

DIVISION OF REAL ESTATE AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael G. Waddoups

House Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill modifies provisions related to the regulation of the real estate, appraiser, and mortgage industries by the Division of Real Estate.

Highlighted Provisions:

This bill:

- ▶ modifies the Real Estate provisions including:
 - permitting a member of the Real Estate Commission to continue to hold office until a successor is appointed and qualified;
 - allowing the Real Estate Commission to delegate functions to the division related to licensing;
 - addressing changes in information provided to the division;
 - making certain funds nonlapsing;
 - addressing revocation of licenses;
 - modifying grounds for disciplinary action; and
 - addressing disciplinary action and judicial review;
- ▶ modifies the Real Estate Appraiser Licensing and Certification Act including:
 - modifying references to registration;
 - amending definition provisions;
 - repealing references to senior appraisers;
 - addressing when licensing and certification is required;
 - modifying the duties of the division including determining fees;
 - providing for trainees;

- addressing the division providing information;
- addressing registration of expert witnesses;
- addressing when the division is to make available certain information;
- modifying provisions related to the Real Estate Appraiser Licensing and Certification Board including makeup and duties of the board;
- addressing applying for licensure or certification;
- effective January 1, 2008, modifying the authority and qualifications of a state-licensed appraiser;
- effective January 1, 2008, modifying provisions related to state-certified residential appraisers;
- effective January 1, 2008, modifying provisions related to state-certified general appraisers;
- modifying restrictions on use of terms and provisions related to appraisal reports;
- providing limits on a person acting as a trainee if the person's license or certification is revoked;
- addressing recordkeeping; and
- addressing the duty of the division to provide the public information concerning appraisers;
- ▶ modifies the Utah Residential Mortgage Practices Act including:
 - modifying definition provisions;
 - addressing fees charged by the division;
 - making permissive providing a list of names and mailing addresses of licensees;
 - modifying the makeup of and quorum requirement of the Residential Mortgage Regulatory Commission;
 - addressing when address information is public;
 - addressing use of an assumed business name;
 - providing for conversion of registrations to licenses;
 - allowing the commission to delegate to the division authority related to licensing

including outlining procedures in case of a denial of license;

- addressing post-revocation hearings and ability to apply for a new license;
- providing that certain fees are nonlapsing;
- modifying qualifications for licensure related to criminal history;
- addressing renewal of licensing;
- requiring reporting of changes;
- addressing lending manager licenses;
- addressing prohibited conduct including adding title insurance agent in the list of

capacities that a licensee cannot engage in with respect to the same residential mortgage loan transaction;

- clarifying language applicable to disciplinary action and adjudicative proceedings;

and

- extending the implementation of the principal lender manager licensing; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

61-2-5.5, as last amended by Chapters 102 and 243, Laws of Utah 1996

61-2-6, as last amended by Chapter 90, Laws of Utah 2004

61-2-7.1, as last amended by Chapter 86, Laws of Utah 2000

61-2-9, as last amended by Chapter 129, Laws of Utah 2004

61-2-11, as last amended by Chapter 351, Laws of Utah 1997

61-2-12, as last amended by Chapter 173, Laws of Utah 1999

61-2b-2, as last amended by Chapter 117, Laws of Utah 1999

61-2b-3, as last amended by Chapter 117, Laws of Utah 1999

61-2b-6, as last amended by Chapter 86, Laws of Utah 2000
61-2b-7, as last amended by Chapter 176, Laws of Utah 2002
61-2b-8, as last amended by Chapter 117, Laws of Utah 1999
61-2b-9, as last amended by Chapter 117, Laws of Utah 1999
61-2b-10, as last amended by Chapter 214, Laws of Utah 2001
61-2b-14, as last amended by Chapter 117, Laws of Utah 1999
61-2b-15, as last amended by Chapter 117, Laws of Utah 1999
61-2b-17, as last amended by Chapter 214, Laws of Utah 2001
61-2b-18, as last amended by Chapter 86, Laws of Utah 2000
61-2b-19, as last amended by Chapter 117, Laws of Utah 1999
61-2b-20, as last amended by Chapter 117, Laws of Utah 1999
61-2b-21, as last amended by Chapter 117, Laws of Utah 1999
61-2b-22, as last amended by Chapter 117, Laws of Utah 1999
61-2b-24, as last amended by Chapter 117, Laws of Utah 1999
61-2b-26, as last amended by Chapter 86, Laws of Utah 2000
61-2b-27, as last amended by Chapter 86, Laws of Utah 2000
61-2b-28, as last amended by Chapter 117, Laws of Utah 1999
61-2b-29, as last amended by Chapter 117, Laws of Utah 1999
61-2b-30.5, as enacted by Chapter 117, Laws of Utah 1999
61-2b-31, as last amended by Chapter 117, Laws of Utah 1999
61-2b-33, as last amended by Chapter 117, Laws of Utah 1999
61-2b-34, as last amended by Chapter 117, Laws of Utah 1999
61-2b-36, as last amended by Chapter 117, Laws of Utah 1999
61-2b-38, as last amended by Chapter 117, Laws of Utah 1999
61-2b-39, as last amended by Chapter 117, Laws of Utah 1999
61-2b-40, as last amended by Chapter 117, Laws of Utah 1999
61-2c-102, as last amended by Chapter 297, Laws of Utah 2004
61-2c-103, as last amended by Chapter 297, Laws of Utah 2004

61-2c-104, as last amended by Chapter 297, Laws of Utah 2004

61-2c-106 (Superseded 01/01/06), as last amended by Chapter 243, Laws of Utah 2003

61-2c-106 (Effective 01/01/06), as last amended by Chapter 297, Laws of Utah 2004

61-2c-201, as last amended by Chapter 297, Laws of Utah 2004

61-2c-202, as last amended by Chapter 297, Laws of Utah 2004

61-2c-203, as last amended by Chapter 297, Laws of Utah 2004

61-2c-205, as last amended by Chapter 297, Laws of Utah 2004

61-2c-206, as enacted by Chapter 297, Laws of Utah 2004

61-2c-208, as enacted by Chapter 297, Laws of Utah 2004

61-2c-301, as last amended by Chapter 297, Laws of Utah 2004

61-2c-402, as last amended by Chapter 297, Laws of Utah 2004

61-2c-404, as enacted by Chapter 297, Laws of Utah 2004

ENACTS:

61-2c-201.1, Utah Code Annotated 1953

61-2c-402.1, Utah Code Annotated 1953

REPEALS:

61-2b-15.6, as enacted by Chapter 117, Laws of Utah 1999

Uncodified Material Affected:

AMENDS UNCODIFIED MATERIAL:

Uncodified Section 32, Chapter 297, Laws of Utah 2004

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **61-2-5.5** is amended to read:

61-2-5.5. Real Estate Commission created -- Functions -- Appointment --

Qualification and terms of members -- Expenses -- Meetings.

(1) There is created within the division a Real Estate Commission. The commission shall:

(a) make rules for the administration of this chapter [~~which~~] that are not inconsistent with

this chapter, including:

(i) licensing of:

(A) principal brokers[;];

(B) associate brokers[;];

(C) sales agents[;];

(D) real estate companies[;]; and

(E) branch offices;

(ii) prelicensing and postlicensing education curricula[;];

(iii) examination procedures[~~;~~and];

(iv) the certification and conduct of:

(A) real estate schools[;];

(B) course providers[;]; and

(C) instructors;

[~~(iii)~~] (v) proper handling of funds received by real estate licensees[~~;~~and];

(vi) brokerage office procedures and recordkeeping requirements;

[~~(iv)~~] (vii) property management; and

[~~(v)~~] (viii) standards of conduct for real estate licensees;

(b) establish, with the concurrence of the division, all fees as provided in this chapter and

Title 61, Chapter 2a, Real Estate Recovery Fund Act;

(c) conduct all administrative hearings not delegated by [it] the commission to an administrative law judge or the division relating to the:

(i) licensing of any applicant[;];

(ii) conduct of any licensee[;]; or

(iii) the certification or conduct of any real estate school, course provider, or instructor regulated under this chapter;

(d) with the concurrence of the director, impose sanctions against licensees and certificate holders as provided in Section 61-2-11;

(e) advise the director on the administration and enforcement of any matters 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:
 - (i) this chapter; and
 - (ii) Title 61, Chapter 2a, Real Estate Recovery Fund Act.

(2) (a) The commission shall be comprised of five members appointed by the governor and approved by the Senate.

- (b) Four of the commission members shall:
 - (i) have at least five years' experience in the real estate business; and ~~[shall]~~
 - (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) No more than one commission member may be appointed from any given county in the state.

(3) (a) Except as required by Subsection (3)(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 (3)(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.

~~[(e)]~~ (d) A commission member may not serve more than one consecutive term.

~~[(d)]~~ (e) Members of the commission shall annually select one member to serve as chair.

(4) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(5) (a) ~~[Members]~~ A member shall receive no compensation or benefits for ~~[their]~~ the

member's services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) [~~Members~~] A member may decline to receive per diem and expenses for [~~their~~] the member's service.

(6) (a) The commission shall meet at least monthly.

(b) The director may call additional meetings:

(i) at [~~his~~] the director's discretion [~~or~~];

(ii) upon the request of the chair; or

(iii) upon the written request of three or more commission members.

(7) Three members of the commission constitute a quorum for the transaction of business.

Section 2. Section **61-2-6** is amended to read:

61-2-6. Licensing procedures and requirements.

(1) (a) [~~The Real Estate Commission~~] Except as provided in Subsection (5), the commission shall determine the qualifications and requirements of applicants for:

(i) a principal broker license[-];

(ii) an associate broker[-] license; or

(iii) a sales agent license.

(b) 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.

(c) (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 not to exceed 90 hours[-]; and [~~an applicant for~~]

(B) an associate broker or principal broker license to complete an approved educational program not to exceed 120 hours.

(ii) The hours required by this section mean 50 minutes of instruction in each 60 minutes[; and the].

(iii) The maximum number of program hours available to an individual is ten hours per day.

(d) 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) the provisions of this chapter[;];

(iii) the rules established by the [~~Real Estate Commission,~~] commission; and

(iv) any other aspect of Utah real estate license law considered appropriate.

(e) (i) Three years' full-time experience as a real estate sales agent or its equivalent is required before any 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 63, Chapter 46a, Utah Administrative Rulemaking Act, the criteria by which [~~it~~] 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 [~~his~~] the applicant's Social Security number, which is a private record under Subsection 63-2-302(1)(h).

(3) (a) A nonresident principal broker may be licensed in this state by conforming to all the provisions of this chapter except that of residency.

(b) A nonresident associate broker or sales agent may become licensed in this state by:

(i) conforming to all the provisions of this chapter except that of residency; and [by]
 (ii) being employed or engaged as an independent contractor by or on behalf of a
 nonresident or resident principal broker who is licensed in this state.

(4) [Am] (a) Except as provided in Subsection 61-2-9(1)(e)(iv), an applicant who has had a real estate license revoked;

(i) shall be relicensed as prescribed for an original application[~~, but~~]; and
 (ii) may not apply for a new license until at least five years after the [revocation] day on which the license is revoked.

(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 prior to the revocation of a real estate license.

(5) (a) Notwithstanding Subsection (1), 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 review of the denial of licensure.

(ii) An applicant who is denied licensure pursuant to this Subsection (5) may seek agency review by the executive director only after the commission has reviewed the division's denial of the applicant's application.

Section 3. Section **61-2-7.1** is amended to read:

61-2-7.1. Change of information -- Failure to notify -- Notification to an applicant, licensee, or certificate holder.

[Each] (1) An applicant, licensee, or certificate holder shall send the division a signed statement in the form required by the division notifying the division within ten business days of

any change of [~~principal business location or home street address within ten business days of the change. In providing an address to the division~~];

- (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 in accordance with Section 63-38-3.2 for processing any notification of change submitted by an applicant, licensee, 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, or certificate holder may provide a post office box or other mail drop location.

(4) Failure to notify the division of a change [~~of business location~~] described in Subsection (1) is separate grounds for disciplinary action against the applicant, licensee, or certificate holder. [A]

(5) An applicant, licensee, or certificate holder [~~will be~~] is considered to have received any notification [~~which~~] that has been sent to the last address furnished to the division by the applicant, licensee, or certificate holder.

Section 4. Section **61-2-9** is amended to read:

61-2-9. Examination and license fees -- Background check -- Renewal of licenses -- Education requirements -- Activation of inactive licenses -- Recertification -- Licenses of firm, partnership, or association -- Miscellaneous fees.

(1) (a) Upon filing an application for a principal broker, associate broker, or sales agent license examination, the applicant shall pay a nonrefundable fee as determined by the commission with the concurrence of the division under Section 63-38-3.2 for admission to the examination.

(b) A principal broker, associate broker, or sales agent applicant shall pay a nonrefundable fee as determined by the commission with the concurrence of the division under Section 63-38-3.2 for issuance of an initial license or license renewal.

(c) Each license issued under this Subsection (1) shall be issued for a period of not less than two years as determined by the division with the concurrence of the commission.

(d) (i) Any new sales agent applicant shall:

(A) submit fingerprint cards in a form acceptable to the division at the time the license application is filed; and ~~shall~~

(B) consent to a fingerprint background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application.

(ii) The division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for each new sales agent applicant through the national criminal history system (NCIC) or any successor system.

(iii) The cost of the background check and the fingerprinting shall be borne by the applicant.

(iv) Funds paid to the division by an applicant for the cost of the background check shall be nonlapsing.

(e) (i) Any new sales agent license issued under this section shall be conditional, pending completion of the criminal background check. If the criminal background check discloses the applicant has failed to accurately disclose a criminal history, the license shall be immediately and automatically revoked.

(ii) Any person whose conditional license has been revoked under Subsection (1)(e)(i) shall be entitled to a post-revocation hearing to challenge the revocation. The hearing shall be conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

(iii) The division director shall designate one of the following to act as the presiding officer in a post-revocation hearing described in this Subsection (1)(e):

(A) the division; or

(B) the division with the concurrence of the commission.

(iv) The decision on whether relief from the revocation of a license under this Subsection (1)(e) will be granted shall be made by the presiding officer.

(v) Relief from a revocation under this Subsection (1)(e) 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 had a reasonable good faith belief at the time of application that there was no criminal history to be disclosed; or

(C) the division failed to follow the prescribed procedure for the revocation.

(vi) If a revocation under this Subsection (1)(e) is upheld after a post-revocation hearing, the person may not apply for a new license until at least 12 months after the day on which the final decision upholding the revocation is issued.

(2) (a) (i) A license expires if it is not renewed on or before its expiration date.

(ii) As [as] a condition of renewal, each active licensee shall demonstrate competence:

(A) by viewing an approved real estate education video program and completing a supplementary workbook; or

(B) by completing 12 hours of professional education approved by the division and commission within each two-year renewal period.

(iii) The division with the concurrence of the commission shall certify education which may include:

(A) state conventions[;];

(B) home study courses[;];

(C) video courses[;]; and

(D) closed circuit television courses.

(iv) The commission with concurrence of the division may exempt a licensee from [~~this~~] the education requirement of this Subsection (2)(a) for a period not to exceed four years:

(A) upon a finding of reasonable cause, including military service; and

(B) under conditions established by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(b) For a period of 30 days after the expiration date of a license, [a] the license may be reinstated upon:

(i) payment of a renewal fee and a late fee determined by the commission with the concurrence of the division under Section 63-38-3.2; and [~~upon~~]

(ii) providing proof acceptable to the division and the commission of the licensee having completed the hours of education or demonstrated competence as required under Subsection (2)(a).

(c) After [~~this~~] the 30-day period described in Subsection (2)(b), and until six months after the expiration date, 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 63-38-3.2;

(ii) providing to the division proof of satisfactory completion of 12 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 63, Chapter 46a, Utah Administrative Rulemaking Act; and

(iii) providing proof acceptable to the division and the commission of the licensee having completed the hours of education or demonstrated competence as required under Subsection (2)(a).

(d) A person who does not renew [~~his~~] that person's license within six months after the expiration date shall be relicensed as prescribed for an original application.

(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 broker licensing examination within six months prior to applying to activate the license; or

(ii) the successful completion of 12 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 63, Chapter 46a, Utah Administrative Rulemaking Act, establish by rule:

(i) the nature or type of continuing education required for reactivation of a license; and

(ii) how long prior to reactivation the continuing education must have been completed.

(4) (a) A principal broker license may be granted to a corporation, partnership, or association if the corporation, partnership, or association has affiliated with it an individual who:

(i) has qualified as a principal broker under the terms of this chapter^[7]; and ~~[who]~~

(ii) serves in the capacity of a principal broker.

(b) Application for the license described in Subsection (4)(a) shall be made in accordance with the rules adopted by the division with the concurrence of the commission.

(5) The division may charge and collect reasonable fees determined by the commission with the concurrence of the division under Section 63-38-3.2 to cover the costs for:

(a) issuance of a new or duplicate license;

(b) license histories or certifications;

(c) certified copies of official documents, orders, and other papers and transcripts;

(d) certifying real estate schools, courses, and instructors, the fees for which shall, notwithstanding Section 13-1-2, be deposited in the Real Estate Education, Research, and Recovery Fund; and

(e) other duties required by this chapter.

(6) If a licensee submits or causes to be submitted a check, draft, or other negotiable instrument to the division for payment of fees, and the check, draft, or other negotiable instrument is dishonored, the transaction for which the payment was submitted is void and will be reversed by the division if payment of the applicable fee is not received in full.

(7) (a) The fees under this chapter and the additional license fee for the Real Estate Education, Research, and Recovery Fund under Section 61-2a-4 are 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 if the licensee maintains a place of business within the jurisdiction of the political subdivision.

(b) Unless otherwise exempt, each licensee under this chapter is subject to all taxes imposed under Title 59, Revenue and Taxation.

Section 5. Section **61-2-11** is amended to read:

61-2-11. Investigations -- Subpoena power of division -- Grounds for disciplinary action.

The division may investigate or cause to be investigated the actions of any principal broker, associate broker, sales agent, real estate school, course provider, or school instructor licensed or certified by this state, or of any applicant for licensure or certification, or of any person who acts in any of those capacities within this state. The division is empowered to subpoena witnesses, take evidence, and require by subpoena duces tecum the production of books, papers, contracts, records, other documents, or information considered relevant to the investigation. The division may serve subpoenas by certified mail. Each failure to respond to a subpoena is considered as a separate violation of this chapter. The commission, with the concurrence of the director, may impose a civil penalty in an amount not to exceed \$500 per violation, impose educational requirements, and suspend, revoke, place on probation, or deny renewal, reinstatement, or reissuance of any license or any certification if at any time the licensee or certificate holder, whether acting as an agent or on his own account, is found guilty of:

- (1) making any substantial misrepresentation;
- (2) making any false promises of a character likely to influence, persuade, or induce;
- (3) pursuing a continued and flagrant course of misrepresentation, or of making false promises through agents, sales agents, advertising, or otherwise;
- (4) acting for more than one party in a transaction without the informed consent of all parties;

(5) (a) acting as an associate broker or sales agent while not licensed with a licensed principal broker[;];

(b) representing or attempting to represent a broker other than the principal broker with whom ~~[he]~~ the person is affiliated[;]; or

(c) representing as sales agent or having a contractual relationship similar to that of sales agent with other than a licensed principal broker;

(6) (a) failing, within a reasonable time, to account for or to remit any monies coming into ~~[his]~~ the person's possession that belong to others~~[, or commingling those funds with his own, or diverting those funds];~~

(b) commingling the funds described in Subsection (6)(a) with the person's own; or

(c) diverting the funds described in Subsection (6)(a) from the purpose for which they were received;

(7) paying or offering to pay valuable consideration, as defined by the commission, to any person not licensed under this chapter, except that:

(a) valuable consideration may be shared with a licensed principal broker of another jurisdiction or as provided under the Professional Corporation Act or the Limited Liability Company Act; and

(b) the valuable consideration to be paid to a licensee for the performance of any of the acts specified in this chapter may be paid by the licensee's principal broker to the licensee's Sub-Chapter S corporation;

(8) being unworthy or incompetent to act as a principal broker, associate broker, or sales agent in such manner as to safeguard the interests of the public;

(9) failing to voluntarily furnish copies of all documents to all parties executing the documents;

(10) 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 the property[;];

(c) the sale or rental price[;];

(d) any monies received in trust[;];

(e) any agreements or instructions from buyers and sellers or lessees and lessors[;]; and

(f) any other information required by rule;

(11) failing to disclose, in writing, in the purchase, sale, or rental of property, whether the purchase, sale, or rental is made for himself or for an undisclosed principal;

(12) regardless of whether the crime was related to real estate, being convicted of a criminal offense involving moral turpitude within five years of the most recent application, including a conviction based upon a plea of nolo contendere, or a plea held in abeyance to a criminal offense involving moral turpitude;

(13) advertising the availability of real estate or the services of a licensee in a false, misleading, or deceptive manner;

(14) in the case of a principal broker or a licensee who is a branch manager, failing to exercise reasonable supervision over the activities of [his] the principal broker's or branch manager's licensees and any unlicensed staff;

(15) violating or disregarding this chapter, an order of the commission, or the rules adopted by the commission and the division;

(16) breaching a fiduciary duty owed by a licensee to [his] the licensee's principal in a real estate transaction;

(17) any other conduct which constitutes dishonest dealing;

(18) unprofessional conduct as defined by statute or rule; or

(19) suspension, revocation, surrender, or cancellation of a real estate license issued by another jurisdiction, or of another professional license issued by this or another jurisdiction, based on misconduct in a professional capacity that relates to character, honesty, integrity, or truthfulness.

Section 6. Section **61-2-12** is amended to read:

61-2-12. Disciplinary action -- Judicial review.

(1) (a) [~~Before imposing an educational requirement, a civil penalty, revoking,~~

~~suspending, placing on probation, or denying the renewal, reinstatement, or reissuance of any license or certificate based on~~ On the basis of a violation of Section 61-2-11, the division shall give notice to the licensee or certificate holder and [schedule] commence an adjudicative proceeding[-:] before:

- (i) imposing an educational requirement;
- (ii) imposing a civil penalty; or
- (iii) taking any of the following actions related to a license or certificate:
 - (A) revoking;
 - (B) suspending;
 - (C) placing on probation; or
 - (D) denying the renewal, reinstatement, or reissuance.

(b) If the 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 ~~the~~ any hearing.

(c) If ~~after~~ the presiding officer at a hearing [the commission] determines that any licensee or certificate holder is guilty of a violation of this chapter, the division by written order may:

- (i) with regard to the license or certificate [may be suspended, revoked, denied]:
 - (A) suspend;
 - (B) revoke;
 - (C) place on probation; or
 - (D) deny renewal, reinstatement, or reissuance[-]; or

(ii) impose a civil penalty [may be imposed by written order of the commission in concurrence with the director].

(2) (a) Any applicant, certificate holder, licensee, or person aggrieved, including the complainant, may obtain ~~judicial review or~~ agency review by the executive director and judicial review of any adverse ruling, order, or decision of the ~~director and the commission~~ division.

(b) If the applicant, certificate holder, 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, or licensee as provided under Title 78, Chapter 27a, Small Business Equal Access to Justice Act.

(c) (i) An order, ~~[rule]~~ ruling, or decision of the ~~[director and the commission]~~ division shall take effect and become operative 30 days after the service ~~[thereof]~~ of the order, ruling, or decision unless otherwise provided in the order.

(ii) If an appeal is taken by a licensee, the division may stay enforcement of ~~[the commission's action]~~ an order, ruling, or decision in accordance with ~~[the provisions of]~~ Section 63-46b-18.

(iii) The appeal shall be governed by the Utah Rules of Appellate Procedure.

(3) The commission and the director shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in ~~[their]~~ all adjudicative proceedings.

Section 7. Section **61-2b-2** is amended to read:

61-2b-2. Definitions.

(1) As used in this chapter:

~~[(+)]~~ (a) (i) "Appraisal" means an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate or identified real property.

~~[(b) Appraisals]~~ (ii) An appraisal shall be classified by the nature of the assignment as a valuation appraisal, an analysis assignment, or a review assignment in accordance with the following definitions:

~~[(+)]~~ (A) "Valuation appraisal" means an unbiased analysis, opinion, or conclusion that estimates the value of an identified parcel of real estate or identified real property at a particular point in time.

~~[(+)]~~ (B) "Analysis assignment" means an unbiased analysis, opinion, or conclusion that relates to the nature, quality, or utility of identified real estate or identified real property.

~~[(+)]~~ (C) "Review assignment" means an unbiased analysis, opinion, or conclusion that forms an opinion as to the adequacy and appropriateness of a valuation appraisal or an analysis

assignment.

~~[(2)]~~ (b) "Appraisal Foundation" means the Appraisal Foundation that was incorporated as an Illinois not-for-profit corporation on November 30, 1987.

~~[(3)]~~ ~~(a)~~ (c) (i) "Appraisal report" means any communication, written or oral, of an appraisal.

~~[(b)]~~ (ii) An appraisal report shall be classified by the nature of the assignment as a valuation report, analysis report, or review report in accordance with the definitions provided in Subsection (1)~~[(b)]~~(a)(ii).

~~[(e)]~~ (iii) The testimony of a person relating to the person's analyses, conclusions, or opinions concerning identified real estate or identified real property is considered to be an oral appraisal report.

~~[(4)]~~ (d) "Board" means the Real Estate Appraiser Licensing and Certification Board that is established in Section 61-2b-7.

~~[(5)]~~ (e) "Certified appraisal report" means a written or oral appraisal report that is certified by a state-certified general appraiser or state-certified residential appraiser.

~~[(6)]~~ ~~(a)~~ ~~(i)~~ (f) (i) (A) "Consultation service" means an engagement to provide a real estate valuation service analysis, opinion, conclusion, or other service that does not fall within the definition of appraisal.

~~[(i)]~~ (B) "Consultation service" does not mean a valuation appraisal, analysis assignment, or review assignment.

~~[(b)]~~ (ii) Regardless of the intention of the client or employer, if a person prepares an unbiased analysis, opinion, or conclusion, the analysis, opinion, or conclusion is considered to be an appraisal and not a consultation service.

~~[(7)]~~ (g) "Contingent fee" means a fee or other form of compensation, payment of which is dependent on or conditioned by:

~~[(a)]~~ (i) the reporting of a predetermined analysis, opinion, or conclusion by the person performing the analysis, opinion, or conclusion; or

~~[(b)]~~ (ii) achieving a result specified by the person requesting the analysis, opinion, or

conclusion.

~~[(8)]~~ (h) "Division" means the Division of Real Estate of the Department of Commerce.

~~[(9)]~~ (i) "Federally related transaction" means any real estate related transaction ~~[which]~~ that is required by federal law or by federal regulation to be supported by an appraisal prepared by:

(i) a state-licensed appraiser; or

(ii) a state-certified appraiser.

~~[(10)]~~ (j) "Real estate" means an identified parcel or tract of land including improvements if any.

~~[(11)]~~ (k) "Real estate appraisal activity" means the act or process of making an appraisal of real estate or real property and preparing an appraisal report.

~~[(12)]~~ (l) "Real estate related transaction" means:

~~[(a)]~~ (i) the sale, lease, purchase, investment in, or exchange of real property or an interest in real property, or the financing of such a transaction;

~~[(b)]~~ (ii) the refinancing of real property or an interest in real property; or

~~[(c)]~~ (iii) the use of real property or an interest in real property as security for a loan or investment, including mortgage-backed securities.

~~[(13)]~~ (m) "Real property" means one or more defined interests, benefits, or rights inherent in the ownership of real estate.

~~[(14)] "Senior appraiser" means a person grandfathered under this chapter who holds a current, valid state registration as a real estate appraiser whose registration was issued to the person based on the person's experience or designation as a member in good standing in an appraisal organization that is a member of the Appraisal Foundation.]~~

~~[(15)]~~ (n) "State-certified general appraiser" means a person who holds a current, valid certification as a state-certified general appraiser issued under ~~[the provisions of]~~ this chapter.

~~[(16)]~~ (o) "State-certified residential appraiser" means a person who holds a current, valid certification as a state-certified residential real estate appraiser issued under ~~[the provisions of]~~ this chapter.

~~[(17)]~~ (p) "State-licensed appraiser" means a person who holds a current, valid license as a state-licensed appraiser issued under ~~[the provisions of]~~ this chapter.

~~[(18)]~~ (q) "State-registered appraiser" means a person who ~~[holds a current, valid state registration as a real estate appraiser issued under the provisions of]~~ before May 3, 1999, was registered as an appraiser under this chapter.

(r) "Trainee" means an individual who:

(i) does not hold an appraiser license or appraiser certification issued under this chapter;
and

(ii) works under the direct supervision of a state-licensed appraiser or state-certified appraiser to earn experience for licensure.

~~[(19)]~~ (s) "Unbiased analysis, opinion, or conclusion" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility ~~[or]~~ of identified real estate or identified real property that is prepared by a person who is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering the analysis, opinion, or conclusion.

(2) (a) If a term not defined in this section is defined by rule, the term shall have the meaning established by the division by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(b) If a term not defined in this section is not defined by rule, the term shall have the meaning commonly accepted in the business community.

Section 8. Section **61-2b-3** is amended to read:

61-2b-3. License or certification required.

(1) Except as provided in Subsection (2) and in Subsection 61-2b-6(2), it is unlawful for anyone to prepare, for valuable consideration, an appraisal, an appraisal report, a certified appraisal report, or perform a consultation service relating to real estate or real property in this state without first being ~~[registered,]~~ licensed~~[-]~~ or certified in accordance with ~~[the provisions of]~~ this chapter.

(2) This section does not apply to:

(a) a real estate broker or sales agent as defined by Section 61-2-2 licensed by this state who, in the ordinary course of ~~[his]~~ the real estate broker's or sales agent's business, gives an opinion:

(i) regarding the value of real estate;

(ii) to a potential seller or third party recommending a listing price of real estate; or

(iii) to a potential buyer or third party recommending a purchase price of real estate;

(b) an employee of a company who states an opinion of value or prepares a report containing value conclusions relating to real estate or real property solely for the company's use;

(c) any official or employee of a government agency while acting solely within the scope of ~~[his]~~ the official's or employee's duties, unless otherwise required by Utah law;

(d) an auditor or accountant who states an opinion of value or prepares a report containing value conclusions relating to real estate or real property while performing an audit;

(e) an individual, except an individual who is required to be ~~[registered,]~~ licensed~~;~~ or certified under this chapter, who states an opinion about the value of property in which ~~[he]~~ the person has an ownership interest;

(f) an individual who states an opinion of value if no consideration is paid or agreed to be paid for the opinion and no other party is reasonably expected to rely on the individual's appraisal expertise;

(g) an individual, such as a researcher or a secretary, who does not render significant professional assistance, as defined by the board, in arriving at a real estate appraisal analysis, opinion, or conclusion; or

(h) an attorney authorized to practice law in this state who, in the course of ~~[his]~~ the attorney's practice, ~~[utilizes]~~ uses an appraisal report governed by this chapter or who states an opinion of the value of real estate.

(3) ~~[No]~~ An opinion of value or report containing value conclusions exempt under Subsection (2) may not be referred to as an appraisal.

Section 9. Section **61-2b-6** is amended to read:

61-2b-6. Duties and powers of division.

(1) The division shall have the ~~[following]~~ powers and duties~~[-]~~ listed in this Subsection (1).

(a) The division shall:

(i) receive applications for licensing ~~[as a state-licensed appraiser]~~ and certification;

(ii) establish appropriate administrative procedures for the processing of ~~[licensing]~~ applications for licensure or certification;

(iii) issue licenses and certifications to qualified applicants pursuant to ~~[the provisions of]~~ this chapter; and

(iv) maintain a registry of the names and addresses of individuals who are currently licensed ~~[as state-licensed]~~ or certified as appraisers under this chapter.

~~[(b) The division shall:]~~

~~[(i) receive applications for certification as a state-certified general appraiser or state-certified residential appraiser under this chapter;]~~

~~[(ii) establish appropriate administrative procedures for the processing of certification applications;]~~

~~[(iii) issue certificates to qualified applicants pursuant to the provisions of this chapter; and]~~

~~[(iv) maintain a registry of the names and addresses of individuals who are currently registered, licensed, or certified under this chapter.]~~

(b) (i) The division shall require a trainee to notify the division that the trainee is acting in the capacity of a trainee earning experience for licensure.

(ii) The board shall adopt rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for the trainee notification required by this Subsection (1)(b).

(c) The division shall hold public hearings under the direction of the board.

(d) ~~[(i)]~~ The division ~~[shall, at its option,]~~ may:

(i) solicit bids and enter into contracts with one or more educational testing services or organizations for the preparation of a bank of questions and answers approved by the board for licensing and certification examinations; and

(ii) administer or contract for the administration of licensing and certification examinations as may be required to carry out ~~[its]~~ the division's responsibilities under this chapter.

(e) The division shall provide administrative assistance to the board by providing to the board the facilities, equipment, supplies, and personnel that are required to enable the board to carry out ~~[its]~~ the board's responsibilities under this chapter.

(f) The division shall assist the board in upgrading and improving the quality of the education and examinations required under this chapter.

(g) The division shall assist the board in improving the quality of the continuing education available to persons ~~[registered,]~~ licensed[;] and certified under this chapter.

(h) The division shall assist the board with respect to the proper interpretation or explanation of the Uniform Standards of Professional Appraisal Practice as required by Section 61-2b-27 when an interpretation or explanation becomes necessary in the enforcement of this chapter.

(i) The division shall ~~[collect all registration, licensing, and certification fees]~~ establish fees in accordance with Section 63-38-3.2:

(i) for processing:

(A) trainee notifications;

(B) applications for licensing and certification; and

(C) registration of expert witnesses; and

(ii) for all other functions required or permitted by this chapter.

(j) The division may:

(i) investigate complaints against:

(A) trainees; or

(B) persons ~~[registered,]~~ licensed[;] or certified under this chapter;

(ii) subpoena witnesses and the production of books, documents, records, and other papers;

(iii) administer oaths; and

(iv) take testimony and receive evidence concerning all matters within ~~[its]~~ the division's jurisdiction.

(k) The division may promote research and conduct studies relating to the profession of real estate appraising and sponsor real estate appraisal educational activities.

(l) The division shall adopt, with the concurrence of the board, rules for the administration of this chapter pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, that are not inconsistent with ~~[the provisions of]~~ this chapter or the constitution and laws of this state or of the United States.

(m) The division shall employ an appropriate staff to investigate allegations that persons ~~[registered,]~~ licensed~~;~~ or certified under this chapter failed to comply with ~~[the terms and provisions of]~~ this chapter.

(n) The division may employ such other professional, clerical, and technical staff as may be necessary to properly administer the work of the division under this chapter.

(o) The division may make available, at a reasonable cost determined by the division, a list of the names and addresses of all persons licensed or certified by the division under this chapter to the extent the information is a public record under Title 63, Chapter 2, Government Records Access and Management Act.

(2) (a) The division shall register expert witnesses who are not otherwise ~~[registered,]~~ licensed~~;~~ or certified under this chapter to appear in all administrative and judicial tax proceedings to provide evidence related to the valuation of real property that is assessed by the tax commission, provided that the:

- (i) registration is limited to a specific proceeding;
- (ii) registration is valid until the proceeding becomes final;
- (iii) applicant pays a registration fee to the division;
- (iv) applicant provides the applicant's name, address, occupation, and professional credentials; and
- (v) applicant provides a notarized statement that:
 - (A) the applicant is competent to render an appraisal and to testify as an expert witness in

the proceeding; and

(B) the appraisal and testimony to be offered shall be in accordance with the Uniform Standards of Professional Appraisal Practice adopted by the board.

(b) ~~[The provisions of]~~ Subsection (2)(a) shall be effective for all administrative and judicial property tax proceedings related to the valuation of real property that is assessed by the tax commission, including those filed but which are not final as of May 3, 1994.

(3) The division shall be immune from any civil action or criminal prosecution for initiating or assisting in any lawful investigation of the actions of or participating in any disciplinary proceeding concerning a trainee or a person ~~[registered,]~~ licensed, ~~[or] certified, or registered as an expert witness pursuant to this chapter if the action is taken without malicious intent and in the reasonable belief that the action was taken pursuant to the powers and duties vested in the members of the division under this chapter.~~

Section 10. Section **61-2b-7** is amended to read:

61-2b-7. Board established -- Composition -- Qualifications -- Meeting -- Chair -- Terms of office -- Expenses -- Quorum.

(1) (a) There is established a Real Estate Appraiser Licensing and Certification Board which shall consist of ~~[seven]~~ five regular members as follows:

(i) one state-licensed or state-certified appraiser who may be either a residential or general licensee or certificate holder;

(ii) ~~[three]~~ one state-certified ~~[appraisers]~~ residential appraiser;

(iii) one state-certified general appraiser;

(iv) one member who is certified as either a state-certified residential appraiser or a state-certified general appraiser; and

~~[(iii)]~~ (v) [two members] one member of the general public~~[-and]~~;

~~[(iv) the Commissioner of the Department of Financial Institutions or his designee.]~~

(b) The term of the longest serving general public member of the board as of May 2, 2005 terminates May 2, 2005.

(c) A state-licensed or state-certified appraiser may be appointed as an alternate member

of the board.

~~[(b) AH]~~ (d) The governor shall appoint all members of the board ~~[shall be appointed by the governor]~~ with the consent of the Senate.

(2) (a) Except as required by Subsection (2)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term beginning on July 1.

(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) Upon the expiration of ~~[his]~~ a member's term, a member of the board shall continue to hold office until the appointment and qualification of ~~[his]~~ the member's successor.

(d) ~~[No]~~ A person may not serve as a member of the board for more than two consecutive terms.

(3) (a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(b) The governor may remove a board member for cause.

(4) The public ~~[members]~~ member of the board may not be licensed or certified under this chapter.

(5) The board shall meet at least quarterly to conduct its business. Public notice shall be given for all board meetings.

(6) The members of the board shall elect a chair annually from among the members to preside at board meetings. ~~[A quorum of the board shall be four members.]~~

(7) (a) ~~[(i) Members]~~ A member who ~~[are]~~ is not a government ~~[employees]~~ employee shall receive no compensation or benefits for ~~[their]~~ the member's services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

~~[(ii) Members]~~ (b) A member may decline to receive per diem and expenses for ~~[their]~~ the member's service.

~~[(b) (i) State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the commission at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.]~~

~~[(ii) State government officer and employee members may decline to receive per diem and expenses for their service.]~~

(8) (a) Three members of the board shall constitute a quorum for the transaction of business.

(b) If a quorum of members is unavailable for any meeting, the alternate member of the board, if any, shall serve as a regular member of the board for that meeting if with the presence of the alternate member a quorum is present at the meeting.

Section 11. Section **61-2b-8** is amended to read:

61-2b-8. Duties of board.

The board shall provide technical assistance to the division relating to real estate appraisal standards and real estate appraiser qualifications and shall have the ~~[following]~~ responsibilities, powers, and duties~~[-]~~ listed in this section.

(1) The board shall:

(a) determine the experience, education, and examination requirements appropriate for persons ~~[registered or]~~ licensed under this chapter;

(b) determine the experience, education, and examination requirements appropriate for persons certified under this chapter in compliance with the minimum requirements of Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and consistent with the intent of this chapter; ~~[and]~~

(c) determine the appraisal related acts that may be performed by:

(i) a trainee on the basis of the trainee's education and experience;

(ii) clerical staff; and

(iii) a person who:

(A) does not hold a license or certification; and

(B) assists appraisers licensed or certified under this chapter in providing appraisal services or consultation services;

(d) determine the procedures for a trainee notifying the division that the trainee will assist persons licensed or certified under this chapter in providing appraisal services or consultation services; and

~~[(e)]~~ (e) develop programs to upgrade and improve the experience, education, and examinations as required under this chapter.

(2) (a) The experience, education, and examination requirements established by the board for persons licensed or certified under this chapter shall be the minimum criteria established by the Appraiser Qualification Board of the Appraisal Foundation, unless, after notice and a public hearing held in accordance with ~~[the provisions of]~~ Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the board ~~[has found]~~ finds that the minimum criteria are not appropriate for state-licensed appraisers or state-certified appraisers in this state ~~[in which case the board]~~.

(b) If under Subsection (2)(a) the board makes a finding that the minimum criteria are not appropriate, the board shall recommend appropriate criteria to the Legislature.

(3) The board shall:

(a) determine the continuing education requirements appropriate for the renewal of licenses and certifications issued under this chapter[;];

(b) develop programs to upgrade and improve continuing education[;]; and

(c) recommend to the division available continuing education courses that meet the requirements of this chapter.

(4) (a) The board shall consider the proper interpretation or explanation of the Uniform Standards of Professional Appraisal Practice as required by Section 61-2b-27 when:

(i) an interpretation or explanation becomes necessary in the enforcement of this chapter[; and when]; and

(ii) the Appraisal Standards Board of the Appraisal Foundation has not as yet issued an interpretation or explanation[; and].

(b) If the conditions of Subsection (4)(a) are met, the board shall recommend to the division the appropriate interpretation or explanation that the division should adopt as a rule under this chapter.

(5) The board shall develop and establish or approve the examination specifications and the minimum score required to pass the examinations for licensure and certification.

(6) The board shall review the:

(a) bank of questions and answers that comprise the examination for persons licensed and certified under this chapter;

(b) procedure that is established for selecting individual questions from the bank of questions for use in each scheduled examination; and

(c) questions in the bank of questions and the related answers to determine whether they meet the examination specifications established by the board.

(7) (a) The board shall conduct administrative hearings, not delegated by the board to an administrative law judge, in connection with all disciplinary proceedings under Sections 61-2b-30 and 61-2b-31 concerning [~~persons registered~~];

(i) a person licensed[;] or certified under this chapter; and [~~their~~]

(ii) the person's failure to comply with [~~the provisions of~~] this chapter and the Uniform Standards of Professional Appraisal Practice as adopted under Section 61-2b-27.

(b) The board shall issue in each administrative hearing a decision that contains findings of fact and conclusions of law.

(c) When a determination is made that a person [~~registered~~] licensed[;] or certified under this chapter has violated any provision of this chapter, the division shall implement disciplinary action determined by the board.

(8) The members of the board shall be immune from any civil action or criminal prosecution for any disciplinary proceeding concerning a person registered, licensed, or certified under this chapter if the action is taken without malicious intent and in the reasonable belief that the action taken was taken pursuant to the powers and duties vested in the members of the board under this chapter.

(9) The board shall require and pass upon proof necessary to determine the honesty, competency, integrity, and truthfulness of each applicant for original or renewal [~~registration,~~] licensure[;] or certification.

Section 12. Section **61-2b-9** is amended to read:

61-2b-9. Licensure or certification required -- Application.

[~~Any~~] Except as provided in Subsections 61-2b-3(2) and 61-2b-6(2), any individual who prepares or causes to be prepared an appraisal, an appraisal report, or a certified appraisal report in this state, in order to lawfully engage in such activity in this state, shall:

(1) make application in writing for [~~registration,~~] licensure[;] or certification as provided in this chapter in the form as the division may prescribe; and

(2) become [~~registered,~~] licensed[;] or certified under this chapter.

Section 13. Section **61-2b-10** is amended to read:

61-2b-10. State-licensed appraiser -- Authority and qualifications.

(1) A state-licensed appraiser is authorized to appraise complex and noncomplex 1-4 family residential units in this state having a transaction value permitted under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations.

(2) A state-licensed appraiser is [~~also~~] authorized to appraise vacant or unimproved land having a transaction value permitted under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations that is utilized for 1-4 family purposes or for which the highest and best use is 1-4 family purposes and subdivisions for which a development analysis/appraisal is not necessary.

(3) A state-licensed appraiser may not issue a certified appraisal report.

(4) To qualify as a state-licensed appraiser, an applicant must:

(a) be of good moral character;

(b) pass the licensing examination with a satisfactory score as determined by the board;

(c) successfully complete not less than [~~90~~] 150 classroom hours in courses of study

approved by the board that relate to:

(i) real estate appraisal;

- (ii) the Uniform Standards of Professional Appraisal Practice; and
- (iii) ethical rules to be observed by a real estate appraiser as required by Section 61-2b-27; and
- (d) possess the minimum number of hours of experience in real property appraisal as established by rule.

(5) The courses of study under Subsection (4)(c) shall be conducted by:

~~[(a) an accredited university, college, or junior college;]~~

~~[(b) an approved appraisal society, institute, or association; or]~~

~~[(c) such other school as the board may approve.]~~

(a) a college or university;

(b) a community or junior college;

(c) a real estate appraisal or real estate related organization;

(d) a state or federal agency or commission;

(e) a proprietary school;

(f) a provider approved by a state certification and licensing agency; or

(g) the Appraisal Foundation or its boards.

(6) The board shall require and pass upon proof necessary to determine the honesty, competency, integrity, and truthfulness of each applicant.

Section 14. Section **61-2b-14** is amended to read:

61-2b-14. State-certified residential appraiser -- Application.

(1) Each applicant for certification as a residential appraiser shall provide to the division evidence:

(a) of completion of the certification examination with a satisfactory score as determined by the board;

~~[(b) of satisfactory completion of not less than 120 classroom hours of education or their equivalent as required under this chapter;]~~

~~[(c) that the applicant possesses]~~

(b) (i) of an associate degree or higher degree from an accredited;

(A) college;

(B) junior college;

(C) community college; or

(D) university; or

(ii) of successfully passing a curriculum determined by rule of collegiate level subject matter courses from an accredited:

(A) college;

(B) junior college;

(C) community college; or

(D) university;

(c) of satisfactory completion of not less than 200 classroom hours in a curriculum:

(i) of specific appraisal education determined by rule made by the board; and

(ii) that includes a course in the Uniform Standards of Professional Practice or its equivalent that has been approved by the Appraisal Qualifications Board of the federal Appraisal Foundation authorized by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

(d) of the minimum number of hours of experience in real property appraisal as established by rule; and

~~[(d)]~~ (e) that the experience required under Subsection (1)~~[(e)]~~~~(d)~~, or the equivalent, was acquired within a reasonable period, as determined by ~~the board~~ rule, immediately preceding the filing of the application for certification.

(2) Upon request by the division, the applicant shall ~~also~~ make available to the division for examination~~;~~:

(a) a detailed listing of the real estate appraisal reports~~;~~ or file memoranda for each year for which experience is claimed [and a sample of appraisal reports which the applicant has prepared in the course of his appraisal practice.]; and

~~[(3) (a) To meet the 120 classroom hours required by Subsection (1)(b), an applicant must successfully complete courses of study approved by the board which relate to real estate~~

~~appraisal theory and practice, including a course of study approved by the board which relates specifically to the Uniform Standards of Professional Appraisal Practice adopted under Section 61-2b-27, to the ethical rules to be observed by a real estate appraiser, and to the provisions of this chapter.]~~

~~[(b) The courses of study referred to in Subsection (3)(a) must be conducted by:]~~

~~[(i) an accredited university, college, or junior college;]~~

~~[(ii) an approved appraisal society, institute, or association; or]~~

~~[(iii) such other school as may be approved by the board.]~~

(b) a sample selected by the division of appraisal reports that the applicant has prepared in the course of the applicant's appraisal practice.

(3) The classroom hours required by Subsection (1)(c) shall be provided by:

(a) a college or university;

(b) a community or junior college;

(c) a real estate appraisal or real estate related organization;

(d) a state or federal agency or commission;

(e) a proprietary school;

(f) a provider approved by a state certification and licensing agency; or

(g) the Appraisal Foundation or its boards.

Section 15. Section **61-2b-15** is amended to read:

61-2b-15. State-certified general appraiser -- Application -- Qualifications.

(1) Each applicant for certification as a general appraiser shall provide to the division evidence:

(a) of completion of the certification examination with a satisfactory score as determined by the board;

~~[(b) of satisfactory completion of not less than 180 classroom hours of education or their equivalent as required under this chapter;]~~

~~[(c) that the applicant possesses]~~

(b) (i) of a bachelors degree or higher degree from an accredited college or university; or

(ii) of successfully passing a curriculum determined by rule of collegiate level subject matter courses from an accredited:

(A) college;

(B) junior college;

(C) community college; or

(D) university;

(c) of satisfactory completion of not less than 300 classroom hours in a curriculum:

(i) of specific appraisal education determined by rule; and

(ii) that includes a course in the Uniform Standards of Professional Practice or its equivalent that has been approved by the Appraisal Qualifications Board of the Appraisal Foundation authorized by Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

(d) of the minimum number of hours of experience in real property appraisal as established by rule; and

~~[(d)]~~ (e) that the experience required under Subsection (1)~~[(e)]~~~~(d)~~, or the equivalent, was] is acquired within a reasonable period, as determined by ~~[the board]~~ rule, immediately preceding the filing of the application for certification.

~~[(2) To meet the 180 classroom hours required by Subsection (1)(b), an applicant must successfully complete courses of study approved by the board which relate to real estate appraisal theory and practice, including a course of study approved by the board which relates specifically to the Uniform Standards of Professional Appraisal Practice adopted under Section 61-2b-27, to the ethical rules to be observed by a real estate appraiser, and to the provisions of this chapter.]~~

(2) Upon request by the division, the applicant shall make available to the division for examination:

(a) a detailed listing of the real estate appraisal reports or file memoranda for each year for which experience is claimed; and

(b) a sample selected by the division of appraisal reports that the applicant has prepared in the course of the applicant's appraisal practice.

(3) The classroom hours required by Subsection (1)(c) shall be provided by:

- (a) a college or university;
- (b) a community or junior college;
- (c) a real estate appraisal or real estate related organization;
- (d) a state or federal agency or commission;
- (e) a proprietary school;
- (f) a provider approved by a state certification and licensing agency; or
- (g) the Appraisal Foundation or its boards.

Section 16. Section **61-2b-17** is amended to read:

61-2b-17. State-certified and state-licensed appraisers -- Restrictions on use of terms -- Conduct prohibited or required -- Trainee.

(1) (a) The terms "state-certified general appraiser," "state-certified residential appraiser," and "state-licensed appraiser[;]" [~~"state-registered appraiser," and "senior appraiser":~~]

(i) may only be used to refer to an individual who is certified[;] or licensed[; ~~or registered~~] under this chapter; and

(ii) may not be used following, or immediately in connection with, the name or signature of a firm, partnership, corporation, or group, or in any manner that it might be interpreted as referring to a firm, partnership, corporation, group, or to anyone other than the individual who is certified[; ~~registered;~~] or licensed under this chapter.

(b) [~~This~~] The requirement [~~shall~~] of this Subsection (1) may not be construed to prevent a state-certified general appraiser from signing an appraisal report on behalf of a corporation, partnership, firm, or group practice if it is clear that only the individual is certified and that the corporation, partnership, firm, or group practice is not certified.

(c) Except as provided in Section 61-2b-25, [~~no~~] a certificate[; ~~registration;~~] or license may not be issued under [~~the provisions of~~] this chapter to a corporation, partnership, firm, or group.

(2) (a) [~~No~~] A person other than a state-certified general appraiser or state-certified residential appraiser, may not assume or use any title, designation, or abbreviation likely to create

the impression of certification in this state as a real estate appraiser.

(b) ~~[No]~~ A person other than a state-licensed appraiser may not assume or use any title, designation, or abbreviation likely to create the impression of licensure in this state as a real estate appraiser.

(3) (a) Only an individual who has qualified under the certification requirements of Sections 61-2b-14 and 61-2b-15 is authorized to prepare and sign a certified appraisal report relating to real estate or real property in this state.

(b) If a certified appraisal report is prepared and signed by a state-certified residential appraiser, the certified appraisal report shall state, immediately following the signature on the report, "State-Certified Residential Appraiser."

(c) If a certified appraisal report is prepared and signed by a state-certified general appraiser, the certified appraisal report shall state, immediately following the signature on the report, "State-Certified General Appraiser."

(d) An appraisal report prepared by a state-licensed appraiser shall state, immediately following the signature on the report, "State-Licensed Appraiser."

(e) When signing a certified appraisal report, a state-certified appraiser shall also place on the report, immediately below ~~[his signature, a seal on the report showing his]~~ the state-certified appraiser's signature the state-certified appraiser's certificate number and its expiration date.

(f) A state-certified residential appraiser may not prepare a certified appraisal report outside ~~[his area of expertise]~~ the state-certified residential appraiser's authority as defined in Section 61-2b-13. ~~[However, a state-certified residential appraiser may prepare an appraisal report for any type property for which a state-licensed appraiser is authorized to appraise under Section 61-2b-10.]~~

(g) A state-licensed appraiser ~~[or state-registered appraiser]~~ who assisted in the preparation of a certified appraisal report is authorized to cosign the certified appraisal report.

(4) A person who has not qualified under either Section 61-2b-14 or 61-2b-15 may not describe or refer to any appraisal or appraisal report relating to real estate or real property in this

state by the terms "certified appraisal" or "certified appraisal report."

(5) If a trainee assists a state-licensed appraiser or a state-certified appraiser in the preparation of an appraisal report, the appraisal report shall disclose:

- (a) the trainee's name; and
- (b) the extent to which the trainee assists in the preparation of the appraisal report.

Section 17. Section **61-2b-18** is amended to read:

61-2b-18. Application for certification or licensure -- Registration as an expert witness.

(1) ~~[Applications for]~~ An application for the following shall be sent to the division on forms approved by the division:

- (a) original certification[;] or licensure;
- (b) registration as an expert witness[; or licensure]; and
- (c) renewal of certification[; registration,] or licensure [shall be sent to the division on forms approved by the division].

(2) The payment of the appropriate fee, as fixed by the division with the concurrence of the board in accordance with Section 63-38-3.2, must accompany ~~[all applications]~~ an application for:

- (a) registration as an expert witness;
- (b) original certification[; registration as an expert witness,] or licensure; and
- (c) renewal of certification[; registration,] or licensure.

(3) ~~[(a)]~~ At the time of filing an application ~~[for original certification, registration as an expert witness, or licensure or for renewal of certification, registration, or licensure,]~~ described in Subsection (1), each applicant shall:

(a) sign a pledge to comply with the Uniform Standards of Professional Appraisal Practice and the ethical rules to be observed by an appraiser that are established under Section 61-2b-27 for certified[; registered,] or licensed appraisers or registered expert witnesses under this chapter[;]; and

- (b) ~~[Each applicant shall also]~~ certify that ~~[he]~~ the applicant understands the types of

misconduct, as set forth in this chapter, for which disciplinary proceedings may be initiated against persons certified[~~;~~registered~~;~~] or licensed under this chapter.

Section 18. Section **61-2b-19** is amended to read:

61-2b-19. Expiration of license or certification.

(1) The initial [~~registration;~~] license[~~;~~] or certification issued under this chapter expires on the expiration date indicated on the [~~registration;~~] license[~~;~~] or certificate.

(2) A renewal [~~registration;~~] license[~~;~~] or certification issued under this chapter expires two years from the date of issuance [~~except as provided in Section 61-2b-10.5~~].

(3) The scheduled expiration date of the [~~registration;~~] license[~~;~~] or certification shall appear on the [~~registration;~~] license[~~;~~] or certification document and no other notice of its expiration need be given to its holder.

Section 19. Section **61-2b-20** is amended to read:

61-2b-20. Renewal of license or certification.

(1) To obtain a renewal of a [~~registration;~~] license[~~;~~] or certification under this chapter, the holder of a current, valid [~~registration;~~] license[~~;~~] or certification shall, in compliance with procedures established by the division and the board, make application and pay the prescribed fee to the division prior to the expiration date of the [~~registration;~~] license[~~;~~] or certification then held.

(2) The application for renewal of a [~~registration;~~] license[~~;~~] or certification shall be accompanied by evidence in the form prescribed by the division of having completed the continuing education requirements for renewal specified in this chapter.

(3) A [~~registration;~~] license[~~;~~] or certification expires if it is not renewed on or before its expiration date.

(a) For a period of 30 days after the expiration date, a [~~registration;~~] license[~~;~~] or certification may be reinstated upon:

(i) payment of a renewal fee and a late fee determined by the division and the board [~~in addition to~~]; and

(ii) satisfying the continuing education requirements specified in Section 61-2b-40.

(b) After the 30-day period described in Subsection (3)(a), and until six months after the expiration date, the ~~[registration,]~~ license[;] or certification may be reinstated by:

(i) paying a renewal fee and a reinstatement fee determined by the division and the board ~~[in addition to];~~ and

(ii) satisfying the continuing education requirements specified in Section 61-2b-40.

(4) A person who does not renew ~~[his registration,]~~ that person's license[;] or certification within six months after the expiration date shall be relicensed or recertified as prescribed for an original application.

Section 20. Section **61-2b-21** is amended to read:

61-2b-21. Denial of licensure or certification.

The division may, upon compliance with ~~[the provisions of]~~ Title 63, Chapter 46b, Administrative Procedures Act, deny the issuance of a ~~[registration,]~~ license[;] or certification to an applicant on any of the grounds enumerated in this chapter.

Section 21. Section **61-2b-22** is amended to read:

61-2b-22. Licensing, certification, or expert witness requirements for nonresidents -- Temporary license or certificate -- Revocation.

(1) Each applicant for registration as an expert witness, licensure, or certification under this chapter who is not a resident of this state shall submit with ~~[his]~~ the applicant's application an irrevocable consent that service of process upon ~~[him]~~ the applicant may be made by delivery of the process to the director of the division if, in an action against the applicant in a court of this state arising out of the applicant's activities as a real estate appraiser in this state, the plaintiff cannot, in the exercise of due diligence, obtain personal service upon the applicant.

(2) A nonresident of this state who has complied with the provisions of Subsection (1) may obtain a registration[;] as an expert witness, a license, or a certification in this state by complying with all of the provisions of this chapter relating to registration of expert witnesses, licensure, or certification.

(3) A nonresident of this state who has complied with the provisions of Subsection (1) may obtain a temporary license or certification to perform a contract relating to the appraisal of

real estate or real property in this state. To qualify for the issuance of a temporary license or certification, an applicant must:

- (a) submit an application on a form approved by the division;
- (b) submit evidence that ~~he~~ the applicant is licensed or certified in the state in which ~~he~~ the applicant primarily conducts business;
- (c) certify that no formal charges alleging violation of state appraisal licensing or certification laws have been filed against the applicant by the applicant's state of domicile; and
- (d) pay an application fee in an amount established by the division with the concurrence of the board.

(4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division, with the concurrence of the board, shall make rules establishing the duration of a temporary permit and procedures for renewal of a temporary permit.

(5) A temporary permit issued under this section shall be immediately and automatically revoked if the appraiser's license or certification is suspended or revoked in the appraiser's state of domicile.

(6) Any person whose license or certification has been revoked under Subsection (5) is entitled to a postrevocation hearing to challenge the revocation. The hearing shall be conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

Section 22. Section **61-2b-24** is amended to read:

61-2b-24. Expert witness, licensing, or certification documents -- Assigned number to be used on contracts -- Surrender of documents upon suspension.

(1) The division shall issue to each person registered ~~as an expert witness~~, licensed, or certified under this chapter a document:

(a) stating that the person ~~has been~~ is registered ~~as an expert witness~~, licensed, or certified under this chapter; and

(b) specifying the expiration date of the ~~registration,~~ license~~;~~ or certification.

(2) (a) A registration~~;~~ as an expert witness, a license, or a certification document issued under this chapter shall bear a registration, license, or certification number assigned by the

division.

(b) The assigned number shall be used in all statements of qualification, contracts, or other instruments used by the registration, license, or certificate holder when reference is made to his status as being registered, licensed, or certified under this chapter.

(3) ~~(a) [Registration, licensing, and certification]~~ Licensing, certification, and expert witness registration documents remain the property of the state.

~~(b)~~ Upon any suspension or revocation of a ~~[registration,]~~ license~~;~~ or certification under this chapter, the individual holding the respective documents shall immediately return the document to the division~~;~~ ~~together with any stamps or seals used for certified appraisal reports~~.

~~[(4) The division shall maintain and keep open for public inspection during office hours a complete and properly indexed record of all registration, licensing, and certification documents issued, registrations, licenses, and certifications renewed, and registrations, licenses, and certifications revoked, cancelled, or suspended under the provisions of this chapter. A copy of any such record shall be made available to the public, upon application to the division, at a price per copy as fixed by the division.]~~

Section 23. Section **61-2b-26** is amended to read:

61-2b-26. Principal place of business -- Display of documents -- Notify of changes -- Nonresidents.

(1) Each person ~~[registered,]~~ licensed~~;~~ or certified under this chapter shall designate and maintain a principal place of business and shall conspicuously display ~~[his registration,]~~ the person's license~~;~~ or certification.

(2) ~~(a)~~ Upon any change of ~~[his]~~ a person's principal business location or home address, a person ~~[registered,]~~ licensed~~;~~ or certified under this chapter shall promptly send the division a signed statement notifying the division of any change within ten business days of the change.

~~(b)~~ Upon any change of an expert witness's address listed on the expert witness's registration application, the expert witness shall promptly send the division a signed statement notifying the division of any change within ten business days of the change.

(3) A nonresident ~~[registrant, licensee, or certificate holder]~~ licensee or certificate holder,

or a nonresident registered as an expert witness is not required to maintain a place of business in this state if ~~he~~ the nonresident maintains an active place of business in ~~his~~ the nonresident's state of domicile.

Section 24. Section **61-2b-27** is amended to read:

61-2b-27. Professional conduct -- Uniform standards.

(1) (a) Each person ~~registered,~~ licensed, ~~or~~ certified, or registered as an expert witness under this chapter must comply with generally accepted standards of professional appraisal practice and generally accepted ethical rules to be observed by a real estate appraiser.

(b) Generally accepted standards of professional appraisal practice are ~~currently~~ evidenced by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Foundation.

(c) After a public hearing held in accordance with ~~the provisions of~~ Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the board shall adopt and may make modifications of or additions to the Uniform Standards of Professional Appraisal Practice as the board considers appropriate to comply with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(2) If the Appraisal Standards Board of the Appraisal Foundation modifies the Uniform Standards of Professional Appraisal Practice, issues supplemental appraisal standards which it considers appropriate for residential real estate appraisers or for general real estate appraisers, or issues ethical rules to be observed by a real estate appraiser and requests the board to consider the adoption of the modified or supplemental standards or ethical rules, the board shall schedule a public hearing pursuant to ~~the provisions of~~ Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for the purpose of deciding whether or not ~~it~~ the board should require the modified or supplemental standards or the ethical rules to be observed by persons ~~registered,~~ licensed, ~~or~~ certified, or registered as an expert witness under this chapter.

(3) If, after the notice and public hearing, the board finds that the modified or supplemental standards or the ethical rules issued by the Appraisal Standards Board of the Appraisal Foundation are appropriate for persons ~~registered,~~ licensed, ~~or~~ certified, or

registered as an expert witness under this chapter, the board shall recommend rules requiring all persons [~~registered,~~] licensed, [~~or~~] certified, or registered as an expert witness under this chapter to observe the modified or supplemental standards or the ethical rules.

~~[(4) A copy of each such rule adopted by the division shall be sent to the business address of each person currently registered, licensed, or certified under this chapter.]~~

Section 25. Section **61-2b-28** is amended to read:

61-2b-28. Enforcement -- Investigation -- Orders -- Hearings.

(1) The division may investigate the actions of any person [~~registered,~~] licensed[;] or certified under this chapter, [~~or~~] an applicant for [~~registration,~~] licensure[;] or certification, or an applicant for renewal of licensure or certification, and may initiate an agency action in accordance with Title 63, Chapter 46b, Administrative Procedures Act, to:

(a) impose disciplinary action on a person [~~registered,~~] licensed[;] or certified under this chapter; or [~~to~~]

(b) deny issuance to an applicant of an original or renewal [~~registration,~~] license[;] or certification.

(2) (a) The division may subpoena witnesses, take evidence, and require by subpoena duces tecum the production of books, papers, contracts, records, other documents, or information relevant to the investigation described in Subsection (1).

(b) The division may serve subpoenas by certified mail.

(c) Each failure to respond to a subpoena by a person [~~registered,~~] licensed[;] or certified under this chapter is considered to be a separate violation of this chapter.

(3) (a) If the director has reason to believe that any person has been or is engaging in acts constituting violations of this chapter, and if it appears to the director that it would be in the public interest to stop these acts, [~~he~~] the director shall issue and serve upon the person an order directing that person to cease and desist from those acts.

(b) Within ten days after receiving the order, the person upon whom the order is served may request an adjudicative proceeding.

(c) Pending the hearing, the 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 63, Chapter 46b, Administrative Procedures Act.

(4) (a) After the hearing, if the board agrees that the acts of the person violate this chapter, the board shall issue an order making the cease and desist order permanent.

(b) If no hearing is requested and if the person fails to cease the acts, or after discontinuing the acts, again commences the acts, 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 the acts occurred or where the person resides or carries on business, to enjoin and restrain the person from violating this chapter.

(5) The remedies and action provided in this section do not limit, interfere with, or prevent the prosecution of any other remedies or actions including criminal proceedings.

Section 26. Section **61-2b-29** is amended to read:

61-2b-29. Disciplinary action -- Grounds.

(1) The board may order disciplinary action against any person [~~registered,~~] licensed[;] or certified under this chapter. [~~Board~~] On the basis of any of the grounds listed in Subsection (2) for disciplinary action, board action may include:

(a) revoking, suspending, or placing a person's [~~registration,~~] license[;] or certification on probation[;];

(b) denying a person's original or renewal [~~registration,~~] license[;] or certification[;];

(c) ordering remedial education[;]; and

(d) imposing a civil penalty upon a person not to exceed \$1,000 per violation [~~based on any of the following grounds for disciplinary action:~~].

~~[(1)]~~ (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 by fraud or by making a false statement, submitting false information, or making a material misrepresentation in an application filed with the division;

~~[(2)]~~ (b) paying money or attempting to pay money other than the fees provided for by this chapter to any member or employee of the division to procure a [~~registration,~~] license[;] or

certification under this chapter;

~~[(3)]~~ (c) an act or omission in the practice of real estate appraising ~~[which]~~ that constitutes dishonesty, fraud, or misrepresentation;

~~[(4)]~~ (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;

~~[(5)]~~ (e) a guilty plea to a criminal offense involving moral turpitude ~~[which]~~ 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;

~~[(6)]~~ (f) engaging in the business of real estate appraising under an assumed or fictitious name not properly registered in this state;

~~[(7)]~~ (g) paying a finder's fee or a referral fee to a person not ~~[registered,]~~ licensed~~;~~ or certified under this chapter in connection with an appraisal of real estate or real property in this state;

~~[(8)]~~ (h) making a false or misleading statement in that portion of a written appraisal report that deals with professional qualifications or in any testimony concerning professional qualifications;

~~[(9)]~~ (i) violating or disregarding any provision of this chapter, an order of the board, or any rule issued under this chapter;

~~[(10)]~~ (j) violation of 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;

~~[(11)]~~ (k) acceptance of a contingent fee for performing an appraisal as defined in Subsection 61-2b-2(1)~~(a)~~ if in fact the fee is or was contingent upon the appraiser reporting a predetermined analysis, opinion, or conclusion or is or was contingent upon the analysis, opinion, conclusion, or valuation reached or upon the consequences resulting from the appraisal assignment;

~~[(12)]~~ (l) unprofessional conduct as defined by statute or rule; or

~~[(13)]~~ (m) any other conduct ~~[which]~~ that constitutes dishonest dealing.

Section 27. Section **61-2b-30.5** is amended to read:

61-2b-30.5. Reinstatement of license, certification -- Expert witness -- Trainee.

(1) An individual who has had an appraiser registration, license, or certification revoked under this chapter may not apply for renewal of that registration, license, or certification, but may apply for licensure or certification as prescribed for an original license or certification subject to the limitations in Subsection (2).

(2) An applicant for licensure, certification, or for registration as an expert witness under Subsection (1):

(a) may not apply for licensure or certification until at least five years after the date of revocation of the applicant's original [~~registration,~~] license[;] or certification; and

(b) is not entitled to credit for experience gained prior to the date of revocation in determining whether the applicant meets the experience requirement for licensure or certification.

(3) A person whose license or certification is revoked may not act as a trainee until at least four years after the day on which the person's license or certification is revoked.

Section 28. Section **61-2b-31** is amended to read:

61-2b-31. Disciplinary hearing process.

(1) Before disciplinary action may be taken by the board against a [~~registrant,~~] licensee[;] or certificate holder, the division shall notify the [~~registrant,~~] licensee[;] or certificate holder and commence an adjudicative proceeding.

(2) If, after the hearing, the board determines that the [~~registrant,~~] licensee[;] or certificate holder has violated this chapter, the board may impose disciplinary action by written order as provided in Section 61-2b-29.

(3) The board may conduct hearings with the assistance of an administrative law judge or may delegate hearings to an administrative law judge. If the hearing is delegated by the board to an administrative law judge, the judge shall submit written findings of fact, conclusions of law, and a recommended order to the board for its consideration.

(4) (a) Any applicant, [~~registrant,~~] licensee, certificate holder, or person aggrieved,

including the complainant, may obtain judicial review of any adverse ruling, order, or decision of the board. Any appeal shall be governed by the Utah Rules of Appellate Procedure.

(b) If the applicant, [~~registrant,~~] licensee, or certificate holder 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, [~~registrant,~~] licensee, or certificate holder as provided under Title 78, Chapter 27a, Small Business Equal Access to Justice Act.

Section 29. Section **61-2b-33** is amended to read:

61-2b-33. Criminal penalty -- Licensure or certification following conviction.

(1) Any person required by this chapter to be [~~registered,~~] licensed[;] or certified who engages in real estate appraisal activity in this state without obtaining a [~~registration,~~] license[;] or certification or who violates any provision of this chapter:

(a) is guilty of a class B misdemeanor punishable by a \$1,000 fine and up to six months in jail; and

(b) shall be ineligible to apply for a [~~registration,~~] license[;] or certificate for a period of one year from the date of [~~his~~] the person's conviction of the offense.

(2) The division, in its discretion, may grant a [~~registration,~~] license[;] or certification to a person ineligible pursuant to Subsection (1) within the one-year period upon application and after an administrative hearing.

Section 30. Section **61-2b-34** is amended to read:

61-2b-34. Recordkeeping requirements.

(1) [~~All persons registered,~~] Subject to Subsection (2), a person licensed[;] or certified under this chapter and a person required to be registered under this chapter before May 3, 2001, shall retain for a period of five years the original or a true copy of:

(a) each written contract engaging [~~his~~] the person's services for real estate or real property appraisal work;

(b) each appraisal report prepared or signed by [~~him~~] the person; and

(c) all supporting data assembled and formulated by the appraiser in preparing each appraisal report.

(2) The five-year period for retention of records is applicable to each engagement of the services of the appraiser and begins upon the date of the delivery of each appraisal report to the client unless, within the five-year period, the appraiser is notified that the appraisal or the appraisal report is involved in litigation, in which event the records must be maintained for the longer of:

(a) five years[;]; or

(b) two years following the date of the final disposition of the litigation[~~, whichever is longer~~].

(3) Upon reasonable notice, [~~all persons registered;~~] a person licensed[;] or certified under this chapter and a person required to be registered under this chapter before May 3, 2001, shall make all records required to be maintained under this chapter available to the division for inspection and copying.

Section 31. Section **61-2b-36** is amended to read:

61-2b-36. Contingent fees.

(1) A person [~~registered;~~] licensed[;] or certified under this chapter who enters into an agreement to perform an appraisal as defined in Subsection 61-2b-2(1)(a) may not accept a contingent fee.

(2) A person [~~registered;~~] licensed[;] or certified under this chapter who enters into an agreement to provide consultation services as defined in Subsection 61-2b-2[~~(6)(a)(i)~~](1)(f)(i)(A) may be paid a fixed fee or a contingent fee.

(3) (a) If a person [~~registered;~~] licensed[;] or certified under this chapter enters into an agreement to perform consultation services for a contingent fee, this fact shall be clearly stated in each oral statement.

(b) In addition to the requirements of Subsection (3)(a), if a person [~~registered;~~] licensed[;] or certified under this chapter prepares a written consultation report or summary, letter of transmittal, or certification statement for a contingent fee, the person shall clearly state in the report, summary, letter of transmittal, or certification statement that the report is prepared under a contingent fee arrangement.

Section 32. Section **61-2b-38** is amended to read:

61-2b-38. Division to publish roster of appraisers.

The division shall prepare and issue at least once each calendar year a roster of appraisers containing the information required by the Federal Financial Institutions Examination Council. ~~[A copy of the roster shall be made available to the public, upon application to the division, at a reasonable price per copy, as determined by the division.]~~ The division shall transmit the roster to the Federal Financial Institutions Examinations Council at least annually.

Section 33. Section **61-2b-39** is amended to read:

61-2b-39. License or certification history.

The division may, upon payment of a fee in an amount specified in rule, issue to any person a verified license history ~~[to]~~ of:

- (1) any person ~~[registered,]~~ licensed~~;~~ or certified under this chapter~~;~~ or
- (2) any person previously registered, licensed, or certified under this chapter.

Section 34. Section **61-2b-40** is amended to read:

61-2b-40. Continuing education requirements.

(1) As a prerequisite to renewal of a ~~[registration,]~~ license~~;~~ or certification, the applicant for renewal shall present evidence satisfactory to the division of having met the continuing education requirements of this section.

(2) For any person ~~[registered,]~~ licensed~~;~~ or certified under this chapter, the continuing education requirement for renewal of ~~[registration,]~~ licensure~~;~~ or certification shall be the completion by the applicant, during the two-year period immediately preceding the filing of an application for renewal, of not less than 28 classroom hours of instruction in courses or seminars that have received the approval of the board.

(3) The division may adopt rules for the implementation of ~~[the provisions of]~~ this section to assure that each person renewing ~~[his registration,]~~ that person's license~~;~~ or certification under this chapter has a working knowledge of current real estate appraisal theories, practices, and techniques that will enable the person to provide competent real estate appraisal services to the members of the public with whom that person deals in a professional relationship

under the authority of that person's [~~registration,~~] license[;] or certificate.

(4) An amendment or repeal of a rule adopted by the division under this section shall not operate to deprive a person of credit toward renewal of that person's [~~registration,~~] license[;] or certification for any course of instruction that is successfully completed by the applicant prior to the date of the amendment or repeal of the rule.

(5) In lieu of meeting the requirements set forth in Subsection (2) and applicable rules, an applicant for renewal may satisfy all or part of the continuing education requirements by presenting evidence of the following:

(a) completion of an educational program of study determined by the board to be equivalent, for continuing education purposes, to courses or seminars approved by the board; or

(b) participation other than as a student in educational processes and programs approved by the board that relate to real property appraisal theory, practices, or techniques including teaching, program development, and preparation of textbooks, monographs, articles, and other instructional materials.

(6) The board shall develop and propose to the division rules for the implementation of [~~the provisions of~~] this section to assure that a person who renews [~~his registration,~~] that person's license[;] or certification has a working knowledge of current real estate appraisal theories, practices, and techniques that will enable the person to provide competent real estate appraisal services to the members of the public with whom that person deals in a professional relationship under the authority of that person's [~~registration,~~] license[;] or certification. These rules shall prescribe:

(a) policies and procedures to be followed in obtaining board approval of courses of instruction and seminars;

(b) standards, policies, and procedures to be used by the division in evaluating an applicant's claims of equivalency; and

(c) standards, monitoring methods, and systems for recording attendance to be employed by course and seminar sponsors as a prerequisite to division approval of courses and seminars for credit.

(7) (a) A person whose [~~registration,~~] license[;] or certification has been revoked or suspended as the result of a disciplinary action taken by the board may not apply for reinstatement unless the person presents evidence of completion of the continuing education requirement that is provided in this chapter for renewal.

(b) The continuing education required under Subsection (7)(a) shall not be imposed upon an applicant for reinstatement who has been required by the division to successfully complete the examination for licensure or certification required by Section 61-2b-20 as a condition to reinstatement.

Section 35. Section **61-2c-102** is amended to read:

61-2c-102. Definitions.

(1) As used in this chapter:

~~[(1)]~~ (a) "Affiliate" means an individual or an entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified individual or entity.

~~[(2)]~~ (b) "Applicant" means an individual or entity applying for a license under this chapter.

~~[(3)]~~ (c) "Associate lending manager" means a person who:

~~[(a)]~~ (i) has qualified under this chapter as a principal lending manager; and

~~[(b)]~~ (ii) works by or on behalf of another principal lending manager in transacting the business of residential mortgage loans.

~~[(4)]~~ (d) "Branch office" means a licensed entity's office:

~~[(a)]~~ (i) for the transaction of the business of residential mortgage loans regulated under this chapter; and

~~[(b)]~~ (ii) other than the main office of the licensed entity.

~~[(5)]~~ ~~[(a)]~~ (e) (i) "Business of residential mortgage loans" means for compensation to:

~~[(i)]~~ (A) make or originate a residential mortgage loan;

~~[(ii)]~~ (B) directly or indirectly solicit, place, or negotiate a residential mortgage loan for another; or

~~[(iii)]~~ (C) render services related to the origination ~~[or funding]~~ of a residential mortgage loan including:

~~[(A)]~~ (I) taking applications; and

~~[(B)]~~ (II) communicating with the borrower and lender.

~~[(b)]~~ (ii) "Business of residential mortgage loans" does not include:

~~[(i)]~~ (A) the performance of clerical functions such as:

~~[(A)]~~ (I) gathering information related to a residential mortgage loan on behalf of the prospective borrower or a person licensed under this chapter; or

~~[(B)]~~ (II) requesting or gathering information, word processing, sending correspondence, or assembling files by an individual who works under the instruction of a person licensed under this chapter; ~~[or]~~

~~[(i)]~~ (B) ownership of an entity that engages in the business of residential mortgage loans if the owner does not personally perform the acts listed in Subsection ~~[(5)(a):]~~ (1)(e)(i);

(C) acting as a loan wholesaler;

(D) acting as an account executive for a loan wholesaler;

(E) acting as a loan underwriter;

(F) acting as a loan closer; or

(G) funding a loan.

~~[(6)]~~ (f) "Closed-end" means a loan with a fixed amount borrowed and which does not permit additional borrowing secured by the same collateral.

~~[(7)]~~ (g) "Commission" means the Residential Mortgage Regulatory Commission created in Section 61-2c-104.

~~[(8)]~~ (h) "Compensation" means anything of economic value that is paid, loaned, granted, given, donated, or transferred to an individual or entity for or in consideration of:

~~[(a)]~~ (i) services;

~~[(b)]~~ (ii) personal or real property; or

~~[(c)]~~ (iii) other thing of value.

(i) "Control," as used in Subsection (1)(a), means the power to directly or indirectly:

(i) direct or exercise a controlling interest over:

(A) the management or policies of an entity; or

(B) the election of a majority of the directors, officers, managers, or managing partners of an entity;

(ii) vote 20% or more of any class of voting securities of an entity by an individual; or

(iii) vote more than 5% of any class of voting securities of any entity by another entity.

~~(9)~~ (j) "Control person" means an individual who is designated by an entity as the individual who directly manages or controls the entity's transaction of the business of residential mortgage loans secured by Utah dwellings.

~~(10)~~ (k) "Depository institution" is as defined in Section 7-1-103.

~~(11)~~ (l) "Director" means the director of the division.

~~(12)~~ (m) "Division" means the Division of Real Estate.

~~(13)~~ (n) "Dwelling" means a residential structure attached to real property that contains one to four units including any of the following if used as a residence:

~~(a)~~ (i) a condominium unit;

~~(b)~~ (ii) a cooperative unit;

~~(c)~~ (iii) a manufactured home; or

~~(d)~~ (iv) a house.

~~(14)~~ (o) "Entity" means any corporation, limited liability company, partnership, company, association, joint venture, business trust, trust, or other organization.

~~(15)~~ (p) "Executive director" means the executive director of the Department of Commerce.

~~(16)~~ (q) "Inactive status" means a dormant status into which an unexpired license is placed when the holder of the license is not currently engaging in the business of residential mortgage loans.

~~(17)~~ (r) "Lending manager" or "principal lending manager" means a person licensed as a principal lending manager under Section 61-2c-206.

~~(18)~~ (s) "Licensee" means an individual or entity licensed with the division under this

chapter.

~~[(19)(a)]~~ (t)(i) Except as provided in Subsection ~~[(19)(b)]~~ (1)(t)(ii), "mortgage officer" means an individual who is licensed with the division to transact the business of residential mortgage loans through a principal lending manager.

~~[(b)]~~ (ii) "Mortgage officer" does not include a principal lending manager.

~~[(20)]~~ (u) "Record" means information that is:

~~[(a)]~~ (i) prepared, owned, received, or retained by an individual or entity; and

~~[(b)(i)]~~ (ii)(A) inscribed on a tangible medium; or

~~[(ii)(A)]~~ (B)(I) stored in an electronic or other medium; and

~~[(B)]~~ (II) retrievable in perceivable form.

(v) "Registration" means the permission to engage in the business of residential mortgage loans issued by the division before January 1, 2004.

~~[(21)]~~ (w) "Residential mortgage loan" means a closed-end, first mortgage loan or extension of credit, if:

~~[(a)]~~ (i) the loan or extension of credit is secured by a:

~~[(i)]~~ (A) mortgage;

~~[(ii)]~~ (B) deed of trust; or

~~[(iii)]~~ (C) lien interest; and

~~[(b)]~~ (ii) the mortgage, deed of trust, or lien interest described in Subsection ~~[(21)(a)]~~

(1)(w)(i):

~~[(i)]~~ (A) is on a dwelling located in the state; and

~~[(ii)]~~ (B) created with the consent of the owner of the residential real property.

~~[(22)]~~ (x) "State" means:

~~[(a)]~~ (i) a state, territory, or possession of the United States;

~~[(b)]~~ (ii) the District of Columbia; or

~~[(c)]~~ (iii) the Commonwealth of Puerto Rico.

(2) (a) If a term not defined in this section is defined by rule, the term shall have the meaning established by the division by rule made in accordance with Title 63, Chapter 46a, Utah

Administrative Rulemaking Act.

(b) If a term not defined in this section is not defined by rule, the term shall have the meaning commonly accepted in the business community.

Section 36. Section **61-2c-103** is amended to read:

61-2c-103. Powers and duties of the division.

- (1) The division shall administer this chapter.
- (2) In addition to any power or duty expressly provided in this chapter, the division may:
 - (a) receive and act on complaints including:
 - (i) taking action designed to obtain voluntary compliance with this chapter; or
 - (ii) commencing administrative or judicial proceedings on the division's own initiative;
 - (b) establish programs for the education of consumers with respect to residential mortgage loans;
 - (c) (i) make studies appropriate to effectuate the purposes and policies of this chapter;
and
(ii) make the results of the studies described in Subsection (2)(c)(i) available to the public;
 - (d) visit and investigate an entity licensed under this chapter, regardless of whether the entity is located in Utah; and
 - (e) employ any necessary hearing examiners, investigators, clerks, and other employees and agents.
- (3) The division shall make rules for the administration of this chapter in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, including:
 - (a) licensure procedures for:
 - (i) individuals and entities required by this chapter to obtain a license with the division;
and
(ii) the establishment of a branch office by an entity;
 - (b) proper handling of funds received by licensees;
 - (c) record-keeping requirements by licensees; and

(d) standards of conduct for licensees.

(4) ~~[(a)]~~ The division ~~[shall]~~ may make available to the public a list of the names and mailing addresses of all licensees~~[-]~~:

(a) either directly or through a third party; and

(b) at a reasonable cost.

~~[(b) The division may charge a fee established by the division in accordance with Section 63-38-3.2 for obtaining the list described in Subsection (4)(a).]~~

(5) The division shall:

(a) certify education providers who offer:

(i) prelicensing education to candidates for licensure under this chapter; or

(ii) continuing education to individuals licensed under this chapter; and

(b) make available to the public, licensees, and candidates for licensure a list of the names and addresses of all education providers certified under this Subsection (5).

(6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division shall make rules establishing:

(a) certification criteria and procedures for providers of prelicensing education and continuing education; and

(b) standards of conduct for certified education providers.

(7) The division may charge a fee established in accordance with Section 63-38-3.2 for processing any of the changes that a licensee is required by Section 61-2c-205 to report to the division.

Section 37. Section **61-2c-104** is amended to read:

61-2c-104. Residential Mortgage Regulatory Commission.

(1) (a) There is created within the division the Residential Mortgage Regulatory Commission consisting of~~[-(a)]~~ the following members appointed by the executive director with the approval of the governor:

(i) ~~[three]~~ four members having at least three years of experience in transacting the business of residential mortgage loans and who are currently licensed under this chapter; and

(ii) one member from the general public~~;~~ and].

~~[(b) the commissioner of the Department of Financial Institutions or the commissioner's designee.]~~

(b) (i) The executive director with the approval of the governor may appoint an alternate member to the board.

(ii) The alternate member shall:

(A) at the time of the appointment, have at least three years of experience in transacting the business of residential mortgage loans; and

(B) be licensed under this chapter at the time of and during appointment.

(2) (a) Except as required by Subsection (2)(b), the executive director shall appoint each new member or reappointed member subject to appointment by the executive director to a four-year term ending June 30.

(b) Notwithstanding the requirements of Subsection (2)(a), the executive director 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) If a vacancy occurs in the membership of the commission for any reason, the replacement shall be appointed for the unexpired term.

(3) Members of the commission shall annually select one member to serve as chair.

(4) (a) The commission shall meet at least quarterly.

(b) The director may call a meeting in addition to the meetings required by Subsection (4)(a):

(i) at the discretion of the director;

(ii) at the request of the chair of the commission; or

(iii) at the written request of three or more commission members.

(5) (a) Three members of the commission constitute a quorum for the transaction of business.

(b) If a quorum of members is unavailable for any meeting and an alternate member has

been appointed to the commission by the executive director with the approval of the governor, the alternate member shall serve as a regular member of the commission for that meeting if with the presence of the alternate member there is a quorum present at the meeting.

~~[(b)]~~ (c) The action of a majority of a quorum present is an action of the commission.

(6) (a) (i) ~~[Members]~~ A member who ~~[are]~~ is not a government ~~[employees]~~ employee shall receive no compensation or benefits for ~~[their]~~ the member's services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) ~~[Members]~~ A member who ~~[are]~~ is not a government ~~[employees]~~ employee may decline to receive per diem and expenses for ~~[their]~~ the member's service.

(b) (i) ~~[State]~~ A state government officer and employee ~~[members]~~ member who ~~[do]~~ does not receive salary, per diem, or expenses from ~~[their]~~ the member's agency for ~~[their]~~ the member's service may receive per diem and expenses incurred in the performance of ~~[their]~~ the member's official duties from the commission at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) ~~[State]~~ A state government officer and employee ~~[members]~~ member may decline to receive per diem and expenses for ~~[their]~~ the member's service.

(7) The commission shall:

(a) except as provided in Subsection 61-2c-202(2), concur in the licensure or denial of licensure of individuals and entities under this chapter in accordance with Part 2, Licensure;

(b) take disciplinary action with the concurrence of the director in accordance with Part 4, Enforcement;

(c) advise the division concerning matters related to the administration and enforcement of this chapter; and

(d) with the concurrence of the division, determine the requirements for:

(i) the examination required under Section 61-2c-202, covering at least:

(A) the fundamentals of the English language;

(B) arithmetic;

- (C) the provisions of this chapter;
- (D) rules adopted by the division;
- (E) basic residential mortgage principles and practices; and
- (F) any other aspect of Utah law the commission determines is appropriate;
- (ii) with the concurrence of the division, the continuing education requirements under

Section 61-2c-205, including:

(A) except as provided in Subsection 61-2c-202(4)(a)(i)(C) and Subsection 61-2c-206(1)(c), the appropriate number of hours of prelicensing education and required continuing education; and

(B) the subject matter of courses the division may accept for continuing education purposes;

(iii) with the concurrence of the division, the prelicensing education required under Sections 61-2c-202 and 61-2c-206, including online education or distance learning options; and

(iv) the examination required under Section 61-2c-206 covering:

(A) advanced residential mortgage principles and practices; and

(B) other aspects of Utah law the commission, with the concurrence of the division, determines appropriate.

(8) The commission may appoint a committee to make recommendations to the commission concerning approval of prelicensing education and continuing education courses.

(9) The commission and the division shall make the examination and prelicensing education and continuing education requirements described in this section available through the Internet or other distance education methods approved by the commission and division when reasonably practicable.

(10) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission, with the concurrence of the division, shall make rules establishing procedures under which a licensee may be exempted from continuing education requirements:

(a) for a period not to exceed four years; and

(b) upon a finding of reasonable cause.

Section 38. Section **61-2c-106 (Superseded 01/01/06)** is amended to read:

61-2c-106 (Superseded 01/01/06). Addresses provided the division.

(1) (a) In providing an address to the division under this chapter, a physical location or street address shall be provided.

(b) The following are public information:

(i) a business address; or

(ii) a mailing address.

(2) An individual or entity licensed under this chapter will be considered to have received any notification that is mailed to the last mailing address furnished to the division by the individual, or by a control person of the entity, licensed under this chapter.

Section 39. Section **61-2c-106 (Effective 01/01/06)** is amended to read:

61-2c-106 (Effective 01/01/06). Addresses provided the division.

(1) (a) In providing an address to the division under this chapter, a physical location or street address shall be provided.

(b) The following are public information:

(i) a business address; or

(ii) a mailing address.

(2) An individual or entity licensed under this chapter will be considered to have received any notification that is mailed to the last mailing address furnished to the division by the individual, or by the principal lending manager of the entity, licensed under this chapter.

Section 40. Section **61-2c-201** is amended to read:

61-2c-201. Licensure required of individuals and entities engaged in the business of residential mortgage loans -- Mortgage officer -- Principal lending manager.

(1) Unless exempt from this chapter under Section 61-2c-105, an individual or entity may not transact the business of residential mortgage loans, as defined in Section 61-2c-102, without obtaining a license under this chapter.

(2) For purposes of this chapter, an individual or entity transacts business in this state if:

(a) (i) the individual or entity engages in an act that constitutes the business of residential

mortgage loans; and

(ii) (A) the act described in Subsection (2)(a)(i) is directed to or received in this state;

and

(B) the real property that is the subject of the act described in Subsection (2)(a)(i) is located in this state; or

(b) a representation is made by the individual or entity that the individual or entity transacts the business of residential mortgage loans in this state.

(3) An individual who has an ownership interest in an entity required to be licensed under this chapter is not required to obtain an individual license under this chapter unless the individual transacts the business of residential mortgage loans.

(4) Unless otherwise exempted under this chapter, licensure under this chapter is required of both:

(a) the individual who directly transacts the business of residential mortgage loans; and

(b) if the individual transacts business as an employee or agent of an entity or individual, the entity or individual for whom the employee or agent transacts the business of residential mortgage loans.

(5) (a) On or after [~~January~~] May 1, 2006, a license issued under this chapter to an individual who has not obtained a license as a principal lending manager automatically converts to a mortgage officer license.

(b) A mortgage officer license issued pursuant to Subsection (5)(a) shall be placed on inactive status until the holder of the license has submitted to the division the forms required to activate the license with a principal lending manager.

(6) (a) An individual licensed under this chapter may not engage in the business of residential mortgage loans on behalf of more than one entity at the same time.

(b) This Subsection (6) does not restrict the number of:

(i) different lenders an individual or entity may use as a funding source for residential mortgage loans; or

(ii) entities in which an individual may have an ownership interest, regardless of whether

the entities are:

- (A) licensed under this chapter; or
- (B) exempt under Section 61-2c-105.

(7) An individual licensed under this chapter may not transact the business of residential mortgage loans for the following at the same time:

- (a) an entity licensed under this chapter; and
- (b) an entity that is exempt from licensure under Section 61-2c-105.

(8) On or after [~~January~~] May 1, 2006, except as provided under Title 16, Chapter 11, Professional Corporation Act or under Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, a mortgage officer may not receive consideration for transacting the business of residential mortgage loans from any person or entity except the principal lending manager with whom the mortgage officer is licensed.

(9) On or after [~~January~~] May 1, 2006, a mortgage officer shall conduct all business of residential mortgage loans:

- (a) through the principal lending manager with which the individual is licensed; and
- (b) in the business name under which the principal lending manager is authorized by the division to do business.

(10) (a) (i) [~~H~~] Subject to Subsection (10)(a)(ii) and until May 1, 2006, if an individual who is authorized by this chapter to transact the business of residential mortgage loans as an individual transacts the business of residential mortgage loans under an assumed business name, the individual shall:

- (A) register the assumed business name with the division; and
- (B) furnish to the division proof that the assumed business name has been filed with the Division of Corporations and Commercial Code pursuant to Title 42, Chapter 2, Conducting Business Under Assumed Name.

(ii) This Subsection (10)(a) does not apply to an individual who transacts the business of residential mortgage loans as an employee or agent of another individual or entity.

(iii) If an entity that is authorized by this chapter to transact the business of residential

mortgage loans transacts the business of residential mortgage loans under an assumed business name, the entity shall:

(A) register the assumed name with the division; and

(B) furnish the division proof that the assumed business name has been filed with the Division of Corporations and Commercial Code pursuant to Title 42, Chapter 2, Conducting Business Under Assumed Name.

(b) The division may charge a fee established in accordance with Section 63-38-3.2 for registering an assumed name pursuant to this Subsection (10).

(11) (a) A licensee whose license is in inactive status may not transact the business of residential mortgage loans.

(b) On or after [January] May 1, 2006, a mortgage officer whose license has been placed in inactive status may not transact the business of residential mortgage loans until the mortgage officer has licensed with a principal lending manager by following the procedures established by the division by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, including submission of all required forms and payment of all required activation fees.

(12) (a) On or after May 3, 2004 and before [January] May 1, 2006, if a licensed entity terminates its control person, or if the control person of a licensed entity resigns, dies, or becomes unable to act as control person due to disability, the entity shall cease all business of residential mortgage loans until the entity has submitted all forms and fees to the division that are required to affiliate another control person with the licensed entity.

(b) On or after [January] May 1, 2006, if a licensed entity terminates its principal lending manager, or if the principal lending manager of a licensed entity resigns, dies, or becomes unable to act as a principal lending manager due to disability, the entity may not transact the business of residential mortgage loans until the entity has submitted all forms and fees to the division that are required to affiliate another principal lending manager with the entity.

Section 41. Section **61-2c-201.1** is enacted to read:

61-2c-201.1. Conversion of registrations.

On January 1, 2004, any unexpired registration authorizing an individual or entity to engage in the business of residential mortgage loans automatically converts from a registration to a license, retaining the expiration date of the registration as the expiration date of the converted license.

Section 42. Section **61-2c-202** is amended to read:

61-2c-202. Licensure procedures.

(1) To apply for licensure under this chapter an applicant shall:

(a) submit to the division a licensure statement that:

(i) lists any name under which the individual or entity will transact business in this state;

(ii) lists the address of the principal business location of the applicant;

(iii) on or after May 3, 2004 and before [January] May 1, 2006, if the applicant is an

entity:

(A) lists the control person of the applicant; and

(B) contains the signature of the control person;

(iv) on or after [January] May 1, 2006, if the applicant is an entity:

(A) lists the principal lending manager of the entity; and

(B) contains the signature of the principal lending manager;

(v) demonstrates [~~to the satisfaction of the division with the concurrence of the commission~~] that the applicant meets the qualifications listed in Section 61-2c-203;

(vi) if the applicant is an entity, lists:

(A) all jurisdictions in which the entity is registered, licensed, or otherwise regulated in the business of residential mortgage loans; and

(B) the history of any disciplinary action or adverse administrative action taken against the entity by any regulatory agency within the ten years preceding the application; and

(vii) includes any information required by the division by rule;

(b) pay to the division:

(i) an application fee established by the division in accordance with Section 63-38-3.2;

and

(ii) the reasonable expenses incurred in processing the application for licensure including the costs incurred by the division under Subsection (4); and

(c) comply with Subsection (4).

(2) (a) The division~~[, with the concurrence of the commission,]~~ shall ~~[grant]~~ issue a license to an applicant if the division, with the concurrence of the commission, finds that the applicant:

~~[(a)]~~ (i) meets the qualifications of Section 61-2c-203; and

~~[(b)]~~ (ii) complies with this section.

(b) The commission may delegate to the division the authority to:

(i) review any class or category of application for initial or renewed licenses;

(ii) determine whether an applicant meets the licensing criteria in Section 61-2c-203;

(iii) conduct any necessary hearing on an application; and

(iv) approve or deny a license application without concurrence by the commission.

(c) 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 review of the denial.

(d) An applicant who is denied licensure under this Subsection (2)(b) may seek agency review by the executive director only after the commission has reviewed the division's denial of the applicant's application.

(3) ~~[(h)]~~ Subject to Subsection (2)(d) and in accordance with Title 63, Chapter 46b, Administrative Procedures Act, an applicant who is denied licensure under this chapter may submit a request for agency review to the executive director within 30 days following the issuance of the commission order denying the licensure.

(4) (a) (i) An individual applying for a license under this chapter and any control person of the applicant shall:

(A) submit a fingerprint card in a form acceptable to the division at the time the licensure statement is filed;

(B) consent to a fingerprint background check by:

(I) the Utah Bureau of Criminal Identification; and

(II) the Federal Bureau of Investigation;

(C) on or after January 1, 2005, provide proof using methods approved by the division of having successfully completed 20 hours of approved prelicensing education required by the commission under Section 61-2c-104 before taking the examination required by Subsection (4)(a)(i)(D); and

(D) provide proof using methods approved by the division of having successfully passed an examination approved by the commission under Section 61-2c-104.

(ii) Notwithstanding Subsections (4)(a)(i)(C) and (4)(a)(i)(D), an individual [~~who was registered with the division under this chapter prior to January 1, 2004~~] meeting the conditions of Subsection (4)(a)(iii) may engage in the business of residential mortgage loans until January 1, 2005 without having:

(A) completed the prelicensing education described in Subsection (4)(a)(i)(C); and

(B) passed the examination described in Subsection (4)(a)(i)(D).

(iii) Subsection (4)(a)(ii) applies to an individual:

(A) who was registered with the division under this chapter prior to January 1, 2004;

(B) whose registration was converted to a license under Section 61-2c-201.1; and

(C) whose converted license either:

(I) does not expire before January 1, 2005; or

(II) is renewed prior to January 1, 2005.

(b) The division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for each applicant and each control person of an applicant through a national criminal history system.

(c) The applicant shall pay the cost of:

(i) the fingerprinting required by this section; and

(ii) the background check required by this section.

(d) (i) A license under this chapter is conditional pending completion of the criminal

background check required by this Subsection (4).

(ii) If a criminal background check discloses that an applicant or an applicant's control person failed to accurately disclose a criminal history, the license shall be immediately and automatically revoked.

(iii) An individual or entity whose conditional license is revoked under Subsection (4)(d)(ii) may appeal the revocation in a hearing conducted by the commission:

(A) after the revocation; and

(B) in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

(iv) The commission may delegate to the division or an administrative law judge the authority to conduct a hearing described in Subsection (4)(d)(iii).

~~[(iv)]~~ (v) Relief from a revocation may be granted only if:

(A) the criminal history upon which the division based the revocation:

(I) did not occur; or

(II) ~~[was]~~ is the criminal history of another person;

(B) (I) the revocation ~~[was]~~ is based on a failure to accurately disclose a criminal history;

and

(II) the applicant had a reasonable good faith belief at the time of application that there was no criminal history to be disclosed; or

(C) the division failed to follow the prescribed procedure for the revocation.

(e) If a revocation is upheld after a hearing described in Subsection (4)(d)(iii), the person may not apply for a new license for a period of 12 months or longer not to exceed five years after the revocation, as determined by the presiding officer.

(f) The funds paid by an applicant for the cost of the background check shall be nonlapsing.

(g) The commission may delegate to the division the authority to make a decision on whether relief from a revocation should be granted.

Section 43. Section **61-2c-203** is amended to read:

61-2c-203. Qualifications for licensure.

(1) To qualify for licensure under this chapter, an individual:

(a) shall have good moral character and the competency to transact the business of residential mortgage loans;

(b) shall demonstrate honesty, integrity, and truthfulness;

~~[(c) may not have been convicted of a felony or misdemeanor involving moral turpitude in the five years preceding the date the individual applies for a license, except as provided in Subsection (3);]~~

(c) except as provided in Subsection (3), may not have been convicted in the ten years preceding the day on which an application is submitted to the division of:

(i) any felony or class A misdemeanor involving moral turpitude; or

(ii) any crime in any other jurisdiction that is the equivalent of a felony or class A misdemeanor involving moral turpitude;

(d) except as provided in Subsection (3), may not have been convicted in the five years preceding the day on which an application is submitted to the division of:

(i) any class B or class C misdemeanor involving moral turpitude; or

(ii) any crime in another jurisdiction that is the equivalent of a class B or class C misdemeanor involving moral turpitude;

(e) except as provided in Subsection (3), in relationship to a crime set forth in Subsections (1)(c) and (d) during the time period set forth in Subsections (1)(c) and (d), may not have:

(i) entered a guilty plea, a no contest plea, or its equivalent; and

(ii) resolved by diversion or its equivalent;

~~[(d)]~~ (f) except as provided in Subsection 61-2c-202(4)(e), may not have had a license or registration suspended, revoked, surrendered, canceled, or denied in the five years preceding the date the individual applies for licensure except as provided in Subsection (3), if:

(i) the registration or license is issued by this state or another jurisdiction; and

(ii) the suspension, revocation, surrender, probation, fine, cancellation, or denial is based on misconduct in a professional capacity that relates to moral character, honesty, integrity,

truthfulness, or the competency to transact the business of residential mortgage loans;

~~[(e)]~~ (g) except as provided in Subsection (3), may not have been the subject of a bar by the Securities and Exchange Commission, the New York Stock Exchange, or the National Association of Securities Dealers within the five years preceding the date the individual applies for registration; and

~~[(f)]~~ (h) may not have had any temporary or permanent injunction entered against the individual:

(i) by a court or licensing agency; and

(ii) based on:

(A) conduct or a practice involving the business of residential mortgage loans; or

(B) conduct involving fraud, misrepresentation, or deceit.

(2) To qualify for licensure under this chapter an entity may not have:

(a) any of the following individuals in management who fails to meet the requirements of Subsection (1):

(i) a manager or a managing partner;

(ii) a director;

(iii) an executive officer; or

(iv) an individual occupying a position or performing functions similar to those described in Subsections (2)(a)(i) through (iii); or

(b) (i) before ~~[January]~~ May 1, 2006, a control person who fails to meet the requirements of Subsection (1); or

(ii) on or after ~~[January]~~ May 1, 2006, a principal lending manager who fails to meet the requirements of Subsection (1).

(3) Notwithstanding the failure to meet the requirements of Subsections (1)(c) through ~~[(f)]~~ (h), the division may permit an individual or entity to be licensed under this chapter if the individual applicant or a person listed in Subsection (2):

(a) fails to meet the requirements of Subsections (1)(c) through ~~[(f)]~~ (h);

(b) otherwise meets the qualifications for licensure; and

(c) provides evidence satisfactory to the division with the concurrence of the commission that the individual applicant or person described in Subsection (2):

- (i) is of good moral character;
- (ii) is honest;
- (iii) has integrity;
- (iv) is truthful; and
- (v) has the competency to transact the business of residential mortgage loans.

Section 44. Section **61-2c-205** is amended to read:

61-2c-205. Term of licensure -- Renewal -- Reporting of changes.

(1) (a) A license under this chapter is valid for a two-year period.

(b) Notwithstanding Subsection (1)(a), the time period of a license may be extended or shortened by as much as one year to maintain or change a renewal cycle established by rule by the division.

(2) To renew a license, no later than the date the license expires, a licensee shall:

~~[(a) file a licensure statement meeting the requirements of Section 61-2c-202;]~~

(a) (i) file the renewal form required by the division; and

(ii) furnish the information required by Subsection 61-2c-202(1);

(b) pay a fee to the division established by the division in accordance with Section 63-38-3.2; and

(c) if the licensee is an individual and the individual's license is in active status at the time of application for renewal, submit proof using forms approved by the division of having completed during the two years prior to application the continuing education required by the commission under Section 61-2c-104.

(3) (a) A licensee under this chapter shall ~~[amend its licensure statement filed with the division]~~ notify the division using the form required by the division within ten days of the date on which there is a change in:

(i) a name under which the licensee transacts the business of residential mortgage loans in this state;

- (ii) (A) if the licensee is an entity, the business location of the licensee; or
 - (B) if the licensee is an individual, the home and business addresses of the individual;
 - (iii) (A) on or after May 3, 2004 and before [~~January~~] May 1, 2006, the control person of the licensee; or
 - (B) on or after [~~January~~] May 1, 2006, the principal lending manager of the entity; [~~or~~]
 - (iv) the entity with which an individual licensee is licensed to conduct the business of residential mortgage loans; or
 - ~~[(iv)]~~ (v) any other information that is defined as material by rule made by the division.
- (b) Failure to notify the division of a change described in Subsection (3)(a) is separate grounds for disciplinary action against a licensee.
- (4) A licensee shall notify the division by sending the division a signed statement within ten business days of:
- (a) (i) a conviction of any criminal offense;
 - (ii) the entry of a plea in abeyance to any criminal offense; or
 - (iii) the potential resolution of any criminal case by:
 - (A) a diversion agreement; or
 - (B) any other agreement under which criminal charges are held in suspense for a period of time;
 - (b) filing a personal bankruptcy or bankruptcy of a business that transacts the business of residential mortgage loans;
 - (c) the suspension, revocation, surrender, cancellation, or denial of a professional license or professional registration of the licensee, whether the license or registration is issued by this state or another jurisdiction; or
 - (d) the entry of a cease and desist order or a temporary or permanent injunction:
 - (i) against the licensee by a court or licensing agency; and
 - (ii) based on:
 - (A) conduct or a practice involving the business of residential mortgage loans; or
 - (B) conduct involving fraud, misrepresentation, or deceit.

(5) (a) A license under this chapter expires if the licensee does not apply to renew the license on or before the expiration date of the license.

(b) Within 30 calendar days after the expiration date, a licensee whose license has expired may apply to reinstate the expired license upon:

(i) payment of a renewal fee and a late fee determined by the division under Section 63-38-3.2; and

(ii) if the licensee is an individual and is applying to reinstate a license to active status, providing proof using forms approved by the division of having completed, during the two years prior to application, the continuing education required by the commission under Section 61-2c-104.

(c) After the 30 calendar days described in Subsection (5)(b) and within six months after the expiration date, a licensee whose license has expired may apply to reinstate an expired license upon:

(i) payment of a renewal fee and a late fee determined by the division under Section 63-38-3.2;

(ii) if the licensee is an individual and is applying to reinstate a license to active status, providing proof using forms approved by the division of having completed, during the two years prior to application, the continuing education required by the commission under Section 61-2c-104; and

(iii) in addition to the continuing education required for a timely renewal, completing an additional 12 hours of continuing education approved by the commission under Section 61-2c-104.

(d) A licensee whose license has been expired for more than six months shall be relicensed as prescribed for an original application under Section 61-2c-202.

Section 45. Section **61-2c-206** is amended to read:

61-2c-206. Lending manager licenses.

(1) Except as provided in Subsection [(3)] (2), on or after [~~September~~] January 1, [2005] 2006, to qualify as a principal lending manager under this chapter, an individual shall, in addition

to meeting the standards in Section 61-2c-203:

- (a) submit an application on a form approved by the division;
- (b) pay fees determined by the division under Section 63-38-3.2;
- (c) submit proof of having successfully completed 40 hours of prelicensing education approved by the commission under Section 61-2c-104;
- (d) submit proof of having successfully completed the principal lending manager examination approved by the commission under Section 61-2c-104;
- (e) submit proof on forms approved by the division of three years of full-time active experience as a mortgage officer in the five years preceding the day on which the application is submitted, or its equivalent as approved by the commission; and
- (f) if the individual is not licensed under this chapter at the time of application, submit to the background check required by Subsection 61-2c-202(4).

(2) (a) Notwithstanding Subsection (1), an individual described in Subsection (2)(b) may qualify as a principal lending manager without:

- (i) meeting the requirements of Subsection (1)(c); and
- (ii) completing the portions of the principal lending manager examination described in Subsection (1)(d) that:

- (A) relate to federal law; and
- (B) do not relate to Utah law.

(b) An individual may qualify as a principal lending manager pursuant to Subsection (2)(a) if the individual:

(i) submits to the division an affidavit that the individual has five years of experience in the business of residential mortgage loans;

(ii) establishes that the individual's experience described in this Subsection (2)(b) was acquired:

(A) under requirements substantially equivalent to the [~~licensing~~] requirements of this chapter; and

(B) in compliance with the requirements of this chapter; and

(iii) provides any other information required by the division by rule under Subsection (2)(c).

(c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division shall define the information an individual shall provide to the division pursuant to Subsection (2)(b).

(3) A principal lending manager may not engage in the business of residential mortgage loans on behalf of more than one entity at the same time.

Section 46. Section **61-2c-208** is amended to read:

61-2c-208. Activation and inactivation of license.

(1) (a) A licensee may request that the division place the license on inactive status by submitting an inactivation form approved by the division.

(b) On or after [~~January~~] May 1, 2006, if the license of a principal lending manager is revoked, suspended, or expires, the license of any mortgage officer licensed with that principal lending manager shall automatically convert to inactive status.

(2) To activate a license that has been placed on inactive status, a licensee shall:

(a) submit an activation form approved by the division;

(b) pay an activation fee established by the division under Section 63-38-3.2; and

(c) if the licensee is an individual whose license was in inactive status at the time of the previous renewal, the licensee shall supply the division with proof of the successful completion of the number of hours of continuing education that the licensee would have been required to complete under [~~Section~~] Subsection 61-2c-205(2)(c) if the licensee's license had been on active status, up to a maximum of the number of hours required for two licensing periods.

(3) On or after [~~January~~] May 1, 2006, in addition to the requirements of Subsection (2), a mortgage officer whose license has been placed on inactive status shall obtain the signature of the principal lending manager with whom the mortgage officer will be actively licensed on the form required by the division.

(4) (a) On or after May 3, 2004 and before [~~January~~] May 1, 2006, in addition to the requirements of Subsection (2), an entity whose license has been placed on inactive status

because of the termination, death, disability, or departure of its control person shall submit the forms required by the division to affiliate the license of another control person with the entity.

(b) On or after [~~January~~] May 1, 2006, in addition to the requirements of Subsection (2), an entity whose license has been placed on inactive status because of the termination, death, disability, or departure of its principal lending manager shall submit the forms required by the division to affiliate the license of another principal lending manager with the entity.

Section 47. Section **61-2c-301** is amended to read:

61-2c-301. Prohibited conduct -- Violations of the chapter.

(1) An individual or entity transacting the business of residential mortgage loans in this state may not:

(a) give or receive compensation or anything of value in exchange for a referral of residential mortgage loan business;

(b) charge a fee in connection with a residential mortgage loan transaction:

(i) that is excessive; or

(ii) if the individual or entity does not comply with Section 70D-1-6;

(c) give or receive compensation or anything of value in exchange for a referral of settlement or loan closing services related to a residential mortgage loan transaction;

(d) do any of the following to induce a lender to extend credit as part of a residential mortgage loan transaction:

(i) make a false statement or representation;

(ii) cause false documents to be generated; or

(iii) knowingly permit false information to be submitted by any party;

(e) give or receive compensation or anything of value, or withhold or threaten to withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in reaching a value conclusion in a residential mortgage loan transaction, except that it is not a violation of this section for a licensee to withhold payment because of a bona fide dispute regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards of Professional Appraisal Practice;

(f) violate or not comply with:

- (i) this chapter;
- (ii) an order of the commission or division; or
- (iii) a rule made by the division;

(g) fail to respond within the required time period to:

- (i) a notice or complaint of the division; or
- (ii) a request for information from the division;
- (h) make false representations to the division, including in a licensure statement;

(i) for any residential mortgage loan transaction beginning on or after January 1, 2004,

engage in the business of residential mortgage loans with respect to the transaction if the individual or entity also acts in any of the following capacities with respect to the same residential mortgage loan transaction:

- (i) appraiser;
- (ii) escrow agent;
- (iii) real estate agent; ~~or~~
- (iv) general contractor; or
- (v) title insurance agent;

(j) order a title insurance report or hold a title insurance policy unless the individual or entity provides to the title insurer a copy of a valid, current license under this chapter;

(k) engage in unprofessional conduct as defined by rule;

(l) engage in an act or omission in transacting the business of residential mortgage loans that constitutes dishonesty, fraud, or misrepresentation;

(m) engage in false or misleading advertising;

(n) (i) fail to account for all funds received in connection with a residential mortgage loan;

(ii) use funds for a different purpose from the purpose for which the funds were received;

or

(iii) ~~(A)~~ except as provided in Subsection ~~[(1)(n)(iii)(B)]~~ (4), retain funds paid for

services if the services were not actually performed;

~~[(B) notwithstanding Subsection (1)(n)(iii)(A), a licensee may, upon compliance with Section 70D-1-6, charge a reasonable cancellation fee for work done originating a mortgage if the mortgage is not closed;]~~

(o) fail, within 90 calendar days of a request from a borrower who has paid for an appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;

(p) engage in an act that is performed to:

(i) evade this chapter; or

(ii) assist another person to evade this chapter;

(q) recommend or encourage default or delinquency, or continuation of an existing default or delinquency, by a mortgage applicant on an existing indebtedness prior to the closing of a residential mortgage loan that will refinance all or part of the indebtedness;

(r) in the case of a control person of an entity, fail to exercise reasonable supervision over the activities of:

(i) the individuals engaged in the business of residential mortgage loans on behalf of the entity; or

(ii) any unlicensed staff;

(s) on or after ~~January~~ May 1, 2006, in the case of the principal lending manager of an entity or a branch office of an entity, fail to exercise reasonable supervision over the activities of the mortgage officers who are licensed with the principal lending manager; or

(t) pay or offer to pay an individual who does not hold a license under this chapter for work that requires the individual to hold a license under this chapter.

(2) Whether or not the crime is related to the business of residential mortgage loans, it is a violation of this chapter for a licensee, a control person of a licensee, or a person who is a certified education provider to do any of the following with respect to a criminal offense which involves moral turpitude:

(a) be convicted;

(b) plead guilty or nolo contendere;

- (c) enter a plea in abeyance; or
- (d) be subjected to a criminal disposition similar to the ones described in Subsections (2)(a) through (c).
- (3) A principal lending manager does not violate Subsection (1)(s) if:
 - (a) in contravention of the principal lending manager's written policies and instructions, an affiliated licensee of the principal lending manager violates a provision of:
 - (i) this chapter; or
 - (ii) rules made by the division under this chapter;
 - (b) the principal lending manager established and followed reasonable procedures to ensure that affiliated licensees receive adequate supervision;
 - (c) upon learning of a violation by an affiliated licensee, the principal lending manager attempted to prevent or mitigate the damage;
 - (d) the principal lending manager did not participate in or ratify the violation by an affiliated licensee; and
 - (e) the principal lending manager did not attempt to avoid learning of the violation.
- (4) Notwithstanding Subsection (1)(n)(iii), a licensee may, upon compliance with Section 70D-1-6, charge a reasonable cancellation fee for work done originating a mortgage if the mortgage is not closed.

Section 48. Section **61-2c-402** is amended to read:

61-2c-402. Disciplinary action -- Reinstatement -- Education providers.

- (1) Subject to the requirements of [this] Section 61-2c-402.1, if an individual or entity required to be licensed under this chapter violates this chapter, or an education provider required to be certified under this chapter violates this chapter, the commission, with the concurrence of the director, may:
 - (a) impose a civil penalty against the individual or entity in an amount not to exceed \$2,500 per violation;
 - (b) do any of the following to a license under this chapter:
 - (i) suspend;

- (ii) revoke;
- (iii) place on probation;
- (iv) deny renewal; or
- (v) deny reinstatement; or
- (c) do both Subsections (1)(a) and (b).

(2) (a) If a license under this chapter is revoked, the individual or entity may apply to have the license reinstated by complying with the requirements of Section 61-2c-202 for licensure.

(b) Notwithstanding Subsection (2)(a) and except as provided in Subsection 61-2c-202(4)(e), if a license under this chapter is revoked, the individual or entity may not apply for reinstatement of the license sooner than five years after the day on which the license is revoked in accordance with this section.

(c) If an individual or entity whose license has been revoked applies for reinstatement in accordance with Subsection (2)(b), the presiding officer may grant the application for reinstatement if the presiding officer finds that:

(i) (A) there has been good conduct on the part of the applicant subsequent to the events that led to the revocation; and

(B) the subsequent good conduct outweighs the events that led to the revocation; and

(ii) the interest of the public is not likely to be harmed by the granting of the license.

(3) Subject to the requirements of Section 61-2c-402.1, if an individual or entity required to be licensed under this chapter violates this chapter, or an education provider required to be certified under this chapter violates this chapter, the presiding officer in an adjudicative proceeding commenced after a person or an entity applies for an original or renewed license may:

(a) deny an application for an original license;

(b) deny an application for renewal;

(c) deny an application for reinstatement; or

(d) issue or renew the license but:

(i) place the license on probation;

- (ii) suspend the license for a period of time;
- (iii) impose a civil penalty not to exceed \$2,500 per violation; or
- (iv) any combination of Subsections (3)(d)(i) through (iii).

~~[(2) (a) Before the commission and the division may take an action described in Subsection (1), the division shall:]~~

~~[(i) give notice to the individual or entity; and]~~

~~[(ii) schedule an adjudicative proceeding.]~~

~~[(b) If after the adjudicative proceeding scheduled under Subsection (2)(a), the commission and the director determine that an individual or entity required to be licensed under this chapter has violated this chapter, the commission may take an action described in Subsection (1) by written order.]~~

~~[(3) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, an individual or entity against whom disciplinary action is taken under this section may seek review by the executive director of the disciplinary action.]~~

~~[(4) If an individual or entity prevails in a judicial appeal and the court finds that the state action was undertaken without substantial justification, the court may award reasonable litigation expenses to that individual or entity as provided under Title 78, Chapter 27a, Small Business Equal Access to Justice Act.]~~

~~[(5) (a) An order issued under this section takes effect 30 days after the service of the order unless otherwise provided in the order.]~~

~~[(b) If an appeal of an order issued under this section is taken by an individual or entity, the division may stay enforcement of the commission's order in accordance with Section 63-46b-18.]~~

~~[(6) If ordered by the court of competent jurisdiction, the division shall promptly take an action described in Subsection (1)(b) against a license granted under this chapter.]~~

~~[(7) (a) If a license under this chapter is revoked, the individual or entity may apply to have the license reinstated by complying with the requirements of Section 61-2c-202 for licensure.]~~

~~[(b) Notwithstanding Subsection (7)(a), if a license under this chapter is revoked, the individual or entity may not apply for reinstatement of the license sooner than five years after the date the license is revoked in accordance with this section.]~~

~~[(c) If an individual or entity whose license has been revoked applies for reinstatement in accordance with Subsection (7)(b), the commission and the division may grant the application for reinstatement if they find that:]~~

~~[(i) there has been good conduct on the part of the applicant subsequent to the events that led to the revocation, and that the subsequent good conduct outweighs the events which led to the revocation; and]~~

~~[(ii) the interest of the public is not likely to be harmed by the granting of the license.]~~

Section 49. Section **61-2c-402.1** is enacted to read:

61-2c-402.1. Adjudicative proceedings -- Review.

(1) (a) Before the actions described in Section 61-2c-402 may be taken, the division shall:

(i) give notice to the individual or entity; and

(ii) commence an adjudicative proceeding.

(b) If after the adjudicative proceeding is commenced under Subsection (1)(a) the presiding officer determines that an individual or entity required to be licensed under this chapter has violated this chapter, the division may take an action described in Section 61-2c-402 by written order.

(2) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, an individual or entity against whom action is taken under this section may seek review by the executive director of the action.

(3) If an individual or entity prevails in a judicial appeal and the court finds that the state action was undertaken without substantial justification, the court may award reasonable litigation expenses to that individual or entity as provided under Title 78, Chapter 27a, Small Business Equal Access to Justice Act.

(4) (a) An order issued under this section takes effect 30 days after the service of the

order unless otherwise provided in the order.

(b) If an appeal of an order issued under this section is taken by an individual or entity, the division may stay enforcement of the order in accordance with Section 63-46b-18.

(5) If ordered by the court of competent jurisdiction, the division shall promptly take an action described in Section 61-2c-402 against a license granted under this chapter.

Section 50. Section **61-2c-404** is amended to read:

61-2c-404. Civil actions.

(1) (a) A person who violates this chapter is liable for an additional penalty, as determined by the court, of at least the amount the person received in consequence of a violation of this chapter as:

- (i) commission;
- (ii) compensation; or
- (iii) profit.

(b) A person aggrieved by a violation of this chapter may:

- (i) bring an action for a penalty described in Subsection (1)(a); and
- (ii) use a penalty obtained under Subsection (1)(a) for the person's own use and benefit.

(2) A person who is not licensed under this chapter at the time of an act or service that requires a license under this chapter may not bring an action in court for the recovery of a commission, fee, or compensation for that act or service.

(3) On or after [~~January~~] May 1, 2006:

(a) a mortgage officer may not bring an action in the mortgage officer's own name for the recovery of a fee, commission, or compensation for transacting the business of residential mortgage loans unless the action is brought against the principal lending manager with whom the mortgage officer was licensed at the time of the act or service that is the subject of the action; and

(b) an action by an entity for the recovery of a fee, commission, or other compensation shall be brought by:

- (i) an entity; or
- (ii) the principal lending manager of an entity on behalf of the entity.

(4) On or after [~~January~~] May 1, 2006, a principal lending manager who transacts the business of residential mortgage loans on the principal lending manager's own behalf may sue in the principal lending manager's own name for the recovery of a fee, commission, or compensation for transacting the business of residential mortgage loans.

Section 51. **Uncodified Section 32, Chapter 297, Laws of Utah 2004** is amended to read:

Section 32. **Effective date.**

This bill takes effect on May 3, 2004, except that:

- (1) the amendments to Section 61-2c-106 take effect on [~~January~~] May 1, 2006; and
- (2) the amendments to Section [~~62-2c-104~~] 61-2c-104 (Effective 07/01/04) take effect on July 1, 2004.

Section 52. **Effective date.**

(1) Except as provided in Subsection (2), this bill takes effect on May 2, 2005.

(2) The amendments in this bill to:

(a) Section 61-2b-10 take effect on January 1, 2008;

(b) Section 61-2b-14 take effect on January 1, 2008;

(c) Section 61-2b-15 take effect on January 1, 2008; and

(d) Section 61-2c-106 (Effective January 1, 2006) take effect on May 1, 2006.

Section 53. **Repealer.**

This bill repeals:

Section **61-2b-15.6, Conversion of senior appraisers to state-licensed appraisers.**