

1 **DEPARTMENT OF COMMERCE BOARDS, COMMITTEES,**
2 **AND COMMISSIONS CONCURRENCE AMENDMENTS**

3 2016 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Curtis S. Bramble**

6 House Sponsor: Val L. Peterson

8 **LONG TITLE**

9 **Committee Note:**

10 The Business and Labor Interim Committee recommended this bill.

11 **General Description:**

12 This bill modifies provisions related to when concurrence with a board, committee, or
13 commission is required.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ defines "concurrence";
- 17 ▶ if concurrence is required, provides that the director or division has final authority if
18 the Construction Services Commission and the director or division cannot reach
19 concurrence;
- 20 ▶ clarifies when concurrence between the director or division and the Securities
21 Commission is required;
- 22 ▶ provides that the director or division has final authority if the Security Commission
23 and the director or division cannot reach concurrence;
- 24 ▶ repeals outdated language;
- 25 ▶ provides that the director or division has final authority if provisions related to the
26 Division of Real Estate require concurrence and concurrence cannot be reached;
- 27 ▶ requires concurrence of the division if the Real Estate Appraiser Licensing and



28 Certification Board makes rules related to appraised management services or companies;
 29 ▶ provides that the Real Estate Commission may not make certain rules without
 30 concurrence by the Division of Real Estate; and
 31 ▶ makes technical changes.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

- 38 **58-55-103**, as last amended by Laws of Utah 2010, Chapter 286
- 39 **61-1-12**, as last amended by Laws of Utah 2009, Chapter 351
- 40 **61-1-14**, as last amended by Laws of Utah 2010, Chapter 218
- 41 **61-1-15.5**, as last amended by Laws of Utah 2009, Chapter 351
- 42 **61-2e-304**, as enacted by Laws of Utah 2009, Chapter 269
- 43 **61-2e-305**, as enacted by Laws of Utah 2009, Chapter 269
- 44 **61-2f-103**, as last amended by Laws of Utah 2014, Chapter 350
- 45 **61-2f-203**, as last amended by Laws of Utah 2013, Chapter 426
- 46 **61-2f-204**, as last amended by Laws of Utah 2014, Chapter 350
- 47 **61-2f-206**, as last amended by Laws of Utah 2013, Chapter 292
- 48 **61-2f-306**, as renumbered and amended by Laws of Utah 2010, Chapter 379
- 49 **61-2f-307**, as renumbered and amended by Laws of Utah 2010, Chapter 379

50 ENACTS:

- 51 **61-1-18.8**, Utah Code Annotated 1953
- 52 **61-2-205**, Utah Code Annotated 1953

53

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

55 Section 1. Section **58-55-103** is amended to read:

56 **58-55-103. Construction Services Commission created -- Functions --**
 57 **Appointment -- Qualifications and terms of members -- Vacancies -- Expenses --**
 58 **Meetings.**

- 59 (1) (a) There is created within the division the Construction Services Commission.
- 60 (b) The commission shall:
- 61 (i) with the concurrence of the director, make reasonable rules under Title 63G,
62 Chapter 3, Utah Administrative Rulemaking Act, to administer and enforce this chapter which
63 are consistent with this chapter including:
- 64 (A) licensing of various licensees;
- 65 (B) examination requirements and administration of the examinations, to include
66 approving and establishing a passing score for applicant examinations;
- 67 (C) standards of supervision for students or persons in training to become qualified to
68 obtain a license in the trade they represent; and
- 69 (D) standards of conduct for various licensees;
- 70 (ii) approve or disapprove fees adopted by the division under Section 63J-1-504;
- 71 (iii) except where the boards conduct them, conduct all administrative hearings not
72 delegated to an administrative law judge relating to the licensing of any applicant;
- 73 (iv) except as otherwise provided in Sections 38-11-207 and 58-55-503, with the
74 concurrence of the director, impose sanctions against licensees and certificate holders with the
75 same authority as the division under Section 58-1-401;
- 76 (v) advise the director on the administration and enforcement of any matters affecting
77 the division and the construction industry;
- 78 (vi) advise the director on matters affecting the division budget;
- 79 (vii) advise and assist trade associations in conducting construction trade seminars and
80 industry education and promotion; and
- 81 (viii) perform other duties as provided by this chapter.
- 82 (2) (a) Initially the commission shall be comprised of the five members of the
83 Contractors Licensing Board and two of the three chair persons from the Plumbers Licensing
84 Board, the Alarm System Security and Licensing Board, and the Electricians Licensing Board.
- 85 (b) The terms of office of the commission members who are serving on the Contractors
86 Licensing Board shall continue as they serve on the commission.
- 87 (c) Beginning July 1, 2004, the commission shall be comprised of nine members
88 appointed by the executive director with the approval of the governor from the following
89 groups:

- 90 (i) one member shall be a licensed general engineering contractor;
- 91 (ii) one member shall be a licensed general building contractor;
- 92 (iii) two members shall be licensed residential and small commercial contractors;
- 93 (iv) three members shall be the three chair persons from the Plumbers Licensing Board,
- 94 the Alarm System Security and Licensing Board, and the Electricians Licensing Board; and
- 95 (v) two members shall be from the general public, provided, however that the certified
- 96 public accountant on the Contractors Licensing Board will continue to serve until the current
- 97 term expires, after which both members under this Subsection (2)(c)(v) shall be appointed from
- 98 the general public.

99 (3) (a) Except as required by Subsection (3)(b), as terms of current commission
100 members expire, the executive director with the approval of the governor shall appoint each
101 new member or reappointed member to a four-year term ending June 30.

102 (b) Notwithstanding the requirements of Subsection (3)(a), the executive director with
103 the approval of the governor shall, at the time of appointment or reappointment, adjust the
104 length of terms to stagger the terms of commission members so that approximately 1/2 of the
105 commission members are appointed every two years.

106 (c) A commission member may not serve more than two consecutive terms.

107 (4) The commission shall elect annually one of its members as chair, for a term of one
108 year.

109 (5) When a vacancy occurs in the membership for any reason, the replacement shall be
110 appointed for the unexpired term.

111 (6) A member may not receive compensation or benefits for the member's service, but
112 may receive per diem and travel expenses in accordance with:

113 (a) Section [63A-3-106](#);

114 (b) Section [63A-3-107](#); and

115 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
116 [63A-3-107](#).

117 (7) (a) The commission shall meet at least monthly unless the director determines
118 otherwise.

119 (b) The director may call additional meetings at the director's discretion, upon the
120 request of the chair, or upon the written request of four or more commission members.

121 (8) (a) Five members constitute a quorum for the transaction of business.

122 (b) If a quorum is present when a vote is taken, the affirmative vote of commission
123 members present is the act of the commission.

124 (9) The commission shall comply with the procedures and requirements of Title 13,
125 Chapter 1, Department of Commerce, and Title 63G, Chapter 4, Administrative Procedures
126 Act, in all of its adjudicative proceedings.

127 (10) (a) For purposes of this Subsection (10), "concurrence" means the entities given a
128 concurring role must jointly agree for the action to be taken.

129 (b) If a provision of this chapter requires concurrence between the director or division
130 and the commission and no concurrence can be reached, the director or division has final
131 authority.

131a Ĥ→ (c) When this chapter requires concurrence between the director or division and the
131b commission:

131c (i) the director or division shall report to and update the commission on a regular basis
131d related to matters requiring concurrence; and

131e (ii) the commission shall review the report submitted by the director or division under
131f this Subsection (10)(c) and concur with the report, or:

131g (A) provide a reason for not concurring with the report; and

131h (B) provide recommendations to the director or division. ←Ĥ

132 Section 2. Section 61-1-12 is amended to read:

133 **61-1-12. Denial, suspension, and revocation of registration.**

134 (1) [~~Upon approval by a majority~~] With the concurrence of the commission, the
135 director, by means of an adjudicative proceeding conducted in accordance with Title 63G,
136 Chapter 4, Administrative Procedures Act, may issue a stop order that denies effectiveness to,
137 or suspends or revokes the effectiveness of, any securities registration statement and may
138 impose a fine if the director finds that the order is in the public interest and that:

139 (a) the registration statement, as of its effective date or as of any earlier date in the case
140 of an order denying effectiveness, or an amendment under Subsection 61-1-11(10) as of its
141 effective date, or a report under Subsection 61-1-11(9), is incomplete in a material respect, or
142 contains a statement that was, in the light of the circumstances under which it was made, false
143 or misleading with respect to a material fact;

144 (b) this chapter, or a rule, order, or condition lawfully imposed under this chapter, is
145 willfully violated, in connection with the offering, by:

146 (i) the person filing the registration statement;

147 (ii) the issuer, a partner, officer, or director of the issuer, a person occupying a similar
148 status or performing similar functions, or a person directly or indirectly controlling or
149 controlled by the issuer, but only if the person filing the registration statement is directly or
150 indirectly controlled by or acting for the issuer; or
151 (iii) an underwriter;

152 (c) subject to Subsection (5), the security registered or sought to be registered is the
153 subject of an administrative stop order or similar order, or a permanent or temporary injunction
154 of a court of competent jurisdiction entered under another federal or state act applicable to the
155 offering;

156 (d) the issuer's enterprise or method of business includes or would include activities
157 that are illegal where performed;

158 (e) the offering has worked or tended to work a fraud upon purchasers or would so
159 operate;

160 (f) the offering is or would be made with unreasonable amounts of underwriters' and
161 sellers' discounts, commissions, or other compensation, or promoters' profits or participation,
162 or unreasonable amounts or kinds of options;

163 (g) when a security is sought to be registered by coordination, there is a failure to
164 comply with the undertaking required by Subsection 61-1-9(2)(d); or

165 (h) the applicant or registrant has failed to pay the proper filing fee.

166 (2) The director may enter an order under this section but may vacate the order if the
167 director finds that the conditions that prompted its entry have changed or that it is otherwise in
168 the public interest to do so.

169 (3) The director may not issue a stop order against an effective registration statement
170 on the basis of a fact or transaction known to the division when the registration statement
171 became effective unless the proceeding is instituted within the 120 days after the day on which
172 the registration statement becomes effective.

173 (4) A person may not be considered to have violated Section 61-1-7 or 61-1-15 by
174 reason of an order or sale effected after the entry of an order under this section if that person
175 proves by a preponderance of the evidence that the person did not know, and in the exercise of
176 reasonable care could not have known, of the order.

177 (5) (a) The director may not commence agency action against an effective registration
178 statement under Subsection (1)(c) more than one year from the day on which the order or
179 injunction on which the director relies is issued.

180 (b) The director may not enter an order under Subsection (1)(c) on the basis of an order
181 or injunction entered under the securities act of another state unless that order or injunction is
182 issued on the basis of facts that would constitute a ground for a stop order under this section at

183 the time the director commences the agency action.

184 Section 3. Section **61-1-14** is amended to read:

185 **61-1-14. Exemptions.**

186 (1) The following securities are exempt from Sections **61-1-7** and **61-1-15**:

187 (a) a security, including a revenue obligation, issued or guaranteed by the United
188 States, a state, a political subdivision of a state, or an agency or corporate or other
189 instrumentality of one or more of the foregoing, or a certificate of deposit for any of the
190 foregoing;

191 (b) a security issued or guaranteed by Canada, a Canadian province, a political
192 subdivision of a Canadian province, an agency or corporate or other instrumentality of one or
193 more of the foregoing, or another foreign government with which the United States currently
194 maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer
195 or guarantor;

196 (c) a security issued by and representing an interest in or a debt of, or guaranteed by, a
197 depository institution organized under the laws of the United States, or a depository institution
198 or trust company supervised under the laws of a state;

199 (d) a security issued or guaranteed by a public utility or a security regulated in respect
200 of its rates or in its issuance by a governmental authority of the United States, a state, Canada,
201 or a Canadian province;

202 (e) (i) a federal covered security specified in the Securities Act of 1933, Section
203 18(b)(1), 15 U.S.C. [~~Section~~] Sec. 77r(b)(1), or by rule adopted under that provision;

204 (ii) a security listed or approved for listing on another securities market specified by
205 rule under this chapter;

206 (iii) any of the following with respect to a security described in Subsection (1)(e)(i) or
207 (ii):

208 (A) a put or a call option contract;

209 (B) a warrant; or

210 (C) a subscription right on or with respect to the security;

211 (iv) an option or similar derivative security on a security or an index of securities or
212 foreign currencies issued by a clearing agency that is:

213 (A) registered under the Securities Exchange Act of 1934; and

214 (B) listed or designated for trading on a national securities exchange, or a facility of a
215 national securities association registered under the Securities Exchange Act of 1934;

216 (v) an offer or sale, of the underlying security in connection with the offer, sale, or
217 exercise of an option or other security that was exempt when the option or other security was
218 written or issued; or

219 (vi) an option or a derivative security designated by the Securities and Exchange
220 Commission under Securities Exchange Act of 1934, Section 9(b), 15 U.S.C. [~~Section~~] Sec.
221 78i(b);

222 (f) (i) a security issued by a person organized and operated not for private profit but
223 exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or
224 reformatory purposes, or as a chamber of commerce or trade or professional association; and

225 (ii) a security issued by a corporation organized under Title 3, Chapter 1, General
226 Provisions Relating to Agricultural Cooperative Associations, and a security issued by a
227 corporation to which that chapter is made applicable by compliance with Section 3-1-21;

228 (g) an investment contract issued in connection with an employees' stock purchase,
229 option, savings, pension, profit-sharing, or similar benefit plan;

230 (h) a security issued by an investment company that is registered, or that has filed a
231 registration statement, under the Investment Company Act of 1940; and

232 (i) a security as to which the director, by rule or order, finds that registration is not
233 necessary or appropriate for the protection of investors.

234 (2) The following transactions are exempt from Sections 61-1-7 and 61-1-15:

235 (a) an isolated nonissuer transaction, whether effected through a broker-dealer or not;

236 (b) a nonissuer transaction in an outstanding security, if as provided by rule of the
237 division:

238 (i) information about the issuer of the security as required by the division is currently
239 listed in a securities manual recognized by the division, and the listing is based upon such
240 information as required by rule of the division; or

241 (ii) the security has a fixed maturity or a fixed interest or dividend provision and there
242 is no default during the current fiscal year or within the three preceding fiscal years, or during
243 the existence of the issuer and any predecessors if less than three years, in the payment of
244 principal, interest, or dividends on the security;

245 (c) a nonissuer transaction effected by or through a registered broker-dealer pursuant to
246 an unsolicited order or offer to buy;

247 (d) a transaction between the issuer or other person on whose behalf the offering is
248 made and an underwriter, or among underwriters;

249 (e) a transaction in a bond or other evidence of indebtedness secured by a real or
250 chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the
251 entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of
252 indebtedness secured thereby, is offered and sold as a unit;

253 (f) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in
254 bankruptcy, guardian, or conservator;

255 (g) a transaction executed by a bona fide pledgee without a purpose of evading this
256 chapter;

257 (h) an offer or sale to one of the following whether the purchaser is acting for itself or
258 in a fiduciary capacity:

259 (i) a depository institution;

260 (ii) a trust company;

261 (iii) an insurance company;

262 (iv) an investment company as defined in the Investment Company Act of 1940;

263 (v) a pension or profit-sharing trust;

264 (vi) other financial institution or institutional investor; or

265 (vii) a broker-dealer;

266 (i) an offer or sale of a preorganization certificate or subscription if:

267 (i) no commission or other remuneration is paid or given directly or indirectly for
268 soliciting a prospective subscriber;

269 (ii) the number of subscribers acquiring a legal or beneficial interest therein does not
270 exceed 10;

271 (iii) there is no general advertising or solicitation in connection with the offer or sale;
272 and

273 (iv) no payment is made by a subscriber;

274 (j) subject to Subsection (6), a transaction pursuant to an offer by an issuer of its
275 securities to its existing securities holders, if:

- 276 (i) no commission or other remuneration, other than a standby commission is paid or
277 given directly or indirectly for soliciting a security holder in this state; and
- 278 (ii) the transaction constitutes:
- 279 (A) the conversion of convertible securities;
- 280 (B) the exercise of nontransferable rights or warrants;
- 281 (C) the exercise of transferable rights or warrants if the rights or warrants are
282 exercisable not more than 90 days after their issuance;
- 283 (D) the purchase of securities under a preemptive right; or
- 284 (E) a transaction other than one specified in Subsections (2)(j)(ii)(A) through (D) if:
- 285 (I) the division is furnished with:
- 286 (Aa) a general description of the transaction;
- 287 (Bb) the disclosure materials to be furnished to the issuer's securities holders in the
288 transaction; and
- 289 (Cc) a non-refundable fee; and
- 290 (II) the division does not, by order, deny or revoke the exemption within 20 working
291 days after the day on which the filing required by Subsection (2)(j)(ii)(E)(I) is complete;
- 292 (k) an offer, but not a sale, of a security for which a registration statement is filed under
293 both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and
294 no public proceeding or examination looking toward such an order is pending;
- 295 (l) a distribution of securities as a dividend if the person distributing the dividend is the
296 issuer of the securities distributed;
- 297 (m) a nonissuer transaction effected by or through a registered broker-dealer where the
298 broker-dealer or issuer files with the division, and the broker-dealer maintains in the
299 broker-dealer's records, and makes reasonably available upon request to a person expressing an
300 interest in a proposed transaction in the security with the broker-dealer information prescribed
301 by the division under its rules;
- 302 (n) a transaction not involving a public offering;
- 303 (o) an offer or sale of "condominium units" or "time period units" as those terms are
304 defined in Title 57, Chapter 8, Condominium Ownership Act, whether or not to be sold by
305 installment contract, if the following are complied with:
- 306 (i) Title 57, Chapter 8, Condominium Ownership Act, or if the units are located in

307 another state, the condominium act of that state;

308 (ii) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;

309 (iii) Title 57, Chapter 19, Timeshare and Camp Resort Act; and

310 (iv) Title 70C, Utah Consumer Credit Code;

311 (p) a transaction or series of transactions involving a merger, consolidation,

312 reorganization, recapitalization, reclassification, or sale of assets, if the consideration for

313 which, in whole or in part, is the issuance of securities of a person or persons, and if:

314 (i) the transaction or series of transactions is incident to a vote of the securities holders

315 of each person involved or by written consent or resolution of some or all of the securities

316 holders of each person involved;

317 (ii) the vote, consent, or resolution is given under a provision in:

318 (A) the applicable corporate statute or other controlling statute;

319 (B) the controlling articles of incorporation, trust indenture, deed of trust, or

320 partnership agreement; or

321 (C) the controlling agreement among securities holders;

322 (iii) (A) one person involved in the transaction is required to file proxy or

323 informational materials under Section 14(a) or (c) of the Securities Exchange Act of 1934 or

324 Section 20 of the Investment Company Act of 1940 and has so filed;

325 (B) one person involved in the transaction is an insurance company that is exempt from

326 filing under Section 12(g)(2)(G) of the Securities Exchange Act of 1934, and has filed proxy or

327 informational materials with the appropriate regulatory agency or official of its domiciliary

328 state; or

329 (C) all persons involved in the transaction are exempt from filing under Section

330 12(g)(1) of the Securities Exchange Act of 1934, and file with the division such proxy or

331 informational material as the division requires by rule;

332 (iv) the proxy or informational material is filed with the division and distributed to all

333 securities holders entitled to vote in the transaction or series of transactions at least 10 working

334 days [~~prior to~~] before any necessary vote by the securities holders or action on any necessary

335 consent or resolution; and

336 (v) the division does not, by order, deny or revoke the exemption within 10 working

337 days after filing of the proxy or informational materials;

338 (q) subject to Subsection (7), a transaction pursuant to an offer to sell securities of an
339 issuer if:

340 (i) the transaction is part of an issue in which there are not more than 15 purchasers in
341 this state, other than those designated in Subsection (2)(h), during any 12 consecutive months;

342 (ii) no general solicitation or general advertising is used in connection with the offer to
343 sell or sale of the securities;

344 (iii) no commission or other similar compensation is given, directly or indirectly, to a
345 person other than a broker-dealer or agent licensed under this chapter, for soliciting a
346 prospective purchaser in this state;

347 (iv) the seller reasonably believes that all the purchasers in this state are purchasing for
348 investment; and

349 (v) the transaction is part of an aggregate offering that does not exceed \$1,000,000, or a
350 greater amount as prescribed by a division rule, during any 12 consecutive months;

351 (r) a transaction involving a commodity contract or commodity option;

352 (s) a transaction in a security, whether or not the security or transaction is otherwise
353 exempt if:

354 (i) the transaction is:

355 (A) in exchange for one or more outstanding securities, claims, or property interests; or

356 (B) partly for cash and partly in exchange for one or more outstanding securities,
357 claims, or property interests; and

358 (ii) the terms and conditions are approved by the director after a hearing under Section
359 [61-1-11.1](#);

360 (t) a transaction incident to a judicially approved reorganization in which a security is
361 issued:

362 (i) in exchange for one or more outstanding securities, claims, or property interests; or

363 (ii) partly for cash and partly in exchange for one or more outstanding securities,
364 claims, or property interests;

365 (u) a nonissuer transaction by a federal covered investment adviser with investments
366 under management in excess of \$100,000,000 acting in the exercise of discretionary authority
367 in a signed record for the account of others; and

368 (v) a transaction as to which the division finds that registration is not necessary or

369 appropriate for the protection of investors.

370 (3) A person filing an exemption notice or application shall pay a filing fee as
371 determined under Section 61-1-18.4.

372 (4) ~~Upon approval by a majority~~ With the concurrence of the commission, the
373 director, by means of an adjudicative proceeding conducted in accordance with Title 63G,
374 Chapter 4, Administrative Procedures Act, may deny or revoke an exemption specified in
375 Subsection (1)(f) or (g) or in Subsection (2) with respect to:

376 (a) a specific security, transaction, or series of transactions; or

377 (b) a person or issuer, an affiliate or successor to a person or issuer, or an entity
378 subsequently organized by or on behalf of a person or issuer generally and may impose a fine if
379 the director finds that the order is in the public interest and that:

380 (i) the application for or notice of exemption filed with the division is incomplete in a
381 material respect or contains a statement which was, in the light of the circumstances under
382 which it was made, false or misleading with respect to a material fact;

383 (ii) this chapter, or a rule, order, or condition lawfully imposed under this chapter has
384 been willfully violated in connection with the offering or exemption by:

385 (A) the person filing an application for or notice of exemption;

386 (B) the issuer, a partner, officer, or director of the issuer, a person occupying a similar
387 status or performing similar functions, or a person directly or indirectly controlling or
388 controlled by the issuer, but only if the person filing the application for or notice of exemption
389 is directly or indirectly controlled by or acting for the issuer; or

390 (C) an underwriter;

391 (iii) subject to Subsection (8), the security for which the exemption is sought is the
392 subject of an administrative stop order or similar order, or a permanent or temporary injunction
393 or a court of competent jurisdiction entered under another federal or state act applicable to the
394 offering or exemption;

395 (iv) the issuer's enterprise or method of business includes or would include activities
396 that are illegal where performed;

397 (v) the offering has worked, has tended to work, or would operate to work a fraud upon
398 purchasers;

399 (vi) the offering is or was made with unreasonable amounts of underwriters' and sellers'

400 discounts, commissions, or other compensation, or promoters' profits or participation, or
401 unreasonable amounts or kinds of options;

402 (vii) an exemption is sought for a security or transaction that is not eligible for the
403 exemption; or

404 (viii) the proper filing fee, if required, has not been paid.

405 (5) (a) An order under Subsection (4) may not operate retroactively.

406 (b) A person may not be considered to have violated Section 61-1-7 or 61-1-15 by
407 reason of an offer or sale effected after the entry of an order under this Subsection (5) if the
408 person sustains the burden of proof that the person did not know, and in the exercise of
409 reasonable care could not have known, of the order.

410 (6) The exemption created by Subsection (2)(j) is not available for an offer or sale of a
411 security to an existing securities holder who has acquired the holder's security from the issuer
412 in a transaction in violation of Section 61-1-7.

413 (7) As to a security, a transaction, or a type of security or transaction, the division may:

414 (a) withdraw or further condition the exemption described in Subsection (2)(q); or

415 (b) waive one or more of the conditions described in Subsection (2)(q).

416 (8) (a) The director may not institute a proceeding against an effective exemption under
417 Subsection (4)(b) more than one year from the day on which the order or injunction on which
418 the director relies is issued.

419 (b) The director may not enter an order under Subsection (4)(b) on the basis of an order
420 or injunction entered under another state act unless that order or injunction is issued on the
421 basis of facts that would constitute a ground for a stop order under this section at the time the
422 director enters the order.

423 Section 4. Section 61-1-15.5 is amended to read:

424 **61-1-15.5. Federal covered securities.**

425 (1) The division by rule or order may require the filing of any of the following
426 documents with respect to a covered security under Section 18(b)(2) of the Securities Act of
427 1933:

428 (a) [~~prior to~~] before the initial offer of federal covered security in this state, a notice
429 form as prescribed by the division or all documents that are part of a federal registration
430 statement filed with the Securities and Exchange Commission under the Securities Act of

431 1933, together with a consent to service of process signed by the issuer and a filing fee as
432 determined under Section 61-1-18.4;

433 (b) after the initial offer of such federal covered security in this state, all documents
434 that are part of an amendment to a federal registration statement filed with the U.S. Securities
435 and Exchange Commission under the Securities Act of 1933, which shall be filed concurrently
436 with the division;

437 (c) a report of the value of federal covered securities offered or sold in this state,
438 together with a filing fee as determined under Section 61-1-18.4; and

439 (d) a notice filing under this section shall be effective for one year and shall be
440 renewed annually in order to continue to offer or sell the federal covered securities for which
441 the notice was filed.

442 (2) With respect to a security that is a covered security under Section 18(b)(4)(D) of
443 the Securities Act of 1933, the division by rule or order may require the issuer to file a notice
444 on SEC Form D and a consent to service of process signed by the issuer no later than 15 days
445 after the first sale of such covered security in this state, together with a filing fee as determined
446 under Section 61-1-18.4.

447 (3) The division by rule or order may require the filing of a document filed with the
448 Securities and Exchange Commission under the Securities Act of 1933, with respect to a
449 covered security under Securities Act of 1933, Section 18(b)(3) or (4), together with a filing fee
450 as determined under Section 61-1-18.4.

451 (4) ~~[Upon approval by a majority of the commission,]~~ With the concurrence of the
452 commission, the director, by means of an adjudicative proceeding conducted in accordance
453 with Title 63G, Chapter 4, Administrative Procedures Act, may issue a stop order suspending
454 the offer and sale of a federal covered security, except a covered security under Section
455 18(b)(1) of the Securities Act of 1933, if the director finds that the order is in the public interest
456 and there is a failure to comply with any condition established under this section.

457 (5) The division by rule or order may waive any or all of the provisions of this section.
458 Section 5. Section 61-1-18.8 is enacted to read:

459 **61-1-18.8. Concurrence under this chapter.**

460 (1) For purposes of this section, "concurrence" means the entities given a concurring
461 role must jointly agree for the action to be taken.

462 (2) Except for Section 61-1-18.7, if a provision of this chapter requires concurrence
 463 between the director or division and the commission and no concurrence can be reached, the
 464 director or division has final authority.

464a **Ĥ→ (3) When this chapter requires concurrence between the director or division and the**
 464b **commission:**

464c **(a) the director or division shall report to and update the commission on a regular basis**
 464d **related to matters requiring concurrence; and**

464e **(b) the commission shall review the report submitted by the director or division under**
 464f **this Subsection (3) and concur with the report, or:**

464g **(i) provide a reason for not concurring with the report; and**

464h **(ii) provide recommendations to the division or director.** ←Ĥ

465 Section 6. Section 61-2-205 is enacted to read:

466 **61-2-205. Concurrence.**

467 **Ĥ→ (1) ←Ĥ If a provision under this title requires concurrence between the director or**
 467a **division and**

468 **a commission or board created under this title and no concurrence can be reached, the director**
 469 **or division has final authority.**

469a **Ĥ→ (2) When this title requires concurrence between the director or division and a**
 469b **commission or board:**

469c **(a) the director or division shall report to and update the commission or board on a**
 469d **regular basis related to matters requiring concurrence; and**

469e **(b) the commission or board shall review the report submitted by the director or**
 469f **division under this Subsection (2) and concur with the report, or:**

469g **(i) provide a reason for not concurring with the report; and**

469h **(ii) provide recommendations to the director or division.** ←Ĥ

470 Section 7. Section 61-2e-304 is amended to read:

471 **61-2e-304. Required disclosure.**

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

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

478 (a) what constitutes the total compensation that an appraisal management company

479 pays to an appraiser who performs a real estate appraisal activity, except that the rules shall
480 provide for disclosing this amount:

- 481 (i) as a dollar amount; or
- 482 (ii) as a percentage of the total amount charged to a client by an appraisal management
483 company;
- 484 (b) the method an appraisal management company is required to use in calculating the
485 figures described in Subsection (2)(a); and
- 486 (c) the form and content of the disclosure required by Subsection (1).

487 Section 8. Section **61-2e-305** is amended to read:

488 **61-2e-305. Employee requirements.**

- 489 (1) Subsection (2) applies to an individual who:
 - 490 (a) (i) is an employee of an appraisal management company; or
 - 491 (ii) works on behalf of an appraisal management company; and
 - 492 (b) (i) selects an appraiser for the performance of a real estate appraisal activity for the

493 appraisal management company; or

494 (ii) reviews a completed appraisal.

495 (2) (a) An individual described in Subsection (1) is required to be appropriately trained
496 and qualified in the performance of an appraisal, as determined by rule made by the board [~~by~~
497 ~~rule made~~], with the concurrence of the division, in accordance with Title 63G, Chapter 3, Utah
498 Administrative Rulemaking Act.

499 (b) For purposes of an individual described in Subsection (1) who reviews the work of
500 an appraiser, to comply with this Subsection (2), the individual shall demonstrate knowledge of
501 the applicable appraisal standards, as determined by rule made by the board [~~by rule made~~],
502 with the concurrence of the division, in accordance with Title 63G, Chapter 3, Utah
503 Administrative Rulemaking Act.

504 Section 9. Section **61-2f-103** is amended to read:

505 **61-2f-103. Real Estate Commission.**

506 (1) There is created within the division a Real Estate Commission. The commission
507 shall:

508 (a) subject to concurrence by the division and in accordance with Title 63G, Chapter 3,
509 Utah Administrative Rulemaking Act, make rules for the administration of this chapter that are
510 not inconsistent with this chapter, including:

511 (i) licensing of:

512 (A) a principal broker;

513 (B) an associate broker; and

514 (C) a sales agent;

515 (ii) registration of:

516 (A) an entity; and

517 (B) a branch office;

518 (iii) prelicensing and postlicensing education curricula;

519 (iv) examination procedures;

520 (v) the certification and conduct of:

521 (A) a real estate school;

522 (B) a course provider; or

523 (C) an instructor;

- 524 (vi) proper handling of money received by a licensee under this chapter;
- 525 (vii) brokerage office procedures and recordkeeping requirements;
- 526 (viii) property management;
- 527 (ix) standards of conduct for a licensee under this chapter;
- 528 (x) a rule made under Section 61-2f-307 regarding an undivided fractionalized
- 529 long-term estate; and
- 530 (xi) if the commission, with the concurrence of the division, determines necessary, a
- 531 rule as provided in Subsection 61-2f-306(3) regarding a legal form;
- 532 (b) establish, with the concurrence of the division, a fee provided for in this chapter,
- 533 except a fee imposed under Part 5, Real Estate Education, Research, and Recovery Fund Act;
- 534 (c) conduct an administrative hearing not delegated by the commission to an
- 535 administrative law judge or the division relating to the:
- 536 (i) licensing of an applicant;
- 537 (ii) conduct of a licensee;
- 538 (iii) the certification or conduct of a real estate school, course provider, or instructor
- 539 regulated under this chapter; or
- 540 (iv) violation of this chapter by any person;
- 541 (d) with the concurrence of the director, impose a sanction as provided in Section
- 542 61-2f-404;
- 543 (e) advise the director on the administration and enforcement of a matter affecting the
- 544 division and the real estate sales and property management industries;
- 545 (f) advise the director on matters affecting the division budget;
- 546 (g) advise and assist the director in conducting real estate seminars; and
- 547 (h) perform other duties as provided by this chapter.
- 548 (2) (a) Except as provided in Subsection (2)(b), a state entity may not, without the
- 549 concurrence of the commission, make a rule that changes the rights, duties, or obligations of
- 550 buyers, sellers, or persons licensed under this chapter in relation to a real estate transaction
- 551 between private parties.
- 552 (b) Subsection (2)(a) does not apply to a rule made:
- 553 (i) under Title 31A, Insurance Code, or Title 7, Financial Institutions Act; or
- 554 (ii) by the Department of Commerce or any division or other rulemaking body within

555 the Department of Commerce.

556 (3) (a) The commission shall be comprised of five members appointed by the governor
557 and approved by the Senate.

558 (b) Four of the commission members shall:

559 (i) have at least five years' experience in the real estate business; and

560 (ii) hold an active principal broker, associate broker, or sales agent license.

561 (c) One commission member shall be a member of the general public.

562 (d) The governor may not appoint a commission member described in Subsection
563 (3)(b) who, at the time of appointment, resides in the same county in the state as another
564 commission member.

565 (e) At least one commission member described in Subsection (3)(b) shall at the time of
566 an appointment reside in a county that is not a county of the first or second class.

567 (4) (a) Except as required by Subsection (4)(b), as terms of current commission
568 members expire, the governor shall appoint each new member or reappointed member to a
569 four-year term ending June 30.

570 (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the
571 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
572 commission members are staggered so that approximately half of the commission is appointed
573 every two years.

574 (c) Upon the expiration of the term of a member of the commission, the member of the
575 commission shall continue to hold office until a successor is appointed and qualified.

576 (d) A commission member may not serve more than two consecutive terms.

577 (e) Members of the commission shall annually select one member to serve as chair.

578 (5) When a vacancy occurs in the membership for any reason, the governor, with the
579 consent of the Senate, shall appoint a replacement for the unexpired term.

580 (6) A member may not receive compensation or benefits for the member's service, but
581 may receive per diem and travel expenses in accordance with:

582 (a) Section [63A-3-106](#);

583 (b) Section [63A-3-107](#); and

584 (c) rules made by the Division of Finance pursuant to Sections [63A-3-106](#) and
585 [63A-3-107](#).

- 586 (7) (a) The commission shall meet at least monthly.
- 587 (b) The director may call additional meetings:
- 588 (i) at the director's discretion;
- 589 (ii) upon the request of the chair; or
- 590 (iii) upon the written request of three or more commission members.
- 591 (8) Three members of the commission constitute a quorum for the transaction of
- 592 business.

593 Section 10. Section **61-2f-203** is amended to read:

594 **61-2f-203. Licensing requirements.**

- 595 (1) (a) (i) The division shall determine whether an applicant with a criminal history
- 596 qualifies for licensure.
- 597 (ii) If the division, acting under Subsection (1)(a)(i), denies or restricts a license or
- 598 places a license on probation, the applicant may petition the commission for de novo review of
- 599 the application.
- 600 (b) Except as provided in Subsection (5), the commission shall determine all other
- 601 qualifications and requirements of an applicant for:
- 602 (i) a principal broker license;
- 603 (ii) an associate broker license; or
- 604 (iii) a sales agent license.
- 605 (c) The division, with the concurrence of the commission, shall require and pass upon
- 606 proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency of
- 607 each applicant for an initial license or for renewal of an existing license.
- 608 (d) (i) The division, with the concurrence of the commission, shall require an applicant
- 609 for:
- 610 (A) a sales agent license to complete an approved educational program consisting of
- 611 the number of hours designated by rule made by the commission with the concurrence of the
- 612 division, except that the rule may not require less than 120 hours; and
- 613 (B) an associate broker or a principal broker license to complete an approved
- 614 educational program consisting of the number of hours designated by rule made by the
- 615 commission with the concurrence of the division, except that the rule may not require less than
- 616 120 hours.

617 (ii) An hour required by this section means 50 minutes of instruction in each 60
618 minutes.

619 (iii) The maximum number of program hours available to an individual is eight hours
620 per day.

621 (e) The division, with the concurrence of the commission, shall require the applicant to
622 pass an examination approved by the commission covering:

623 (i) the fundamentals of:

624 (A) the English language;

625 (B) arithmetic;

626 (C) bookkeeping; and

627 (D) real estate principles and practices;

628 (ii) this chapter;

629 (iii) the rules established by the commission with the concurrence of the division; and

630 (iv) any other aspect of Utah real estate license law considered appropriate.

631 (f) (i) Three years' full-time experience as a sales agent or its equivalent is required
632 before an applicant may apply for, and secure a principal broker or associate broker license in
633 this state.

634 (ii) The commission shall establish by rule[;] made in accordance with Title 63G,
635 Chapter 3, Utah Administrative Rulemaking Act, subject to concurrence by the division, the
636 criteria by which the commission will accept experience or special education in similar fields
637 of business in lieu of the three years' experience.

638 (2) (a) The division, with the concurrence of the commission, may require an applicant
639 to furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's
640 reputation and competency as set forth by rule.

641 (b) The division shall require an applicant to provide the applicant's [~~Social Security~~]
642 social security number, which is a private record under Subsection [63G-2-302\(1\)\(i\)](#).

643 (3) (a) An individual who is not a resident of this state may be licensed in this state if
644 the person complies with this chapter.

645 (b) An individual who is not a resident of this state may be licensed as an associate
646 broker or sales agent in this state by:

647 (i) complying with this chapter; and

648 (ii) being employed or engaged as an independent contractor by or on behalf of a
649 principal broker who is licensed in this state, regardless of whether the principal broker is a
650 resident of this state.

651 (4) (a) The division and commission shall treat an application to be relicensed of an
652 applicant whose real estate license is revoked as an original application.

653 (b) In the case of an applicant for a new license as a principal broker or associate
654 broker, the applicant is not entitled to credit for experience gained before the revocation of a
655 real estate license.

656 (5) (a) Notwithstanding Subsection (1)(b), the commission may delegate to the division
657 the authority to:

- 658 (i) review a class or category of applications for initial or renewed licenses;
- 659 (ii) determine whether an applicant meets the licensing criteria in Subsection (1); and
- 660 (iii) approve or deny a license application without concurrence by the commission.

661 (b) (i) If the commission delegates to the division the authority to approve or deny an
662 application without concurrence by the commission and the division denies an application for
663 licensure, the applicant who is denied licensure may petition the commission for de novo
664 review of the application.

665 (ii) An applicant who is denied licensure pursuant to this Subsection (5) may seek
666 agency review by the executive director only after the commission has reviewed the division's
667 denial of the applicant's application.

668 Section 11. Section **61-2f-204** is amended to read:

669 **61-2f-204. Licensing fees and procedures -- Renewal fees and procedures.**

670 (1) (a) Upon filing an application for an examination for a license under this chapter,
671 the applicant shall pay a nonrefundable fee established in accordance with Section [63J-1-504](#)
672 for admission to the examination.

673 (b) An applicant for a principal broker, associate broker, or sales agent license shall
674 pay a nonrefundable fee as determined by the commission with the concurrence of the division
675 under Section [63J-1-504](#) for issuance of an initial license or license renewal.

676 (c) A license issued under this Subsection (1) shall be issued for a period of not less
677 than two years as determined by the division with the concurrence of the commission.

678 (d) (i) Any of the following applicants shall comply with this Subsection (1)(d):

- 679 (A) a new sales agent applicant;
- 680 (B) a principal broker applicant; or
- 681 (C) an associate broker applicant.
- 682 (ii) An applicant described in this Subsection (1)(d) shall:
- 683 (A) submit fingerprint cards in a form acceptable to the division at the time the license
- 684 application is filed; and
- 685 (B) consent to a criminal background check by the Utah Bureau of Criminal
- 686 Identification and the Federal Bureau of Investigation regarding the application.
- 687 (iii) The division shall request the Department of Public Safety to complete a Federal
- 688 Bureau of Investigation criminal background check for each applicant described in this
- 689 Subsection (1)(d) through the national criminal history system or any successor system.
- 690 (iv) The applicant shall pay the cost of the criminal background check and the
- 691 fingerprinting.
- 692 (v) Money paid to the division by an applicant for the cost of the criminal background
- 693 check is nonlapsing.
- 694 (e) (i) A license issued under Subsection (1)(d) is conditional, pending completion of
- 695 the criminal background check.
- 696 (ii) A license is immediately and automatically revoked if the criminal background
- 697 check discloses the applicant fails to accurately disclose a criminal history involving:
- 698 (A) the real estate industry; or
- 699 (B) a felony conviction on the basis of an allegation of fraud, misrepresentation, or
- 700 deceit.
- 701 (iii) If a criminal background check discloses that an applicant fails to accurately
- 702 disclose a criminal history other than one described in Subsection (1)(e)(ii), the division:
- 703 (A) shall review the application; and
- 704 (B) in accordance with rules made by the division pursuant to Title 63G, Chapter 3,
- 705 Utah Administrative Rulemaking Act, may:
- 706 (I) place a condition on a license;
- 707 (II) place a restriction on a license;
- 708 (III) revoke a license; or
- 709 (IV) refer the application to the commission for a decision.

710 (iv) A person whose conditional license is automatically revoked under Subsection
711 (1)(e)(ii) or whose license is conditioned, restricted, or revoked under Subsection (1)(e)(iii)
712 may have a hearing after the action is taken to challenge the action. The hearing shall be
713 conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

714 (v) The director shall designate one of the following to act as the presiding officer in a
715 hearing described in Subsection (1)(e)(iv):

716 (A) the division; or

717 (B) the division with the concurrence of the commission.

718 (vi) The decision on whether relief from an action under this Subsection (1)(e) will be
719 granted shall be made by the presiding officer.

720 (vii) Relief from an automatic revocation under Subsection (1)(e)(ii) may be granted
721 only if:

722 (A) the criminal history upon which the division based the revocation:

723 (I) did not occur; or

724 (II) is the criminal history of another person;

725 (B) (I) the revocation is based on a failure to accurately disclose a criminal history; and

726 (II) the applicant has a reasonable good faith belief at the time of application that there
727 was no criminal history to be disclosed; or

728 (C) the division fails to follow the prescribed procedure for the revocation.

729 (viii) If a license is revoked or a revocation under this Subsection (1)(e) is upheld after
730 a hearing, the individual may not apply for a new license until at least 12 months after the day
731 on which the license is revoked.

732 (2) (a) (i) A license expires if it is not renewed on or before its expiration date.

733 (ii) As a condition of renewal, an active licensee shall demonstrate competence by
734 completing 18 hours of continuing education within a two-year renewal period subject to rules
735 made by the commission, with the concurrence of the division.

736 (iii) In making a rule described in Subsection (2)(c)(ii), the division and commission
737 shall consider:

738 (A) evaluating continuing education on the basis of competency, rather than course
739 time;

740 (B) allowing completion of courses in a significant variety of topic areas that the

741 division and commission determine are valuable in assisting an individual licensed under this
742 chapter to increase the individual's competency; and

743 (C) allowing completion of courses that will increase a licensee's professional
744 competency in the area of practice of the licensee.

745 (iv) The division may award credit to a licensee for a continuing education requirement
746 of this Subsection (2)(a) for a reasonable period of time upon a finding of reasonable cause,
747 including:

748 (A) military service; or

749 (B) if an individual is elected or appointed to government service, the individual's
750 government service during which the individual spends a substantial time addressing real estate
751 issues subject to conditions established by rule made in accordance with Title 63G, Chapter 3,
752 Utah Administrative Rulemaking Act.

753 (b) For a period of 30 days after the day on which a license expires, the license may be
754 reinstated:

755 (i) if the applicant's license was inactive on the day on which the applicant's license
756 expired, upon payment of a renewal fee and a late fee determined by the commission with the
757 concurrence of the division under Section 63J-1-504; or

758 (ii) if the applicant's license was active on the day on which the applicant's license
759 expired, upon payment of a renewal fee and a late fee determined by the commission with the
760 concurrence of the division under Section 63J-1-504, and providing proof acceptable to the
761 division and the commission of the licensee having:

762 (A) completed the hours of education required by Subsection (2)(a); or

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

764 (c) After the 30-day period described in Subsection (2)(b), and until six months after
765 the day on which an active or inactive license expires, the license may be reinstated by:

766 (i) paying a renewal fee and a late fee determined by the commission with the
767 concurrence of the division under Section 63J-1-504;

768 (ii) providing to the division proof of satisfactory completion of six hours of continuing
769 education:

770 (A) in addition to the requirements for a timely renewal; and

771 (B) on a subject determined by the commission by rule with the concurrence of the

772 division and made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
773 Act; and

774 (iii) providing proof acceptable to the division and the commission of the licensee
775 having:

776 (A) completed the hours of education required under Subsection (2)(a); or

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

778 (d) After the six-month period described in Subsection (2)(c), and until one year after
779 the day on which an active or inactive license expires, the license may be reinstated by:

780 (i) paying a renewal fee and a late fee determined by the commission with the
781 concurrence of the division under Section [63J-1-504](#);

782 (ii) providing to the division proof of satisfactory completion of 24 hours of continuing
783 education:

784 (A) in addition to the requirements for a timely renewal; and

785 (B) on a subject determined by the commission by rule made in accordance with Title
786 63G, Chapter 3, Utah Administrative Rulemaking Act, subject to concurrence by the division;
787 and

788 (iii) providing proof acceptable to the division and the commission of the licensee
789 having:

790 (A) completed the hours of education required by Subsection (2)(a); or

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

792 (e) The division shall relicense a person who does not renew that person's license
793 within one year as prescribed for an original application.

794 (f) Notwithstanding Subsection (2)(a), the division may extend the term of a license
795 that would expire under Subsection (2)(a) except for the extension if:

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

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

799 (ii) at the time of the extension, there is pending a disciplinary action under this
800 chapter.

801 (3) (a) As a condition for the activation of an inactive license that was in an inactive
802 status at the time of the licensee's most recent renewal, the licensee shall supply the division

803 with proof of:

804 (i) successful completion of the respective sales agent or principal broker licensing
805 examination within six months before applying to activate the license; or

806 (ii) the successful completion of the hours of continuing education that the licensee
807 would have been required to complete under Subsection (2)(a) if the license had been on active
808 status at the time of the licensee's most recent renewal.

809 (b) The commission may, in accordance with Title 63G, Chapter 3, Utah
810 Administrative Rulemaking Act, subject to concurrence by the division, establish by rule:

811 (i) the nature or type of continuing education required for reactivation of a license; and

812 (ii) how long before reactivation the continuing education must be completed.

813 Section 12. Section **61-2f-206** is amended to read:

814 **61-2f-206. Registration of entity or branch office -- Certification of education**

815 **providers and courses -- Specialized licenses.**

816 (1) (a) An entity may not engage in an activity described in Section [61-2f-201](#), unless it
817 is registered with the division.

818 (b) To register with the division under this Subsection (1), an entity shall submit to the
819 division:

820 (i) an application in a form required by the division;

821 (ii) evidence of an affiliation with a principal broker;

822 (iii) evidence that the entity is registered and in good standing with the Division of
823 Corporations and Commercial Code; and

824 (iv) a registration fee established by the commission with the concurrence of the
825 division under Section [63J-1-504](#).

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

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

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

830 (2) (a) A principal broker shall register with the division each of the principal broker's
831 branch offices.

832 (b) To register a branch office with the division under this Subsection (2), a principal
833 broker shall submit to the division:

- 834 (i) an application in a form required by the division; and
- 835 (ii) a registration fee established by the commission with the concurrence of the
- 836 division under Section 63J-1-504.

837 (3) (a) In accordance with rules made by the commission with the concurrence of the
838 division, the division shall certify:

- 839 (i) a real estate school;
- 840 (ii) a course provider; or
- 841 (iii) an instructor.

842 (b) In accordance with rules made by the commission, [~~and with the concurrence of the~~
843 ~~commission~~] subject to concurrence by the division, the division shall certify a continuing
844 education course that is required under this chapter.

845 (4) (a) Except as provided by rule, a principal broker may not be responsible for more
846 than one registered entity at the same time.

847 (b) (i) In addition to issuing a principal broker license, associate broker license, or sales
848 agent license authorizing the performance of an act set forth in Section 61-2f-201, the division
849 may issue a specialized sales license or specialized property management license with the
850 scope of practice limited to the specialty.

851 (ii) An individual may hold a specialized license in addition to a license as a principal
852 broker, associate broker, or a sales agent.

853 (iii) The commission may adopt rules pursuant to Title 63G, Chapter 3, Utah
854 Administrative Rulemaking Act, subject to concurrence by the division, for the administration
855 of this Subsection (4), including:

- 856 (A) prelicensing and postlicensing education requirements;
- 857 (B) examination requirements;
- 858 (C) affiliation with real estate brokerages or property management companies; and
- 859 (D) other licensing procedures.

860 Section 13. Section 61-2f-306 is amended to read:

861 **61-2f-306. Rights and privileges of real estate licensees to fill out forms or**
862 **documents.**

863 (1) Except as provided in Subsection (2), a real estate licensee may fill out only those
864 legal forms approved by the commission and the attorney general, and those forms provided by

865 statute.

866 (2) (a) (i) A principal broker may fill out any documents associated with the closing of
867 a real estate transaction.

868 (ii) A branch broker or associate broker may fill out any documents associated with the
869 closing of a real estate transaction if designated to fill out the documents by the principal
870 broker with whom the branch broker or associate broker is affiliated.

871 (b) A real estate licensee may fill out real estate forms prepared by legal counsel of the
872 buyer, seller, lessor, or lessee.

873 (c) If the commission and the attorney general have not approved a specific form for
874 the transaction, a principal broker, associate broker, or sales agent may fill out real estate forms
875 prepared by any legal counsel, including legal counsel retained by the brokerage to develop
876 these forms.

877 (3) The commission may, by rule~~;~~ made in accordance with Title 63G, Chapter 3,
878 Utah Administrative Rulemaking Act, subject to concurrence by the division, provide a process
879 for the approval of a legal form under this section by the commission and the attorney general.

880 Section 14. Section **61-2f-307** is amended to read:

881 **61-2f-307. Rulemaking required for offer or sale of an undivided fractionalized**
882 **long-term estate -- Disclosures -- Management agreement.**

883 (1) (a) A licensee or certificate holder under this chapter who sells or offers to sell an
884 undivided fractionalized long-term estate shall comply with the disclosure requirements
885 imposed by ~~[rules]~~ rule made by the commission with the concurrence of the division under
886 this section.

887 (b) ~~[In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~
888 ~~the]~~ The commission shall [make rules as to], subject to concurrence by the division, establish,
889 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
890 the timing, form, and substance of disclosures required to be made by a licensee or certificate
891 holder under this section.

892 (2) ~~[In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~
893 ~~the commission shall make rules imposing requirements]~~ The commission shall, subject to
894 concurrence by the division, establish requirements, by rule made in accordance with Title
895 63G, Chapter 3, Utah Administrative Rulemaking Act, for a management agreement related to

896 an undivided fractionalized long-term estate that makes the offer or sale of the undivided
897 fractionalized long-term estate treated as a real estate transaction and not treated as an offer or
898 sale of a security under Chapter 1, Utah Uniform Securities Act.

899 ~~[(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~
900 ~~the commission shall make rules establishing:]~~

901 (3) The commission shall, subject to concurrence by the division, establish, by rule
902 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

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

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

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

Legislative Review Note
Office of Legislative Research and General Counsel