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REAL ESTATE RELATED AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to real estate in general and the Division of Real Estate to address the regulation of activities involving real estate.

Highlighted Provisions:

This bill:

- ▶ amends the Utah Uniform Land Sales Practices Act, including:
 - modifying penalties; and
 - repealing extradition proceedings;
- ▶ renumbers and amends the Timeshare and Camp Resort Act, including:
 - modifying the definition provision;
 - addressing the powers and duties of the division and the director;
 - addressing payments to the division that are not honored;
 - providing restrictions on use of a registration;
 - modifying registration processes and requirements;
 - providing for developer and salesperson reporting requirements;
 - addressing renewal, reinstatement, consolidations, and amendments of registrations;
 - addressing the effect of an application and prohibitions on misleading statements;
 - addressing disclosure requirements;



- 28 • addressing a purchaser's right to cancel;
- 29 • addressing unprofessional conduct for a developer or salesperson;
- 30 • increasing fine amounts;
- 31 • modifying review procedures;
- 32 • modifying provisions related to investigations;
- 33 • providing for cease and desist orders; and
- 34 • modifying exemption provisions;
- 35 ▶ modifies the Utah Residential Mortgage Practices and Licensing Act, including:
- 36 • modifying the definition provisions;
- 37 • addressing payments to the division that are dishonored;
- 38 • addressing the establishment of fees;
- 39 • addressing qualifications for licensure and criminal histories;
- 40 • providing for enforcement of reporting requirements;
- 41 • modifying prohibited conduct;
- 42 • addressing recordkeeping requirements; and
- 43 • allowing for de novo review under certain circumstances;
- 44 ▶ modifies the Appraisal Management Company Registration and Regulation Act,
- 45 including:
- 46 • modifying the definition provisions;
- 47 • addressing when board action is taken with the concurrence of the division;
- 48 • addressing payments to the division that are dishonored;
- 49 • expanding provisions related to criminal histories;
- 50 • allowing the board to delegate to the division certain hearings;
- 51 • providing for the extension of the term of a license;
- 52 • addressing adherence to standards;
- 53 • modifying prohibited conduct;
- 54 • providing for the payment of certain costs related to investigations;
- 55 • increasing the amount of a civil penalty; and
- 56 • addressing the contents and affect of an order;
- 57 ▶ modifies the Real Estate Licensing and Practices Act, including:
- 58 • modifying the definition provisions;

- 59 • addressing payments to the division that are dishonored;
- 60 • providing for de novo review in certain circumstances;
- 61 • addressing criminal histories;
- 62 • addressing when the division may extend the term of a license;
- 63 • providing for the enforcement of reporting requirements;
- 64 • addressing exclusive brokerage agreements; and
- 65 • modifying grounds for disciplinary conduct;
- 66 ▶ renumbers and amends the Real Estate Appraiser Licensing and Certification Act,
- 67 including:
- 68 • addressing when the board may take action with the concurrence of the division;
- 69 • addressing criminal histories;
- 70 • addressing when the division may extend the term of a license;
- 71 • modifying reinstatement requirements; and
- 72 • allowing the board to delegate certain actions to the division; and
- 73 ▶ makes technical and conforming amendments.

74 **Money Appropriated in this Bill:**

75 None

76 **Other Special Clauses:**

77 None

78 **Utah Code Sections Affected:**

79 AMENDS:

- 80 **7-5-1**, as last amended by Laws of Utah 2003, Chapter 301
- 81 **13-21-2**, as last amended by Laws of Utah 2008, Chapter 250
- 82 **16-11-2**, as last amended by Laws of Utah 2010, Chapter 379
- 83 **17-17-2**, as last amended by Laws of Utah 2010, Chapter 131
- 84 **31A-2-402**, as last amended by Laws of Utah 2010, Chapter 379
- 85 **31A-23a-402**, as last amended by Laws of Utah 2008, Chapter 382
- 86 **48-2c-1502**, as last amended by Laws of Utah 2010, Chapter 379
- 87 **53C-4-103**, as enacted by Laws of Utah 2008, Chapter 203
- 88 **57-3-105**, as last amended by Laws of Utah 2008, Chapter 97
- 89 **57-8-3**, as last amended by Laws of Utah 2008, Chapter 291

- 90 **57-8-10**, as last amended by Laws of Utah 2009, Chapter 178
- 91 **57-8-27**, as last amended by Laws of Utah 2007, Chapters 268 and 329
- 92 **57-8a-209**, as enacted by Laws of Utah 2009, Chapter 178
- 93 **57-11-4**, as last amended by Laws of Utah 2009, Chapter 352
- 94 **57-11-16**, as last amended by Laws of Utah 2009, Chapter 352
- 95 **57-23-4**, as enacted by Laws of Utah 1991, Chapter 262
- 96 **59-1-404**, as last amended by Laws of Utah 2008, Chapter 382
- 97 **59-2-701**, as last amended by Laws of Utah 2001, Chapter 214
- 98 **61-1-14**, as last amended by Laws of Utah 2010, Chapter 218
- 99 **61-2-201**, as renumbered and amended by Laws of Utah 2010, Chapter 379
- 100 **61-2c-102**, as last amended by Laws of Utah 2010, Chapters 184, 379 and last amended
101 by Coordination Clause, Laws of Utah 2010, Chapter 379
- 102 **61-2c-103**, as last amended by Laws of Utah 2010, Chapter 379
- 103 **61-2c-202**, as last amended by Laws of Utah 2010, Chapter 379
- 104 **61-2c-203**, as last amended by Laws of Utah 2010, Chapter 379
- 105 **61-2c-205**, as last amended by Laws of Utah 2010, Chapter 379
- 106 **61-2c-301**, as last amended by Laws of Utah 2010, Chapters 184 and 379
- 107 **61-2c-302**, as last amended by Laws of Utah 2010, Chapter 379
- 108 **61-2c-402**, as last amended by Laws of Utah 2010, Chapter 379
- 109 **61-2c-501.5**, as enacted by Laws of Utah 2010, Chapter 379
- 110 **61-2c-507**, as last amended by Laws of Utah 2010, Chapter 379
- 111 **61-2e-102**, as enacted by Laws of Utah 2009, Chapter 269
- 112 **61-2e-103**, as enacted by Laws of Utah 2009, Chapter 269
- 113 **61-2e-202**, as enacted by Laws of Utah 2009, Chapter 269
- 114 **61-2e-203**, as enacted by Laws of Utah 2009, Chapter 269
- 115 **61-2e-204**, as enacted by Laws of Utah 2009, Chapter 269
- 116 **61-2e-301**, as enacted by Laws of Utah 2009, Chapter 269
- 117 **61-2e-302**, as enacted by Laws of Utah 2009, Chapter 269
- 118 **61-2e-307**, as enacted by Laws of Utah 2009, Chapter 269
- 119 **61-2e-401**, as enacted by Laws of Utah 2009, Chapter 269
- 120 **61-2e-402**, as enacted by Laws of Utah 2009, Chapter 269

121 **61-2f-102**, as last amended by Laws of Utah 2010, Chapter 184 and renumbered and
122 amended by Laws of Utah 2010, Chapter 379 and last amended by Coordination
123 Clause, Laws of Utah 2010, Chapter 379

124 **61-2f-105**, as enacted by Laws of Utah 2010, Chapter 379

125 **61-2f-202**, as last amended by Laws of Utah 2010, Chapter 184 and renumbered and
126 amended by Laws of Utah 2010, Chapter 379

127 **61-2f-203**, as renumbered and amended by Laws of Utah 2010, Chapter 379

128 **61-2f-204**, as renumbered and amended by Laws of Utah 2010, Chapter 379

129 **61-2f-206**, as enacted by Laws of Utah 2010, Chapter 379

130 **61-2f-301**, as renumbered and amended by Laws of Utah 2010, Chapter 379

131 **61-2f-308**, as renumbered and amended by Laws of Utah 2010, Chapter 379

132 **61-2f-401**, as last amended by Laws of Utah 2010, Chapter 184 and renumbered and
133 amended by Laws of Utah 2010, Chapter 379

134 **63A-5-220**, as last amended by Laws of Utah 2010, Chapter 278

135 **63A-5-401**, as enacted by Laws of Utah 2008, Chapter 203

136 **70D-1-102**, as renumbered and amended by Laws of Utah 2009, Chapter 72

137 **72-5-117**, as enacted by Laws of Utah 2008, Chapter 203

138 **78B-6-1101**, as last amended by Laws of Utah 2010, Chapter 193

139 **79-2-403**, as renumbered and amended by Laws of Utah 2009, Chapter 344

140 ENACTS:

141 **57-19a-303**, Utah Code Annotated 1953

142 **57-19a-505**, Utah Code Annotated 1953

143 **61-2g-302**, Utah Code Annotated 1953

144 **61-2g-303**, Utah Code Annotated 1953

145 RENUMBERS AND AMENDS:

146 **57-19a-101**, (Renumbered from 57-19-1, as enacted by Laws of Utah 1987, Chapter 73)

147 **57-19a-102**, (Renumbered from 57-19-2, as last amended by Laws of Utah 1989,
148 Chapter 225)

149 **57-19a-103**, (Renumbered from 57-19-3, as enacted by Laws of Utah 1987, Chapter 73)

150 **57-19a-201**, (Renumbered from 57-19-4, as enacted by Laws of Utah 1987, Chapter 73)

151 **57-19a-202**, (Renumbered from 57-19-5, as last amended by Laws of Utah 2009,

152 Chapter 352)
153 **57-19a-203**, (Renumbered from 57-19-6, as last amended by Laws of Utah 2000,
154 Chapter 86)
155 **57-19a-204**, (Renumbered from 57-19-9, as last amended by Laws of Utah 2000,
156 Chapter 86)
157 **57-19a-205**, (Renumbered from 57-19-10, as enacted by Laws of Utah 1987, Chapter
158 73)
159 **57-19a-206**, (Renumbered from 57-19-26, as enacted by Laws of Utah 1987, Chapter
160 73)
161 **57-19a-301**, (Renumbered from 57-19-14, as last amended by Laws of Utah 2010,
162 Chapter 379)
163 **57-19a-302**, (Renumbered from 57-19-15, as last amended by Laws of Utah 2009,
164 Chapter 352)
165 **57-19a-401**, (Renumbered from 57-19-8, as last amended by Laws of Utah 1991,
166 Chapter 165)
167 **57-19a-402**, (Renumbered from 57-19-11, as last amended by Laws of Utah 1991,
168 Chapter 165)
169 **57-19a-403**, (Renumbered from 57-19-12, as enacted by Laws of Utah 1987, Chapter
170 73)
171 **57-19a-501**, (Renumbered from 57-19-13, as enacted by Laws of Utah 1987, Chapter
172 73)
173 **57-19a-502**, (Renumbered from 57-19-16, as last amended by Laws of Utah 2009,
174 Chapter 352)
175 **57-19a-503**, (Renumbered from 57-19-17, as last amended by Laws of Utah 1989,
176 Chapter 225)
177 **57-19a-504**, (Renumbered from 57-19-18, as enacted by Laws of Utah 1987, Chapter
178 73)
179 **57-19a-506**, (Renumbered from 57-19-21, as enacted by Laws of Utah 1987, Chapter
180 73)
181 **57-19a-507**, (Renumbered from 57-19-22, as last amended by Laws of Utah 1991,
182 Chapter 241)

- 183 **57-19a-508**, (Renumbered from 57-19-23, as enacted by Laws of Utah 1987, Chapter
- 184 73)
- 185 **57-19a-509**, (Renumbered from 57-19-24, as enacted by Laws of Utah 1987, Chapter
- 186 73)
- 187 **57-19a-510**, (Renumbered from 57-19-25, as enacted by Laws of Utah 1987, Chapter
- 188 73)
- 189 **61-2g-101**, (Renumbered from 61-2b-1, as last amended by Laws of Utah 1999,
- 190 Chapter 117)
- 191 **61-2g-102**, (Renumbered from 61-2b-2, as last amended by Laws of Utah 2010,
- 192 Chapter 379)
- 193 **61-2g-103**, (Renumbered from 61-2b-25, as last amended by Laws of Utah 2010,
- 194 Chapter 379)
- 195 **61-2g-201**, (Renumbered from 61-2b-6, as last amended by Laws of Utah 2010,
- 196 Chapter 379)
- 197 **61-2g-202**, (Renumbered from 61-2b-37, as last amended by Laws of Utah 2009,
- 198 Chapter 183)
- 199 **61-2g-203**, (Renumbered from 61-2b-38, as last amended by Laws of Utah 2005,
- 200 Chapter 199)
- 201 **61-2g-204**, (Renumbered from 61-2b-7, as last amended by Laws of Utah 2010,
- 202 Chapter 286)
- 203 **61-2g-205**, (Renumbered from 61-2b-8, as last amended by Laws of Utah 2010,
- 204 Chapter 379)
- 205 **61-2g-301**, (Renumbered from 61-2b-3, as last amended by Laws of Utah 2010,
- 206 Chapter 379)
- 207 **61-2g-304**, (Renumbered from 61-2b-18, as last amended by Laws of Utah 2010,
- 208 Chapter 379)
- 209 **61-2g-305**, (Renumbered from 61-2b-19, as last amended by Laws of Utah 2010,
- 210 Chapter 379)
- 211 **61-2g-306**, (Renumbered from 61-2b-20, as last amended by Laws of Utah 2010,
- 212 Chapter 379)
- 213 **61-2g-307**, (Renumbered from 61-2b-40, as last amended by Laws of Utah 2010,

214 Chapter 379)
215 **61-2g-308**, (Renumbered from 61-2b-22, as last amended by Laws of Utah 2008,
216 Chapters 382 and 387)
217 **61-2g-309**, (Renumbered from 61-2b-21, as last amended by Laws of Utah 2008,
218 Chapters 382 and 387)
219 **61-2g-310**, (Renumbered from 61-2b-23, as last amended by Laws of Utah 1999,
220 Chapter 117)
221 **61-2g-311**, (Renumbered from 61-2b-10, as last amended by Laws of Utah 2010,
222 Chapter 379)
223 **61-2g-312**, (Renumbered from 61-2b-13, as last amended by Laws of Utah 2001,
224 Chapter 214)
225 **61-2g-313**, (Renumbered from 61-2b-14, as last amended by Laws of Utah 2010,
226 Chapter 379)
227 **61-2g-314**, (Renumbered from 61-2b-15, as last amended by Laws of Utah 2010,
228 Chapter 379)
229 **61-2g-315**, (Renumbered from 61-2b-24, as last amended by Laws of Utah 2008,
230 Chapter 387)
231 **61-2g-401**, (Renumbered from 61-2b-17, as last amended by Laws of Utah 2010,
232 Chapter 379)
233 **61-2g-402**, (Renumbered from 61-2b-26, as last amended by Laws of Utah 2008,
234 Chapter 387)
235 **61-2g-403**, (Renumbered from 61-2b-27, as last amended by Laws of Utah 2009,
236 Chapter 352)
237 **61-2g-404**, (Renumbered from 61-2b-32, as last amended by Laws of Utah 2010,
238 Chapter 379)
239 **61-2g-405**, (Renumbered from 61-2b-34, as last amended by Laws of Utah 2005,
240 Chapter 199)
241 **61-2g-406**, (Renumbered from 61-2b-36, as last amended by Laws of Utah 2010,
242 Chapter 379)
243 **61-2g-407**, (Renumbered from 61-2b-41, as enacted by Laws of Utah 1996, Chapter
244 131)

245 **61-2g-501**, (Renumbered from 61-2b-28, as last amended by Laws of Utah 2010,
246 Chapter 379)

247 **61-2g-502**, (Renumbered from 61-2b-29, as last amended by Laws of Utah 2010,
248 Chapter 379)

249 **61-2g-503**, (Renumbered from 61-2b-30.5, as last amended by Laws of Utah 2010,
250 Chapter 379)

251 **61-2g-504**, (Renumbered from 61-2b-31, as last amended by Laws of Utah 2008,
252 Chapters 3 and 387)

253 **61-2g-505**, (Renumbered from 61-2b-33, as last amended by Laws of Utah 2010,
254 Chapter 379)

255 REPEALS:

256 **57-11-19**, as enacted by Laws of Utah 1973, Chapter 158

257 **57-19-7**, as enacted by Laws of Utah 1987, Chapter 73

258 **57-19-19**, as last amended by Laws of Utah 2008, Chapter 3

259 **57-19-20**, as last amended by Laws of Utah 2008, Chapter 382

260 **61-2b-5**, as enacted by Laws of Utah 1990, Chapter 212

261 **61-2b-9**, as last amended by Laws of Utah 2005, Chapter 199

262 **61-2b-30**, as last amended by Laws of Utah 2008, Chapter 382

263 **61-2b-39**, as last amended by Laws of Utah 2010, Chapter 379

264

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

266 Section 1. Section **7-5-1** is amended to read:

267 **7-5-1. Definitions -- Allowable trust companies -- Exceptions.**

268 (1) As used in this chapter:

269 (a) "Business trust" means an entity engaged in a trade or business that is created by a
270 declaration of trust that transfers property to trustees, to be held and managed by them for the
271 benefit of persons holding certificates representing the beneficial interest in the trust estate and
272 assets.

273 (b) "Trust business" means, except as provided in Subsection (1)(c), a business in
274 which one acts in any agency or fiduciary capacity, including that of personal representative,
275 executor, administrator, conservator, guardian, assignee, receiver, depository, or trustee under

276 appointment as trustee for any purpose permitted by law, including the definition of "trust" set
277 forth in Subsection 75-1-201[~~(53)~~](55).

278 (c) "Trust business" does not include the following means of holding [funds] money,
279 assets, or other property:

280 (i) [funds] money held in a client trust account by an attorney authorized to practice
281 law in this state;

282 (ii) [funds] money held in connection with the purchase or sale of real estate by a
283 person [~~authorized to act as a real estate broker in this state~~] licensed as a principal broker in
284 accordance with Title 61, Chapter 2f, Real Estate Licensing and Practices Act;

285 (iii) [funds] money or other assets held in escrow by a person authorized by the
286 department in accordance with Chapter 22, Regulation of Independent Escrow Agents, or by
287 the Utah Insurance Department to act as an escrow agent in this state;

288 (iv) [funds] money held by a homeowners' association or similar organization to pay
289 maintenance and other related costs for commonly owned property;

290 (v) [funds] money held in connection with the collection of debts or payments on loans
291 by a person acting solely as the agent or representative or otherwise at the sole direction of the
292 person to which the debt or payment is owed, including [funds] money held by an escrow agent
293 for payment of taxes or insurance;

294 (vi) [funds] money and other assets held in trust on an occasional or isolated basis by a
295 person who does not represent that [~~he~~] the person is engaged in the trust business in Utah;

296 (vii) [funds] money or other assets found by a court to be held in an implied, resulting,
297 or constructive trust;

298 (viii) [funds] money or other assets held by a court appointed conservator, guardian,
299 receiver, trustee, or other fiduciary if:

300 (A) the conservator, receiver, guardian, trustee, or other fiduciary is responsible to the
301 court in the same manner as a personal representative under Title 75, Chapter 3, Part 5,
302 Supervised Administration, or as a receiver under Rule 66, Utah Rules of Civil Procedure;

303 (B) the conservator, trustee, or other fiduciary is a certified public accountant or has
304 qualified for and received a designation as a certified financial planner, chartered financial
305 consultant, certified financial analyst, or similar designation suitable to the court, that
306 evidences the conservator's, trustee's, or other fiduciary's professional competence to manage

307 financial matters;

308 (C) no trust company is willing or eligible to serve as conservator, guardian, trustee, or
309 receiver after notice has been given pursuant to Section 75-1-401 to all trust companies doing
310 business in this state, including a statement of the value of the assets to be managed~~[.That]~~,
311 that notice need not be provided, however, if a trust company has been employed by the
312 fiduciary to manage the assets; and

313 (D) in the event guardianship services are needed, the person seeking appointment as a
314 guardian under this Subsection (1) is a specialized care professional, as that term is defined in
315 Section 75-5-311, or a business or state agency that employs the services of one of those
316 professionals for the purpose of caring for the incapacitated person, so long as the specialized
317 care professional, business, or state agency does not:

318 (I) profit financially or otherwise from, or receive compensation for acting in that
319 capacity, except for the direct costs of providing guardianship or conservatorship services; or

320 (II) otherwise have a conflict of interest in providing those services;

321 (ix) ~~[funds]~~ money or other assets held by a credit services organization operating in
322 compliance with Title 13, Chapter 21, Credit Services Organizations Act;

323 (x) ~~[funds]~~ money, securities, or other assets held in a customer account in connection
324 with the purchase or sale of securities by a regulated securities broker, dealer, or transfer agent;
325 or

326 (xi) ~~[funds]~~ money, assets, and other property held in a business trust for the benefit of
327 holders of certificates of beneficial interest if the fiduciary activities of the business trust are
328 merely incidental to conducting business in the business trust form.

329 (d) "Trust company" means an institution authorized to engage in the trust business
330 under this chapter. Only the following may be a trust company:

331 (i) a Utah depository institution or its wholly owned subsidiary;

332 (ii) an out-of-state depository institution authorized to engage in business as a
333 depository institution in Utah or its wholly owned subsidiary;

334 (iii) a corporation, including a credit union service organization, owned entirely by one
335 or more federally insured depository institutions as defined in Subsection 7-1-103(8);

336 (iv) a direct or indirect subsidiary of a depository institution holding company that also
337 has a direct or indirect subsidiary authorized to engage in business as a depository institution in

338 Utah; and

339 (v) any other corporation continuously and lawfully engaged in the trust business in
340 this state since before July 1, 1981.

341 (2) Only a trust company may engage in the trust business in this state.

342 (3) The requirements of this chapter do not apply to:

343 (a) an institution authorized to engage in a trust business in another state that is
344 engaged in trust activities in this state solely to fulfill its duties as a trustee of a trust created
345 and administered in another state;

346 (b) a national bank, federal savings bank, federal savings and loan association, or
347 federal credit union authorized to engage in business as a depository institution in Utah, or any
348 wholly owned subsidiary of any of these, to the extent the institution is authorized by its
349 primary federal regulator to engage in the trust business in this state; or

350 (c) a state agency that is otherwise authorized by statute to act as a conservator,
351 receiver, guardian, trustee, or in any other fiduciary capacity.

352 Section 2. Section **13-21-2** is amended to read:

353 **13-21-2. Definitions -- Exemptions.**

354 As used in this chapter:

355 (1) "Buyer" means an individual who is solicited to purchase or who purchases the
356 services of a credit services organization.

357 (2) "Credit reporting agency" means a person who, for a monetary fee, dues, or on a
358 cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling
359 or evaluating consumer credit information or other information on consumers for the purpose
360 of furnishing consumer reports to third persons.

361 (3) (a) "Credit services organization" means a person who represents that the person or
362 an employee is a debt professional or credit counselor, or, with respect to the extension of
363 credit by others, sells, provides, or performs, or represents that the person can or will sell,
364 provide, or perform, in return for the payment of money or other valuable consideration any of
365 the following services:

366 (i) improving a buyer's credit record, history, or rating;

367 (ii) providing advice, assistance, instruction, or instructional materials to a buyer with
368 regard to Subsection (3)(a)(i); or

- 369 (iii) debt reduction or debt management plans.
- 370 (b) "Credit services organization" does not include:
- 371 (i) a person authorized to make loans or extensions of credit under the laws of this state
372 or the United States who is subject to regulation and supervision by this state or the United
373 States and who derives at least 35% of the person's income from making loans and extensions
374 of credit;
- 375 (ii) a depository institution:
- 376 (A) as defined in Section 7-1-103; or
- 377 (B) that is regulated or supervised by the Federal Deposit Insurance Corporation or the
378 National Credit Union Administration;
- 379 (iii) a person licensed as a ~~real estate broker by this state~~ principal broker under Title
380 61, Chapter 2f, Real Estate Licensing and Practices Act, if the person is acting within the
381 course and scope of that license;
- 382 (iv) a person licensed to practice law in this state if:
- 383 (A) the person renders the services described in Subsection (3)(a) within the course and
384 scope of the person's practice as an attorney; and
- 385 (B) the services described in Subsection (3)(a) are incidental to the person's practice as
386 an attorney;
- 387 (v) a broker-dealer registered with the Securities and Exchange Commission or the
388 Commodity Futures Trading Commission if the broker-dealer is acting within the course and
389 scope of that regulation;
- 390 (vi) a credit reporting agency if the services described in Subsection (3)(a) are
391 incidental to the credit reporting agency's services; or
- 392 (vii) a person who provides debt-management services and is required to be registered
393 under Title 13, Chapter 42, Uniform Debt-Management Services Act.
- 394 (4) "Extension of credit" means the right to defer payment of debt or to incur debt and
395 defer its payment, offered or granted primarily for personal, family, or household purposes.
- 396 Section 3. Section **16-11-2** is amended to read:
- 397 **16-11-2. Definitions.**
- 398 As used in this chapter:
- 399 (1) "Filed" means the division has received and approved, as to form, a document

400 submitted under ~~[the provisions of]~~ this chapter, and has marked on the face of the document a
401 stamp or seal indicating the time of day and date of approval, the name of the division, the
402 division director's signature and division seal, or facsimiles of the signature or seal.

403 (2) "Professional corporation" means a corporation organized under this chapter.

404 (3) "Professional service" means the personal service rendered by:

405 (a) a physician, surgeon, or doctor of medicine holding a license under Title 58,
406 Chapter 67, Utah Medical Practice Act, and any subsequent laws regulating the practice of
407 medicine;

408 (b) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentist and
409 Dental Hygienist Practice Act, and any subsequent laws regulating the practice of dentistry;

410 (c) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68,
411 Utah Osteopathic Medical Practice Act, and any subsequent laws regulating the practice of
412 osteopathy;

413 (d) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician
414 Practice Act, and any subsequent laws regulating the practice of ~~[chiropractic]~~ chiropractics;

415 (e) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric
416 Physician Licensing Act, and any subsequent laws regulating the practice of podiatry;

417 (f) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry
418 Practice Act, and any subsequent laws regulating the practice of optometry;

419 (g) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act,
420 and any subsequent laws regulating the practice of veterinary medicine;

421 (h) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act,
422 and any subsequent laws regulating the practice of architecture;

423 (i) a public accountant holding a license under Title 58, Chapter 26a, Certified Public
424 Accountant Licensing Act, and any subsequent laws regulating the practice of public
425 accounting;

426 (j) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician
427 Practice Act, and any subsequent laws regulating the practice of naturopathy;

428 (k) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice Act,
429 and any subsequent laws regulating the practice of pharmacy;

430 (l) an attorney granted the authority to practice law by:

- 431 (i) the Utah Supreme Court; or
- 432 (ii) the Supreme Court, other court, agency, instrumentality, or regulating board that
- 433 licenses or regulates the authority to practice law in any state or territory of the United States
- 434 other than Utah;
- 435 (m) a professional engineer registered under Title 58, Chapter 22, Professional
- 436 Engineers and Professional Land Surveyors Licensing Act;
- 437 (n) a principal broker, associate broker, or sales agent holding a license under Title 61,
- 438 Chapter 2f, Real Estate Licensing and Practices Act, and any subsequent laws regulating the
- 439 selling, exchanging, purchasing, renting, or leasing of real estate;
- 440 (o) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing
- 441 Act, and any subsequent laws regulating the practice of psychology;
- 442 (p) a clinical or certified social worker holding a license under Title 58, Chapter 60,
- 443 Part 2, Social Worker Licensing Act, and any subsequent laws regulating the practice of social
- 444 work;
- 445 (q) a physical therapist holding a license under Title 58, Chapter 24b, Physical Therapy
- 446 Practice Act, and any subsequent laws regulating the practice of physical therapy;
- 447 (r) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58,
- 448 Chapter 44a, Nurse Midwife Practice Act;
- 449 (s) a landscape architect licensed under Title 58, Chapter 53, Landscape Architects
- 450 Licensing Act, and any subsequent laws regulating landscape architects; or
- 451 (t) an individual licensed, certified, or registered under Title 61, Chapter [2b] 2g, Real
- 452 Estate Appraiser Licensing and Certification Act, and any subsequent laws regulating the
- 453 practice of appraising real estate.
- 454 (4) "Regulating board" means the board that is charged with the licensing and
- 455 regulation of the practice of the profession which the professional corporation is organized to
- 456 render. The definitions of Title 16, Chapter 10a, Utah Revised Business Corporation Act,
- 457 apply to this chapter unless the context clearly indicates that a different meaning is intended.
- 458 Section 4. Section **17-17-2** is amended to read:
- 459 **17-17-2. Assessor to be state qualified -- Vacancy -- Filling vacancy.**
- 460 (1) (a) Except as provided in Subsection (1)(b), in addition to the requirements of
- 461 Section 17-16-1, any person elected to the office of county assessor after November 1, 1993,

462 shall be a state-licensed or state-certified appraiser as defined in Title 61, Chapter ~~[2b]~~ 2g, Real
463 Estate Appraiser Licensing and Certification Act, ~~[prior to]~~ before the expiration of 36 months
464 from the day on which ~~[his]~~ the person's term of office begins.

465 (b) Notwithstanding Subsection (1)(a), a county assessor of a county of the first
466 through third class shall be a state-licensed or state-certified appraiser as defined in Title 61,
467 Chapter ~~[2b]~~ 2g, Real Estate Appraiser Licensing and Certification Act, ~~[prior to]~~ before filing
468 for office if the county assessor is:

- 469 (i) elected to the office of county assessor on or after January 1, 2010; or
- 470 (ii) selected to fill the vacancy of a county assessor as described in Subsection (2).

471 (2) (a) If an assessor fails to meet the requirement of this section, the assessor's office
472 is automatically vacant.

473 (b) (i) (A) If a vacancy occurs under this section, the county legislative body shall fill
474 the vacancy in the manner provided in Sections 17-53-104 and 20A-1-508.

475 (B) A person selected to fill the vacancy shall be a state-licensed or state-certified
476 appraiser before assuming the office of county assessor.

477 (ii) If a state-licensed or state-certified appraiser cannot be found to fill a vacancy
478 which resulted from the requirements of this section, the county legislative body may contract
479 with a state-licensed or state-certified appraiser from outside the county to fill the remainder of
480 the term in the office of county assessor.

481 Section 5. Section **31A-2-402** is amended to read:

482 **31A-2-402. Definitions.**

483 As used in this part:

484 (1) "Commission" means the Title and Escrow Commission created in Section
485 31A-2-403.

486 (2) "Concurrence" means the entities given a concurring role must jointly agree for the
487 action to be taken.

488 (3) "Dual licensed title licensee" means a title licensee who holds:

489 (a) a producer license as a title licensee; and

490 (b) a license or certificate under:

491 (i) Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act;

492 ~~[(†)]~~ (ii) Title 61, Chapter 2f, Real Estate Licensing and Practices Act; or

493 [(ii)] (iii) Title 61, Chapter [2b] 2g, Real Estate Appraiser Licensing and Certification
 494 Act[;or].

495 [(iii) Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act.]

496 (4) "Real Estate Commission" means the Real Estate Commission created in Section
 497 61-2f-103.

498 (5) "Title licensee" means a person licensed under this title as:

499 (a) an agency with a title insurance line of authority;

500 (b) a producer with:

501 (i) a general title insurance line of authority; or

502 (ii) a specific category of authority for title insurance; or

503 (c) a title insurance adjuster.

504 Section 6. Section ~~31A-23a-402~~ is amended to read:

505 **31A-23a-402. Unfair marketing practices -- Communication -- Inducement --**
 506 **Unfair discrimination -- Coercion or intimidation -- Restriction on choice.**

507 (1) (a) (i) Any of the following may not make or cause to be made any communication
 508 that contains false or misleading information, relating to an insurance product or contract, any
 509 insurer, or any licensee under this title, including information that is false or misleading
 510 because it is incomplete:

511 (A) a person who is or should be licensed under this title;

512 (B) an employee or producer of a person described in Subsection (1)(a)(i)(A);

513 (C) a person whose primary interest is as a competitor of a person licensed under this
 514 title; and

515 (D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

516 (ii) As used in this Subsection (1), "false or misleading information" includes:

517 (A) assuring the nonobligatory payment of future dividends or refunds of unused
 518 premiums in any specific or approximate amounts, but reporting fully and accurately past
 519 experience is not false or misleading information; and

520 (B) with intent to deceive a person examining it:

521 (I) filing a report;

522 (II) making a false entry in a record; or

523 (III) wilfully refraining from making a proper entry in a record.

- 524 (iii) A licensee under this title may not:
- 525 (A) use any business name, slogan, emblem, or related device that is misleading or
526 likely to cause the insurer or other licensee to be mistaken for another insurer or other licensee
527 already in business; or
- 528 (B) use any advertisement or other insurance promotional material that would cause a
529 reasonable person to mistakenly believe that a state or federal government agency:
- 530 (I) is responsible for the insurance sales activities of the person;
- 531 (II) stands behind the credit of the person;
- 532 (III) guarantees any returns on insurance products of or sold by the person; or
- 533 (IV) is a source of payment of any insurance obligation of or sold by the person.
- 534 (iv) A person who is not an insurer may not assume or use any name that deceptively
535 implies or suggests that person is an insurer.
- 536 (v) A person other than persons licensed as health maintenance organizations under
537 Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to
538 itself.
- 539 (b) A licensee's violation creates a rebuttable presumption that the violation was also
540 committed by the insurer if:
- 541 (i) the licensee under this title distributes cards or documents, exhibits a sign, or
542 publishes an advertisement that violates Subsection (1)(a), with reference to a particular
543 insurer:
- 544 (A) that the licensee represents; or
- 545 (B) for whom the licensee processes claims; and
- 546 (ii) the cards, documents, signs, or advertisements are supplied or approved by that
547 insurer.
- 548 (2) (a) (i) A licensee under this title, or an officer or employee of a licensee may not
549 induce any person to enter into or continue an insurance contract or to terminate an existing
550 insurance contract by offering benefits not specified in the policy to be issued or continued,
551 including premium or commission rebates.
- 552 (ii) An insurer may not make or knowingly allow any agreement of insurance that is
553 not clearly expressed in the policy to be issued or renewed.
- 554 (iii) This Subsection (2)(a) does not preclude:

- 555 (A) an insurer from reducing premiums because of expense savings;
- 556 (B) an insurer from providing to a policyholder or insured one or more incentives to
557 participate in programs or activities designed to reduce claims or claim expenses;
- 558 (C) the usual kinds of social courtesies not related to particular transactions; or
- 559 (D) an insurer from receiving premiums under an installment payment plan.
- 560 (iv) The commissioner may adopt rules in accordance with Title 63G, Chapter 3, Utah
561 Administrative Rulemaking Act, to define what constitutes an incentive described in
562 Subsection (2)(a)(iii)(B).
- 563 (b) A licensee under this title may not absorb the tax under Section 31A-3-301.
- 564 (c) (i) A title insurer or producer or any officer or employee of either may not pay,
565 allow, give, or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining
566 any title insurance business:
- 567 (A) any rebate, reduction, or abatement of any rate or charge made incident to the
568 issuance of the title insurance;
- 569 (B) any special favor or advantage not generally available to others; [or]
- 570 (C) any money or other consideration, except if approved under Section 31A-2-405; or
- 571 (D) material inducement.
- 572 (ii) "Charge made incident to the issuance of the title insurance" includes escrow
573 charges, and any other services that are prescribed in rule by the Title and Escrow Commission
574 after consultation with the commissioner and subject to Section 31A-2-404.
- 575 (iii) An insured or any other person connected, directly or indirectly, with the
576 transaction[~~including a mortgage lender, real estate broker, builder, attorney, or any officer,~~
577 ~~employee, or agent of any of them,~~] may not knowingly receive or accept, directly or indirectly,
578 any benefit referred to in Subsection (2)(c)(i)[~~;~~], including:
- 579 (A) a person licensed under Title 61, Chapter 2c, Utah Residential Mortgage Practices
580 and Licensing Act;
- 581 (B) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices
582 Act;
- 583 (C) a builder;
- 584 (D) an attorney; or
- 585 (E) an officer, employee, or agent of a person listed in this Subsection (2)(c)(iii).

586 (3) (a) An insurer may not unfairly discriminate among policyholders by charging
587 different premiums or by offering different terms of coverage, except on the basis of
588 classifications related to the nature and the degree of the risk covered or the expenses involved.

589 (b) Rates are not unfairly discriminatory if they are averaged broadly among persons
590 insured under a group, blanket, or franchise policy, and the terms of those policies are not
591 unfairly discriminatory merely because they are more favorable than in similar individual
592 policies.

593 (4) (a) This Subsection (4) applies to:

594 (i) a person who is or should be licensed under this title;

595 (ii) an employee of that licensee or person who should be licensed;

596 (iii) a person whose primary interest is as a competitor of a person licensed under this
597 title; and

598 (iv) one acting on behalf of any person described in Subsections (4)(a)(i) through (iii).

599 (b) A person described in Subsection (4)(a) may not commit or enter into any
600 agreement to participate in any act of boycott, coercion, or intimidation that:

601 (i) tends to produce:

602 (A) an unreasonable restraint of the business of insurance; or

603 (B) a monopoly in that business; or

604 (ii) results in an applicant purchasing or replacing an insurance contract.

605 (5) (a) (i) Subject to Subsection (5)(a)(ii), a person may not restrict in the choice of an
606 insurer or licensee under this chapter, another person who is required to pay for insurance as a
607 condition for the conclusion of a contract or other transaction or for the exercise of any right
608 under a contract.

609 (ii) A person requiring coverage may reserve the right to disapprove the insurer or the
610 coverage selected on reasonable grounds.

611 (b) The form of corporate organization of an insurer authorized to do business in this
612 state is not a reasonable ground for disapproval, and the commissioner may by rule specify
613 additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from
614 declining an application for insurance.

615 (6) A person may not make any charge other than insurance premiums and premium
616 financing charges for the protection of property or of a security interest in property, as a

617 condition for obtaining, renewing, or continuing the financing of a purchase of the property or
618 the lending of money on the security of an interest in the property.

619 (7) (a) A licensee under this title may not refuse or fail to return promptly all indicia of
620 agency to the principal on demand.

621 (b) A licensee whose license is suspended, limited, or revoked under Section
622 31A-2-308, 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the
623 commissioner on demand.

624 (8) (a) A person may not engage in any other unfair method of competition or any other
625 unfair or deceptive act or practice in the business of insurance, as defined by the commissioner
626 by rule, after a finding that they:

- 627 (i) are misleading;
- 628 (ii) are deceptive;
- 629 (iii) are unfairly discriminatory;
- 630 (iv) provide an unfair inducement; or
- 631 (v) unreasonably restrain competition.

632 (b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the
633 Title and Escrow Commission shall make rules, subject to Section 31A-2-404, that define any
634 other unfair method of competition or any other unfair or deceptive act or practice after a
635 finding that they:

- 636 (i) are misleading;
- 637 (ii) are deceptive;
- 638 (iii) are unfairly discriminatory;
- 639 (iv) provide an unfair inducement; or
- 640 (v) unreasonably restrain competition.

641 Section 7. Section **48-2c-1502** is amended to read:

642 **48-2c-1502. Definitions.**

643 As used in this part:

644 (1) "Professional services company" means a limited liability company organized
645 under this part to render professional services.

646 (2) "Professional services" means the personal services rendered by:

647 (a) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act,

648 and any subsequent laws regulating the practice of architecture;

649 (b) an attorney granted the authority to practice law by the:

650 (i) Supreme Court of Utah; or

651 (ii) the Supreme Court, other court, agency, instrumentality, or regulating board that

652 licenses or regulates the authority to practice law in any state or territory of the United States

653 other than Utah;

654 (c) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician

655 Practice Act, and any subsequent laws regulating the practice of [~~chiropractic~~] chiropractics;

656 (d) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentist and

657 Dental Hygienist Practice Act, and any subsequent laws, regulating the practice of dentistry;

658 (e) a professional engineer registered under Title 58, Chapter 22, Professional

659 Engineers and Professional Land Surveyors Licensing Act;

660 (f) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician

661 Practice Act, and any subsequent laws regulating the practice of naturopathy;

662 (g) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58,

663 Chapter 44a, Nurse Midwife Practice Act;

664 (h) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry

665 Practice Act, and any subsequent laws regulating the practice of optometry;

666 (i) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68,

667 Utah Osteopathic Medical Practice Act, and any subsequent laws regulating the practice of

668 osteopathy;

669 (j) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice Act,

670 and any subsequent laws regulating the practice of pharmacy;

671 (k) a physician, surgeon, or doctor of medicine holding a license under Title 58,

672 Chapter 67, Utah Medical Practice Act, and any subsequent laws regulating the practice of

673 medicine;

674 (l) a physical therapist holding a license under Title 58, Chapter 24b, Physical Therapy

675 Practice Act, and any subsequent laws regulating the practice of physical therapy;

676 (m) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric

677 Physician Licensing Act, and any subsequent laws regulating the practice of podiatry;

678 (n) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing

679 Act, and any subsequent laws regulating the practice of psychology;

680 (o) a public accountant holding a license under Title 58, Chapter 26a, Certified Public
681 Accountant Licensing Act, and any subsequent laws regulating the practice of public
682 accounting;

683 (p) a principal broker, associate broker, or sales agent holding a license under Title 61,
684 Chapter 2f, Real Estate Licensing and Practices Act, and any subsequent laws regulating the
685 sale, exchange, purchase, rental, or leasing of real estate;

686 (q) a clinical or certified social worker holding a license under Title 58, Chapter 60,
687 Part 2, Social Worker Licensing Act, and any subsequent laws regulating the practice of social
688 work;

689 (r) a mental health therapist holding a license under Title 58, Chapter 60, Mental
690 Health Professional Practice Act, and any subsequent laws regulating the practice of mental
691 health therapy;

692 (s) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act,
693 and any subsequent laws regulating the practice of veterinary medicine; or

694 (t) an individual licensed, certified, or registered under Title 61, Chapter ~~2b~~ 2g, Real
695 Estate Appraiser Licensing and Certification Act, and any subsequent laws regulating the
696 practice of appraising real estate.

697 (3) "Regulating board" means the board or agency organized pursuant to state law that
698 is charged with the licensing and regulation of the practice of the profession that a company is
699 organized to render.

700 Section 8. Section **53C-4-103** is amended to read:

701 **53C-4-103. Rulemaking for sale of real property -- Licensed or certified**
702 **appraisers -- Exceptions.**

703 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if
704 the administration buys, sells, or exchanges real property, the administration shall make rules
705 to ensure that the value of the real property is congruent with the proposed price and other
706 terms of the purchase, sale, or exchange.

707 (2) The rules:

708 (a) shall establish procedures for determining the value of the real property;

709 (b) may provide that an appraisal, as defined under Section ~~[61-2b-2]~~ 61-2g-102,

710 demonstrates the real property's value; and

711 (c) may require that the appraisal be completed by a state-certified general appraiser, as
712 defined under Section [~~61-2b-2~~] 61-2g-102.

713 (3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or
714 to an interest in real property:

715 (a) that is under a contract or other written agreement [~~prior to~~] before May 5, 2008; or

716 (b) with a value of less than \$100,000, as estimated by the state agency.

717 Section 9. Section **57-3-105** is amended to read:

718 **57-3-105. Legal description of real property and names and addresses required in**
719 **documents.**

720 (1) Except as otherwise provided by statute, a person may not present a document for
721 recording unless the document complies with this section.

722 (2) A document executed after July 1, 1983, is entitled to be recorded in the office of
723 the recorder of the county in which the property described in the document is located only if the
724 document contains a legal description of the real property.

725 (3) (a) A document conveying title to real property presented for recording after July 1,
726 1981, is entitled to be recorded in the office of the recorder of the county in which the property
727 described in the document is located only if the document contains the names and mailing
728 addresses of the grantees in addition to the legal description required under Subsection (2).

729 (b) The address of the management committee may be used as the mailing address of a
730 grantee as required in Subsection (3)(a) if the interest conveyed is a timeshare interest, as
731 defined by Section [~~57-19-2~~] 57-19a-102.

732 (4) A person may not present and a county recorder may refuse to accept a document
733 for recording if the document does not conform to this section.

734 (5) Notwithstanding Subsections (2), (3), and (4), a master form, as defined in Section
735 57-3-201, that does not meet the requirements of Subsections (2) and (3) is entitled to be
736 recorded in the office of the recorder of the county in which the property described in the
737 master form is located if it complies with Part 2, Master Mortgage and Trust Deeds.

738 Section 10. Section **57-8-3** is amended to read:

739 **57-8-3. Definitions.**

740 As used in this chapter:

741 (1) "Assessment" means any charge imposed by the association, including common
742 expenses on or against a unit owner pursuant to ~~[the provisions of]~~ the declaration, bylaws, or
743 this chapter.

744 (2) "Association of unit owners" means all of the unit owners:

745 (a) acting as a group in accordance with the declaration and bylaws; or

746 (b) organized as a legal entity in accordance with the declaration.

747 (3) "Building" means a building, containing units, and comprising a part of the
748 property.

749 (4) "Common areas and facilities" unless otherwise provided in the declaration or
750 lawful amendments to the declaration means:

751 (a) the land included within the condominium project, whether leasehold or in fee
752 simple;

753 (b) the foundations, columns, girders, beams, supports, main walls, roofs, halls,
754 corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of the building;

755 (c) the basements, yards, gardens, parking areas, and storage spaces;

756 (d) the premises for lodging of janitors or persons in charge of the property;

757 (e) installations of central services such as power, light, gas, hot and cold water,
758 heating, refrigeration, air conditioning, and incinerating;

759 (f) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all
760 apparatus and installations existing for common use;

761 (g) such community and commercial facilities as may be provided for in the
762 declaration; and

763 (h) all other parts of the property necessary or convenient to its existence, maintenance,
764 and safety, or normally in common use.

765 (5) "Common expenses" means:

766 (a) all sums lawfully assessed against the unit owners;

767 (b) expenses of administration, maintenance, repair, or replacement of the common
768 areas and facilities;

769 (c) expenses agreed upon as common expenses by the association of unit owners; and

770 (d) expenses declared common expenses by this chapter, or by the declaration or the
771 bylaws.

772 (6) "Common profits," unless otherwise provided in the declaration or lawful
773 amendments to the declaration, means the balance of all income, rents, profits, and revenues
774 from the common areas and facilities remaining after the deduction of the common expenses.

775 (7) "Condominium" means the ownership of a single unit in a multiunit project
776 together with an undivided interest in common in the common areas and facilities of the
777 property.

778 (8) "Condominium plat" means a plat or plats of survey of land and units prepared in
779 accordance with Section 57-8-13.

780 (9) "Condominium project" means a real estate condominium project; a plan or project
781 whereby two or more units, whether contained in existing or proposed apartments, commercial
782 or industrial buildings or structures, or otherwise, are separately offered or proposed to be
783 offered for sale. Condominium project also means the property when the context so requires.

784 (10) "Condominium unit" means a unit together with the undivided interest in the
785 common areas and facilities appertaining to that unit. Any reference in this chapter to a
786 condominium unit includes both a physical unit together with its appurtenant undivided interest
787 in the common areas and facilities and a time period unit together with its appurtenant
788 undivided interest, unless the reference is specifically limited to a time period unit.

789 (11) "Contractible condominium" means a condominium project from which one or
790 more portions of the land within the project may be withdrawn in accordance with [provisions
791 of] the declaration and of this chapter. If the withdrawal can occur only by the expiration or
792 termination of one or more leases, then the condominium project is not a contractible
793 condominium within the meaning of this chapter.

794 (12) "Convertible land" means a building site which is a portion of the common areas
795 and facilities, described by metes and bounds, within which additional units or limited common
796 areas and facilities may be created in accordance with this chapter.

797 (13) "Convertible space" means a portion of the structure within the condominium
798 project, which portion may be converted into one or more units or common areas and facilities,
799 including limited common areas and facilities in accordance with this chapter.

800 (14) "Declarant" means all persons who execute the declaration or on whose behalf the
801 declaration is executed. From the time of the recordation of any amendment to the declaration
802 expanding an expandable condominium, all persons who execute that amendment or on whose

803 behalf that amendment is executed shall also come within this definition. Any successors of
804 the persons referred to in this subsection who come to stand in the same relation to the
805 condominium project as their predecessors also come within this definition.

806 (15) "Declaration" means the instrument by which the property is submitted to [~~the~~
807 ~~provisions of this act~~] this chapter, as it from time to time may be lawfully amended.

808 (16) "Expandable condominium" means a condominium project to which additional
809 land or an interest in it may be added in accordance with the declaration and this chapter.

810 (17) "Leasehold condominium" means a condominium project in all or any portion of
811 which each unit owner owns an estate for years in [~~his~~] the unit owner's unit, or in the land
812 upon which that unit is situated, or both, with all those leasehold interests to expire naturally at
813 the same time. A condominium project including leased land, or an interest in the land, upon
814 which no units are situated or to be situated is not a leasehold condominium within the
815 meaning of this chapter.

816 (18) "Limited common areas and facilities" means those common areas and facilities
817 designated in the declaration as reserved for use of a certain unit or units to the exclusion of the
818 other units.

819 (19) "Majority" or "majority of the unit owners," unless otherwise provided in the
820 declaration or lawful amendments to the declaration, means the owners of more than 50% in
821 the aggregate in interest of the undivided ownership of the common areas and facilities.

822 (20) "Management committee" means the committee as provided in the declaration
823 charged with and having the responsibility and authority to make and to enforce all of the
824 reasonable rules covering the operation and maintenance of the property.

825 (21) "Par value" means a number of dollars or points assigned to each unit by the
826 declaration. Substantially identical units shall be assigned the same par value, but units located
827 at substantially different heights above the ground, or having substantially different views, or
828 having substantially different amenities or other characteristics that might result in differences
829 in market value, may be considered substantially identical within the meaning of this
830 subsection. If par value is stated in terms of dollars, that statement may not be considered to
831 reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or
832 fair market transaction at a different figure may affect the par value of any unit, or any
833 undivided interest in the common areas and facilities, voting rights in the unit owners'

834 association, liability for common expenses, or right to common profits, assigned on the basis
835 thereof.

836 (22) "Person" means an individual, corporation, partnership, association, trustee, or
837 other legal entity.

838 (23) "Property" means the land, whether leasehold or in fee simple, the building, if any,
839 all improvements and structures thereon, all easements, rights, and appurtenances belonging
840 thereto, and all articles of personal property intended for use in connection therewith.

841 (24) "Record," "recording," "recorded," and "recorder" have the meaning stated in Title
842 57, Chapter 3, Recording of Documents.

843 (25) "Size" means the number of cubic feet, or the number of square feet of ground or
844 floor space, within each unit as computed by reference to the record of survey map and rounded
845 off to a whole number. Certain spaces within the units including attic, basement, or garage
846 space may be omitted from the calculation or be partially discounted by the use of a ratio, if the
847 same basis of calculation is employed for all units in the condominium project and if that basis
848 is described in the declaration.

849 (26) "Time period unit" means an annually recurring part or parts of a year specified in
850 the declaration as a period for which a unit is separately owned and includes a timeshare estate
851 as defined in [~~Subsection 57-19-2(17)~~] Section 57-19a-102.

852 (27) "Unit" means either a separate physical part of the property intended for any type
853 of independent use, including one or more rooms or spaces located in one or more floors or
854 part or parts of floors in a building or a time period unit, as the context may require. A
855 convertible space shall be treated as a unit in accordance with Subsection 57-8-13.4(3). A
856 proposed condominium unit under an expandable condominium project, not constructed, is a
857 unit two years after the date the recording requirements of Section 57-8-13.6 are met.

858 (28) "Unit number" means the number, letter, or combination of numbers and letters
859 designating the unit in the declaration and in the record of survey map.

860 (29) "Unit owner" means the person or persons owning a unit in fee simple and an
861 undivided interest in the fee simple estate of the common areas and facilities in the percentage
862 specified and established in the declaration or, in the case of a leasehold condominium project,
863 the person or persons whose leasehold interest or interests in the condominium unit extend for
864 the entire balance of the unexpired term or terms.

865 Section 11. Section **57-8-10** is amended to read:

866 **57-8-10. Contents of declaration.**

867 (1) [~~Prior to~~] Before the conveyance of any unit in a condominium project, a
868 declaration shall be recorded that contains the covenants, conditions, and restrictions relating to
869 the project that shall be enforceable equitable servitudes, where reasonable, and which shall run
870 with the land. Unless otherwise provided, these servitudes may be enforced by any unit owner
871 and [~~his~~] the unit owner's successors in interest.

872 (2) (a) For every condominium project:

873 (i) The declaration shall include a description of the land or interests in real property
874 included within the project.

875 (ii) The declaration shall contain a description of any buildings, which states the
876 number of storeys and basements, the number of units, the principal materials of which the
877 building is or is to be constructed, and a description of all other significant improvements
878 contained or to be contained in the project.

879 (iii) The declaration shall contain the unit number of each unit, the square footage of
880 each unit, and any other description or information necessary to properly identify each unit.

881 (iv) The declaration shall describe the common areas and facilities of the project.

882 (v) The declaration shall describe any limited common areas and facilities and shall
883 state to which units the use of the common areas and facilities is reserved.

884 (b) Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, or
885 other apparatus intended to serve a single unit, but located outside the boundaries of the unit,
886 shall constitute a limited common area and facility appertaining to that unit exclusively,
887 whether or not the declaration makes such a provision.

888 (c) The condominium plat recorded with the declaration may provide or supplement
889 the information required under Subsections (2)(a) and (b).

890 (d) (i) The declaration shall include the percentage or fraction of undivided interest in
891 the common areas and facilities appurtenant to each unit and its owner for all purposes,
892 including voting, derived and allocated in accordance with Subsection 57-8-7(2).

893 (ii) If any use restrictions are to apply, the declaration shall state the purposes for which
894 the units are intended and restricted as to use.

895 (iii) (A) The declaration shall include the name of a person to receive service of

896 process on behalf of the project, in the cases provided by this chapter, together with the
897 residence or place of business of that person.

898 (B) The person described in Subsection (2)(d)(iii)(A) shall be a resident of, or shall
899 maintain a place of business within, this state.

900 (iv) The declaration shall describe the method by which it may be amended consistent
901 with this chapter.

902 (v) Any further matters in connection with the property may be included in the
903 declaration, which the person or persons executing the declaration may consider desirable
904 consistent with this chapter.

905 (vi) The declaration shall contain a statement of intention that this chapter applies to
906 the property.

907 (3) (a) If the condominium project contains any convertible land:

908 (i) The declaration shall contain a legal description by metes and bounds of each area
909 of convertible land within the condominium project.

910 (ii) The declaration shall state the maximum number of units that may be created
911 within each area of convertible land.

912 (iii) (A) The declaration shall state, with respect to each area of convertible land, the
913 maximum percentage of the aggregate land and floor area of all units that may be created and
914 the use of which will not or may not be restricted exclusively to residential purposes.

915 (B) The statements described in Subsection (3)(a)(iii)(A) need not be supplied if none
916 of the units on other portions of the land within the project are restricted exclusively to
917 residential use.

918 (iv) The declaration shall state the extent to which any structure erected on any
919 convertible land will be compatible with structures on other portions of the land within the
920 condominium project in terms of quality of construction, the principal materials to be used, and
921 architectural style.

922 (v) The declaration shall describe all other improvements that may be made on each
923 area of convertible land within the condominium project.

924 (vi) The declaration shall state that any units created within each area of convertible
925 land will be substantially identical to the units on other portions of the land within the project
926 or it shall describe in detail what other type of units may be created.

927 (vii) The declaration shall describe the declarant's reserved right, if any, to create
928 limited common areas and facilities within any convertible land in terms of the types, sizes, and
929 maximum number of the limited common areas within each convertible land.

930 (b) The condominium plat recorded with the declaration may provide or supplement
931 the information required under Subsection (3)(a).

932 (4) If the condominium is an expandable condominium project:

933 (a) (i) (A) The declaration shall contain an explicit reservation of an option to expand
934 the project.

935 (B) The declaration shall include a statement of any limitations on the option to
936 expand, including a statement as to whether the consent of any unit owners shall be required
937 and, a statement as to the method by which consent shall be ascertained, or a statement that
938 there are no such limitations.

939 (ii) The declaration shall include a time limit, not exceeding seven years from the date
940 of the recording of the declaration, upon which the option to expand the condominium project
941 shall expire, together with a statement of any circumstances which will terminate the option
942 [~~prior to~~] before expiration of the specified time limits.

943 (iii) The declaration shall contain a legal description by metes and bounds of all land
944 that may be added to the condominium project, which is known as additional land.

945 (iv) The declaration shall state:

946 (A) if any of the additional land is added to the condominium project, whether all of it
947 or any particular portion of it must be added;

948 (B) any limitations as to what portions may be added; or

949 (C) a statement that there are no such limitations.

950 (v) The declaration shall include a statement as to whether portions of the additional
951 land may be added to the condominium project at different times, together with any limitations
952 fixing the boundaries of those portions by legal descriptions setting forth the metes and bounds
953 of these lands and regulating the order in which they may be added to the condominium
954 project.

955 (vi) The declaration shall include a statement of any limitations as to the locations of
956 any improvements that may be made on any portions of the additional land added to the
957 condominium project, or a statement that no assurances are made in that regard.

958 (vii) The declaration shall state the maximum number of units that may be created on
959 the additional land. If portions of the additional land may be added to the condominium project
960 and the boundaries of those portions are fixed in accordance with Subsection (4)(a)(v), the
961 declaration shall also state the maximum number of units that may be created on each portion
962 added to the condominium project. If portions of the additional land may be added to the
963 condominium project and the boundaries of those portions are not fixed in accordance with
964 Subsection (4)(a)(v), then the declaration shall also state the maximum number of units per
965 acre that may be created on any portion added to the condominium project.

966 (viii) With respect to the additional land and to any portion of it that may be added to
967 the condominium project, the declaration shall state the maximum percentage of the aggregate
968 land and floor area of all units that may be created on it, the use of which will not or may not
969 be restricted exclusively to residential purposes. However, these statements need not be
970 supplied if none of the units on the land originally within the project are restricted exclusively
971 to residential use.

972 (ix) The declaration shall state the extent to which any structures erected on any
973 portion of the additional land added to the condominium project will be compatible with
974 structures on the land originally within the project in terms of quality of construction, the
975 principal materials to be used, and architectural style. The declaration may also state that no
976 assurances are made in those regards.

977 (x) The declaration shall describe all other improvements that will be made on any
978 portion of the additional land added to the condominium project, or it shall contain a statement
979 of any limitations as to what other improvements may be made on it. The declaration may also
980 state that no assurances are made in that regard.

981 (xi) The declaration shall contain a statement that any units created on any portion of
982 the additional land added to the condominium project will be substantially identical to the units
983 on the land originally within the project, or a statement of any limitations as to what types of
984 units may be created on it. The declaration may also contain a statement that no assurances are
985 made in that regard.

986 (xii) The declaration shall describe the declarant's reserved right, if any, to create
987 limited common areas and facilities within any portion of the additional land added to the
988 condominium project, in terms of the types, sizes, and maximum number of limited common

989 areas within each portion. The declaration may also state that no assurances are made in those
990 regards.

991 (b) The condominium plat recorded with the declaration may provide or supplement
992 the information required under Subsections (4)(a)(iii) through (a)(vi) and (a)(ix) through
993 (a)(xii).

994 (5) If the condominium project is a contractible condominium:

995 (a) (i) The declaration shall contain an explicit reservation of an option to contract the
996 condominium project.

997 (ii) The declaration shall contain a statement of any limitations on the option to
998 contract, including a statement as to whether the consent of any unit owners shall be required,
999 and if so, a statement as to the method by which this consent shall be ascertained. The
1000 declaration may also contain a statement that there are no such limitations.

1001 (iii) The declaration shall state the time limit, not exceeding seven years from the
1002 recording of the declaration, upon which the option to contract the condominium project shall
1003 expire, together with a statement of any circumstances which will terminate this option [~~prior~~
1004 ~~to~~] before expiration of the specified time limit.

1005 (b) (i) The declaration shall include a legal description by metes and bounds of all land
1006 that may be withdrawn from the condominium project, which is known as withdrawable land.

1007 (ii) The declaration shall include a statement as to whether portions of the
1008 withdrawable land may be withdrawn from the condominium project at different times,
1009 together with any limitations fixing the boundaries of those portions by legal descriptions
1010 setting forth the metes and bounds and regulating the order in which they may be withdrawn
1011 from the condominium project.

1012 (iii) The declaration shall include a legal description by metes and bounds of all of the
1013 land within the condominium project to which the option to contract the project does not
1014 extend.

1015 (c) The condominium plat recorded with the declaration may provide or supplement
1016 the information required under Subsection (5)(b).

1017 (6) (a) If the condominium project is a leasehold condominium, then with respect to
1018 any ground lease or other leases the expiration or termination of which will or may terminate or
1019 contract the condominium project:

1020 (i) The declaration shall include recording information enabling the location of each
1021 lease in the official records of the county recorder.

1022 (ii) The declaration shall include the date upon which each lease is due to expire.

1023 (iii) The declaration shall state whether any land or improvements will be owned by the
1024 unit owners in fee simple. If there is to be fee simple ownership, the declaration shall include:

1025 (A) a description of the land or improvements, including without limitation, a legal
1026 description by metes and bounds of the land; or

1027 (B) a statement of any rights the unit owners have to remove these improvements
1028 within a reasonable time after the expiration or termination of the lease or leases involved, or a
1029 statement that they shall have no such rights.

1030 (iv) The declaration shall include a statement of the rights the unit owners have to
1031 extend or renew any of the leases or to redeem or purchase any of the reversions, or a statement
1032 that they have no such rights.

1033 (b) After the recording of the declaration, no lessor who executed the declaration, and
1034 no successor in interest to this lessor, has any right or power to terminate any part of the
1035 leasehold interest of any unit owner who:

1036 (i) makes timely payment of [~~his~~] the unit owner's share of the rent to the persons
1037 designated in the declaration for the receipt of the rent; and

1038 (ii) otherwise complies with all covenants which would entitle the lessor to terminate
1039 the lease if they were violated.

1040 (7) (a) If the condominium project contains time period units, the declaration shall also
1041 contain the location of each condominium unit in the calendar year. This information shall be
1042 set out in a fourth column of the exhibit or schedule referred to in Subsection 57-8-7(2), if the
1043 exhibit or schedule accompanies the declaration.

1044 (b) The declaration shall also put timeshare owners on notice that tax notices will be
1045 sent to the management committee, not each timeshare owner.

1046 (c) The time period units created with respect to any given physical unit shall be such
1047 that the aggregate of the durations involved constitute a full calendar year.

1048 (8) (a) The declaration, bylaws, and condominium plat shall be duly executed and
1049 acknowledged by all of the owners and any lessees of the land which is made subject to this
1050 chapter.

1051 (b) As used in Subsection (8)(a), "owners and lessees" does not include, in their
1052 respective capacities, any mortgagee, any trustee or beneficiary under a deed of trust, any other
1053 lien holder, any person having an equitable interest under any contract for the sale or lease of a
1054 condominium unit, or any lessee whose leasehold interest does not extend to any portion of the
1055 common areas and facilities.

1056 (9) (a) As used in this section, "rentals" or "rental unit" means:

1057 (i) a unit owned by an individual not described in Subsection (9)(a)(ii) that is occupied
1058 by someone while no unit owner occupies the unit as the unit owner's primary residence; and

1059 (ii) a unit owned by an entity or trust, regardless of who occupies the unit.

1060 (b) (i) Subject to Subsections (9)(c), (f), and (g), an association of unit owners may:

1061 (A) create restrictions on the number and term of rentals in a condominium project; or

1062 (B) prohibit rentals in the condominium project.

1063 (ii) An association of unit owners that creates a rental restriction or prohibition in
1064 accordance with Subsection (9)(b)(i) shall create the rental restriction or prohibition in a
1065 declaration or by amending the declaration.

1066 (c) If an association of unit owners prohibits or imposes restrictions on the number and
1067 term of rentals, the restrictions shall include:

1068 (i) a provision that requires a condominium project to exempt from the rental
1069 restrictions the following unit owner and the unit owner's unit:

1070 (A) a unit owner in the military for the period of the unit owner's deployment;

1071 (B) a unit occupied by a unit owner's parent, child, or sibling;

1072 (C) a unit owner whose employer has relocated the unit owner for no less than two
1073 years; or

1074 (D) a unit owned by a trust or other entity created for estate planning purposes if the
1075 trust or other estate planning entity was created for the estate of:

1076 (I) a current resident of the unit; or

1077 (II) the parent, child, or sibling of the current resident of the unit;

1078 (ii) a provision allowing a unit owner who has a rental in the condominium project
1079 before the time the rental restriction described in Subsection (9)(b)(i) is recorded with the
1080 county recorder of the county in which the condominium project is located to continue renting
1081 until:

1082 (A) the unit owner occupies the unit; or
1083 (B) an officer, owner, member, trustee, beneficiary, director, or person holding a
1084 similar position of ownership or control of an entity or trust that holds an ownership interest in
1085 the unit, occupies the unit; and
1086 (iii) a requirement that the association of unit owners create, by rule or resolution,
1087 procedures to:
1088 (A) determine and track the number of rentals and units in the condominium project
1089 subject to the provisions described in Subsections (9)(c)(i) and (ii); and
1090 (B) ensure consistent administration and enforcement of the rental restrictions.
1091 (d) For purposes of Subsection (9)(c)(ii), a transfer occurs when one or more of the
1092 following occur:
1093 (i) the conveyance, sale, or other transfer of a unit by deed;
1094 (ii) the granting of a life estate in the unit; or
1095 (iii) if the unit is owned by a limited liability company, corporation, partnership, or
1096 other business entity, the sale or transfer of more than 75% of the business entity's share, stock,
1097 membership interests, or partnership interests in a 12-month period.
1098 (e) This section does not limit or affect residency age requirements for an association
1099 of unit owners that complies with the requirements of the Housing for Older Persons Act, 42
1100 U.S.C. Sec. 3607.
1101 (f) A declaration or amendment to a declaration recorded [~~prior to~~] before transfer of
1102 the first unit from the initial declarant may prohibit or restrict rentals without providing for the
1103 exceptions, provisions, and procedures required under Subsection (9)(c).
1104 (g) This section does not apply to:
1105 (i) a condominium project containing a time period unit as defined in Section 57-8-3;
1106 (ii) any other form of timeshare interest as defined in Section [~~57-19-2~~] 57-19a-102; or
1107 (iii) a condominium project in which the initial declaration is recorded before May 12,
1108 2009.
1109 (h) Notwithstanding this section, an association of unit owners may, upon unanimous
1110 approval by all unit owners, restrict or prohibit rentals without an exception described in
1111 Subsection (9)(c).
1112 Section 12. Section **57-8-27** is amended to read:

1113 **57-8-27. Separate taxation.**

1114 (1) Each unit and its percentage of undivided interest in the common or community
1115 areas and facilities shall be considered to be a parcel and shall be subject to separate
1116 assessment and taxation by each assessing unit, local district, and special service district for all
1117 types of taxes authorized by law, including ad valorem levies and special assessments. Neither
1118 the building or buildings, the property, nor any of the common areas and facilities may be
1119 considered a parcel.

1120 (2) In the event any of the interests in real property made subject to this chapter by the
1121 declaration are leasehold interests, if the lease creating these interests is of record in the office
1122 of the county recorder, if the balance of the term remaining under the lease is at least 40 years
1123 at the time the leasehold interest is made subject to this chapter, if units are situated or are to be
1124 situated on or within the real property covered by the lease, and if the lease provides that the
1125 lessee shall pay all taxes and assessments imposed by governmental authority, then until 10
1126 years [~~prior to~~] before the date that the leasehold is to expire or until the lease is terminated,
1127 whichever first occurs, all taxes and assessments on the real property covered by the lease shall
1128 be levied against the owner of the lessee's interest. If the owner of the reversion under the lease
1129 has executed the declaration and condominium plat, until 10 years [~~prior to~~] before the date
1130 that the leasehold is to expire, or until the lease is terminated, whichever first occurs, all taxes
1131 and assessments on the real property covered by the lease shall be separately levied against the
1132 unit owners having an interest in the lease, with each unit owner for taxation purposes being
1133 considered the owner of a parcel consisting of [~~his~~] the unit owner's undivided condominium
1134 interest in the fee of the real property affected by the lease.

1135 (3) No forfeiture or sale of the improvements or the property as a whole for delinquent
1136 real estate taxes, special assessments, or charges shall divest or in anywise affect the title to an
1137 individual unit if the real estate taxes or duly levied share of the assessments and charges on the
1138 individual unit are currently paid.

1139 (4) Any exemption from taxes that may exist on real property or the ownership of the
1140 property may not be denied by virtue of the submission of the property to this chapter.

1141 (5) Timeshare interests and timeshare estates, as defined in [~~Subsection 57-19-2(17)]~~
1142 Section 57-19a-102, may not be separately taxed but shall be valued, assessed, and taxed at the
1143 unit level. The value of timeshare interests and timeshare estates, for purposes of ad valorem

1144 taxation, shall be determined by valuing the real property interest associated with the timeshare
1145 interest or timeshare estate, exclusive of the value of any intangible property and rights
1146 associated with the acquisition, operation, ownership, and use of the timeshare interest or
1147 timeshare estate, including the fees and costs associated with the sale of timeshare interests and
1148 timeshare estates that exceed those fees and costs normally incurred in the sale of other similar
1149 properties, the fees and costs associated with the operation, ownership, and use of timeshare
1150 interests and timeshare estates, vacation exchange rights, vacation conveniences and services,
1151 club memberships, and any other intangible rights and benefits available to a timeshare unit
1152 owner. Nothing in this section shall be construed as requiring the assessment of any real
1153 property interest associated with a timeshare interest or timeshare estate at less than its fair
1154 market value. Notice of assessment, delinquency, sale, or any other purpose required by law is
1155 considered sufficient for all purposes if the notice is given to the management committee.

1156 Section 13. Section **57-8a-209** is amended to read:

1157 **57-8a-209. Rental restrictions.**

1158 (1) As used in this section, "rentals" or "rental lot" means:

1159 (a) a lot owned by an individual not described in Subsection (1)(b) that is occupied by
1160 someone while no lot owner occupies the lot as the lot owner's primary residence; and

1161 (b) a lot owned by an entity or trust, regardless of who occupies the lot.

1162 (2) (a) Subject to Subsections (2)(b), (6), and (7), an association may:

1163 (i) create restrictions on the number and term of rentals in an association; or

1164 (ii) prohibit rentals in the association.

1165 (b) An association that creates a rental restriction or prohibition in accordance with
1166 Subsection (1)(a)(i) shall create the rental restriction or prohibition in a recorded declaration of
1167 covenants, conditions, and restrictions, or by amending the recorded declaration of covenants,
1168 conditions, and restrictions.

1169 (3) If an association prohibits or imposes restrictions on the number and term of
1170 rentals, the restrictions shall include:

1171 (a) a provision that requires the association to exempt from the rental restrictions the
1172 following lot owner and the lot owner's lot:

1173 (i) a lot owner in the military for the period of the lot owner's deployment;

1174 (ii) a lot occupied by a lot owner's parent, child, or sibling;

- 1175 (iii) a lot owner whose employer has relocated the lot owner for no less than two years;
1176 or
- 1177 (iv) a lot owned by a trust or other entity created for estate planning purposes if the
1178 trust or other estate planning entity was created for:
- 1179 (A) the estate of a current resident of the lot; or
1180 (B) the parent, child, or sibling of the current resident of the lot;
- 1181 (b) a provision allowing a lot owner who has a rental in the association before the time
1182 the rental restriction described in Subsection (2)(a) is recorded with the county recorder of the
1183 county in which the association is located to continue renting until:
- 1184 (i) the lot owner occupies the lot; or
1185 (ii) an officer, owner, member, trustee, beneficiary, director, or person holding a
1186 similar position of ownership or control of an entity or trust that holds an ownership interest in
1187 the lot, occupies the lot; and
- 1188 (c) a requirement that the association create, by rule or resolution, procedures to:
- 1189 (i) determine and track the number of rentals and lots in the association subject to the
1190 provisions described in Subsections (3)(a) and (b); and
1191 (ii) ensure consistent administration and enforcement of the rental restrictions.
- 1192 (4) For purposes of Subsection (3)(b), a transfer occurs when one or more of the
1193 following occur:
- 1194 (a) the conveyance, sale, or other transfer of a lot by deed;
1195 (b) the granting of a life estate in the lot; or
1196 (c) if the lot is owned by a limited liability company, corporation, partnership, or other
1197 business entity, the sale or transfer of more than 75% of the business entity's share, stock,
1198 membership interests, or partnership interests in a 12-month period.
- 1199 (5) This section does not limit or affect residency age requirements for an association
1200 that complies with the requirements of the Housing for Older Persons Act, 42 U.S.C. Sec.
1201 3607.
- 1202 (6) The declaration of covenants, conditions, and restrictions or amendments to the
1203 declaration of covenants, conditions, and restrictions recorded [~~prior to~~] before the transfer of
1204 the first lot from the initial declarant may prohibit or restrict rentals without providing for the
1205 exceptions, provisions, and procedures required under Subsection (3)(a).

1206 (7) This section does not apply to:
1207 (a) an association containing a time period unit as defined in Section 57-8-3;
1208 (b) any other form of timeshare interest as defined in Section ~~[57-19-2]~~ 57-19a-102; or
1209 (c) an association in which the initial declaration of covenants, conditions, and
1210 restrictions is recorded before May 12, 2009.

1211 (8) Notwithstanding this section, an association may, upon unanimous approval by all
1212 lot owners, restrict or prohibit rentals without an exception described in Subsection (3).

1213 Section 14. Section **57-11-4** is amended to read:

1214 **57-11-4. Exemptions.**

1215 (1) Unless the method of disposition is adopted for the purpose of evasion of this
1216 chapter or the federal act, this chapter does not apply to an offer or disposition of an interest in
1217 land:

1218 (a) by a purchaser of subdivided lands for the person's own account in a single or
1219 isolated transaction;

1220 (b) (i) on a unit of which there is a residential, commercial, or industrial building; or

1221 (ii) on a unit of which there is a legal obligation on the part of the seller to complete
1222 construction of a residential, commercial, or industrial building within two years from date of
1223 disposition;

1224 (c) unless a person who acquires land for one of the following purposes sells that land
1225 to one or more individuals as unimproved lots with no legal obligation on the part of the seller
1226 to construct a residential, commercial, or industrial building on that lot within two years from
1227 the date of disposition:

1228 (i) if the person acquires an interest in the land for use in the business of constructing
1229 residential, commercial, or industrial buildings; or

1230 (ii) if the person acquires the type of land described in Subsection (1)(c)(i) for the
1231 purpose of disposition to a person engaged in the business of constructing residential,
1232 commercial, or industrial buildings;

1233 (d) pursuant to court order;

1234 (e) by a government or government agency;

1235 (f) (i) if the interest lies within the boundaries of a city or a county which:

1236 (A) has a planning and zoning board using at least one professional planner;

1237 (B) enacts ordinances that require approval of planning, zoning, and plats, including
1238 the approval of plans for streets, culinary water, sanitary sewer, and flood control; and

1239 (C) will have the improvements described in Subsection (1)(f)(i)(B) plus telephone and
1240 electricity; and

1241 (ii) if at the time of the offer or disposition the subdivider furnishes satisfactory
1242 assurance of completion of the improvements described in Subsection (1)(f)(i)(C);

1243 (g) in an industrial park;

1244 (h) as cemetery lots; or

1245 (i) if the interest is offered as part of a camp resort, as defined in Section ~~[57-19-2]~~
1246 57-19a-102 or a timeshare development, as defined in Section ~~[57-19-2]~~ 57-19a-102.

1247 (2) Unless the method of disposition is adopted for the purpose of evasion of this
1248 chapter or ~~[the provisions of]~~ the federal act, this chapter, except as specifically designated,
1249 does not apply to an offer or disposition of:

1250 (a) indebtedness secured by a mortgage or deed of trust on real estate;

1251 (b) a security or unit of interest issued by a real estate investment trust regulated under
1252 any state or federal statute;

1253 (c) subject to Subsection (5), subdivided lands registered under the federal act and
1254 which the division finds to be in the public interest to exempt from the registration
1255 requirements of this chapter;

1256 (d) a security currently registered with the Division of Securities; or

1257 (e) an interest in oil, gas, or other minerals or a royalty interest in these assets if the
1258 offer or disposition of the interest is regulated as a security by the federal government or by the
1259 Division of Securities.

1260 (3) (a) Notwithstanding the exemptions in Subsections (1) and (2), a person making an
1261 offer or disposition of an interest in land that is located in Utah shall apply to the division for
1262 an exemption before the offer or disposition is made if:

1263 (i) the person is representing, in connection with the offer or disposition, the
1264 availability of culinary water service to or on the subdivided land; and

1265 (ii) the culinary water service is provided by a water corporation as defined in Section
1266 54-2-1.

1267 (b) A subdivider seeking to qualify under this exemption shall file with the division a

1268 filing fee of \$50 and an application containing:

1269 (i) information required by the division to show that the offer or disposition is exempt
1270 under this section;

1271 (ii) a statement as to what entity will be providing culinary water service and the nature
1272 of that entity; and

1273 (iii) (A) a copy of the entity's certificate of convenience and necessity issued by the
1274 Public Service Commission; or

1275 (B) evidence that the entity providing water service is exempt from the jurisdiction of
1276 the Public Service Commission.

1277 (4) (a) The director may by rule or order exempt a person from a requirement of this
1278 chapter if the director finds that the offering of an interest in a subdivision is essentially
1279 noncommercial.

1280 (b) For purposes of this section, the bulk sale of subdivided lands by a subdivider to
1281 another person who will become the subdivider of those lands is considered essentially
1282 noncommercial.

1283 (5) (a) A subdivider seeking to qualify under the exemption described in Subsection
1284 (2)(c) shall file with the division:

1285 (i) a copy of an effective statement of record filed with the secretary of the Department
1286 of Housing and Urban Development; and

1287 (ii) a filing fee of \$100.

1288 (b) If a subdivider does not qualify under the exemption described in Subsection (2)(c),
1289 the division shall credit the filing fee described in Subsection (5)(a) to the filing fee required
1290 for registration under this chapter.

1291 (c) Nothing in this Subsection (5) exempts a subdivider from:

1292 (i) Sections 57-11-16 and 57-11-17; or

1293 (ii) the requirement to file an annual report with the division under Section 57-11-10.

1294 (6) Notwithstanding an exemption under this section, the division:

1295 (a) retains jurisdiction over an offer or disposition of an interest in land to determine
1296 whether or not the exemption continues to apply; and

1297 (b) may require compliance with this chapter if an exemption no longer applies.

1298 Section 15. Section **57-11-16** is amended to read:

1299 **57-11-16. Violations -- Duties of attorney general, county attorney, or district**
1300 **attorney.**

1301 [~~(1) (a) This Subsection (1) applies to a person who willfully:~~
1302 [~~(i) violates this chapter or a rule adopted under this chapter; or]~~
1303 [~~(ii) in an application for registration under this chapter or under the federal act, makes~~
1304 ~~any untrue statement of a material fact or omits to state a material fact.]~~

1305 [~~(b) A person described in Subsection (1)(a) may be:~~
1306 [~~(i) fined a civil penalty not to exceed the greater of:~~
1307 [~~(A) \$2,500 for each violation; or]~~
1308 [~~(B) double the amount of any gain or economic benefit derived from each violation;]~~
1309 [~~(ii) imprisoned for not more than two years; or]~~
1310 [~~(iii) both fined or imprisoned.]~~

1311 [~~(c) An indictment or information may not be returned or a complaint filed under this~~
1312 ~~chapter more than five years after the alleged violation.]~~

1313 (1) (a) A person who violates this chapter is guilty of a class B misdemeanor, except as
1314 provided in Subsection (1)(b).

1315 (b) A person who knowingly makes an untrue statement or knowingly omits a material
1316 fact in an application for registration under this chapter or under the federal act is guilty of a
1317 class A misdemeanor.

1318 (2) (a) The attorney general shall advise the division and the division's staff in matters
1319 requiring legal counsel or services in the exercise of the division's power or performance of the
1320 division's duties.

1321 (b) In the prosecution or defense of an action under this section, the attorney general,
1322 the county attorney, or the district attorney of the appropriate county shall perform ~~an~~ the
1323 necessary legal services without compensation other than their regular salaries.

1324 Section 16. Section **57-19a-101**, which is renumbered from Section 57-19-1 is
1325 renumbered and amended to read:

CHAPTER 19a. TIMESHARE AND CAMP RESORT ACT

Part 1. General Provisions

~~[57-19-1].~~ **57-19a-101. Title.**

This chapter is known ~~[and may be cited]~~ as the "Timeshare and Camp Resort Act."

1330 Section 17. Section **57-19a-102**, which is renumbered from Section 57-19-2 is
1331 renumbered and amended to read:

1332 ~~[57-19-2].~~ **57-19a-102. Definitions.**

1333 As used in this chapter, unless the context clearly requires otherwise:

1334 (1) "Accommodations" includes:

1335 (a) a hotel or motel [rooms;] room;

1336 (b) a condominium or cooperative [units, cabins, lodges, apartments, and] unit;

1337 (c) a cabin;

1338 (d) a lodge;

1339 (e) an apartment; or

1340 (f) a private or commercial [structures] structure designed for occupancy by one or
1341 more individuals.

1342 (2) "Advertisement" means a written, printed, audio, or visual offer made by general
1343 solicitation.

1344 (3) "Affiliation" means an employment or independent contractor relationship between
1345 a salesperson and a developer.

1346 (4) "Amendment" means a change to an original registration that is required to be
1347 reported to the division pursuant to:

1348 (a) Section 57-19a-204; or

1349 (b) rules made by the division in accordance with Title 63G, Chapter 3, Utah

1350 Administrative Rulemaking Act.

1351 (5) "Business day" means a day other than a:

1352 (a) Saturday;

1353 (b) Sunday; or

1354 (c) state or federal holiday.

1355 ~~[(3)]~~ (6) "Camp resort" means [any] an enterprise that has as its primary purpose the
1356 offering of a camp resort interest.

1357 ~~[(4)]~~ (7) "Camp resort interest" means the right to use and occupy a fixed or variable
1358 camping site according to a fixed or variable time schedule.

1359 ~~[(5)]~~ (8) "Camping site" means a space designed or promoted for the purpose of
1360 locating a trailer, tent, tent trailer, pickup camper, or other similar device used for land-based

1361 portable housing.

1362 (9) "Consolidation" means the registration of one or more additional interests in a
1363 project after the division approves a registration.

1364 (10) "Deeded ownership" means the acquisition by a purchaser of an interest:

1365 (a) through transfer of title to the one or more real properties to which the interest
1366 attaches; and

1367 (b) regardless of whether title is transferred to:

1368 (i) the purchaser; or

1369 (ii) a trust in which the purchaser is granted a beneficial interest.

1370 [~~6~~] (11) "Developer" means a person who:

1371 (a) establishes, promotes, owns, or operates a timeshare development or camp resort;

1372 or

1373 (b) sells one or more interests in one or more projects.

1374 (12) "Direct sales presentation" means a meeting in which a salesperson or developer
1375 provides information to one or more prospective purchasers about:

1376 (a) one or more projects; or

1377 (b) one or more interests.

1378 [~~7~~] (13) "Director" means the director of the division.

1379 [~~8~~] (14) "Division" means the Division of Real Estate of the Department of
1380 Commerce.

1381 (15) "Entity" means:

1382 (a) a corporation;

1383 (b) a limited liability company;

1384 (c) a partnership;

1385 (d) a company;

1386 (e) an association;

1387 (f) a joint venture;

1388 (g) a business trust;

1389 (h) a trust; or

1390 (i) another organization.

1391 [~~9~~] (16) "Executive director" means the executive director of the Department of

1392 Commerce.

1393 ~~[(10)]~~ (17) "Interest" means a camp resort interest or a timeshare interest.

1394 (18) (a) "Marketing of interests" means implementing a plan under which multiple
1395 interests are advertised, offered, or both advertised and offered, for disposition, regardless of
1396 whether:

1397 (i) the multiple interests are in the same location; or

1398 (ii) the ownership of the interests is differentiated or distinguished.

1399 (b) "Marketing of interests" does not mean:

1400 (i) creating or providing material to be disseminated to a prospective purchaser through
1401 an advertisement or at a direct sales presentation; or

1402 (ii) disseminating an advertisement through means that do not involve:

1403 (A) speaking directly with a prospective purchaser; or

1404 (B) sending to, or receiving from, a prospective purchaser a personalized email, text
1405 message, or other communication.

1406 (19) "Notice of defect" means a written communication from the division informing an
1407 applicant that the applicant must submit additional information to clarify, complete, or correct
1408 an application for:

1409 (a) registration;

1410 (b) consolidation; or

1411 (c) renewal.

1412 ~~[(11)]~~ (20) "Offer" means a solicitation intended to result in a person purchasing an
1413 interest in a project.

1414 (21) "Person" means an individual or an entity.

1415 ~~[(12)]~~ (22) "Project" means a camp resort or timeshare development.

1416 (23) "Prospective purchaser" means a person who:

1417 (a) attends a direct sales presentation;

1418 (b) communicates with a developer or salesperson to obtain information about a
1419 project;

1420 (c) provides personal information to a developer or salesperson; or

1421 (d) is solicited by a developer or salesperson through any type of advertisement or
1422 marketing.

- 1423 (24) "Property report" means a document that includes:
 1424 (a) the disclosures required under Section 57-19a-402;
 1425 (b) a cover sheet as provided by the division; and
 1426 (c) a receipt provided by the division.
- 1427 ~~[(13)]~~ (25) "Purchaser" means a person who purchases an interest in a project.
 1428 (26) "Registration":
 1429 (a) for a project, means that the division approves an application for registration as
 1430 provided in Section 57-19a-202; and
 1431 (b) for a salesperson, means the division approves an application for registration of a
 1432 person to engage as a salesperson in the sale and marketing of interests on behalf of a
 1433 developer as provided in Section 57-19a-301.
- 1434 (27) "Renewal" means extending a registration for an additional period on or before the
 1435 date the registration expires.
- 1436 ~~[(14) "Sale" or "sell" means selling an interest in a project for value. It does not~~
 1437 ~~include charging a reasonable fee to offset the administrative costs of transferring an interest in~~
 1438 ~~a project.]~~
- 1439 (28) "Resale" may be defined by the division by rule made in accordance with Title
 1440 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 1441 (29) (a) "Sale" or "sell" means the transfer of an interest in a project for value.
 1442 (b) "Sale" or "sell" includes a transfer of an interest in a project as part of a resale.
 1443 (c) "Sale" or "sell" does not include the transfer of an interest by a developer or
 1444 homeowners' association that charges only a reasonable fee to offset the administrative costs of
 1445 a transfer described in Subsection (29)(a).
- 1446 ~~[(15)]~~ (30) (a) "Salesperson" means an individual who[;]:
 1447 (i) is affiliated with a developer; and
 1448 (ii) for compensation and as agent for [another, is engaged] the developer, engages in
 1449 obtaining commitments of one or more persons to purchase an interest in a project by:
 1450 (A) making direct sales presentations to those persons[. It does not include purchasers
 1451 or members engaged in the referral of persons]; or
 1452 (B) engaging in any other activity that constitutes the marketing of interests.
 1453 (b) "Salesperson" does not include a purchaser who refers another person to the

1454 developer without making a direct sales presentation to ~~[them]~~ that person.

1455 (31) "Temporary permit" means authorization from the division under Section
1456 57-19a-203 for a developer to engage in the marketing of interests for a period not to exceed 30
1457 days.

1458 ~~[(16)]~~ (32) "Timeshare development" means [any] an enterprise that has as its primary
1459 purpose the offering of a timeshare interest.

1460 (33) "Timeshare estate" means a small undivided fractional fee interest in real property
1461 by which the purchaser does not receive any right to use accommodations except as provided
1462 by contract, declaration, or other instrument defining a legal right.

1463 ~~[(17)]~~ (34) (a) "Timeshare interest" means a right to occupy fixed or variable
1464 accommodations during three or more separate fixed or variable time periods over a period of
1465 at least three years[; including renewal options;].

1466 (b) "Timeshare interest" includes:

1467 (i) a renewal option, whether or not coupled with an estate in land[. It includes what is
1468 commonly known as a "timeshare estate," which is a small undivided fractional fee interest in
1469 real property by which the purchaser does not receive any right to use accommodations except
1470 as provided by contract, declaration, or other instrument defining a legal right.]; or

1471 (ii) a time share estate.

1472 Section 18. Section **57-19a-103**, which is renumbered from Section 57-19-3 is
1473 renumbered and amended to read:

1474 ~~[57-19-3].~~ **57-19a-103. Powers and duties of director and division -- Fees.**

1475 (1) The [director] division may make, amend, and repeal [rules, forms, and orders] a
1476 rule, form, or order when necessary to carry out [the provisions of] this chapter. The division
1477 shall make a rule under this chapter in accordance with Title 63G, Chapter 3, Utah
1478 Administrative Rulemaking Act.

1479 (2) The division may charge and collect a fee determined by the division under Section
1480 63J-1-504 for:

1481 (a) approving a new, renewed, duplicate, or consolidated registration;

1482 (b) processing an amendment to a registration;

1483 (c) completing an inspection of a project;

1484 (d) issuing a temporary permit;

1485 (e) producing a certified copy of an official document, order, or other paper or
 1486 transcript; or

1487 (f) performing another duty of the division under this chapter.

1488 (3) If a person pays a fee or costs to the division with a negotiable instrument or other
 1489 payment method that is not honored for payment:

1490 (a) the transaction for which the payment is submitted is voidable by the division;

1491 (b) the division may reverse the transaction if payment of the applicable fee or cost is
 1492 not received in full; and

1493 (c) the person's registration is automatically suspended:

1494 (i) beginning the day on which the payment is due; and

1495 (ii) ending the day on which payment is made in full.

1496 Section 19. Section **57-19a-201**, which is renumbered from Section 57-19-4 is
 1497 renumbered and amended to read:

1498 **Part 2. Registration of Project**

1499 **[57-19-4]. 57-19a-201. Unregistered sales prohibited -- Restrictions on use of**
 1500 **registration.**

1501 (1) Except [for transactions exempt under] as provided in Subsection (3) or Section
 1502 [57-19-26] 57-19a-206, it is unlawful for [any] a person to sell or offer [or] to sell in this state
 1503 an interest in a project unless;

1504 (a) the project is registered under this chapter[-]; and

1505 (b) any individual that advertises or markets the interest is:

1506 (i) the project developer; or

1507 (ii) registered as a salesperson under this chapter.

1508 (2) A developer who uses another person to promote or operate a project shall:

1509 (a) actively supervise the activities of the person so as to ensure compliance with:

1510 (i) this chapter; and

1511 (ii) rules made under this chapter; and

1512 (b) ensure that the person is registered as a salesperson, if the person is an individual.

1513 (3) An individual who is licensed and on active status as a sales agent, associate
 1514 broker, or principal broker pursuant to Title 61, Chapter 2f, Real Estate Licensing and Practices
 1515 Act, is not required to register under this chapter to sell or offer to sell an interest owned by a

1516 purchaser, if the individual operates in accordance with any restriction as to sales volume that
1517 the division may impose under this chapter by rule made in accordance with Title 63G, Chapter
1518 3, Utah Administrative Rulemaking Act.

1519 (4) A permit to market a project issued by the division before April 27, 1987, is
1520 considered to be an effective registration, but is subject to the renewal provisions of this
1521 chapter upon the anniversary date of the issuance of the original permit.

1522 Section 20. Section **57-19a-202**, which is renumbered from Section 57-19-5 is
1523 renumbered and amended to read:

1524 **[57-19-5]. 57-19a-202. Registration -- Filing application.**

1525 (1) (a) A developer shall register a project. To register a project a developer shall
1526 demonstrate good moral character.

1527 (b) In evaluating a developer's moral character, the division shall consider whether the
1528 developer or an officer, partner, director, or owner of the developer has:

1529 (i) been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner
1530 to, or resolved by diversion or its equivalent:

1531 (A) a felony; or

1532 (B) a misdemeanor involving theft, fraud, or dishonesty;

1533 (ii) been enjoined from, assessed a civil penalty for, or found to have engaged in the
1534 violation of a law designed to protect a consumer; or

1535 (iii) engaged in a dishonest practice in an industry involving sales to a consumer.

1536 (c) Unless exempted by this chapter or by the division through rule or order, a
1537 developer that engages in the resale of an interest previously registered by a different developer
1538 shall register the interest as a new project.

1539 (d) The developer who registers a project is considered the "applicant" or "registrant"
1540 for the purposes of this chapter.

1541 ~~[(1)]~~ (2) A ~~[person]~~ developer may apply for registration of a project by:

1542 ~~[(a)]~~ (a) filing with the ~~[director]~~ division:

1543 ~~[(a)]~~ (i) an application in the form prescribed by the ~~[director]~~ division by rule made in
1544 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

1545 ~~[(b)]~~ (ii) the written disclosure required to be furnished to prospective purchasers by
1546 Section ~~[57-19-11]~~ 57-19a-402; and

1547 ~~[(e)]~~ (iii) financial statements and other information that the ~~[director]~~ division may, by
1548 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
1549 require as being reasonably necessary to determine whether:

1550 (A) the requirements of this chapter have been met; and ~~[whether any of the events]~~

1551 (B) an event specified in Subsection [57-19-13(1)(g) have occurred.] 57-19a-303(1)
1552 occurs; and

1553 ~~[(2) Interests in a project which are encumbered by liens, mortgages, or other~~
1554 ~~encumbrances may not be accepted for registration or offered for]~~

1555 (b) paying a fee determined by the division under Section 63J-1-504.

1556 (3) The division may not accept an interest that is encumbered by a lien, mortgage, or
1557 other encumbrance for registration, and a person may not offer the interest for disposition to the
1558 public unless:

1559 (a) adequate release or nondisturbance clauses are contained in the encumbering
1560 instruments to reasonably assure that the purchaser's interest in the project will not be defeated;
1561 or

1562 (b) the division has accepted other equivalent assurances [which] that, in the opinion of
1563 the division, meet the purposes of this Subsection [(2)] (3).

1564 ~~[(3)(a) Each application for registration of a project shall be accompanied by:]~~

1565 ~~[(i) a filing fee of \$500 for up to 100 interests, plus an additional \$3 per interest for~~
1566 ~~each interest over 100, up to a maximum of \$2,500 for each application; and]~~

1567 ~~[(ii) subject to Subsection (3)(b), a deposit of \$300 to cover all on-site inspection costs~~
1568 ~~and expenses incurred by the division.]~~

1569 ~~[(b) (i) If the \$300 deposit is insufficient to meet the estimated costs and expenses of~~
1570 ~~the on-site inspection, the applicant shall make an additional deposit sufficient to cover the~~
1571 ~~estimated costs and expenses before the division will inspect the subdivided lands.]~~

1572 ~~[(ii) The deposit shall be refunded to the extent it is not used, together with an itemized~~
1573 ~~statement from the division of all amounts it has used.]~~

1574 (4) (a) Within a reasonable time after an initial or consolidated registration is approved,
1575 the developer shall cooperate with the division in making arrangements for an inspector
1576 appointed by the division to travel to and inspect the project site.

1577 (b) The developer shall bear the costs for the inspection required under this Subsection

1578 (4), including:

1579 (i) travel expenses;

1580 (ii) food and lodging;

1581 (iii) rental car, if applicable; and

1582 (iv) per diem.

1583 (c) If a developer fails to comply with this Subsection (4), the division may revoke the
 1584 initial project registration through an informal proceeding conducted pursuant to Title 63G,
 1585 Chapter 4, Administrative Procedures Act.

1586 ~~[(4)]~~ (5) If a person registers additional interests to be offered for disposition, the
 1587 person may consolidate the subsequent registration with any earlier registration offering
 1588 interests for disposition in the same project by:

1589 (a) filing an application for consolidation [accompanied by an additional fee of \$200
 1590 plus \$3 for each additional interest, up to a maximum of \$1,250 for each application, if at the
 1591 time the person makes the application all of the information required by Subsection (1) has
 1592 been brought current and covers the additional interests.] in a form prescribed by the division
 1593 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

1594 (b) filing updates, as applicable, to the information required by Subsection (2); and

1595 (c) paying a fee determined by the division under Section 63J-1-504.

1596 Section 21. Section **57-19a-203**, which is renumbered from Section 57-19-6 is
 1597 renumbered and amended to read:

1598 ~~[57-19-6].~~ **57-19a-203. Approval of application for registration.**

1599 (1) An application for registration filed pursuant to Section ~~[57-19-5 is effective upon~~
 1600 ~~the expiration of 30 business days following its filing with the director, unless]~~ 57-19a-202 is
 1601 considered approved by the division on the day on which the division issues:

1602 ~~[(a) an order denying the application pursuant to Section 57-19-13 is in effect;]~~

1603 ~~[(b) a prior effective date has been ordered by the director; or]~~

1604 ~~[(c) the director has, prior to that date, notified the applicant of a defect in the~~
 1605 ~~registration application.]~~

1606 ~~[(2) An applicant may consent to the delay of effectiveness until the director by order~~
 1607 ~~declares the registration to be effective.]~~

1608 (a) a cover page:

1609 (i) that states the term for which a purchaser is obligated to maintain the interest; and

1610 (ii) which the developer shall attach, without alteration, to the property report as the

1611 first page of the property report; and

1612 (b) a receipt for the property report, which the developer shall attach to the property

1613 report as the last page of the property report.

1614 ~~[(3)]~~ (2) (a) Notwithstanding Section [57-19-4] 57-19a-201, the division may grant a

1615 temporary permit allowing [the] a developer to begin [a sales program] the sale and marketing

1616 of interests while the registration is in process.

1617 (b) To obtain a temporary permit, [the] a developer shall:

1618 ~~[(a) submit an application to the division for a temporary permit in the form required~~

1619 ~~by the division;]~~

1620 ~~[(b) submit a substantially complete application for registration to the division,~~

1621 ~~including all appropriate fees and exhibits required under Section 57-19-5, plus a temporary~~

1622 ~~permit fee of \$100;]~~

1623 (i) submit to the division:

1624 (A) an application for a temporary permit in the form required by the division by rule

1625 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

1626 (B) the information required under Section 57-19a-202, including any information

1627 required by the division by rule made in accordance with Title 63G, Chapter 3, Utah

1628 Administrative Rulemaking Act;

1629 (ii) pay:

1630 (A) a fee required under Subsection 57-19a-202(2)(b) for registration; and

1631 (B) a temporary permit fee determined by the division under Section 63J-1-504;

1632 ~~[(c)]~~ (iii) provide evidence acceptable to the division that [all funds] money received

1633 by the developer or [marketing agent] salesperson will be placed into an independent escrow

1634 with instructions that [funds] the money will not be released until a final registration [has been

1635 granted] is approved;

1636 ~~[(d) give to each purchaser and]~~

1637 (iv) describe the information and documents that the developer will supply to complete

1638 the registration process;

1639 (v) provide a purchaser or potential purchaser a copy of the proposed property report

1640 that the developer has submitted to the division with the [~~initial~~] application for registration;
1641 and

1642 [~~(e) give to each purchaser~~]

1643 (vi) provide a purchaser:

1644 (A) the opportunity to cancel the purchase in accordance with Section [~~57-19-12. The~~
1645 purchaser shall have] 57-19a-403;

1646 (B) an additional opportunity to cancel upon the issuance of an approved registration if
1647 the division determines that there is a substantial difference [~~in~~] between the disclosures
1648 contained in the final property report and those given to the [~~purchase] purchaser in the~~
1649 proposed property report[-]; and

1650 (C) an additional opportunity to cancel if the division does not issue an approved
1651 registration under this chapter.

1652 Section 22. Section **57-19a-204**, which is renumbered from Section 57-19-9 is
1653 renumbered and amended to read:

1654 **[~~57-19-9]. 57-19a-204. Duration of registration -- Amendment and renewal --~~**
1655 **Supplemental disclosure -- Notice of amendment.**

1656 (1) (a) Registration of a project is effective for a period of one year [~~and may, upon~~
1657 application, be renewed].

1658 (b) A developer may renew a project for successive periods of one year each by
1659 applying with the division and complying with the rules made by the division in accordance
1660 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1661 [~~(2) A registration may be amended at any time, for any reason, by filing an amended~~
1662 ~~application for registration, which]~~

1663 (2) A developer who fails to file a timely renewal may apply for reinstatement of the
1664 expired registration within 30 days following the date of expiration by:

1665 (a) complying with the requirements for a timely renewal; and

1666 (b) paying an additional late fee determined by the division under Section 63J-1-504.

1667 (3) Notwithstanding Subsection (1), the division may extend the term of a project
1668 registration that would expire under Subsection (1) except for the extension if:

1669 (a) (i) the person complies with the requirements of this section to renew the
1670 registration; and

1671 (ii) the renewal application remains pending at the time of expiration; or
1672 (b) at the time of extension, there is pending under this chapter an investigation or a
1673 disciplinary action against the developer.

1674 (4) (a) If an event that has a material adverse effect on the operation of a project occurs,
1675 the developer shall, within 10 business days of the occurrence of the event, file an amendment
1676 with the division.

1677 (b) The division may define, by rule made in accordance with Title 63G, Chapter 3,
1678 Utah Administrative Rulemaking Act, what constitutes an "event that has a material adverse
1679 effect on the operation of a project" for purposes of this Subsection (4).

1680 (c) An amended registration [shall become effective in the manner provided in Section
1681 57-19-6] becomes effective if approved by the division in the manner provided in Section
1682 57-19a-203.

1683 ~~[(3) The]~~ (5) (a) A developer shall supplement a written disclosure required to be
1684 furnished to a prospective [purchasers pursuant to Section 57-19-11 shall be supplemented]
1685 purchaser under Section 57-19a-402 as often as is necessary to keep the required information
1686 reasonably current. [These supplements shall be filed with the director] A developer shall file
1687 a supplement with the division as provided in Section [57-19-8] 57-19a-401.

1688 ~~[(4) Every developer shall provide timely notice sent to the director of any event which~~
1689 ~~has occurred which may have a material adverse effect on the conduct of the operation of the~~
1690 ~~project. In addition to this notification, the developer shall, within 30 days of the occurrence of~~
1691 ~~that event, file an amendment to the registration disclosing the information previously~~
1692 ~~provided.]~~

1693 ~~[(5) Each application for renewal of a registration and each supplementary filing as~~
1694 ~~provided in this section shall be accompanied by a fee of \$200.]~~

1695 (b) A developer shall pay with a supplementary filing a fee determined by the division
1696 under Section 63J-1-504.

1697 Section 23. Section **57-19a-205**, which is renumbered from Section 57-19-10 is
1698 renumbered and amended to read:

1699 ~~[57-19-10].~~ **57-19a-205. Misleading statements -- Effect of application or**
1700 **registration.**

1701 ~~[Neither the fact that an application for registration or the written disclosures required~~

1702 by this chapter have been filed, nor the fact that a project has been effectively registered or
 1703 exempted, constitutes a finding by the director that the]

1704 (1) It is a class A misdemeanor to make or cause to be made to a purchaser or
 1705 prospective purchaser an offering or document filed under this chapter that is untrue,
 1706 incomplete, or misleading.

1707 (2) When registering a project, the division does not certify or otherwise ensure to a
 1708 purchaser or potential purchaser that:

1709 (a) an offering or any document filed under this chapter is true, complete, [and] or not
 1710 misleading[; nor does either of these facts mean that the director has determined in any way
 1711 the];

1712 (b) a project has any specific merits or qualifications [of, or recommended or given
 1713 approval to,]; or

1714 (c) any person, developer, or transaction involving an interest in a project[. It is a class
 1715 A misdemeanor to make or cause to be made to any purchaser or prospective purchaser any
 1716 offering or document filed under this chapter which is untrue, incomplete, or misleading] is
 1717 recommended or endorsed by the division.

1718 (3) A developer may not claim that the division endorses, recommends, or certifies an
 1719 offering, document, project, or interest because of the following:

1720 (a) the filing of an application for registration;

1721 (b) the submission to the division of a written disclosure required by this chapter; or

1722 (c) the division issuing a registration.

1723 Section 24. Section **57-19a-206**, which is renumbered from Section 57-19-26 is
 1724 renumbered and amended to read:

1725 **[57-19-26]. 57-19a-206. Exemptions.**

1726 (1) Unless entered into for the purpose of evading [~~the provisions of~~] this chapter, the
 1727 following transactions are exempt from registration by operation of law:

1728 (a) an isolated [transactions] transaction by an owner of an interest in a project, or by a
 1729 person holding [~~such an owner's~~] an executed power of attorney of an owner described in this
 1730 Subsection (1)(a);

1731 (b) an offer or sale by a [~~governmental~~] government entity; and

1732 (c) a bona fide pledge of interest in a project.

1733 (2) ~~(a) The [director may, by rule or order, exempt any] division may exempt a person~~
 1734 ~~from [any or all] one or more of the requirements of this chapter [if the director finds that the~~
 1735 ~~offering of an interest in a project is essentially noncommercial. For purposes of this~~
 1736 ~~subsection, the offering of fewer than 10 interests in a project is considered essentially~~
 1737 ~~noncommercial.] under procedures established by the division by rule made in accordance with~~
 1738 ~~Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~

1739 (b) An application for an exemption shall be accompanied by a nonrefundable fee
 1740 determined by the division under Section 63J-1-504.

1741 (c) An exemption granted by order under this Subsection (2) is valid for one year from
 1742 the date on which the order is issued by the division and expires unless renewed through
 1743 reapplication to the division.

1744 (3) A purchaser of an interest in a project that is exempt from registration under this
 1745 chapter may bring a private cause of action against a developer for unprofessional conduct as
 1746 provided in Section 57-19a-501.

1747 Section 25. Section **57-19a-301**, which is renumbered from Section 57-19-14 is
 1748 renumbered and amended to read:

Part 3. Registration of Salesperson

1750 ~~[57-19-14].~~ **57-19a-301. Registration of salesperson.**

1751 (1) Unless the transaction is exempt under Section ~~[57-19-26]~~ 57-19a-206, it is
 1752 unlawful for ~~[any]~~ a person to act as a salesperson selling or marketing an interest or a project
 1753 in this state without first registering under this chapter as a salesperson.

1754 (2) The fee for registration as a salesperson is waived by the division for persons
 1755 licensed by the division under Title 61, Chapter 2f, Real Estate Licensing and Practices Act.

1756 Section 26. Section **57-19a-302**, which is renumbered from Section 57-19-15 is
 1757 renumbered and amended to read:

1758 ~~[57-19-15].~~ **57-19a-302. Application for registration of salesperson.**

1759 ~~[(1) A person may apply for registration as a salesperson under this chapter by filing~~
 1760 ~~with the director an application in the form prescribed by the director, including:]~~

1761 ~~[(a) a statement of whether or not the applicant has ever been:]~~

1762 ~~[(i) convicted of:]~~

1763 ~~[(A) a felony; or]~~

1764 (1) (a) An individual applying for registration as a salesperson under this chapter shall
1765 demonstrate good moral character.

1766 (b) In evaluating an applicant's moral character, the division may consider any
1767 evidence, including:

1768 (i) whether an applicant has been convicted of, pled guilty to, pled no contest to, pled
1769 guilty in a similar manner to, or resolved by diversion or its equivalent:

1770 (A) a felony; or

1771 (B) a misdemeanor involving theft, fraud, or dishonesty; or

1772 (ii) whether an applicant has been enjoined from, assessed a civil penalty for, or found
1773 to have engaged in the violation of a law designed to protect a consumer[?].

1774 (2) To apply for registration as a salesperson, an individual shall:

1775 (a) submit to the division an application in the form prescribed by the division,
1776 including:

1777 (i) a questionnaire addressing issues that the division will consider in evaluating the
1778 applicant's moral character;

1779 ~~[(b)(i)]~~ (ii) a statement describing the applicant's employment history for the five years
1780 immediately preceding the day on which the application is filed; and

1781 ~~[(i)]~~ (iii) a statement of whether or not a termination of employment during the period
1782 described in Subsection ~~[(1)(b)(i)]~~ (2)(a)(ii) is as a result of theft, fraud, or an act of dishonesty;
1783 and

1784 ~~[(e)]~~ (iv) any other information that the ~~[director]~~ division, by rule made in accordance
1785 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, considers necessary to protect
1786 the interests of a purchaser[?]; and

1787 ~~[(2) Notwithstanding the requirements for a regulatory fee under Section 63J-1-504, at~~
1788 ~~the time an applicant files an application, the applicant shall pay to the division a fee of \$100.]~~

1789 (b) pay a fee determined by the division under Section 63J-1-504.

1790 (3) (a) Registration as a salesperson is effective for a period ~~[for]~~ of two years, unless
1791 the ~~[director]~~ division specifies otherwise.

1792 (b) To renew a registration a salesperson shall:

1793 (i) ~~[file a]~~ submit a renewal application in the form prescribed by the ~~[director for that~~
1794 purpose] division; and

1795 (ii) pay a renewal fee [~~of \$100~~] determined by the division under Section 63J-1-504.

1796 (c) An individual who fails to file a timely renewal may apply for reinstatement of the
1797 salesperson registration within 30 days following the date of expiration by:

1798 (i) complying with the requirements for a timely renewal; and

1799 (ii) paying an additional late fee determined by the division under Section 63J-1-504.

1800 (d) Notwithstanding Subsection (3)(a), the division may extend the term of a
1801 salesperson registration that would expire under Subsection (3)(a) except for the extension if:

1802 (i) (A) the individual complies with the requirements of this section to renew the
1803 license; and

1804 (B) the renewal application remains pending at the time of expiration; or

1805 (ii) at the time of extension, there is pending under this chapter an investigation or a
1806 disciplinary action against the individual.

1807 (e) A salesperson who fails to reinstate an expired registration within the time period
1808 provided in this Subsection (3) shall reapply with the division as a new applicant.

1809 Section 27. Section **57-19a-303** is enacted to read:

1810 **57-19a-303. Reporting requirements for developer and salesperson.**

1811 (1) A developer shall notify the division within 10 business days if an officer, partner,
1812 director, or owner of the developer:

1813 (a) is convicted in a court of a:

1814 (i) felony;

1815 (ii) class A misdemeanor; or

1816 (iii) class B misdemeanor; or

1817 (b) is subject to an injunction or administrative order restraining a false or misleading
1818 promotional plan involving the sale or marketing of an interest.

1819 (2) A developer shall notify the division within 10 business days if:

1820 (a) the developer files a petition in bankruptcy; or

1821 (b) any other event occurs that might have a material adverse effect on a project.

1822 (3) If a developer is sued in, or brings, a civil action involving an allegation related to
1823 the marketing of an interest or management of a project, the developer shall, within 10 days of
1824 the civil action being filed:

1825 (a) notify the division of the civil action; and

1826 (b) provide the division a copy of the pleadings.

1827 (4) A developer's failure to comply with Subsection (1), (2), or (3) is grounds for
 1828 discipline under Section 57-19a-501.

1829 (5) (a) A registered salesperson shall notify the division in writing within 10 business
 1830 days after the day on which the salesperson:

1831 (i) enters a plea in abeyance to, or is convicted of:

1832 (A) a felony; or

1833 (B) a misdemeanor involving theft, fraud, or dishonesty; or

1834 (ii) is enjoined from, assessed a civil penalty for, or found to have engaged in a
 1835 violation of any law designed to protect consumers.

1836 (b) On receiving a notification pursuant to this section, the director may:

1837 (i) conduct a hearing pursuant to Section 57-19a-503; and

1838 (ii) if the director finds that the salesperson does not maintain the good moral character
 1839 required for registration, take an action contemplated under Section 57-19a-502.

1840 (c) In enforcing the reporting requirement of this section, the division may, following a
 1841 hearing, take an action contemplated under Section 57-19a-502.

1842 Section 28. Section **57-19a-401**, which is renumbered from Section 57-19-8 is
 1843 renumbered and amended to read:

1844 **Part 4. Operational Provisions**

1845 **[57-19-8]. 57-19a-401. Filing proposed documents -- Sales contracts.**

1846 (1) ~~[Every]~~ A developer shall file the following with the ~~[director]~~ division at least five
 1847 business days ~~[prior to using any of the following in this state]~~ before providing the document
 1848 to a prospective purchaser:

1849 ~~[(a) copies or the proposed text of all advertisements and sales promotion literature;]~~

1850 ~~[(b) the proposed form of its sales contracts; and]~~

1851 ~~[(c) copies or the text of any supplements]~~

1852 (a) a sales contract; and

1853 (b) a supplement to the written disclosure required to be furnished to prospective
 1854 purchasers pursuant to Section ~~[57-19-11]~~ 57-19a-402.

1855 ~~[(2) If the text, rather than copies, of the materials specified in Subsection (1) are filed;~~
 1856 ~~copies of these materials shall be filed with the director within five business days following the~~

1857 ~~date the materials are first used.]~~

1858 ~~[(3) The developer shall notify the division within five working days if he is convicted~~
1859 ~~in any court of a crime involving fraud, deception, false pretenses, misrepresentation, false~~
1860 ~~advertising, or dishonest dealing in real estate transactions, or has been subject to any~~
1861 ~~injunction or administrative order restraining a false or misleading promotional plan involving~~
1862 ~~land dispositions.]~~

1863 ~~[(4) The developer must notify the division within five working days if the developer~~
1864 ~~files a petition in bankruptcy or if any other event occurs which may have a material adverse~~
1865 ~~effect on the subdivision.]~~

1866 ~~[(5) In any suit by or against the developer involving camp resorts or timeshare~~
1867 ~~developments, the developer promptly shall furnish the division notice of the suit and copies of~~
1868 ~~all pleadings. Failure to provide notice may, in the discretion of the division, constitute~~
1869 ~~grounds for the division withholding any approval required by this act.]~~

1870 (2) (a) The division may not approve a registration of a project if a developer proposes
1871 to use a sales contract that commits a purchaser by means other than deeded ownership to
1872 maintain an interest into perpetuity.

1873 (b) This Subsection (2) applies to a sales contract that is entered into on or after May
1874 10, 2011.

1875 Section 29. Section **57-19a-402**, which is renumbered from Section 57-19-11 is
1876 renumbered and amended to read:

1877 **~~[57-19-11].~~ 57-19a-402. Disclosure to prospective purchaser required.**

1878 (1) Except in a transaction exempt under Section ~~[57-19-26, any] 57-19a-206, this~~
1879 section applies to a person who:

1880 (a) sells or offers to sell an interest in a project located in this state~~[-];~~ or ~~[who]~~

1881 (b) sells or offers to sell in this state an interest in a project located outside of this
1882 state~~[-]~~, shall provide to the prospective purchaser, before the prospective purchaser signs an
1883 agreement to purchase an interest in a project or gives any item of value for the purchase of an
1884 interest in a project, a written statement which provides].

1885 (2) A person subject to this section shall provide to a prospective purchaser the
1886 disclosure described in Subsection (3):

1887 (a) at the beginning of a direct sales presentation; or

1888 (b) if the prospective purchaser does not attend a direct sales presentation, at least three
1889 days before obtaining the prospective purchaser's signature on a sales contract.

1890 (3) The disclosure required by Subsection (2) shall:

1891 (a) be in the form of a written statement required by the division by rule made in
1892 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

1893 (b) provide a full and fair disclosure of information regarding the project and the
1894 purchaser's rights and obligations associated with the purchase of an interest in a project[. The
1895 written disclosure shall be on the property report form required by the division and shall
1896 include:]; and

1897 (c) at a minimum, include:

1898 ~~[(1)]~~ (i) the name and address of the developer;

1899 ~~[(2)]~~ (ii) a statement as to whether [or not] the developer, or an officer, partner,
1900 director, or owner of the developer has [ever] been:

1901 ~~[(a)]~~ (A) convicted of a felony[. or any];

1902 (B) convicted of a misdemeanor involving theft, fraud, or dishonesty; or

1903 ~~[(b)]~~ (C) enjoined from, assessed [any] a civil penalty for, or found to have engaged in
1904 the violation of any law designed to protect consumers;

1905 ~~[(3)]~~ (iii) a brief description of the developer's experience in timeshare, camp resort, or
1906 any other real estate development;

1907 ~~[(4)]~~ (iv) a brief description of the interest [which] that is being offered in the project;

1908 ~~[(5) a description of any provisions]~~

1909 (v) a brief description of any provision to protect the purchaser's interest from loss due
1910 to foreclosure on [any] an underlying financial obligation of the project;

1911 ~~[(6)]~~ (vi) a statement of the maximum number of interests in the project to be
1912 marketed, and a commitment that this maximum number will not be exceeded unless disclosed
1913 by filing an amendment to the registration as provided in Section [57-19-9 prior to] 57-19a-204
1914 before the amendment becoming effective;

1915 ~~[(7) any event which has]~~

1916 (vii) any event that:

1917 (A) occurred as of the date of the offer [which may]; and

1918 (B) might have a material adverse effect on the operation of the project; and

1919 ~~[(8)]~~ (viii) any other information the ~~[director]~~ division considers necessary for the
1920 protection of purchasers.

1921 Section 30. Section **57-19a-403**, which is renumbered from Section 57-19-12 is
1922 renumbered and amended to read:

1923 ~~[57-19-12]~~. **57-19a-403. Purchaser's right to cancel.**

1924 (1) (a) An agreement to purchase an interest in a project may be cancelled, at the option
1925 of the purchaser, if:

1926 (i) the purchaser provides to the developer, by hand delivery or certified mail, written
1927 notice of the cancellation; and

1928 (ii) the notice is delivered or postmarked not later than midnight of the fifth ~~[calendar]~~
1929 business day following the day on which the agreement is signed.

1930 (b) In computing the ~~[number of calendar days for purposes of this section]~~ time period
1931 described in Subsection (1)(a), the day on which the agreement ~~[was]~~ is signed ~~[and legal~~
1932 holidays are] is not included ~~[as "calendar days."]~~.

1933 (c) Within 30 days after receipt of timely notice of cancellation, the developer shall
1934 refund ~~[any]~~ in full money or other consideration paid by the purchaser for purchase of an
1935 interest.

1936 (2) ~~[Every]~~ An agreement to purchase an interest in a project ~~[which]~~ that is subject to
1937 this chapter shall include the following statement in at least 10 point bold upper-case type,
1938 immediately preceding the space for the purchaser's signature:

1939 "PURCHASER'S RIGHT TO CANCEL: YOU MAY CANCEL THIS AGREEMENT
1940 WITHOUT ANY CANCELLATION FEE OR OTHER PENALTY BY HAND DELIVERING
1941 OR SENDING BY CERTIFIED MAIL WRITTEN NOTICE OF CANCELLATION TO:

1942 ~~[(NAME AND ADDRESS OF DEVELOPER)]~~. THE NOTICE MUST BE
1943 DELIVERED OR POSTMARKED BY MIDNIGHT OF THE FIFTH ~~[CALENDAR]~~
1944 BUSINESS DAY FOLLOWING THE DAY ON WHICH THE AGREEMENT IS SIGNED.
1945 IN COMPUTING ~~[THE NUMBER OF CALENDAR DAYS]~~ THIS TIME PERIOD, THE
1946 DAY ON WHICH THE CONTRACT IS SIGNED ~~[AND LEGAL HOLIDAYS ARE]~~ IS NOT
1947 INCLUDED."

1948 Section 31. Section **57-19a-501**, which is renumbered from Section 57-19-13 is
1949 renumbered and amended to read:

1950 **Part 5. Violations and Enforcement**

1951 ~~[57-19-13].~~ **57-19a-501. Unprofessional conduct -- Suspension, revocation, or**
1952 **denial of registration -- Fine.**

1953 (1) Subject to Section ~~[57-19-17, an application for registration of a project may be~~
1954 ~~denied, an existing registration may be suspended or revoked, or a fine of not more than \$500~~
1955 ~~may be imposed by the director, if he finds that:]~~ 57-19a-503, the division may take one or
1956 more of the following actions if the division makes a finding described in Subsection (2):

1957 ~~[(a) the developer's]~~

1958 (a) deny an application for a registration;

1959 (b) suspend or revoke an existing registration;

1960 (c) impose a fine not to exceed \$5,000 per violation; or

1961 (d) take a combination of actions under this Subsection (1).

1962 (2) The division may take an action described in Subsection (1) if the division finds
1963 that the developer has engaged in unprofessional conduct, including:

1964 (a) deceptive, false, or misleading advertising [or], sales techniques, or trade practices
1965 [have been or are deceptive, false, or misleading];

1966 ~~[(b) the developer has failed to file copies of its advertisements, promotion literature,~~
1967 ~~or sales contract forms as required by Section 57-19-8;]~~

1968 (b) failure to file with the division information or documentation required by:

1969 (i) this chapter; or

1970 (ii) rules made by the division under this chapter in accordance with Title 63G, Chapter
1971 3, Utah Administrative Rulemaking Act;

1972 ~~(c) [the developer has failed]~~ failure to comply with ~~[any provision of]~~ this chapter or
1973 the rules ~~[adopted]~~ made under this chapter ~~[that materially affect or would affect the rights of~~
1974 ~~purchasers or prospective purchasers of an interest in a project, or that materially affect the~~
1975 ~~administration of this chapter];~~

1976 ~~(d) [the developer's]~~ offering of an interest in a project ~~[has worked or would]~~ in a
1977 manner to work a fraud upon purchasers or prospective purchasers of such an interest;

1978 ~~[(e) the developer's application or any amendment to an application is incomplete in~~
1979 ~~any material respect;]~~

1980 ~~[(f) the developer's application or any amendment to an application contains material~~

1981 ~~misrepresentations or omissions of material fact which are necessary to make the statements~~
 1982 ~~contained in the application or amendment not misleading;]~~

1983 ~~[(g) the developer or any officer or director of the developer has been:]~~

1984 ~~[(i) convicted of a felony, or any misdemeanor involving theft, fraud, or dishonesty;]~~

1985 ~~[(ii) enjoined from, assessed a civil penalty for, or found to have engaged in the~~
 1986 ~~violation of any law designed to protect consumers; or]~~

1987 ~~[(iii) engaged in dishonest practices in any industry involving sales to consumers;]~~

1988 ~~[(h) the developer has represented or is]~~

1989 (e) making a material misrepresentation or omission in an application or an amendment
 1990 to an application;

1991 (f) representing to [purchasers] a purchaser in connection with the offer or sale of an
 1992 interest in a project that [any accommodations, related facilities, or amenities are] an
 1993 accommodation, related facility, or amenity is planned, without reasonable grounds to believe
 1994 that [they] it will be completed within a reasonable time;

1995 ~~[(i) the developer has disposed of, concealed, or diverted any funds]~~

1996 (g) disposal, concealment, or diversion of money or assets so as to defeat the rights of
 1997 [purchasers] a purchaser; or

1998 ~~[(j) the developer has failed to provide to purchasers copies]~~

1999 (h) failure to provide to a purchaser a copy of the written disclosure required by
 2000 Section [57-19-11] 57-19a-402.

2001 ~~[(2) The authority to impose fines as provided in this section does not apply to~~
 2002 ~~Subsection (1)(e).]~~

2003 Section 32. Section **57-19a-502**, which is renumbered from Section 57-19-16 is
 2004 renumbered and amended to read:

2005 **[57-19-16]. 57-19a-502. Unprofessional conduct -- Denial, revocation, or**
 2006 **suspension of registration of salesperson -- Fine.**

2007 (1) Subject to Section [57-19-17, if the director] 57-19a-503, if the division finds that
 2008 an applicant or salesperson has engaged in an act described in Subsection (2), the [director]
 2009 division may do one or more of the following:

2010 (a) deny an application for registration as a salesperson;

2011 (b) suspend or revoke an existing registration; [or]

- 2012 (c) impose a civil penalty not to exceed [~~\$500.~~] \$5,000 per violation; or
- 2013 (d) take a combination of actions under this Subsection (1).
- 2014 (2) Subsection (1) applies if the [~~director~~] division finds that the applicant or
- 2015 salesperson has engaged in unprofessional conduct, including:
- 2016 (a) [~~files, or causes~~] filing, or causing to be filed, with the [~~director~~] division a
- 2017 document that contains [~~an~~] untrue or misleading information;
- 2018 (b) [~~makes~~] making an untrue or misleading statement of material fact;
- 2019 (c) [~~fails~~] failing to state a material fact that is necessary in order to make [~~the~~
- 2020 statements] a statement made not misleading in light of the circumstances under which the
- 2021 [~~statements are~~] statement is made;
- 2022 (d) [~~employs~~] employing a device, scheme, or artifice to defraud[~~, or engages~~];
- 2023 (e) engaging in an act, practice, or course of business that operates or would operate as
- 2024 a fraud or deceit upon a person;
- 2025 [~~(e) subsequent to the effective date of registration as a salesperson, is:~~
- 2026 [~~(i) convicted of:~~
- 2027 [~~(A) a felony; or~~
- 2028 [~~(B) a misdemeanor involving theft, fraud, or dishonesty; or~~
- 2029 [~~(ii) enjoined from, assessed a civil penalty for, or found to have engaged in a violation~~
- 2030 of any law designed to protect consumers;]
- 2031 (f) [~~violates~~] violating this chapter;
- 2032 (g) [~~engages~~] engaging in an activity that constitutes dishonest dealing; or
- 2033 (h) [~~engages~~] engaging in unprofessional conduct as defined by statute or rule made by
- 2034 the [~~director~~] division in accordance with Title 63G, Chapter 3, Utah Administrative
- 2035 Rulemaking Act.
- 2036 Section 33. Section **57-19a-503**, which is renumbered from Section 57-19-17 is
- 2037 renumbered and amended to read:
- 2038 **[~~57-19-17~~]. 57-19a-503. Administrative procedures -- Review -- Publication.**
- 2039 (1) The [~~director~~] division may summarily deny an application for registration [~~under~~
- 2040 any of the provisions of Section 57-19-13 or 57-19-16.];
- 2041 (a) on a finding that:
- 2042 (i) the application is incomplete or fails in any other way to meet the requirements for

2043 registration; or

2044 (ii) the applicant does not demonstrate good moral character; or

2045 (b) under Section 57-19a-501 or 57-19a-502.

2046 (2) (a) If a registration is denied under Subsection (1), the applicant may, within 10
2047 days after receipt of notice of the denial, request a hearing before [an administrative law judge]
2048 the director.

2049 (b) The director shall schedule [the] a hearing under this Subsection (2) within 30 days
2050 after receipt of the applicant's request and [give notice of the hearing in writing to the applicant,
2051 specifying the reasons for denial of the registration. If, as a result of the hearing, it is
2052 determined that the applicant is qualified to be registered, the registration shall be issued]
2053 comply with Title 63G, Chapter 4, Administrative Procedures Act, in providing notice of the
2054 hearing to the applicant.

2055 [(2)] (3) Before an existing registration is suspended or revoked, or a fine imposed, the
2056 director shall [schedule] conduct a hearing [before an administrative law judge and give notice
2057 in writing to the affected person as prescribed in Title 13, Chapter 1, and the rules of procedure
2058 for hearings before the Department of Commerce. If, as a result of the hearing, the
2059 administrative law judge finds that there has been a violation of this chapter, the registration
2060 shall be suspended or revoked, or a fine imposed, by written order of the director in
2061 concurrence with the executive director] in accordance with Title 63G, Chapter 4,
2062 Administrative Procedures Act.

2063 [(3) The developer or salesperson has the right to appear at the hearing, in person or by
2064 counsel, to be heard and to examine witnesses appearing in connection with the complaint. At
2065 the hearing, all witnesses shall be sworn by the administrative law judge, and stenographic
2066 notes or a tape recording of the proceeding shall be taken and filed as a part of the record in the
2067 case. Any party to the proceeding shall be furnished a copy of the stenographic notes or tape
2068 recording at a reasonable cost. The administrative law judge shall render a decision within 60
2069 days after the completion of the hearing. The executive director and the director shall
2070 concurrently make the final decision and promptly notify the parties to the proceedings, in
2071 writing, of the ruling, order, or decision.]

2072 [(4) The developer or salesperson, or any person aggrieved, may appeal any adverse
2073 ruling, order, or decision of the executive director and the director to the district court for the

2074 county in which the hearing was held, within 30 days from the date of service of notice of the
2075 ruling, order, or decision upon him. At the time of filing the notice of appeal, the appellant
2076 shall file with the notice a bond for costs on appeal in the amount of \$200, conditioned to
2077 secure the payment of costs if the appeal is dismissed or the judgment affirmed.]

2078 (4) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, a person
2079 against whom action is taken under this section may seek review of the action by the executive
2080 director.

2081 (5) The division may publish information concerning a violation of this chapter or a
2082 rule or order under this chapter.

2083 Section 34. Section **57-19a-504**, which is renumbered from Section 57-19-18 is
2084 renumbered and amended to read:

2085 **[57-19-18]. 57-19a-504. Investigation.**

2086 (1) The ~~[director may make any investigations or requests for]~~ division may investigate
2087 or request information, within or outside of this state, that ~~[he]~~ the division considers
2088 necessary:

2089 (a) to determine whether ~~[any]~~ a registration under this chapter should be ~~[granted]~~
2090 approved, denied, suspended, or revoked;

2091 (b) to determine whether ~~[any]~~ a person has violated or is about to violate ~~[any of the~~
2092 provisions of] this chapter or ~~[any]~~ a rule or order under this chapter; ~~[or]~~

2093 (c) to determine whether a registrant maintains the moral character required by Section
2094 57-19a-202 or 57-19a-302, as applicable; or

2095 ~~[(c)]~~ (d) to aid in the enforcement of this chapter.

2096 ~~[(2) The director may publish information concerning any violation of this chapter or~~
2097 ~~any rule or order under this chapter.]~~

2098 (2) For the purposes of an investigation or proceeding under this chapter, the director,
2099 or the director's designee may:

2100 (a) administer an oath or affirmation;

2101 (b) subpoena witnesses and evidence;

2102 (c) take evidence;

2103 (d) require the production of a record or information relevant or material to the inquiry;

2104 and

- 2105 (e) serve a subpoena by certified mail.
- 2106 (3) A failure to respond to a request by the division in an investigation authorized
2107 under this chapter is considered as a separate violation of this chapter, including:
- 2108 (a) failing to respond to a subpoena;
- 2109 (b) withholding evidence; or
- 2110 (c) failing to produce a record.
- 2111 (4) The division may inspect and copy a record related to the sale or marketing of
2112 interests by a developer or salesperson under this chapter, regardless of whether the record is
2113 maintained at a business location in Utah, in conducting:
- 2114 (a) an investigation of a complaint; or
- 2115 (b) an inspection of a record required to be maintained under this chapter or a rule
2116 made under this chapter.
- 2117 (5) (a) If a person is found to have violated this chapter or a rule made under this
2118 chapter, the person shall pay the costs incurred by the division to copy a record required under
2119 this chapter, including the costs incurred to copy an electronic record in a universally readable
2120 format.
- 2121 (b) If a person fails to pay the costs described in Subsection (5)(a) when due, the
2122 person's registration is automatically suspended:
- 2123 (i) beginning the day on which the payment of costs is due; and
- 2124 (ii) ending the day on which the costs are paid.
- 2125 Section 35. Section **57-19a-505** is enacted to read:
- 2126 **57-19a-505. Cease and desist.**
- 2127 (1) (a) The division may issue and serve by certified mail, or by personal service, on a
2128 person an order to cease and desist from an act if:
- 2129 (i) the division has reason to believe that the person has been engaged, is engaging, or
2130 is about to engage in an act constituting a violation of this chapter; and
- 2131 (ii) it appears to the division that it would be in the public interest to stop the act.
- 2132 (b) Within 10 days after service of the order, the person named in the order may
2133 request a hearing to be held before an administrative law judge in accordance with Title 63G,
2134 Chapter 4, Administrative Procedures Act.
- 2135 (c) Pending a hearing requested under Subsection (1)(b), a cease and desist order

2136 remains in effect.

2137 (2) (a) After the hearing described in Subsection (1), if the administrative law judge
2138 finds that an act of the person violates this chapter, the administrative law judge:

2139 (i) shall issue an order making the cease and desist order permanent; and

2140 (ii) may impose another disciplinary action under Section 57-19a-501 or 57-19a-502,
2141 as applicable.

2142 (b) The director may file suit in the name of the division to enjoin and restrain a person
2143 on whom an order is served under this section from violating this chapter if:

2144 (i) (A) the person does not request a hearing under Subsection (1); or

2145 (B) a permanent cease and desist order is issued against the person following a hearing
2146 or stipulation; and

2147 (ii) (A) the person fails to cease the act; or

2148 (B) after discontinuing the act, the person again commences the act.

2149 (c) The suit described in Subsection (2)(b) shall be filed in the district court in the
2150 county:

2151 (i) in which the act occurs;

2152 (ii) where the individual resides; or

2153 (iii) where the individual or entity carries on business.

2154 (3) A cease and desist order issued under this section may not interfere with or prevent
2155 the prosecution of a remedy or enforcement action under this chapter.

2156 (4) An individual who violates a cease and desist order issued under this section is
2157 guilty of a class A misdemeanor.

2158 Section 36. Section **57-19a-506**, which is renumbered from Section 57-19-21 is
2159 renumbered and amended to read:

2160 **[57-19-21]. 57-19a-506. Voidable agreements.**

2161 [Any] (1) Subject to Subsection (2), an agreement to purchase an interest in a project
2162 entered into in violation of Section [57-19-4 or 57-19-14] 57-19a-201 or 57-19a-301 may, at
2163 the option of the purchaser, be voided and the purchaser's entire consideration recovered
2164 together with:

2165 (a) interest at the legal rate[;];

2166 (b) costs[;]; and

2167 (c) reasonable ~~[attorney's]~~ attorney fees. ~~[However, no suit under this section may]~~

2168 (2) A suit under this section may not be brought more than two years after:

2169 ~~[(1)]~~ (a) the date the agreement is signed; or

2170 ~~[(2)]~~ (b) the date the purchaser knew or reasonably should have known of the violation.

2171 Section 37. Section **57-19a-507**, which is renumbered from Section 57-19-22 is
2172 renumbered and amended to read:

2173 **[57-19-22]. 57-19a-507. Violation a misdemeanor.**

2174 Any person who willfully violates ~~[any provision of]~~ this chapter is guilty of a class B
2175 misdemeanor.

2176 Section 38. Section **57-19a-508**, which is renumbered from Section 57-19-23 is
2177 renumbered and amended to read:

2178 **[57-19-23]. 57-19a-508. Prosecution.**

2179 The ~~[director]~~ division may refer ~~[any]~~ available evidence concerning violations of this
2180 chapter or of ~~[any]~~ a rule or order under this chapter to the attorney general or the proper
2181 prosecuting attorney, who may ~~[-in his]~~ exercise discretion, with or without ~~[such a]~~ the
2182 referral, ~~[institute the]~~ in instituting an appropriate civil or criminal ~~[proceedings]~~ proceeding
2183 under this chapter.

2184 Section 39. Section **57-19a-509**, which is renumbered from Section 57-19-24 is
2185 renumbered and amended to read:

2186 **[57-19-24]. 57-19a-509. Violation of Consumer Sales Practice Act.**

2187 For purposes of applying Title 13, Chapter 11, ~~[the]~~ Utah Consumer Sales Practices
2188 Act, any material violation of ~~[the provisions of]~~ this chapter constitutes an unfair or deceptive
2189 act or practice or unfair method of competition in the conduct of trade or commerce.

2190 Section 40. Section **57-19a-510**, which is renumbered from Section 57-19-25 is
2191 renumbered and amended to read:

2192 **[57-19-25]. 57-19a-510. Remedies nonexclusive.**

2193 The remedies provided in this chapter:

2194 (1) are cumulative and nonexclusive~~[-];~~ and

2195 (2) do not affect any other remedy available at law.

2196 Section 41. Section **57-23-4** is amended to read:

2197 **57-23-4. Exclusions.**

2198 This chapter does not apply to:

2199 (1) an interest in real estate regulated under Title 57, Chapter [19] 19a, Timeshare and
2200 Camp Resort Act;

2201 (2) an offering for an interest in real estate which is regulated under:

2202 (a) Title 61, Chapter 1, Utah Uniform Securities Act;

2203 (b) the securities laws of any state; or

2204 (c) federal securities laws; or

2205 (3) a sale of manufactured housing licensed under Title 58, Chapter 56, Utah Uniform
2206 Building Standards Act, unless the sale is made in conjunction with an offering or sale of a
2207 cooperative interest under this chapter.

2208 Section 42. Section ~~59-1-404~~ is amended to read:

2209 **59-1-404. Definitions -- Confidentiality of commercial information obtained from**
2210 **a property taxpayer or derived from the commercial information -- Rulemaking**
2211 **authority -- Exceptions -- Written explanation -- Signature requirements -- Retention of**
2212 **signed explanation by employer -- Penalty.**

2213 (1) As used in this section:

2214 (a) "Appraiser" means an individual who holds an appraiser's certificate or license
2215 issued by the Division of Real Estate under Title 61, Chapter [2b] 2g, Real Estate Appraiser
2216 Licensing and Certification Act and includes an individual associated with an appraiser who
2217 assists the appraiser in preparing an appraisal.

2218 (b) "Appraisal" [~~means an appraisal~~] is as defined in Section [61-2b-2] 61-2g-102.

2219 (c) (i) "Commercial information" means:

2220 (A) information of a commercial nature obtained from a property taxpayer regarding
2221 the property taxpayer's property; or

2222 (B) information derived from the information described in this Subsection (1)(c)(i).

2223 (ii) (A) "Commercial information" does not include information regarding a property
2224 taxpayer's property if the information is intended for public use.

2225 (B) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
2226 purposes of Subsection (1)(c)(ii)(A), the commission may by rule prescribe the circumstances
2227 under which information is intended for public use.

2228 (d) "Consultation service" [~~means a consultation service~~] is as defined in Section

2229 [~~61-2b-2~~] 61-2g-102.

2230 (e) "Locally assessed property" means property that is assessed by a county assessor in
2231 accordance with Chapter 2, Part 3, County Assessment.

2232 (f) "Property taxpayer" means a person that:

2233 (i) is a property owner; or

2234 (ii) has in effect a contract with a property owner to:

2235 (A) make filings on behalf of the property owner;

2236 (B) process appeals on behalf of the property owner; or

2237 (C) pay a tax under Chapter 2, Property Tax Act, on the property owner's property.

2238 (g) "Property taxpayer's property" means property with respect to which a property
2239 taxpayer:

2240 (i) owns the property;

2241 (ii) makes filings relating to the property;

2242 (iii) processes appeals relating to the property; or

2243 (iv) pays a tax under Chapter 2, Property Tax Act, on the property.

2244 (h) "Protected commercial information" means commercial information that:

2245 (i) identifies a specific property taxpayer; or

2246 (ii) would reasonably lead to the identity of a specific property taxpayer.

2247 (2) An individual listed under Subsection 59-1-403(1)(a) may not disclose commercial
2248 information:

2249 (a) obtained in the course of performing any duty that the individual listed under
2250 Subsection 59-1-403(1)(a) performs under Chapter 2, Property Tax Act; or

2251 (b) relating to an action or proceeding:

2252 (i) with respect to a tax imposed on property in accordance with Chapter 2, Property
2253 Tax Act; and

2254 (ii) that is filed in accordance with:

2255 (A) this chapter;

2256 (B) Chapter 2, Property Tax Act; or

2257 (C) this chapter and Chapter 2, Property Tax Act.

2258 (3) (a) Notwithstanding Subsection (2) and subject to Subsection (3)(b), an individual
2259 listed under Subsection 59-1-403(1)(a) may disclose the following information:

- 2260 (i) the assessed value of property;
- 2261 (ii) the tax rate imposed on property;
- 2262 (iii) a legal description of property;
- 2263 (iv) the physical description or characteristics of property, including a street address or
- 2264 parcel number for the property;
- 2265 (v) the square footage or acreage of property;
- 2266 (vi) the square footage of improvements on property;
- 2267 (vii) the name of a property taxpayer;
- 2268 (viii) the mailing address of a property taxpayer;
- 2269 (ix) the amount of a property tax:
- 2270 (A) assessed on property;
- 2271 (B) due on property;
- 2272 (C) collected on property;
- 2273 (D) abated on property; or
- 2274 (E) deferred on property;
- 2275 (x) the amount of the following relating to property taxes due on property:
- 2276 (A) interest;
- 2277 (B) costs; or
- 2278 (C) other charges;
- 2279 (xi) the tax status of property, including:
- 2280 (A) an exemption;
- 2281 (B) a property classification;
- 2282 (C) a bankruptcy filing; or
- 2283 (D) whether the property is the subject of an action or proceeding under this title;
- 2284 (xii) information relating to a tax sale of property; or
- 2285 (xiii) information relating to single-family residential property.
- 2286 (b) (i) Subject to Subsection (3)(b)(ii), a person may receive the information described
- 2287 in Subsection (3)(a) in written format.
- 2288 (ii) The following may charge a reasonable fee to cover the actual cost of providing the
- 2289 information described in Subsection (3)(a) in written format:
- 2290 (A) the commission;

2291 (B) a county;
2292 (C) a city; or
2293 (D) a town.
2294 (4) (a) Notwithstanding Subsection (2) and except as provided in Subsection (4)(c), an
2295 individual listed under Subsection 59-1-403(1)(a) shall disclose commercial information:
2296 (i) in accordance with judicial order;
2297 (ii) on behalf of the commission in any action or proceeding:
2298 (A) under this title;
2299 (B) under another law under which a property taxpayer is required to disclose
2300 commercial information; or
2301 (C) to which the commission is a party;
2302 (iii) on behalf of any party to any action or proceeding under this title if the commercial
2303 information is directly involved in the action or proceeding; or
2304 (iv) if the requirements of Subsection (4)(b) are met, that is:
2305 (A) relevant to an action or proceeding:
2306 (I) filed in accordance with this title; and
2307 (II) involving property; or
2308 (B) in preparation for an action or proceeding involving property.
2309 (b) Commercial information shall be disclosed in accordance with Subsection
2310 (4)(a)(iv):
2311 (i) if the commercial information is obtained from:
2312 (A) a real estate agent if the real estate agent is not a property taxpayer of the property
2313 that is the subject of the action or proceeding;
2314 (B) an appraiser if the appraiser:
2315 (I) is not a property taxpayer of the property that is the subject of the action or
2316 proceeding; and
2317 (II) did not receive the commercial information pursuant to Subsection (8);
2318 (C) a property manager if the property manager is not a property taxpayer of the
2319 property that is the subject of the action or proceeding; or
2320 (D) a property taxpayer other than a property taxpayer of the property that is the subject
2321 of the action or proceeding;

2322 (ii) regardless of whether the commercial information is disclosed in more than one
2323 action or proceeding; and

2324 (iii) (A) if a county board of equalization conducts the action or proceeding, the county
2325 board of equalization takes action to provide that any commercial information disclosed during
2326 the action or proceeding may not be disclosed by any person conducting or participating in the
2327 action or proceeding except as specifically allowed by this section;

2328 (B) if the commission conducts the action or proceeding, the commission enters a
2329 protective order or, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
2330 Act, makes rules specifying that any commercial information disclosed during the action or
2331 proceeding may not be disclosed by any person conducting or participating in the action or
2332 proceeding except as specifically allowed by this section; or

2333 (C) if a court of competent jurisdiction conducts the action or proceeding, the court
2334 enters a protective order specifying that any commercial information disclosed during the
2335 action or proceeding may not be disclosed by any person conducting or participating in the
2336 action or proceeding except as specifically allowed by this section.

2337 (c) Notwithstanding Subsection (4)(a), a court may require the production of, and may
2338 admit in evidence, commercial information that is specifically pertinent to the action or
2339 proceeding.

2340 (5) Notwithstanding Subsection (2), this section does not prohibit:

2341 (a) the following from receiving a copy of any commercial information relating to the
2342 basis for assessing a tax that is charged to a property taxpayer:

2343 (i) the property taxpayer;

2344 (ii) a duly authorized representative of the property taxpayer;

2345 (iii) a person that has in effect a contract with the property taxpayer to:

2346 (A) make filings on behalf of the property taxpayer;

2347 (B) process appeals on behalf of the property taxpayer; or

2348 (C) pay a tax under Chapter 2, Property Tax Act, on the property taxpayer's property;

2349 (iv) a property taxpayer that purchases property from another property taxpayer; or

2350 (v) a person that the property taxpayer designates in writing as being authorized to
2351 receive the commercial information;

2352 (b) the publication of statistics as long as the statistics are classified to prevent the

2353 identification of a particular property taxpayer's commercial information; or

2354 (c) the inspection by the attorney general or other legal representative of the state or a
2355 legal representative of a political subdivision of the state of the commercial information of a
2356 property taxpayer:

2357 (i) that brings action to set aside or review a tax or property valuation based on the
2358 commercial information;

2359 (ii) against which an action or proceeding is contemplated or has been instituted under
2360 this title; or

2361 (iii) against which the state or a political subdivision of the state has an unsatisfied
2362 money judgment.

2363 (6) Notwithstanding Subsection (2), in accordance with Title 63G, Chapter 3, Utah
2364 Administrative Rulemaking Act, the commission may by rule establish standards authorizing
2365 an individual listed under Subsection 59-1-403(1)(a) to disclose commercial information:

2366 (a) (i) in a published decision; or

2367 (ii) in carrying out official duties; and

2368 (b) if that individual listed under Subsection 59-1-403(1)(a) consults with the property
2369 taxpayer that provided the commercial information.

2370 (7) Notwithstanding Subsection (2):

2371 (a) an individual listed under Subsection 59-1-403(1)(a) may share commercial
2372 information with the following:

2373 (i) another individual listed in Subsection 59-1-403(1)(a)(i) or (ii); or

2374 (ii) a representative, agent, clerk, or other officer or employee of a county as required
2375 to fulfill an obligation created by Chapter 2, Property Tax Act;

2376 (b) an individual listed under Subsection 59-1-403(1)(a) may perform the following to
2377 fulfill an obligation created by Chapter 2, Property Tax Act:

2378 (i) publish notice;

2379 (ii) provide notice; or

2380 (iii) file a lien; or

2381 (c) the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah
2382 Administrative Rulemaking Act, share commercial information gathered from returns and other
2383 written statements with the federal government, any other state, any of the political

2384 subdivisions of another state, or any political subdivision of this state, if these political
2385 subdivisions or the federal government grant substantially similar privileges to this state.

2386 (8) Notwithstanding Subsection (2):

2387 (a) subject to the limitations in this section, an individual described in Subsection
2388 59-1-403(1)(a) may share the following commercial information with an appraiser:

2389 (i) the sales price of locally assessed property and the related financing terms;

2390 (ii) capitalization rates and related rates and ratios related to the valuation of locally
2391 assessed property; and

2392 (iii) income and expense information related to the valuation of locally assessed
2393 property; and

2394 (b) except as provided in Subsection (4), an appraiser who receives commercial
2395 information:

2396 (i) may disclose the commercial information:

2397 (A) to an individual described in Subsection 59-1-403(1)(a);

2398 (B) to an appraiser;

2399 (C) in an appraisal if protected commercial information is removed to protect its
2400 confidential nature; or

2401 (D) in performing a consultation service if protected commercial information is not
2402 disclosed; and

2403 (ii) may not use the commercial information:

2404 (A) for a purpose other than to prepare an appraisal or perform a consultation service;

2405 or

2406 (B) for a purpose intended to be, or which could reasonably be foreseen to be,
2407 anti-competitive to a property taxpayer.

2408 (9) (a) The commission shall:

2409 (i) prepare a written explanation of this section; and

2410 (ii) make the written explanation described in Subsection (9)(a)(i) available to the
2411 public.

2412 (b) An employer of a person described in Subsection 59-1-403(1)(a) shall:

2413 (i) provide the written explanation described in Subsection (9)(a)(i) to each person
2414 described in Subsection 59-1-403(1)(a) who is reasonably likely to receive commercial

2415 information;

2416 (ii) require each person who receives a written explanation in accordance with

2417 Subsection (9)(b)(i) to:

2418 (A) read the written explanation; and

2419 (B) sign the written explanation; and

2420 (iii) retain each written explanation that is signed in accordance with Subsection

2421 (9)(b)(ii) for a time period:

2422 (A) beginning on the day on which a person signs the written explanation in

2423 accordance with Subsection (9)(b)(ii); and

2424 (B) ending six years after the day on which the employment of the person described in

2425 Subsection (9)(b)(iii)(A) by the employer terminates.

2426 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

2427 commission shall by rule define "employer."

2428 (10) (a) An individual described in Subsection (1)(a) or 59-1-403(1)(a), or an

2429 individual that violates a protective order or similar limitation entered pursuant to Subsection

2430 (4)(b)(iii), is guilty of a class A misdemeanor if that person:

2431 (i) intentionally discloses commercial information in violation of this section; and

2432 (ii) knows that the disclosure described in Subsection (10)(a)(i) is prohibited by this

2433 section.

2434 (b) If the individual described in Subsection (10)(a) is an officer or employee of the

2435 state or a county and is convicted of violating this section, the individual shall be dismissed

2436 from office and be disqualified from holding public office in this state for a period of five years

2437 thereafter.

2438 (c) If the individual described in Subsection (10)(a) is an appraiser, the appraiser shall

2439 forfeit any certification or license received under Title 61, [~~Section 2b~~] Chapter 2g, Real Estate

2440 Appraiser Licensing and Certification Act, for a period of five years.

2441 (d) If the individual described in Subsection (10)(a) is an individual associated with an

2442 appraiser who assists the appraiser in preparing appraisals, the individual shall be prohibited

2443 from becoming licensed or certified under Title 61, [~~Section 2b~~] Chapter 2g, Real Estate

2444 Appraiser Licensing and Certification Act, for a period of five years.

2445 Section 43. Section **59-2-701** is amended to read:

2446 **59-2-701. Appraisal by certified or licensed appraisers only -- Certification of**
2447 **elected county assessors.**

2448 (1) Any person performing an appraisal for purposes of establishing fair market value
2449 of real estate or real property for the assessment roll shall be the holder of an appraiser's
2450 certificate or license issued by the Division of Real Estate under Title 61, Chapter ~~[2b]~~ 2g, Real
2451 Estate Appraiser Licensing and Certification Act, except uncertified or unlicensed appraiser
2452 trainees may, for up to 36 months after the date of hire or appointment as an appraiser trainee,
2453 appraise property under the direction of a holder of an appraiser's certificate or license issued
2454 by the division.

2455 (2) The limitations on appraisal authority under Subsections ~~[61-2b-10]~~ 61-2g-311(1)
2456 and (2) and Section ~~[61-2b-13]~~ 61-2g-312 do not apply to a person performing an appraisal for
2457 purposes of establishing fair market value for the assessment roll.

2458 (3) The commission may prescribe additional requirements for any person performing
2459 an appraisal for purposes of establishing fair market value for the assessment roll.

2460 (4) The commission may, by rule, establish qualifications for personal property
2461 appraisers exempt from licensure under Title 61, Chapter ~~[2b]~~ 2g, Real Estate Appraiser
2462 Licensing and Certification Act.

2463 (5) It is the duty of a county assessor, as established in Section 17-17-1, to ensure that
2464 the assessor's office is in compliance with this section and any additional rules or requirements
2465 for property appraisers established by the commission.

2466 Section 44. Section **61-1-14** is amended to read:

2467 **61-1-14. Exemptions.**

2468 (1) The following securities are exempt from Sections 61-1-7 and 61-1-15:

2469 (a) a security, including a revenue obligation, issued or guaranteed by the United
2470 States, a state, a political subdivision of a state, or an agency or corporate or other
2471 instrumentality of one or more of the foregoing, or a certificate of deposit for any of the
2472 foregoing;

2473 (b) a security issued or guaranteed by Canada, a Canadian province, a political
2474 subdivision of a Canadian province, an agency or corporate or other instrumentality of one or
2475 more of the foregoing, or another foreign government with which the United States currently
2476 maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer

2477 or guarantor;

2478 (c) a security issued by and representing an interest in or a debt of, or guaranteed by, a
2479 depository institution organized under the laws of the United States, or a depository institution
2480 or trust company supervised under the laws of a state;

2481 (d) a security issued or guaranteed by a public utility or a security regulated in respect
2482 of its rates or in its issuance by a governmental authority of the United States, a state, Canada,
2483 or a Canadian province;

2484 (e) (i) a federal covered security specified in the Securities Act of 1933, Section
2485 18(b)(1), 15 U.S.C. [~~Section~~] Sec. 77r(b)(1), or by rule adopted under that provision;

2486 (ii) a security listed or approved for listing on another securities market specified by
2487 rule under this chapter;

2488 (iii) any of the following with respect to a security described in Subsection (1)(e)(i) or
2489 (ii):

2490 (A) a put or a call option contract;

2491 (B) a warrant; or

2492 (C) a subscription right on or with respect to the security;

2493 (iv) an option or similar derivative security on a security or an index of securities or
2494 foreign currencies issued by a clearing agency that is:

2495 (A) registered under the Securities Exchange Act of 1934; and

2496 (B) listed or designated for trading on a national securities exchange, or a facility of a
2497 national securities association registered under the Securities Exchange Act of 1934;

2498 (v) an offer or sale, of the underlying security in connection with the offer, sale, or
2499 exercise of an option or other security that was exempt when the option or other security was
2500 written or issued; or

2501 (vi) an option or a derivative security designated by the Securities and Exchange
2502 Commission under Securities Exchange Act of 1934, Section 9(b), 15 U.S.C. [~~Section~~] Sec.
2503 78i(b);

2504 (f) (i) a security issued by a person organized and operated not for private profit but
2505 exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or
2506 reformatory purposes, or as a chamber of commerce or trade or professional association; and

2507 (ii) a security issued by a corporation organized under Title 3, Chapter 1, General

2508 Provisions Relating to Agricultural Cooperative Associations, and a security issued by a
2509 corporation to which that chapter is made applicable by compliance with Section 3-1-21;

2510 (g) an investment contract issued in connection with an employees' stock purchase,
2511 option, savings, pension, profit-sharing, or similar benefit plan;

2512 (h) a security issued by an investment company that is registered, or that has filed a
2513 registration statement, under the Investment Company Act of 1940; and

2514 (i) a security as to which the director, by rule or order, finds that registration is not
2515 necessary or appropriate for the protection of investors.

2516 (2) The following transactions are exempt from Sections 61-1-7 and 61-1-15:

2517 (a) an isolated nonissuer transaction, whether effected through a broker-dealer or not;

2518 (b) a nonissuer transaction in an outstanding security, if as provided by rule of the
2519 division:

2520 (i) information about the issuer of the security as required by the division is currently
2521 listed in a securities manual recognized by the division, and the listing is based upon such
2522 information as required by rule of the division; or

2523 (ii) the security has a fixed maturity or a fixed interest or dividend provision and there
2524 is no default during the current fiscal year or within the three preceding fiscal years, or during
2525 the existence of the issuer and any predecessors if less than three years, in the payment of
2526 principal, interest, or dividends on the security;

2527 (c) a nonissuer transaction effected by or through a registered broker-dealer pursuant to
2528 an unsolicited order or offer to buy;

2529 (d) a transaction between the issuer or other person on whose behalf the offering is
2530 made and an underwriter, or among underwriters;

2531 (e) a transaction in a bond or other evidence of indebtedness secured by a real or
2532 chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the
2533 entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of
2534 indebtedness secured thereby, is offered and sold as a unit;

2535 (f) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in
2536 bankruptcy, guardian, or conservator;

2537 (g) a transaction executed by a bona fide pledgee without a purpose of evading this
2538 chapter;

- 2539 (h) an offer or sale to one of the following whether the purchaser is acting for itself or
2540 in a fiduciary capacity:
- 2541 (i) a depository institution;
 - 2542 (ii) a trust company;
 - 2543 (iii) an insurance company;
 - 2544 (iv) an investment company as defined in the Investment Company Act of 1940;
 - 2545 (v) a pension or profit-sharing trust;
 - 2546 (vi) other financial institution or institutional investor; or
 - 2547 (vii) a broker-dealer;
- 2548 (i) an offer or sale of a preorganization certificate or subscription if:
- 2549 (i) no commission or other remuneration is paid or given directly or indirectly for
2550 soliciting a prospective subscriber;
 - 2551 (ii) the number of subscribers acquiring a legal or beneficial interest therein does not
2552 exceed 10;
 - 2553 (iii) there is no general advertising or solicitation in connection with the offer or sale;
2554 and
 - 2555 (iv) no payment is made by a subscriber;
 - 2556 (j) subject to Subsection (6), a transaction pursuant to an offer by an issuer of its
2557 securities to its existing securities holders, if:
 - 2558 (i) no commission or other remuneration, other than a standby commission is paid or
2559 given directly or indirectly for soliciting a security holder in this state; and
 - 2560 (ii) the transaction constitutes:
 - 2561 (A) the conversion of convertible securities;
 - 2562 (B) the exercise of nontransferable rights or warrants;
 - 2563 (C) the exercise of transferable rights or warrants if the rights or warrants are
2564 exercisable not more than 90 days after their issuance;
 - 2565 (D) the purchase of securities under a preemptive right; or
 - 2566 (E) a transaction other than one specified in Subsections (2)(j)(ii)(A) through (D) if:
 - 2567 (I) the division is furnished with:
 - 2568 (Aa) a general description of the transaction;
 - 2569 (Bb) the disclosure materials to be furnished to the issuer's securities holders in the

2570 transaction; and

2571 (Cc) a non-refundable fee; and

2572 (II) the division does not, by order, deny or revoke the exemption within 20 working
2573 days after the day on which the filing required by Subsection (2)(j)(ii)(E)(I) is complete;

2574 (k) an offer, but not a sale, of a security for which a registration statement is filed under
2575 both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and
2576 no public proceeding or examination looking toward such an order is pending;

2577 (l) a distribution of securities as a dividend if the person distributing the dividend is the
2578 issuer of the securities distributed;

2579 (m) a nonissuer transaction effected by or through a registered broker-dealer where the
2580 broker-dealer or issuer files with the division, and the broker-dealer maintains in the
2581 broker-dealer's records, and makes reasonably available upon request to a person expressing an
2582 interest in a proposed transaction in the security with the broker-dealer information prescribed
2583 by the division under its rules;

2584 (n) a transaction not involving a public offering;

2585 (o) an offer or sale of "condominium units" or "time period units" as those terms are
2586 defined in Title 57, Chapter 8, Condominium Ownership Act, whether or not to be sold by
2587 installment contract, if the following are complied with:

2588 (i) Title 57, Chapter 8, Condominium Ownership Act, or if the units are located in
2589 another state, the condominium act of that state;

2590 (ii) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;

2591 (iii) Title 57, Chapter ~~[49]~~ 19a, Timeshare and Camp Resort Act; and

2592 (iv) Title 70C, Utah Consumer Credit Code;

2593 (p) a transaction or series of transactions involving a merger, consolidation,
2594 reorganization, recapitalization, reclassification, or sale of assets, if the consideration for
2595 which, in whole or in part, is the issuance of securities of a person or persons, and if:

2596 (i) the transaction or series of transactions is incident to a vote of the securities holders
2597 of each person involved or by written consent or resolution of some or all of the securities
2598 holders of each person involved;

2599 (ii) the vote, consent, or resolution is given under a provision in:

2600 (A) the applicable corporate statute or other controlling statute;

- 2601 (B) the controlling articles of incorporation, trust indenture, deed of trust, or
2602 partnership agreement; or
- 2603 (C) the controlling agreement among securities holders;
- 2604 (iii) (A) one person involved in the transaction is required to file proxy or
2605 informational materials under Section 14(a) or (c) of the Securities Exchange Act of 1934 or
2606 Section 20 of the Investment Company Act of 1940 and has so filed;
- 2607 (B) one person involved in the transaction is an insurance company that is exempt from
2608 filing under Section 12(g)(2)(G) of the Securities Exchange Act of 1934, and has filed proxy or
2609 informational materials with the appropriate regulatory agency or official of its domiciliary
2610 state; or
- 2611 (C) [aH] the persons involved in the transaction are exempt from filing under Section
2612 12(g)(1) of the Securities Exchange Act of 1934, and file with the division such proxy or
2613 informational material as the division requires by rule;
- 2614 (iv) the proxy or informational material is filed with the division and distributed to [aH]
2615 the securities holders entitled to vote in the transaction or series of transactions at least 10
2616 working days [~~prior to~~] before any necessary vote by the securities holders or action on any
2617 necessary consent or resolution; and
- 2618 (v) the division does not, by order, deny or revoke the exemption within 10 working
2619 days after filing of the proxy or informational materials;
- 2620 (q) subject to Subsection (7), a transaction pursuant to an offer to sell securities of an
2621 issuer if:
- 2622 (i) the transaction is part of an issue in which there are not more than 15 purchasers in
2623 this state, other than those designated in Subsection (2)(h), during any 12 consecutive months;
- 2624 (ii) no general solicitation or general advertising is used in connection with the offer to
2625 sell or sale of the securities;
- 2626 (iii) no commission or other similar compensation is given, directly or indirectly, to a
2627 person other than a broker-dealer or agent licensed under this chapter, for soliciting a
2628 prospective purchaser in this state;
- 2629 (iv) the seller reasonably believes that all the purchasers in this state are purchasing for
2630 investment; and
- 2631 (v) the transaction is part of an aggregate offering that does not exceed \$1,000,000, or a

- 2632 greater amount as prescribed by a division rule, during any 12 consecutive months;
- 2633 (r) a transaction involving a commodity contract or commodity option;
- 2634 (s) a transaction in a security, whether or not the security or transaction is otherwise
- 2635 exempt if:
- 2636 (i) the transaction is:
- 2637 (A) in exchange for one or more outstanding securities, claims, or property interests; or
- 2638 (B) partly for cash and partly in exchange for one or more outstanding securities,
- 2639 claims, or property interests; and
- 2640 (ii) the terms and conditions are approved by the director after a hearing under Section
- 2641 61-1-11.1;
- 2642 (t) a transaction incident to a judicially approved reorganization in which a security is
- 2643 issued:
- 2644 (i) in exchange for one or more outstanding securities, claims, or property interests; or
- 2645 (ii) partly for cash and partly in exchange for one or more outstanding securities,
- 2646 claims, or property interests;
- 2647 (u) a nonissuer transaction by a federal covered investment adviser with investments
- 2648 under management in excess of \$100,000,000 acting in the exercise of discretionary authority
- 2649 in a signed record for the account of others; and
- 2650 (v) a transaction as to which the division finds that registration is not necessary or
- 2651 appropriate for the protection of investors.
- 2652 (3) A person filing an exemption notice or application shall pay a filing fee as
- 2653 determined under Section 61-1-18.4.
- 2654 (4) Upon approval by a majority of the commission, the director, by means of an
- 2655 adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative
- 2656 Procedures Act, may deny or revoke an exemption specified in Subsection (1)(f) or (g) or in
- 2657 Subsection (2) with respect to:
- 2658 (a) a specific security, transaction, or series of transactions; or
- 2659 (b) a person or issuer, an affiliate or successor to a person or issuer, or an entity
- 2660 subsequently organized by or on behalf of a person or issuer generally and may impose a fine if
- 2661 the director finds that the order is in the public interest and that:
- 2662 (i) the application for or notice of exemption filed with the division is incomplete in a

2663 material respect or contains a statement which was, in the light of the circumstances under
2664 which it was made, false or misleading with respect to a material fact;

2665 (ii) this chapter, or a rule, order, or condition lawfully imposed under this chapter has
2666 been willfully violated in connection with the offering or exemption by:

2667 (A) the person filing an application for or notice of exemption;

2668 (B) the issuer, a partner, officer, or director of the issuer, a person occupying a similar
2669 status or performing similar functions, or a person directly or indirectly controlling or
2670 controlled by the issuer, but only if the person filing the application for or notice of exemption
2671 is directly or indirectly controlled by or acting for the issuer; or

2672 (C) an underwriter;

2673 (iii) subject to Subsection (8), the security for which the exemption is sought is the
2674 subject of an administrative stop order or similar order, or a permanent or temporary injunction
2675 or a court of competent jurisdiction entered under another federal or state act applicable to the
2676 offering or exemption;

2677 (iv) the issuer's enterprise or method of business includes or would include activities
2678 that are illegal where performed;

2679 (v) the offering has worked, has tended to work, or would operate to work a fraud upon
2680 purchasers;

2681 (vi) the offering is or was made with unreasonable amounts of underwriters' and sellers'
2682 discounts, commissions, or other compensation, or promoters' profits or participation, or
2683 unreasonable amounts or kinds of options;

2684 (vii) an exemption is sought for a security or transaction that is not eligible for the
2685 exemption; or

2686 (viii) the proper filing fee, if required, has not been paid.

2687 (5) (a) An order under Subsection (4) may not operate retroactively.

2688 (b) A person may not be considered to have violated Section 61-1-7 or 61-1-15 by
2689 reason of an offer or sale effected after the entry of an order under this Subsection (5) if the
2690 person sustains the burden of proof that the person did not know, and in the exercise of
2691 reasonable care could not have known, of the order.

2692 (6) The exemption created by Subsection (2)(j) is not available for an offer or sale of a
2693 security to an existing securities holder who has acquired the holder's security from the issuer

2694 in a transaction in violation of Section 61-1-7.

2695 (7) As to a security, a transaction, or a type of security or transaction, the division may:

2696 (a) withdraw or further condition the exemption described in Subsection (2)(q); or

2697 (b) waive one or more of the conditions described in Subsection (2)(q).

2698 (8) (a) The director may not institute a proceeding against an effective exemption under
2699 Subsection (4)(b) more than one year from the day on which the order or injunction on which
2700 the director relies is issued.

2701 (b) The director may not enter an order under Subsection (4)(b) on the basis of an order
2702 or injunction entered under another state act unless that order or injunction is issued on the
2703 basis of facts that would constitute a ground for a stop order under this section at the time the
2704 director enters the order.

2705 Section 45. Section **61-2-201** is amended to read:

2706 **61-2-201. Division of Real Estate created -- Director appointed -- Personnel.**

2707 (1) There is created within the department a Division of Real Estate. The division is
2708 responsible for the administration and enforcement of:

2709 (a) this chapter;

2710 (b) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;

2711 (c) Title 57, Chapter ~~[19]~~ 19a, Timeshare and Camp Resort Act;

2712 (d) Title 57, Chapter 23, Real Estate Cooperative Marketing Act;

2713 ~~[(e) Chapter 2b, Real Estate Appraiser Licensing and Certification Act;]~~

2714 ~~[(f)]~~ (e) Chapter 2c, Utah Residential Mortgage Practices and Licensing Act;

2715 ~~[(g)]~~ (f) Chapter 2e, Appraisal Management Company Registration and Regulation
2716 Act; ~~and~~

2717 ~~[(h)]~~ (g) Chapter 2f, Real Estate Licensing and Practices Act[-]; and

2718 (h) Chapter 2g, Real Estate Appraiser Licensing and Certification Act.

2719 (2) The division is under the direction and control of a director appointed by the
2720 executive director of the department with the approval of the governor. The director holds the
2721 office of director at the pleasure of the governor.

2722 (3) The director, with the approval of the executive director, may employ personnel
2723 necessary to discharge the duties of the division at salaries to be fixed by the director according
2724 to standards established by the Department of Administrative Services.

2725 Section 46. Section **61-2c-102** is amended to read:

2726 **61-2c-102. Definitions.**

2727 (1) As used in this chapter:

2728 (a) "Affiliation" means that a mortgage loan originator is associated with a principal
2729 lending manager in accordance with Section 61-2c-209.

2730 (b) "Applicant" means a person applying for a license under this chapter.

2731 (c) "Approved examination provider" means a person approved by the nationwide
2732 database as an approved test provider.

2733 (d) "Associate lending manager" means an individual who:

2734 (i) qualifies under this chapter as a principal lending manager; and

2735 (ii) works by or on behalf of another principal lending manager in transacting the
2736 business of residential mortgage loans.

2737 (e) "Branch office" means a licensed entity's office:

2738 (i) for the transaction of the business of residential mortgage loans regulated under this
2739 chapter;

2740 (ii) other than the main office of the licensed entity; and

2741 (iii) that operates under:

2742 (A) the same business name as the licensed entity[-]; or

2743 (B) another trade name that is registered with the division under the entity license.

2744 (f) "Business day" means a day other than:

2745 (i) a Saturday;

2746 (ii) a Sunday; or

2747 (iii) a federal or state holiday.

2748 (g) (i) "Business of residential mortgage loans" means for compensation or in the
2749 expectation of compensation to:

2750 (A) engage in an act that makes an individual a mortgage loan originator;

2751 (B) make or originate a residential mortgage loan;

2752 (C) directly or indirectly solicit a residential mortgage loan for another;

2753 (D) unless excluded under Subsection (1)(g)(ii), render services related to the
2754 origination of a residential mortgage loan including:

2755 (I) preparing a loan package;

- 2756 (II) communicating with the borrower [~~and~~] or lender; or
- 2757 (III) advising on a loan term; or
- 2758 (E) engage in loan modification assistance.
- 2759 (ii) "Business of residential mortgage loans" does not include:
- 2760 (A) if working as an employee under the direction of and subject to the supervision and
- 2761 instruction of a person licensed under this chapter, the performance of a clerical or support duty
- 2762 such as:
 - 2763 (I) the receipt, collection, or distribution of information common for the processing or
 - 2764 underwriting of a loan in the mortgage industry other than taking an application;
 - 2765 (II) communicating with a consumer to obtain information necessary for the processing
 - 2766 or underwriting of a residential mortgage loan;
 - 2767 (III) word processing;
 - 2768 (IV) sending correspondence; or
 - 2769 (V) assembling files;
- 2770 (B) ownership of an entity that engages in the business of residential mortgage loans if
- 2771 the owner does not personally perform the acts listed in Subsection (1)(g)(i); or
- 2772 (C) except if an individual will engage in an activity as a mortgage loan originator,
- 2773 acting in one or more of the following capacities:
 - 2774 (I) a loan wholesaler;
 - 2775 (II) an account executive for a loan wholesaler;
 - 2776 (III) a loan underwriter;
 - 2777 (IV) a loan closer; or
 - 2778 (V) funding a loan; or
- 2779 (D) if employed by a person who owns or services an [~~existing~~] existing residential
- 2780 mortgage loan[~~, as defined in Section 70D-2-102~~], the direct negotiation with the borrower for
- 2781 the purpose of loan modification.
- 2782 (h) "Certified education provider" means a person who is certified under Section
- 2783 61-2c-204.1 to provide one or more of the following:
 - 2784 (i) Utah-specific prelicensing education; or
 - 2785 (ii) Utah-specific continuing education.
- 2786 (i) "Closed-end" means a loan:

- 2787 (i) with a fixed amount borrowed; and
- 2788 (ii) that does not permit additional borrowing secured by the same collateral.
- 2789 (j) "Commission" means the Residential Mortgage Regulatory Commission created in
2790 Section 61-2c-104.
- 2791 (k) "Compensation" means anything of economic value that is paid, loaned, granted,
2792 given, donated, or transferred to an individual or entity for or in consideration of:
- 2793 (i) services;
- 2794 (ii) personal or real property; or
- 2795 (iii) another thing of value.
- 2796 (l) "Concurrence" means that entities given a concurring ~~[rule]~~ role must jointly agree
2797 for the action to be taken.
- 2798 (m) "Continuing education" means education taken by an individual licensed under this
2799 chapter in order to meet the education requirements imposed by Sections 61-2c-204.1 and
2800 61-2c-205 to renew a license under this chapter.
- 2801 (n) "Control," as used in Subsection 61-2c-105(2)(f), means the power to directly or
2802 indirectly:
- 2803 (i) direct or exercise a controlling interest over:
- 2804 (A) the management or policies of an entity; or
- 2805 (B) the election of a majority of the directors, officers, managers, or managing partners
2806 of an entity;
- 2807 (ii) vote 20% or more of a class of voting securities of an entity by an individual; or
- 2808 (iii) vote more than 5% of a class of voting securities of an entity by another entity.
- 2809 (o) (i) "Control person" means an individual identified by an entity registered with the
2810 nationwide database as being ~~[the]~~ an individual ~~[primarily responsible for]~~ directing the
2811 management or policies of the entity.
- 2812 (ii) "Control person" may include one of the following who is identified as provided in
2813 Subsection (1)(o)(i):
- 2814 (A) a manager;
- 2815 (B) a managing partner;
- 2816 (C) a director;
- 2817 (D) an executive officer; or

2818 (E) an individual who performs a function similar to an individual listed in this
2819 Subsection (1)(o)(ii).

2820 (p) "Depository institution" is as defined in Section 7-1-103.

2821 (q) "Director" means the director of the division.

2822 (r) "Division" means the Division of Real Estate.

2823 (s) "Dwelling" means a residential structure attached to real property that contains one
2824 to four units including any of the following if used as a residence:

2825 (i) a condominium unit;

2826 (ii) a cooperative unit;

2827 (iii) a manufactured home; or

2828 (iv) a house.

2829 (t) "Entity" means:

2830 (i) a corporation;

2831 (ii) a limited liability company;

2832 (iii) a partnership;

2833 (iv) a company;

2834 (v) an association;

2835 (vi) a joint venture;

2836 (vii) a business trust;

2837 (viii) a trust; or

2838 (ix) another organization.

2839 (u) "Executive director" means the executive director of the Department of Commerce.

2840 (v) "Federal licensing requirements" means Secure and Fair Enforcement for Mortgage
2841 Licensing, 12 U.S.C. Sec. 5101 et seq.

2842 (w) "Foreclosure rescue" means, for compensation or with the expectation of receiving
2843 valuable consideration, to:

2844 (i) engage, or offer to engage, in an act that:

2845 (A) the person represents will assist a borrower in preventing a foreclosure; and

2846 (B) relates to a transaction involving the transfer of title to residential real property; or

2847 (ii) as an employee or agent of another person:

2848 (A) solicit, or offer that the other person will engage in an act described in Subsection

2849 (1)(w)(i); or

2850 (B) negotiate terms in relationship to an act described in Subsection (1)(w)(i).

2851 (x) "Inactive status" means a dormant status into which an unexpired license is placed
2852 when the holder of the license is not currently engaging in the business of residential mortgage
2853 loans.

2854 (y) "Licensee" means a person licensed with the division under this chapter.

2855 (z) "Licensing examination" means the examination required by Section 61-2c-204.1 or
2856 61-2c-206 for an individual to obtain a license under this chapter.

2857 (aa) "Loan modification assistance" means, for compensation or with the expectation
2858 of receiving valuable consideration, to:

2859 (i) act, or offer to act, on behalf of a person to:

2860 (A) obtain a loan term of a residential mortgage loan that is different from an existing
2861 loan term including:

2862 (I) an increase or decrease in an interest rate;

2863 (II) a change to the type of interest rate;

2864 (III) an increase or decrease in the principal amount of the residential mortgage loan;

2865 (IV) a change in the number of required period payments;

2866 (V) an addition of collateral;

2867 (VI) a change to, or addition of, a prepayment penalty;

2868 (VII) an addition of a cosigner; or

2869 (VIII) a change in persons obligated under the existing residential mortgage loan; or

2870 (B) substitute a new residential mortgage loan for an existing residential mortgage
2871 loan; or

2872 (ii) as an employee or agent of another person:

2873 (A) solicit, or offer that the other person will engage in an act described in Subsection

2874 (1)(aa)(i); or

2875 (B) negotiate terms in relationship to an act described in Subsection (1)(aa)(i).

2876 (bb) (i) Except as provided in Subsection (1)(bb)(ii), "mortgage loan originator" means
2877 an individual who for compensation or in expectation of compensation:

2878 (A) (I) takes a residential mortgage loan application; or

2879 (II) offers or negotiates terms of a residential mortgage loan for the purpose of:

- 2880 (Aa) a purchase;
- 2881 (Bb) a refinance;
- 2882 (Cc) a loan modification assistance; or
- 2883 (Dd) a foreclosure rescue; and
- 2884 (B) is licensed as a mortgage loan originator in accordance with this chapter.
- 2885 (ii) "Mortgage loan originator" does not include a person who:
- 2886 (A) is described in Subsection (1)(bb)(i), but who performs exclusively administrative
- 2887 or clerical tasks as described in Subsection (1)(g)(ii)(A);
- 2888 (B) (I) is licensed under Chapter 2f, Real Estate Licensing and Practices Act;
- 2889 (II) performs only real estate brokerage activities; and
- 2890 (III) receives no compensation from:
- 2891 (Aa) a lender;
- 2892 (Bb) a principal lending manager; or
- 2893 (Cc) an agent of a lender or principal lending manager; or
- 2894 (C) is solely involved in extension of credit relating to a timeshare plan, as defined in
- 2895 11 U.S.C. Sec. 101(53D).
- 2896 (cc) "Nationwide database" means the Nationwide Mortgage Licensing System and
- 2897 Registry, authorized under federal licensing requirements.
- 2898 (dd) "Nontraditional mortgage product" means a mortgage product other than a 30-year
- 2899 fixed rate mortgage.
- 2900 (ee) "Person" means an individual or entity.
- 2901 (ff) "Prelicensing education" means education taken by an individual seeking to be
- 2902 licensed under this chapter in order to meet the education requirements imposed by Section
- 2903 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.
- 2904 (gg) (i) "Principal lending manager" means an individual licensed as a principal
- 2905 lending manager under Section 61-2c-206 to transact the business of residential mortgage
- 2906 loans.
- 2907 (ii) An individual who is a principal lending manager may transact the business of
- 2908 residential mortgage loans as a mortgage loan originator.
- 2909 (hh) "Record" means information that is:
- 2910 (i) prepared, owned, received, or retained by a person; and

- 2911 (ii) (A) inscribed on a tangible medium; or
2912 (B) (I) stored in an electronic or other medium; and
2913 (II) in a perceivable and reproducible form.
- 2914 (ii) "Residential mortgage loan" means an extension of credit, if:
2915 (i) the loan or extension of credit is secured by a:
2916 (A) mortgage;
2917 (B) deed of trust; or
2918 (C) consensual security interest;
2919 (ii) the mortgage, deed of trust, or consensual security interest described in Subsection
2920 (1)(ii)(i):
2921 (A) is on a dwelling located in the state; and
2922 (B) is created with the consent of the owner of the residential real property; and
2923 (iii) solely for the purposes of defining "mortgage loan originator," the extension of
2924 credit is primarily for personal, family, or household use.
- 2925 (jj) "Sponsorship" means an association in accordance with Section 61-2c-209 between
2926 an individual licensed under this chapter and an entity licensed under this chapter.
- 2927 (kk) "State" means:
2928 (i) a state, territory, or possession of the United States;
2929 (ii) the District of Columbia; or
2930 (iii) the Commonwealth of Puerto Rico.
- 2931 (ll) "Unique identifier" is as defined in 12 U.S.C. Sec. 5102.
- 2932 (mm) "Utah-specific" means an educational or examination requirement under this
2933 chapter that relates specifically to Utah.
- 2934 (2) (a) If a term not defined in this section is defined by rule, the term shall have the
2935 meaning established by the division by rule made in accordance with Title 63G, Chapter 3,
2936 Utah Administrative Rulemaking Act.
- 2937 (b) If a term not defined in this section is not defined by rule, the term shall have the
2938 meaning commonly accepted in the business community.
- 2939 Section 47. Section **61-2c-103** is amended to read:
2940 **61-2c-103. Powers and duties of the division.**
2941 (1) The division shall administer this chapter.

- 2942 (2) In addition to a power or duty expressly provided in this chapter, the division may:
- 2943 (a) receive and act on a complaint including:
- 2944 (i) taking action designed to obtain voluntary compliance with this chapter; or
- 2945 (ii) commencing an administrative or judicial proceeding on the division's own
- 2946 initiative;
- 2947 (b) establish one or more programs for the education of consumers with respect to
- 2948 residential mortgage loans;
- 2949 (c) (i) make one or more studies appropriate to effectuate the purposes and policies of
- 2950 this chapter; and
- 2951 (ii) make the results of the studies described in Subsection (2)(c)(i) available to the
- 2952 public;
- 2953 (d) visit and investigate a person licensed under this chapter, regardless of whether the
- 2954 person is located in Utah; ~~and~~
- 2955 (e) employ one or more necessary hearing examiners, investigators, clerks, and other
- 2956 employees and agents~~[-]; and~~
- 2957 (f) establish fees under Section 63J-1-504 for:
- 2958 (i) processing an application for licensing or certification; and
- 2959 (ii) any other function required or permitted by this chapter.
- 2960 (3) The division shall make rules for the administration of this chapter in accordance
- 2961 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including:
- 2962 (a) licensure procedures for:
- 2963 (i) a person required by this chapter to obtain a license with the division; and
- 2964 (ii) the establishment of a branch office by an entity;
- 2965 (b) proper handling of money received by a licensee;
- 2966 (c) record-keeping requirements by a licensee, including proper disposal of a record;
- 2967 (d) certification procedures for certifying an education provider; and
- 2968 (e) standards of conduct for a licensee or certified education provider.
- 2969 (4) The division may by rule made in accordance with Title 63G, Chapter 3, Utah
- 2970 Administrative Rulemaking Act, require as a condition of maintaining a license or certification
- 2971 under this chapter that a person comply with a requirement of the nationwide database if:
- 2972 (a) required for uniformity amongst states; and

- 2973 (b) not inconsistent with this chapter.
- 2974 (5) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah
2975 Administrative Rulemaking Act, provide a process under which an individual may challenge
2976 information contained in the nationwide database.
- 2977 (6) The division shall annually:
- 2978 (a) review the requirements related to the nationwide database imposed by federal
2979 licensing requirements or the nationwide database on:
- 2980 (i) the division;
- 2981 (ii) a licensee under this chapter;
- 2982 (iii) a certified education provider; or
- 2983 (iv) an approved examination provider; and
- 2984 (b) after the review required by Subsection (6)(a):
- 2985 (i) report to the Business and Labor Interim Committee the impact of the requirements
2986 on the implementation by the division of this chapter; and
- 2987 (ii) recommend legislation, if any, to the Business and Labor Interim Committee
2988 related to how the division should coordinate with the nationwide database.
- 2989 (7) The division may enter into a relationship or contract with the nationwide database
2990 or another entity designated by the nationwide database to do the following related to a licensee
2991 or other person subject to this chapter:
- 2992 (a) collect or maintain a record; and
- 2993 (b) process a transaction fee or other fee.
- 2994 (8) The division shall regularly report the following to the nationwide database:
- 2995 (a) a violation of this chapter;
- 2996 (b) disciplinary action under this chapter; and
- 2997 (c) other information relevant to this chapter.
- 2998 (9) If a person pays a fee or costs to the division with a negotiable instrument [~~and the~~
2999 ~~negotiable instrument~~] or any other method that is not honored for payment:
- 3000 (a) the transaction for which the payment is submitted is voidable by the division;
- 3001 (b) the division may reverse the transaction if payment of the applicable fee or costs is
3002 not received in full; and
- 3003 (c) the person's license, certification, or registration is automatically suspended:

- 3004 (i) beginning the day on which the payment is due; and
- 3005 (ii) ending the day on which payment is made in full.

3006 Section 48. Section **61-2c-202** is amended to read:

3007 **61-2c-202. Licensure procedures.**

3008 (1) To apply for licensure under this chapter an applicant shall in a manner provided by
3009 the division by rule:

3010 (a) if the applicant is an entity, submit a licensure statement that:

- 3011 (i) lists any name under which the entity will transact business in this state;
- 3012 (ii) lists the address of the principal business location of the entity;
- 3013 (iii) identifies the principal lending manager of the entity;
- 3014 (iv) contains the signature of the principal lending manager;
- 3015 (v) identifies the one or more control persons for the entity;
- 3016 (vi) identifies the jurisdictions in which the entity is registered, licensed, or otherwise
3017 regulated in the business of residential mortgage loans;

3018 (vii) discloses any adverse administrative action taken by an administrative agency
3019 against:

3020 (A) the entity; or

3021 (B) any control person for the entity;

3022 (viii) discloses any history of criminal proceedings involving any control person for the
3023 entity; and

3024 (ix) includes any information required by the division by rule;

3025 (b) if the applicant is an individual:

3026 (i) submit a licensure statement that identifies the entity with which the applicant is
3027 sponsored;

3028 (ii) authorize a criminal background check through the nationwide database accessing:

3029 (A) the Utah Bureau of Criminal Identification, if the nationwide database is able to
3030 obtain information from the Utah Bureau of Criminal Identification; and

3031 (B) the Federal Bureau of Investigation;

3032 (iii) submit evidence using a method approved by the division by rule of having
3033 successfully completed approved prelicensing education in accordance with Section

3034 61-2c-204.1;

3035 (iv) submit evidence using a method approved by the division by rule of having
3036 successfully passed any required licensing examination in accordance with Section
3037 61-2c-204.1; and

3038 (v) submit evidence using a method approved by the division by rule of having
3039 successfully registered in the nationwide database, including paying a fee required by the
3040 nationwide database; and

3041 (c) pay to the division:

3042 (i) an application fee established by the division in accordance with Section 63J-1-504;
3043 and

3044 (ii) the reasonable expenses incurred by the division in processing the application for
3045 licensure.

3046 (2) (a) Upon receiving an application, the division, with the concurrence of the
3047 commission, shall determine whether the applicant:

3048 (i) meets the qualifications for licensure; and

3049 (ii) complies with this section.

3050 (b) If the division, with the concurrence of the commission, determines that an
3051 applicant meets the qualifications for licensure and complies with this section, the division
3052 shall issue the applicant a license.

3053 (c) If the division, with the concurrence of the commission, determines that the
3054 division requires more information to make a determination under Subsection (2)(a), the
3055 division may:

3056 (i) hold the application pending further information about an applicant's criminal
3057 background or history related to adverse administrative action in any jurisdiction; or

3058 (ii) issue a conditional license:

3059 (A) pending the completion of a criminal background check; and

3060 (B) subject to probation, suspension, or revocation if the criminal background check
3061 reveals that the applicant did not truthfully or accurately disclose on the licensing application a
3062 criminal history or other history related to adverse administrative action.

3063 (3) (a) The commission may delegate to the division the authority to:

3064 (i) review a class or category of application for an initial or renewed license;

3065 (ii) determine whether an applicant meets the qualifications for licensure;

3066 (iii) conduct a necessary hearing on an application; and
 3067 (iv) approve or deny a license application without concurrence by the commission.
 3068 (b) If the commission delegates to the division the authority to approve or deny an
 3069 application without concurrence by the commission and the division denies an application for
 3070 licensure, the applicant who is denied licensure may petition the commission for a de novo
 3071 review of the ~~[denial]~~ application.

3072 (c) An applicant who is denied licensure under Subsection (3)(b) may seek agency
 3073 review by the executive director only after the commission reviews the division's denial of the
 3074 applicant's application.

3075 (d) Subject to Subsection (3)(c) and in accordance with Title 63G, Chapter 4,
 3076 Administrative Procedures Act, an applicant who is denied licensure under this chapter may
 3077 submit a request for agency review to the executive director within 30 days following the day
 3078 on which the commission order denying the licensure is issued.

3079 Section 49. Section **61-2c-203** is amended to read:

3080 **61-2c-203. General qualifications for licensure.**

3081 (1) To qualify for licensure under this chapter, a person shall demonstrate through
 3082 procedures established by rule made by the division in accordance with Title 63G, Chapter 3,
 3083 Utah Administrative Rulemaking Act:

- 3084 (a) financial responsibility;
- 3085 (b) good moral character, honesty, integrity, and truthfulness; and
- 3086 (c) the competence to transact the business of residential mortgage loans, including
 3087 general fitness such as to command the confidence of the community and to warrant a
 3088 determination that the person will operate honestly, fairly, and efficiently within the purposes
 3089 of this chapter.

3090 ~~[(2) If an applicant is an individual, the applicant may not have:]~~

3091 ~~[(a) been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner~~
 3092 ~~to, or resolved by diversion or its equivalent:]~~

3093 ~~[(i) a felony involving an act of fraud, dishonesty, a breach of trust, or money~~
 3094 ~~laundering; or]~~

3095 ~~[(ii) a felony in the seven years preceding the day on which an application is submitted~~
 3096 ~~to the division;]~~

3097 ~~[(b) in the five years preceding the day on which an application is submitted to the~~
 3098 ~~division, been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner~~
 3099 ~~to, or resolved by diversion its equivalent;]~~

3100 ~~[(i) a class B or class C misdemeanor involving moral turpitude; or]~~

3101 ~~[(ii) a crime in another jurisdiction that is the equivalent of a class B or class C~~
 3102 ~~misdemeanor involving moral turpitude;]~~

3103 ~~[(c) had a license as a mortgage loan originator revoked by a governmental jurisdiction~~
 3104 ~~at any time;]~~

3105 ~~[(d) had a license or registration suspended, surrendered, canceled, or denied in the five~~
 3106 ~~years preceding the date the individual applies for licensure if:]~~

3107 ~~[(i) the registration or license is issued by this state or another jurisdiction; and]~~

3108 ~~[(ii) the suspension, surrender, cancellation, or denial is based on misconduct in a~~
 3109 ~~professional capacity that relates to moral character, honesty, integrity, truthfulness, or the~~
 3110 ~~competency to transact the business of residential mortgage loans;]~~

3111 ~~[(e) been the subject of a bar by the Securities and Exchange Commission, the New~~
 3112 ~~York Stock Exchange, or the National Association of Securities Dealers within the five years~~
 3113 ~~preceding the date the individual applies for registration; or]~~

3114 ~~[(f) had a permanent injunction entered against the individual:]~~

3115 ~~[(i) by a court or administrative agency; and]~~

3116 ~~[(ii) on the basis of:]~~

3117 ~~[(A) conduct or a practice involving the business of residential mortgage loans; or]~~

3118 ~~[(B) conduct involving fraud, misrepresentation, or deceit.]~~

3119 ~~[(3)]~~ (2) If an applicant is an entity, the applicant may not have a control person who
 3120 fails to meet the requirements of Subsection ~~[(2)]~~ (1) for an individual applicant.

3121 Section 50. Section **61-2c-205** is amended to read:

3122 **61-2c-205. Term of licensure -- Renewal -- Reporting of changes.**

3123 (1) (a) A license issued under this chapter expires as follows:

3124 (i) for the calendar year the license is issued:

3125 (A) if the license is issued on or before October 31, the license expires on December 31
 3126 of the same calendar year; and

3127 (B) if the license is issued on or after November 1, the license expires on December 31

3128 of the following calendar year; and

3129 (ii) after the December 31 on which a license expires under Subsection (1)(a)(i), a
3130 license expires annually on December 31.

3131 (b) Notwithstanding Subsection (1)(a), the time period of a license may be extended or
3132 shortened by as much as one year to maintain or change a renewal cycle established by rule by
3133 the division.

3134 (2) To renew a license, no later than the date the license expires, a licensee shall in a
3135 manner provided by the division by rule:

3136 (a) file a renewal statement;

3137 (b) furnish the information required by Subsection 61-2c-202(1);

3138 (c) renew the licensee's registration with the nationwide database, including the
3139 payment of a fee required by the nationwide database;

3140 (d) pay a fee to the division established by the division in accordance with Section
3141 63J-1-504; and

3142 (e) if the licensee is an individual and the individual's license is in active status at the
3143 time of application for renewal, submit proof of having completed during the year before
3144 application the continuing education required under Section 61-2c-204.1.

3145 (3) (a) A licensee under this chapter shall notify the division in a manner provided by
3146 the division by rule within 10 days of the date on which there is a change in:

3147 (i) a name under which the licensee transacts the business of residential mortgage loans
3148 in this state;

3149 (ii) (A) if the licensee is an entity, the business location of the licensee; or

3150 (B) if the licensee is an individual, the home and business addresses of the individual;

3151 (iii) the principal lending manager of the entity;

3152 (iv) the entity with which an individual licensee is licensed to conduct the business of
3153 residential mortgage loans; or

3154 (v) any other information that is defined as material by rule made by the division.

3155 (b) Failure to notify the division of a change described in Subsection (3)(a) is separate
3156 grounds for disciplinary action against a licensee.

3157 (c) The division may charge a fee established in accordance with Section 63J-1-504 for
3158 processing a change that a licensee is required to report to the division under Subsection (3)(a).

3159 (4) (a) A licensee shall notify the division by sending the division a signed statement
3160 within 10 business days of:

3161 [~~(i)~~] (i) (A) a conviction of a [~~criminal offense~~] felony, class A misdemeanor, or class
3162 B misdemeanor;

3163 [~~(ii)~~] (B) the entry of a plea in abeyance to a [~~criminal offense~~] felony, class A
3164 misdemeanor, or class B misdemeanor; or

3165 [~~(iii)~~] (C) the potential resolution of a [~~criminal case~~] felony, class A misdemeanor, or
3166 class B misdemeanor by [~~-(A)~~] a diversion agreement[;], or [~~(B)~~] any other agreement under
3167 which a criminal charge is held in suspense for a period of time;

3168 [~~(b)~~] (ii) filing a personal bankruptcy or bankruptcy of a business that transacts the
3169 business of residential mortgage loans;

3170 [~~(c)~~] (iii) the suspension, revocation, surrender, cancellation, or denial of a professional
3171 license or professional registration of the licensee, whether the license or registration is issued
3172 by this state or another jurisdiction; or

3173 [~~(d)~~] (iv) the entry of a cease and desist order or a temporary or permanent injunction:

3174 [~~(i)~~] (A) against the licensee by a court or licensing agency; and

3175 [~~(ii)~~] (B) based on [~~-(A)~~] conduct or a practice involving the business of residential
3176 mortgage loans[;], or [~~(B)~~] conduct involving fraud, misrepresentation, or deceit.

3177 (b) The commission, with the concurrence of the division, shall enforce the reporting
3178 requirement under this Subsection (4) pursuant to Section 61-2c-402.

3179 (5) (a) A license under this chapter expires if the licensee does not apply to renew the
3180 license on or before the expiration date of the license.

3181 (b) A licensee whose license has expired may apply to reinstate the expired license, in
3182 a manner provided by the division by rule by:

3183 (i) requesting reinstatement;

3184 (ii) paying to the division a renewal fee and a late fee determined by the division under
3185 Section 63J-1-504; and

3186 (iii) reinstating the licensee's registration with the nationwide database, including the
3187 payment of a fee required by the nationwide database.

3188 Section 51. Section **61-2c-301** is amended to read:

3189 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

3190 (1) A person transacting the business of residential mortgage loans in this state may
3191 not:

3192 (a) give or receive compensation or anything of value in exchange for a referral of
3193 residential mortgage loan business;

3194 (b) charge a fee in connection with a residential mortgage loan transaction:

3195 (i) that is excessive; or
3196 [~~(ii) if the person does not comply with Section 70D-2-305;~~]
3197 (ii) without providing to the loan applicant a written statement signed by the loan
3198 applicant:

3199 (A) stating whether or not the fee or deposit is refundable; and
3200 (B) describing the conditions, if any, under which all or a portion of the fee or deposit
3201 will be refunded to the applicant;

3202 (c) give or receive compensation or anything of value in exchange for a referral of
3203 settlement or loan closing services related to a residential mortgage loan transaction;

3204 (d) do any of the following to induce a lender to extend credit as part of a residential
3205 mortgage loan transaction:

3206 (i) make a false statement or representation;
3207 (ii) cause false documents to be generated; or
3208 (iii) knowingly permit false information to be submitted by any party;

3209 (e) give or receive compensation or anything of value, or withhold or threaten to
3210 withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in
3211 reaching a value conclusion in a residential mortgage loan transaction, except that it is not a
3212 violation of this section for a licensee to withhold payment because of a bona fide dispute
3213 regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards
3214 of Professional Appraisal Practice;

3215 (f) violate or not comply with:

3216 (i) this chapter;
3217 (ii) an order of the commission or division; or
3218 (iii) a rule made by the division;

3219 (g) fail to respond within the required time period to:
3220 (i) a notice or complaint of the division; or

- 3221 (ii) a request for information from the division;
- 3222 (h) make false representations to the division, including in a licensure statement;
- 3223 (i) for a residential mortgage loan transaction beginning on or after January 1, 2004,
- 3224 engage in the business of residential mortgage loans with respect to the transaction if the
- 3225 person also acts in any of the following capacities with respect to the same residential mortgage
- 3226 loan transaction:
 - 3227 (i) appraiser;
 - 3228 (ii) escrow agent;
 - 3229 (iii) real estate agent;
 - 3230 (iv) general contractor; or
 - 3231 (v) title insurance producer;
 - 3232 (j) order a title insurance report or hold a title insurance policy unless the person
 - 3233 provides to the title insurer a copy of a valid, current license under this chapter;
 - 3234 (k) engage in unprofessional conduct as defined by rule;
 - 3235 (l) engage in an act or omission in transacting the business of residential mortgage
 - 3236 loans that constitutes dishonesty, fraud, or misrepresentation;
 - 3237 (m) engage in false or misleading advertising;
 - 3238 (n) (i) fail to account for money received in connection with a residential mortgage
 - 3239 loan;
 - 3240 (ii) use money for a different purpose from the purpose for which the money is
 - 3241 received; or
 - 3242 (iii) except as provided in Subsection (4), retain money paid for services if the services
 - 3243 are not performed;
 - 3244 (o) fail, within 90 calendar days of a request from a borrower who has paid for an
 - 3245 appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;
 - 3246 (p) engage in an act that is performed to:
 - 3247 (i) evade this chapter; or
 - 3248 (ii) assist another person to evade this chapter;
 - 3249 (q) recommend or encourage default, delinquency, or continuation of an existing
 - 3250 default or delinquency, by a mortgage applicant on an existing indebtedness before the closing
 - 3251 of a residential mortgage loan that will refinance all or part of the indebtedness;

3252 (r) in the case of the principal lending manager of an entity or a branch office of an
3253 entity, fail to exercise reasonable supervision over the activities of:

3254 (i) unlicensed staff; and

3255 (ii) a mortgage loan originator who is affiliated with the principal lending manager;

3256 (s) pay or offer to pay an individual who does not hold a license under this chapter for
3257 work that requires the individual to hold a license under this chapter;

3258 (t) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

3259 (i) provide a title insurance product or service without the approval required by Section
3260 31A-2-405; or

3261 (ii) knowingly provide false or misleading information in the statement required by
3262 Subsection 31A-2-405(2);

3263 (u) represent to the public that the person can or will perform any act of a mortgage
3264 loan originator if that person is not licensed under this chapter because the person is exempt
3265 under Subsection 61-2c-102(1)(g)(ii)(A), including through:

3266 (i) advertising;

3267 (ii) a business card;

3268 (iii) stationery;

3269 (iv) a brochure;

3270 (v) a sign;

3271 (vi) a rate list; or

3272 (vii) other promotional item; or

3273 (v) (i) engage in an act of loan modification assistance without being licensed under
3274 this chapter;

3275 (ii) engage in an act of foreclosure rescue that requires licensure as a real estate agent
3276 or real estate broker under Chapter 2, Division of Real Estate, without being licensed under
3277 that chapter;

3278 (iii) engage in an act of loan modification assistance without entering into a written
3279 agreement specifying which one or more acts of loan modification assistance will be
3280 completed;

3281 [~~iii~~] (iv) request or require a person to pay a fee [~~if:~~] before obtaining:

3282 [~~(A) the person is required to pay the fee before entering into a written agreement~~

3283 ~~specifying what one or more acts of loan modification assistance will be completed if the fee is~~
 3284 ~~paid; or]~~

3285 ~~[(B) in a case when the residential mortgage loan that is the subject of the loan~~
 3286 ~~modification assistance is foreclosed within one year of the day on which the person enters into~~
 3287 ~~a written agreement, the person is required to forfeit the fee for any reason;]~~

3288 (A) a written offer for a loan modification from the person's lender or servicer; and

3289 (B) the person's written acceptance of the offer from the lender or servicer;

3290 ~~[(iv)]~~ (v) induce a person seeking a loan modification to hire the licensee to engage in
 3291 an act of loan modification assistance by:

3292 (A) suggesting to the person that the licensee has a special relationship with the
 3293 person's lender or loan servicer; or

3294 (B) falsely representing or advertising that the licensee is acting on behalf of:

3295 (I) a government agency;

3296 (II) the person's lender or loan servicer; or

3297 (III) a nonprofit or charitable institution;

3298 ~~[(v)]~~ (vi) recommend or participate in a loan modification that requires a person to:

3299 (A) transfer title to real property to the licensee or to a ~~[third party]~~ third-party with
 3300 whom the licensee has a business relationship or financial interest;

3301 (B) make a mortgage payment to a person other than the person's loan servicer; or

3302 (C) refrain from contacting the person's:

3303 (I) lender;

3304 (II) loan servicer;

3305 (III) attorney;

3306 (IV) credit counselor; or

3307 (V) housing counselor; or

3308 ~~[(vi)]~~ (vii) for an agreement for loan modification assistance entered into on or after
 3309 May 11, 2010, engage in an act of loan modification assistance without offering in writing to
 3310 the person entering into the agreement for loan modification assistance a right to cancel the
 3311 agreement within three business days after the day on which the person enters the agreement.

3312 (2) Whether or not the crime is related to the business of residential mortgage loans, it
 3313 is a violation of this chapter for a licensee or a person who is a certified education provider to

3314 do any of the following with respect to a criminal offense that involves moral turpitude:

3315 (a) be convicted;

3316 (b) plead guilty or nolo contendere;

3317 (c) enter a plea in abeyance; or

3318 (d) be subjected to a criminal disposition similar to the ones described in Subsections

3319 (2)(a) through (c).

3320 (3) A principal lending manager does not violate Subsection (1)(r) if:

3321 (a) in contravention of the principal lending manager's written policies and

3322 instructions, an affiliated licensee of the principal lending manager violates:

3323 (i) this chapter; or

3324 (ii) rules made by the division under this chapter;

3325 (b) the principal lending manager established and followed reasonable procedures to

3326 ensure that affiliated licensees receive adequate supervision;

3327 (c) upon learning of a violation by an affiliated licensee, the principal lending manager

3328 attempted to prevent or mitigate the damage;

3329 (d) the principal lending manager did not participate in or ratify the violation by an

3330 affiliated licensee; and

3331 (e) the principal lending manager did not attempt to avoid learning of the violation.

3332 (4) Notwithstanding Subsection (1)(n)(iii), a licensee may, upon compliance with

3333 Section 70D-2-305, charge a reasonable cancellation fee for work done originating a mortgage

3334 if the mortgage is not closed.

3335 Section 52. Section **61-2c-302** is amended to read:

3336 **61-2c-302. Record requirements.**

3337 (1) For the time period specified in Subsection (2), a licensee shall make or possess any

3338 record required for that licensee by a rule made by the division.

3339 (2) A licensee shall maintain and safeguard in its possession a record described in

3340 Subsection (1) for four years from the last to occur of the following:

3341 (a) the final entry on a residential mortgage loan is made by that licensee;

3342 (b) if the residential mortgage loan is serviced by the licensee:

3343 (i) the residential mortgage loan is paid in full; or

3344 (ii) the licensee ceases to service the residential mortgage loan; or

3345 (c) if the residential mortgage loan is not serviced by the licensee, the residential
3346 mortgage loan is closed.

3347 (3) A licensee shall:

3348 (a) make available to the division for inspection and copying during normal business
3349 hours all records required to be maintained under this chapter; and

3350 (b) upon reasonable notice from the division to a licensee, produce all records
3351 described in Subsection (3)(a) that are related to an investigation being conducted by the
3352 division at the division office for inspection and copying by the division.

3353 (4) A licensee who is an entity shall maintain and produce for inspection by the
3354 division a current list of all individuals whose licenses are sponsored by the entity.

3355 (5) (a) A licensee who engages in an activity as a mortgage loan originator shall
3356 maintain a report of condition submitted to the nationwide database as required by 12 U.S.C.
3357 Sec. 5104(e) for at least four years from the day on which the licensee submits the report of
3358 condition to the nationwide database.

3359 (b) Upon request by the division, a mortgage loan originator shall produce a report of
3360 condition for inspection by the division.

3361 Section 53. Section **61-2c-402** is amended to read:

3362 **61-2c-402. Disciplinary action.**

3363 (1) Subject to the requirements of Section 61-2c-402.1, the commission, with the
3364 concurrence of the division, may impose a sanction described in Subsection (2) against a
3365 person if the person:

3366 (a) (i) is a licensee or person required to be licensed under this chapter; and

3367 (ii) violates this chapter; or

3368 (b) (i) is a certified education provider or person required to be certified to provide
3369 prelicensing or continuing education under this chapter; and

3370 (ii) violates this chapter.

3371 (2) The commission, with the concurrence of the director, may against a person
3372 described in Subsection (1):

3373 (a) impose an educational requirement;

3374 (b) impose a civil penalty against the individual or entity in an amount not to exceed
3375 the greater of:

- 3376 (i) \$5,000 for each violation; or
3377 (ii) the amount equal to any gain or economic benefit derived from each violation;
3378 (c) deny an application for an original license;
3379 (d) do any of the following to a license under this chapter:
3380 (i) suspend;
3381 (ii) revoke;
3382 (iii) place on probation;
3383 (iv) deny renewal;
3384 (v) deny reinstatement; or
3385 (vi) in the case of a denial of a license or a suspension that extends to the expiration
3386 date of a license, set a waiting period for a person to apply for a license under this chapter;
3387 (e) issue a cease and desist order;
3388 (f) require the reimbursement of the division of costs incurred by the division related to
3389 the recovery, storage, or destruction of a record that the person disposes of in a manner that
3390 violates this chapter or a rule made under this chapter;
3391 (g) modify a sanction described in Subsections (2)(a) through (f) if the commission
3392 finds that the person complies with court ordered restitution; or
3393 (h) impose any combination of sanctions described in this Subsection (2).
3394 (3) (a) If the commission, with the concurrence of the division, issues an order that
3395 orders a fine or educational requirements as part of a disciplinary action against a person,
3396 including a stipulation and order, the commission shall state in the order the deadline by which
3397 the person shall comply with the fine or educational requirements.
3398 (b) If a person fails to comply with a stated deadline:
3399 (i) the person's license or certificate is automatically suspended:
3400 (A) beginning the day specified in the order as the deadline for compliance; and
3401 (B) ending the day on which the person complies in full with the order; and
3402 (ii) if the person fails to pay a fine required by an order, the division may begin a
3403 collection process:
3404 (A) established by the division by rule made in accordance with Title 63G, Chapter 3,
3405 Utah Administrative Rulemaking Act; and
3406 (B) subject to Title 63A, Chapter 8, Office of State Debt Collection.

3407 (4) (a) A person whose license was revoked under this chapter before May 11, 2010,
3408 may request that the revocation be converted to a suspension under this Subsection (4):

3409 (i) if the revocation was not as a result of a felony conviction involving fraud,
3410 misrepresentation, ~~[or] deceit, dishonesty, breach of trust, or money laundering~~; and

3411 (ii) by filing a written request with the division.

3412 (b) Upon receipt of a request to convert a revocation under this Subsection (4), the
3413 commission, with the concurrence of the director, shall determine whether to convert the
3414 revocation.

3415 (c) The commission may delegate to the division the authority to make a decision on
3416 whether to convert a revocation.

3417 (d) If the division, acting under Subsection (4)(c), denies a request to convert a
3418 revocation, the person who requests the conversion may appeal the decision in a hearing
3419 conducted by the commission:

3420 (i) after the division denies the request to convert the revocation; and

3421 (ii) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

3422 (e) The commission may delegate to the division or an administrative law judge the
3423 authority to conduct a hearing described in Subsection (4)(d).

3424 Section 54. Section **61-2c-501.5** is amended to read:

3425 **61-2c-501.5. Definitions.**

3426 As used in this part:

3427 (1) "Civil judgment" means a judgment in a civil action that:

3428 (a) is awarded in an action brought against a ~~[real estate licensee]~~ person licensed
3429 under this chapter on the basis of fraud, misrepresentation, or deceit in a residential mortgage
3430 loan transaction; and

3431 (b) awards actual damages.

3432 (2) "Criminal restitution judgment" means a judgment that, in accordance with the
3433 Utah Code of Criminal Procedure, orders criminal restitution to a person and against a ~~[real~~
3434 ~~estate licensee]~~ person licensed under this chapter for a criminal offense involving fraud,
3435 misrepresentation, or deceit in a residential mortgage loan transaction.

3436 (3) "Final judgment" means one of the following judgments upon termination of the
3437 proceedings related to the judgment, including appeals:

3438 (a) a civil judgment; or
3439 (b) a criminal restitution judgment.
3440 (4) "Fund" means the Residential Mortgage Loan Education, Research, and Recovery
3441 Fund created in Section 61-2c-501.
3442 Section 55. Section **61-2c-507** is amended to read:
3443 **61-2c-507. Division subrogated -- Authority to revoke license.**
3444 (1) If the division pays a person from the fund in accordance with this part:
3445 (a) the division is subrogated to the rights of that person for the amounts paid out of the
3446 fund; and
3447 (b) any amount and interest recovered by the division shall be deposited in the fund.
3448 (2) (a) Subject to Subsection (2)(b), the license of a licensee for whom payment from
3449 the fund is made under this part is automatically revoked as of the earlier of the day on which:
3450 (i) the division is ordered by a court to pay from the fund; or
3451 (ii) the division pays from the fund.
3452 (b) (i) A person whose license is revoked under Subsection (2)(a) may appeal the
3453 revocation in a de novo hearing conducted by the commission:
3454 (A) after the revocation; and
3455 (B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
3456 (ii) The commission may delegate:
3457 (A) to the division or an administrative law judge the authority to conduct a hearing
3458 described in Subsection (2)(b)(i); or
3459 (B) to the division the authority to make a decision on whether relief from a revocation
3460 should be granted.
3461 (3) Unless the revocation is not upheld after a hearing described in Subsection (2)(b), a
3462 licensee whose license is revoked pursuant to Subsection (2) may not apply for a new license
3463 until the licensee pays into the fund:
3464 (a) the amount paid out of the fund on behalf of the licensee; and
3465 (b) interest at a rate determined by the division with the concurrence of the
3466 commission.
3467 Section 56. Section **61-2e-102** is amended to read:
3468 **61-2e-102. Definitions.**

3469 As used in this chapter:

3470 (1) "Applicable appraisal standards" means:

3471 (a) the Uniform Standards for Professional Appraisal Practice:

3472 (i) published by the Appraisal Foundation; and

3473 (ii) as adopted under Section ~~[61-2b-27]~~ 61-2g-403;

3474 (b) Chapter ~~[2b]~~ 2g, Real Estate Appraiser Licensing and Certification Act; and

3475 (c) rules made by the board under Chapter ~~[2b]~~ 2g, Real Estate Appraiser Licensing
3476 and Certification Act.

3477 (2) "Appraisal" is as defined in Section ~~[61-2b-2]~~ 61-2g-102.

3478 (3) "Appraisal foundation" is as defined in Section ~~[61-2b-2]~~ 61-2g-102.

3479 (4) "Appraisal management company" means an entity that serves as a third-party
3480 broker of an appraisal service between a client and an appraiser by:

3481 (a) ~~[administers]~~ administering a network of appraisers to perform real estate appraisal
3482 activities for one or more clients;

3483 (b) (i) ~~[receives]~~ receiving a request for a real estate appraisal activity from a client;
3484 and

3485 (ii) for a fee paid by the client, ~~[enters]~~ entering into an agreement with one or more
3486 appraisers to perform the real estate appraisal activity contained in the request; or

3487 ~~[(c) otherwise serves as a third-party broker of an appraisal management service~~
3488 ~~between a client and an appraiser.]~~

3489 (c) any other means.

3490 (5) "Appraisal management service" means a process of:

3491 (a) receiving a request for the performance of a real estate appraisal activity from a
3492 client; and

3493 (b) for a fee paid by the client, entering into an agreement with one or more appraisers
3494 to perform the real estate appraisal activity contained in the request.

3495 (6) "Appraisal report" is as defined in Section ~~[61-2b-2]~~ 61-2g-102.

3496 (7) "Appraiser" means an individual who engages in a real estate appraisal activity.

3497 (8) "Appraiser panel" means a group of appraisers that are selected by an appraisal
3498 management company to perform real estate appraisal activities for the appraisal management
3499 company.

3500 (9) "Board" means the Real Estate Appraiser Licensing and Certification Board that is
3501 created in Section ~~[61-2b-7]~~ 61-2g-204.

3502 (10) "Client" means a person that enters into an agreement with an appraisal
3503 management company for the performance of a real estate appraisal activity.

3504 (11) "Concurrence" means that the entities that are given a concurring role must jointly
3505 agree before an action may be taken.

3506 ~~[(11)]~~ (12) "Controlling person" means:

3507 (a) an owner, officer, or director of an entity seeking to offer appraisal management
3508 services;

3509 (b) an individual employed, appointed, or authorized by an appraisal management
3510 company who has the authority to:

3511 (i) enter into a contractual relationship with a client for the performance of an appraisal
3512 management service; and

3513 (ii) enter into an agreement with an appraiser for the performance of a real estate
3514 appraisal activity; or

3515 (c) an individual who possesses, directly or indirectly, the power to direct or cause the
3516 direction of the management or policies of an appraisal management company.

3517 ~~[(12)]~~ (13) "Director" means the director of the division.

3518 ~~[(13)]~~ (14) "Division" means the Division of Real Estate of the Department of
3519 Commerce.

3520 ~~[(14)]~~ (15) "Entity" means:

3521 (a) a corporation;

3522 (b) a partnership;

3523 (c) a sole proprietorship;

3524 (d) a limited liability company;

3525 (e) another business entity; or

3526 (f) a subsidiary or unit of an entity described in Subsections ~~[(14)]~~ (15)(a) through (e).

3527 ~~[(15)]~~ (16) "Person" means an individual or an entity.

3528 ~~[(16)]~~ (17) "Real estate appraisal activity" is as defined in Section ~~[61-2b-2]~~
3529 61-2g-102.

3530 Section 57. Section **61-2e-103** is amended to read:

3531 **61-2e-103. Rulemaking.**

3532 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3533 board may make rules, with the concurrence of the division, that are:

- 3534 (1) consistent with this chapter; and
3535 (2) necessary to implement this chapter.

3536 Section 58. Section **61-2e-202** is amended to read:

3537 **61-2e-202. Initial registration process.**

3538 (1) (a) To register under this chapter as an appraisal management company, an entity
3539 shall:

- 3540 (i) file with the division a registration application in a form prescribed by the division;
3541 (ii) pay to the division a fee determined in accordance with Section 63J-1-504;
3542 (iii) if the entity is not a resident of this state, submit an irrevocable consent for service
3543 of process meeting the requirements of Subsection (3); and
3544 (iv) have the application for registration approved by the division.

3545 (b) The division shall approve an application if the division finds that the entity:

- 3546 (i) complies with this Subsection (1); and
3547 (ii) meets the qualifications under Section 61-2e-201.

3548 (c) The division may, upon compliance with Title 63G, Chapter 4, Administrative
3549 Procedures Act, deny the issuance of a registration to an applicant on any ground enumerated
3550 in this chapter.

3551 (d) If an entity pays a fee or costs to the division with a negotiable instrument or other
3552 method that is not honored for payment:

- 3553 (i) the transaction for which the payment is submitted is voidable by the division;
3554 (ii) the division may reverse the transaction if payment of the applicable fee or costs is
3555 not received in full; and
3556 (iii) the entity's registration is automatically suspended:
3557 (A) beginning the day on which the payment is due; and
3558 (B) ending the day on which payment is made in full.

3559 (2) A registration application shall include the following:

- 3560 (a) the name of the entity seeking registration;
3561 (b) a business address of the entity seeking registration;

- 3562 (c) telephone contact information of the entity seeking registration;
- 3563 (d) if the entity is not an entity domiciled in this state, the name and contact
- 3564 information for the entity's agent for service of process in this state;
- 3565 (e) for each individual who owns 10% or more of the entity:
- 3566 (i) the individual's name, address, and contact information;
- 3567 (ii) a statement of whether or not the individual has had a license or certificate to
- 3568 engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or
- 3569 revoked in this state or in another state; and
- 3570 (iii) (A) fingerprint cards in a form acceptable to the division at the time the
- 3571 registration application is filed; and
- 3572 (B) consent to a criminal background check by the Utah Bureau of Criminal
- 3573 Identification and the Federal Bureau of Investigation regarding the application;
- 3574 (f) the name, address, and contact information for each controlling person;
- 3575 (g) for the controlling person designated as the contact as required by Section
- 3576 61-2e-201:
- 3577 (i) a statement of whether or not the individual has had a license or certificate to
- 3578 engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or
- 3579 revoked in this state or in another state; and
- 3580 (ii) (A) fingerprint cards in a form acceptable to the division at the time the registration
- 3581 application is filed; and
- 3582 (B) consent to a criminal background check by the Utah Bureau of Criminal
- 3583 Identification and the Federal Bureau of Investigation regarding the application;
- 3584 (h) provide an explanation required by:
- 3585 (i) Section 61-2e-301, related to adding an individual to an appraiser panel;
- 3586 (ii) Section 61-2e-302, related to the review of the work of an appraiser; and
- 3587 (iii) Section 61-2e-303, related to recordkeeping; and
- 3588 (i) any other information required by the board.
- 3589 (3) An irrevocable consent for service of process required to be filed under Subsection
- 3590 (1) shall provide that process may be served on the entity by delivering the process to the
- 3591 director if:
- 3592 (a) the service of process is for an action:

- 3593 (i) in a court of this state against an entity; and
- 3594 (ii) arising out of an act governed by this chapter; and
- 3595 (b) a plaintiff cannot, in the exercise of due diligence, obtain personal service upon the
- 3596 entity.

3597 Section 59. Section **61-2e-203** is amended to read:

3598 **61-2e-203. Criminal background check -- Conditional registration -- Changes in**
3599 **ownership or controlling person.**

3600 (1) The division shall request the Department of Public Safety to complete a Federal
3601 Bureau of Investigation criminal background check for an individual described in Subsection
3602 61-2e-202[(+)](2)(e) or (g) through the national criminal history system or any successor
3603 system.

3604 (2) (a) The entity filing the application under Section 61-2e-202 shall pay the cost of
3605 the criminal background check and the fingerprinting.

3606 (b) [~~Monies~~] Money paid to the division by an entity for the cost of a criminal
3607 background check [~~are~~] is nonlapsing.

3608 (3) (a) A registration issued under Section 61-2e-202 is conditional, pending
3609 completion of a criminal background check.

3610 (b) [~~H~~] (i) A registration shall be immediately and automatically revoked if a criminal
3611 background check discloses that an individual described in Subsection 61-2e-202[(+)](2)(e) or
3612 (g) fails to accurately disclose a criminal history[, the registration is immediately and
3613 automatically revoked.] involving:

3614 (A) the appraisal industry;

3615 (B) the appraisal management industry; or

3616 (C) a felony conviction on the basis of an allegation of fraud, misrepresentation, or
3617 deceit.

3618 (ii) If a criminal background check discloses that an individual described in Subsection
3619 61-2e-202(2)(e) or (g) fails to accurately disclose a criminal history other than that described in
3620 Subsection (3)(b)(i), the division shall review the application, and in accordance with rules
3621 made by the division pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
3622 may:

3623 (A) place a condition on a registration;

3624 (B) place a restriction on a registration;

3625 (C) revoke a registration; or

3626 (D) refer the application to the board for a decision.

3627 (c) An entity whose conditional registration is revoked under [~~this~~] Subsection (3)(b)(i)
3628 or whose license is conditioned, restricted, or revoked under Subsection (3)(b)(ii) is entitled to
3629 a post-revocation hearing conducted in accordance with Title 63G, Chapter 4, Administrative
3630 Procedures Act, to challenge the revocation.

3631 (d) The board shall decide whether relief from the revocation of a registration under
3632 this Subsection (3) will be granted, except that relief from [~~a~~] an automatic revocation under
3633 [~~this~~] Subsection (3)(b)(i) may be granted only if:

3634 (i) the criminal history upon which the revocation is based:

3635 (A) did not occur; or

3636 (B) is the criminal history of another individual;

3637 (ii) (A) the revocation is based on a failure to accurately disclose a criminal history;

3638 and

3639 (B) the entity has a reasonable good faith belief at the time of application that there is
3640 no criminal history to be disclosed; or

3641 (iii) the division fails to follow the prescribed procedure for the revocation.

3642 (e) The board may delegate to the division the authority to conduct a post-revocation
3643 hearing under Subsection (3)(d).

3644 [~~(e)~~] (f) If a registration is revoked or a revocation under this Subsection (3) is upheld
3645 after a post-revocation hearing, the entity may not apply for a new registration until at least 12
3646 months after the day on which the registration is revoked.

3647 (4) (a) An appraisal management company shall comply with this Subsection (4) if
3648 there is a change in:

3649 (i) an individual who owns 10% or more of the entity; or

3650 (ii) the controlling person designated as the contact as required by Section 61-2e-201.

3651 (b) If there is a change in an individual described in Subsection (4)(a), within 30 days
3652 of the day on which the change occurs, the appraisal management company shall file with the
3653 division:

3654 (i) the individual's name, address, and contact information;

3655 (ii) a statement of whether or not the individual has had a license or certificate to
3656 engage in an act related to a real estate or mortgage transaction refused, denied, canceled, or
3657 revoked in this state or in another state; and

3658 (iii) (A) fingerprint cards in a form acceptable to the division at the time the
3659 registration application is filed; and

3660 (B) consent to a criminal background check by the Utah Bureau of Criminal
3661 Identification and the Federal Bureau of Investigation regarding the application.

3662 Section 60. Section **61-2e-204** is amended to read:

3663 **61-2e-204. Renewal of a registration.**

3664 (1) (a) A registration under this chapter expires two years from the day on which the
3665 registration is filed.

3666 (b) Notwithstanding Subsection (1)(a), the time period of a registration may be
3667 extended or shortened by as much as one year to maintain or change a renewal cycle
3668 established by rule by the division.

3669 (2) To renew a registration under this chapter, before the day on which the registration
3670 expires, an appraisal management company shall:

3671 (a) file with the division a renewal registration application on a form prescribed by the
3672 division; and

3673 (b) pay to the division a fee determined in accordance with Section 63J-1-504.

3674 (3) A renewal registration application shall include substantially similar information to
3675 the information required under Section 61-2e-202, except that for an individual described in
3676 Subsection 61-2e-202~~(1)~~(2)(e) or (g), the entity is required to report whether the individual
3677 has had:

3678 (a) (i) a conviction of a criminal offense;

3679 (ii) the entry of a plea in abeyance to a criminal offense; or

3680 (iii) the potential resolution of a criminal case by:

3681 (A) a diversion agreement; or

3682 (B) another agreement under which a criminal charge is held in suspense for a period
3683 of time;

3684 (b) a filing of personal bankruptcy or bankruptcy of a business that transacts the
3685 appraisal management services;

3686 (c) the suspension, revocation, surrender, cancellation, or denial of a professional
3687 license or certification, whether the license or registration is issued by this state or another
3688 jurisdiction; or

3689 (d) the entry of a cease and desist order or a temporary or permanent injunction:

3690 (i) against the individual by a court or government agency; and

3691 (ii) on the basis of:

3692 (A) conduct or a practice involving the business of appraisal management services; or

3693 (B) conduct involving fraud, misrepresentation, or deceit.

3694 (4) A registration expires if it is not renewed on or before its expiration date, except
3695 that for a period of 30 days after the expiration date, the registration may be reinstated upon
3696 compliance with this section, including payment of a renewal fee and a late fee determined by
3697 the division and the board.

3698 (5) Notwithstanding Subsection (4), the division may extend the term of a license that
3699 would expire under Subsection (4) except for the extension if:

3700 (a) (i) the person complies with the requirements of this section to renew the
3701 registration; and

3702 (ii) the renewal application remains pending at the time of the extension; or

3703 (b) at the time of the extension, there is pending under this chapter a disciplinary
3704 action.

3705 Section 61. Section **61-2e-301** is amended to read:

3706 **61-2e-301. Use of licensed or certified appraisers.**

3707 (1) An appraisal management company required to be registered under this chapter
3708 may not enter into an agreement with an appraiser for the performance of a real estate appraisal
3709 activity unless the appraiser is licensed or certified in good standing pursuant to Chapter [2b]
3710 2g, Real Estate Appraiser Licensing and Certification Act.

3711 (2) (a) An appraisal management company required to be registered under this chapter
3712 shall have a system to verify that an individual added to the appraiser panel of the appraisal
3713 management company holds a license or certificate in good standing in this state pursuant to
3714 Chapter [2b] 2g, Real Estate Appraiser Licensing and Certification Act.

3715 (b) As part of the registration process under Part 2, Registration, an appraisal
3716 management company shall biennially provide an explanation of the system described in

3717 Subsection (2)(a) in the form prescribed by the division.

3718 Section 62. Section **61-2e-302** is amended to read:

3719 **61-2e-302. Adherence to standards.**

3720 (1) An appraisal management company required to be registered under this chapter
3721 shall have a system in place to review the work of an appraiser who performs a real estate
3722 appraisal activity for the appraisal management company on a periodic basis to ensure that a
3723 real estate appraisal activity is conducted in accordance with applicable appraisal standards.

3724 (2) As part of the registration process under Part 2, Registration, an appraisal
3725 management company shall biennially provide an explanation of the system described in
3726 Subsection (1) in the form prescribed by the division.

3727 (3) An appraisal management company shall pay an appraiser who performs a real
3728 estate appraisal activity an amount that adheres to the standards for determining customary and
3729 reasonable fees, as defined by rule made in accordance with Title 63G, Chapter 3, Utah
3730 Administrative Rulemaking Act.

3731 Section 63. Section **61-2e-307** is amended to read:

3732 **61-2e-307. Prohibitions related to an appraiser.**

3733 (1) An appraisal management company required to be registered under this chapter, or
3734 a controlling person, employee, or agent of the appraisal management company may not
3735 influence or attempt to influence the development, reporting, or review of an appraisal through:

3736 (a) coercion;

3737 (b) extortion;

3738 (c) collusion;

3739 (d) compensation;

3740 (e) instruction;

3741 (f) inducement;

3742 (g) intimidation;

3743 (h) bribery; or

3744 (i) any other manner that would constitute undue influence.

3745 (2) A violation of Subsection (1) includes doing one or more of the following for a
3746 purpose listed in Subsection (1):

3747 (a) withholding or threatening to withhold timely payment for an appraisal;

- 3748 (b) withholding or threatening to withhold future business for an appraiser;
3749 (c) taking adverse action or threatening to take adverse action against an appraiser
3750 regarding use of the appraiser for a real estate appraisal activity;
- 3751 (d) expressly or by implication promising future business or increased compensation
3752 for an appraiser;
- 3753 (e) conditioning one or more of the following on the opinion, conclusion, or valuation
3754 to be reached, or on a preliminary estimate or opinion requested from an appraiser:
- 3755 (i) a request for a real estate appraisal activity; or
3756 (ii) the payment of consideration;
- 3757 (f) requesting that an appraiser provide at any time before the appraiser's completion of
3758 a real estate appraisal activity:
- 3759 (i) an estimated, predetermined, or desired valuation in an appraisal report; or
3760 (ii) an estimated value or comparable sale;
- 3761 (g) except for a copy of a sales contract for a purchase transaction, providing to an
3762 appraiser:
- 3763 (i) an anticipated, estimated, encouraged, or desired value for a subject property; or
3764 (ii) a proposed or target amount to be loaned to the borrower;
- 3765 (h) providing to an appraiser, or an individual related to the appraiser, stock or other
3766 financial or non-financial benefits;
- 3767 (i) allowing the removal of an appraiser from an appraiser panel, without prior written
3768 notice to the appraiser as required by Section 61-2e-306;
- 3769 (j) obtaining, using, or paying for a subsequent appraisal or ordering an automated
3770 valuation model in connection with a mortgage financing transaction unless:
- 3771 (i) (A) there is a reasonable basis to believe that the initial appraisal does not meet
3772 applicable appraisal standards; and
- 3773 (B) the reasonable basis is noted in the loan file; or
- 3774 (ii) the subsequent appraisal or automated valuation model is done pursuant to a pre- or
3775 post-funding appraisal review or quality control process in accordance with applicable
3776 appraisal standards;
- 3777 (k) compensating an appraiser in a manner that the person should reasonably have
3778 known would result in the appraiser not conducting a real estate appraisal activity in a manner

3779 consistent with applicable appraisal standards;

3780 (l) engaging in the business of an appraisal management company under an assumed or
3781 fictitious name not properly registered in this state;

3782 (m) accepting a contingent fee for performing an appraisal management service if the
3783 fee is contingent on:

3784 (i) the appraiser report having a predetermined analysis, opinion, or conclusion;

3785 (ii) the analysis, opinion, conclusion, or valuation reached in an appraisal report; or

3786 (iii) the consequences resulting from the appraisal assignment; or

3787 (n) any other act or practice that impairs or attempts to impair an appraiser's
3788 independence, objectivity, or impartiality.

3789 (3) An appraisal management company required to be registered under this chapter, or
3790 a controlling person, employee, or agent of the appraisal management company, may not
3791 require an appraiser to indemnify the appraisal management company against liability except
3792 liability for errors and omissions by the appraiser.

3793 [~~3~~] (4) This section may not be construed to prohibit an appraisal management
3794 company from requesting that an appraiser:

3795 (a) provide additional information about the basis for a valuation; or

3796 (b) correct an objective factual error in an appraisal report.

3797 [~~4~~] (5) An appraisal management company required to be registered under this
3798 chapter, or a controlling person, employee, or agent of the appraisal management company may
3799 not alter, modify, or otherwise change a completed appraisal report submitted by an appraiser.

3800 Section 64. Section **61-2e-401** is amended to read:

3801 **61-2e-401. Division authority -- Immunity.**

3802 (1) (a) In addition to a power or duty expressly provided in this chapter, the division
3803 may:

3804 (i) receive and act on a complaint including:

3805 (A) taking action designed to obtain voluntary compliance with this chapter; or

3806 (B) commencing an administrative or judicial proceeding on the division's own
3807 initiative;

3808 (ii) investigate an entity required to be registered under this chapter, regardless of
3809 whether the entity is located in Utah; and

3810 (iii) employ one or more investigators, clerks, or other employees or agents if:
3811 (A) approved by the executive director; and
3812 (B) within the budget of the division.
3813 (b) A failure to respond to a request by the division in an investigation under this
3814 chapter is considered to be a separate violation of this chapter, including:
3815 (i) failing to respond to a subpoena;
3816 (ii) withholding evidence; or
3817 (iii) failing to produce a document or record.
3818 (2) (a) If a person is found to have violated this chapter or a rule made under this
3819 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,
3820 document, or record required under this chapter, including the costs incurred to copy an
3821 electronic book, paper, contract, document, or record in a universally readable format.
3822 (b) If a person fails to pay the costs described in Subsection (2)(a) when due, the
3823 person's registration is automatically suspended:
3824 (i) beginning the day on which the payment of costs is due; and
3825 (ii) ending the day on which the costs are paid.
3826 [~~2~~] (3) The division is immune from a civil action or criminal prosecution for
3827 initiating or assisting in a lawful investigation of an act or participating in a disciplinary
3828 proceeding under this chapter if the division takes the action:
3829 (a) without malicious intent; and
3830 (b) in the reasonable belief that the action is taken pursuant to the powers and duties
3831 vested in the division under this chapter.
3832 Section 65. Section **61-2e-402** is amended to read:
3833 **61-2e-402. Enforcement -- Immunity for board.**
3834 (1) (a) The board may order disciplinary action, with the concurrence of the division,
3835 against:
3836 (i) an entity registered under this chapter;
3837 (ii) an entity required to be registered under this chapter; or
3838 (iii) a controlling person of an entity described in this Subsection (1)(a).
3839 (b) If the board, with the concurrence of the division, makes a finding described in
3840 Subsection (2) pursuant to an adjudicative proceeding conducted in accordance with Title 63G,

3841 Chapter 4, Administrative Procedures Act, the board, with the concurrence of the division,
3842 may:

- 3843 (i) revoke, suspend, or place an entity's registration on probation;
- 3844 (ii) deny an entity's original registration;
- 3845 (iii) deny an entity's renewal registration;
- 3846 (iv) in the case of denial or revocation of a registration, set a waiting period for an
3847 applicant to apply for a registration under this chapter;
- 3848 (v) order remedial education;
- 3849 (vi) impose a civil penalty upon a person not to exceed the greater of:
3850 (A) [~~\$2,500~~] \$5,000 for each violation; or
3851 (B) the amount of any gain or economic benefit from a violation;
- 3852 (vii) issue a cease and desist order; or
3853 (viii) do a combination of Subsections (1)(b)(i) through (vii).
- 3854 (2) Subsection (1) applies if the board finds, with the concurrence of the division, that a
3855 person has engaged in, is attempting to, or has attempted to engage in:
 - 3856 (a) an act that violates this chapter;
 - 3857 (b) an act that violates a rule made [~~by the board~~] under this chapter;
 - 3858 (c) procuring a registration for the person or another person by fraud,
3859 misrepresentation, or deceit;
 - 3860 (d) paying money or attempting to pay money other than a fee provided for by this
3861 chapter to an employee of the division to procure a registration under this chapter;
 - 3862 (e) an act or omission in the business of an appraisal management company that
3863 constitutes dishonesty, fraud, or misrepresentation;
 - 3864 (f) unprofessional conduct as defined by statute or rule; or
3865 (g) other conduct that constitutes dishonest dealing.
- 3866 (3) (a) If the board, with the concurrence of the director, issues an order that orders a
3867 fine or remedial education as part of a disciplinary action against a person, including a
3868 stipulation and order, the board shall state in the order the deadline by which the person shall
3869 comply with the fine or remedial education requirements.
- 3870 (b) If a person fails to comply by the stated deadline, the person's registration shall be
3871 immediately and automatically suspended:

3872 (i) beginning the day specified in the order as the deadline for compliance; and
3873 (ii) ending the day on which the person complies in full with the order.
3874 (c) If a person fails to pay a fine required by an order, the division shall begin a
3875 collection process:
3876 (i) established by the division by rule made in accordance with Title 63G, Chapter 3,
3877 Utah Administrative Rulemaking Act; and
3878 (ii) subject to Title 63A, Chapter 8, Office of State Debt Collection.
3879 [~~3~~] (4) A member of the board is immune from a civil action or criminal prosecution
3880 for a disciplinary proceeding under this chapter if:
3881 (a) the action is taken without malicious intent; and
3882 (b) in the reasonable belief that the action taken was taken pursuant to the powers and
3883 duties vested in a member of the board under this chapter.
3884 Section 66. Section **61-2f-102** is amended to read:
3885 **61-2f-102. Definitions.**
3886 As used in this chapter:
3887 (1) "Associate broker" means an individual who is:
3888 (a) employed or engaged as an independent contractor by or on behalf of a principal
3889 broker to perform an act set out in Subsection [~~17~~] (18) for valuable consideration; and
3890 (b) licensed under this chapter as an associate broker.
3891 (2) "Branch office" means a principal broker's real estate brokerage office that is not
3892 the principal broker's main office.
3893 (3) "Business day" means a day other than:
3894 (a) a Saturday;
3895 (b) a Sunday; or
3896 (c) a federal or state holiday.
3897 (4) "Business opportunity" means the sale, lease, or exchange of any business that
3898 includes an interest in real estate.
3899 [~~4~~] (5) "Commission" means the Real Estate Commission established under this
3900 chapter.
3901 [~~5~~] (6) "Concurrence" means the entities given a concurring role must jointly agree
3902 for action to be taken.

3903 [~~(6)~~] (7) "Condominium unit" is as defined in Section 57-8-3.

3904 [~~(7)~~] (8) "Condominium homeowners' association" means the condominium unit

3905 owners acting as a group in accordance with declarations and bylaws.

3906 [~~(8)~~] (9) (a) "Condominium hotel" means one or more condominium units that are

3907 operated as a hotel.

3908 (b) "Condominium hotel" does not mean a hotel consisting of condominium units, all

3909 of which are owned by a single entity.

3910 [~~(9)~~] (10) "Director" means the director of the Division of Real Estate.

3911 [~~(10)~~] (11) "Division" means the Division of Real Estate.

3912 [~~(11)~~] (12) "Entity" means:

3913 (a) a corporation;

3914 (b) a partnership;

3915 (c) a limited liability company;

3916 (d) a company;

3917 (e) an association;

3918 (f) a joint venture;

3919 (g) a business trust;

3920 (h) a trust; or

3921 (i) any organization similar to an entity described in Subsections [~~(11)~~] (12)(a) through

3922 (h).

3923 [~~(12)~~] (13) "Executive director" means the director of the Department of Commerce.

3924 [~~(13)~~] (14) "Foreclosure rescue" means, for compensation or with the expectation of

3925 receiving valuable consideration, to:

3926 (a) engage, or offer to engage, in an act that:

3927 (i) the person represents will assist a borrower in preventing a foreclosure; and

3928 (ii) relates to a transaction involving the transfer of title to residential real property; or

3929 (b) as an employee or agent of another person:

3930 (i) solicit, or offer that the other person will engage in an act described in Subsection

3931 [~~(13)~~] (14)(a); or

3932 (ii) negotiate terms in relationship to an act described in Subsection [~~(13)~~] (14)(a).

3933 [~~(14)~~] (15) "Loan modification assistance" means, for compensation or with the

3934 expectation of receiving valuable consideration, to:

3935 (a) act, or offer to act, on behalf of a person to:

3936 (i) obtain a loan term of a residential mortgage loan that is different from an existing
3937 loan term including:

3938 (A) an increase or decrease in an interest rate;

3939 (B) a change to the type of interest rate;

3940 (C) an increase or decrease in the principal amount of the residential mortgage loan;

3941 (D) a change in the number of required period payments;

3942 (E) an addition of collateral;

3943 (F) a change to, or addition of, a prepayment penalty;

3944 (G) an addition of a cosigner; or

3945 (H) a change in persons obligated under the existing residential mortgage loan; or

3946 (ii) substitute a new residential mortgage loan for an existing residential mortgage loan;

3947 or

3948 (b) as an employee or agent of another person:

3949 (i) solicit, or offer that the other person will engage in an act described in Subsection

3950 [~~(14)~~] (15)(a); or

3951 (ii) negotiate terms in relationship to an act described in Subsection [~~(14)~~] (15)(a).

3952 [~~(15)~~] (16) "Main office" means the address which a principal broker designates with
3953 the division as the principal broker's primary brokerage office.

3954 [~~(16)~~] (17) "Person" means an individual or entity.

3955 [~~(17)~~] (18) "Principal broker" means an individual who is licensed as a principal broker
3956 under this chapter and who:

3957 (a) (i) sells or lists real estate or a business opportunity for sale with the expectation of
3958 receiving valuable consideration;

3959 (ii) buys, exchanges, or auctions real estate, [~~options~~] an option on real estate, a
3960 business opportunity, or [~~improvements~~] an improvement on real estate with the expectation of
3961 receiving valuable consideration; or

3962 (iii) [~~who~~] advertises, offers, attempts, or otherwise holds the individual out to be
3963 engaged in the business described in Subsection [~~(17)~~] (18)(a)(i) or (ii);

3964 (b) is employed by or on behalf of the owner of real estate or by a prospective

3965 purchaser of real estate and performs an act described in Subsection ~~[(17)]~~ (18)(a), whether the
3966 individual's compensation is at a stated salary, a commission basis, upon a salary and
3967 commission basis, or otherwise;

3968 (c) (i) with the expectation of receiving valuable consideration, manages property
3969 owned by another person; or

3970 (ii) advertises or otherwise holds the individual out to be engaged in property
3971 management;

3972 (d) with the expectation of receiving valuable consideration, assists or directs in the
3973 procurement of prospects for or the negotiation of a transaction listed in Subsections ~~[(17)]~~
3974 (18)(a) and (c);

3975 (e) except for a mortgage lender, title insurance producer, or an employee of a
3976 mortgage lender or title insurance producer, assists or directs in the closing of a real estate
3977 transaction with the expectation of receiving valuable consideration; or

3978 (f) (i) engages in foreclosure rescue; or

3979 (ii) advertises, offers, attempts, or otherwise holds the person out as being engaged in
3980 foreclosure rescue~~[-and]~~.

3981 ~~[(g) is licensed as a principal broker under this chapter.]~~

3982 ~~[(18)]~~ (19) (a) "Property management" means engaging in, with the expectation of
3983 receiving valuable consideration, the management of real estate owned by another person or
3984 advertising or otherwise claiming to be engaged in property management by:

3985 (i) advertising for, arranging, negotiating, offering, or otherwise attempting or
3986 participating in a transaction calculated to secure the rental or leasing of real estate;

3987 (ii) collecting, agreeing, offering, or otherwise attempting to collect rent for the real
3988 estate and accounting for and disbursing the money collected; or

3989 (iii) authorizing expenditures for repairs to the real estate.

3990 (b) "Property management" does not include:

3991 (i) hotel or motel management;

3992 (ii) rental of tourist accommodations, including hotels, motels, tourist homes,
3993 condominiums, condominium hotels, mobile home park accommodations, campgrounds, or
3994 similar public accommodations for a period of less than 30 consecutive days, and the
3995 management activities associated with these rentals; or

3996 (iii) the leasing or management of surface or subsurface minerals or oil and gas
3997 interests, if the leasing or management is separate from a sale or lease of the surface estate.

3998 [~~19~~] (20) "Real estate" includes leaseholds and business opportunities involving real
3999 property.

4000 [~~20~~] (21) (a) "Regular salaried employee" means an individual who performs a
4001 service for wages or other remuneration, whose employer withholds federal employment taxes
4002 under a contract of hire, written or oral, express or implied.

4003 (b) "Regular salaried employee" does not include an individual who performs services
4004 on a project-by-project basis or on a commission basis.

4005 [~~21~~] (22) "Reinstatement" means restoring a license that has expired or has been
4006 suspended.

4007 [~~22~~] (23) "Reissuance" means the process by which a licensee may obtain a license
4008 following revocation of the license.

4009 [~~23~~] (24) "Renewal" means extending a license for an additional licensing period on
4010 or before the date the license expires.

4011 [~~24~~] (25) "Sales agent" means an individual who is:

4012 (a) affiliated with a principal broker, either as an independent contractor or an
4013 employee as provided in Section 61-2f-303, to perform for valuable consideration an act
4014 described in Subsection [~~17~~] (18); and

4015 (b) licensed under this chapter as a sales agent.

4016 [~~25~~] (26) (a) "Undivided fractionalized long-term estate" means an ownership interest
4017 in real property by two or more persons that is:

4018 (i) a tenancy in common; or

4019 (ii) any other legal form of undivided estate in real property including:

4020 (A) a fee estate;

4021 (B) a life estate; or

4022 (C) other long-term estate.

4023 (b) "Undivided fractionalized long-term estate" does not include a joint tenancy.

4024 Section 67. Section **61-2f-105** is amended to read:

4025 **61-2f-105. Fees.**

4026 (1) In addition to when expressly authorized in another provision of this chapter, the

4027 division may charge and collect reasonable fees determined by the commission with the
4028 concurrence of the division under Section 63J-1-504 to cover the costs for:

4029 (a) issuing a new or duplicate license;

4030 (b) registering an entity or branch office;

4031 (c) certifying a real estate school, course, or instructor;

4032 (d) providing a history of a license, registration, or certification; ~~and~~

4033 (e) producing a certified copy of an official document, order, or other paper or
4034 transcript; and

4035 (f) other duties required by this chapter.

4036 (2) Notwithstanding Section 13-1-2, a fee collected under Subsection (1)(c) shall be
4037 deposited in the Real Estate Education, Research, and Recovery Fund.

4038 (3) If a person pays a fee or costs to the division with a negotiable instrument ~~and the~~
4039 ~~negotiable instrument~~ or other payment method that is not honored for payment:

4040 (a) the transaction for which the payment is submitted is voidable by the division;

4041 (b) the division may reverse the transaction if payment of the applicable fee or costs is
4042 not received in full; and

4043 (c) the person's license, certification, or registration is automatically suspended:

4044 (i) beginning the day on which the payment is due; and

4045 (ii) ending the day on which payment is made in full.

4046 (4) (a) A fee under this chapter is in lieu of all other license fees or assessments that
4047 might otherwise be imposed or charged by the state or any of its political subdivisions upon, or
4048 as a condition of, the privilege of conducting the business regulated by this chapter, except that
4049 a political subdivision within the state may charge a business license fee on a principal broker
4050 if the principal broker maintains a place of business within the jurisdiction of the political
4051 subdivision.

4052 (b) Unless otherwise exempt, a licensee under this chapter is subject to the taxes
4053 imposed under Title 59, Revenue and Taxation.

4054 Section 68. Section **61-2f-202** is amended to read:

4055 **61-2f-202. Exempt persons and transactions.**

4056 (1) (a) Except as provided in Subsection (1)(b), a license under this chapter is not
4057 required for:

- 4058 (i) an individual who as owner or lessor performs an act described in Subsection
- 4059 61-2f-102[~~(17)~~](18) with reference to real estate owned or leased by that individual;
- 4060 (ii) a regular salaried employee of the owner or lessor of real estate who, with reference
- 4061 to nonresidential real estate owned or leased by the employer, performs an act described in
- 4062 Subsection 61-2f-102[~~(17)~~](18)(a) or (b);
- 4063 (iii) a regular salaried employee of the owner of real estate who performs property
- 4064 management services with reference to real estate owned by the employer, except that the
- 4065 employee may only manage real estate for one employer;
- 4066 (iv) an individual who performs property management services for the apartments at
- 4067 which that individual resides in exchange for free or reduced rent on that individual's
- 4068 apartment;
- 4069 (v) a regular salaried employee of a condominium homeowners' association who
- 4070 manages real estate subject to the declaration of condominium that established the
- 4071 condominium homeowners' association, except that the employee may only manage real estate
- 4072 for one condominium homeowners' association; and
- 4073 (vi) a regular salaried employee of a licensed property management company who
- 4074 performs support services, as prescribed by rule, for the property management company.
- 4075 (b) Subsection (1)(a) does not exempt from licensing:
- 4076 (i) an employee engaged in the sale of real estate regulated under:
- 4077 (A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; ~~and~~ or
- 4078 (B) Title 57, Chapter ~~[19]~~ 19a, Timeshare and Camp Resort Act;
- 4079 (ii) an employee engaged in the sale of cooperative interests regulated under Title 57,
- 4080 Chapter 23, Real Estate Cooperative Marketing Act; or
- 4081 (iii) an individual whose interest as an owner or lessor is obtained by that individual or
- 4082 transferred to that individual for the purpose of evading the application of this chapter, and not
- 4083 for another legitimate business reason.
- 4084 (2) A license under this chapter is not required for:
- 4085 (a) an isolated transaction by an individual holding a duly executed power of attorney
- 4086 from an owner;
- 4087 (b) services rendered by an attorney in performing the attorney's duties as an attorney;
- 4088 (c) a receiver, trustee in bankruptcy, administrator, executor, or an individual acting

- 4089 under order of a court;
- 4090 (d) a trustee or employee of a trustee under a deed of trust or a will;
- 4091 (e) a public utility, officer of a public utility, or regular salaried employee of a public
4092 utility, unless performance of an act described in Subsection 61-2f-102~~[(17)]~~(18) is in
4093 connection with the sale, purchase, lease, or other disposition of real estate or investment in
4094 real estate unrelated to the principal business activity of that public utility;
- 4095 (f) a regular salaried employee or authorized agent working under the oversight of the
4096 Department of Transportation when performing an act on behalf of the Department of
4097 Transportation in connection with one or more of the following:
- 4098 (i) the acquisition of real estate pursuant to Section 72-5-103;
- 4099 (ii) the disposal of real estate pursuant to Section 72-5-111;
- 4100 (iii) services that constitute property management; or
- 4101 (iv) the leasing of real estate; and
- 4102 (g) a regular salaried employee of a county, city, or town when performing an act on
4103 behalf of the county, city, or town:
- 4104 (i) in accordance with:
- 4105 (A) if a regular salaried employee of a city or town:
- 4106 (I) Title 10, Utah Municipal Code; or
- 4107 (II) Title 11, Cities, Counties, and Local Taxing Units; and
- 4108 (B) if a regular salaried employee of a county:
- 4109 (I) Title 11, Cities, Counties, and Local Taxing Units; and
- 4110 (II) Title 17, Counties; and
- 4111 (ii) in connection with one or more of the following:
- 4112 (A) the acquisition of real estate, including by eminent domain;
- 4113 (B) the disposal of real estate;
- 4114 (C) services that constitute property management; or
- 4115 (D) the leasing of real estate.
- 4116 (3) A license under this chapter is not required for an individual registered to act as a
4117 broker-dealer, agent, or investment adviser under the Utah and federal securities laws in the
4118 sale or the offer for sale of real estate if:
- 4119 (a) (i) the real estate is a necessary element of a "security" as that term is defined by the

4120 Securities Act of 1933 and the Securities Exchange Act of 1934; and

4121 (ii) the security is registered for sale in accordance with:

4122 (A) the Securities Act of 1933; or

4123 (B) Title 61, Chapter 1, Utah Uniform Securities Act; or

4124 (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec.

4125 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation

4126 D, Rule 506, 17 C.F.R. Sec. 230.506; and

4127 (ii) the selling agent and the purchaser are not residents of this state.

4128 Section 69. Section **61-2f-203** is amended to read:

4129 **61-2f-203. Licensing requirements.**

4130 (1) (a) Except as provided in Subsection (5), the commission shall determine the

4131 qualifications and requirements of an applicant for:

4132 (i) a principal broker license;

4133 (ii) an associate broker license; or

4134 (iii) a sales agent license.

4135 (b) The division, with the concurrence of the commission, shall require and pass upon

4136 proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency of

4137 each applicant for an initial license or for renewal of an existing license.

4138 (c) (i) The division, with the concurrence of the commission, shall require an applicant

4139 for:

4140 (A) a sales agent license to complete an approved educational program consisting of

4141 the number of hours designated by rule made by the commission with the concurrence of the

4142 division, except that the rule may not require less than 120 hours; and

4143 (B) an associate broker or a principal broker license to complete an approved

4144 educational program consisting of the number of hours designated by rule made by the

4145 commission with the concurrence of the division, except that the rule may not require less than

4146 120 hours.

4147 (ii) An hour required by this section means 50 minutes of instruction in each 60

4148 minutes.

4149 (iii) The maximum number of program hours available to an individual is eight hours

4150 per day.

4151 (d) The division, with the concurrence of the commission, shall require the applicant to
4152 pass an examination approved by the commission covering:

4153 (i) the fundamentals of:

4154 (A) the English language;

4155 (B) arithmetic;

4156 (C) bookkeeping; and

4157 (D) real estate principles and practices;

4158 (ii) ~~[the provisions of]~~ this chapter;

4159 (iii) the rules established by the commission; and

4160 (iv) any other aspect of Utah real estate license law considered appropriate.

4161 (e) (i) Three years' full-time experience as a sales agent or its equivalent is required
4162 before an applicant may apply for, and secure a principal broker or associate broker license in
4163 this state.

4164 (ii) The commission shall establish by rule, made in accordance with Title 63G,
4165 Chapter 3, Utah Administrative Rulemaking Act, the criteria by which the commission will
4166 accept experience or special education in similar fields of business in lieu of the three years'
4167 experience.

4168 (2) (a) The division, with the concurrence of the commission, may require an applicant
4169 to furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's
4170 reputation and competency as set forth by rule.

4171 (b) The division shall require an applicant to provide the applicant's Social Security
4172 number, which is a private record under Subsection 63G-2-302(1)(h).

4173 (3) (a) An individual who is not a resident of this state may be licensed in this state if
4174 the person complies with ~~[all the provisions of]~~ this chapter.

4175 (b) An individual who is not a resident of this state may be licensed as an associate
4176 broker or sales agent in this state by:

4177 (i) complying with ~~[all the provisions of]~~ this chapter; and

4178 (ii) being employed or engaged as an independent contractor by or on behalf of a
4179 principal broker who is licensed in this state, regardless of whether the principal broker is a
4180 resident of this state.

4181 (4) (a) ~~[Except as provided in Subsection 61-2f-204(1)(e)(vi), the]~~ The division and

4182 commission shall treat an application to be relicensed of an applicant whose real estate license
4183 is revoked as an original application.

4184 (b) In the case of an applicant for a new license as a principal broker or associate
4185 broker, the applicant is not entitled to credit for experience gained before the revocation of a
4186 real estate license.

4187 (5) (a) Notwithstanding Subsection (1), the commission may delegate to the division
4188 the authority to:

- 4189 (i) review a class or category of applications for initial or renewed licenses;
- 4190 (ii) determine whether an applicant meets the licensing criteria in Subsection (1); and
- 4191 (iii) approve or deny a license application without concurrence by the commission.

4192 (b) (i) If the commission delegates to the division the authority to approve or deny an
4193 application without concurrence by the commission and the division denies an application for
4194 licensure, the applicant who is denied licensure may petition the commission for de novo
4195 review of the [~~denial of licensure~~] application.

4196 (ii) An applicant who is denied licensure pursuant to this Subsection (5) may seek
4197 agency review by the executive director only after the commission has reviewed the division's
4198 denial of the applicant's application.

4199 Section 70. Section **61-2f-204** is amended to read:

4200 **61-2f-204. Licensing fees and procedures -- Renewal fees and procedures.**

4201 (1) (a) Upon filing an application for an examination for a license under this chapter,
4202 the applicant shall pay a nonrefundable fee as determined by the commission with the
4203 concurrence of the division under Section 63J-1-504 for admission to the examination.

4204 (b) An applicant for a principal broker, associate broker, or sales agent license shall
4205 pay a nonrefundable fee as determined by the commission with the concurrence of the division
4206 under Section 63J-1-504 for issuance of an initial license or license renewal.

4207 (c) A license issued under this Subsection (1) shall be issued for a period of not less
4208 than two years as determined by the division with the concurrence of the commission.

4209 (d) (i) Any of the following applicants shall comply with this Subsection (1)(d):

- 4210 (A) a new sales agent applicant;
- 4211 (B) a principal broker applicant; or
- 4212 (C) an associate broker applicant.

- 4213 (ii) An applicant described in this Subsection (1)(d) shall:
- 4214 (A) submit fingerprint cards in a form acceptable to the division at the time the license
4215 application is filed; and
- 4216 (B) consent to a criminal background check by the Utah Bureau of Criminal
4217 Identification and the Federal Bureau of Investigation regarding the application.
- 4218 (iii) The division shall request the Department of Public Safety to complete a Federal
4219 Bureau of Investigation criminal background check for each applicant described in this
4220 Subsection (1)(d) through the national criminal history system or any successor system.
- 4221 (iv) The applicant shall pay the cost of the criminal background check and the
4222 fingerprinting.
- 4223 (v) Money paid to the division by an applicant for the cost of the criminal background
4224 check is nonlapsing.
- 4225 (e) (i) A license issued under Subsection (1)(d) is conditional, pending completion of
4226 the criminal background check.
- 4227 (ii) A license is immediately and automatically revoked if the criminal background
4228 check discloses the applicant fails to accurately disclose a criminal history involving:
- 4229 (A) the real estate industry; or
- 4230 [~~(B) fraud;~~]
- 4231 [~~(C) misrepresentation; or~~]
- 4232 [~~(D) deceit.~~]
- 4233 (B) a felony conviction on the basis of an allegation of fraud, misrepresentation, or
4234 deceit.
- 4235 (iii) If a criminal background check discloses that an applicant fails to accurately
4236 disclose a criminal history other than one described in Subsection (1)(e)(ii), the division:
- 4237 (A) shall review the application; and
- 4238 (B) in accordance with rules made by the division pursuant to Title 63G, Chapter 3,
4239 Utah Administrative Rulemaking Act, may:
- 4240 (I) place a condition on a license;
- 4241 (II) place a restriction on a license;
- 4242 (III) revoke a license; or
- 4243 (IV) refer the application to the commission for a decision.

4244 (iv) A person whose conditional license is automatically revoked under Subsection
4245 (1)(e)(ii) or whose license is conditioned, restricted, or revoked under Subsection (1)(e)(iii)
4246 may have a hearing after the action is taken to challenge the action. The hearing shall be
4247 conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

4248 (v) The director shall designate one of the following to act as the presiding officer in a
4249 hearing described in Subsection (1)(e)(iv):

4250 (A) the division; or

4251 (B) the division with the concurrence of the commission.

4252 (vi) The decision on whether relief from an action under this Subsection (1)(e) will be
4253 granted shall be made by the presiding officer.

4254 (vii) Relief from an automatic revocation under Subsection (1)(e)(ii) may be granted
4255 only if:

4256 (A) the criminal history upon which the division based the revocation:

4257 (I) did not occur; or

4258 (II) is the criminal history of another person;

4259 (B) (I) the revocation is based on a failure to accurately disclose a criminal history; and

4260 (II) the applicant has a reasonable good faith belief at the time of application that there
4261 was no criminal history to be disclosed; or

4262 (C) the division fails to follow the prescribed procedure for the revocation.

4263 (viii) If a license is revoked or a revocation under this Subsection (1)(e) is upheld after
4264 a hearing, the individual may not apply for a new license until at least 12 months after the day
4265 on which the license is revoked.

4266 (2) (a) (i) A license expires if it is not renewed on or before its expiration date.

4267 (ii) As a condition of renewal, an active licensee shall demonstrate competence by
4268 completing 18 hours of continuing education within a two-year renewal period subject to rules
4269 made by the commission, with the concurrence of the division.

4270 (iii) In making a rule described in Subsection (2)(c)(ii), the division and commission
4271 shall consider:

4272 (A) evaluating continuing education on the basis of competency, rather than course
4273 time;

4274 (B) allowing completion of courses in a significant variety of topic areas that the

4275 division and commission determine are valuable in assisting an individual licensed under this
4276 chapter to increase the individual's competency; and

4277 (C) allowing completion of courses that will increase a licensee's professional
4278 competency in the area of practice of the licensee.

4279 (iv) The division may award credit to a licensee for a continuing education requirement
4280 of this Subsection (2)(a) for a reasonable period of time upon a finding of reasonable cause,
4281 including:

4282 (A) military service; or

4283 (B) if an individual is elected or appointed to government service, the individual's
4284 government service during which the individual spends a substantial time addressing real estate
4285 issues subject to conditions established by rule made in accordance with Title 63G, Chapter 3,
4286 Utah Administrative Rulemaking Act.

4287 (b) For a period of 30 days after the expiration date of a license, the license may be
4288 reinstated upon:

4289 (i) payment of a renewal fee and a late fee determined by the commission with the
4290 concurrence of the division under Section 63J-1-504; and

4291 (ii) providing proof acceptable to the division and the commission of the licensee
4292 having:

4293 (A) completed the hours of education required by Subsection (2)(a); or

4294 (B) demonstrated competence as required under Subsection (2)(a).

4295 (c) After the 30-day period described in Subsection (2)(b), and until six months after
4296 the expiration date, the license may be reinstated by:

4297 (i) paying a renewal fee and a late fee determined by the commission with the
4298 concurrence of the division under Section 63J-1-504;

4299 (ii) providing to the division proof of satisfactory completion of six hours of continuing
4300 education:

4301 (A) in addition to the requirements for a timely renewal; and

4302 (B) on a subject determined by the commission by rule made in accordance with Title
4303 63G, Chapter 3, Utah Administrative Rulemaking Act; and

4304 (iii) providing proof acceptable to the division and the commission of the licensee
4305 having:

4306 (A) completed the hours of education required under Subsection (2)(a); or
4307 (B) demonstrated competence as required under Subsection (2)(a).
4308 (d) After the six-month period described in Subsection (2)(c), and until one year after
4309 the expiration date, the license may be reinstated by:
4310 (i) paying a renewal fee and a late fee determined by the commission with the
4311 concurrence of the division under Section 63J-1-504;
4312 (ii) providing to the division proof of satisfactory completion of 24 hours of continuing
4313 education:
4314 (A) in addition to the requirements for a timely renewal; and
4315 (B) on a subject determined by the commission by rule made in accordance with Title
4316 63G, Chapter 3, Utah Administrative Rulemaking Act; and
4317 (iii) providing proof acceptable to the division and the commission of the licensee
4318 having:
4319 (A) completed the hours of education required by Subsection (2)(a); or
4320 (B) demonstrated competence as required under Subsection (2)(a).
4321 (e) The division shall relicense a person who does not renew that person's license
4322 within one year as prescribed for an original application.
4323 (f) Notwithstanding Subsection (2)(a), the division may extend the term of a license
4324 that would expire under Subsection (2)(a) except for the extension if:
4325 (i) (A) the person complies with the requirements of this section to renew the license;
4326 and
4327 ~~[(ii)]~~ (B) the renewal application remains pending at the time of the extension~~[-there is~~
4328 ~~pending under this chapter.]; or~~
4329 ~~[(A) the application for renewal of the license; or]~~
4330 ~~[(B)]~~ (ii) at the time of the extension, there is pending a disciplinary action under this
4331 chapter.
4332 (3) (a) As a condition for the activation of an inactive license that was in an inactive
4333 status at the time of the licensee's most recent renewal, the licensee shall supply the division
4334 with proof of:
4335 (i) successful completion of the respective sales agent or principal broker licensing
4336 examination within six months ~~[prior to]~~ before applying to activate the license; or

4337 (ii) the successful completion of the hours of continuing education that the licensee
4338 would have been required to complete under Subsection (2)(a) if the license had been on active
4339 status at the time of the licensee's most recent renewal.

4340 (b) The commission may, in accordance with Title 63G, Chapter 3, Utah
4341 Administrative Rulemaking Act, establish by rule:

- 4342 (i) the nature or type of continuing education required for reactivation of a license; and
- 4343 (ii) how long before reactivation the continuing education must be completed.

4344 Section 71. Section **61-2f-206** is amended to read:

4345 **61-2f-206. Registration of entity or branch office -- Certification of education**
4346 **providers and courses -- Specialized licenses.**

4347 (1) (a) An entity may not engage in an activity described in Section 61-2f-201, unless it
4348 is registered with the division.

4349 (b) To register with the division under this Subsection (1), an entity shall submit to the
4350 division:

- 4351 (i) an application in a form required by the division;
- 4352 (ii) evidence of an affiliation with a principal broker;
- 4353 (iii) evidence that the entity is registered and in good standing with the Division of
4354 Corporations and Commercial Code; and
- 4355 (iv) a registration fee established by the commission with the concurrence of the
4356 division under Section 63J-1-504.

4357 (2) (a) A principal broker shall register with the division each of the principal broker's
4358 branch offices.

4359 (b) To register a branch office with the division under this Subsection (2), a principal
4360 broker shall submit to the division:

- 4361 (i) an application in a form required by the division; and
- 4362 (ii) a registration fee established by the commission with the concurrence of the
4363 division under Section 63J-1-504.

4364 (3) (a) In accordance with rules made by the commission, the division shall certify:

- 4365 (i) a real estate school;
- 4366 (ii) a course provider; or
- 4367 (iii) an instructor.

4368 (b) In accordance with rules made by the commission, and with the concurrence of the
4369 commission, the division shall certify a continuing education course that is required under this
4370 ~~[section]~~ chapter.

4371 (4) (a) Except as provided by rule, a principal broker may not be responsible for more
4372 than one registered entity at the same time.

4373 (b) (i) In addition to issuing a principal broker license, associate broker license, or sales
4374 agent license authorizing the performance of an act set forth in Section 61-2f-201, the division
4375 may issue a specialized sales license or specialized property management license with the
4376 scope of practice limited to the specialty.

4377 (ii) An individual may hold a specialized license in addition to a license as a principal
4378 broker, associate broker, or a sales agent.

4379 (iii) The commission may adopt rules pursuant to Title 63G, Chapter 3, Utah
4380 Administrative Rulemaking Act, for the administration of this Subsection (4), including:

4381 (A) prelicensing and postlicensing education requirements;

4382 (B) examination requirements;

4383 (C) affiliation with real estate brokerages or property management companies; and

4384 (D) other licensing procedures.

4385 Section 72. Section **61-2f-301** is amended to read:

4386 **61-2f-301. Reporting requirements.**

4387 (1) A licensee shall notify the division of the following by sending the division a
4388 signed statement within 10 business days of:

4389 ~~[(1)]~~ (a) (i) a conviction of a ~~[criminal offense]~~ felony, class A misdemeanor, or class
4390 B misdemeanor;

4391 ~~[(b)]~~ (ii) the entry of a plea in abeyance to a ~~[criminal offense]~~ felony, class A
4392 misdemeanor, or class B misdemeanor; or

4393 ~~[(c)]~~ (iii) the potential resolution of a ~~[criminal case]~~ felony, class A misdemeanor, or
4394 class B misdemeanor by:

4395 ~~[(1)]~~ (A) a diversion agreement; or

4396 ~~[(2)]~~ (B) another agreement under which a criminal charge is held in suspense for a
4397 period of time;

4398 ~~[(2)]~~ (b) filing a personal or brokerage bankruptcy;

4399 ~~[(3)]~~ (c) the suspension, revocation, surrender, cancellation, or denial of a license or
4400 registration of the licensee that is necessary to engage in an occupation or profession,
4401 regardless of whether the license or registration is issued by this state or another jurisdiction; or

4402 ~~[(4)]~~ (d) the entry of a cease and desist order or a temporary or permanent injunction:

4403 ~~[(a)]~~ (i) against the licensee by a court or administrative agency; and

4404 ~~[(b)]~~ (ii) on the basis of:

4405 ~~[(1)]~~ (A) conduct or a practice involving the business of real estate; or

4406 ~~[(2)]~~ (B) conduct involving fraud, misrepresentation, or deceit.

4407 (2) The commission, with the concurrence of the director, shall enforce the reporting
4408 requirement under this section pursuant to Section 61-2f-404.

4409 Section 73. Section **61-2f-308** is amended to read:

4410 **61-2f-308. Exclusive brokerage agreement.**

4411 (1) As used in this section:

4412 (a) "Client" means a person who makes an exclusive brokerage agreement with a
4413 principal broker under Subsection (1)(c).

4414 (b) "Closed" means that:

4415 (i) the documents required to be executed under the contract are executed;

4416 (ii) the money required to be paid by either party under the contract is paid in the form
4417 of collected or cleared funds;

4418 (iii) the proceeds of any new loan are delivered by the lender to the seller; and

4419 (iv) the applicable documents are recorded in the office of the county recorder for the
4420 county in which the real estate is located.

4421 (c) "Exclusive brokerage agreement" means a written agreement between a client and a
4422 principal broker:

4423 (i) (A) to list for sale, lease, or exchange:

4424 (I) real estate;

4425 (II) an option on real estate; or

4426 (III) an improvement on real estate; or

4427 (B) for representation in the purchase, lease, or exchange of:

4428 (I) real estate;

4429 (II) an option on real estate; or

- 4430 (III) an improvement on real estate;
- 4431 (ii) that gives the principal broker the sole right to act as the agent or representative of
- 4432 the client for the purchase, sale, lease, or exchange of:
- 4433 (A) real estate;
- 4434 (B) an option on real estate; or
- 4435 (C) an improvement on real estate; and
- 4436 (iii) that gives the principal broker the expectation of receiving valuable consideration
- 4437 in exchange for the principal broker's services.
- 4438 (2) (a) Except as provided in Subsection (2)(b), a principal broker subject to an
- 4439 exclusive brokerage agreement shall:
- 4440 (i) accept delivery of and present to the client offers and counteroffers to buy, lease, or
- 4441 exchange the client's real estate;
- 4442 (ii) assist the client in developing, communicating, and presenting offers, counteroffers,
- 4443 and notices; and
- 4444 (iii) answer any question the client has concerning:
- 4445 (A) an offer;
- 4446 (B) a counteroffer;
- 4447 (C) a notice; and
- 4448 (D) a contingency.
- 4449 (b) A principal broker subject to an exclusive brokerage agreement need not comply
- 4450 with Subsection (2)(a) after:
- 4451 (i) (A) an agreement for the sale, lease, or exchange of the real estate, option on real
- 4452 estate, or improvement on real estate is signed;
- 4453 (B) the contingencies related to the sale, lease, or exchange are satisfied or waived; and
- 4454 (C) the sale, lease, or exchange is closed; or
- 4455 (ii) the exclusive brokerage agreement expires or terminates.
- 4456 (3) A principal broker who contracts with a person for services under an agreement that
- 4457 is not an exclusive brokerage agreement shall:
- 4458 (a) provide the person with a written disclosure of the specific services that the
- 4459 principal broker will provide; and
- 4460 (b) obtain the person's acknowledgment of receipt on the written disclosure.

4461 (4) (a) A principal broker who represents a client under an exclusive brokerage
4462 agreement may negotiate a transaction with a person who, pursuant to Subsection (3), does not
4463 have an exclusive brokerage agreement with another principal broker if the principal broker
4464 provides a written disclosure to the person that states clearly that the principal broker:

4465 (i) does not act as the person's agent; and

4466 (ii) will not assist the person to:

4467 (A) complete a form;

4468 (B) negotiate the terms of the transaction; or

4469 (C) review or execute a closing document.

4470 (b) The division may not subject a principal broker who complies with this Subsection
4471 (4) to discipline for engaging in activities for which an agency agreement is required.

4472 [~~(3)~~] (5) A principal broker who violates this section is subject to Sections 61-2f-404
4473 and 61-2f-405.

4474 Section 74. Section **61-2f-401** is amended to read:

4475 **61-2f-401. Grounds for disciplinary action.**

4476 The following acts are unlawful for a person required to be licensed under this chapter:

4477 (1) (a) making a substantial misrepresentation;

4478 (b) making an intentional misrepresentation;

4479 (c) pursuing a continued and flagrant course of misrepresentation;

4480 (d) making a false representation or promise through an agent, sales agent, advertising,
4481 or otherwise; or

4482 (e) making a false representation or promise of a character likely to influence,
4483 persuade, or induce;

4484 (2) acting for more than one party in a transaction without the informed consent of [aH]
4485 the parties;

4486 (3) (a) acting as an associate broker or sales agent while not affiliated with a principal
4487 broker;

4488 (b) representing or attempting to represent a principal broker other than the principal
4489 broker with whom the person is affiliated; or

4490 (c) representing as sales agent or having a contractual relationship similar to that of
4491 sales agent with a person other than a principal broker;

4492 (4) (a) failing, within a reasonable time, to account for or to remit money that belongs
4493 to another and comes into the person's possession;

4494 (b) commingling money described in Subsection (4)(a) with the person's own money;
4495 or

4496 (c) diverting money described in Subsection (4)(a) from the purpose for which the
4497 money is received;

4498 (5) paying or offering to pay valuable consideration, as defined by the commission, to a
4499 person not licensed under this chapter, except that valuable consideration may be shared:

4500 (a) with a principal broker of another jurisdiction; or

4501 (b) as provided under:

4502 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;

4503 (ii) Title 16, Chapter 11, Professional Corporation Act; or

4504 (iii) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act;

4505 (6) being incompetent to act as a principal broker, associate broker, or sales agent in
4506 such manner as to safeguard the interests of the public;

4507 (7) failing to voluntarily furnish a copy of a document to ~~all~~ the parties before and
4508 after the execution of a document;

4509 (8) failing to keep and make available for inspection by the division a record of each
4510 transaction, including:

4511 (a) the names of buyers and sellers or lessees and lessors;

4512 (b) the identification of real estate;

4513 (c) the sale or rental price;

4514 (d) money received in trust;

4515 (e) agreements or instructions from buyers and sellers or lessees and lessors; and

4516 (f) any other information required by rule;

4517 (9) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether
4518 the purchase, sale, or rental is made for that person or for an undisclosed principal;

4519 (10) being convicted of a criminal offense involving moral turpitude within five years
4520 of the most recent application:

4521 (a) regardless of whether the criminal offense is related to real estate; and

4522 (b) including:

- 4523 (i) a conviction based upon a plea of nolo contendere; or
- 4524 (ii) a plea held in abeyance to a criminal offense involving moral turpitude;
- 4525 (11) advertising the availability of real estate or the services of a licensee in a false,
- 4526 misleading, or deceptive manner;
- 4527 (12) in the case of a principal broker or a licensee who is a branch manager, failing to
- 4528 exercise reasonable supervision over the activities of the principal broker's or branch manager's
- 4529 licensed or unlicensed staff;
- 4530 (13) violating or disregarding:
- 4531 (a) this chapter;
- 4532 (b) an order of the commission; or
- 4533 (c) the rules adopted by the commission and the division;
- 4534 (14) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real
- 4535 estate transaction;
- 4536 (15) any other conduct which constitutes dishonest dealing;
- 4537 (16) unprofessional conduct as defined by statute or rule;
- 4538 (17) having one of the following suspended, revoked, surrendered, or cancelled on the
- 4539 basis of misconduct in a professional capacity that relates to character, honesty, integrity, or
- 4540 truthfulness:
- 4541 (a) a real estate license, registration, or certificate issued by another jurisdiction; or
- 4542 (b) another license, registration, or certificate to engage in an occupation or profession
- 4543 issued by this state or another jurisdiction;
- 4544 (18) failing to respond to a request by the division in an investigation authorized under
- 4545 this chapter, including:
- 4546 (a) failing to respond to a subpoena;
- 4547 (b) withholding evidence; or
- 4548 (c) failing to produce documents or records;
- 4549 (19) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
- 4550 (a) providing a title insurance product or service without the approval required by
- 4551 Section 31A-2-405; or
- 4552 (b) knowingly providing false or misleading information in the statement required by
- 4553 Subsection 31A-2-405(2);

4554 (20) violating an independent contractor agreement between a principal broker and a
4555 sales agent or associate broker as evidenced by a final judgment of a court;

4556 (21) (a) engaging in a foreclosure rescue if not licensed under this chapter;

4557 (b) engaging in an act of loan modification assistance that requires licensure as a
4558 mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing Act,
4559 without being licensed under that chapter;

4560 (c) engaging in an act of foreclosure rescue without entering into a written agreement
4561 specifying what one or more acts of foreclosure rescue will be completed;

4562 ~~[(c)]~~ (d) requesting or requiring a person to pay a fee [if:] for a foreclosure rescue
4563 service before obtaining a written agreement:

4564 ~~[(i) the person is required to pay the fee before entering into a written agreement~~
4565 ~~specifying what one or more acts of foreclosure rescue will be completed if the fee is paid; or]~~

4566 ~~[(ii) in a case when the financing that is the subject of the foreclosure rescue is~~
4567 ~~foreclosed within one year from the day on which the person enters into a written agreement,~~
4568 ~~the person is required to forfeit the fee for any reason;]~~

4569 (i) between the person and the person's lender or servicer; and

4570 (ii) by which title to the residential real estate at risk of foreclosure will be transferred;

4571 ~~[(d)]~~ (e) inducing a person who is at risk of foreclosure to hire the licensee to engage in
4572 an act of foreclosure rescue by:

4573 (i) suggesting to the person that the licensee has a special relationship with the person's
4574 lender or loan servicer; or

4575 (ii) falsely representing or advertising that the licensee is acting on behalf of:

4576 (A) a government agency;

4577 (B) the person's lender or loan servicer; or

4578 (C) a nonprofit or charitable institution; or

4579 ~~[(e)]~~ (f) recommending or participating in a foreclosure rescue that requires a person
4580 to:

4581 (i) transfer title to real ~~[property]~~ estate to the licensee or to a ~~[third-party]~~ third-party
4582 with whom the licensee has a business relationship or financial interest;

4583 (ii) make a mortgage payment to a person other than the person's loan servicer; or

4584 (iii) refrain from contacting the person's:

- 4585 (A) lender;
- 4586 (B) loan servicer;
- 4587 (C) attorney;
- 4588 (D) credit counselor; or
- 4589 (E) housing counselor; or

4590 (22) for an agreement for foreclosure rescue entered into on or after May 11, 2010,
 4591 engaging in an act of foreclosure rescue without offering in writing to the person entering into
 4592 the agreement for foreclosure rescue a right to cancel the agreement within three business days
 4593 after the day on which the person enters the agreement.

4594 Section 75. Section **61-2g-101**, which is renumbered from Section 61-2b-1 is
 4595 renumbered and amended to read:

4596 **CHAPTER 2g. REAL ESTATE APPRAISER LICENSING AND CERTIFICATION**

4597 **ACT**

4598 **Part 1. General Provisions**

4599 **~~[61-2b-1].~~ 61-2g-101. Title.**

4600 This chapter is known as the "Real Estate Appraiser Licensing and Certification Act."

4601 Section 76. Section **61-2g-102**, which is renumbered from Section 61-2b-2 is
 4602 renumbered and amended to read:

4603 **~~[61-2b-2].~~ 61-2g-102. Definitions.**

4604 (1) As used in this chapter:

4605 (a) (i) "Appraisal" means an unbiased analysis, opinion, or conclusion relating to the
 4606 nature, quality, value, or utility of a specified interest in, or aspect of, identified real estate or
 4607 identified real property.

4608 (ii) An appraisal is classified by the nature of the assignment as a valuation appraisal,
 4609 an analysis assignment, or a review assignment in accordance with the following definitions:

4610 (A) "Analysis assignment" means an unbiased analysis, opinion, or conclusion that
 4611 relates to the nature, quality, or utility of identified real estate or identified real property.

4612 (B) "Review assignment" means an unbiased analysis, opinion, or conclusion that
 4613 forms an opinion as to the adequacy and appropriateness of a valuation appraisal or an analysis
 4614 assignment.

4615 (C) "Valuation appraisal" means an unbiased analysis, opinion, or conclusion that

4616 estimates the value of an identified parcel of real estate or identified real property at a particular
4617 point in time.

4618 (b) "Appraisal Foundation" means the Appraisal Foundation that was incorporated as
4619 an Illinois not-for-profit corporation on November 30, 1987.

4620 (c) (i) "Appraisal report" means a communication, written or oral, of an appraisal.

4621 (ii) An appraisal report is classified by the nature of the assignment as a valuation
4622 report, analysis report, or review report in accordance with the definitions provided in
4623 Subsection (1)(a)(ii).

4624 (iii) The testimony of a person relating to the person's analyses, conclusions, or
4625 opinions concerning identified real estate or identified real property is considered to be an oral
4626 appraisal report.

4627 (d) "Appraisal Qualification Board" means the Appraisal Qualification Board of the
4628 Appraisal Foundation.

4629 (e) "Board" means the Real Estate Appraiser Licensing and Certification Board that is
4630 established in Section [~~61-2b-7~~] 61-2g-204.

4631 (f) "Certified appraisal report" means a written or oral appraisal report that is certified
4632 by a state-certified general appraiser or state-certified residential appraiser.

4633 (g) "Concurrence" means that the entities that are given a concurring role jointly agree
4634 to an action.

4635 (h) (i) (A) "Consultation service" means an engagement to provide a real estate
4636 valuation service analysis, opinion, conclusion, or other service that does not fall within the
4637 definition of appraisal.

4638 (B) "Consultation service" does not mean a valuation appraisal, analysis assignment, or
4639 review assignment.

4640 (ii) Regardless of the intention of the client or employer, if a person prepares an
4641 unbiased analysis, opinion, or conclusion, the analysis, opinion, or conclusion is considered to
4642 be an appraisal and not a consultation service.

4643 (i) "Contingent fee" means a fee or other form of compensation, payment of which is
4644 dependent on or conditioned by:

4645 (i) the reporting of a predetermined analysis, opinion, or conclusion by the person
4646 performing the analysis, opinion, or conclusion; or

4647 (ii) achieving a result specified by the person requesting the analysis, opinion, or
4648 conclusion.

4649 (j) "Division" means the Division of Real Estate of the Department of Commerce.

4650 (k) "Federally related transaction" means a real estate related transaction that is
4651 required by federal law or by federal regulation to be supported by an appraisal prepared by:

4652 (i) a state-licensed appraiser; or

4653 (ii) a state-certified appraiser.

4654 (l) "Real estate" means an identified parcel or tract of land including improvements if
4655 any.

4656 (m) "Real estate appraisal activity" means the act or process of making an appraisal of
4657 real estate or real property and preparing an appraisal report.

4658 (n) "Real estate related transaction" means:

4659 (i) the sale, lease, purchase, investment in, or exchange of real property or an interest in
4660 real property, or the financing of such a transaction;

4661 (ii) the refinancing of real property or an interest in real property; or

4662 (iii) the use of real property or an interest in real property as security for a loan or
4663 investment, including mortgage-backed securities.

4664 (o) "Real property" means one or more defined interests, benefits, or rights inherent in
4665 the ownership of real estate.

4666 (p) "State-certified general appraiser" means a person who holds a current, valid
4667 certification as a state-certified general appraiser issued under this chapter.

4668 (q) "State-certified residential appraiser" means a person who holds a current, valid
4669 certification as a state-certified residential real estate appraiser issued under this chapter.

4670 (r) "State-licensed appraiser" means a person who holds a current, valid license as a
4671 state-licensed appraiser issued under this chapter.

4672 (s) "Trainee" means an individual who:

4673 (i) does not hold an appraiser license or appraiser certification issued under this
4674 chapter;

4675 (ii) works under the direct supervision of a state-certified appraiser to earn experience
4676 for licensure; and

4677 (iii) is registered as a trainee under this chapter.

4678 (t) "Unbiased analysis, opinion, or conclusion" means an analysis, opinion, or
4679 conclusion relating to the nature, quality, value, or utility of identified real estate or identified
4680 real property that is prepared by a person who is employed or retained to act, or would be
4681 perceived by third parties or the public as acting, as a disinterested [~~third party~~] third-party in
4682 rendering the analysis, opinion, or conclusion.

4683 (2) (a) If a term not defined in this section is defined by rule, the term shall have the
4684 meaning established by the division by rule made in accordance with Title 63G, Chapter 3,
4685 Utah Administrative Rulemaking Act.

4686 (b) If a term not defined in this section is not defined by rule, the term shall have the
4687 meaning commonly accepted in the business community.

4688 Section 77. Section **61-2g-103**, which is renumbered from Section 61-2b-25 is
4689 renumbered and amended to read:

4690 ~~[61-2b-25].~~ **61-2g-103. Other law unaffected.**

4691 This chapter may not be considered to prohibit a person approved, licensed, certified, or
4692 registered under this chapter from engaging in the practice of real estate appraising as a
4693 professional corporation or a limited liability company in accordance with:

- 4694 (1) Title 16, Chapter 11, Professional Corporation Act; or
- 4695 (2) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act.

4696 Section 78. Section **61-2g-201**, which is renumbered from Section 61-2b-6 is
4697 renumbered and amended to read:

4698 **Part 2. Division and Board**

4699 ~~[61-2b-6].~~ **61-2g-201. Duties and powers of division in general.**

4700 (1) The division shall administer and enforce this chapter.

4701 [~~(1)~~] (2) The division has the following powers and duties [~~listed in this Subsection~~

4702 ~~(1)~~];

4703 (a) The division shall:

4704 (i) receive an application for licensing, certification, or registration;

4705 (ii) establish appropriate administrative procedures for the processing of an application
4706 for licensure, certification, or registration;

4707 (iii) issue a license or certification to a qualified applicant pursuant to this chapter; and

4708 (iv) register an individual who applies and qualifies for registration as a trainee under

4709 this chapter.

4710 ~~[(b) (i) The division shall require an individual to register with the division as a trainee~~
 4711 ~~before the individual acts in the capacity of a trainee earning experience for licensure.]~~

4712 ~~[(ii) Subject to Subsection (4), the board shall adopt rules in accordance with Title~~
 4713 ~~63G, Chapter 3, Utah Administrative Rulemaking Act, for:]~~

4714 ~~[(A) the trainee registration required by this Subsection (1)(b); and]~~

4715 ~~[(B) renewal of the trainee registration required by this Subsection (1)(b).]~~

4716 ~~[(c)]~~ (b) The division shall hold public hearings under the direction of the board.

4717 ~~[(d)]~~ (c) The division may:

4718 (i) solicit bids and enter into contracts with one or more educational testing services or
 4719 organizations for the preparation of a bank of questions and answers; and

4720 (ii) administer or contract for the administration of licensing and certification
 4721 examinations as may be required to carry out the division's responsibilities under this chapter.

4722 ~~[(e)]~~ (d) The division shall provide administrative assistance to the board by providing
 4723 to the board the facilities, equipment, supplies, and personnel that are required to enable the
 4724 board to carry out the board's responsibilities under this chapter.

4725 ~~[(f)]~~ (e) The division shall assist the board in improving the quality of the continuing
 4726 education available to a person licensed, certified, or registered under this chapter.

4727 ~~[(g)]~~ (f) The division shall assist the board with respect to the proper interpretation or
 4728 explanation of the Uniform Standards of Professional Appraisal Practice as required by Section
 4729 ~~[61-2b-27]~~ 61-2g-403 when an interpretation or explanation becomes necessary in the
 4730 enforcement of this chapter.

4731 ~~[(h) The division shall establish fees in accordance with Section 63J-1-504.]~~

4732 ~~[(i) for processing:]~~

4733 ~~[(A) an application for licensing, certification, or registration; and]~~

4734 ~~[(B) approval of an expert witness; and]~~

4735 ~~[(ii) for any other function required or permitted by this chapter.]~~

4736 ~~[(i) If a person pays a fee or costs to the division with a negotiable instrument and the~~
 4737 ~~negotiable instrument is not honored for payment:]~~

4738 ~~[(i) the transaction for which the payment is submitted is voidable by the division;]~~

4739 ~~[(ii) the division may reverse the transaction if payment of the applicable fee or costs is~~

4740 not received in full; and]

4741 [~~(iii) the person's license, certification, or registration is automatically suspended;~~]

4742 [~~(A) beginning the day on which the payment is due; and]~~

4743 [~~(B) ending the day on which payment is made in full.]~~

4744 [~~(j) The division may:~~]

4745 [~~(i) investigate a complaint against:]~~

4746 [~~(A) a person licensed, certified, or registered under this chapter; or]~~

4747 [~~(B) a person required to be licensed, certified, or registered under this chapter;]~~

4748 [~~(ii) subpoena a witness;]~~

4749 [~~(iii) subpoena the production of a book, paper, document, record, contract, or~~

4750 ~~evidence;]~~

4751 [~~(iv) administer an oath; and]~~

4752 [~~(v) take testimony and receive evidence concerning a matter within the division's~~

4753 ~~jurisdiction.]~~

4754 [~~(k)~~ (g) The division may:

4755 (i) promote research and conduct studies relating to the profession of real estate

4756 appraising; and

4757 (ii) sponsor real estate appraisal educational activities.

4758 [~~(f)~~ (h) The division shall adopt, with the concurrence of the board, rules for the

4759 administration of this chapter pursuant to Title 63G, Chapter 3, Utah Administrative

4760 Rulemaking Act, that are not inconsistent with this chapter or the constitution and laws of this

4761 state or of the United States.

4762 [~~(m)~~ (i) The division shall employ an appropriate staff to investigate allegations that a

4763 person required to be licensed, certified, or registered under this chapter fails to comply with

4764 this chapter.

4765 [~~(n)~~ (j) The division may employ other professional, clerical, and technical staff as

4766 may be necessary to properly administer the work of the division under this chapter.

4767 [~~(o)~~ (k) (i) Upon request, the division shall make available, either directly or through a

4768 [~~third party~~] third-party, a list of the names and addresses of the persons licensed, registered, or

4769 certified by the division under this chapter.

4770 (ii) A person who requests a list under this Subsection (1)[~~(o)~~](k) shall pay the costs

4771 incurred by the division to make the list available.

4772 ~~[(2) (a) The division shall approve an expert witness who is not otherwise licensed or~~
 4773 ~~certified under this chapter to appear in an administrative or judicial tax proceeding to provide~~
 4774 ~~evidence related to the valuation of real property that is assessed by the State Tax Commission,~~
 4775 ~~if the:]~~

4776 ~~[(i) approval is limited to a specific proceeding;]~~

4777 ~~[(ii) approval is valid until the proceeding becomes final;]~~

4778 ~~[(iii) applicant pays to the division an approval fee set by the division in accordance~~
 4779 ~~with Section 63J-1-504;]~~

4780 ~~[(iv) applicant provides the applicant's name, address, occupation, and professional~~
 4781 ~~credentials; and]~~

4782 ~~[(v) applicant provides a notarized statement that:]~~

4783 ~~[(A) the applicant is competent to render an appraisal and to testify as an expert~~
 4784 ~~witness in the proceeding; and]~~

4785 ~~[(B) the appraisal and testimony to be offered shall be in accordance with the Uniform~~
 4786 ~~Standards of Professional Appraisal Practice adopted by the board.]~~

4787 ~~[(b) Subsection (2)(a) applies to an administrative or judicial property tax proceeding~~
 4788 ~~related to the valuation of real property that is assessed by the State Tax Commission.]~~

4789 ~~[(3)]~~ (2) (a) If the conditions of Subsection ~~[(3)]~~ (2)(b) are met, the division is immune
 4790 from any civil action or criminal prosecution for initiating or assisting in a lawful investigation
 4791 of an act of, or participating in a disciplinary proceeding concerning:

4792 (i) a person required to be licensed, certified, or registered pursuant to this chapter; or

4793 (ii) a person approved as an expert witness pursuant to this chapter.

4794 (b) This Subsection ~~[(3)]~~ (2) applies if the division takes the action:

4795 (i) without malicious intent; and

4796 (ii) in the reasonable belief that the action is taken pursuant to the powers and duties
 4797 vested in the division under this chapter.

4798 ~~[(4) (a) An individual applying to register as a trainee under this chapter shall:]~~

4799 ~~[(i) submit a fingerprint card in a form acceptable to the division at the time of~~
 4800 ~~applying for registration; and]~~

4801 ~~[(ii) consent to a criminal background check by:]~~

4802 ~~[(A) the Utah Bureau of Criminal Identification; and]~~
4803 ~~[(B) the Federal Bureau of Investigation.]~~
4804 ~~[(b) The division shall request the Department of Public Safety to complete a Federal~~
4805 ~~Bureau of Investigation criminal background check for an applicant through a national criminal~~
4806 ~~history system.]~~
4807 ~~[(c) The applicant shall pay the cost of:]~~
4808 ~~[(i) the fingerprinting required by this section; and]~~
4809 ~~[(ii) the criminal background check required by this section.]~~
4810 ~~[(d) (i) A registration as a trainee under this chapter is conditional pending completion~~
4811 ~~of the criminal background check required by this Subsection (4).]~~
4812 ~~[(ii) A registration is immediately and automatically revoked if a criminal background~~
4813 ~~check discloses that the applicant fails to accurately disclose a criminal history involving:]~~
4814 ~~[(A) the appraisal industry;]~~
4815 ~~[(B) fraud;]~~
4816 ~~[(C) misrepresentation; or]~~
4817 ~~[(D) deceit.]~~
4818 ~~[(iii) If a criminal background check discloses that an applicant fails to accurately~~
4819 ~~disclose a criminal history other than one described in Subsection (4)(d)(ii), the division:]~~
4820 ~~[(A) shall review the application; and]~~
4821 ~~[(B) in accordance with rules made by the division pursuant to Title 63G, Chapter 3,~~
4822 ~~Utah Administrative Rulemaking Act, may:]~~
4823 ~~[(F) place one or more conditions on a registration;]~~
4824 ~~[(H) place one or more restrictions on a registration;]~~
4825 ~~[(III) revoke a registration; or]~~
4826 ~~[(IV) refer the application to the board for a decision.]~~
4827 ~~[(iv) An individual whose conditional registration is automatically revoked under~~
4828 ~~Subsection (4)(d)(ii) or whose registration is conditioned, restricted, or revoked under~~
4829 ~~Subsection (4)(d)(iii) may appeal the action in a hearing conducted by the board:]~~
4830 ~~[(A) after the action is taken; and]~~
4831 ~~[(B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.]~~
4832 ~~[(v) The board may delegate to the division or an administrative law judge the~~

4833 authority to conduct a hearing described in Subsection (4)(d)(iv).]

4834 [~~(vi) Relief from an automatic revocation under Subsection (4)(d)(ii) may be granted~~

4835 ~~only if:~~

4836 [~~(A) the criminal history upon which the division bases the revocation;~~

4837 [~~(F) did not occur; or~~

4838 [~~(H) is the criminal history of another person;~~

4839 [~~(B) (F) the revocation is based on a failure to accurately disclose a criminal history;~~

4840 ~~and]~~

4841 [~~(H) the applicant has a reasonable good faith belief at the time of application that there~~

4842 ~~was no criminal history to be disclosed; or]~~

4843 [~~(C) the division fails to follow the prescribed procedure for the revocation.]~~

4844 [~~(e) If a registration is revoked or a revocation is upheld after a hearing described in~~

4845 ~~Subsection (4)(d)(iv), the individual may not apply for a new registration for a period of 12~~

4846 ~~months after the day on which the registration is revoked.]~~

4847 [~~(f) The board may delegate to the division the authority to make a decision on whether~~

4848 ~~relief from a revocation should be granted.]~~

4849 [~~(g) Money paid by an applicant for the cost of the criminal background check is~~

4850 ~~nonlapsing.]~~

4851 Section 79. Section **61-2g-202**, which is renumbered from Section 61-2b-37 is

4852 renumbered and amended to read:

4853 **[61-2b-37]. 61-2g-202. Division service fees -- Federal registry fees.**

4854 (1) The division, with the concurrence of the board, shall establish and collect fees in

4855 accordance with Section 63J-1-504 for its services under this chapter.

4856 (2) The division shall collect the annual registry fee established by the Federal

4857 Financial Institutions Examinations Council from those certificate holders who seek to perform

4858 appraisals in federally related transactions. The division shall transmit the fees to the federal

4859 Appraisal Subcommittee at least annually.

4860 (3) If a person pays a fee or costs to the division with a negotiable instrument or any

4861 other payment method that is not honored:

4862 (a) the transaction for which the payment is submitted is voidable by the division;

4863 (b) the division may reverse the transaction if payment of the applicable fee or costs is

4864 not received in full; and

4865 (c) the person's license, certification, or registration is automatically suspended:

4866 (i) beginning the day on which the payment is due; and

4867 (ii) ending the day on which payment is made in full.

4868 Section 80. Section **61-2g-203**, which is renumbered from Section 61-2b-38 is
4869 renumbered and amended to read:

4870 **[61-2b-38]. 61-2g-203. Division to publish roster of appraisers.**

4871 (1) The division shall prepare and issue at least once each calendar year a roster of
4872 appraisers containing the information required by the Federal Financial Institutions
4873 Examination Council. The division shall transmit the roster to the Federal Financial
4874 Institutions Examinations Council at least annually.

4875 (2) The division may, upon payment of a fee established by the division in accordance
4876 with Section 63J-1-504, issue to a person a verified history of a person:

4877 (a) licensed, certified, or registered under this chapter; or

4878 (b) previously registered, licensed, or certified under this chapter.

4879 Section 81. Section **61-2g-204**, which is renumbered from Section 61-2b-7 is
4880 renumbered and amended to read:

4881 **[61-2b-7]. 61-2g-204. Real Estate Appraiser Licensing and Certification**
4882 **Board.**

4883 (1) (a) There is established a Real Estate Appraiser Licensing and Certification Board
4884 [~~which shall consist~~] that consists of five regular members as follows:

4885 (i) one state-licensed or state-certified appraiser who may be either a residential or
4886 general licensee or certificate holder;

4887 (ii) one state-certified residential appraiser;

4888 (iii) one state-certified general appraiser;

4889 (iv) one member who is certified as either a state-certified residential appraiser or a
4890 state-certified general appraiser; and

4891 (v) one member of the general public.

4892 (b) A state-licensed or state-certified appraiser may be appointed as an alternate
4893 member of the board.

4894 (c) The governor shall appoint all members of the board with the consent of the Senate.

4895 (2) (a) Except as required by Subsection (2)(b), as terms of current board members
4896 expire, the governor shall appoint each new member or reappointed member to a four-year
4897 term beginning on July 1.

4898 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the
4899 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
4900 board members are staggered so that approximately half of the board is appointed every two
4901 years.

4902 (c) Upon the expiration of a member's term, a member of the board shall continue to
4903 hold office until the appointment and qualification of the member's successor.

4904 (d) A person may not serve as a member of the board for more than two consecutive
4905 terms.

4906 (3) (a) When a vacancy occurs in the membership for any reason, the replacement shall
4907 be appointed for the unexpired term.

4908 (b) The governor may remove a [board] member for cause.

4909 (4) The public member of the board may not be licensed or certified under this chapter.

4910 (5) The board shall meet at least quarterly to conduct its business. ~~[Public notice shall~~
4911 ~~be given for all board meetings.]~~ The division shall give public notice of a board meeting.

4912 (6) The members of the board shall elect a chair annually from among the members to
4913 preside at board meetings.

4914 (7) A member may not receive compensation or benefits for the member's service, but
4915 may receive per diem and travel expenses in accordance with:

4916 (a) Section 63A-3-106;

4917 (b) Section 63A-3-107; and

4918 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
4919 63A-3-107.

4920 (8) (a) Three members of the board shall constitute a quorum for the transaction of
4921 business.

4922 (b) If a quorum of members is unavailable for any meeting, the alternate member of the
4923 board, if any, shall serve as a regular member of the board for that meeting if with the presence
4924 of the alternate member a quorum is present at the meeting.

4925 Section 82. Section **61-2g-205**, which is renumbered from Section 61-2b-8 is

4926 renumbered and amended to read:

4927 ~~[61-2b-8].~~ **61-2g-205. Duties of board.**

4928 (1) (a) The board shall provide technical assistance to the division relating to real estate
4929 appraisal standards and real estate appraiser qualifications.

4930 (b) The board has the powers and duties listed in this section.

4931 (2) The board shall:

4932 (a) determine the experience and education requirements appropriate for a person
4933 licensed under this chapter;

4934 (b) determine the experience and education requirements appropriate for a person
4935 certified under this chapter:

4936 (i) in compliance with the minimum requirements of Financial Institutions Reform,
4937 Recovery, and Enforcement Act of 1989; and

4938 (ii) consistent with the intent of this chapter;

4939 (c) determine the appraisal related acts that may be performed by:

4940 (i) a trainee on the basis of the trainee's education and experience;

4941 (ii) clerical staff; and

4942 (iii) a person who:

4943 (A) does not hold a license or certification; and

4944 (B) assists an appraiser licensed or certified under this chapter in providing appraisal
4945 services or consultation services;

4946 (d) determine the procedures for a trainee to register and to renew a registration with
4947 the division; and

4948 (e) develop one or more programs to upgrade and improve the experience, education,
4949 and examinations as required under this chapter.

4950 (3) (a) The experience and education requirements established by the board for a
4951 person licensed or certified under this chapter shall be the minimum criteria established by the
4952 Appraisal Qualification Board, unless, after notice and a public hearing held in accordance with
4953 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board finds that the minimum
4954 criteria are not appropriate for a state-licensed appraiser or a state-certified appraiser in this
4955 state.

4956 (b) If under Subsection (3)(a) the board makes a finding that the minimum criteria are

4957 not appropriate, the board shall recommend appropriate criteria to the Legislature.

4958 (4) The board shall:

4959 (a) determine the continuing education requirements appropriate for the renewal of a
4960 license, certification, or registration issued under this chapter, except that the continuing
4961 education requirements established by the board shall at least meet the minimum criteria
4962 established by the Appraisal Qualification Board;

4963 (b) develop one or more programs to upgrade and improve continuing education; and

4964 (c) recommend to the division one or more available continuing education courses that
4965 meet the requirements of this chapter.

4966 (5) (a) The board shall consider the proper interpretation or explanation of the Uniform
4967 Standards of Professional Appraisal Practice as required by Section [~~61-2b-27~~] 61-2g-403
4968 when:

4969 (i) an interpretation or explanation is necessary in the enforcement of this chapter; and

4970 (ii) the Appraisal Standards Board of the Appraisal Foundation has not issued an
4971 interpretation or explanation.

4972 (b) If the conditions of Subsection (5)(a) are met, the board shall recommend to the
4973 division the appropriate interpretation or explanation that the division should adopt as a rule
4974 under this chapter.

4975 (c) The board may by rule made in accordance with Title 63G, Chapter 3, Utah
4976 Administrative Rulemaking Act, and Section [~~61-2b-27~~] 61-2g-403, and with the concurrence
4977 of the division, provide for an exemption from a provision of the Uniform Standards of
4978 Professional Appraisal Practice for an activity engaged in on behalf of a governmental entity.

4979 (6) (a) The board shall conduct an administrative hearing, not delegated by the board to
4980 an administrative law judge, in connection with a disciplinary proceeding under [~~Sections~~
4981 ~~61-2b-30 and 61-2b-31~~] Section 61-2f-504 concerning:

4982 (i) a person required to be licensed, certified, or registered under this chapter; and

4983 (ii) the person's failure to comply with this chapter and the Uniform Standards of
4984 Professional Appraisal Practice as adopted under Section [~~61-2b-27~~] 61-2g-403.

4985 (b) The board, with the concurrence of the division, shall issue in an administrative
4986 hearing a decision that contains findings of fact and conclusions of law.

4987 (c) When a determination is made that a person required to be licensed, certified, or

4988 registered under this chapter has violated this chapter, the division shall implement disciplinary
4989 action determined ~~[by]~~ through concurrence of the board and the division.

4990 (7) A member of the board is immune from a civil action or criminal prosecution for a
4991 disciplinary proceeding concerning a person required to be registered, licensed, certified, or
4992 approved as an expert under this chapter if the action is taken without malicious intent and in
4993 the reasonable belief that the action taken was taken pursuant to the powers and duties vested
4994 in a member of the board under this chapter.

4995 (8) The board shall require and pass upon proof necessary to determine the honesty,
4996 competency, integrity, and truthfulness of an applicant for:

4997 (a) original licensure, certification, or registration; and

4998 (b) renewal licensure, certification, or registration.

4999 Section 83. Section **61-2g-301**, which is renumbered from Section 61-2b-3 is
5000 renumbered and amended to read:

5001 **Part 3. Licensure, Certification, or Registration**

5002 ~~[61-2b-3].~~ **61-2g-301. License or certification required.**

5003 (1) Except as provided in Subsection (2) and in ~~[Subsection 61-2b-6(2)]~~ Section
5004 61-2g-303, it is unlawful for a person to prepare, for valuable consideration, an appraisal, an
5005 appraisal report, a certified appraisal report, or perform a consultation service relating to real
5006 estate or real property in this state without first being licensed or certified in accordance with
5007 this chapter.

5008 (2) This section does not apply to:

5009 (a) a principal broker, associate broker, or sales agent as defined by Section 61-2f-102
5010 licensed by this state who, in the ordinary course of the broker's or sales agent's business, gives
5011 an opinion:

5012 (i) regarding the value of real estate;

5013 (ii) to a potential seller or ~~[third party]~~ third-party recommending a listing price of real
5014 estate; or

5015 (iii) to a potential buyer or ~~[third party]~~ third-party recommending a purchase price of
5016 real estate;

5017 (b) an employee of a company who states an opinion of value or prepares a report
5018 containing value conclusions relating to real estate or real property solely for the company's

5019 use;

5020 (c) an official or employee of a government agency while acting solely within the scope
5021 of the official's or employee's duties, unless otherwise required by Utah law;

5022 (d) an auditor or accountant who states an opinion of value or prepares a report
5023 containing value conclusions relating to real estate or real property while performing an audit;

5024 (e) an individual, except an individual who is required to be licensed or certified under
5025 this chapter, who states an opinion about the value of property in which the person has an
5026 ownership interest;

5027 (f) an individual who states an opinion of value if no consideration is paid or agreed to
5028 be paid for the opinion and no other party is reasonably expected to rely on the individual's
5029 appraisal expertise;

5030 (g) an individual, such as a researcher or a secretary, who does not render significant
5031 professional assistance, as defined by the board, in arriving at a real estate appraisal analysis,
5032 opinion, or conclusion; or

5033 (h) an attorney authorized to practice law in this state who, in the course of the
5034 attorney's practice, uses an appraisal report governed by this chapter or who states an opinion
5035 of the value of real estate.

5036 (3) An opinion of value or report containing value conclusions exempt under
5037 Subsection (2) may not be referred to as an appraisal.

5038 (4) Except as provided in Subsection (2) and Section 61-2g-303, to prepare or cause to
5039 be prepared in this state an appraisal, an appraisal report, or a certified appraisal report an
5040 individual shall:

5041 (a) apply in writing for licensure or certification as provided in this chapter in the form
5042 as the division may prescribe; and

5043 (b) become licensed or certified under this chapter.

5044 Section 84. Section **61-2g-302** is enacted to read:

5045 **61-2g-302. Registration as trainee.**

5046 (1) (a) An individual is required to register with the division as a trainee before the
5047 individual acts in the capacity of a trainee earning experience for licensure.

5048 (b) Subject to Subsection (2), the board, with the concurrence of the division, shall
5049 adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for:

5050 (i) the trainee registration required by this Subsection (1); and
5051 (ii) renewal of the trainee registration required by this Subsection (1).
5052 (2) (a) An individual applying to register as a trainee under this chapter shall:
5053 (i) submit a fingerprint card in a form acceptable to the division at the time of applying
5054 for registration; and
5055 (ii) consent to a criminal background check by:
5056 (A) the Utah Bureau of Criminal Identification; and
5057 (B) the Federal Bureau of Investigation.
5058 (b) The division shall request the Department of Public Safety to complete a Federal
5059 Bureau of Investigation criminal background check for an applicant through a national criminal
5060 history system.
5061 (c) The applicant shall pay the cost of:
5062 (i) the fingerprinting required by this section; and
5063 (ii) the criminal background check required by this section.
5064 (d) (i) A registration as a trainee under this chapter is conditional pending completion
5065 of the criminal background check required by this Subsection (2).
5066 (ii) A registration is immediately and automatically revoked if a criminal background
5067 check discloses that the applicant fails to accurately disclose a criminal history involving:
5068 (A) the appraisal industry; or
5069 (B) a felony conviction on the basis of an allegation of fraud, misrepresentation, or
5070 deceit.
5071 (iii) If a criminal background check discloses that an applicant fails to accurately
5072 disclose a criminal history other than one described in Subsection (2)(d)(ii), the division shall
5073 review the application, and in accordance with rules made by the division pursuant to Title
5074 63G, Chapter 3, Utah Administrative Rulemaking Act, may:
5075 (A) place one or more conditions on a registration;
5076 (B) place one or more restrictions on a registration;
5077 (C) revoke a registration; or
5078 (D) refer the application to the board for a decision.
5079 (iv) An individual whose conditional registration is automatically revoked under
5080 Subsection (2)(d)(ii) or whose registration is conditioned, restricted, or revoked under

- 5081 Subsection (2)(d)(iii) may appeal the action in a hearing conducted by the board:
- 5082 (A) after the action is taken; and
- 5083 (B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- 5084 (v) The board may delegate to the division or an administrative law judge the authority
- 5085 to conduct a hearing described in Subsection (2)(d)(iv).
- 5086 (vi) Relief from an automatic revocation under Subsection (2)(d)(ii) may be granted
- 5087 only if:
- 5088 (A) the criminal history upon which the division bases the revocation did not occur or
- 5089 is the criminal history of another person;
- 5090 (B) the revocation is based on a failure to accurately disclose a criminal history, and the
- 5091 applicant has a reasonable good faith belief at the time of application that there was no criminal
- 5092 history to be disclosed; or
- 5093 (C) the division fails to follow the prescribed procedure for the revocation.
- 5094 (e) If a registration is revoked or a revocation is upheld after a hearing described in
- 5095 Subsection (2)(d)(iv), the individual may not apply for a new registration for a period of 12
- 5096 months after the day on which the registration is revoked.
- 5097 (f) The board may delegate to the division the authority to make a decision on whether
- 5098 relief from a revocation should be granted.
- 5099 (g) Money paid by an applicant for the cost of the criminal background check is
- 5100 nonlapsing.
- 5101 Section 85. Section **61-2g-303** is enacted to read:
- 5102 **61-2g-303. Approval of an expert.**
- 5103 (1) The division shall approve an expert witness who is not otherwise licensed or
- 5104 certified under this chapter to appear in an administrative or judicial tax proceeding to provide
- 5105 evidence related to the valuation of real property that is assessed by the State Tax Commission,
- 5106 if the:
- 5107 (a) approval is limited to a specific proceeding;
- 5108 (b) approval is valid until the proceeding becomes final;
- 5109 (c) applicant pays to the division an approval fee set by the division in accordance with
- 5110 Section 63J-1-504;
- 5111 (d) applicant provides the applicant's name, address, occupation, and professional

5112 credentials; and

5113 (e) applicant provides a notarized statement that:

5114 (i) the applicant is competent to render an appraisal and to testify as an expert witness
5115 in the proceeding; and

5116 (ii) the appraisal and testimony to be offered shall be in accordance with the Uniform
5117 Standards of Professional Appraisal Practice adopted by the board.

5118 (2) Subsection (1) applies to an administrative or judicial property tax proceeding
5119 related to the valuation of real property that is assessed by the State Tax Commission.

5120 Section 86. Section **61-2g-304**, which is renumbered from Section 61-2b-18 is
5121 renumbered and amended to read:

5122 **[61-2b-18]. 61-2g-304. Application for licensure, certification, or registration --**
5123 **Approval as an expert witness.**

5124 (1) An application for the following shall be sent to the division on a form approved by
5125 the division:

5126 (a) original certification, licensure, or registration;

5127 (b) approval as an expert witness; and

5128 (c) renewal of certification, licensure, or registration.

5129 (2) The payment of the appropriate fee, as established by the division, with the
5130 concurrence of the board, in accordance with Section 63J-1-504, must accompany an
5131 application for:

5132 (a) approval as an expert witness;

5133 (b) original certification, licensure, or registration; and

5134 (c) renewal of certification, licensure, or registration.

5135 (3) At the time of filing an application described in Subsection (1), an applicant shall:

5136 (a) sign a pledge to comply with the Uniform Standards of Professional Appraisal

5137 Practice and the ethical rules to be observed by an appraiser that are established under Section

5138 ~~[61-2b-27]~~ 61-2g-403 for:

5139 (i) a certified or licensed appraiser;

5140 (ii) a trainee; or

5141 (iii) an expert witness approved under this chapter; and

5142 (b) certify that the applicant understands the types of misconduct, as set forth in this

5143 chapter, for which a disciplinary proceeding may be initiated against a person certified,
5144 licensed, or registered under this chapter.

5145 Section 87. Section **61-2g-305**, which is renumbered from Section 61-2b-19 is
5146 renumbered and amended to read:

5147 **~~61-2b-19~~. 61-2g-305. Expiration of license, certification, or registration.**

5148 (1) An initial license, certification, or registration issued under this chapter expires on
5149 the expiration date indicated on the license, certificate, or registration.

5150 (2) A renewal license, certification, or registration issued under this chapter expires
5151 two years from the date of issuance.

5152 (3) (a) The scheduled expiration date of a license, certification, or registration shall
5153 appear on the license, certification, or registration document.

5154 (b) (i) The division shall mail a holder of a license, certification, or registration notice
5155 of its expiration to the last address stated on the division's records as the holder's current
5156 address.

5157 (ii) To be mailed a notice under this Subsection (3)(b), a holder of a license,
5158 certification, or registration shall provide to the division in writing the holder's current address.

5159 (iii) A holder's license, certification, or registration expires if not renewed by the holder
5160 notwithstanding whether the holder receives a notice of its expiration by the division under this
5161 Subsection (3)(b).

5162 Section 88. Section **61-2g-306**, which is renumbered from Section 61-2b-20 is
5163 renumbered and amended to read:

5164 **~~61-2b-20~~. 61-2g-306. Renewal of license, certification, or registration.**

5165 (1) To renew a license, certification, or registration, before the license, certification, or
5166 registration expires, the holder of the license, certification, or registration shall submit to the
5167 division in compliance with procedures set [by] through the concurrence of the division and the
5168 board:

5169 (a) an application for renewal;

5170 (b) a fee established by the division and the board, in accordance with Section
5171 63J-1-504; and

5172 (c) evidence in the form prescribed by the division of having completed the continuing
5173 education requirements for renewal specified in this chapter.

5174 (2) (a) A license, certification, or registration expires if it is not renewed on or before
5175 its expiration date.

5176 (b) For a period of 30 days after the expiration date, a license, certification, or
5177 registration may be reinstated upon:

5178 (i) payment of a renewal fee and a late fee determined ~~[by]~~ through the concurrence of
5179 the division and the board; and

5180 (ii) satisfying the continuing education requirements specified in Section ~~[61-2b-40]~~
5181 61-2g-307.

5182 (c) After the 30-day period described in Subsection (2)(b), and until six months after
5183 the expiration date, a license, certification, or registration may be reinstated by:

5184 (i) paying a renewal fee and a reinstatement fee determined ~~[by]~~ through the
5185 concurrence of the division and the board; and

5186 (ii) satisfying the continuing education requirements specified in Section ~~[61-2b-40]~~
5187 61-2g-307.

5188 (d) After the six-month period described in Subsection (2)(c), and until one year after
5189 the expiration date, a license, certification, or registration may be reinstated by:

5190 (i) paying a renewal fee and a reinstatement fee determined ~~[by]~~ through the
5191 concurrence of the division and the board in accordance with Section 63J-1-504;

5192 (ii) providing proof acceptable to the division ~~[and]~~, with the concurrence of the board,
5193 of the person having satisfied the continuing education requirements of Section ~~[61-2b-40]~~
5194 61-2g-307; and

5195 (iii) providing proof acceptable to the division ~~[and]~~, with the concurrence of the
5196 board, of the person completing 24 hours of continuing education:

5197 (A) in addition to the requirements in Section ~~[61-2b-40]~~ 61-2g-307; and

5198 (B) on a subject determined by the division by rule made in accordance with Title 63G,
5199 Chapter 3, Utah Administrative Rulemaking Act.

5200 (e) The division shall relicense, recertify, or reregister a person who does not renew
5201 that person's license, certification, or registration within one year after the expiration date as
5202 prescribed for an original application.

5203 (f) Notwithstanding Subsection (2)(a), the division may extend the term of a license,
5204 certification, or registration that would expire under Subsection (2)(a) except for the extension

5205 if:

5206 (i) (A) the person complies with the requirements of this section to renew the license,
5207 certification, or registration; and

5208 ~~[(ii)]~~ (B) the application for renewal remains pending at the time of the extension[;
5209 ~~there is pending under this chapter.]; or~~

5210 ~~[(A) the application for renewal of the license, certification, or registration; or]~~

5211 ~~[(B)]~~ (ii) at the time of the extension, there is pending under this chapter a disciplinary
5212 action.

5213 (3) A person who is licensed, certified, or registered under this chapter shall notify the
5214 division of the following by sending the division a signed statement within 10 business days of:

5215 (a) (i) a conviction of a ~~[criminal offense;];~~

5216 (A) felony;

5217 (B) class A misdemeanor; or

5218 (C) class B misdemeanor;

5219 (ii) the entry of a plea in abeyance to a ~~[criminal offense; or];~~

5220 (A) felony;

5221 (B) class A misdemeanor; or

5222 (C) class B misdemeanor; or

5223 (iii) the potential resolution of a ~~[criminal case]~~ felony, class A misdemeanor, or class
5224 B misdemeanor by:

5225 (A) a diversion agreement; or

5226 (B) any other agreement under which a criminal charge is suspended for a period of
5227 time;

5228 (b) filing a personal bankruptcy or business bankruptcy;

5229 (c) the suspension, revocation, surrender, cancellation, or denial of a professional
5230 license, certification, or registration of the person, whether the license, certification, or
5231 registration is issued by this state or another jurisdiction; or

5232 (d) the entry of a cease and desist order or a temporary or permanent injunction:

5233 (i) against the person by a court or administrative agency; and

5234 (ii) on the basis of:

5235 (A) conduct or a practice involving an act regulated by this chapter; or

5236 (B) conduct involving fraud, misrepresentation, or deceit.

5237 (4) The board, with the concurrence of the division, shall enforce the reporting
5238 requirement of Subsection (3) pursuant to Section 61-2g-502.

5239 Section 89. Section **61-2g-307**, which is renumbered from Section 61-2b-40 is
5240 renumbered and amended to read:

5241 ~~[61-2b-40]~~. **61-2g-307. Continuing education requirements.**

5242 (1) As a prerequisite to renewal of a license, certification, or registration, the applicant
5243 for renewal shall present evidence satisfactory to the division of having met the continuing
5244 education requirements of this section.

5245 (2) A person licensed, certified, or registered under this chapter shall complete during
5246 the two-year period immediately preceding the filing of an application for renewal not less than
5247 28 classroom hours of instruction in courses or seminars that have received the approval of the
5248 division.

5249 (3) (a) The division, with the concurrence of the board, may adopt rules for the
5250 implementation of this section to assure that ~~[each]~~ a person renewing that person's license,
5251 certification, or registration under this chapter has a working knowledge of current real estate
5252 appraisal theories, practices, and techniques that will enable the person to provide competent
5253 real estate appraisal services to the members of the public with whom that person deals in a
5254 professional relationship under the authority of that person's license, certificate, or registration.

5255 ~~[(4)]~~ (b) An amendment or repeal of a rule adopted by the division under this section,
5256 with the concurrence of the board, does not operate to deprive a person of credit toward
5257 renewal of that person's license, certification, or registration for a course of instruction that is
5258 successfully completed by the applicant before the date of the amendment or repeal of the rule.

5259 (c) The rules made under this Subsection (3) shall prescribe:

5260 (i) policies and procedures to be followed in obtaining division approval of courses of
5261 instruction and seminars;

5262 (ii) standards, policies, and procedures to be used by the division in evaluating an
5263 applicant's claims of equivalency; and

5264 (iii) standards, monitoring methods, and systems for recording attendance to be
5265 employed by course and seminar sponsors as a prerequisite to division approval of courses and
5266 seminars for credit.

5267 ~~[(5)]~~ (4) In lieu of meeting the requirements set forth in Subsection (2) and applicable
 5268 rules, an applicant for renewal may satisfy all or part of the continuing education requirements
 5269 that are imposed by the board in excess of the minimum requirements of the Appraisal
 5270 Qualification Board by presenting evidence of the following:

5271 (a) completion of an educational program of study determined by the board to be
 5272 equivalent, for continuing education purposes, to courses or seminars approved by the board; or

5273 (b) participation other than as a student in educational processes and programs
 5274 approved by the board that relate to real property appraisal theory, practices, or techniques
 5275 including teaching, program development, and preparation of textbooks, monographs, articles,
 5276 and other instructional materials.

5277 ~~[(6) The board shall develop and propose to the division rules described in Subsection~~
 5278 ~~(3). The rules developed and proposed by the board under this Subsection (6) shall prescribe:]~~

5279 ~~[(a) policies and procedures to be followed in obtaining division approval of courses of~~
 5280 ~~instruction and seminars;]~~

5281 ~~[(b) standards, policies, and procedures to be used by the division in evaluating an~~
 5282 ~~applicant's claims of equivalency; and]~~

5283 ~~[(c) standards, monitoring methods, and systems for recording attendance to be~~
 5284 ~~employed by course and seminar sponsors as a prerequisite to division approval of courses and~~
 5285 ~~seminars for credit.]~~

5286 ~~[(7)(a)]~~ (5) A person whose license, certification, or registration is ~~[revoked or]~~
 5287 suspended as the result of a disciplinary action taken ~~[by the board]~~ under this chapter may not
 5288 apply for reinstatement unless the person presents evidence of completion of the continuing
 5289 education requirement that is required by this chapter for renewal.

5290 ~~[(b) The continuing education required under Subsection (7) (5)(a) may not be imposed~~
 5291 ~~upon an applicant for reinstatement who has been required by the division to successfully~~
 5292 ~~complete the examination for licensure or certification required by Section 61-2b-20 as a~~
 5293 ~~condition to reinstatement.]~~

5294 Section 90. Section **61-2g-308**, which is renumbered from Section 61-2b-22 is
 5295 renumbered and amended to read:

5296 ~~[61-2b-22].~~ **61-2g-308. Licensing, certification, registration, or expert witness**
 5297 **requirements for nonresidents -- Temporary license or certificate -- Revocation.**

5298 (1) An applicant for one of the following who is not a resident of this state shall submit
5299 with the applicant's application an irrevocable consent that service of process upon the
5300 applicant may be made by delivery of the process to the director of the division if, in an action
5301 against the applicant in a court of this state arising out of the applicant's activities governed by
5302 this chapter in this state, the plaintiff cannot, in the exercise of due diligence, obtain personal
5303 service upon the applicant:

5304 (a) approval as an expert witness; or

5305 (b) licensure, certification, or registration under this chapter.

5306 (2) A nonresident of this state who complies with Subsection (1) may obtain approval
5307 as an expert witness, a license, a certification, or a registration in this state by complying with
5308 ~~[the provisions of]~~ this chapter relating to approval as an expert witness, licensure,
5309 certification, or registration.

5310 (3) A nonresident of this state who complies with Subsection (1) may obtain a
5311 temporary permit for a license or certification to perform a contract relating to the appraisal of
5312 real estate or real property in this state. To qualify for the issuance of a temporary permit for a
5313 license or certification, an applicant must:

5314 (a) submit an application on a form approved by the division;

5315 (b) submit evidence that the applicant is licensed or certified in the state in which the
5316 applicant primarily conducts business;

5317 (c) certify that no formal charges alleging violation of state appraisal licensing or
5318 certification laws have been filed against the applicant by the applicant's state of domicile; and

5319 (d) pay an application fee in an amount established by the division with the
5320 concurrence of the board.

5321 (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
5322 division, with the concurrence of the board, shall make rules establishing:

5323 (a) the duration of a temporary permit; and

5324 (b) procedures for renewal of a temporary permit.

5325 (5) A temporary permit issued under this section shall be immediately and
5326 automatically revoked if the appraiser's license or certification is suspended or revoked in the
5327 appraiser's state of domicile.

5328 (6) A person whose temporary permit for a license or certification is revoked under

5329 Subsection (5) is entitled to a postrevocation hearing to challenge the revocation. The hearing
5330 shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

5331 Section 91. Section **61-2g-309**, which is renumbered from Section 61-2b-21 is
5332 renumbered and amended to read:

5333 ~~[61-2b-21]~~. **61-2g-309. Denial of licensure, certification, or registration.**

5334 The division may, upon compliance with Title 63G, Chapter 4, Administrative
5335 Procedures Act, deny the issuance of a license, certification, or registration to an applicant on
5336 any of the grounds enumerated in this chapter.

5337 Section 92. Section **61-2g-310**, which is renumbered from Section 61-2b-23 is
5338 renumbered and amended to read:

5339 ~~[61-2b-23]~~. **61-2g-310. Reciprocal licensure.**

5340 An applicant for licensure or certification in this state who is licensed or certified under
5341 the laws of any other state, territory, or district may obtain a license or certification in this state
5342 upon the terms and conditions determined by the division and the board, if, in the
5343 determination of the division and the board:

5344 (1) the state, territory, or the District of Columbia is considered to have substantially
5345 equivalent licensing laws for real estate appraisers;

5346 (2) the laws of that state, territory, or the District of Columbia accord substantially
5347 equal reciprocal rights to a person licensed or certified and in good standing in this state; and

5348 (3) no formal charges alleging violation of state appraisal licensing or certification laws
5349 have been filed against the applicant by the applicant's state of domicile.

5350 Section 93. Section **61-2g-311**, which is renumbered from Section 61-2b-10 is
5351 renumbered and amended to read:

5352 ~~[61-2b-10]~~. **61-2g-311. State-licensed appraiser -- Authority and qualifications.**

5353 (1) A state-licensed appraiser is authorized to appraise complex and noncomplex 1-4
5354 family residential units in this state having a transaction value permitted under the Financial
5355 Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations.

5356 (2) A state-licensed appraiser is authorized to appraise vacant or unimproved land
5357 having a transaction value permitted under the Financial Institutions Reform, Recovery, and
5358 Enforcement Act of 1989, and related federal regulations that is utilized for 1-4 family
5359 purposes or for which the highest and best use is 1-4 family purposes and subdivisions for

5360 which a development analysis/appraisal is not necessary.

5361 (3) A state-licensed appraiser may not issue a certified appraisal report.

5362 (4) To qualify as a state-licensed appraiser, an applicant must:

5363 (a) be of good moral character;

5364 (b) demonstrate honesty, competency, integrity, and truthfulness;

5365 (c) pass the licensing examination with a satisfactory score as determined by the

5366 Appraisal Qualification Board;

5367 (d) successfully complete not less than 150 classroom hours in courses of study that

5368 relate to:

5369 (i) real estate appraisal;

5370 (ii) the Uniform Standards of Professional Appraisal Practice; and

5371 (iii) ethical rules to be observed by a real estate appraiser as required by Section

5372 ~~[61-2b-27]~~ 61-2g-403; and

5373 (e) possess the minimum number of hours of experience in real property appraisal as

5374 established by rule.

5375 (5) The courses of study under Subsection (4)(d) shall be conducted by:

5376 (a) a college or university;

5377 (b) a community or junior college;

5378 (c) a real estate appraisal or real estate related organization;

5379 (d) a state or federal agency or commission;

5380 (e) a proprietary school;

5381 (f) a provider approved by a state certification and licensing agency; or

5382 (g) the Appraisal Foundation or its boards.

5383 Section 94. Section **61-2g-312**, which is renumbered from Section 61-2b-13 is

5384 renumbered and amended to read:

5385 ~~[61-2b-13]~~. **61-2g-312. State-certified appraisers -- Authority.**

5386 (1) A state-certified residential appraiser is authorized to appraise ~~[att]~~ the types of real
5387 estate which a state-licensed appraiser is authorized to appraise.

5388 (2) A state-certified residential appraiser is also authorized to appraise 1-4 unit
5389 residential real estate without regard to transaction value or complexity.

5390 (3) A state-certified residential appraiser is not authorized to appraise subdivisions for

5391 which a development analysis/appraisal is necessary.

5392 (4) A state-certified general appraiser is authorized to appraise [aH] the types of real
5393 estate and real property.

5394 Section 95. Section **61-2g-313**, which is renumbered from Section 61-2b-14 is
5395 renumbered and amended to read:

5396 **~~[61-2b-14].~~ 61-2g-313. State-certified residential appraiser -- Authority and**
5397 **qualifications.**

5398 (1) An applicant for certification as a residential appraiser shall provide to the division
5399 evidence of:

5400 (a) the applicant's good moral character, honesty, competency, integrity, and
5401 truthfulness;

5402 (b) completion of the certification examination with a satisfactory score as determined
5403 by the Appraisal Qualification Board;

5404 (c) (i) an associate degree or higher degree from an accredited:

5405 (A) college;

5406 (B) junior college;

5407 (C) community college; or

5408 (D) university; or

5409 (ii) successfully passing a curriculum determined by rule of collegiate level subject
5410 matter courses from an accredited:

5411 (A) college;

5412 (B) junior college;

5413 (C) community college; or

5414 (D) university;

5415 (d) satisfactory completion of not less than 200 classroom hours in a curriculum:

5416 (i) of specific appraisal education determined by rule made by the board, with the
5417 concurrence of the division; and

5418 (ii) that includes a course in the Uniform Standards of Professional Practice or its
5419 equivalent that is approved by the Appraisal Qualification Board;

5420 (e) the minimum number of hours of experience in real property appraisal as
5421 established by rule; and

5422 (f) acquiring the experience required under Subsection (1)(e) within a reasonable
5423 period, as determined by rule, immediately preceding the filing of the application for
5424 certification.

5425 (2) Upon request by the division, an applicant shall make available to the division for
5426 examination:

5427 (a) a detailed listing of the real estate appraisal reports or file memoranda for each year
5428 for which experience is claimed; and

5429 (b) a sample selected by the division of appraisal reports that the applicant has prepared
5430 in the course of the applicant's appraisal practice.

5431 (3) The classroom hours required by Subsection (1)(d) shall be provided by:

5432 (a) a college or university;

5433 (b) a community or junior college;

5434 (c) a real estate appraisal or real estate related organization;

5435 (d) a state or federal agency or commission;

5436 (e) a proprietary school;

5437 (f) a provider approved by a state certification and licensing agency; or

5438 (g) the Appraisal Foundation or its boards.

5439 Section 96. Section **61-2g-314**, which is renumbered from Section 61-2b-15 is
5440 renumbered and amended to read:

5441 **[61-2b-15]. 61-2g-314. State-certified general appraiser -- Application --**

5442 **Qualifications.**

5443 (1) An applicant for certification as a general appraiser shall provide to the division
5444 evidence of:

5445 (a) the applicant's good moral character, honesty, competency, integrity, and
5446 truthfulness;

5447 (b) completion of the certification examination with a satisfactory score as determined
5448 by the Appraisal Qualification Board;

5449 (c) (i) a bachelors degree or higher degree from an accredited college or university; or

5450 (ii) successfully passing a curriculum determined by rule of collegiate level subject
5451 matter courses from an accredited:

5452 (A) college;

- 5453 (B) junior college;
- 5454 (C) community college; or
- 5455 (D) university;
- 5456 (d) satisfactory completion of not less than 300 classroom hours in a curriculum:
- 5457 (i) of specific appraisal education determined by rule; and
- 5458 (ii) that includes a course in the Uniform Standards of Professional Practice or its
- 5459 equivalent that has been approved by the Appraisal Qualification Board;
- 5460 (e) the minimum number of hours of experience in real property appraisal as
- 5461 established by rule; and
- 5462 (f) acquiring the experience required under Subsection (1)(e) within a reasonable
- 5463 period, as determined by rule, immediately preceding the filing of the application for
- 5464 certification.
- 5465 (2) Upon request by the division, an applicant shall make available to the division for
- 5466 examination:
- 5467 (a) a detailed listing of the real estate appraisal reports or file memoranda for each year
- 5468 for which experience is claimed; and
- 5469 (b) a sample selected by the division of appraisal reports that the applicant has prepared
- 5470 in the course of the applicant's appraisal practice.
- 5471 (3) The classroom hours required by Subsection (1)(d) shall be provided by:
- 5472 (a) a college or university;
- 5473 (b) a community or junior college;
- 5474 (c) a real estate appraisal or real estate related organization;
- 5475 (d) a state or federal agency or commission;
- 5476 (e) a proprietary school;
- 5477 (f) a provider approved by a state certification and licensing agency; or
- 5478 (g) the Appraisal Foundation or its boards.

5479 Section 97. Section **61-2g-315**, which is renumbered from Section 61-2b-24 is

5480 renumbered and amended to read:

5481 **[61-2b-24]. 61-2g-315. Expert witness, licensing, certification, and registration**

5482 **documents -- Assigned number to be used on contracts -- Surrender of documents upon**

5483 **suspension.**

5484 (1) The division shall issue to a person approved as an expert witness, licensed,
5485 certified, or registered under this chapter a document:

5486 (a) stating that the person is approved as an expert witness, licensed, certified, or
5487 registered under this chapter; and

5488 (b) specifying the expiration date of a license or certification.

5489 (2) (a) An approval as an expert witness, a license, a certification, or a registration
5490 document issued under this chapter shall bear an approval, license, certification, or registration
5491 number assigned by the division.

5492 (b) An assigned number shall be used in a statement of qualification, a contract, or
5493 another instrument used by the holder of the approval, license, certificate, or registration when
5494 reference is made to the holder's status as being approved, licensed, certified, or registered
5495 under this chapter.

5496 (3) (a) An approval, license, certification, or registration document is the property of
5497 the state.

5498 (b) Upon a suspension or revocation of a license, certification, or registration under this
5499 chapter, the individual holding the applicable document shall immediately return the document
5500 to the division.

5501 Section 98. Section **61-2g-401**, which is renumbered from Section 61-2b-17 is
5502 renumbered and amended to read:

5503 **Part 4. Operational Restrictions**

5504 **[~~61-2b-17~~]. 61-2g-401. State-certified and state-licensed appraisers --**
5505 **Restrictions on use of terms -- Conduct prohibited or required -- Trainee.**

5506 (1) (a) The terms "state-certified general appraiser," "state-certified residential
5507 appraiser," and "state-licensed appraiser":

5508 (i) may only be used to refer to an individual who is certified or licensed under this
5509 chapter; and

5510 (ii) may not be used following, or immediately in connection with, the name or
5511 signature of a firm, partnership, corporation, or group, or in any manner that it might be
5512 interpreted as referring to a firm, partnership, corporation, group, or to anyone other than the
5513 individual who is certified or licensed under this chapter.

5514 (b) The requirement of this Subsection (1) may not be construed to prevent a

5515 state-certified general appraiser from signing an appraisal report on behalf of a corporation,
5516 partnership, firm, or group practice if it is clear that:

5517 (i) only the individual is certified; and

5518 (ii) the corporation, partnership, firm, or group practice is not certified.

5519 (c) Except as provided in Section [~~61-2b-25~~] 61-2g-103, a certificate or license may
5520 not be issued under this chapter to a corporation, partnership, firm, or group.

5521 (2) (a) A person other than a state-certified general appraiser or state-certified
5522 residential appraiser, may not assume or use any title, designation, or abbreviation likely to
5523 create the impression of certification in this state as a real estate appraiser.

5524 (b) A person other than a state-licensed appraiser may not assume or use any title,
5525 designation, or abbreviation likely to create the impression of licensure in this state as a real
5526 estate appraiser.

5527 (3) (a) Only an individual who has qualified under the certification requirements of this
5528 chapter is authorized to prepare and sign a certified appraisal report relating to real estate or
5529 real property in this state.

5530 (b) If a certified appraisal report is prepared and signed by a state-certified residential
5531 appraiser, the certified appraisal report shall state, immediately following the signature on the
5532 report, "State-Certified Residential Appraiser."

5533 (c) If a certified appraisal report is prepared and signed by a state-certified general
5534 appraiser, the certified appraisal report shall state, immediately following the signature on the
5535 report, "State-Certified General Appraiser."

5536 (d) An appraisal report prepared by a state-licensed appraiser shall state, immediately
5537 following the signature on the report, "State-Licensed Appraiser."

5538 (e) When signing a certified appraisal report, a state-certified appraiser shall also place
5539 on the report, immediately below the state-certified appraiser's signature the state-certified
5540 appraiser's certificate number and its expiration date.

5541 (f) A state-certified residential appraiser may not prepare a certified appraisal report
5542 outside the state-certified residential appraiser's authority as defined in Section [~~61-2b-13~~]
5543 61-2g-312.

5544 (g) A state-licensed appraiser who assisted in the preparation of a certified appraisal
5545 report is authorized to cosign the certified appraisal report.

5546 (4) A person who has not qualified under this chapter may not describe or refer to any
5547 appraisal or appraisal report relating to real estate or real property in this state by the terms
5548 "certified appraisal" or "certified appraisal report."

5549 (5) If a trainee assists a state-certified appraiser in the preparation of an appraisal
5550 report, the appraisal report shall disclose:

5551 (a) the trainee's name; and

5552 (b) the extent to which the trainee assists in the preparation of the appraisal report.

5553 Section 99. Section **61-2g-402**, which is renumbered from Section 61-2b-26 is
5554 renumbered and amended to read:

5555 **[61-2b-26]. 61-2g-402. Principal place of business -- Display of documents --**
5556 **Notify of changes -- Nonresidents.**

5557 (1) A person licensed or certified under this chapter shall:

5558 (a) designate and maintain a principal place of business; and

5559 (b) conspicuously display the person's license or certification.

5560 (2) (a) Upon a change of a person's principal business location or home address, a
5561 person licensed or certified under this chapter shall promptly send the division a signed
5562 statement notifying the division of the change within 10 business days of the change.

5563 (b) Upon a change of an expert witness's address listed on the expert witness's
5564 application for approval, the expert witness shall send the division a signed statement notifying
5565 the division of the change within 10 business days of the change.

5566 (3) A nonresident licensee or certificate holder, or a nonresident approved as an expert
5567 witness is not required to maintain a place of business in this state if the nonresident maintains
5568 an active place of business in the nonresident's state of domicile.

5569 Section 100. Section **61-2g-403**, which is renumbered from Section 61-2b-27 is
5570 renumbered and amended to read:

5571 **[61-2b-27]. 61-2g-403. Professional conduct -- Uniform standards.**

5572 (1) (a) A person licensed, certified, registered, or approved as an expert witness under
5573 this chapter must comply with:

5574 (i) generally accepted standards of professional appraisal practice; and

5575 (ii) generally accepted ethical rules to be observed by a real estate appraiser.

5576 (b) Subject to Subsection (1)(c), generally accepted standards of professional appraisal

5577 practice are evidenced by the Uniform Standards of Professional Appraisal Practice
5578 promulgated by the Appraisal Foundation.

5579 (c) After a public hearing held in accordance with Title 63G, Chapter 3, Utah
5580 Administrative Rulemaking Act, the board, with the concurrence of the division:

5581 (i) shall adopt and may make modifications of or additions to the Uniform Standards of
5582 Professional Appraisal Practice as the board considers appropriate to comply with the Financial
5583 Institutions Reform, Recovery, and Enforcement Act of 1989; or

5584 (ii) may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
5585 Rulemaking Act, exempt a person licensed, certified, registered, or approved as an expert
5586 witness from complying with a provision of the Uniform Standards of Professional Appraisal
5587 Practice for an activity that the person engages in on behalf of a governmental entity.

5588 (2) [~~The~~] When instructed by the board, the division shall schedule a public hearing
5589 pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the purpose of
5590 deciding whether or not the board should require a modified or supplemental standard or the
5591 ethical rule to be observed by a person licensed, certified, registered, or approved as an expert
5592 witness under this chapter if the Appraisal Standards Board of the Appraisal Foundation:

5593 (a) (i) modifies the Uniform Standards of Professional Appraisal Practice;

5594 (ii) issues a supplemental appraisal standard which it considers appropriate for:

5595 (A) a residential real estate appraiser; or

5596 (B) a general real estate appraiser; or

5597 (iii) issues an ethical rule to be observed by a real estate appraiser; and

5598 (b) requests the board to consider the adoption of the modified or supplemental
5599 standard or ethical rule.

5600 (3) If, after the notice and public hearing described in Subsection (2), the board finds
5601 that a modified or supplemental standard or the ethical rule issued by the Appraisal Standards
5602 Board of the Appraisal Foundation is appropriate for a person licensed, certified, registered, or
5603 approved as an expert witness under this chapter, the board shall recommend a rule requiring a
5604 person licensed, certified, registered, or approved as an expert witness under this chapter to
5605 observe the modified or supplemental standard or the ethical rule.

5606 Section 101. Section **61-2g-404**, which is renumbered from Section 61-2b-32 is
5607 renumbered and amended to read:

5608 ~~[61-2b-32]~~. 61-2g-404. **Registration, licensure, or certification prerequisite to**
5609 **suit for compensation.**

5610 A person engaged in the business of real estate appraising in this state or acting in the
5611 capacity of a real estate appraiser in this state may not bring or maintain an action as a plaintiff
5612 in a court of this state to collect compensation for the performance of real estate appraisal
5613 services for which registration, licensure, or certification is required by this chapter without
5614 alleging and proving that the person was the holder of a valid registration, license, or
5615 certification in this state at all times during the performance of the real estate appraisal
5616 services.

5617 Section 102. Section **61-2g-405**, which is renumbered from Section 61-2b-34 is
5618 renumbered and amended to read:

5619 ~~[61-2b-34]~~. 61-2g-405. **Recordkeeping requirements.**

5620 (1) Subject to Subsection (2), a person licensed or certified under this chapter and a
5621 person required to be registered under this chapter before May 3, 2001, shall retain for a period
5622 of five years the original or a true copy of:

5623 (a) each written contract engaging the person's services for real estate or real property
5624 appraisal work;

5625 (b) each appraisal report prepared or signed by the person; and

5626 (c) ~~[aH]~~ the supporting data assembled and formulated by the appraiser in preparing
5627 each appraisal report.

5628 (2) The five-year period for retention of records is applicable to each engagement of
5629 the services of the appraiser and begins upon the date of the delivery of each appraisal report to
5630 the client unless, within the five-year period, the appraiser is notified that the appraisal or the
5631 appraisal report is involved in litigation, in which event the records must be maintained for the
5632 longer of:

5633 (a) five years; or

5634 (b) two years following the date of the final disposition of the litigation.

5635 (3) Upon reasonable notice, a person licensed or certified under this chapter and a
5636 person required to be registered under this chapter before May 3, 2001, shall make ~~[aH]~~ the
5637 records required to be maintained under this chapter available to the division for inspection and
5638 copying.

5639 Section 103. Section **61-2g-406**, which is renumbered from Section 61-2b-36 is
5640 renumbered and amended to read:

5641 **[61-2b-36]. 61-2g-406. Contingent fees.**

5642 (1) A person licensed or certified under this chapter who enters into an agreement to
5643 perform an appraisal may not accept a contingent fee.

5644 (2) A person licensed or certified under this chapter who enters into an agreement to
5645 provide consultation services may be paid a fixed fee or a contingent fee.

5646 (3) (a) If a person licensed or certified under this chapter enters into an agreement to
5647 perform consultation services for a contingent fee, this fact shall be clearly stated in each oral
5648 statement.

5649 (b) In addition to the requirements of Subsection (3)(a), if a person licensed or certified
5650 under this chapter prepares a written consultation report or summary, letter of transmittal, or
5651 certification statement for a contingent fee, the person shall clearly state in the report,
5652 summary, letter of transmittal, or certification statement that the report is prepared under a
5653 contingent fee arrangement.

5654 Section 104. Section **61-2g-407**, which is renumbered from Section 61-2b-41 is
5655 renumbered and amended to read:

5656 **[61-2b-41]. 61-2g-407. Consultation reports -- Restrictions on use of terms.**

5657 A person who prepares a written or oral consultation report may not refer to the
5658 consultation report as an appraisal, an appraisal report, or in any manner that may be
5659 interpreted as referring to an appraisal or an appraisal report.

5660 Section 105. Section **61-2g-501**, which is renumbered from Section 61-2b-28 is
5661 renumbered and amended to read:

5662 **Part 5. Enforcement**

5663 **[61-2b-28]. 61-2g-501. Enforcement -- Investigation -- Orders -- Hearings.**

5664 (1) (a) The division may investigate the actions of:

5665 (i) a person registered, licensed, or certified under this chapter;

5666 (ii) an applicant for registration, licensure, or certification;

5667 (iii) an applicant for renewal of registration, licensure, or certification; or

5668 (iv) a person required to be registered, licensed, or certified under this chapter.

5669 (b) The division may initiate an agency action against a person described in Subsection

- 5670 (1)(a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to:
- 5671 (i) impose disciplinary action;
- 5672 (ii) deny issuance to an applicant of:
- 5673 (A) an original registration, license, or certification; or
- 5674 (B) a renewal of a registration, license, or certification; or
- 5675 (iii) issue a cease and desist order as provided in Subsection (3).
- 5676 (2) (a) The division may:
- 5677 (i) administer an oath or affirmation;
- 5678 (ii) subpoena a witness or evidence;
- 5679 (iii) take evidence; and
- 5680 (iv) require the production of a book, paper, contract, record, document, information,
- 5681 or evidence relevant to the investigation described in Subsection (1).
- 5682 (b) The division may serve a subpoena by certified mail.
- 5683 (c) A failure to respond to a request by the division in an investigation authorized
- 5684 under this chapter is considered to be a separate violation of this chapter, including:
- 5685 (i) failing to respond to a subpoena as a witness;
- 5686 (ii) withholding evidence; or
- 5687 (iii) failing to produce a book, paper, contract, document, information, or record.
- 5688 (d) (i) If a person is found to have violated this chapter or a rule made under this
- 5689 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,
- 5690 document, information, or record required under this chapter, including the costs incurred to
- 5691 copy an electronic book, paper, contract, document, information, or record in a universally
- 5692 readable format.
- 5693 (ii) If a person fails to pay the costs described in Subsection (2)(d)(i) when due, the
- 5694 person's license, certification, or registration is automatically suspended:
- 5695 (A) beginning the day on which the payment of costs is due; and
- 5696 (B) ending the day on which the costs are paid.
- 5697 (3) (a) The director shall issue and serve upon a person an order directing that person to
- 5698 cease and desist from an act if:
- 5699 (i) the director has reason to believe that the person has been engaging, is about to
- 5700 engage, or is engaging in the act constituting a violation of this chapter; and

5701 (ii) it appears to the director that it would be in the public interest to stop the act.

5702 (b) Within 10 days after receiving the order, the person upon whom the order is served
5703 may request a hearing.

5704 (c) Pending a hearing requested under Subsection (3)(b), a cease and desist order shall
5705 remain in effect.

5706 (d) If a request for hearing is made, the division shall follow the procedures and
5707 requirements of Title 63G, Chapter 4, Administrative Procedures Act.

5708 (4) (a) After a hearing requested under Subsection (3), if the board [~~agrees~~] and
5709 division concur that an act of the person violates this chapter, the board, with the concurrence
5710 of the division:

5711 (i) shall issue an order making the cease and desist order permanent; and

5712 (ii) may impose another disciplinary action under Section [~~61-2b-29~~] 61-2g-502.

5713 (b) The director shall commence an action in the name of the Department of
5714 Commerce and Division of Real Estate, in the district court in the county in which an act
5715 described in Subsection (3) occurs or where the person resides or carries on business, to enjoin
5716 and restrain the person from violating this chapter if:

5717 (i) (A) a hearing is not requested under Subsection (3); and

5718 (B) the person fails to cease the act described in Subsection (3); or

5719 (ii) after discontinuing the act described in Subsection (3), the person again
5720 commences the act.

5721 (5) A remedy or action provided in this section does not limit, interfere with, or prevent
5722 the prosecution of another remedy or action, including a criminal proceeding.

5723 Section 106. Section **61-2g-502**, which is renumbered from Section 61-2b-29 is
5724 renumbered and amended to read:

5725 **~~[61-2b-29]~~. 61-2g-502. Disciplinary action -- Grounds.**

5726 (1) (a) The board may order disciplinary action, with the concurrence of the division,
5727 against a person:

5728 (i) registered, licensed, or certified under this chapter; or

5729 (ii) required to be registered, licensed, or certified under this chapter.

5730 (b) On the basis of a ground listed in Subsection (2) for disciplinary action, board
5731 action may include:

- 5732 (i) revoking, suspending, or placing a person's registration, license, or certification on
5733 probation;
- 5734 (ii) denying a person's original registration, license, or certification;
- 5735 (iii) denying a person's renewal license, certification, or registration;
- 5736 (iv) in the case of denial or revocation of a registration, license, or certification, setting
5737 a waiting period for an applicant to apply for a registration, license, or certification under this
5738 chapter;
- 5739 (v) ordering remedial education;
- 5740 (vi) imposing a civil penalty upon a person not to exceed the greater of:
- 5741 (A) \$5,000 for each violation; or
- 5742 (B) the amount of any gain or economic benefit from a violation;
- 5743 (vii) issuing a cease and desist order;
- 5744 (viii) modifying an action described in Subsections (1)(b)(i) through (vii) if the board,
5745 with the concurrence of the division, finds that the person complies with court ordered
5746 restitution; or
- 5747 (ix) doing any combination of Subsections (1)(b)(i) through (viii).
- 5748 (c) (i) If the board or division issues an order that orders a fine or educational
5749 requirements as part of the disciplinary action against a person, including a stipulation and
5750 order, the board or division shall state in the order the deadline by which the person shall
5751 comply with the fine or educational requirements.
- 5752 (ii) If a person fails to comply with a stated deadline:
- 5753 (A) the person's license, certificate, or registration is automatically suspended:
- 5754 (I) beginning on the day specified in the order as the deadline for compliance; and
- 5755 (II) ending the day on which the person complies in full with the order; and
- 5756 (B) if the person fails to pay a fine required by an order, the division may begin a
5757 collection process:
- 5758 (I) established by the division by rule made in accordance with Title 63G, Chapter 3,
5759 Utah Administrative Rulemaking Act; and
- 5760 (II) subject to Title 63A, Chapter 8, Office of State Debt Collection.
- 5761 (2) The following are grounds for disciplinary action under this section:
- 5762 (a) procuring or attempting to procure a registration, license, or certification under this

5763 chapter:

5764 (i) by fraud; or

5765 (ii) by making a false statement, submitting false information, or making a material

5766 misrepresentation in an application filed with the division;

5767 (b) paying money or attempting to pay money other than a fee provided for by this

5768 chapter to a member or employee of the division to procure a registration, license, or

5769 certification under this chapter;

5770 (c) an act or omission in the practice of real estate appraising that constitutes

5771 dishonesty, fraud, or misrepresentation;

5772 (d) entry of a judgment against a registrant, licensee, or certificate holder on grounds of

5773 fraud, misrepresentation, or deceit in the making of an appraisal of real estate;

5774 (e) a guilty plea to a criminal offense involving moral turpitude that is held in

5775 abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo

5776 contendere, of a criminal offense involving moral turpitude;

5777 (f) engaging in the business of real estate appraising under an assumed or fictitious

5778 name not properly registered in this state;

5779 (g) paying a finder's fee or a referral fee to a person not licensed or certified under this

5780 chapter in connection with an appraisal of real estate or real property in this state;

5781 (h) making a false or misleading statement in:

5782 (i) that portion of a written appraisal report that deals with professional qualifications;

5783 or

5784 (ii) testimony concerning professional qualifications;

5785 (i) violating or disregarding:

5786 (i) this chapter;

5787 (ii) an order of:

5788 (A) the board; or

5789 (B) the division, in a case when the board delegates to the division the authority to

5790 make a decision on behalf of the board; or

5791 (iii) a rule issued under this chapter;

5792 (j) violating the confidential nature of governmental records to which a person

5793 registered, licensed, certified, or approved as an expert under this chapter gained access

5794 through employment or engagement as an appraiser by a governmental agency;

5795 (k) accepting a contingent fee for performing an appraisal if in fact the fee is or was
5796 contingent upon:

5797 (i) the appraiser reporting a predetermined analysis, opinion, or conclusion;

5798 (ii) the analysis, opinion, conclusion, or valuation reached; or

5799 (iii) the consequences resulting from the appraisal assignment;

5800 (l) unprofessional conduct as defined by statute or rule;

5801 (m) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

5802 (i) providing a title insurance product or service without the approval required by
5803 Section 31A-2-405; or

5804 (ii) knowingly providing false or misleading information in the statement required by
5805 Subsection 31A-2-405(2); or

5806 (n) other conduct that constitutes dishonest dealing.

5807 Section 107. Section **61-2g-503**, which is renumbered from Section 61-2b-30.5 is
5808 renumbered and amended to read:

5809 ~~[61-2b-30.5].~~ **61-2g-503. Reinstatement of license, certification,**
5810 **registration, and approval -- Expert witness -- Trainee.**

5811 (1) An individual whose license, certification, registration, or approval is revoked
5812 under this chapter:

5813 (a) may not apply for renewal or reinstatement of that license, certification,
5814 registration, or approval; and

5815 (b) may apply for licensure, certification, registration, or approval as prescribed for an
5816 original license, certification, registration, or approval subject to the limitations in Subsection
5817 (2).

5818 (2) An applicant for licensure, certification, registration, or approval as an expert
5819 witness under Subsection (1)~~[(a) may not apply for licensure, certification, registration, or~~
5820 ~~approval until at least five years after the date of revocation of the applicant's original license,~~
5821 ~~certification, registration, or approval; and (b)]~~ is not entitled to credit for experience gained
5822 ~~[prior to]~~ before the date of revocation in determining whether the applicant meets the
5823 experience requirement for licensure, certification, registration, or approval.

5824 ~~[(3) A person whose license or certification is revoked may not act as a trainee until at~~

5825 ~~least four years after the day on which the person's license or certification is revoked.]~~

5826 Section 108. Section **61-2g-504**, which is renumbered from Section 61-2b-31 is
5827 renumbered and amended to read:

5828 ~~[61-2b-31].~~ **61-2g-504. Disciplinary hearing process.**

5829 (1) The division and board shall comply with Title 63G, Chapter 4, Administrative
5830 Procedures Act, in conducting any disciplinary proceedings under this chapter.

5831 ~~[(1)]~~ (2) Before disciplinary action may be taken ~~[by the board]~~ under this chapter, the
5832 division shall:

5833 (a) notify the person against whom ~~[the board seeks to take]~~ disciplinary action is
5834 sought; and

5835 (b) commence an adjudicative proceeding.

5836 ~~[(2)]~~ (3) If, after the hearing, the board determines, with the concurrence of the
5837 division, that a person described in Subsection ~~[(1)]~~ (2) violated this chapter, the board may
5838 impose disciplinary action, with the concurrence of the division, by written order as provided in
5839 Section ~~[61-2b-29]~~ 61-2g-502.

5840 ~~[(3)]~~ (4) (a) The board may:

5841 (i) conduct hearings with the assistance of an administrative law judge; or

5842 (ii) delegate hearings to an administrative law judge.

5843 (b) If a hearing is delegated by the board to an administrative law judge, the
5844 administrative law judge shall submit to the board and the director for ~~[its]~~ their consideration:

5845 (i) written findings of fact;

5846 (ii) written conclusions of law; and

5847 (iii) a recommended order.

5848 ~~[(4)]~~ (5) (a) An applicant, licensee, certificate holder, registrant, or person aggrieved,
5849 including the complainant, may obtain judicial review of an adverse ruling, order, or decision
5850 ~~[of the board]~~.

5851 (b) If an applicant, licensee, certificate holder, or registrant prevails in an appeal and
5852 the court finds that the state action is undertaken without substantial justification, the court may
5853 award reasonable litigation expenses to the applicant, licensee, certificate holder, or registrant
5854 as provided under Title 78B, Chapter 8, Part 5, Small Business Equal Access to Justice Act.

5855 Section 109. Section **61-2g-505**, which is renumbered from Section 61-2b-33 is

5856 renumbered and amended to read:

5857 ~~[61-2b-33]~~. 61-2g-505. **Penalty for violating this chapter -- Automatic**
5858 **revocation.**

5859 (1) In addition to being subject to a disciplinary action [~~by the board~~], a person
5860 required to be licensed, certified, or registered under this chapter who violates this chapter:

5861 (a) is guilty of a class A misdemeanor, upon a conviction of a first violation of this
5862 chapter; and

5863 (b) is guilty of a third degree felony, upon conviction of a second or subsequent
5864 violation of this chapter.

5865 (2) A license, certification, or registration issued by the division to a person convicted
5866 of a violation of Section 76-6-1203 is automatically revoked.

5867 Section 110. Section **63A-5-220** is amended to read:

5868 **63A-5-220. Definitions -- Creation of Account for People with Disabilities -- Use**
5869 **of restricted account.**

5870 (1) As used in this section:

5871 (a) "Developmental center" means the Utah State Developmental Center described in
5872 Section 62A-5-201.

5873 (b) "DSPD" means the Division of Services for People with Disabilities within the
5874 Department of Human Services.

5875 (c) "Long-term lease" means:

5876 (i) a lease with a term of five years or more; or

5877 (ii) a lease with a term of less than five years that may be unilaterally renewed by the
5878 lessee.

5879 (2) Notwithstanding [~~the provisions of~~] Section 63A-5-215, any money received by the
5880 division or DSPD from the sale, lease, except any lease existing on May 1, 1995, or other
5881 disposition of real property associated with the developmental center shall be deposited in the
5882 restricted account created in Subsection (3).

5883 (3) (a) There is created a restricted account within the General Fund known as the
5884 "Account for People with Disabilities."

5885 (b) The Division of Finance shall deposit the following revenues into the restricted
5886 account:

- 5887 (i) revenue from the sale, lease, except any lease existing on May 1, 1995, or other
5888 disposition of real property associated with the developmental center;
- 5889 (ii) revenue from the sale, lease, or other disposition of water rights associated with the
5890 developmental center; and
- 5891 (iii) revenue from voluntary contributions made to the restricted account.
- 5892 (c) The state treasurer shall invest money in the fund according to the procedures and
5893 requirements of Title 51, Chapter 7, State Money Management Act, and ~~and~~ the interest shall
5894 remain with the restricted account.
- 5895 (d) (i) Except as provided in Subsection (3)(d)(ii), ~~and~~ an expenditure or appropriation
5896 may not be made from the restricted account.
- 5897 (ii) (A) The Legislature may appropriate interest earned on restricted account money
5898 invested pursuant to this Subsection (3)(d), leases from real property and improvements, leases
5899 from water, rents, and fees to DSPD for programs described in Title 62A, Chapter 5, Services
5900 ~~and~~ for People with Disabilities.
- 5901 (B) Restricted account money appropriated each year under Subsection (3)(d)(ii)(A)
5902 may not be expended unless approved by the director of the Division of Services for People
5903 with Disabilities within the Department of Human Services in consultation with the executive
5904 director of the department.
- 5905 (4) (a) Notwithstanding ~~the provisions of~~ Section 65A-4-1, any sale or disposition of
5906 real property or water rights associated with the developmental center shall be conducted as
5907 provided in this Subsection (4).
- 5908 (b) The division shall secure the concurrence of DSPD and the approval of the
5909 governor before making the sale or other disposition of land or water rights.
- 5910 (c) In addition to the concurrences required by Subsection (4)(b), the division shall
5911 secure the approval of the Legislature before offering the land or water rights for sale,
5912 exchange, or long-term lease.
- 5913 (d) The division shall sell or otherwise dispose of the land or water rights as directed
5914 by the governor.
- 5915 (e) The division may not sell, exchange, or enter into a long-term lease of the land or
5916 water rights for a price or estimated value below the average of two appraisals conducted by an
5917 appraiser who holds an appraiser's certificate or license issued by the Division of Real Estate

5918 under Title 61, Chapter ~~[2b]~~ 2g, Real Estate Appraiser Licensing and Certification Act.

5919 Section 111. Section **63A-5-401** is amended to read:

5920 **63A-5-401. Rulemaking for sale of real property -- Licensed or certified**
5921 **appraisers -- Exceptions.**

5922 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if
5923 the division buys, sells, or exchanges real property, the division shall make rules to ensure that
5924 the value of the real property is congruent with the proposed price and other terms of the
5925 purchase, sale, or exchange.

5926 (2) The rules:

5927 (a) shall establish procedures for determining the value of the real property;

5928 (b) may provide that an appraisal, as defined under Section ~~[61-2b-2]~~ 61-2g-102,
5929 demonstrates the real property's value; and

5930 (c) may require that the appraisal be completed by a state-certified general appraiser, as
5931 defined under Section ~~[61-2b-2]~~ 61-2g-102.

5932 (3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or
5933 to an interest in real property:

5934 (a) that is under a contract or other written agreement ~~[prior to]~~ before May 5, 2008; or

5935 (b) with a value of less than \$100,000, as estimated by the state agency.

5936 Section 112. Section **70D-1-102** is amended to read:

5937 **70D-1-102. Definitions.**

5938 As used in this title:

5939 (1) "Commissioner" means the commissioner of the department.

5940 (2) "Department" means the Department of Financial Institutions.

5941 (3) "Depository institution" is as defined in Section 7-1-103.

5942 (4) "Dwelling" means a residential structure attached to real property that contains one
5943 to four units including any of the following if used as a residence:

5944 (a) a condominium unit;

5945 (b) a cooperative unit;

5946 (c) a manufactured home; or

5947 (d) a house.

5948 (5) "Mortgage" means a mortgage or deed of trust affecting real property located in this

5949 state.

5950 (6) (a) "Mortgage loan" means a loan:

5951 (i) secured by a mortgage; and

5952 (ii) made for personal, family, or household purposes.

5953 (b) "Mortgage loan" does not include a loan:

5954 (i) made by an individual to a member of the individual's family; or

5955 (ii) subject to Title 70C, Utah Consumer Credit Code.

5956 (7) "Mortgagor" means a person who:

5957 (a) executes a mortgage; or

5958 (b) is obligated to pay a mortgage loan.

5959 (8) "Record" means information that is:

5960 (a) inscribed on a tangible medium; or

5961 (b) stored in an electronic or other medium and is retrievable in perceivable form.

5962 (9) "Real estate brokerage activity" means an act that involves offering or providing

5963 real estate brokerage services to the public, including:

5964 (a) acting as a real estate ~~[agent or real estate broker]~~ principal broker, associate broker,
5965 or sales agent, as defined in Section 61-2f-102, for a buyer, seller, lessor, or lessee of real
5966 property;

5967 (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange
5968 of real property;

5969 (c) negotiating, on behalf of a party, a portion of a contract relating to the sale,
5970 purchase, lease, rental, or exchange of real property, other than in connection with providing
5971 financing with respect to the transaction;

5972 (d) engaging in an act for which a person engaged in the activity is required to be
5973 registered or licensed as a real estate agent or real estate broker under applicable law; and

5974 (e) offering to engage in an activity, or act in a capacity, described in Subsections (9)(a)
5975 through (d).

5976 (10) "State" means:

5977 (a) a state, territory, or possession of the United States;

5978 (b) the District of Columbia; or

5979 (c) the Commonwealth of Puerto Rico.

5980 Section 113. Section **72-5-117** is amended to read:

5981 **72-5-117. Rulemaking for sale of real property -- Licensed or certified appraisers**

5982 **-- Exceptions.**

5983 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if
5984 the department buys, sells, or exchanges real property, the department shall make rules to
5985 ensure that the value of the real property is congruent with the proposed price and other terms
5986 of the purchase, sale, or exchange.

5987 (2) The rules:

5988 (a) shall establish procedures for determining the value of the real property;

5989 (b) may provide that an appraisal, as defined under Section [~~61-2b-2~~] 61-2g-102,
5990 demonstrates the real property's value; and

5991 (c) may require that the appraisal be completed by a state-certified general appraiser, as
5992 defined under Section [~~61-2b-2~~] 61-2g-102.

5993 (3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or
5994 to an interest in real property:

5995 (a) that is under a contract or other written agreement [~~prior to~~] before May 5, 2008; or

5996 (b) with a value of less than \$100,000, as estimated by the state agency.

5997 Section 114. Section **78B-6-1101** is amended to read:

5998 **78B-6-1101. Definitions -- Nuisance -- Right of action.**

5999 (1) A nuisance is anything which is injurious to health, indecent, offensive to the
6000 senses, or an obstruction to the free use of property, so as to interfere with the comfortable
6001 enjoyment of life or property. A nuisance may be the subject of an action.

6002 (2) A nuisance may include the following:

6003 (a) drug houses and drug dealing as provided in Section 78B-6-1107;

6004 (b) gambling as provided in Title 76, Chapter 10, Part 11, Gambling;

6005 (c) criminal activity committed in concert with two or more persons as provided in
6006 Section 76-3-203.1;

6007 (d) criminal activity committed for the benefit of, at the direction of, or in association
6008 with any criminal street gang as defined in Section 76-9-802;

6009 (e) criminal activity committed to gain recognition, acceptance, membership, or
6010 increased status with a criminal street gang as defined in Section 76-9-802;

6011 (f) party houses which frequently create conditions defined in Subsection (1); and

6012 (g) prostitution as provided in Title 76, Chapter 10, Part 13, Prostitution.

6013 (3) A nuisance under this part includes tobacco smoke that drifts into any residential
6014 unit a person rents, leases, or owns, from another residential or commercial unit and the smoke:

6015 (a) drifts in more than once in each of two or more consecutive seven-day periods; and

6016 (b) creates any of the conditions under Subsection (1).

6017 (4) Subsection (3) does not apply to:

6018 (a) residential rental units available for temporary rental, such as for vacations, or
6019 available for only 30 or fewer days at a time; or

6020 (b) hotel or motel rooms.

6021 (5) Subsection (3) does not apply to any unit that is part of a timeshare development, as
6022 defined in Section [~~57-19-2~~] 57-19a-102, or subject to a timeshare interest as defined in

6023 Section [~~57-19-2~~] 57-19a-102.

6024 (6) An action may be brought by any person whose property is injuriously affected, or
6025 whose personal enjoyment is lessened by the nuisance.

6026 (7) "Agricultural operation" means any activity engaged in the commercial production
6027 of crops, orchards, aquaculture, livestock, poultry, livestock products, poultry products, and the
6028 facilities, equipment, and property used to facilitate the activity.

6029 (8) "Manufacturing facility" means any factory, plant, or other facility including its
6030 appurtenances, where the form of raw materials, processed materials, commodities, or other
6031 physical objects is converted or otherwise changed into other materials, commodities, or
6032 physical objects or where such materials, commodities, or physical objects are combined to
6033 form a new material, commodity, or physical object.

6034 Section 115. Section **79-2-403** is amended to read:

6035 **79-2-403. Rulemaking for sale of real property -- Licensed or certified appraisers**
6036 **-- Exceptions.**

6037 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if
6038 the department buys, sells, or exchanges real property, the department shall make rules to
6039 ensure that the value of the real property is congruent with the proposed price and other terms
6040 of the purchase, sale, or exchange.

6041 (2) The rules:

- 6042 (a) shall establish procedures for determining the value of the real property;
- 6043 (b) may provide that an appraisal, as defined under Section ~~[61-2b-2]~~ 61-2g-102,
- 6044 demonstrates the real property's value; and
- 6045 (c) may require that the appraisal be completed by a state-certified general appraiser, as
- 6046 defined under Section ~~[61-2b-2]~~ 61-2g-102.
- 6047 (3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or
- 6048 to an interest in real property:
 - 6049 (a) that is under a contract or other written agreement [~~prior to~~] before May 5, 2008; or
 - 6050 (b) with a value of less than \$100,000, as estimated by the state agency.
- 6051 **Section 116. Repealer.**
- 6052 This bill repeals:
 - 6053 **Section 57-11-19, Extradition proceedings against person charged with crime.**
 - 6054 **Section 57-19-7, Prior permits.**
 - 6055 **Section 57-19-19, Subpoenas -- Evidence.**
 - 6056 **Section 57-19-20, Injunctive relief -- Cease and desist order.**
 - 6057 **Section 61-2b-5, Chapter administration.**
 - 6058 **Section 61-2b-9, Licensure or certification required -- Application.**
 - 6059 **Section 61-2b-30, Compliance with Administrative Procedures Act.**
 - 6060 **Section 61-2b-39, Registration, licensure, or certification history.**

Legislative Review Note
as of 1-26-11 3:50 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 91

SHORT TITLE: Real Estate Related Amendments

SPONSOR: Froerer, G.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

While this bill increases the penalties for specific violations, no additional revenue is anticipated, based on last years' history of no assessments. Any impact to the Courts is expected to be minimal and can be handled within existing budgets.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

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

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

This bill increases the fines for two groups of real estate licensees and creates new misdemeanors. Violators of the law would be subject to these penalties.