

DIVISION OF REAL ESTATE RELATED

AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: Sheldon L. Killpack

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ addresses rulemaking by the Real Estate Commission;
- ▶ addresses fines that may be imposed;
- ▶ addresses firms;
- ▶ 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;
- ▶ addresses the hours required of prelicensing education for mortgage licensing including providing for rulemaking;
- ▶ removes grandfathering language related to principal lending manager;
- ▶ provides for deposit of certain fees into the Residential Mortgage Loan Education, 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:**

37 **61-2-5.5**, as last amended by Laws of Utah 2007, Chapter 325

38 **61-2-13**, as last amended by Laws of Utah 1991, Chapter 165

39 **61-2-20**, as last amended by Laws of Utah 2007, Chapter 325

40 **61-2-21**, as last amended by Laws of Utah 2007, Chapter 325

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

42 **61-2b-6**, as last amended by Laws of Utah 2005, Chapter 199

43 **61-2b-8**, as last amended by Laws of Utah 2005, Chapter 199

44 **61-2b-18**, as last amended by Laws of Utah 2005, Chapter 199

45 **61-2b-21**, as last amended by Laws of Utah 2005, Chapter 199

46 **61-2b-22**, as last amended by Laws of Utah 2005, Chapter 199

47 **61-2b-24**, as last amended by Laws of Utah 2005, Chapter 199

48 **61-2b-25**, as last amended by Laws of Utah 2007, Chapter 306

49 **61-2b-26**, as last amended by Laws of Utah 2005, Chapter 199

50 **61-2b-27**, as last amended by Laws of Utah 2005, Chapter 199

51 **61-2b-28**, as last amended by Laws of Utah 2007, Chapter 325

52 **61-2b-29**, as last amended by Laws of Utah 2007, Chapter 325

53 **61-2b-30.5**, as last amended by Laws of Utah 2005, Chapter 199

54 **61-2b-31**, as last amended by Laws of Utah 2007, Chapter 325

55 **61-2b-33**, as last amended by Laws of Utah 2005, Chapter 199

56 **61-2c-202**, as last amended by Laws of Utah 2007, Chapter 325

57 **61-2c-206**, as last amended by Laws of Utah 2007, Chapter 325

58 **61-2c-403**, as last amended by Laws of Utah 2007, Chapter 325

59 **61-2c-502**, as last amended by Laws of Utah 2007, Chapter 325

60 ENACTS:

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



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

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

65 **61-2-5.5. Real Estate Commission.**

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

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

70 (i) licensing of:

71 (A) principal brokers;

72 (B) associate brokers;

73 (C) sales agents;

74 (D) real estate companies; and

75 (E) branch offices;

76 (ii) prelicensing and postlicensing education curricula;

77 (iii) examination procedures;

78 (iv) the certification and conduct of:

79 (A) real estate schools;

80 (B) course providers; and

81 (C) instructors;

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

83 (vi) brokerage office procedures and recordkeeping requirements;

84 (vii) property management;

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

86 (ix) rules made under Section 61-2-26 regarding an undivided fractionalized long-term
87 estate; and

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

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

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

94 (i) licensing of any applicant;

95 (ii) conduct of any licensee;

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

98 (iv) violation of this chapter by any person;

99 (d) with the concurrence of the director, impose sanctions as provided in Section
100 61-2-12;

101 (e) advise the director on the administration and enforcement of any matters affecting
102 the division and the real estate sales and property management industries;

103 (f) advise the director on matters affecting the division budget;

104 (g) advise and assist the director in conducting real estate seminars; and

105 (h) perform other duties as provided by:

106 (i) this chapter; and

107 (ii) Title 61, Chapter 2a, Real Estate Recovery Fund Act.

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

110 (b) Four of the commission members shall:

111 (i) have at least five years' experience in the real estate business; and

112 (ii) hold an active principal broker, associate broker, or sales agent license.

113 (c) One commission member shall be a member of the general public.

114 (d) No more than one commission member described in Subsection (2)(b) shall at the
115 time of appointment reside in any given county in the state.

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

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

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

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

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

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

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

131 (5) (a) A member may not receive compensation or benefits for the member's services,
132 but may receive per diem and expenses incurred in the performance of the member's official
133 duties at the rates established by the Division of Finance under Sections 63A-3-106 and
134 63A-3-107.

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

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

137 (b) The director may call additional meetings:

138 (i) at the director's discretion;

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

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

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

142 business.

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

144 **61-2-13. Grounds for revocation of principal broker's license -- Automatic**
145 **inactivation of affiliated associate brokers and sales agents licenses.**

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

150 (i) the revocation, suspension, or probation of ~~[the] a~~ principal broker's license~~[-];~~; or
151 ~~[for]~~

152 (ii) the imposition of a fine against the principal broker in an amount not to exceed
153 ~~[\$500] \$2,500~~ per violation.

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

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

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

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

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

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

166 Section 3. Section **61-2-20** is amended to read:

167 **61-2-20. Rights and privileges of real estate licensees to fill out forms or**
168 **documents.**

169 ~~[A]~~ (1) Except as provided in Subsection (2), a real estate licensee may fill out only

170 those legal forms approved by the commission and the attorney general, and those forms
171 provided by statute~~[, with the following exceptions:]~~.

172 ~~[(1)]~~ (2) (a) (i) A principal broker may fill out any documents associated with the
173 closing of a real estate transaction.

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

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

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

183 (3) The commission may by rule, made in accordance with Title 63, Chapter 46a, Utah
184 Administrative Rulemaking Act, provide a process for the approval of a legal form under this
185 section by the commission and the attorney general.

186 Section 4. Section **61-2-21** is amended to read:

187 **61-2-21. Remedies and action for violations.**

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

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

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

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

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

197 (d) If a request for a hearing is made, the division shall follow the procedures and

198 requirements of Title 63, Chapter 46b, Administrative Procedures Act.

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

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

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

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

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

206 (b) The director shall file suit in the name of the Department of Commerce and the

207 Division of Real Estate, in the district court in the county in which an act described in

208 Subsection (1) ~~[occurred]~~ occurs or where the person resides or carries on business, to enjoin

209 and restrain the person from violating this chapter if:

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

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

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

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

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

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

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

220 (iii) enter a declaratory judgment;

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

222 (v) order disgorgement;

223 (vi) order rescission;

224 (vii) impose a civil penalty not to exceed the greater of:

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

226 (B) the amount of any gain or economic benefit derived from [~~each~~] a violation; and
227 (viii) enter any other relief the court considers just.

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

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

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

234 **61-2b-2. Definitions.**

235 (1) As used in this chapter:

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

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

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

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

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

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

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

253 (ii) An appraisal report [~~shall be~~] is classified by the nature of the assignment as a

254 valuation report, analysis report, or review report in accordance with the definitions provided in
255 Subsection (1)(a)(ii).

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

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

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

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

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

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

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

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

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

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

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

280 (i) a state-licensed appraiser; or

281 (ii) a state-certified appraiser.

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

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

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

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

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

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

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

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

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

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

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

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

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

304 [and]

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

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

308 [~~(s)~~] (r) "Unbiased analysis, opinion, or conclusion" means an analysis, opinion, or
309 conclusion relating to the nature, quality, value, or utility of identified real estate or identified

310 real property that is prepared by a person who is employed or retained to act, or would be
311 perceived by third parties or the public as acting, as a disinterested third party in rendering the
312 analysis, opinion, or conclusion.

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

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

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

319 **61-2b-6. Duties and powers of division.**

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

321 (a) The division shall:

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

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

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

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

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

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

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

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

337 (d) The division may:

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

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

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

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

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

350 (h) The division shall assist the board with respect to the proper interpretation or
351 explanation of the Uniform Standards of Professional Appraisal Practice as required by Section
352 61-2b-27 when an interpretation or explanation becomes necessary in the enforcement of this
353 chapter.

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

355 (i) for processing:

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

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

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

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

360 (j) The division may:

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

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

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

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

365 (ii) subpoena ~~[witnesses and the production of books, documents, records, and other~~

366 ~~papers;~~ a witness;

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

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

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

371 (k) The division may:

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

374 (ii) sponsor real estate appraisal educational activities.

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

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

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

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

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

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

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

- 394 (iii) applicant pays [~~a registration~~] an approval fee to the division;
- 395 (iv) applicant provides the applicant's name, address, occupation, and professional
- 396 credentials; and
- 397 (v) applicant provides a notarized statement that:
- 398 (A) the applicant is competent to render an appraisal and to testify as an expert witness
- 399 in the proceeding; and
- 400 (B) the appraisal and testimony to be offered shall be in accordance with the Uniform
- 401 Standards of Professional Appraisal Practice adopted by the board.

402 (b) Subsection (2)(a) [~~shall be~~] is effective for [~~an~~] an administrative [~~and~~] or judicial

403 property tax [~~proceedings~~] proceeding related to the valuation of real property that is assessed

404 by the tax commission, including those filed but which are not final as of May 3, 1994.

405 (3) (a) [~~The division shall be~~] If the conditions of Subsection (3)(b) are met, the division

406 is immune from any civil action or criminal prosecution for initiating or assisting in [~~any~~] a

407 lawful investigation of [~~the actions of~~] an act of, or participating in [~~any~~] a disciplinary

408 proceeding concerning [~~a trainee or~~];

- 409 (i) a person required to be licensed, certified, or registered pursuant to this chapter; or
- 410 (ii) a person approved as an expert witness pursuant to this chapter [~~if the action is~~
- 411 ~~taken~~].

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

- 413 (i) without malicious intent; and
- 414 (ii) in the reasonable belief that the action [~~was~~] is taken pursuant to the powers and
- 415 duties vested in the [~~members of the~~] division under this chapter.

416 Section 7. Section **61-2b-8** is amended to read:

417 **61-2b-8. Duties of board.**

418 (1) (a) The board shall provide technical assistance to the division relating to real estate

419 appraisal standards and real estate appraiser qualifications [~~and shall have the responsibilities,~~

420 ~~powers~~];

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

422 ~~[(1)]~~ (2) The board shall:

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

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

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

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

431 (ii) clerical staff; and

432 (iii) a person who:

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

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

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

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

441 ~~[(2)]~~ (3) (a) The experience, education, and examination requirements established by
442 the board for ~~[persons]~~ a person licensed or certified under this chapter shall be the minimum
443 criteria established by the Appraiser Qualification Board of the Appraisal Foundation, unless,
444 after notice and a public hearing held in accordance with Title 63, Chapter 46a, Utah
445 Administrative Rulemaking Act, the board finds that the minimum criteria are not appropriate
446 for a state-licensed ~~[appraisers or]~~ appraiser or a state-certified ~~[appraisers]~~ appraiser in this
447 state.

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

450 ~~[(3)]~~ (4) The board shall:

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

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

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

456 ~~[(4)]~~ (5) (a) The board shall consider the proper interpretation or explanation of the
457 Uniform Standards of Professional Appraisal Practice as required by Section 61-2b-27 when:

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

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

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

465 ~~[(5)]~~ (6) The board shall develop and establish or approve the examination
466 specifications and the minimum score required to pass ~~[the examinations]~~ an examination for
467 licensure ~~[and]~~ or certification.

468 ~~[(6)]~~ (7) The board ~~[shall]~~ may review the:

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

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

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

475 ~~[(7)]~~ (8) (a) The board shall conduct an administrative ~~[hearings]~~ hearing, not delegated
476 by the board to an administrative law judge, in connection with ~~[an]~~ a disciplinary ~~[proceedings]~~
477 proceeding under Sections 61-2b-30 and 61-2b-31 concerning:

478 (i) a person required to be licensed [~~or~~], certified, or registered under this chapter; and
 479 (ii) the person's failure to comply with this chapter and the Uniform Standards of
 480 Professional Appraisal Practice as adopted under Section 61-2b-27.

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

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

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

487 (9) A member of the board is immune from [~~any~~] a civil action or criminal prosecution
 488 for [~~any~~] a disciplinary proceeding concerning a person required to be registered, licensed, [~~or~~]
 489 certified, or approved as an expert under this chapter if the action is taken without malicious
 490 intent and in the reasonable belief that the action taken was taken pursuant to the powers and
 491 duties vested in [~~the members~~] a member of the board under this chapter.

492 [~~(9)~~] (10) The board shall require and pass upon proof necessary to determine the
 493 honesty, competency, integrity, and truthfulness of [~~each~~] an applicant for:

- 494 (a) original [~~or renewal~~] licensure [~~or~~], certification, or registration; and
- 495 (b) renewal licensure or certification.

496 Section 8. Section **61-2b-18** is amended to read:

497 **61-2b-18. Application for licensure, certification, or registration -- Approval as**
 498 **an expert witness.**

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

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

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

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

509 (3) At the time of filing an application described in Subsection (1), ~~[each]~~ an applicant
 510 shall:

511 (a) sign a pledge to comply with the Uniform Standards of Professional Appraisal
 512 Practice and the ethical rules to be observed by an appraiser that are established under Section
 513 61-2b-27 for:

- 514 (i) a certified or licensed ~~[appraisers or registered expert witnesses]~~ appraiser;
- 515 (ii) a trainee; or
- 516 (iii) an expert witness approved under this chapter; and

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

520 Section 9. Section **61-2b-21** is amended to read:

521 **61-2b-21. Denial of licensure, certification, or registration.**

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

525 Section 10. Section **61-2b-22** is amended to read:

526 **61-2b-22. Licensing, certification, registration, or expert witness requirements for**
 527 **nonresidents -- Temporary license or certificate -- Revocation.**

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

534 diligence, obtain personal service upon the applicant[-]:

535 (a) approval as an expert witness; or

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

537 (2) A nonresident of this state who [~~has complied with the provisions of~~] complies with

538 Subsection (1) may obtain [~~a registration~~] approval as an expert witness, a license, [~~or~~] a

539 certification, or a registration in this state by complying with [~~all of~~] the provisions of this

540 chapter relating to [~~registration of~~] approval as an expert [~~witnesses~~] witness, licensure, [~~or~~]

541 certification, or registration.

542 (3) A nonresident of this state who [~~has complied with the provisions of~~] complies with

543 Subsection (1) may obtain a temporary permit for a license or certification to perform a contract

544 relating to the appraisal of real estate or real property in this state. To qualify for the issuance

545 of a temporary permit for a license or certification, an applicant must:

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

547 (b) submit evidence that the applicant is licensed or certified in the state in which the

548 applicant primarily conducts business;

549 (c) certify that no formal charges alleging violation of state appraisal licensing or

550 certification laws have been filed against the applicant by the applicant's state of domicile; and

551 (d) pay an application fee in an amount established by the division with the concurrence

552 of the board.

553 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

554 division, with the concurrence of the board, shall make rules establishing:

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

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

557 (5) A temporary permit issued under this section shall be immediately and automatically

558 revoked if the appraiser's license or certification is suspended or revoked in the appraiser's state

559 of domicile.

560 (6) [~~Any~~] A person whose temporary permit for a license or certification [~~has been~~] is

561 revoked under Subsection (5) is entitled to a postrevocation hearing to challenge the revocation.

562 The hearing shall be conducted in accordance with Title 63, Chapter 46b, Administrative
563 Procedures Act.

564 Section 11. Section **61-2b-24** is amended to read:

565 **61-2b-24. Expert witness, licensing, certification, registration documents --**
566 **Assigned number to be used on contracts -- Surrender of documents upon suspension.**

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

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

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

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

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

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

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

585 Section 12. Section **61-2b-25** is amended to read:

586 **61-2b-25. Other law unaffected.**

587 Nothing contained in this chapter shall be considered to prohibit ~~[any]~~ a person
588 ~~[registered]~~ approved, licensed, or certified under this chapter from engaging in the practice of
589 real estate appraising as a professional corporation or a limited liability company in accordance

590 with ~~[the provisions of]~~:

591 (1) ~~[Each]~~ A person licensed or certified under this chapter; or

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

593 Section 13. Section **61-2b-26** is amended to read:

594 **61-2b-26. Principal place of business -- Display of documents -- Notify of changes**
595 **-- Nonresidents.**

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

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

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

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

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

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

609 Section 14. Section **61-2b-27** is amended to read:

610 **61-2b-27. Professional conduct -- Uniform standards.**

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

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

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

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

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

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

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

- 633 (a) (i) modifies the Uniform Standards of Professional Appraisal Practice;
- 634 (ii) issues a supplemental appraisal standard which it considers appropriate for:
 - 635 (A) a residential real estate appraiser; or
 - 636 (B) a general real estate appraiser; or
- 637 (iii) issues an ethical rule to be observed by a real estate appraiser; and
- 638 (b) requests the board to consider the adoption of the modified or supplemental
639 standard or ethical rule.

640 (3) If, after the notice and public hearing described in Subsection (2), the board finds
641 that ~~the~~ a modified or supplemental ~~standards~~ standard or the ethical ~~rules~~ rule issued by
642 the Appraisal Standards Board of the Appraisal Foundation ~~are~~ is appropriate for ~~persons~~ a
643 person licensed, certified, ~~or~~ registered, or approved as an expert witness under this chapter,
644 the board shall recommend ~~rules~~ a rule requiring ~~all persons~~ a person licensed, certified, ~~or~~
645 registered, or approved as an expert witness under this chapter to observe the modified or

646 supplemental [~~standards~~] standard or the ethical [~~rules~~] rule.

647 Section 15. Section **61-2b-28** is amended to read:

648 **61-2b-28. Enforcement -- Investigation -- Orders -- Hearings.**

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

650 (i) [~~any~~] a person registered, licensed, or certified under this chapter;

651 (ii) an applicant for registration, licensure, or certification;

652 (iii) an applicant for renewal of licensure or certification; or

653 (iv) a person required to be registered, licensed, or certified under this chapter.

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

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

656 (i) impose disciplinary action;

657 (ii) deny issuance to an applicant of:

658 (A) an original [~~or renewal~~] registration, license, or certification; or

659 (B) a renewal of a license or certification; or

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

661 (2) (a) The division may:

662 (i) administer an oath or affirmation;

663 (ii) subpoena [~~witnesses~~] a witness;

664 (iii) take evidence; and

665 (iv) require the production of [~~books, papers, contracts, records;~~] a book, paper,

666 contract, record, other [~~documents~~] document, or information relevant to the investigation

667 described in Subsection (1).

668 (b) The division may serve [~~subpoenas~~] a subpoena by certified mail.

669 (c) [~~Each~~] A failure to respond to a request by the division in an investigation

670 authorized under this chapter is considered to be a separate violation of this chapter, including:

671 (i) failing to respond to a subpoena;

672 (ii) withholding evidence; or

673 (iii) failing to produce [~~documents or records~~] a document or record.

674 (3) (a) The director shall issue and serve upon a person an order directing that person
 675 to cease and desist from an act if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

700 (5) [~~The remedies and action~~] A remedy or action provided in this section [~~do~~] does not
 701 limit, interfere with, or prevent the prosecution of [~~any other remedies or actions~~] another

702 remedy or action, including a criminal [~~proceedings~~] proceeding.

703 Section 16. Section **61-2b-29** is amended to read:

704 **61-2b-29. Disciplinary action -- Grounds.**

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

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

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

708 (b) On the basis of [~~any of the grounds~~] a ground listed in Subsection (2) for

709 disciplinary action, board action may include:

710 (i) revoking, suspending, or placing a person's registration, license, or certification on
711 probation;

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

713 (iii) denying a person's renewal license or certification;

714 [~~(iii)~~] (iv) in the case of denial or revocation of a registration, license, or certification,

715 setting a waiting period for an applicant to apply for a registration, license, or certification under

716 this chapter;

717 [~~(iv)~~] (v) ordering remedial education;

718 [~~(v)~~] (vi) imposing a civil penalty upon a person not to exceed the greater of:

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

720 (B) the amount of any gain or economic benefit from [~~each~~] a violation;

721 [~~(vi)~~] (vii) issuing a cease and desist order; or

722 [~~(vii)~~] (viii) doing any combination of Subsections (1)(b)(i) through [~~(vi)~~](vii).

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

724 (a) procuring or attempting to procure a registration, license, or certification under this

725 chapter;

726 (i) by fraud; or

727 (ii) by making a false statement, submitting false information, or making a material

728 misrepresentation in an application filed with the division;

729 (b) paying money or attempting to pay money other than [~~the fees~~] a fee provided for

730 by this chapter to ~~[any]~~ a member or employee of the division to procure a registration, license,
 731 or certification under this chapter;

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

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

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

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

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

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

744 (i) that portion of a written appraisal report that deals with professional qualifications;
 745 or ~~[in any]~~

746 (ii) testimony concerning professional qualifications;

747 (i) violating or disregarding ~~[any]~~;

748 (i) a provision of this chapter~~[-];~~;

749 (ii) an order of the board~~[-];~~ or ~~[any]~~

750 (iii) a rule issued under this chapter;

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

754 (k) accepting a contingent fee for performing an appraisal as defined in Subsection
 755 61-2b-2(1)(a) if in fact the fee is or was contingent upon;

756 (i) the appraiser reporting a predetermined analysis, opinion, or conclusion ~~[or is or was~~
 757 contingent upon];

- 758 (ii) the analysis, opinion, conclusion, or valuation reached; or ~~upon~~
- 759 (iii) the consequences resulting from the appraisal assignment;
- 760 (l) unprofessional conduct as defined by statute or rule;
- 761 (m) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
- 762 (i) providing a title insurance product or service without the approval required by
- 763 Section 31A-2-405; or
- 764 (ii) knowingly providing false or misleading information in the statement required by
- 765 Subsection 31A-2-405(2); or
- 766 (n) ~~any~~ other conduct that constitutes dishonest dealing.

767 Section 17. Section **61-2b-30.5** is amended to read:

768 **61-2b-30.5. Reinstatement of license, certification, registration, approval --**

769 **Expert witness -- Trainee.**

770 (1) An individual who has had ~~an appraiser registration;~~ a license, ~~or~~ certification,

771 registration, or approval revoked under this chapter;

772 (a) may not apply for renewal of that ~~registration;~~ license, ~~or~~ certification, ~~but~~

773 registration, or approval; and

774 (b) may apply for licensure ~~or~~, certification, registration, or approval as prescribed for

775 an original license or certification subject to the limitations in Subsection (2).

776 (2) An applicant for licensure, certification, ~~or for~~ registration, or approval as an

777 expert witness under Subsection (1):

778 (a) may not apply for licensure ~~or~~, certification, registration, or approval until at least

779 five years after the date of revocation of the applicant's original license ~~or~~, certification,

780 registration, or approval; and

781 (b) is not entitled to credit for experience gained prior to the date of revocation in

782 determining whether the applicant meets the experience requirement for licensure ~~or~~,

783 certification, registration, or approval.

784 (3) A person whose license or certification is revoked may not act as a trainee until at

785 least four years after the day on which the person's license or certification is revoked.

786 Section 18. Section **61-2b-31** is amended to read:

787 **61-2b-31. Disciplinary hearing process.**

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

789 (a) notify the person against whom the board seeks to take disciplinary action; and

790 (b) commence an adjudicative proceeding.

791 (2) If, after the hearing, the board determines that a person described in Subsection (1)

792 violated this chapter, the board may impose disciplinary action by written order as provided in

793 Section 61-2b-29.

794 (3) (a) The board may:

795 (i) conduct hearings with the assistance of an administrative law judge; or ~~may~~

796 (ii) delegate hearings to an administrative law judge.

797 (b) If ~~the~~ a hearing is delegated by the board to an administrative law judge, the

798 administrative law judge shall submit to the board for its consideration:

799 (i) written findings of fact~~;~~;

800 (ii) written conclusions of law~~;~~; and

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

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

803 including the complainant, may obtain judicial review of ~~[any]~~ an adverse ruling, order, or

804 decision of the board. ~~[Any appeal shall be governed by the Utah Rules of Appellate~~

805 Procedure.]

806 (b) If ~~the~~ an applicant, licensee, ~~[or]~~ certificate holder, or registrant prevails in ~~[the]~~ an

807 appeal and the court finds that the state action ~~[was]~~ is undertaken without substantial

808 justification, the court may award reasonable litigation expenses to the applicant, licensee, ~~[or]~~

809 certificate holder, or registrant as provided under Title ~~[78]~~ 78B, Chapter ~~[27a;]~~ 8, Part 5, Small

810 Business Equal Access to Justice Act.

811 Section 19. Section **61-2b-33** is amended to read:

812 **61-2b-33. Penalty for violating this chapter.**

813 ~~[(1) Any person required by this chapter to be licensed or certified who engages in real~~

814 ~~estate appraisal activity in this state without obtaining a license or certification or]~~ In addition to
815 being subject to a disciplinary action by the board, a person who violates [any provision of] this
816 chapter:

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

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

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

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

826 Section 20. Section **61-2c-202** is amended to read:

827 **61-2c-202. Licensure procedures.**

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

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

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

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

832 (iii) if the applicant is an entity:

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

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

835 (iv) demonstrates that the applicant meets the qualifications listed in Section 61-2c-203;

836 (v) if the applicant is an entity, lists:

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

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

841 (vi) includes any information required by the division by rule;

- 842 (b) pay to the division:
- 843 (i) an application fee established by the division in accordance with Section 63-38-3.2;
- 844 and
- 845 (ii) the reasonable expenses incurred in processing the application for licensure,
- 846 including the costs incurred by the division under Subsection (4); and
- 847 (c) comply with Subsection (4).
- 848 (2) (a) The division shall issue a license to an applicant if the division, with the
- 849 concurrence of the commission, finds that the applicant:
- 850 (i) meets the qualifications of Section 61-2c-203; and
- 851 (ii) complies with this section.
- 852 (b) The commission may delegate to the division the authority to:
- 853 (i) review ~~[any]~~ a class or category of application for an initial or renewed ~~[licenses]~~
- 854 license;
- 855 (ii) determine whether an applicant meets the licensing criteria in Section 61-2c-203;
- 856 (iii) conduct ~~[any]~~ a necessary hearing on an application; and
- 857 (iv) approve or deny a license application without concurrence by the commission.
- 858 (c) If the commission delegates to the division the authority to approve or deny an
- 859 application without concurrence by the commission and the division denies an application for
- 860 licensure, the applicant who is denied licensure may petition the commission for review of the
- 861 denial.
- 862 (d) An applicant who is denied licensure under ~~[this]~~ Subsection (2)(b) may seek agency
- 863 review by the executive director only after the commission ~~[has reviewed]~~ reviews the division's
- 864 denial of the applicant's application.
- 865 (3) Subject to Subsection (2)(d) and in accordance with Title 63, Chapter 46b,
- 866 Administrative Procedures Act, an applicant who is denied licensure under this chapter may
- 867 submit a request for agency review to the executive director within 30 days following the
- 868 ~~[issuance of]~~ day on which the commission order denying the licensure is issued.
- 869 (4) (a) An individual applying for a license under this chapter shall:

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

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

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

874 (B) the Federal Bureau of Investigation;

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

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

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

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

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

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

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

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

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

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

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

895 (A) after the revocation; and

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

897 (iv) The commission may delegate to the division or an administrative law judge the

898 authority to conduct a hearing described in Subsection (4)(d)(iii).

899 (v) Relief from a revocation may be granted only if:

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

901 (I) did not occur; or

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

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

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

906 (C) the division [~~failed~~] fails to follow the prescribed procedure for the revocation.

907 (e) If a license is revoked or a revocation is upheld after a hearing described in
908 Subsection (4)(d)(iii), the person may not apply for a new license for a period of 12 months
909 after the day on which the license is revoked.

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

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

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

915 **61-2c-206. Principal lending manager licenses.**

916 (1) [~~Except as provided in Subsection (2), to~~] To qualify as a principal lending manager
917 under this chapter, an individual shall, in addition to meeting the standards in Section
918 61-2c-203:

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

920 (b) pay [~~fees~~] a fee determined by the division under Section 63-38-3.2;

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

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

925 (e) submit proof on [~~forms~~] a form approved by the division of three years of full-time

926 active experience as a mortgage officer in the five years preceding the day on which the
927 application is submitted, or its equivalent as approved by the commission; and

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

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

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

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

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

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

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

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

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

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

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

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

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

951 ~~[(3)]~~ (2) A principal lending manager may not engage in the business of residential
952 mortgage loans on behalf of more than one entity at the same time.

953 Section 22. Section **61-2c-403** is amended to read:

954 **61-2c-403. Cease and desist orders.**

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

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

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

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

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

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

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

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

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

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

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

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

975 (II) a permanent cease and desist order is issued against the individual or entity

976 following a hearing or stipulation; and

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

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

979 [~~acts~~] act.

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

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

983 (B) where the individual resides; or

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

985 (3) The cease and desist order issued under this section may not interfere with or
986 prevent the prosecution of a remedy or action enforcement under this chapter.

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

989 Section 23. Section **61-2c-405** is enacted to read:

990 **61-2c-405. Penalty for violation of chapter.**

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

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

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

997 Section 24. Section **61-2c-502** is amended to read:

998 **61-2c-502. Additional license fee.**

999 (1) An individual who applies for or renews a license shall pay, in addition to the
1000 application or renewal fee, a reasonable annual fee:

1001 (a) determined by the division with the concurrence of the commission; and

1002 (b) not to exceed \$18.

1003 (2) An entity that applies for or renews an entity license shall pay, in addition to the
1004 application or renewal fee, a reasonable annual fee:

1005 (a) determined by the division with the concurrence of the commission; and

1006 (b) not to exceed \$25.

1007 (3) Notwithstanding Section 13-1-2, the following shall be paid into the [~~fund~~]
1008 Residential Mortgage Loan Education, Research, and Recovery Fund to be used as provided in
1009 this part:

1010 (a) ~~[fees]~~ a fee provided in this section; ~~[and]~~
1011 (b) a fee for certifying:
1012 (i) a mortgage school;
1013 (ii) a mortgage course; or
1014 (iii) a mortgage instructor; and
1015 ~~[(b)]~~ (c) a civil ~~[penalties]~~ penalty imposed under this chapter.
1016 (4) If the balance in the ~~[fund]~~ Residential Mortgage Loan Education, Research, and
1017 Recovery Fund that is available to satisfy ~~[judgments]~~ a judgment against ~~[licensees]~~ a licensee
1018 decreases to less than \$100,000, the division may make an additional ~~[assessments]~~ assessment
1019 to ~~[licensees]~~ a licensee to maintain the balance available at \$100,000 to satisfy judgments.