required to report whether the individual has had:

(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

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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~~] one year 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 6. 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(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(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

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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; or

(B) Title 57, Chapter 19, 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~~ ~~transactions~~ or ~~services~~ service by an individual holding a duly executed power of attorney from ~~an~~ a property owner;

(b) services rendered by an attorney admitted to practice law in this state 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(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

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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:
    - (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.

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Section 7. 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, the applicant shall pay a nonrefundable fee [~~as determined by the commission with the concurrence of the division under~~] established in accordance with 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:

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(A) the real estate industry; or

(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.

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(viii) If a license is revoked or a revocation under this Subsection (1)(e) is upheld after 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

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

(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:

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

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

(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 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 8. 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.

(c) The division may terminate an entity's registration if:

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(i) the entity's registration with the Division of Corporations and Commercial Code has been expired for at least three years; and

(ii) the entity's license with the division has been inactive for at least three years.

(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 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.

## **HB0290S02 compared with HB0290S01**

Section 9. Section 61-2f-409 is amended to read:

### **61-2f-409. Actions for recovery of compensation restricted.**

(1) A person may not bring or maintain an action in any court of this state for the recovery of a commission[-] or fee, or for compensation for any act done or service rendered [which] that is prohibited under this chapter [to other than principal brokers, unless the person was licensed as a principal broker at the time of the doing of the act or rendering the service.], except, if the cause of action accrues on or after May 11, 2010 and the person bringing the action is:

(a) a principal broker;

(b) an individual that was licensed as a principal broker at the time the act or service that is the subject of the lawsuit was performed; or

(c) an entity that, under the records of the Division of Real Estate, is affiliated with a principal broker.

(2) (a) A sales agent or associate broker may not sue in that individual's own name for the recovery of a fee, commission, or compensation for services as a sales agent or associate broker unless the action is against the principal broker with whom the sales agent or associate broker is or was affiliated.

(b) An action for the recovery of a fee, commission, or other compensation may only be instituted and brought by the principal broker with whom a sales agent or associate broker is affiliated.

### **Section 10. Retrospective operation.**

The amendments in this bill to Section 61-2f-409 have retrospective operation to May 11, 2010.