

**DIVISION OF REAL ESTATE AND RELATED
AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Sheldon L. Killpack

House Sponsor: Gage Froerer

LONG TITLE

General Description:

This bill modifies provisions related to the Division of Real Estate.

Highlighted Provisions:

This bill:

▶ addresses when the Real Estate Commission may hold administrative hearings related to violations of the real estate chapter;

§→ ▶ provides an exemption from licensure for certain Department of Transportation employees; ←§

- ▶ addresses appointment of industry members on the Real Estate Commission;
- ▶ addresses relicensing when a real estate license is revoked;
- ▶ requires fingerprints and criminal background checks for out-of-state applicants for a real estate broker license;
- ▶ requires a 12-month waiting period for a mortgage and real estate license applicant to reapply if the first license is automatically revoked for failing to disclose a criminal history;
- ▶ addresses when a branch or associate broker may fill out settlement documents;
- ▶ permits investigation of and administrative action against unlicensed persons acting in the capacity of a person required to be licensed as a real estate agent or broker, real estate appraiser, or mortgage officer;
- ▶ includes failing to respond to requests by the division in an investigation to be grounds for administrative or disciplinary action;



- 28 ▶ addresses powers of the division related to investigations;
- 29 ▶ addresses disciplinary proceedings including:
 - 30 • modifying administrative sanctions available to the Real Estate Commission,
 - 31 Appraisal Board, and Mortgage Commission, such as providing for education
 - 32 requirements, monetary civil penalties, cease and desist orders, and
 - 33 combinations of sanctions; and
 - 34 • allowing a civil penalty to be imposed as part of an administrative hearing for a
 - 35 cease and desist order;
 - 36 ▶ provides that investigations of fraud under the real estate chapter may be funded
 - 37 from the Real Estate Education, Research, and Recovery Fund;
 - 38 ▶ clarifies that an active mortgage license requires affiliation with an active principal
 - 39 lending manager;
 - 40 ▶ clarifies that civil penalties from violations of the mortgage chapter are paid into the
 - 41 Residential Mortgage Loan Education, Research, and Recovery Fund;
 - 42 ▶ provides that investigations of fraud under the mortgage chapter may be funded
 - 43 from the Residential Mortgage Loan Education, Research, and Recovery Fund;
 - 44 ▶ deletes out-dated language; and
 - 45 ▶ makes technical changes and conforming amendments.

46 **Monies Appropriated in this Bill:**

47 None

48 **Other Special Clauses:**

49 None

50 **Utah Code Sections Affected:**

51 AMENDS:

52 **57-11-17**, as enacted by Chapter 158, Laws of Utah 1973

52a **§→ 61-2-3, as last amended by Chapter 198, Laws of Utah 2006 ←§**

53 **61-2-5.5**, as last amended by Chapter 198, Laws of Utah 2006

54 **61-2-6**, as last amended by Chapter 199, Laws of Utah 2005

55 **61-2-9**, as last amended by Chapters 199 and 239, Laws of Utah 2005

56 **61-2-11**, as last amended by Chapter 198, Laws of Utah 2006

57 **61-2-11.5**, as enacted by Chapter 257, Laws of Utah 2005

58 **61-2-12**, as last amended by Chapter 199, Laws of Utah 2005

- 59 **61-2-20**, as last amended by Chapter 146, Laws of Utah 1993
- 60 **61-2a-12**, as last amended by Chapter 256, Laws of Utah 1983
- 61 **61-2b-7**, as last amended by Chapter 199, Laws of Utah 2005
- 62 **61-2b-17**, as last amended by Chapter 199, Laws of Utah 2005
- 63 **61-2b-28**, as last amended by Chapter 199, Laws of Utah 2005
- 64 **61-2b-29**, as last amended by Chapter 199, Laws of Utah 2005
- 65 **61-2b-31**, as last amended by Chapter 199, Laws of Utah 2005
- 66 **61-2c-102**, as last amended by Chapter 199, Laws of Utah 2005
- 67 **61-2c-104**, as last amended by Chapter 199, Laws of Utah 2005
- 68 **61-2c-201**, as last amended by Chapter 199, Laws of Utah 2005
- 69 **61-2c-202**, as last amended by Chapter 199, Laws of Utah 2005
- 70 **61-2c-203**, as last amended by Chapter 199, Laws of Utah 2005
- 71 **61-2c-205**, as last amended by Chapter 199, Laws of Utah 2005
- 72 **61-2c-206**, as last amended by Chapter 199, Laws of Utah 2005
- 73 **61-2c-208**, as last amended by Chapter 199, Laws of Utah 2005
- 74 **61-2c-301**, as last amended by Chapter 199, Laws of Utah 2005
- 75 **61-2c-302**, as last amended by Chapter 297, Laws of Utah 2004
- 76 **61-2c-401**, as last amended by Chapter 297, Laws of Utah 2004
- 77 **61-2c-402**, as last amended by Chapter 199, Laws of Utah 2005
- 78 **61-2c-403**, as last amended by Chapter 297, Laws of Utah 2004
- 79 **61-2c-404**, as last amended by Chapter 199, Laws of Utah 2005
- 80 **61-2c-502**, as enacted by Chapter 297, Laws of Utah 2004
- 81 **61-2c-510**, as enacted by Chapter 297, Laws of Utah 2004

81a **§→ ENACTS:**

81b **72-5-116, Utah Code Annotated 1953 ←§**

82 REPEALS:

- 83 **61-2b-10.5**, as enacted by Chapter 117, Laws of Utah 1999
- 84 **61-2c-201.1**, as enacted by Chapter 199, Laws of Utah 2005



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

87 Section 1. Section **57-11-17** is amended to read:

88 **57-11-17. Violations -- Civil remedies.**

89 (1) (a) [Any] A person [who] is liable as provided in Subsection (1)(b) if that person:

90 ~~[(a)]~~ (i) disposes of subdivided lands in violation of ~~[Section-]~~ Subsection
91 57-11-5~~[(1), (2), or (3)]~~;

92 ~~[(b)]~~ (ii) in disposing of subdivided lands, makes an untrue statement of a material fact;
93 or

94 ~~[(c)]~~ (iii) in disposing of subdivided lands, omits a material fact required to be stated in
95 a registration statement, public offering statement, statement of record or public report,
96 necessary to make the statements made not misleading~~[-]~~.

97 (b) A person described in Subsection (1)(a) is liable as provided in this section to the
98 purchaser unless, in the case of an untruth or omission, it is proved that:

99 (i) the purchaser knew of the untruth or omission; or ~~[that]~~

100 (ii) the person offering or disposing of subdivided lands did not know and in the
101 exercise of reasonable care could not have known of the untruth or omission.

102 (2) In addition to any other remedies, the purchaser, under Subsection (1) may recover
103 the consideration paid for the unit together with interest at the rate of 7% per year from the date
104 of payment, property taxes paid, costs, and reasonable ~~[attorneys']~~ attorney fees, less the
105 amount of any income received from the subdivided lands, upon tender of appropriate
106 instruments of reconveyance. If the purchaser no longer owns the unit, ~~[he]~~ the purchaser may
107 recover the amount that would be recoverable upon a tender of a reconveyance, less the value
108 of the land when disposed of and less interest at the rate of 7% per year on that amount from
109 the date of disposition.

110 (3) Every person who directly or indirectly controls a subdivider liable under
111 Subsection (1), every general partner, officer, or director of a subdivider, every person
112 occupying a similar status or performing a similar function, every employee of the subdivider
113 who materially aids in the disposition, and every agent who materially aids in the disposition is
114 also liable jointly and severally with and to the same extent as the subdivider, unless the person
115 otherwise liable sustains the burden of proof that ~~[he]~~ the person did not know and in the
116 exercise of reasonable care could not have known of the existence of the facts by reason of
117 which the liability is alleged to exist. There is a right to contribution as in cases of contract
118 among persons so liable.

119 (4) Every person whose occupation gives authority to a statement which with ~~[his]~~ that
120 person's consent has been used in an application for registration, public offering statement,

121 statement of record or public report, if ~~he~~ the person is not otherwise associated with the
 122 subdivision and development plan in a material way, is liable only for false statements and
 123 omissions in ~~his~~ the person's statement and only if ~~he~~ the person fails to prove that ~~he~~ the
 124 person did not know and in the exercise of the reasonable care of a man in ~~his~~ the person's
 125 occupation could not have known of the existence of the facts by reason of which the liability
 126 is alleged to exist.

127 (5) A tender of reconveyance may be made at any time before the entry of judgment.

128 (6) A person may not recover under this section in actions commenced more than four
 129 years after ~~his~~ the person's first payment of money to the subdivider in the contested action.

130 (7) Any stipulation or provision purporting to bind any person acquiring subdivided
 131 lands to waive compliance with this ~~act~~ chapter or any rule or order under it is void.

131a **§→ Section 2. Section 61-2-3 is amended to read:**

131b **61-2-3. Exempt persons and transactions.**

131c (1) (a) Except as provided in Subsection (1)(b), a license under this chapter is not required for:

131d (i) any person who as owner or lessor performs the acts described in Subsection 61-2-2 (12)
 131e with reference to property owned or leased by that person;

131f (ii) a regular salaried employee of the owner or lessor of real estate who, with reference to
 131g nonresidential real estate owned or leased by the employer, performs the acts enumerated in
 131h Subsections 61-2-2(12)(a) and (b);

131i (iii) a regular salaried employee of the owner of real estate who performs property
 131j management services with reference to real estate owned by the employer, except that the employee
 131k may only manage property for one employer;

131l (iv) a person who performs property management services for the apartments at which that
 131m person resides in exchange for free or reduced rent on that person's apartment;

131n (v) a regular salaried employee of a condominium homeowners' association who manages real
 131o property subject to the declaration of condominium that established the homeowners' association,
 131p except that the employee may only manage property for one condominium homeowners' association;
 131q and

131r (vi) a regular salaried employee of a licensed property management company who performs
 131s support services, as prescribed by rule, for the property management company.

131t (b) Subsection (1)(a) does not exempt from licensing:

131u (i) ~~{employees}~~ an employee engaged in the sale of properties regulated under:

131v (A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; and

131w (B) Title 57, Chapter 19, Timeshare and Camp Resort Act;

131x (ii) ~~{employees}~~ an employee engaged in the sale of cooperative interests regulated
 131y under Title 57, Chapter 23, Real Estate Cooperative Marketing Act; or

131z (iii) any person whose interest as an owner or lessor ~~{was}~~ is obtained by that person
 131aa or transferred to that person for the purpose of evading the application of this chapter, and not for any
 131ab other legitimate business reason. ←§

- 131ac **§→** (2) A license under this chapter is not required for:
- 131ad (a) an isolated ~~{-transactions-}~~ transaction by ~~{-persons-}~~ a person holding a
131ae duly executed power of attorney from the owner;
- 131af (b) services rendered by an attorney ~~{-at-law-}~~ in performing the ~~{-attorney-at~~
131ag ~~law's-}~~ attorney's duties as an attorney ~~{-at-law-}~~ ;
- 131ah (c) a receiver, trustee in bankruptcy, administrator, executor, or any person acting under order of any
131ai court;
- 131aj (d) a trustee or ~~{-its-employees-}~~ employee of a trustee under a deed of trust or a will;
131ak ~~{-or-}~~
- 131al (e) any public utility, ~~{-its-officers-}~~ officer of a public utility , or regular salaried
131am ~~{-employees-}~~ employee of a public utility , unless performance of any of the acts set out in
131an Subsection 61-2-2(12) is in connection with the sale, purchase, lease, or other disposition of real estate or
131ao investment in real estate unrelated to the principal business activity of that public utility ; or
131ap = (f) a regular salaried employee of the Department of Transportation when performing an act
131aq on behalf of the Department of Transportation in connection with one or more of the following:
- 131ar (i) the acquisition of real property pursuant to Section 72-5-103;
131as (ii) the disposal of real property pursuant to Section 72-5-111; or
131at (iii) services that constitute property management .
- 131au (3) A license under this chapter is not required for any person registered to act as a broker-dealer,
131av agent, or investment advisor under the Utah and federal securities laws in the sale or the offer for sale of real
131aw estate if:
- 131ax (a) (i) the real estate is a necessary element of a "security" as that term is defined by the Securities
131ay Act of 1933 and the Securities Exchange Act of 1934; and
- 131az (ii) the security is registered for sale:
- 131ba (A) pursuant to the Securities Act of 1933; or
- 131bb (B) by Title 61, Chapter 1, Utah Uniform Securities Act; or
- 131bc (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec. 239.500, has
131bd been filed with the Securities and Exchange Commission pursuant to Regulation D, Rule 506, 17 C.F.R. Sec.
131be 230.506; and
- 131bf (ii) the selling agent and the purchaser are not residents of this state. ←**§**
- 132 Section 2. Section 61-2-5.5 is amended to read:
- 133 **61-2-5.5. Real Estate Commission created -- Functions -- Appointment --**
- 134 **Qualification and terms of members -- Expenses -- Meetings.**
- 135 (1) There is created within the division a Real Estate Commission. The commission
136 shall:
- 137 (a) make rules for the administration of this chapter that are not inconsistent with this
138 chapter, including:
- 139 (i) licensing of:
- 140 (A) principal brokers;

- 141 (B) associate brokers;
- 142 (C) sales agents;
- 143 (D) real estate companies; and
- 144 (E) branch offices;
- 145 (ii) prelicensing and postlicensing education curricula;
- 146 (iii) examination procedures;
- 147 (iv) the certification and conduct of:
- 148 (A) real estate schools;
- 149 (B) course providers; and
- 150 (C) instructors;
- 151 (v) proper handling of funds received by real estate licensees;

- 152 (vi) brokerage office procedures and recordkeeping requirements;
- 153 (vii) property management;
- 154 (viii) standards of conduct for real estate licensees; and
- 155 (ix) rules made under Section 61-2-26 regarding an undivided fractionalized long-term
- 156 estate;
- 157 (b) establish, with the concurrence of the division, all fees as provided in this chapter
- 158 and Title 61, Chapter 2a, Real Estate Recovery Fund Act;
- 159 (c) conduct all administrative hearings not delegated by the commission to an
- 160 administrative law judge or the division relating to the:
- 161 (i) licensing of any applicant;
- 162 (ii) conduct of any licensee; ~~[or]~~
- 163 (iii) the certification or conduct of any real estate school, course provider, or instructor
- 164 regulated under this chapter; or
- 165 (iv) violation of this chapter by any person;
- 166 (d) with the concurrence of the director, impose sanctions ~~[against licensees and~~
- 167 ~~certificate holders]~~ as provided in Section ~~[61-2-11]~~ 61-2-12;
- 168 (e) advise the director on the administration and enforcement of any matters affecting
- 169 the division and the real estate sales and property management industries;
- 170 (f) advise the director on matters affecting the division budget;
- 171 (g) advise and assist the director in conducting real estate seminars; and
- 172 (h) perform other duties as provided by:
- 173 (i) this chapter; and
- 174 (ii) Title 61, Chapter 2a, Real Estate Recovery Fund Act.
- 175 (2) (a) The commission shall be comprised of five members appointed by the governor
- 176 and approved by the Senate.
- 177 (b) Four of the commission members shall:
- 178 (i) have at least five years' experience in the real estate business; and
- 179 (ii) hold an active principal broker, associate broker, or sales agent license.
- 180 (c) One commission member shall be a member of the general public.
- 181 (d) No more than one commission member ~~[may be appointed from]~~ described in
- 182 Subsection (2)(b) shall at the time of appointment reside in any given county in the state.

183 (e) At least one commission member described in Subsection (2)(b) shall at the time of
184 an appointment reside in a county that is not a county of the first or second class.

185 (3) (a) Except as required by Subsection (3)(b), as terms of current commission
186 members expire, the governor shall appoint each new member or reappointed member to a
187 four-year term ending June 30.

188 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the
189 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
190 commission members are staggered so that approximately half of the commission is appointed
191 every two years.

192 (c) Upon the expiration of the term of a member of the commission, the member of the
193 commission shall continue to hold office until a successor is appointed and qualified.

194 (d) A commission member may not serve more than two consecutive terms.

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

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

198 (5) (a) A member [~~shall~~] may not receive [~~no~~] compensation or benefits for the
199 member's services, but may receive per diem and expenses incurred in the performance of the
200 member's official duties at the rates established by the Division of Finance under Sections
201 63A-3-106 and 63A-3-107.

202 (b) A member may decline to receive per diem and expenses for the member's service.

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

204 (b) The director may call additional meetings:

205 (i) at the director's discretion;

206 (ii) upon the request of the chair; or

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

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

210 Section 3. Section **61-2-6** is amended to read:

211 **61-2-6. Licensing procedures and requirements.**

212 (1) (a) Except as provided in Subsection (5), the commission shall determine the
213 qualifications and requirements of applicants for:

- 214 (i) a principal broker license;
- 215 (ii) an associate broker license; or
- 216 (iii) a sales agent license.

217 (b) The division, with the concurrence of the commission, shall require and pass upon
218 proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency of
219 each applicant for an initial license or for renewal of an existing license.

220 (c) (i) The division, with the concurrence of the commission, shall require an applicant
221 for:

222 (A) a sales agent license to complete an approved educational program not to exceed
223 90 hours; and

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

226 (ii) The hours required by this section mean 50 minutes of instruction in each 60
227 minutes.

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

230 (d) The division, with the concurrence of the commission, shall require the applicant to
231 pass an examination approved by the commission covering:

232 (i) the fundamentals of:

233 (A) the English language;

234 (B) arithmetic;

235 (C) bookkeeping; and

236 (D) real estate principles and practices;

237 (ii) the provisions of this chapter;

238 (iii) the rules established by the commission; and

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

240 (e) (i) Three years' full-time experience as a real estate sales agent or its equivalent is
241 required before any applicant may apply for, and secure a principal broker or associate broker
242 license in this state.

243 (ii) The commission shall establish by rule, made in accordance with Title 63, Chapter
244 46a, Utah Administrative Rulemaking Act, the criteria by which the commission will accept

245 experience or special education in similar fields of business in lieu of the three years'
246 experience.

247 (2) (a) The division, with the concurrence of the commission, may require an applicant
248 to furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's
249 reputation and competency as set forth by rule.

250 (b) The division shall require an applicant to provide the applicant's Social Security
251 number, which is a private record under Subsection 63-2-302(1)(h).

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

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

255 (i) conforming to all the provisions of this chapter except that of residency; and

256 (ii) being employed or engaged as an independent contractor by or on behalf of a
257 nonresident or resident principal broker who is licensed in this state.

258 (4) (a) Except as provided in Subsection 61-2-9(1)(e)(iv), the application to be
259 relicensed of an applicant who has had a real estate license revoked[: (i) ~~shall be relicensed as~~
260 ~~prescribed for~~] shall be treated as an original application[; and].

261 [(ii) ~~may not apply for a new license until at least five years after the day on which the~~
262 ~~license is revoked.~~]

263 (b) In the case of an applicant for a new license as a principal broker or associate
264 broker, the applicant is not entitled to credit for experience gained prior to the revocation of a
265 real estate license.

266 (5) (a) Notwithstanding Subsection (1), the commission may delegate to the division
267 the authority to:

268 (i) review a class or category of applications for initial or renewed licenses;

269 (ii) determine whether an applicant meets the licensing criteria in Subsection (1); and

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

271 (b) (i) If the commission delegates to the division the authority to approve or deny an
272 application without concurrence by the commission and the division denies an application for
273 licensure, the applicant who is denied licensure may petition the commission for review of the
274 denial of licensure.

275 (ii) An applicant who is denied licensure pursuant to this Subsection (5) may seek

276 agency review by the executive director only after the commission has reviewed the division's
277 denial of the applicant's application.

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

279 **61-2-9. Examination and license fees -- Criminal background check -- Renewal of**
280 **licenses -- Education requirements -- Activation of inactive licenses -- Recertification --**
281 **Licenses of firm, partnership, or association -- Miscellaneous fees.**

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

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

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

291 (d) (i) Any [~~new sales agent applicant shall~~] of the following applicants shall comply
292 with this Subsection (1)(d):

293 (A) a new sales agent applicant; or

294 (B) an out-of-state broker applicant.

295 (ii) An applicant described in this Subsection (1)(d) shall:

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

298 (B) consent to a [~~fingerprint~~] criminal background check by the Utah Bureau of
299 Criminal Identification and the Federal Bureau of Investigation regarding the application.

300 [~~(ii)~~] (iii) The division shall request the Department of Public Safety to complete a
301 Federal Bureau of Investigation criminal background check for each [~~new sales agent~~
302 applicant described in this Subsection (1)(d) through the national criminal history system
303 [~~(NCIC)~~] or any successor system.

304 [~~(iii)~~] (iv) The cost of the criminal background check and the fingerprinting shall be
305 borne by the applicant.

306 [~~(iv)~~] (v) Funds paid to the division by an applicant for the cost of the criminal

307 background check shall be nonlapsing.

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

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

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

317 (A) the division; or

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

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

321 (v) Relief from a revocation under this Subsection (1)(e) may be granted only if:

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

323 (I) did not occur; or

324 (II) is the criminal history of another person;

325 (B) (I) the revocation is based on a failure to accurately disclose a criminal history; and

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

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

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

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

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

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

337 (B) by completing 12 hours of professional education approved by the division and

338 commission within each two-year renewal period.

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

- 341 (A) state conventions;
- 342 (B) home study courses;
- 343 (C) video courses; and
- 344 (D) closed circuit television courses.

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

- 347 (A) upon a finding of reasonable cause, including military service; and
- 348 (B) under conditions established by rule made in accordance with Title 63, Chapter
349 46a, Utah Administrative Rulemaking Act.

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

- 352 (i) payment of a renewal fee and a late fee determined by the commission with the
353 concurrence of the division under Section 63-38-3.2; and
- 354 (ii) providing proof acceptable to the division and the commission of the licensee
355 having completed the hours of education or demonstrated competence as required under
356 Subsection (2)(a).

357 (c) After the 30-day period described in Subsection (2)(b), and until six months after
358 the expiration date, the license may be reinstated by:

- 359 (i) paying a renewal fee and a late fee determined by the commission with the
360 concurrence of the division under Section 63-38-3.2;
- 361 (ii) providing to the division proof of satisfactory completion of 12 hours of continuing
362 education:
 - 363 (A) in addition to the requirements for a timely renewal; and
 - 364 (B) on a subject determined by the commission by rule made in accordance with Title
365 63, Chapter 46a, Utah Administrative Rulemaking Act; and

366 (iii) providing proof acceptable to the division and the commission of the licensee
367 having:

- 368 (A) completed the hours of education; or

369 (B) demonstrated competence as required under Subsection (2)(a).

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

372 (3) (a) As a condition for the activation of an inactive license that was in an inactive
373 status at the time of the licensee's most recent renewal, the licensee shall supply the division
374 with proof of:

375 (i) successful completion of the respective sales agent or broker licensing examination
376 within six months prior to applying to activate the license; or

377 (ii) the successful completion of 12 hours of continuing education that the licensee
378 would have been required to complete under Subsection (2)(a) if the license had been on active
379 status at the time of the licensee's most recent renewal.

380 (b) The commission may, in accordance with Title 63, Chapter 46a, Utah
381 Administrative Rulemaking Act, establish by rule:

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

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

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

387 (i) has qualified as a principal broker under the terms of this chapter; and

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

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

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

393 (a) issuance of a new or duplicate license;

394 (b) license histories or certifications;

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

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

398 Recovery Fund; and

399 (e) other duties required by this chapter.

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

404 (7) (a) The fees under this chapter and the additional license fee for the Real Estate
405 Education, Research, and Recovery Fund under Section 61-2a-4 are in lieu of all other license
406 fees or assessments that might otherwise be imposed or charged by the state or any of its
407 political subdivisions, upon, or as a condition of, the privilege of conducting the business
408 regulated by this chapter, except that a political subdivision within the state may charge a
409 business license fee on a principal broker if the principal broker maintains a place of business
410 within the jurisdiction of the political subdivision.

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

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

414 **61-2-11. Grounds for disciplinary action.**

415 ~~[The division may investigate or cause to be investigated the actions of any principal
416 broker, associate broker, sales agent, real estate school, course provider, or school instructor
417 licensed or certified by this state, or of any applicant for licensure or certification, or of any
418 person who acts in any of those capacities within this state. The division is empowered to
419 subpoena witnesses, take evidence, and require by subpoena duces tecum the production of
420 books, papers, contracts, records, other documents, or information considered relevant to the
421 investigation. The division may serve subpoenas by certified mail. Each failure to respond to a
422 subpoena is considered as a separate violation of this chapter. The commission, with the
423 concurrence of the director, may impose a civil penalty in an amount not to exceed \$2,500 per
424 violation, impose educational requirements, and suspend, revoke, place on probation, or deny
425 renewal, reinstatement, or reissuance of any license or any certification if at any time the
426 licensee or certificate holder, whether acting as an agent or on his own account, is found guilty
427 of:]~~

428 The following acts are unlawful for a person required to be licensed under this chapter:

- 429 (1) making any substantial misrepresentation;
430 (2) making any false promises of a character likely to influence, persuade, or induce;

431 (3) pursuing a continued and flagrant course of misrepresentation, or of making false
432 promises through agents, sales agents, advertising, or otherwise;

433 (4) acting for more than one party in a transaction without the informed consent of all
434 parties;

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

437 (b) representing or attempting to represent a broker other than the principal broker with
438 whom the person is affiliated; or

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

441 (6) (a) failing, within a reasonable time, to account for or to remit any monies coming
442 into the person's possession that belong to others;

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

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

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

449 (a) with a licensed principal broker of another jurisdiction; or

450 (b) as provided under:

451 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;

452 (ii) Title 16, Chapter 11, Professional Corporation Act; or

453 (iii) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act;

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

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

458 (10) failing to keep and make available for inspection by the division a record of each
459 transaction, including:

460 (a) the names of buyers and sellers or lessees and lessors;

461 (b) the identification of the property;

- 462 (c) the sale or rental price;
- 463 (d) any monies received in trust;
- 464 (e) any agreements or instructions from buyers and sellers or lessees and lessors; and
- 465 (f) any other information required by rule;
- 466 (11) failing to disclose, in writing, in the purchase, sale, or rental of property, whether
- 467 the purchase, sale, or rental is made for ~~himself~~ that person or for an undisclosed principal;
- 468 (12) regardless of whether the crime was related to real estate, being convicted of a
- 469 criminal offense involving moral turpitude within five years of the most recent application,
- 470 including a conviction based upon a plea of nolo contendere, or a plea held in abeyance to a
- 471 criminal offense involving moral turpitude;
- 472 (13) advertising the availability of real estate or the services of a licensee in a false,
- 473 misleading, or deceptive manner;
- 474 (14) in the case of a principal broker or a licensee who is a branch manager, failing to
- 475 exercise reasonable supervision over the activities of the principal broker's or branch manager's
- 476 licensees and any unlicensed staff;
- 477 (15) violating or disregarding this chapter, an order of the commission, or the rules
- 478 adopted by the commission and the division;
- 479 (16) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real
- 480 estate transaction;
- 481 (17) any other conduct which constitutes dishonest dealing;
- 482 (18) unprofessional conduct as defined by statute or rule; ~~or~~
- 483 (19) ~~[suspension, revocation, surrender, or cancellation of]~~ on the basis of misconduct
- 484 in a professional capacity that relates to character, honesty, integrity, or truthfulness, having
- 485 one of the following suspended, revoked, surrendered, or cancelled:
- 486 (a) a real estate license issued by another jurisdiction~~];~~ or ~~of~~
- 487 (b) another professional license issued by this or another jurisdiction~~]; based on~~
- 488 ~~misconduct in a professional capacity that relates to character, honesty, integrity, or~~
- 489 ~~truthfulness.]; or~~
- 490 (20) failing to respond to a request by the division in an investigation authorized under
- 491 this chapter, including:
- 492 (a) failing to respond to a subpoena;

493 (b) withholding evidence; or

494 (c) failing to produce documents or records.

495 Section 6. Section **61-2-11.5** is amended to read:

496 **61-2-11.5. Investigations.**

497 ~~[In addition to any action authorized by Section 61-2-11, in relationship to the offer or~~
 498 ~~sale of an undivided fractionalized long-term estate:]~~

499 (1) The division may make any ~~[public or private]~~ investigation within or outside of
 500 this state as the division considers necessary to determine whether any person has violated, is
 501 violating, or is about to violate this chapter or any rule or order under this chapter[;].

502 (2) To aid in the enforcement of this chapter or in the prescribing of rules and forms
 503 under this chapter, the division may require or permit any person to file a statement in writing,
 504 under oath or otherwise as to all facts and circumstances concerning the matter to be
 505 investigated[; ~~and~~].

506 (3) For the purpose of the investigation described in Subsection (1), the division or any
 507 employee designated by the division may:

508 (a) administer ~~[oaths and]~~ an oath or affirmation; ~~[or]~~

509 ~~[(b) take any action permitted by Section 61-2-11 including:]~~

510 ~~[(i) (b) subpoena witnesses [and compel their attendance];~~

511 ~~[(ii) (c) take evidence; [and]~~

512 ~~[(iii) (d) require the production of [any books, papers, correspondence, memoranda,~~
 513 ~~agreement, or other documents or records] a book, paper, contract, record, other document, or~~
 514 ~~information relevant [or material] to the investigation[-]; and~~

515 (e) serve a subpoena by certified mail.

516 Section 7. Section **61-2-12** is amended to read:

517 **61-2-12. Disciplinary action -- Judicial review.**

518 (1) (a) On the basis of a violation of ~~[Section 61-2-11, the division shall give notice to~~
 519 ~~the licensee or certificate holder and commence an adjudicative proceeding before:] this~~
 520 ~~chapter, the commission with the concurrence of the director, may issue an order:~~

521 (i) imposing an educational requirement;

522 (ii) imposing a civil penalty[; ~~or~~] not to exceed the greater of:

523 (A) \$2,500 for each violation; or

- 524 (B) the amount of any gain or economic benefit derived from each violation;
525 (iii) taking any of the following actions related to a license or certificate:
526 (A) revoking;
527 (B) suspending;
528 (C) placing on probation; ~~[or]~~
529 (D) denying the renewal, reinstatement, or ~~[reissuance:]~~ application for an original
530 license or certificate; or
531 (E) in the case of denial or revocation of a license or certificate, setting a waiting
532 period for an applicant to apply for a license or certificate under this title;
533 (iv) issuing a cease and desist order; or
534 (v) doing any combination of Subsections (1)(a)(i) through (iv).
535 (b) If the licensee is an active sales agent or active associate broker, the division shall
536 inform the principal broker with whom the licensee is affiliated of the charge and of the time
537 and place of any hearing.
538 ~~[(c) If the presiding officer at a hearing determines that any licensee or certificate~~
539 ~~holder is guilty of a violation of this chapter, the division by written order may:]~~
540 ~~[(i) with regard to the license or certificate:]~~
541 ~~[(A) suspend;]~~
542 ~~[(B) revoke;]~~
543 ~~[(C) place on probation; or]~~
544 ~~[(D) deny renewal, reinstatement, or reissuance; or]~~
545 ~~[(ii) impose a civil penalty.]~~
546 (2) (a) Any applicant, certificate holder, licensee, or person aggrieved, including the
547 complainant, may obtain agency review by the executive director and judicial review of any
548 adverse ruling, order, or decision of the division.
549 (b) If the applicant, certificate holder, or licensee prevails in the appeal and the court
550 finds that the state action was undertaken without substantial justification, the court may award
551 reasonable litigation expenses to the applicant, certificate holder, or licensee as provided under
552 Title 78, Chapter 27a, Small Business Equal Access to Justice Act.
553 (c) (i) An order, ruling, or decision of the division shall take effect and become
554 operative 30 days after the service of the order, ruling, or decision unless otherwise provided in

555 the order.

556 (ii) If an appeal is taken by a licensee, the division may stay enforcement of an order,
557 ruling, or decision in accordance with Section 63-46b-18.

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

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

562 Section 8. Section **61-2-20** is amended to read:

563 **61-2-20. Rights and privileges of real estate licensees to fill out forms or**
564 **documents.**

565 ~~[Real]~~ A real estate ~~[licensees]~~ licensee may fill out only those legal forms approved by
566 the commission and the attorney general, and those forms provided by statute, with the
567 following exceptions:

568 (1) ~~(a) [Principal brokers and associate brokers]~~ A principal broker may fill out any
569 documents associated with the closing of a real estate transaction.

570 (b) A branch broker or associate broker may fill out any documents associated with the
571 closing of a real estate transaction if designated to fill out the documents by the principal
572 broker with whom the branch broker or associate broker is affiliated.

573 (2) ~~[Real]~~ A real estate ~~[licensees]~~ licensee may fill out real estate forms prepared by
574 legal counsel of the buyer, seller, lessor, or lessee.

575 (3) If the commission and the attorney general have not approved a specific form for
576 the transaction, a principal ~~[brokers]~~ broker, associate ~~[brokers, and]~~ broker, or sales ~~[agents]~~
577 agent may fill out real estate forms prepared by any legal counsel, including legal counsel
578 retained by the brokerage to develop these forms.

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

580 **61-2a-12. Moneys accumulated -- Excess set aside -- Purpose.**

581 (1) Any of the money accumulated in the Real Estate Education, Research and
582 Recovery Fund in excess of \$100,000 shall be set aside and segregated to be used by the Real
583 Estate Division ~~[in carrying out the advancement of]~~ to:

584 (a) investigate violations of this chapter related to fraud; and

585 (b) advance education and research in the field of real estate~~[, including courses].~~

586 (2) The division may only use the excess monies described in Subsection (1) only in a
587 manner consistent with Subsection (1), including for courses:

588 (a) sponsored by the division[;];

589 (b) offered by the division in conjunction with any university or college in the state[;];

590 or

591 (c) provided for by contracting for a particular research project in the field of real estate
592 for the state.

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

594 **61-2b-7. Board established -- Composition -- Qualifications -- Meeting -- Chair --**
595 **Terms of office -- Expenses -- Quorum.**

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

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

600 (ii) one state-certified residential appraiser;

601 (iii) one state-certified general appraiser;

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

604 (v) one member of the general public.

605 [~~(b) The term of the longest serving general public member of the board as of May 2,~~
606 ~~2005 terminates May 2, 2005.~~]

607 [~~(b)~~] (b) A state-licensed or state-certified appraiser may be appointed as an alternate
608 member of the board.

609 [~~(c)~~] (c) The governor shall appoint all members of the board with the consent of the
610 Senate.

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

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

617 years.

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

620 (d) A person may not serve as a member of the board for more than two consecutive
621 terms.

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

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

625 (4) The public member of the board may not be licensed or certified under this chapter.

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

628 (6) The members of the board shall elect a chair annually from among the members to
629 preside at board meetings.

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

634 (b) A member may decline to receive per diem and expenses for the member's service.

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

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

640 Section 11. Section **61-2b-17** is amended to read:

641 **61-2b-17. State-certified and state-licensed appraisers -- Restrictions on use of**
642 **terms -- Conduct prohibited or required -- Trainee.**

643 (1) (a) The terms "state-certified general appraiser," "state-certified residential
644 appraiser," and "state-licensed appraiser":

645 (i) may only be used to refer to an individual who is certified or licensed under this
646 chapter; and

647 (ii) may not be used following, or immediately in connection with, the name or

648 signature of a firm, partnership, corporation, or group, or in any manner that it might be
649 interpreted as referring to a firm, partnership, corporation, group, or to anyone other than the
650 individual who is certified or licensed under this chapter.

651 (b) The requirement of this Subsection (1) may not be construed to prevent a
652 state-certified general appraiser from signing an appraisal report on behalf of a corporation,
653 partnership, firm, or group practice if it is clear that;

654 (i) only the individual is certified; and [that]

655 (ii) the corporation, partnership, firm, or group practice is not certified.

656 (c) Except as provided in Section 61-2b-25, a certificate or license may not be issued
657 under this chapter to a corporation, partnership, firm, or group.

658 (2) (a) A person other than a state-certified general appraiser or state-certified
659 residential appraiser, may not assume or use any title, designation, or abbreviation likely to
660 create the impression of certification in this state as a real estate appraiser.

661 (b) A person other than a state-licensed appraiser may not assume or use any title,
662 designation, or abbreviation likely to create the impression of licensure in this state as a real
663 estate appraiser.

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

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

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

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

675 (e) When signing a certified appraisal report, a state-certified appraiser shall also place
676 on the report, immediately below the state-certified appraiser's signature the state-certified
677 appraiser's certificate number and its expiration date.

678 (f) A state-certified residential appraiser may not prepare a certified appraisal report

679 outside the state-certified residential appraiser's authority as defined in Section 61-2b-13.

680 (g) A state-licensed appraiser who assisted in the preparation of a certified appraisal
681 report is authorized to cosign the certified appraisal report.

682 (4) A person who has not qualified under ~~[either Section 61-2b-14 or 61-2b-15]~~ this
683 chapter may not describe or refer to any appraisal or appraisal report relating to real estate or
684 real property in this state by the terms "certified appraisal" or "certified appraisal report."

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

687 (a) the trainee's name; and

688 (b) the extent to which the trainee assists in the preparation of the appraisal report.

689 Section 12. Section **61-2b-28** is amended to read:

690 **61-2b-28. Enforcement -- Investigation -- Orders -- Hearings.**

691 (1) (a) The division may investigate the actions of:

692 (i) any person licensed or certified under this chapter~~[-];~~;

693 (ii) an applicant for licensure or certification~~[-or];~~;

694 (iii) an applicant for renewal of licensure or certification~~[-and];~~ or

695 (iv) a person required to be licensed or certified under this chapter.

696 (b) The division may initiate an agency action against a person described in Subsection

697 (1)(a) in accordance with Title 63, Chapter 46b, Administrative Procedures Act, to:

698 ~~[(a)]~~ (i) impose disciplinary action ~~[on a person licensed or certified under this chapter;~~
699 ~~or];~~

700 ~~[(b)]~~ (ii) deny issuance to an applicant of an original or renewal license or
701 certification~~[-];~~ or

702 (iii) issue a cease and desist order as provided in Subsection (3).

703 (2) (a) The division may:

704 (i) administer an oath or affirmation;

705 (ii) subpoena witnesses~~[-];~~;

706 (iii) take evidence~~[-];~~ and

707 (iv) require ~~[by subpoena duces tecum]~~ the production of books, papers, contracts,

708 records, other documents, or information relevant to the investigation described in Subsection

709 (1).

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

711 (c) Each failure to respond to ~~[a subpoena by a person licensed or certified under this~~
712 ~~chapter]~~ a request by the division in an investigation authorized under this chapter is
713 considered to be a separate violation of this chapter~~[-]~~, including:

714 (i) failing to respond to a subpoena;

715 (ii) withholding evidence; or

716 (iii) failing to produce documents or records.

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

721 (i) the director has reason to believe that the person has been engaging, is about to
722 engage, or is engaging in the act constituting a violation of this chapter; and

723 (ii) it appears to the director that it would be in the public interest to stop the act.

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

726 (c) Pending the hearing, the cease and desist order shall remain in effect.

727 (d) If a request for hearing is made, the division shall follow the procedures and
728 requirements of Title 63, Chapter 46b, Administrative Procedures Act.

729 (4) (a) After the hearing, if the board agrees that the acts of the person violate this
730 chapter, the board:

731 (i) shall issue an order making the cease and desist order permanent[-]; and

732 (ii) may impose a civil penalty not to exceed the greater of:

733 (A) \$2,500 for each violation; or

734 (B) the amount of any gain or economic benefit derived from each violation.

735 (b) ~~[If no hearing is requested and if the person fails to cease the acts, or after~~
736 ~~discontinuing the acts, again commences the acts, the]~~ The director shall commence an action
737 in the name of the Department of Commerce and Division of Real Estate, in the district court
738 in the county in which [the acts occurred] an act described in Subsection (3) occurs or where
739 the person resides or carries on business, to enjoin and restrain the person from violating this
740 chapter[-] if:

741 (i) (A) no hearing is requested; and
 742 (B) the person fails to cease the act described in Subsection (3); or
 743 (ii) after discontinuing the act described in Subsection (3), the person again
 744 commences the act.

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

747 Section 13. Section **61-2b-29** is amended to read:

748 **61-2b-29. Disciplinary action -- Grounds.**

749 (1) (a) The board may order disciplinary action against any person:

750 (i) licensed or certified under this chapter[-]; or

751 (ii) required to be licensed or certified under this chapter.

752 (b) On the basis of any of the grounds listed in Subsection (2) for disciplinary action,
 753 board action may include:

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

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

757 (iii) in the case of denial or revocation of a license or certification, setting a waiting
 758 period for an applicant to apply for a license or certification under this chapter;

759 [~~(c)~~] (iv) ordering remedial education; [~~and~~]

760 [~~(d)~~] (v) imposing a civil penalty upon a person not to exceed [~~\$1,000 per violation.~~]
 761 the greater of:

762 (A) \$2,500 for each violation; or

763 (B) the amount of any gain or economic benefit from each violation;

764 (vi) issuing a cease and desist order; or

765 (vii) doing any combination of Subsections (1)(b)(i) through (vi).

766 (2) The following are grounds for disciplinary action under this section:

767 (a) procuring or attempting to procure a license or certification under this chapter by
 768 fraud or by making a false statement, submitting false information, or making a material
 769 misrepresentation in an application filed with the division;

770 (b) paying money or attempting to pay money other than the fees provided for by this
 771 chapter to any member or employee of the division to procure a license or certification under

772 this chapter;

773 (c) an act or omission in the practice of real estate appraising that constitutes
774 dishonesty, fraud, or misrepresentation;

775 (d) entry of a judgment against a licensee or certificate holder on grounds of fraud,
776 misrepresentation, or deceit in the making of an appraisal of real estate;

777 (e) a guilty plea to a criminal offense involving moral turpitude that is held in
778 abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo
779 contendere, of a criminal offense involving moral turpitude;

780 (f) engaging in the business of real estate appraising under an assumed or fictitious
781 name not properly registered in this state;

782 (g) paying a finder's fee or a referral fee to a person not licensed or certified under this
783 chapter in connection with an appraisal of real estate or real property in this state;

784 (h) making a false or misleading statement in that portion of a written appraisal report
785 that deals with professional qualifications or in any testimony concerning professional
786 qualifications;

787 (i) violating or disregarding any provision of this chapter, an order of the board, or any
788 rule issued under this chapter;

789 (j) ~~[violation of]~~ violating the confidential nature of governmental records to which a
790 person registered, licensed, or certified under this chapter gained access through employment
791 or engagement as an appraiser by a governmental agency;

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

797 (l) unprofessional conduct as defined by statute or rule; or

798 (m) any other conduct that constitutes dishonest dealing.

799 Section 14. Section **61-2b-31** is amended to read:

800 **61-2b-31. Disciplinary hearing process.**

801 (1) Before disciplinary action may be taken by the board ~~[against a licensee or~~
802 ~~certificate holder,]~~ the division shall;

803 (a) notify the [~~licensee or certificate holder and~~] person against whom the board seeks
804 to take disciplinary action; and

805 (b) commence an adjudicative proceeding.

806 (2) If, after the hearing, the board determines that [~~the licensee or certificate holder~~
807 ~~has~~] a person described in Subsection (1) violated this chapter, the board may impose
808 disciplinary action by written order as provided in Section 61-2b-29.

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

813 (4) (a) Any applicant, licensee, certificate holder, or person aggrieved, including the
814 complainant, may obtain judicial review of any adverse ruling, order, or decision of the board.
815 Any appeal shall be governed by the Utah Rules of Appellate Procedure.

816 (b) If the applicant, licensee, or certificate holder prevails in the appeal and the court
817 finds that the state action was undertaken without substantial justification, the court may award
818 reasonable litigation expenses to the applicant, licensee, or certificate holder as provided under
819 Title 78, Chapter 27a, Small Business Equal Access to Justice Act.

820 Section 15. Section **61-2c-102** is amended to read:

821 **61-2c-102. Definitions.**

822 (1) As used in this chapter:

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

826 (b) "Applicant" means an individual or entity applying for a license under this chapter.

827 (c) "Associate lending manager" means a person who:

828 (i) has qualified under this chapter as a principal lending manager; and

829 (ii) works by or on behalf of another principal lending manager in transacting the
830 business of residential mortgage loans.

831 (d) "Branch office" means a licensed entity's office:

832 (i) for the transaction of the business of residential mortgage loans regulated under this
833 chapter; and

- 834 (ii) other than the main office of the licensed entity.
- 835 (e) (i) "Business of residential mortgage loans" means for compensation to:
- 836 (A) make or originate a residential mortgage loan;
- 837 (B) directly or indirectly solicit, place, or negotiate a residential mortgage loan for
- 838 another; or
- 839 (C) render services related to the origination of a residential mortgage loan including:
- 840 (I) taking applications; and
- 841 (II) communicating with the borrower and lender.
- 842 (ii) "Business of residential mortgage loans" does not include:
- 843 (A) the performance of clerical functions such as:
- 844 (I) gathering information related to a residential mortgage loan on behalf of the
- 845 prospective borrower or a person licensed under this chapter; or
- 846 (II) requesting or gathering information, word processing, sending correspondence, or
- 847 assembling files by an individual who works under the instruction of a person licensed under
- 848 this chapter;
- 849 (B) ownership of an entity that engages in the business of residential mortgage loans if
- 850 the owner does not personally perform the acts listed in Subsection (1)(e)(i);
- 851 (C) acting as a loan wholesaler;
- 852 (D) acting as an account executive for a loan wholesaler;
- 853 (E) acting as a loan underwriter;
- 854 (F) acting as a loan closer; or
- 855 (G) funding a loan.
- 856 (f) "Closed-end" means a loan with a fixed amount borrowed and which does not
- 857 permit additional borrowing secured by the same collateral.
- 858 (g) "Commission" means the Residential Mortgage Regulatory Commission created in
- 859 Section 61-2c-104.
- 860 (h) "Compensation" means anything of economic value that is paid, loaned, granted,
- 861 given, donated, or transferred to an individual or entity for or in consideration of:
- 862 (i) services;
- 863 (ii) personal or real property; or
- 864 (iii) other thing of value.

- 865 (i) "Control," as used in Subsection (1)(a), means the power to directly or indirectly:
 866 (i) direct or exercise a controlling interest over:
 867 (A) the management or policies of an entity; or
 868 (B) the election of a majority of the directors, officers, managers, or managing partners
 869 of an entity;
- 870 (ii) vote 20% or more of any class of voting securities of an entity by an individual; or
 871 (iii) vote more than 5% of any class of voting securities of any entity by another entity.
- 872 ~~[(j) "Control person" means an individual who is designated by an entity as the
 873 individual who directly manages or controls the entity's transaction of the business of
 874 residential mortgage loans secured by Utah dwellings.]~~
- 875 ~~[(k)]~~ (j) "Depository institution" is as defined in Section 7-1-103.
- 876 ~~[(l)]~~ (k) "Director" means the director of the division.
- 877 ~~[(m)]~~ (l) "Division" means the Division of Real Estate.
- 878 ~~[(n)]~~ (m) "Dwelling" means a residential structure attached to real property that
 879 contains one to four units including any of the following if used as a residence:
 880 (i) a condominium unit;
 881 (ii) a cooperative unit;
 882 (iii) a manufactured home; or
 883 (iv) a house.
- 884 ~~[(o)]~~ (n) "Entity" means any corporation, limited liability company, partnership,
 885 company, association, joint venture, business trust, trust, or other organization.
- 886 ~~[(p)]~~ (o) "Executive director" means the executive director of the Department of
 887 Commerce.
- 888 ~~[(q)]~~ (p) "Inactive status" means a dormant status into which an unexpired license is
 889 placed when the holder of the license is not currently engaging in the business of residential
 890 mortgage loans.
- 891 ~~[(r)]~~ (q) "Lending manager" or "principal lending manager" means a person licensed as
 892 a principal lending manager under Section 61-2c-206.
- 893 ~~[(s)]~~ (r) "Licensee" means an individual or entity licensed with the division under this
 894 chapter.
- 895 ~~[(t)]~~ (s) (i) Except as provided in Subsection (1)~~[(t)]~~(s)(ii), "mortgage officer" means an

896 individual who is licensed with the division to transact the business of residential mortgage
897 loans through a principal lending manager.

898 (ii) "Mortgage officer" does not include a principal lending manager.

899 ~~[(t)]~~ (t) "Record" means information that is:

900 (i) prepared, owned, received, or retained by an individual or entity; and

901 (ii) (A) inscribed on a tangible medium; or

902 (B) (I) stored in an electronic or other medium; and

903 (II) retrievable in perceivable form.

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

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

908 (i) the loan or extension of credit is secured by a:

909 (A) mortgage;

910 (B) deed of trust; or

911 (C) lien interest; and

912 (ii) the mortgage, deed of trust, or lien interest described in Subsection (1)~~[(w)]~~(u)(i):

913 (A) is on a dwelling located in the state; and

914 (B) created with the consent of the owner of the residential real property.

915 ~~[(x)]~~ (v) "State" means:

916 (i) a state, territory, or possession of the United States;

917 (ii) the District of Columbia; or

918 (iii) the Commonwealth of Puerto Rico.

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

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

924 Section 16. Section **61-2c-104** is amended to read:

925 **61-2c-104. Residential Mortgage Regulatory Commission.**

926 (1) (a) There is created within the division the Residential Mortgage Regulatory

927 Commission consisting of the following members appointed by the executive director with the
928 approval of the governor:

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

931 (ii) one member from the general public.

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

934 (ii) The alternate member shall:

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

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

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

941 (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall,
942 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms
943 of commission members are staggered so that approximately half of the commission is
944 appointed every two years.

945 (c) If a vacancy occurs in the membership of the commission for any reason, the
946 replacement shall be appointed for the unexpired term.

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

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

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

951 (i) at the discretion of the director;

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

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

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

956 (b) If a quorum of members is unavailable for any meeting and an alternate member
957 has been appointed to the commission by the executive director with the approval of the

958 governor, the alternate member shall serve as a regular member of the commission for that
959 meeting if with the presence of the alternate member there is a quorum present at the meeting.

960 (c) The action of a majority of a quorum present is an action of the commission.

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

965 (ii) A member who is not a government employee may decline to receive per diem and
966 expenses for the member's service.

967 (b) (i) A state government officer and employee member who does not receive salary,
968 per diem, or expenses from the member's agency for the member's service may receive per
969 diem and expenses incurred in the performance of the member's official duties from the
970 commission at the rates established by the Division of Finance under Sections 63A-3-106 and
971 63A-3-107.

972 (ii) A state government officer and employee member may decline to receive per diem
973 and expenses for the member's service.

974 (7) The commission shall:

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

977 (b) take disciplinary action with the concurrence of the director in accordance with Part
978 4, Enforcement;

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

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

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

983 (A) the fundamentals of the English language;

984 (B) arithmetic;

985 (C) the provisions of this chapter;

986 (D) rules adopted by the division;

987 (E) basic residential mortgage principles and practices; and

988 (F) any other aspect of Utah law the commission determines is appropriate;

989 (ii) with the concurrence of the division, the continuing education requirements under
990 Section 61-2c-205, including:

991 (A) except as provided in Subsection 61-2c-202(4)(a)~~(i)(C)~~(iii) and Subsection
992 61-2c-206(1)(c), the appropriate number of hours of prelicensing education and required
993 continuing education; and

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

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

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

999 (A) advanced residential mortgage principles and practices; and

1000 (B) other aspects of Utah law the commission, with the concurrence of the division,
1001 determines appropriate.

1002 (8) The commission may appoint a committee to make recommendations to the
1003 commission concerning approval of prelicensing education and continuing education courses.

1004 (9) The commission and the division shall make the examination and prelicensing
1005 education and continuing education requirements described in this section available through
1006 the Internet or other distance education methods approved by the commission and division
1007 when reasonably practicable.

1008 (10) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
1009 the commission, with the concurrence of the division, shall make rules establishing procedures
1010 under which a licensee may be exempted from continuing education requirements:

1011 (a) for a period not to exceed four years; and

1012 (b) upon a finding of reasonable cause.

1013 Section 17. Section **61-2c-201** is amended to read:

1014 **61-2c-201. Licensure required of individuals and entities engaged in the business**
1015 **of residential mortgage loans -- Mortgage officer -- Principal lending manager.**

1016 (1) Unless exempt from this chapter under Section 61-2c-105, an individual or entity
1017 may not transact the business of residential mortgage loans, as defined in Section 61-2c-102,
1018 without obtaining a license under this chapter.

1019 (2) For purposes of this chapter, an individual or entity transacts business in this state

1020 if:

1021 (a) (i) the individual or entity engages in an act that constitutes the business of
1022 residential mortgage loans; and

1023 (ii) (A) the act described in Subsection (2)(a)(i) is directed to or received in this state;
1024 and

1025 (B) the real property that is the subject of the act described in Subsection (2)(a)(i) is
1026 located in this state; or

1027 (b) a representation is made by the individual or entity that the individual or entity
1028 transacts the business of residential mortgage loans in this state.

1029 (3) An individual who has an ownership interest in an entity required to be licensed
1030 under this chapter is not required to obtain an individual license under this chapter unless the
1031 individual transacts the business of residential mortgage loans.

1032 (4) Unless otherwise exempted under this chapter, licensure under this chapter is
1033 required of both:

1034 (a) the individual who directly transacts the business of residential mortgage loans; and

1035 (b) if the individual transacts business as an employee or agent of an entity or
1036 individual, the entity or individual for whom the employee or agent transacts the business of
1037 residential mortgage loans.

1038 [~~(5) (a) On or after May 1, 2006, a license issued under this chapter to an individual
1039 who has not obtained a license as a principal lending manager automatically converts to a
1040 mortgage officer license.~~]

1041 [~~(b) A mortgage officer license issued pursuant to Subsection (5)(a) shall be placed on
1042 inactive status until the holder of the license has submitted to the division the forms required to
1043 activate the license with a principal lending manager.~~]

1044 [(6)] (5) (a) An individual licensed under this chapter may not engage in the business
1045 of residential mortgage loans on behalf of more than one entity at the same time.

1046 (b) This Subsection [(6)] (5) does not restrict the number of:

1047 (i) different lenders an individual or entity may use as a funding source for residential
1048 mortgage loans; or

1049 (ii) entities in which an individual may have an ownership interest, regardless of
1050 whether the entities are:

1051 (A) licensed under this chapter; or

1052 (B) exempt under Section 61-2c-105.

1053 ~~[(7)]~~ (6) An individual licensed under this chapter may not transact the business of
1054 residential mortgage loans for the following at the same time:

1055 (a) an entity licensed under this chapter; and

1056 (b) an entity that is exempt from licensure under Section 61-2c-105.

1057 ~~[(8) On or after May 1, 2006, except as provided under Title 16, Chapter 11,
1058 Professional Corporation Act or under Title 48, Chapter 2c, Utah Revised Limited Liability
1059 Company Act, a]~~

1060 (7) A mortgage officer may not receive consideration for transacting the business of
1061 residential mortgage loans from any person or entity except the principal lending manager with
1062 whom the mortgage officer is licensed.

1063 ~~[(9) On or after May 1, 2006, a]~~

1064 (8) A mortgage officer shall conduct all business of residential mortgage loans:

1065 (a) through the principal lending manager with which the individual is licensed; and

1066 (b) in the business name under which the principal lending manager is authorized by
1067 the division to do business.

1068 ~~[(10) (a) (i) Subject to Subsection (10)(a)(ii) and until May 1, 2006, if an individual
1069 who is authorized by this chapter to transact the business of residential mortgage loans as an
1070 individual transacts the business of residential mortgage loans under an assumed business
1071 name, the individual shall:]~~

1072 ~~[(A) register the assumed business name with the division; and]~~

1073 ~~[(B) furnish to the division proof that the assumed business name has been filed with
1074 the Division of Corporations and Commercial Code pursuant to Title 42, Chapter 2,
1075 Conducting Business Under Assumed Name.]~~

1076 ~~[(ii)]~~ (9) (a) (i) This Subsection ~~[(10)]~~ (9)(a) does not apply to an individual who
1077 transacts the business of residential mortgage loans as an employee or agent of another
1078 individual or entity.

1079 ~~[(iii)]~~ (ii) If an entity that is authorized by this chapter to transact the business of
1080 residential mortgage loans transacts the business of residential mortgage loans under an
1081 assumed business name, the entity shall:

- 1082 (A) register the assumed name with the division; and
- 1083 (B) furnish the division proof that the assumed business name has been filed with the
- 1084 Division of Corporations and Commercial Code pursuant to Title 42, Chapter 2, Conducting
- 1085 Business Under Assumed Name.
- 1086 (b) The division may charge a fee established in accordance with Section 63-38-3.2 for
- 1087 registering an assumed name pursuant to this Subsection ~~[(10)]~~ (9).
- 1088 ~~[(11)(a)]~~ (10) A licensee whose license is in inactive status may not transact the
- 1089 business of residential mortgage loans.
- 1090 ~~[(b) On or after May 1, 2006, a mortgage officer whose license has been placed in~~
- 1091 ~~inactive status may not transact the business of residential mortgage loans until the mortgage~~
- 1092 ~~officer has licensed with a principal lending manager by following the procedures established~~
- 1093 ~~by the division by rule made in accordance with Title 63, Chapter 46a, Utah Administrative~~
- 1094 ~~Rulemaking Act, including submission of all required forms and payment of all required~~
- 1095 ~~activation fees.]~~
- 1096 ~~[(12) (a) On or after May 3, 2004 and before May 1, 2006, if a licensed entity~~
- 1097 ~~terminates its control person, or if the control person of a licensed entity resigns, dies, or~~
- 1098 ~~becomes unable to act as control person due to disability, the entity shall cease all business of~~
- 1099 ~~residential mortgage loans until the entity has submitted all forms and fees to the division that~~
- 1100 ~~are required to affiliate another control person with the licensed entity.]~~
- 1101 ~~[(b) On or after May 1, 2006, if a licensed entity terminates its principal lending~~
- 1102 ~~manager, or if the principal lending manager of a licensed entity resigns, dies, or becomes~~
- 1103 ~~unable to act as a principal lending manager due to disability, the entity may not transact the~~
- 1104 ~~business of residential mortgage loans until the entity has submitted all forms and fees to the~~
- 1105 ~~division that are required to affiliate another principal lending manager with the entity.]~~
- 1106 Section 18. Section **61-2c-202** is amended to read:
- 1107 **61-2c-202. Licensure procedures.**
- 1108 (1) To apply for licensure under this chapter an applicant shall:
- 1109 (a) submit to the division a licensure statement that:
- 1110 (i) lists any name under which the individual or entity will transact business in this
- 1111 state;
- 1112 (ii) lists the address of the principal business location of the applicant;

- 1113 ~~[(iii) on or after May 3, 2004 and before May 1, 2006, if the applicant is an entity:]~~
 1114 ~~[(A) lists the control person of the applicant; and]~~
 1115 ~~[(B) contains the signature of the control person;]~~
 1116 ~~[(iv) on or after May 1, 2006,]~~
 1117 (iii) if the applicant is an entity:
 1118 (A) lists the principal lending manager of the entity; and
 1119 (B) contains the signature of the principal lending manager;
 1120 ~~[(v)]~~ (iv) demonstrates that the applicant meets the qualifications listed in Section
 1121 61-2c-203;
 1122 ~~[(vi)]~~ (v) if the applicant is an entity, lists:
 1123 (A) all jurisdictions in which the entity is registered, licensed, or otherwise regulated in
 1124 the business of residential mortgage loans; and
 1125 (B) the history of any disciplinary action or adverse administrative action taken against
 1126 the entity by any regulatory agency within the ten years preceding the application; and
 1127 ~~[(vii)]~~ (vi) includes any information required by the division by rule;
 1128 (b) pay to the division:
 1129 (i) an application fee established by the division in accordance with Section 63-38-3.2;
 1130 and
 1131 (ii) the reasonable expenses incurred in processing the application for licensure
 1132 including the costs incurred by the division under Subsection (4); and
 1133 (c) comply with Subsection (4).
 1134 (2) (a) The division shall issue a license to an applicant if the division, with the
 1135 concurrence of the commission, finds that the applicant:
 1136 (i) meets the qualifications of Section 61-2c-203; and
 1137 (ii) complies with this section.
 1138 (b) The commission may delegate to the division the authority to:
 1139 (i) review any class or category of application for initial or renewed licenses;
 1140 (ii) determine whether an applicant meets the licensing criteria in Section 61-2c-203;
 1141 (iii) conduct any necessary hearing on an application; and
 1142 (iv) approve or deny a license application without concurrence by the commission.
 1143 (c) If the commission delegates to the division the authority to approve or deny an

1144 application without concurrence by the commission and the division denies an application for
1145 licensure, the applicant who is denied licensure may petition the commission for review of the
1146 denial.

1147 (d) An applicant who is denied licensure under this Subsection (2)(b) may seek agency
1148 review by the executive director only after the commission has reviewed the division's denial of
1149 the applicant's application.

1150 (3) Subject to Subsection (2)(d) and in accordance with Title 63, Chapter 46b,
1151 Administrative Procedures Act, an applicant who is denied licensure under this chapter may
1152 submit a request for agency review to the executive director within 30 days following the
1153 issuance of the commission order denying the licensure.

1154 (4) (a) ~~(i)~~ An individual applying for a license under this chapter ~~[and any control~~
1155 ~~person of the applicant]~~ shall:

1156 ~~(A)~~ (i) submit a fingerprint card in a form acceptable to the division at the time the
1157 licensure statement is filed;

1158 ~~(B)~~ (ii) consent to a ~~[fingerprint]~~ criminal background check by:

1159 ~~(i)~~ (A) the Utah Bureau of Criminal Identification; and

1160 ~~(ii)~~ (B) the Federal Bureau of Investigation;

1161 ~~(C) on or after January 1, 2005;]~~

1162 (iii) provide proof using methods approved by the division of having successfully
1163 completed 20 hours of approved prelicensing education required by the commission under
1164 Section 61-2c-104 before taking the examination required by Subsection (4)(a)~~(i)(D)~~(iv); and

1165 ~~(D)~~ (iv) provide proof using methods approved by the division of having successfully
1166 passed an examination approved by the commission under Section 61-2c-104.

1167 ~~(ii) Notwithstanding Subsections (4)(a)(i)(C) and (4)(a)(i)(D), an individual meeting~~
1168 ~~the conditions of Subsection (4)(a)(iii) may engage in the business of residential mortgage~~
1169 ~~loans until January 1, 2005 without having:]~~

1170 ~~(A) completed the prelicensing education described in Subsection (4)(a)(i)(C); and]~~

1171 ~~(B) passed the examination described in Subsection (4)(a)(i)(D).]~~

1172 ~~(iii) Subsection (4)(a)(ii) applies to an individual:]~~

1173 ~~(A) who was registered with the division under this chapter prior to January 1, 2004;]~~

1174 ~~(B) whose registration was converted to a license under Section 61-2c-201.1; and]~~

1175 ~~[(C) whose converted license either:]~~
1176 ~~[(F) does not expire before January 1, 2005; or]~~
1177 ~~[(H) is renewed prior to January 1, 2005.]~~
1178 (b) The division shall request the Department of Public Safety to complete a Federal
1179 Bureau of Investigation criminal background check for each applicant and each control person
1180 of an applicant through a national criminal history system.
1181 (c) The applicant shall pay the cost of:
1182 (i) the fingerprinting required by this section; and
1183 (ii) the criminal background check required by this section.
1184 (d) (i) A license under this chapter is conditional pending completion of the criminal
1185 background check required by this Subsection (4).
1186 (ii) If a criminal background check discloses that an applicant ~~[or an applicant's control~~
1187 ~~person]~~ failed to accurately disclose a criminal history, the license shall be immediately and
1188 automatically revoked.
1189 (iii) An individual or entity whose conditional license is revoked under Subsection
1190 (4)(d)(ii) may appeal the revocation in a hearing conducted by the commission:
1191 (A) after the revocation; and
1192 (B) in accordance with Title 63, Chapter 46b, Administrative Procedures Act.
1193 (iv) The commission may delegate to the division or an administrative law judge the
1194 authority to conduct a hearing described in Subsection (4)(d)(iii).
1195 (v) Relief from a revocation may be granted only if:
1196 (A) the criminal history upon which the division based the revocation:
1197 (I) did not occur; or
1198 (II) is the criminal history of another person;
1199 (B) (I) the revocation is based on a failure to accurately disclose a criminal history; and
1200 (II) the applicant had a reasonable good faith belief at the time of application that there
1201 was no criminal history to be disclosed; or
1202 (C) the division failed to follow the prescribed procedure for the revocation.
1203 (e) If a license is revoked or a revocation is upheld after a hearing described in
1204 Subsection (4)(d)(iii), the person may not apply for a new license for a period of 12 months ~~[or~~
1205 ~~longer not to exceed five years after the revocation, as determined by the presiding officer]~~

1206 after the day on which the license is revoked.

1207 (f) The funds paid by an applicant for the cost of the criminal background check shall
1208 be nonlapsing.

1209 (g) The commission may delegate to the division the authority to make a decision on
1210 whether relief from a revocation should be granted.

1211 Section 19. Section **61-2c-203** is amended to read:

1212 **61-2c-203. Qualifications for licensure.**

1213 (1) To qualify for licensure under this chapter, an individual:

1214 (a) shall have good moral character and the competency to transact the business of
1215 residential mortgage loans;

1216 (b) shall demonstrate honesty, integrity, and truthfulness;

1217 (c) except as provided in Subsection (3), may not have been convicted in the ten years
1218 preceding the day on which an application is submitted to the division of:

1219 (i) any felony or class A misdemeanor involving moral turpitude; or

1220 (ii) any crime in any other jurisdiction that is the equivalent of a felony or class A
1221 misdemeanor involving moral turpitude;

1222 (d) except as provided in Subsection (3), may not have been convicted in the five years
1223 preceding the day on which an application is submitted to the division of:

1224 (i) any class B or class C misdemeanor involving moral turpitude; or

1225 (ii) any crime in another jurisdiction that is the equivalent of a class B or class C
1226 misdemeanor involving moral turpitude;

1227 (e) except as provided in Subsection (3), in relationship to a crime set forth in

1228 [~~Subsections~~] Subsection (1)(c) [~~and~~] or (d) during the time period set forth in [~~Subsections~~]
1229 Subsection (1)(c) [~~and~~] or (d), may not have:

1230 (i) entered a guilty plea, a no contest plea, or its equivalent; and

1231 (ii) resolved by diversion or its equivalent;

1232 (f) except as provided in Subsection 61-2c-202(4)(e), may not have had a license or
1233 registration suspended, revoked, surrendered, canceled, or denied in the five years preceding
1234 the date the individual applies for licensure except as provided in Subsection (3), if:

1235 (i) the registration or license is issued by this state or another jurisdiction; and

1236 (ii) the suspension, revocation, surrender, probation, fine, cancellation, or denial is

1237 based on misconduct in a professional capacity that relates to moral character, honesty,
1238 integrity, truthfulness, or the competency to transact the business of residential mortgage loans;
1239 (g) except as provided in Subsection (3), may not have been the subject of a bar by the
1240 Securities and Exchange Commission, the New York Stock Exchange, or the National
1241 Association of Securities Dealers within the five years preceding the date the individual applies
1242 for registration; and
1243 (h) may not have had any temporary or permanent injunction entered against the
1244 individual:
1245 (i) by a court or licensing agency; and
1246 (ii) ~~[based]~~ on the basis of:
1247 (A) conduct or a practice involving the business of residential mortgage loans; or
1248 (B) conduct involving fraud, misrepresentation, or deceit.
1249 (2) To qualify for licensure under this chapter an entity may not have:
1250 (a) any of the following individuals in management who fails to meet the requirements
1251 of Subsection (1):
1252 (i) a manager or a managing partner;
1253 (ii) a director;
1254 (iii) an executive officer; or
1255 (iv) an individual occupying a position or performing functions similar to those
1256 described in Subsections (2)(a)(i) through (iii); or
1257 ~~[(b) (i) before May 1, 2006, a control person who fails to meet the requirements of~~
1258 ~~Subsection (1); or]~~
1259 ~~[(ii) on or after May 1, 2006,]~~
1260 (b) a principal lending manager who fails to meet the requirements of Subsection (1).
1261 (3) Notwithstanding the failure to meet the requirements of Subsections (1)(c) through
1262 (h), the division may permit an individual or entity to be licensed under this chapter if the
1263 individual applicant or a person listed in Subsection (2):
1264 (a) fails to meet the requirements of Subsections (1)(c) through (h);
1265 (b) otherwise meets the qualifications for licensure; and
1266 (c) provides evidence satisfactory to the division with the concurrence of the
1267 commission that the individual applicant or person described in Subsection (2):

- 1268 (i) is of good moral character;
- 1269 (ii) is honest;
- 1270 (iii) has integrity;
- 1271 (iv) is truthful; and
- 1272 (v) has the competency to transact the business of residential mortgage loans.
- 1273 Section 20. Section **61-2c-205** is amended to read:
- 1274 **61-2c-205. Term of licensure -- Renewal -- Reporting of changes.**
- 1275 (1) (a) A license under this chapter is valid for a two-year period.
- 1276 (b) Notwithstanding Subsection (1)(a), the time period of a license may be extended or
- 1277 shortened by as much as one year to maintain or change a renewal cycle established by rule by
- 1278 the division.
- 1279 (2) To renew a license, no later than the date the license expires, a licensee shall:
- 1280 (a) (i) file the renewal form required by the division; and
- 1281 (ii) furnish the information required by Subsection 61-2c-202(1);
- 1282 (b) pay a fee to the division established by the division in accordance with Section
- 1283 63-38-3.2; and
- 1284 (c) if the licensee is an individual and the individual's license is in active status at the
- 1285 time of application for renewal, submit proof using forms approved by the division of having
- 1286 completed during the two years prior to application the continuing education required by the
- 1287 commission under Section 61-2c-104.
- 1288 (3) (a) A licensee under this chapter shall notify the division using the form required by
- 1289 the division within ten days of the date on which there is a change in:
- 1290 (i) a name under which the licensee transacts the business of residential mortgage loans
- 1291 in this state;
- 1292 (ii) (A) if the licensee is an entity, the business location of the licensee; or
- 1293 (B) if the licensee is an individual, the home and business addresses of the individual;
- 1294 [~~(iii) (A) on or after May 3, 2004 and before May 1, 2006, the control person of the~~
- 1295 ~~licensee; or]~~
- 1296 [~~(B) on or after May 1, 2006;]~~
- 1297 (iii) the principal lending manager of the entity;
- 1298 (iv) the entity with which an individual licensee is licensed to conduct the business of

1299 residential mortgage loans; or
1300 (v) any other information that is defined as material by rule made by the division.
1301 (b) Failure to notify the division of a change described in Subsection (3)(a) is separate
1302 grounds for disciplinary action against a licensee.
1303 (4) A licensee shall notify the division by sending the division a signed statement
1304 within ten business days of:
1305 (a) (i) a conviction of any criminal offense;
1306 (ii) the entry of a plea in abeyance to any criminal offense; or
1307 (iii) the potential resolution of any criminal case by:
1308 (A) a diversion agreement; or
1309 (B) any other agreement under which criminal charges are held in suspense for a period
1310 of time;
1311 (b) filing a personal bankruptcy or bankruptcy of a business that transacts the business
1312 of residential mortgage loans;
1313 (c) the suspension, revocation, surrender, cancellation, or denial of a professional
1314 license or professional registration of the licensee, whether the license or registration is issued
1315 by this state or another jurisdiction; or
1316 (d) the entry of a cease and desist order or a temporary or permanent injunction:
1317 (i) against the licensee by a court or licensing agency; and
1318 (ii) based on:
1319 (A) conduct or a practice involving the business of residential mortgage loans; or
1320 (B) conduct involving fraud, misrepresentation, or deceit.
1321 (5) (a) A license under this chapter expires if the licensee does not apply to renew the
1322 license on or before the expiration date of the license.
1323 (b) Within 30 calendar days after the expiration date, a licensee whose license has
1324 expired may apply to reinstate the expired license upon:
1325 (i) payment of a renewal fee and a late fee determined by the division under Section
1326 63-38-3.2; and
1327 (ii) if the licensee is an individual and is applying to reinstate a license to active status,
1328 providing proof using forms approved by the division of having completed, during the two
1329 years prior to application, the continuing education required by the commission under Section

1330 61-2c-104.

1331 (c) After the 30 calendar days described in Subsection (5)(b) and within six months
1332 after the expiration date, a licensee whose license has expired may apply to reinstate an expired
1333 license upon:

1334 (i) payment of a renewal fee and a late fee determined by the division under Section
1335 63-38-3.2;

1336 (ii) if the licensee is an individual and is applying to reinstate a license to active status,
1337 providing proof using forms approved by the division of having completed, during the two
1338 years prior to application, the continuing education required by the commission under Section
1339 61-2c-104; and

1340 (iii) in addition to the continuing education required for a timely renewal, completing
1341 an additional 12 hours of continuing education approved by the commission under Section
1342 61-2c-104.

1343 (d) A licensee whose license has been expired for more than six months shall be
1344 relicensed as prescribed for an original application under Section 61-2c-202.

1345 Section 21. Section **61-2c-206** is amended to read:

1346 **61-2c-206. Lending manager licenses.**

1347 (1) Except as provided in Subsection (2), [~~on or after January 1, 2006,~~] to qualify as a
1348 principal lending manager under this chapter, an individual shall, in addition to meeting the
1349 standards in Section 61-2c-203:

1350 (a) submit an application on a form approved by the division;

1351 (b) pay fees determined by the division under Section 63-38-3.2;

1352 (c) submit proof of having successfully completed 40 hours of prelicensing education
1353 approved by the commission under Section 61-2c-104;

1354 (d) submit proof of having successfully completed the principal lending manager
1355 examination approved by the commission under Section 61-2c-104;

1356 (e) submit proof on forms approved by the division of three years of full-time active
1357 experience as a mortgage officer in the five years preceding the day on which the application is
1358 submitted, or its equivalent as approved by the commission; and

1359 (f) if the individual is not licensed under this chapter at the time of application, submit
1360 to the criminal background check required by Subsection 61-2c-202(4).

1361 (2) (a) Notwithstanding Subsection (1), an individual described in Subsection (2)(b)
1362 may qualify as a principal lending manager without:

1363 (i) meeting the requirements of Subsection (1)(c); and

1364 (ii) completing the portions of the principal lending manager examination described in
1365 Subsection (1)(d) that:

1366 (A) relate to federal law; and

1367 (B) do not relate to Utah law.

1368 (b) An individual may qualify as a principal lending manager pursuant to Subsection
1369 (2)(a) if the individual:

1370 (i) submits to the division an affidavit that the individual has five years of experience
1371 in the business of residential mortgage loans;

1372 (ii) establishes that the individual's experience described in this Subsection (2)(b) was
1373 acquired:

1374 (A) under requirements substantially equivalent to the requirements of this chapter; and

1375 (B) in compliance with the requirements of this chapter; and

1376 (iii) provides any other information required by the division by rule under Subsection
1377 (2)(c).

1378 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1379 division shall define the information an individual shall provide to the division pursuant to
1380 Subsection (2)(b).

1381 (3) A principal lending manager may not engage in the business of residential
1382 mortgage loans on behalf of more than one entity at the same time.

1383 Section 22. Section **61-2c-208** is amended to read:

1384 **61-2c-208. Activation and inactivation of license.**

1385 (1) (a) A licensee may request that the division place the license on inactive status by
1386 submitting an inactivation form approved by the division.

1387 ~~[(b) On or after May 1, 2006, if the license of a principal lending manager is revoked,~~
1388 ~~suspended, or expires, the license of any mortgage officer licensed with that principal lending~~
1389 ~~manager shall automatically convert to inactive status.]~~

1390 (b) The license of a mortgage officer or mortgage entity not affiliated with an active
1391 license of a principal lending manager automatically converts to inactive status on the day on

1392 which the mortgage officer or mortgage entity is not affiliated with the active license of the
1393 principal lending manager.

1394 (c) A licensee whose license is in inactive status may not transact the business of
1395 residential mortgage loans.

1396 (2) To activate a license that has been placed on inactive status, a licensee shall:

1397 (a) submit an activation form;

1398 (i) approved by the division; and

1399 (ii) signed by the principal lending manager with whom the licensee is affiliating;

1400 (b) pay an activation fee established by the division under Section 63-38-3.2; and

1401 (c) if the licensee is an individual whose license was in inactive status at the time of the
1402 previous renewal, the licensee shall supply the division with proof of the successful completion
1403 of the number of hours of continuing education that the licensee would have been required to
1404 complete under Subsection 61-2c-205(2)(c) if the licensee's license had been on active status,
1405 up to a maximum of the number of hours required for two licensing periods.

1406 ~~[(3) On or after May 1, 2006, in addition to the requirements of Subsection (2), a~~
1407 ~~mortgage officer whose license has been placed on inactive status shall obtain the signature of~~
1408 ~~the principal lending manager with whom the mortgage officer will be actively licensed on the~~
1409 ~~form required by the division.]~~

1410 ~~[(4) (a) On or after May 3, 2004 and before May 1, 2006, in addition to the~~
1411 ~~requirements of Subsection (2), an entity whose license has been placed on inactive status~~
1412 ~~because of the termination, death, disability, or departure of its control person shall submit the~~
1413 ~~forms required by the division to affiliate the license of another control person with the entity.]~~

1414 ~~[(b) On or after May 1, 2006, in addition to the requirements of Subsection (2), an~~
1415 ~~entity whose license has been placed on inactive status because of the termination, death,~~
1416 ~~disability, or departure of its principal lending manager shall submit the forms required by the~~
1417 ~~division to affiliate the license of another principal lending manager with the entity.]~~

1418 Section 23. Section **61-2c-301** is amended to read:

1419 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

1420 (1) An individual or entity transacting the business of residential mortgage loans in this
1421 state may not:

1422 (a) give or receive compensation or anything of value in exchange for a referral of

- 1423 residential mortgage loan business;
- 1424 (b) charge a fee in connection with a residential mortgage loan transaction:
- 1425 (i) that is excessive; or
- 1426 (ii) if the individual or entity does not comply with Section 70D-1-6;
- 1427 (c) give or receive compensation or anything of value in exchange for a referral of
- 1428 settlement or loan closing services related to a residential mortgage loan transaction;
- 1429 (d) do any of the following to induce a lender to extend credit as part of a residential
- 1430 mortgage loan transaction:
- 1431 (i) make a false statement or representation;
- 1432 (ii) cause false documents to be generated; or
- 1433 (iii) knowingly permit false information to be submitted by any party;
- 1434 (e) give or receive compensation or anything of value, or withhold or threaten to
- 1435 withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in
- 1436 reaching a value conclusion in a residential mortgage loan transaction, except that it is not a
- 1437 violation of this section for a licensee to withhold payment because of a bona fide dispute
- 1438 regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards
- 1439 of Professional Appraisal Practice;
- 1440 (f) violate or not comply with:
- 1441 (i) this chapter;
- 1442 (ii) an order of the commission or division; or
- 1443 (iii) a rule made by the division;
- 1444 (g) fail to respond within the required time period to:
- 1445 (i) a notice or complaint of the division; or
- 1446 (ii) a request for information from the division;
- 1447 (h) make false representations to the division, including in a licensure statement;
- 1448 (i) for any residential mortgage loan transaction beginning on or after January 1, 2004,
- 1449 engage in the business of residential mortgage loans with respect to the transaction if the
- 1450 individual or entity also acts in any of the following capacities with respect to the same
- 1451 residential mortgage loan transaction:
- 1452 (i) appraiser;
- 1453 (ii) escrow agent;

- 1454 (iii) real estate agent;
- 1455 (iv) general contractor; or
- 1456 (v) title insurance agent;
- 1457 (j) order a title insurance report or hold a title insurance policy unless the individual or
- 1458 entity provides to the title insurer a copy of a valid, current license under this chapter;
- 1459 (k) engage in unprofessional conduct as defined by rule;
- 1460 (l) engage in an act or omission in transacting the business of residential mortgage
- 1461 loans that constitutes dishonesty, fraud, or misrepresentation;
- 1462 (m) engage in false or misleading advertising;
- 1463 (n) (i) fail to account for all funds received in connection with a residential mortgage
- 1464 loan;
- 1465 (ii) use funds for a different purpose from the purpose for which the funds were
- 1466 received; or
- 1467 (iii) except as provided in Subsection (4), retain funds paid for services if the services
- 1468 were not actually performed;
- 1469 (o) fail, within 90 calendar days of a request from a borrower who has paid for an
- 1470 appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;
- 1471 (p) engage in an act that is performed to:
- 1472 (i) evade this chapter; or
- 1473 (ii) assist another person to evade this chapter;
- 1474 (q) recommend or encourage default or delinquency, or continuation of an existing
- 1475 default or delinquency, by a mortgage applicant on an existing indebtedness prior to the closing
- 1476 of a residential mortgage loan that will refinance all or part of the indebtedness;
- 1477 [~~(r) in the case of a control person of an entity, fail to exercise reasonable supervision~~
- 1478 ~~over the activities of:]~~
- 1479 [~~(i) the individuals engaged in the business of residential mortgage loans on behalf of~~
- 1480 ~~the entity; or]~~
- 1481 [~~(ii) any unlicensed staff;]~~
- 1482 [~~(s) on or after May 1, 2006;]~~
- 1483 (r) in the case of the principal lending manager of an entity or a branch office of an
- 1484 entity, fail to exercise reasonable supervision over the activities of [~~the~~];

1485 (i) any unlicensed staff; and
 1486 (ii) any mortgage officers who are licensed with the principal lending manager; or
 1487 [~~(t)~~] (s) pay or offer to pay an individual who does not hold a license under this chapter
 1488 for work that requires the individual to hold a license under this chapter.

1489 (2) Whether or not the crime is related to the business of residential mortgage loans, it
 1490 is a violation of this chapter for a licensee[~~, a control person of a licensee,~~] or a person who is a
 1491 certified education provider to do any of the following with respect to a criminal offense which
 1492 involves moral turpitude:

1493 (a) be convicted;
 1494 (b) plead guilty or nolo contendere;
 1495 (c) enter a plea in abeyance; or
 1496 (d) be subjected to a criminal disposition similar to the ones described in Subsections
 1497 (2)(a) through (c).

1498 (3) A principal lending manager does not violate Subsection (1)[~~(s)~~](r) if:

1499 (a) in contravention of the principal lending manager's written policies and
 1500 instructions, an affiliated licensee of the principal lending manager violates [~~a provision of~~]:

1501 (i) this chapter; or
 1502 (ii) rules made by the division under this chapter;
 1503 (b) the principal lending manager established and followed reasonable procedures to
 1504 ensure that affiliated licensees receive adequate supervision;
 1505 (c) upon learning of a violation by an affiliated licensee, the principal lending manager
 1506 attempted to prevent or mitigate the damage;
 1507 (d) the principal lending manager did not participate in or ratify the violation by an
 1508 affiliated licensee; and
 1509 (e) the principal lending manager did not attempt to avoid learning of the violation.

1510 (4) Notwithstanding Subsection (1)(n)(iii), a licensee may, upon compliance with
 1511 Section 70D-1-6, charge a reasonable cancellation fee for work done originating a mortgage if
 1512 the mortgage is not closed.

1513 Section 24. Section **61-2c-302** is amended to read:

1514 **61-2c-302. Record requirements.**

1515 (1) For the time period specified in Subsection (2), a licensee shall make or possess any

1516 record required for that licensee by a rule made by the division.

1517 (2) A licensee shall maintain in its possession a record described in Subsection (1)

1518 [~~until the later of~~] for four years from the last to occur of the following:

1519 (a) the final entry on a residential mortgage loan is made by that licensee;

1520 (b) if the residential mortgage loan is serviced by the licensee:

1521 (i) the residential mortgage loan is paid in full; or

1522 (ii) the licensee ceases to service the residential mortgage loan; or

1523 (c) if the residential mortgage loan is not serviced by the licensee, the residential
1524 mortgage loan is closed.

1525 (3) A licensee shall:

1526 (a) make available to the division for inspection and copying during normal business
1527 hours all records required to be maintained under this chapter; and

1528 (b) upon reasonable notice from the division to a licensee, produce all records
1529 described in Subsection (3)(a) that are related to an investigation being conducted by the
1530 division at the division office for inspection and copying by the division.

1531 (4) A licensed entity shall maintain and produce for inspection by the division a current
1532 list of all individuals whose licenses are affiliated with the entity.

1533 Section 25. Section **61-2c-401** is amended to read:

1534 **61-2c-401. Investigations -- Subpoena power of division.**

1535 (1) The division may investigate or cause to be investigated the actions of:

1536 (a) (i) a licensee; [~~or~~]

1537 (ii) a person required to be licensed under this chapter; or

1538 [~~(ii)~~] (iii) the following with respect to an entity that is a licensee or an entity required
1539 to be licensed under this chapter:

1540 [~~(A) a control person;~~]

1541 [~~(B)~~] (A) a manager;

1542 [~~(C)~~] (B) a managing partner;

1543 [~~(D)~~] (C) a director;

1544 [~~(E)~~] (D) an executive officer; or

1545 [~~(F)~~] (E) an individual who performs a function similar to an individual listed in this
1546 Subsection (1)(a)[~~(ii)~~](iii);

- 1547 (b) (i) an applicant for licensure or renewal of licensure under this chapter; or
- 1548 (ii) the following with respect to an entity that has applied for a license or renewal of
- 1549 licensure under this chapter:
- 1550 [~~(A)~~] a control person;
- 1551 [~~(B)~~] (A) a manager;
- 1552 [~~(C)~~] (B) a managing partner;
- 1553 [~~(D)~~] (C) a director;
- 1554 [~~(E)~~] (D) an executive officer; or
- 1555 [~~(F)~~] (E) an individual who performs a function similar to an individual listed in this
- 1556 Subsection (1)(b)(ii); or
- 1557 (c) any individual or entity that transacts the business of residential mortgage loans
- 1558 within this state~~[-, and the control persons of any such entity].~~
- 1559 (2) In conducting investigations, records inspections, and adjudicative proceedings, the
- 1560 division may:
- 1561 (a) administer an oath or affirmation;
- 1562 [~~(a)~~] (b) subpoena witnesses;
- 1563 [~~(b)~~] (c) take evidence;
- 1564 [~~(c)~~] (d) require [~~by subpoena duces tecum~~] the production of books, papers, contracts,
- 1565 records, other documents, or information [~~considered~~] relevant to an investigation; and
- 1566 [~~(d)~~] (e) serve a subpoena by certified mail.
- 1567 (3) A failure to respond to [~~a subpoena served by the division~~] a request by the division
- 1568 in an investigation authorized under this chapter is considered as a separate violation of this
- 1569 chapter~~[-]~~, including:
- 1570 (a) failing to respond to a subpoena;
- 1571 (b) withholding evidence; or
- 1572 (c) failing to produce documents or records.
- 1573 (4) The division may inspect and copy all records related to the business of residential
- 1574 mortgage loans by a licensee under this chapter, regardless of whether the records are
- 1575 maintained at a business location in Utah, in conducting:
- 1576 (a) investigations of complaints; or
- 1577 (b) inspections of the records required to be maintained under:

1578 (i) this chapter; or

1579 (ii) rules adopted by the division under this chapter.

1580 (5) (a) If a licensee maintains the records required by this chapter and the rules adopted
1581 by the division under this chapter outside Utah, the licensee is responsible for all reasonable
1582 costs, including reasonable travel costs, incurred by the division in inspecting those records.

1583 (b) Upon receipt of notification from the division that records maintained outside Utah
1584 are to be examined in connection with an investigation or an examination, the licensee shall
1585 deposit with the division a deposit of \$500 to cover the division's expenses in connection with
1586 the examination of the records.

1587 (c) If the deposit described in Subsection (5)(b) is insufficient to meet the estimated
1588 costs and expenses of examination of the records, the licensee shall make an additional deposit
1589 to cover the estimated costs and expenses of the division.

1590 (d) (i) All deposits under this Subsection (5) shall be deposited in the General Fund as
1591 a dedicated credit to be used by the division under Subsection (5)(a).

1592 (ii) The division, with the concurrence of the executive director, may use the deposit
1593 monies deposited in the General Fund under this Subsection (5)(d) as a dedicated credit for the
1594 records inspection costs under Subsection (5)(a).

1595 (iii) A deposit under this Subsection (5) shall be refunded to the licensee to the extent it
1596 is not used, together with an itemized statement from the division of all amounts it has used.

1597 (e) All deposits under this Subsection (5) shall be nonlapsing.

1598 (6) Failure to deposit with the division a deposit required to cover the costs of
1599 examination of records that are maintained outside Utah shall result in automatic suspension of
1600 a license until the deposit is made.

1601 Section 26. Section **61-2c-402** is amended to read:

1602 **61-2c-402. Disciplinary action.**

1603 ~~[(1)]~~ Subject to the requirements of Section 61-2c-402.1, if an individual or entity
1604 required to be licensed under this chapter violates this chapter, or an education provider
1605 required to be certified under this chapter violates this chapter, the commission, with the
1606 concurrence of the director, may:

1607 (1) impose an educational requirement;

1608 ~~[(2)]~~ (2) impose a civil penalty against the individual or entity in an amount not to

1609 exceed the greater of:

1610 (a) \$2,500 [~~per~~] for each violation; or

1611 (b) the amount equal to any gain or economic benefit derived from each violation;

1612 (3) deny an application for an original license;

1613 ~~[(b)]~~ (4) do any of the following to a license under this chapter:

1614 ~~[(i)]~~ (a) suspend;

1615 ~~[(ii)]~~ (b) revoke;

1616 ~~[(iii)]~~ (c) place on probation;

1617 ~~[(iv)]~~ (d) deny renewal; [~~or~~]

1618 ~~[(v)]~~ (e) deny reinstatement; or

1619 (f) in the case of a denial or revocation of a license, set a waiting period for an

1620 applicant to apply for a license under this chapter;

1621 (5) issue a cease and desist order; or

1622 (6) do any combination of Subsections (1) through (5).

1623 ~~[(c) do both Subsections (1)(a) and (b).]~~

1624 ~~[(2) (a) If a license under this chapter is revoked, the individual or entity may apply to~~

1625 ~~have the license reinstated by complying with the requirements of Section 61-2c-202 for~~

1626 ~~licensure.]~~

1627 ~~[(b) Notwithstanding Subsection (2)(a) and except as provided in Subsection~~

1628 ~~61-2c-202(4)(c), if a license under this chapter is revoked, the individual or entity may not~~

1629 ~~apply for reinstatement of the license sooner than five years after the day on which the license~~

1630 ~~is revoked in accordance with this section.]~~

1631 ~~[(c) If an individual or entity whose license has been revoked applies for reinstatement~~

1632 ~~in accordance with Subsection (2)(b), the presiding officer may grant the application for~~

1633 ~~reinstatement if the presiding officer finds that:]~~

1634 ~~[(i) (A) there has been good conduct on the part of the applicant subsequent to the~~

1635 ~~events that led to the revocation; and]~~

1636 ~~[(B) the subsequent good conduct outweighs the events that led to the revocation; and]~~

1637 ~~[(ii) the interest of the public is not likely to be harmed by the granting of the license.]~~

1638 ~~[(3) Subject to the requirements of Section 61-2c-402.1, if an individual or entity~~

1639 ~~required to be licensed under this chapter violates this chapter, or an education provider~~

1640 required to be certified under this chapter violates this chapter, the presiding officer in an
 1641 adjudicative proceeding commenced after a person or an entity applies for an original or
 1642 renewed license may:]

1643 [~~(a) deny an application for an original license;~~]

1644 [~~(b) deny an application for renewal;~~]

1645 [~~(c) deny an application for reinstatement; or~~]

1646 [~~(d) issue or renew the license but;~~]

1647 [~~(i) place the license on probation;~~]

1648 [~~(ii) suspend the license for a period of time;~~]

1649 [~~(iii) impose a civil penalty not to exceed \$2,500 per violation; or~~]

1650 [~~(iv) any combination of Subsections (3)(d)(i) through (iii).]~~

1651 Section 27. Section **61-2c-403** is amended to read:

1652 **61-2c-403. Cease and desist orders.**

1653 (1) (a) The director may issue and serve by certified mail, or by personal service, on an
 1654 individual or entity an order to cease and desist if:

1655 (i) the director has reason to believe that the individual or entity has been ~~[or]~~ engaged,
 1656 is engaging in, or is about to engage in acts constituting a violation of this chapter; and

1657 (ii) it appears to the director that it would be in the public interest to stop the acts.

1658 (b) Within ten days after service of the order, the party named in the order may request
 1659 an adjudicative proceeding to be held in accordance with Title 63, Chapter 46b, Administrative
 1660 Procedures Act.

1661 (c) Pending the hearing, the cease and desist order shall remain in effect.

1662 (2) (a) After the hearing described in Subsection (1), if the director finds that the acts
 1663 of the individual or entity violate this chapter, the director;

1664 (i) shall issue an order making the cease and desist order permanent[-]; and

1665 (ii) may impose a civil penalty not to exceed the greater of:

1666 (A) \$2,500 for each violation; or

1667 (B) the amount of any gain or economic benefit derived from each violation.

1668 (b) (i) The director may file suit in the name of the division to enjoin and restrain an
 1669 individual or entity on whom an order is served under this section from violating this chapter
 1670 if:

1671 (A) (I) the individual or entity did not request a hearing under Subsection (1); or
 1672 (II) a permanent cease and desist order is issued against the individual or entity
 1673 following a hearing or stipulation; and
 1674 (B) (I) the individual or entity fails to cease the acts; or
 1675 (II) after discontinuing the acts, the individual or entity again commences the acts.
 1676 (ii) The suit described in Subsection (2)(b)(i) shall be filed in the district court in the
 1677 county:

1678 (A) in which the acts occurred;
 1679 (B) where the individual resides; or
 1680 (C) where the individual or entity carries on business.
 1681 (3) The cease and desist order issued under this section may not interfere with or
 1682 prevent the prosecution of a remedy or action enforcement under this chapter.

1683 (4) An individual who violates a cease and desist order issued under this section is
 1684 guilty of a class A misdemeanor.

1685 Section 28. Section **61-2c-404** is amended to read:

1686 **61-2c-404. Civil actions.**

1687 (1) (a) A person who violates this chapter is liable for an additional penalty, as
 1688 determined by the court, of at least the amount the person received in consequence of a
 1689 violation of this chapter as:

1690 (i) commission;
 1691 (ii) compensation; or
 1692 (iii) profit.

1693 (b) A person aggrieved by a violation of this chapter may:

1694 (i) bring an action for a penalty described in Subsection (1)(a); and
 1695 (ii) use a penalty obtained under Subsection (1)(a) for the person's own use and benefit.

1696 (2) A person who is not licensed under this chapter at the time of an act or service that
 1697 requires a license under this chapter may not bring an action in court for the recovery of a
 1698 commission, fee, or compensation for that act or service.

1699 [~~(3) On or after May 1, 2006:~~]

1700 [~~(a) a~~] (3) A mortgage officer may not bring an action in the mortgage officer's own
 1701 name for the recovery of a fee, commission, or compensation for transacting the business of

1702 residential mortgage loans unless the action is brought against the principal lending manager
1703 with whom the mortgage officer ~~[was]~~ is licensed at the time of the act or service that is the
1704 subject of the action~~[, and]~~.

1705 (b) ~~[an]~~ An action by an entity for the recovery of a fee, commission, or other
1706 compensation shall be brought by:

- 1707 (i) an entity; or
- 1708 (ii) the principal lending manager of an entity on behalf of the entity.

1709 (4) ~~[On or after May 1, 2006, a]~~ A principal lending manager who transacts the
1710 business of residential mortgage loans on the principal lending manager's own behalf may sue
1711 in the principal lending manager's own name for the recovery of a fee, commission, or
1712 compensation for transacting the business of residential mortgage loans.

1713 Section 29. Section **61-2c-502** is amended to read:

1714 **61-2c-502. Additional license fee.**

1715 (1) An individual who applies for or renews a license shall pay, in addition to the
1716 application or renewal fee, a reasonable annual fee:

- 1717 (a) determined by the division with the concurrence of the commission; and
- 1718 (b) not to exceed \$18.

1719 (2) An entity that applies for or renews an entity license shall pay, in addition to the
1720 application or renewal fee, a reasonable annual fee:

- 1721 (a) determined by the division with the concurrence of the commission; and
- 1722 (b) not to exceed \$25.

1723 (3) Notwithstanding Section 13-1-2, the ~~[fees provided in this section]~~ the following
1724 shall be paid into the fund to be used as provided in this part~~[-]~~:

- 1725 (a) fees provided in this section; and
- 1726 (b) civil penalties imposed under this chapter.

1727 (4) If the balance in the fund that is available to satisfy judgments against licensees
1728 decreases to less than \$100,000, the division may make additional assessments to licensees to
1729 maintain the balance available at \$100,000 to satisfy judgments.

1730 Section 30. Section **61-2c-510** is amended to read:

1731 **61-2c-510. Monies accumulated -- Purpose.**

1732 (1) The division may use monies accumulated in the fund in excess of the amount

1733 necessary to satisfy claims to:

1734 (a) investigate violations of this chapter related to fraud; and

1735 (b) advance education and research in the field of residential mortgage loans[;

1736 including:];

1737 (2) The division may use the excess monies described in Subsection (1) only in a

1738 manner consistent with Subsection (1), including for:

1739 [~~(1)~~] (a) courses sponsored by the division;

1740 [~~(2)~~] (b) courses offered by the division in conjunction with a university or college in

1741 Utah;

1742 [~~(3)~~] (c) contracting for a research project for the state in the field of residential

1743 mortgage loans;

1744 [~~(4)~~] (d) funding the salaries and training expenses of division staff members who are
 1745 employed in positions related to the education of mortgage licensees;

1746 [~~(5)~~] (e) funding the training expenses of division staff members who are employed in
 1747 positions conducting investigations of complaints under this chapter; and

1748 [~~(6)~~] (f) publishing and distributing educational materials to:

1749 [~~(a)~~] (i) licensees; and

1750 [~~(b)~~] (ii) applicants for licensure.

1750a **§→ Section 31. Section 72-5-116 is enacted to read:**

1750b **72-5-116. Exemption from state licensure.**

1750c **An employee of the department when engaging in an act on behalf of the department**

1750d **related to one or more of the following is exempt from licensure under Title 61, Chapter 2,**

1750e **Division of Real Estate:**

1750f **(1) acquiring real property pursuant to Section 72-5-103;**

1750g **(2) disposing of real property pursuant to Section 72-5-111; or**

1750h **(3) providing services that constitute property management, as defined in Section**

1750i **61-2-2. ←§**

1751 Section 31. **Repealer.**

1752 This bill repeals:

1753 Section **61-2b-10.5, State-registered appraisers -- Authority -- Transition to**

1754 **state-licensed or state-certified appraisers.**

1755 Section **61-2c-201.1, Conversion of registrations.**

S.B. 199 - Division of Real Estate and Related Amendments

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Out of state broker companies and broker applicants could see additional costs associated with background checks and additional Real Estate Division rules.

1/31/2007, 10:41:45 AM, Lead Analyst: Eckersley, S.

Office of the Legislative Fiscal Analyst