

## Part 3 Operational Requirements

### **61-2f-301 Reporting requirements.**

- (1) A licensee shall notify the division of the following by sending the division a signed statement within 10 business days after the day on which:
  - (a) a personal or brokerage bankruptcy is filed, if the licensee is a principal broker;
  - (b) a license or registration of the licensee that is necessary to engage in an occupation or profession is suspended, revoked, surrendered, canceled, or denied, regardless of whether the license or registration is issued by this state or another jurisdiction; or
  - (c) a cease and desist order or a temporary or permanent injunction is issued:
    - (i) against the licensee by a court or administrative agency; and
    - (ii) on the basis of:
      - (A) conduct or a practice involving the business of real estate; or
      - (B) conduct involving fraud, misrepresentation, or deceit.
- (2) The commission, with the concurrence of the director, shall enforce the reporting requirement under this section pursuant to Section 61-2f-404.

Amended by Chapter 227, 2024 General Session

### **61-2f-302 Affiliation with a principal broker.**

- (1) An individual who is not a principal broker may not engage in an act described in Section 61-2f-201 unless the individual is affiliated with a principal broker as:
  - (a) an associate broker; or
  - (b) a sales agent.
- (2)
  - (a) An inactive associate broker or sales agent may not conduct a real estate transaction until the inactive associate broker or sales agent becomes affiliated with a principal broker and submits the required documentation to the division.
  - (b) An inactive principal broker may not conduct a real estate transaction until the principal broker's license is activated with the division.
- (3) A sales agent or associate broker may not affiliate with more than one principal broker at the same time.
- (4) An individual may not be a principal broker of an entity and a sales agent or associate broker for a different entity at the same time.
- (5) An owner, purchaser, lessor, or lessee who engages the services of a principal broker may designate which sales agents or associate brokers affiliated with that principal broker will also represent that owner, purchaser, lessor, or lessee in the purchase, sale, lease, or exchange of real estate, or in exercising an option relating to real estate.

Amended by Chapter 184, 2010 General Session

Renumbered and Amended by Chapter 379, 2010 General Session

### **61-2f-303 Sale agents or associate broker -- Affiliated with principal broker as independent contractors or employees -- Presumption.**

- (1)

- (a) A sales agent or associate broker may be affiliated with a principal broker either as an independent contractor or as an employee.
  - (b) The relationship between sales agent or associate broker and principal broker is presumed to be an independent contractor relationship unless there is clear and convincing evidence that the relationship was intended by the parties to be an employer employee relationship.
- (2) The presumption of an independent contractor relationship extends to all of the duties and services that the sales agent or associate broker performs, including the preparation and receipt of payment for a broker price opinion.

Amended by Chapter 262, 2015 General Session

**61-2f-304 Termination of associate broker or sales agent by principal broker -- Notice.**

- (1) If a principal broker terminates an associate broker or sales agent, the principal broker shall notify the division and the associate broker or sales agent of the termination in a manner prescribed by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, by the commission with the concurrence of the division.
- (2) An associate broker or sales agent may not perform any act under this chapter, directly or indirectly, from and after the effective date of the termination notice until the day on which the associate broker or sales agent is affiliated with a principal broker.

Amended by Chapter 182, 2017 General Session

**61-2f-305 Restrictions on commissions.**

- (1) Except as provided in Subsection (2), an associate broker or sales agent may not accept valuable consideration for the performance of an act specified in this chapter from a person except the principal broker with whom the associate broker or sales agent is affiliated.
- (2) An associate broker or sales agent may receive valuable consideration for the performance of an act specified in this chapter from a person other than the principal broker with whom the associate broker or sales agent is affiliated if:
- (a) the valuable consideration is paid with a payment instrument prepared by a title insurance agent; and
  - (b) the title insurance agent complies with the written instructions of the principal broker:
    - (i) in preparing the payment instrument; and
    - (ii) delivering the payment instrument to the associate broker or sales agent.
- (3) The commission, with the concurrence of the division, may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
- (a) defining what constitutes a "payment instrument" for purposes of this section; or
  - (b) the form and contents of the written instructions required by Subsection (2), including providing that the contents of the written instructions indicate that the payment instrument process is an assignment to the associate broker or sales agent by the principal broker of a portion of the consideration the title insurance agent is obligated to pay the principal broker.

Amended by Chapter 141, 2023 General Session

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

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

- (a)
  - (i) A principal broker may fill out any documents associated with the closing of a real estate transaction.
  - (ii) A branch broker or associate broker may fill out any documents associated with the closing of a real estate transaction if designated to fill out the documents by the principal broker with whom the branch broker or associate broker is affiliated.
- (b) A real estate licensee may fill out real estate forms prepared by legal counsel of the buyer, seller, lessor, or lessee.
- (c) If the commission and the attorney general have not approved a specific form for the transaction, a principal broker, associate broker, or sales agent may fill out real estate forms prepared by any legal counsel, including legal counsel retained by the brokerage to develop these forms.
- (3) The commission may, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, subject to concurrence by the division, provide a process for the approval of a legal form under this section by the commission and the attorney general.

Amended by Chapter 25, 2016 General Session

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

- (1) As used in this section:
  - (a) "Brokerage agreement" means a written agreement between a client and a principal broker:
    - (i)
      - (A) to list for sale, lease, or exchange, real estate, an option on real estate, or an improvement on real estate; or
      - (B) for representation in the purchase, lease, or exchange of real estate, an option on real estate, or an improvement on real estate; and
    - (ii) that gives the principal broker the expectation of receiving valuable consideration in exchange for the principal broker's services.
  - (b) "Client" means a person who makes an exclusive brokerage agreement with a principal broker under Subsection (1)(d).
  - (c) "Closed" means that:
    - (i) the documents required to be executed under the contract are executed;
    - (ii) the money required to be paid by either party under the contract is paid in the form of collected or cleared funds;
    - (iii) the proceeds of any new loan are delivered by the lender to the seller; and
    - (iv) the applicable documents are recorded in the office of the county recorder for the county in which the real estate is located.
  - (d) "Exclusive brokerage agreement" means a brokerage agreement that gives the principal broker the sole right to act as the agent or representative of the client for the purchase, sale, lease, or exchange of real estate, an option on real estate, or an improvement on real estate.
- (2)
  - (a) Except as provided in Subsection (2)(b), a principal broker subject to an exclusive brokerage agreement shall:
    - (i) accept delivery of and present to the client offers and counteroffers to buy, lease, or exchange the client's real estate;
    - (ii) assist the client in developing, communicating, and presenting offers, counteroffers, and notices; and
    - (iii) answer any question the client has concerning:

- (A) an offer;
  - (B) a counteroffer;
  - (C) a notice; and
  - (D) a contingency.
- (b) A principal broker subject to an exclusive brokerage agreement need not comply with Subsection (2)(a) after:
- (i)
    - (A) an agreement for the sale, lease, or exchange of the real estate, option on real estate, or improvement on real estate is signed;
    - (B) the contingencies related to the sale, lease, or exchange are satisfied or waived; and
    - (C) the sale, lease, or exchange is closed; or
  - (ii) the exclusive brokerage agreement expires or terminates.
- (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.

Amended by Chapter 350, 2014 General Session