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**DIVISION OF REAL ESTATE RELATED
AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ addresses fines that may be imposed;
- 13a **⚡→ ▶ addresses rulemaking by the Real Estate Commission; ←⚡**
- ▶ addresses disciplinary actions that may be imposed under provisions related to real estate brokers and agents, the Real Estate Appraiser Licensing and Certification Act, and the Utah Residential Mortgage Practices Act;
- ▶ provides for registration of trainees under the Real Estate Appraiser Licensing and Certification Act;
- ▶ addresses terminology for experts under the Real Estate Appraiser Licensing and Certification Act;
- ▶ modifies criminal penalties under the Real Estate Appraiser Licensing and Certification Act and the Utah Residential Mortgage Practices Act;
- ▶ provides for licensure under an assumed name by an entity under the Utah Residential Mortgage Practices Act;
- ▶ addresses the hours required of prelicensing education for mortgage licensing including providing for rulemaking;
- ▶ removes grandfathering language related to principal lending manager;



- 28 ▶ provides for deposit of certain fees into the Residential Mortgage Loan Education,
- 29 Research, and Recovery Fund; and
- 30 ▶ makes technical and conforming amendments.

31 Monies Appropriated in this Bill:

32 None

33 Other Special Clauses:

34 None

35 Utah Code Sections Affected:

36 AMENDS:

36a **Ĥ→ 61-2-5.5, as last amended by Laws of Utah 2007, Chapter 325 ←Ĥ**

37 **61-2-13**, as last amended by Laws of Utah 1991, Chapter 165

37a **Ĥ→ 61-2-20, as last amended by Laws of Utah 2007, Chapter 325 ←Ĥ**

38 **61-2-21**, as last amended by Laws of Utah 2007, Chapter 325

39 **61-2b-2**, as last amended by Laws of Utah 2005, Chapter 199

40 **61-2b-6**, as last amended by Laws of Utah 2005, Chapter 199

41 **61-2b-8**, as last amended by Laws of Utah 2005, Chapter 199

42 **61-2b-18**, as last amended by Laws of Utah 2005, Chapter 199

43 **61-2b-21**, as last amended by Laws of Utah 2005, Chapter 199

44 **61-2b-22**, as last amended by Laws of Utah 2005, Chapter 199

45 **61-2b-24**, as last amended by Laws of Utah 2005, Chapter 199

46 **61-2b-25**, as last amended by Laws of Utah 2007, Chapter 306

47 **61-2b-26**, as last amended by Laws of Utah 2005, Chapter 199

48 **61-2b-27**, as last amended by Laws of Utah 2005, Chapter 199

49 **61-2b-28**, as last amended by Laws of Utah 2007, Chapter 325

50 **61-2b-29**, as last amended by Laws of Utah 2007, Chapter 325

51 **61-2b-30.5**, as last amended by Laws of Utah 2005, Chapter 199

52 **61-2b-31**, as last amended by Laws of Utah 2007, Chapter 325

53 **61-2b-33**, as last amended by Laws of Utah 2005, Chapter 199

54 **61-2c-201**, as last amended by Laws of Utah 2007, Chapter 325

55 **61-2c-202**, as last amended by Laws of Utah 2007, Chapter 325

56 **61-2c-206**, as last amended by Laws of Utah 2007, Chapter 325

57 **61-2c-403**, as last amended by Laws of Utah 2007, Chapter 325

58 **61-2c-502**, as last amended by Laws of Utah 2007, Chapter 325

59 ENACTS:

60 **61-2c-405**, Utah Code Annotated 1953

61

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

62a **H→ Section 1. Section 61-2-5.5 is amended to read:**

62b **61-2-5.5. Real Estate Commission.**

62c **(1) There is created within the division a Real Estate Commission. The commission shall:**

62d **(a) make rules for the administration of this chapter that are not inconsistent with this**
 62e **chapter, including:**

62f **(i) licensing of:**

62g **(A) principal brokers;**

62h **(B) associate brokers;**

62i **(C) sales agents;**

62j **(D) real estate companies; and**

62k **(E) branch offices;**

62l **(ii) prelicensing and postlicensing education curricula;**

62m **(iii) examination procedures;**

62n **(iv) the certification and conduct of:**

62o **(A) real estate schools;**

62p **(B) course providers; and**

62q **(C) instructors;**

62r **(v) proper handling of funds received by real estate licensees;**

62s **(vi) brokerage office procedures and recordkeeping requirements;**

62t **(vii) property management;**

62u **(viii) standards of conduct for real estate licensees; [and]**

62v **(ix) rules made under Section 61-2-26 regarding an undivided fractionalized long-term**
 62w **estate; and**

62x **(x) if the commission determines necessary, rules as provided in Subsection 61-2-20(3)**
 62y **regarding legal forms;**

62z **(b) establish, with the concurrence of the division, all fees as provided in this chapter and Title**
 62aa **61, Chapter 2a, Real Estate Recovery Fund Act;**

62ab **(c) conduct all administrative hearings not delegated by the commission to an administrative**
 62ac **law judge or the division relating to the:**

62ad **(i) licensing of any applicant;**

62ae **(ii) conduct of any licensee;**

62af **(iii) the certification or conduct of any real estate school, course provider, or**
 62ag **instructor regulated under this chapter; or**

62ah **(iv) violation of this chapter by any person;**

62ai **(d) with the concurrence of the director, impose sanctions as provided in Section 61-2-12;**

- 62aj **Ĥ→(e) advise the director on the administration and enforcement of any matters affecting the**
62ak **division and the real estate sales and property management industries;**
- 62al **(f) advise the director on matters affecting the division budget;**
- 62am **(g) advise and assist the director in conducting real estate seminars; and**
- 62an **(h) perform other duties as provided by:**
- 62ao **(i) this chapter; and**
- 62ap **(ii) Title 61, Chapter 2a, Real Estate Recovery Fund Act.**
- 62aq **(2) (a) The commission shall be comprised of five members appointed by the governor and**
62ar **approved by the Senate.**
- 62as **(b) Four of the commission members shall:**
- 62at **(i) have at least five years' experience in the real estate business; and**
- 62au **(ii) hold an active principal broker, associate broker, or sales agent license.**
- 62av **(c) One commission member shall be a member of the general public.**
- 62aw **(d) No more than one commission member described in Subsection (2)(b) shall at the time of**
62ax **appointment reside in any given county in the state.**
- 62ay **(e) At least one commission member described in Subsection (2)(b) shall at the time of an**
62az **appointment reside in a county that is not a county of the first or second class.**
- 62ba **(3) (a) Except as required by Subsection (3)(b), as terms of current commission members**
62bb **expire, the governor shall appoint each new member or reappointed member to a four-year term**
62bc **ending June 30.**
- 62bd **(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of**
62be **appointment or reappointment, adjust the length of terms to ensure that the terms of commission**
62bf **members are staggered so that approximately half of the commission is appointed every two years.**
- 62bg **(c) Upon the expiration of the term of a member of the commission, the member of the**
62bh **commission shall continue to hold office until a successor is appointed and qualified.**
- 62bi **(d) A commission member may not serve more than two consecutive terms.**
- 62bj **(e) Members of the commission shall annually select one member to serve as chair.**
- 62bk **(4) When a vacancy occurs in the membership for any reason, the replacement shall be**
62bl **appointed for the unexpired term.**
- 62bm **(5) (a) A member may not receive compensation or benefits for the member's services, but**
62bn **may receive per diem and expenses incurred in the performance of the member's official duties at the**
62bo **rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.**
- 62bp **(b) A member may decline to receive per diem and expenses for the member's service.**
- 62bq **(6) (a) The commission shall meet at least monthly.**
- 62br **(b) The director may call additional meetings:**
- 62bs **(i) at the director's discretion;**
- 62bt **(ii) upon the request of the chair; or**
- 62bu **(iii) upon the written request of three or more commission members.**
- 62bv **(7) Three members of the commission constitute a quorum for the transaction of business. ←Ĥ**

63 Section ~~H~~→ [H] 2 ←~~H~~ . Section 61-2-13 is amended to read:

64 **61-2-13. Grounds for revocation of principal broker's license -- Automatic**
 65 **inactivation of affiliated associate brokers and sales agents licenses.**

66 (1) ~~(a) [Any] An~~ unlawful act or ~~[any]~~ violation of this chapter committed by ~~[any real~~
 67 ~~estate sales agent or associate broker employed or engaged as an independent contractor by or~~
 68 ~~on behalf of a licensed principal broker or committed by any employee, officer, or member of a~~
 69 ~~licensed principal broker]~~ a person listed in Subsection (1)(b) is cause for:

70 (i) the revocation, suspension, or probation of [the] a principal broker's license[;]; or
 71 [for]

72 (ii) the imposition of a fine against the principal broker in an amount not to exceed
 73 [\$500] \$2,500 per violation.

74 (b) Subsection (1)(a) applies to an act or violation by any of the following:

75 (i) a real estate sales agent or associate broker employed by a licensed principal broker;

76 (ii) a real estate sales agent or associate broker engaged as an independent contractor
 77 by or on behalf of a licensed principal broker; or

78 (iii) an employee, officer, or member of a licensed principal broker.

79 (2) (a) The revocation or suspension of a principal broker license automatically
 80 inactivates [every] an associate broker or sales agent license granted to [those persons] a person
 81 by reason of [their] that person's affiliation with the principal broker whose license [was] is
 82 revoked or suspended, pending a change of broker affiliation.

83 (b) A principal broker shall, [prior to] before the effective date of [the] a suspension or
 84 revocation of [his] the principal broker's license, notify in writing every licensee affiliated with
 85 [him] the principal broker of the revocation or suspension of [his] the principal broker license.

85a ~~H~~→ **Section 3. Section 61-2-20 is amended to read:**

85b **61-2-20. Rights and privileges of real estate licensees to fill out forms or documents.**

85c ~~[A]~~ **(1) Except as provided in Subsections (2) and (3), a real estate licensee may fill out**
 85d **only those legal forms approved by the commission and the attorney general, and those forms provided**
 85e **by statute [; with the following exceptions:] .**

85f ~~[(1)]~~ **(2) (a) (i) A principal broker may fill out any documents associated with the closing of**
 85g **a real estate transaction.**

85h ~~[(b)]~~ **(ii) A branch broker or associate broker may fill out any documents associated with the**
 85i **closing of a real estate transaction if designated to fill out the documents by the principal broker with**
 85j **whom the branch broker or associate broker is affiliated.**

85k ~~[(2)]~~ **(b) A real estate licensee may fill out real estate forms prepared by legal counsel of the**
 85l **buyer, seller, lessor, or lessee.**

85m ~~[(3)]~~ **(c) If the commission and the attorney general have not approved a specific form for the**
 85n **transaction, a principal broker, associate broker, or sales agent may fill out real estate forms**

85o prepared by any legal counsel, including legal counsel retained by the brokerage to develop these
85p forms.

85q (3) The commission may by rule, made in accordance with Title 63, Chapter 46a, Utah
85r Administrative Rulemaking Act, provide a process for the use of a legal form under this
85s section if the rule:

85t (a) provides for the involvement of the commission and attorney general in the creation
85u of a legal form; and

85v (b) protects the interest of the general public. ←Ĥ

86 Section Ĥ→ [2] 4 ←Ĥ . Section 61-2-21 is amended to read:

87 **61-2-21. Remedies and action for violations.**

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

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

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

93 (b) Within ten days after receiving the order, the person upon whom the order is served
94 may request ~~[an adjudicative proceeding]~~ a hearing.

95 (c) Pending ~~[the]~~ a hearing requested under Subsection (1)(b), ~~[any]~~ a cease and desist
96 order shall remain in effect.

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

99 (2) (a) After ~~[the]~~ a hearing requested under Subsection (1), if the commission and the
100 director agree that ~~[the]~~ an act of the person violates this chapter, the director:

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

102 (ii) may impose ~~[a civil penalty not to exceed the greater of:]~~ another disciplinary
103 action under Section 61-2-12.

104 ~~[(A) \$2,500 for each violation; or]~~

105 ~~[(B) the amount of any gain or economic benefit derived from each violation.]~~

106 (b) The director shall file suit in the name of the Department of Commerce and the
107 Division of Real Estate, in the district court in the county in which an act described in
108 Subsection (1) ~~[occurred]~~ occurs or where the person resides or carries on business, to enjoin
109 and restrain the person from violating this chapter if:

110 (i) (A) ~~[no]~~ a hearing is not requested under Subsection (1); and

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

112 (ii) after discontinuing the act described in Subsection (1), the person again
113 commences the act.

114 (c) ~~[The]~~ A district [courts] court of this state ~~[shall have]~~ has jurisdiction of an action
115 brought under this section.

116 (d) Upon a proper showing in an action brought under this section ~~[related to an~~
117 ~~undivided fractionalized long-term estate]~~, the court may:

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

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

120 (iii) enter a declaratory judgment;

- 121 (iv) appoint a receiver or conservator for the defendant or the defendant's assets;
 122 (v) order disgorgement;
 123 (vi) order rescission;
 124 (vii) impose a civil penalty not to exceed the greater of:
 125 (A) \$2,500 for each violation; or
 126 (B) the amount of any gain or economic benefit derived from ~~[each]~~ a violation; and
 127 (viii) enter any other relief the court considers just.
 128 (e) The court may not require the division to post a bond in an action brought under
 129 this Subsection (2).

130 (3) ~~[The remedies and action]~~ A remedy or action provided in this section ~~[may]~~ does
 131 not limit, interfere with, or prevent the prosecution of ~~[, any other remedies or actions]~~ another
 132 remedy or action, including a criminal ~~[proceedings]~~ proceeding.

133 Section ~~Ĥ~~ → [3] 5 ← ~~Ĥ~~ . Section **61-2b-2** is amended to read:

134 **61-2b-2. Definitions.**

135 (1) As used in this chapter:

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

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

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

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

147 (C) "Review assignment" means an unbiased analysis, opinion, or conclusion that
 148 forms an opinion as to the adequacy and appropriateness of a valuation appraisal or an analysis
 149 assignment.

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

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

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

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

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

162 (e) "Certified appraisal report" means a written or oral appraisal report that is certified
163 by a state-certified general appraiser or state-certified residential appraiser.

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

167 (B) "Consultation service" does not mean a valuation appraisal, analysis assignment, or
168 review assignment.

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

172 (g) "Contingent fee" means a fee or other form of compensation, payment of which is
173 dependent on or conditioned by:

174 (i) the reporting of a predetermined analysis, opinion, or conclusion by the person
175 performing the analysis, opinion, or conclusion; or

176 (ii) achieving a result specified by the person requesting the analysis, opinion, or
177 conclusion.

178 (h) "Division" means the Division of Real Estate of the Department of Commerce.

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

181 (i) a state-licensed appraiser; or

182 (ii) a state-certified appraiser.

183 (j) "Real estate" means an identified parcel or tract of land including improvements if
184 any.

185 (k) "Real estate appraisal activity" means the act or process of making an appraisal of
186 real estate or real property and preparing an appraisal report.

187 (l) "Real estate related transaction" means:

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

190 (ii) the refinancing of real property or an interest in real property; or

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

193 (m) "Real property" means one or more defined interests, benefits, or rights inherent in
194 the ownership of real estate.

195 (n) "State-certified general appraiser" means a person who holds a current, valid
196 certification as a state-certified general appraiser issued under this chapter.

197 (o) "State-certified residential appraiser" means a person who holds a current, valid
198 certification as a state-certified residential real estate appraiser issued under this chapter.

199 (p) "State-licensed appraiser" means a person who holds a current, valid license as a
200 state-licensed appraiser issued under this chapter.

201 [~~(q) "State-registered appraiser" means a person who before May 3, 1999, was~~
202 ~~registered as an appraiser under this chapter.~~]

203 [~~(r)~~] (q) "Trainee" means an individual who:

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

206 (ii) works under the direct supervision of a [~~state-licensed appraiser or~~] state-certified
207 appraiser to earn experience for licensure[-]; and

208 (iii) is registered as a trainee under this chapter.

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

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

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

219 Section ~~H~~→ [4] 6 ←~~H~~ . Section **61-2b-6** is amended to read:

220 **61-2b-6. Duties and powers of division.**

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

222 (a) The division shall:

223 (i) receive [~~applications~~] an application for licensing [~~and~~], certification, or
 224 registration;

225 (ii) establish appropriate administrative procedures for the processing of [~~applications~~]
 226 an application for licensure [~~or~~], certification, or registration;

227 (iii) issue [~~licenses and certifications to qualified applicants~~] a license or certification
 228 to a qualified applicant pursuant to this chapter; and

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

231 (iv) register an individual who applies for registration as a trainee under this chapter.

232 (b) (i) The division shall require [~~a trainee to notify the division that the trainee is~~
 233 ~~acting~~] an individual to register as a trainee with the division before the individual acts in the
 234 capacity of a trainee earning experience for licensure.

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

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

239 (d) The division may:

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

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

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

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

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

252 (h) The division shall assist the board with respect to the proper interpretation or
253 explanation of the Uniform Standards of Professional Appraisal Practice as required by Section
254 61-2b-27 when an interpretation or explanation becomes necessary in the enforcement of this
255 chapter.

256 (i) The division shall establish fees in accordance with Section 63-38-3.2:

257 (i) for processing:

258 (A) a trainee ~~[notifications]~~ registration;

259 (B) ~~[applications]~~ an application for licensing and certification; and

260 (C) ~~[registration of expert witnesses]~~ approval of an expert witness; and

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

262 (j) The division may:

263 (i) investigate ~~[complaints]~~ a complaint against:

264 (A) ~~[trainees]~~ a trainee; ~~[or]~~

265 (B) ~~[persons]~~ a person licensed or certified under this chapter; or

266 (C) a person required to be licensed, certified, or registered under this chapter;

267 (ii) subpoena ~~[witnesses and the production of books, documents, records, and other~~
268 ~~papers;]~~ a witness;

269 (iii) subpoena the production of a book, document, record, or other paper;

270 ~~[(iii)]~~ (iv) administer ~~[oaths]~~ an oath; and

271 ~~[(iv)]~~ (v) take testimony and receive evidence concerning ~~[all matters]~~ a matter within
272 the division's jurisdiction.

273 (k) The division may:

274 (i) promote research and conduct studies relating to the profession of real estate
275 appraising; and

276 (ii) sponsor real estate appraisal educational activities.

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

281 (m) The division shall employ an appropriate staff to investigate allegations that
282 ~~[persons]~~ a person required to be licensed ~~[or]~~, certified, or registered under this chapter
283 ~~[failed]~~ fails to comply with this chapter.

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

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

290 (2) (a) The division shall ~~[register expert witnesses who are]~~ approve an expert witness
291 who is not otherwise licensed or certified under this chapter to appear in ~~[att]~~ an administrative
292 ~~[and]~~ or judicial tax ~~[proceedings]~~ proceeding to provide evidence related to the valuation of
293 real property that is assessed by the tax commission, provided that the:

294 (i) ~~[registration]~~ approval is limited to a specific proceeding;

295 (ii) ~~[registration]~~ approval is valid until the proceeding becomes final;

296 (iii) applicant pays ~~[a registration]~~ an approval fee to the division;

297 (iv) applicant provides the applicant's name, address, occupation, and professional
298 credentials; and

299 (v) applicant provides a notarized statement that:

300 (A) the applicant is competent to render an appraisal and to testify as an expert witness
301 in the proceeding; and

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

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

307 (3) ~~(a) [The division shall be]~~ If the conditions of Subsection (3)(b) are met, the
 308 division is immune from any civil action or criminal prosecution for initiating or assisting in
 309 [any] a lawful investigation of [the actions of] an act of, or participating in [any] a disciplinary
 310 proceeding concerning [a trainee or]:

311 (i) a person required to be licensed, certified, or registered pursuant to this chapter; or
 312 (ii) a person approved as an expert witness pursuant to this chapter [if the action is
 313 taken].

314 (b) This Subsection (3) applies if the division takes the action:

315 (i) without malicious intent; and

316 (ii) in the reasonable belief that the action ~~[was]~~ is taken pursuant to the powers and
 317 duties vested in the ~~[members of the]~~ division under this chapter.

318 Section ~~H~~ → [5] 7 ← ~~H~~ . Section **61-2b-8** is amended to read:

319 **61-2b-8. Duties of board.**

320 (1) (a) The board shall provide technical assistance to the division relating to real estate
 321 appraisal standards and real estate appraiser qualifications ~~[and shall have the responsibilities,~~
 322 ~~powers;].~~

323 (b) The board has the powers and duties listed in this section.

324 ~~[+]~~ (2) The board shall:

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

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

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

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

333 (ii) clerical staff; and

334 (iii) a person who:

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

336 (B) assists ~~[appraisers]~~ an appraiser licensed or certified under this chapter in providing
 337 appraisal services or consultation services;

338 (d) determine the procedures for a trainee ~~[notifying]~~ to register with the division ~~[that~~
339 ~~the trainee will assist persons licensed or certified under this chapter in providing appraisal~~
340 ~~services or consultation services]~~; and

341 (e) develop one or more programs to upgrade and improve the experience, education,
342 and examinations as required under this chapter.

343 ~~[(2)]~~ (3) (a) The experience, education, and examination requirements established by
344 the board for ~~[persons]~~ a person licensed or certified under this chapter shall be the minimum
345 criteria established by the Appraiser Qualification Board of the Appraisal Foundation, unless,
346 after notice and a public hearing held in accordance with Title 63, Chapter 46a, Utah
347 Administrative Rulemaking Act, the board finds that the minimum criteria are not appropriate
348 for a state-licensed ~~[appraisers or]~~ appraiser or a state-certified ~~[appraisers]~~ appraiser in this
349 state.

350 (b) If under Subsection ~~[(2)]~~ (3)(a) the board makes a finding that the minimum criteria
351 are not appropriate, the board shall recommend appropriate criteria to the Legislature.

352 ~~[(3)]~~ (4) The board shall:

353 (a) determine the continuing education requirements appropriate for the renewal of
354 ~~[licenses and certifications]~~ a license or certification issued under this chapter;

355 (b) develop one or more programs to upgrade and improve continuing education; and

356 (c) recommend to the division one or more available continuing education courses that
357 meet the requirements of this chapter.

358 ~~[(4)]~~ (5) (a) The board shall consider the proper interpretation or explanation of the
359 Uniform Standards of Professional Appraisal Practice as required by Section 61-2b-27 when:

360 (i) an interpretation or explanation ~~[becomes]~~ is necessary in the enforcement of this
361 chapter; and

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

364 (b) If the conditions of Subsection ~~[(4)]~~ (5)(a) are met, the board shall recommend to
365 the division the appropriate interpretation or explanation that the division should adopt as a
366 rule under this chapter.

367 ~~[(5)]~~ (6) The board shall develop and establish or approve the examination
368 specifications and the minimum score required to pass ~~[the examinations]~~ an examination for

369 licensure ~~[and]~~ or certification.

370 ~~[(6)]~~ (7) The board ~~[shall]~~ may review the:

371 (a) bank of questions and answers that comprise the examination for ~~[persons]~~ a person
372 licensed and certified under this chapter;

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

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

377 ~~[(7)]~~ (8) (a) The board shall conduct an administrative ~~[hearings]~~ hearing, not
378 delegated by the board to an administrative law judge, in connection with ~~[att]~~ a disciplinary
379 ~~[proceedings]~~ proceeding under Sections 61-2b-30 and 61-2b-31 concerning:

380 (i) a person required to be licensed ~~[or]~~, certified, or registered under this chapter; and

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

383 (b) The board shall issue in ~~[each]~~ an administrative hearing a decision that contains
384 findings of fact and conclusions of law.

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

388 ~~[(8) The members of the board shall be]~~

389 (9) (a) If the conditions of Subsection (9)(b) are met, a member of the board is immune
390 from ~~[any]~~ a civil action or criminal prosecution for ~~[any]~~ a disciplinary proceeding
391 concerning:

392 (i) a person required to be registered, licensed, or certified under this chapter ~~[if the~~
393 action is taken]; or

394 (ii) a person approved under this chapter as an expert.

395 (b) This Subsection (9) applies if the division takes the action:

396 (i) without malicious intent; and

397 (ii) in the reasonable belief that the action taken ~~[was]~~ is taken pursuant to the powers
398 and duties vested in ~~[the members]~~ a member of the board under this chapter.

399 ~~[(9)]~~ (10) The board shall require and pass upon proof necessary to determine the

400 honesty, competency, integrity, and truthfulness of ~~each~~ an applicant for:

401 (a) original ~~[or renewal]~~ licensure ~~[or]~~, certification, or registration; and

402 (b) renewal licensure or certification.

403 Section ~~H~~→ [6] 8 ←~~H~~ . Section **61-2b-18** is amended to read:

404 **61-2b-18. Application for licensure, certification, or registration -- Approval as**
405 **an expert witness.**

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

408 (a) original certification ~~[or]~~, licensure, or registration;

409 (b) ~~[registration]~~ approval as an expert witness; and

410 (c) renewal of certification or licensure.

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

413 (a) ~~[registration]~~ approval as an expert witness;

414 (b) original certification ~~[or]~~, licensure, or registration; and

415 (c) renewal of certification or licensure.

416 (3) At the time of filing an application described in Subsection (1), ~~each~~ an applicant
417 shall:

418 (a) sign a pledge to comply with the Uniform Standards of Professional Appraisal
419 Practice and the ethical rules to be observed by an appraiser that are established under Section
420 61-2b-27 for:

421 (i) a certified or licensed ~~[appraisers or registered expert witnesses]~~ appraiser;

422 (ii) a trainee; or

423 (iii) an expert witness approved under this chapter; and

424 (b) certify that the applicant understands the types of misconduct, as set forth in this
425 chapter, for which a disciplinary ~~[proceedings]~~ proceeding may be initiated against ~~[persons]~~ a
426 person certified ~~[or]~~, licensed, or registered under this chapter.

427 Section ~~H~~→ [7] 9 ←~~H~~ . Section **61-2b-21** is amended to read:

428 **61-2b-21. Denial of licensure, certification, or registration.**

429 The division may, upon compliance with Title 63, Chapter 46b, Administrative
430 Procedures Act, deny the issuance of a license ~~[or]~~, certification, or registration to an applicant

431 on any of the grounds enumerated in this chapter.

432 Section ~~H~~→ [8] 10 ←~~H~~ . Section 61-2b-22 is amended to read:

433 **61-2b-22. Licensing, certification, registration, or expert witness requirements**
434 **for nonresidents -- Temporary license or certificate -- Revocation.**

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

442 (a) approval as an expert witness; or

443 (b) licensure, certification, or registration under this chapter.

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

449 (3) A nonresident of this state who [~~has complied with the provisions of~~] complies
450 with Subsection (1) may obtain a temporary permit for a license or certification to perform a
451 contract relating to the appraisal of real estate or real property in this state. To qualify for the
452 issuance of a temporary license or certification, an applicant must:

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

454 (b) submit evidence that the applicant is licensed or certified in the state in which the
455 applicant primarily conducts business;

456 (c) certify that no formal charges alleging violation of state appraisal licensing or
457 certification laws have been filed against the applicant by the applicant's state of domicile; and

458 (d) pay an application fee in an amount established by the division with the
459 concurrence of the board.

460 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
461 division, with the concurrence of the board, shall make rules establishing:

462 (a) the duration of a temporary permit; and

463 (b) procedures for renewal of a temporary permit.

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

467 (6) ~~[Any]~~ A person whose temporary permit for a license or certification ~~[has been]~~ is
468 revoked under Subsection (5) is entitled to a postrevocation hearing to challenge the
469 revocation. The hearing shall be conducted in accordance with Title 63, Chapter 46b,
470 Administrative Procedures Act.

471 Section ~~H~~→ [9] 11 ←~~H~~ . Section **61-2b-24** is amended to read:

472 **61-2b-24. Expert witness, licensing, certification, registration documents --**
473 **Assigned number to be used on contracts -- Surrender of documents upon suspension.**

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

476 (a) stating that the person is ~~[registered]~~ approved as an expert witness, licensed, ~~[or]~~
477 certified, or registered under this chapter; and

478 (b) specifying the expiration date of ~~[the]~~ a license or certification.

479 (2) (a) ~~[A registration]~~ An approval as an expert witness, a license, ~~[or]~~ a certification,
480 or a registration document issued under this chapter shall bear ~~[a registration]~~ an approval,
481 license, ~~[or]~~ certification, or registration number assigned by the division.

482 (b) ~~[The]~~ An assigned number shall be used in ~~[all statements of qualification,~~
483 ~~contracts, or other instruments used by the registration, license, or certificate holder]~~ a
484 statement of qualification, a contract, or another instrument used by the holder of the approval,
485 license, certificate, or registration when reference is made to ~~[his]~~ the holder's status as being
486 ~~[registered]~~ approved, licensed, ~~[or]~~ certified, or registered under this chapter.

487 (3) (a) ~~[Licensing, certification, and expert witness registration documents remain]~~ An
488 approval, license, certification, or registration document is the property of the state.

489 (b) Upon ~~[any]~~ a suspension or revocation of a license ~~[or]~~, certification, or registration
490 under this chapter, the individual holding the ~~[respective documents]~~ applicable document shall
491 immediately return the document to the division.

492 Section ~~H~~→ [10] 12 ←~~H~~ . Section **61-2b-25** is amended to read:

493 **61-2b-25. Other law unaffected.**

494 Nothing contained in this chapter shall be considered to prohibit ~~[any]~~ a person
 495 ~~[registered]~~ approved, licensed, or certified under this chapter from engaging in the practice of
 496 real estate appraising as a professional corporation or a limited liability company in accordance
 497 with ~~[the provisions of]~~:

498 (1) Title 16, Chapter 11, Professional Corporation Act; or

499 (2) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act.

500 Section ~~H~~→ [H] 13 ←~~H~~ . Section **61-2b-26** is amended to read:

501 **61-2b-26. Principal place of business -- Display of documents -- Notify of changes**
 502 **-- Nonresidents.**

503 (1) ~~[Each]~~ A person licensed or certified under this chapter shall:

504 (a) designate and maintain a principal place of business; and ~~[shall]~~

505 (b) conspicuously display the person's license or certification.

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

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

513 (3) A nonresident licensee or certificate holder, or a nonresident ~~[registered]~~ approved
 514 as an expert witness is not required to maintain a place of business in this state if the
 515 nonresident maintains an active place of business in the nonresident's state of domicile.

516 Section ~~H~~→ [H] 14 ←~~H~~ . Section **61-2b-27** is amended to read:

517 **61-2b-27. Professional conduct -- Uniform standards.**

518 (1) (a) ~~[Each]~~ A person licensed, certified, ~~[or]~~ registered, or approved as an expert
 519 witness under this chapter must comply with:

520 (i) generally accepted standards of professional appraisal practice; and

521 (ii) generally accepted ethical rules to be observed by a real estate appraiser.

522 (b) Generally accepted standards of professional appraisal practice are evidenced by the
 523 Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal

524 Foundation.

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

530 ~~[(2) If the Appraisal Standards Board of the Appraisal Foundation modifies the~~
531 ~~Uniform Standards of Professional Appraisal Practice, issues supplemental appraisal standards~~
532 ~~which it considers appropriate for residential real estate appraisers or for general real estate~~
533 ~~appraisers, or issues ethical rules to be observed by a real estate appraiser and requests the~~
534 ~~board to consider the adoption of the modified or supplemental standards or ethical rules, the]~~

535 (2) The board shall schedule a public hearing pursuant to Title 63, Chapter 46a, Utah
536 Administrative Rulemaking Act, for the purpose of deciding whether or not the board should
537 require ~~[the]~~ a modified or supplemental [standards] standard or the ethical ~~[rules]~~ rule to be
538 observed by ~~[persons]~~ a person licensed, certified, ~~[or]~~ registered, or approved as an expert
539 witness under this chapter[:] if the Appraisal Standards Board of the Appraisal Foundation:

540 (a) (i) modifies the Uniform Standards of Professional Appraisal Practice;

541 (ii) issues a supplemental appraisal standard which it considers appropriate for:

542 (A) a residential real estate appraiser; or

543 (B) a general real estate appraiser; or

544 (iii) issues an ethical rule to be observed by a real estate appraiser; and

545 (b) requests the board to consider the adoption of the modified or supplemental
546 standard or ethical rule.

547 (3) If, after the notice and public hearing described in Subsection (2), the board finds
548 that ~~[the]~~ a modified or supplemental [standards] standard or the ethical ~~[rules]~~ rule issued by
549 the Appraisal Standards Board of the Appraisal Foundation ~~[are]~~ is appropriate for ~~[persons]~~ a
550 person licensed, certified, ~~[or]~~ registered, or approved as an expert witness under this chapter,
551 the board shall recommend ~~[rules]~~ a rule requiring ~~[all persons]~~ a person licensed, certified,
552 ~~[or]~~ registered, or approved as an expert witness under this chapter to observe the modified or
553 supplemental ~~[standards]~~ standard or the ethical ~~[rules]~~ rule.

554 Section ~~H~~→ [13] 15 ←~~H~~ . Section **61-2b-28** is amended to read:

- 555 **61-2b-28. Enforcement -- Investigation -- Orders -- Hearings.**
- 556 (1) (a) The division may investigate the actions of:
- 557 (i) ~~[any]~~ a person registered, licensed, or certified under this chapter;
- 558 (ii) an applicant for registration, licensure, or certification;
- 559 (iii) an applicant for renewal of licensure or certification; or
- 560 (iv) a person required to be registered, licensed, or certified under this chapter.
- 561 (b) The division may initiate an agency action against a person described in Subsection
- 562 (1)(a) in accordance with Title 63, Chapter 46b, Administrative Procedures Act, to:
- 563 (i) impose disciplinary action;
- 564 (ii) deny issuance to an applicant of:
- 565 (A) an original ~~[or renewal]~~ registration, license, or certification; or
- 566 (B) a renewal of a license or certification; or
- 567 (iii) issue a cease and desist order as provided in Subsection (3).
- 568 (2) (a) The division may:
- 569 (i) administer an oath or affirmation;
- 570 (ii) subpoena ~~[witnesses]~~ a witness;
- 571 (iii) take evidence; and
- 572 (iv) require the production of ~~[books, papers, contracts, records,]~~ a book, paper,
- 573 contract, record, other ~~[documents]~~ document, or information relevant to the investigation
- 574 described in Subsection (1).
- 575 (b) The division may serve ~~[subpoenas]~~ a subpoena by certified mail.
- 576 (c) ~~[Each]~~ A failure to respond to a request by the division in an investigation
- 577 authorized under this chapter is considered to be a separate violation of this chapter, including:
- 578 (i) failing to respond to a subpoena;
- 579 (ii) withholding evidence; or
- 580 (iii) failing to produce ~~[documents or records]~~ a document or record.
- 581 (3) (a) The director shall issue and serve upon a person an order directing that person to
- 582 cease and desist from an act if:
- 583 (i) the director has reason to believe that the person has been engaging, is about to
- 584 engage, or is engaging in the act constituting a violation of this chapter; and
- 585 (ii) it appears to the director that it would be in the public interest to stop the act.

586 (b) Within ten days after receiving the order, the person upon whom the order is served
587 may request [~~an adjudicative proceeding~~] a hearing.

588 (c) Pending [~~the~~] a hearing requested under Subsection (3)(b), [~~the~~] a cease and desist
589 order shall remain in effect.

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

592 (4) (a) After [~~the~~] a hearing requested under Subsection (3), if the board agrees that
593 [~~the acts~~] an act of the person [~~violate~~] violates this chapter, the board:

594 (i) shall issue an order making the cease and desist order permanent; and

595 (ii) may impose [~~a civil penalty not to exceed the greater of:~~] another disciplinary
596 action under Section 61-2b-29.

597 [~~(A) \$2,500 for each violation; or~~]

598 [~~(B) the amount of any gain or economic benefit derived from each violation.~~]

599 (b) The director shall commence an action in the name of the Department of
600 Commerce and Division of Real Estate, in the district court in the county in which an act
601 described in Subsection (3) occurs or where the person resides or carries on business, to enjoin
602 and restrain the person from violating this chapter if:

603 (i) (A) [~~no~~] a hearing is not requested under Subsection (3); and

604 (B) the person fails to cease the act described in Subsection (3); or

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

607 (5) [~~The remedies and action~~] A remedy or action provided in this section [~~do~~] does not
608 limit, interfere with, or prevent the prosecution of [~~any other remedies or actions~~] another
609 remedy or action, including a criminal [~~proceedings~~] proceeding.

610 Section ~~H~~→ [14] 16 ←~~H~~ . Section **61-2b-29** is amended to read:

611 **61-2b-29. Disciplinary action -- Grounds.**

612 (1) (a) The board may order disciplinary action against [~~any~~] a person:

613 (i) registered, licensed, or certified under this chapter; or

614 (ii) required to be registered, licensed, or certified under this chapter.

615 (b) On the basis of [~~any of the grounds~~] a ground listed in Subsection (2) for
616 disciplinary action, board action may include:

- 617 (i) revoking, suspending, or placing a person's registration, license, or certification on
618 probation;
- 619 (ii) denying a person's original [~~or renewal~~] registration, license, or certification;
- 620 (iii) denying a person's renewal license or certification;
- 621 [~~(iii)~~] (iv) in the case of denial or revocation of a registration, license, or certification,
622 setting a waiting period for an applicant to apply for a registration, license, or certification
623 under this chapter;
- 624 [~~(iv)~~] (v) ordering remedial education;
- 625 [~~(v)~~] (vi) imposing a civil penalty upon a person not to exceed the greater of:
- 626 (A) \$2,500 for each violation; or
- 627 (B) the amount of any gain or economic benefit from [~~each~~] a violation;
- 628 [~~(vi)~~] (vii) issuing a cease and desist order; or
- 629 [~~(vii)~~] (viii) doing any combination of Subsections (1)(b)(i) through [~~(vi)~~](vii).
- 630 (2) The following are grounds for disciplinary action under this section:
- 631 (a) procuring or attempting to procure a registration, license, or certification under this
632 chapter;
- 633 (i) by fraud; or
- 634 (ii) by making a false statement, submitting false information, or making a material
635 misrepresentation in an application filed with the division;
- 636 (b) paying money or attempting to pay money other than [~~the fees~~] a fee provided for
637 by this chapter to [~~any~~] a member or employee of the division to procure a registration, license,
638 or certification under this chapter;
- 639 (c) an act or omission in the practice of real estate appraising that constitutes
640 dishonesty, fraud, or misrepresentation;
- 641 (d) entry of a judgment against a registrant, licensee, or certificate holder on grounds of
642 fraud, misrepresentation, or deceit in the making of an appraisal of real estate;
- 643 (e) a guilty plea to a criminal offense involving moral turpitude that is held in
644 abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo
645 contendere, of a criminal offense involving moral turpitude;
- 646 (f) engaging in the business of real estate appraising under an assumed or fictitious
647 name not properly registered in this state;

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

650 (h) making a false or misleading statement in:

651 (i) that portion of a written appraisal report that deals with professional qualifications;

652 or ~~in any~~

653 (ii) testimony concerning professional qualifications;

654 (i) violating or disregarding ~~any~~;

655 (i) a provision of this chapter~~;~~;

656 (ii) an order of the board~~;~~; or ~~any~~

657 (iii) a rule issued under this chapter;

658 (j) violating the confidential nature of governmental records to which a person
 659 registered, licensed, ~~or~~ certified, or approved as an expert under this chapter gained access
 660 through employment or engagement as an appraiser by a governmental agency;

661 (k) accepting a contingent fee for performing an appraisal as defined in Subsection
 662 61-2b-2(1)(a) if in fact the fee is or was contingent upon:

663 (i) the appraiser reporting a predetermined analysis, opinion, or conclusion ~~or is or~~
 664 ~~was contingent upon~~;

665 (ii) the analysis, opinion, conclusion, or valuation reached; or ~~upon~~

666 (iii) the consequences resulting from the appraisal assignment;

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

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

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

671 (ii) knowingly providing false or misleading information in the statement required by
 672 Subsection 31A-2-405(2); or

673 (n) ~~any~~ other conduct that constitutes dishonest dealing.

674 Section ~~H~~→ **[15] 17 ←H** . Section **61-2b-30.5** is amended to read:

675 **61-2b-30.5. Reinstatement of license, certification, registration, approval --**

676 **Expert witness -- Trainee.**

677 (1) An individual who has had ~~an appraiser registration,~~ a license, ~~or~~ certification,
 678 registration, or approval revoked under this chapter;

679 (a) may not apply for renewal of that [~~registration,~~] license, [~~or~~] certification, [~~but~~
680 registration, or approval; and

681 (b) may apply for licensure [~~or~~], certification, registration, or approval as prescribed for
682 an original license or certification subject to the limitations in Subsection (2).

683 (2) An applicant for licensure, certification, [~~or for~~] registration, or approval as an
684 expert witness under Subsection (1):

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

688 (b) is not entitled to credit for experience gained prior to the date of revocation in
689 determining whether the applicant meets the experience requirement for licensure [~~or~~],
690 certification, registration, or approval.

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

694 Section ~~H~~→ [16] 18 ←~~H~~ . Section 61-2b-31 is amended to read:

695 **61-2b-31. Disciplinary hearing process.**

696 (1) Before disciplinary action may be taken by the board, the division shall:

- 697 (a) notify the person against whom the board seeks to take disciplinary action; and
698 (b) commence an adjudicative proceeding.

699 (2) If, after [~~the hearing~~] an adjudicative proceeding, the board determines that a person
700 described in Subsection (1) violated this chapter, the board may impose disciplinary action by
701 written order as provided in Section 61-2b-29.

702 (3) (a) The board may:

703 (i) conduct [~~hearings~~] an adjudicative proceeding with the assistance of an
704 administrative law judge; or [~~may~~]

705 (ii) delegate [~~hearings~~] an adjudicative proceeding to an administrative law judge.

706 (b) If [~~the hearing~~] an adjudicative proceeding is delegated by the board to an
707 administrative law judge, the administrative law judge shall submit to the board for its
708 consideration:

709 (i) written findings of fact[;];

710 (ii) written conclusions of law[-]; and

711 (iii) a recommended order [to the board for its consideration].

712 (4) (a) [~~Any~~] An applicant, licensee, certificate holder, registrant, or person aggrieved,
713 including the complainant, may obtain judicial review of [~~any~~] an adverse ruling, order, or
714 decision of the board. [~~Any~~] An appeal [~~shall be~~] is governed by the Utah Rules of Appellate
715 Procedure.

716 (b) If [~~the~~] an applicant, licensee, [~~or~~] certificate holder, or registrant prevails in [~~the~~]
717 an appeal and the court finds that the state action [~~was~~] is undertaken without substantial
718 justification, the court may award reasonable litigation expenses to the applicant, licensee, [~~or~~]
719 certificate holder, or registrant as provided under Title 78, Chapter 27a, Small Business Equal
720 Access to Justice Act.

721 Section ~~H~~→ [17] 19 ←~~H~~ . Section **61-2b-33** is amended to read:

722 **61-2b-33. Penalty for violating this chapter.**

723 [~~(1) Any person required by this chapter to be licensed or certified who engages in real~~
724 ~~estate appraisal activity in this state without obtaining a license or certification or] In addition
725 to being subject to a disciplinary action by the board, a person who violates [any provision of]
726 this chapter:~~

727 [~~(a)~~] (1) is guilty of a class [B] A misdemeanor [punishable by a \$1,000 fine and up to
728 six months in jail], upon a conviction of a first violation of this chapter; and

729 (2) is guilty of a third degree felony, upon conviction of a second or subsequent
730 violation of this chapter.

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

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

736 Section ~~H~~→ [18] 20 ←~~H~~ . Section **61-2c-201** is amended to read:

737 **61-2c-201. Licensure required of individuals and entities engaged in the business**
738 **of residential mortgage loans -- Mortgage officer -- Principal lending manager.**

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

741 without obtaining a license under this chapter.

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

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

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

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

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

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

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

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

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

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

763 (b) This Subsection (5) does not restrict the number of:

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

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

768 (A) licensed under this chapter; or

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

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

- 772 (a) an entity licensed under this chapter; and
- 773 (b) an entity that is exempt from licensure under Section 61-2c-105.
- 774 (7) A mortgage officer may not receive consideration for transacting the business of
- 775 residential mortgage loans from ~~[any]~~ a person or entity ~~[except]~~ other than the principal
- 776 lending manager with whom the mortgage officer is licensed.
- 777 (8) A mortgage officer shall conduct all business of residential mortgage loans:
- 778 (a) through the principal lending manager with which the individual is licensed; and
- 779 (b) in the business name under which the principal lending manager is authorized by
- 780 the division to do business.
- 781 (9) (a) (i) This Subsection (9)(a) does not apply to an individual who transacts the
- 782 business of residential mortgage loans as an employee or agent of another individual or entity.
- 783 (ii) If an entity that is authorized by this chapter to transact the business of residential
- 784 mortgage loans transacts the business of residential mortgage loans under an assumed business
- 785 name, the entity shall:
- 786 (A) ~~[register]~~ obtain a license under the assumed name ~~[with]~~ from the division; and
- 787 (B) furnish the division proof that the assumed business name ~~[has been]~~ is filed with
- 788 the Division of Corporations and Commercial Code pursuant to Title 42, Chapter 2,
- 789 Conducting Business Under Assumed Name.
- 790 (b) The division may charge a fee established in accordance with Section 63-38-3.2 for
- 791 ~~[registering]~~ obtaining a license under an assumed name pursuant to this Subsection (9).
- 792 (10) A licensee whose license is in inactive status may not transact the business of
- 793 residential mortgage loans.
- 794 Section ~~H~~→ ~~[19]~~ 21 ←~~H~~ . Section **61-2c-202** is amended to read:
- 795 **61-2c-202. Licensure procedures.**
- 796 (1) To apply for licensure under this chapter an applicant shall:
- 797 (a) submit to the division a licensure statement that:
- 798 (i) lists any name under which the individual or entity will transact business in this
- 799 state;
- 800 (ii) lists the address of the principal business location of the applicant;
- 801 (iii) if the applicant is an entity:
- 802 (A) lists the principal lending manager of the entity; and

803 (B) contains the signature of the principal lending manager;
804 (iv) demonstrates that the applicant meets the qualifications listed in Section
805 61-2c-203;
806 (v) if the applicant is an entity, lists:
807 (A) all jurisdictions in which the entity is registered, licensed, or otherwise regulated in
808 the business of residential mortgage loans; and
809 (B) the history of any disciplinary action or adverse administrative action taken against
810 the entity by any regulatory agency within the ten years preceding the application; and
811 (vi) includes any information required by the division by rule;
812 (b) pay to the division:
813 (i) an application fee established by the division in accordance with Section 63-38-3.2;
814 and
815 (ii) the reasonable expenses incurred in processing the application for licensure,
816 including the costs incurred by the division under Subsection (4); and
817 (c) comply with Subsection (4).
818 (2) (a) The division shall issue a license to an applicant if the division, with the
819 concurrence of the commission, finds that the applicant:
820 (i) meets the qualifications of Section 61-2c-203; and
821 (ii) complies with this section.
822 (b) The commission may delegate to the division the authority to:
823 (i) review ~~any~~ a class or category of application for an initial or renewed ~~licenses~~
824 license;
825 (ii) determine whether an applicant meets the licensing criteria in Section 61-2c-203;
826 (iii) conduct ~~any~~ a necessary hearing on an application; and
827 (iv) approve or deny a license application without concurrence by the commission.
828 (c) If the commission delegates to the division the authority to approve or deny an
829 application without concurrence by the commission and the division denies an application for
830 licensure, the applicant who is denied licensure may petition the commission for review of the
831 denial.
832 (d) An applicant who is denied licensure under ~~this~~ Subsection (2)(b) may seek
833 agency review by the executive director only after the commission ~~has reviewed~~ reviews the

834 division's denial of the applicant's application.

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

839 (4) (a) An individual applying for a license under this chapter shall:

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

842 (ii) consent to a criminal background check by:

843 (A) the Utah Bureau of Criminal Identification; and

844 (B) the Federal Bureau of Investigation;

845 (iii) provide proof using ~~[methods]~~ a method approved by the division of having
846 successfully completed ~~[20 hours of]~~ approved prelicensing education required by the
847 commission under Section 61-2c-104;

848 (A) before taking the examination required by Subsection (4)(a)(iv); and

849 (B) in the number of hours, not to exceed 90 hours, required by rule made by the
850 division in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

851 (iv) provide proof using ~~[methods]~~ a method approved by the division of having
852 successfully passed an examination approved by the commission under Section 61-2c-104.

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

856 (c) The applicant shall pay the cost of:

857 (i) the fingerprinting required by this section; and

858 (ii) the criminal background check required by this section.

859 (d) (i) A license under this chapter is conditional pending completion of the criminal
860 background check required by this Subsection (4).

861 (ii) If a criminal background check discloses that an applicant ~~[failed]~~ fails to
862 accurately disclose a criminal history, the license shall be immediately and automatically
863 revoked.

864 (iii) An individual or entity whose conditional license is revoked under Subsection

- 865 (4)(d)(ii) may appeal the revocation in a hearing conducted by the commission:
- 866 (A) after the revocation; and
- 867 (B) in accordance with Title 63, Chapter 46b, Administrative Procedures Act.
- 868 (iv) The commission may delegate to the division or an administrative law judge the
- 869 authority to conduct a hearing described in Subsection (4)(d)(iii).
- 870 (v) Relief from a revocation may be granted only if:
- 871 (A) the criminal history upon which the division based the revocation:
- 872 (I) did not occur; or
- 873 (II) is the criminal history of another person;
- 874 (B) (I) the revocation is based on a failure to accurately disclose a criminal history; and
- 875 (II) the applicant had a reasonable good faith belief at the time of application that there
- 876 was no criminal history to be disclosed; or
- 877 (C) the division [~~failed~~] fails to follow the prescribed procedure for the revocation.
- 878 (e) If a license is revoked or a revocation is upheld after a hearing described in
- 879 Subsection (4)(d)(iii), the person may not apply for a new license for a period of 12 months
- 880 after the day on which the license is revoked.
- 881 (f) The funds paid by an applicant for the cost of the criminal background check shall
- 882 be nonlapsing.
- 883 (g) The commission may delegate to the division the authority to make a decision on
- 884 whether relief from a revocation should be granted.

885 Section ~~H~~→ [20] 22 ←~~H~~ . Section **61-2c-206** is amended to read:

886 **61-2c-206. Principal lending manager licenses.**

- 887 (1) [~~Except as provided in Subsection (2), to~~] To qualify as a principal lending
- 888 manager under this chapter, an individual shall, in addition to meeting the standards in Section
- 889 61-2c-203:
- 890 (a) submit an application on a form approved by the division;
- 891 (b) pay [~~fees~~] a fee determined by the division under Section 63-38-3.2;
- 892 (c) submit proof of having successfully completed 40 hours of prelicensing education
- 893 approved by the commission under Section 61-2c-104;
- 894 (d) submit proof of having successfully completed the principal lending manager
- 895 examination approved by the commission under Section 61-2c-104;

896 (e) submit proof on [~~forms~~] a form approved by the division of three years of full-time
 897 active experience as a mortgage officer in the five years preceding the day on which the
 898 application is submitted, or its equivalent as approved by the commission; and

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

901 [~~(2)(a) Notwithstanding Subsection (1), an individual described in Subsection (2)(b)~~
 902 ~~may qualify as a principal lending manager without:]~~

903 [~~(i) meeting the requirements of Subsection (1)(c); and]~~

904 [~~(ii) completing the portions of the principal lending manager examination described in~~
 905 ~~Subsection (1)(d) that:]~~

906 [~~(A) relate to federal law; and]~~

907 [~~(B) do not relate to Utah law:]~~

908 [~~(b) An individual may qualify as a principal lending manager pursuant to Subsection~~
 909 ~~(2)(a) if the individual:]~~

910 [~~(i) submits to the division an affidavit that the individual has five years of experience~~
 911 ~~in the business of residential mortgage loans;]~~

912 [~~(ii) establishes that the individual's experience described in this Subsection (2)(b) was~~
 913 ~~acquired:]~~

914 [~~(A) under requirements substantially equivalent to the requirements of this chapter;~~
 915 ~~and]~~

916 [~~(B) in compliance with the requirements of this chapter; and]~~

917 [~~(iii) provides any other information required by the division by rule under Subsection~~
 918 ~~(2)(c):]~~

919 [~~(c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,~~
 920 ~~the division shall define the information an individual shall provide to the division pursuant to~~
 921 ~~Subsection (2)(b):]~~

922 [~~(3)~~] (2) A principal lending manager may not engage in the business of residential
 923 mortgage loans on behalf of more than one entity at the same time.

924 Section ~~Ĥ~~ → [21] 23 ← ~~Ĥ~~ . Section **61-2c-403** is amended to read:

925 **61-2c-403. Cease and desist orders.**

926 (1) (a) The director may issue and serve by certified mail, or by personal service, on an

927 individual or entity an order to cease and desist from an act if:

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

930 (ii) it appears to the director that it would be in the public interest to stop the [~~acts~~] act.

931 (b) Within ten days after service of the order, the party named in the order may request
932 [~~an adjudicative proceeding~~] a hearing to be held in accordance with Title 63, Chapter 46b,
933 Administrative Procedures Act.

934 (c) Pending [~~the~~] a hearing requested under Subsection (1)(b), [~~the~~] a cease and desist
935 order shall remain in effect.

936 (2) (a) After the hearing described in Subsection (1), if the director finds that [~~the acts~~]
937 an act of the individual or entity [~~violate~~] violates this chapter, the director:

938 (i) shall issue an order making the cease and desist order permanent; and

939 (ii) may impose [~~a civil penalty not to exceed the greater of:~~] another disciplinary
940 action under Section 61-2c-402.

941 [~~(A) \$2,500 for each violation; or~~]

942 [~~(B) the amount of any gain or economic benefit derived from each violation.~~]

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

946 (A) (I) the individual or entity [~~did~~] does not request a hearing under Subsection (1); or

947 (II) a permanent cease and desist order is issued against the individual or entity
948 following a hearing or stipulation; and

949 (B) (I) the individual or entity fails to cease the [~~acts~~] act; or

950 (II) after discontinuing the [~~acts~~] act, the individual or entity again commences the
951 [~~acts~~] the act.

952 (ii) The suit described in Subsection (2)(b)(i) shall be filed in the district court in the
953 county:

954 (A) in which the [~~acts occurred~~] act occurs;

955 (B) where the individual resides; or

956 (C) where the individual or entity carries on business.

957 (3) The cease and desist order issued under this section may not interfere with or

958 prevent the prosecution of a remedy or action enforcement under this chapter.

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

961 Section ~~H~~→ [22] 24 ←~~H~~ . Section 61-2c-405 is enacted to read:

962 **61-2c-405. Penalty for violation of chapter.**

963 In addition to being subject to a disciplinary action by the commission, a person who
964 violates this chapter:

965 (1) is guilty of a class A misdemeanor, upon conviction of a first violation of this
966 chapter; and

967 (2) is guilty of a third degree felony, upon conviction of a second or subsequent
968 violation of this chapter.

969 Section ~~H~~→ [23] 25 ←~~H~~ . Section 61-2c-502 is amended to read:

970 **61-2c-502. Additional license fee.**

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

973 (a) determined by the division with the concurrence of the commission; and

974 (b) not to exceed \$18.

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

977 (a) determined by the division with the concurrence of the commission; and

978 (b) not to exceed \$25.

979 (3) Notwithstanding Section 13-1-2, the following shall be paid into the [~~fund~~]

980 Residential Mortgage Loan Education, Research, and Recovery Fund to be used as provided in
981 this part:

982 (a) [~~fees~~] a fee provided in this section; [~~and~~]

983 (b) a fee for certifying:

984 (i) a mortgage school;

985 (ii) a mortgage course; or

986 (iii) a mortgage instructor; and

987 [~~(b)~~] (c) a civil [~~penalties~~] penalty imposed under this chapter.

988 (4) If the balance in the [~~fund~~] Residential Mortgage Loan Education, Research, and

989 Recovery Fund that is available to satisfy [~~judgments~~] a judgment against [~~licensees~~] a licensee
990 decreases to less than \$100,000, the division may make an additional [~~assessments~~] assessment
991 to [~~licensees~~] a licensee to maintain the balance available at \$100,000 to satisfy judgments.

Legislative Review Note
as of 1-25-08 3:38 PM

Office of Legislative Research and General Counsel

H.B. 346 - Division of Real Estate Related Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
