

## Chapter 2f Real Estate Licensing and Practices Act

### 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.

Amended by Chapter 182, 2017 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; and
    - (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;
  - (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 259, 2021 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

## 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) a person who as owner or lessor performs an act described in Subsection 61-2f-102(20) with reference to real estate owned or leased by that person;
    - (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(20)(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) subject to Subsection 61-2f-401(5), 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(20) 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) Except as otherwise provided by statute or rule, the following individuals may engage in the practice of an occupation or profession regulated by this chapter, subject to the stated circumstances and limitations, without being licensed under this chapter:
  - (a) an individual licensed under the laws of this state, other than under this chapter, to practice or engage in an occupation or profession, while engaged in the lawful, professional, and competent practice of that occupation or profession;
  - (b) an individual serving in the armed forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs, or any other federal agency while engaged in activities regulated under this title as a part of employment with that federal agency if the individual holds a valid license to practice the regulated occupation or profession issued by any other state or jurisdiction recognized by the department; and
  - (c) the spouse of an individual serving in the armed forces of the United States while the individual is stationed within this state, if:
    - (i) the spouse holds a valid license to practice the regulated occupation or profession issued by any other state or jurisdiction recognized by the department; and
    - (ii) the license is current and the spouse is in good standing in the state or jurisdiction of licensure.
- (5) 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.
- (6) The commission, with the concurrence of the division, may provide, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the circumstances under which a person or transaction qualifies for an exemption that is described in this section.

Amended by Chapter 213, 2018 General Session

Amended by Chapter 462, 2018 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 (6), 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) The division, with the concurrence of the commission, may enter into a reciprocal licensing agreement with another jurisdiction for the licensure of a principal broker, an associate broker, or a sales agent, if the jurisdiction's requirements and standards for the license are substantially similar to those of this state.
- (5)

- (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.
- (6)
- (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 (6) 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 259, 2021 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 the division determines with the concurrence of the commission.
  - (d)
    - (i) Each of the following applicants shall comply with this Subsection (1)(d):
      - (A) a new sales agent applicant;
      - (B) a principal broker applicant; and
      - (C) an associate broker applicant.
    - (ii) An applicant described in this Subsection (1)(d) shall at the time the licensee files an application:
      - (A) submit to the division fingerprint cards in a form acceptable to the Department of Public Safety;
      - (B) submit to the division a signed waiver in accordance with Subsection 53-10-108(4), acknowledging the registration of the applicant's fingerprints in the Federal Bureau of Investigation Next Generation Identification System's Rap Back Service beginning January 1, 2020;
      - (C) consent to a criminal background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation; and
      - (D) pay the fee the division establishes in accordance with Subsection (1)(d)(vi).

- (iii) The Bureau of Criminal Identification shall:
  - (A) check the fingerprints an applicant submits under Subsection (1)(d)(ii) against the applicable state, regional, and national criminal records databases, including, beginning January 1, 2020, the Federal Bureau of Investigation Next Generation Identification System;
  - (B) report the results of the background check to the division;
  - (C) maintain a separate file of fingerprints that applicants submit under Subsection (1)(d) for search by future submissions to the local and regional criminal records databases, including latent prints;
  - (D) request that beginning January 1, 2020, the fingerprints be retained in the Federal Bureau of Investigation Next Generation Identification System's Rap Back Service for search by future submissions to national criminal records databases, including the Next Generation Identification System and latent prints; and
  - (E) ensure that the division only receives notifications for an individual with whom the division maintains permission to receive notifications.
- (iv)
  - (A) The division shall assess an applicant who submits fingerprints under Subsection (1)(d) or (2)(g) a fee in an amount that the division sets in accordance with Section 63J-1-504 for services that the division and the Bureau of Criminal Identification or another authorized agency provide under Subsection (1)(d) or (2)(g).
  - (B) The Bureau of Criminal Identification may collect from the division money for services provided under this section.
- (v) Money paid to the division by an applicant for the cost of the criminal background check is nonlapsing.
- (vi) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and with the concurrence of the division, the commission may make rules for the administration of this Subsection (1)(d) and Subsection (2)(g) regarding criminal background checks with ongoing monitoring.
- (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) 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.

- (B) The division shall conduct a hearing described in Subsection (1)(d)(iv)(A) 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):
    - (A) the division; or
    - (B) the division with the concurrence of the commission.
  - (vi) The presiding officer shall decide whether relief from an action under this Subsection (1)(e) is granted.
  - (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 the expiration date of the license.
    - (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.
- (g) Beginning January 1, 2020, each applicant for renewal or reinstatement of a license to practice as a sales agent, principal broker, or associate broker who is not already subject to ongoing monitoring of the individual's criminal history shall, at the time the application for renewal or reinstatement is filed:
  - (i) submit fingerprint cards in a form acceptable to the Department of Public Safety;
  - (ii) submit to the division a signed waiver in accordance with Subsection 53-10-108(4), acknowledging the registration of the applicant's fingerprints in the Federal Bureau of Investigation Next Generation Identification System's Rap Back Service;
  - (iii) consent to a fingerprint background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation; and

- (iv) pay the fee the division establishes in accordance with Subsection (1)(d)(vi).
- (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 the day on which the licensee applies 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 337, 2019 General Session

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

The division shall issue to a licensee a license that contains:

- (1) the name and address of the licensee;
- (2) the seal of the state; and
- (3) any other matter prescribed by the division.

Amended by Chapter 72, 2020 General Session

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

- (1)
- (a) A person may not engage in an activity described in Section 61-2f-201, unless the person is registered with the division.
  - (b) To register with the division under this Subsection (1), a person 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 person 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 a person's registration if:
    - (i) the person's registration with the Division of Corporations and Commercial Code has been expired for at least three years; and
    - (ii) the person'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 and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, 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 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, subject to concurrence by the division, the division shall certify a continuing education course that is required under this chapter.
- (4) Except as provided under this chapter or by rule the commission makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, a principal broker may not be responsible for more than one registered person at the same time.
- (5) A principal broker:
  - (a) shall exercise active and reasonable supervision of the principal broker's main office in accordance with this chapter and rules the commission makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
  - (b) may supervise a branch office affiliated with the principal broker at the same time the principal broker exercises the supervision required under Subsection (5)(a).
- (6)
  - (a) A principal broker may designate a branch broker to supervise a branch office affiliated with the principal broker.
  - (b) A branch broker shall exercise active and reasonable supervision, in accordance with this chapter and rules the commission makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, of each branch office the principal broker designates the branch broker to supervise.
- (7)
  - (a) 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.
  - (b) An individual may hold a specialized license in addition to a license as a principal broker, associate broker, or a sales agent.
  - (c) A sales agent who is affiliated with a dual broker may act as a property management sales agent if:
    - (i) the dual broker designates the sales agent as a property management sales agent; and
    - (ii) the sales agent pays to the division a property management sales agent designation fee in an amount determined by the division in accordance with Section 63J-1-504.
  - (d) A property management sales agent may simultaneously provide both property management services and real estate sales services under the supervision of a dual broker as provided by the commission with the concurrence of the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (8) The commission may determine, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, subject to concurrence by the division, licensing requirements related to this section for a principal broker, associate broker, sales agent, dual broker, property management sales agent, or for a specialized license described in Subsection (7), including:
  - (a) prelicensing and postlicensing education requirements;
  - (b) examination requirements;
  - (c) affiliation with real estate brokerages or property management companies;



- (d) property management sales agent:
  - (i) designation procedures;
  - (ii) allowable scope of practice; and
  - (iii) division fees;
- (e) what constitutes active and reasonable supervision for:
  - (i) a principal broker when supervising a branch broker or sales agent; and
  - (ii) a branch broker when supervising a sales agent; and
- (f) other licensing procedures.

Amended by Chapter 259, 2021 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

### **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 of:
  - (a) a conviction of, or the entry of a plea in abeyance to:
    - (i) a felony; or
    - (ii) a misdemeanor involving financial services or a financial services-related business, fraud, a false statement or omission, theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, or extortion;
  - (b) the potential resolution of a felony or of a misdemeanor described in Subsection (1)(a)(ii) by:
    - (i) a diversion agreement; or
    - (ii) another agreement under which a criminal charge is held in suspense for a period of time;
  - (c) the filing of a personal or brokerage bankruptcy, if the licensee is a principal broker;
  - (d) the suspension, revocation, surrender, cancellation, or denial of a license or registration of the licensee that is necessary to engage in an occupation or profession, regardless of whether the license or registration is issued by this state or another jurisdiction; or
  - (e) the entry of a cease and desist order or a temporary or permanent injunction:
    - (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 166, 2012 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;
  - (b) the title insurance agent provides the payment instrument to the principal broker;
  - (c) 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 principal broker; and

- (d) the principal broker directly delivers the payment instrument to the associate broker or sales agent.
- (3) The commission, with the concurrence of the division, shall 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.

Enacted by Chapter 379, 2010 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:
    - (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

## Part 4 Enforcement

### 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

**61-2f-402 Investigations -- Disciplinary actions.**

- (1) The division may conduct a public or private investigation within or outside of this state as the division considers necessary to determine whether a person has violated, is violating, or is about to violate this chapter or any rule or order under this chapter.
- (2) To aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter, the division may require or permit a person to file a statement in writing, under oath or otherwise as to the facts and circumstances concerning the matter to be investigated.
- (3) For the purpose of the investigation described in Subsection (1), the division or an employee designated by the division may:
  - (a) administer an oath or affirmation;
  - (b) issue a subpoena that requires:
    - (i) the attendance and testimony of a witness; or
    - (ii) the production of evidence;
  - (c) take evidence;
  - (d) require the production of a book, paper, contract, record, other document, or information relevant to the investigation; and
  - (e) serve a subpoena by certified mail.
- (4)
  - (a) A court of competent jurisdiction shall enforce, according to the practice and procedure of the court, a subpoena issued by the division.
  - (b) The division shall pay any witness fee, travel expense, mileage, or any other fee required by the service statutes of the state where the witness or evidence is located.
- (5)
  - (a) If a person is found to have violated this chapter or a rule made under this chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract, document, or record required under this chapter, including the costs incurred to copy an electronic book, paper, contract, document, or record in a universally readable format.
  - (b) If a person fails to pay the costs described in Subsection (5)(a) when due, the person's license, certification, or registration is automatically suspended:
    - (i) beginning the day on which the payment of costs is due; and
    - (ii) ending the day on which the costs are paid.
- (6)
  - (a) Except as provided in Subsections (6)(b) and (c), the division shall commence a disciplinary action under this chapter no later than the earlier of the following:
    - (i) four years after the day on which the violation is reported to the division; or
    - (ii) 10 years after the day on which the violation occurred.
  - (b) Except as provided in Subsection (6)(c), the division shall commence a disciplinary action within four years after the day on which a violation occurred, if the violation was of:
    - (i) Section 61-2f-206;
    - (ii) Subsection 61-2f-401(8), which prohibits failure to voluntarily furnish a copy of a document to the parties before and after the execution of a document; or
    - (iii) Subsection 61-2f-401(18), which prohibits failure to respond to a division request in an investigation within 10 days after the day on which the request is served.
  - (c) The division may commence a disciplinary action under this chapter after the time period described in Subsection (6)(a) or (b) expires if:
    - (i)

- (A) the disciplinary action is in response to a civil or criminal judgment or settlement; and
  - (B) the division initiates the disciplinary action no later than one year after the day on which the judgment is issued or the settlement is final; or
- (ii) the division and the person subject to a disciplinary action enter into a written stipulation to extend the time period described in Subsection (6)(a) or (b).

Amended by Chapter 72, 2020 General Session

**61-2f-403 Mishandling of trust money.**

- (1) The division may audit principal brokers' trust accounts or other accounts in which a licensee maintains trust money under this chapter. If the division's audit shows, in the opinion of the division, gross mismanagement, commingling, or misuse of money, the division, with the concurrence of the commission, may order at the division's expense a complete audit of the account by a certified public accountant, or take other action in accordance with Section 61-2f-404.
- (2) If the commission finds under Subsection (1) that gross mismanagement, comingling, or misuse of money occurred, the commission, with concurrence of the division, may then order the licensee to reimburse the division for the cost of the audit described in Subsection (1).
- (3) The licensee may obtain agency review by the executive director or judicial review of any division order.
- (4)
- (a) If it appears that a person has grossly mismanaged, commingled, or otherwise misused trust money, the division, with or without prior administrative proceedings, may bring an action:
    - (i) in the district court of the district where:
      - (A) the person resides;
      - (B) the person maintains a place of business; or
      - (C) the act or practice occurred or is about to occur; and
    - (ii) to enjoin the act or practice and to enforce compliance with this chapter or any rule or order under this chapter.
  - (b) Upon a proper showing, a court shall grant injunctive relief or a temporary restraining order, and may appoint a receiver or conservator. The division is not required to post a bond in any court proceeding.

Amended by Chapter 182, 2017 General Session

**61-2f-404 Disciplinary action -- Judicial review.**

- (1)
- (a) On the basis of a violation of this chapter, the commission with the concurrence of the director, may issue an order:
    - (i) imposing an educational requirement;
    - (ii) imposing a civil penalty not to exceed the greater of:
      - (A) \$5,000 for each violation; or
      - (B) the amount of any gain or economic benefit derived from each violation;
    - (iii) taking any of the following actions related to a license, registration, or certificate:
      - (A) revoking;
      - (B) suspending;
      - (C) placing on probation;

- (D) denying the renewal, reinstatement, or application for an original license, registration, or certificate; or
  - (E) in the case of denial or revocation of a license, registration, or certificate, setting a waiting period for an applicant to apply for a license, registration, or certificate under this title;
  - (iv) issuing a cease and desist order;
  - (v) modifying an action described in Subsections (1)(a)(i) through (iv) if the commission finds that the person complies with court ordered restitution; or
  - (vi) doing any combination of Subsections (1)(a)(i) through (v).
- (b)
- (i) If the commission with the concurrence of the director issues an order that orders a fine or educational requirements as part of a disciplinary action against a person, including a stipulation and order, the commission shall state in the order the deadline by which the person shall comply with the fine or educational requirements.
  - (ii) If a person fails to comply by the stated deadline:
    - (A) the person's license, registration, or certificate is automatically suspended:
      - (I) beginning the day specified in the order as the deadline for compliance; and
      - (II) ending the day on which the person complies in full with the order; and
    - (B) if the person fails to pay a fine required by an order, the division may begin a collection process:
      - (I) established by the division, with the concurrence of the commission, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
      - (II) subject to Title 63A, Chapter 3, Part 5, Office of State Debt Collection.
- (c) If a licensee is an active sales agent or active associate broker, the division shall inform the principal broker with whom the licensee is affiliated of the charge and of the time and place of any hearing.
- (d) A person previously licensed under this chapter remains responsible for, and is subject to disciplinary action for, an act the person committed while the person was licensed in violation of this chapter or an administrative rule in effect at the time the person committed the act, regardless of whether the person is currently licensed.
- (2)
- (a) An applicant, certificate holder, licensee, registrant, or person aggrieved, including the complainant, may obtain agency review by the executive director and judicial review of any adverse ruling, order, or decision of the division.
  - (b) If an applicant, certificate holder, registrant, or licensee prevails in the appeal and the court finds that the state action was undertaken without substantial justification, the court may award reasonable litigation expenses to the applicant, certificate holder, registrant, or licensee as provided under Title 78B, Chapter 8, Part 5, Small Business Equal Access to Justice Act.
- (c)
- (i) An order, ruling, or decision of the division shall take effect and become operative 30 days after the service of the order, ruling, or decision unless otherwise provided in the order.
  - (ii) If an appeal is taken by a licensee, registrant, or certificate holder, the division may stay enforcement of an order, ruling, or decision in accordance with Section 63G-4-405.
  - (iii) An appeal is governed by the Utah Rules of Appellate Procedure.
- (3) The commission and the director shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative proceeding.

Amended by Chapter 384, 2016 General Session

**61-2f-405 Criminal penalties for violation of chapter -- Other penalties.**

- (1)
  - (a) An individual required to be licensed under this chapter who violates this chapter, in addition to being subject to a license sanction or a fine ordered by the commission, is, upon conviction of a first violation, guilty of a class A misdemeanor.
  - (b) For a conviction under this Subsection (1), imprisonment shall be for a term not to exceed six months.
- (2)
  - (a) Upon conviction of a second or subsequent violation, an individual is guilty of a third degree felony.
  - (b) Imprisonment for a conviction under this Subsection (2)(a) shall be for a term not to exceed two years.
- (3) An officer or agent of a corporation, a member or agent of a partnership or association, or an individual in a similar position of another type of entity who personally participates in or is an accessory to any violation of this chapter by the entity is subject to the penalties prescribed for an individual.
- (4) If a person receives money or its equivalent, as commission, compensation, or profit by or in consequence of a violation of this chapter, that person is liable for an additional penalty of not less than the amount of the money received and not more than three times the amount of money received, as may be determined by the court. This penalty may be sued for in any court of competent jurisdiction, and recovered by any person aggrieved for the person's own use and benefit.
- (5) A fine imposed by the commission and the director under this chapter shall, notwithstanding Section 13-1-2, be deposited into the Real Estate Education, Research, and Recovery Fund to be used in a manner consistent with the requirements of Part 5, Real Estate Education, Research, and Recovery Fund Act.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-406 Grounds for revocation of principal broker's license.**

- (1) An unlawful act or violation of this chapter committed by a person listed in Subsection (2) is cause for:
  - (a) the revocation, suspension, or probation of a principal broker's license; or
  - (b) the imposition of a fine against the principal broker in an amount not to exceed \$5,000 per violation.
- (2) Subsection (1) applies to an act or violation by any of the following:
  - (a) a sales agent or associate broker employed by a principal broker;
  - (b) a sales agent or associate broker engaged as an independent contractor by or on behalf of a principal broker; or
  - (c) an employee, officer, or member of a principal broker.

Amended by Chapter 350, 2014 General Session

**61-2f-407 Remedies and action for violations.**

- (1)
  - (a) The director shall issue and serve upon a person an order directing that person to cease and desist from an act if:

- (i) the director has reason to believe that the person has been engaging, is about to engage, or is engaging in the act constituting a violation of this chapter; and
  - (ii) it appears to the director that it would be in the public interest to stop the act.
  - (b) Within 10 days after the day on which the order is served, the person upon whom the order is served may request a hearing.
  - (c) Pending a hearing requested under Subsection (1)(b), a cease and desist order shall remain in effect.
  - (d) If a request for a hearing is made, the division shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.
- (2)
- (a) After a hearing requested under Subsection (1), if the commission and the director agree that an act of the person violates this chapter, the director:
    - (i) shall issue an order making the order issued under Subsection (1) permanent; and
    - (ii) may impose another disciplinary action under Section 61-2f-404.
  - (b) The director shall file suit in the name of the Department of Commerce and the Division of Real Estate, in the district court in the county in which an act described in Subsection (1) occurs or where the person resides or carries on business, to enjoin and restrain the person from violating this chapter if:
    - (i)
      - (A) a hearing is not requested under Subsection (1); and
      - (B) the person fails to cease the act described in Subsection (1); or
    - (ii) after discontinuing the act described in Subsection (1), the person again commences the act.
  - (c) A district court of this state has jurisdiction of an action brought under this section.
  - (d) Upon a proper showing in an action brought under this section or upon a conviction under Section 76-6-1203, the court may:
    - (i) issue a permanent or temporary, prohibitory or mandatory injunction;
    - (ii) issue a restraining order or writ of mandamus;
    - (iii) enter a declaratory judgment;
    - (iv) appoint a receiver or conservator for the defendant or the defendant's assets;
    - (v) order disgorgement;
    - (vi) order rescission;
    - (vii) impose a civil penalty not to exceed the greater of:
      - (A) \$5,000 for each violation; or
      - (B) the amount of any gain or economic benefit derived from a violation; and
    - (viii) enter any other relief the court considers just.
  - (e) The court may not require the division to post a bond in an action brought under this Subsection (2).
- (3) A license, certificate, or registration issued by the division to any person convicted of a violation of Section 76-6-1203 is automatically revoked.
- (4) A remedy or action provided in this section does not limit, interfere with, or prevent the prosecution of another remedy or action, including a criminal proceeding.

Amended by Chapter 213, 2018 General Session

**61-2f-408 Court-ordered discipline.**

The division shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this chapter if so ordered by a court.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-409 Actions for recovery of compensation restricted.**

- (1)
  - (a) A person may not bring or maintain an action in any court of this state for the recovery of a commission, fee, or compensation, for any act done or service rendered if the act or service is prohibited under this chapter.
  - (b) Except as provided in Subsection (1)(a), a person may bring or maintain an action in any court of this state for the recovery of a commission, fee, or compensation if the person is:
    - (i) a principal broker;
    - (ii) an individual that was licensed as a principal broker at the time the act or service that is the subject of the lawsuit was performed; or
    - (iii) an entity that, under the records of the Division of Real Estate, is affiliated with a principal broker.
- (2)
  - (a) A sales agent or associate broker may not sue in that individual's own name for the recovery of a fee, commission, or compensation for services as a sales agent or associate broker unless the action is against the principal broker with whom the sales agent or associate broker is or was affiliated.
  - (b) An action for the recovery of a fee, commission, or other compensation may only be instituted and brought by the principal broker with whom a sales agent or associate broker is affiliated.

Amended by Chapter 292, 2013 General Session

**61-2f-410 Effect of expiration, revocation, or suspension -- Notice required.**

- (1)
  - (a) The revocation or suspension of a principal broker license automatically inactivates an associate broker license or a sales agent license that was issued based upon the licensee's affiliation with the principal broker whose license is revoked or suspended, pending a change of principal broker affiliation.
  - (b) If an individual's associate broker license or sales agent license becomes inactive under Subsection (1)(a), the individual may affiliate with another principal broker licensed under this chapter.
- (2) Before the day on which a suspension or revocation of a principal broker's license is effective, the principal broker shall notify, in writing, each licensee affiliated with the principal broker:
  - (a) that the principal broker's license will be revoked or suspended;
  - (b) of the day on which the revocation or suspension is effective; and
  - (c) that the licensee's license will be inactive beginning on the day on which the principal broker's license is revoked or suspended.
- (3) If a principal broker fails to timely renew the principal broker's license in accordance with this chapter, on the day on which the principal broker's license expires, the principal broker shall notify, in writing, each licensee affiliated with the principal broker:
  - (a) that the principal broker's license is expired;
  - (b) of the day on which the principal broker's license expired; and
  - (c) that the licensee's license is inactive beginning on the day on which the principal broker's license expired.

Enacted by Chapter 350, 2014 General Session

**Part 5**  
**Real Estate Education, Research, and Recovery Fund Act**

**61-2f-501 Title.**

This part is known as the "Real Estate Education, Research, and Recovery Fund Act."

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-502 Definitions.**

For purposes of this part:

- (1) "Civil judgment" means a judgment in a civil action that:
  - (a) is awarded in an action brought against a real estate licensee on the basis of fraud, misrepresentation, or deceit in a real estate transaction; and
  - (b) awards actual damages.
- (2) "Criminal restitution judgment" means a judgment that, in accordance with the Utah Code of Criminal Procedure, orders criminal restitution to a person and against a real estate licensee for a criminal offense involving fraud, misrepresentation, or deceit in a real estate transaction.
- (3) "Final judgment" means one of the following judgments upon termination of the proceedings related to the judgment, including appeals:
  - (a) a civil judgment; or
  - (b) a criminal restitution judgment.
- (4) "Fund" means the Real Estate Education, Research, and Recovery Fund created in Section 61-2f-503.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-503 Real Estate Education, Research, and Recovery Fund.**

- (1)
  - (a) There is created an expendable special revenue fund known as the "Real Estate Education, Research, and Recovery Fund."
  - (b) The actual interest earned on the fund shall be deposited into the fund.
- (2) The money in the fund includes:
  - (a) a fee imposed under Section 61-2f-505; and
  - (b) interest described in Subsection (1)(b).
- (3) The division shall administer the fund to:
  - (a) reimburse the public for damages caused in a real estate transaction by an individual licensed under this chapter; and
  - (b) in accordance with Section 61-2f-504:
    - (i) investigate violations of this chapter related to fraud, misrepresentation, or deceit; or
    - (ii) provide revenue for improving the real estate profession through education and research with the goal of making licensees more responsible to the public.
- (4) This part applies to damages caused by an individual licensee. Reimbursement may not be made for a final judgment against an entity.

- (5) At the beginning of each fiscal year, the division shall make available \$100,000 in the fund to satisfy final judgments rendered against a person licensed under this chapter.

Amended by Chapter 400, 2013 General Session

**61-2f-504 Use of money.**

- (1) Money accumulated in the fund in excess of \$100,000 shall be set aside and segregated to be used by the division to:
  - (a) investigate violations of this chapter related to fraud, misrepresentation, or deceit; and
  - (b) advance education and research in the field of real estate.
- (2) The division may use the money described in Subsection (1) only in a manner consistent with Subsection (1), including for a course:
  - (a) sponsored by the division;
  - (b) offered by the division in conjunction with any university or college in the state; or
  - (c) provided for by contracting for a particular research project in the field of real estate for the state.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-505 Additional license fee.**

- (1) An individual who applies for or renews a principal broker or associate broker license shall pay, in addition to the application or renewal fee, a reasonable annual fee of up to \$18, as determined by the division with the concurrence of the commission.
- (2) An individual who applies for or renews a sales agent license shall pay in addition to the application or renewal fee a reasonable annual fee of up to \$12, as determined by the division with the concurrence of the commission.
- (3) Notwithstanding Section 13-1-2, the additional fees under this section shall be paid into the fund.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-506 Procedure to make a claim against the fund.**

- (1) A person may bring a claim against the fund if:
  - (a) the person obtains a final judgment;
  - (b) the person complies with the requirements under this part;
  - (c) the person is not complicit in the fraud, misrepresentation, or deceit that is the basis of the claim; and
  - (d) the final judgment that is the basis for the claim:
    - (i) has not been discharged in bankruptcy; and
    - (ii) when a bankruptcy proceeding is open or commenced during the pendency of the claim, the person obtains an order from the bankruptcy court declaring the final judgment and related debt to be nondischargeable.
- (2)
  - (a) A person may not bring a claim against the fund for money owed under a civil judgment unless, within 10 business days of the day on which the person brings the civil action that results in the civil judgment, the person sends to the division a signed notification alleging fraud, misrepresentation, or deceit by a real estate licensee.



- (b) Within 30 days of the day on which the division receives a notice under Subsection (1), the division has an unconditional right to intervene in the civil action.
- (3)
- (a) After obtaining a final judgment, to file a claim against the fund, a person shall:
- (i) file a verified petition in the court where the final judgment is entered seeking an order directing payment from the fund of an amount equal to the uncollected actual damages owed under the final judgment that are unpaid;
  - (ii) serve a copy of the verified petition described in Subsection (3)(a)(i) on the division; and
  - (iii) file a copy of the affidavit of service of the verified petition with the court.
- (b) Recovery from the fund may not include:
- (i) punitive damages;
  - (ii) attorney fees;
  - (iii) interest; or
  - (iv) court costs.
- (c) Regardless of the number of claimants or parcels of real estate involved in a real estate transaction, the liability of the fund may not exceed:
- (i) \$15,000 for a single transaction; and
  - (ii) \$50,000 for one licensee.
- (4) A court shall conduct a hearing on a petition filed under Subsection (3) as scheduled by the court.
- (5) Subject to Subsection (6), a court may order payment from the fund under this section only if the person who files the petition shows that the person:
- (a) is not:
    - (i) in the case of a civil judgment, the spouse of the judgment debtor;
    - (ii) in the case of a criminal judgment, the spouse of the criminal defendant; or
    - (iii) a personal representative of an individual described in Subsection (5)(a)(i) or (ii);
  - (b) is in compliance with this chapter;
  - (c) is owed damages under a final judgment that:
    - (i) is issued by the court in the manner prescribed under this section; and
    - (ii) indicates the amount of the final judgment awarded;
  - (d) has proved the amount still owing on the final judgment on the date the petition is filed;
  - (e)
    - (i)
      - (A) has had a writ of execution issued upon the final judgment; and
      - (B) has received a return made by the officer executing the writ showing that no property subject to execution in satisfaction of the final judgment could be found; or
    - (ii) if execution is levied against the property of the judgment debtor or criminal defendant:
      - (A) has not realized an amount sufficient to satisfy the final judgment; and
      - (B) is owed a specific balance remaining on the final judgment after application of the amount realized;
  - (f) has made reasonable searches and inquiries to ascertain whether the judgment debtor or criminal defendant has any interest in property, real or personal, that may satisfy the final judgment; and
  - (g) has exercised reasonable diligence to secure payment of the final judgment from the assets of the judgment debtor or criminal defendant.
- (6) If a person satisfies the court under Subsection (5) that it is not practicable for the petitioner to comply with one or more of the requirements enumerated in Subsections (5)(e) through (g), the court may waive those requirements.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-507 Division authority to act upon receipt of petition.**

- (1) When the division is served a petition under Section 61-2f-506, the division may:
  - (a) file an answer to the petition in the court;
  - (b) initiate a review proceeding conducted by the division; or
  - (c) appear in any proceeding in the name of the defendant to the action or on behalf of the fund.
- (2) The division may settle a claim against the fund if:
  - (a) the person who brings the claim requests a settlement; and
  - (b) the court in which the petition is filed approves the settlement.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-508 Court determination and order.**

If a court determines that the fund should pay a claim under this part, in its order the court shall direct the division to pay from the fund that portion of the final judgment that is payable from the fund in accordance with Section 61-2f-506.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-509 Insufficient funds to satisfy judgments -- Procedure and interest.**

If money deposited in the fund and allotted for satisfying a final judgment against a real estate licensee is insufficient to satisfy an order issued in accordance with Section 61-2f-508, when sufficient money is deposited in the fund, the division shall:

- (1) satisfy the unpaid claims in the order that the unpaid claims are originally filed; and
- (2) pay with the claim accumulated interest at the rate of 8% per annum.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-510 Division subrogated to claimant -- Authority to revoke license.**

- (1)
  - (a) If the division pays a claim against the fund in accordance with this chapter, the division is subrogated to the rights of the person who is paid the claim for the amounts paid out of the fund.
  - (b) The division shall deposit in the fund any amount and interest recovered by the division under this part.
- (2)
  - (a) The license of a real estate licensee for whom payment from the fund is made under this chapter shall be automatically revoked.
  - (b) A person whose real estate license is revoked under Subsection (2)(a) may not apply for a new license under this chapter until the person pays in full:
    - (i) the amount paid by the fund for a claim that is based on a final judgment against the person; and
    - (ii) interest at a rate determined by the division with the concurrence of the commission.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-511 Authority to take disciplinary action.**

- (1) This part does not limit the authority of the director of the division to take disciplinary action against a real estate licensee for a violation of this chapter or of the rules of the commission and division.
- (2) A real estate licensee's payment of all the obligations of the real estate licensee to the fund does not nullify or modify the effect of any other disciplinary proceeding brought pursuant to this chapter or the rules of the commission.

Renumbered and Amended by Chapter 379, 2010 General Session

**61-2f-512 Failure to comply with provisions constitutes a waiver.**

A person's failure to comply with this part constitutes a waiver of any right under this part.

Renumbered and Amended by Chapter 379, 2010 General Session