

Effective 5/12/2020

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 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) 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
 - (C) a criminal offense comparable to a class A or class B misdemeanor;
- (12) advertising the availability of real estate or the services of a licensee in a false, misleading, or deceptive manner;
- (13) in the case of a principal broker or a branch broker, failing to exercise active and reasonable supervision, as the commission may define by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, over the activities of the principal broker's or branch broker's licensed or unlicensed staff;
- (14) violating or disregarding:
 - (a) this chapter;
 - (b) an order of the commission; or
 - (c) the rules adopted by the commission and the division;
- (15) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real estate transaction;
- (16) any other conduct which constitutes dishonest dealing;
- (17) 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;
- (18) failing to respond to a request by the division in an investigation authorized under this chapter within 10 days after the day on which the request is served, including:
 - (a) failing to respond to a subpoena;
 - (b) withholding evidence; or
 - (c) failing to produce documents or records;
- (19) 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);
- (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)
 - (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;
- (22) 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 brokerage; or
 - (b) is related to the business administration of the real estate brokerage;
- (23) as a principal broker, placing a lien on real property, unless authorized by law;
- (24) 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; or
- (25) failing to timely disclose to a buyer or seller an affiliated business arrangement, as defined in Section 31A-23a-1001, in accordance with the federal Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601 et seq. and any rules made thereunder.

Amended by Chapter 72, 2020 General Session