

**DIVISION OF REAL ESTATE AND TITLE
INSURANCE RELATED AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Sheldon L. Killpack

House Sponsor: Gage Froerer

LONG TITLE

General Description:

This bill modifies the Title and Escrow Commission Act, provisions related to the Division of Real Estate, and related statutes.

Highlighted Provisions:

This bill:

- ▶ addresses definitions;
 - ▶ requires disclosure of certain business interests by members of the Title and Escrow Commission;
 - ▶ requires notice to the Real Estate Commission with regard to rules made by the Title and Escrow Commission;
 - ▶ requires reporting of complaint information by the Commissioner of Insurance;
 - ▶ addresses limitations on conducting title insurance business when licensed by the Department of Insurance and the Division of Real Estate;
 - ▶ provides for revocation of certain licenses or certificates held by a dual licensed title licensee;
 - ▶ modifies reserve fund requirements for title insurance producers and agencies;
 - ▶ authorizes the Utah Housing Opportunity special group license plate to support organizations that create affordable housing for those in severe need;
 - ▶ requires applicants for the plate to:
 - contribute \$30 annually to the Utah Housing Opportunity Restricted Account;
- and

- 30 • be a member of a trade organization for real estate licensees that has more than
- 31 15,000 Utah members;
- 32 ▶ creates the Utah Housing Opportunity Restricted Account;
- 33 ▶ provides an exemption from licensure for certain Department of Transportation
- 34 employees;
- 35 ▶ provides an exemption from licensure for certain municipal employees;
- 36 ▶ addresses when the Real Estate Commission may hold administrative hearings
- 37 related to violations of the real estate chapter;
- 38 ▶ addresses appointment of members on the Real Estate Commission;
- 39 ▶ addresses relicensing when a real estate license is revoked;
- 40 ▶ requires fingerprints and criminal background checks for out-of-state applicants for
- 41 a real estate broker license;
- 42 ▶ requires a 12-month waiting period for a mortgage and real estate license applicant
- 43 to reapply if the first license is automatically revoked for failing to disclose a
- 44 criminal history;
- 45 ▶ permits investigation of and administrative action against unlicensed persons acting
- 46 in the capacity of a person required to be licensed as a real estate agent or broker,
- 47 real estate appraiser, or mortgage officer;
- 48 ▶ includes failing to respond to requests by the division in an investigation to be
- 49 grounds for administrative or disciplinary action;
- 50 ▶ addresses powers of the division related to investigations;
- 51 ▶ addresses when a branch or associate broker may fill out settlement documents;
- 52 ▶ addresses disciplinary proceedings including:
- 53 • modifying administrative sanctions available to the Real Estate Commission,
- 54 Appraisal Board, and Mortgage Commission, such as providing for education
- 55 requirements, monetary civil penalties, cease and desist orders, and
- 56 combinations of sanctions; and
- 57 • allowing a civil penalty to be imposed as part of an administrative hearing for a

- 58 cease and desist order;
- 59 ▶ provides that investigations of fraud under the real estate chapter may be funded
- 60 from the Real Estate Education, Research, and Recovery Fund;
- 61 ▶ addresses who can sign a certified appraiser report;
- 62 ▶ clarifies that an active mortgage license requires affiliation with an active principal
- 63 lending manager;
- 64 ▶ clarifies that civil penalties from violations of the mortgage chapter are paid into the
- 65 Residential Mortgage Loan Education, Research, and Recovery Fund;
- 66 ▶ provides that investigations of fraud under the mortgage chapter may be funded
- 67 from the Residential Mortgage Loan Education, Research, and Recovery Fund;
- 68 ▶ deletes out-dated language; and
- 69 ▶ makes technical changes and conforming amendments.

70 **Monies Appropriated in this Bill:**

71 None

72 **Other Special Clauses:**

73 This bill has multiple effective dates.

74 **Utah Code Sections Affected:**

75 AMENDS:

- 76 **31A-2-402**, as enacted by Chapter 185, Laws of Utah 2005
- 77 **31A-2-403**, as enacted by Chapter 185, Laws of Utah 2005
- 78 **31A-2-404**, as enacted by Chapter 185, Laws of Utah 2005
- 79 **31A-19a-209**, as last amended by Chapter 185, Laws of Utah 2005
- 80 **31A-23a-106**, as last amended by Chapters 185 and 219, Laws of Utah 2005
- 81 **31A-23a-204**, as last amended by Chapter 312, Laws of Utah 2006
- 82 **31A-23a-402**, as last amended by Chapters 123 and 185, Laws of Utah 2005
- 83 **31A-23a-406**, as last amended by Chapters 124 and 185, Laws of Utah 2005
- 84 **31A-23a-415**, as last amended by Chapter 185, Laws of Utah 2005
- 85 **31A-26-204**, as last amended by Chapter 185, Laws of Utah 2005

- 86 **41-1a-418**, as last amended by Chapter 63, Laws of Utah 2005
- 87 **41-1a-422**, as last amended by Chapter 69, Laws of Utah 2004
- 88 **57-11-17**, as enacted by Chapter 158, Laws of Utah 1973
- 89 **61-2-3**, as last amended by Chapter 198, Laws of Utah 2006
- 90 **61-2-5.5**, as last amended by Chapter 198, Laws of Utah 2006
- 91 **61-2-6**, as last amended by Chapter 199, Laws of Utah 2005
- 92 **61-2-9**, as last amended by Chapters 199 and 239, Laws of Utah 2005
- 93 **61-2-11**, as last amended by Chapter 198, Laws of Utah 2006
- 94 **61-2-11.5**, as enacted by Chapter 257, Laws of Utah 2005
- 95 **61-2-12**, as last amended by Chapter 199, Laws of Utah 2005
- 96 **61-2-20**, as last amended by Chapter 146, Laws of Utah 1993
- 97 **61-2-21**, as last amended by Chapter 257, Laws of Utah 2005
- 98 **61-2a-12**, as last amended by Chapter 256, Laws of Utah 1983
- 99 **61-2b-7**, as last amended by Chapter 199, Laws of Utah 2005
- 100 **61-2b-17**, as last amended by Chapter 199, Laws of Utah 2005
- 101 **61-2b-28**, as last amended by Chapter 199, Laws of Utah 2005
- 102 **61-2b-29**, as last amended by Chapter 199, Laws of Utah 2005
- 103 **61-2b-31**, as last amended by Chapter 199, Laws of Utah 2005
- 104 **61-2c-102**, as last amended by Chapter 199, Laws of Utah 2005
- 105 **61-2c-104**, as last amended by Chapter 199, Laws of Utah 2005
- 106 **61-2c-201**, as last amended by Chapter 199, Laws of Utah 2005
- 107 **61-2c-202**, as last amended by Chapter 199, Laws of Utah 2005
- 108 **61-2c-203**, as last amended by Chapter 199, Laws of Utah 2005
- 109 **61-2c-205**, as last amended by Chapter 199, Laws of Utah 2005
- 110 **61-2c-206**, as last amended by Chapter 199, Laws of Utah 2005
- 111 **61-2c-208**, as last amended by Chapter 199, Laws of Utah 2005
- 112 **61-2c-301**, as last amended by Chapter 199, Laws of Utah 2005
- 113 **61-2c-302**, as last amended by Chapter 297, Laws of Utah 2004

- 114 **61-2c-401**, as last amended by Chapter 297, Laws of Utah 2004
- 115 **61-2c-402**, as last amended by Chapter 199, Laws of Utah 2005
- 116 **61-2c-403**, as last amended by Chapter 297, Laws of Utah 2004
- 117 **61-2c-404**, as last amended by Chapter 199, Laws of Utah 2005
- 118 **61-2c-502**, as enacted by Chapter 297, Laws of Utah 2004
- 119 **61-2c-510**, as enacted by Chapter 297, Laws of Utah 2004

120 ENACTS:

- 121 **10-11-1110**, Utah Code Annotated 1953
- 122 **31A-2-405**, Utah Code Annotated 1953
- 123 **61-2-28**, Utah Code Annotated 1953
- 124 **72-5-116**, Utah Code Annotated 1953

125 REPEALS:

- 126 **61-2b-10.5**, as enacted by Chapter 117, Laws of Utah 1999
- 127 **61-2c-201.1**, as enacted by Chapter 199, Laws of Utah 2005



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

130 Section 1. Section **10-11-1110** is enacted to read:

131 **10-11-1110. Exemption from state licensure by Division of Real Estate.**

132 In accordance with Section 61-2-3, an employee of a municipality when engaging in an
133 act on behalf of the municipality in accordance with this title and related to one or more of the
134 following is exempt from licensure under Title 61, Chapter 2, Division of Real Estate:

- 135 (1) acquiring real property, including by eminent domain;
- 136 (2) disposing of real property; or
- 137 (3) providing services that constitute property management, as defined in Section
138 61-2-2.

139 Section 2. Section **31A-2-402** is amended to read:

140 **31A-2-402. Definitions.**

141 As used in this part:

142 (1) "Commission" means the Title and Escrow Commission created in Section
143 31A-2-403.

144 (2) "Concurrence" means the entities given a concurring role must jointly agree for the
145 action to be taken.

146 (3) "Dual licensed title licensee" means a title licensee who holds:

147 (a) a producer license as a title licensee; and

148 (b) a license or certificate under:

149 (i) Title 61, Chapter 2, Real Estate Division;

150 (ii) Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification Act; or

151 (iii) Title 61, Chapter 2c, Utah Residential Mortgage Practices Act.

152 (4) "Real Estate Commission" means the Real Estate Commission created in Section
153 61-2-5.5.

154 [~~3~~] (5) "Title licensee" means a person licensed under this title as:

155 (a) an agency with a title insurance line of authority;

156 (b) a producer with:

157 (i) a general title insurance line of authority; or

158 (ii) a specific category of authority for title insurance; or

159 (c) a title insurance adjuster.

160 Section 3. Section **31A-2-403** is amended to read:

161 **31A-2-403. Title and Escrow Commission created.**

162 (1) (a) There is created within the department the Title and Escrow Commission that is
163 comprised of five members appointed by the governor with the consent of the Senate as
164 follows:

165 (i) four members shall:

166 (A) be or have been licensed under the title insurance line of authority; and

167 (B) as of the day on which the member is appointed, be or have been licensed with the
168 search or escrow subline of authority for at least five years; and

169 (ii) one member shall be a member of the general public.

170 (b) No more than one commission member may be appointed from:

171 (i) any ~~given~~ county in the state; or

172 (ii) any single company.

173 (2) (a) Subject to Subsection (2)(c), each member of the commission shall file with the
174 department a disclosure of any position of employment or ownership interest that the member
175 of the commission has with respect to any person that is subject to the jurisdiction of the
176 department.

177 (b) The disclosure statement required by this Subsection (2) shall be:

178 (i) filed by no later than the day on which the person begins that person's appointment;

179 and

180 (ii) amended when a significant change occurs in any matter required to be disclosed
181 under this Subsection (2).

182 (c) A member of the commission is not required to disclose an ownership interest that
183 the member of the commission has if the ownership interest is held as part of a mutual fund,
184 trust, or similar investment.

185 ~~[(2)]~~ (3) (a) Except as required by Subsection ~~[(2)]~~ (3)(b), as terms of current
186 commission members expire, the governor shall appoint each new member to a four-year term
187 ending on June 30.

188 (b) Notwithstanding the requirements of Subsection ~~[(2)]~~ (3)(a), the governor shall, at
189 the time of appointment, adjust the length of terms to ensure that the terms of the commission
190 members are staggered so that approximately half of the commission is appointed every two
191 years.

192 (c) A commission member may not serve more than one consecutive term.

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

195 ~~[(3)]~~ (4) (a) A member of the commission ~~[shall receive no]~~ may not receive
196 compensation or benefits for the member's services, but may receive per diem and expenses
197 incurred in the performance of the member's official duties at the rates established by the

198 Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

200 [~~(4)~~] (5) Members of the commission shall annually select one member to serve as

201 chair.

202 [~~(5)~~] (6) (a) The commission shall meet at least monthly.

203 (b) The commissioner may call additional meetings:

204 (i) at the commissioner's discretion;

205 (ii) upon the request of the chair of the commission; or

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

207 (c) (i) Three members of the commission constitute a quorum for the transaction of

208 business.

209 (ii) The action of a majority of the members when a quorum is present is the action of

210 the commission.

211 [~~(6)~~] (7) The department shall staff the commission.

212 Section 4. Section 31A-2-404 is amended to read:

213 **31A-2-404. Duties of the commissioner and Title and Escrow Commission.**

214 (1) Notwithstanding the other provisions of this chapter, to the extent provided in this

215 part, the commissioner shall administer and enforce the provisions in this title related to:

216 (a) title insurance; and

217 (b) escrow conducted by a title licensee or title insurer.

218 (2) The commission shall:

219 (a) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,

220 and subject to Subsection (3), make rules for the administration of the provisions in this title

221 related to title insurance including rules related to:

222 (i) rating standards and rating methods for title agencies and producers as provided in

223 Section 31A-19a-209;

224 (ii) the licensing for a title licensee including the licensing requirements of Sections

225 31A-23a-203 and 31A-23a-204;

226 (iii) continuing education requirements of Section 31A-23a-202;

227 (iv) examination procedures, after consultation with the department and the
228 department's test administrator when required by Section 31A-23a-204; and

229 (v) standards of conduct for a title licensee;

230 (b) concur in the issuance and renewal of licenses in accordance with Section
231 31A-23a-105 or 31A-26-203;

232 (c) in accordance with Section 31A-3-103, establish, with the concurrence of the
233 department, all fees imposed by this title on a title licensee;

234 (d) in accordance with Section 31A-23a-415 determine, after consulting with the
235 commissioner, the assessment on a title insurer as defined in Section 31A-23a-415;

236 (e) conduct all administrative hearings not delegated by [it] the commission to an
237 administrative law judge related to the:

238 (i) licensing of any applicant;

239 (ii) conduct of any title licensee; or

240 (iii) approval of continuing education programs required by Section 31A-23a-202;

241 (f) with the concurrence of the commissioner, approve assets that can be included in a
242 reserve fund required by Section 31A-23a-204;

243 (g) with the concurrence of the commissioner, approve continuing education programs
244 required by Section 31A-23a-202;

245 (h) with the concurrence of the commissioner, impose penalties:

246 (i) under this title related to:

247 (A) title insurance; or

248 (B) escrow conducted by a title licensee;

249 (ii) after investigation by the department in accordance with Part 3, Procedures and
250 Enforcement; and

251 (iii) that are enforced by the commissioner;

252 (i) advise the commissioner on the administration and enforcement of any matters
253 affecting the title insurance industry;

254 (j) advise the commissioner on matters affecting the department's budget related to title
255 insurance; and

256 (k) perform other duties as provided in this title.

257 (3) The commission may make a rule under this title only if at the time the commission
258 files its proposed rule and rule analysis with the Division of Administrative Rules in
259 accordance with Section 63-46a-4, the commission provides the Real Estate Commission that
260 same information.

261 (4) (a) The commissioner shall annually report the information described in Subsection
262 (4)(b) in writing to:

263 (i) the commission; and

264 (ii) the Business and Labor Interim Committee.

265 (b) The information required to be reported under this Subsection (4):

266 (i) may not identify a person; and

267 (ii) shall include:

268 (A) the number of complaints the department receives with regard to transactions
269 involving title insurance or a title licensee during the calendar year immediately proceeding the
270 report;

271 (B) the type of complaints described in Subsection (4)(b)(ii)(A); and

272 (C) for each complaint described in Subsection (4)(b)(ii)(A):

273 (I) any action taken by the department with regard to the complaint; and

274 (II) the time-period beginning the day on which a complaint is made and ending the
275 day on which the department determines it will take no further action with regard to the
276 complaint.

277 Section 5. Section **31A-2-405** is enacted to read:

278 **31A-2-405. Dual licensing.**

279 (1) A dual licensed title licensee may provide a title insurance product or service under
280 this title only if before providing that title insurance product or service the dual licensed title
281 licensee obtains approval as provided in this section.

282 (2) (a) Except as provided in Subsection (3), a dual licensed title licensee shall obtain
283 approval from the commissioner by filing under penalty of perjury with the department:
284 (i) a statement that includes:
285 (A) a description of the title insurance product or service to be provided;
286 (B) the names of the principals anticipated to be involved in the provision or receipt of
287 the title insurance product or service;
288 (C) a legal description of the property to be involved in the provision or receipt of the
289 title insurance product or service;
290 (D) whether or not the dual licensed title licensee received any consideration from a
291 person described in Subsection (2)(a)(i)(B) within 18 months prior to the day on which the dual
292 licensed title licensee files the statement; and
293 (E) any other information the commission requires by rule made in accordance with
294 this section and Section 31A-2-404; and
295 (ii) the fee applicable under Section 31A-3-103.
296 (b) The commissioner shall approve the provision of a title insurance product or
297 service under this section if the commissioner finds that the dual licensed title licensee:
298 (i) completed the filing required by Subsection (2)(a);
299 (ii) is acting in good faith; and
300 (iii) has not received consideration from a person described in Subsection (2)(a)(i)(B)
301 within the 18-month period described in Subsection (2)(a)(i)(D).
302 (c) If the commissioner does not deny approval under this section, the commissioner is
303 considered to have approved the provision of the title insurance product or service the earlier
304 of:
305 (i) the day on which the commissioner issues the commissioner's approval in writing;
306 or
307 (ii) 15 days after the day on which the dual licensed title licensee completes the filing
308 under Subsection (2)(a).
309 (3) Notwithstanding Subsection (2), a dual licensed title licensee may obtain approval

310 from the chair of the commission if:

311 (a) the dual licensed title licensee completes the filing under Subsection (2)(a);

312 (b) the dual licensed title licensee establishes a need for expedited approval; and

313 (c) the chair of the commission issues approval in writing after making the findings

314 described in Subsection (2)(b).

315 (4) The commissioner shall revoke the license under this title of a dual licensed title

316 licensee if the dual licensed title licensee:

317 (a) provides a title insurance product or service without the approval required by this

318 section; or

319 (b) knowingly provides false or misleading information in the statement required by

320 Subsection (2).

321 (5) The commission may make rules, subject to Section 31A-2-404, to implement the

322 filing requirements under Subsection (2), including the definition of terms.

323 Section 6. Section **31A-19a-209** is amended to read:

324 **31A-19a-209. Special provisions for title insurance.**

325 (1) (a) (i) The Title and Escrow Commission shall adopt rules [~~in accordance with Title~~

326 ~~63, Chapter 46a, Utah Administrative Rulemaking Act]~~ subject to Section 31A-2-404,

327 establishing rate standards and rating methods for title agencies and producers.

328 (ii) The commissioner shall determine compliance with rate standards and rating

329 methods for title insurance insurers, agencies, and producers.

330 (b) In addition to the considerations in determining compliance with rate standards and

331 rating methods as set forth in Sections 31A-19a-201 and 31A-19a-202, including for title

332 insurers, the commissioner and the Title and Escrow Commission shall consider the costs and

333 expenses incurred by title insurance insurers, agencies, and producers peculiar to the business

334 of title insurance including:

335 (i) the maintenance of title plants; and

336 (ii) the searching and examining of public records to determine insurability of title to

337 real redevelopment property.

338 (2) (a) Every title insurance insurer, agency, and title insurance producer shall file with
339 the commissioner:

340 (i) a schedule of the escrow charges that the title insurance insurer, agency, or title
341 insurance producer proposes to use in this state for services performed in connection with the
342 issuance of policies of title insurance; and

343 (ii) any changes to the schedule of the escrow charges described in Subsection (2)(a)(i).

344 (b) Except for a schedule filed by a title insurance insurer under this Subsection (2), a
345 schedule filed under this Subsection (2) is subject to review by the Title and Escrow
346 Commission.

347 (c) (i) The schedule of escrow charges required to be filed by Subsection (2)(a)(i) takes
348 effect on the day on which the schedule of escrow charges is filed.

349 (ii) Any changes to the schedule of the escrow charges required to be filed by
350 Subsection (2)(a)(ii) take effect on the day specified in the change to the schedule of escrow
351 charges except that the effective date may not be less than 30 calendar days after the day on
352 which the change to the schedule of escrow charges is filed.

353 (3) A title insurance insurer, agency, or producer may not file or use any rate or other
354 charge relating to the business of title insurance, including rates or charges filed for escrow that
355 would cause the title insurance company, agency, or producer to:

356 (a) operate at less than the cost of doing:

357 (i) the insurance business; or

358 (ii) the escrow business; or

359 (b) fail to adequately underwrite a title insurance policy.

360 (4) (a) All or any of the schedule of rates or schedule of charges, including the schedule
361 of escrow charges, may be changed or amended at any time, subject to the limitations in this
362 Subsection (4).

363 (b) Each change or amendment shall:

364 (i) be filed with the commissioner, subject to review by the Title and Escrow
365 Commission; and

366 (ii) state the effective date of the change or amendment, which may not be less than 30
367 calendar days after the day on which the change or amendment is filed.

368 (c) Any change or amendment remains in force for a period of at least 90 calendar days
369 from the change or amendment's effective date.

370 (5) While the schedule of rates and schedule of charges are effective, a copy of each
371 shall be:

372 (a) retained in each of the offices of:

373 (i) the title insurance insurer in this state;

374 (ii) the title insurance insurer's producers in this state; and

375 (b) upon request, furnished to the public.

376 (6) Except in accordance with the schedules of rates and charges filed with the
377 commissioner, a title insurance insurer, agency, or producer may not make or impose any
378 premium or other charge:

379 (a) in connection with the issuance of a policy of title insurance; or

380 (b) for escrow services performed in connection with the issuance of a policy of title
381 insurance.

382 Section 7. Section **31A-23a-106** is amended to read:

383 **31A-23a-106. License types.**

384 (1) (a) A resident or nonresident license issued under this chapter shall be issued under
385 the license types described under Subsection (2).

386 (b) License types and lines of authority pertaining to each license type describe the type
387 of licensee and the lines of business that licensee may sell, solicit, or negotiate. License types
388 are intended to describe the matters to be considered under any education, examination, and
389 training required of license applicants under Sections 31A-23a-108, 31A-23a-202, and
390 31A-23a-203.

391 (2) (a) A producer license type includes the following lines of authority:

392 (i) life insurance, including nonvariable contracts;

393 (ii) variable contracts, including variable life and annuity, if the producer has the life

394 insurance line of authority;

395 (iii) accident and health insurance, including contracts issued to policyholders under

396 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance

397 Organizations and Limited Health Plans;

398 (iv) property insurance;

399 (v) casualty insurance, including surety and other bonds;

400 (vi) title insurance under one or more of the following categories:

401 (A) search, including authority to act as a title marketing representative;

402 (B) escrow, including authority to act as a title marketing representative;

403 (C) search and escrow, including authority to act as a title marketing representative;

404 and

405 (D) title marketing representative only;

406 (vii) workers' compensation insurance;

407 (viii) personal lines insurance; and

408 (ix) surplus lines, if the producer has the property or casualty or both lines of authority.

409 (b) A limited line producer license type includes the following limited lines of

410 authority:

411 (i) limited line credit insurance;

412 (ii) travel insurance;

413 (iii) motor club insurance;

414 (iv) car rental related insurance;

415 (v) legal expense insurance; and

416 (vi) bail bond producer.

417 (c) A customer service representative license type includes the following lines of

418 authority, if held by the customer service representative's employer producer:

419 (i) life insurance, including nonvariable contracts;

420 (ii) accident and health insurance, including contracts issued to policyholders under

421 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance

- 422 Organizations and Limited Health Plans;
- 423 (iii) property insurance;
- 424 (iv) casualty insurance, including surety and other bonds;
- 425 (v) workers' compensation insurance;
- 426 (vi) personal lines insurance; and
- 427 (vii) surplus lines, if the employer producer has the property or casualty or both lines of
- 428 authority.
- 429 (d) A consultant license type includes the following lines of authority:
- 430 (i) life insurance, including nonvariable contracts;
- 431 (ii) variable contracts, including variable life and annuity, if the consultant has the life
- 432 insurance line of authority;
- 433 (iii) accident and health insurance, including contracts issued to policyholders under
- 434 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
- 435 Organizations and Limited Health Plans;
- 436 (iv) property insurance;
- 437 (v) casualty insurance, including surety and other bonds;
- 438 (vi) workers' compensation insurance; and
- 439 (vii) personal lines insurance.
- 440 (e) A managing general agent license type includes the following lines of authority:
- 441 (i) life insurance, including nonvariable contracts;
- 442 (ii) variable contracts, including variable life and annuity, if the managing general
- 443 agent has the life insurance line of authority;
- 444 (iii) accident and health insurance, including contracts issued to policyholders under
- 445 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance
- 446 Organizations and Limited Health Plans;
- 447 (iv) property insurance;
- 448 (v) casualty insurance, including surety and other bonds;
- 449 (vi) workers' compensation insurance; and

450 (vii) personal lines insurance.

451 (f) A reinsurance intermediary license type includes the following lines of authority:

452 (i) life insurance, including nonvariable contracts;

453 (ii) variable contracts, including variable life and annuity, if the reinsurance

454 intermediary has the life insurance line of authority;

455 (iii) accident and health insurance, including contracts issued to policyholders under

456 Chapter 7, Nonprofit Health Service Insurance Corporations, or Chapter 8, Health Maintenance

457 Organizations and Limited Health Plans;

458 (iv) property insurance;

459 (v) casualty insurance, including surety and other bonds;

460 (vi) workers' compensation insurance; and

461 (vii) personal lines insurance.

462 (g) A holder of licenses under Subsections (2)(a), (d), (e), and (f) has all qualifications

463 necessary to act as a holder of a license under Subsections (2)(b) and (c).

464 (3) (a) The commissioner may by rule recognize other producer, limited line producer,

465 customer service representative, consultant, managing general agent, or reinsurance

466 intermediary lines of authority as to kinds of insurance not listed under Subsections (2)(a)

467 through (f).

468 (b) Notwithstanding Subsection (3)(a), for purposes of title insurance the Title and

469 Escrow Commission may by rule, with the concurrence of the commissioner and subject to

470 Section 31A-2-404, recognize other categories for a title insurance producer line of authority

471 not listed under Subsection (2)(a)(vi).

472 (4) The variable contracts, including variable life and annuity line of authority requires:

473 (a) licensure as a registered agent or broker by the National Association of Securities

474 Dealers; and

475 (b) current registration with a securities broker/dealer.

476 (5) A surplus lines producer is a producer who has a surplus lines line of authority.

477 Section 8. Section **31A-23a-204** is amended to read:

478 **31A-23a-204. Special requirements for title insurance producers and agencies.**

479 Title insurance producers shall be licensed in accordance with this chapter, with the
480 additional requirements listed in this section.

481 (1) (a) A person that receives a new license under this title on or after July 1, 2007 as a
482 title insurance agency, shall at the time of licensure be owned or managed by one or more
483 natural persons who are licensed with the following lines of authority for at least three of the
484 five years immediately proceeding the date on which the title insurance agency applies for a
485 license:

486 (i) both a:

487 (A) search line of authority; and

488 (B) escrow line of authority; or

489 (ii) a search and escrow line of authority.

490 (b) A title insurance agency subject to Subsection (1)(a) may comply with Subsection
491 (1)(a) by having the title insurance agency owned or managed by:

492 (i) one or more natural persons who are licensed with the search line of authority for
493 the time period provided in Subsection (1)(a); and

494 (ii) one or more natural persons who are licensed with the escrow line of authority for
495 the time period provided in Subsection (1)(a).

496 (c) The Title and Escrow Commission may by rule [~~made in accordance with Title 63,~~
497 ~~Chapter 46a, Utah Administrative Rulemaking Act~~], subject to Section 31A-2-404, exempt an
498 attorney with real estate experience from the experience requirements in Subsection (1)(a).

499 (2) (a) Every title insurance agency or producer appointed by an insurer shall maintain:

500 (i) a fidelity bond;

501 (ii) a professional liability insurance policy; or

502 (iii) a financial protection:

503 (A) equivalent to that described in Subsection (2)(a)(i) or (ii); and

504 (B) that the commissioner considers adequate.

505 (b) The bond or insurance required by this Subsection (2):

506 (i) shall be supplied under a contract approved by the commissioner to provide
507 protection against the improper performance of any service in conjunction with the issuance of
508 a contract or policy of title insurance; and

509 (ii) be in a face amount no less than \$50,000.

510 (c) The Title and Escrow Commission may by rule [~~made in accordance with Title 63,~~
511 ~~Chapter 46a, Utah Administrative Rulemaking Act~~], subject to Section 31A-2-404, exempt title
512 insurance producers from the requirements of this Subsection (2) upon a finding that, and only
513 so long as, the required policy or bond is generally unavailable at reasonable rates.

514 (3) (a) (i) Every title insurance agency or producer appointed by an insurer shall
515 maintain a reserve fund.

516 (ii) The reserve fund required by this Subsection (3) shall be:

517 (A) (I) composed of assets approved by the commissioner and the Title and Escrow
518 Commission;

519 (II) maintained as a separate trust account; and

520 (III) charged as a reserve liability of the title insurance producer in determining the
521 producer's financial condition; and

522 (B) accumulated by segregating 1% of all gross income on premiums received from the
523 title insurance business.

524 (iii) The reserve fund shall contain the accumulated assets for the immediately
525 preceding ten years as defined in Subsection (3)(a)(ii).

526 (iv) That portion of the assets held in the reserve fund over ten years may be:

527 (A) withdrawn from the reserve fund; and

528 (B) restored to the income of the title insurance producer.

529 (v) The title insurance producer may withdraw interest from the reserve fund related to
530 the principal amount as it accrues.

531 (b) (i) A disbursement may not be made from the reserve fund except as provided in
532 Subsection (3)(a) unless the title insurance producer ceases doing business as a result of:

533 (A) sale of assets;

534 (B) merger of the producer with another producer;

535 (C) termination of the producer's license;

536 (D) insolvency; or

537 (E) any cessation of business by the producer.

538 (ii) Any disbursements from the reserve fund may be made only to settle claims arising
539 from the improper performance of the title insurance producer in providing services defined in
540 Section 31A-23a-406.

541 (iii) The commissioner shall be notified ten days before any disbursements from the
542 reserve fund.

543 (iv) The notice required by this Subsection (3)(b) shall contain:

544 (A) the amount of claim;

545 (B) the nature of the claim; and

546 (C) the name of the payee.

547 (c) (i) The reserve fund shall be maintained by the title insurance producer or the title
548 insurance producer's representative for a period of two years after the title insurance producer
549 ceases doing business.

550 (ii) Any assets remaining in the reserve fund at the end of the two years specified in
551 Subsection (3)(c)(i) may be withdrawn and restored to the former title insurance producer.

552 (4) Any examination for licensure shall include questions regarding the search and
553 examination of title to real property.

554 (5) A title insurance producer may not perform the functions of escrow unless the title
555 insurance producer has been examined on the fiduciary duties and procedures involved in those
556 functions.

557 (6) The Title and Escrow Commission shall adopt rules, [~~in accordance with Title 63,~~
558 ~~Chapter 46a, Utah Administrative Rulemaking Act]~~ subject to Section 31A-2-404, after
559 consulting with the department and the department's test administrator, establishing an
560 examination for a license that will satisfy this section.

561 (7) A license may be issued to a title insurance producer who has qualified:

- 562 (a) to perform only searches and examinations of title as specified in Subsection (4);
- 563 (b) to handle only escrow arrangements as specified in Subsection (5); or
- 564 (c) to act as a title marketing representative.

565 (8) (a) A person licensed to practice law in Utah is exempt from the requirements of
566 Subsections (2) and (3) if that person issues 12 or less policies in any 12-month period.

567 (b) In determining the number of policies issued by a person licensed to practice law in
568 Utah for purposes of Subsection (8)(a), if the person licensed to practice law in Utah issues a
569 policy to more than one party to the same closing, the person is considered to have issued only
570 one policy.

571 (9) A person licensed to practice law in Utah, whether exempt under Subsection (8) or
572 not, shall maintain a trust account separate from a law firm trust account for all title and real
573 estate escrow transactions.

574 Section 9. Section **31A-23a-402** is amended to read:

575 **31A-23a-402. Unfair marketing practices -- Communication -- Inducement --**
576 **Unfair discrimination -- Coercion or intimidation -- Restriction on choice -- Unfair**
577 **methods of competition, acts, or practices.**

578 (1) (a) (i) Any of the following may not make or cause to be made any communication
579 that contains false or misleading information, relating to an insurance product or contract, any
580 insurer, or any licensee under this title, including information that is false or misleading
581 because it is incomplete:

- 582 (A) a person who is or should be licensed under this title;
- 583 (B) an employee or producer of a person described in Subsection (1)(a)(i)(A);
- 584 (C) a person whose primary interest is as a competitor of a person licensed under this
585 title; and
- 586 (D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

587 (ii) As used in this Subsection (1), "false or misleading information" includes:

- 588 (A) assuring the nonobligatory payment of future dividends or refunds of unused
589 premiums in any specific or approximate amounts, but reporting fully and accurately past

590 experience is not false or misleading information; and
591 (B) with intent to deceive a person examining it:
592 (I) filing a report;
593 (II) making a false entry in a record; or
594 (III) wilfully refraining from making a proper entry in a record.
595 (iii) A licensee under this title may not:
596 (A) use any business name, slogan, emblem, or related device that is misleading or
597 likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee
598 already in business; or
599 (B) use any advertisement or other insurance promotional material that would cause a
600 reasonable person to mistakenly believe that a state or federal government agency:
601 (I) is responsible for the insurance sales activities of the person;
602 (II) stands behind the credit of the person;
603 (III) guarantees any returns on insurance products of or sold by the person; or
604 (IV) is a source of payment of any insurance obligation of or sold by the person.
605 (iv) A person who is not an insurer may not assume or use any name that deceptively
606 implies or suggests that person is an insurer.
607 (v) A person other than persons licensed as health maintenance organizations under
608 Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to
609 itself.
610 (b) A licensee's violation creates a rebuttable presumption that the violation was also
611 committed by the insurer if:
612 (i) the licensee under this title distributes cards or documents, exhibits a sign, or
613 publishes an advertisement that violates Subsection (1)(a), with reference to a particular
614 insurer:
615 (A) that the licensee represents; or
616 (B) for whom the licensee processes claims; and
617 (ii) the cards, documents, signs, or advertisements are supplied or approved by that

618 insurer.

619 (2) (a) (i) A licensee under this title, or an officer or employee of a licensee may not
620 induce any person to enter into or continue an insurance contract or to terminate an existing
621 insurance contract by offering benefits not specified in the policy to be issued or continued,
622 including premium or commission rebates.

623 (ii) An insurer may not make or knowingly allow any agreement of insurance that is
624 not clearly expressed in the policy to be issued or renewed.

625 (iii) This Subsection (2)(a) does not preclude:

626 (A) insurers from reducing premiums because of expense savings;

627 (B) the usual kinds of social courtesies not related to particular transactions; or

628 (C) an insurer from receiving premiums under an installment payment plan.

629 (b) A licensee under this title may not absorb the tax under Section 31A-3-301.

630 (c) (i) A title insurer or producer or any officer or employee of either may not pay,
631 allow, give, or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining
632 any title insurance business:

633 (A) any rebate, reduction, or abatement of any rate or charge made incident to the
634 issuance of the title insurance;

635 (B) any special favor or advantage not generally available to others; or

636 (C) any money or other consideration except if approved under Section 31A-2-405; or

637 (D) material inducement.

638 (ii) "Charge made incident to the issuance of the title insurance" includes escrow
639 charges, and any other services that are prescribed in rule by the Title and Escrow Commission
640 after consultation with the commissioner and subject to Section 31A-2-404.

641 (iii) An insured or any other person connected, directly or indirectly, with the
642 transaction, including a mortgage lender, real estate broker, builder, attorney, or any officer,
643 employee, or agent of any of them, may not knowingly receive or accept, directly or indirectly,
644 any benefit referred to in Subsection (2)(c)(i).

645 (3) (a) An insurer may not unfairly discriminate among policyholders by charging

646 different premiums or by offering different terms of coverage, except on the basis of
647 classifications related to the nature and the degree of the risk covered or the expenses involved.

648 (b) Rates are not unfairly discriminatory if they are averaged broadly among persons
649 insured under a group, blanket, or franchise policy, and the terms of those policies are not
650 unfairly discriminatory merely because they are more favorable than in similar individual
651 policies.

652 (4) (a) This Subsection (4) applies to:

653 (i) a person who is or should be licensed under this title;

654 (ii) an employee of that licensee or person who should be licensed;

655 (iii) a person whose primary interest is as a competitor of a person licensed under this
656 title; and

657 (iv) one acting on behalf of any person described in Subsections (4)(a)(i) through (iii).

658 (b) A person described in Subsection (4)(a) may not commit or enter into any
659 agreement to participate in any act of boycott, coercion, or intimidation that:

660 (i) tends to produce:

661 (A) an unreasonable restraint of the business of insurance; or

662 (B) a monopoly in that business; or

663 (ii) results in an applicant purchasing or replacing an insurance contract.

664 (5) (a) (i) Subject to Subsection (5)(a)(ii), a person may not restrict in the choice of an
665 insurer or licensee under this chapter, another person who is required to pay for insurance as a
666 condition for the conclusion of a contract or other transaction or for the exercise of any right
667 under a contract.

668 (ii) A person requiring coverage may reserve the right to disapprove the insurer or the
669 coverage selected on reasonable grounds.

670 (b) The form of corporate organization of an insurer authorized to do business in this
671 state is not a reasonable ground for disapproval, and the commissioner may by rule specify
672 additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from
673 declining an application for insurance.

674 (6) A person may not make any charge other than insurance premiums and premium
675 financing charges for the protection of property or of a security interest in property, as a
676 condition for obtaining, renewing, or continuing the financing of a purchase of the property or
677 the lending of money on the security of an interest in the property.

678 (7) (a) A licensee under this title may not refuse or fail to return promptly all indicia of
679 agency to the principal on demand.

680 (b) A licensee whose license is suspended, limited, or revoked under Section
681 31A-2-308, 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the
682 commissioner on demand.

683 (8) (a) A person may not engage in any other unfair method of competition or any other
684 unfair or deceptive act or practice in the business of insurance, as defined by the commissioner
685 by rule, after a finding that they:

- 686 (i) are misleading;
- 687 (ii) are deceptive;
- 688 (iii) are unfairly discriminatory;
- 689 (iv) provide an unfair inducement; or
- 690 (v) unreasonably restrain competition.

691 (b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the
692 Title and Escrow Commission shall make rules, [~~in accordance with Title 63, Chapter 46a,~~
693 ~~Utah Administrative Rulemaking Act~~] subject to Section 31A-2-404, that define any other
694 unfair method of competition or any other unfair or deceptive act or practice after a finding that
695 they:

- 696 (i) are misleading;
- 697 (ii) are deceptive;
- 698 (iii) are unfairly discriminatory;
- 699 (iv) provide an unfair inducement; or
- 700 (v) unreasonably restrain competition.

701 Section 10. Section **31A-23a-406** is amended to read:

702 **31A-23a-406. Title insurance producer's business.**

703 (1) A title insurance producer may do escrow involving real property transactions if all
704 of the following exist:

705 (a) the title insurance producer is licensed with:

706 (i) the title line of authority; and

707 (ii) the escrow subline of authority;

708 (b) the title insurance producer is appointed by a title insurer authorized to do business
709 in the state;

710 (c) one or more of the following is to be issued as part of the transaction:

711 (i) an owner's policy of title insurance; or

712 (ii) a lender's policy of title insurance;

713 (d) (i) all funds deposited with the title insurance producer in connection with any
714 escrow:

715 (A) are deposited:

716 (I) in a federally insured financial institution; and

717 (II) in a trust account that is separate from all other trust account funds that are not
718 related to real estate transactions; and

719 (B) are the property of the persons entitled to them under the provisions of the escrow;
720 and

721 (ii) are segregated escrow by escrow in the records of the title insurance producer;

722 (e) earnings on funds held in escrow may be paid out of the escrow account to any
723 person in accordance with the conditions of the escrow; and

724 (f) the escrow does not require the title insurance producer to hold:

725 (i) construction funds; or

726 (ii) funds held for exchange under Section 1031, Internal Revenue Code.

727 (2) Notwithstanding Subsection (1), a title insurance producer may engage in the
728 escrow business if:

729 (a) the escrow involves:

- 730 (i) a mobile home;
- 731 (ii) a grazing right;
- 732 (iii) a water right; or
- 733 (iv) other personal property authorized by the commissioner; and
- 734 (b) the title insurance producer complies with all the requirements of this section
- 735 except for the requirement of Subsection (1)(c).
- 736 (3) Funds held in escrow:
- 737 (a) are not subject to any debts of the title insurance producer;
- 738 (b) may only be used to fulfill the terms of the individual escrow under which the funds
- 739 were accepted; and
- 740 (c) may not be used until all conditions of the escrow have been met.
- 741 (4) Assets or property other than escrow funds received by a title insurance producer in
- 742 accordance with an escrow shall be maintained in a manner that will:
- 743 (a) reasonably preserve and protect the asset or property from loss, theft, or damages;
- 744 and
- 745 (b) otherwise comply with all general duties and responsibilities of a fiduciary or
- 746 bailee.
- 747 (5) (a) A check from the trust account described in Subsection (1)(d) may not be
- 748 drawn, executed, or dated, or funds otherwise disbursed unless the segregated escrow account
- 749 from which funds are to be disbursed contains a sufficient credit balance consisting of collected
- 750 or cleared funds at the time the check is drawn, executed, or dated, or funds are otherwise
- 751 disbursed.
- 752 (b) As used in this Subsection (5), funds are considered to be "collected or cleared,"
- 753 and may be disbursed as follows:
- 754 (i) cash may be disbursed on the same day the cash is deposited;
- 755 (ii) a wire transfer may be disbursed on the same day the wire transfer is deposited;
- 756 (iii) the following may be disbursed on the day following the date of deposit:
- 757 (A) a cashier's check;

- 758 (B) a certified check;
- 759 (C) a teller's check;
- 760 (D) a U.S. Postal Service money order; and
- 761 (E) a check drawn on a Federal Reserve Bank or Federal Home Loan Bank; and
- 762 (iv) any other check or deposit may be disbursed:
- 763 (A) within the time limits provided under the Expedited Funds Availability Act, 12
- 764 U.S.C. Section 4001 et seq., as amended, and related regulations of the Federal Reserve
- 765 System; or
- 766 (B) upon written notification from the financial institution to which the funds have
- 767 been deposited, that final settlement has occurred on the deposited item.
- 768 (c) Subject to Subsections (5)(a) and (b), any material change to a settlement statement
- 769 made after the final closing documents are executed must be authorized or acknowledged by
- 770 date and signature on each page of the settlement statement by the one or more persons affected
- 771 by the change before disbursement of funds.
- 772 (6) The title insurance producer shall maintain records of all receipts and
- 773 disbursements of escrow funds.
- 774 (7) The title insurance producer shall comply with:
- 775 (a) Section 31A-23a-409;
- 776 (b) Title 46, Chapter 1, Notaries Public Reform Act; and
- 777 (c) any rules adopted by the Title and Escrow Commission [~~in accordance with Title~~
- 778 ~~63, Chapter 46a, Utah Administrative Rulemaking Act~~], subject to Section 31A-2-404, that
- 779 govern escrows.

780 Section 11. Section **31A-23a-415** is amended to read:

781 **31A-23a-415. Assessment on title insurance agencies or title insurers.**

- 782 (1) For purposes of this section:
- 783 (a) "Premium" is as defined in Subsection 59-9-101(3).
- 784 (b) "Title insurer" means a person:
- 785 (i) making any contract or policy of title insurance as:

- 786 (A) insurer;
- 787 (B) guarantor; or
- 788 (C) surety;
- 789 (ii) proposing to make any contract or policy of title insurance as:
- 790 (A) insurer;
- 791 (B) guarantor; or
- 792 (C) surety; or
- 793 (iii) transacting or proposing to transact any phase of title insurance, including:
- 794 (A) soliciting;
- 795 (B) negotiating preliminary to execution;
- 796 (C) executing of a contract of title insurance;
- 797 (D) insuring; and
- 798 (E) transacting matters subsequent to the execution of the contract and arising out of
- 799 the contract.
- 800 (c) "Utah risks" means insuring, guaranteeing, or indemnifying with regard to real or
- 801 personal property located in Utah, an owner of real or personal property, the holders of liens or
- 802 encumbrances on that property, or others interested in the property against loss or damage
- 803 suffered by reason of:
- 804 (i) liens or encumbrances upon, defects in, or the unmarketability of the title to the
- 805 property; or
- 806 (ii) invalidity or unenforceability of any liens or encumbrances on the property.
- 807 (2) (a) Beginning on July 1, 1998, the commissioner may assess each title insurer and
- 808 each title insurance agency an annual assessment:
- 809 (i) determined by the Title and Escrow Commission:
- 810 (A) after consultation with the commissioner; and
- 811 (B) in accordance with this Subsection (2); and
- 812 (ii) to be used for the purposes described in Subsection (3).
- 813 (b) A title insurance agency shall be assessed up to:

814 (i) \$200 for the first office in each county in which the title insurance agency maintains
815 an office; and

816 (ii) \$100 for each additional office the title insurance agency maintains in the county
817 described in Subsection (2)(b)(i).

818 (c) A title insurer shall be assessed up to:

819 (i) \$200 for the first office in each county in which the title insurer maintains an office;

820 (ii) \$100 for each additional office the title insurer maintains in the county described in
821 Subsection (2)(c)(i); and

822 (iii) an amount calculated by:

823 (A) aggregating the assessments imposed on:

824 (I) title insurance agencies under Subsection (2)(b); and

825 (II) title insurers under Subsections (2)(c)(i) and (2)(c)(ii);

826 (B) subtracting the amount determined under Subsection (2)(c)(iii)(A) from the total
827 costs and expenses determined under Subsection (2)(d); and

828 (C) multiplying:

829 (I) the amount calculated under Subsection (2)(c)(iii)(B); and

830 (II) the percentage of total premiums for title insurance on Utah risk that are premiums
831 of the title insurer.

832 (d) Notwithstanding Section 31A-3-103 and [~~in accordance with Title 63, Chapter 46a,~~
833 ~~Utah Administrative Rulemaking Act~~] subject to Section 31A-2-404, the Title and Escrow
834 Commission by rule shall establish the amount of costs and expenses described under
835 Subsection (3) that will be covered by the assessment, except the costs or expenses to be
836 covered by the assessment may not exceed \$75,000 annually.

837 (3) All money received by the state under this section:

838 (a) shall be deposited in the General Fund as a dedicated credit of the department; and

839 (b) may be expended by the department only to pay for any cost or expense incurred by
840 the department in the administration, investigation, and enforcement of [~~Chapter 23a, Parts 4~~
841 this part and Part 5, Compensation of Producers and Consultants, related to:

842 (i) the marketing of title insurance; and

843 (ii) audits of agencies.

844 (4) The assessment imposed by this section shall be in addition to any premium
845 assessment imposed under Subsection 59-9-101(3).

846 Section 12. Section **31A-26-204** is amended to read:

847 **31A-26-204. License classifications.**

848 A resident or nonresident license issued under this chapter shall be issued under the
849 classifications described under Subsections (1), (2), and (3). These classifications are intended
850 to describe the matters to be considered under any prerequisite education and examination
851 required of license applicants under Sections 31A-26-206 and 31A-26-207.

852 (1) Independent adjuster license classifications include:

853 (a) accident and health insurance, including related service insurance under Chapter 7,
854 Nonprofit Health Service Insurance Corporation, or Chapter 8, Health Maintenance
855 Organizations and Limited Health Plans;

856 (b) property and liability insurance, which includes:

857 (i) property insurance;

858 (ii) liability insurance;

859 (iii) surety bonds; and

860 (iv) policies containing combinations or variations of these coverages;

861 (c) service insurance;

862 (d) title insurance;

863 (e) credit insurance; and

864 (f) workers' compensation insurance.

865 (2) Public adjuster license classifications include:

866 (a) accident and health insurance, including related service insurance under Chapter 7
867 or 8;

868 (b) property and liability insurance, which includes:

869 (i) property insurance;

- 870 (ii) liability insurance;
- 871 (iii) surety bonds; and
- 872 (iv) policies containing combinations or variations of these coverages;
- 873 (c) service insurance;
- 874 (d) title insurance;
- 875 (e) credit insurance; and
- 876 (f) workers' compensation insurance.

877 (3) (a) The commissioner may by rule:

878 (i) recognize other independent adjuster or public adjuster license classifications as to
879 other kinds of insurance not listed under Subsection (1); and

880 (ii) create license classifications that grant only part of the authority arising under
881 another license class.

882 (b) Notwithstanding Subsection (3)(a), for purpose of title insurance, the Title and
883 Escrow Commission may make the rules provided for in Subsection (3)(a), subject to Section
884 31A-2-404.

885 Section 13. Section **41-1a-418** is amended to read:

886 **41-1a-418. Authorized special group license plates.**

887 (1) The division shall only issue special group license plates in accordance with
888 Sections 41-1a-418 through 41-1a-422 to a person who is specified under this section within
889 the categories listed as follows:

890 (a) disability special group license plates issued in accordance with Section 41-1a-420;

891 (b) honor special group license plates, as in a war hero, which plates are issued for a:

892 (i) survivor of the Japanese attack on Pearl Harbor;

893 (ii) former prisoner of war;

894 (iii) recipient of a Purple Heart; or

895 (iv) disabled veteran;

896 (c) unique vehicle type special group license plates, as for historical, collectors value,
897 or other unique vehicle type, which plates are issued for a:

- 898 (i) special interest vehicle;
- 899 (ii) vintage vehicle;
- 900 (iii) farm truck; or
- 901 (iv) vehicle powered by clean fuel and for which a current clean special fuel certificate
- 902 is maintained as provided in Section 59-13-304;
- 903 (d) recognition special group license plates, as in a public official or an emergency
- 904 service giver, which plates are issued for a:
 - 905 (i) current member of the Legislature;
 - 906 (ii) current member of the United States Congress;
 - 907 (iii) current member of the National Guard;
 - 908 (iv) licensed amateur radio operator;
 - 909 (v) currently employed, volunteer, or retired firefighter;
 - 910 (vi) emergency medical technician;
 - 911 (vii) current member of a search and rescue team; or
 - 912 (viii) current honorary consulate designated by the United States Department of State;
- 913 and
- 914 (e) support special group license plates, as for a contributor to an institution or cause,
- 915 which plates are issued for a contributor to:
 - 916 (i) an institution's scholastic scholarship fund;
 - 917 (ii) the Division of Wildlife Resources;
 - 918 (iii) the Office of Veterans' Affairs;
 - 919 (iv) the Division of Parks and Recreation;
 - 920 (v) the Department of Agriculture and Food;
 - 921 (vi) the Guardian Ad Litem Services Account and the Children's Museum of Utah;
 - 922 (vii) the Boy Scouts of America;
 - 923 (viii) spay and neuter programs through No More Homeless Pets in Utah;
 - 924 (ix) the Boys and Girls Clubs of America; [or]
 - 925 (x) Utah public education[-]; or

926 (xi) programs that provide support to organizations that create affordable housing for
927 those in severe need through the Division of Real Estate.

928 (2) Beginning January 1, 2003, the division may not issue a new type of special group
929 license plate unless the division receives:

930 (a) a start-up fee established under Section 63-38-3.2 for production and administrative
931 costs for providing the new special group license plates; or

932 (b) a legislative appropriation for the start-up fee provided under Subsection (2)(a).

933 (3) (a) A sponsoring organization that qualifies for tax-exempt status under Internal
934 Revenue Code Section 501(c)(3) may request the commission to authorize a new type of
935 special group license plate for the sponsoring organization. The sponsoring organization shall:

936 (i) collect a minimum of 200 applications; and

937 (ii) pay a start-up fee established under Section 63-38-3.2 for production and
938 administrative costs for providing the new type of special group license plates.

939 (b) If the provisions of Subsection (3)(a) are met, the commission shall approve the
940 request and the division shall:

941 (i) design a license plate in accordance with Section 41-1a-419; and

942 (ii) issue the new type of special group license plates.

943 Section 14. Section **41-1a-422** is amended to read:

944 **41-1a-422. Support special group license plates -- Contributor -- Voluntary**
945 **contribution collection procedures.**

946 (1) As used in this section:

947 (a) (i) Except as provided in Subsection (1)(a)(ii), "contributor" means a person who
948 has donated or in whose name at least \$25 has been donated to:

949 (A) a scholastic scholarship fund of a single named institution;

950 (B) the Division of Veterans' Affairs in the Utah National Guard for veterans'
951 programs;

952 (C) the Division of Wildlife Resources for the Wildlife Resources Account created in
953 Section 23-14-13, for conservation of wildlife and the enhancement, preservation, protection,

954 access, and management of wildlife habitat;

955 (D) the Department of Agriculture and Food for the benefit of soil conservation
956 districts;

957 (E) the Division of Parks and Recreation for the benefit of snowmobile programs;

958 (F) the Guardian Ad Litem Services Account and the Children's Museum of Utah, with
959 the donation evenly divided between the two;

960 (G) the Boy Scouts of America for the benefit of a Utah Boy Scouts of America
961 council as specified by the contributor;

962 (H) No More Homeless Pets in Utah for distribution to organizations or individuals
963 that provide spay and neuter programs that subsidize the sterilization of domestic animals;

964 (I) the Utah Alliance of Boys and Girls Clubs, Inc. to provide and enhance youth
965 development programs; [or]

966 (J) the Utah Association of Public School Foundations to support public education[;];

967 or

968 (K) the Utah Housing Opportunity Restricted Account created in Section 61-2-28 to
969 assist people who have severe housing needs.

970 (ii) (A) For a veterans' special group license plate, "contributor" means a person who
971 has donated or in whose name at least a \$25 donation at the time of application and \$10 annual
972 donation thereafter has been made.

973 (B) For a Utah Housing Opportunity special group license plate, "contributor" means a
974 person who:

975 (I) has donated or in whose name at least \$30 has been donated at the time of
976 application and annually after the time of application; and

977 (II) is a member of a trade organization for real estate licensees that has more than
978 15,000 Utah members.

979 (b) "Institution" means a state institution of higher education as defined under Section
980 53B-3-102 or a private institution of higher education in the state accredited by a regional or
981 national accrediting agency recognized by the United States Department of Education.

982 (2) (a) An applicant for original or renewal collegiate special group license plates under
983 Subsection (1)(a)(i) must be a contributor to the institution named in the application and
984 present the original contribution verification form under Subsection (2)(b) or make a
985 contribution to the division at the time of application under Subsection (3).

986 (b) An institution with a support special group license plate shall issue to a contributor
987 a verification form designed by the commission containing:

- 988 (i) the name of the contributor;
- 989 (ii) the institution to which a donation was made;
- 990 (iii) the date of the donation; and
- 991 (iv) an attestation that the donation was for a scholastic scholarship.

992 (c) The state auditor may audit each institution to verify that the moneys collected by
993 the institutions from contributors are used for scholastic scholarships.

994 (d) After an applicant has been issued collegiate license plates or renewal decals, the
995 commission shall charge the institution whose plate was issued, a fee determined in accordance
996 with Section 63-38-3.2 for management and administrative expenses incurred in issuing and
997 renewing the collegiate license plates.

998 (e) If the contribution is made at the time of application, the contribution shall be
999 collected, treated, and deposited as provided under Subsection (3).

1000 (3) (a) An applicant for original or renewal support special group license plates under
1001 this section must be a contributor to the sponsoring organization associated with the license
1002 plate.

1003 (b) This contribution shall be:

1004 (i) unless collected by the named institution under Subsection (2), collected by the
1005 division;

1006 (ii) considered a voluntary contribution for the funding of the activities specified under
1007 this section and not a motor vehicle registration fee; and

1008 (iii) deposited into the appropriate account less actual administrative costs associated
1009 with issuing the license plates.

1010 (c) The donation described in Subsection (1)(a) must be made in the 12 months prior to
1011 registration or renewal of registration.

1012 (d) The donation described in Subsection (1)(a) shall be a one-time donation made to
1013 the division when issuing original:

1014 (i) snowmobile license plates; or

1015 (ii) soil conservation license plates.

1016 (4) Veterans' license plates shall display one of the symbols representing the Army,
1017 Navy, Air Force, Marines, Coast Guard, or American Legion.

1018 Section 15. Section **57-11-17** is amended to read:

1019 **57-11-17. Violations -- Civil remedies.**

1020 (1) (a) ~~[Any]~~ A person ~~[who]~~ is liable as provided in Subsection (1)(b) if that person:

1021 ~~[(a)]~~ (i) disposes of subdivided lands in violation of ~~[Section]~~ Subsection 57-11-5[:](1),
1022 (2), or (3);

1023 ~~[(b)]~~ (ii) in disposing of subdivided lands, makes an untrue statement of a material fact;

1024 or

1025 ~~[(c)]~~ (iii) in disposing of subdivided lands, omits a material fact required to be stated in
1026 a registration statement, public offering statement, statement of record or public report,
1027 necessary to make the statements made not misleading[;].

1028 (b) A person described in Subsection (1)(a) is liable as provided in this section to the
1029 purchaser unless, in the case of an untruth or omission, it is proved that:

1030 (i) the purchaser knew of the untruth or omission; or [that]

1031 (ii) the person offering or disposing of subdivided lands did not know and in the
1032 exercise of reasonable care could not have known of the untruth or omission.

1033 (2) In addition to any other remedies, the purchaser, under Subsection (1) may recover
1034 the consideration paid for the unit together with interest at the rate of 7% per year from the date
1035 of payment, property taxes paid, costs, and reasonable ~~[attorneys']~~ attorney fees, less the
1036 amount of any income received from the subdivided lands, upon tender of appropriate
1037 instruments of reconveyance. If the purchaser no longer owns the unit, ~~[he]~~ the purchaser may

1038 recover the amount that would be recoverable upon a tender of a reconveyance, less the value
1039 of the land when disposed of and less interest at the rate of 7% per year on that amount from
1040 the date of disposition.

1041 (3) Every person who directly or indirectly controls a subdivider liable under
1042 Subsection (1), every general partner, officer, or director of a subdivider, every person
1043 occupying a similar status or performing a similar function, every employee of the subdivider
1044 who materially aids in the disposition, and every agent who materially aids in the disposition is
1045 also liable jointly and severally with and to the same extent as the subdivider, unless the person
1046 otherwise liable sustains the burden of proof that ~~he~~ the person did not know and in the
1047 exercise of reasonable care could not have known of the existence of the facts by reason of
1048 which the liability is alleged to exist. There is a right to contribution as in cases of contract
1049 among persons so liable.

1050 (4) Every person whose occupation gives authority to a statement which with ~~his~~ that
1051 person's consent has been used in an application for registration, public offering statement,
1052 statement of record or public report, if ~~he~~ the person is not otherwise associated with the
1053 subdivision and development plan in a material way, is liable only for false statements and
1054 omissions in ~~his~~ the person's statement and only if ~~he~~ the person fails to prove that ~~he~~ the
1055 person did not know and in the exercise of the reasonable care of a ~~man~~ person in ~~his~~ the
1056 person's occupation could not have known of the existence of the facts by reason of which the
1057 liability is alleged to exist.

1058 (5) A tender of reconveyance may be made at any time before the entry of judgment.

1059 (6) A person may not recover under this section in actions commenced more than four
1060 years after ~~his~~ the person's first payment of money to the subdivider in the contested action.

1061 (7) Any stipulation or provision purporting to bind any person acquiring subdivided
1062 lands to waive compliance with this ~~act~~ chapter or any rule or order under it is void.

1063 Section 16. Section **61-2-3** is amended to read:

1064 **61-2-3. Exempt persons and transactions.**

1065 (1) (a) Except as provided in Subsection (1)(b), a license under this chapter is not

1066 required for:

1067 (i) any person who as owner or lessor performs the acts described in Subsection 61-2-2
1068 (12) with reference to property owned or leased by that person;

1069 (ii) a regular salaried employee of the owner or lessor of real estate who, with reference
1070 to nonresidential real estate owned or leased by the employer, performs the acts enumerated in
1071 Subsections 61-2-2(12)(a) and (b);

1072 (iii) a regular salaried employee of the owner of real estate who performs property
1073 management services with reference to real estate owned by the employer, except that the
1074 employee may only manage property for one employer;

1075 (iv) a person who performs property management services for the apartments at which
1076 that person resides in exchange for free or reduced rent on that person's apartment;

1077 (v) a regular salaried employee of a condominium homeowners' association who
1078 manages real property subject to the declaration of condominium that established the
1079 homeowners' association, except that the employee may only manage property for one
1080 condominium homeowners' association; and

1081 (vi) a regular salaried employee of a licensed property management company who
1082 performs support services, as prescribed by rule, for the property management company.

1083 (b) Subsection (1)(a) does not exempt from licensing:

1084 (i) ~~employees~~ an employee engaged in the sale of properties regulated under:

1085 (A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; and

1086 (B) Title 57, Chapter 19, Timeshare and Camp Resort Act;

1087 (ii) ~~employees~~ an employee engaged in the sale of cooperative interests regulated
1088 under Title 57, Chapter 23, Real Estate Cooperative Marketing Act; or

1089 (iii) any person whose interest as an owner or lessor ~~was~~ is obtained by that person or
1090 transferred to that person for the purpose of evading the application of this chapter, and not for
1091 any other legitimate business reason.

1092 (2) A license under this chapter is not required for:

1093 (a) an isolated ~~transactions~~ transaction by ~~persons~~ a person holding a duly executed

1094 power of attorney from the owner;

1095 (b) services rendered by an attorney [~~at law~~] in performing the [~~attorney at law's~~]
1096 attorney's duties as an attorney [~~at law~~];

1097 (c) a receiver, trustee in bankruptcy, administrator, executor, or any person acting
1098 under order of any court;

1099 (d) a trustee or [~~its employees~~] employee of a trustee under a deed of trust or a will;
1100 [~~or~~]

1101 (e) any public utility, [~~its officers~~] officer of a public utility, or regular salaried
1102 [~~employees~~] employee of a public utility, unless performance of any of the acts set out in
1103 Subsection 61-2-2(12) is in connection with the sale, purchase, lease, or other disposition of
1104 real estate or investment in real estate unrelated to the principal business activity of that public
1105 utility[-:];

1106 (f) a regular salaried employee of the Department of Transportation when performing
1107 an act on behalf of the Department of Transportation in connection with one or more of the
1108 following:

1109 (i) the acquisition of real property pursuant to Section 72-5-103;

1110 (ii) the disposal of real property pursuant to Section 72-5-111; or

1111 (iii) services that constitute property management; or

1112 (g) a regular salaried employee of a city or town when performing an act on behalf of
1113 the city or town:

1114 (i) in accordance with Title 10, Utah Municipal Code; and

1115 (ii) in connection with one or more of the following:

1116 (A) the acquisition of real property, including by eminent domain;

1117 (B) the disposal of real property; or

1118 (C) services that constitute property management.

1119 (3) A license under this chapter is not required for any person registered to act as a
1120 broker-dealer, agent, or investment advisor under the Utah and federal securities laws in the
1121 sale or the offer for sale of real estate if:

1122 (a) (i) the real estate is a necessary element of a "security" as that term is defined by the
1123 Securities Act of 1933 and the Securities Exchange Act of 1934; and

1124 (ii) the security is registered for sale:

1125 (A) pursuant to the Securities Act of 1933; or

1126 (B) by Title 61, Chapter 1, Utah Uniform Securities Act; or

1127 (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec.
1128 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation
1129 D, Rule 506, 17 C.F.R. Sec. 230.506; and

1130 (ii) the selling agent and the purchaser are not residents of this state.

1131 Section 17. Section **61-2-5.5** is amended to read:

1132 **61-2-5.5. Real Estate Commission.**

1133 (1) There is created within the division a Real Estate Commission. The commission
1134 shall:

1135 (a) make rules for the administration of this chapter that are not inconsistent with this
1136 chapter, including:

1137 (i) licensing of:

1138 (A) principal brokers;

1139 (B) associate brokers;

1140 (C) sales agents;

1141 (D) real estate companies; and

1142 (E) branch offices;

1143 (ii) prelicensing and postlicensing education curricula;

1144 (iii) examination procedures;

1145 (iv) the certification and conduct of:

1146 (A) real estate schools;

1147 (B) course providers; and

1148 (C) instructors;

1149 (v) proper handling of funds received by real estate licensees;

- 1150 (vi) brokerage office procedures and recordkeeping requirements;
1151 (vii) property management;
1152 (viii) standards of conduct for real estate licensees; and
1153 (ix) rules made under Section 61-2-26 regarding an undivided fractionalized long-term
1154 estate;
- 1155 (b) establish, with the concurrence of the division, all fees as provided in this chapter
1156 and Title 61, Chapter 2a, Real Estate Recovery Fund Act;
- 1157 (c) conduct all administrative hearings not delegated by the commission to an
1158 administrative law judge or the division relating to the:
- 1159 (i) licensing of any applicant;
1160 (ii) conduct of any licensee; ~~[or]~~
1161 (iii) the certification or conduct of any real estate school, course provider, or instructor
1162 regulated under this chapter; or
- 1163 (iv) violation of this chapter by any person;
- 1164 (d) with the concurrence of the director, impose sanctions ~~[against licensees and~~
1165 ~~certificate holders]~~ as provided in Section ~~[61-2-11]~~ 61-2-12;
- 1166 (e) advise the director on the administration and enforcement of any matters affecting
1167 the division and the real estate sales and property management industries;
- 1168 (f) advise the director on matters affecting the division budget;
- 1169 (g) advise and assist the director in conducting real estate seminars; and
1170 (h) perform other duties as provided by:
- 1171 (i) this chapter; and
1172 (ii) Title 61, Chapter 2a, Real Estate Recovery Fund Act.
- 1173 (2) (a) The commission shall be comprised of five members appointed by the governor
1174 and approved by the Senate.
- 1175 (b) Four of the commission members shall:
- 1176 (i) have at least five years' experience in the real estate business; and
1177 (ii) hold an active principal broker, associate broker, or sales agent license.

- 1178 (c) One commission member shall be a member of the general public.
- 1179 (d) No more than one commission member [~~may be appointed from~~] described in
1180 Subsection (2)(b) shall at the time of appointment reside in any given county in the state.
- 1181 (e) At least one commission member described in Subsection (2)(b) shall at the time of
1182 an appointment reside in a county that is not a county of the first or second class.
- 1183 (3) (a) Except as required by Subsection (3)(b), as terms of current commission
1184 members expire, the governor shall appoint each new member or reappointed member to a
1185 four-year term ending June 30.
- 1186 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the
1187 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
1188 commission members are staggered so that approximately half of the commission is appointed
1189 every two years.
- 1190 (c) Upon the expiration of the term of a member of the commission, the member of the
1191 commission shall continue to hold office until a successor is appointed and qualified.
- 1192 (d) A commission member may not serve more than two consecutive terms.
- 1193 (e) Members of the commission shall annually select one member to serve as chair.
- 1194 (4) When a vacancy occurs in the membership for any reason, the replacement shall be
1195 appointed for the unexpired term.
- 1196 (5) (a) A member [~~shall~~] may not receive [~~no~~] compensation or benefits for the
1197 member's services, but may receive per diem and expenses incurred in the performance of the
1198 member's official duties at the rates established by the Division of Finance under Sections
1199 63A-3-106 and 63A-3-107.
- 1200 (b) A member may decline to receive per diem and expenses for the member's service.
- 1201 (6) (a) The commission shall meet at least monthly.
- 1202 (b) The director may call additional meetings:
- 1203 (i) at the director's discretion;
- 1204 (ii) upon the request of the chair; or
- 1205 (iii) upon the written request of three or more commission members.

1206 (7) Three members of the commission constitute a quorum for the transaction of
1207 business.

1208 Section 18. Section **61-2-6** is amended to read:

1209 **61-2-6. Licensing procedures and requirements.**

1210 (1) (a) Except as provided in Subsection (5), the commission shall determine the
1211 qualifications and requirements of applicants for:

- 1212 (i) a principal broker license;
- 1213 (ii) an associate broker license; or
- 1214 (iii) a sales agent license.

1215 (b) The division, with the concurrence of the commission, shall require and pass upon
1216 proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency of
1217 each applicant for an initial license or for renewal of an existing license.

1218 (c) (i) The division, with the concurrence of the commission, shall require an applicant
1219 for:

1220 (A) a sales agent license to complete an approved educational program not to exceed
1221 90 hours; and

1222 (B) an associate broker or principal broker license to complete an approved educational
1223 program not to exceed 120 hours.

1224 (ii) The hours required by this section mean 50 minutes of instruction in each 60
1225 minutes.

1226 (iii) The maximum number of program hours available to an individual is ten hours per
1227 day.

1228 (d) The division, with the concurrence of the commission, shall require the applicant to
1229 pass an examination approved by the commission covering:

- 1230 (i) the fundamentals of:
 - 1231 (A) the English language;
 - 1232 (B) arithmetic;
 - 1233 (C) bookkeeping; and

- 1234 (D) real estate principles and practices;
- 1235 (ii) the provisions of this chapter;
- 1236 (iii) the rules established by the commission; and
- 1237 (iv) any other aspect of Utah real estate license law considered appropriate.
- 1238 (e) (i) Three years' full-time experience as a real estate sales agent or its equivalent is
- 1239 required before any applicant may apply for, and secure a principal broker or associate broker
- 1240 license in this state.
- 1241 (ii) The commission shall establish by rule, made in accordance with Title 63, Chapter
- 1242 46a, Utah Administrative Rulemaking Act, the criteria by which the commission will accept
- 1243 experience or special education in similar fields of business in lieu of the three years'
- 1244 experience.
- 1245 (2) (a) The division, with the concurrence of the commission, may require an applicant
- 1246 to furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's
- 1247 reputation and competency as set forth by rule.
- 1248 (b) The division shall require an applicant to provide the applicant's Social Security
- 1249 number, which is a private record under Subsection 63-2-302(1)(h).
- 1250 (3) (a) A nonresident principal broker may be licensed in this state by conforming to all
- 1251 the provisions of this chapter except that of residency.
- 1252 (b) A nonresident associate broker or sales agent may become licensed in this state by:
- 1253 (i) conforming to all the provisions of this chapter except that of residency; and
- 1254 (ii) being employed or engaged as an independent contractor by or on behalf of a
- 1255 nonresident or resident principal broker who is licensed in this state.
- 1256 (4) (a) Except as provided in Subsection 61-2-9(1)(e)(iv), the application to be
- 1257 relicensed of an applicant who has had a real estate license revoked[~~:(i) shall be relicensed as~~
- 1258 ~~prescribed for] shall be treated as an original application[~~; and~~].~~
- 1259 [~~(ii) may not apply for a new license until at least five years after the day on which the~~
- 1260 ~~license is revoked.]~~
- 1261 (b) In the case of an applicant for a new license as a principal broker or associate

1262 broker, the applicant is not entitled to credit for experience gained prior to the revocation of a
1263 real estate license.

1264 (5) (a) Notwithstanding Subsection (1), the commission may delegate to the division
1265 the authority to:

- 1266 (i) review a class or category of applications for initial or renewed licenses;
- 1267 (ii) determine whether an applicant meets the licensing criteria in Subsection (1); and
- 1268 (iii) approve or deny a license application without concurrence by the commission.

1269 (b) (i) If the commission delegates to the division the authority to approve or deny an
1270 application without concurrence by the commission and the division denies an application for
1271 licensure, the applicant who is denied licensure may petition the commission for review of the
1272 denial of licensure.

1273 (ii) An applicant who is denied licensure pursuant to this Subsection (5) may seek
1274 agency review by the executive director only after the commission has reviewed the division's
1275 denial of the applicant's application.

1276 Section 19. Section **61-2-9** is amended to read:

1277 **61-2-9. Examination and license fees -- Criminal background check -- Renewal of**
1278 **licenses -- Education requirements -- Activation of inactive licenses -- Recertification --**
1279 **Licenses of firm, partnership, or association -- Miscellaneous fees.**

1280 (1) (a) Upon filing an application for a principal broker, associate broker, or sales agent
1281 license examination, the applicant shall pay a nonrefundable fee as determined by the
1282 commission with the concurrence of the division under Section 63-38-3.2 for admission to the
1283 examination.

1284 (b) A principal broker, associate broker, or sales agent applicant shall pay a
1285 nonrefundable fee as determined by the commission with the concurrence of the division under
1286 Section 63-38-3.2 for issuance of an initial license or license renewal.

1287 (c) Each license issued under this Subsection (1) shall be issued for a period of not less
1288 than two years as determined by the division with the concurrence of the commission.

1289 (d) (i) Any [~~new sales agent applicant shall:~~] of the following applicants shall comply

1290 with this Subsection (1)(d):

1291 (A) a new sales agent applicant; or

1292 (B) an out-of-state broker applicant.

1293 (ii) An applicant described in this Subsection (1)(d) shall:

1294 (A) submit fingerprint cards in a form acceptable to the division at the time the license
1295 application is filed; and

1296 (B) consent to a [~~fingerprint~~] criminal background check by the Utah Bureau of
1297 Criminal Identification and the Federal Bureau of Investigation regarding the application.

1298 [~~(ii)~~] (iii) The division shall request the Department of Public Safety to complete a
1299 Federal Bureau of Investigation criminal background check for each [~~new sales agent~~]
1300 applicant described in this Subsection (1)(d) through the national criminal history system
1301 [~~(NCIC)~~] or any successor system.

1302 [~~(iii)~~] (iv) The cost of the criminal background check and the fingerprinting shall be
1303 borne by the applicant.

1304 [~~(iv)~~] (v) Funds paid to the division by an applicant for the cost of the criminal
1305 background check shall be nonlapsing.

1306 (e) (i) Any [~~new sales agent~~] license issued under [~~this section~~] Subsection (1)(d) shall
1307 be conditional, pending completion of the criminal background check. If the criminal
1308 background check discloses the applicant has failed to accurately disclose a criminal history,
1309 the license shall be immediately and automatically revoked.

1310 (ii) Any person whose conditional license has been revoked under Subsection (1)(e)(i)
1311 shall be entitled to a post-revocation hearing to challenge the revocation. The hearing shall be
1312 conducted in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

1313 (iii) The division director shall designate one of the following to act as the presiding
1314 officer in a postrevocation hearing described in this Subsection (1)(e):

1315 (A) the division; or

1316 (B) the division with the concurrence of the commission.

1317 (iv) The decision on whether relief from the revocation of a license under this

1318 Subsection (1)(e) will be granted shall be made by the presiding officer.

1319 (v) Relief from a revocation under this Subsection (1)(e) may be granted only if:

1320 (A) the criminal history upon which the division based the revocation:

1321 (I) did not occur; or

1322 (II) is the criminal history of another person;

1323 (B) (I) the revocation is based on a failure to accurately disclose a criminal history; and

1324 (II) the applicant had a reasonable good faith belief at the time of application that there
1325 was no criminal history to be disclosed; or

1326 (C) the division failed to follow the prescribed procedure for the revocation.

1327 (vi) If a license is revoked or a revocation under this Subsection (1)(e) is upheld after a
1328 post-revocation hearing, the person may not apply for a new license until at least 12 months
1329 after the day on which the [~~final decision upholding the revocation is issued~~] license is
1330 revoked.

1331 (2) (a) (i) A license expires if it is not renewed on or before its expiration date.

1332 (ii) As a condition of renewal, each active licensee shall demonstrate competence:

1333 (A) by viewing an approved real estate education video program and completing a
1334 supplementary workbook; or

1335 (B) by completing 12 hours of professional education approved by the division and
1336 commission within each two-year renewal period.

1337 (iii) The division with the concurrence of the commission shall certify education which
1338 may include:

1339 (A) state conventions;

1340 (B) home study courses;

1341 (C) video courses; and

1342 (D) closed circuit television courses.

1343 (iv) The commission with concurrence of the division may exempt a licensee from the
1344 education requirement of this Subsection (2)(a) for a period not to exceed four years:

1345 (A) upon a finding of reasonable cause, including military service; and

1346 (B) under conditions established by rule made in accordance with Title 63, Chapter
1347 46a, Utah Administrative Rulemaking Act.

1348 (b) For a period of 30 days after the expiration date of a license, the license may be
1349 reinstated upon:

1350 (i) payment of a renewal fee and a late fee determined by the commission with the
1351 concurrence of the division under Section 63-38-3.2; and

1352 (ii) providing proof acceptable to the division and the commission of the licensee
1353 having completed the hours of education or demonstrated competence as required under
1354 Subsection (2)(a).

1355 (c) After the 30-day period described in Subsection (2)(b), and until six months after
1356 the expiration date, the license may be reinstated by:

1357 (i) paying a renewal fee and a late fee determined by the commission with the
1358 concurrence of the division under Section 63-38-3.2;

1359 (ii) providing to the division proof of satisfactory completion of 12 hours of continuing
1360 education:

1361 (A) in addition to the requirements for a timely renewal; and

1362 (B) on a subject determined by the commission by rule made in accordance with Title
1363 63, Chapter 46a, Utah Administrative Rulemaking Act; and

1364 (iii) providing proof acceptable to the division and the commission of the licensee
1365 having:

1366 (A) completed the hours of education; or

1367 (B) demonstrated competence as required under Subsection (2)(a).

1368 (d) A person who does not renew that person's license within six months after the
1369 expiration date shall be relicensed as prescribed for an original application.

1370 (3) (a) As a condition for the activation of an inactive license that was in an inactive
1371 status at the time of the licensee's most recent renewal, the licensee shall supply the division
1372 with proof of:

1373 (i) successful completion of the respective sales agent or broker licensing examination

1374 within six months prior to applying to activate the license; or
1375 (ii) the successful completion of 12 hours of continuing education that the licensee
1376 would have been required to complete under Subsection (2)(a) if the license had been on active
1377 status at the time of the licensee's most recent renewal.

1378 (b) The commission may, in accordance with Title 63, Chapter 46a, Utah
1379 Administrative Rulemaking Act, establish by rule:

1380 (i) the nature or type of continuing education required for reactivation of a license; and
1381 (ii) how long prior to reactivation the continuing education must have been completed.

1382 (4) (a) A principal broker license may be granted to a corporation, partnership, or
1383 association if the corporation, partnership, or association has affiliated with it an individual
1384 who:

1385 (i) has qualified as a principal broker under the terms of this chapter; and
1386 (ii) serves in the capacity of a principal broker.

1387 (b) Application for the license described in Subsection (4)(a) shall be made in
1388 accordance with the rules adopted by the division with the concurrence of the commission.

1389 (5) The division may charge and collect reasonable fees determined by the commission
1390 with the concurrence of the division under Section 63-38-3.2 to cover the costs for:

1391 (a) issuance of a new or duplicate license;

1392 (b) license histories or certifications;

1393 (c) certified copies of official documents, orders, and other papers and transcripts;

1394 (d) certifying real estate schools, courses, and instructors, the fees for which shall,
1395 notwithstanding Section 13-1-2, be deposited in the Real Estate Education, Research, and
1396 Recovery Fund; and

1397 (e) other duties required by this chapter.

1398 (6) If a licensee submits or causes to be submitted a check, draft, or other negotiable
1399 instrument to the division for payment of fees, and the check, draft, or other negotiable
1400 instrument is dishonored, the transaction for which the payment was submitted is void and will
1401 be reversed by the division if payment of the applicable fee is not received in full.

1402 (7) (a) The fees under this chapter and the additional license fee for the Real Estate
1403 Education, Research, and Recovery Fund under Section 61-2a-4 are in lieu of all other license
1404 fees or assessments that might otherwise be imposed or charged by the state or any of its
1405 political subdivisions, upon, or as a condition of, the privilege of conducting the business
1406 regulated by this chapter, except that a political subdivision within the state may charge a
1407 business license fee on a principal broker if the principal broker maintains a place of business
1408 within the jurisdiction of the political subdivision.

1409 (b) Unless otherwise exempt, each licensee under this chapter is subject to all taxes
1410 imposed under Title 59, Revenue and Taxation.

1411 Section 20. Section **61-2-11** is amended to read:

1412 **61-2-11. Grounds for disciplinary action.**

1413 [~~The division may investigate or cause to be investigated the actions of any principal
1414 broker, associate broker, sales agent, real estate school, course provider, or school instructor
1415 licensed or certified by this state, or of any applicant for licensure or certification, or of any
1416 person who acts in any of those capacities within this state. The division is empowered to
1417 subpoena witnesses, take evidence, and require by subpoena duces tecum the production of
1418 books, papers, contracts, records, other documents, or information considered relevant to the
1419 investigation. The division may serve subpoenas by certified mail. Each failure to respond to a
1420 subpoena is considered as a separate violation of this chapter. The commission, with the
1421 concurrence of the director, may impose a civil penalty in an amount not to exceed \$2,500 per
1422 violation, impose educational requirements, and suspend, revoke, place on probation, or deny
1423 renewal, reinstatement, or reissuance of any license or any certification if at any time the
1424 licensee or certificate holder, whether acting as an agent or on his own account, is found guilty
1425 of:]~~

1426 The following acts are unlawful for a person required to be licensed under this chapter:

- 1427 (1) making any substantial misrepresentation;
- 1428 (2) making any false promises of a character likely to influence, persuade, or induce;
- 1429 (3) pursuing a continued and flagrant course of misrepresentation, or of making false

- 1430 promises through agents, sales agents, advertising, or otherwise;
- 1431 (4) acting for more than one party in a transaction without the informed consent of all
1432 parties;
- 1433 (5) (a) acting as an associate broker or sales agent while not licensed with a licensed
1434 principal broker;
- 1435 (b) representing or attempting to represent a broker other than the principal broker with
1436 whom the person is affiliated; or
- 1437 (c) representing as sales agent or having a contractual relationship similar to that of
1438 sales agent with other than a licensed principal broker;
- 1439 (6) (a) failing, within a reasonable time, to account for or to remit any monies coming
1440 into the person's possession that belong to others;
- 1441 (b) commingling the funds described in Subsection (6)(a) with the person's own funds;
1442 or
- 1443 (c) diverting the funds described in Subsection (6)(a) from the purpose for which they
1444 were received;
- 1445 (7) paying or offering to pay valuable consideration, as defined by the commission, to
1446 any person not licensed under this chapter, except that valuable consideration may be shared:
- 1447 (a) with a licensed principal broker of another jurisdiction; or
1448 (b) as provided under:
- 1449 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;
1450 (ii) Title 16, Chapter 11, Professional Corporation Act; or
1451 (iii) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act;
- 1452 (8) being unworthy or incompetent to act as a principal broker, associate broker, or
1453 sales agent in such manner as to safeguard the interests of the public;
- 1454 (9) failing to voluntarily furnish copies of all documents to all parties executing the
1455 documents;
- 1456 (10) failing to keep and make available for inspection by the division a record of each
1457 transaction, including:

- 1458 (a) the names of buyers and sellers or lessees and lessors;
- 1459 (b) the identification of the property;
- 1460 (c) the sale or rental price;
- 1461 (d) any monies received in trust;
- 1462 (e) any agreements or instructions from buyers and sellers or lessees and lessors; and
- 1463 (f) any other information required by rule;
- 1464 (11) failing to disclose, in writing, in the purchase, sale, or rental of property, whether
- 1465 the purchase, sale, or rental is made for [~~himself~~] that person or for an undisclosed principal;
- 1466 (12) regardless of whether the crime was related to real estate, being convicted of a
- 1467 criminal offense involving moral turpitude within five years of the most recent application,
- 1468 including a conviction based upon a plea of nolo contendere, or a plea held in abeyance to a
- 1469 criminal offense involving moral turpitude;
- 1470 (13) advertising the availability of real estate or the services of a licensee in a false,
- 1471 misleading, or deceptive manner;
- 1472 (14) in the case of a principal broker or a licensee who is a branch manager, failing to
- 1473 exercise reasonable supervision over the activities of the principal broker's or branch manager's
- 1474 licensees and any unlicensed staff;
- 1475 (15) violating or disregarding this chapter, an order of the commission, or the rules
- 1476 adopted by the commission and the division;
- 1477 (16) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real
- 1478 estate transaction;
- 1479 (17) any other conduct which constitutes dishonest dealing;
- 1480 (18) unprofessional conduct as defined by statute or rule; [~~or~~]
- 1481 (19) [~~suspension, revocation, surrender, or cancellation of~~] on the basis of misconduct
- 1482 in a professional capacity that relates to character, honesty, integrity, or truthfulness, having
- 1483 one of the following suspended, revoked, surrendered, or cancelled:
- 1484 (a) a real estate license issued by another jurisdiction[;]; or [~~of~~]
- 1485 (b) another professional license issued by this or another jurisdiction[; ~~based on~~]

1486 ~~misconduct in a professional capacity that relates to character, honesty, integrity, or~~
 1487 ~~truthfulness.];~~

1488 (20) failing to respond to a request by the division in an investigation authorized under
 1489 this chapter, including:

1490 (a) failing to respond to a subpoena;

1491 (b) withholding evidence; or

1492 (c) failing to produce documents or records; or

1493 (21) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

1494 (a) providing a title insurance product or service without the approval required by
 1495 Section 31A-2-405; or

1496 (b) knowingly providing false or misleading information in the statement required by
 1497 Subsection 31A-2-405(2).

1498 Section 21. Section **61-2-11.5** is amended to read:

1499 **61-2-11.5. Investigations.**

1500 ~~[In addition to any action authorized by Section 61-2-11, in relationship to the offer or~~
 1501 ~~sale of an undivided fractionalized long-term estate:]~~

1502 (1) The division may make any ~~[public or private]~~ investigation within or outside of
 1503 this state as the division considers necessary to determine whether any person has violated, is
 1504 violating, or is about to violate this chapter or any rule or order under this chapter[;].

1505 (2) To aid in the enforcement of this chapter or in the prescribing of rules and forms
 1506 under this chapter, the division may require or permit any person to file a statement in writing,
 1507 under oath or otherwise as to all facts and circumstances concerning the matter to be
 1508 investigated[; and].

1509 (3) For the purpose of the investigation described in Subsection (1), the division or any
 1510 employee designated by the division may:

1511 (a) administer ~~[oaths and]~~ an oath or affirmation; ~~[or]~~

1512 ~~[(b) take any action permitted by Section 61-2-11 including:]~~

1513 ~~[(i)]~~ (b) subpoena witnesses [and compel their attendance];

1514 ~~[(ii)]~~ (c) take evidence; ~~[and]~~
 1515 ~~[(iii)]~~ (d) require the production of ~~[any books, papers, correspondence, memoranda,~~
 1516 ~~agreement, or other documents or records]~~ a book, paper, contract, record, other document, or
 1517 information relevant ~~[or material]~~ to the investigation~~[-]; and~~
 1518 (e) serve a subpoena by certified mail.

1519 Section 22. Section **61-2-12** is amended to read:

1520 **61-2-12. Disciplinary action -- Judicial review.**

1521 (1) (a) On the basis of a violation of ~~[Section 61-2-11, the division shall give notice to~~
 1522 ~~the licensee or certificate holder and commence an adjudicative proceeding before:]~~ this
 1523 chapter, the commission with the concurrence of the director, may issue an order:

- 1524 (i) imposing an educational requirement;
- 1525 (ii) imposing a civil penalty~~[-or]~~ not to exceed the greater of:
 - 1526 (A) \$2,500 for each violation; or
 - 1527 (B) the amount of any gain or economic benefit derived from each violation;
- 1528 (iii) taking any of the following actions related to a license or certificate:
 - 1529 (A) revoking;
 - 1530 (B) suspending;
 - 1531 (C) placing on probation; ~~[or]~~
 - 1532 (D) denying the renewal, reinstatement, or ~~[reissuance:]~~ application for an original
 1533 license or certificate; or
 - 1534 (E) in the case of denial or revocation of a license or certificate, setting a waiting
 1535 period for an applicant to apply for a license or certificate under this title;
 - 1536 (iv) issuing a cease and desist order; or
 - 1537 (v) doing any combination of Subsections (1)(a)(i) through (iv).

1538 (b) If the licensee is an active sales agent or active associate broker, the division shall
 1539 inform the principal broker with whom the licensee is affiliated of the charge and of the time
 1540 and place of any hearing.

1541 ~~[(c) If the presiding officer at a hearing determines that any licensee or certificate~~

1542 holder is guilty of a violation of this chapter, the division by written order may:]

1543 [~~(i) with regard to the license or certificate;~~]

1544 [~~(A) suspend;~~]

1545 [~~(B) revoke;~~]

1546 [~~(C) place on probation; or~~]

1547 [~~(D) deny renewal, reinstatement, or reissuance; or~~]

1548 [~~(ii) impose a civil penalty.~~]

1549 (2) (a) Any applicant, certificate holder, licensee, or person aggrieved, including the
1550 complainant, may obtain agency review by the executive director and judicial review of any
1551 adverse ruling, order, or decision of the division.

1552 (b) If the applicant, certificate holder, or licensee prevails in the appeal and the court
1553 finds that the state action was undertaken without substantial justification, the court may award
1554 reasonable litigation expenses to the applicant, certificate holder, or licensee as provided under
1555 Title 78, Chapter 27a, Small Business Equal Access to Justice Act.

1556 (c) (i) An order, ruling, or decision of the division shall take effect and become
1557 operative 30 days after the service of the order, ruling, or decision unless otherwise provided in
1558 the order.

1559 (ii) If an appeal is taken by a licensee, the division may stay enforcement of an order,
1560 ruling, or decision in accordance with Section 63-46b-18.

1561 (iii) The appeal shall be governed by the Utah Rules of Appellate Procedure.

1562 (3) The commission and the director shall comply with the procedures and
1563 requirements of Title 63, Chapter 46b, Administrative Procedures Act, in all adjudicative
1564 proceedings.

1565 Section 23. Section **61-2-20** is amended to read:

1566 **61-2-20. Rights and privileges of real estate licensees to fill out forms or**
1567 **documents.**

1568 [~~Real~~] A real estate [~~licensees~~] licensee may fill out only those legal forms approved by
1569 the commission and the attorney general, and those forms provided by statute, with the

1570 following exceptions:

1571 (1) ~~(a) [Principal brokers and associate brokers]~~ A principal broker may fill out any
1572 documents associated with the closing of a real estate transaction.

1573 (b) A branch broker or associate broker may fill out any documents associated with the
1574 closing of a real estate transaction if designated to fill out the documents by the principal
1575 broker with whom the branch broker or associate broker is affiliated.

1576 (2) ~~[Real]~~ A real estate [licensees] licensee may fill out real estate forms prepared by
1577 legal counsel of the buyer, seller, lessor, or lessee.

1578 (3) If the commission and the attorney general have not approved a specific form for
1579 the transaction, a principal [brokers] broker, associate [brokers, and] broker, or sales [agents]
1580 agent may fill out real estate forms prepared by any legal counsel, including legal counsel
1581 retained by the brokerage to develop these forms.

1582 Section 24. Section **61-2-21** is amended to read:

1583 **61-2-21. Remedies and action for violations.**

1584 (1) (a) ~~[If the director has reason to believe that any person has been, is engaging in, or~~
1585 ~~is about to engage in acts constituting violations of this chapter, and if it appears to the director~~
1586 ~~that it would be in the public interest to stop such acts, the]~~ The director shall issue and serve
1587 upon ~~[the]~~ a person an order directing that person to cease and desist from ~~[those acts:]~~ an act
1588 if:

1589 (i) the director has reason to believe that the person has been engaging, is about to
1590 engage, or is engaging in the act constituting a violation of this chapter; and

1591 (ii) it appears to the director that it would be in the public interest to stop the act.

1592 (b) Within ten days after receiving the order, the person upon whom the order is served
1593 may request an adjudicative proceeding.

1594 (c) Pending the hearing, any cease and desist order shall remain in effect.

1595 (d) If a request for a hearing is made, the division shall follow the procedures and
1596 requirements of Title 63, Chapter 46b, Administrative Procedures Act.

1597 (2) (a) After the hearing, if the commission and the director agree that the ~~[acts]~~ act of

1598 the person [~~violate~~] violates this chapter, the director:

1599 (i) shall issue an order making the order issued under Subsection (1) permanent; and

1600 (ii) may impose a [~~fine.~~] civil penalty not to exceed the greater of:

1601 (A) \$2,500 for each violation; or

1602 (B) the amount of any gain or economic benefit derived from each violation.

1603 (b) [~~If no hearing is requested and if the person fails to cease the acts, or after~~

1604 ~~discontinuing the acts, again commences the acts, the~~] The director shall file suit in the name of

1605 the Department of Commerce and the Division of Real Estate, in the district court in the county

1606 in which [~~the acts~~] an act described in Subsection (1) occurred or where the person resides or

1607 carries on business, to enjoin and restrain the person from violating this chapter[-] if:

1608 (i) (A) no hearing is requested; and

1609 (B) the person fails to cease the act described in Subsection (1); or

1610 (ii) after discontinuing the act described in Subsection (1), the person again

1611 commences the act.

1612 (c) The district courts of this state shall have jurisdiction of [~~these suits~~] an action

1613 brought under this section.

1614 (d) Upon a proper showing in an action brought under this section related to an

1615 undivided fractionalized long-term estate, the court may:

1616 (i) issue a permanent or temporary, prohibitory or mandatory injunction;

1617 (ii) issue a restraining order or writ of mandamus;

1618 (iii) enter a declaratory judgment;

1619 (iv) appoint a receiver or conservator for the defendant or the defendant's assets;

1620 (v) order disgorgement;

1621 (vi) order rescission;

1622 (vii) impose a [~~fine of not more than \$500 for each violation of this chapter~~] civil

1623 penalty not to exceed the greater of:

1624 (A) \$2,500 for each violation; or

1625 (B) the amount of any gain or economic benefit derived from each violation; and

1626 (viii) enter any other relief the court considers just.

1627 (e) The court may not require the division to post a bond in an action brought under
1628 this Subsection (2).

1629 (3) The remedies and action provided in this section may not interfere with, or prevent
1630 the prosecution of, any other remedies or actions including criminal proceedings.

1631 Section 25. Section **61-2-28** is enacted to read:

1632 **61-2-28. Utah Housing Opportunity Restricted Account.**

1633 (1) There is created in the General Fund a restricted account known as the "Utah
1634 Housing Opportunity Restricted Account."

1635 (2) The account shall be funded by:

1636 (a) contributions deposited into the Utah Housing Opportunity Restricted Account in
1637 accordance with Section 41-1a-422;

1638 (b) private contributions;

1639 (c) donations or grants from public or private entities; and

1640 (d) interest and earnings on fund monies.

1641 (3) Funds in the account are nonlapsing.

1642 (4) The Legislature shall appropriate money in the account to the division.

1643 (5) The division shall distribute the funds to one or more charitable organizations that:

1644 (a) qualify as being tax exempt under Section 501(c)(3), Internal Revenue Code; and

1645 (b) have as a primary part of their mission to provide support to organizations that
1646 create affordable housing for those in severe need.

1647 (6) The division may only consider proposals that are:

1648 (a) proposed by an organization under Subsection (5); and

1649 (b) designed to provide support to organizations that create affordable housing for
1650 those in severe need.

1651 (7) (a) An organization described in Subsection (5) may apply to the division to receive
1652 a distribution in accordance with Subsection (5).

1653 (b) An organization that receives a distribution from the division in accordance with

1654 Subsection (5) shall expend the distribution only to provide support to organizations that create
1655 affordable housing for those in severe need.

1656 (8) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1657 division shall make rules providing procedures for an organization to apply to receive funds
1658 under this section.

1659 Section 26. Section **61-2a-12** is amended to read:

1660 **61-2a-12. Moneys accumulated -- Excess set aside -- Purpose.**

1661 (1) Any of the money accumulated in the Real Estate Education, Research and
1662 Recovery Fund in excess of \$100,000 shall be set aside and segregated to be used by the
1663 Division of Real Estate [~~Division in carrying out the advancement of~~] to:

1664 (a) investigate violations of this chapter related to fraud; and

1665 (b) advance education and research in the field of real estate[~~, including courses~~].

1666 (2) The division may only use the excess monies described in Subsection (1) only in a
1667 manner consistent with Subsection (1), including for courses:

1668 (a) sponsored by the division[;];

1669 (b) offered by the division in conjunction with any university or college in the state[;];

1670 or

1671 (c) provided for by contracting for a particular research project in the field of real estate
1672 for the state.

1673 Section 27. Section **61-2b-7** is amended to read:

1674 **61-2b-7. Real Estate Appraiser Licensing and Certification Board.**

1675 (1) (a) There is established a Real Estate Appraiser Licensing and Certification Board
1676 which shall consist of five regular members as follows:

1677 (i) one state-licensed or state-certified appraiser who may be either a residential or
1678 general licensee or certificate holder;

1679 (ii) one state-certified residential appraiser;

1680 (iii) one state-certified general appraiser;

1681 (iv) one member who is certified as either a state-certified residential appraiser or a

1682 state-certified general appraiser; and

1683 (v) one member of the general public.

1684 [~~(b)~~ The term of the longest serving general public member of the board as of May 2,
1685 2005 terminates May 2, 2005.]

1686 [~~(c)~~] (b) A state-licensed or state-certified appraiser may be appointed as an alternate
1687 member of the board.

1688 [~~(d)~~] (c) The governor shall appoint all members of the board with the consent of the
1689 Senate.

1690 (2) (a) Except as required by Subsection (2)(b), as terms of current board members
1691 expire, the governor shall appoint each new member or reappointed member to a four-year
1692 term beginning on July 1.

1693 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the
1694 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
1695 board members are staggered so that approximately half of the board is appointed every two
1696 years.

1697 (c) Upon the expiration of a member's term, a member of the board shall continue to
1698 hold office until the appointment and qualification of the member's successor.

1699 (d) A person may not serve as a member of the board for more than two consecutive
1700 terms.

1701 (3) (a) When a vacancy occurs in the membership for any reason, the replacement shall
1702 be appointed for the unexpired term.

1703 (b) The governor may remove a board member for cause.

1704 (4) The public member of the board may not be licensed or certified under this chapter.

1705 (5) The board shall meet at least quarterly to conduct its business. Public notice shall
1706 be given for all board meetings.

1707 (6) The members of the board shall elect a chair annually from among the members to
1708 preside at board meetings.

1709 (7) (a) A member who is not a government employee [~~shall~~] may not receive [~~no~~]

1710 compensation or benefits for the member's services, but may receive per diem and expenses
1711 incurred in the performance of the member's official duties at the rates established by the
1712 Division of Finance under Sections 63A-3-106 and 63A-3-107.

1713 (b) A member may decline to receive per diem and expenses for the member's service.

1714 (8) (a) Three members of the board shall constitute a quorum for the transaction of
1715 business.

1716 (b) If a quorum of members is unavailable for any meeting, the alternate member of the
1717 board, if any, shall serve as a regular member of the board for that meeting if with the presence
1718 of the alternate member a quorum is present at the meeting.

1719 Section 28. Section **61-2b-17** is amended to read:

1720 **61-2b-17. State-certified and state-licensed appraisers -- Restrictions on use of**
1721 **terms -- Conduct prohibited or required -- Trainee.**

1722 (1) (a) The terms "state-certified general appraiser," "state-certified residential
1723 appraiser," and "state-licensed appraiser":

1724 (i) may only be used to refer to an individual who is certified or licensed under this
1725 chapter; and

1726 (ii) may not be used following, or immediately in connection with, the name or
1727 signature of a firm, partnership, corporation, or group, or in any manner that it might be
1728 interpreted as referring to a firm, partnership, corporation, group, or to anyone other than the
1729 individual who is certified or licensed under this chapter.

1730 (b) The requirement of this Subsection (1) may not be construed to prevent a
1731 state-certified general appraiser from signing an appraisal report on behalf of a corporation,
1732 partnership, firm, or group practice if it is clear that:

1733 (i) only the individual is certified; and [~~that~~]

1734 (ii) the corporation, partnership, firm, or group practice is not certified.

1735 (c) Except as provided in Section 61-2b-25, a certificate or license may not be issued
1736 under this chapter to a corporation, partnership, firm, or group.

1737 (2) (a) A person other than a state-certified general appraiser or state-certified

1738 residential appraiser, may not assume or use any title, designation, or abbreviation likely to
1739 create the impression of certification in this state as a real estate appraiser.

1740 (b) A person other than a state-licensed appraiser may not assume or use any title,
1741 designation, or abbreviation likely to create the impression of licensure in this state as a real
1742 estate appraiser.

1743 (3) (a) Only an individual who has qualified under the certification requirements of
1744 [~~Sections 61-2b-14 and 61-2b-15~~] this chapter is authorized to prepare and sign a certified
1745 appraisal report relating to real estate or real property in this state.

1746 (b) If a certified appraisal report is prepared and signed by a state-certified residential
1747 appraiser, the certified appraisal report shall state, immediately following the signature on the
1748 report, "State-Certified Residential Appraiser."

1749 (c) If a certified appraisal report is prepared and signed by a state-certified general
1750 appraiser, the certified appraisal report shall state, immediately following the signature on the
1751 report, "State-Certified General Appraiser."

1752 (d) An appraisal report prepared by a state-licensed appraiser shall state, immediately
1753 following the signature on the report, "State-Licensed Appraiser."

1754 (e) When signing a certified appraisal report, a state-certified appraiser shall also place
1755 on the report, immediately below the state-certified appraiser's signature the state-certified
1756 appraiser's certificate number and its expiration date.

1757 (f) A state-certified residential appraiser may not prepare a certified appraisal report
1758 outside the state-certified residential appraiser's authority as defined in Section 61-2b-13.

1759 (g) A state-licensed appraiser who assisted in the preparation of a certified appraisal
1760 report is authorized to cosign the certified appraisal report.

1761 (4) A person who has not qualified under [~~either Section 61-2b-14 or 61-2b-15~~] this
1762 chapter may not describe or refer to any appraisal or appraisal report relating to real estate or
1763 real property in this state by the terms "certified appraisal" or "certified appraisal report."

1764 (5) If a trainee assists a state-licensed appraiser or a state-certified appraiser in the
1765 preparation of an appraisal report, the appraisal report shall disclose:

- 1766 (a) the trainee's name; and
- 1767 (b) the extent to which the trainee assists in the preparation of the appraisal report.

1768 Section 29. Section **61-2b-28** is amended to read:

1769 **61-2b-28. Enforcement -- Investigation -- Orders -- Hearings.**

1770 (1) (a) The division may investigate the actions of:

- 1771 (i) any person licensed or certified under this chapter~~[-];~~;
- 1772 (ii) an applicant for licensure or certification~~[-or];~~;
- 1773 (iii) an applicant for renewal of licensure or certification~~[-and];~~ or
- 1774 (iv) a person required to be licensed or certified under this chapter.

1775 (b) The division may initiate an agency action against a person described in Subsection

1776 (1)(a) in accordance with Title 63, Chapter 46b, Administrative Procedures Act, to:

1777 ~~[(a)]~~ (i) impose disciplinary action ~~[on a person licensed or certified under this chapter;~~

1778 ~~or];~~

1779 ~~[(b)]~~ (ii) deny issuance to an applicant of an original or renewal license or

1780 certification~~[-];~~ or

1781 (iii) issue a cease and desist order as provided in Subsection (3).

1782 (2) (a) The division may:

1783 (i) administer an oath or affirmation;

1784 (ii) subpoena witnesses~~[-];~~;

1785 (iii) take evidence~~[-];~~ and

1786 (iv) require ~~[by subpoena duces tecum]~~ the production of books, papers, contracts,

1787 records, other documents, or information relevant to the investigation described in Subsection

1788 (1).

1789 (b) The division may serve subpoenas by certified mail.

1790 (c) Each failure to respond to ~~[a subpoena by a person licensed or certified under this~~

1791 ~~chapter]~~ a request by the division in an investigation authorized under this chapter is

1792 considered to be a separate violation of this chapter~~[-]~~, including:

1793 (i) failing to respond to a subpoena;

1794 (ii) withholding evidence; or
1795 (iii) failing to produce documents or records.
1796 (3) (a) [~~If the director has reason to believe that any person has been or is engaging in~~
1797 ~~acts constituting violations of this chapter, and if it appears to the director that it would be in~~
1798 ~~the public interest to stop these acts, the] The director shall issue and serve upon [~~the~~] a person
1799 an order directing that person to cease and desist from [~~those acts.~~] an act if:
1800 (i) the director has reason to believe that the person has been engaging, is about to
1801 engage, or is engaging in the act constituting a violation of this chapter; and
1802 (ii) it appears to the director that it would be in the public interest to stop the act.
1803 (b) Within ten days after receiving the order, the person upon whom the order is served
1804 may request an adjudicative proceeding.
1805 (c) Pending the hearing, the cease and desist order shall remain in effect.
1806 (d) If a request for hearing is made, the division shall follow the procedures and
1807 requirements of Title 63, Chapter 46b, Administrative Procedures Act.
1808 (4) (a) After the hearing, if the board agrees that the acts of the person violate this
1809 chapter, the board:
1810 (i) shall issue an order making the cease and desist order permanent[-]; and
1811 (ii) may impose a civil penalty not to exceed the greater of:
1812 (A) \$2,500 for each violation; or
1813 (B) the amount of any gain or economic benefit derived from each violation.
1814 (b) [~~If no hearing is requested and if the person fails to cease the acts, or after~~
1815 ~~discontinuing the acts, again commences the acts, the] The director shall commence an action
1816 in the name of the Department of Commerce and Division of Real Estate, in the district court
1817 in the county in which [~~the acts occurred~~] an act described in Subsection (3) occurs or where
1818 the person resides or carries on business, to enjoin and restrain the person from violating this
1819 chapter[-] if:
1820 (i) (A) no hearing is requested; and
1821 (B) the person fails to cease the act described in Subsection (3); or~~~~

1822 (ii) after discontinuing the act described in Subsection (3), the person again
 1823 commences the act.

1824 (5) The remedies and action provided in this section do not limit, interfere with, or
 1825 prevent the prosecution of any other remedies or actions including criminal proceedings.

1826 Section 30. Section **61-2b-29** is amended to read:

1827 **61-2b-29. Disciplinary action -- Grounds.**

1828 (1) (a) The board may order disciplinary action against any person:

1829 (i) licensed or certified under this chapter[-]; or

1830 (ii) required to be licensed or certified under this chapter.

1831 (b) On the basis of any of the grounds listed in Subsection (2) for disciplinary action,
 1832 board action may include:

1833 ~~[(a)]~~ (i) revoking, suspending, or placing a person's license or certification on
 1834 probation;

1835 ~~[(b)]~~ (ii) denying a person's original or renewal license or certification;

1836 (iii) in the case of denial or revocation of a license or certification, setting a waiting
 1837 period for an applicant to apply for a license or certification under this chapter;

1838 ~~[(c)]~~ (iv) ordering remedial education; [and]

1839 ~~[(d)]~~ (v) imposing a civil penalty upon a person not to exceed [\$1,000 per violation.]
 1840 the greater of:

1841 (A) \$2,500 for each violation; or

1842 (B) the amount of any gain or economic benefit from each violation;

1843 (vi) issuing a cease and desist order; or

1844 (vii) doing any combination of Subsections (1)(b)(i) through (vi).

1845 (2) The following are grounds for disciplinary action under this section:

1846 (a) procuring or attempting to procure a license or certification under this chapter by
 1847 fraud or by making a false statement, submitting false information, or making a material
 1848 misrepresentation in an application filed with the division;

1849 (b) paying money or attempting to pay money other than the fees provided for by this

1850 chapter to any member or employee of the division to procure a license or certification under
1851 this chapter;

1852 (c) an act or omission in the practice of real estate appraising that constitutes
1853 dishonesty, fraud, or misrepresentation;

1854 (d) entry of a judgment against a licensee or certificate holder on grounds of fraud,
1855 misrepresentation, or deceit in the making of an appraisal of real estate;

1856 (e) a guilty plea to a criminal offense involving moral turpitude that is held in
1857 abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo
1858 contendere, of a criminal offense involving moral turpitude;

1859 (f) engaging in the business of real estate appraising under an assumed or fictitious
1860 name not properly registered in this state;

1861 (g) paying a finder's fee or a referral fee to a person not licensed or certified under this
1862 chapter in connection with an appraisal of real estate or real property in this state;

1863 (h) making a false or misleading statement in that portion of a written appraisal report
1864 that deals with professional qualifications or in any testimony concerning professional
1865 qualifications;

1866 (i) violating or disregarding any provision of this chapter, an order of the board, or any
1867 rule issued under this chapter;

1868 (j) [~~violation of~~] violating the confidential nature of governmental records to which a
1869 person registered, licensed, or certified under this chapter gained access through employment
1870 or engagement as an appraiser by a governmental agency;

1871 (k) [~~acceptance of~~] accepting a contingent fee for performing an appraisal as defined in
1872 Subsection 61-2b-2(1)(a) if in fact the fee is or was contingent upon the appraiser reporting a
1873 predetermined analysis, opinion, or conclusion or is or was contingent upon the analysis,
1874 opinion, conclusion, or valuation reached or upon the consequences resulting from the
1875 appraisal assignment;

1876 (l) unprofessional conduct as defined by statute or rule; [~~or~~]

1877 (m) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

1878 (i) providing a title insurance product or service without the approval required by
1879 Section 31A-2-405; or
1880 (ii) knowingly providing false or misleading information in the statement required by
1881 Subsection 31A-2-405(2); or
1882 ~~(m)~~ (n) any other conduct that constitutes dishonest dealing.

1883 Section 31. Section **61-2b-31** is amended to read:

1884 **61-2b-31. Disciplinary hearing process.**

1885 (1) Before disciplinary action may be taken by the board ~~[against a licensee or~~
1886 ~~certificate holder;]~~ the division shall:

1887 (a) notify the ~~[licensee or certificate holder and]~~ person against whom the board seeks
1888 to take disciplinary action; and

1889 (b) commence an adjudicative proceeding.

1890 (2) If, after the hearing, the board determines that ~~[the licensee or certificate holder~~
1891 ~~has]~~ a person described in Subsection (1) violated this chapter, the board may impose
1892 disciplinary action by written order as provided in Section 61-2b-29.

1893 (3) The board may conduct hearings with the assistance of an administrative law judge
1894 or may delegate hearings to an administrative law judge. If the hearing is delegated by the
1895 board to an administrative law judge, the judge shall submit written findings of fact,
1896 conclusions of law, and a recommended order to the board for its consideration.

1897 (4) (a) Any applicant, licensee, certificate holder, or person aggrieved, including the
1898 complainant, may obtain judicial review of any adverse ruling, order, or decision of the board.
1899 Any appeal shall be governed by the Utah Rules of Appellate Procedure.

1900 (b) If the applicant, licensee, or certificate holder prevails in the appeal and the court
1901 finds that the state action was undertaken without substantial justification, the court may award
1902 reasonable litigation expenses to the applicant, licensee, or certificate holder as provided under
1903 Title 78, Chapter 27a, Small Business Equal Access to Justice Act.

1904 Section 32. Section **61-2c-102** is amended to read:

1905 **61-2c-102. Definitions.**

- 1906 (1) As used in this chapter:
- 1907 (a) "Affiliate" means an individual or an entity that directly, or indirectly through one
1908 or more intermediaries, controls or is controlled by, or is under common control with, a
1909 specified individual or entity.
- 1910 (b) "Applicant" means an individual or entity applying for a license under this chapter.
- 1911 (c) "Associate lending manager" means a person who:
- 1912 (i) has qualified under this chapter as a principal lending manager; and
1913 (ii) works by or on behalf of another principal lending manager in transacting the
1914 business of residential mortgage loans.
- 1915 (d) "Branch office" means a licensed entity's office:
- 1916 (i) for the transaction of the business of residential mortgage loans regulated under this
1917 chapter; and
1918 (ii) other than the main office of the licensed entity.
- 1919 (e) (i) "Business of residential mortgage loans" means for compensation to:
- 1920 (A) make or originate a residential mortgage loan;
1921 (B) directly or indirectly solicit, place, or negotiate a residential mortgage loan for
1922 another; or
1923 (C) render services related to the origination of a residential mortgage loan including:
1924 (I) taking applications; and
1925 (II) communicating with the borrower and lender.
- 1926 (ii) "Business of residential mortgage loans" does not include:
- 1927 (A) the performance of clerical functions such as:
1928 (I) gathering information related to a residential mortgage loan on behalf of the
1929 prospective borrower or a person licensed under this chapter; or
1930 (II) requesting or gathering information, word processing, sending correspondence, or
1931 assembling files by an individual who works under the instruction of a person licensed under
1932 this chapter;
- 1933 (B) ownership of an entity that engages in the business of residential mortgage loans if

1934 the owner does not personally perform the acts listed in Subsection (1)(e)(i);
1935 (C) acting as a loan wholesaler;
1936 (D) acting as an account executive for a loan wholesaler;
1937 (E) acting as a loan underwriter;
1938 (F) acting as a loan closer; or
1939 (G) funding a loan.
1940 (f) "Closed-end" means a loan with a fixed amount borrowed and which does not
1941 permit additional borrowing secured by the same collateral.
1942 (g) "Commission" means the Residential Mortgage Regulatory Commission created in
1943 Section 61-2c-104.
1944 (h) "Compensation" means anything of economic value that is paid, loaned, granted,
1945 given, donated, or transferred to an individual or entity for or in consideration of:
1946 (i) services;
1947 (ii) personal or real property; or
1948 (iii) other thing of value.
1949 (i) "Control," as used in Subsection (1)(a), means the power to directly or indirectly:
1950 (i) direct or exercise a controlling interest over:
1951 (A) the management or policies of an entity; or
1952 (B) the election of a majority of the directors, officers, managers, or managing partners
1953 of an entity;
1954 (ii) vote 20% or more of any class of voting securities of an entity by an individual; or
1955 (iii) vote more than 5% of any class of voting securities of any entity by another entity.
1956 ~~[(j) "Control person" means an individual who is designated by an entity as the~~
1957 ~~individual who directly manages or controls the entity's transaction of the business of~~
1958 ~~residential mortgage loans secured by Utah dwellings.]~~
1959 ~~[(k)]~~ (j) "Depository institution" is as defined in Section 7-1-103.
1960 ~~[(l)]~~ (k) "Director" means the director of the division.
1961 ~~[(m)]~~ (l) "Division" means the Division of Real Estate.

1962 ~~[(n)]~~ (m) "Dwelling" means a residential structure attached to real property that
1963 contains one to four units including any of the following if used as a residence:

- 1964 (i) a condominium unit;
- 1965 (ii) a cooperative unit;
- 1966 (iii) a manufactured home; or
- 1967 (iv) a house.

1968 ~~[(o)]~~ (n) "Entity" means any corporation, limited liability company, partnership,
1969 company, association, joint venture, business trust, trust, or other organization.

1970 ~~[(p)]~~ (o) "Executive director" means the executive director of the Department of
1971 Commerce.

1972 ~~[(q)]~~ (p) "Inactive status" means a dormant status into which an unexpired license is
1973 placed when the holder of the license is not currently engaging in the business of residential
1974 mortgage loans.

1975 ~~[(r)]~~ (q) "Lending manager" or "principal lending manager" means a person licensed as
1976 a principal lending manager under Section 61-2c-206.

1977 ~~[(s)]~~ (r) "Licensee" means an individual or entity licensed with the division under this
1978 chapter.

1979 ~~[(t)]~~ (s) (i) Except as provided in Subsection (1)~~[(t)]~~(s)(ii), "mortgage officer" means an
1980 individual who is licensed with the division to transact the business of residential mortgage
1981 loans through a principal lending manager.

1982 (ii) "Mortgage officer" does not include a principal lending manager.

1983 ~~[(u)]~~ (t) "Record" means information that is:

- 1984 (i) prepared, owned, received, or retained by an individual or entity; and
- 1985 (ii) (A) inscribed on a tangible medium; or
- 1986 (B) (I) stored in an electronic or other medium; and
- 1987 (II) retrievable in perceivable form.

1988 ~~[(v)]~~ "Registration" means the permission to engage in the business of residential
1989 mortgage loans issued by the division before January 1, 2004.]

1990 [~~(w)~~] (u) "Residential mortgage loan" means a closed-end, first mortgage loan or
1991 extension of credit, if:

1992 (i) the loan or extension of credit is secured by a:

1993 (A) mortgage;

1994 (B) deed of trust; or

1995 (C) lien interest; and

1996 (ii) the mortgage, deed of trust, or lien interest described in Subsection (1)[~~(w)~~](u)(i):

1997 (A) is on a dwelling located in the state; and

1998 (B) created with the consent of the owner of the residential real property.

1999 [~~(x)~~] (v) "State" means:

2000 (i) a state, territory, or possession of the United States;

2001 (ii) the District of Columbia; or

2002 (iii) the Commonwealth of Puerto Rico.

2003 (2) (a) If a term not defined in this section is defined by rule, the term shall have the
2004 meaning established by the division by rule made in accordance with Title 63, Chapter 46a,
2005 Utah Administrative Rulemaking Act.

2006 (b) If a term not defined in this section is not defined by rule, the term shall have the
2007 meaning commonly accepted in the business community.

2008 Section 33. Section **61-2c-104** is amended to read:

2009 **61-2c-104. Residential Mortgage Regulatory Commission.**

2010 (1) (a) There is created within the division the Residential Mortgage Regulatory
2011 Commission consisting of the following members appointed by the executive director with the
2012 approval of the governor:

2013 (i) four members having at least three years of experience in transacting the business of
2014 residential mortgage loans and who are currently licensed under this chapter; and

2015 (ii) one member from the general public.

2016 (b) (i) The executive director with the approval of the governor may appoint an
2017 alternate member to the board.

2018 (ii) The alternate member shall:

2019 (A) at the time of the appointment, have at least three years of experience in transacting

2020 the business of residential mortgage loans; and

2021 (B) be licensed under this chapter at the time of and during appointment.

2022 (2) (a) Except as required by Subsection (2)(b), the executive director shall appoint

2023 each new member or reappointed member subject to appointment by the executive director to a

2024 four-year term ending June 30.

2025 (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall,

2026 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms

2027 of commission members are staggered so that approximately half of the commission is

2028 appointed every two years.

2029 (c) If a vacancy occurs in the membership of the commission for any reason, the

2030 replacement shall be appointed for the unexpired term.

2031 (3) Members of the commission shall annually select one member to serve as chair.

2032 (4) (a) The commission shall meet at least quarterly.

2033 (b) The director may call a meeting in addition to the meetings required by Subsection

2034 (4)(a):

2035 (i) at the discretion of the director;

2036 (ii) at the request of the chair of the commission; or

2037 (iii) at the written request of three or more commission members.

2038 (5) (a) Three members of the commission constitute a quorum for the transaction of

2039 business.

2040 (b) If a quorum of members is unavailable for any meeting and an alternate member

2041 has been appointed to the commission by the executive director with the approval of the

2042 governor, the alternate member shall serve as a regular member of the commission for that

2043 meeting if with the presence of the alternate member there is a quorum present at the meeting.

2044 (c) The action of a majority of a quorum present is an action of the commission.

2045 (6) (a) (i) A member who is not a government employee shall receive no compensation

2046 or benefits for the member's services, but may receive per diem and expenses incurred in the
2047 performance of the member's official duties at the rates established by the Division of Finance
2048 under Sections 63A-3-106 and 63A-3-107.

2049 (ii) A member who is not a government employee may decline to receive per diem and
2050 expenses for the member's service.

2051 (b) (i) A state government officer and employee member who does not receive salary,
2052 per diem, or expenses from the member's agency for the member's service may receive per
2053 diem and expenses incurred in the performance of the member's official duties from the
2054 commission at the rates established by the Division of Finance under Sections 63A-3-106 and
2055 63A-3-107.

2056 (ii) A state government officer and employee member may decline to receive per diem
2057 and expenses for the member's service.

2058 (7) The commission shall:

2059 (a) except as provided in Subsection 61-2c-202(2), concur in the licensure or denial of
2060 licensure of individuals and entities under this chapter in accordance with Part 2, Licensure;

2061 (b) take disciplinary action with the concurrence of the director in accordance with Part
2062 4, Enforcement;

2063 (c) advise the division concerning matters related to the administration and
2064 enforcement of this chapter; and

2065 (d) with the concurrence of the division, determine the requirements for:

2066 (i) the examination required under Section 61-2c-202, covering at least:

2067 (A) the fundamentals of the English language;

2068 (B) arithmetic;

2069 (C) the provisions of this chapter;

2070 (D) rules adopted by the division;

2071 (E) basic residential mortgage principles and practices; and

2072 (F) any other aspect of Utah law the commission determines is appropriate;

2073 (ii) with the concurrence of the division, the continuing education requirements under

2074 Section 61-2c-205, including:

2075 (A) except as provided in Subsection 61-2c-202(4)(a)~~(i)(C)~~(iii) and Subsection
2076 61-2c-206(1)(c), the appropriate number of hours of prelicensing education and required
2077 continuing education; and

2078 (B) the subject matter of courses the division may accept for continuing education
2079 purposes;

2080 (iii) with the concurrence of the division, the prelicensing education required under
2081 Sections 61-2c-202 and 61-2c-206, including online education or distance learning options; and

2082 (iv) the examination required under Section 61-2c-206 covering:

2083 (A) advanced residential mortgage principles and practices; and

2084 (B) other aspects of Utah law the commission, with the concurrence of the division,
2085 determines appropriate.

2086 (8) The commission may appoint a committee to make recommendations to the
2087 commission concerning approval of prelicensing education and continuing education courses.

2088 (9) The commission and the division shall make the examination and prelicensing
2089 education and continuing education requirements described in this section available through
2090 the Internet or other distance education methods approved by the commission and division
2091 when reasonably practicable.

2092 (10) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
2093 the commission, with the concurrence of the division, shall make rules establishing procedures
2094 under which a licensee may be exempted from continuing education requirements:

2095 (a) for a period not to exceed four years; and

2096 (b) upon a finding of reasonable cause.

2097 Section 34. Section **61-2c-201** is amended to read:

2098 **61-2c-201. Licensure required of individuals and entities engaged in the business**
2099 **of residential mortgage loans -- Mortgage officer -- Principal lending manager.**

2100 (1) Unless exempt from this chapter under Section 61-2c-105, an individual or entity
2101 may not transact the business of residential mortgage loans, as defined in Section 61-2c-102,

2102 without obtaining a license under this chapter.

2103 (2) For purposes of this chapter, an individual or entity transacts business in this state
2104 if:

2105 (a) (i) the individual or entity engages in an act that constitutes the business of
2106 residential mortgage loans; and

2107 (ii) (A) the act described in Subsection (2)(a)(i) is directed to or received in this state;
2108 and

2109 (B) the real property that is the subject of the act described in Subsection (2)(a)(i) is
2110 located in this state; or

2111 (b) a representation is made by the individual or entity that the individual or entity
2112 transacts the business of residential mortgage loans in this state.

2113 (3) An individual who has an ownership interest in an entity required to be licensed
2114 under this chapter is not required to obtain an individual license under this chapter unless the
2115 individual transacts the business of residential mortgage loans.

2116 (4) Unless otherwise exempted under this chapter, licensure under this chapter is
2117 required of both:

2118 (a) the individual who directly transacts the business of residential mortgage loans; and

2119 (b) if the individual transacts business as an employee or agent of an entity or
2120 individual, the entity or individual for whom the employee or agent transacts the business of
2121 residential mortgage loans.

2122 [~~(5) (a) On or after May 1, 2006, a license issued under this chapter to an individual
2123 who has not obtained a license as a principal lending manager automatically converts to a
2124 mortgage officer license.~~]

2125 [~~(b) A mortgage officer license issued pursuant to Subsection (5)(a) shall be placed on
2126 inactive status until the holder of the license has submitted to the division the forms required to
2127 activate the license with a principal lending manager.~~]

2128 [~~(6)~~ (5) (a) An individual licensed under this chapter may not engage in the business
2129 of residential mortgage loans on behalf of more than one entity at the same time.

2130 (b) This Subsection ~~[(6)]~~ (5) does not restrict the number of:
2131 (i) different lenders an individual or entity may use as a funding source for residential
2132 mortgage loans; or
2133 (ii) entities in which an individual may have an ownership interest, regardless of
2134 whether the entities are:
2135 (A) licensed under this chapter; or
2136 (B) exempt under Section 61-2c-105.
2137 ~~[(7)]~~ (6) An individual licensed under this chapter may not transact the business of
2138 residential mortgage loans for the following at the same time:
2139 (a) an entity licensed under this chapter; and
2140 (b) an entity that is exempt from licensure under Section 61-2c-105.
2141 ~~[(8) On or after May 1, 2006, except as provided under Title 16, Chapter 11,~~
2142 ~~Professional Corporation Act or under Title 48, Chapter 2c, Utah Revised Limited Liability~~
2143 ~~Company Act, a]~~
2144 (7) A mortgage officer may not receive consideration for transacting the business of
2145 residential mortgage loans from any person or entity except the principal lending manager with
2146 whom the mortgage officer is licensed.
2147 ~~[(9) On or after May 1, 2006, a]~~
2148 (8) A mortgage officer shall conduct all business of residential mortgage loans:
2149 (a) through the principal lending manager with which the individual is licensed; and
2150 (b) in the business name under which the principal lending manager is authorized by
2151 the division to do business.
2152 ~~[(10) (a) (i) Subject to Subsection (10)(a)(ii) and until May 1, 2006, if an individual~~
2153 ~~who is authorized by this chapter to transact the business of residential mortgage loans as an~~
2154 ~~individual transacts the business of residential mortgage loans under an assumed business~~
2155 ~~name, the individual shall:]~~
2156 ~~[(A) register the assumed business name with the division; and]~~
2157 ~~[(B) furnish to the division proof that the assumed business name has been filed with~~

2158 ~~the Division of Corporations and Commercial Code pursuant to Title 42, Chapter 2,~~
2159 ~~Conducting Business Under Assumed Name.]~~

2160 ~~[(ii)] (9) (a) (i)~~ This Subsection ~~[(10)] (9)~~(a) does not apply to an individual who
2161 transacts the business of residential mortgage loans as an employee or agent of another
2162 individual or entity.

2163 ~~[(iii)] (ii)~~ If an entity that is authorized by this chapter to transact the business of
2164 residential mortgage loans transacts the business of residential mortgage loans under an
2165 assumed business name, the entity shall:

2166 (A) register the assumed name with the division; and

2167 (B) furnish the division proof that the assumed business name has been filed with the
2168 Division of Corporations and Commercial Code pursuant to Title 42, Chapter 2, Conducting
2169 Business Under Assumed Name.

2170 (b) The division may charge a fee established in accordance with Section 63-38-3.2 for
2171 registering an assumed name pursuant to this Subsection ~~[(10)] (9)~~.

2172 ~~[(11)(a)] (10)~~ A licensee whose license is in inactive status may not transact the
2173 business of residential mortgage loans.

2174 ~~[(b) On or after May 1, 2006, a mortgage officer whose license has been placed in~~
2175 ~~inactive status may not transact the business of residential mortgage loans until the mortgage~~
2176 ~~officer has licensed with a principal lending manager by following the procedures established~~
2177 ~~by the division by rule made in accordance with Title 63, Chapter 46a, Utah Administrative~~
2178 ~~Rulemaking Act, including submission of all required forms and payment of all required~~
2179 ~~activation fees.]~~

2180 ~~[(12) (a) On or after May 3, 2004 and before May 1, 2006, if a licensed entity~~
2181 ~~terminates its control person, or if the control person of a licensed entity resigns, dies, or~~
2182 ~~becomes unable to act as control person due to disability, the entity shall cease all business of~~
2183 ~~residential mortgage loans until the entity has submitted all forms and fees to the division that~~
2184 ~~are required to affiliate another control person with the licensed entity.]~~

2185 ~~[(b) On or after May 1, 2006, if a licensed entity terminates its principal lending~~

2186 ~~manager, or if the principal lending manager of a licensed entity resigns, dies, or becomes~~
2187 ~~unable to act as a principal lending manager due to disability, the entity may not transact the~~
2188 ~~business of residential mortgage loans until the entity has submitted all forms and fees to the~~
2189 ~~division that are required to affiliate another principal lending manager with the entity.]~~

2190 Section 35. Section **61-2c-202** is amended to read:

2191 **61-2c-202. Licensure procedures.**

2192 (1) To apply for licensure under this chapter an applicant shall:

2193 (a) submit to the division a licensure statement that:

2194 (i) lists any name under which the individual or entity will transact business in this
2195 state;

2196 (ii) lists the address of the principal business location of the applicant;

2197 [~~(iii) on or after May 3, 2004 and before May 1, 2006, if the applicant is an entity:]~~

2198 [~~(A) lists the control person of the applicant; and]~~

2199 [~~(B) contains the signature of the control person;]~~

2200 [~~(iv) on or after May 1, 2006;]~~

2201 (iii) if the applicant is an entity:

2202 (A) lists the principal lending manager of the entity; and

2203 (B) contains the signature of the principal lending manager;

2204 [~~(v)~~] (iv) demonstrates that the applicant meets the qualifications listed in Section
2205 61-2c-203;

2206 [~~(vi)]~~ (v) if the applicant is an entity, lists:

2207 (A) all jurisdictions in which the entity is registered, licensed, or otherwise regulated in
2208 the business of residential mortgage loans; and

2209 (B) the history of any disciplinary action or adverse administrative action taken against
2210 the entity by any regulatory agency within the ten years preceding the application; and

2211 [~~(vii)]~~ (vi) includes any information required by the division by rule;

2212 (b) pay to the division:

2213 (i) an application fee established by the division in accordance with Section 63-38-3.2;

2214 and

2215 (ii) the reasonable expenses incurred in processing the application for licensure
2216 including the costs incurred by the division under Subsection (4); and

2217 (c) comply with Subsection (4).

2218 (2) (a) The division shall issue a license to an applicant if the division, with the
2219 concurrence of the commission, finds that the applicant:

2220 (i) meets the qualifications of Section 61-2c-203; and

2221 (ii) complies with this section.

2222 (b) The commission may delegate to the division the authority to:

2223 (i) review any class or category of application for initial or renewed licenses;

2224 (ii) determine whether an applicant meets the licensing criteria in Section 61-2c-203;

2225 (iii) conduct any necessary hearing on an application; and

2226 (iv) approve or deny a license application without concurrence by the commission.

2227 (c) If the commission delegates to the division the authority to approve or deny an
2228 application without concurrence by the commission and the division denies an application for
2229 licensure, the applicant who is denied licensure may petition the commission for review of the
2230 denial.

2231 (d) An applicant who is denied licensure under this Subsection (2)(b) may seek agency
2232 review by the executive director only after the commission has reviewed the division's denial of
2233 the applicant's application.

2234 (3) Subject to Subsection (2)(d) and in accordance with Title 63, Chapter 46b,
2235 Administrative Procedures Act, an applicant who is denied licensure under this chapter may
2236 submit a request for agency review to the executive director within 30 days following the
2237 issuance of the commission order denying the licensure.

2238 (4) (a) ~~(f)~~ An individual applying for a license under this chapter ~~[and any control~~
2239 ~~person of the applicant]~~ shall:

2240 ~~(A)~~ (i) submit a fingerprint card in a form acceptable to the division at the time the
2241 licensure statement is filed;

2242 ~~[(B)]~~ (ii) consent to a ~~[fingerprint]~~ criminal background check by:

2243 ~~[(F)]~~ (A) the Utah Bureau of Criminal Identification; and

2244 ~~[(H)]~~ (B) the Federal Bureau of Investigation;

2245 ~~[(C)] on or after January 1, 2005;~~

2246 (iii) provide proof using methods approved by the division of having successfully

2247 completed 20 hours of approved prelicensing education required by the commission under

2248 Section 61-2c-104 before taking the examination required by Subsection (4)(a)~~[(i)(D)]~~(iv); and

2249 ~~[(D)]~~ (iv) provide proof using methods approved by the division of having successfully

2250 passed an examination approved by the commission under Section 61-2c-104.

2251 ~~[(ii) Notwithstanding Subsections (4)(a)(i)(C) and (4)(a)(i)(D), an individual meeting~~

2252 ~~the conditions of Subsection (4)(a)(iii) may engage in the business of residential mortgage~~

2253 ~~loans until January 1, 2005 without having:]~~

2254 ~~[(A) completed the prelicensing education described in Subsection (4)(a)(i)(C); and]~~

2255 ~~[(B) passed the examination described in Subsection (4)(a)(i)(D).]~~

2256 ~~[(iii) Subsection (4)(a)(ii) applies to an individual:]~~

2257 ~~[(A) who was registered with the division under this chapter prior to January 1, 2004;]~~

2258 ~~[(B) whose registration was converted to a license under Section 61-2c-201.1; and]~~

2259 ~~[(C) whose converted license either:]~~

2260 ~~[(F) does not expire before January 1, 2005; or]~~

2261 ~~[(H) is renewed prior to January 1, 2005.]~~

2262 (b) The division shall request the Department of Public Safety to complete a Federal

2263 Bureau of Investigation criminal background check for each applicant and each control person

2264 of an applicant through a national criminal history system.

2265 (c) The applicant shall pay the cost of:

2266 (i) the fingerprinting required by this section; and

2267 (ii) the criminal background check required by this section.

2268 (d) (i) A license under this chapter is conditional pending completion of the criminal

2269 background check required by this Subsection (4).

2270 (ii) If a criminal background check discloses that an applicant [~~or an applicant's control~~
2271 ~~person~~] failed to accurately disclose a criminal history, the license shall be immediately and
2272 automatically revoked.

2273 (iii) An individual or entity whose conditional license is revoked under Subsection
2274 (4)(d)(ii) may appeal the revocation in a hearing conducted by the commission:

2275 (A) after the revocation; and

2276 (B) in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

2277 (iv) The commission may delegate to the division or an administrative law judge the
2278 authority to conduct a hearing described in Subsection (4)(d)(iii).

2279 (v) Relief from a revocation may be granted only if:

2280 (A) the criminal history upon which the division based the revocation:

2281 (I) did not occur; or

2282 (II) is the criminal history of another person;

2283 (B) (I) the revocation is based on a failure to accurately disclose a criminal history; and

2284 (II) the applicant had a reasonable good faith belief at the time of application that there
2285 was no criminal history to be disclosed; or

2286 (C) the division failed to follow the prescribed procedure for the revocation.

2287 (e) If a license is revoked or a revocation is upheld after a hearing described in
2288 Subsection (4)(d)(iii), the person may not apply for a new license for a period of 12 months [~~or~~
2289 ~~longer not to exceed five years after the revocation, as determined by the presiding officer]~~
2290 after the day on which the license is revoked.

2291 (f) The funds paid by an applicant for the cost of the criminal background check shall
2292 be nonlapsing.

2293 (g) The commission may delegate to the division the authority to make a decision on
2294 whether relief from a revocation should be granted.

2295 Section 36. Section **61-2c-203** is amended to read:

2296 **61-2c-203. Qualifications for licensure.**

2297 (1) To qualify for licensure under this chapter, an individual:

2298 (a) shall have good moral character and the competency to transact the business of
2299 residential mortgage loans;

2300 (b) shall demonstrate honesty, integrity, and truthfulness;

2301 (c) except as provided in Subsection (3), may not have been convicted in the ten years
2302 preceding the day on which an application is submitted to the division of:

2303 (i) any felony or class A misdemeanor involving moral turpitude; or
2304 (ii) any crime in any other jurisdiction that is the equivalent of a felony or class A
2305 misdemeanor involving moral turpitude;

2306 (d) except as provided in Subsection (3), may not have been convicted in the five years
2307 preceding the day on which an application is submitted to the division of:

2308 (i) any class B or class C misdemeanor involving moral turpitude; or
2309 (ii) any crime in another jurisdiction that is the equivalent of a class B or class C
2310 misdemeanor involving moral turpitude;

2311 (e) except as provided in Subsection (3), in relationship to a crime set forth in
2312 ~~[Subsections]~~ Subsection (1)(c) ~~[and]~~ or (d) during the time period set forth in ~~[Subsections]~~
2313 Subsection (1)(c) ~~[and]~~ or (d), may not have:

2314 (i) entered a guilty plea, a no contest plea, or its equivalent; and
2315 (ii) resolved by diversion or its equivalent;

2316 (f) except as provided in Subsection 61-2c-202(4)(e), may not have had a license or
2317 registration suspended, revoked, surrendered, canceled, or denied in the five years preceding
2318 the date the individual applies for licensure except as provided in Subsection (3), if:

2319 (i) the registration or license is issued by this state or another jurisdiction; and
2320 (ii) the suspension, revocation, surrender, probation, fine, cancellation, or denial is
2321 based on misconduct in a professional capacity that relates to moral character, honesty,
2322 integrity, truthfulness, or the competency to transact the business of residential mortgage loans;

2323 (g) except as provided in Subsection (3), may not have been the subject of a bar by the
2324 Securities and Exchange Commission, the New York Stock Exchange, or the National
2325 Association of Securities Dealers within the five years preceding the date the individual applies

2326 for registration; and

2327 (h) may not have had any temporary or permanent injunction entered against the

2328 individual:

2329 (i) by a court or licensing agency; and

2330 (ii) ~~based~~ on the basis of:

2331 (A) conduct or a practice involving the business of residential mortgage loans; or

2332 (B) conduct involving fraud, misrepresentation, or deceit.

2333 (2) To qualify for licensure under this chapter an entity may not have:

2334 (a) any of the following individuals in management who fails to meet the requirements

2335 of Subsection (1):

2336 (i) a manager or a managing partner;

2337 (ii) a director;

2338 (iii) an executive officer; or

2339 (iv) an individual occupying a position or performing functions similar to those

2340 described in Subsections (2)(a)(i) through (iii); or

2341 ~~[(b) (i) before May 1, 2006, a control person who fails to meet the requirements of~~

2342 ~~Subsection (1); or]~~

2343 ~~[(ii) on or after May 1, 2006,]~~

2344 (b) a principal lending manager who fails to meet the requirements of Subsection (1).

2345 (3) Notwithstanding the failure to meet the requirements of Subsections (1)(c) through

2346 (h), the division may permit an individual or entity to be licensed under this chapter if the

2347 individual applicant or a person listed in Subsection (2):

2348 (a) fails to meet the requirements of Subsections (1)(c) through (h);

2349 (b) otherwise meets the qualifications for licensure; and

2350 (c) provides evidence satisfactory to the division with the concurrence of the

2351 commission that the individual applicant or person described in Subsection (2):

2352 (i) is of good moral character;

2353 (ii) is honest;

- 2354 (iii) has integrity;
- 2355 (iv) is truthful; and
- 2356 (v) has the competency to transact the business of residential mortgage loans.

2357 Section 37. Section **61-2c-205** is amended to read:

2358 **61-2c-205. Term of licensure -- Renewal -- Reporting of changes.**

2359 (1) (a) A license under this chapter is valid for a two-year period.

2360 (b) Notwithstanding Subsection (1)(a), the time period of a license may be extended or
2361 shortened by as much as one year to maintain or change a renewal cycle established by rule by
2362 the division.

2363 (2) To renew a license, no later than the date the license expires, a licensee shall:

2364 (a) (i) file the renewal form required by the division; and

2365 (ii) furnish the information required by Subsection 61-2c-202(1);

2366 (b) pay a fee to the division established by the division in accordance with Section
2367 63-38-3.2; and

2368 (c) if the licensee is an individual and the individual's license is in active status at the
2369 time of application for renewal, submit proof using forms approved by the division of having
2370 completed during the two years prior to application the continuing education required by the
2371 commission under Section 61-2c-104.

2372 (3) (a) A licensee under this chapter shall notify the division using the form required by
2373 the division within ten days of the date on which there is a change in:

2374 (i) a name under which the licensee transacts the business of residential mortgage loans
2375 in this state;

2376 (ii) (A) if the licensee is an entity, the business location of the licensee; or

2377 (B) if the licensee is an individual, the home and business addresses of the individual;

2378 [~~(iii) (A) on or after May 3, 2004 and before May 1, 2006, the control person of the~~
2379 ~~licensee; or]~~

2380 [~~(B) on or after May 1, 2006,~~]

2381 (iii) the principal lending manager of the entity;

2382 (iv) the entity with which an individual licensee is licensed to conduct the business of
2383 residential mortgage loans; or

2384 (v) any other information that is defined as material by rule made by the division.

2385 (b) Failure to notify the division of a change described in Subsection (3)(a) is separate
2386 grounds for disciplinary action against a licensee.

2387 (4) A licensee shall notify the division by sending the division a signed statement
2388 within ten business days of:

2389 (a) (i) a conviction of any criminal offense;

2390 (ii) the entry of a plea in abeyance to any criminal offense; or

2391 (iii) the potential resolution of any criminal case by:

2392 (A) a diversion agreement; or

2393 (B) any other agreement under which criminal charges are held in suspense for a period
2394 of time;

2395 (b) filing a personal bankruptcy or bankruptcy of a business that transacts the business
2396 of residential mortgage loans;

2397 (c) the suspension, revocation, surrender, cancellation, or denial of a professional
2398 license or professional registration of the licensee, whether the license or registration is issued
2399 by this state or another jurisdiction; or

2400 (d) the entry of a cease and desist order or a temporary or permanent injunction:

2401 (i) against the licensee by a court or licensing agency; and

2402 (ii) based on:

2403 (A) conduct or a practice involving the business of residential mortgage loans; or

2404 (B) conduct involving fraud, misrepresentation, or deceit.

2405 (5) (a) A license under this chapter expires if the licensee does not apply to renew the
2406 license on or before the expiration date of the license.

2407 (b) Within 30 calendar days after the expiration date, a licensee whose license has
2408 expired may apply to reinstate the expired license upon:

2409 (i) payment of a renewal fee and a late fee determined by the division under Section

2410 63-38-3.2; and

2411 (ii) if the licensee is an individual and is applying to reinstate a license to active status,
2412 providing proof using forms approved by the division of having completed, during the two
2413 years prior to application, the continuing education required by the commission under Section
2414 61-2c-104.

2415 (c) After the 30 calendar days described in Subsection (5)(b) and within six months
2416 after the expiration date, a licensee whose license has expired may apply to reinstate an expired
2417 license upon:

2418 (i) payment of a renewal fee and a late fee determined by the division under Section
2419 63-38-3.2;

2420 (ii) if the licensee is an individual and is applying to reinstate a license to active status,
2421 providing proof using forms approved by the division of having completed, during the two
2422 years prior to application, the continuing education required by the commission under Section
2423 61-2c-104; and

2424 (iii) in addition to the continuing education required for a timely renewal, completing
2425 an additional 12 hours of continuing education approved by the commission under Section
2426 61-2c-104.

2427 (d) A licensee whose license has been expired for more than six months shall be
2428 relicensed as prescribed for an original application under Section 61-2c-202.

2429 Section 38. Section **61-2c-206** is amended to read:

2430 **61-2c-206. Principal lending manager licenses.**

2431 (1) Except as provided in Subsection (2), [~~on or after January 1, 2006;~~] to qualify as a
2432 principal lending manager under this chapter, an individual shall, in addition to meeting the
2433 standards in Section 61-2c-203:

2434 (a) submit an application on a form approved by the division;

2435 (b) pay fees determined by the division under Section 63-38-3.2;

2436 (c) submit proof of having successfully completed 40 hours of prelicensing education
2437 approved by the commission under Section 61-2c-104;

2438 (d) submit proof of having successfully completed the principal lending manager
2439 examination approved by the commission under Section 61-2c-104;

2440 (e) submit proof on forms approved by the division of three years of full-time active
2441 experience as a mortgage officer in the five years preceding the day on which the application is
2442 submitted, or its equivalent as approved by the commission; and

2443 (f) if the individual is not licensed under this chapter at the time of application, submit
2444 to the criminal background check required by Subsection 61-2c-202(4).

2445 (2) (a) Notwithstanding Subsection (1), an individual described in Subsection (2)(b)
2446 may qualify as a principal lending manager without:

2447 (i) meeting the requirements of Subsection (1)(c); and

2448 (ii) completing the portions of the principal lending manager examination described in
2449 Subsection (1)(d) that:

2450 (A) relate to federal law; and

2451 (B) do not relate to Utah law.

2452 (b) An individual may qualify as a principal lending manager pursuant to Subsection
2453 (2)(a) if the individual:

2454 (i) submits to the division an affidavit that the individual has five years of experience
2455 in the business of residential mortgage loans;

2456 (ii) establishes that the individual's experience described in this Subsection (2)(b) was
2457 acquired:

2458 (A) under requirements substantially equivalent to the requirements of this chapter; and

2459 (B) in compliance with the requirements of this chapter; and

2460 (iii) provides any other information required by the division by rule under Subsection
2461 (2)(c).

2462 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
2463 division shall define the information an individual shall provide to the division pursuant to
2464 Subsection (2)(b).

2465 (3) A principal lending manager may not engage in the business of residential

2466 mortgage loans on behalf of more than one entity at the same time.

2467 Section 39. Section **61-2c-208** is amended to read:

2468 **61-2c-208. Activation and inactivation of license.**

2469 (1) (a) A licensee may request that the division place the license on inactive status by
 2470 submitting an inactivation form approved by the division.

2471 ~~[(b) On or after May 1, 2006, if the license of a principal lending manager is revoked,~~
 2472 ~~suspended, or expires, the license of any mortgage officer licensed with that principal lending~~
 2473 ~~manager shall automatically convert to inactive status.]~~

2474 (b) The license of a mortgage officer or mortgage entity not affiliated with an active
 2475 license of a principal lending manager automatically converts to inactive status on the day on
 2476 which the mortgage officer or mortgage entity is not affiliated with the active license of the
 2477 principal lending manager.

2478 (c) A licensee whose license is in inactive status may not transact the business of
 2479 residential mortgage loans.

2480 (2) To activate a license that has been placed on inactive status, a licensee shall:

2481 (a) submit an activation form;

2482 (i) approved by the division; and

2483 (ii) signed by the principal lending manager with whom the licensee is affiliating;

2484 (b) pay an activation fee established by the division under Section 63-38-3.2; and

2485 (c) if the licensee is an individual whose license was in inactive status at the time of the
 2486 previous renewal, the licensee shall supply the division with proof of the successful completion
 2487 of the number of hours of continuing education that the licensee would have been required to
 2488 complete under Subsection 61-2c-205(2)(c) if the licensee's license had been on active status,
 2489 up to a maximum of the number of hours required for two licensing periods.

2490 ~~[(3) On or after May 1, 2006, in addition to the requirements of Subsection (2), a~~
 2491 ~~mortgage officer whose license has been placed on inactive status shall obtain the signature of~~
 2492 ~~the principal lending manager with whom the mortgage officer will be actively licensed on the~~
 2493 ~~form required by the division.]~~

2494 ~~[(4) (a) On or after May 3, 2004 and before May 1, 2006, in addition to the~~
2495 ~~requirements of Subsection (2), an entity whose license has been placed on inactive status~~
2496 ~~because of the termination, death, disability, or departure of its control person shall submit the~~
2497 ~~forms required by the division to affiliate the license of another control person with the entity.]~~

2498 ~~[(b) On or after May 1, 2006, in addition to the requirements of Subsection (2), an~~
2499 ~~entity whose license has been placed on inactive status because of the termination, death,~~
2500 ~~disability, or departure of its principal lending manager shall submit the forms required by the~~
2501 ~~division to affiliate the license of another principal lending manager with the entity.]~~

2502 Section 40. Section **61-2c-301** is amended to read:

2503 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

2504 (1) An individual or entity transacting the business of residential mortgage loans in this
2505 state may not:

2506 (a) give or receive compensation or anything of value in exchange for a referral of
2507 residential mortgage loan business;

2508 (b) charge a fee in connection with a residential mortgage loan transaction:

2509 (i) that is excessive; or

2510 (ii) if the individual or entity does not comply with Section 70D-1-6;

2511 (c) give or receive compensation or anything of value in exchange for a referral of
2512 settlement or loan closing services related to a residential mortgage loan transaction;

2513 (d) do any of the following to induce a lender to extend credit as part of a residential
2514 mortgage loan transaction:

2515 (i) make a false statement or representation;

2516 (ii) cause false documents to be generated; or

2517 (iii) knowingly permit false information to be submitted by any party;

2518 (e) give or receive compensation or anything of value, or withhold or threaten to
2519 withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in
2520 reaching a value conclusion in a residential mortgage loan transaction, except that it is not a
2521 violation of this section for a licensee to withhold payment because of a bona fide dispute

2522 regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards
2523 of Professional Appraisal Practice;

2524 (f) violate or not comply with:

2525 (i) this chapter;

2526 (ii) an order of the commission or division; or

2527 (iii) a rule made by the division;

2528 (g) fail to respond within the required time period to:

2529 (i) a notice or complaint of the division; or

2530 (ii) a request for information from the division;

2531 (h) make false representations to the division, including in a licensure statement;

2532 (i) for any residential mortgage loan transaction beginning on or after January 1, 2004,

2533 engage in the business of residential mortgage loans with respect to the transaction if the

2534 individual or entity also acts in any of the following capacities with respect to the same

2535 residential mortgage loan transaction:

2536 (i) appraiser;

2537 (ii) escrow agent;

2538 (iii) real estate agent;

2539 (iv) general contractor; or

2540 (v) title insurance agent;

2541 (j) order a title insurance report or hold a title insurance policy unless the individual or

2542 entity provides to the title insurer a copy of a valid, current license under this chapter;

2543 (k) engage in unprofessional conduct as defined by rule;

2544 (l) engage in an act or omission in transacting the business of residential mortgage

2545 loans that constitutes dishonesty, fraud, or misrepresentation;

2546 (m) engage in false or misleading advertising;

2547 (n) (i) fail to account for all funds received in connection with a residential mortgage

2548 loan;

2549 (ii) use funds for a different purpose from the purpose for which the funds were

2550 received; or

2551 (iii) except as provided in Subsection (4), retain funds paid for services if the services

2552 were not actually performed;

2553 (o) fail, within 90 calendar days of a request from a borrower who has paid for an

2554 appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;

2555 (p) engage in an act that is performed to:

2556 (i) evade this chapter; or

2557 (ii) assist another person to evade this chapter;

2558 (q) recommend or encourage default or delinquency, or continuation of an existing

2559 default or delinquency, by a mortgage applicant on an existing indebtedness prior to the closing

2560 of a residential mortgage loan that will refinance all or part of the indebtedness;

2561 ~~[(r) in the case of a control person of an entity, fail to exercise reasonable supervision~~

2562 ~~over the activities of:]~~

2563 ~~[(i) the individuals engaged in the business of residential mortgage loans on behalf of~~

2564 ~~the entity; or]~~

2565 ~~[(ii) any unlicensed staff;]~~

2566 ~~[(s) on or after May 1, 2006;]~~

2567 (r) in the case of the principal lending manager of an entity or a branch office of an

2568 entity, fail to exercise reasonable supervision over the activities of ~~[the]~~;

2569 (i) any unlicensed staff; and

2570 (ii) any mortgage officers who are licensed with the principal lending manager; [or]

2571 ~~[(t)]~~ (s) pay or offer to pay an individual who does not hold a license under this chapter

2572 for work that requires the individual to hold a license under this chapter~~[-]; or~~

2573 (t) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

2574 (i) provide a title insurance product or service without the approval required by Section

2575 31A-2-405; or

2576 (ii) knowingly provide false or misleading information in the statement required by

2577 Subsection 31A-2-405(2).

2578 (2) Whether or not the crime is related to the business of residential mortgage loans, it
2579 is a violation of this chapter for a licensee~~[, a control person of a licensee,]~~ or a person who is a
2580 certified education provider to do any of the following with respect to a criminal offense which
2581 involves moral turpitude:

- 2582 (a) be convicted;
- 2583 (b) plead guilty or nolo contendere;
- 2584 (c) enter a plea in abeyance; or
- 2585 (d) be subjected to a criminal disposition similar to the ones described in Subsections
2586 (2)(a) through (c).

2587 (3) A principal lending manager does not violate Subsection (1)~~(s)~~(r) if:

- 2588 (a) in contravention of the principal lending manager's written policies and
2589 instructions, an affiliated licensee of the principal lending manager violates ~~[a provision of]~~:
 - 2590 (i) this chapter; or
 - 2591 (ii) rules made by the division under this chapter;
- 2592 (b) the principal lending manager established and followed reasonable procedures to
2593 ensure that affiliated licensees receive adequate supervision;
- 2594 (c) upon learning of a violation by an affiliated licensee, the principal lending manager
2595 attempted to prevent or mitigate the damage;
- 2596 (d) the principal lending manager did not participate in or ratify the violation by an
2597 affiliated licensee; and
- 2598 (e) the principal lending manager did not attempt to avoid learning of the violation.

2599 (4) Notwithstanding Subsection (1)(n)(iii), a licensee may, upon compliance with
2600 Section 70D-1-6, charge a reasonable cancellation fee for work done originating a mortgage if
2601 the mortgage is not closed.

2602 Section 41. Section **61-2c-302** is amended to read:

2603 **61-2c-302. Record requirements.**

2604 (1) For the time period specified in Subsection (2), a licensee shall make or possess any
2605 record required for that licensee by a rule made by the division.

2606 (2) A licensee shall maintain in its possession a record described in Subsection (1)
2607 [~~until the later of~~] for four years from the last to occur of the following:

- 2608 (a) the final entry on a residential mortgage loan is made by that licensee;
- 2609 (b) if the residential mortgage loan is serviced by the licensee:
 - 2610 (i) the residential mortgage loan is paid in full; or
 - 2611 (ii) the licensee ceases to service the residential mortgage loan; or
- 2612 (c) if the residential mortgage loan is not serviced by the licensee, the residential
2613 mortgage loan is closed.

2614 (3) A licensee shall:

- 2615 (a) make available to the division for inspection and copying during normal business
2616 hours all records required to be maintained under this chapter; and
- 2617 (b) upon reasonable notice from the division to a licensee, produce all records
2618 described in Subsection (3)(a) that are related to an investigation being conducted by the
2619 division at the division office for inspection and copying by the division.

2620 (4) A licensed entity shall maintain and produce for inspection by the division a current
2621 list of all individuals whose licenses are affiliated with the entity.

2622 Section 42. Section **61-2c-401** is amended to read:

2623 **61-2c-401. Investigations.**

2624 (1) The division may investigate or cause to be investigated the actions of:

- 2625 (a) (i) a licensee; [~~or~~]
- 2626 (ii) a person required to be licensed under this chapter; or
- 2627 [~~(ii)~~] (iii) the following with respect to an entity that is a licensee or an entity required
2628 to be licensed under this chapter:
 - 2629 [~~(A)~~] a control person;
 - 2630 [~~(B)~~] (A) a manager;
 - 2631 [~~(C)~~] (B) a managing partner;
 - 2632 [~~(D)~~] (C) a director;
 - 2633 [~~(E)~~] (D) an executive officer; or

2634 [~~F~~] (E) an individual who performs a function similar to an individual listed in this
2635 Subsection (1)(a)[~~ii~~](iii);

2636 (b) (i) an applicant for licensure or renewal of licensure under this chapter; or
2637 (ii) the following with respect to an entity that has applied for a license or renewal of
2638 licensure under this chapter:

2639 [~~A~~] a control person;

2640 [~~B~~] (A) a manager;

2641 [~~C~~] (B) a managing partner;

2642 [~~D~~] (C) a director;

2643 [~~E~~] (D) an executive officer; or

2644 [~~F~~] (E) an individual who performs a function similar to an individual listed in this
2645 Subsection (1)(b)(ii); or

2646 (c) any individual or entity that transacts the business of residential mortgage loans
2647 within this state[, and the control persons of any such entity].

2648 (2) In conducting investigations, records inspections, and adjudicative proceedings, the
2649 division may:

2650 (a) administer an oath or affirmation;

2651 [~~a~~] (b) subpoena witnesses;

2652 [~~b~~] (c) take evidence;

2653 [~~c~~] (d) require [~~by subpoena duces tecum~~] the production of books, papers, contracts,
2654 records, other documents, or information [~~considered~~] relevant to an investigation; and

2655 [~~d~~] (e) serve a subpoena by certified mail.

2656 (3) A failure to respond to [~~a subpoena served by the division~~] a request by the division
2657 in an investigation authorized under this chapter is considered as a separate violation of this
2658 chapter[-], including:

2659 (a) failing to respond to a subpoena;

2660 (b) withholding evidence; or

2661 (c) failing to produce documents or records.

2662 (4) The division may inspect and copy all records related to the business of residential
2663 mortgage loans by a licensee under this chapter, regardless of whether the records are
2664 maintained at a business location in Utah, in conducting:

- 2665 (a) investigations of complaints; or
- 2666 (b) inspections of the records required to be maintained under:
 - 2667 (i) this chapter; or
 - 2668 (ii) rules adopted by the division under this chapter.

2669 (5) (a) If a licensee maintains the records required by this chapter and the rules adopted
2670 by the division under this chapter outside Utah, the licensee is responsible for all reasonable
2671 costs, including reasonable travel costs, incurred by the division in inspecting those records.

2672 (b) Upon receipt of notification from the division that records maintained outside Utah
2673 are to be examined in connection with an investigation or an examination, the licensee shall
2674 deposit with the division a deposit of \$500 to cover the division's expenses in connection with
2675 the examination of the records.

2676 (c) If the deposit described in Subsection (5)(b) is insufficient to meet the estimated
2677 costs and expenses of examination of the records, the licensee shall make an additional deposit
2678 to cover the estimated costs and expenses of the division.

2679 (d) (i) All deposits under this Subsection (5) shall be deposited in the General Fund as
2680 a dedicated credit to be used by the division under Subsection (5)(a).

2681 (ii) The division, with the concurrence of the executive director, may use the deposit
2682 monies deposited in the General Fund under this Subsection (5)(d) as a dedicated credit for the
2683 records inspection costs under Subsection (5)(a).

2684 (iii) A deposit under this Subsection (5) shall be refunded to the licensee to the extent it
2685 is not used, together with an itemized statement from the division of all amounts it has used.

2686 (e) All deposits under this Subsection (5) shall be nonlapsing.

2687 (6) Failure to deposit with the division a deposit required to cover the costs of
2688 examination of records that are maintained outside Utah shall result in automatic suspension of
2689 a license until the deposit is made.

2690 Section 43. Section **61-2c-402** is amended to read:

2691 **61-2c-402. Disciplinary action.**

2692 ~~[(1)]~~ Subject to the requirements of Section 61-2c-402.1, if an individual or entity
 2693 required to be licensed under this chapter violates this chapter, or an education provider
 2694 required to be certified under this chapter violates this chapter, the commission, with the
 2695 concurrence of the director, may:

2696 (1) impose an educational requirement;

2697 ~~[(a)]~~ (2) impose a civil penalty against the individual or entity in an amount not to
 2698 exceed the greater of:

2699 (a) \$2,500 ~~[per]~~ for each violation; or

2700 (b) the amount equal to any gain or economic benefit derived from each violation;

2701 (3) deny an application for an original license;

2702 ~~[(b)]~~ (4) do any of the following to a license under this chapter:

2703 ~~[(i)]~~ (a) suspend;

2704 ~~[(ii)]~~ (b) revoke;

2705 ~~[(iii)]~~ (c) place on probation;

2706 ~~[(iv)]~~ (d) deny renewal; ~~[or]~~

2707 ~~[(v)]~~ (e) deny reinstatement; or

2708 (f) in the case of a denial or revocation of a license, set a waiting period for an
 2709 applicant to apply for a license under this chapter;

2710 (5) issue a cease and desist order; or

2711 (6) do any combination of Subsections (1) through (5).

2712 ~~[(c) do both Subsections (1)(a) and (b).]~~

2713 ~~[(2)(a) If a license under this chapter is revoked, the individual or entity may apply to~~
 2714 ~~have the license reinstated by complying with the requirements of Section 61-2c-202 for~~
 2715 ~~licensure.]~~

2716 ~~[(b) Notwithstanding Subsection (2)(a) and except as provided in Subsection~~

2717 ~~61-2c-202(4)(c), if a license under this chapter is revoked, the individual or entity may not~~

2718 apply for reinstatement of the license sooner than five years after the day on which the license
2719 is revoked in accordance with this section.]

2720 ~~[(c) If an individual or entity whose license has been revoked applies for reinstatement~~
2721 ~~in accordance with Subsection (2)(b), the presiding officer may grant the application for~~
2722 ~~reinstatement if the presiding officer finds that:]~~

2723 ~~[(i) (A) there has been good conduct on the part of the applicant subsequent to the~~
2724 ~~events that led to the revocation; and]~~

2725 ~~[(B) the subsequent good conduct outweighs the events that led to the revocation; and]~~

2726 ~~[(ii) the interest of the public is not likely to be harmed by the granting of the license.]~~

2727 ~~[(3) Subject to the requirements of Section 61-2c-402.1, if an individual or entity~~
2728 ~~required to be licensed under this chapter violates this chapter, or an education provider~~
2729 ~~required to be certified under this chapter violates this chapter, the presiding officer in an~~
2730 ~~adjudicative proceeding commenced after a person or an entity applies for an original or~~
2731 ~~renewed license may:]~~

2732 ~~[(a) deny an application for an original license;]~~

2733 ~~[(b) deny an application for renewal;]~~

2734 ~~[(c) deny an application for reinstatement; or]~~

2735 ~~[(d) issue or renew the license but:]~~

2736 ~~[(i) place the license on probation;]~~

2737 ~~[(ii) suspend the license for a period of time;]~~

2738 ~~[(iii) impose a civil penalty not to exceed \$2,500 per violation; or]~~

2739 ~~[(iv) any combination of Subsections (3)(d)(i) through (iii).]~~

2740 Section 44. Section **61-2c-403** is amended to read:

2741 **61-2c-403. Cease and desist orders.**

2742 (1) (a) The director may issue and serve by certified mail, or by personal service, on an
2743 individual or entity an order to cease and desist if:

2744 (i) the director has reason to believe that the individual or entity has been ~~[or]~~ engaged,
2745 is engaging in, or is about to engage in acts constituting a violation of this chapter; and

2746 (ii) it appears to the director that it would be in the public interest to stop the acts.
2747 (b) Within ten days after service of the order, the party named in the order may request
2748 an adjudicative proceeding to be held in accordance with Title 63, Chapter 46b, Administrative
2749 Procedures Act.

2750 (c) Pending the hearing, the cease and desist order shall remain in effect.

2751 (2) (a) After the hearing described in Subsection (1), if the director finds that the acts
2752 of the individual or entity violate this chapter, the director;

2753 (i) shall issue an order making the cease and desist order permanent[-]; and
2754 (ii) may impose a civil penalty not to exceed the greater of:
2755 (A) \$2,500 for each violation; or
2756 (B) the amount of any gain or economic benefit derived from each violation.

2757 (b) (i) The director may file suit in the name of the division to enjoin and restrain an
2758 individual or entity on whom an order is served under this section from violating this chapter
2759 if:

2760 (A) (I) the individual or entity did not request a hearing under Subsection (1); or
2761 (II) a permanent cease and desist order is issued against the individual or entity
2762 following a hearing or stipulation; and

2763 (B) (I) the individual or entity fails to cease the acts; or
2764 (II) after discontinuing the acts, the individual or entity again commences the acts.

2765 (ii) The suit described in Subsection (2)(b)(i) shall be filed in the district court in the
2766 county:

2767 (A) in which the acts occurred;
2768 (B) where the individual resides; or
2769 (C) where the individual or entity carries on business.

2770 (3) The cease and desist order issued under this section may not interfere with or
2771 prevent the prosecution of a remedy or action enforcement under this chapter.

2772 (4) An individual who violates a cease and desist order issued under this section is
2773 guilty of a class A misdemeanor.

2774 Section 45. Section **61-2c-404** is amended to read:

2775 **61-2c-404. Civil actions.**

2776 (1) (a) A person who violates this chapter is liable for an additional penalty, as
2777 determined by the court, of at least the amount the person received in consequence of a
2778 violation of this chapter as:

2779 (i) commission;

2780 (ii) compensation; or

2781 (iii) profit.

2782 (b) A person aggrieved by a violation of this chapter may:

2783 (i) bring an action for a penalty described in Subsection (1)(a); and

2784 (ii) use a penalty obtained under Subsection (1)(a) for the person's own use and benefit.

2785 (2) A person who is not licensed under this chapter at the time of an act or service that
2786 requires a license under this chapter may not bring an action in court for the recovery of a
2787 commission, fee, or compensation for that act or service.

2788 [~~(3) On or after May 1, 2006:~~]

2789 [~~(a)~~] (3) (a) A mortgage officer may not bring an action in the mortgage officer's
2790 own name for the recovery of a fee, commission, or compensation for transacting the business
2791 of residential mortgage loans unless the action is brought against the principal lending manager
2792 with whom the mortgage officer [~~was~~] is licensed at the time of the act or service that is the
2793 subject of the action[~~; and~~].

2794 (b) [~~an~~] An action by an entity for the recovery of a fee, commission, or other
2795 compensation shall be brought by:

2796 (i) an entity; or

2797 (ii) the principal lending manager of an entity on behalf of the entity.

2798 (4) [~~On or after May 1, 2006, a~~] A principal lending manager who transacts the
2799 business of residential mortgage loans on the principal lending manager's own behalf may sue
2800 in the principal lending manager's own name for the recovery of a fee, commission, or
2801 compensation for transacting the business of residential mortgage loans.

2802 Section 46. Section **61-2c-502** is amended to read:

2803 **61-2c-502. Additional license fee.**

2804 (1) An individual who applies for or renews a license shall pay, in addition to the
2805 application or renewal fee, a reasonable annual fee:

2806 (a) determined by the division with the concurrence of the commission; and

2807 (b) not to exceed \$18.

2808 (2) An entity that applies for or renews an entity license shall pay, in addition to the
2809 application or renewal fee, a reasonable annual fee:

2810 (a) determined by the division with the concurrence of the commission; and

2811 (b) not to exceed \$25.

2812 (3) Notwithstanding Section 13-1-2, the [~~fees provided in this section~~] following shall
2813 be paid into the fund to be used as provided in this part[-]:

2814 (a) fees provided in this section; and

2815 (b) civil penalties imposed under this chapter.

2816 (4) If the balance in the fund that is available to satisfy judgments against licensees
2817 decreases to less than \$100,000, the division may make additional assessments to licensees to
2818 maintain the balance available at \$100,000 to satisfy judgments.

2819 Section 47. Section **61-2c-510** is amended to read:

2820 **61-2c-510. Monies accumulated -- Purpose.**

2821 (1) The division may use monies accumulated in the fund in excess of the amount
2822 necessary to satisfy claims to:

2823 (a) investigate violations of this chapter related to fraud; and

2824 (b) advance education and research in the field of residential mortgage loans[-;
2825 including:-]

2826 (2) The division may use the excess monies described in Subsection (1) only in a
2827 manner consistent with Subsection (1), including for:

2828 [(+)] (a) courses sponsored by the division;

2829 [(2)] (b) courses offered by the division in conjunction with a university or college in

2830 Utah;

2831 ~~[(3)]~~ (c) contracting for a research project for the state in the field of residential
2832 mortgage loans;

2833 ~~[(4)]~~ (d) funding the salaries and training expenses of division staff members who are
2834 employed in positions related to the education of mortgage licensees;

2835 ~~[(5)]~~ (e) funding the training expenses of division staff members who are employed in
2836 positions conducting investigations of complaints under this chapter; and

2837 ~~[(6)]~~ (f) publishing and distributing educational materials to:

2838 ~~[(a)]~~ (i) licensees; and

2839 ~~[(b)]~~ (ii) applicants for licensure.

2840 Section 48. Section **72-5-116** is enacted to read:

2841 **72-5-116. Exemption from state licensure.**

2842 In accordance with Section 61-2-3, an employee of the department when engaging in an
2843 act on behalf of the department related to one or more of the following is exempt from
2844 licensure under Title 61, Chapter 2, Division of Real Estate:

2845 (1) acquiring real property pursuant to Section 72-5-103;

2846 (2) disposing of real property pursuant to Section 72-5-111; or

2847 (3) providing services that constitute property management, as defined in Section
2848 61-2-2.

2849 Section 49. **Repealer.**

2850 This bill repeals:

2851 Section **61-2b-10.5, State-registered appraisers -- Authority -- Transition to**
2852 **state-licensed or state-certified appraisers.**

2853 Section **61-2c-201.1, Conversion of registrations.**

2854 Section 50. **Effective date.**

2855 (1) Except as provided in Subsection (2), this bill takes effect on April 30, 2007.

2856 (2) (a) The amendments in this bill to the following take effect on October 1, 2007:

2857 (i) Section 41-1a-418; and

2858 (ii) Section 41-1a-422.

2859 (b) Section 61-2-28 enacted in this bill takes effect on October 1, 2007.