

Part 1 General Provisions

61-2f-101 Title.

This chapter is known as the "Real Estate Licensing and Practices Act."

Enacted by Chapter 379, 2010 General Session

61-2f-102 Definitions.

As used in this chapter:

- (1) "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) for valuable consideration; and
 - (b) licensed under this chapter as an associate broker.
- (2) "Branch broker" means an associate broker who manages a principal broker's branch office under the supervision of the principal broker.
- (3) "Branch office" means a principal broker's real estate brokerage office that is not the principal broker's main office.
- (4) "Business day" means a day other than:
 - (a) a Saturday;
 - (b) a Sunday; or
 - (c) a federal or state holiday.
- (5) "Business opportunity" means the sale, lease, or exchange of any business that includes an interest in real estate.
- (6) "Commission" means the Real Estate Commission established under this chapter.
- (7) "Concurrence" means the entities given a concurring role must jointly agree for action to be taken.
- (8) "Condominium homeowners' association" means the condominium unit owners acting as a group in accordance with declarations and bylaws.
- (9)
 - (a) "Condominium hotel" means one or more condominium units that are operated as a hotel.
 - (b) "Condominium hotel" does not mean a hotel consisting of condominium units, all of which are owned by a single entity.
- (10) "Condominium unit" means the same as that term is defined in Section 57-8-3.
- (11) "Director" means the director of the Division of Real Estate.
- (12) "Division" means the Division of Real Estate.
- (13) "Dual broker" means a principal broker of a real estate sales brokerage who obtains from the division a dual broker license in order to function as the principal broker of a property management company that is a separate entity from the real estate sales brokerage.
- (14) "Entity" means:
 - (a) a corporation;
 - (b) a partnership;
 - (c) a limited liability company;
 - (d) a company;
 - (e) an association;
 - (f) a joint venture;
 - (g) a business trust;

- (h) a trust; or
 - (i) any organization similar to an entity described in Subsections (14)(a) through (h).
- (15) "Executive director" means the director of the Department of Commerce.
- (16) "Foreclosure rescue" means, for compensation or with the expectation of receiving valuable consideration, to:
- (a) engage, or offer to engage, in an act that:
 - (i) the person represents will assist a borrower in preventing a foreclosure; and
 - (ii) relates to a transaction involving the transfer of title to residential real property; or
 - (b) as an employee or agent of another person:
 - (i) solicit, or offer that the other person will engage in an act described in Subsection (16)(a); or
 - (ii) negotiate terms in relationship to an act described in Subsection (16)(a).
- (17) "Loan modification assistance" means, for compensation or with the expectation of receiving valuable consideration, to:
- (a) act, or offer to act, on behalf of a person to:
 - (i) obtain a loan term of a residential mortgage loan that is different from an existing loan term including:
 - (A) an increase or decrease in an interest rate;
 - (B) a change to the type of interest rate;
 - (C) an increase or decrease in the principal amount of the residential mortgage loan;
 - (D) a change in the number of required period payments;
 - (E) an addition of collateral;
 - (F) a change to, or addition of, a prepayment penalty;
 - (G) an addition of a cosigner; or
 - (H) a change in persons obligated under the existing residential mortgage loan; or
 - (ii) substitute a new residential mortgage loan for an existing residential mortgage loan; or
 - (b) as an employee or agent of another person:
 - (i) solicit, or offer that the other person will engage in an act described in Subsection (17)(a); or
 - (ii) negotiate terms in relationship to an act described in Subsection (17)(a).
- (18) "Main office" means the address which a principal broker designates with the division as the principal broker's primary brokerage office.
- (19) "Person" means an individual or entity.
- (20) "Principal broker" means an individual who is licensed or required to be licensed as a principal broker under this chapter who:
- (a) sells or lists for sale real estate, including real estate being sold as part of a foreclosure rescue, or a business opportunity 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 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) 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), 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) 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)
- (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) "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) "Real estate" includes leaseholds and business opportunities involving real property.
- (24)
- (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) "Reinstatement" means restoring a license that has expired or has been suspended.
- (26) "Reissuance" means the process by which a licensee may obtain a license following revocation of the license.
- (27) "Renewal" means extending a license for an additional licensing period on or before the date the license expires.
- (28) "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 (20); and
 - (b) licensed under this chapter as a sales agent.
- (29) "Vulnerable adult" means the same as that term is defined in Section 26B-6-201.

Amended by Chapter 227, 2024 General Session

61-2f-103 Real Estate Commission.

- (1) There is created within the division a Real Estate Commission.
- (2) The commission shall:
 - (a) subject to concurrence by the division and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules for the administration of this chapter that are not inconsistent with this chapter, including:
 - (i) licensing of:
 - (A) a principal broker;
 - (B) an associate broker; and
 - (C) a sales agent;
 - (ii) registration of:
 - (A) an entity;
 - (B) an assumed name under which a person conducts business;
 - (C) a branch office; and
 - (D) a property management company;
 - (iii) prelicensing and postlicensing education curricula;
 - (iv) examination procedures;
 - (v) the certification and conduct of:
 - (A) a real estate school;
 - (B) a course provider; or
 - (C) an instructor;
 - (vi) proper handling of money received by a licensee under this chapter;
 - (vii) brokerage office procedures and recordkeeping requirements;
 - (viii) property management;
 - (ix) standards of conduct for a licensee under this chapter;
 - (x) if the commission, with the concurrence of the division, determines necessary, a rule as provided in Subsection 61-2f-306(3) regarding a legal form;
 - (xi) the qualification and designation of an acting principal broker in the event a principal broker dies, is incapacitated, or is unable to perform the duties of a principal broker, as described in Section 61-2f-202; and
 - (xii) giving or paying an inducement gift or a closing gift to a buyer or seller in a real property transaction;
 - (b) establish, with the concurrence of the division, a fee provided for in this chapter, except a fee imposed under Part 5, Real Estate Education, Research, and Recovery Fund Act;
 - (c) conduct an administrative hearing not delegated by the commission to an administrative law judge or the division relating to the:
 - (i) licensing of an applicant;
 - (ii) conduct of a licensee;
 - (iii) the certification or conduct of a real estate school, course provider, or instructor regulated under this chapter; or
 - (iv) violation of this chapter by any person;
 - (d) with the concurrence of the director, impose a sanction as provided in Section 61-2f-404;
 - (e) advise the director on the administration and enforcement of a matter affecting the division and the real estate sales and property management industries;
 - (f) advise the director on matters affecting the division budget;
 - (g) advise and assist the director in conducting real estate seminars; and
 - (h) perform other duties as provided by this chapter.
- (3)

- (a) Except as provided in Subsection (3)(b), a state entity may not, without the concurrence of the commission, make a rule that changes the rights, duties, or obligations of buyers, sellers, or persons licensed under this chapter in relation to a real estate transaction between private parties.
- (b) Subsection (3)(a) does not apply to a rule made:
 - (i) under Title 31A, Insurance Code, or Title 7, Financial Institutions Act; or
 - (ii) by the Department of Commerce or any division or other rulemaking body within the Department of Commerce.
- (4)
 - (a) The commission shall be comprised of five members appointed by the governor and approved by the Senate in accordance with Title 63G, Chapter 24, Part 2, Vacancies.
 - (b) Four of the commission members shall:
 - (i) have at least five years' experience in the real estate business; and
 - (ii) hold an active principal broker, associate broker, or sales agent license.
 - (c) One commission member shall be a member of the general public.
 - (d) The governor may not appoint a commission member described in Subsection (4)(b) who, at the time of appointment, resides in the same county in the state as another commission member.
 - (e) At least one commission member described in Subsection (4)(b) shall at the time of an appointment reside in a county that is not a county of the first or second class.
- (5)
 - (a) Except as required by Subsection (5)(b), as terms of current commission members expire, the governor shall appoint each new member or reappointed member to a four-year term ending June 30.
 - (b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.
 - (c) Upon the expiration of the term of a member of the commission, the member of the commission shall continue to hold office until a successor is appointed and qualified.
 - (d) A commission member may not serve more than two consecutive terms.
 - (e) Members of the commission shall annually select one member to serve as chair.
- (6) When a vacancy occurs in the membership for any reason, the governor, with the advice and consent of the Senate, shall appoint a replacement for the unexpired term.
- (7) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (8)
 - (a) The commission shall meet at least monthly.
 - (b) The director may call additional meetings:
 - (i) at the director's discretion;
 - (ii) upon the request of the chair; or
 - (iii) upon the written request of three or more commission members.
- (9) Three members of the commission constitute a quorum for the transaction of business.
- (10) A member of the commission shall comply with the conflict of interest provisions described in Title 63G, Chapter 24, Part 3, Conflicts of Interest.

Amended by Chapter 204, 2022 General Session

61-2f-104 List of licensees, registrants, and certificate holders to be available.

- (1) Upon request, the division shall make available a list of the names and addresses of the persons licensed, registered, or certified by it under this chapter either directly or through a third party.
- (2) A person who requests a list under Subsection (1) shall pay the costs incurred by the division to make the list available.

Renumbered and Amended by Chapter 379, 2010 General Session

61-2f-105 Fees.

- (1) In addition to when expressly authorized in another provision of this chapter, the division may charge and collect reasonable fees determined by the commission with the concurrence of the division under Section 63J-1-504 to cover the costs for:
 - (a) issuing a new or duplicate license;
 - (b) registering an entity or branch office;
 - (c) certifying a real estate school, course, or instructor;
 - (d) providing a history of a license, registration, or certification;
 - (e) producing a certified copy of an official document, order, or other paper or transcript; and
 - (f) other duties required by this chapter.
- (2) Notwithstanding Section 13-1-2, a fee collected under Subsection (1)(c) shall be deposited in the Real Estate Education, Research, and Recovery Fund.
- (3) If a person pays a fee or costs to the division with a negotiable instrument or other payment method that is not honored for payment:
 - (a) the transaction for which the payment is submitted is voidable by the division;
 - (b) the division may reverse the transaction if payment of the applicable fee or costs is not received in full; and
 - (c) the person's license, certification, or registration is automatically suspended:
 - (i) beginning the day on which the payment is due; and
 - (ii) ending the day on which payment is made in full.
- (4)
 - (a) A fee under this chapter is in lieu of all other license fees or assessments that might otherwise be imposed or charged by the state or any of its political subdivisions upon, or as a condition of, the privilege of conducting the business regulated by this chapter, except that a political subdivision within the state may charge a business license fee on a principal broker if the principal broker maintains a place of business within the jurisdiction of the political subdivision.
 - (b) Unless otherwise exempt, a licensee under this chapter is subject to the taxes imposed under Title 59, Revenue and Taxation.

Amended by Chapter 289, 2011 General Session

61-2f-106 Severability.

If a provision of this chapter, or the application of a provision to any person or circumstance, is held invalid, the remainder of this chapter shall be given effect without the invalid provision or application. The provisions of this chapter are severable.

Renumbered and Amended by Chapter 379, 2010 General Session