

## Part 2 Licensure, Registration, and Certification

### **61-2f-201 License required.**

- (1) Unless a person is licensed under this chapter, it is unlawful for the person to do the following with respect to real estate located in this state:
  - (a) engage in the business of a principal broker, associate broker, or sales agent;
  - (b) act in the capacity of a principal broker, associate broker, or sales agent;
  - (c) advertise or assume to act as a principal broker, associate broker, or a sales agent.
- (2) Except as provided in Section 61-2f-202, an individual is required to be licensed as a principal broker, associate broker, or a sales agent if the individual performs, offers to perform, or attempts to perform one act for valuable consideration of:
  - (a) buying, selling, leasing, managing, or exchanging real estate for another person; or
  - (b) offering for another person to buy, sell, lease, manage, or exchange real estate.

Renumbered and Amended by Chapter 379, 2010 General Session

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

- (1)
  - (a) Except as provided in Subsection (1)(b), a license under this chapter is not required for:
    - (i) an individual who as owner or lessor performs an act described in Subsection 61-2f-102(18) with reference to real estate owned or leased by that individual;
    - (ii) a regular salaried employee of the owner or lessor of real estate who, with reference to nonresidential real estate owned or leased by the employer, performs an act described in Subsection 61-2f-102(18)(b) or (c);
    - (iii) a regular salaried employee of the owner of real estate who performs property management services with reference to real estate owned by the employer, except that the employee may only manage real estate for one employer;
    - (iv) an individual who performs property management services for the apartments at which that individual resides in exchange for free or reduced rent on that individual's apartment;
    - (v) a regular salaried employee of a condominium homeowners' association who manages real estate subject to the declaration of condominium that established the condominium homeowners' association, except that the employee may only manage real estate for one condominium homeowners' association; and
    - (vi) a regular salaried employee of a licensed property management company or real estate brokerage who performs support services, as prescribed by rule, for the property management company or real estate brokerage.
  - (b) Subsection (1)(a) does not exempt from licensing:
    - (i) an employee engaged in the sale of real estate regulated under:
      - (A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; or
      - (B) Title 57, Chapter 19, Timeshare and Camp Resort Act;
    - (ii) an employee engaged in the sale of cooperative interests regulated under Title 57, Chapter 23, Real Estate Cooperative Marketing Act; or
    - (iii) an individual whose interest as an owner or lessor is obtained by that individual or transferred to that individual for the purpose of evading the application of this chapter, and not for another legitimate business reason.
- (2) A license under this chapter is not required for:

- (a) an isolated transaction or service by an individual holding an unsolicited, duly executed power of attorney from a property owner;
  - (b) services rendered by an attorney admitted to practice law in this state in performing the attorney's duties as an attorney;
  - (c) a receiver, trustee in bankruptcy, administrator, executor, or an individual acting under order of a court;
  - (d) a trustee or employee of a trustee under a deed of trust or a will;
  - (e) a public utility, officer of a public utility, or regular salaried employee of a public utility, unless performance of an act described in Subsection 61-2f-102(18) is in connection with the sale, purchase, lease, or other disposition of real estate or investment in real estate unrelated to the principal business activity of that public utility;
  - (f) a regular salaried employee or authorized agent working under the oversight of the Department of Transportation when performing an act on behalf of the Department of Transportation in connection with one or more of the following:
    - (i) the acquisition of real estate pursuant to Section 72-5-103;
    - (ii) the disposal of real estate pursuant to Section 72-5-111;
    - (iii) services that constitute property management; or
    - (iv) the leasing of real estate; and
  - (g) a regular salaried employee of a county, city, or town when performing an act on behalf of the county, city, or town:
    - (i) in accordance with:
      - (A) if a regular salaried employee of a city or town:
        - (I) Title 10, Utah Municipal Code; or
        - (II) Title 11, Cities, Counties, and Local Taxing Units; and
      - (B) if a regular salaried employee of a county:
        - (I) Title 11, Cities, Counties, and Local Taxing Units; and
        - (II) Title 17, Counties; and
    - (ii) in connection with one or more of the following:
      - (A) the acquisition of real estate, including by eminent domain;
      - (B) the disposal of real estate;
      - (C) services that constitute property management; or
      - (D) the leasing of real estate.
- (3) A license under this chapter is not required for an individual registered to act as a broker-dealer, agent, or investment adviser under the Utah and federal securities laws in the sale or the offer for sale of real estate if:
- (a)
    - (i) the real estate is a necessary element of a "security" as that term is defined by the Securities Act of 1933 and the Securities Exchange Act of 1934; and
    - (ii) the security is registered for sale in accordance with:
      - (A) the Securities Act of 1933; or
      - (B) Title 61, Chapter 1, Utah Uniform Securities Act; or
  - (b)
    - (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec. 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation D, Rule 506, 17 C.F.R. Sec. 230.506; and
    - (ii) the selling agent and the purchaser are not residents of this state.
- (4) As used in this section, "owner" does not include:
- (a) a person who holds an option to purchase real property;

- (b) a mortgagee;
- (c) a beneficiary under a deed of trust;
- (d) a trustee under a deed of trust; or
- (e) a person who owns or holds a claim that encumbers any real property or an improvement to the real property.

Amended by Chapter 384, 2016 General Session

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

- (1)
  - (a)
    - (i) The division shall determine whether an applicant with a criminal history qualifies for licensure.
    - (ii) If the division, acting under Subsection (1)(a)(i), denies or restricts a license or places a license on probation, the applicant may petition the commission for de novo review of the application.
  - (b) Except as provided in Subsection (5), the commission shall determine all other qualifications and requirements of an applicant for:
    - (i) a principal broker license;
    - (ii) an associate broker license; or
    - (iii) a sales agent license.
  - (c) The division, with the concurrence of the commission, shall require and pass upon proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency of each applicant for an initial license or for renewal of an existing license.
  - (d)
    - (i) The division, with the concurrence of the commission, shall require an applicant for:
      - (A) a sales agent license to complete an approved educational program consisting of the number of hours designated by rule made by the commission with the concurrence of the division, except that the rule may not require less than 120 hours; and
      - (B) an associate broker or a principal broker license to complete an approved educational program consisting of the number of hours designated by rule made by the commission with the concurrence of the division, except that the rule may not require less than 120 hours.
    - (ii) An hour required by this section means 50 minutes of instruction in each 60 minutes.
    - (iii) The maximum number of program hours available to an individual is eight hours per day.
  - (e) The division, with the concurrence of the commission, shall require the applicant to pass an examination approved by the commission covering:
    - (i) the fundamentals of:
      - (A) the English language;
      - (B) arithmetic;
      - (C) bookkeeping; and
      - (D) real estate principles and practices;
    - (ii) this chapter;
    - (iii) the rules established by the commission with the concurrence of the division; and
    - (iv) any other aspect of Utah real estate license law considered appropriate.
  - (f)

- (i) Three years' full-time experience as a sales agent or its equivalent is required before an applicant may apply for, and secure a principal broker or associate broker license in this state.
  - (ii) The commission shall establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, subject to concurrence by the division, the criteria by which the commission will accept experience or special education in similar fields of business in lieu of the three years' experience.
- (2)
  - (a) The division, with the concurrence of the commission, may require an applicant to furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's reputation and competency as set forth by rule.
  - (b) The division shall require an applicant to provide the applicant's social security number, which is a private record under Subsection 63G-2-302(1)(i).
- (3)
  - (a) An individual who is not a resident of this state may be licensed in this state if the person complies with this chapter.
  - (b) An individual who is not a resident of this state may be licensed as an associate broker or sales agent in this state by:
    - (i) complying with this chapter; and
    - (ii) being employed or engaged as an independent contractor by or on behalf of a principal broker who is licensed in this state, regardless of whether the principal broker is a resident of this state.
- (4)
  - (a) The division and commission shall treat an application to be relicensed of an applicant whose real estate license is revoked as an original application.
  - (b) In the case of an applicant for a new license as a principal broker or associate broker, the applicant is not entitled to credit for experience gained before the revocation of a real estate license.
- (5)
  - (a) Notwithstanding Subsection (1)(b), the commission may delegate to the division the authority to:
    - (i) review a class or category of applications for initial or renewed licenses;
    - (ii) determine whether an applicant meets the licensing criteria in Subsection (1); and
    - (iii) approve or deny a license application without concurrence by the commission.
  - (b)
    - (i) If the commission delegates to the division the authority to approve or deny an application without concurrence by the commission and the division denies an application for licensure, the applicant who is denied licensure may petition the commission for de novo review of the application.
    - (ii) An applicant who is denied licensure pursuant to this Subsection (5) may seek agency review by the executive director only after the commission has reviewed the division's denial of the applicant's application.

Amended by Chapter 25, 2016 General Session

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

(1)

- (a) Upon filing an application for an examination for a license under this chapter, the applicant shall pay a nonrefundable fee established in accordance with Section 63J-1-504 for admission to the examination.
- (b) An applicant for a principal broker, associate broker, or sales agent license shall pay a nonrefundable fee as determined by the commission with the concurrence of the division under Section 63J-1-504 for issuance of an initial license or license renewal.
- (c) A license issued under this Subsection (1) shall be issued for a period of not less than two years as determined by the division with the concurrence of the commission.
- (d)
  - (i) Any of the following applicants shall comply with this Subsection (1)(d):
    - (A) a new sales agent applicant;
    - (B) a principal broker applicant; or
    - (C) an associate broker applicant.
  - (ii) An applicant described in this Subsection (1)(d) shall:
    - (A) submit fingerprint cards in a form acceptable to the division at the time the license application is filed; and
    - (B) consent to a criminal background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application.
  - (iii) The division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for each applicant described in this Subsection (1)(d) through the national criminal history system or any successor system.
  - (iv) The applicant shall pay the cost of the criminal background check and the fingerprinting.
  - (v) Money paid to the division by an applicant for the cost of the criminal background check is nonlapsing.
- (e)
  - (i) A license issued under Subsection (1)(d) is conditional, pending completion of the criminal background check.
  - (ii) A license is immediately and automatically revoked if the criminal background check discloses the applicant fails to accurately disclose a criminal history involving:
    - (A) the real estate industry; or
    - (B) a felony conviction on the basis of an allegation of fraud, misrepresentation, or deceit.
  - (iii) If a criminal background check discloses that an applicant fails to accurately disclose a criminal history other than one described in Subsection (1)(e)(ii), the division:
    - (A) shall review the application; and
    - (B) in accordance with rules made by the division pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may:
      - (I) place a condition on a license;
      - (II) place a restriction on a license;
      - (III) revoke a license; or
      - (IV) refer the application to the commission for a decision.
  - (iv) A person whose conditional license is automatically revoked under Subsection (1)(e)(ii) or whose license is conditioned, restricted, or revoked under Subsection (1)(e)(iii) may have a hearing after the action is taken to challenge the action. The hearing shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
  - (v) The director shall designate one of the following to act as the presiding officer in a hearing described in Subsection (1)(e)(iv):
    - (A) the division; or
    - (B) the division with the concurrence of the commission.

- (vi) The decision on whether relief from an action under this Subsection (1)(e) will be granted shall be made by the presiding officer.
  - (vii) Relief from an automatic revocation under Subsection (1)(e)(ii) may be granted only if:
    - (A) the criminal history upon which the division based the revocation:
      - (I) did not occur; or
      - (II) is the criminal history of another person;
    - (B)
      - (I) the revocation is based on a failure to accurately disclose a criminal history; and
      - (II) the applicant has a reasonable good faith belief at the time of application that there was no criminal history to be disclosed; or
    - (C) the division fails to follow the prescribed procedure for the revocation.
  - (viii) If a license is revoked or a revocation under this Subsection (1)(e) is upheld after a hearing, the individual may not apply for a new license until at least 12 months after the day on which the license is revoked.
- (2)
- (a)
    - (i) A license expires if it is not renewed on or before its expiration date.
    - (ii) As a condition of renewal, an active licensee shall demonstrate competence by completing 18 hours of continuing education within a two-year renewal period subject to rules made by the commission, with the concurrence of the division.
    - (iii) In making a rule described in Subsection (2)(c)(ii), the division and commission shall consider:
      - (A) evaluating continuing education on the basis of competency, rather than course time;
      - (B) allowing completion of courses in a significant variety of topic areas that the division and commission determine are valuable in assisting an individual licensed under this chapter to increase the individual's competency; and
      - (C) allowing completion of courses that will increase a licensee's professional competency in the area of practice of the licensee.
    - (iv) The division may award credit to a licensee for a continuing education requirement of this Subsection (2)(a) for a reasonable period of time upon a finding of reasonable cause, including:
      - (A) military service; or
      - (B) if an individual is elected or appointed to government service, the individual's government service during which the individual spends a substantial time addressing real estate issues subject to conditions established by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
  - (b) For a period of 30 days after the day on which a license expires, the license may be reinstated:
    - (i) if the applicant's license was inactive on the day on which the applicant's license expired, upon payment of a renewal fee and a late fee determined by the commission with the concurrence of the division under Section 63J-1-504; or
    - (ii) if the applicant's license was active on the day on which the applicant's license expired, upon payment of a renewal fee and a late fee determined by the commission with the concurrence of the division under Section 63J-1-504, and providing proof acceptable to the division and the commission of the licensee having:
      - (A) completed the hours of education required by Subsection (2)(a); or
      - (B) demonstrated competence as required under Subsection (2)(a).

- (c) After the 30-day period described in Subsection (2)(b), and until six months after the day on which an active or inactive license expires, the license may be reinstated by:
    - (i) paying a renewal fee and a late fee determined by the commission with the concurrence of the division under Section 63J-1-504;
    - (ii) providing to the division proof of satisfactory completion of six hours of continuing education:
      - (A) in addition to the requirements for a timely renewal; and
      - (B) on a subject determined by the commission by rule with the concurrence of the division and made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
    - (iii) providing proof acceptable to the division and the commission of the licensee having:
      - (A) completed the hours of education required under Subsection (2)(a); or
      - (B) demonstrated competence as required under Subsection (2)(a).
  - (d) After the six-month period described in Subsection (2)(c), and until one year after the day on which an active or inactive license expires, the license may be reinstated by:
    - (i) paying a renewal fee and a late fee determined by the commission with the concurrence of the division under Section 63J-1-504;
    - (ii) providing to the division proof of satisfactory completion of 24 hours of continuing education:
      - (A) in addition to the requirements for a timely renewal; and
      - (B) on a subject determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, subject to concurrence by the division; and
    - (iii) providing proof acceptable to the division and the commission of the licensee having:
      - (A) completed the hours of education required by Subsection (2)(a); or
      - (B) demonstrated competence as required under Subsection (2)(a).
  - (e) The division shall relicense a person who does not renew that person's license within one year as prescribed for an original application.
  - (f) Notwithstanding Subsection (2)(a), the division may extend the term of a license that would expire under Subsection (2)(a) except for the extension if:
    - (i)
      - (A) the person complies with the requirements of this section to renew the license; and
      - (B) the renewal application remains pending at the time of the extension; or
    - (ii) at the time of the extension, there is pending a disciplinary action under this chapter.
- (3)
- (a) As a condition for the activation of an inactive license that was in an inactive status at the time of the licensee's most recent renewal, the licensee shall supply the division with proof of:
    - (i) successful completion of the respective sales agent or principal broker licensing examination within six months before applying to activate the license; or
    - (ii) the successful completion of the hours of continuing education that the licensee would have been required to complete under Subsection (2)(a) if the license had been on active status at the time of the licensee's most recent renewal.
  - (b) The commission may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, subject to concurrence by the division, establish by rule:
    - (i) the nature or type of continuing education required for reactivation of a license; and
    - (ii) how long before reactivation the continuing education must be completed.

Amended by Chapter 25, 2016 General Session

**61-2f-205 Form of license -- Display of license.**

- (1) The division shall issue to a licensee a wall license that contains:
  - (a) the name and address of the licensee;
  - (b) the seal of the state; and
  - (c) any other matter prescribed by the division.
- (2) The division shall send, by mail or email, the license described in Subsection (1) to the licensee at the mailing address or email address furnished by the licensee.
- (3) A principal broker shall keep the license of the principal broker and the license of any associate broker or sales agent affiliated with the principal broker in the office in which the licensee works to be made available on request.

Amended by Chapter 350, 2014 General Session

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

- (1)
  - (a) An entity may not engage in an activity described in Section 61-2f-201, unless it is registered with the division.
  - (b) To register with the division under this Subsection (1), an entity 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 entity 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 an entity's registration if:
    - (i) the entity's registration with the Division of Corporations and Commercial Code has been expired for at least three years; and
    - (ii) the entity'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, 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, subject to concurrence by the division, the division shall certify a continuing education course that is required under this chapter.
- (4)
  - (a) Except as provided by rule, a principal broker may not be responsible for more than one registered entity at the same time.
  - (b)

- (i) 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.
- (ii) An individual may hold a specialized license in addition to a license as a principal broker, associate broker, or a sales agent.
- (iii) The commission may adopt rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, subject to concurrence by the division, for the administration of this Subsection (4), including:
  - (A) prelicensing and postlicensing education requirements;
  - (B) examination requirements;
  - (C) affiliation with real estate brokerages or property management companies; and
  - (D) other licensing procedures.

Amended by Chapter 25, 2016 General Session

**61-2f-207 Change of information -- Failure to notify.**

- (1) An applicant, licensee, registrant, or certificate holder shall send the division a signed statement in the form required by the division notifying the division within 10 business days of any change of:
  - (a) principal broker;
  - (b) principal business location;
  - (c) mailing address;
  - (d) home street address;
  - (e) an individual's name; or
  - (f) business name.
- (2) The division may charge a fee established by the commission with the concurrence of the division in accordance with Section 63J-1-504 for processing any notification of change submitted by an applicant, licensee, registrant, or certificate holder.
- (3)
  - (a) When providing the division a business location or home street address, a physical location or street address must be provided.
  - (b) When providing a mailing address, an applicant, licensee, registrant, or certificate holder may provide a post office box or other mail drop location.
- (4) Failure to notify the division of a change described in Subsection (1) is separate grounds for disciplinary action against an applicant, licensee, registrant, or certificate holder.
- (5) An applicant, licensee, registrant, or certificate holder is considered to have received any notification that has been sent to the last address furnished to the division by the applicant, licensee, registrant, or certificate holder.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-208 Surrender of license.**

- (1) The division may, by written agreement, accept the voluntary surrender of a license issued under this chapter.
- (2) Tender and acceptance of a voluntary surrender of a license under Subsection (1):

- (a) does not prevent the division from pursuing additional action, including disciplinary action, that relates to the surrendered license and is authorized by this chapter or by rules made under this chapter; and
  - (b) terminates all rights and privileges associated with the license.
- (3) A person may restore the rights and privileges described in Subsection (2)(b) only if the person reapplies for, and is granted, licensure in accordance with the requirements described in this chapter.
- (4) Any documentation relating to the tender and acceptance of a voluntary surrender is a public record.

Enacted by Chapter 350, 2014 General Session