

Effective 5/10/2016

61-2f-401 Grounds for disciplinary action.

The following acts are unlawful 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 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, as defined by the commission, 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) 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) being convicted, within five years of the most recent application for licensure, of a criminal offense involving moral turpitude regardless of whether:
 - (a) the criminal offense is related to real estate; or
 - (b) the conviction is based upon a plea of nolo contendere;
- (12) having, within five years of the most recent application for a license under this chapter, entered any of the following related to a criminal offense involving moral turpitude:
 - (a) a plea in abeyance agreement;
 - (b) a diversion agreement;
 - (c) a withheld judgment; or
 - (d) an agreement in which a charge was held in suspense during a period of time when the licensee was on probation or was obligated to comply with conditions outlined by a court;
- (13) advertising the availability of real estate or the services of a licensee in a false, misleading, or deceptive manner;
- (14) in the case of a principal broker or a licensee who is a branch manager, failing to exercise reasonable supervision over the activities of the principal broker's or branch manager's licensed or unlicensed staff;
- (15) violating or disregarding:
 - (a) this chapter;
 - (b) an order of the commission; or
 - (c) the rules adopted by the commission and the division;
- (16) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real estate transaction;
- (17) any other conduct which constitutes dishonest dealing;
- (18) unprofessional conduct as defined by statute or rule;
- (19) having one of the following suspended, revoked, surrendered, or cancelled on the basis of misconduct in a professional capacity that relates to character, honesty, integrity, or truthfulness:
 - (a) a real estate license, registration, or certificate issued by another jurisdiction; or
 - (b) another license, registration, or certificate to engage in an occupation or profession issued by this state or another jurisdiction;
- (20) failing to respond to a request by the division in an investigation authorized under this chapter, including:
 - (a) failing to respond to a subpoena;
 - (b) withholding evidence; or
 - (c) failing to produce documents or records;
- (21) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
 - (a) providing a title insurance product or service without the approval required by Section 31A-2-405; or
 - (b) knowingly providing false or misleading information in the statement required by Subsection 31A-2-405(2);
- (22) 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;
- (23)
 - (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;
- (24) as a principal broker, placing a lien on real property, unless authorized by law; or
- (25) as a sales agent or associate broker, placing a lien on real property for an unpaid commission or other compensation related to real estate brokerage services.

Amended by Chapter 384, 2016 General Session