

**REAL ESTATE AMENDMENTS**

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gage Froerer**

Senate Sponsor: Curtis S. Bramble

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**LONG TITLE**

**General Description:**

This bill amends provisions relating to real estate.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ amends provisions relating to:
  - property tax equalization;
  - powers of the Division of Real Estate;
  - licensing and practices of a real estate professional, including a principal broker, an associate broker, and a sales agent;
  - registration and practices of a real estate entity;
  - licensing and practices of a residential mortgage professional and entities;
  - licensing and certification of a real estate appraiser; and
  - registration and regulation of an appraisal management company;
- ▶ amends provisions relating to who and under what circumstances a person may, in a property tax appeal, provide an opinion of value, present evidence, or provide tax information;
- ▶ adds enforcement provisions, including citation authority, penalties, and procedures;
- ▶ modifies provisions regarding a prohibition of a mortgage loan professional from accepting anything of value in exchange for a referral of mortgage loan business;



- 28           ▶ prohibits signing or initialing a document on behalf of another person, except in
- 29 circumstances established by rule;
- 30           ▶ modifies provisions regarding a subpoena;
- 31           ▶ modifies provisions regarding a former licensee's liability for acts committed while
- 32 previously licensed;
- 33           ▶ modifies provisions regarding the license of a licensee for whom payment is made
- 34 from the Residential Mortgage Loan Education, Research, and Recovery Fund;
- 35           ▶ modifies provisions regarding customary and reasonable compensation for an
- 36 appraisal;
- 37           ▶ modifies the list of prohibited acts of an appraisal management company;
- 38           ▶ modifies provisions regarding grounds for disciplinary action;
- 39           ▶ modifies provisions regarding under what circumstances a person may accept a
- 40 fixed fee or a contingent fee for services related to establishing the value of
- 41 property; and
- 42           ▶ amends a prescribed notice form, regarding the return of a residential tenant's rental
- 43 deposit, such that the notice form conforms with the requirements for notice for
- 44 return of a tenant's rental deposit.

**45 Money Appropriated in this Bill:**

46           None

**47 Other Special Clauses:**

48           None

**49 Utah Code Sections Affected:**

50 AMENDS:

- 51           **57-17-3**, as last amended by Laws of Utah 2015, Chapter 258
- 52           **59-2-1017**, as last amended by Laws of Utah 2015, Chapter 258
- 53           **61-2-203**, as renumbered and amended by Laws of Utah 2010, Chapter 379
- 54           **61-2c-102**, as last amended by Laws of Utah 2015, Chapter 262
- 55           **61-2c-301**, as last amended by Laws of Utah 2015, Chapters 262 and 290
- 56           **61-2c-401**, as last amended by Laws of Utah 2010, Chapters 379 and 391
- 57           **61-2c-402**, as last amended by Laws of Utah 2012, Chapter 369
- 58           **61-2c-507**, as last amended by Laws of Utah 2011, Chapter 289

59           **61-2e-204**, as last amended by Laws of Utah 2015, Chapter 262  
60           **61-2e-301**, as last amended by Laws of Utah 2011, Chapter 289  
61           **61-2e-304**, as enacted by Laws of Utah 2009, Chapter 269  
62           **61-2e-306**, as enacted by Laws of Utah 2009, Chapter 269  
63           **61-2e-307**, as last amended by Laws of Utah 2012, Chapter 166  
64           **61-2e-401**, as last amended by Laws of Utah 2012, Chapter 166  
65           **61-2f-102**, as last amended by Laws of Utah 2012, Chapter 166  
66           **61-2f-202**, as last amended by Laws of Utah 2015, Chapter 262  
67           **61-2f-307**, as renumbered and amended by Laws of Utah 2010, Chapter 379  
68           **61-2f-401**, as last amended by Laws of Utah 2015, Chapter 262  
69           **61-2f-402**, as last amended by Laws of Utah 2014, Chapter 350  
70           **61-2f-404**, as last amended by Laws of Utah 2012, Chapter 369  
71           **61-2g-301**, as last amended by Laws of Utah 2013, Chapter 180  
72           **61-2g-406**, as last amended by Laws of Utah 2013, Chapter 180  
73           **61-2g-501**, as last amended by Laws of Utah 2014, Chapter 350  
74           **61-2g-502**, as last amended by Laws of Utah 2012, Chapters 166 and 369

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

77           Section 1. Section **57-17-3** is amended to read:

78           **57-17-3. Deductions from deposit -- Written itemization -- Time for return.**

79           (1) Upon termination of a tenancy, the owner or the owner's agent may apply property  
80    or money held as a deposit toward the payment of rent, damages to the premises beyond  
81    reasonable wear and tear, other costs and fees provided for in the contract, or cleaning of the  
82    unit.

83           (2) No later than 30 days after the day on which a renter vacates and returns possession  
84    of a rental property to the owner or the owner's agent, the owner or the owner's agent shall  
85    deliver to the renter at the renter's last known address:

86           (a) the balance of any deposit;

87           (b) the balance of any prepaid rent; and

88           (c) if the owner or the owner's agent made any deductions from the deposit or prepaid  
89    rent, a written notice that itemizes and explains the reason for each deduction.

90 (3) If an owner or the owner's agent fails to comply with the requirements described in  
91 Subsection (2), the renter may serve the owner or the owner's agent, in accordance with  
92 Subsection (4), a notice that:

93 (a) states:

94 (i) the names of the parties to the rental agreement;

95 (ii) the day on which the renter vacated the rental property;

96 (iii) that the owner or the owner's agent has failed to comply with the requirements  
97 described in Subsection (2); and

98 (iv) the address where the owner or the owner's agent may send the items described in  
99 Subsection (2); and

100 (b) is substantially in the following form:

101 TENANT'S NOTICE TO PROVIDE DEPOSIT DISPOSITION

102 TO: (insert owner or owner's agent's name)

103 RE: (insert address of rental property)

104 NOTICE IS HEREBY GIVEN THAT WITHIN FIVE (5) CALENDAR DAYS

105 pursuant to Utah Code Sections 57-17-3 et seq., the owner or the owner's agent must provide  
106 the tenant, at the address below, a refund of the balance of any security deposit, the balance of  
107 any prepaid rent, and a notice of any deductions from the security deposit or prepaid rent as  
108 allowed by law.

109 NOTICE IS FURTHER GIVEN that the tenant vacated the property on the \_\_\_\_\_ day  
110 of \_\_\_\_\_, 20\_\_\_\_\_.

111 NOTICE IS FURTHER GIVEN that failure to comply with this notice will require the  
112 owner to refund the entire security deposit, the full amount of any prepaid rent, and a penalty of  
113 \$100. If the entire security deposit, the full amount of any prepaid rent, and the penalty of \$100  
114 is not tendered to the tenant, and the tenant is required to initiate litigation to enforce the  
115 provisions of the statute, the owner may be liable for the tenant's court costs and attorney fees.

116 Tenant's Name(s): \_\_\_\_\_

117 Mailing Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

118 This is a legal document. Please read and comply with the document's terms.

119 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

120 Return of Service

121 On this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, I swear and attest that I served this notice  
122 in compliance with Utah Code Section 57-17-3 by:

123 \_\_\_\_ Delivering a copy to the owner or the owner's agent personally at the address  
124 provided in the lease agreement;

125 \_\_\_\_ Leaving a copy with a person of suitable age and discretion at the address  
126 provided in the lease agreement because the owner or the owner's agent was absent from the  
127 address provided in the lease agreement;

128 \_\_\_\_ Affixing a copy in a conspicuous place at the address provided in the lease  
129 agreement because a person of suitable age or discretion could not be found at the address  
130 provided in the lease agreement; or

131 \_\_\_\_ Sending a copy through registered or certified mail to the owner or the owner's  
132 agent at the address provided in the lease agreement.

133 The owner's address to which the service was effected is:

134 Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

135 \_\_\_\_\_ (server's signature)

136 Self-Authentication Declaration

137 Pursuant to Utah Code Section 78B-5-705, I declare under criminal penalty of the State of Utah  
138 that the foregoing is true and correct.

139 Executed this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

140 \_\_\_\_\_ (server's signature)

141 (4) A notice described in Subsection (3) shall be served:

142 (a) (i) by delivering a copy to the owner or the owner's agent personally at the address  
143 provided in the lease agreement;

144 (ii) if the owner or the owner's agent is absent from the address provided in the lease  
145 agreement, by leaving a copy with a person of suitable age and discretion at the address  
146 provided in the lease agreement; or

147 (iii) if a person of suitable age or discretion cannot be found at the address provided in  
148 the lease agreement, by affixing a copy in a conspicuous place at the address provided in the  
149 lease agreement; or

150 (b) by sending a copy through registered or certified mail to the owner or the owner's  
151 agent at the address provided in the lease agreement.

152 (5) Within five business days after the day on which the notice described in Subsection  
153 (3) is served, the owner or the owner's agent shall comply with the requirements described in  
154 Subsection (2).

155 Section 2. Section **59-2-1017** is amended to read:

156 **59-2-1017. Property tax appeal assistance.**

157 (1) As used in this section:

158 (a) "Certified appraiser" means an appraiser certified in accordance with:

159 (i) Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act; or

160 (ii) the law of a jurisdiction in the United States.

161 [~~(a)~~] (b) "Licensed appraiser" means an appraiser licensed in accordance with:

162 (i) Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act[-]; or

163 (ii) the law of a jurisdiction in the United States.

164 [~~(b)~~] (c) "Opinion of value" means an estimate of fair market value that:

165 (i) is made by a licensed appraiser or a certified appraiser; and

166 (ii) except as provided in Subsections (5) and (6), complies with the Uniform

167 Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board as

168 described in 12 U.S.C. Sec. 3339.

169 [~~(c)~~] (d) "Present evidence" means to present information:

170 (i) to a county board of equalization or the commission; and

171 (ii) related to a property tax appeal made in accordance with this part.

172 [~~(d)~~] (e) "Price estimate" means an estimate:

173 (i) of the price that property would sell for; and

174 (ii) that is not an opinion of value.

175 [~~(e)~~] (f) "Provide property tax information" means to provide information related to a

176 property tax appeal made in accordance with this part to another person.

177 (2) Subject to the other provisions of this section, a person may:

178 (a) present evidence in a property tax appeal on behalf of another person after

179 obtaining permission from that other person; or

180 (b) provide property tax information to another person.

181 (3) For purposes of Subsection (2):

182 (a) only [a person who is] a licensed appraiser or a certified appraiser may present or

183 provide an opinion of value; and

184 (b) [~~only a person who is not~~] a licensed appraiser or a certified appraiser may not  
185 present or provide a price estimate.

186 (4) A licensed appraiser or a certified appraiser may, in accordance with Subsection  
187 (2), provide services regarding a property tax appeal as follows:

188 (a) present or provide an opinion of value; or

189 (b) provide consultation services, including presenting evidence or providing property  
190 tax information.

191 [~~(4)~~] (5) (a) A licensed appraiser or a certified appraiser who presents or provides an  
192 opinion of value in accordance with Subsection (2) shall comply with all applicable laws and  
193 regulations, including Sections [61-2g-304](#), [61-2g-403](#), [61-2g-406](#), and [61-2g-407](#).

194 (b) A licensed appraiser or a certified appraiser who does not present or provide an  
195 opinion of value but who provides consultation services by presenting evidence or [~~provides~~]  
196 providing property tax information in accordance with Subsection (2) [~~is subject to~~] shall  
197 comply with all applicable laws and regulations, including Sections [61-2g-304](#), [61-2g-403](#),  
198 [61-2g-406](#), and [61-2g-407](#), except that the licensed appraiser or the certified appraiser may  
199 advocate for the client in a property tax appeal.

200 [~~(b)~~] (c) A person who is not a licensed appraiser[;] and not a certified appraiser who  
201 presents evidence or provides property tax information in accordance with Subsection (2):

202 (i) is subject to Section [61-2g-407](#); and

203 (ii) if the person charges a contingent fee, is subject to Section [61-2g-406](#).

204 (6) A licensed appraiser or a certified appraiser may provide an opinion of value,  
205 present evidence, or provide tax information in a property tax appeal of the personal residence  
206 of the licensed appraiser or certified appraiser despite any personal bias.

207 [~~(5)~~] (7) A county board of equalization or the commission may evaluate the reliability  
208 or accuracy of evidence presented or property tax information provided in accordance with  
209 [~~Subsection (2)~~] this section.

210 Section 3. Section **61-2-203** is amended to read:

211 **61-2-203. Adjudicative proceedings -- Citation authority.**

212 (1) The division shall comply with Title 63G, Chapter 4, Administrative Procedures  
213 Act, in an adjudicative proceeding under a chapter the division administers.

- 214 (2) The division may initiate an adjudicative proceeding through:  
215 (a) a citation, pursuant to Subsection (3);  
216 (b) a notice of agency action; or  
217 (c) a notice of formal or informal proceeding.  
218 (3) In addition to any other statutory penalty for a violation related to an occupation or  
219 profession regulated under this title, the division may issue a citation to a person who, upon  
220 inspection or investigation, the division concludes to have violated:  
221 (a) Subsection [61-2c-201](#)(1), which requires licensure;  
222 (b) Subsection [61-2c-201](#)(4), which requires entity licensure;  
223 (c) Subsection [61-2c-205](#)(3), which requires notification of a change in specified  
224 information regarding a licensee;  
225 (d) Subsection [61-2c-205](#)(4), which requires notification of specified legal actions;  
226 (e) Subsection [61-2c-301](#)(1)(g), which prohibits failing to respond to the division  
227 within the required time period;  
228 (f) Subsection [61-2c-301](#)(1)(h), which prohibits making a false representation to the  
229 division;  
230 (g) Subsection [61-2c-301](#)(1)(i), which prohibits taking a dual role in a transaction;  
231 (h) Subsection [61-2c-301](#)(1)(l), which prohibits engaging in false or misleading  
232 advertising;  
233 (i) Subsection [61-2c-301](#)(1)(t), which prohibits advertising the ability to do licensed  
234 work if unlicensed;  
235 (j) Subsection [61-2e-201](#)(1), which requires registration;  
236 (k) Subsection [61-2e-203](#)(4), which requires a notification of a change in ownership;  
237 (l) Subsection [61-2e-307](#)(1)(c), which prohibits use of an unregistered fictitious name;  
238 (m) Subsection [61-2e-401](#)(1)(b), which prohibits failure to respond to a request by the  
239 division;  
240 (n) Subsection [61-2f-201](#)(1), which requires licensure;  
241 (o) Subsection [61-2f-206](#)(1), which requires entity registration;  
242 (p) Subsection [61-2f-301](#)(1), which requires notification of a specified legal action;  
243 (q) Subsection [61-2f-401](#)(1)(a), which prohibits making a substantial  
244 misrepresentation;



245 (r) Subsection 61-2f-401(3), which prohibits undertaking real estate while not affiliated  
246 with a principal broker;

247 (s) Subsection 61-2f-401(9), which prohibits failing to keep specified records for  
248 inspection by the division;

249 (t) Subsection 61-2f-401(13), which prohibits false, misleading, or deceptive  
250 advertising;

251 (u) Subsection 61-2f-401(20), which prohibits failing to respond to a division request;

252 (v) Subsection 61-2g-301(1), which requires licensure;

253 (w) Subsection 61-2g-405(3), which requires making records required to be maintained  
254 available to the division;

255 (x) Subsection 61-2g-502(2)(f), which prohibits using a nonregistered fictitious name;

256 (y) a rule made pursuant to any Subsection listed in this Subsection (3);

257 (z) an order of the division; or

258 (aa) an order of the commission or board that oversees the person's profession.

259 (4) (a) In accordance with Subsection (9), the division may assess a fine against a  
260 person for a violation of a provision listed in Subsection (3), as evidenced by:

261 (i) an uncontested citation;

262 (ii) a stipulated settlement; or

263 (iii) a finding of a violation in an adjudicative proceeding.

264 (b) The division may, in addition to or in lieu of a fine under Subsection (4)(a), order  
265 the person to cease and desist from an activity that violates a provision listed in Subsection (3).

266 (5) Except as provided in Subsection (7)(d), the division may not use a citation to  
267 effect a license:

268 (a) denial;

269 (b) probation;

270 (c) suspension; or

271 (d) revocation.

272 (6) (a) A citation issued by the division shall:

273 (i) be in writing;

274 (ii) describe with particularity the nature of the violation, including a reference to the  
275 provision of the statute, rule, or order alleged to have been violated;

276 (iii) clearly state that the recipient must notify the division in writing within 20  
277 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing  
278 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

279 (iv) clearly explain the consequences of failure to timely contest the citation or to make  
280 payment of a fine assessed by the citation within the time period specified in the citation.

281 (b) The division may issue a notice in lieu of a citation.

282 (7) (a) A citation becomes final:

283 (i) if within 20 calendar days from the service of the citation, the person to whom the  
284 citation was issued fails to request a hearing to contest the citation; or

285 (ii) if the director or the director's designee conducts a hearing pursuant to a timely  
286 request for a hearing and issues an order finding that a violation has occurred.

287 (b) The 20-day period to contest a citation may be extended by the division for cause.

288 (c) A citation that becomes the final order of the division due to a person's failure to  
289 timely request a hearing is not subject to further agency review.

290 (d) (i) The division may refuse to issue, refuse to renew, suspend, revoke, or place on  
291 probation the license of a licensee who fails to comply with a citation after the citation  
292 becomes final.

293 (ii) The failure of a license applicant to comply with a citation after the citation  
294 becomes final is a ground for denial of the license application.

295 (8) (a) The division may not issue a citation under this section after the expiration of  
296 six months following the occurrence of a violation.

297 (b) The division may issue a notice to address a violation that is outside of the  
298 six-month citation period.

299 (9) The director or the director's designee shall assess a fine with a citation in an  
300 amount that is no more than:

301 (a) for a first offense, \$1,000;

302 (b) for a second offense, \$2,000; and

303 (c) for each offense subsequent to a second offense, \$2,000 for each day of continued  
304 offense.

305 (10) (a) An action for a first or second offense for which the division has not issued  
306 final order does not preclude the division from initiating a subsequent action for a second or

307 subsequent offense while the preceding action is pending.

308 (b) The final order on a subsequent action is considered a second or subsequent  
309 offense, respectively, provided the preceding action resulted in a first or second offense,  
310 respectively.

311 (11) (a) If a person does not pay a penalty, the director may collect the unpaid penalty  
312 by:

313 (i) referring the matter to a collection agency; or

314 (ii) bringing an action in the district court of the county:

315 (A) where the person resides; or

316 (B) where the office of the director is located.

317 (b) A county attorney or the attorney general of the state shall provide legal services to  
318 the director in an action to collect the penalty.

319 (c) A court may award reasonable attorney fees and costs to the division in an action  
320 brought by the division to enforce the provisions of this section.

321 Section 4. Section **61-2c-102** is amended to read:

322 **61-2c-102. Definitions.**

323 (1) As used in this chapter:

324 (a) "Affiliation" means that a mortgage loan originator is associated with a principal  
325 lending manager in accordance with Section [61-2c-209](#).

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

327 (c) "Approved examination provider" means a person approved by the nationwide  
328 database or by the division as an approved test provider.

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

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

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

333 (e) "Branch lending manager" means an individual who is:

334 (i) licensed as a lending manager; and

335 (ii) designated in the nationwide database by the individual's sponsoring entity as being  
336 responsible to work from a branch office and to supervise the business of residential mortgage  
337 loans that is conducted at the branch office.

- 338 (f) "Branch office" means a licensed entity's office:
- 339 (i) for the transaction of the business of residential mortgage loans regulated under this
- 340 chapter;
- 341 (ii) other than the main office of the licensed entity; and
- 342 (iii) that operates under:
- 343 (A) the same business name as the licensed entity; or
- 344 (B) another trade name that is registered with the division under the entity license.
- 345 (g) "Business day" means a day other than:
- 346 (i) a Saturday;
- 347 (ii) a Sunday; or
- 348 (iii) a federal or state holiday.
- 349 (h) (i) "Business of residential mortgage loans" means for compensation or in the
- 350 expectation of compensation to:
- 351 (A) engage in an act that makes an individual a mortgage loan originator;
- 352 (B) make or originate a residential mortgage loan;
- 353 (C) directly or indirectly solicit a residential mortgage loan for another;
- 354 (D) unless excluded under Subsection (1)(h)(ii), render services related to the
- 355 origination of a residential mortgage loan including:
- 356 (I) preparing a loan package;
- 357 (II) communicating with the borrower or lender;
- 358 (III) advising on a loan term;
- 359 (IV) acting as a loan processor or loan underwriter without being employed by a
- 360 licensed entity; or
- 361 (V) except as provided in Subsection (1)(h)(ii)(B) or (C), acting as a loan underwriter;
- 362 or
- 363 (E) engage in loan modification assistance.
- 364 (ii) "Business of residential mortgage loans" does not include:
- 365 (A) if working as an employee under the direction of and subject to the supervision and
- 366 instruction of a person licensed under this chapter, the performance of a clerical or support
- 367 duty, including:
- 368 (I) the receipt, collection, or distribution of information common for the processing or

369 underwriting of a loan in the mortgage industry other than taking an application;  
370 (II) communicating with a consumer to obtain information necessary for the processing  
371 or underwriting of a residential mortgage loan;  
372 (III) word processing;  
373 (IV) sending correspondence;  
374 (V) assembling files; or  
375 (VI) acting as a loan processor or loan underwriter;  
376 (B) acting as a loan underwriter under the direction and control of an employer  
377 licensed under this chapter;  
378 (C) acting as a loan underwriter, as an employee of a depository institution, exclusively  
379 in the capacity of the depository institution's employee;  
380 (D) ownership of an entity that engages in the business of residential mortgage loans if  
381 the owner does not personally perform the acts listed in Subsection (1)(h)(i);  
382 (E) except if an individual will engage in an activity as a mortgage loan originator,  
383 acting in one or more of the following capacities:  
384 (I) a loan wholesaler;  
385 (II) an account executive for a loan wholesaler;  
386 (III) a loan underwriter;  
387 (IV) a loan closer; or  
388 (V) funding a loan; or  
389 (F) if employed by a person who owns or services an existing residential mortgage  
390 loan, the direct negotiation with the borrower for the purpose of loan modification.  
391 (i) "Certified education provider" means a person who is certified under Section  
392 [61-2c-204.1](#) to provide one or more of the following:  
393 (i) Utah-specific prelicensing education; or  
394 (ii) Utah-specific continuing education.  
395 (j) "Closed-end" means a loan:  
396 (i) with a fixed amount borrowed; and  
397 (ii) that does not permit additional borrowing secured by the same collateral.  
398 (k) "Commission" means the Residential Mortgage Regulatory Commission created in  
399 Section [61-2c-104](#).

400 (l) "Community development financial institution" means the same as that term is  
401 defined in 12 U.S.C. Sec. 4702.

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

404 (i) services;

405 (ii) personal or real property; or

406 (iii) another thing of value.

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

409 (o) "Continuing education" means education taken by an individual licensed under this  
410 chapter in order to meet the education requirements imposed by Sections [61-2c-204.1](#) and  
411 [61-2c-205](#) to renew a license under this chapter.

412 (p) "Control," as used in Subsection [61-2c-105\(2\)\(f\)](#), means the power to directly or  
413 indirectly:

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

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

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

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

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

420 (q) (i) "Control person" means an individual identified by an entity registered with the  
421 nationwide database as being an individual directing the management or policies of the entity.

422 (ii) "Control person" may include one of the following who is identified as provided in  
423 Subsection (1)(q)(i):

424 (A) a manager;

425 (B) a managing partner;

426 (C) a director;

427 (D) an executive officer; or

428 (E) an individual who performs a function similar to an individual listed in this  
429 Subsection (1)(q)(ii).

430 (r) "Depository institution" means the same as that term is defined in Section [7-1-103](#).

- 431 (s) "Director" means the director of the division.
- 432 (t) "Division" means the Division of Real Estate.
- 433 (u) "Dwelling" means a residential structure attached to real property that contains one  
434 to four family units including any of the following if used as a residence:
- 435 (i) a condominium unit;
- 436 (ii) a cooperative unit;
- 437 (iii) a manufactured home; or
- 438 (iv) a house.
- 439 (v) "Employee":
- 440 (i) means an individual:
- 441 (A) whose manner and means of work performance are subject to the right of control  
442 of, or are controlled by, another person; and
- 443 (B) whose compensation for federal income tax purposes is reported, or is required to  
444 be reported, on a W-2 form issued by the controlling person; and
- 445 (ii) does not include an independent contractor who performs duties other than at the  
446 direction of, and subject to the supervision and instruction of, another person.
- 447 (w) "Entity" means:
- 448 (i) a corporation;
- 449 (ii) a limited liability company;
- 450 (iii) a partnership;
- 451 (iv) a company;
- 452 (v) an association;
- 453 (vi) a joint venture;
- 454 (vii) a business trust;
- 455 (viii) a trust; or
- 456 (ix) another organization.
- 457 (x) "Executive director" means the executive director of the Department of Commerce.
- 458 (y) "Federal licensing requirements" means Secure and Fair Enforcement for Mortgage  
459 Licensing, 12 U.S.C. Sec. 5101 et seq.
- 460 (z) "Foreclosure rescue" means, for compensation or with the expectation of receiving  
461 valuable consideration, to:

- 462 (i) engage, or offer to engage, in an act that:
  - 463 (A) the person represents will assist a borrower in preventing a foreclosure; and
  - 464 (B) relates to a transaction involving the transfer of title to residential real property; or
- 465 (ii) as an employee or agent of another person:
  - 466 (A) solicit, or offer that the other person will engage in an act described in Subsection
  - 467 (1)(z)(i); or
  - 468 (B) negotiate terms in relationship to an act described in Subsection (1)(z)(i).
- 469 (aa) "Inactive status" means a dormant status into which an unexpired license is placed
- 470 when the holder of the license is not currently engaging in the business of residential mortgage
- 471 loans.
- 472 (bb) "Lending manager" means an individual licensed as a lending manager under
- 473 Section 61-2c-206 to transact the business of residential mortgage loans.
- 474 (cc) "Licensee" means a person licensed with the division under this chapter.
- 475 (dd) "Licensing examination" means the examination required by Section 61-2c-204.1
- 476 or 61-2c-206 for an individual to obtain a license under this chapter.
- 477 (ee) "Loan modification assistance" means, for compensation or with the expectation
- 478 of receiving valuable consideration, to:
  - 479 (i) act, or offer to act, on behalf of a person to:
    - 480 (A) obtain a loan term of a residential mortgage loan that is different from an existing
    - 481 loan term including:
      - 482 (I) an increase or decrease in an interest rate;
      - 483 (II) a change to the type of interest rate;
      - 484 (III) an increase or decrease in the principal amount of the residential mortgage loan;
      - 485 (IV) a change in the number of required period payments;
      - 486 (V) an addition of collateral;
      - 487 (VI) a change to, or addition of, a prepayment penalty;
      - 488 (VII) an addition of a cosigner; or
      - 489 (VIII) a change in persons obligated under the existing residential mortgage loan; or
    - 490 (B) substitute a new residential mortgage loan for an existing residential mortgage
    - 491 loan; or
  - 492 (ii) as an employee or agent of another person:



493 (A) solicit, or offer that the other person will engage in an act described in Subsection  
494 (1)(ee)(i); or

495 (B) negotiate terms in relationship to an act described in Subsection (1)(ee)(i).

496 (ff) (i) [~~Except as provided in Subsection (1)(ff)(ii), "mortgage]~~ "Mortgage loan  
497 originator" means an individual who, for compensation or in expectation of compensation:

498 (A) (I) takes a residential mortgage loan application; [~~or]~~

499 (II) offers or negotiates terms of a residential mortgage loan for the purpose of:

500 (Aa) a purchase;

501 (Bb) a refinance;

502 (Cc) a loan modification assistance; or

503 (Dd) a foreclosure rescue; [~~and]~~ or

504 (III) directly or indirectly solicits a residential mortgage loan for another person; and

505 (B) is licensed as a mortgage loan originator in accordance with this chapter.

506 (ii) "Mortgage loan originator" does not include a person who:

507 (A) is described in Subsection (1)(ff)(i), but who performs exclusively administrative  
508 or clerical tasks as described in Subsection (1)(h)(ii)(A);

509 (B) (I) is licensed under Chapter 2f, Real Estate Licensing and Practices Act;

510 (II) performs only real estate brokerage activities; and

511 (III) receives no compensation from:

512 (Aa) a lender;

513 (Bb) a lending manager; or

514 (Cc) an agent of a lender or lending manager; or

515 (C) is solely involved in extension of credit relating to a timeshare plan, as defined in  
516 11 U.S.C. Sec. 101(53D).

517 (gg) "Nationwide database" means the Nationwide Mortgage Licensing System and  
518 Registry, authorized under federal licensing requirements.

519 (hh) "Nontraditional mortgage product" means a mortgage product other than a 30-year  
520 fixed rate mortgage.

521 (ii) "Person" means an individual or entity.

522 (jj) "Prelicensing education" means education taken by an individual seeking to be  
523 licensed under this chapter in order to meet the education requirements imposed by Section

524 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

525 (kk) "Principal lending manager" means an individual:

526 (i) licensed as a lending manager under Section 61-2c-206; and

527 (ii) identified in the nationwide database by the individual's sponsoring entity as the  
528 entity's principal lending manager.

529 (ll) "Prospective borrower" means a person applying for a mortgage from a person who  
530 is required to be licensed under this chapter.

531 (mm) "Record" means information that is:

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

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

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

535 (II) in a perceivable and reproducible form.

536 (nn) "Referral fee":

537 (i) means any fee, kickback, other compensation, or thing of value tendered for a  
538 referral of business or a service incident to or part of a residential mortgage loan transaction;  
539 and

540 (ii) does not include:

541 (A) a payment made by a licensed entity to an individual employed by the entity under  
542 a contractual incentive program according to rules made by the division in accordance with  
543 Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

544 (B) a payment made for reasonable promotional and educational activities that is not  
545 conditioned on the referral of business and is not used to pay expenses that a person in a  
546 position to refer settlement services or business related to the settlement services would  
547 otherwise incur.

548 (oo) "Residential mortgage loan" means an extension of credit, if:

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

550 (A) mortgage;

551 (B) deed of trust; or

552 (C) consensual security interest; and

553 (ii) the mortgage, deed of trust, or consensual security interest described in Subsection

554 (1)(oo)(i):

- 555 (A) is on a dwelling located in the state; and
- 556 (B) is created with the consent of the owner of the residential real property[; and].
- 557 [~~(iii) solely for the purposes of defining "mortgage loan originator," the extension of~~
- 558 ~~credit is primarily for personal, family, or household use.]~~
- 559 (pp) "Settlement" means the time at which each of the following is complete:
- 560 (i) the borrower and, if applicable, the seller sign and deliver to each other or to the
- 561 escrow or closing office each document required by:
- 562 (A) the real estate purchase contract;
- 563 (B) the lender;
- 564 (C) the title insurance company;
- 565 (D) the escrow or closing office;
- 566 (E) the written escrow instructions; or
- 567 (F) applicable law;
- 568 (ii) the borrower delivers to the seller, if applicable, or to the escrow or closing office
- 569 any money, except for the proceeds of any new loan, that the borrower is required to pay; and
- 570 (iii) if applicable, the seller delivers to the buyer or to the escrow or closing office any
- 571 money that the seller is required to pay.
- 572 (qq) "Settlement services" means a service provided in connection with a real estate
- 573 settlement, including a title search, a title examination, the provision of a title certificate,
- 574 services related to title insurance, services rendered by an attorney, preparing documents, a
- 575 property survey, rendering a credit report or appraisal, a pest or fungus inspection, services
- 576 rendered by a real estate agent or broker, the origination of a federally related mortgage loan,
- 577 and the processing of a federally related mortgage.
- 578 (rr) "Sponsorship" means an association in accordance with Section [61-2c-209](#) between
- 579 an individual licensed under this chapter and an entity licensed under this chapter.
- 580 (ss) "State" means:
- 581 (i) a state, territory, or possession of the United States;
- 582 (ii) the District of Columbia; or
- 583 (iii) the Commonwealth of Puerto Rico.
- 584 (tt) "Unique identifier" means the same as that term is defined in 12 U.S.C. Sec. 5102.
- 585 (uu) "Utah-specific" means an educational or examination requirement under this

586 chapter that relates specifically to Utah.

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

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

592 Section 5. Section **61-2c-301** is amended to read:

593 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

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

596 (a) give or receive a referral fee ~~[, other compensation, or anything of value in exchange~~  
597 ~~for a referral of residential mortgage loan business];~~

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

599 (i) that is excessive; or

600 (ii) without providing to the loan applicant a written statement signed by the loan  
601 applicant:

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

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

605 ~~[(c) give or receive compensation or anything of value in exchange for a referral of~~  
606 ~~settlement or loan closing services related to a residential mortgage loan transaction;]~~

607 (c) act incompetently in the transaction of the business of residential mortgage loans  
608 such that the person fails to:

609 (i) safeguard the interests of the public; or

610 (ii) conform to acceptable standards of the residential mortgage loan industry;

611 (d) do any of the following as part of a residential mortgage loan transaction, regardless  
612 of whether the residential mortgage loan closes:

613 (i) make a false statement or representation;

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

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

616 (e) give or receive compensation or anything of value, or withhold or threaten to

617 withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in  
618 reaching a value conclusion in a residential mortgage loan transaction, except that it is not a  
619 violation of this section for a licensee to withhold payment because of a bona fide dispute  
620 regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards  
621 of Professional Appraisal Practice;

622 (f) violate or not comply with:

623 (i) this chapter;

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

625 (iii) a rule made by the division;

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

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

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

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

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

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

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

633 loan transaction:

634 (i) appraiser;

635 (ii) escrow agent;

636 (iii) real estate agent;

637 (iv) general contractor; or

638 (v) title insurance producer;

639 (j) engage in unprofessional conduct as defined by rule;

640 (k) engage in an act or omission in transacting the business of residential mortgage

641 loans that constitutes dishonesty, fraud, or misrepresentation;

642 (l) engage in false or misleading advertising;

643 (m) (i) fail to account for money received in connection with a residential mortgage

644 loan;

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

646 received; or

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

648 are not performed;

649 (n) fail to provide a prospective borrower a copy of each appraisal and any other  
650 written valuation developed in connection with an application for credit that is to be secured by  
651 a first lien on a dwelling in accordance with Subsection (5);

652 (o) engage in an act that is performed to:

653 (i) evade this chapter; or

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

655 (p) recommend or encourage default, delinquency, or continuation of an existing  
656 default or delinquency, by a mortgage applicant on an existing indebtedness before the closing  
657 of a residential mortgage loan that will refinance all or part of the indebtedness;

658 (q) in the case of the lending manager of an entity or a branch office of an entity, fail to  
659 exercise reasonable supervision over the activities of:

660 (i) unlicensed staff; or

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

662 (r) pay or offer to pay an individual who does not hold a license under this chapter for  
663 work that requires the individual to hold a license under this chapter;

664 (s) in the case of a dual licensed title licensee as defined in Section [31A-2-402](#):

665 (i) provide a title insurance product or service without the approval required by Section  
666 [31A-2-405](#); or

667 (ii) knowingly provide false or misleading information in the statement required by  
668 Subsection [31A-2-405\(2\)](#);

669 (t) represent to the public that the person can or will perform any act of a mortgage  
670 loan originator if that person is not licensed under this chapter because the person is exempt  
671 under Subsection [61-2c-102\(1\)\(h\)\(ii\)\(A\)](#), including through:

672 (i) advertising;

673 (ii) a business card;

674 (iii) stationery;

675 (iv) a brochure;

676 (v) a sign;

677 (vi) a rate list; or

678 (vii) other promotional item;

- 679 (u) (i) engage in an act of loan modification assistance without being licensed under  
680 this chapter;
- 681 (ii) engage in an act of foreclosure rescue that requires licensure as a real estate agent  
682 or real estate broker under Chapter 2, Division of Real Estate, without being licensed under  
683 that chapter;
- 684 (iii) engage in an act of loan modification assistance without entering into a written  
685 agreement specifying which one or more acts of loan modification assistance will be  
686 completed;
- 687 (iv) request or require a person to pay a fee before obtaining:
- 688 (A) a written offer for a loan modification from the person's lender or servicer; and  
689 (B) the person's written acceptance of the offer from the lender or servicer;
- 690 (v) induce a person seeking a loan modification to hire the licensee to engage in an act  
691 of loan modification assistance by:
- 692 (A) suggesting to the person that the licensee has a special relationship with the  
693 person's lender or loan servicer; or
- 694 (B) falsely representing or advertising that the licensee is acting on behalf of:
- 695 (I) a government agency;  
696 (II) the person's lender or loan servicer; or  
697 (III) a nonprofit or charitable institution;
- 698 (vi) recommend or participate in a loan modification that requires a person to:
- 699 (A) transfer title to real property to the licensee or to a third-party with whom the  
700 licensee has a business relationship or financial interest;
- 701 (B) make a mortgage payment to a person other than the person's loan servicer; or  
702 (C) refrain from contacting the person's:
- 703 (I) lender;  
704 (II) loan servicer;  
705 (III) attorney;  
706 (IV) credit counselor; or  
707 (V) housing counselor; or
- 708 (vii) for an agreement for loan modification assistance entered into on or after May 11,  
709 2010, engage in an act of loan modification assistance without offering in writing to the person

710 entering into the agreement for loan modification assistance a right to cancel the agreement  
711 within three business days after the day on which the person enters the agreement; [~~or~~]  
712 (v) sign or initial a document on behalf of another person, except for in a circumstance  
713 allowed by the division by rule, with the concurrence of the commission, made in accordance  
714 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or  
715 [~~(v)~~] (w) violate or fail to comply with a provision of Title 57, Chapter 28, Utah  
716 Reverse Mortgage Act.

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

- 720 (a) be convicted;  
721 (b) plead guilty or nolo contendere;  
722 (c) enter a plea in abeyance; or  
723 (d) be subjected to a criminal disposition similar to the ones described in Subsections  
724 (2)(a) through (c).

725 (3) A lending manager does not violate Subsection (1)(q) if:

- 726 (a) in contravention of the lending manager's written policies and instructions, an  
727 affiliated licensee of the lending manager violates:  
728 (i) this chapter; or  
729 (ii) rules made by the division under this chapter;  
730 (b) the lending manager established and followed reasonable procedures to ensure that  
731 affiliated licensees receive adequate supervision;  
732 (c) upon learning of a violation by an affiliated licensee, the lending manager  
733 attempted to prevent or mitigate the damage;  
734 (d) the lending manager did not participate in or ratify the violation by an affiliated  
735 licensee; and  
736 (e) the lending manager did not attempt to avoid learning of the violation.

737 (4) Notwithstanding Subsection (1)(m)(iii), a licensee may, upon compliance with  
738 Section [70D-2-305](#), charge a reasonable cancellation fee for work done originating a mortgage  
739 if the mortgage is not closed.

740 (5) (a) Except as provided in Subsection (5)(b), a person transacting the business of



741 residential mortgage loans in this state shall provide a prospective borrower a copy of each  
742 appraisal and any other written valuation developed in connection with an application for credit  
743 that is to be secured by a first lien on a dwelling on or before the earlier of:

744 (i) as soon as reasonably possible after the appraisal or other valuation is complete; or

745 (ii) three business days before the day of the settlement.

746 (b) Subject to Subsection (5)(c), unless otherwise prohibited by law, a prospective  
747 borrower may waive the timing requirement described in Subsection (5)(a) and agree to receive  
748 each appraisal and any other written valuation:

749 (i) less than three business days before the day of the settlement; or

750 (ii) at the settlement.

751 (c) (i) Except as provided in Subsection (5)(c)(ii), a prospective borrower shall submit  
752 a waiver described in Subsection (5)(b) at least three business days before the day of the  
753 settlement.

754 (ii) Subsection (5)(b) does not apply if the waiver only pertains to a copy of an  
755 appraisal or other written valuation that contains only clerical changes from a previous version  
756 of the appraisal or other written valuation and the prospective borrower received a copy of the  
757 original appraisal or other written valuation at least three business days before the day of the  
758 settlement.

759 (d) If a prospective borrower submits a waiver described in Subsection (5)(b) and the  
760 transaction never completes, the person transacting the business of residential mortgage loans  
761 shall provide a copy of each appraisal or any other written valuation to the applicant no later  
762 than 30 days after the day on which the person knows the transaction will not complete.

763 Section 6. Section **61-2c-401** is amended to read:

764 **61-2c-401. Investigations.**

765 (1) The division may investigate or cause to be investigated the actions of:

766 (a) (i) a licensee;

767 (ii) a person required to be licensed under this chapter; or

768 (iii) the following with respect to an entity that is a licensee or an entity required to be  
769 licensed under this chapter:

770 (A) a manager;

771 (B) a managing partner;

- 772 (C) a director;
- 773 (D) an executive officer; or
- 774 (E) an individual who performs a function similar to an individual listed in this
- 775 Subsection (1)(a)(iii);
- 776 (b) (i) an applicant for licensure or renewal of licensure under this chapter; or
- 777 (ii) the following with respect to an entity that has applied for a license or renewal of
- 778 licensure under this chapter:
- 779 (A) a manager;
- 780 (B) a managing partner;
- 781 (C) a director;
- 782 (D) an executive officer; or
- 783 (E) an individual who performs a function similar to an individual listed in this
- 784 Subsection (1)(b)(ii); or
- 785 (c) a person who transacts the business of residential mortgage loans within this state.
- 786 (2) In conducting investigations, records inspections, and adjudicative proceedings, the
- 787 division may:
- 788 (a) administer an oath or affirmation;
- 789 ~~[(b) subpoena witnesses and evidence;]~~
- 790 (b) issue a subpoena that requires:
- 791 (i) the attendance and testimony of a witness; or
- 792 (ii) the production of evidence;
- 793 (c) take evidence;
- 794 (d) require the production of a record or information relevant to an investigation; and
- 795 (e) serve a subpoena by certified mail.
- 796 (3) (a) A court of competent jurisdiction shall enforce, according to the practice and
- 797 procedure of the court, a subpoena issued by the division.
- 798 (b) The division shall pay any witness fee, travel expense, mileage, or any other fee
- 799 required by the service statutes of the state where the witness or evidence is located.
- 800 ~~[(3)]~~ (4) A failure to respond to a request by the division in an investigation authorized
- 801 under this chapter is considered as a separate violation of this chapter, including:
- 802 (a) failing to respond to a subpoena;

803 (b) withholding evidence; or

804 (c) failing to produce a record.

805 [~~(4)~~] (5) The division may inspect and copy a record related to the business of  
806 residential mortgage loans by a licensee under this chapter, regardless of whether the record is  
807 maintained at a business location in Utah, in conducting:

808 (a) investigations of complaints; or

809 (b) inspections of the record required to be maintained under:

810 (i) this chapter; or

811 (ii) rules adopted by the division under this chapter.

812 [~~(5)~~] (6) (a) If a licensee maintains a record required by this chapter and the rules  
813 adopted by the division under this chapter outside Utah, the licensee is responsible for all  
814 reasonable costs, including reasonable travel costs, incurred by the division in inspecting the  
815 record.

816 (b) Upon receipt of notification from the division that a record maintained outside Utah  
817 is to be examined in connection with an investigation or an examination, the licensee shall  
818 deposit with the division a deposit of \$500 to cover the division's expenses in connection with  
819 the examination of the record.

820 (c) If the deposit described in Subsection [~~(5)~~] (6)(b) is insufficient to meet the  
821 estimated costs and expenses of examination of the record, the licensee shall make an  
822 additional deposit to cover the estimated costs and expenses of the division.

823 (d) (i) A deposit under this Subsection [~~(5)~~] (6) shall be deposited in the General Fund  
824 as a dedicated credit to be used by the division under Subsection [~~(5)~~] (6)(a).

825 (ii) The division, with the concurrence of the executive director, may use a deposit as a  
826 dedicated credit for the records inspection costs under Subsection [~~(5)~~] (6)(a).

827 (iii) A deposit under this Subsection [~~(5)~~] (6) shall be refunded to the licensee to the  
828 extent it is not used, together with an itemized statement from the division of all amounts it has  
829 used.

830 [~~(6)~~] (7) Failure to deposit with the division a deposit required to cover the costs of  
831 examination of a record that is maintained outside Utah shall result in automatic suspension of  
832 a license until the deposit is made.

833 [~~(7)~~] (8) (a) If a person is found to have violated this chapter or a rule made under this

834 chapter, the person shall pay the costs incurred by the division to copy a record required under  
835 this chapter, including the costs incurred to copy an electronic record in a universally readable  
836 format.

837 (b) If a person fails to pay the costs described in Subsection [~~(7)~~] (8)(a) when due, the  
838 person's license or certification is automatically suspended:

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

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

841 Section 7. Section **61-2c-402** is amended to read:

842 **61-2c-402. Disciplinary action.**

843 (1) Subject to the requirements of Section [61-2c-402.1](#), the commission, with the  
844 concurrence of the division, may impose a sanction described in Subsection (2) against a  
845 person if the person:

846 (a) (i) is a licensee, a person previously licensed under this chapter for an act the person  
847 committed while licensed, or a person required to be licensed under this chapter; and

848 (ii) violates this chapter; or

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

851 (ii) violates this chapter.

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

854 (a) impose an educational requirement;

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

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

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

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

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

861 (i) suspend;

862 (ii) revoke;

863 (iii) place on probation;

864 (iv) reduce a lending manager license to a loan originator license;

865            [~~(iv)~~] (v) deny renewal;

866            [~~(v)~~] (vi) deny reinstatement; or

867            [~~(vi)~~] (vii) in the case of a denial of a license or a suspension that extends to the

868 expiration date of a license, set a waiting period for a person to apply for a license under this

869 chapter;

870            (e) issue a cease and desist order;

871            (f) require the reimbursement of the division of costs incurred by the division related to

872 the recovery, storage, or destruction of a record that the person disposes of in a manner that

873 violates this chapter or a rule made under this chapter;

874            (g) modify a sanction described in Subsections (2)(a) through (f) if the commission

875 finds that the person complies with court ordered restitution; or

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

877            (3) (a) If the commission, with the concurrence of the division, issues an order that

878 orders a fine or educational requirements as part of a disciplinary action against a person,

879 including a stipulation and order, the commission shall state in the order the deadline by which

880 the person shall comply with the fine or educational requirements.

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

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

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

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

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

886 collection process:

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

888 Utah Administrative Rulemaking Act; and

889            (B) subject to Title 63A, Chapter 3, Part 5, Office of State Debt Collection.

890            (4) (a) A person whose license was revoked under this chapter before May 11, 2010,

891 may request that the revocation be converted to a suspension under this Subsection (4):

892            (i) if the revocation was not as a result of a felony conviction involving fraud,

893 misrepresentation, deceit, dishonesty, breach of trust, or money laundering; and

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

895            (b) Upon receipt of a request to convert a revocation under this Subsection (4), the

896 commission, with the concurrence of the director, shall determine whether to convert the  
897 revocation.

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

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

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

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

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

907 Section 8. Section **61-2c-507** is amended to read:

908 **61-2c-507. Division subrogated -- Authority to suspend license.**

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

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

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

913 (2) (a) Subject to Subsection (2)(b), the license of a licensee for whom payment from  
914 the fund is made under this part is automatically [~~revoked~~] suspended as of the earlier of the  
915 day on which:

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

917 (ii) the division pays from the fund.

918 (b) (i) A person whose license is [~~revoked~~] suspended under Subsection (2)(a) may  
919 appeal the [~~revocation~~] suspension in a de novo hearing conducted by the commission:

920 (A) after the [~~revocation~~] suspension; and

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

922 (ii) The commission may delegate:

923 (A) to the division or an administrative law judge the authority to conduct a hearing  
924 described in Subsection (2)(b)(i); or

925 (B) to the division the authority to make a decision on whether relief from a  
926 [~~revocation~~] suspension should be granted.

927 (3) Unless the [~~revocation~~] suspension is not upheld after a hearing described in  
928 Subsection (2)(b), a licensee whose license is [~~revoked~~] suspended pursuant to Subsection (2)  
929 may not apply to renew a license nor apply for a new license until the licensee:

930 (a) pays into the fund:

931 [~~(a)~~] (i) the amount paid out of the fund on behalf of the licensee; and

932 [~~(b)~~] (ii) interest at a rate determined by the division with the concurrence of the  
933 commission[-]; and

934 (b) participates in a hearing before the commission and is approved by the commission,  
935 with the concurrence of the director, for licensure or activation of the suspended license.

936 Section 9. Section **61-2e-204** is amended to read:

937 **61-2e-204. Renewal of a registration.**

938 (1) (a) A registration under this chapter expires two years from the day on which the  
939 registration is approved.

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

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

945 (a) file with the division a renewal registration application on a form prescribed by the  
946 division;

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

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

952 (3) (a) An appraisal management company's registration is immediately and  
953 automatically suspended if:

954 (i) the appraisal management company's surety bond lapses or is cancelled during the  
955 time period described in Subsection (1); and

956 (ii) the appraisal management company fails to obtain or reinstate a surety bond within  
957 30 days after the day on which the surety bond lapses or is cancelled.

958 (b) To reinstate a registration suspended under Subsection (3)(a), the appraisal  
959 management company shall provide evidence to the division that the appraisal management  
960 company is in compliance with the surety bond requirement described in this section.

961 (4) A renewal registration application shall include substantially similar information to  
962 the information required under Section 61-2e-202, except that for an individual described in  
963 Subsection 61-2e-202(2)(e) or (g), the entity is required to report whether the individual has  
964 had:

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

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

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

968 (A) a diversion agreement; or

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

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

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

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

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

978 (ii) on the basis of:

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

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

981 (5) A registration expires if it is not renewed on or before its expiration date, except  
982 that for a period of one year after the expiration date, the registration may be reinstated upon  
983 compliance with this section, including payment of a renewal fee and a late fee determined by  
984 the division and the board.

985 (6) Notwithstanding Subsection (5), the division may extend the term of a license that  
986 would expire under Subsection (5) except for the extension if:

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



989 (ii) the renewal application remains pending at the time of the extension; or  
990 (b) at the time of the extension, there is pending under this chapter a disciplinary  
991 action.

992 Section 10. Section **61-2e-301** is amended to read:

993 **61-2e-301. Use of licensed or certified appraisers.**

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

998 (2) (a) An appraisal management company required to be registered under this chapter  
999 shall have a system to verify that an individual added to the appraiser panel of the appraisal  
1000 management company holds a license or certificate in good standing in this state pursuant to  
1001 Chapter 2g, Real Estate Appraiser Licensing and Certification Act.

1002 (b) As part of the registration process under Part 2, Registration, an appraisal  
1003 management company shall biennially provide an explanation of the system described in  
1004 Subsection (2)(a) in the form prescribed by the division.

1005 (3) The board, with the concurrence of the division, may establish, by rule made in  
1006 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requirements  
1007 regarding when use of a licensed appraiser or certified appraiser is appropriate, including how  
1008 an assignment is offered to an appraiser.

1009 Section 11. Section **61-2e-304** is amended to read:

1010 **61-2e-304. Required disclosure -- Customary and reasonable compensation.**

1011 (1) Before an appraisal management company may receive money from a client for a  
1012 real estate appraisal activity requested by the client, the appraisal management company shall  
1013 disclose to the client the total compensation that the appraisal management company pays to  
1014 the appraiser who performs the real estate appraisal activity.

1015 (2) An appraisal management company shall compensate an appraiser for an appraisal  
1016 at a rate that is:

1017 (a) customary and reasonable for an appraisal in the geographic market area of the  
1018 property being appraised; and

1019 (b) consistent with a presumption of compliance under the Dodd-Frank Wall Street

1020 Reform and Consumer Protection Act, Pub. L. No. 111-203, and implementing federal  
 1021 regulations.

1022 ~~[(2)]~~ (3) The board may, with the concurrence of the division, define by rule made in  
 1023 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

1024 ~~[(a) what constitutes the total compensation that an appraisal management company~~  
 1025 ~~pays to an appraiser who performs a real estate appraisal activity, except that the rules shall~~  
 1026 ~~provide for disclosing this amount:]~~

1027 ~~[(i) as a dollar amount; or]~~

1028 ~~[(ii) as a percentage of the total amount charged to a client by an appraisal management~~  
 1029 ~~company;]~~

1030 ~~[(b) the method an appraisal management company is required to use in calculating the~~  
 1031 ~~figures described in Subsection (2)(a); and]~~

1032 (a) the disclosures required to be made by the appraisal management company to the  
 1033 appraiser;

1034 (b) the disclosures required to be made by the appraiser in the appraisal report;

1035 (c) the form and content of the disclosure required by Subsection (1)[-]; and

1036 (d) the customary and reasonable compensation required to be paid to appraisers by  
 1037 appraisal management companies.

1038 Section 12. Section **61-2e-306** is amended to read:

1039 **61-2e-306. Removal of appraiser from appraisal panel.**

1040 (1) Except within the first 30 days after the day on which an appraiser is first added to  
 1041 the appraiser panel of an appraisal management company, an appraisal management company  
 1042 may not remove the appraiser from its appraiser panel, or otherwise refuse to assign a request  
 1043 for a real estate appraisal activity to ~~[an]~~ the appraiser without:

1044 ~~[(+)]~~ (a) notifying the appraiser in writing of:

1045 ~~[(a)]~~ (i) the reason why the appraiser is being removed from the appraiser panel of the  
 1046 appraisal management company; and

1047 ~~[(b)]~~ (ii) the nature of the alleged conduct or violation if the appraiser is being removed  
 1048 from the appraiser panel for:

1049 ~~[(+)]~~ (A) illegal conduct; or

1050 ~~[(+)]~~ (B) a violation of the applicable appraisal standards; and

1051            [(2)] (b) providing an opportunity for the appraiser to respond to the notification [of the  
1052 appraisal management company] under Subsection (1)(a).

1053            (2) The board, with the concurrence of the division, may establish by rule made in  
1054 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requirements  
1055 consistent with this section regarding the removal of an appraiser from an appraisal panel.

1056            Section 13. Section **61-2e-307** is amended to read:

1057            **61-2e-307. Prohibited acts -- Exclusions.**

1058            (1) An appraisal management company required to be registered under this chapter and  
1059 a controlling person, employee, or agent of the appraisal management company may not:

1060            (a) engage in an act of coercion, extortion, intimidation, or bribery for any purpose  
1061 related to an appraisal;

1062            (b) compensate an appraiser in a manner that the person should reasonably know  
1063 would result in the appraiser not conducting a real estate appraisal activity in a manner  
1064 consistent with applicable appraisal standards;

1065            (c) engage in the business of an appraisal management company under an assumed or  
1066 fictitious name not properly registered in the state;

1067            (d) accept a contingent fee for performing an appraisal management service if the fee is  
1068 contingent on:

1069            (i) the appraisal report having a predetermined analysis, opinion, or conclusion;

1070            (ii) the analysis, opinion, conclusion, or valuation reached in an appraisal report; or

1071            (iii) the consequences resulting from the appraisal assignment;

1072            (e) require an appraiser to indemnify the appraisal management company against  
1073 liability except liability for errors and omissions by the appraiser; or

1074            (f) alter, modify, or otherwise change a completed appraisal report submitted by an  
1075 appraiser.

1076            (2) An appraisal management company required to be registered under this chapter, or  
1077 a controlling person, employee, or agent of the appraisal management company may not  
1078 influence or attempt to influence the development, reporting, or review of an appraisal through:

1079            (a) coercion;

1080            (b) extortion;

1081            (c) collusion;

- 1082 (d) compensation;
- 1083 (e) instruction;
- 1084 (f) inducement;
- 1085 (g) intimidation;
- 1086 (h) bribery; or
- 1087 (i) any other manner that would constitute undue influence.
- 1088 (3) A violation of Subsection (2) includes doing one or more of the following for a
- 1089 purpose listed in Subsection (2):
- 1090 (a) withholding or threatening to withhold timely payment for an appraisal;
- 1091 (b) withholding or threatening to withhold future business for an appraiser;
- 1092 (c) taking adverse action or threatening to take adverse action against an appraiser
- 1093 regarding use of the appraiser for a real estate appraisal activity;
- 1094 (d) expressly or by implication promising future business or increased compensation
- 1095 for an appraiser;
- 1096 (e) conditioning one or more of the following on the opinion, conclusion, or valuation
- 1097 to be reached, or on a preliminary estimate or opinion requested from an appraiser:
- 1098 (i) a request for a real estate appraisal activity; or
- 1099 (ii) the payment of consideration;
- 1100 (f) requesting that an appraiser provide at any time before the appraiser's completion of
- 1101 a real estate appraisal activity:
- 1102 (i) an estimated, predetermined, or desired valuation in an appraisal report; or
- 1103 (ii) an estimated value or comparable sale;
- 1104 (g) except for a copy of a sales contract for a purchase transaction, providing to an
- 1105 appraiser:
- 1106 (i) an anticipated, estimated, encouraged, or desired value for a subject property; or
- 1107 (ii) a proposed or target amount to be loaned to the borrower;
- 1108 (h) providing to an appraiser, or an individual related to the appraiser, stock or other
- 1109 financial or non-financial benefits;
- 1110 (i) allowing the removal of an appraiser from an appraiser panel, without prior written
- 1111 notice to the appraiser as required by Section [61-2e-306](#);
- 1112 (j) obtaining, using, or paying for a subsequent appraisal or ordering an automated

1113 valuation model in connection with a mortgage financing transaction unless:

1114 (i) (A) there is a reasonable basis to believe that the initial appraisal does not meet  
1115 applicable appraisal standards; and

1116 (B) the reasonable basis is noted in the loan file; or

1117 (ii) the subsequent appraisal or automated valuation model is done pursuant to a pre- or  
1118 post-funding appraisal review or quality control process in accordance with applicable  
1119 appraisal standards; ~~or~~

1120 (k) removing or threatening to remove an appraiser from the appraiser panel if an  
1121 appraiser requires a reasonable extension of the completion date for an appraisal assignment in  
1122 order to complete a credible appraisal report; or

1123 ~~(l)~~ (l) engaging in any other act or practice that impairs or attempts to impair an  
1124 appraiser's independence, objectivity, or impartiality.

1125 (4) This section may not be construed to prohibit an appraisal management company  
1126 from requesting that an appraiser:

1127 (a) provide additional information about the basis for a valuation; or

1128 (b) correct an objective factual error in an appraisal report.

1129 Section 14. Section **61-2e-401** is amended to read:

1130 **61-2e-401. Division authority -- Immunity.**

1131 (1) (a) In addition to a power or duty expressly provided in this chapter, the division  
1132 may:

1133 (i) receive and act on a complaint including:

1134 (A) taking action designed to obtain voluntary compliance with this chapter, including  
1135 the issuance of a cease and desist order if the person against whom the order is issued is given  
1136 the right to petition the board for review of the order; or

1137 (B) commencing an administrative or judicial proceeding on the division's own  
1138 initiative;

1139 (ii) investigate an entity required to be registered under this chapter, regardless of  
1140 whether the entity is located in Utah; ~~and~~

1141 (iii) employ one or more investigators, clerks, or other employees or agents if:

1142 (A) approved by the executive director; and

1143 (B) within the budget of the division~~[-]~~; and

1144 (iv) issue a subpoena that requires:  
1145 (A) the attendance and testimony of a witness; or  
1146 (B) the production of evidence.  
1147 (b) (i) A court of competent jurisdiction shall enforce, according to the practice and  
1148 procedure of the court, a subpoena issued by the division.  
1149 (ii) The division shall pay any witness fee, travel expense, mileage, or any other fee  
1150 required by the service statutes of the state where the witness or evidence is located.  
1151 ~~[(b)]~~ (c) A failure to respond to a request by the division in an investigation under this  
1152 chapter is considered to be a separate violation of this chapter, including:  
1153 (i) failing to respond to a subpoena;  
1154 (ii) withholding evidence; or  
1155 (iii) failing to produce a document or record.  
1156 (2) (a) If a person is found to have violated this chapter or a rule made under this  
1157 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,  
1158 document, or record required under this chapter, including the costs incurred to copy an  
1159 electronic book, paper, contract, document, or record in a universally readable format.  
1160 (b) If a person fails to pay the costs described in Subsection (2)(a) when due, the  
1161 person's registration is automatically suspended:  
1162 (i) beginning the day on which the payment of costs is due; and  
1163 (ii) ending the day on which the costs are paid.  
1164 (3) The division is immune from a civil action or criminal prosecution for initiating or  
1165 assisting in a lawful investigation of an act or participating in a disciplinary proceeding under  
1166 this chapter if the division takes the action:  
1167 (a) without malicious intent; and  
1168 (b) in the reasonable belief that the action is taken pursuant to the powers and duties  
1169 vested in the division under this chapter.  
1170 Section 15. Section **61-2f-102** is amended to read:  
1171 **61-2f-102. Definitions.**  
1172 As used in this chapter:  
1173 (1) "Associate broker" means an individual who is:  
1174 (a) employed or engaged as an independent contractor by or on behalf of a principal

- 1175 broker to perform an act set out in Subsection (18) for valuable consideration; and  
1176 (b) licensed under this chapter as an associate broker.
- 1177 (2) "Branch office" means a principal broker's real estate brokerage office that is not  
1178 the principal broker's main office.
- 1179 (3) "Business day" means a day other than:  
1180 (a) a Saturday;  
1181 (b) a Sunday; or  
1182 (c) a federal or state holiday.
- 1183 (4) "Business opportunity" means the sale, lease, or exchange of any business that  
1184 includes an interest in real estate.
- 1185 (5) "Commission" means the Real Estate Commission established under this chapter.
- 1186 (6) "Concurrence" means the entities given a concurring role must jointly agree for  
1187 action to be taken.
- 1188 ~~[(8)]~~ (7) "Condominium homeowners' association" means the condominium unit  
1189 owners acting as a group in accordance with declarations and bylaws.
- 1190 ~~[(9)]~~ (8) (a) "Condominium hotel" means one or more condominium units that are  
1191 operated as a hotel.
- 1192 (b) "Condominium hotel" does not mean a hotel consisting of condominium units, all  
1193 of which are owned by a single entity.
- 1194 ~~[(7)]~~ (9) "Condominium unit" ~~[is as]~~ means the same as that term is defined in Section  
1195 [57-8-3](#).
- 1196 (10) "Director" means the director of the Division of Real Estate.
- 1197 (11) "Division" means the Division of Real Estate.
- 1198 (12) "Entity" means:  
1199 (a) a corporation;  
1200 (b) a partnership;  
1201 (c) a limited liability company;  
1202 (d) a company;  
1203 (e) an association;  
1204 (f) a joint venture;  
1205 (g) a business trust;

- 1206 (h) a trust; or
- 1207 (i) any organization similar to an entity described in Subsections (12)(a) through (h).
- 1208 (13) "Executive director" means the director of the Department of Commerce.
- 1209 (14) "Foreclosure rescue" means, for compensation or with the expectation of receiving
- 1210 valuable consideration, to:
  - 1211 (a) engage, or offer to engage, in an act that:
    - 1212 (i) the person represents will assist a borrower in preventing a foreclosure; and
    - 1213 (ii) relates to a transaction involving the transfer of title to residential real property; or
  - 1214 (b) as an employee or agent of another person:
    - 1215 (i) solicit, or offer that the other person will engage in an act described in Subsection
    - 1216 (14)(a); or
    - 1217 (ii) negotiate terms in relationship to an act described in Subsection (14)(a).
  - 1218 (15) "Loan modification assistance" means, for compensation or with the expectation
  - 1219 of receiving valuable consideration, to:
    - 1220 (a) act, or offer to act, on behalf of a person to:
      - 1221 (i) obtain a loan term of a residential mortgage loan that is different from an existing
      - 1222 loan term including:
        - 1223 (A) an increase or decrease in an interest rate;
        - 1224 (B) a change to the type of interest rate;
        - 1225 (C) an increase or decrease in the principal amount of the residential mortgage loan;
        - 1226 (D) a change in the number of required period payments;
        - 1227 (E) an addition of collateral;
        - 1228 (F) a change to, or addition of, a prepayment penalty;
        - 1229 (G) an addition of a cosigner; or
        - 1230 (H) a change in persons obligated under the existing residential mortgage loan; or
      - 1231 (ii) substitute a new residential mortgage loan for an existing residential mortgage loan;
    - 1232 or
    - 1233 (b) as an employee or agent of another person:
      - 1234 (i) solicit, or offer that the other person will engage in an act described in Subsection
      - 1235 (15)(a); or
      - 1236 (ii) negotiate terms in relationship to an act described in Subsection (15)(a).



1237 (16) "Main office" means the address which a principal broker designates with the  
1238 division as the principal broker's primary brokerage office.

1239 (17) "Person" means an individual or entity.

1240 (18) "Principal broker" means an individual who is licensed or required to be licensed  
1241 as a principal broker under this chapter [~~and~~] who:

1242 (a) [(i)] sells or lists for sale real estate, including real estate being sold as part of a  
1243 foreclosure rescue, or a business opportunity with the expectation of receiving valuable  
1244 consideration;

1245 [(ii)] (b) buys, exchanges, or auctions real estate, an option on real estate, a business  
1246 opportunity, or an improvement on real estate with the expectation of receiving valuable  
1247 consideration; [~~or~~]

1248 [(iii)] (c) advertises, offers, attempts, or otherwise holds the individual out to be  
1249 engaged in the business described in Subsection (18)(a)[(i)] or [(ii)] (b);

1250 [(b)] (d) is employed by or on behalf of the owner of real estate or by a prospective  
1251 purchaser of real estate and performs an act described in Subsection (18)(a), whether the  
1252 individual's compensation is at a stated salary, a commission basis, upon a salary and  
1253 commission basis, or otherwise;

1254 [(e)-(i)] (e) with the expectation of receiving valuable consideration, manages property  
1255 owned by another person; [~~or~~]

1256 [(ii)] (f) advertises or otherwise holds the individual out to be engaged in property  
1257 management;

1258 [(d)] (g) with the expectation of receiving valuable consideration, assists or directs in  
1259 the procurement of prospects for or the negotiation of a transaction listed in Subsections  
1260 (18)[(a) and (c)](a) and (e);

1261 [(e)] (h) except for a mortgage lender, title insurance producer, or an employee of a  
1262 mortgage lender or title insurance producer, assists or directs in the closing of a real estate  
1263 transaction with the expectation of receiving valuable consideration; [~~or~~]

1264 [(f)] (i) engages in foreclosure rescue; or

1265 [(ii)] (j) advertises, offers, attempts, or otherwise holds the person out as being engaged  
1266 in foreclosure rescue.

1267 (19) (a) "Property management" means engaging in, with the expectation of receiving

1268 valuable consideration, the management of real estate owned by another person or advertising  
1269 or otherwise claiming to be engaged in property management by:

1270 (i) advertising for, arranging, negotiating, offering, or otherwise attempting or  
1271 participating in a transaction calculated to secure the rental or leasing of real estate;

1272 (ii) collecting, agreeing, offering, or otherwise attempting to collect rent for the real  
1273 estate and accounting for and disbursing the money collected; or

1274 (iii) authorizing expenditures for repairs to the real estate.

1275 (b) "Property management" does not include:

1276 (i) hotel or motel management;

1277 (ii) rental of tourist accommodations, including hotels, motels, tourist homes,  
1278 condominiums, condominium hotels, mobile home park accommodations, campgrounds, or  
1279 similar public accommodations for a period of less than 30 consecutive days, and the  
1280 management activities associated with these rentals; or

1281 (iii) the leasing or management of surface or subsurface minerals or oil and gas  
1282 interests, if the leasing or management is separate from a sale or lease of the surface estate.

1283 (20) "Real estate" includes leaseholds and business opportunities involving real  
1284 property.

1285 (21) (a) "Regular salaried employee" means an individual who performs a service for  
1286 wages or other remuneration, whose employer withholds federal employment taxes under a  
1287 contract of hire, written or oral, express or implied.

1288 (b) "Regular salaried employee" does not include an individual who performs services  
1289 on a project-by-project basis or on a commission basis.

1290 (22) "Reinstatement" means restoring a license that has expired or has been suspended.

1291 (23) "Reissuance" means the process by which a licensee may obtain a license  
1292 following revocation of the license.

1293 (24) "Renewal" means extending a license for an additional licensing period on or  
1294 before the date the license expires.

1295 (25) "Sales agent" means an individual who is:

1296 (a) affiliated with a principal broker, either as an independent contractor or an  
1297 employee as provided in Section [61-2f-303](#), to perform for valuable consideration an act  
1298 described in Subsection (18); and

1299 (b) licensed under this chapter as a sales agent.

1300 (26) (a) "Undivided fractionalized long-term estate" means an ownership interest in  
1301 real property by two or more persons that is:

1302 (i) a tenancy in common; or

1303 (ii) any other legal form of undivided estate in real property including:

1304 (A) a fee estate;

1305 (B) a life estate; or

1306 (C) other long-term estate.

1307 (b) "Undivided fractionalized long-term estate" does not include a joint tenancy.

1308 Section 16. Section **61-2f-202** is amended to read:

1309 **61-2f-202. Exempt persons and transactions.**

1310 (1) (a) Except as provided in Subsection (1)(b), a license under this chapter is not  
1311 required for:

1312 (i) an individual who as owner or lessor performs an act described in Subsection  
1313 **61-2f-102**(18) with reference to real estate owned or leased by that individual;

1314 (ii) a regular salaried employee of the owner or lessor of real estate who, with reference  
1315 to nonresidential real estate owned or leased by the employer, performs an act described in  
1316 Subsection **61-2f-102**(18)~~(a) or~~(b) or (c);

1317 (iii) a regular salaried employee of the owner of real estate who performs property  
1318 management services with reference to real estate owned by the employer, except that the  
1319 employee may only manage real estate for one employer;

1320 (iv) an individual who performs property management services for the apartments at  
1321 which that individual resides in exchange for free or reduced rent on that individual's  
1322 apartment;

1323 (v) a regular salaried employee of a condominium homeowners' association who  
1324 manages real estate subject to the declaration of condominium that established the  
1325 condominium homeowners' association, except that the employee may only manage real estate  
1326 for one condominium homeowners' association; and

1327 (vi) a regular salaried employee of a licensed property management company or real  
1328 estate brokerage who performs support services, as prescribed by rule, for the property  
1329 management company or real estate brokerage.

- 1330 (b) Subsection (1)(a) does not exempt from licensing:
- 1331 (i) an employee engaged in the sale of real estate regulated under:
- 1332 (A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; or
- 1333 (B) Title 57, Chapter 19, Timeshare and Camp Resort Act;
- 1334 (ii) an employee engaged in the sale of cooperative interests regulated under Title 57,
- 1335 Chapter 23, Real Estate Cooperative Marketing Act; or
- 1336 (iii) an individual whose interest as an owner or lessor is obtained by that individual or
- 1337 transferred to that individual for the purpose of evading the application of this chapter, and not
- 1338 for another legitimate business reason.
- 1339 (2) A license under this chapter is not required for:
- 1340 (a) an isolated transaction or service by an individual holding [a] an unsolicited, duly
- 1341 executed power of attorney from a property owner;
- 1342 (b) services rendered by an attorney admitted to practice law in this state in performing
- 1343 the attorney's duties as an attorney;
- 1344 (c) a receiver, trustee in bankruptcy, administrator, executor, or an individual acting
- 1345 under order of a court;
- 1346 (d) a trustee or employee of a trustee under a deed of trust or a will;
- 1347 (e) a public utility, officer of a public utility, or regular salaried employee of a public
- 1348 utility, unless performance of an act described in Subsection 61-2f-102(18) is in connection
- 1349 with the sale, purchase, lease, or other disposition of real estate or investment in real estate
- 1350 unrelated to the principal business activity of that public utility;
- 1351 (f) a regular salaried employee or authorized agent working under the oversight of the
- 1352 Department of Transportation when performing an act on behalf of the Department of
- 1353 Transportation in connection with one or more of the following:
- 1354 (i) the acquisition of real estate pursuant to Section 72-5-103;
- 1355 (ii) the disposal of real estate pursuant to Section 72-5-111;
- 1356 (iii) services that constitute property management; or
- 1357 (iv) the leasing of real estate; and
- 1358 (g) a regular salaried employee of a county, city, or town when performing an act on
- 1359 behalf of the county, city, or town:
- 1360 (i) in accordance with:

- 1361 (A) if a regular salaried employee of a city or town:  
1362 (I) Title 10, Utah Municipal Code; or  
1363 (II) Title 11, Cities, Counties, and Local Taxing Units; and  
1364 (B) if a regular salaried employee of a county:  
1365 (I) Title 11, Cities, Counties, and Local Taxing Units; and  
1366 (II) Title 17, Counties; and  
1367 (ii) in connection with one or more of the following:  
1368 (A) the acquisition of real estate, including by eminent domain;  
1369 (B) the disposal of real estate;  
1370 (C) services that constitute property management; or  
1371 (D) the leasing of real estate.  
1372 (3) A license under this chapter is not required for an individual registered to act as a  
1373 broker-dealer, agent, or investment adviser under the Utah and federal securities laws in the  
1374 sale or the offer for sale of real estate if:  
1375 (a) (i) the real estate is a necessary element of a "security" as that term is defined by the  
1376 Securities Act of 1933 and the Securities Exchange Act of 1934; and  
1377 (ii) the security is registered for sale in accordance with:  
1378 (A) the Securities Act of 1933; or  
1379 (B) Title 61, Chapter 1, Utah Uniform Securities Act; or  
1380 (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec.  
1381 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation  
1382 D, Rule 506, 17 C.F.R. Sec. 230.506; and  
1383 (ii) the selling agent and the purchaser are not residents of this state.  
1384 (4) As used in this section, "owner" does not include:  
1385 (a) a person who holds an option to purchase real property;  
1386 (b) a mortgagee;  
1387 (c) a beneficiary under a deed of trust;  
1388 (d) a trustee under a deed of trust; or  
1389 (e) a person who owns or holds a claim that encumbers any real property or an  
1390 improvement to the real property.  
1391 Section 17. Section **61-2f-307** is amended to read:

1392           **61-2f-307. Rulemaking required for offer or sale of an undivided fractionalized**  
1393 **long-term estate -- Disclosures -- Management agreement.**

1394           (1) (a) A licensee or certificate holder under this chapter who sells or offers to sell an  
1395 undivided fractionalized long-term estate shall comply with the disclosure requirements  
1396 imposed by rules made by the commission under this section.

1397           (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1398 commission shall make rules as to the timing, form, and substance of disclosures required to be  
1399 made by a licensee or certificate holder under this section.

1400           (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1401 commission shall make rules imposing requirements for a management agreement related to an  
1402 undivided fractionalized long-term estate that [~~makes~~] treats the offer or sale of the undivided  
1403 fractionalized long-term estate [~~treated~~] as a real estate transaction and not [~~treated~~] as an offer  
1404 or sale of a security under Chapter 1, Utah Uniform Securities Act.

1405           (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1406 commission shall make rules establishing:

1407           (a) the disclosures required in the sale or offer of an undivided fractionalized long-term  
1408 estate that is subject to a master lease;

1409           (b) requirements for the management of a master lease on an undivided fractionalized  
1410 long-term estate; and

1411           (c) the requirements on the structure of a master lease on an undivided fractionalized  
1412 long-term estate.

1413           Section 18. Section **61-2f-401** is amended to read:

1414           **61-2f-401. Grounds for disciplinary action.**

1415           The following acts are unlawful for a person licensed or required to be licensed under  
1416 this chapter:

1417           (1) (a) making a substantial misrepresentation, including in a licensure statement;

1418           (b) making an intentional misrepresentation;

1419           (c) pursuing a continued and flagrant course of misrepresentation;

1420           (d) making a false representation or promise through an agent, sales agent, advertising,  
1421 or otherwise; or

1422           (e) making a false representation or promise of a character likely to influence,

- 1423 persuade, or induce;
- 1424       (2) acting for more than one party in a transaction without the informed consent of the  
1425 parties;
- 1426       (3) (a) acting as an associate broker or sales agent while not affiliated with a principal  
1427 broker;
- 1428       (b) representing or attempting to represent a principal broker other than the principal  
1429 broker with whom the person is affiliated; or
- 1430       (c) representing as sales agent or having a contractual relationship similar to that of  
1431 sales agent with a person other than a principal broker;
- 1432       (4) (a) failing, within a reasonable time, to account for or to remit money that belongs  
1433 to another and comes into the person's possession;
- 1434       (b) commingling money described in Subsection (4)(a) with the person's own money;  
1435 or
- 1436       (c) diverting money described in Subsection (4)(a) from the purpose for which the  
1437 money is received;
- 1438       (5) paying or offering to pay valuable consideration, as defined by the commission, to a  
1439 person not licensed under this chapter, except that valuable consideration may be shared:
- 1440       (a) with a principal broker of another jurisdiction; or
- 1441       (b) as provided under:
- 1442       (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;
- 1443       (ii) Title 16, Chapter 11, Professional Corporation Act; or
- 1444       (iii) [~~Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, or~~] Title 48,  
1445 Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to  
1446 Section [48-3a-1405](#);
- 1447       (6) for a principal broker, paying or offering to pay a sales agent or associate broker  
1448 who is not affiliated with the principal broker at the time the sales agent or associate broker  
1449 earned the compensation;
- 1450       (7) being incompetent to act as a principal broker, associate broker, or sales agent in  
1451 such manner as to safeguard the interests of the public;
- 1452       (8) failing to voluntarily furnish a copy of a document to the parties before and after the  
1453 execution of a document;

- 1454 (9) failing to keep and make available for inspection by the division a record of each  
1455 transaction, including:
- 1456 (a) the names of buyers and sellers or lessees and lessors;
  - 1457 (b) the identification of real estate;
  - 1458 (c) the sale or rental price;
  - 1459 (d) money received in trust;
  - 1460 (e) agreements or instructions from buyers and sellers or lessees and lessors; and
  - 1461 (f) any other information required by rule;
- 1462 (10) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether  
1463 the purchase, sale, or rental is made for that person or for an undisclosed principal;
- 1464 (11) being convicted, within five years of the most recent application for licensure, of a  
1465 criminal offense involving moral turpitude [~~within five years of the most recent application:~~  
1466 ~~(a)~~] regardless of whether:
- 1467 (a) the criminal offense is related to real estate; [and] or
  - 1468 ~~[(b) including:]~~
  - 1469 ~~[(i) a conviction based upon a plea of nolo contendere; or]~~
  - 1470 ~~[(ii) a plea held in abeyance to a criminal offense involving moral turpitude;]~~
  - 1471 (b) the conviction is based upon a plea of nolo contendere;
- 1472 (12) having, within five years of the most recent application for a license under this  
1473 chapter, entered any of the following related to a criminal offense involving moral turpitude:
- 1474 (a) a plea in abeyance agreement;
  - 1475 (b) a diversion agreement;
  - 1476 (c) a withheld judgment; or
  - 1477 (d) an agreement in which a charge was held in suspense during a period of time when  
1478 the licensee was on probation or was obligated to comply with conditions outlined by a court;
- 1479 ~~[(12)]~~ (13) advertising the availability of real estate or the services of a licensee in a  
1480 false, misleading, or deceptive manner;
- 1481 ~~[(13)]~~ (14) in the case of a principal broker or a licensee who is a branch manager,  
1482 failing to exercise reasonable supervision over the activities of the principal broker's or branch  
1483 manager's licensed or unlicensed staff;
- 1484 ~~[(14)]~~ (15) violating or disregarding:



- 1485 (a) this chapter;
- 1486 (b) an order of the commission; or
- 1487 (c) the rules adopted by the commission and the division;
- 1488 ~~[(15)]~~ (16) breaching a fiduciary duty owed by a licensee to the licensee's principal in a  
1489 real estate transaction;
- 1490 ~~[(16)]~~ (17) any other conduct which constitutes dishonest dealing;
- 1491 ~~[(17)]~~ (18) unprofessional conduct as defined by statute or rule;
- 1492 ~~[(18)]~~ (19) having one of the following suspended, revoked, surrendered, or cancelled  
1493 on the basis of misconduct in a professional capacity that relates to character, honesty,  
1494 integrity, or truthfulness:
- 1495 (a) a real estate license, registration, or certificate issued by another jurisdiction; or
- 1496 (b) another license, registration, or certificate to engage in an occupation or profession  
1497 issued by this state or another jurisdiction;
- 1498 ~~[(19)]~~ (20) failing to respond to a request by the division in an investigation authorized  
1499 under this chapter, including:
- 1500 (a) failing to respond to a subpoena;
- 1501 (b) withholding evidence; or
- 1502 (c) failing to produce documents or records;
- 1503 ~~[(20)]~~ (21) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
- 1504 (a) providing a title insurance product or service without the approval required by  
1505 Section 31A-2-405; or
- 1506 (b) knowingly providing false or misleading information in the statement required by  
1507 Subsection 31A-2-405(2);
- 1508 ~~[(21)]~~ (22) violating an independent contractor agreement between a principal broker  
1509 and a sales agent or associate broker as evidenced by a final judgment of a court;
- 1510 ~~[(22)]~~ (23) (a) engaging in an act of loan modification assistance that requires licensure  
1511 as a mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing  
1512 Act, without being licensed under that chapter;
- 1513 (b) engaging in an act of foreclosure rescue without entering into a written agreement  
1514 specifying what one or more acts of foreclosure rescue will be completed;
- 1515 (c) inducing a person who is at risk of foreclosure to hire the licensee to engage in an

1516 act of foreclosure rescue by:

1517 (i) suggesting to the person that the licensee has a special relationship with the person's  
1518 lender or loan servicer; or

1519 (ii) falsely representing or advertising that the licensee is acting on behalf of:

1520 (A) a government agency;

1521 (B) the person's lender or loan servicer; or

1522 (C) a nonprofit or charitable institution; or

1523 (d) recommending or participating in a foreclosure rescue that requires a person to:

1524 (i) transfer title to real estate to the licensee or to a third-party with whom the licensee  
1525 has a business relationship or financial interest;

1526 (ii) make a mortgage payment to a person other than the person's loan servicer; or

1527 (iii) refrain from contacting the person's:

1528 (A) lender;

1529 (B) loan servicer;

1530 (C) attorney;

1531 (D) credit counselor; or

1532 (E) housing counselor;

1533 [~~(23)~~] (24) as a principal broker, placing a lien on real property, unless authorized by  
1534 law; or

1535 [~~(24)~~] (25) as a sales agent or associate broker, placing a lien on real property for an  
1536 unpaid commission or other compensation related to real estate brokerage services.

1537 Section 19. Section **61-2f-402** is amended to read:

1538 **61-2f-402. Investigations.**

1539 (1) The division may make an investigation within or outside of this state as the  
1540 division considers necessary to determine whether a person has violated, is violating, or is  
1541 about to violate this chapter or any rule or order under this chapter.

1542 (2) To aid in the enforcement of this chapter or in the prescribing of rules and forms  
1543 under this chapter, the division may require or permit a person to file a statement in writing,  
1544 under oath or otherwise as to the facts and circumstances concerning the matter to be  
1545 investigated.

1546 (3) For the purpose of the investigation described in Subsection (1), the division or an

1547 employee designated by the division may:

1548 (a) administer an oath or affirmation;

1549 [~~(b) subpoena witnesses and evidence;~~]

1550 (b) issue a subpoena that requires:

1551 (i) the attendance and testimony of a witness; or

1552 (ii) the production of evidence;

1553 (c) take evidence;

1554 (d) require the production of a book, paper, contract, record, other document, or

1555 information relevant to the investigation; and

1556 (e) serve a subpoena by certified mail.

1557 (4) (a) A court of competent jurisdiction shall enforce, according to the practice and  
 1558 procedure of the court, a subpoena issued by the division.

1559 (b) The division shall pay any witness fee, travel expense, mileage, or any other fee  
 1560 required by the service statutes of the state where the witness or evidence is located.

1561 [~~(4)~~] (5) (a) If a person is found to have violated this chapter or a rule made under this  
 1562 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,  
 1563 document, or record required under this chapter, including the costs incurred to copy an  
 1564 electronic book, paper, contract, document, or record in a universally readable format.

1565 (b) If a person fails to pay the costs described in Subsection [~~(4)~~] (5)(a) when due, the  
 1566 person's license, certification, or registration is automatically suspended:

1567 (i) beginning the day on which the payment of costs is due; and

1568 (ii) ending the day on which the costs are paid.

1569 [~~(5)~~] (6) (a) Except as provided in Subsection [~~(5)~~] (6)(b), the division shall commence  
 1570 a disciplinary action under this chapter no later than the earlier of the following:

1571 (i) four years after the day on which the violation is reported to the division; or

1572 (ii) 10 years after the day on which the violation occurred.

1573 (b) The division may commence a disciplinary action under this chapter after the time  
 1574 period described in Subsection [~~(5)~~] (6)(a) expires if:

1575 (i) (A) the disciplinary action is in response to a civil or criminal judgment or  
 1576 settlement; and

1577 (B) the division initiates the disciplinary action no later than one year after the day on

1578 which the judgment is issued or the settlement is final; or

1579 (ii) the division and the person subject to a disciplinary action enter into a written  
1580 stipulation to extend the time period described in Subsection [~~(5)~~] (6)(a).

1581 Section 20. Section **61-2f-404** is amended to read:

1582 **61-2f-404. Disciplinary action -- Judicial review.**

1583 (1) (a) On the basis of a violation of this chapter, the commission with the concurrence  
1584 of the director, may issue an order:

1585 (i) imposing an educational requirement;

1586 (ii) imposing a civil penalty not to exceed the greater of:

1587 (A) \$5,000 for each violation; or

1588 (B) the amount of any gain or economic benefit derived from each violation;

1589 (iii) taking any of the following actions related to a license, registration, or certificate:

1590 (A) revoking;

1591 (B) suspending;

1592 (C) placing on probation;

1593 (D) denying the renewal, reinstatement, or application for an original license,

1594 registration, or certificate; or

1595 (E) in the case of denial or revocation of a license, registration, or certificate, setting a  
1596 waiting period for an applicant to apply for a license, registration, or certificate under this title;

1597 (iv) issuing a cease and desist order;

1598 (v) modifying an action described in Subsections (1)(a)(i) through (iv) if the

1599 commission finds that the person complies with court ordered restitution; or

1600 (vi) doing any combination of Subsections (1)(a)(i) through (v).

1601 (b) (i) If the commission with the concurrence of the director issues an order that

1602 orders a fine or educational requirements as part of a disciplinary action against a person,

1603 including a stipulation and order, the commission shall state in the order the deadline by which

1604 the person shall comply with the fine or educational requirements.

1605 (ii) If a person fails to comply by the stated deadline:

1606 (A) the person's license, registration, or certificate is automatically suspended:

1607 (I) beginning the day specified in the order as the deadline for compliance; and

1608 (II) ending the day on which the person complies in full with the order; and

1609 (B) if the person fails to pay a fine required by an order, the division may begin a  
1610 collection process:

1611 (I) established by the division, with the concurrence of the commission, by rule made  
1612 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

1613 (II) subject to Title 63A, Chapter 3, Part 5, Office of State Debt Collection.

1614 (c) If a licensee is an active sales agent or active associate broker, the division shall  
1615 inform the principal broker with whom the licensee is affiliated of the charge and of the time  
1616 and place of any hearing.

1617 (d) A person previously licensed under this chapter remains responsible for, and is  
1618 subject to disciplinary action for, an act the person committed while the person was licensed in  
1619 violation of this chapter or an administrative rule in effect at the time the person committed the  
1620 act, regardless of whether the person is currently licensed.

1621 (2) (a) An applicant, certificate holder, licensee, registrant, or person aggrieved,  
1622 including the complainant, may obtain agency review by the executive director and judicial  
1623 review of any adverse ruling, order, or decision of the division.

1624 (b) If an applicant, certificate holder, registrant, or licensee prevails in the appeal and  
1625 the court finds that the state action was undertaken without substantial justification, the court  
1626 may award reasonable litigation expenses to the applicant, certificate holder, registrant, or  
1627 licensee as provided under Title 78B, Chapter 8, Part 5, Small Business Equal Access to  
1628 Justice Act.

1629 (c) (i) An order, ruling, or decision of the division shall take effect and become  
1630 operative 30 days after the service of the order, ruling, or decision unless otherwise provided in  
1631 the order.

1632 (ii) If an appeal is taken by a licensee, registrant, or certificate holder, the division may  
1633 stay enforcement of an order, ruling, or decision in accordance with Section 63G-4-405.

1634 (iii) An appeal is governed by the Utah Rules of Appellate Procedure.

1635 (3) The commission and the director shall comply with the procedures and  
1636 requirements of Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative  
1637 proceeding.

1638 Section 21. Section **61-2g-301** is amended to read:

1639 **61-2g-301. License or certification required.**

1640 (1) Except as provided in Subsection (2), it is unlawful for a person to prepare, for  
1641 valuable consideration, an appraisal, an appraisal report, a certified appraisal report, or perform  
1642 a consultation service relating to real estate or real property in this state without first being  
1643 licensed or certified in accordance with this chapter.

1644 (2) This section does not apply to:

1645 (a) a principal broker, associate broker, or sales agent as defined by Section [61-2f-102](#)  
1646 licensed by this state who, in the ordinary course of the broker's or sales agent's business, gives  
1647 an opinion[~~:(i)~~] regarding the value of real estate[~~;~~]:

1648 [~~(ii)~~] (i) to a potential seller or third-party recommending a listing price of real estate;  
1649 or

1650 [~~(iii)~~] (ii) to a potential buyer or third-party recommending a purchase price of real  
1651 estate;

1652 (b) an employee of a company who states an opinion of value or prepares a report  
1653 containing value conclusions relating to real estate or real property solely for the company's  
1654 use;

1655 (c) an official or employee of a government agency while acting solely within the scope  
1656 of the official's or employee's duties, unless otherwise required by Utah law;

1657 (d) an auditor or accountant who states an opinion of value or prepares a report  
1658 containing value conclusions relating to real estate or real property while performing an audit;

1659 (e) an individual, except an individual who is required to be licensed or certified under  
1660 this chapter, who states an opinion about the value of property in which the [~~person~~] individual  
1661 has an ownership interest;

1662 (f) an individual who states an opinion of value if no consideration is paid or agreed to  
1663 be paid for the opinion and no other party is reasonably expected to rely on the individual's  
1664 appraisal expertise;

1665 (g) an individual, such as a researcher or a secretary, who does not render significant  
1666 professional assistance, as defined by the board, in arriving at a real estate appraisal analysis,  
1667 opinion, or conclusion;

1668 (h) an attorney authorized to practice law in any state who, in the course of the  
1669 attorney's practice or tax appeal services, uses an appraisal report governed by this chapter or  
1670 who states an opinion of the value of real estate; or

1671 (i) ~~[a person]~~ an individual who is not an appraiser who presents or provides a price  
 1672 estimate, evidence, or property tax information solely for a property tax appeal in accordance  
 1673 with Section 59-2-1017.

1674 (3) An opinion of value or report containing value conclusions exempt under  
 1675 Subsection (2) may not be referred to as an appraisal.

1676 (4) Except as provided in Subsection (2), to prepare or cause to be prepared in this state  
 1677 an appraisal, an appraisal report, or a certified appraisal report, an individual shall:

1678 (a) apply in writing for licensure or certification as provided in this chapter in the form  
 1679 the division may prescribe; and

1680 (b) become licensed or certified under this chapter.

1681 Section 22. Section **61-2g-406** is amended to read:

1682 **61-2g-406. Contingent fees.**

1683 (1) A person licensed or certified under this chapter who enters into an agreement to  
 1684 perform an appraisal may not accept a contingent fee.

1685 (2) A person ~~[who]~~ may accept payment of a fixed fee or a contingent fee when the  
 1686 person:

1687 (a) if the person is not licensed or certified under this chapter, presents or provides a  
 1688 price estimate or property tax information in accordance with Section 59-2-1017~~[, or a];~~ or

1689 (b) if the person [who] is licensed or certified under this chapter [who], enters into an  
 1690 agreement to provide consultation services~~[, may be paid a fixed fee or a contingent fee].~~

1691 ~~[(3)(a) If a person who presents or provides a price estimate or property tax  
 1692 information in accordance with Section 59-2-1017, or a person who is licensed or certified  
 1693 under this chapter, enters into an agreement to perform consultation services for a contingent  
 1694 fee, this fact shall be clearly stated in each oral statement.]~~

1695 ~~[(b) In addition to the requirements of Subsection (3)(a), if a person who presents or  
 1696 provides a price estimate or property tax information in accordance with Section 59-2-1017, or  
 1697 a person who is licensed or certified under this chapter, prepares a]~~

1698 (3) A person that accepts payment of a fee under Subsection (2) shall:

1699 (a) clearly state in each oral statement the fact that the person is accepting payment of a  
 1700 fee under a contingent fee arrangement and whether the person is licensed or certified under  
 1701 this chapter; and

1702 (b) clearly state in any written consultation report or summary, letter of transmittal, [~~or~~]  
 1703 certification statement [~~for a contingent fee, the person shall clearly state in the~~], price estimate,  
 1704 or property tax information[~~, report, summary, letter of transmittal, or certification statement~~]  
 1705 that the [~~report~~] document is prepared under a contingent fee arrangement and whether the  
 1706 person is licensed or certified under this chapter.

1707 Section 23. Section **61-2g-501** is amended to read:

1708 **61-2g-501. Enforcement -- Investigation -- Orders -- Hearings.**

1709 (1) (a) The division may investigate the actions of:

1710 (i) a person registered, licensed, or certified under this chapter;

1711 (ii) an applicant for registration, licensure, or certification;

1712 (iii) an applicant for renewal of registration, licensure, or certification; or

1713 (iv) a person required to be registered, licensed, or certified under this chapter.

1714 (b) The division may initiate an agency action against a person described in Subsection

1715 (1)(a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to:

1716 (i) impose disciplinary action;

1717 (ii) deny issuance to an applicant of:

1718 (A) an original registration, license, or certification; or

1719 (B) a renewal of a registration, license, or certification; or

1720 (iii) issue a cease and desist order as provided in Subsection (3).

1721 (2) (a) The division may:

1722 (i) administer an oath or affirmation;

1723 [~~(ii) subpoena a witness or evidence;~~]

1724 (ii) issue a subpoena that requires:

1725 (A) the attendance and testimony of a witness; or

1726 (B) the production of evidence;

1727 (iii) take evidence; and

1728 (iv) require the production of a book, paper, contract, record, document, information,  
 1729 or evidence relevant to the investigation described in Subsection (1).

1730 (b) The division may serve a subpoena by certified mail.

1731 (c) A failure to respond to a request by the division in an investigation authorized

1732 under this chapter is considered to be a separate violation of this chapter, including:



- 1733 (i) failing to respond to a subpoena as a witness;
- 1734 (ii) withholding evidence; or
- 1735 (iii) failing to produce a book, paper, contract, document, information, or record.
- 1736 (d) (i) A court of competent jurisdiction shall enforce, according to the practice and
- 1737 procedure of the court, a subpoena issued by the division.
- 1738 (ii) The division shall pay any witness fee, travel expense, mileage, or any other fee
- 1739 required by the service statutes of the state where the witness or evidence is located.
- 1740 [~~(d)~~] (e) (i) If a person is found to have violated this chapter or a rule made under this
- 1741 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,
- 1742 document, information, or record required under this chapter, including the costs incurred to
- 1743 copy an electronic book, paper, contract, document, information, or record in a universally
- 1744 readable format.
- 1745 (ii) If a person fails to pay the costs described in Subsection (2)[~~(d)~~](e)(i) when due, the
- 1746 person's license, certification, or registration is automatically suspended:
- 1747 (A) beginning the day on which the payment of costs is due; and
- 1748 (B) ending the day on which the costs are paid.
- 1749 (3) (a) The director shall issue and serve upon a person an order directing that person to
- 1750 cease and desist from an act if:
- 1751 (i) the director has reason to believe that the person has been engaging, is about to
- 1752 engage, or is engaging in the act constituting a violation of this chapter; and
- 1753 (ii) it appears to the director that it would be in the public interest to stop the act.
- 1754 (b) Within 10 days after receiving the order, the person upon whom the order is served
- 1755 may request a hearing.
- 1756 (c) Pending a hearing requested under Subsection (3)(b), a cease and desist order shall
- 1757 remain in effect.
- 1758 (d) If a request for hearing is made, the division shall follow the procedures and
- 1759 requirements of Title 63G, Chapter 4, Administrative Procedures Act.
- 1760 (4) (a) After a hearing requested under Subsection (3), if the board and division concur
- 1761 that an act of the person violates this chapter, the board, with the concurrence of the division:
- 1762 (i) shall issue an order making the cease and desist order permanent; and
- 1763 (ii) may impose another disciplinary action under Section [61-2g-502](#).

1764 (b) The director shall commence an action in the name of the Department of  
1765 Commerce and Division of Real Estate, in the district court in the county in which an act  
1766 described in Subsection (3) occurs or where the [person] individual resides or carries on  
1767 business, to enjoin and restrain the [person] individual from violating this chapter if:

1768 (i) (A) a hearing is not requested under Subsection (3); and

1769 (B) the [person] individual fails to cease the act described in Subsection (3); or

1770 (ii) after discontinuing the act described in Subsection (3), the [person] individual  
1771 again commences the act.

1772 (5) A remedy or action provided in this section does not limit, interfere with, or prevent  
1773 the prosecution of another remedy or action, including a criminal proceeding.

1774 (6) (a) Except as provided in Subsection (6)(b), the division shall commence a  
1775 disciplinary action under this chapter no later than the earlier of the following:

1776 (i) four years after the day on which the violation is reported to the division; or

1777 (ii) 10 years after the day on which the violation occurred.

1778 (b) The division may commence a disciplinary action under this chapter after the time  
1779 period described in Subsection (6)(a) expires if:

1780 (i) (A) the disciplinary action is in response to a civil or criminal judgment or  
1781 settlement; and

1782 (B) the division initiates the disciplinary action no later than one year after the day on  
1783 which the judgment is issued or the settlement is final; or

1784 (ii) the division and the [person] individual subject to a disciplinary action enter into a  
1785 written stipulation to extend the time period described in Subsection (6)(a).

1786 Section 24. Section **61-2g-502** is amended to read:

1787 **61-2g-502. Disciplinary action -- Grounds.**

1788 (1) (a) The board may order disciplinary action, with the concurrence of the division,  
1789 against a person:

1790 (i) registered, licensed, or certified under this chapter; or

1791 (ii) required to be registered, licensed, or certified under this chapter.

1792 (b) On the basis of a ground listed in Subsection (2) for disciplinary action, board  
1793 action may include:

1794 (i) revoking, suspending, or placing a person's registration, license, or certification on

1795 probation;

1796 (ii) denying a person's original registration, license, or certification;

1797 (iii) denying a person's renewal license, certification, or registration;

1798 (iv) in the case of denial or revocation of a registration, license, or certification, setting

1799 a waiting period for an applicant to apply for a registration, license, or certification under this

1800 chapter;

1801 (v) ordering remedial education;

1802 (vi) imposing a civil penalty upon a person not to exceed the greater of:

1803 (A) \$5,000 for each violation; or

1804 (B) the amount of any gain or economic benefit from a violation;

1805 (vii) issuing a cease and desist order;

1806 (viii) modifying an action described in Subsections (1)(b)(i) through (vii) if the board,

1807 with the concurrence of the division, finds that the person complies with court ordered

1808 restitution; or

1809 (ix) doing any combination of Subsections (1)(b)(i) through (viii).

1810 (c) (i) If the board or division issues an order that orders a fine or educational

1811 requirements as part of the disciplinary action against a person, including a stipulation and

1812 order, the board or division shall state in the order the deadline by which the person shall

1813 comply with the fine or educational requirements.

1814 (ii) If a person fails to comply with a stated deadline:

1815 (A) the person's license, certificate, or registration is automatically suspended:

1816 (I) beginning on the day specified in the order as the deadline for compliance; and

1817 (II) ending the day on which the person complies in full with the order; and

1818 (B) if the person fails to pay a fine required by an order, the division may begin a

1819 collection process:

1820 (I) established by the division by rule made in accordance with Title 63G, Chapter 3,

1821 Utah Administrative Rulemaking Act; and

1822 (II) subject to Title 63A, Chapter 3, Part 5, Office of State Debt Collection.

1823 (2) The following are grounds for disciplinary action under this section:

1824 (a) procuring or attempting to procure a registration, license, or certification under this

1825 chapter:

- 1826 (i) by fraud; or
- 1827 (ii) by making a false statement, submitting false information, or making a material
- 1828 misrepresentation in an application filed with the division;
- 1829 (b) paying money or attempting to pay money other than a fee provided for by this
- 1830 chapter to a member or employee of the division to procure a registration, license, or
- 1831 certification under this chapter;
- 1832 (c) an act or omission in the practice of real estate appraising that constitutes
- 1833 dishonesty, fraud, or misrepresentation;
- 1834 (d) entry of a judgment against a registrant, licensee, or certificate holder on grounds of
- 1835 fraud, misrepresentation, or deceit in the making of an appraisal of real estate;
- 1836 (e) a guilty plea to a criminal offense involving moral turpitude that is held in
- 1837 abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo
- 1838 contendere, of a criminal offense involving moral turpitude;
- 1839 (f) engaging in the business of real estate appraising under an assumed or fictitious
- 1840 name not properly registered in this state;
- 1841 (g) paying a finder's fee or a referral fee to a person not licensed or certified under this
- 1842 chapter in connection with an appraisal of real estate or real property in this state;
- 1843 (h) making a false or misleading statement in:
- 1844 (i) that portion of a written appraisal report that deals with professional qualifications;
- 1845 or
- 1846 (ii) testimony concerning professional qualifications;
- 1847 (i) violating or disregarding:
- 1848 (i) this chapter;
- 1849 (ii) an order of:
- 1850 (A) the board; or
- 1851 (B) the division, in a case when the board delegates to the division the authority to
- 1852 make a decision on behalf of the board; or
- 1853 (iii) a rule issued under this chapter;
- 1854 (j) violating the confidential nature of governmental records to which a person
- 1855 registered, licensed, or certified under this chapter gained access through employment or
- 1856 engagement as an appraiser by a governmental agency;

1857 (k) accepting a contingent fee for performing an appraisal if in fact the fee is or was  
1858 contingent upon:

1859 (i) the appraiser reporting a predetermined analysis, opinion, or conclusion;

1860 (ii) the analysis, opinion, conclusion, or valuation reached; or

1861 (iii) the consequences resulting from the appraisal assignment;

1862 (l) unprofessional conduct as defined by statute or rule;

1863 (m) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

1864 (i) providing a title insurance product or service without the approval required by

1865 Section 31A-2-405; or

1866 (ii) knowingly providing false or misleading information in the statement required by

1867 Subsection 31A-2-405(2); or

1868 (n) other conduct that constitutes dishonest dealing.

1869 (3) A person previously licensed, certified, or registered under this chapter remains  
1870 responsible for, and is subject to disciplinary action for, an act that the person committed, while  
1871 the person was licensed, certified, or registered, in violation of this chapter or an administrative  
1872 rule in effect at the time that the person committed the act, regardless of whether the person is  
1873 currently licensed, certified, or registered.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**