

**DIVISION OF REAL ESTATE LICENSING
AND PRESENCE IN THE UNITED STATES**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Margaret Dayton

House Sponsor: Christopher N. Herrod

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ prohibits a person who is unlawfully present in the United States from being licensed under provisions applicable to real estate and mortgage licensing;
- ▶ requires the Division of Real Estate to verify that a person is not unlawfully present in the United States;
- ▶ permits the division, with the concurrence of the commission, to obtain information from an applicant;
- ▶ requires an applicant to pay costs of verification; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

61-2-6, as last amended by Laws of Utah 2007, Chapter 325



28 **61-2c-203**, as last amended by Laws of Utah 2007, Chapter 325

29

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

31 Section 1. Section **61-2-6** is amended to read:

32 **61-2-6. Licensing procedures and requirements.**

33 (1) (a) Except as provided in Subsection (5) and subject to the other requirements of
34 this section, the commission shall determine the qualifications and requirements of [~~applicants~~]
35 an applicant for:

- 36 (i) a principal broker license;
- 37 (ii) an associate broker license; or
- 38 (iii) a sales agent license.

39 (b) The division, with the concurrence of the commission, shall require and pass upon
40 proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency of
41 [~~each~~] an applicant for:

- 42 (i) an initial license; or [~~for~~]
- 43 (ii) the renewal of an existing license.

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

46 (A) a sales agent license to complete an approved educational program not to exceed
47 90 hours; and

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

50 (ii) [~~The hours required by this section mean~~] For purposes of this Subsection (1)(c), an
51 "hour" means 50 minutes of instruction in [~~each~~] a 60 [~~minutes~~] minute time period.

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

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

- 56 (i) the fundamentals of:
 - 57 (A) the English language;
 - 58 (B) arithmetic;

- 59 (C) bookkeeping; and
60 (D) real estate principles and practices;
61 (ii) the provisions of this chapter;
62 (iii) the rules established by the commission; and
63 (iv) any other aspect of Utah real estate license law considered appropriate.
64 (e) (i) Three years' full-time experience as a real estate sales agent or its equivalent is
65 required before ~~[any]~~ an applicant may apply for, and secure a principal broker or associate
66 broker license in this state.
67 (ii) The commission shall establish by rule, made in accordance with Title 63, Chapter
68 46a, Utah Administrative Rulemaking Act, the criteria by which the commission will accept
69 experience or special education in similar fields of business in lieu of the three years'
70 experience.
71 (2) (a) The division, with the concurrence of the commission, may require an applicant
72 to furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's
73 reputation and competency as set forth by rule.
74 (b) The division shall require an applicant to provide the applicant's Social Security
75 number, which is a private record under Subsection 63-2-302(1)(h).
76 (3) (a) A nonresident principal broker may be licensed in this state by conforming to all
77 the provisions of this chapter except that of residency.
78 (b) A nonresident associate broker or sales agent may become licensed in this state by:
79 (i) conforming to all the provisions of this chapter except that of residency; and
80 (ii) being employed or engaged as an independent contractor by or on behalf of a
81 nonresident or resident principal broker who is licensed in this state.
82 (4) (a) Except as provided in Subsection 61-2-9(1)(e)(iv), the application to be
83 relicensed of an applicant who has had a real estate license revoked shall be treated as an
84 original application.
85 (b) In the case of an applicant for a new license as a principal broker or associate
86 broker, the applicant is not entitled to credit for experience gained ~~[prior to]~~ before the
87 revocation of a real estate license.
88 (5) (a) Notwithstanding Subsection (1), the commission may delegate to the division
89 the authority to:

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

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

97 (ii) An applicant who is denied licensure pursuant to this Subsection (5) may seek
98 agency review by the executive director only after the commission [~~has reviewed~~] reviews the
99 division's denial of the applicant's application.

100 (6) (a) For purposes of this Subsection (6), "unlawfully present" means an individual is
101 not:

102 (i) a qualified alien as defined in 8 U.S.C. Sec. 1641;

103 (ii) a nonimmigrant under the Immigration and Nationality Act, Pub. L. No. 82-424, as
104 amended; or

105 (iii) an alien who is paroled into the United States under 8 U.S.C. Sec. 1182 (d)(5) for
106 less than one year.

107 (b) The division, with the concurrence of the commission, may not license or renew the
108 license of an individual under this chapter who is unlawfully present in the United States.

109 (c) The division shall take reasonable steps to verify whether or not an applicant is
110 unlawfully present in the United States before an individual:

111 (i) obtains an initial license under this chapter; or

112 (ii) renews an existing license under this chapter.

113 (d) The division, with the concurrence of the commission, may require an applicant to
114 furnish evidence satisfactory to the division that the applicant is not unlawfully present in the
115 United States.

116 (e) An applicant shall pay to the division the cost of verifying that the applicant is not
117 unlawfully present in the United States.

118 Section 2. Section **61-2c-203** is amended to read:

119 **61-2c-203. Qualifications for licensure.**

120 (1) To qualify for licensure under this chapter, an individual:

- 121 (a) shall have good moral character and the competency to transact the business of
122 residential mortgage loans;
- 123 (b) shall demonstrate honesty, integrity, and truthfulness;
- 124 (c) except as provided in Subsection (3), may not have been convicted in the ten years
125 preceding the day on which an application is submitted to the division of:
- 126 (i) ~~any~~ a felony or class A misdemeanor involving moral turpitude; or
127 (ii) ~~any~~ a crime in any other jurisdiction that is the equivalent of a felony or class A
128 misdemeanor involving moral turpitude;
- 129 (d) except as provided in Subsection (3), may not have been convicted in the five years
130 preceding the day on which an application is submitted to the division of:
- 131 (i) ~~any~~ a class B or class C misdemeanor involving moral turpitude; or
132 (ii) ~~any~~ a crime in another jurisdiction that is the equivalent of a class B or class C
133 misdemeanor involving moral turpitude;
- 134 (e) except as provided in Subsection (3), in relationship to a crime set forth in
135 Subsection (1)(c) or (d) during the time period set forth in Subsection (1)(c) or (d), may not
136 have:
- 137 (i) entered a guilty plea, a no contest plea, or its equivalent; and
138 (ii) resolved by diversion or its equivalent;
- 139 (f) except as provided in Subsection 61-2c-202(4)(e), may not have had a license or
140 registration suspended, revoked, surrendered, canceled, or denied in the five years preceding
141 the date the individual applies for licensure except as provided in Subsection (3), if:
- 142 (i) the registration or license is issued by this state or another jurisdiction; and
143 (ii) the suspension, revocation, surrender, probation, fine, cancellation, or denial is
144 based on misconduct in a professional capacity that relates to moral character, honesty,
145 integrity, truthfulness, or the competency to transact the business of residential mortgage loans;
- 146 (g) except as provided in Subsection (3), may not have been the subject of a bar by the
147 Securities and Exchange Commission, the New York Stock Exchange, or the National
148 Association of Securities Dealers within the five years preceding the date the individual applies
149 for registration; and
- 150 (h) may not have had any temporary or permanent injunction entered against the
151 individual:

152 (i) by a court or licensing agency; and
153 (ii) on the basis of:
154 (A) conduct or a practice involving the business of residential mortgage loans; or
155 (B) conduct involving fraud, misrepresentation, or deceit.
156 (2) To qualify for licensure under this chapter an entity may not have:
157 (a) any of the following individuals in management who fails to meet the requirements
158 of Subsection (1):
159 (i) a manager or a managing partner;
160 (ii) a director;
161 (iii) an executive officer; or
162 (iv) an individual occupying a position or performing functions similar to those
163 described in Subsections (2)(a)(i) through (iii); or
164 (b) a principal lending manager who fails to meet the requirements of Subsection (1).
165 (3) Notwithstanding the failure to meet the requirements of Subsections (1)(c) through
166 (h), the division may permit an individual or entity to be licensed under this chapter if the
167 individual applicant or a person listed in Subsection (2):
168 (a) fails to meet the requirements of Subsections (1)(c) through (h);
169 (b) otherwise meets the qualifications for licensure; and
170 (c) provides evidence satisfactory to the division with the concurrence of the
171 commission that the individual applicant or person described in Subsection (2):
172 (i) is of good moral character;
173 (ii) is honest;
174 (iii) has integrity;
175 (iv) is truthful; and
176 (v) has the competency to transact the business of residential mortgage loans.
177 (4) (a) For purposes of this Subsection (4), "unlawfully present" means an individual is
178 not:
179 (i) a qualified alien as defined in 8 U.S.C. Sec. 1641;
180 (ii) a nonimmigrant under the Immigration and Nationality Act, Pub. L. No. 82-424, as
181 amended; or
182 (iii) an alien who is paroled into the United States under 8 U.S.C. Sec. 1182 (d)(5) for

183 less than one year.

184 (b) The division, with the concurrence of the commission, may not license or renew the
185 license of an individual under this chapter who is unlawfully present in the United States.

186 (c) The division shall take reasonable steps to verify whether or not an applicant is
187 unlawfully present in the United States before an individual:

188 (i) obtains an initial license under this chapter; or

189 (ii) renews an existing license under this chapter.

190 (d) The division, with the concurrence of the commission, may require an applicant to
191 furnish evidence satisfactory to the division that the applicant is not unlawfully present in the
192 United States.

193 (e) An applicant shall pay to the division the cost of verifying that the applicant is not
194 unlawfully present in the United States.

Legislative Review Note

as of 2-13-08 11:25 AM

Office of Legislative Research and General Counsel

S.B. 222 - Division of Real Estate Licensing and Presence in the United States

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will require an additional appropriation of \$45,500 in FY 2009 and \$43,500 in FY 2010 from the Commerce Service Fund for additional verification expenses. It is anticipated that the Department of Commerce will receive additional fee revenue of \$45,500 in FY 2009 and \$43,500 in FY 2010 to offset the cost of the implementation of this bill.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
Commerce Service Fund	\$0	\$45,500	\$43,500	\$0	\$45,500	\$43,500
Total	\$0	\$45,500	\$43,500	\$0	\$45,500	\$43,500

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for businesses or local governments. Some individuals may be affected due to additional verification requirements.