

**Representative Gage Froerer** proposes the following substitute bill:

**DIVISION OF REAL ESTATE RELATED**

**AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gage Froerer**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ addresses exemptions from real estate licensing;
- ▶ addresses rulemaking by the Real Estate Commission;
- ▶ addresses fines that may be imposed;
- ▶ 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



- 26 including providing for rulemaking;
- 27       ▶ 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:

- 37       **61-2-3**, as last amended by Laws of Utah 2007, Chapter 325
- 38       **61-2-5.5**, as last amended by Laws of Utah 2007, Chapter 325
- 39       **61-2-13**, as last amended by Laws of Utah 1991, Chapter 165
- 40       **61-2-20**, as last amended by Laws of Utah 2007, Chapter 325
- 41       **61-2-21**, as last amended by Laws of Utah 2007, Chapter 325
- 42       **61-2b-2**, as last amended by Laws of Utah 2005, Chapter 199
- 43       **61-2b-6**, as last amended by Laws of Utah 2005, Chapter 199
- 44       **61-2b-8**, as last amended by Laws of Utah 2005, Chapter 199
- 45       **61-2b-18**, as last amended by Laws of Utah 2005, Chapter 199
- 46       **61-2b-21**, as last amended by Laws of Utah 2005, Chapter 199
- 47       **61-2b-22**, as last amended by Laws of Utah 2005, Chapter 199
- 48       **61-2b-24**, as last amended by Laws of Utah 2005, Chapter 199
- 49       **61-2b-25**, as last amended by Laws of Utah 2007, Chapter 306
- 50       **61-2b-26**, as last amended by Laws of Utah 2005, Chapter 199
- 51       **61-2b-27**, as last amended by Laws of Utah 2005, Chapter 199
- 52       **61-2b-28**, as last amended by Laws of Utah 2007, Chapter 325
- 53       **61-2b-29**, as last amended by Laws of Utah 2007, Chapter 325
- 54       **61-2b-30.5**, as last amended by Laws of Utah 2005, Chapter 199
- 55       **61-2b-31**, as last amended by Laws of Utah 2007, Chapter 325
- 56       **61-2b-33**, as last amended by Laws of Utah 2005, Chapter 199

- 57           **61-2c-202**, as last amended by Laws of Utah 2007, Chapter 325
- 58           **61-2c-206**, as last amended by Laws of Utah 2007, Chapter 325
- 59           **61-2c-403**, as last amended by Laws of Utah 2007, Chapter 325
- 60           **61-2c-502**, as last amended by Laws of Utah 2007, Chapter 325
- 61           **72-5-116**, as enacted by Laws of Utah 2007, Chapter 325

62 ENACTS:

63           **61-2c-405**, Utah Code Annotated 1953



64  
65 *Be it enacted by the Legislature of the state of Utah:*

66           Section 1. Section **61-2-3** is amended to read:

67           **61-2-3. Exempt persons and transactions.**

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

70           (i) any person who as owner or lessor performs the acts described in Subsection 61-2-2

71 (12) with reference to property owned or leased by that person;

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

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

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

80           (v) a regular salaried employee of a condominium homeowners' association who  
81 manages real property subject to the declaration of condominium that established the  
82 homeowners' association, except that the employee may only manage property for one  
83 condominium homeowners' association; and

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

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

87           (i) an employee engaged in the sale of properties regulated under:

- 88 (A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; and  
89 (B) Title 57, Chapter 19, Timeshare and Camp Resort Act;  
90 (ii) an employee engaged in the sale of cooperative interests regulated under Title 57,  
91 Chapter 23, Real Estate Cooperative Marketing Act; or  
92 (iii) any person whose interest as an owner or lessor is obtained by that person or  
93 transferred to that person for the purpose of evading the application of this chapter, and not for  
94 any other legitimate business reason.
- 95 (2) A license under this chapter is not required for:  
96 (a) an isolated transaction by a person holding a duly executed power of attorney from  
97 the owner;  
98 (b) services rendered by an attorney in performing the attorney's duties as an attorney;  
99 (c) a receiver, trustee in bankruptcy, administrator, executor, or any person acting  
100 under order of any court;  
101 (d) a trustee or employee of a trustee under a deed of trust or a will;  
102 (e) any public utility, officer of a public utility, or regular salaried employee of a public  
103 utility, unless performance of any of the acts set out in Subsection 61-2-2(12) is in connection  
104 with the sale, purchase, lease, or other disposition of real estate or investment in real estate  
105 unrelated to the principal business activity of that public utility;  
106 (f) a regular salaried employee or authorized agent working under the oversight of the  
107 Department of Transportation when performing an act on behalf of the Department of  
108 Transportation in connection with one or more of the following:  
109 (i) the acquisition of real property pursuant to Section 72-5-103;  
110 (ii) the disposal of real property pursuant to Section 72-5-111; or  
111 (iii) services that constitute property management; or  
112 (g) a regular salaried employee of a city or town when performing an act on behalf of  
113 the city or town:  
114 (i) in accordance with Title 10, Utah Municipal Code; and  
115 (ii) in connection with one or more of the following:  
116 (A) the acquisition of real property, including by eminent domain;  
117 (B) the disposal of real property; or  
118 (C) services that constitute property management.

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

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

124 (ii) the security is registered for sale:

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

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

127 (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec.  
128 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation  
129 D, Rule 506, 17 C.F.R. Sec. 230.506; and

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

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

132 **61-2-5.5. Real Estate Commission.**

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

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

137 (i) licensing of:

138 (A) principal brokers;

139 (B) associate brokers;

140 (C) sales agents;

141 (D) real estate companies; and

142 (E) branch offices;

143 (ii) prelicensing and postlicensing education curricula;

144 (iii) examination procedures;

145 (iv) the certification and conduct of:

146 (A) real estate schools;

147 (B) course providers; and

148 (C) instructors;

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

- 150 (vi) brokerage office procedures and recordkeeping requirements;
- 151 (vii) property management;
- 152 (viii) standards of conduct for real estate licensees; [~~and~~]
- 153 (ix) rules made under Section 61-2-26 regarding an undivided fractionalized long-term
- 154 estate; and
- 155 (x) if the commission determines necessary, rules as provided in Subsection 61-2-20(3)
- 156 regarding legal forms;
- 157 (b) establish, with the concurrence of the division, all fees as provided in this chapter
- 158 and Title 61, Chapter 2a, Real Estate Recovery Fund Act;
- 159 (c) conduct all administrative hearings not delegated by the commission to an
- 160 administrative law judge or the division relating to the:
- 161 (i) licensing of any applicant;
- 162 (ii) conduct of any licensee;
- 163 (iii) the certification or conduct of any real estate school, course provider, or instructor
- 164 regulated under this chapter; or
- 165 (iv) violation of this chapter by any person;
- 166 (d) with the concurrence of the director, impose sanctions as provided in Section
- 167 61-2-12;
- 168 (e) advise the director on the administration and enforcement of any matters affecting
- 169 the division and the real estate sales and property management industries;
- 170 (f) advise the director on matters affecting the division budget;
- 171 (g) advise and assist the director in conducting real estate seminars; and
- 172 (h) perform other duties as provided by:
- 173 (i) this chapter; and
- 174 (ii) Title 61, Chapter 2a, Real Estate Recovery Fund Act.
- 175 (2) (a) The commission shall be comprised of five members appointed by the governor
- 176 and approved by the Senate.
- 177 (b) Four of the commission members shall:
- 178 (i) have at least five years' experience in the real estate business; and
- 179 (ii) hold an active principal broker, associate broker, or sales agent license.
- 180 (c) One commission member shall be a member of the general public.

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

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

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

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

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

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

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

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

198 (5) (a) A member may not receive compensation or benefits for the member's services,  
199 but may receive per diem and expenses incurred in the performance of the member's official  
200 duties at the rates established by the Division of Finance under Sections 63A-3-106 and  
201 63A-3-107.

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

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

204 (b) The director may call additional meetings:

205 (i) at the director's discretion;

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

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

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

210 Section 3. Section **61-2-13** is amended to read:

211 **61-2-13. Grounds for revocation of principal broker's license -- Automatic**

212 **inactivation of affiliated associate brokers and sales agents licenses.**

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

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

219 (ii) the imposition of a fine against the principal broker in an amount not to exceed  
 220 [\$500] \$2,500 per violation.

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

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

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

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

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

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

233 Section 4. Section **61-2-20** is amended to read:

234 **61-2-20. Rights and privileges of real estate licensees to fill out forms or**  
 235 **documents.**

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

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

241 ~~[+]~~ (ii) A branch broker or associate broker may fill out any documents associated  
 242 with the closing of a real estate transaction if designated to fill out the documents by the



243 principal broker with whom the branch broker or associate broker is affiliated.

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

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

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

253 (a) provides for the involvement of the commission and attorney general in the creation  
254 of a legal form; and

255 (b) protects the interest of the general public.

256 Section 5. Section **61-2-21** is amended to read:

257 **61-2-21. Remedies and action for violations.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

290 (iii) enter a declaratory judgment;

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

292 (v) order disgorgement;

293 (vi) order rescission;

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

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

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

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

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

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

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

304 **61-2b-2. Definitions.**

305 (1) As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

334 (f) (i) (A) "Consultation service" means an engagement to provide a real estate  
335 valuation service analysis, opinion, conclusion, or other service that does not fall within the

336 definition of appraisal.

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

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

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

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

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

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

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

351 (i) a state-licensed appraiser; or

352 (ii) a state-certified appraiser.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

389 Section 7. Section **61-2b-6** is amended to read:

390 **61-2b-6. Duties and powers of division.**

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

392 (a) The division shall:

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

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

397 (iii) issue [~~licenses and certifications to qualified applicants~~] a license or certification

398 to a qualified applicant pursuant to this chapter; and

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

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

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

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

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

409 (d) The division may:

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

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

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

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

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

422 (h) The division shall assist the board with respect to the proper interpretation or  
423 explanation of the Uniform Standards of Professional Appraisal Practice as required by Section  
424 61-2b-27 when an interpretation or explanation becomes necessary in the enforcement of this  
425 chapter.

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

427 (i) for processing:

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

- 429 (B) [~~applications~~] an application for licensing and certification; and
- 430 (C) [~~registration of expert witnesses~~] approval of an expert witness; and
- 431 (ii) for all other functions required or permitted by this chapter.
- 432 (j) The division may:
- 433 (i) investigate [~~complaints~~] a complaint against:
- 434 (A) [~~trainees~~] a trainee; [~~or~~]
- 435 (B) [~~persons~~] a person licensed or certified under this chapter; or
- 436 (C) a person required to be licensed, certified, or registered under this chapter;
- 437 (ii) subpoena [~~witnesses and the production of books, documents, records, and other~~
- 438 ~~papers;~~] a witness;
- 439 (iii) subpoena the production of a book, document, record, or other paper;
- 440 [(iii)] (iv) administer [~~oaths~~] an oath; and
- 441 [(iv)] (v) take testimony and receive evidence concerning [~~all matters~~] a matter within
- 442 the division's jurisdiction.
- 443 (k) The division may:
- 444 (i) promote research and conduct studies relating to the profession of real estate
- 445 appraising; and
- 446 (ii) sponsor real estate appraisal educational activities.
- 447 (l) The division shall adopt, with the concurrence of the board, rules for the
- 448 administration of this chapter pursuant to Title 63, Chapter 46a, Utah Administrative
- 449 Rulemaking Act, that are not inconsistent with this chapter or the constitution and laws of this
- 450 state or of the United States.
- 451 (m) The division shall employ an appropriate staff to investigate allegations that
- 452 [~~persons~~] a person required to be licensed [~~or~~], certified, or registered under this chapter
- 453 [~~failed~~] fails to comply with this chapter.
- 454 (n) The division may employ [~~such~~] other professional, clerical, and technical staff as
- 455 may be necessary to properly administer the work of the division under this chapter.
- 456 (o) The division may make available, at a reasonable cost determined by the division, a
- 457 list of the names and addresses of all persons licensed or certified by the division under this
- 458 chapter to the extent the information is a public record under Title 63, Chapter 2, Government
- 459 Records Access and Management Act.

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

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

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

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

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

469 (v) applicant provides a notarized statement that:

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

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

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

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

481 (i) a person required to be licensed, certified, or registered pursuant to this chapter; or

482 (ii) a person approved as an expert witness pursuant to this chapter ~~[if the action is~~  
483 ~~taken]~~.

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

485 (i) without malicious intent; and

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

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

489 **61-2b-8. Duties of board.**

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



491 appraisal standards and real estate appraiser qualifications [~~and shall have the responsibilities,~~  
492 ~~powers,~~].

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

494 [~~(1)~~] (2) The board shall:

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

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

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

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

503 (ii) clerical staff; and

504 (iii) a person who:

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

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

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

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

513 [~~(2)~~] (3) (a) The experience, education, and examination requirements established by  
514 the board for [~~persons~~] a person licensed or certified under this chapter shall be the minimum  
515 criteria established by the Appraiser Qualification Board of the Appraisal Foundation, unless,  
516 after notice and a public hearing held in accordance with Title 63, Chapter 46a, Utah  
517 Administrative Rulemaking Act, the board finds that the minimum criteria are not appropriate  
518 for a state-licensed [~~appraisers or~~] appraiser or a state-certified [~~appraisers~~] appraiser in this  
519 state.

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

522 [~~(3)~~] (4) The board shall:

523 (a) determine the continuing education requirements appropriate for the renewal of

524 [~~licenses and certifications~~] a license or certification issued under this chapter;

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

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

528 [~~(4)~~] (5) (a) The board shall consider the proper interpretation or explanation of the  
529 Uniform Standards of Professional Appraisal Practice as required by Section 61-2b-27 when:

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

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

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

537 [~~(5)~~] (6) The board shall develop and establish or approve the examination  
538 specifications and the minimum score required to pass [~~the examinations~~] an examination for  
539 licensure [~~and~~] or certification.

540 [~~(6)~~] (7) The board [~~shall~~] may review the:

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

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

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

547 [~~(7)~~] (8) (a) The board shall conduct an administrative [~~hearings~~] hearing, not  
548 delegated by the board to an administrative law judge, in connection with [~~an~~] a disciplinary  
549 [~~proceedings~~] proceeding under Sections 61-2b-30 and 61-2b-31 concerning:

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

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

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

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

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

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

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

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

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

566 (i) without malicious intent; and

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

569 ~~[(9)]~~ (10) The board shall require and pass upon proof necessary to determine the  
570 honesty, competency, integrity, and truthfulness of ~~[each]~~ an applicant for:

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

572 (b) renewal licensure or certification.

573 Section 9. Section **61-2b-18** is amended to read:

574 **61-2b-18. Application for licensure, certification, or registration -- Approval as**  
575 **an expert witness.**

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

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

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

580 (c) renewal of certification or licensure.

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

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

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

585 (c) renewal of certification or licensure.

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

588 (a) sign a pledge to comply with the Uniform Standards of Professional Appraisal  
589 Practice and the ethical rules to be observed by an appraiser that are established under Section  
590 61-2b-27 for:

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

592 (ii) a trainee; or

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

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

597 Section 10. Section **61-2b-21** is amended to read:

598 **61-2b-21. Denial of licensure, certification, or registration.**

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

602 Section 11. Section **61-2b-22** is amended to read:

603 **61-2b-22. Licensing, certification, registration, or expert witness requirements**  
604 **for nonresidents -- Temporary license or certificate -- Revocation.**

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

612 (a) approval as an expert witness; or

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

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

615 with Subsection (1) may obtain [~~a registration~~] approval as an expert witness, a license, [~~or~~] a  
 616 certification, or a registration in this state by complying with [~~all of~~] the provisions of this  
 617 chapter relating to [~~registration of~~] approval as an expert [~~witnesses~~] witness, licensure, [~~or~~]  
 618 certification, or registration.

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

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

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

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

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

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

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

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

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

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

641 Section 12. Section **61-2b-24** is amended to read:

642 **61-2b-24. Expert witness, licensing, certification, registration documents --**  
 643 **Assigned number to be used on contracts -- Surrender of documents upon suspension.**

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

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

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

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

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

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

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

662 Section 13. Section **61-2b-25** is amended to read:

663 **61-2b-25. Other law unaffected.**

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

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

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

670 Section 14. Section **61-2b-26** is amended to read:

671 **61-2b-26. Principal place of business -- Display of documents -- Notify of changes**  
672 **-- Nonresidents.**

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

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

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

676 (2) (a) Upon [~~any~~] a change of a person's principal business location or home address, a

677 person licensed or certified under this chapter shall promptly send the division a signed  
678 statement notifying the division of ~~[any]~~ the change within ten business days of the change.

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

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

686 Section 15. Section **61-2b-27** is amended to read:

687 **61-2b-27. Professional conduct -- Uniform standards.**

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

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

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

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

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

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

705 (2) The board shall schedule a public hearing pursuant to Title 63, Chapter 46a, Utah  
706 Administrative Rulemaking Act, for the purpose of deciding whether or not the board should  
707 require ~~[the]~~ a modified or supplemental ~~[standards]~~ standard or the ethical ~~[rules]~~ rule to be

708 observed by ~~[persons]~~ a person licensed, certified, ~~[or]~~ registered, or approved as an expert  
 709 witness under this chapter~~[-]~~ if the Appraisal Standards Board of the Appraisal Foundation:

- 710 (a) (i) modifies the Uniform Standards of Professional Appraisal Practice;  
 711 (ii) issues a supplemental appraisal standard which it considers appropriate for:  
 712 (A) a residential real estate appraiser; or  
 713 (B) a general real estate appraiser; or  
 714 (iii) issues an ethical rule to be observed by a real estate appraiser; and  
 715 (b) requests the board to consider the adoption of the modified or supplemental  
 716 standard or ethical rule.

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

724 Section 16. Section **61-2b-28** is amended to read:

725 **61-2b-28. Enforcement -- Investigation -- Orders -- Hearings.**

- 726 (1) (a) The division may investigate the actions of:  
 727 (i) ~~[any]~~ a person registered, licensed, or certified under this chapter;  
 728 (ii) an applicant for registration, licensure, or certification;  
 729 (iii) an applicant for renewal of licensure or certification; or  
 730 (iv) a person required to be registered, licensed, or certified under this chapter.  
 731 (b) The division may initiate an agency action against a person described in Subsection  
 732 (1)(a) in accordance with Title 63, Chapter 46b, Administrative Procedures Act, to:  
 733 (i) impose disciplinary action;  
 734 (ii) deny issuance to an applicant of:  
 735 (A) an original [or renewal] registration, license, or certification; or  
 736 (B) a renewal of a license or certification; or  
 737 (iii) issue a cease and desist order as provided in Subsection (3).  
 738 (2) (a) The division may:



- 739 (i) administer an oath or affirmation;
- 740 (ii) subpoena [~~witnesses~~] a witness;
- 741 (iii) take evidence; and
- 742 (iv) require the production of [~~books, papers, contracts, records,;~~] a book, paper,
- 743 contract, record, other [~~documents~~] document, or information relevant to the investigation
- 744 described in Subsection (1).
- 745 (b) The division may serve [~~subpoenas~~] a subpoena by certified mail.
- 746 (c) [~~Each~~] A failure to respond to a request by the division in an investigation
- 747 authorized under this chapter is considered to be a separate violation of this chapter, including:
- 748 (i) failing to respond to a subpoena;
- 749 (ii) withholding evidence; or
- 750 (iii) failing to produce [~~documents or records~~] a document or record.
- 751 (3) (a) The director shall issue and serve upon a person an order directing that person to
- 752 cease and desist from an act if:
- 753 (i) the director has reason to believe that the person has been engaging, is about to
- 754 engage, or is engaging in the act constituting a violation of this chapter; and
- 755 (ii) it appears to the director that it would be in the public interest to stop the act.
- 756 (b) Within ten days after receiving the order, the person upon whom the order is served
- 757 may request [~~an adjudicative proceeding~~] a hearing.
- 758 (c) Pending [~~the~~] a hearing requested under Subsection (3)(b), [~~the~~] a cease and desist
- 759 order shall remain in effect.
- 760 (d) If a request for hearing is made, the division shall follow the procedures and
- 761 requirements of Title 63, Chapter 46b, Administrative Procedures Act.
- 762 (4) (a) After [~~the~~] a hearing requested under Subsection (3), if the board agrees that
- 763 [~~the acts~~] an act of the person [~~violate~~] violates this chapter, the board:
- 764 (i) shall issue an order making the cease and desist order permanent; and
- 765 (ii) may impose [~~a civil penalty not to exceed the greater of:~~] another disciplinary
- 766 action under Section 61-2b-29.
- 767 [~~(A) \$2,500 for each violation, or~~]
- 768 [~~(B) the amount of any gain or economic benefit derived from each violation.~~]
- 769 (b) The director shall commence an action in the name of the Department of

770 Commerce and Division of Real Estate, in the district court in the county in which an act  
 771 described in Subsection (3) occurs or where the person resides or carries on business, to enjoin  
 772 and restrain the person from violating this chapter if:

- 773 (i) (A) ~~[no]~~ a hearing is not requested under Subsection (3); and  
 774 (B) the person fails to cease the act described in Subsection (3); or  
 775 (ii) after discontinuing the act described in Subsection (3), the person again  
 776 commences the act.

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

780 Section 17. Section **61-2b-29** is amended to read:

781 **61-2b-29. Disciplinary action -- Grounds.**

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

- 783 (i) registered, licensed, or certified under this chapter; or  
 784 (ii) required to be registered, licensed, or certified under this chapter.

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

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

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

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

791 ~~[(iii)]~~ (iv) in the case of denial or revocation of a registration, license, or certification,  
 792 setting a waiting period for an applicant to apply for a registration, license, or certification  
 793 under this chapter;

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

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

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

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

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

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

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

801 (a) procuring or attempting to procure a registration, license, or certification under this  
802 chapter;

803 (i) by fraud; or

804 (ii) by making a false statement, submitting false information, or making a material  
805 misrepresentation in an application filed with the division;

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

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

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

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

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

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

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

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

823 (ii) testimony concerning professional qualifications;

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

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

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

827 (iii) a rule issued under this chapter;

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

831 (k) accepting a contingent fee for performing an appraisal as defined in Subsection

832 61-2b-2(1)(a) if in fact the fee is or was contingent upon:

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

835 (ii) the analysis, opinion, conclusion, or valuation reached; or [~~upon~~]

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

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

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

839 (i) providing a title insurance product or service without the approval required by

840 Section 31A-2-405; or

841 (ii) knowingly providing false or misleading information in the statement required by

842 Subsection 31A-2-405(2); or

843 (n) [~~any~~] other conduct that constitutes dishonest dealing.

844 Section 18. Section **61-2b-30.5** is amended to read:

845 **61-2b-30.5. Reinstatement of license, certification, registration, approval --**

846 **Expert witness -- Trainee.**

847 (1) An individual who has had [~~an appraiser registration,~~] a license, [~~or~~] certification,  
848 registration, or approval revoked under this chapter;

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

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

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

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

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

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

863 revoked.

864 Section 19. Section **61-2b-31** is amended to read:

865 **61-2b-31. Disciplinary hearing process.**

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

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

868 (b) commence an adjudicative proceeding.

869 (2) If, after ~~[the hearing]~~ an adjudicative proceeding, the board determines that a person

870 described in Subsection (1) violated this chapter, the board may impose disciplinary action by

871 written order as provided in Section 61-2b-29.

872 (3) (a) The board may:

873 (i) conduct ~~[hearings]~~ an adjudicative proceeding with the assistance of an

874 administrative law judge; or ~~[may]~~

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

876 (b) If ~~[the hearing]~~ an adjudicative proceeding is delegated by the board to an

877 administrative law judge, the administrative law judge shall submit to the board for its

878 consideration:

879 (i) written findings of fact~~[-];~~

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

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

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

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

884 decision of the board. ~~[Any]~~ An appeal ~~[shall be]~~ is governed by the Utah Rules of Appellate

885 Procedure.

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

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

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

889 certificate holder, or registrant as provided under Title 78, Chapter 27a, Small Business Equal

890 Access to Justice Act.

891 Section 20. Section **61-2b-33** is amended to read:

892 **61-2b-33. Penalty for violating this chapter.**

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

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

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

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

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

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

906 Section 21. Section **61-2c-202** is amended to read:

907 **61-2c-202. Licensure procedures.**

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

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

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

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

913 (iii) if the applicant is an entity:

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

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

916 (iv) demonstrates that the applicant meets the qualifications listed in Section  
 917 61-2c-203;

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

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

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

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

924 (b) pay to the division:

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

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

929 (c) comply with Subsection (4).

930 (2) (a) The division shall issue a license to an applicant if the division, with the  
931 concurrence of the commission, finds that the applicant:

932 (i) meets the qualifications of Section 61-2c-203; and

933 (ii) complies with this section.

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

935 (i) review ~~[any]~~ a class or category of application for an initial or renewed ~~[licenses]~~  
936 license;

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

938 (iii) conduct ~~[any]~~ a necessary hearing on an application; and

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

940 (c) If the commission delegates to the division the authority to approve or deny an  
941 application without concurrence by the commission and the division denies an application for  
942 licensure, the applicant who is denied licensure may petition the commission for review of the  
943 denial.

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

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

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

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

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

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

956 (B) the Federal Bureau of Investigation;

957 (iii) provide proof using [~~methods~~] a method approved by the division of having

958 successfully completed [~~20 hours of~~] approved prelicensing education required by the

959 commission under Section 61-2c-104;

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

961 (B) in the number of hours, not to exceed 90 hours, required by rule made by the

962 division in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

963 (iv) provide proof using [~~methods~~] a method approved by the division of having

964 successfully passed an examination approved by the commission under Section 61-2c-104.

965 (b) The division shall request the Department of Public Safety to complete a Federal

966 Bureau of Investigation criminal background check for [~~each~~] an applicant [~~and each control~~

967 ~~person of an applicant~~] through a national criminal history system.

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

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

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

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

972 background check required by this Subsection (4).

973 (ii) If a criminal background check discloses that an applicant [~~failed~~] fails to

974 accurately disclose a criminal history, the license shall be immediately and automatically

975 revoked.

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

977 (4)(d)(ii) may appeal the revocation in a hearing conducted by the commission:

978 (A) after the revocation; and

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

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

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

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

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

984 (I) did not occur; or

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

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



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

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

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

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

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

997 Section 22. Section **61-2c-206** is amended to read:

998 **61-2c-206. Principal lending manager licenses.**

999 (1) [~~Except as provided in Subsection (2), to~~] To qualify as a principal lending  
1000 manager under this chapter, an individual shall, in addition to meeting the standards in Section  
1001 61-2c-203:

1002 (a) submit an application on a form approved by the division;

1003 (b) pay [~~fees~~] a fee determined by the division under Section 63-38-3.2;

1004 (c) submit proof of having successfully completed 40 hours of prelicensing education  
1005 approved by the commission under Section 61-2c-104;

1006 (d) submit proof of having successfully completed the principal lending manager  
1007 examination approved by the commission under Section 61-2c-104;

1008 (e) submit proof on [~~forms~~] a form approved by the division of three years of full-time  
1009 active experience as a mortgage officer in the five years preceding the day on which the  
1010 application is submitted, or its equivalent as approved by the commission; and

1011 (f) if the individual is not licensed under this chapter at the time of application, submit  
1012 to the criminal background check required by Subsection 61-2c-202(4).

1013 [~~(2) (a) Notwithstanding Subsection (1), an individual described in Subsection (2)(b)~~  
1014 ~~may qualify as a principal lending manager without:~~]

1015 [~~(i) meeting the requirements of Subsection (1)(c); and~~]

1016 [~~(ii) completing the portions of the principal lending manager examination described in~~  
1017 ~~Subsection (1)(d) that:~~]

1018 ~~[(A) relate to federal law; and]~~  
 1019 ~~[(B) do not relate to Utah law.]~~  
 1020 ~~[(b) An individual may qualify as a principal lending manager pursuant to Subsection~~  
 1021 ~~(2)(a) if the individual:]~~  
 1022 ~~[(i) submits to the division an affidavit that the individual has five years of experience~~  
 1023 ~~in the business of residential mortgage loans;]~~  
 1024 ~~[(ii) establishes that the individual's experience described in this Subsection (2)(b) was~~  
 1025 ~~acquired:]~~  
 1026 ~~[(A) under requirements substantially equivalent to the requirements of this chapter;~~  
 1027 ~~and]~~  
 1028 ~~[(B) in compliance with the requirements of this chapter; and]~~  
 1029 ~~[(iii) provides any other information required by the division by rule under Subsection~~  
 1030 ~~(2)(c).]~~  
 1031 ~~[(c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,~~  
 1032 ~~the division shall define the information an individual shall provide to the division pursuant to~~  
 1033 ~~Subsection (2)(b).]~~  
 1034 ~~[(3)]~~ (2) A principal lending manager may not engage in the business of residential  
 1035 mortgage loans on behalf of more than one entity at the same time.  
 1036 Section 23. Section **61-2c-403** is amended to read:  
 1037 **61-2c-403. Cease and desist orders.**  
 1038 (1) (a) The director may issue and serve by certified mail, or by personal service, on an  
 1039 individual or entity an order to cease and desist from an act if:  
 1040 (i) the director has reason to believe that the individual or entity has been engaged, is  
 1041 engaging in, or is about to engage in ~~[acts]~~ the act constituting a violation of this chapter; and  
 1042 (ii) it appears to the director that it would be in the public interest to stop the ~~[acts]~~ act.  
 1043 (b) Within ten days after service of the order, the party named in the order may request  
 1044 ~~[an adjudicative proceeding]~~ a hearing to be held in accordance with Title 63, Chapter 46b,  
 1045 Administrative Procedures Act.  
 1046 (c) Pending ~~[the]~~ a hearing requested under Subsection (1)(b), ~~[the]~~ a cease and desist  
 1047 order shall remain in effect.  
 1048 (2) (a) After the hearing described in Subsection (1), if the director finds that ~~[the acts]~~

1049 an act of the individual or entity [~~violate~~] violates this chapter, the director:

1050 (i) shall issue an order making the cease and desist order permanent; and

1051 (ii) may impose [~~a civil penalty not to exceed the greater of:~~] another disciplinary  
1052 action under Section 61-2c-402.

1053 [~~(A) \$2,500 for each violation; or]~~

1054 [~~(B) the amount of any gain or economic benefit derived from each violation.]~~

1055 (b) (i) The director may file suit in the name of the division to enjoin and restrain an  
1056 individual or entity on whom an order is served under this section from violating this chapter  
1057 if:

1058 (A) (I) the individual or entity [~~did~~] does not request a hearing under Subsection (1); or

1059 (II) a permanent cease and desist order is issued against the individual or entity  
1060 following a hearing or stipulation; and

1061 (B) (I) the individual or entity fails to cease the [~~acts~~] act; or

1062 (II) after discontinuing the [~~acts~~] act, the individual or entity again commences the  
1063 [~~acts~~] the act.

1064 (ii) The suit described in Subsection (2)(b)(i) shall be filed in the district court in the  
1065 county:

1066 (A) in which the [~~acts occurred~~] act occurs;

1067 (B) where the individual resides; or

1068 (C) where the individual or entity carries on business.

1069 (3) The cease and desist order issued under this section may not interfere with or  
1070 prevent the prosecution of a remedy or action enforcement under this chapter.

1071 (4) An individual who violates a cease and desist order issued under this section is  
1072 guilty of a class A misdemeanor.

1073 Section 24. Section **61-2c-405** is enacted to read:

1074 **61-2c-405. Penalty for violation of chapter.**

1075 In addition to being subject to a disciplinary action by the commission, a person who  
1076 violates this chapter:

1077 (1) is guilty of a class A misdemeanor, upon conviction of a first violation of this  
1078 chapter; and

1079 (2) is guilty of a third degree felony, upon conviction of a second or subsequent

1080 violation of this chapter.

1081 Section 25. Section **61-2c-502** is amended to read:

1082 **61-2c-502. Additional license fee.**

1083 (1) An individual who applies for or renews a license shall pay, in addition to the  
1084 application or renewal fee, a reasonable annual fee:

1085 (a) determined by the division with the concurrence of the commission; and

1086 (b) not to exceed \$18.

1087 (2) An entity that applies for or renews an entity license shall pay, in addition to the  
1088 application or renewal fee, a reasonable annual fee:

1089 (a) determined by the division with the concurrence of the commission; and

1090 (b) not to exceed \$25.

1091 (3) Notwithstanding Section 13-1-2, the following shall be paid into the [~~fund~~]  
1092 Residential Mortgage Loan Education, Research, and Recovery Fund to be used as provided in  
1093 this part:

1094 (a) [~~fees~~] a fee provided in this section; [~~and~~]

1095 (b) a fee for certifying:

1096 (i) a mortgage school;

1097 (ii) a mortgage course; or

1098 (iii) a mortgage instructor; and

1099 [~~(b)~~] (c) a civil [~~penalties~~] penalty imposed under this chapter.

1100 (4) If the balance in the [~~fund~~] Residential Mortgage Loan Education, Research, and  
1101 Recovery Fund that is available to satisfy [~~judgments~~] a judgment against [~~licensees~~] a licensee  
1102 decreases to less than \$100,000, the division may make an additional [~~assessments~~] assessment  
1103 to [~~licensees~~] a licensee to maintain the balance available at \$100,000 to satisfy judgments.

1104 Section 26. Section **72-5-116** is amended to read:

1105 **72-5-116. Exemption from state licensure.**

1106 In accordance with Section 61-2-3, an employee or authorized agent working under the  
1107 oversight of the department when engaging in an act on behalf of the department related to one  
1108 or more of the following is exempt from licensure under Title 61, Chapter 2, Division of Real  
1109 Estate:

1110 (1) acquiring real property pursuant to Section 72-5-103;

- 1111           (2) disposing of real property pursuant to Section 72-5-111; or
- 1112           (3) providing services that constitute property management, as defined in Section
- 1113 61-2-2.