

Representative Gage Froerer proposes the following substitute bill:

DIVISION OF REAL ESTATE RELATED

AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: Sheldon L. Killpack

LONG TITLE

General Description:

This bill amends provisions administered or enforced by the Division of Real Estate.

Highlighted Provisions:

This bill:

- ▶ increases a civil penalty that the division may impose under the Utah Uniform Land Sales Practices Act;
- ▶ addresses exemptions under the Utah Uniform Land Sales Practices Act;
- ▶ modifies provisions related to registration of a salesperson under the Timeshare and Camp Resort Act;
- ▶ addresses grounds under which the division may take action under the Timeshare and Camp Resort Act;
- ▶ modifies education requirements for a real estate broker or sales agent;
- ▶ modifies reporting requirements for a real estate broker or sales agent;
- ▶ modifies provisions related to renewal of a real estate license;
- ▶ provides for the modification of sanctions for a real estate licensee complying with court ordered restitution;
- ▶ addresses payments to associate brokers or sales agents;



- 26 ▶ addresses what constitutes grounds for disciplinary action;
- 27 ▶ clarifies criminal penalties against a person required to be licensed as a real estate
- 28 licensee;
- 29 ▶ provides definitions related to the Real Estate Education, Research, and Recovery
- 30 Fund, including what constitutes a judgment;
- 31 ▶ increases caps on recovery from the Real Estate Education, Research, and Recovery
- 32 Fund;
- 33 ▶ clarifies notice requirements for the Real Estate Education, Research, and Recovery
- 34 Fund;
- 35 ▶ requires criminal background checks and addresses other requirements for trainees
- 36 registered under appraisal provisions;
- 37 ▶ provides for conditional registration of a trainee pending the criminal background
- 38 check;
- 39 ▶ modifies renewal provisions for a license or certificate under appraisal provisions;
- 40 ▶ addresses rulemaking of the appraisal board related to the Uniform Standards of
- 41 Professional Appraisal Practices;
- 42 ▶ requires notification of the division of certain events by a person licensed, certified,
- 43 or registered under appraisal provisions;
- 44 ▶ provides for the modification of sanctions under appraisal provisions for a person
- 45 complying with court ordered restitution;
- 46 ▶ clarifies criminal penalties against a person required to be licensed, certified, or
- 47 registered under appraisal provisions;
- 48 ▶ modifies renewal provisions for a residential mortgage licensee;
- 49 ▶ addresses disposal of records by a residential mortgage licensee;
- 50 ▶ repeals a requirement that the division by rule provide for certain licensing
- 51 processes;
- 52 ▶ provides for the modification of sanctions under residential mortgage provisions for
- 53 a person complying with court ordered restitution;
- 54 ▶ clarifies criminal penalties against a person required to be licensed or certified under
- 55 residential mortgage provisions;
- 56 ▶ provides that criminal restitution judgments may be recovered from the Residential

- 57 Mortgage Loan Education, Research, and Recovery Fund;
- 58 ▶ modifies notification requirements related to the Residential Mortgage Loan
- 59 Education, Research, and Recovery Fund;
- 60 ▶ restricts recovery by a lender from the Residential Mortgage Loan Education,
- 61 Research, and Recovery Fund; and
- 62 ▶ makes technical and conforming amendments.

63 **Monies Appropriated in this Bill:**

64 None

65 **Other Special Clauses:**

66 None

67 **Utah Code Sections Affected:**

68 AMENDS:

- 69 **57-11-2**, as last amended by Laws of Utah 1987, Chapter 73
- 70 **57-11-3**, as last amended by Laws of Utah 1989, Chapter 225
- 71 **57-11-4**, as last amended by Laws of Utah 2003, Chapter 292
- 72 **57-11-14**, as last amended by Laws of Utah 2008, Chapter 382
- 73 **57-11-16**, as last amended by Laws of Utah 1993, Chapter 38
- 74 **57-19-5**, as last amended by Laws of Utah 1990, Chapter 199
- 75 **57-19-15**, as last amended by Laws of Utah 1990, Chapter 199
- 76 **57-19-16**, as enacted by Laws of Utah 1987, Chapter 73
- 77 **61-2-6**, as last amended by Laws of Utah 2008, Chapter 382
- 78 **61-2-7.2**, as last amended by Laws of Utah 2000, Chapter 86
- 79 **61-2-9**, as last amended by Laws of Utah 2008, Chapter 382
- 80 **61-2-10**, as last amended by Laws of Utah 2008, Chapter 382
- 81 **61-2-11**, as last amended by Laws of Utah 2007, Chapter 325
- 82 **61-2-12**, as last amended by Laws of Utah 2008, Chapters 3 and 382
- 83 **61-2-17**, as last amended by Laws of Utah 1993, Chapter 146
- 84 **61-2a-2**, as last amended by Laws of Utah 1989, Chapter 227
- 85 **61-2a-3**, as last amended by Laws of Utah 2002, Chapter 256
- 86 **61-2a-4**, as last amended by Laws of Utah 1993, Chapter 146
- 87 **61-2a-5**, as last amended by Laws of Utah 2000, Chapter 86

- 88 **61-2a-6**, as enacted by Laws of Utah 1975, Chapter 172
- 89 **61-2a-7**, as enacted by Laws of Utah 1975, Chapter 172
- 90 **61-2a-9**, as last amended by Laws of Utah 1989, Chapter 227
- 91 **61-2a-11**, as last amended by Laws of Utah 1989, Chapter 225
- 92 **61-2a-12**, as last amended by Laws of Utah 2007, Chapter 325
- 93 **61-2b-6**, as last amended by Laws of Utah 2008, Chapters 382 and 387
- 94 **61-2b-8**, as last amended by Laws of Utah 2008, Chapters 382 and 387
- 95 **61-2b-20**, as last amended by Laws of Utah 2005, Chapter 199
- 96 **61-2b-27**, as last amended by Laws of Utah 2008, Chapters 382 and 387
- 97 **61-2b-29**, as last amended by Laws of Utah 2008, Chapter 387
- 98 **61-2b-33**, as last amended by Laws of Utah 2008, Chapters 370 and 387
- 99 **61-2c-103**, as last amended by Laws of Utah 2008, Chapters 158 and 382
- 100 **61-2c-104**, as last amended by Laws of Utah 2008, Chapter 382
- 101 **61-2c-205**, as last amended by Laws of Utah 2008, Chapter 382
- 102 **61-2c-402**, as last amended by Laws of Utah 2007, Chapter 325
- 103 **61-2c-405**, as enacted by Laws of Utah 2008, Chapters 370 and 387
- 104 **61-2c-501**, as enacted by Laws of Utah 2004, Chapter 297
- 105 **61-2c-502**, as last amended by Laws of Utah 2008, Chapter 387
- 106 **61-2c-503**, as enacted by Laws of Utah 2004, Chapter 297

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

Section 1. Section **57-11-2** is amended to read:

57-11-2. Definitions.

As used in this chapter:

(1) (a) "Disposition" includes sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision, if undertaken for gain or profit. [H]

(b) "Disposition" does not include the sale or lease of land held by railroads for right of way if the land is within 400 feet of the center line of [any] a railroad tract.

(2) "Division" means the Division of Real Estate created in Section 61-2-5.

(3) "Federal act" means the federal Interstate Land Sales Full Disclosure Act [f], 15 U.S.C.[;] Sec. 1701, et seq.[;] or any successor federal act.

119 ~~[(3)]~~ (4) (a) "Industrial park" means ~~[any]~~ a subdivision or subdivided lands offered as
 120 a part of a common promotional plan of advertising and sale zoned for office, manufacturing,
 121 warehousing, commercial, industrial, distribution, or wholesale use and utilized for one or
 122 more of those purposes. ~~[It]~~

123 (b) "Industrial park" does not include ~~[any]~~ land offered for sale ~~[which]~~ that is
 124 designed or intended to be used for recreational, residential, including multiple family
 125 dwellings, or agricultural purposes.

126 ~~[(4)]~~ (5) "Offer" includes ~~[every]~~ an inducement, solicitation, or attempt to encourage a
 127 person to acquire an interest in land if undertaken for gain or profit.

128 ~~[(5)]~~ (6) "Person" includes:

129 (a) a business trust~~;~~;

130 (b) an estate~~;~~;

131 (c) a trust~~;~~;

132 (d) a partnership~~;~~;

133 (e) an unincorporated association~~;~~;

134 (f) two or more of any entity having a joint or common interest~~;~~ or

135 (g) any other legal or commercial entity.

136 ~~[(6)]~~ (7) "Purchaser" means a person who acquires or attempts to acquire or succeeds
 137 to an interest in land.

138 ~~[(7)]~~ (8) "Residential building" means ~~[any]~~ a structure intended for occupation as a
 139 residence which, at the time of an offer or disposition of the unit on which it is situated, or on
 140 which there is a legal obligation on the part of the seller to complete construction of it within
 141 two years from date of disposition, has, or if completed would have, ready access to water, gas,
 142 electricity, and roads.

143 ~~[(8)]~~ (9) "Subdivider" means ~~[the]~~;

144 (a) an owner of ~~[any]~~ an interest in subdivided lands who offers ~~[them]~~ the subdivided
 145 lands for disposition; or ~~[the]~~

146 (b) a principal agent of an [inactive] owner of an interest in subdivided lands if the
 147 owner is inactive.

148 ~~[(9)]~~ (10) (a) "Subdivision" and "subdivided lands" means land ~~[which]~~ that is divided
 149 or is proposed to be divided for the purpose of disposition into ten or more units including

150 land, whether contiguous or not, if ten or more units are offered as a part of a common
151 promotional plan of advertising and sale.

152 (b) If a subdivision is offered by a developer or group of developers, and the land is
153 contiguous or is known, designated, or advertised as a common tract or by a common name,
154 that land is presumed, without regard to the number of units covered by each individual
155 offering, to be part of a common promotional plan.

156 ~~[(10)]~~ (11) "Unit" includes ~~[any]~~ a lot, parcel, or other interest in land separately
157 offered for disposition.

158 Section 2. Section **57-11-3** is amended to read:

159 **57-11-3. Administration by division.**

160 ~~[This]~~ The division shall administer this chapter ~~[shall be administered by the Division~~
161 ~~of Real Estate of the Department of Commerce, which hereinafter is referred to as the~~
162 ~~division]~~.

163 Section 3. Section **57-11-4** is amended to read:

164 **57-11-4. Exemptions.**

165 (1) Unless the method of disposition is adopted for the purpose of evasion of this
166 chapter or the federal act, this chapter does not apply to ~~[offers or dispositions]~~ an offer or
167 disposition of an interest in land:

168 (a) by a purchaser of subdivided lands for ~~[his]~~ the person's own account in a single or
169 isolated transaction;

170 (b) (i) on ~~[each]~~ a unit of which there is a residential, commercial, or industrial
171 building~~[-];~~ or

172 (ii) on ~~[each]~~ a unit of which there is a legal obligation on the part of the seller to
173 complete construction of ~~[such]~~ a residential, commercial, or industrial building within two
174 years from date of disposition;

175 (c) ~~[to any person who acquires that interest for use in the business of constructing~~
176 ~~residential, commercial, or industrial buildings, or to any person who acquires that type of land~~
177 ~~for the purpose of disposition to a person engaged in that business,]~~ unless ~~[the]~~ a person who
178 acquires land for ~~[these]~~ one of the following purposes sells that land to one or more
179 individuals as unimproved lots with no legal obligation on the part of the seller to construct a
180 residential, commercial, or industrial building on that lot within two years from the date of

181 disposition[;]:

182 (i) if the person acquires an interest in the land for use in the business of constructing

183 residential, commercial, or industrial buildings; or

184 (ii) if the person acquires the type of land described in Subsection (1)(c)(i) for the

185 purpose of disposition to a person engaged in the business of constructing residential,

186 commercial, or industrial buildings;

187 (d) pursuant to court order;

188 (e) by ~~[any]~~ a government or government agency;

189 (f) (i) if [at the time of the offer or disposition the subdivider furnishes satisfactory

190 assurance of completion of the improvements described in Subsections (1)(f)(ii) and (iii) and]

191 the interest lies within the boundaries of a city or a county which:

192 [(i)] (A) has a planning and zoning board [utilizing or employing] using at least one

193 professional planner;

194 [(ii)] (B) enacts ordinances that require approval of planning, zoning, and plats,

195 including the approval of plans for streets, culinary water, sanitary sewer, and flood control;

196 and

197 [(iii) in which the interest in land]

198 (C) will have the improvements described in Subsection (1)(f)[(ii)](i)(B) plus

199 telephone and electricity; and

200 (ii) if at the time of the offer or disposition the subdivider furnishes satisfactory

201 assurance of completion of the improvements described in Subsection (1)(f)(i)(C);

202 (g) in an industrial park;

203 (h) as cemetery lots; or

204 (i) if the interest is offered as part of a camp resort as defined in Section 57-19-2 or a

205 timeshare development as defined in Section 57-19-2.

206 (2) Unless the method of disposition is adopted for the purpose of evasion of this

207 chapter or the provisions of the federal act, ~~[the provisions of]~~ this chapter, except as

208 specifically designated, ~~[do]~~ does not apply to an offer or disposition of:

209 (a) ~~[offers or dispositions of evidences of]~~ indebtedness secured by a mortgage or deed

210 of trust on real estate;

211 (b) ~~[offers or dispositions of securities or units]~~ a security or unit of interest issued by a

212 real estate investment trust regulated under any state or federal statute;

213 (c) ~~[offers or dispositions of]~~ subject to Subsection (5), subdivided lands registered
214 under the federal act and which the division finds to be in the public interest to exempt from
215 the registration requirements of this chapter~~[-]; [A subdivider seeking to qualify under this~~
216 ~~exemption shall file with the division a copy of an effective statement of record filed with the~~
217 ~~secretary of the Department of Housing and Urban Development together with a filing fee of~~
218 ~~\$100. In the event the subdivider does not qualify under this exemption, this amount shall be~~
219 ~~credited to the filing fee required for registration under this chapter. Nothing in this Subsection~~
220 ~~(2)(c) exempts a subdivider from the provisions of Sections 57-11-16 and 57-11-17 or the~~
221 ~~requirement to file an annual report with the division under Section 57-11-10;]~~

222 (d) ~~[offers or dispositions of securities]~~ a security currently registered with the
223 ~~[Securities] Division of Securities; or~~

224 (e) ~~[offers or dispositions of any]~~ an interest in oil, gas, or other minerals or ~~[any]~~ a
225 royalty interest in these assets if the ~~[offers or dispositions of those interests are regulated as~~
226 ~~securities by the United States or by the Securities Division]~~ offer or disposition of the interest
227 is regulated as a security by the federal government or by the Division of Securities.

228 (3) (a) Notwithstanding the exemptions in Subsections (1) and (2), ~~[any]~~ a person
229 making an offer or disposition of an interest in land ~~[which]~~ that is located in Utah shall apply
230 to the division for an exemption before the offer or disposition is made if:

231 (i) the person is representing, in connection with the offer or disposition, the
232 availability of culinary water service to or on the subdivided land; and

233 (ii) the culinary water service is provided by a water corporation as defined in Section
234 54-2-1.

235 (b) A subdivider seeking to qualify under this exemption shall file with the division ~~[an~~
236 ~~application for exemption together with]~~ a filing fee of \$50 and an application containing:

237 (i) information required by the division to show that the offer or disposition is exempt
238 under ~~[the provisions of]~~ this section;

239 (ii) a statement as to what entity will be providing culinary water service and the nature
240 of that entity; and

241 (iii) (A) a copy of the entity's certificate of convenience and necessity issued by the
242 Public Service Commission~~[-];~~ or

243 (B) evidence that the entity providing water service is exempt from the jurisdiction of
244 the Public Service Commission.

245 (4) (a) The director may by rule or order exempt [any] a person from [any] a
246 requirement of this chapter if the director finds that the offering of an interest in a subdivision
247 is essentially noncommercial.

248 (b) For purposes of this section, the bulk sale of subdivided lands by a subdivider to
249 another person who will become the subdivider of those lands is considered essentially
250 noncommercial.

251 (5) (a) A subdivider seeking to qualify under the exemption described in Subsection
252 (2)(c) shall file with the division:

253 (i) a copy of an effective statement of record filed with the secretary of the Department
254 of Housing and Urban Development; and

255 (ii) a filing fee of \$100.

256 (b) If a subdivider does not qualify under the exemption described in Subsection (2)(c),
257 the division shall credit the filing fee described in Subsection (2)(c) to the filing fee required
258 for registration under this chapter.

259 (c) Nothing in this Subsection (5) exempts a subdivider from:

260 (i) Sections 57-11-16 and 57-11-17; or

261 (ii) the requirement to file an annual report with the division under Section 57-11-10.

262 (6) Notwithstanding an exemption under this section, the division:

263 (a) retains jurisdiction over an offer or disposition of an interest in land to determine
264 whether or not the exemption continues to apply; and

265 (b) may require compliance with this chapter if an exemption no longer applies.

266 Section 4. Section **57-11-14** is amended to read:

267 **57-11-14. Revocation, suspension, or denial of registration -- Grounds --**

268 **Suspension or revocation of real estate license.**

269 (1) (a) [The] If the division makes a written finding of fact that a subdivider engages in
270 one or more acts described in Subsection (1)(b), the division may:

271 (i) deny an application for registration [or may];

272 (ii) revoke, suspend, or deny reissuance of a registration[;]; or [may]

273 (iii) impose a [fine of not more than \$500 per violation, by following the procedures

274 and requirements of Title 63G, Chapter 4, Administrative Procedures Act, and by making a
 275 ~~written finding of fact that the subdivider has:~~ civil penalty not to exceed the greater of:
 276 (A) \$2,500 for each violation; or
 277 (B) the amount of any gain or economic benefit derived from each violation.
 278 (b) Subsection (1)(a) applies if the division makes a written finding of fact that a
 279 subdivider:
 280 (i) ~~[failed]~~ fails to comply with the terms of a cease and desist order;
 281 (ii) ~~[been]~~ is convicted in ~~[any]~~ a court prior or subsequent to the filing of the
 282 application for registration of a crime involving:
 283 (A) fraud[;];
 284 (B) deception[;];
 285 (C) false pretenses[;];
 286 (D) misrepresentation[;];
 287 (E) false advertising[;]; or
 288 (F) dishonest dealing in a real estate transactions[~~, or has been~~];
 289 (iii) is subject to ~~[any]~~ an injunction or administrative order restraining a false or
 290 misleading promotional plan involving land dispositions[~~, and that the public interest requires~~
 291 ~~revocation~~];
 292 ~~[(iii) disposed of, concealed, or diverted any]~~
 293 (iv) disposes of, conceals, or diverts funds or assets of any person so as to defeat the
 294 rights of subdivision purchasers;
 295 ~~[(iv) failed]~~ (v) fails to perform faithfully ~~[any]~~ a stipulation or agreement made with
 296 the division as an inducement to:
 297 (A) grant [any] a registration[~~, to~~];
 298 (B) reinstate [any] a registration[~~, to~~];
 299 (C) revoke [any] a cease and desist order[;]; or [to]
 300 (D) approve any promotional plan or public offering statement;
 301 ~~[(v) made]~~ (vi) makes an intentional ~~[misrepresentations]~~ misrepresentation, or
 302 ~~[concealed]~~ conceals a material ~~[facts]~~ fact, in an application for registration;
 303 ~~[(vi) violated any provision of]~~
 304 (vii) violates this chapter or the rules adopted under this chapter;

305 ~~[(vii)]~~ (viii) directly or through an agent or employee knowingly ~~[engaged]~~ engages in
 306 ~~[any]~~ false, deceptive, or misleading advertising, promotional, or sales methods to offer or
 307 dispose of an interest in subdivided lands;

308 ~~[(viii) engaged]~~ (ix) engages in the offering of subdivided lands ~~[which]~~ that has
 309 constituted or ~~[which]~~ that may constitute a fraud upon purchasers or prospective purchasers of
 310 the subdivided lands; or

311 ~~[(ix) engaged]~~ (x) engages in a dishonest ~~[practices]~~ practice in any industry involving
 312 sales to consumers.

313 ~~[(b)]~~ (c) ~~[Findings of fact shall be accompanied by]~~ The division shall accompany with
 314 a finding of fact required by this Subsection (1) a concise and explicit statement of the
 315 underlying facts supporting the ~~[findings]~~ finding.

316 (2) As an alternative to revoking the registration of a subdivider, the director may issue
 317 a cease and desist order if after notice and a hearing the director finds that the subdivider is
 318 guilty of a violation for which revocation may be ordered.

319 (3) ~~[Any]~~ (a) The division shall suspend or revoke the license of a real estate broker or
 320 ~~[salesman violating any provisions of]~~ real estate sales agent who violates this chapter [shall
 321 ~~have the real estate broker or salesman's license suspended or revoked by the division]~~ for the
 322 period of time the director determines to be justified under the circumstances. ~~[The]~~

323 (b) A suspension or revocation [shall be] under this section is in addition to any other
 324 penalty [which] that may be imposed under this chapter, subject to the provisions of Section
 325 61-2-12.

326 Section 5. Section **57-11-16** is amended to read:

327 **57-11-16. Violations -- Criminal penalty -- Limitation -- Duties of attorney**
 328 **general, county attorney, or district attorney.**

329 (1) (a) [Any] This Subsection (1) applies to a person who willfully:

330 (i) violates [any provision of this act] this chapter or [of] a rule adopted under [it or any
 331 ~~person who willfully;]~~ this chapter; or

332 (ii) in an application for registration under this [act] chapter or under the federal act,
 333 makes any untrue statement of a material fact or omits to state a material fact [may be fined not
 334 less than \$1,000 or double the amount of gain from the transaction, whichever is the larger, but
 335 not more than \$50,000; or he may be].

336 (b) A person described in Subsection (1)(a) may be:

337 (i) fined a civil penalty not to exceed the greater of:

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

339 (B) double the amount of any gain or economic benefit derived from each violation;

340 (ii) imprisoned for not more than two years; or

341 (iii) both fined or imprisoned. [No]

342 (c) An indictment or information may not be returned or a complaint filed under this
343 [act] chapter more than five years after the alleged violation.

344 (2) (a) The attorney general shall advise the division and [its] the division's staff in
345 matters requiring legal counsel or services in the exercise of the division's power or
346 performance of [its] the division's duties.

347 (b) In the prosecution or defense of [any] an action under this section, the attorney
348 general, the county attorney, or the district attorney of the appropriate county shall perform all
349 necessary legal services without compensation other than their regular salaries.

350 Section 6. Section **57-19-5** is amended to read:

351 **57-19-5. Registration -- Filing application.**

352 (1) A person may apply for registration of a project by filing with the director:

353 (a) an application in the form prescribed by the director;

354 (b) the written disclosure required to be furnished to prospective purchasers by Section
355 57-19-11; and

356 (c) financial statements and other information that the director may by rule require as
357 being reasonably necessary to determine whether the requirements of this chapter have been
358 met and whether any of the events specified in Subsection 57-19-13(1)(g) have occurred.

359 (2) Interests in a project which are encumbered by liens, mortgages, or other
360 encumbrances may not be accepted for registration or offered for disposition to the public
361 unless:

362 (a) adequate release or nondisturbance clauses are contained in the encumbering
363 instruments to reasonably assure that the purchaser's interest in the project will not be defeated;
364 or

365 (b) the division has accepted other equivalent assurances which, in the opinion of the
366 division, meet the purposes of this Subsection (2).

367 (3) (a) Each application for registration of a project shall be accompanied by:
 368 [~~(a)~~] (i) a filing fee of \$500 for up to 100 interests, plus an additional \$3 per interest for
 369 each interest over 100, up to a maximum of \$2,500 for each application; and

370 [~~(b)~~] (ii) subject to Subsection (3)(b), a deposit of \$300 to cover all on-site inspection
 371 costs and expenses incurred by the division.

372 (b) (i) If the \$300 deposit is insufficient to meet the estimated costs and expenses of the
 373 on-site inspection, the applicant shall make an additional deposit sufficient to cover the
 374 estimated costs and expenses before the division will inspect the subdivided lands.

375 (ii) The deposit shall be refunded to the extent it is not used, together with an itemized
 376 statement from the division of all amounts it has used.

377 (4) If a person registers additional interests to be offered for disposition, [~~he~~] the
 378 person may consolidate the subsequent registration with any earlier registration offering
 379 interests for disposition in the same project by filing an application for consolidation
 380 accompanied by an additional fee of \$200 plus \$3 for each additional interest, up to a
 381 maximum of \$1,250 for each application, if at the time the person makes the application all of
 382 the information required by Subsection (1) has been brought current and covers the additional
 383 interests.

384 Section 7. Section **57-19-15** is amended to read:

385 **57-19-15. Application for registration of salesperson.**

386 (1) A person may apply for registration as a salesperson under this chapter by filing
 387 with the director an application in the form prescribed by the director, including[~~, but not~~
 388 ~~limited to~~]:

389 (a) a statement of whether or not the applicant has ever been:

390 (i) convicted of:

391 (A) a felony[~~;~~]; or [~~any~~]

392 (B) a misdemeanor involving theft, fraud, or dishonesty; or

393 (ii) enjoined from, assessed a civil penalty for, or found to have engaged in the
 394 violation of [~~any~~] a law designed to protect [~~consumers~~] a consumer;

395 (b) (i) a statement describing the applicant's employment history for the [~~previous~~] five
 396 years immediately preceding the day on which the application is filed; and

397 (ii) a statement of whether or not [~~any~~] a termination of employment during [~~that~~] the

398 period ~~[was occasioned by any]~~ described in Subsection (1)(b)(i) is as a result of theft, fraud, or
 399 an act of dishonesty; and

400 (c) any other information that the director, by rule, considers necessary to protect the
 401 interests of ~~[purchasers]~~ a purchaser.

402 (2) ~~[The]~~ Notwithstanding the requirements for a regulatory fee under Section
 403 63J-1-303, at the time an applicant files an application, the applicant shall ~~[be accompanied by]~~
 404 pay to the division a fee of ~~[\$50]~~ \$100.

405 (3) (a) Registration as a salesperson is effective for a period for ~~[one year]~~ two years,
 406 unless the director specifies otherwise. ~~[Registration as]~~

407 (b) To renew a registration a salesperson ~~[may be renewed by the filing of]~~ shall:

408 (i) file a form prescribed by the director for that purpose; and ~~[the payment of]~~

409 (ii) pay a renewal fee of ~~[\$50]~~ \$100.

410 Section 8. Section **57-19-16** is amended to read:

411 **57-19-16. Denial, revocation, or suspension of registration of salesperson -- Fine.**

412 (1) Subject to Section 57-19-17, if the director finds that an applicant or salesperson
 413 has engaged in an act described in Subsection (2), the director may:

414 (a) deny an application for registration as a salesperson ~~[may be denied];~~

415 (b) suspend or revoke an existing registration ~~[may be revoked or suspended];~~ or ~~[a~~
 416 ~~fine not to exceed \$500 may be imposed by the director, if he]~~

417 (c) impose a civil penalty not to exceed \$500.

418 (2) Subsection (1) applies if the director finds that the applicant or salesperson [has]:
 419 ~~[(1) filed, or caused]~~

420 (a) files, or causes to be filed, with the director ~~[any]~~ a document ~~[which]~~ that contains

421 ~~[any] an untrue or misleading information;~~

422 ~~[(2) made any]~~

423 (b) makes an untrue or misleading statement of material fact~~[, or failed];~~

424 (c) fails to state a material fact ~~[which]~~ that is necessary in order to make the

425 statements made not misleading in light of the circumstances under which ~~[they]~~ the statements

426 are made;

427 ~~[(3) employed any]~~

428 (d) employs a device, scheme, or artifice to defraud, or ~~[engaged]~~ engages in ~~[any]~~ an

429 act, practice, or course of business [~~which~~] that operates or would operate as a fraud or deceit
 430 upon [~~any~~] a person;

431 [~~(4)~~] (e) subsequent to the effective date of registration as a salesperson, [~~has been~~] is:

432 [~~(a)~~] (i) convicted of:

433 (A) a felony[~~;~~]; or [~~any~~]

434 (B) a misdemeanor involving theft, fraud, or dishonesty; or

435 [~~(b)~~] (ii) enjoined from, assessed a civil penalty for, or found to have engaged in [~~any~~]
 436 a violation of any law designed to protect consumers;

437 [~~(5) violated any provision of~~]

438 (f) violates this chapter; [or]

439 [~~(6) engaged in any~~]

440 (g) engages in an activity [~~which~~] that constitutes dishonest dealing[~~;~~]; or

441 (h) engages in unprofessional conduct as defined by statute or rule made by the
 442 director.

443 Section 9. Section **61-2-6** is amended to read:

444 **61-2-6. Licensing procedures and requirements.**

445 (1) (a) Except as provided in Subsection (5), the commission shall determine the
 446 qualifications and requirements of [~~applicants~~] an applicant for:

447 (i) a principal broker license;

448 (ii) an associate broker license; or

449 (iii) a sales agent license.

450 (b) The division, with the concurrence of the commission, shall require and pass upon
 451 proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency of
 452 each applicant for an initial license or for renewal of an existing license.

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

455 (A) a sales agent license to complete an approved educational program [~~not to exceed~~
 456 ~~90 hours~~] consisting of the number of hours designated by rule made by the commission with
 457 the concurrence of the division, except that the rule may not require less than 120 hours; and

458 (B) an associate broker or principal broker license to complete an approved educational
 459 program [~~not to exceed~~] consisting of the number of hours designated by rule made by the

460 commission with the concurrence of the division, except that the rule may not require less than
461 120 hours.

462 (ii) [~~The hours~~] An hour required by this section [~~mean~~] means 50 minutes of
463 instruction in each 60 minutes.

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

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

468 (i) the fundamentals of:

469 (A) the English language;

470 (B) arithmetic;

471 (C) bookkeeping; and

472 (D) real estate principles and practices;

473 (ii) the provisions of this chapter;

474 (iii) the rules established by the commission; and

475 (iv) any other aspect of Utah real estate license law considered appropriate.

476 (e) (i) Three years' full-time experience as a real estate sales agent or its equivalent is
477 required before [~~any~~] an applicant may apply for, and secure a principal broker or associate
478 broker license in this state.

479 (ii) The commission shall establish by rule, made in accordance with Title 63G,
480 Chapter 3, Utah Administrative Rulemaking Act, the criteria by which the commission will
481 accept experience or special education in similar fields of business in lieu of the three years'
482 experience.

483 (2) (a) The division, with the concurrence of the commission, may require an applicant
484 to furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's
485 reputation and competency as set forth by rule.

486 (b) The division shall require an applicant to provide the applicant's Social Security
487 number, which is a private record under Subsection 63G-2-302(1)(h).

488 (3) (a) A nonresident principal broker may be licensed in this state by [~~conforming to~~]
489 complying with all the provisions of this chapter except that of residency.

490 (b) A nonresident associate broker or sales agent may become licensed in this state by:

491 (i) ~~[conforming to]~~ complying with all the provisions of this chapter except that of
492 residency; and

493 (ii) being employed or engaged as an independent contractor by or on behalf of a
494 nonresident or resident principal broker who is licensed in this state.

495 (4) (a) Except as provided in Subsection 61-2-9(1)(e)(iv), ~~[the]~~ the division and
496 commission shall treat an application to be relicensed of an applicant ~~[who has had a]~~ whose
497 real estate license is revoked ~~[shall be treated]~~ as an original application.

498 (b) In the case of an applicant for a new license as a principal broker or associate
499 broker, the applicant is not entitled to credit for experience gained ~~[prior to]~~ before the
500 revocation of a real estate license.

501 (5) (a) Notwithstanding Subsection (1), the commission may delegate to the division
502 the authority to:

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

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

510 (ii) An applicant who is denied licensure pursuant to this Subsection (5) may seek
511 agency review by the executive director only after the commission has ~~reviewed~~ the division's
512 denial of the applicant's application.

513 Section 10. Section ~~61-2-7.2~~ is amended to read:

514 **61-2-7.2. Reporting requirements.**

515 ~~[Principal brokers, associate brokers, and sales agents]~~ A licensee shall [send] notify the
516 division of the following by sending the division a signed statement ~~[notifying the division of~~
517 ~~the following]~~ within ten business days of:

- 518 (1) (a) a conviction of [any] a criminal offense; [or]
519 (b) the entry of a plea in abeyance to a criminal offense; or
520 (c) the potential resolution of a criminal case by:
521 (i) a diversion agreement; or

522 (ii) any other agreement under which a criminal charge is held in suspense for a period
523 of time; or

524 (2) filing a personal or brokerage bankruptcy.

525 Section 11. Section **61-2-9** is amended to read:

526 **61-2-9. Examination and license fees -- Criminal background check -- Renewal of**
527 **licenses -- Education requirements -- Activation of inactive licenses -- Recertification --**
528 **Licenses of firm, partnership, or association -- Miscellaneous fees.**

529 (1) (a) Upon filing an application for a principal broker, associate broker, or sales agent
530 license examination, the applicant shall pay a nonrefundable fee as determined by the
531 commission with the concurrence of the division under Section 63J-1-303 for admission to the
532 examination.

533 (b) A principal broker, associate broker, or sales agent applicant shall pay a
534 nonrefundable fee as determined by the commission with the concurrence of the division under
535 Section 63J-1-303 for issuance of an initial license or license renewal.

536 (c) ~~[Each]~~ A license issued under this Subsection (1) shall be issued for a period of not
537 less than two years as determined by the division with the concurrence of the commission.

538 (d) (i) Any of the following applicants shall comply with this Subsection (1)(d):

539 (A) a new sales agent applicant; or

540 (B) ~~[an out-of-state]~~ a broker applicant.

541 (ii) An applicant described in this Subsection (1)(d) shall:

542 (A) submit fingerprint cards in a form acceptable to the division at the time the license
543 application is filed; and

544 (B) consent to a criminal background check by the Utah Bureau of Criminal
545 Identification and the Federal Bureau of Investigation regarding the application.

546 (iii) The division shall request the Department of Public Safety to complete a Federal
547 Bureau of Investigation criminal background check for each applicant described in this
548 Subsection (1)(d) through the national criminal history system or any successor system.

549 (iv) The applicant shall pay the cost of the criminal background check and the
550 fingerprinting ~~[shall be borne by the applicant]~~.

551 (v) ~~[Funds]~~ Monies paid to the division by an applicant for the cost of the criminal
552 background check ~~[shall be]~~ are nonlapsing.

553 (e) (i) ~~[Any]~~ A license issued under Subsection (1)(d) ~~[shall be]~~ is conditional, pending
554 completion of the criminal background check. If the criminal background check discloses the
555 applicant ~~[has failed]~~ fails to accurately disclose a criminal history, the license shall be
556 immediately and automatically revoked.

557 (ii) ~~[Any]~~ A person whose conditional license ~~[has been]~~ is revoked under Subsection
558 (1)(e)(i) ~~[shall be entitled to]~~ may have a post-revocation hearing to challenge the revocation.
559 The hearing shall be conducted in accordance with Title 63G, Chapter 4, Administrative
560 Procedures Act.

561 (iii) The division director shall designate one of the following to act as the presiding
562 officer in a postrevocation hearing described in this Subsection (1)(e):

563 (A) the division; or

564 (B) the division with the concurrence of the commission.

565 (iv) The decision on whether relief from the revocation of a license under this
566 Subsection (1)(e) will be granted shall be made by the presiding officer.

567 (v) Relief from a revocation under this Subsection (1)(e) may be granted only if:

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

569 (I) did not occur; or

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

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

572 (II) the applicant ~~[had]~~ has a reasonable good faith belief at the time of application that
573 there was no criminal history to be disclosed; or

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

575 (vi) If a license is revoked or a revocation under this Subsection (1)(e) is upheld after a
576 post-revocation hearing, the person may not apply for a new license until at least 12 months
577 after the day on which the license is revoked.

578 (2) (a) (i) A license expires if it is not renewed on or before its expiration date.

579 (ii) As a condition of renewal, ~~[each]~~ an active licensee shall demonstrate competence[:

580 ~~(A) by viewing an approved real estate education video program and completing a~~

581 ~~supplementary workbook; or (B)]~~ by completing ~~[12]~~ 18 hours of ~~[professional]~~ continuing

582 education ~~[approved by the division and commission]~~ within ~~[each]~~ a two-year renewal period

583 subject to rules made by the commission, with the concurrence of the division.

584 (iii) In making a rule described in Subsection (2)(c)(ii), the division and commission
585 shall consider:

586 (A) evaluating continuing education on the basis of competency, rather than course
587 time;

588 (B) allowing completion of courses in a significant variety of topic areas that the
589 division and commission determine are valuable in assisting an individual licensed under this
590 chapter to increase the individual's competency; and

591 (C) allowing completion of courses that will increase a licensee's professional
592 competency in the area of practice of the licensee.

593 ~~[(iii)]~~ (iv) The division with the concurrence of the commission shall certify the
594 continuing education required under this Subsection (2)(a) which may include:

595 (A) state conventions;

596 (B) home study courses;

597 (C) video courses; and

598 (D) closed circuit television courses.

599 ~~[(iv)]~~ (v) The commission with concurrence of the division may exempt a licensee
600 from all or a part of the continuing education requirement of this Subsection (2)(a) for a
601 reasonable period [not to exceed four years] of time:

602 (A) upon a finding of reasonable cause, including:

603 (I) military service; [and] or

604 (II) if an individual is elected or appointed to government service, the individual's
605 government service during which the individual spends a substantial time addressing real estate
606 issues; and

607 (B) under conditions established by rule made in accordance with Title 63G, Chapter 3,
608 Utah Administrative Rulemaking Act.

609 (b) For a period of 30 days after the expiration date of a license, the license may be
610 reinstated upon:

611 (i) payment of a renewal fee and a late fee determined by the commission with the
612 concurrence of the division under Section 63J-1-303; and

613 (ii) providing proof acceptable to the division and the commission of the licensee
614 having:

615 (A) completed the hours of education required by Subsection (2)(a); or
616 (B) demonstrated competence as required under Subsection (2)(a).
617 (c) After the 30-day period described in Subsection (2)(b), and until six months after
618 the expiration date, the license may be reinstated by:
619 (i) paying a renewal fee and a late fee determined by the commission with the
620 concurrence of the division under Section 63J-1-303;
621 (ii) providing to the division proof of satisfactory completion of 12 hours of continuing
622 education:
623 (A) in addition to the requirements for a timely renewal; and
624 (B) on a subject determined by the commission by rule made in accordance with Title
625 63G, Chapter 3, Utah Administrative Rulemaking Act; and
626 (iii) providing proof acceptable to the division and the commission of the licensee
627 having:
628 (A) completed the hours of education required under Subsection (2)(a); or
629 (B) demonstrated competence as required under Subsection (2)(a).
630 (d) After the six-month period described in Subsection (2)(c), and until one year after
631 the expiration date, the license may be reinstated by:
632 (i) paying a renewal fee and a late fee determined by the commission with the
633 concurrence of the division under Section 63J-1-303;
634 (ii) providing to the division proof of satisfactory completion of 24 hours of continuing
635 education;
636 (A) in addition to the requirements for a timely renewal; and
637 (B) on a subject determined by the commission by rule made in accordance with Title
638 63G, Chapter 3, Utah Administrative Rulemaking Act; and
639 (iii) providing proof acceptable to the division and the commission of the licensee
640 having:
641 (A) completed the hours of education required by Subsection (2)(a); or
642 (B) demonstrated competence as required under Subsection (2)(a).
643 ~~[(d) A]~~ (e) The division shall relicense a person who does not renew that person's
644 license within [six months after the expiration date shall be relicensed] one year as prescribed
645 for an original application.

646 (f) Notwithstanding Subsection (2)(a), the division may extend the term of a license
647 that would expire under Subsection (2)(a) except for the extension if:

648 (i) the person complies with the requirements of this section to renew the license; and

649 (ii) at the time of the extension, there is pending under this chapter:

650 (A) the application for renewal of the license; or

651 (B) a disciplinary action.

652 (3) (a) As a condition for the activation of an inactive license that was in an inactive
653 status at the time of the licensee's most recent renewal, the licensee shall supply the division
654 with proof of:

655 (i) successful completion of the respective sales agent or broker licensing examination
656 within six months prior to applying to activate the license; or

657 (ii) the successful completion of [~~12~~] the hours of continuing education that the
658 licensee would have been required to complete under Subsection (2)(a) if the license had been
659 on active status at the time of the licensee's most recent renewal.

660 (b) The commission may, in accordance with Title 63G, Chapter 3, Utah
661 Administrative Rulemaking Act, establish by rule:

662 (i) the nature or type of continuing education required for reactivation of a license; and

663 (ii) how long [~~prior to~~] before reactivation the continuing education must [~~have been~~]
664 be completed.

665 (4) (a) A principal broker license may be granted to a corporation, partnership, or
666 association if the corporation, partnership, or association has affiliated with it an individual
667 who:

668 (i) has qualified as a principal broker under the terms of this chapter; and

669 (ii) serves in the capacity of a principal broker.

670 (b) Application for the license described in Subsection (4)(a) shall be made in
671 accordance with the rules adopted by the division with the concurrence of the commission.

672 (5) The division may charge and collect reasonable fees determined by the commission
673 with the concurrence of the division under Section 63J-1-303 to cover the costs for:

674 (a) issuance of a new or duplicate license;

675 (b) a license [~~histories or certifications~~] history or certification;

676 (c) a certified [~~copies~~] copy of an official [~~documents, orders, and~~] document, order, or

677 other [~~papers and transcripts~~] paper or transcript;

678 (d) certifying a real estate [~~schools, courses, and instructors~~] school, course, or
679 instructor, the fees for which shall, notwithstanding Section 13-1-2, be deposited in the Real
680 Estate Education, Research, and Recovery Fund; and

681 (e) other duties required by this chapter.

682 (6) If a licensee submits or causes to be submitted a check, draft, or other negotiable
683 instrument to the division for payment of [~~fees~~] a fee, and the check, draft, or other negotiable
684 instrument is dishonored, the transaction for which the payment [~~was~~] is submitted is void and
685 will be reversed by the division if payment of the applicable fee is not received in full.

686 (7) (a) [~~The fees~~] A fee under this chapter and the additional license fee for the Real
687 Estate Education, Research, and Recovery Fund under Section 61-2a-4 are in lieu of all other
688 license fees or assessments that might otherwise be imposed or charged by the state or any of
689 its political subdivisions, upon, or as a condition of, the privilege of conducting the business
690 regulated by this chapter, except that a political subdivision within the state may charge a
691 business license fee on a principal broker if the principal broker maintains a place of business
692 within the jurisdiction of the political subdivision.

693 (b) Unless otherwise exempt, [~~each~~] a licensee under this chapter is subject to all taxes
694 imposed under Title 59, Revenue and Taxation.

695 Section 12. Section **61-2-10** is amended to read:

696 **61-2-10. Restriction on commissions -- Affiliation with more than one broker --**
697 **Specialized licenses -- Designation of agents or brokers.**

698 (1) [~~It is unlawful for any~~] (a) Except as provided in Subsection (1)(b), an associate
699 broker or sales agent [~~to~~] may not accept valuable consideration for the performance of [~~any of~~
700 ~~the acts~~] an act specified in this chapter from [~~any~~] a person except the principal broker with
701 whom the associate broker or sales agent is affiliated and licensed.

702 (b) An associate broker or sales agent may receive valuable consideration for the
703 performance of an act specified in this chapter from a person other than the principal broker
704 with whom the associate broker or sales agent is affiliated if:

705 (i) the valuable consideration is paid with a payment instrument prepared by a title
706 insurance agent;

707 (ii) the title insurance agent provides the payment instrument to the principal broker;

708 (iii) the title insurance agent complies with the written instructions of the principal
709 broker:

710 (A) in preparing the payment instrument; and

711 (B) delivering the payment instrument to the principal broker; and

712 (iv) the principal broker directly delivers the payment instrument to the associate
713 broker or sales agent.

714 (c) The commission, with the concurrence of the division, may make rules in
715 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

716 (i) defining what constitutes a "payment instrument" for purposes of this Subsection
717 (1); or

718 (ii) the form and contents of the of the written instructions required by Subsection
719 (1)(b).

720 (2) An inactive associate broker or sales agent [~~is not authorized to~~] may not conduct a
721 real estate [~~transactions~~] transaction until the inactive associate broker or sales agent becomes
722 affiliated with a licensed principal broker and submits the required documentation to the
723 division. An inactive principal broker [~~is not authorized to~~] may not conduct a real estate
724 [~~transactions~~] transaction until the principal broker's license is activated with the division.

725 (3) [~~No~~] A sales agent or associate broker may not affiliate with more than one
726 principal broker at the same time.

727 (4) (a) Except as provided by rule, a principal broker may not be responsible for more
728 than one real estate brokerage at the same time.

729 (b) (i) In addition to issuing principal broker, associate broker, and sales agent licenses
730 authorizing the performance of all of the acts set forth in Subsection 61-2-2(12), the division
731 may issue specialized sales licenses and specialized property management licenses with the
732 scope of practice limited to the specialty.

733 (ii) An individual may hold a specialized license in addition to a license to act as a
734 principal broker, an associate broker, or a sales agent.

735 (iii) The commission may adopt rules pursuant to Title 63G, Chapter 3, Utah
736 Administrative Procedures Act, for the administration of this [~~provision~~] Subsection (4),
737 including:

738 (A) prelicensing and postlicensing education requirements[;];

739 (B) examination requirements[;];
740 (C) affiliation with real estate brokerages or property management companies[;]; and
741 (D) other licensing procedures.

742 (c) An individual may not be a principal broker of a brokerage and a sales agent or
743 associate broker for a different brokerage at the same time.

744 (5) [~~Any~~] An owner, purchaser, lessor, or lessee who engages the services of a
745 principal broker may designate which sales agents or associate brokers affiliated with that
746 principal broker will also represent that owner, purchaser, lessor, or lessee in the purchase, sale,
747 lease, or exchange of real estate, or in exercising an option relating to real estate.

748 Section 13. Section **61-2-11** is amended to read:

749 **61-2-11. Grounds for disciplinary action.**

750 The following acts are unlawful for a person required to be licensed under this chapter:

751 (1) making [~~any~~] a substantial misrepresentation;

752 (2) making [~~any~~] a false [~~promises~~] promise of a character likely to influence,
753 persuade, or induce;

754 (3) pursuing a continued and flagrant course of misrepresentation, or of making false
755 promises through agents, sales agents, advertising, or otherwise;

756 (4) acting for more than one party in a transaction without the informed consent of all
757 parties;

758 (5) (a) acting as an associate broker or sales agent while not licensed with a licensed
759 principal broker;

760 (b) representing or attempting to represent a broker other than the principal broker with
761 whom the person is affiliated; or

762 (c) representing as sales agent or having a contractual relationship similar to that of
763 sales agent with other than a licensed principal broker;

764 (6) (a) failing, within a reasonable time, to account for or to remit [~~any~~] monies coming
765 into the person's possession that belong to others;

766 (b) commingling the [~~funds~~] monies described in Subsection (6)(a) with the person's
767 own [~~funds~~] monies; or

768 (c) diverting the [~~funds~~] monies described in Subsection (6)(a) from the purpose for
769 which they were received;

770 (7) paying or offering to pay valuable consideration, as defined by the commission, to
771 ~~[any]~~ a person not licensed under this chapter, except that valuable consideration may be
772 shared:

773 (a) with a licensed principal broker of another jurisdiction; or

774 (b) as provided under:

775 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;

776 (ii) Title 16, Chapter 11, Professional Corporation Act; or

777 (iii) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act;

778 (8) being unworthy or incompetent to act as a principal broker, associate broker, or
779 sales agent in such manner as to safeguard the interests of the public;

780 (9) failing to voluntarily furnish ~~[copies of all documents]~~ a copy of a document to all
781 parties executing the ~~[documents]~~ document;

782 (10) failing to keep and make available for inspection by the division a record of each
783 transaction, including:

784 (a) the names of buyers and sellers or lessees and lessors;

785 (b) the identification of the property;

786 (c) the sale or rental price;

787 (d) ~~[any]~~ monies received in trust;

788 (e) ~~[any]~~ agreements or instructions from buyers and sellers or lessees and lessors; and

789 (f) any other information required by rule;

790 (11) failing to disclose, in writing, in the purchase, sale, or rental of property, whether
791 the purchase, sale, or rental is made for that person or for an undisclosed principal;

792 (12) regardless of whether the crime ~~[was]~~ is related to real estate, being convicted of a
793 criminal offense involving moral turpitude within five years of the most recent application,
794 including:

795 (a) a conviction based upon a plea of nolo contendere[;]; or

796 (b) a plea held in abeyance to a criminal offense involving moral turpitude;

797 (13) advertising the availability of real estate or the services of a licensee in a false,
798 misleading, or deceptive manner;

799 (14) in the case of a principal broker or a licensee who is a branch manager, failing to
800 exercise reasonable supervision over the activities of the principal broker's or branch manager's

- 801 ~~[licensees and any]~~ licensee or unlicensed staff;
- 802 (15) violating or disregarding:
- 803 (a) this chapter~~[-];~~;
- 804 (b) an order of the commission~~[-];~~ or
- 805 (c) the rules adopted by the commission and the division;
- 806 (16) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real
- 807 estate transaction;
- 808 (17) any other conduct which constitutes dishonest dealing;
- 809 (18) unprofessional conduct as defined by statute or rule;
- 810 (19) on the basis of misconduct in a professional capacity that relates to character,
- 811 honesty, integrity, or truthfulness, having one of the following suspended, revoked,
- 812 surrendered, or cancelled:
- 813 (a) a real estate license issued by another jurisdiction; or
- 814 (b) another professional license issued by this or another jurisdiction;
- 815 (20) failing to respond to a request by the division in an investigation authorized under
- 816 this chapter, including:
- 817 (a) failing to respond to a subpoena;
- 818 (b) withholding evidence; or
- 819 (c) failing to produce documents or records; ~~[or]~~
- 820 (21) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
- 821 (a) providing a title insurance product or service without the approval required by
- 822 Section 31A-2-405; or
- 823 (b) knowingly providing false or misleading information in the statement required by
- 824 Subsection 31A-2-405(2)~~[-];~~ or
- 825 (22) violating an independent contractor agreement between a principal broker and a
- 826 sales agent as evidenced by a final judgment of a court.
- 827 Section 14. Section **61-2-12** is amended to read:
- 828 **61-2-12. Disciplinary action -- Judicial review.**
- 829 (1) (a) On the basis of a violation of this chapter, the commission with the concurrence
- 830 of the director, may issue an order:
- 831 (i) imposing an educational requirement;

- 832 (ii) imposing a civil penalty not to exceed the greater of:
833 (A) \$2,500 for each violation; or
834 (B) the amount of any gain or economic benefit derived from each violation;
835 (iii) taking any of the following actions related to a license or certificate:
836 (A) revoking;
837 (B) suspending;
838 (C) placing on probation;
839 (D) denying the renewal, reinstatement, or application for an original license or
840 certificate; or
841 (E) in the case of denial or revocation of a license or certificate, setting a waiting
842 period for an applicant to apply for a license or certificate under this title;
843 (iv) issuing a cease and desist order; ~~or~~
844 (v) modifying an action described in Subsections (1)(a)(i) through (iv) if the
845 commission finds that the person complies with court ordered restitution; or
846 ~~(v)~~ (vi) doing any combination of Subsections (1)(a)(i) through (v).
847 (b) If ~~the~~ a licensee is an active sales agent or active associate broker, the division
848 shall inform the principal broker with whom the licensee is affiliated of the charge and of the
849 time and place of any hearing.
- 850 (2) (a) ~~Any~~ An applicant, certificate holder, licensee, or person aggrieved, including
851 the complainant, may obtain agency review by the executive director and judicial review of any
852 adverse ruling, order, or decision of the division.
- 853 (b) If ~~the~~ an applicant, certificate holder, or licensee prevails in the appeal and the
854 court finds that the state action was undertaken without substantial justification, the court may
855 award reasonable litigation expenses to the applicant, certificate holder, or licensee as provided
856 under Title 78B, Chapter 8, Part 5, Small Business Equal Access to Justice Act.
- 857 (c) (i) An order, ruling, or decision of the division shall take effect and become
858 operative 30 days after the service of the order, ruling, or decision unless otherwise provided in
859 the order.
- 860 (ii) If an appeal is taken by a licensee, the division may stay enforcement of an order,
861 ruling, or decision in accordance with Section 63G-4-405.
- 862 (iii) ~~The~~ An appeal ~~shall be~~ is governed by the Utah Rules of Appellate Procedure.

863 (3) The commission and the director shall comply with the procedures and
864 requirements of Title 63G, Chapter 4, Administrative Procedures Act, in ~~[aH]~~ an adjudicative
865 ~~[proceedings]~~ proceeding.

866 Section 15. Section **61-2-17** is amended to read:

867 **61-2-17. Penalty for violation of chapter.**

868 (1) ~~[Any individual violating]~~ (a) An individual required to be licensed under this
869 chapter who violates this chapter, in addition to being subject to a license sanction or a fine
870 ordered by the commission, is, upon conviction of a first violation, guilty of a class A
871 misdemeanor. ~~[Any]~~ For a conviction under this Subsection (1)(a), imprisonment shall be for a
872 term not to exceed six months.

873 (b) If ~~[the]~~ a violator of this chapter is a corporation, ~~[it]~~ the corporation is, upon
874 conviction of a first violation, guilty of a class A misdemeanor.

875 (2) (a) Upon conviction of a second or subsequent violation, an individual is guilty of a
876 third degree felony. Imprisonment for a conviction under this Subsection (2)(a) shall be for a
877 term not to exceed two years.

878 (b) If a corporation is convicted of a second or subsequent violation, ~~[it]~~ the
879 corporation is guilty of a third degree felony.

880 (3) ~~[Any]~~ An officer or agent of a corporation, or ~~[any]~~ a member or agent of a
881 partnership or association, who personally participates in or is an accessory to any violation of
882 this chapter by ~~[such]~~ the corporation, partnership, or association, is subject to the penalties
883 prescribed for ~~[individuals]~~ an individual.

884 (4) If ~~[any]~~ a person receives ~~[any]~~ money or its equivalent, as commission,
885 compensation, or profit by or in consequence of a violation of this chapter, that person is liable
886 for an additional penalty of not less than the amount of the money received and not more than
887 three times the amount of money received, as may be determined by the court. This penalty
888 may be sued for in any court of competent jurisdiction, and recovered by any person aggrieved
889 for ~~[his]~~ the person's own use and benefit.

890 (5) ~~[All fines]~~ A fine imposed by the commission and the director under this chapter
891 shall, notwithstanding Section 13-1-2, be deposited into the Real Estate Education, Research,
892 and Recovery Fund to be used in a manner consistent with the requirements of ~~[the]~~ Chapter
893 2a, Real Estate Recovery Fund Act.

894 Section 16. Section **61-2a-2** is amended to read:

895 **61-2a-2. Purpose -- Definitions.**

896 (1) The purposes of this chapter are as follows:

897 [~~(1) To establish a~~] (a)(i) This chapter creates the Real Estate Education, Research,
898 and Recovery Fund [that shall] to reimburse the public out of the fund for damages up to
899 [\$10,000] \$15,000 caused by a real estate [licensees] licensee in a real estate transaction as
900 provided in Subsection 61-2a-5(1).

901 (ii) This chapter applies to damages caused by an individual [licensees] licensee.
902 Reimbursement may not be made for [judgments] a judgment against [corporations,
903 partnerships, associations, or other legal entities] a corporation, partnership, association, or
904 other legal entity.

905 [~~(2) To provide~~] (b) This chapter provides revenue for improving the real estate
906 profession through education and research with the goal of making [real estate salesmen]
907 licensees more responsible to the public.

908 (2) For purposes of this chapter:

909 (a) "Commission" means the Real Estate Commission.

910 (b) "Division" means the Division of Real Estate.

911 (c) "Fund" means the Real Estate Education, Research, and Recovery Fund created in
912 Section 61-2a-3.

913 (d) "Judgment" includes a criminal restitution judgment award.

914 Section 17. Section **61-2a-3** is amended to read:

915 **61-2a-3. Education, Research, and Recovery Fund.**

916 (1) (a) There is created a restricted special revenue fund to be known as the "Real
917 Estate Education, Research, and Recovery Fund."

918 (b) The actual interest earned on the [~~Real Estate Education, Research, and Recovery~~
919 ~~Fund] fund shall be deposited into the fund.~~

920 (2) At the commencement of each fiscal year, \$100,000 shall be available in the fund
921 for satisfying judgments rendered against [~~persons] a person licensed under Title 61, Chapter 2,~~
922 ~~Division of Real Estate.~~

923 Section 18. Section **61-2a-4** is amended to read:

924 **61-2a-4. Additional license fee -- Purpose.**

925 (1) ~~[Each]~~ A person who applies for or renews a real estate principal broker or
 926 associate broker license shall pay, in addition to the application or renewal fee, a reasonable
 927 annual fee of up to \$18, as determined by the ~~[Division of Real Estate]~~ division with the
 928 concurrence of the ~~[Real Estate Commission]~~ commission.

929 (2) ~~[Each]~~ A person who applies for or renews a real estate sales agent license shall pay
 930 in addition to the application or renewal fee a reasonable annual fee of up to \$12, as determined
 931 by the division with the concurrence of the commission.

932 (3) Notwithstanding Section 13-1-2, the additional fees under this section shall be paid
 933 into the ~~[Real Estate Education, Research, and Recovery Fund]~~ fund to be used for the
 934 purposes of this chapter.

935 Section 19. Section **61-2a-5** is amended to read:

936 **61-2a-5. Notice to division -- Judgment against real estate licensee -- Fraud,**
 937 **misrepresentation, or deceit -- Verified petition for order directing payment from fund --**
 938 **Limitations and procedure.**

939 (1) ~~[A]~~ (a) Except as provided in Subsection (6), a person may bring a claim against
 940 the ~~[Real Estate Education, Research, and Recovery Fund]~~ fund only if ~~[he]~~ the person sends a
 941 signed notification to the ~~[Division of Real Estate]~~ division at the time ~~[he]~~ the person files an
 942 action against a real estate licensee alleging fraud, misrepresentation, or deceit.

943 (b) Within 30 days of receipt of the notice, the division ~~[shall have]~~ has an
 944 unconditional right to intervene in the action.

945 (c) If the person making a claim against the fund obtains a final judgment in a court of
 946 competent jurisdiction in this state against the licensee based upon fraud, misrepresentation, or
 947 deceit in ~~[any]~~ a real estate transaction, the person making the claim may, upon termination of
 948 all proceedings including appeals, file a verified petition in the court where the judgment was
 949 entered for an order directing payment from the ~~[Real Estate Education, Research, and~~
 950 ~~Recovery Fund]~~ fund for the uncollected actual damages included in the judgment and unpaid.

951 (d) Recovery from the fund may not include:

952 (i) punitive damages~~[-attorney's]~~;

953 (ii) attorney fees~~[-]~~;

954 (iii) interest~~[-]~~; or

955 (iv) court costs.

956 (e) Regardless of the number of claimants or parcels of real estate involved in a
957 transaction, the liability of the fund may not exceed ~~[\$10,000];~~

958 (i) \$15,000 for a single transaction; and

959 (ii) \$50,000 for ~~[any]~~ one licensee.

960 (2) A copy of the petition shall be served upon the ~~[Division of Real Estate of the~~
961 ~~Department of Commerce]~~ division, and an affidavit of the service shall be filed with the court.

962 (3) The court shall conduct a hearing on the petition within 30 days after service. The
963 petitioner shall recover from the fund only if ~~[he]~~ the petitioner shows all of the following:

964 (a) ~~[He]~~ the petitioner is not the spouse of the judgment debtor or the personal
965 representative of the spouse~~[-];~~

966 (b) ~~[He]~~ the petitioner has complied with this chapter~~[-];~~

967 (c) ~~[He]~~ the petitioner has obtained a final judgment in the manner prescribed under
968 this section, indicating the amount of the judgment awarded~~[-];~~

969 (d) ~~[He]~~ the petitioner has proved the amount still owing on the judgment at the date of
970 the petition~~[-];~~

971 (e) ~~[He]~~ the petitioner has had a writ of execution issued upon the judgment, and the
972 officer executing the writ has made a return showing that no property subject to execution in
973 satisfaction of the judgment could be found~~[-;H];~~

974 (f) if execution is levied against the property of the judgment debtor~~[-;the petitioner~~
975 ~~shall show];~~

976 (i) that the amount realized was insufficient to satisfy the judgment~~[-];~~ and ~~[shall~~
977 ~~indicate]~~

978 (ii) the amount realized and the balance remaining on the judgment after application of
979 the amount realized~~[-];~~

980 ~~[(f)He]~~ (g) the petitioner has made reasonable searches and inquiries to ascertain
981 whether the judgment debtor has any interest in property, real or personal, that may satisfy the
982 judgment~~[-];~~ and ~~[he]~~

983 (h) the petitioner has exercised reasonable diligence to secure payment of the judgment
984 from the assets of the judgment debtor.

985 (4) If the petitioner satisfies the court that it is not practicable for ~~[him]~~ the petitioner to
986 comply with one or more of the requirements enumerated in Subsections (3)(e) ~~[and (f)]~~

987 through (h), the court may waive those requirements.

988 (5) (a) A judgment that is the basis for a claim against the fund may not have been
989 discharged in bankruptcy.

990 (b) In the case of a bankruptcy proceeding that is still open or that is commenced
991 during the pendency of the claim, the claimant shall obtain an order from the bankruptcy court
992 declaring the judgment and debt to be nondischargeable.

993 (6) A person may not bring a claim against the fund if the person is substantially
994 complicit in the fraud, misrepresentation, or deceit that is the basis of the claim.

995 Section 20. Section **61-2a-6** is amended to read:

996 **61-2a-6. Real Estate Division -- Authority to act upon receipt of petition.**

997 (1) Upon receipt of a petition as required by Section 61-2a-5, the [~~Real Estate Division~~]
998 division may answer, initiate review proceedings of its own, or appear in any proceeding in the
999 name of the defendant to the action or on behalf of the fund.

1000 (2) The division may, subject to court approval, compromise a claim based upon the
1001 application of a petitioner.

1002 Section 21. Section **61-2a-7** is amended to read:

1003 **61-2a-7. Court determination and order.**

1004 If the court determines that a claim should be levied against that portion of the fund
1005 allocated for the purpose of carrying out the provisions of this [~~act~~] chapter, the court shall
1006 enter an order directed to the division requiring payment from the fund of that portion of the
1007 petitioner's judgment that is payable from the fund pursuant to [~~the provisions of and in~~
1008 ~~accordance with the limitations contained in~~] Section 61-2a-5.

1009 Section 22. Section **61-2a-9** is amended to read:

1010 **61-2a-9. Division subrogated to judgment creditor -- Authority to revoke license.**

1011 (1) If the division makes payment from the fund to a judgment creditor, the division
1012 shall be subrogated to [~~all~~] the rights of the judgment creditor for the amounts paid out of the
1013 fund and any amount and interest recovered by the division shall be deposited in the fund.

1014 (2) (a) The license of [~~any~~] a real estate licensee for whom payment from the fund is
1015 made under this chapter shall be automatically revoked. [~~The~~]

1016 (b) A licensee may not apply for a new license until the amount paid out on [~~his~~] the
1017 licensee's account, plus interest at a rate determined by the [~~Division of Real Estate~~] division

1018 with the concurrence of the commission, [~~has been~~] is repaid in full.

1019 Section 23. Section **61-2a-11** is amended to read:

1020 **61-2a-11. Authority to take disciplinary action.**

1021 (1) Nothing contained in this chapter shall limit the authority of the director of the
1022 [~~Department of Commerce~~] division to take disciplinary action against a licensee for a
1023 violation of [~~any of the provisions of Title 61,~~] Chapter 2, Division of Real Estate, or of the
1024 rules [~~and regulations of the Division of Real Estate~~] of the commission and division.

1025 (2) The repayment in full of all obligations to the fund by [~~any~~] a licensee does not
1026 nullify or modify the effect of any other disciplinary proceeding brought pursuant to [~~the~~
1027 ~~provisions of Title 61,~~] Chapter 2, Division of Real Estate, or the rules [~~and regulations~~
1028 ~~promulgated by the commission~~] of the commission.

1029 Section 24. Section **61-2a-12** is amended to read:

1030 **61-2a-12. Moneys accumulated -- Excess set aside -- Purpose.**

1031 (1) [~~Any of the money~~] Money accumulated in the [~~Real Estate Education, Research~~
1032 ~~and Recovery Fund~~] fund in excess of \$100,000 shall be set aside and segregated to be used by
1033 the [~~Division of Real Estate~~] division to:

1034 (a) investigate violations of this chapter or Chapter 2, Division of Real Estate, related
1035 to fraud; and

1036 (b) advance education and research in the field of real estate.

1037 (2) The division may only use the excess monies described in Subsection (1) only in a
1038 manner consistent with Subsection (1), including for courses:

1039 (a) sponsored by the division;

1040 (b) offered by the division in conjunction with any university or college in the state; or

1041 (c) provided for by contracting for a particular research project in the field of real estate
1042 for the state.

1043 Section 25. Section **61-2b-6** is amended to read:

1044 **61-2b-6. Duties and powers of division.**

1045 (1) The division has the powers and duties listed in this Subsection (1).

1046 (a) The division shall:

1047 (i) receive an application for licensing, certification, or registration;

1048 (ii) establish appropriate administrative procedures for the processing of an application

1049 for licensure, certification, or registration;

1050 (iii) issue a license or certification to a qualified applicant pursuant to this chapter; and

1051 (iv) register an individual who applies and qualifies for registration as a trainee under
1052 this chapter.

1053 (b) (i) The division shall require an individual to register as a trainee with the division
1054 before the individual acts in the capacity of a trainee earning experience for licensure.

1055 (ii) [~~The~~] Subject to Subsection (4), the board shall adopt rules in accordance with
1056 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for:

1057 (A) the trainee registration required by this Subsection (1)(b)[:]; and

1058 (B) renewal of the trainee registration required by this Subsection (1)(b).

1059 (c) The division shall hold public hearings under the direction of the board.

1060 (d) The division may:

1061 (i) solicit bids and enter into contracts with one or more educational testing services or
1062 organizations for the preparation of a bank of questions and answers approved by the board for
1063 licensing and certification examinations; and

1064 (ii) administer or contract for the administration of licensing and certification
1065 examinations as may be required to carry out the division's responsibilities under this chapter.

1066 (e) The division shall provide administrative assistance to the board by providing to the
1067 board the facilities, equipment, supplies, and personnel that are required to enable the board to
1068 carry out the board's responsibilities under this chapter.

1069 (f) The division shall assist the board in upgrading and improving the quality of the
1070 education and examinations required under this chapter.

1071 (g) The division shall assist the board in improving the quality of the continuing
1072 education available to a person licensed and certified under this chapter.

1073 (h) The division shall assist the board with respect to the proper interpretation or
1074 explanation of the Uniform Standards of Professional Appraisal Practice as required by Section
1075 61-2b-27 when an interpretation or explanation becomes necessary in the enforcement of this
1076 chapter.

1077 (i) The division shall establish fees in accordance with Section 63J-1-303:

1078 (i) for processing:

1079 (A) a trainee registration;

- 1080 (B) an application for licensing and certification; and
1081 (C) approval of an expert witness; and
1082 (ii) for all other functions required or permitted by this chapter.
1083 (j) The division may:
1084 (i) investigate a complaint against:
1085 (A) a trainee;
1086 (B) a person licensed or certified under this chapter; or
1087 (C) a person required to be licensed, certified, or registered under this chapter;
1088 (ii) subpoena a witness;
1089 (iii) subpoena the production of a book, document, record, or other paper;
1090 (iv) administer an oath; and
1091 (v) take testimony and receive evidence concerning a matter within the division's
1092 jurisdiction.
1093 (k) The division may:
1094 (i) promote research and conduct studies relating to the profession of real estate
1095 appraising; and
1096 (ii) sponsor real estate appraisal educational activities.
1097 (l) The division shall adopt, with the concurrence of the board, rules for the
1098 administration of this chapter pursuant to Title 63G, Chapter 3, Utah Administrative
1099 Rulemaking Act, that are not inconsistent with this chapter or the constitution and laws of this
1100 state or of the United States.
1101 (m) The division shall employ an appropriate staff to investigate allegations that a
1102 person required to be licensed, certified, or registered under this chapter fails to comply with
1103 this chapter.
1104 (n) The division may employ other professional, clerical, and technical staff as may be
1105 necessary to properly administer the work of the division under this chapter.
1106 (o) The division may make available, at a reasonable cost determined by the division, a
1107 list of the names and addresses of all persons licensed or certified by the division under this
1108 chapter to the extent the information is a public record under Title 63G, Chapter 2,
1109 Government Records Access and Management Act.
1110 (2) (a) The division shall approve an expert witness who is not otherwise licensed or

1111 certified under this chapter to appear in an administrative or judicial tax proceeding to provide
1112 evidence related to the valuation of real property that is assessed by the [~~tax commission~~] State
1113 Tax Commission, provided that the:

1114 (i) approval is limited to a specific proceeding;

1115 (ii) approval is valid until the proceeding becomes final;

1116 (iii) applicant pays an approval fee to the division;

1117 (iv) applicant provides the applicant's name, address, occupation, and professional
1118 credentials; and

1119 (v) applicant provides a notarized statement that:

1120 (A) the applicant is competent to render an appraisal and to testify as an expert witness
1121 in the proceeding; and

1122 (B) the appraisal and testimony to be offered shall be in accordance with the Uniform
1123 Standards of Professional Appraisal Practice adopted by the board.

1124 (b) Subsection (2)(a) is effective for an administrative or judicial property tax
1125 proceeding related to the valuation of real property that is assessed by the [~~tax commission,~~
1126 ~~including those filed but which are not final as of May 3, 1994~~] State Tax Commission.

1127 (3) (a) If the conditions of Subsection (3)(b) are met, the division is immune from any
1128 civil action or criminal prosecution for initiating or assisting in a lawful investigation of an act
1129 of, or participating in a disciplinary proceeding concerning:

1130 (i) a person required to be licensed, certified, or registered pursuant to this chapter; or

1131 (ii) a person approved as an expert witness pursuant to this chapter.

1132 (b) This Subsection (3) applies if the division takes the action:

1133 (i) without malicious intent; and

1134 (ii) in the reasonable belief that the action is taken pursuant to the powers and duties
1135 vested in the division under this chapter.

1136 (4) (a) An individual applying to register as a trainee under this chapter shall:

1137 (i) submit a fingerprint card in a form acceptable to the division at the time of applying
1138 for registration; and

1139 (ii) consent to a criminal background check by:

1140 (A) the Utah Bureau of Criminal Identification; and

1141 (B) the Federal Bureau of Investigation.

1142 (b) The division shall request the Department of Public Safety to complete a Federal
1143 Bureau of Investigation criminal background check for an applicant through a national criminal
1144 history system.

1145 (c) The applicant shall pay the cost of:

1146 (i) the fingerprinting required by this section; and

1147 (ii) the criminal background check required by this section.

1148 (d) (i) A registration as a trainee under this chapter is conditional pending completion
1149 of the criminal background check required by this Subsection (4).

1150 (ii) If a criminal background check discloses that an applicant fails to accurately
1151 disclose a criminal history, the registration is immediately and automatically revoked.

1152 (iii) An individual whose conditional registration is revoked under Subsection (4)(d)(ii)
1153 may appeal the revocation in a hearing conducted by the board:

1154 (A) after the revocation; and

1155 (B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

1156 (iv) The board may delegate to the division or an administrative law judge the authority
1157 to conduct a hearing described in Subsection (4)(d)(iii).

1158 (v) Relief from a revocation may be granted only if:

1159 (A) the criminal history upon which the division based the revocation:

1160 (I) did not occur; or

1161 (II) is the criminal history of another person;

1162 (B) (I) the revocation is based on a failure to accurately disclose a criminal history; and

1163 (II) the applicant has a reasonable good faith belief at the time of application that there
1164 was no criminal history to be disclosed; or

1165 (C) the division fails to follow the prescribed procedure for the revocation.

1166 (e) If a registration is revoked or a revocation is upheld after a hearing described in
1167 Subsection (4)(d)(iii), the individual may not apply for a new license for a period of 12 months
1168 after the day on which the registration is revoked.

1169 (f) The board may delegate to the division the authority to make a decision on whether
1170 relief from a revocation should be granted.

1171 (g) The funds paid by an applicant for the cost of the criminal background check shall
1172 be nonlapsing.

1173 Section 26. Section **61-2b-8** is amended to read:

1174 **61-2b-8. Duties of board.**

1175 (1) (a) The board shall provide technical assistance to the division relating to real estate
1176 appraisal standards and real estate appraiser qualifications.

1177 (b) The board has the powers and duties listed in this section.

1178 (2) The board shall:

1179 (a) determine the experience, education, and examination requirements appropriate for
1180 a person licensed under this chapter;

1181 (b) determine the experience, education, and examination requirements appropriate for
1182 a person certified under this chapter:

1183 (i) in compliance with the minimum requirements of Financial Institutions Reform,
1184 Recovery, and Enforcement Act of 1989[7]; and

1185 (ii) consistent with the intent of this chapter;

1186 (c) determine the appraisal related acts that may be performed by:

1187 (i) a trainee on the basis of the trainee's education and experience;

1188 (ii) clerical staff; and

1189 (iii) a person who:

1190 (A) does not hold a license or certification; and

1191 (B) assists an appraiser licensed or certified under this chapter in providing appraisal
1192 services or consultation services;

1193 (d) determine the procedures for a trainee to register with the division; and

1194 (e) develop one or more programs to upgrade and improve the experience, education,
1195 and examinations as required under this chapter.

1196 (3) (a) The experience, education, and examination requirements established by the
1197 board for a person licensed or certified under this chapter shall be the minimum criteria
1198 established by the Appraiser Qualification Board of the Appraisal Foundation, unless, after
1199 notice and a public hearing held in accordance with Title 63G, Chapter 3, Utah Administrative
1200 Rulemaking Act, the board finds that the minimum criteria are not appropriate for a
1201 state-licensed appraiser or a state-certified appraiser in this state.

1202 (b) If under Subsection (3)(a) the board makes a finding that the minimum criteria are
1203 not appropriate, the board shall recommend appropriate criteria to the Legislature.

- 1204 (4) The board shall:
- 1205 (a) determine the continuing education requirements appropriate for the renewal of a
- 1206 license ~~[or]~~, certification, or registration issued under this chapter;
- 1207 (b) develop one or more programs to upgrade and improve continuing education; and
- 1208 (c) recommend to the division one or more available continuing education courses that
- 1209 meet the requirements of this chapter.
- 1210 (5) (a) The board shall consider the proper interpretation or explanation of the Uniform
- 1211 Standards of Professional Appraisal Practice as required by Section 61-2b-27 when:
- 1212 (i) an interpretation or explanation is necessary in the enforcement of this chapter; and
- 1213 (ii) the Appraisal Standards Board of the Appraisal Foundation has not issued an
- 1214 interpretation or explanation.
- 1215 (b) If the conditions of Subsection (5)(a) are met, the board shall recommend to the
- 1216 division the appropriate interpretation or explanation that the division should adopt as a rule
- 1217 under this chapter.
- 1218 (c) The board may by rule made in accordance with Title 63G, Chapter 3, Utah
- 1219 Administrative Rulemaking Act, and Section 61-2b-27 provide for an exemption from a
- 1220 provision of the Uniform Standards of Professional Appraisal Practice for an activity engaged
- 1221 in on behalf of a governmental entity.
- 1222 (6) The board shall develop and establish or approve the examination specifications
- 1223 and the minimum score required to pass an examination for licensure or certification.
- 1224 (7) The board may review the:
- 1225 (a) bank of questions and answers that comprise the examination for a person licensed
- 1226 and certified under this chapter;
- 1227 (b) procedure that is established for selecting individual questions from the bank of
- 1228 questions for use in each scheduled examination; and
- 1229 (c) questions in the bank of questions and the related answers to determine whether
- 1230 they meet the examination specifications established by the board.
- 1231 (8) (a) The board shall conduct an administrative hearing, not delegated by the board to
- 1232 an administrative law judge, in connection with a disciplinary proceeding under Sections
- 1233 61-2b-30 and 61-2b-31 concerning:
- 1234 (i) a person required to be licensed, certified, or registered under this chapter; and

1235 (ii) the person's failure to comply with this chapter and the Uniform Standards of
1236 Professional Appraisal Practice as adopted under Section 61-2b-27.

1237 (b) The board shall issue in an administrative hearing a decision that contains findings
1238 of fact and conclusions of law.

1239 (c) When a determination is made that a person required to be licensed, certified, or
1240 registered under this chapter has violated this chapter, the division shall implement disciplinary
1241 action determined by the board.

1242 (9) A member of the board is immune from a civil action or criminal prosecution for a
1243 disciplinary proceeding concerning a person required to be registered, licensed, certified, or
1244 approved as an expert under this chapter if the action is taken without malicious intent and in
1245 the reasonable belief that the action taken was taken pursuant to the powers and duties vested
1246 in a member of the board under this chapter.

1247 (10) The board shall require and pass upon proof necessary to determine the honesty,
1248 competency, integrity, and truthfulness of an applicant for:

1249 (a) original licensure, certification, or registration; and

1250 (b) renewal licensure or certification.

1251 Section 27. Section **61-2b-20** is amended to read:

1252 **61-2b-20. Renewal of license or certification.**

1253 (1) To obtain a renewal of a license or certification under this chapter, the holder of a
1254 current, valid license or certification shall, in compliance with procedures established by the
1255 division and the board, make application and pay the prescribed fee to the division [~~prior to~~
1256 before the expiration date of the license or certification [~~then held~~].

1257 (2) [~~The~~] An application for renewal of a license or certification shall be accompanied
1258 by evidence in the form prescribed by the division of having completed the continuing
1259 education requirements for renewal specified in this chapter.

1260 (3) (a) A license or certification expires if it is not renewed on or before its expiration
1261 date.

1262 [~~(a)~~] (b) For a period of 30 days after the expiration date, a license or certification may
1263 be reinstated upon:

1264 (i) payment of a renewal fee and a late fee determined by the division and the board;

1265 and

1266 (ii) satisfying the continuing education requirements specified in Section 61-2b-40.

1267 ~~[(b)]~~ (c) After the 30-day period described in Subsection (3)~~[(a)]~~(b), and until six

1268 months after the expiration date, the license or certification may be reinstated by:

1269 (i) paying a renewal fee and a reinstatement fee determined by the division and the
1270 board; and

1271 (ii) satisfying the continuing education requirements specified in Section 61-2b-40.

1272 (d) After the six-month period described in Subsection (3)(c), and until one year after
1273 the expiration date, the license or certification may be reinstated by:

1274 (i) paying a renewal fee and a reinstatement fee determined by the division and the
1275 board;

1276 (ii) providing proof acceptable to the division and the board of the person having
1277 satisfied the continuing education requirements of Section 61-2b-40; and

1278 (iii) providing proof acceptable to the division and the board of the person completing
1279 24 hours of continuing education:

1280 (A) in addition to the requirements in Section 61-2b-40; and

1281 (B) on a subject determined by the division by rule made in accordance with Title 63G,
1282 Chapter 3, Utah Administrative Rulemaking Act.

1283 ~~[(4)-A]~~ (e) The division shall relicense or recertify a person who does not renew that
1284 person's license or certification within [six months] one year after the expiration date [shall be
1285 relicensed or recertified] as prescribed for an original application.

1286 (f) Notwithstanding Subsection (3)(a), the division may extend the term of a license
1287 that would expire under Subsection (3)(a) except for the extension if:

1288 (i) the person complies with the requirements of this section to renew the license; and

1289 (ii) at the time of the extension, there is pending under this chapter:

1290 (A) the application for renewal of the license; or

1291 (B) a disciplinary action.

1292 (4) A person who is licensed, certified, or registered under this chapter shall notify the
1293 division of the following by sending the division a signed statement within ten business days
1294 of:

1295 (a) (i) a conviction of a criminal offense;

1296 (ii) the entry of a plea in abeyance to a criminal offense; or

- 1297 (iii) the potential resolution of a criminal case by:
 1298 (A) a diversion agreement; or
 1299 (B) any other agreement under which a criminal charge is suspended for a period of
 1300 time;
 1301 (b) filing a personal bankruptcy or business bankruptcy;
 1302 (c) the suspension, revocation, surrender, cancellation, or denial of a professional
 1303 license, certification, or registration of the person, whether the license, certification, or
 1304 registration is issued by this state or another jurisdiction; or
 1305 (d) the entry of a cease and desist order or a temporary or permanent injunction:
 1306 (i) against the person by a court or licensing agency; and
 1307 (ii) on the basis of:
 1308 (A) conduct or a practice involving an act regulated by this chapter; or
 1309 (B) conduct involving fraud, misrepresentation, or deceit.
- 1310 Section 28. Section **61-2b-27** is amended to read:
 1311 **61-2b-27. Professional conduct -- Uniform standards.**
 1312 (1) (a) A person licensed, certified, registered, or approved as an expert witness under
 1313 this chapter must comply with:
 1314 (i) generally accepted standards of professional appraisal practice; and
 1315 (ii) generally accepted ethical rules to be observed by a real estate appraiser.
 1316 (b) [~~Generally~~] Subject to Subsection (1)(c), generally accepted standards of
 1317 professional appraisal practice are evidenced by the Uniform Standards of Professional
 1318 Appraisal Practice promulgated by the Appraisal Foundation.
 1319 (c) After a public hearing held in accordance with Title 63G, Chapter 3, Utah
 1320 Administrative Rulemaking Act, the board;
 1321 (i) shall adopt and may make modifications of or additions to the Uniform Standards of
 1322 Professional Appraisal Practice as the board considers appropriate to comply with the Financial
 1323 Institutions Reform, Recovery, and Enforcement Act of 1989[-]; or
 1324 (ii) may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
 1325 Rulemaking Act, exempt a person licensed, certified, registered, or approved as an expert
 1326 witness from complying with a provision of the Uniform Standards of Professional Appraisal
 1327 Practice for an activity that the person engages in on behalf of a governmental entity.

1328 (2) The board shall schedule a public hearing pursuant to Title 63G, Chapter 3, Utah
1329 Administrative Rulemaking Act, for the purpose of deciding whether or not the board should
1330 require a modified or supplemental standard or the ethical rule to be observed by a person
1331 licensed, certified, registered, or approved as an expert witness under this chapter if the
1332 Appraisal Standards Board of the Appraisal Foundation:

1333 (a) (i) modifies the Uniform Standards of Professional Appraisal Practice;
1334 (ii) issues a supplemental appraisal standard which it considers appropriate for:
1335 (A) a residential real estate appraiser; or
1336 (B) a general real estate appraiser; or
1337 (iii) issues an ethical rule to be observed by a real estate appraiser; and
1338 (b) requests the board to consider the adoption of the modified or supplemental
1339 standard or ethical rule.

1340 (3) If, after the notice and public hearing described in Subsection (2), the board finds
1341 that a modified or supplemental standard or the ethical rule issued by the Appraisal Standards
1342 Board of the Appraisal Foundation is appropriate for a person licensed, certified, registered, or
1343 approved as an expert witness under this chapter, the board shall recommend a rule requiring a
1344 person licensed, certified, registered, or approved as an expert witness under this chapter to
1345 observe the modified or supplemental standard or the ethical rule.

1346 Section 29. Section **61-2b-29** is amended to read:

1347 **61-2b-29. Disciplinary action -- Grounds.**

1348 (1) (a) The board may order disciplinary action against a person:
1349 (i) registered, licensed, or certified under this chapter; or
1350 (ii) required to be registered, licensed, or certified under this chapter.
1351 (b) On the basis of a ground listed in Subsection (2) for disciplinary action, board
1352 action may include:
1353 (i) revoking, suspending, or placing a person's registration, license, or certification on
1354 probation;
1355 (ii) denying a person's original registration, license, or certification;
1356 (iii) denying a person's renewal license or certification;
1357 (iv) in the case of denial or revocation of a registration, license, or certification, setting
1358 a waiting period for an applicant to apply for a registration, license, or certification under this

- 1359 chapter;
- 1360 (v) ordering remedial education;
- 1361 (vi) imposing a civil penalty upon a person not to exceed the greater of:
- 1362 (A) \$2,500 for each violation; or
- 1363 (B) the amount of any gain or economic benefit from a violation;
- 1364 (vii) issuing a cease and desist order; [~~or~~]
- 1365 (viii) modifying an action described in Subsections (1)(b)(i) through (vii) if the board
- 1366 finds that the person complies with court ordered restitution; or
- 1367 [~~viii~~] (ix) doing any combination of Subsections (1)(b)(i) through [~~vii~~] (viii).
- 1368 (2) The following are grounds for disciplinary action under this section:
- 1369 (a) procuring or attempting to procure a registration, license, or certification under this
- 1370 chapter:
- 1371 (i) by fraud; or
- 1372 (ii) by making a false statement, submitting false information, or making a material
- 1373 misrepresentation in an application filed with the division;
- 1374 (b) paying money or attempting to pay money other than a fee provided for by this
- 1375 chapter to a member or employee of the division to procure a registration, license, or
- 1376 certification under this chapter;
- 1377 (c) an act or omission in the practice of real estate appraising that constitutes
- 1378 dishonesty, fraud, or misrepresentation;
- 1379 (d) entry of a judgment against a registrant, licensee, or certificate holder on grounds of
- 1380 fraud, misrepresentation, or deceit in the making of an appraisal of real estate;
- 1381 (e) a guilty plea to a criminal offense involving moral turpitude that is held in
- 1382 abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo
- 1383 contendere, of a criminal offense involving moral turpitude;
- 1384 (f) engaging in the business of real estate appraising under an assumed or fictitious
- 1385 name not properly registered in this state;
- 1386 (g) paying a finder's fee or a referral fee to a person not licensed or certified under this
- 1387 chapter in connection with an appraisal of real estate or real property in this state;
- 1388 (h) making a false or misleading statement in:
- 1389 (i) that portion of a written appraisal report that deals with professional qualifications;

1390 or

1391 (ii) testimony concerning professional qualifications;

1392 (i) violating or disregarding:

1393 (i) a provision of this chapter;

1394 (ii) an order of the board; or

1395 (iii) a rule issued under this chapter;

1396 (j) violating the confidential nature of governmental records to which a person

1397 registered, licensed, certified, or approved as an expert under this chapter gained access

1398 through employment or engagement as an appraiser by a governmental agency;

1399 (k) accepting a contingent fee for performing an appraisal as defined in Subsection

1400 61-2b-2(1)(a) if in fact the fee is or was contingent upon:

1401 (i) the appraiser reporting a predetermined analysis, opinion, or conclusion;

1402 (ii) the analysis, opinion, conclusion, or valuation reached; or

1403 (iii) the consequences resulting from the appraisal assignment;

1404 (l) unprofessional conduct as defined by statute or rule;

1405 (m) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

1406 (i) providing a title insurance product or service without the approval required by

1407 Section 31A-2-405; or

1408 (ii) knowingly providing false or misleading information in the statement required by

1409 Subsection 31A-2-405(2); or

1410 (n) other conduct that constitutes dishonest dealing.

1411 Section 30. Section **61-2b-33** is amended to read:

1412 **61-2b-33. Penalty for violating this chapter -- Automatic revocation.**

1413 (1) In addition to being subject to a disciplinary action by the board, a person required

1414 to be licensed, certified, or registered under this chapter who violates this chapter:

1415 (a) is guilty of a class A misdemeanor, upon a conviction of a first violation of this

1416 chapter; and

1417 (b) is guilty of a third degree felony, upon conviction of a second or subsequent

1418 violation of this chapter.

1419 (2) [~~Any~~] A license or registration issued by the division to [~~any~~] a person [~~or entity~~]

1420 convicted of a violation of Section 76-6-1203 is automatically revoked.

1421 Section 31. Section **61-2c-103** is amended to read:

1422 **61-2c-103. Powers and duties of the division.**

1423 (1) The division shall administer this chapter.

1424 (2) In addition to any power or duty expressly provided in this chapter, the division

1425 may:

1426 (a) receive and act on a complaint including:

1427 (i) taking action designed to obtain voluntary compliance with this chapter; or

1428 (ii) commencing an administrative or judicial proceeding on the division's own

1429 initiative;

1430 (b) establish one or more programs for the education of consumers with respect to

1431 residential mortgage loans;

1432 (c) (i) make one or more studies appropriate to effectuate the purposes and policies of

1433 this chapter; and

1434 (ii) make the results of the studies described in Subsection (2)(c)(i) available to the

1435 public;

1436 (d) visit and investigate an entity licensed under this chapter, regardless of whether the

1437 entity is located in Utah; and

1438 (e) employ one or more necessary hearing examiners, investigators, clerks, and other

1439 employees and agents.

1440 (3) The division shall make rules for the administration of this chapter in accordance

1441 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including:

1442 (a) licensure procedures for:

1443 (i) an individual or entity required by this chapter to obtain a license with the division;

1444 and

1445 (ii) the establishment of a branch office by an entity;

1446 (b) proper handling of funds received by a licensee;

1447 (c) record-keeping requirements by a licensee, including proper disposal of a record;

1448 and

1449 (d) standards of conduct for a licensee.

1450 (4) The division may make available to the public a list of the names and mailing

1451 addresses of all licensees:

1452 (a) either directly or through a third party; and

1453 (b) at a reasonable cost.

1454 (5) The division shall:

1455 (a) certify an education provider who offers:

1456 (i) prelicensing education to candidates for licensure under this chapter; or

1457 (ii) continuing education to individuals licensed under this chapter; and

1458 (b) make available to the public, licensees, and candidates for licensure a list of the
1459 names and addresses of all education providers certified under this Subsection (5).

1460 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1461 division shall make rules establishing:

1462 (a) certification criteria and procedures for a provider of prelicensing education and
1463 continuing education; and

1464 (b) standards of conduct for a certified education provider.

1465 (7) The division may charge a fee established in accordance with Section 63J-1-303 for
1466 processing a change that a licensee is required by Section 61-2c-205 to report to the division.

1467 ~~[(8)(a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
1468 and this Subsection (8), the division shall make rules establishing a licensure procedure for
1469 obtaining both a principal lending manager license and an entity license at the same time that
1470 applies if the principal lending manager is the only individual that transacts the business of
1471 residential mortgage loans on behalf of the entity, including as an employee or agent of the
1472 entity.]~~

1473 ~~[(b) A rule made under this Subsection (8) shall require that to obtain or renew both a
1474 principal lending manager license and an entity license, an individual described in Subsection
1475 (8)(a) is required to only:]~~

1476 ~~[(i) complete one licensing process for the term of a license; and]~~

1477 ~~[(ii) pay one licensing fee for the term of a license.]~~

1478 Section 32. Section **61-2c-104** is amended to read:

1479 **61-2c-104. Residential Mortgage Regulatory Commission.**

1480 (1) (a) There is created within the division the "Residential Mortgage Regulatory
1481 Commission" consisting of the following members appointed by the executive director with the
1482 approval of the governor:

- 1483 (i) four members;
- 1484 (A) having at least three years of experience in transacting the business of residential
1485 mortgage loans; and
- 1486 (B) who are [~~currently~~] licensed under this chapter at the time of and during
1487 appointment; and
- 1488 (ii) one member from the general public.
- 1489 (b) (i) The executive director with the approval of the governor may appoint an
1490 alternate member to the board.
- 1491 (ii) The alternate member shall:
- 1492 (A) at the time of the appointment, have at least three years of experience in transacting
1493 the business of residential mortgage loans; and
- 1494 (B) be licensed under this chapter at the time of and during appointment.
- 1495 (2) (a) Except as required by Subsection (2)(b), the executive director shall appoint
1496 each new member or reappointed member subject to appointment by the executive director to a
1497 four-year term ending June 30.
- 1498 (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall,
1499 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms
1500 of commission members are staggered so that approximately half of the commission is
1501 appointed every two years.
- 1502 (c) If a vacancy occurs in the membership of the commission for any reason, the
1503 [~~replacement shall be appointed~~] executive director shall appoint a replacement for the
1504 unexpired term.
- 1505 (d) A member shall remain on the commission until the member's successor is
1506 appointed and qualified.
- 1507 (3) Members of the commission shall annually select one member to serve as chair.
- 1508 (4) (a) The commission shall meet at least quarterly.
- 1509 (b) The director may call a meeting in addition to the meetings required by Subsection
1510 (4)(a):
- 1511 (i) at the discretion of the director;
- 1512 (ii) at the request of the chair of the commission; or
- 1513 (iii) at the written request of three or more commission members.

1514 (5) (a) Three members of the commission constitute a quorum for the transaction of
1515 business.

1516 (b) If a quorum of members is unavailable for any meeting and an alternate member
1517 has been appointed to the commission by the executive director with the approval of the
1518 governor, the alternate member shall serve as a regular member of the commission for that
1519 meeting if with the presence of the alternate member there is a quorum present at the meeting.

1520 (c) The action of a majority of a quorum present is an action of the commission.

1521 (6) (a) (i) A member who is not a government employee [~~shall~~] may not receive [~~no~~]
1522 compensation or benefits for the member's services, but may receive per diem and expenses
1523 incurred in the performance of the member's official duties at the rates established by the
1524 Division of Finance under Sections 63A-3-106 and 63A-3-107.

1525 (ii) A member who is not a government employee may decline to receive per diem and
1526 expenses for the member's service.

1527 (b) (i) A state government officer and employee member who does not receive salary,
1528 per diem, or expenses from the member's agency for the member's service may receive per
1529 diem and expenses incurred in the performance of the member's official duties from the
1530 commission at the rates established by the Division of Finance under Sections 63A-3-106 and
1531 63A-3-107.

1532 (ii) A state government officer and employee member may decline to receive per diem
1533 and expenses for the member's service.

1534 (7) The commission shall:

1535 (a) except as provided in Subsection 61-2c-202(2), concur in the licensure or denial of
1536 licensure of individuals and entities under this chapter in accordance with Part 2, Licensure;

1537 (b) take disciplinary action with the concurrence of the director in accordance with Part
1538 4, Enforcement;

1539 (c) advise the division concerning matters related to the administration and
1540 enforcement of this chapter; and

1541 (d) with the concurrence of the division, determine the requirements for:

1542 (i) the examination required under Section 61-2c-202, covering at least:

1543 (A) the fundamentals of the English language;

1544 (B) arithmetic;

- 1545 (C) the provisions of this chapter;
- 1546 (D) rules adopted by the division;
- 1547 (E) basic residential mortgage principles and practices; and
- 1548 (F) any other aspect of Utah law the commission determines is appropriate;
- 1549 (ii) [~~with the concurrence of the division,~~] the continuing education requirements under
- 1550 Section 61-2c-205, including:
- 1551 (A) except as provided in Subsection 61-2c-202(4)(a)(iii) and Subsection
- 1552 61-2c-206(1)(c), the appropriate number of hours of prelicensing education and required
- 1553 continuing education; and
- 1554 (B) the subject matter of courses the division may accept for continuing education
- 1555 purposes;
- 1556 (iii) with the concurrence of the division, the prelicensing education required under
- 1557 Sections 61-2c-202 and 61-2c-206, including online education or distance learning options; and
- 1558 (iv) the examination required under Section 61-2c-206 covering:
- 1559 (A) advanced residential mortgage principles and practices; and
- 1560 (B) other aspects of Utah law the commission, with the concurrence of the division,
- 1561 determines appropriate.
- 1562 (8) The commission may appoint a committee to make recommendations to the
- 1563 commission concerning approval of prelicensing education and continuing education courses.
- 1564 (9) The commission and the division shall make the examination and prelicensing
- 1565 education and continuing education requirements described in this section available through
- 1566 the Internet or other distance education methods approved by the commission and division
- 1567 when reasonably practicable.
- 1568 (10) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
- 1569 the commission, with the concurrence of the division, shall make rules establishing procedures
- 1570 under which a licensee may be exempted from continuing education requirements:
- 1571 (a) for a period not to exceed four years; and
- 1572 (b) upon a finding of reasonable cause.
- 1573 Section 33. Section **61-2c-205** is amended to read:
- 1574 **61-2c-205. Term of licensure -- Renewal -- Reporting of changes.**
- 1575 (1) (a) A license under this chapter is valid for a two-year period.

1576 (b) Notwithstanding Subsection (1)(a), the time period of a license may be extended or
1577 shortened by as much as one year to maintain or change a renewal cycle established by rule by
1578 the division.

1579 (2) To renew a license, no later than the date the license expires, a licensee shall:

1580 (a) (i) file the renewal form required by the division; and

1581 (ii) furnish the information required by Subsection 61-2c-202(1);

1582 (b) pay a fee to the division established by the division in accordance with Section
1583 63J-1-303; and

1584 (c) if the licensee is an individual and the individual's license is in active status at the
1585 time of application for renewal, submit proof using forms approved by the division of having
1586 completed during the two years prior to application the continuing education required by the
1587 commission under Section 61-2c-104.

1588 (3) (a) A licensee under this chapter shall notify the division using the form required by
1589 the division within ten days of the date on which there is a change in:

1590 (i) a name under which the licensee transacts the business of residential mortgage loans
1591 in this state;

1592 (ii) (A) if the licensee is an entity, the business location of the licensee; or

1593 (B) if the licensee is an individual, the home and business addresses of the individual;

1594 (iii) the principal lending manager of the entity;

1595 (iv) the entity with which an individual licensee is licensed to conduct the business of
1596 residential mortgage loans; or

1597 (v) any other information that is defined as material by rule made by the division.

1598 (b) Failure to notify the division of a change described in Subsection (3)(a) is separate
1599 grounds for disciplinary action against a licensee.

1600 (4) A licensee shall notify the division by sending the division a signed statement
1601 within ten business days of:

1602 (a) (i) a conviction of any criminal offense;

1603 (ii) the entry of a plea in abeyance to any criminal offense; or

1604 (iii) the potential resolution of any criminal case by:

1605 (A) a diversion agreement; or

1606 (B) any other agreement under which criminal charges are held in suspense for a period

1607 of time;

1608 (b) filing a personal bankruptcy or bankruptcy of a business that transacts the business
1609 of residential mortgage loans;

1610 (c) the suspension, revocation, surrender, cancellation, or denial of a professional
1611 license or professional registration of the licensee, whether the license or registration is issued
1612 by this state or another jurisdiction; or

1613 (d) the entry of a cease and desist order or a temporary or permanent injunction:

1614 (i) against the licensee by a court or licensing agency; and

1615 (ii) based on:

1616 (A) conduct or a practice involving the business of residential mortgage loans; or

1617 (B) conduct involving fraud, misrepresentation, or deceit.

1618 (5) (a) A license under this chapter expires if the licensee does not apply to renew the
1619 license on or before the expiration date of the license.

1620 (b) Within 30 calendar days after the expiration date, a licensee whose license has
1621 expired may apply to reinstate the expired license upon:

1622 (i) payment of a renewal fee and a late fee determined by the division under Section
1623 63J-1-303; and

1624 (ii) if the licensee is an individual and is applying to reinstate a license to active status,
1625 providing proof using forms approved by the division of having completed, during the two
1626 years prior to application, the continuing education required by the commission under Section
1627 61-2c-104.

1628 (c) After the 30 calendar days described in Subsection (5)(b) and within six months
1629 after the expiration date, a licensee whose license has expired may apply to reinstate an expired
1630 license upon:

1631 (i) payment of a renewal fee and a late fee determined by the division under Section
1632 63J-1-303;

1633 (ii) if the licensee is an individual and is applying to reinstate a license to active status,
1634 providing proof using forms approved by the division of having completed, during the two
1635 years prior to application, the continuing education required by the commission under Section
1636 61-2c-104; and

1637 (iii) in addition to the continuing education required for a timely renewal, completing

1638 an additional 12 hours of continuing education approved by the commission under Section
1639 61-2c-104.

1640 (d) A licensee whose license has been expired for more than six months shall be
1641 relicensed as prescribed for an original application under Section 61-2c-202.

1642 (e) Notwithstanding Subsection (5)(a), the division may extend the term of a license
1643 that would expire under Subsection (5)(a) except for the extension if:

1644 (i) the person complies with the requirements of this section to renew the license; and

1645 (ii) at the time of the extension, there is pending under this chapter:

1646 (A) the application for renewal of the license; or

1647 (B) a disciplinary action.

1648 Section 34. Section **61-2c-402** is amended to read:

1649 **61-2c-402. Disciplinary action.**

1650 Subject to the requirements of Section 61-2c-402.1, if [~~an individual or entity~~] a person
1651 required to be licensed under this chapter violates this chapter, or an education provider
1652 required to be certified under this chapter violates this chapter, the commission, with the
1653 concurrence of the director, may:

1654 (1) impose an educational requirement;

1655 (2) impose a civil penalty against the individual or entity in an amount not to exceed
1656 the greater of:

1657 (a) \$2,500 for each violation; or

1658 (b) the amount equal to any gain or economic benefit derived from each violation;

1659 (3) deny an application for an original license;

1660 (4) do any of the following to a license under this chapter:

1661 (a) suspend;

1662 (b) revoke;

1663 (c) place on probation;

1664 (d) deny renewal;

1665 (e) deny reinstatement; or

1666 (f) in the case of a denial or revocation of a license, set a waiting period for [~~an~~
1667 ~~applicant~~] a person to apply for a license under this chapter;

1668 (5) issue a cease and desist order; [~~or~~]

1669 (6) require the reimbursement of the division of costs incurred by the division related
1670 to the recovery, storage, or destruction of a record that the person disposes of in a manner that
1671 violates this chapter or a rule made under this chapter;

1672 (7) modify a sanction described in Subsections (1) through (6) if the commission finds
1673 that the person complies with court ordered restitution; or

1674 ~~[(6)]~~ (8) do any combination of Subsections (1) through ~~[(5)]~~ (7).

1675 Section 35. Section **61-2c-405** is amended to read:

1676 **61-2c-405. Penalty for violating this chapter -- Automatic revocation.**

1677 (1) In addition to being subject to a disciplinary action by the commission, a person
1678 required to be licensed or certified under this chapter who violates this chapter:

1679 (a) is guilty of a class A misdemeanor upon conviction of a first violation of this
1680 chapter; and

1681 (b) is guilty of a third degree felony upon conviction of a second or subsequent
1682 violation of this chapter.

1683 (2) ~~[Any]~~ A license or [registration] certification issued by the division to ~~[any]~~ a
1684 person ~~[or entity]~~ convicted of a violation of Section 76-6-1203 is automatically revoked.

1685 Section 36. Section **61-2c-501** is amended to read:

1686 **61-2c-501. Fund created -- Minimum balance.**

1687 (1) (a) There is created a restricted special revenue fund known as the "Residential
1688 Mortgage Loan Education, Research, and Recovery Fund."

1689 (b) As used in this part, "fund" means the Residential Mortgage Loan Education,
1690 Research, and Recovery Fund.

1691 (2) The interest earned on the fund shall be deposited into the fund.

1692 (3) (a) At the beginning of each state fiscal year, \$100,000 shall remain available in the
1693 fund to satisfy judgments rendered against ~~[individuals and entities]~~ a person licensed under
1694 this chapter.

1695 (b) For purposes of this part, a "judgment" includes a criminal restitution judgment.

1696 Section 37. Section **61-2c-502** is amended to read:

1697 **61-2c-502. Additional license fee.**

1698 (1) An individual who applies for or renews a license shall pay, in addition to the
1699 application or renewal fee, a reasonable annual fee:

- 1700 (a) determined by the division with the concurrence of the commission; and
- 1701 (b) not to exceed \$18.
- 1702 (2) An entity that applies for or renews an entity license shall pay, in addition to the
- 1703 application or renewal fee, a reasonable annual fee:
- 1704 (a) determined by the division with the concurrence of the commission; and
- 1705 (b) not to exceed \$25.
- 1706 (3) Notwithstanding Section 13-1-2, the following shall be paid into the [~~Residential~~
- 1707 ~~Mortgage Loan Education, Research, and Recovery Fund~~] fund to be used as provided in this
- 1708 part:
- 1709 (a) a fee provided in this section;
- 1710 (b) a fee for certifying:
- 1711 (i) a mortgage school;
- 1712 (ii) a mortgage course; or
- 1713 (iii) a mortgage instructor; and
- 1714 (c) a civil penalty imposed under this chapter.
- 1715 (4) If the balance in the [~~Residential Mortgage Loan Education, Research, and~~
- 1716 ~~Recovery Fund~~] fund that is available to satisfy a judgment against a licensee decreases to less
- 1717 than \$100,000, the division may make an additional assessment to a licensee to maintain the
- 1718 balance available at \$100,000 to satisfy judgments.
- 1719 Section 38. Section **61-2c-503** is amended to read:
- 1720 **61-2c-503. Notice to division -- Judgment against mortgage licensee -- Fraud,**
- 1721 **misrepresentation, or deceit -- Verified petition for order directing payment from fund --**
- 1722 **Limitations and procedure.**
- 1723 (1) (a) [~~A~~] Subject to Subsection (6), a person may bring a claim against the fund if the
- 1724 person sends a signed notification to the division at the time the person files an action:
- 1725 (i) against a licensee; and
- 1726 (ii) alleging fraud, misrepresentation, or deceit.
- 1727 (b) Within 30 calendar days of receipt of the notice described in Subsection (1)(a), the
- 1728 division may intervene in the action.
- 1729 (c) If a person making a claim against the fund obtains a final judgment in a court of
- 1730 competent jurisdiction in Utah against a licensee based on fraud, misrepresentation, or deceit in

1731 a residential mortgage loan transaction, the person making the claim may, upon termination of
1732 all proceedings including appeals, file a verified petition in the court where the judgment was
1733 entered for an order directing payment from the fund for the uncollected actual damages
1734 included in the judgment.

1735 (d) A recovery from the fund may not include punitive damages, interest, or court
1736 costs.

1737 (e) Regardless of the number of claimants or number of loans involved in a transaction,
1738 the liability of the fund may not exceed:

1739 (i) \$15,000 for a single transaction;

1740 (ii) \$45,000 for an individual licensee; or

1741 (iii) \$45,000 for an entity.

1742 (2) A person making a claim against the fund shall:

1743 (a) serve a copy of the petition on the division; and

1744 (b) file a copy of the affidavit of the service of the petition described in Subsection
1745 (2)(a) with the court.

1746 (3) (a) The court shall conduct a hearing on the petition within 30 calendar days after
1747 service.

1748 (b) The petitioner shall recover from the fund only if the petitioner shows:

1749 (i) that the petitioner is not:

1750 (A) the spouse of the judgment debtor; or

1751 (B) the personal representative of the spouse of the judgment debtor;

1752 (ii) that the petitioner has complied with this chapter;

1753 (iii) that the petitioner has obtained a final judgment in the manner prescribed under
1754 this section, indicating the amount of the judgment awarded;

1755 (iv) that the petitioner has proved the amount still owing on the judgment at the date of
1756 the petition;

1757 (v) (A) that:

1758 (I) the petitioner has a writ of execution issued upon the judgment; and

1759 (II) the officer executing the writ has made a return showing that no property subject to
1760 execution in satisfaction of the judgment could be found; and

1761 (B) if execution is levied against the property of the judgment debtor, that:

1762 (I) the amount realized was insufficient to satisfy the judgment; and
1763 (II) a balance remains on the judgment after application of the amount realized; and
1764 (vi) that the petitioner has:

1765 (A) made reasonable searches and inquiries to ascertain whether the judgment debtor
1766 has any interest in property, real or personal, that may satisfy the judgment; and

1767 (B) has exercised reasonable diligence to secure payment of the judgment from the
1768 assets of the judgment debtor.

1769 (4) If the petitioner satisfies the court that it is not practicable for the petitioner to
1770 comply with one or more of the requirements in Subsections (3)(b)(v) and (3)(b)(vi), the court
1771 may waive those requirements.

1772 (5) (a) A judgment that is the basis for a claim against the fund may not have been
1773 discharged in bankruptcy.

1774 (b) In the case of a bankruptcy proceeding that is open or that is commenced during the
1775 pendency of the claim, the claimant shall, prior to obtaining a claim against the fund, obtain an
1776 order from the bankruptcy court declaring the judgment and debt to be nondischargeable.

1777 (6) (a) The division may not make a payment from the fund to a lender who:

1778 (i) makes a residential mortgage loan originated by a licensee; or

1779 (ii) acquires a residential mortgage loan originated by a licensee.

1780 (b) A person may not bring a claim against the fund if the person is substantially
1781 complicit in the fraud, misrepresentation, or deceit that is the basis of the claim.

H.B. 86 1st Sub. (Buff) - Division of Real Estate Related Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for businesses and local governments. Individuals may be affected due to changes in filing and education requirements for professional and occupational licenses. Additionally, individuals may be affected due to changes dealing with restitution for claims filed for civil or criminal judgments.
