

Part 5 Enforcement

61-2g-501 Enforcement -- Investigation -- Orders -- Hearings.

- (1)
- (a) The division may investigate the actions of:
 - (i) a person registered, licensed, or certified under this chapter;
 - (ii) an applicant for registration, licensure, or certification;
 - (iii) an applicant for renewal of registration, licensure, or certification; or
 - (iv) a person required to be registered, licensed, or certified under this chapter.
 - (b) The division may initiate an agency action against a person described in Subsection (1)(a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to:
 - (i) impose disciplinary action;
 - (ii) deny issuance to an applicant of:
 - (A) an original registration, license, or certification; or
 - (B) a renewal of a registration, license, or certification; or
 - (iii) issue a cease and desist order as provided in Subsection (3).
- (2)
- (a) The division may:
 - (i) administer an oath or affirmation;
 - (ii) issue a subpoena that requires:
 - (A) the attendance and testimony of a witness; or
 - (B) the production of evidence;
 - (iii) take evidence; and
 - (iv) require the production of a book, paper, contract, record, document, information, or evidence relevant to the investigation described in Subsection (1).
 - (b) The division may serve a subpoena by certified mail.
 - (c) A failure to respond to a request by the division in an investigation authorized under this chapter is considered to be a separate violation of this chapter, including:
 - (i) failing to respond to a subpoena as a witness;
 - (ii) withholding evidence; or
 - (iii) failing to produce a book, paper, contract, document, information, or record.
 - (d)
 - (i) A court of competent jurisdiction shall enforce, according to the practice and procedure of the court, a subpoena issued by the division.
 - (ii) 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.
 - (e)
 - (i) 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, information, or record required under this chapter, including the costs incurred to copy an electronic book, paper, contract, document, information, or record in a universally readable format.
 - (ii) If a person fails to pay the costs described in Subsection (2)(e)(i) when due, the person's license, certification, or registration is automatically suspended:
 - (A) beginning the day on which the payment of costs is due; and
 - (B) ending the day on which the costs are paid.

- (3)
 - (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 receiving the order, the person upon whom the order is served may request a hearing.
 - (c) Pending a hearing requested under Subsection (3)(b), a cease and desist order shall remain in effect.
 - (d) If a request for hearing is made, the division shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.
- (4)
 - (a) After a hearing requested under Subsection (3), if the board and division concur that an act of the person violates this chapter, the board, with the concurrence of the division:
 - (i) shall issue an order making the cease and desist order permanent; and
 - (ii) may impose another disciplinary action under Section 61-2g-502.
 - (b) The director shall commence an action in the name of the Department of Commerce and Division of Real Estate, in the district court in the county in which an act described in Subsection (3) occurs or where the individual resides or carries on business, to enjoin and restrain the individual from violating this chapter if:
 - (i)
 - (A) a hearing is not requested under Subsection (3); and
 - (B) the individual fails to cease the act described in Subsection (3); or
 - (ii) after discontinuing the act described in Subsection (3), the individual again commences the act.
- (5) 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.
- (6)
 - (a) Except as provided in Subsection (6)(b), 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) The division may commence a disciplinary action under this chapter after the time period described in Subsection (6)(a) 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 individual subject to a disciplinary action enter into a written stipulation to extend the time period described in Subsection (6)(a).

Amended by Chapter 384, 2016 General Session

61-2g-502 Disciplinary action -- Grounds.

- (1)
 - (a) The board may order disciplinary action, with the concurrence of the division, against a person:

- (i) registered, licensed, or certified under this chapter; or
 - (ii) required to be registered, licensed, or certified under this chapter.
- (b) On the basis of a ground listed in Subsection (2) for disciplinary action, board action may include:
- (i) revoking, suspending, or placing a person's registration, license, or certification on probation;
 - (ii) denying a person's original registration, license, or certification;
 - (iii) denying a person's renewal license, certification, or registration;
 - (iv) in the case of denial or revocation of a registration, license, or certification, setting a waiting period for an applicant to apply for a registration, license, or certification under this chapter;
 - (v) ordering remedial education;
 - (vi) imposing a civil penalty upon a person not to exceed the greater of:
 - (A) \$5,000 for each violation; or
 - (B) the amount of any gain or economic benefit from a violation;
 - (vii) issuing a cease and desist order;
 - (viii) modifying an action described in Subsections (1)(b)(i) through (vii) if the board, with the concurrence of the division, finds that the person complies with court ordered restitution; or
 - (ix) doing any combination of Subsections (1)(b)(i) through (viii).
- (c)
- (i) If the board or division issues an order that orders a fine or educational requirements as part of the disciplinary action against a person, including a stipulation and order, the board or division 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 with a stated deadline:
 - (A) the person's license, certificate, or registration is automatically suspended:
 - (I) beginning on 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 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.
- (2) The following are grounds for disciplinary action under this section:
- (a) procuring or attempting to procure a registration, license, or certification under this chapter:
 - (i) by fraud; or
 - (ii) by making a false statement, submitting false information, or making a material misrepresentation in an application filed with the division;
 - (b) paying money or attempting to pay money other than a fee provided for by this chapter to a member or employee of the division to procure a registration, license, or certification under this chapter;
 - (c) an act or omission in the practice of real estate appraising that constitutes dishonesty, fraud, or misrepresentation;
 - (d) entry of a judgment against a registrant, licensee, or certificate holder on grounds of fraud, misrepresentation, or deceit in the making of an appraisal of real estate;
 - (e) a guilty plea to a criminal offense involving moral turpitude that is held in abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo contendere, of a criminal offense involving moral turpitude;
 - (f) engaging in the business of real estate appraising under an assumed or fictitious name not properly registered in this state;

- (g) paying a finder's fee or a referral fee to a person not licensed or certified under this chapter in connection with an appraisal of real estate or real property in this state;
 - (h) making a false or misleading statement in:
 - (i) that portion of a written appraisal report that deals with professional qualifications; or
 - (ii) testimony concerning professional qualifications;
 - (i) violating or disregarding:
 - (i) this chapter;
 - (ii) an order of:
 - (A) the board; or
 - (B) the division, in a case when the board delegates to the division the authority to make a decision on behalf of the board; or
 - (iii) a rule issued under this chapter;
 - (j) violating the confidential nature of governmental records to which a person registered, licensed, or certified under this chapter gained access through employment or engagement as an appraiser by a governmental agency;
 - (k) accepting a contingent fee for performing an appraisal if in fact the fee is or was contingent upon:
 - (i) the appraiser reporting a predetermined analysis, opinion, or conclusion;
 - (ii) the analysis, opinion, conclusion, or valuation reached; or
 - (iii) the consequences resulting from the appraisal assignment;
 - (l) unprofessional conduct as defined by statute or rule;
 - (m) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
 - (i) providing a title insurance product or service without the approval required by Section 31A-2-405; or
 - (ii) knowingly providing false or misleading information in the statement required by Subsection 31A-2-405(2); or
 - (n) other conduct that constitutes dishonest dealing.
- (3) A person previously licensed, certified, or registered under this chapter remains responsible for, and is subject to disciplinary action for, an act that the person committed, while the person was licensed, certified, or registered, in violation of this chapter or an administrative rule in effect at the time that the person committed the act, regardless of whether the person is currently licensed, certified, or registered.

Amended by Chapter 384, 2016 General Session

61-2g-503 Reinstatement of license, certification, and registration.

- (1) An individual whose license, certification, or registration is revoked under this chapter:
 - (a) may not apply for renewal or reinstatement of that license, certification, or registration; and
 - (b) may apply for licensure, certification, or registration as prescribed for an original license, certification, or registration subject to the limitations in Subsection (2).
- (2) An applicant for licensure, certification, or registration under Subsection (1) is not entitled to credit for experience gained before the date of revocation in determining whether the applicant meets the experience requirement for licensure, certification, or registration.

Amended by Chapter 166, 2012 General Session

61-2g-504 Disciplinary hearing process.

- (1) The division and board shall comply with Title 63G, Chapter 4, Administrative Procedures Act, in conducting any disciplinary proceedings under this chapter.
- (2) Before disciplinary action may be taken under this chapter, the division shall:
 - (a) notify the person against whom disciplinary action is sought; and
 - (b) commence an adjudicative proceeding.
- (3) If, after the hearing, the board determines, with the concurrence of the division, that a person described in Subsection (2) violated this chapter, the board may impose disciplinary action, with the concurrence of the division, by written order as provided in Section 61-2g-502.
- (4)
 - (a) The board may:
 - (i) conduct hearings with the assistance of an administrative law judge; or
 - (ii) delegate hearings to an administrative law judge.
 - (b) If a hearing is delegated by the board to an administrative law judge, the administrative law judge shall submit to the board and the director for their consideration:
 - (i) written findings of fact;
 - (ii) written conclusions of law; and
 - (iii) a recommended order.
- (5)
 - (a) An applicant, licensee, certificate holder, registrant, or person aggrieved, including the complainant, may obtain judicial review of an adverse ruling, order, or decision.
 - (b) If an applicant, licensee, certificate holder, or registrant prevails in an appeal and the court finds that the state action is undertaken without substantial justification, the court may award reasonable litigation expenses to the applicant, licensee, certificate holder, or registrant as provided under Title 78B, Chapter 8, Part 5, Small Business Equal Access to Justice Act.

Renumbered and Amended by Chapter 289, 2011 General Session

61-2g-505 Penalty for violating this chapter -- Automatic revocation.

- (1) In addition to being subject to a disciplinary action, a person required to be licensed, certified, or registered under this chapter who violates this chapter:
 - (a) is guilty of a class A misdemeanor, upon a conviction of a first violation of this chapter; and
 - (b) is guilty of a third degree felony, upon conviction of a second or subsequent violation of this chapter.
- (2) A license, certification, or registration issued by the division to a person convicted of a violation of Section 76-6-1203 is automatically revoked.

Renumbered and Amended by Chapter 289, 2011 General Session