

**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: Sheldon L. Killpack

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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 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 including providing for rulemaking;



- 26           ▶ removes grandfathering language related to principal lending manager;
- 27           ▶ provides for deposit of certain fees into the Residential Mortgage Loan Education,
- 28 Research, and Recovery Fund; and
- 29           ▶ makes technical and conforming amendments.

**30 Monies Appropriated in this Bill:**

31           None

**32 Other Special Clauses:**

33           None

**34 Utah Code Sections Affected:**

35 AMENDS:

- 36           **61-2-5.5**, as last amended by Laws of Utah 2007, Chapter 325
- 37           **61-2-13**, as last amended by Laws of Utah 1991, Chapter 165
- 38           **61-2-20**, as last amended by Laws of Utah 2007, Chapter 325
- 39           **61-2-21**, as last amended by Laws of Utah 2007, Chapter 325
- 40           **61-2b-2**, as last amended by Laws of Utah 2005, Chapter 199
- 41           **61-2b-6**, as last amended by Laws of Utah 2005, Chapter 199
- 42           **61-2b-8**, as last amended by Laws of Utah 2005, Chapter 199
- 43           **61-2b-18**, as last amended by Laws of Utah 2005, Chapter 199
- 44           **61-2b-21**, as last amended by Laws of Utah 2005, Chapter 199
- 45           **61-2b-22**, as last amended by Laws of Utah 2005, Chapter 199
- 46           **61-2b-24**, as last amended by Laws of Utah 2005, Chapter 199
- 47           **61-2b-25**, as last amended by Laws of Utah 2007, Chapter 306
- 48           **61-2b-26**, as last amended by Laws of Utah 2005, Chapter 199
- 49           **61-2b-27**, as last amended by Laws of Utah 2005, Chapter 199
- 50           **61-2b-28**, as last amended by Laws of Utah 2007, Chapter 325
- 51           **61-2b-29**, as last amended by Laws of Utah 2007, Chapter 325
- 52           **61-2b-30.5**, as last amended by Laws of Utah 2005, Chapter 199
- 53           **61-2b-31**, as last amended by Laws of Utah 2007, Chapter 325
- 54           **61-2b-33**, as last amended by Laws of Utah 2005, Chapter 199
- 55           **61-2c-202**, as last amended by Laws of Utah 2007, Chapter 325
- 56           **61-2c-206**, as last amended by Laws of Utah 2007, Chapter 325

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

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

59 ENACTS:

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



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

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

64 **61-2-5.5. Real Estate Commission.**

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

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

69 (i) licensing of:

70 (A) principal brokers;

71 (B) associate brokers;

72 (C) sales agents;

73 (D) real estate companies; and

74 (E) branch offices;

75 (ii) prelicensing and postlicensing education curricula;

76 (iii) examination procedures;

77 (iv) the certification and conduct of:

78 (A) real estate schools;

79 (B) course providers; and

80 (C) instructors;

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

82 (vi) brokerage office procedures and recordkeeping requirements;

83 (vii) property management;

84 (viii) standards of conduct for real estate licensees; ~~and~~

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

87 (x) if the commission determines necessary, rules as provided in Subsection 61-2-20(3)

88 regarding legal forms:

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

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

93 (i) licensing of any applicant;

94 (ii) conduct of any licensee;

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

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

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

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

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

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

104 (h) perform other duties as provided by:

105 (i) this chapter; and

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

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

109 (b) Four of the commission members shall:

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

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

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

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

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

117 (3) (a) Except as required by Subsection (3)(b), as terms of current commission  
118 members expire, the governor shall appoint each new member or reappointed member to a

119 four-year term ending June 30.

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

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

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

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

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

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

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

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

136 (b) The director may call additional meetings:

137 (i) at the director's discretion;

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

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

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

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

143 **61-2-13. Grounds for revocation of principal broker's license -- Automatic**  
144 **inactivation of affiliated associate brokers and sales agents licenses.**

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

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

150 [for]

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

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

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

155 (ii) a real estate sales agent or associate broker engaged as an independent contractor

156 by or on behalf of a licensed principal broker; or

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

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

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

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

166 **61-2-20. Rights and privileges of real estate licensees to fill out forms or**  
167 **documents.**

168 ~~[A]~~ (1) Except as provided in Subsection (2), a real estate licensee may fill out only  
169 those legal forms approved by the commission and the attorney general, and those forms  
170 provided by statute~~[, with the following exceptions:]~~.

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

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

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

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

181 develop these forms.

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

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

186 **61-2-21. Remedies and action for violations.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

212 commences the act.

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

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

- 217 (i) issue a permanent or temporary, prohibitory or mandatory injunction;
- 218 (ii) issue a restraining order or writ of mandamus;
- 219 (iii) enter a declaratory judgment;
- 220 (iv) appoint a receiver or conservator for the defendant or the defendant's assets;
- 221 (v) order disgorgement;
- 222 (vi) order rescission;
- 223 (vii) impose a civil penalty not to exceed the greater of:
- 224 (A) \$2,500 for each violation; or
- 225 (B) the amount of any gain or economic benefit derived from ~~[each]~~ a violation; and
- 226 (viii) enter any other relief the court considers just.

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

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

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

233 **61-2b-2. Definitions.**

234 (1) As used in this chapter:

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

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

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



243 point in time.

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

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

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

251 (c) (i) "Appraisal report" means [~~any~~] a communication, written or oral, of an  
252 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  
304 chapter; ~~[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,  
315 Utah 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  
323 registration;

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

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

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

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

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

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

336 Subsection (1)(b).

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

338 (d) The division may:

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

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

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

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

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

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

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

356 (i) for processing:

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

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

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

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

361 (j) The division may:

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

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

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

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

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

367 ~~papers;~~ a witness;

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

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

370 ~~[(iv)]~~ (v) take testimony and receive evidence concerning ~~[all matters]~~ a matter within

371 the division's jurisdiction.

372 (k) The division may:

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

374 appraising; and

375 (ii) sponsor real estate appraisal educational activities.

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

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

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

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

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

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

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

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

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

398 (v) applicant provides a notarized statement that:

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

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

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

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

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

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

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

414 (i) without malicious intent; and

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

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

418 **61-2b-8. Duties of board.**

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

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

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

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

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

429 the intent of this chapter;

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

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

432 (ii) clerical staff; and

433 (iii) a person who:

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

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

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

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

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

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

451 ~~[(3)]~~ (4) The board shall:

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

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

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

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

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

460 chapter; and

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

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

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

469 [~~(6)~~] (7) The board [~~shall~~] may review the:

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

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

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

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

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

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

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

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

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

488 (9) (a) A member of the board is immune from [~~any~~] a civil action or criminal  
489 prosecution for [~~any~~] a disciplinary proceeding concerning a person required to be registered,  
490 licensed, [~~or~~] certified, or approved as an expert under this chapter if the action is taken without



491 malicious intent and in the reasonable belief that the action taken was taken pursuant to the  
 492 powers and duties vested in [~~the members~~] a member of the board under this chapter.

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

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

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

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

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

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

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

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

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

512 (a) sign a pledge to comply with the Uniform Standards of Professional Appraisal  
 513 Practice and the ethical rules to be observed by an appraiser that are established under Section  
 514 61-2b-27 for:

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

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

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

522 **61-2b-21. Denial of licensure, certification, or registration.**

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

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

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

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

536 (a) approval as an expert witness; or

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

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

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

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

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

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

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

553 concurrence of the board.

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

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

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

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

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

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

566 **61-2b-24. Expert witness, licensing, certification, registration documents --**

567 **Assigned number to be used on contracts -- Surrender of documents upon suspension.**

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

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

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

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

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

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

583 (b) Upon ~~[any]~~ a suspension or revocation of a license ~~[or]~~ certification, or registration

584 under this chapter, the individual holding the [~~respective documents~~] applicable document shall  
585 immediately return the document to the division.

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

587 **61-2b-25. Other law unaffected.**

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

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

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

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

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

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

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

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

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

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

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

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

611 **61-2b-27. Professional conduct -- Uniform standards.**

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

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

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

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

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

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

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

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

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

636 (A) a residential real estate appraiser; or

637 (B) a general real estate appraiser; or

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

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

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

646 [~~or~~] registered, or approved as an expert witness under this chapter to observe the modified or  
647 supplemental [~~standards~~] standard or the ethical [~~rules~~] rule.

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

649 **61-2b-28. Enforcement -- Investigation -- Orders -- Hearings.**

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

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

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

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

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

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

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

657 (i) impose disciplinary action;

658 (ii) deny issuance to an applicant of:

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

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

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

662 (2) (a) The division may:

663 (i) administer an oath or affirmation;

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

665 (iii) take evidence; and

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

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

668 described in Subsection (1).

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

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

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

672 (i) failing to respond to a subpoena;

673 (ii) withholding evidence; or

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

675 (3) (a) The director shall issue and serve upon a person an order directing that person to

676 cease and desist from an act if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

705 **61-2b-29. Disciplinary action -- Grounds.**

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

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

- 708 (ii) required to be registered, licensed, or certified under this chapter.
- 709 (b) On the basis of [~~any of the grounds~~] a ground listed in Subsection (2) for  
710 disciplinary action, board action may include:
- 711 (i) revoking, suspending, or placing a person's registration, license, or certification on  
712 probation;
- 713 (ii) denying a person's original [~~or renewal~~] registration, license, or certification;
- 714 (iii) denying a person's renewal license or certification;
- 715 [~~(iii)~~] (iv) in the case of denial or revocation of a registration, license, or certification,  
716 setting a waiting period for an applicant to apply for a registration, license, or certification  
717 under this chapter;
- 718 [~~(iv)~~] (v) ordering remedial education;
- 719 [~~(v)~~] (vi) imposing a civil penalty upon a person not to exceed the greater of:
- 720 (A) \$2,500 for each violation; or
- 721 (B) the amount of any gain or economic benefit from [~~each~~] a violation;
- 722 [~~(vi)~~] (vii) issuing a cease and desist order; or
- 723 [~~(vii)~~] (viii) doing any combination of Subsections (1)(b)(i) through [~~(vi)~~](vii).
- 724 (2) The following are grounds for disciplinary action under this section:
- 725 (a) procuring or attempting to procure a registration, license, or certification under this  
726 chapter;
- 727 (i) by fraud; or
- 728 (ii) by making a false statement, submitting false information, or making a material  
729 misrepresentation in an application filed with the division;
- 730 (b) paying money or attempting to pay money other than [~~the fees~~] a fee provided for  
731 by this chapter to [~~any~~] a member or employee of the division to procure a registration, license,  
732 or certification under this chapter;
- 733 (c) an act or omission in the practice of real estate appraising that constitutes  
734 dishonesty, fraud, or misrepresentation;
- 735 (d) entry of a judgment against a registrant, licensee, or certificate holder on grounds of  
736 fraud, misrepresentation, or deceit in the making of an appraisal of real estate;
- 737 (e) a guilty plea to a criminal offense involving moral turpitude that is held in  
738 abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo



739 contendere, of a criminal offense involving moral turpitude;

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

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

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

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

747 (ii) testimony concerning professional qualifications;

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

749 (i) a provision of this chapter[;];

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

751 (iii) a rule issued under this chapter;

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

755 (k) accepting a contingent fee for performing an appraisal as defined in Subsection  
756 61-2b-2(1)(a) if in fact the fee is or was contingent upon:

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

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

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

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

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

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

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

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

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

769 **61-2b-30.5. Reinstatement of license, certification, registration, approval --**

770 **Expert witness -- Trainee.**

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

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

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

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

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

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

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

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

788 **61-2b-31. Disciplinary hearing process.**

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

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

791 (b) commence an adjudicative proceeding.

792 (2) If, after the hearing, the board determines that a person described in Subsection (1)  
793 violated this chapter, the board may impose disciplinary action by written order as provided in  
794 Section 61-2b-29.

795 (3) (a) The board may:

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

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

798 (b) If the a hearing is delegated by the board to an administrative law judge, the  
799 administrative law judge shall submit to the board for its consideration:

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

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

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

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

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

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

813 **61-2b-33. Penalty for violating this chapter.**

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

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

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

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

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

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

828 **61-2c-202. Licensure procedures.**

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

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

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

832 state;

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

834 (iii) if the applicant is an entity:

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

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

837 (iv) demonstrates that the applicant meets the qualifications listed in Section

838 61-2c-203;

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

840 (A) all jurisdictions in which the entity is registered, licensed, or otherwise regulated in

841 the business of residential mortgage loans; and

842 (B) the history of any disciplinary action or adverse administrative action taken against

843 the entity by any regulatory agency within the ten years preceding the application; and

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

845 (b) pay to the division:

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

847 and

848 (ii) the reasonable expenses incurred in processing the application for licensure,

849 including the costs incurred by the division under Subsection (4); and

850 (c) comply with Subsection (4).

851 (2) (a) The division shall issue a license to an applicant if the division, with the

852 concurrence of the commission, finds that the applicant:

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

854 (ii) complies with this section.

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

856 (i) review ~~any~~ a class or category of application for an initial or renewed ~~licenses~~

857 license;

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

859 (iii) conduct ~~any~~ a necessary hearing on an application; and

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

861 (c) If the commission delegates to the division the authority to approve or deny an

862 application without concurrence by the commission and the division denies an application for

863 licensure, the applicant who is denied licensure may petition the commission for review of the  
864 denial.

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

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

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

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

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

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

877 (B) the Federal Bureau of Investigation;

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

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

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

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

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

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

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

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

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

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

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

899 (A) after the revocation; and

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

901 (iv) The commission may delegate to the division or an administrative law judge the  
902 authority to conduct a hearing described in Subsection (4)(d)(iii).

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

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

905 (I) did not occur; or

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

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

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

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

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

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

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

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

919 **61-2c-206. Principal lending manager licenses.**

920 (1) [~~Except as provided in Subsection (2), to~~] To qualify as a principal lending  
921 manager under this chapter, an individual shall, in addition to meeting the standards in Section  
922 61-2c-203:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

955 [~~(3)~~] (2) A principal lending manager may not engage in the business of residential

956 mortgage loans on behalf of more than one entity at the same time.

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

958 **61-2c-403. Cease and desist orders.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



- 987 (A) in which the [~~acts occurred~~] act occurs;
- 988 (B) where the individual resides; or
- 989 (C) where the individual or entity carries on business.

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

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

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

995 **61-2c-405. Penalty for violation of chapter.**

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

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

1000 (2) is guilty of a third degree felony, upon conviction of a second or subsequent  
1001 violation of this chapter.

1002 Section 24. Section **61-2c-502** is amended to read:

1003 **61-2c-502. Additional license fee.**

1004 (1) An individual who applies for or renews a license shall pay, in addition to the  
1005 application or renewal fee, a reasonable annual fee:

- 1006 (a) determined by the division with the concurrence of the commission; and
- 1007 (b) not to exceed \$18.

1008 (2) An entity that applies for or renews an entity license shall pay, in addition to the  
1009 application or renewal fee, a reasonable annual fee:

- 1010 (a) determined by the division with the concurrence of the commission; and
- 1011 (b) not to exceed \$25.

1012 (3) Notwithstanding Section 13-1-2, the following shall be paid into the [~~fund~~]  
1013 Residential Mortgage Loan Education, Research, and Recovery Fund to be used as provided in  
1014 this part:

1015 (a) [~~fees~~] a fee provided in this section; [~~and~~]

1016 (b) a fee for certifying:

1017 (i) a mortgage school;

1018            (ii) a mortgage course; or  
1019            (iii) a mortgage instructor; and  
1020            [~~(b)~~] (c) a civil [~~penalties~~] penalty imposed under this chapter.  
1021            (4) If the balance in the [~~fund~~] Residential Mortgage Loan Education, Research, and  
1022 Recovery Fund that is available to satisfy [~~judgments~~] a judgment against [~~licensees~~] a licensee  
1023 decreases to less than \$100,000, the division may make an additional [~~assessments~~] assessment  
1024 to [~~licensees~~] a licensee to maintain the balance available at \$100,000 to satisfy judgments.

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**H.B. 346 2nd Sub. (Gray) - Division of Real Estate Related Amendments**

**Fiscal Note**

2008 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

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

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