

1

Real Estate Revisions
 2025 GENERAL SESSION
 STATE OF UTAH
Chief Sponsor: R. Neil Walter
 Senate Sponsor:

2

3 **LONG TITLE**4 **General Description:**

5 This bill amends provisions related to the Division of Real Estate's investigation practices
 6 and procedures.

7 **Highlighted Provisions:**

8 This bill:

- 9 ▶ amends provisions related to the Division of Real Estate's (division) authority to
 10 investigate licensees, including:
- 11 • time periods for retention of certain documents, and the division's ability to request
 12 documents; and
 - 13 • prioritization of investigatory practices, to focus on more serious complaints first;
 - 14 ▶ defines terms related to advertising practices;
 - 15 ▶ provides that certain conduct by a principal broker does not created an agency
 16 relationship with a buyer;
 - 17 ▶ amends provisions related to the inclusion of the brokerage's name being included in an
 18 advertisement or through a link requiring only one click; and
 - 19 ▶ makes technical changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **61-2-203**, as last amended by Laws of Utah 2023, Chapter 40127 **61-2f-102**, as last amended by Laws of Utah 2024, Chapter 22728 **61-2f-206**, as last amended by Laws of Utah 2022, Chapter 20429 **61-2f-308**, as last amended by Laws of Utah 2014, Chapter 35030 **61-2f-401**, as last amended by Laws of Utah 2024, Chapter 227

31 **61-2f-402**, as last amended by Laws of Utah 2022, Chapter 204
 32 **61-2f-405**, as renumbered and amended by Laws of Utah 2010, Chapter 379

33 ENACTS:

34 **61-2f-309**, Utah Code Annotated 1953

35

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

37 Section 1. Section **61-2-203** is amended to read:

38 **61-2-203 . Adjudicative proceedings -- Citation authority.**

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

41 (2) The division may initiate an adjudicative proceeding through:

42 (a) a notice of agency action; or

43 (b) a notice of formal or informal proceeding.

44 (3) The provisions of Title 63G, Chapter 4, Administrative Procedures Act, do not apply to
 45 the issuance of a citation under Subsection (4), unless a licensee or another person
 46 authorized by law to contest the validity or correctness of a citation commences an
 47 adjudicative proceeding contesting the citation.

48 (4) ~~[In addition to any other statutory penalty for a violation related to an occupation or~~
 49 ~~profession regulated under this title, the]~~ The division may issue a citation to a person
 50 who, upon inspection or investigation, the division concludes to have violated:

51 (a) Subsection 61-2c-201(1), which requires licensure;

52 (b) Subsection 61-2c-201(4), which requires licensure;

53 (c) Subsection 61-2c-205(3), which requires notification of a change in specified
 54 information regarding a licensee;

55 (d) Subsection 61-2c-205(4), which requires notification of a specified legal action;

56 (e) Subsection 61-2c-301(1)(g), which prohibits failing to respond to the division within
 57 the required time period;

58 (f) Subsection 61-2c-301(1)(h), which prohibits making a false representation to the
 59 division;

60 (g) Subsection 61-2c-301(1)(i), which prohibits taking a dual role in a transaction;

61 (h) Subsection 61-2c-301(1)(l), which prohibits engaging in false or misleading
 62 advertising;

63 (i) Subsection 61-2c-301(1)(t), which prohibits advertising the ability to do licensed
 64 work if unlicensed;

- 65 (j) Subsection 61-2c-302(5), which requires a mortgage entity to create and file a
66 quarterly report of condition;
- 67 (k) Subsection 61-2e-201(1), which requires registration;
- 68 (l) Subsection 61-2e-203(4), which requires a notification of a change in ownership;
- 69 (m) Subsection 61-2e-307(1)(c), which prohibits use of an unregistered fictitious name;
- 70 (n) Subsection 61-2e-401(1)(c), which prohibits failure to respond to a division request;
- 71 (o) Subsection 61-2f-201(1), which requires licensure;
- 72 (p) Subsection 61-2f-206(1), which requires registration;
- 73 (q) Subsection 61-2f-301(1), which requires notification of a specified legal action;
- 74 (r) Subsection 61-2f-401(1)(a), which prohibits making a substantial misrepresentation;
- 75 (s) Subsection 61-2f-401(3), which prohibits undertaking real estate while not affiliated
76 with a principal broker;
- 77 (t) Subsection 61-2f-401(9), which prohibits failing to keep specified records and
78 prohibits failing to make the specified records available for division inspection;
- 79 (u) Subsection 61-2f-401(12), which prohibits false, misleading, or deceptive
80 advertising;
- 81 (v) Subsection 61-2f-401(18), which prohibits failing to respond to a division request;
- 82 (w) Subsection 61-2g-301(1), which requires licensure;
- 83 (x) Subsection 61-2g-405(3), which requires making records required to be maintained
84 available to the division;
- 85 (y) Subsection 61-2g-501(2)(c), which requires a person to respond to a division request
86 in an investigation within 10 days after the day on which the request is served;
- 87 (z) Subsection 61-2g-502(2)(f), which prohibits using a nonregistered fictitious name;
- 88 (aa) a rule made pursuant to any Subsection listed in this Subsection (4);
- 89 (bb) an order of the division; or
- 90 (cc) an order of the commission or board that oversees the person's profession.
- 91 (5)(a) In accordance with Subsection (10), the division may assess a fine against a
92 person for a violation of a provision listed in Subsection (4), as evidenced by:
- 93 (i) an uncontested citation;
- 94 (ii) a stipulated settlement; or
- 95 (iii) a finding of a violation in an adjudicative proceeding.
- 96 (b) The division may, in addition to or in lieu of a fine under Subsection (5)(a), order the
97 person to cease and desist from an activity that violates a provision listed in
98 Subsection (4).

- 99 (6) Except as provided in Subsection (8)(d), the division may not use a citation to effect a
100 license:
- 101 (a) denial;
102 (b) probation;
103 (c) suspension; or
104 (d) revocation.
- 105 (7)(a) A citation issued by the division shall:
- 106 (i) be in writing;
107 (ii) describe with particularity the nature of the violation, including a reference to the
108 provision of the statute, rule, or order alleged to have been violated;
109 (iii) clearly state that the recipient must notify the division in writing within 20
110 calendar days after the day on which the citation is served if the recipient wishes
111 to contest the citation at a hearing conducted under Title 63G, Chapter 4,
112 Administrative Procedures Act; and
113 (iv) clearly explain the consequences of failure to timely contest the citation or to
114 make payment of a fine assessed by the citation within the time period specified in
115 the citation.
- 116 (b) The division may issue a notice in lieu of a citation.
- 117 (8)(a) A citation becomes final:
- 118 (i) if within 20 calendar days after the day on which the citation is served, the person
119 to whom the citation was issued fails to request a hearing to contest the citation; or
120 (ii) if the director or the director's designee conducts a hearing pursuant to a timely
121 request for a hearing and issues an order finding that a violation has occurred.
- 122 (b) The division may extend, for cause, the 20-day period to contest a citation.
- 123 (c) A citation that becomes the final order of the division due to a person's failure to
124 timely request a hearing is not subject to further agency review.
- 125 (d)(i) The division may refuse to issue, refuse to renew, suspend, revoke, or place on
126 probation the license of a licensee who fails to comply with a citation after the
127 citation becomes final.
- 128 (ii) The failure of a license applicant to comply with a citation after the citation
129 becomes final is a ground for denial of the license application.
- 130 (9)(a) The division may not issue a citation under this section after the expiration of one
131 year after the day on which the violation occurs.
- 132 (b) The division may issue a notice or agency action to address a violation that is outside

- 133 of the one-year citation period.
- 134 (10) The director or the director's designee shall assess a fine with a citation in an amount
 135 that is no more than:
- 136 (a) for a first offense, \$1,000;
- 137 (b) for a second offense, \$2,000; and
- 138 (c) for each offense subsequent to a second offense, \$2,000 for each day of continued
 139 offense.
- 140 (11)(a) An action for a first or second offense for which the division has not issued a
 141 final order does not preclude the division from initiating a subsequent action for a
 142 second or subsequent offense while the preceding action is pending.
- 143 (b) The final order on a subsequent action is considered a second or subsequent offense,
 144 respectively, provided the preceding action resulted in a first or second offense,
 145 respectively.
- 146 (12)(a) If a person does not pay a penalty, the director may collect the unpaid penalty by:
- 147 (i) referring the matter to a collection agency; or
- 148 (ii) bringing an action in a court with jurisdiction under Title 78A, Judiciary and
 149 Judicial Administration.
- 150 (b) A county attorney or the attorney general of the state shall provide legal services to
 151 the director in an action to collect the penalty.
- 152 (c) A court may award reasonable attorney fees and costs to the division in an action the
 153 division brings to enforce the provisions of this section.

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

155 **61-2f-102 . Definitions.**

156 As used in this chapter:

- 157 (1)(a) "Advertisement" means a notice or announcement meant to:
- 158 (i) promote the availability of real estate, an option on real estate, or a business
 159 opportunity for sale, exchange, auction, or lease;
- 160 (ii) offer specific types of brokerage services; or
- 161 (iii) specifically solicit the public to contact that licensee for more information.
- 162 (b) "Advertisement" does not include a social media post that generally identifies the
 163 person as being engaged in the profession of real estate if the social media post does
 164 not:
- 165 (i) promote the availability of real estate, an option on real estate, or a business
 166 opportunity for sale, exchange, auction, or lease;

- 167 (ii) offer specific types of brokerage services; or
168 (iii) specifically solicit the public to contact that licensee for more information.
- 169 (2) "Advertising" or "advertise" means placing or directing the placement of an
170 advertisement.
- 171 ~~(1)~~ (3) "Associate broker" means an individual who is:
172 (a) employed or engaged as an independent contractor by or on behalf of a principal
173 broker to perform an act described in Subsection ~~(20)~~ (25) for valuable
174 consideration; and
175 (b) licensed under this chapter as an associate broker.
- 176 ~~(2)~~ (4) "Branch broker" means an associate broker who manages a principal broker's
177 branch office under the supervision of the principal broker.
- 178 ~~(3)~~ (5) "Branch office" means a principal broker's real estate brokerage office that is not
179 the principal broker's main office.
- 180 (6) "Brokerage" means an entity registered or required to be registered with the division
181 pursuant to Section 61-2f-206.
- 182 (7) "Brokerage name" means:
183 (a) the name of the brokerage as shown on division records;
184 (b) the name of a branch office of the brokerage; or
185 (c) a DBA of the brokerage.
- 186 ~~(4)~~ (8) "Business day" means a day other than:
187 (a) a Saturday;
188 (b) a Sunday; or
189 (c) a federal or state holiday.
- 190 ~~(5)~~ (9) "Business opportunity" means the sale, lease, or exchange of any business that
191 includes an interest in real estate.
- 192 ~~(6)~~ (10) "Commission" means the Real Estate Commission established under this chapter.
- 193 ~~(7)~~ (11) "Concurrence" means the entities given a concurring role must jointly agree for
194 action to be taken.
- 195 ~~(8)~~ (12) "Condominium homeowners' association" means the condominium unit owners
196 acting as a group in accordance with declarations and bylaws.
- 197 ~~(9)~~ (13)(a) "Condominium hotel" means one or more condominium units that are
198 operated as a hotel.
199 (b) "Condominium hotel" does not mean a hotel consisting of condominium units, all of
200 which are owned by a single entity.

201 ~~[(10)]~~ (14) "Condominium unit" means the same as that term is defined in Section 57-8-3.

202 ~~[(11)]~~ (15) "Director" means the director of the Division of Real Estate.

203 ~~[(12)]~~ (16) "Division" means the Division of Real Estate.

204 (17) "Doing business as" or "DBA" means a name that is registered with the Division of
 205 Corporations and Commercial Code that allows a business to operate under a name
 206 different from the business's legal name.

207 ~~[(13)]~~ (18) "Dual broker" means a principal broker of a real estate sales brokerage who
 208 obtains from the division a dual broker license in order to function as the principal
 209 broker of a property management company that is a separate entity from the real estate
 210 sales brokerage.

211 ~~[(14)]~~ (19) "Entity" means:

212 (a) a corporation;

213 (b) a partnership;

214 (c) a limited liability company;

215 (d) a company;

216 (e) an association;

217 (f) a joint venture;

218 (g) a business trust;

219 (h) a trust; or

220 (i) any organization similar to an entity described in Subsections ~~[(14)(a)]~~ (19)(a)
 221 through (h).

222 ~~[(15)]~~ (20) "Executive director" means the director of the Department of Commerce.

223 ~~[(16)]~~ (21) "Foreclosure rescue" means, for compensation or with the expectation of
 224 receiving valuable consideration, to:

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

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

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

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

229 (i) solicit, or offer that the other person will engage in an act described in Subsection [
 230 ~~(16)(a)]~~ (21)(a); or

231 (ii) negotiate terms in relationship to an act described in Subsection ~~[(16)(a)]~~ (21)(a).

232 ~~[(17)]~~ (22) "Loan modification assistance" means, for compensation or with the expectation
 233 of receiving valuable consideration, to:

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

- 235 (i) obtain a loan term of a residential mortgage loan that is different from an existing
 236 loan term including:
- 237 (A) an increase or decrease in an interest rate;
- 238 (B) a change to the type of interest rate;
- 239 (C) an increase or decrease in the principal amount of the residential mortgage
 240 loan;
- 241 (D) a change in the number of required period payments;
- 242 (E) an addition of collateral;
- 243 (F) a change to, or addition of, a prepayment penalty;
- 244 (G) an addition of a cosigner; or
- 245 (H) a change in persons obligated under the existing residential mortgage loan; or
- 246 (ii) substitute a new residential mortgage loan for an existing residential mortgage
 247 loan; or
- 248 (b) as an employee or agent of another person:
- 249 (i) solicit, or offer that the other person will engage in an act described in Subsection [
 250 ~~(17)(a)~~] (22)(a); or
- 251 (ii) negotiate terms in relationship to an act described in Subsection [~~(17)(a)~~] (22)(a).
- 252 [~~(18)~~] (23) "Main office" means the address which a principal broker designates with the
 253 division as the principal broker's primary brokerage office.
- 254 [~~(19)~~] (24) "Person" means an individual or entity.
- 255 [~~(20)~~] (25) "Principal broker" means an individual who is licensed or required to be licensed
 256 as a principal broker under this chapter who:
- 257 (a) sells or lists for sale real estate, including real estate being sold as part of a
 258 foreclosure rescue, a mobile home, or a business opportunity with the expectation of
 259 receiving valuable consideration;
- 260 (b) buys, exchanges, or auctions real estate, an option on real estate, a mobile home, or a
 261 business opportunity~~[, or an improvement on real estate]~~ with the expectation of
 262 receiving valuable consideration;
- 263 (c) advertises, offers, attempts, or otherwise holds the individual out to be engaged in the
 264 business described in Subsection [~~(20)(a)~~] (25)(a) or (b);
- 265 (d) is employed by or on behalf of the owner of real estate or by a prospective purchaser
 266 of real estate and performs an act described in Subsection [~~(20)(a)~~] (25)(a), whether
 267 the individual's compensation is at a stated salary, a commission basis, upon a salary
 268 and commission basis, or otherwise;

- 269 (e) with the expectation of receiving valuable consideration, manages property owned by
270 another person;
- 271 (f) advertises or otherwise holds the individual out to be engaged in property
272 management;
- 273 (g) with the expectation of receiving valuable consideration, assists or directs in the
274 procurement of prospects for or the negotiation of a transaction listed in Subsections [
275 ~~(20)(a)~~ (25)(a) and (e);
- 276 (h) except for a mortgage lender, title insurance producer, or an employee of a mortgage
277 lender or title insurance producer, assists or directs in the closing of a real estate
278 transaction with the expectation of receiving valuable consideration;
- 279 (i) engages in foreclosure rescue; or
- 280 (j) advertises, offers, attempts, or otherwise holds the person out as being engaged in
281 foreclosure rescue.
- 282 [~~(21)~~ (26)(a) "Property management" means engaging in, with the expectation of
283 receiving valuable consideration, the management of real estate owned by another
284 person or advertising or otherwise claiming to be engaged in property management
285 by:
- 286 (i) advertising for, arranging, negotiating, offering, or otherwise attempting or
287 participating in a transaction calculated to secure the rental or leasing of real estate;
- 288 (ii) collecting, agreeing, offering, or otherwise attempting to collect rent for the real
289 estate and accounting for and disbursing the money collected; or
- 290 (iii) authorizing expenditures for repairs to the real estate.
- 291 (b) "Property management" does not include:
- 292 (i) hotel or motel management;
- 293 (ii) rental of tourist accommodations, including hotels, motels, tourist homes,
294 condominiums, condominium hotels, mobile home park accommodations,
295 campgrounds, or similar public accommodations for a period of less than 30
296 consecutive days, and the management activities associated with these rentals; or
- 297 (iii) the leasing or management of surface or subsurface minerals or oil and gas
298 interests, if the leasing or management is separate from a sale or lease of the
299 surface estate.
- 300 [~~(22)~~ (27) "Property management sales agent" means a sales agent who:
- 301 (a) is affiliated with a dual broker through the dual broker's property management
302 company; and

- 303 (b) is designated by the dual broker as a property management sales agent.
- 304 [~~(23)~~] (28) "Real estate" includes leaseholds and business opportunities involving real
305 property.
- 306 [~~(24)~~] (29)(a) "Regular salaried employee" means an individual who performs a service
307 for wages or other remuneration, whose employer withholds federal employment
308 taxes under a contract of hire, written or oral, express or implied.
- 309 (b) "Regular salaried employee" does not include an individual who performs services
310 on a project-by-project basis or on a commission basis.
- 311 [~~(25)~~] (30) "Reinstatement" means restoring a license that has expired or has been
312 suspended.
- 313 [~~(26)~~] (31) "Reissuance" means the process by which a licensee may obtain a license
314 following revocation of the license.
- 315 [~~(27)~~] (32) "Renewal" means extending a license for an additional licensing period on or
316 before the date the license expires.
- 317 [~~(28)~~] (33) "Sales agent" means an individual who is:
- 318 (a) affiliated with a principal broker, either as an independent contractor or an employee
319 as provided in Section 61-2f-303, to perform for valuable consideration an act
320 described in Subsection [~~(20)~~] (25); and
- 321 (b) licensed under this chapter as a sales agent.
- 322 (34) "Transaction" means:
- 323 (a) a purchase of real estate;
- 324 (b) a sale of real estate;
- 325 (c) an exchange of real estate;
- 326 (d) a lease of real estate;
- 327 (e) an auction of real estate;
- 328 (f) management of real estate;
- 329 (g) an option on real estate; or
- 330 (h) a business opportunity.
- 331 [~~(29)~~] (35) "Vulnerable adult" means the same as that term is defined in Section 26B-6-201.
332 Section 3. Section **61-2f-206** is amended to read:
- 333 **61-2f-206 . Registration of person or branch office -- Certification of education**
334 **providers and courses -- Specialized licenses.**
- 335 (1)(a) A person may not engage in an activity described in Section 61-2f-201, unless:
- 336 (i) the person is registered with the division[-] ; or

- 337 (ii) an exemption to registration applies.
- 338 (b) To register with the division under this Subsection (1), a person shall submit to the
339 division:
- 340 (i) an application in a form required by the division;
- 341 (ii) evidence of an affiliation with a principal broker;
- 342 (iii) evidence that the person is registered and in good standing with the Division of
343 Corporations and Commercial Code; and
- 344 (iv) a registration fee established by the commission with the concurrence of the
345 division under Section 63J-1-504.
- 346 (c) The division may terminate a person's registration if:
- 347 (i) the person's registration with the Division of Corporations and Commercial Code
348 has been expired for at least three years; and
- 349 (ii) the person's license with the division has been inactive for at least three years.
- 350 (2)(a) A principal broker shall register with the division each of the principal broker's
351 branch offices.
- 352 (b) To register a branch office with the division under this Subsection (2), a principal
353 broker shall submit to the division:
- 354 (i) an application in a form required by the division; and
- 355 (ii) a registration fee established by the commission with the concurrence of the
356 division under Section 63J-1-504.
- 357 (3)(a) In accordance with rules made by the commission with the concurrence of the
358 division and in accordance with Title 63G, Chapter 3, Utah Administrative
359 Rulemaking Act, the division shall certify:
- 360 (i) a real estate school;
- 361 (ii) a course provider; or
- 362 (iii) an instructor.
- 363 (b) In accordance with rules made by the commission in accordance with Title 63G,
364 Chapter 3, Utah Administrative Rulemaking Act, subject to concurrence by the
365 division, the division shall certify a continuing education course that is required
366 under this chapter.
- 367 (4) Except as provided under this chapter or by rule the commission makes in accordance
368 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, a principal broker may
369 not be responsible for more than one registered entity at the same time.
- 370 (5) A principal broker:

- 371 (a) shall exercise active and reasonable supervision of the principal broker's main office
372 in accordance with this chapter and rules the commission makes in accordance with
373 Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
- 374 (b) may supervise a branch office affiliated with the principal broker at the same time
375 the principal broker exercises the supervision required under Subsection (5)(a).
- 376 (6)(a) A principal broker may designate a branch broker to supervise a branch office
377 affiliated with the principal broker.
- 378 (b) A branch broker shall exercise active and reasonable supervision, in accordance with
379 this chapter and rules the commission makes in accordance with Title 63G, Chapter
380 3, Utah Administrative Rulemaking Act, of each branch office the principal broker
381 designates the branch broker to supervise.
- 382 (7)(a) In addition to issuing a principal broker license, associate broker license, or sales
383 agent license authorizing the performance of an act set forth in Section 61-2f-201, the
384 division may issue a specialized sales license or specialized property management
385 license with the scope of practice limited to the specialty.
- 386 (b) An individual may hold a specialized license in addition to a license as a principal
387 broker, associate broker, or a sales agent.
- 388 (c) A sales agent who is affiliated with a dual broker may act as a property management
389 sales agent if:
- 390 (i) the dual broker designates the sales agent as a property management sales agent;
391 and
- 392 (ii) the sales agent pays to the division a property management sales agent
393 designation fee in an amount determined by the division in accordance with
394 Section 63J-1-504.
- 395 (d) A property management sales agent may simultaneously provide both property
396 management services and real estate sales services under the supervision of a dual
397 broker as provided by the commission with the concurrence of the division by rule
398 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 399 (8) The commission may determine, by rule made in accordance with Title 63G, Chapter 3,
400 Utah Administrative Rulemaking Act, subject to concurrence by the division, licensing
401 requirements related to this section for a principal broker, associate broker, sales agent,
402 dual broker, property management sales agent, or for a specialized license described in
403 Subsection (7), including:
- 404 (a) prelicensing and postlicensing education requirements;

- 405 (b) examination requirements;
- 406 (c) affiliation with real estate brokerages or property management companies;
- 407 (d) property management sales agent:
- 408 (i) designation procedures;
- 409 (ii) allowable scope of practice; and
- 410 (iii) division fees;
- 411 (e) what constitutes active and reasonable supervision for:
- 412 (i) a principal broker when supervising a branch broker or sales agent; and
- 413 (ii) a branch broker when supervising a sales agent; and
- 414 (f) other licensing procedures.

415 Section 4. Section **61-2f-308** is amended to read:

416 **61-2f-308 . Brokerage agreements.**

- 417 (1) As used in this section:
- 418 (a) "Brokerage agreement" means a written agreement between a client and a principal
- 419 broker:
- 420 (i)(A) to list for sale, lease, or exchange, real estate, an option on real estate, or an
- 421 improvement on real estate; or
- 422 (B) for representation in the purchase, lease, or exchange of real estate, an option
- 423 on real estate, or an improvement on real estate; and
- 424 (ii) that gives the principal broker the expectation of receiving valuable consideration
- 425 in exchange for the principal broker's services.
- 426 (b) "Client" means a person who makes an exclusive brokerage agreement with a
- 427 principal broker under Subsection (1)(d).
- 428 (c) "Closed" means that:
- 429 (i) the documents required to be executed under the contract are executed;
- 430 (ii) the money required to be paid by either party under the contract is paid in the
- 431 form of collected or cleared funds;
- 432 (iii) the proceeds of any new loan are delivered by the lender to the seller; and
- 433 (iv) the applicable documents are recorded in the office of the county recorder for the
- 434 county in which the real estate is located.
- 435 (d) "Exclusive brokerage agreement" means a brokerage agreement that gives the
- 436 principal broker the sole right to act as the agent or representative of the client for the
- 437 purchase, sale, lease, or exchange of real estate, an option on real estate, or an
- 438 improvement on real estate.

- 439 (2)(a) Except as provided in Subsection (2)(b), a principal broker subject to an exclusive
440 brokerage agreement shall:
- 441 (i) accept delivery of and present to the client offers and counteroffers to buy, lease,
442 or exchange the client's real estate;
 - 443 (ii) assist the client in developing, communicating, and presenting offers,
444 counteroffers, and notices; and
 - 445 (iii) answer any question the client has concerning:
 - 446 (A) an offer;
 - 447 (B) a counteroffer;
 - 448 (C) a notice; and
 - 449 (D) a contingency.
- 450 (b) A principal broker subject to an exclusive brokerage agreement need not comply
451 with Subsection (2)(a) after:
- 452 (i)(A) an agreement for the sale, lease, or exchange of the real estate, option on
453 real estate, or improvement on real estate is signed;
 - 454 (B) the contingencies related to the sale, lease, or exchange are satisfied or
455 waived; and
 - 456 (C) the sale, lease, or exchange is closed; or
 - 457 (ii) the exclusive brokerage agreement expires or terminates.
- 458 (3) A principal broker who violates this section is subject to Sections 61-2f-404 and
459 61-2f-405.
- 460 (4)(a) Subject to Subsection (4)(b), a principal broker who represents a buyer may
461 directly contact a seller who is subject to a brokerage agreement or an exclusive
462 brokerage agreement if:
- 463 (i) the seller's principal broker gives the buyer's principal broker written
464 authorization; or
 - 465 (ii) subject to Subsection (4)(c), the seller gives the buyer's principal broker written
466 authorization.
- 467 (b) If a buyer's principal broker obtains a written authorization described in Subsection
468 (4)(a), the buyer's principal broker may contact the seller directly to:
- 469 (i) discuss items related to a real estate transaction between the buyer and the seller;
 - 470 (ii) provide the seller with blank state-approved forms; and
 - 471 (iii) negotiate the terms of a real estate transaction between the buyer and the seller.
- 472 (c) A buyer's principal broker may not solicit from a seller a written authorization

473 described in Subsection (4)(a)(ii).

474 (5) A principal broker who, in accordance with Subsection (4), engages in the conduct
475 described in Subsection (4)(b) is not, by that conduct, representing that the principal
476 broker is acting on behalf of both the buyer and the seller.

477 (6) The following conduct by a principal broker who represents a seller does not create an
478 agency relationship with a buyer unrepresented by a principal broker:

479 (a) contacting the buyer directly to discuss items related to a real estate transaction
480 between the seller and buyer;

481 (b) providing the buyer with blank state approved forms; or

482 (c) negotiating the terms of a real estate transaction between the seller and the buyer.

483 Section 5. Section **61-2f-309** is enacted to read:

484 **61-2f-309 . Record requirements.**

485 (1) A brokerage shall make or possess any applicable record required for the brokerage to
486 maintain by rule made by the commission pursuant to Section 61-2f-103 for the time
487 period specified in Subsection (2).

488 (2) A brokerage shall maintain and safeguard in the brokerage's possession a record
489 described in Subsection (1) for three years following:

490 (a) the day the transaction either closes or fails;

491 (b) in a lease transaction, the day of the commencement of the lease; or

492 (c) the day an offer is rejected.

493 Section 6. Section **61-2f-401** is amended to read:

494 **61-2f-401 . Grounds for disciplinary action.**

495 The following acts are unlawful and grounds for disciplinary action for a person licensed
496 or required to be licensed under this chapter:

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

498 (b) making an intentional misrepresentation;

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

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

502 (e) making a false representation or promise of a character likely to influence, persuade,
503 or induce;

504 (2) acting for more than one party in a transaction without the informed written consent of
505 the parties;

506 (3)(a) acting as an associate broker or sales agent while not affiliated with a principal

- 507 broker;
- 508 (b) representing or attempting to represent a principal broker other than the principal
509 broker with whom the person is affiliated; or
- 510 (c) representing as sales agent or having a contractual relationship similar to that of sales
511 agent with a person other than a principal broker;
- 512 (4)(a) failing, within a reasonable time, to account for or to remit money that belongs to
513 another and comes into the person's possession;
- 514 (b) commingling money described in Subsection (4)(a) with the person's own money; or
515 (c) diverting money described in Subsection (4)(a) from the purpose for which the
516 money is received;
- 517 (5) paying or offering to pay valuable consideration to a person not licensed under this
518 chapter, except that valuable consideration may be shared:
- 519 (a) with a principal broker of another jurisdiction; or
520 (b) as provided under:
- 521 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;
522 (ii) Title 16, Chapter 11, Professional Corporation Act; or
523 (iii) Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as
524 appropriate pursuant to Section 48-3a-1405;
- 525 (6) for a principal broker, paying or offering to pay a sales agent or associate broker who is
526 not affiliated with the principal broker at the time the sales agent or associate broker
527 earned the compensation;
- 528 (7) being incompetent to act as a principal broker, associate broker, or sales agent in such
529 manner as to safeguard the interests of the public;
- 530 (8) failing to voluntarily furnish a copy of a document to the parties before and after the
531 execution of a document;
- 532 (9) a brokerage failing to keep and make available for inspection by the division a record of
533 each transaction, including:
- 534 (a) the names of buyers and sellers or lessees and lessors;
535 (b) the identification of real estate;
536 (c) the sale or rental price;
537 (d) money received in trust;
538 (e) agreements or instructions from buyers and sellers or lessees and lessors; and
539 (f) any other information required by rule;
- 540 (10) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether the

- 541 purchase, sale, or rental is made for that person or for an undisclosed principal;
542 (11) regardless of whether the crime is related to the business of real estate:
543 (a) be convicted of:
544 (i) a felony; or
545 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
546 (A) a class A misdemeanor;
547 (B) a class B misdemeanor; or
548 (C) a criminal offense comparable to a class A or class B misdemeanor;
549 (b) plead guilty or nolo contendere to:
550 (i) a felony; or
551 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
552 (A) a class A misdemeanor;
553 (B) a class B misdemeanor; or
554 (C) a criminal offense comparable to a class A or class B misdemeanor;
555 (c) enter into a plea in abeyance agreement in relation to:
556 (i) a felony; or
557 (ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:
558 (A) a class A misdemeanor;
559 (B) a class B misdemeanor; or
560 (C) a criminal offense comparable to a class A or class B misdemeanor;
561 (12) at the time of placing an advertisement:
562 (a) advertising the availability of real estate or the services of a licensee in a false,
563 misleading, or deceptive manner; or
564 (b) failing to include within the advertisement the brokerage name with which a person
565 who is licensed or required to be licensed is affiliated or, if the advertisement is
566 placed online or in a digital format, a link to a website or media platform that
567 identifies the brokerage name within one click;
568 (13) in the case of a principal broker or a branch broker, failing to exercise active and
569 reasonable supervision, as the commission may define by rule made in accordance with
570 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, over the activities of the
571 principal broker's or branch broker's licensed or unlicensed staff;
572 (14) violating or disregarding:
573 (a) this chapter;
574 (b) an order of the commission; or

- 575 (c) the rules adopted by the commission and the division;
- 576 (15) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real estate
577 transaction;
- 578 (16) any other conduct which constitutes dishonest dealing;
- 579 (17) having one of the following suspended, revoked, surrendered, or cancelled on the basis
580 of misconduct in a professional capacity that relates to character, honesty, integrity, or
581 truthfulness:
- 582 (a) a real estate license, registration, or certificate issued by another jurisdiction; or
583 (b) another license, registration, or certificate to engage in an occupation or profession
584 issued by this state or another jurisdiction;
- 585 (18) failing to respond to a request by the division in an investigation authorized under this
586 chapter within 10 business days after the day on which the request is served, including:
- 587 (a) failing to respond to a subpoena;
- 588 (b) withholding evidence; or
- 589 (c) failing to produce documents or records;
- 590 (19) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
- 591 (a) providing a title insurance product or service without the approval required by
592 Section 31A-2-405; or
- 593 (b) knowingly providing false or misleading information in the statement required by
594 Subsection 31A-2-405(2);
- 595 (20) violating an independent contractor agreement between a principal broker and a sales
596 agent or associate broker as evidenced by a final judgment of a court;
- 597 (21) violating Title 57, Chapter 30, Residential Property Service Agreements;
- 598 (22)(a) engaging in an act of loan modification assistance that requires licensure as a
599 mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and
600 Licensing Act, without being licensed under that chapter;
- 601 (b) engaging in an act of foreclosure rescue without entering into a written agreement
602 specifying what one or more acts of foreclosure rescue will be completed;
- 603 (c) inducing a person who is at risk of foreclosure to hire the licensee to engage in an act
604 of foreclosure rescue by:
- 605 (i) suggesting to the person that the licensee has a special relationship with the
606 person's lender or loan servicer; or
- 607 (ii) falsely representing or advertising that the licensee is acting on behalf of:
- 608 (A) a government agency;

- 609 (B) the person's lender or loan servicer; or
 610 (C) a nonprofit or charitable institution; or
 611 (d) recommending or participating in a foreclosure rescue that requires a person to:
 612 (i) transfer title to real estate to the licensee or to a third-party with whom the
 613 licensee has a business relationship or financial interest;
 614 (ii) make a mortgage payment to a person other than the person's loan servicer; or
 615 (iii) refrain from contacting the person's:
 616 (A) lender;
 617 (B) loan servicer;
 618 (C) attorney;
 619 (D) credit counselor; or
 620 (E) housing counselor;
 621 (23) taking or removing from the premises of a main office or a branch office, or otherwise
 622 limiting a real estate brokerage's access to or control over, a record that:
 623 (a)(i) the real estate brokerage's licensed staff, unlicensed staff, or affiliated
 624 independent contractor prepared; and
 625 (ii) is related to the business of:
 626 (A) the real estate brokerage; or
 627 (B) an associate broker, a branch broker, or a sales agent of the real estate
 628 brokerage; or
 629 (b) is related to the business administration of the real estate brokerage;
 630 (24) as a principal broker, placing a lien on real property, unless authorized by law;
 631 (25) as a sales agent or associate broker, placing a lien on real property for an unpaid
 632 commission or other compensation related to real estate brokerage services; or
 633 (26) failing to timely disclose to a buyer or seller an affiliated business arrangement, as
 634 defined in Section 31A-23a-1001, in accordance with the federal Real Estate Settlement
 635 Procedures Act, 12 U.S.C. Sec. 2601 et seq. and any rules made thereunder.
 636 Section 7. Section **61-2f-402** is amended to read:
 637 **61-2f-402 . Investigations -- Disciplinary actions.**
 638 (1) The division may conduct a public or private investigation within or outside of this state
 639 as the division considers necessary to determine whether a person has violated, is
 640 violating, or is about to violate this chapter or any rule or order under this chapter.
 641 (2)(a) The division shall give priority to the investigation of complaints and any
 642 disciplinary action resulting from the investigation based on the severity of the

643 allegations as described in Subsection (2)(b).

644 (b) The division shall:

645 (i) consider first those complaints related to actions that clearly amount to a crime
 646 under Title 76, Utah Criminal Code, or other state or federal criminal law; and

647 (ii) after applying Subsection (2)(b)(i), use a risk-based approach based on the:

648 (A) degree of potential harm to a member of the public;

649 (B) number of potential victims of the conduct;

650 (C) potential for immediate harm to a member of the public;

651 (D) number of licensees potentially involved in the complaint;

652 (E) previous complaint history of the licensee; and

653 (F) number of potential violations alleged in the complaint.

654 ~~[(2)]~~ (3) To aid in the enforcement of this chapter or in the prescribing of rules and forms
 655 under this chapter, the division may require or permit a person to file a statement in
 656 writing, under oath or otherwise as to the facts and circumstances concerning the matter
 657 to be investigated.

658 ~~[(3)]~~ (4)(a) For the purpose of the investigation described in Subsection (1), the division
 659 or an employee designated by the division may:

660 ~~[(a)]~~ (i) administer an oath or affirmation;

661 ~~[(b)]~~ (ii) issue a subpoena that requires:

662 ~~[(i)]~~ (A) the attendance and testimony of a witness; or

663 ~~[(ii)]~~ (B) the production of evidence;

664 ~~[(c)]~~ (iii) take evidence;

665 ~~[(d)]~~ (iv) require the production of a book, paper, contract, record, other document, or
 666 information relevant to the investigation; and

667 ~~[(e)]~~ (v) serve a subpoena by certified mail.

668 (b) The division may not require the production of evidence, book, paper, contract,
 669 record, other document, or information required to be kept by a brokerage, licensee,
 670 or a person required to be licensed pursuant to Section 61-2f-309 after the expiration
 671 of the time in which the brokerage is required to maintain and safeguard the record as
 672 described in Section 61-2f-309.

673 ~~[(4)]~~ (5)(a) A court of competent jurisdiction shall enforce, according to the practice and
 674 procedure of the court, a subpoena issued by the division.

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

677 ~~[(5)]~~ (6)(a) Except as provided in ~~[Subsections (5)(b) and (c)]~~ Subsection (6)(b), the
 678 division shall commence ~~[a disciplinary]~~ filing of a citation or notice of agency action
 679 under this chapter no later than the earlier of the following:

680 (i) ~~[four years]~~ two years after the day on which the violation is reported to the
 681 division; or

682 (ii) the date the brokerage is no longer required to keep and maintain the records as
 683 provided in Section 61-2f-309.

684 ~~[(ii) 10 years after the day on which the violation occurred.]~~

685 ~~[(b) Except as provided in Subsection (5)(c), the division shall commence a disciplinary~~
 686 ~~action within four years after the day on which a violation occurred, if the violation~~
 687 ~~was of:]~~

688 ~~[(i) Section 61-2f-206;]~~

689 ~~[(ii) Subsection 61-2f-401(8), which prohibits failure to voluntarily furnish a copy of~~
 690 ~~a document to the parties before and after the execution of a document; or]~~

691 ~~[(iii) Subsection 61-2f-401(18), which prohibits failure to respond to a division~~
 692 ~~request in an investigation within 10 days after the day on which the request is~~
 693 ~~served.]~~

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

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

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

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

702 (7) The division may not publish notice of a public reprimand or the name of the person
 703 subject to disciplinary action unless the commission includes a public reprimand as part
 704 of disciplinary action resulting from an administrative hearing.

705 Section 8. Section **61-2f-405** is amended to read:

706 **61-2f-405 . Other penalties for violation of chapter.**

707 ~~[(1)(a) An individual required to be licensed under this chapter who violates this~~
 708 ~~chapter, in addition to being subject to a license sanction or a fine ordered by the~~
 709 ~~commission, is, upon conviction of a first violation, guilty of a class A misdemeanor.]~~

710 ~~[(b) For a conviction under this Subsection (1), imprisonment shall be for a term not to~~

711 ~~exceed six months.]~~
712 ~~[(2)(a) Upon conviction of a second or subsequent violation, an individual is guilty of a~~
713 ~~third degree felony.]~~
714 ~~[(b) Imprisonment for a conviction under this Subsection (2)(a) shall be for a term not to~~
715 ~~exceed two years.]~~
716 ~~[(3)] (1) An officer or agent of a corporation, a member or agent of a partnership or~~
717 association, or an individual in a similar position of another type of entity who
718 personally participates in or is an accessory to any violation of this chapter by the entity
719 is subject to the penalties prescribed for an individual.
720 ~~[(4)] (2) If a person receives money or its equivalent, as commission, compensation, or~~
721 profit by or in consequence of a violation of this chapter, that person is liable for an
722 additional penalty of not less than the amount of the money received and not more than
723 three times the amount of money received, as may be determined by the court. This
724 penalty may be sued for in any court of competent jurisdiction, and recovered by any
725 person aggrieved for the person's own use and benefit.
726 ~~[(5)] (3) A fine imposed by the commission and the director under this chapter shall,~~
727 notwithstanding Section 13-1-2, be deposited into the Real Estate Education, Research,
728 and Recovery Fund to be used in a manner consistent with the requirements of Part 5,
729 Real Estate Education, Research, and Recovery Fund Act.
730 Section 9. **Effective Date.**
731 This bill takes effect on May 7, 2025.