

R. Neil Walter proposes the following substitute bill:

Real Estate Revisions

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Neil Walter

Senate Sponsor:

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- amends provisions related to the Division of Real Estate's (division) authority to investigate licensees, including time periods for retention of certain documents, and the division's ability to request documents;
- provides guidance on the determination of disciplinary actions taken by the Real Estate Commission;
- defines terms related to advertising practices;
- provides that certain conduct by a principal broker does not create an agency relationship with a buyer;
- amends provisions related to the inclusion of the brokerage's name being included in an advertisement or through a link requiring only one click; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

61-2-203, as last amended by Laws of Utah 2023, Chapter 401

61-2f-102, as last amended by Laws of Utah 2024, Chapter 227

61-2f-206, as last amended by Laws of Utah 2022, Chapter 204

29 **61-2f-308**, as last amended by Laws of Utah 2014, Chapter 350

30 **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-404**, as last amended by Laws of Utah 2024, Chapter 227

33 **61-2f-405**, as renumbered and amended by Laws of Utah 2010, Chapter 379

34 ENACTS:

35 **61-2f-309**, Utah Code Annotated 1953

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

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

39 **61-2-203 . Adjudicative proceedings -- Citation authority.**

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

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

43 (a) a notice of agency action; or

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

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

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

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

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

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

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

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

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

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

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

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

(b) The division may, in addition to or in lieu of a fine under Subsection (5)(a), order the person to cease and desist from an activity that violates a provision listed in Subsection (4).

(6) Except as provided in Subsection (8)(d), the division may not use a citation to effect a license:

(a) denial;

(b) probation;

(c) suspension; or

(d) revocation.

(7)(a) A citation issued by the division shall:

(i) be in writing;

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

(iii) clearly state that the recipient must notify the division in writing within 20 calendar days after the day on which the citation is served if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

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

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

(8)(a) A citation becomes final:

(i) if within 20 calendar days after the day on which the citation is served, the person to whom the citation was issued fails to request a hearing to contest the citation; or

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

(b) The division may extend, for cause, the 20-day period to contest a citation.

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

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

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

- (9)(a) The division may not issue a citation under this section after the expiration of one year after the day on which the violation occurs.
- (b) The division may issue a notice to address a violation that is outside of the one-year citation period.
- (10) The director or the director's designee shall assess a fine with a citation in an amount that is no more than:
- (a) for a first offense, \$1,000;
 - (b) for a second offense, \$2,000; and
 - (c) for each offense subsequent to a second offense, \$2,000 for each day of continued offense.
- (11)(a) An action for a first or second offense for which the division has not issued a final order does not preclude the division from initiating a subsequent action for a second or subsequent offense while the preceding action is pending.
- (b) The final order on a subsequent action is considered a second or subsequent offense, respectively, provided the preceding action resulted in a first or second offense, respectively.
- (12)(a) If a person does not pay a penalty, the director may collect the unpaid penalty by:
- (i) referring the matter to a collection agency; or
 - (ii) bringing an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration.
- (b) A county attorney or the attorney general of the state shall provide legal services to the director in an action to collect the penalty.
- (c) A court may award reasonable attorney fees and costs to the division in an action the division brings to enforce the provisions of this section.

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

61-2f-102 . Definitions.

As used in this chapter:

- (1) "Admonition" means a nonpublic discipline that declares the conduct of a person as improper and does not include the name of the person.
- (2)(a) "Advertisement" means a notice or announcement meant to:
- (i) promote the availability of real estate, an option on real estate, or a business opportunity for sale, exchange, auction, or lease;
 - (ii) offer specific types of brokerage services; or
 - (iii) specifically solicit the public to contact that licensee for more information.

(b) "Advertisement" does not include a social media post that generally identifies the person as being engaged in the profession of real estate if the social media post does not:

(i) promote the availability of real estate, an option on real estate, or a business opportunity for sale, exchange, auction, or lease;

(ii) offer specific types of brokerage services; or

(iii) specifically solicit the public to contact that licensee for more information.

(3) "Advertising" or "advertise" means placing or directing the placement of an advertisement.

~~[(4)]~~ (4) "Associate broker" means an individual who is:

(a) employed or engaged as an independent contractor by or on behalf of a principal broker to perform an act described in Subsection ~~[(20)]~~ (29) for valuable consideration; and

(b) licensed under this chapter as an associate broker.

~~[(2)]~~ (5) "Branch broker" means an associate broker who manages a principal broker's branch office under the supervision of the principal broker.

~~[(3)]~~ (6) "Branch office" means a principal broker's real estate brokerage office that is not the principal broker's main office.

(7) "Brokerage" means an entity registered or required to be registered with the division pursuant to Section 61-2f-206.

(8) "Brokerage name" means:

(a) the name of the brokerage as shown on division records;

(b) the name of a branch office of the brokerage; or

(c) a DBA of the brokerage.

~~[(4)]~~ (9) "Business day" means a day other than:

(a) a Saturday;

(b) a Sunday; or

(c) a federal or state holiday.

~~[(5)]~~ (10) "Business opportunity" means the sale, lease, or exchange of any business that includes an interest in real estate.

~~[(6)]~~ (11) "Commission" means the Real Estate Commission established under this chapter.

~~[(7)]~~ (12) "Concurrence" means the entities given a concurring role must jointly agree for action to be taken.

~~[(8)]~~ (13) "Condominium homeowners' association" means the condominium unit owners

- 199 acting as a group in accordance with declarations and bylaws.
- 200 ~~[(9)]~~ (14)(a) "Condominium hotel" means one or more condominium units that are
- 201 operated as a hotel.
- 202 (b) "Condominium hotel" does not mean a hotel consisting of condominium units, all of
- 203 which are owned by a single entity.
- 204 ~~[(10)]~~ (15) "Condominium unit" means the same as that term is defined in Section 57-8-3.
- 205 ~~[(11)]~~ (16) "Director" means the director of the Division of Real Estate.
- 206 ~~[(12)]~~ (17) "Division" means the Division of Real Estate.
- 207 (18) "Doing business as" or "DBA" means a name that is registered with the Division of
- 208 Corporations and Commercial Code that allows a business to operate under a name
- 209 different from the business's legal name.
- 210 ~~[(13)]~~ (19) "Dual broker" means a principal broker of a real estate sales brokerage who
- 211 obtains from the division a dual broker license in order to function as the principal
- 212 broker of a property management company that is a separate entity from the real estate
- 213 sales brokerage.
- 214 ~~[(14)]~~ (20) "Entity" means:
- 215 (a) a corporation;
- 216 (b) a partnership;
- 217 (c) a limited liability company;
- 218 (d) a company;
- 219 (e) an association;
- 220 (f) a joint venture;
- 221 (g) a business trust;
- 222 (h) a trust; or
- 223 (i) any organization similar to an entity described in Subsections ~~[(14)(a)]~~ (20)(a)
- 224 through (h).
- 225 ~~[(15)]~~ (21) "Executive director" means the director of the Department of Commerce.
- 226 (22) "Factory built housing" means a manufactured home or mobile home.
- 227 ~~[(16)]~~ (23) "Foreclosure rescue" means, for compensation or with the expectation of
- 228 receiving valuable consideration, to:
- 229 (a) engage, or offer to engage, in an act that:
- 230 (i) the person represents will assist a borrower in preventing a foreclosure; and
- 231 (ii) relates to a transaction involving the transfer of title to residential real property; or
- 232 (b) as an employee or agent of another person:

233 (i) solicit, or offer that the other person will engage in an act described in Subsection [
234 ~~(16)(a)~~] (23)(a); or

235 (ii) negotiate terms in relationship to an act described in Subsection [~~(16)(a)~~] (23)(a).
236 ~~[(17)]~~ (24) "Loan modification assistance" means, for compensation or with the expectation
237 of receiving valuable consideration, to:

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

239 (i) obtain a loan term of a residential mortgage loan that is different from an existing
240 loan term including:

241 (A) an increase or decrease in an interest rate;
242 (B) a change to the type of interest rate;
243 (C) an increase or decrease in the principal amount of the residential mortgage
244 loan;
245 (D) a change in the number of required period payments;
246 (E) an addition of collateral;
247 (F) a change to, or addition of, a prepayment penalty;
248 (G) an addition of a cosigner; or
249 (H) a change in persons obligated under the existing residential mortgage loan; or

250 (ii) substitute a new residential mortgage loan for an existing residential mortgage
251 loan; or

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

253 (i) solicit, or offer that the other person will engage in an act described in Subsection [
254 ~~(17)(a)~~] (24)(a); or

255 (ii) negotiate terms in relationship to an act described in Subsection [~~(17)(a)~~] (24)(a).

256 ~~[(18)]~~ (25) "Main office" means the address which a principal broker designates with the
257 division as the principal broker's primary brokerage office.

258 (26) "Manufactured home" means the same as that term is defined in Section 15A-1-302.

259 (27) "Mobile home" means the same as that term is defined in Section 15A-1-302.

260 ~~[(19)]~~ (28) "Person" means an individual or entity.

261 ~~[(20)]~~ (29) "Principal broker" means an individual who is licensed or required to be licensed
262 as a principal broker under this chapter who:

263 (a) sells or lists for sale real estate, including real estate being sold as part of a
264 foreclosure rescue, ~~[or] a business opportunity, or, unless licensed with the Division~~
265 of Professional Licensing as a dealer under Title 58, Chapter 56, Building Inspector
266 and Factory Built Housing Licensing Act, factory built housing, with the expectation

of receiving valuable consideration;

(b) buys, exchanges, or auctions real estate, an option on real estate, a business opportunity~~[- or an improvement on real estate]~~ , or, unless licensed with the Division of Professional Licensing as a dealer under Title 58, Chapter 56, Building Inspector and Factory Built Housing Licensing Act, factory built housing, with the expectation of receiving valuable consideration;

(c) advertises, offers, attempts, or otherwise holds the individual out to be engaged in the business described in Subsection ~~[(20)(a)]~~ (29)(a) or (b);

(d) is employed by or on behalf of the owner of real estate or by a prospective purchaser of real estate and performs an act described in Subsection ~~[(20)(a)]~~ (29)(a), whether the individual's compensation is at a stated salary, a commission basis, upon a salary and commission basis, or otherwise;

(e) with the expectation of receiving valuable consideration, manages property owned by another person;

(f) advertises or otherwise holds the individual out to be engaged in property management;

(g) with the expectation of receiving valuable consideration, assists or directs in the procurement of prospects for or the negotiation of a transaction listed in Subsections ~~[(20)(a)]~~ (29)(a) and (e);

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

(i) engages in foreclosure rescue; or

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

~~[(21)]~~ (30)(a) "Property management" means engaging in, with the expectation of receiving valuable consideration, the management of real estate owned by another person or advertising or otherwise claiming to be engaged in property management by:

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

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

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

(b) "Property management" does not include:

(i) hotel or motel management;

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

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

~~[(22)]~~ (31) "Property management sales agent" means a sales agent who:

(a) is affiliated with a dual broker through the dual broker's property management company; and

(b) is designated by the dual broker as a property management sales agent.

~~[(23)]~~ (32) "Real estate" includes leaseholds and business opportunities involving real property.

~~[(24)]~~ (33)(a) "Regular salaried employee" means an individual who performs a service for wages or other remuneration, whose employer withholds federal employment taxes under a contract of hire, written or oral, express or implied.

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

~~[(25)]~~ (34) "Reinstatement" means restoring a license that has expired or has been suspended.

~~[(26)]~~ (35) "Reissuance" means the process by which a licensee may obtain a license following revocation of the license.

~~[(27)]~~ (36) "Renewal" means extending a license for an additional licensing period on or before the date the license expires.

(37) "Reprimand" means a public discipline that declares the conduct of a person as improper and includes the name of the person.

~~[(28)]~~ (38) "Sales agent" means an individual who is:

(a) affiliated with a principal broker, either as an independent contractor or an employee as provided in Section 61-2f-303, to perform for valuable consideration an act described in Subsection ~~[(29)]~~ (29); and

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

(39) "Transaction" means, whether complete or incomplete:

- (a) a purchase of real estate;
- (b) a sale of real estate;
- (c) an exchange of real estate;
- (d) a lease of real estate;
- (e) an auction of real estate;
- (f) management of real estate;
- (g) an option on real estate; or
- (h) a business opportunity.

[(29)] (40) "Vulnerable adult" means the same as that term is defined in Section 26B-6-201.

Section 3. Section **61-2f-206** is amended to read:

61-2f-206 . Registration of person or branch office -- Certification of education providers and courses -- Specialized licenses.

- (1)(a) A person may not engage in an activity described in Section 61-2f-201, unless:
- (i) the person is registered with the division[-] ; or
 - (ii) an exemption to registration applies.
- (b) To register with the division under this Subsection (1), a person shall submit to the division:
- (i) an application in a form required by the division;
 - (ii) evidence of an affiliation with a principal broker;
 - (iii) evidence that the person is registered and in good standing with the Division of Corporations and Commercial Code; and
 - (iv) a registration fee established by the commission with the concurrence of the division under Section 63J-1-504.
- (c) The division may terminate a person's registration if:
- (i) the person's registration with the Division of Corporations and Commercial Code has been expired for at least three years; and
 - (ii) the person's license with the division has been inactive for at least three years.
- (2)(a) A principal broker shall register with the division each of the principal broker's branch offices.
- (b) To register a branch office with the division under this Subsection (2), a principal broker shall submit to the division:
- (i) an application in a form required by the division; and
 - (ii) a registration fee established by the commission with the concurrence of the division under Section 63J-1-504.

- (3)(a) In accordance with rules made by the commission with the concurrence of the division and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall certify:
- (i) a real estate school;
 - (ii) a course provider; or
 - (iii) an instructor.
- (b) In accordance with rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, subject to concurrence by the division, the division shall certify a continuing education course that is required under this chapter.
- (4) Except as provided under this chapter or by rule the commission makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, a principal broker may not be responsible for more than one registered entity at the same time.
- (5) A principal broker:
- (a) shall exercise active and reasonable supervision of the principal broker's main office in accordance with this chapter and rules the commission makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (b) may supervise a branch office affiliated with the principal broker at the same time the principal broker exercises the supervision required under Subsection (5)(a).
- (6)(a) A principal broker may designate a branch broker to supervise a branch office affiliated with the principal broker.
- (b) A branch broker shall exercise active and reasonable supervision, in accordance with this chapter and rules the commission makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, of each branch office the principal broker designates the branch broker to supervise.
- (7)(a) In addition to issuing a principal broker license, associate broker license, or sales agent license authorizing the performance of an act set forth in Section 61-2f-201, the division may issue a specialized sales license or specialized property management license with the scope of practice limited to the specialty.
- (b) An individual may hold a specialized license in addition to a license as a principal broker, associate broker, or a sales agent.
- (c) A sales agent who is affiliated with a dual broker may act as a property management sales agent if:
- (i) the dual broker designates the sales agent as a property management sales agent;

- 403 and
- 404 (ii) the sales agent pays to the division a property management sales agent
- 405 designation fee in an amount determined by the division in accordance with
- 406 Section 63J-1-504.
- 407 (d) A property management sales agent may simultaneously provide both property
- 408 management services and real estate sales services under the supervision of a dual
- 409 broker as provided by the commission with the concurrence of the division by rule
- 410 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 411 (8) The commission may determine, by rule made in accordance with Title 63G, Chapter 3,
- 412 Utah Administrative Rulemaking Act, subject to concurrence by the division, licensing
- 413 requirements related to this section for a principal broker, associate broker, sales agent,
- 414 dual broker, property management sales agent, or for a specialized license described in
- 415 Subsection (7), including:
- 416 (a) prelicensing and postlicensing education requirements;
- 417 (b) examination requirements;
- 418 (c) affiliation with real estate brokerages or property management companies;
- 419 (d) property management sales agent:
- 420 (i) designation procedures;
- 421 (ii) allowable scope of practice; and
- 422 (iii) division fees;
- 423 (e) what constitutes active and reasonable supervision for:
- 424 (i) a principal broker when supervising a branch broker or sales agent; and
- 425 (ii) a branch broker when supervising a sales agent; and
- 426 (f) other licensing procedures.

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

428 **61-2f-308 . Brokerage agreements.**

- 429 (1) As used in this section:
- 430 (a) "Brokerage agreement" means a written agreement between a client and a principal
- 431 broker:
- 432 (i)(A) to list for sale, lease, or exchange, real estate, an option on real estate, or an
- 433 improvement on real estate; or
- 434 (B) for representation in the purchase, lease, or exchange of real estate, an option
- 435 on real estate, or an improvement on real estate; and
- 436 (ii) that gives the principal broker the expectation of receiving valuable consideration

- 437 in exchange for the principal broker's services.
- 438 (b) "Client" means a person who makes an exclusive brokerage agreement with a
439 principal broker under Subsection (1)(d).
- 440 (c) "Closed" means that:
- 441 (i) the documents required to be executed under the contract are executed;
- 442 (ii) the money required to be paid by either party under the contract is paid in the
443 form of collected or cleared funds;
- 444 (iii) the proceeds of any new loan are delivered by the lender to the seller; and
- 445 (iv) the applicable documents are recorded in the office of the county recorder for the
446 county in which the real estate is located.
- 447 (d) "Exclusive brokerage agreement" means a brokerage agreement that gives the
448 principal broker the sole right to act as the agent or representative of the client for the
449 purchase, sale, lease, or exchange of real estate, an option on real estate, or an
450 improvement on real estate.
- 451 (2)(a) Except as provided in Subsection (2)(b), a principal broker subject to an exclusive
452 brokerage agreement shall:
- 453 (i) accept delivery of and present to the client offers and counteroffers to buy, lease,
454 or exchange the client's real estate;
- 455 (ii) assist the client in developing, communicating, and presenting offers,
456 counteroffers, and notices; and
- 457 (iii) answer any question the client has concerning:
- 458 (A) an offer;
- 459 (B) a counteroffer;
- 460 (C) a notice; and
- 461 (D) a contingency.
- 462 (b) A principal broker subject to an exclusive brokerage agreement need not comply
463 with Subsection (2)(a) after:
- 464 (i)(A) an agreement for the sale, lease, or exchange of the real estate, option on
465 real estate, or improvement on real estate is signed;
- 466 (B) the contingencies related to the sale, lease, or exchange are satisfied or
467 waived; and
- 468 (C) the sale, lease, or exchange is closed; or
- 469 (ii) the exclusive brokerage agreement expires or terminates.
- 470 (3) A principal broker who violates this section is subject to Sections 61-2f-404 and

61-2f-405.

- (4)(a) Subject to Subsection (4)(b), a principal broker who represents a buyer may directly contact a seller who is subject to a brokerage agreement or an exclusive brokerage agreement if:
- (i) the seller's principal broker gives the buyer's principal broker written authorization; or
 - (ii) subject to Subsection (4)(c), the seller gives the buyer's principal broker written authorization.
- (b) If a buyer's principal broker obtains a written authorization described in Subsection (4)(a), the buyer's principal broker may contact the seller directly to:
- (i) discuss items related to a real estate transaction between the buyer and the seller;
 - (ii) provide the seller with blank ~~[state-approved]~~ forms; and
 - (iii) negotiate the terms of a real estate transaction between the buyer and the seller.
- (c) A buyer's principal broker may not solicit from a seller a written authorization described in Subsection (4)(a)(ii).
- (5) A principal broker who, in accordance with Subsection (4), engages in the conduct described in Subsection (4)(b) is not, by that conduct, representing that the principal broker is acting on behalf of both the buyer and the seller.
- (6) The following conduct by a principal broker who represents a seller does not create an agency relationship with a buyer unrepresented by a principal broker:
- (a) contacting the buyer directly to discuss items related to a real estate transaction between the seller and buyer;
 - (b) providing the buyer with blank forms; or
 - (c) negotiating the terms of a real estate transaction between the seller and the buyer.

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

61-2f-309 . Record requirements.

- (1) A brokerage shall make or possess any applicable record required for the brokerage to maintain by rule made by the commission pursuant to Section 61-2f-103 for the time period specified in Subsection (2).
- (2) A brokerage shall maintain and safeguard in the brokerage's possession a record described in Subsection (1) for three years following:
- (a) the day the transaction either closes or fails;
 - (b) in a lease transaction, the day of the commencement of the lease;
 - (c) the day an offer is rejected; or

(d) the end of the term of a property management agreement.

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

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

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

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

(b) making an intentional misrepresentation;

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

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

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

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

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

(b) representing or attempting to represent a principal broker other than the principal broker with whom the person is affiliated; or

(c) representing as sales agent or having a contractual relationship similar to that of sales agent with a person other than a principal broker;

(4)(a) failing, within a reasonable time, to account for or to remit money that belongs to another and comes into the person's possession;

(b) commingling money described in Subsection (4)(a) with the person's own money; or

(c) diverting money described in Subsection (4)(a) from the purpose for which the money is received;

(5) paying or offering to pay valuable consideration to a person not licensed under this chapter, except that valuable consideration may be shared:

(a) with a principal broker of another jurisdiction; or

(b) as provided under:

(i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;

(ii) Title 16, Chapter 11, Professional Corporation Act; or

(iii) Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405;

(6) for a principal broker, paying or offering to pay a sales agent or associate broker who is

not affiliated with the principal broker at the time the sales agent or associate broker earned the compensation;

(7) being incompetent to act as a principal broker, associate broker, or sales agent in such manner as to safeguard the interests of the public;

(8) failing to voluntarily furnish a copy of a document to the parties before and after the execution of a document;

(9) a brokerage failing to keep and make available for inspection by the division a record of each transaction, including:

(a) the names of buyers and sellers or lessees and lessors;

(b) the identification of real estate;

(c) the sale or rental price;

(d) money received in trust;

(e) agreements or instructions from buyers and sellers or lessees and lessors; and

(f) any other information required by rule;

(10) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether the purchase, sale, or rental is made for that person or for an undisclosed principal;

(11) regardless of whether the crime is related to the business of real estate:

(a) be convicted of:

(i) a felony; or

(ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:

(A) a class A misdemeanor;

(B) a class B misdemeanor; or

(C) a criminal offense comparable to a class A or class B misdemeanor;

(b) plead guilty or nolo contendere to:

(i) a felony; or

(ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:

(A) a class A misdemeanor;

(B) a class B misdemeanor; or

(C) a criminal offense comparable to a class A or class B misdemeanor;

(c) enter into a plea in abeyance agreement in relation to:

(i) a felony; or

(ii) any of the following involving fraud, misrepresentation, theft, or dishonesty:

(A) a class A misdemeanor;

(B) a class B misdemeanor; or

- 573 (C) a criminal offense comparable to a class A or class B misdemeanor;
- 574 (12) at the time of placing an advertisement:
- 575 (a) advertising the availability of real estate or the services of a licensee in a false,
- 576 misleading, or deceptive manner; or
- 577 (b) failing to include within the advertisement the brokerage name with which a person
- 578 who is licensed is affiliated or, if the advertisement is placed online or in a digital
- 579 format, a link to a website or media platform that identifies the brokerage name
- 580 within one click;
- 581 (13) in the case of a principal broker or a branch broker, failing to exercise active and
- 582 reasonable supervision, as the commission may define by rule made in accordance with
- 583 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, over the activities of the
- 584 principal broker's or branch broker's licensed or unlicensed staff;
- 585 (14) violating or disregarding:
- 586 (a) this chapter;
- 587 (b) an order of the commission; or
- 588 (c) the rules adopted by the commission and the division;
- 589 (15) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real estate
- 590 transaction;
- 591 (16) any other conduct which constitutes dishonest dealing;
- 592 (17) having one of the following suspended, revoked, surrendered, or cancelled on the basis
- 593 of misconduct in a professional capacity that relates to character, honesty, integrity, or
- 594 truthfulness:
- 595 (a) a real estate license, registration, or certificate issued by another jurisdiction; or
- 596 (b) another license, registration, or certificate to engage in an occupation or profession
- 597 issued by this state or another jurisdiction;
- 598 (18) failing to respond to a request by the division in an investigation authorized under this
- 599 chapter within 10 business days after the day on which the request is served, including:
- 600 (a) failing to respond to a subpoena;
- 601 (b) withholding evidence; or
- 602 (c) failing to produce documents or records;
- 603 (19) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
- 604 (a) providing a title insurance product or service without the approval required by
- 605 Section 31A-2-405; or
- 606 (b) knowingly providing false or misleading information in the statement required by

Subsection 31A-2-405(2);

- (20) violating an independent contractor agreement between a principal broker and a sales agent or associate broker as evidenced by a final judgment of a court;
- (21) violating Title 57, Chapter 30, Residential Property Service Agreements;
- (22)(a) engaging in an act of loan modification assistance that requires licensure as a mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing Act, without being licensed under that chapter;
- (b) engaging in an act of foreclosure rescue without entering into a written agreement specifying what one or more acts of foreclosure rescue will be completed;
- (c) inducing a person who is at risk of foreclosure to hire the licensee to engage in an act of foreclosure rescue by:
- (i) suggesting to the person that the licensee has a special relationship with the person's lender or loan servicer; or
- (ii) falsely representing or advertising that the licensee is acting on behalf of:
- (A) a government agency;
- (B) the person's lender or loan servicer; or
- (C) a nonprofit or charitable institution; or
- (d) recommending or participating in a foreclosure rescue that requires a person to:
- (i) transfer title to real estate to the licensee or to a third-party with whom the licensee has a business relationship or financial interest;
- (ii) make a mortgage payment to a person other than the person's loan servicer; or
- (iii) refrain from contacting the person's:
- (A) lender;
- (B) loan servicer;
- (C) attorney;
- (D) credit counselor; or
- (E) housing counselor;
- (23) taking or removing from the premises of a main office or a branch office, or otherwise limiting a real estate brokerage's access to or control over, a record that:
- (a)(i) the real estate brokerage's licensed staff, unlicensed staff, or affiliated independent contractor prepared; and
- (ii) is related to the business of:
- (A) the real estate brokerage; or
- (B) an associate broker, a branch broker, or a sales agent of the real estate

641 brokerage; or

642 (b) is related to the business administration of the real estate brokerage;

643 (24) as a principal broker, placing a lien on real property, unless authorized by law;

644 (25) as a sales agent or associate broker, placing a lien on real property for an unpaid
645 commission or other compensation related to real estate brokerage services; or

646 (26) failing to timely disclose to a buyer or seller an affiliated business arrangement, as
647 defined in Section 31A-23a-1001, in accordance with the federal Real Estate Settlement
648 Procedures Act, 12 U.S.C. Sec. 2601 et seq. and any rules made thereunder.

649 Section 7. Section **61-2f-402** is amended to read:

650 **61-2f-402 . Investigations -- Disciplinary actions.**

651 (1) The division may conduct a public or private investigation within or outside of this state
652 as the division considers necessary to determine whether a person has violated, is
653 violating, or is about to violate this chapter or any rule or order under this chapter.

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

658 (3)(a) For the purpose of the investigation described in Subsection (1), the division or an
659 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, or
670 licensee pursuant to Section 61-2f-309 after the expiration of the time in which the
671 brokerage is required to maintain and safeguard the record as described in Section
672 61-2f-309.

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

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

(5)(a) Except as provided in Subsections (5)(b) and (c), the division shall commence [~~a disciplinary action~~] an adjudicative proceeding under this chapter no later than the earlier of the following:

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

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

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

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

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

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

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

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

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

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

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

(6)(a) The division may publish notices of admonition, reprimand, suspension, revocation, and surrender with discipline pending in the division newsletter.

(b) Nothing in this Subsection (6) shall be construed to restrict the division's publication of information, including orders, irrespective of their style or format, on the division's website.

(c) Nothing in this Subsection (6) shall be construed to restrict the division's publication of information as required by Title 52, Chapter 4, Open and Public Meetings Act.

Section 8. Section **61-2f-404** is amended to read:

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

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

(i) imposing an educational requirement;

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

(A) except as provided in Subsection (1)(a)(ii)(B), \$5,000 for each violation;

(B) \$10,000 for each violation, if the person knew or should have known that the property owner was an individual 65 years old or older, or a vulnerable adult; or

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

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

(A) revoking;

(B) suspending;

(C) placing on probation;

(D) denying the renewal, reinstatement, or application for an original license, registration, or certificate; or

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

(iv) issuing a cease and desist order;

(v) authorizing an admonition;

(vi) authorizing a reprimand;

(vii) authorizing surrender with discipline pending;

[(v)] (viii) modifying an action described in Subsections (1)(a)(i) through [(iv)] (vii) if the commission finds that the person complies with court ordered restitution; or
[(vi)] (ix) doing any combination of Subsections (1)(a)(i) through [(v)] (viii).

(b) In determining appropriate action under Subsection (1)(a), the commission shall consider the following factors:

(i) the seriousness, nature, circumstances, extent, and persistence of the conduct constituting the violation;

(ii) the harm to other persons resulting either directly or indirectly from the violation;

(iii)(A) the cooperation by the person in any inquiry conducted by the division concerning the violation;

(B) efforts by the person to prevent future occurrences of the violation; and

- 743 (C) efforts by the person to mitigate the harm caused by the violation, including
 744 any disgorgement or restitution made to the other persons harmed by the acts
 745 of the person;
- 746 (iv) the history of previous violations by the person;
 747 (v) the need to deter the person or other persons from committing the violation in the
 748 future;
- 749 (vi) whether the person knew or should have known that the property owner was an
 750 individual 65 years old or older, or a vulnerable adult;
- 751 (vii) any direct or indirect compensation or economic benefit the person committing
 752 the violation received; and
- 753 (viii) other matters as justice may require.
- 754 ~~[(b)]~~ (c)(i) If the commission with the concurrence of the director issues an order that
 755 orders a fine or educational requirements as part of a disciplinary action against a
 756 person, including a stipulation and order, the commission shall state in the order
 757 the deadline by which the person shall comply with the fine or educational
 758 requirements.
- 759 (ii) If a person fails to comply by the stated deadline:
- 760 (A) the person's license, registration, or certificate is automatically suspended:
 761 (I) beginning the day specified in the order as the deadline for compliance; and
 762 (II) ending the day on which the person complies in full with the order; and
- 763 (B) if the person fails to pay a fine required by an order, the division may begin a
 764 collection process:
 765 (I) established by the division, with the concurrence of the commission, by rule
 766 made in accordance with Title 63G, Chapter 3, Utah Administrative
 767 Rulemaking Act; and
 768 (II) subject to Title 63A, Chapter 3, Part 5, Office of State Debt Collection.
- 769 ~~[(e)]~~ (d) In a manner determined by the division, the division shall inform a principal
 770 broker:
- 771 (i) with whom a licensee is affiliated of:
- 772 (A) a complaint made to the division against the licensee that requires a written
 773 response from the licensee;
- 774 (B) a violation alleged against the licensee by the division;
- 775 (C) the time and place of any disciplinary hearing regarding the licensee; and
- 776 (D) the resolution of a violation alleged described in Subsection ~~[(1)(e)(i)(B)]~~

- 777 (1)(d)(i)(B); and
- 778 (ii) upon inquiry from a principal broker regarding an affiliated licensee:
- 779 (A) disciplinary actions made by the division against the licensee for the past five
- 780 years; and
- 781 (B) the resolution of the disciplinary actions described in Subsection [(1)(e)(ii)(A)]
- 782 (1)(d)(ii)(A).
- 783 [(1)(e)] (e) A person previously licensed under this chapter remains responsible for, and is
- 784 subject to disciplinary action for, an act the person committed while the person was
- 785 licensed in violation of this chapter or an administrative rule in effect at the time the
- 786 person committed the act, regardless of whether the person is currently licensed.
- 787 (2)(a) An applicant, certificate holder, licensee, registrant, or person aggrieved,
- 788 including the complainant, may obtain agency review by the executive director and
- 789 judicial review of any adverse ruling, order, or decision of the division.
- 790 (b) If an applicant, certificate holder, registrant, or licensee prevails in the appeal and the
- 791 court finds that the state action was undertaken without substantial justification, the
- 792 court may award reasonable litigation expenses to the applicant, certificate holder,
- 793 registrant, or licensee as provided under Title 78B, Chapter 8, Part 5, Small Business
- 794 Equal Access to Justice Act.
- 795 (c)(i) An order, ruling, or decision of the division shall take effect and become
- 796 operative 30 days after the service of the order, ruling, or decision unless
- 797 otherwise provided in the order.
- 798 (ii) If an appeal is taken by a licensee, registrant, or certificate holder, the division
- 799 may stay enforcement of an order, ruling, or decision in accordance with Section
- 800 63G-4-405.
- 801 (iii) An appeal is governed by the Utah Rules of Appellate Procedure.
- 802 (3) The commission and the director shall comply with the procedures and requirements of
- 803 Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative proceeding.
- 804 Section 9. Section **61-2f-405** is amended to read:
- 805 **61-2f-405 . Other penalties for violation of chapter.**
- 806 ~~[(1)(a) An individual required to be licensed under this chapter who violates this~~
- 807 ~~chapter, in addition to being subject to a license sanction or a fine ordered by the~~
- 808 ~~commission, is, upon conviction of a first violation, guilty of a class A misdemeanor.]~~
- 809 ~~[(b) For a conviction under this Subsection (1), imprisonment shall be for a term not to~~
- 810 ~~exceed six months.]~~

811 ~~[(2)(a) Upon conviction of a second or subsequent violation, an individual is guilty of a~~
812 ~~third degree felony.]~~
813 ~~[(b) Imprisonment for a conviction under this Subsection (2)(a) shall be for a term not to~~
814 ~~exceed two years.]~~
815 ~~[(3)]~~ (1) An officer or agent of a corporation, a member or agent of a partnership or
816 association, or an individual in a similar position of another type of entity who
817 personally participates in or is an accessory to any violation of this chapter by the entity
818 is subject to the penalties prescribed for an individual.
819 ~~[(4)]~~ (2) If a person receives money or its equivalent, as commission, compensation, or
820 profit by or in consequence of a violation of this chapter, that person is liable for an
821 additional penalty of not less than the amount of the money received and not more than
822 three times the amount of money received, as may be determined by the court. This
823 penalty may be sued for in any court of competent jurisdiction, and recovered by any
824 person aggrieved for the person's own use and benefit.
825 ~~[(5)]~~ (3) A fine imposed by the commission and the director under this chapter shall,
826 notwithstanding Section 13-1-2, be deposited into the Real Estate Education, Research,
827 and Recovery Fund to be used in a manner consistent with the requirements of Part 5,
828 Real Estate Education, Research, and Recovery Fund Act.
829 Section 10. **Effective Date.**
830 This bill takes effect on May 7, 2025.