

REAL ESTATE AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill modifies provisions relating to real estate.

Highlighted Provisions:

This bill:

- ▶ modifies provisions relating to timeshare and camp resort projects;
- ▶ modifies provisions of the Utah Mortgage Practices and Licensing Act;
- ▶ modifies provisions of the Appraisal Management Company Registration and Regulation Act;
- ▶ modifies provisions of the Real Estate Licensing and Practices Act; and
- ▶ modifies provisions of the Real Estate Appraiser Licensing and Certification Act.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides effective dates.

Utah Code Sections Affected:

AMENDS:

- 57-8-3**, as last amended by Laws of Utah 2011, Chapter 355
- 57-8-27**, as last amended by Laws of Utah 2007, Chapters 268 and 329
- 57-19-2**, as last amended by Laws of Utah 1989, Chapter 225
- 57-19-6**, as last amended by Laws of Utah 2000, Chapter 86



- 28 **57-19-8**, as last amended by Laws of Utah 1991, Chapter 165
- 29 **57-19-12**, as enacted by Laws of Utah 1987, Chapter 73
- 30 **57-19-13**, as enacted by Laws of Utah 1987, Chapter 73
- 31 **57-19-26**, as enacted by Laws of Utah 1987, Chapter 73
- 32 **61-2c-102**, as last amended by Laws of Utah 2011, Chapter 289
- 33 **61-2c-103**, as last amended by Laws of Utah 2011, Chapter 289
- 34 **61-2c-106**, as last amended by Laws of Utah 2010, Chapter 379
- 35 **61-2c-203**, as last amended by Laws of Utah 2011, Chapter 289
- 36 **61-2c-204.1**, as last amended by Laws of Utah 2010, Chapter 379
- 37 **61-2c-205**, as last amended by Laws of Utah 2011, Chapter 289
- 38 **61-2c-206**, as last amended by Laws of Utah 2010, Chapter 379
- 39 **61-2c-209**, as enacted by Laws of Utah 2010, Chapter 379
- 40 **61-2c-301**, as last amended by Laws of Utah 2011, Chapter 289
- 41 **61-2c-302**, as last amended by Laws of Utah 2011, Chapter 289
- 42 **61-2c-404**, as last amended by Laws of Utah 2010, Chapter 379
- 43 **61-2e-104**, as enacted by Laws of Utah 2009, Chapter 269
- 44 **61-2e-201**, as enacted by Laws of Utah 2009, Chapter 269
- 45 **61-2e-307**, as last amended by Laws of Utah 2011, Chapter 289
- 46 **61-2e-401**, as last amended by Laws of Utah 2011, Chapter 289
- 47 **61-2f-102**, as last amended by Laws of Utah 2011, Chapter 289
- 48 **61-2f-203**, as last amended by Laws of Utah 2011, Chapter 289
- 49 **61-2f-301**, as last amended by Laws of Utah 2011, Chapter 289
- 50 **61-2f-401 (Superseded 07/01/12)**, as last amended by Laws of Utah 2011, Chapter 289
- 51 **61-2f-401 (Effective 07/01/12)**, as last amended by Laws of Utah 2011, Chapters 289
- 52 and 353
- 53 **61-2g-102**, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 54 **61-2g-103 (Superseded 07/01/12)**, as renumbered and amended by Laws of Utah 2011,
- 55 Chapter 289
- 56 **61-2g-103 (Effective 07/01/12)**, as last amended by Laws of Utah 2011, Chapter 353
- 57 and renumbered and amended by Laws of Utah 2011, Chapter 289
- 58 **61-2g-201**, as renumbered and amended by Laws of Utah 2011, Chapter 289

- 59 **61-2g-301**, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 60 **61-2g-304**, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 61 **61-2g-306**, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 62 **61-2g-308**, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 63 **61-2g-312**, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 64 **61-2g-315**, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 65 **61-2g-402**, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 66 **61-2g-403**, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 67 **61-2g-502**, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 68 **61-2g-503**, as renumbered and amended by Laws of Utah 2011, Chapter 289

69 REPEALS:

- 70 **61-2g-303**, as enacted by Laws of Utah 2011, Chapter 289



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

73 Section 1. Section **57-8-3** is amended to read:

74 **57-8-3. Definitions.**

75 As used in this chapter:

76 (1) "Assessment" means any charge imposed by the association, including:

77 (a) common expenses on or against a unit owner pursuant to the provisions of the
78 declaration, bylaws, or this chapter; and

79 (b) an amount that an association of unit owners assesses to a unit owner under

80 Subsection 57-8-43(9)(h).

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

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

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

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

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

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

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

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

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

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

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

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

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

102 (5) "Common expenses" means:

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

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

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

107 (d) expenses declared common expenses by this chapter, or by the declaration or the
108 bylaws.

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

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

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

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

121 (10) "Condominium unit" means a unit together with the undivided interest in the
122 common areas and facilities appertaining to that unit. Any reference in this chapter to a
123 condominium unit includes both a physical unit together with its appurtenant undivided interest
124 in the common areas and facilities and a time period unit together with its appurtenant
125 undivided interest, unless the reference is specifically limited to a time period unit.

126 (11) "Contractible condominium" means a condominium project from which one or
127 more portions of the land within the project may be withdrawn in accordance with provisions
128 of the declaration and of this chapter. If the withdrawal can occur only by the expiration or
129 termination of one or more leases, then the condominium project is not a contractible
130 condominium within the meaning of this chapter.

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

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

137 (14) "Declarant" means all persons who execute the declaration or on whose behalf the
138 declaration is executed. From the time of the recordation of any amendment to the declaration
139 expanding an expandable condominium, all persons who execute that amendment or on whose
140 behalf that amendment is executed shall also come within this definition. Any successors of
141 the persons referred to in this subsection who come to stand in the same relation to the
142 condominium project as their predecessors also come within this definition.

143 (15) "Declaration" means the instrument by which the property is submitted to the
144 provisions of this act, as it from time to time may be lawfully amended.

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

147 (17) "Leasehold condominium" means a condominium project in all or any portion of
148 which each unit owner owns an estate for years in his unit, or in the land upon which that unit
149 is situated, or both, with all those leasehold interests to expire naturally at the same time. A
150 condominium project including leased land, or an interest in the land, upon which no units are
151 situated or to be situated is not a leasehold condominium within the meaning of this chapter.

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

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

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

161 (21) "Par value" means a number of dollars or points assigned to each unit by the
162 declaration. Substantially identical units shall be assigned the same par value, but units located
163 at substantially different heights above the ground, or having substantially different views, or
164 having substantially different amenities or other characteristics that might result in differences
165 in market value, may be considered substantially identical within the meaning of this
166 subsection. If par value is stated in terms of dollars, that statement may not be considered to
167 reflect or control the sales price or fair market value of any unit, and no opinion, appraisal, or
168 fair market transaction at a different figure may affect the par value of any unit, or any
169 undivided interest in the common areas and facilities, voting rights in the unit owners'
170 association, liability for common expenses, or right to common profits, assigned on the basis
171 thereof.

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

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

177 (24) "Record," "recording," "recorded," and "recorder" have the meaning stated in Title
178 57, Chapter 3, Recording of Documents.

179 (25) "Size" means the number of cubic feet, or the number of square feet of ground or
180 floor space, within each unit as computed by reference to the record of survey map and rounded
181 off to a whole number. Certain spaces within the units including attic, basement, or garage
182 space may be omitted from the calculation or be partially discounted by the use of a ratio, if the

183 same basis of calculation is employed for all units in the condominium project and if that basis
184 is described in the declaration.

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

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

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

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

201 Section 2. Section **57-8-27** is amended to read:

202 **57-8-27. Separate taxation.**

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

209 (2) In the event any of the interests in real property made subject to this chapter by the
210 declaration are leasehold interests, if the lease creating these interests is of record in the office
211 of the county recorder, if the balance of the term remaining under the lease is at least 40 years
212 at the time the leasehold interest is made subject to this chapter, if units are situated or are to be
213 situated on or within the real property covered by the lease, and if the lease provides that the

214 lessee shall pay all taxes and assessments imposed by governmental authority, then until 10
215 years prior to the date that the leasehold is to expire or until the lease is terminated, whichever
216 first occurs, all taxes and assessments on the real property covered by the lease shall be levied
217 against the owner of the lessee's interest. If the owner of the reversion under the lease has
218 executed the declaration and condominium plat, until 10 years prior to the date that the
219 leasehold is to expire, or until the lease is terminated, whichever first occurs, all taxes and
220 assessments on the real property covered by the lease shall be separately levied against the unit
221 owners having an interest in the lease, with each unit owner for taxation purposes being
222 considered the owner of a parcel consisting of his undivided condominium interest in the fee of
223 the real property affected by the lease.

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

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

230 (5) Timeshare interests and timeshare estates, as defined in Subsection
231 57-19-2~~(17)~~(19), may not be separately taxed but shall be valued, assessed, and taxed at the
232 unit level. The value of timeshare interests and timeshare estates, for purposes of ad valorem
233 taxation, shall be determined by valuing the real property interest associated with the timeshare
234 interest or timeshare estate, exclusive of the value of any intangible property and rights
235 associated with the acquisition, operation, ownership, and use of the timeshare interest or
236 timeshare estate, including the fees and costs associated with the sale of timeshare interests and
237 timeshare estates that exceed those fees and costs normally incurred in the sale of other similar
238 properties, the fees and costs associated with the operation, ownership, and use of timeshare
239 interests and timeshare estates, vacation exchange rights, vacation conveniences and services,
240 club memberships, and any other intangible rights and benefits available to a timeshare unit
241 owner. Nothing in this section shall be construed as requiring the assessment of any real
242 property interest associated with a timeshare interest or timeshare estate at less than its fair
243 market value. Notice of assessment, delinquency, sale, or any other purpose required by law is
244 considered sufficient for all purposes if the notice is given to the management committee.

245 Section 3. Section **57-19-2** is amended to read:

246 **57-19-2. Definitions.**

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

248 (1) "Accommodations" includes hotel or motel rooms, condominium or cooperative
249 units, cabins, lodges, apartments, and private or commercial structures designed for occupancy
250 by one or more individuals.

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

253 (3) "Association" means an organized body consisting solely of owners of timeshare
254 interests in a timeshare development that has been registered with the division.

255 (4) "Business day" means a day other than a Saturday, Sunday, or state or federal
256 holiday.

257 [~~(3)~~] (5) "Camp resort" means any enterprise that has as its primary purpose the
258 offering of a camp resort interest.

259 [~~(4)~~] (6) "Camp resort interest" means the right to use and occupy a camping site.

260 [~~(5)~~] (7) "Camping site" means a space designed or promoted for the purpose of
261 locating a trailer, tent, tent trailer, pickup camper, or other similar device used for land-based
262 portable housing.

263 [~~(6)~~] (8) "Developer" means a person who:

264 (a) establishes, promotes, owns, or operates a timeshare development or camp resort[-];

265 or

266 (b) engages one or more other persons to establish, promote, or operate a timeshare
267 development or camp resort on the person's behalf.

268 [~~(7)~~] (9) "Director" means the director of the division.

269 [~~(8)~~] (10) "Division" means the Division of Real Estate of the Department of
270 Commerce.

271 [~~(9)~~] (11) "Executive director" means the executive director of the Department of
272 Commerce.

273 [~~(10)~~] (12) "Interest" means a camp resort interest or a timeshare interest.

274 [~~(11)~~] (13) "Offer" means a solicitation intended to result in a person purchasing an
275 interest in a project.

276 ~~[(12)]~~ (14) "Project" means a camp resort or timeshare development.

277 ~~[(13)]~~ (15) "Purchaser" means a person who purchases an interest in a project.

278 ~~[(14)]~~ (16) "Sale" or "sell" means selling an interest in a project for value. It does not
279 include charging a reasonable fee to offset the administrative costs of transferring an interest in
280 a project.

281 ~~[(15)]~~ (17) "Salesperson" means an individual who, for compensation and as agent for
282 another, is engaged in obtaining commitments of persons to purchase an interest in a project by
283 making direct sales presentations to those persons. It does not include purchasers or members
284 engaged in the referral of persons without making a direct sales presentation to them.

285 ~~[(16)]~~ (18) "Timeshare development" means any enterprise that has as its primary
286 purpose the offering of a timeshare interest, including a project in which the purchase of an
287 interest gives the purchaser the right to use and occupy an accommodation at one specific site
288 or more than one site.

289 ~~[(17)]~~ (19) "Timeshare interest" means a right to occupy fixed or variable
290 accommodations during three or more separate fixed or variable time periods over a period of
291 at least three years, including renewal options, whether or not coupled with an estate in land. It
292 includes what is commonly known as a "timeshare estate," which is a small undivided
293 fractional fee interest in real property by which the purchaser does not receive any right to use
294 accommodations except as provided by contract, declaration, or other instrument defining a
295 legal right.

296 Section 4. Section **57-19-6** is amended to read:

297 **57-19-6. Effective date of application.**

298 (1) An application for registration filed pursuant to Section 57-19-5 is effective upon
299 the expiration of 30 business days following its filing with the director, unless:

300 (a) an order denying the application pursuant to Section 57-19-13 is in effect;

301 (b) a prior effective date has been ordered by the director; or

302 (c) the director has, prior to that date, notified the applicant of a defect in the
303 registration application.

304 (2) An applicant may consent to the delay of effectiveness until the director by order
305 declares the registration to be effective.

306 (3) (a) Notwithstanding Section 57-19-4, the division may grant a temporary permit

307 allowing the developer to begin a sales and marketing program while the registration is in
308 process.

309 (b) To obtain a temporary permit, the developer shall:

310 ~~(a)~~ (i) submit an application to the division for a temporary permit in the form
311 required by the division;

312 ~~(b)~~ (ii) submit a substantially complete application for registration to the division,
313 including all appropriate fees and exhibits required under Section 57-19-5, plus a temporary
314 permit fee of \$100;

315 ~~(c)~~ (iii) provide evidence acceptable to the division that all funds received by the
316 developer or marketing agent will be placed into an independent escrow with instructions that
317 funds will not be released until a final registration has been granted;

318 ~~(d)~~ (iv) give to each purchaser and potential purchaser a copy of the proposed
319 property report that the developer has submitted to the division with the initial application; and

320 ~~(e)~~ (v) give to each purchaser the opportunity to cancel the purchase in accordance
321 with Section 57-19-12. ~~[The]~~

322 (c) A purchaser shall have an additional opportunity to cancel upon the issuance of an
323 approved registration if the division determines that there is a substantial difference in the
324 disclosures contained in the final property report and those given to the ~~[purchase]~~ purchaser in
325 the proposed property report.

326 (4) (a) Notwithstanding Section 57-19-4, a developer or a person acting on behalf of a
327 developer may market and accept a reservation and deposit from a prospective purchaser before
328 submitting to the division a registration or temporary permit application for a project if:

329 (i) the deposit is placed in a non-interest bearing escrow account with a licensed real
330 estate broker, a title company, or another escrow that the division approves in advance; and

331 (ii) the deposit is guaranteed to be fully refundable at any time at the request of the
332 prospective purchaser.

333 (b) A deposit that a prospective purchaser tenders under Subsection (4)(a) may not be
334 released to the developer until after:

335 (i) the division approves the project registration; and

336 (ii) the prospective purchaser executes a written purchase contract creating a binding
337 obligation to purchase.

338 Section 5. Section 57-19-8 is amended to read:

339 **57-19-8. Filing proposed documents.**

340 (1) Every developer shall file with the director at least five business days prior to using
341 any of the following in this state:

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

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

344 [~~(c)~~] (b) copies or the text of any supplements to the written disclosure required to be
345 furnished to prospective purchasers pursuant to Section 57-19-11.

346 (2) If the text, rather than copies, of the materials specified in Subsection (1) are filed,
347 copies of these materials shall be filed with the director within five business days following the
348 date the materials are first used.

349 (3) The developer shall notify the division within five working days if he is convicted
350 in any court of a crime involving fraud, deception, false pretenses, misrepresentation, false
351 advertising, or dishonest dealing in real estate transactions, or has been subject to any
352 injunction or administrative order restraining a false or misleading promotional plan involving
353 land dispositions.

354 (4) The developer must notify the division within five working days if the developer
355 files a petition in bankruptcy or if any other event occurs which may have a material adverse
356 effect on the subdivision.

357 (5) (a) In any suit by or against the developer involving camp resorts or timeshare
358 developments, the developer [~~promptly~~] shall promptly furnish the division [~~notice of the suit~~
359 ~~and copies of all pleadings. Failure to provide notice]~~ a copy of the final order, settlement
360 agreement, consent agreement, or other document evidencing resolution of the case at the trial
361 level, whether or not an appeal is anticipated.

362 (b) A developer's failure to comply with Subsection (5)(a) may, in the discretion of the
363 division, constitute grounds for the division withholding any approval required by this [act]
364 chapter.

365 Section 6. Section 57-19-12 is amended to read:

366 **57-19-12. Purchaser's right to cancel.**

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

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

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

373 (b) In computing the number of [~~calendar~~] business days for purposes of this section,
374 the day on which the agreement was signed [~~and legal holidays are~~] is not included [as
375 "~~calendar days.~~"].

376 (c) Within 30 days after receipt of timely notice of cancellation, the developer shall
377 refund any money or other consideration paid by the purchaser.

378 (2) Every agreement to purchase an interest in a project which is subject to this chapter
379 shall include the following statement in at least 10-point bold upper-case type, immediately
380 preceding the space for the purchaser's signature:

381 "PURCHASER'S RIGHT TO CANCEL: YOU MAY CANCEL THIS AGREEMENT
382 WITHOUT ANY CANCELLATION FEE OR OTHER PENALTY BY HAND DELIVERING
383 OR SENDING BY CERTIFIED MAIL WRITTEN NOTICE OF CANCELLATION TO:
384 (NAME AND ADDRESS OF DEVELOPER). THE NOTICE MUST BE DELIVERED OR
385 POSTMARKED BY MIDNIGHT OF THE FIFTH [~~CALENDAR~~] BUSINESS DAY
386 FOLLOWING THE DAY ON WHICH THE AGREEMENT IS SIGNED. IN COMPUTING
387 THE NUMBER OF [~~CALENDAR~~] BUSINESS DAYS, THE DAY ON WHICH THE
388 CONTRACT IS SIGNED [~~AND LEGAL HOLIDAYS ARE~~] IS NOT INCLUDED."

389 Section 7. Section **57-19-13** is amended to read:

390 **57-19-13. Suspension, revocation, or denial of registration -- Fine.**

391 (1) Subject to Section 57-19-17, an application for registration of a project may be
392 denied, an existing registration may be suspended or revoked, or a fine of not more than \$500
393 may be imposed by the director, if [~~he~~] the director finds that:

394 (a) the developer's advertising or sales techniques or trade practices have been or are
395 deceptive, false, or misleading;

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

398 (c) the developer has failed to comply with any provision of this chapter or the rules
399 adopted under this chapter that materially affect or would affect the rights of purchasers or

400 prospective purchasers of an interest in a project, or that materially affect the administration of
401 this chapter;

402 (d) the developer's offering of an interest in a project has worked or would work a
403 fraud upon purchasers or prospective purchasers of such an interest;

404 (e) the developer's application or any amendment to an application is incomplete in any
405 material respect;

406 (f) the developer's application or any amendment to an application contains material
407 misrepresentations or omissions of material fact which are necessary to make the statements
408 contained in the application or amendment not misleading;

409 (g) the developer or any officer or director of the developer has been:

410 (i) convicted of a felony, or any misdemeanor involving theft, fraud, or dishonesty;

411 (ii) enjoined from, assessed a civil penalty for, or found to have engaged in the
412 violation of any law designed to protect consumers; or

413 (iii) engaged in dishonest practices in any industry involving sales to consumers;

414 (h) the developer has represented or is representing to purchasers in connection with
415 the offer or sale of an interest in a project that any accommodations, related facilities, or
416 amenities are planned, without reasonable grounds to believe that they will be completed
417 within a reasonable time;

418 (i) the developer has disposed of, concealed, or diverted any funds or assets so as to
419 defeat the rights of purchasers; ~~or~~

420 (j) the developer has failed to provide to purchasers copies of the written disclosure
421 required by Section 57-19-11[-]; or

422 (k) the developer, the developer's successor in interest, or a managing association
423 disseminates a purchaser's name, address, or email address without first obtaining written
424 consent from the purchaser, unless the dissemination is required by law.

425 (2) The authority to impose fines as provided in this section does not apply to
426 Subsection (1)(e).

427 (3) Notwithstanding Subsection (1)(k), a developer shall, upon request by the division,
428 provide the division a list of all purchasers' names, addresses, and email addresses.

429 Section 8. Section **57-19-26** is amended to read:

430 **57-19-26. Exemptions.**

431 (1) Unless entered into for the purpose of evading the provisions of this chapter, the
 432 following transactions are exempt from registration:

433 (a) isolated transactions by an owner of an interest in a project or by a person holding
 434 such an owner's executed power of attorney;

435 (b) an offer or sale by a governmental entity; and

436 ~~[(c) a bona fide pledge of interest in a project.]~~

437 (c) the resale of an interest that is:

438 (i) acquired:

439 (A) by the developer who initially registered the project or by the managing association
 440 of the project; and

441 (B) through a foreclosure, quitclaim deed, deed in lieu of foreclosure, or equivalent
 442 transfer;

443 (ii) not offered as part of a project that includes one or more interests that are
 444 unregistered or have been registered by a different developer or as part of a different project;
 445 and

446 (iii) closed after the developer or managing association provides a purchaser the
 447 disclosures required by Section 57-19-11 and the right to rescind required by Section 57-19-12.

448 (2) After a resale by a developer or managing association that is claimed to be exempt
 449 under Subsection (1)(c), the division retains jurisdiction to:

450 (a) investigate a complaint regarding the resale; and

451 (b) if applicable, take an administrative action against the developer or managing
 452 association on the basis of unprofessional conduct, as provided in Section 57-19-13.

453 ~~[(2)]~~ (3) (a) The director may, by rule or order, exempt any person from any or all
 454 requirements of this chapter if the director finds that the offering of an interest in a project is
 455 essentially noncommercial. ~~[For purposes of this subsection, the]~~

456 (b) The offering of ~~[fewer than]~~ one or more interests in a project that has a maximum
 457 of 10 interests ~~[in a project]~~ is considered essentially noncommercial.

458 Section 9. Section **61-2c-102** is amended to read:

459 **61-2c-102. Definitions.**

460 (1) As used in this chapter:

461 (a) "Affiliation" means that a mortgage loan originator is associated with a principal

462 lending manager in accordance with Section 61-2c-209.

463 (b) "Applicant" means a person applying for a license under this chapter.

464 (c) "Approved examination provider" means a person approved by the nationwide
465 database as an approved test provider.

466 (d) "Associate lending manager" means an individual who:

467 (i) qualifies under this chapter as a principal lending manager; and

468 (ii) works by or on behalf of another principal lending manager in transacting the
469 business of residential mortgage loans.

470 (e) "Branch lending manager" means an individual who is:

471 (i) licensed as a lending manager; and

472 (ii) designated in the nationwide database by the individual's sponsoring entity as being
473 responsible to work from a branch office and to supervise the business of residential mortgage
474 loans that is conducted at the branch office.

475 ~~(e)~~ (f) "Branch office" means a licensed entity's office:

476 (i) for the transaction of the business of residential mortgage loans regulated under this
477 chapter;

478 (ii) other than the main office of the licensed entity; and

479 (iii) that operates under:

480 (A) the same business name as the licensed entity; or

481 (B) another trade name that is registered with the division under the entity license.

482 ~~(f)~~ (g) "Business day" means a day other than:

483 (i) a Saturday;

484 (ii) a Sunday; or

485 (iii) a federal or state holiday.

486 ~~(g)~~ (h) (i) "Business of residential mortgage loans" means for compensation or in the
487 expectation of compensation to:

488 (A) engage in an act that makes an individual a mortgage loan originator;

489 (B) make or originate a residential mortgage loan;

490 (C) directly or indirectly solicit a residential mortgage loan for another;

491 (D) unless excluded under Subsection (1)~~(g)~~(h)(ii), render services related to the
492 origination of a residential mortgage loan including:

- 493 (I) preparing a loan package;
- 494 (II) communicating with the borrower or lender; [or]
- 495 (III) advising on a loan term; or
- 496 (IV) acting as a loan processor without being employed by a licensed entity; or
- 497 (E) engage in loan modification assistance.
- 498 (ii) "Business of residential mortgage loans" does not include:
- 499 (A) if working as an employee under the direction of and subject to the supervision and
- 500 instruction of a person licensed under this chapter, the performance of a clerical or support duty
- 501 such as:
- 502 (I) the receipt, collection, or distribution of information common for the processing or
- 503 underwriting of a loan in the mortgage industry other than taking an application;
- 504 (II) communicating with a consumer to obtain information necessary for the processing
- 505 or underwriting of a residential mortgage loan;
- 506 (III) word processing;
- 507 (IV) sending correspondence; [or]
- 508 (V) assembling files; or
- 509 (VI) acting as a loan processor;
- 510 (B) ownership of an entity that engages in the business of residential mortgage loans if
- 511 the owner does not personally perform the acts listed in Subsection (1)[(g)](h)(i); or
- 512 (C) except if an individual will engage in an activity as a mortgage loan originator,
- 513 acting in one or more of the following capacities:
- 514 (I) a loan wholesaler;
- 515 (II) an account executive for a loan wholesaler;
- 516 (III) a loan underwriter;
- 517 (IV) a loan closer; or
- 518 (V) funding a loan; or
- 519 (D) if employed by a person who owns or services an existing residential mortgage
- 520 loan, the direct negotiation with the borrower for the purpose of loan modification.
- 521 ~~[(h)]~~ (i) "Certified education provider" means a person who is certified under Section
- 522 61-2c-204.1 to provide one or more of the following:
- 523 (i) Utah-specific prelicensing education; or

524 (ii) Utah-specific continuing education.

525 [~~(j)~~] (j) "Closed-end" means a loan:

526 (i) with a fixed amount borrowed; and

527 (ii) that does not permit additional borrowing secured by the same collateral.

528 [~~(k)~~] (k) "Commission" means the Residential Mortgage Regulatory Commission
529 created in Section 61-2c-104.

530 [~~(l)~~] (l) "Compensation" means anything of economic value that is paid, loaned,
531 granted, given, donated, or transferred to an individual or entity for or in consideration of:

532 (i) services;

533 (ii) personal or real property; or

534 (iii) another thing of value.

535 [~~(m)~~] (m) "Concurrence" means that entities given a concurring role must jointly agree
536 for the action to be taken.

537 [~~(n)~~] (n) "Continuing education" means education taken by an individual licensed
538 under this chapter in order to meet the education requirements imposed by Sections
539 61-2c-204.1 and 61-2c-205 to renew a license under this chapter.

540 [~~(o)~~] (o) "Control," as used in Subsection 61-2c-105(2)(f), means the power to directly
541 or indirectly:

542 (i) direct or exercise a controlling interest over:

543 (A) the management or policies of an entity; or

544 (B) the election of a majority of the directors, officers, managers, or managing partners
545 of an entity;

546 (ii) vote 20% or more of a class of voting securities of an entity by an individual; or

547 (iii) vote more than 5% of a class of voting securities of an entity by another entity.

548 [~~(p)~~] (p) (i) "Control person" means an individual identified by an entity registered with
549 the nationwide database as being an individual directing the management or policies of the
550 entity.

551 (ii) "Control person" may include one of the following who is identified as provided in
552 Subsection (1)[~~(p)~~](p)(i):

553 (A) a manager;

554 (B) a managing partner;

555 (C) a director;
556 (D) an executive officer; or
557 (E) an individual who performs a function similar to an individual listed in this
558 Subsection (1)~~(p)~~(p)(ii).
559 ~~(p)~~ (q) "Depository institution" is as defined in Section 7-1-103.
560 ~~(q)~~ (r) "Director" means the director of the division.
561 ~~(r)~~ (s) "Division" means the Division of Real Estate.
562 ~~(s)~~ (t) "Dwelling" means a residential structure attached to real property that contains
563 one to four units including any of the following if used as a residence:
564 (i) a condominium unit;
565 (ii) a cooperative unit;
566 (iii) a manufactured home; or
567 (iv) a house.
568 (u) "Employee":
569 (i) means an individual:
570 (A) whose manner and means of work performance are subject to the right of control
571 of, or are controlled by, another person; and
572 (B) whose compensation for federal income tax purposes is reported, or is required to
573 be reported, on a W-2 form issued by the controlling person; and
574 (ii) does not include an independent contractor who performs duties other than at the
575 direction of, and subject to the supervision and instruction of, another person.
576 ~~(t)~~ (v) "Entity" means:
577 (i) a corporation;
578 (ii) a limited liability company;
579 (iii) a partnership;
580 (iv) a company;
581 (v) an association;
582 (vi) a joint venture;
583 (vii) a business trust;
584 (viii) a trust; or
585 (ix) another organization.

586 ~~(tt)~~ (w) "Executive director" means the executive director of the Department of
587 Commerce.

588 ~~(v)~~ (x) "Federal licensing requirements" means Secure and Fair Enforcement for
589 Mortgage Licensing, 12 U.S.C. Sec. 5101 et seq.

590 ~~(w)~~ (y) "Foreclosure rescue" means, for compensation or with the expectation of
591 receiving valuable consideration, to:

592 (i) engage, or offer to engage, in an act that:

593 (A) the person represents will assist a borrower in preventing a foreclosure; and

594 (B) relates to a transaction involving the transfer of title to residential real property; or

595 (ii) as an employee or agent of another person:

596 (A) solicit, or offer that the other person will engage in an act described in Subsection
597 (1)~~(w)~~(y)(i); or

598 (B) negotiate terms in relationship to an act described in Subsection (1)~~(w)~~(y)(i).

599 ~~(x)~~ (z) "Inactive status" means a dormant status into which an unexpired license is
600 placed when the holder of the license is not currently engaging in the business of residential
601 mortgage loans.

602 ~~(aa)~~ (aa) "Lending manager" means an individual licensed as a lending manager under
603 Section 61-2c-206 to transact the business of residential mortgage loans.

604 ~~(y)~~ (bb) "Licensee" means a person licensed with the division under this chapter.

605 ~~(z)~~ (cc) "Licensing examination" means the examination required by Section
606 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

607 ~~(aa)~~ (dd) "Loan modification assistance" means, for compensation or with the
608 expectation of receiving valuable consideration, to:

609 (i) act, or offer to act, on behalf of a person to:

610 (A) obtain a loan term of a residential mortgage loan that is different from an existing
611 loan term including:

612 (I) an increase or decrease in an interest rate;

613 (II) a change to the type of interest rate;

614 (III) an increase or decrease in the principal amount of the residential mortgage loan;

615 (IV) a change in the number of required period payments;

616 (V) an addition of collateral;

617 (VI) a change to, or addition of, a prepayment penalty;

618 (VII) an addition of a cosigner; or

619 (VIII) a change in persons obligated under the existing residential mortgage loan; or

620 (B) substitute a new residential mortgage loan for an existing residential mortgage

621 loan; or

622 (ii) as an employee or agent of another person:

623 (A) solicit, or offer that the other person will engage in an act described in Subsection

624 (1)~~(aa)~~(dd)(i); or

625 (B) negotiate terms in relationship to an act described in Subsection (1)~~(aa)~~(dd)(i).

626 ~~(bb)~~ (ee) (i) Except as provided in Subsection (1)~~(bb)~~(ee)(ii), "mortgage loan

627 originator" means an individual who for compensation or in expectation of compensation:

628 (A) (I) takes a residential mortgage loan application; or

629 (II) offers or negotiates terms of a residential mortgage loan for the purpose of:

630 (Aa) a purchase;

631 (Bb) a refinance;

632 (Cc) a loan modification assistance; or

633 (Dd) a foreclosure rescue; and

634 (B) is licensed as a mortgage loan originator in accordance with this chapter.

635 (ii) "Mortgage loan originator" does not include a person who:

636 (A) is described in Subsection (1)~~(bb)~~(ee)(i), but who performs exclusively

637 administrative or clerical tasks as described in Subsection (1)~~(g)~~(h)(ii)(A);

638 (B) (I) is licensed under Chapter 2f, Real Estate Licensing and Practices Act;

639 (II) performs only real estate brokerage activities; and

640 (III) receives no compensation from:

641 (Aa) a lender;

642 (Bb) a ~~principal~~ lending manager; or

643 (Cc) an agent of a lender or ~~principal~~ lending manager; or

644 (C) is solely involved in extension of credit relating to a timeshare plan, as defined in

645 11 U.S.C. Sec. 101(53D).

646 ~~(cc)~~ (ff) "Nationwide database" means the Nationwide Mortgage Licensing System

647 and Registry, authorized under federal licensing requirements.

648 ~~[(dd)]~~ (gg) "Nontraditional mortgage product" means a mortgage product other than a
 649 30-year fixed rate mortgage.

650 ~~[(ee)]~~ (hh) "Person" means an individual or entity.

651 ~~[(ff)]~~ (ii) "Prelicensing education" means education taken by an individual seeking to
 652 be licensed under this chapter in order to meet the education requirements imposed by Section
 653 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

654 ~~[(gg)]~~ (i) (jj) "Principal lending manager" means an individual:

655 (i) licensed as a ~~[principal]~~ lending manager under Section 61-2c-206 ~~[to transact the~~
 656 ~~business of residential mortgage loans.]; and~~

657 (ii) identified in the nationwide database by the individual's sponsoring entity as the
 658 entity's principal lending manager.

659 ~~[(ii) An individual who is a principal lending manager may transact the business of~~
 660 ~~residential mortgage loans as a mortgage loan originator.]~~

661 ~~[(hh)]~~ (kk) "Record" means information that is:

662 (i) prepared, owned, received, or retained by a person; and

663 (ii) (A) inscribed on a tangible medium; or

664 (B) (I) stored in an electronic or other medium; and

665 (II) in a perceivable and reproducible form.

666 (ll) "Referral fee":

667 (i) means any fee, kickback, or thing of value tendered for a referral of business or a
 668 service incident to or part of a residential mortgage loan transaction; and

669 (ii) does not mean a payment made:

670 (A) by a licensed entity to an individual employed by the entity;

671 (B) under a contractual incentive program; and

672 (C) according to rules made by the division in accordance with Title 63G, Chapter 3,
 673 Utah Administrative Rulemaking Act.

674 ~~[(ii)]~~ (mm) "Residential mortgage loan" means an extension of credit, if:

675 (i) the loan or extension of credit is secured by a:

676 (A) mortgage;

677 (B) deed of trust; or

678 (C) consensual security interest;

679 (ii) the mortgage, deed of trust, or consensual security interest described in Subsection
680 (1)~~(ii)~~(mm)(i):

681 (A) is on a dwelling located in the state; and

682 (B) is created with the consent of the owner of the residential real property; and

683 (iii) solely for the purposes of defining "mortgage loan originator," the extension of
684 credit is primarily for personal, family, or household use.

685 ~~(jj)~~ (nn) "Sponsorship" means an association in accordance with Section 61-2c-209
686 between an individual licensed under this chapter and an entity licensed under this chapter.

687 ~~(kk)~~ (oo) "State" means:

688 (i) a state, territory, or possession of the United States;

689 (ii) the District of Columbia; or

690 (iii) the Commonwealth of Puerto Rico.

691 ~~(hh)~~ (pp) "Unique identifier" is as defined in 12 U.S.C. Sec. 5102.

692 ~~(mm)~~ (qq) "Utah-specific" means an educational or examination requirement under
693 this chapter that relates specifically to Utah.

694 (2) (a) If a term not defined in this section is defined by rule, the term shall have the
695 meaning established by the division by rule made in accordance with Title 63G, Chapter 3,
696 Utah Administrative Rulemaking Act.

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

699 Section 10. Section **61-2c-103** is amended to read:

700 **61-2c-103. Powers and duties of the division.**

701 (1) The division shall administer this chapter.

702 (2) In addition to a power or duty expressly provided in this chapter, the division may:

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

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

705 (ii) commencing an administrative or judicial proceeding on the division's own
706 initiative;

707 (b) establish one or more programs for the education of consumers with respect to
708 residential mortgage loans;

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

710 this chapter; and

711 (ii) make the results of the studies described in Subsection (2)(c)(i) available to the
712 public;

713 (d) visit and investigate a person licensed under this chapter, regardless of whether the
714 person is located in Utah;

715 (e) employ one or more necessary hearing examiners, investigators, clerks, and other
716 employees and agents; and

717 (f) establish fees under Section 63J-1-504 for:

718 (i) processing an application for licensing or certification; and

719 (ii) any other function required or permitted by this chapter.

720 (3) The division shall make rules for the administration of this chapter in accordance
721 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, including:

722 (a) licensure procedures for:

723 (i) a person required by this chapter to obtain a license with the division; and

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

725 (b) proper handling of money received by a licensee;

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

727 (d) certification procedures for certifying an education provider; and

728 (e) standards of conduct for a licensee or certified education provider.

729 (4) The division may by rule made in accordance with Title 63G, Chapter 3, Utah

730 Administrative Rulemaking Act, require as a condition of maintaining a license or certification
731 under this chapter that a person comply with a requirement of the nationwide database if:

732 (a) required for uniformity amongst states; and

733 (b) not inconsistent with this chapter.

734 (5) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah

735 Administrative Rulemaking Act, provide a process under which an individual may challenge
736 information contained in the nationwide database.

737 (6) The division shall annually:

738 (a) review the requirements related to the nationwide database imposed by federal
739 licensing requirements or the nationwide database on:

740 (i) the division;

- 741 (ii) a licensee under this chapter;
- 742 (iii) a certified education provider; or
- 743 (iv) an approved examination provider; and
- 744 (b) after the review required by Subsection (6)(a):
- 745 (i) report to the Business and Labor Interim Committee the impact of the requirements
- 746 on the implementation by the division of this chapter; and
- 747 (ii) recommend legislation, if any, to the Business and Labor Interim Committee
- 748 related to how the division should coordinate with the nationwide database.
- 749 (7) The division may enter into a relationship or contract with the nationwide database
- 750 or another entity designated by the nationwide database to do the following related to a licensee
- 751 or other person subject to this chapter:
- 752 (a) collect or maintain a record; and
- 753 (b) process a transaction fee or other fee.
- 754 (8) The division shall regularly report the following to the nationwide database:
- 755 (a) a violation of this chapter;
- 756 (b) licensing or disciplinary action under this chapter; and
- 757 (c) other information relevant to this chapter.
- 758 (9) If a person pays a fee or costs to the division with a negotiable instrument or any
- 759 other method that is not honored for payment:
- 760 (a) the transaction for which the payment is submitted is voidable by the division;
- 761 (b) the division may reverse the transaction if payment of the applicable fee or costs is
- 762 not received in full; and
- 763 (c) the person's license, certification, or registration is automatically suspended:
- 764 (i) beginning the day on which the payment is due; and
- 765 (ii) ending the day on which payment is made in full.
- 766 Section 11. Section **61-2c-106** is amended to read:
- 767 **61-2c-106. Addresses provided the division.**
- 768 (1) (a) A person shall provide a physical location or street address when the person
- 769 provides the nationwide database an address required by the division.
- 770 (b) The following when provided under this chapter is public information:
- 771 (i) a business address; or

772 (ii) a mailing address.

773 (2) A licensee is considered to have received a notification that is mailed to the last
774 mailing address furnished to the nationwide database by:

775 (a) ~~[if the licensee is an individual,]~~ the individual, if the licensee is an individual; or

776 (b) ~~[if the licensee is an entity,]~~ the ~~[principal]~~ lending manager ~~[of]~~ who is designated
777 within the nationwide database to act as the principal lending manager for the entity, if the
778 licensee is an entity.

779 Section 12. Section **61-2c-203** is amended to read:

780 **61-2c-203. General qualifications for licensure.**

781 (1) To qualify for licensure under this chapter, a person shall demonstrate through
782 procedures established by rule made by the division in accordance with Title 63G, Chapter 3,
783 Utah Administrative Rulemaking Act:

784 (a) financial responsibility;

785 (b) good moral character, honesty, integrity, and truthfulness; and

786 (c) the competence to transact the business of residential mortgage loans, including
787 general fitness such as to command the confidence of the community and to warrant a
788 determination that the person will operate honestly, fairly, and efficiently within the purposes
789 of this chapter.

790 (2) If an applicant is an entity, the applicant may not have a control person who fails to
791 meet the requirements of Subsection (1) for an individual applicant.

792 (3) (a) The division shall determine whether an applicant with a criminal history
793 qualifies for licensure.

794 (b) If the division, acting under Subsection (3)(a), denies or restricts a license or places
795 a license on probation, the applicant may petition the commission for de novo review of the
796 application.

797 Section 13. Section **61-2c-204.1** is amended to read:

798 **61-2c-204.1. Education providers -- Education requirements -- Examination**
799 **requirements.**

800 (1) As used in this section:

801 (a) "Approved continuing education course" means a course of continuing education
802 that is approved by the nationwide database.

803 (b) "Approved prelicensing education course" means a course of prelicensing education
804 that is approved by the nationwide database.

805 (2) (a) A person may not provide Utah-specific prelicensing education or Utah-specific
806 continuing education if that person is not certified by the division under this chapter.

807 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
808 division shall make rules establishing:

809 (i) certification criteria and procedures to become a certified education provider; and

810 (ii) standards of conduct for a certified education provider.

811 (c) In accordance with the rules described in Subsection (2)(b), the division shall
812 certify a person to provide the education described in Subsection (2)(a).

813 (d) (i) Upon request, the division shall make available to the public a list of the names
814 and addresses of certified education providers either directly or through a third party.

815 (ii) A person who requests a list under this Subsection (2)(d) shall pay the costs
816 incurred by the division to make the list available.

817 (e) In certifying a person as a certified education provider, the division by rule may:

818 (i) distinguish between an individual instructor and an entity that provides education;

819 or

820 (ii) approve:

821 (A) Utah-specific prelicensing education; or

822 (B) Utah-specific continuing education courses.

823 (3) (a) The division may not:

824 (i) license an individual under this chapter as a mortgage loan originator who has not
825 completed the prelicensing education required by this section:

826 (A) before taking the one or more licensing examinations required by Subsection (4);

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

828 division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

829 (C) that includes the prelicensing education required by federal licensing regulations;

830 (ii) subject to Subsection (6), renew a license of an individual who has not completed
831 the continuing education required by this section and Section 61-2c-205:

832 (A) in the number of hours required by rule made by the division in accordance with

833 Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

834 (B) that includes the continuing education required by federal licensing regulations; or
835 (iii) license an individual under this chapter as a [~~principal~~] lending manager who has
836 not completed the prelicensing education required by Section 61-2c-206 before taking the
837 licensing examination required by Section 61-2c-206.

838 (b) Subject to Subsection (3)(a) and with the concurrence of the division, the
839 commission shall determine:

840 (i) except as provided in Subsection 61-2c-206(1)(b), the appropriate number of hours
841 of prelicensing education required to obtain a license;

842 (ii) the subject matters of the prelicensing education required under this section and
843 Section 61-2c-206, including online education or distance learning options;

844 (iii) the appropriate number of hours of continuing education required to renew a
845 license; and

846 (iv) the subject matter of courses the division may accept for continuing education
847 purposes.

848 (c) The commission may appoint a committee to make recommendations to the
849 commission concerning approval of prelicensing education and continuing education courses,
850 except that the commission shall appoint at least one member to the committee to represent
851 each association that represents a significant number of individuals licensed under this chapter.

852 (d) The division may by rule made in accordance with Title 63G, Chapter 3, Utah
853 Administrative Rulemaking Act, provide for the calculation of continuing education credits,
854 except that the rules shall be consistent with 12 U.S.C. Sec. 5105.

855 (4) (a) The division may not license an individual under this chapter unless that
856 individual first passes the one or more licensing examinations that:

857 (i) are adopted by the division in accordance with Title 63G, Chapter 3, Utah
858 Administrative Rulemaking Act;

859 (ii) meet the minimum federal licensing requirements; and

860 (iii) are administered by an approved examination provider.

861 (b) The commission, with the concurrence of the division, shall determine the
862 requirements for:

863 (i) a licensing examination that at least:

864 (A) meets the minimum federal licensing requirements; and

865 (B) tests knowledge of the:
866 (I) fundamentals of the English language;
867 (II) arithmetic;
868 (III) provisions of this chapter;
869 (IV) rules adopted under this chapter;
870 (V) basic residential mortgage principles and practices; and
871 (VI) any other aspect of Utah law the commission determines is appropriate; and

872 (ii) a licensing examination required under Section 61-2c-206 that:

873 (A) meets the requirements of Subsection (4)(b)(i); and

874 (B) tests knowledge of the:

875 (I) advanced residential mortgage principles and practices; and

876 (II) other aspects of Utah law the commission, with the concurrence of the division,

877 determines appropriate.

878 (c) An individual who will engage in an activity as a mortgage loan originator, is not
879 considered to have passed a licensing examination if that individual has not met the minimum
880 competence requirements of 12 U.S.C. Sec. 5104(d)(3).

881 (5) When reasonably practicable, the commission and the division shall make the
882 Utah-specific education requirements described in this section available electronically through
883 one or more distance education methods approved by the commission and division.

884 (6) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
885 the commission, with the concurrence of the division, shall make rules establishing procedures
886 under which a licensee may be exempted from a Utah-specific continuing education
887 requirement:

888 (i) for a period not to exceed four years; and

889 (ii) upon a finding of reasonable cause.

890 (b) An individual who engages in an activity as a mortgage loan originator may not
891 under this Subsection (6) be exempted from the minimum continuing education required under
892 federal licensing regulations for an individual who engages in an activity as a mortgage loan
893 originator.

894 Section 14. Section **61-2c-205** is amended to read:

895 **61-2c-205. Term of licensure -- Renewal -- Reporting of changes.**

896 (1) (a) A license issued under this chapter expires as follows:
897 (i) for the calendar year the license is issued:
898 (A) if the license is issued on or before October 31, the license expires on December 31
899 of the same calendar year; and
900 (B) if the license is issued on or after November 1, the license expires on December 31
901 of the following calendar year; and
902 (ii) after the December 31 on which a license expires under Subsection (1)(a)(i), a
903 license expires annually on December 31.
904 (b) Notwithstanding Subsection (1)(a), the time period of a license may be extended or
905 shortened by as much as one year to maintain or change a renewal cycle established by rule by
906 the division.
907 (2) To renew a license, no later than the date the license expires, a licensee shall in a
908 manner provided by the division by rule:
909 (a) file a renewal statement;
910 (b) furnish the information required by Subsection 61-2c-202(1);
911 (c) renew the licensee's registration with the nationwide database, including the
912 payment of a fee required by the nationwide database;
913 (d) pay a fee to the division established by the division in accordance with Section
914 63J-1-504; and
915 (e) if the licensee is an individual [~~and the individual's license is in active status at the~~
916 ~~time of application for renewal~~], submit proof of having completed [~~during the year before~~
917 ~~application~~] the continuing education required under Section 61-2c-204.1, according to the
918 deadline the division establishes by rule in accordance with Title 63G, Chapter 3, Utah
919 Administrative Rulemaking Act.
920 (3) (a) A licensee under this chapter shall notify the division in a manner provided by
921 the division by rule within 10 days of the date on which there is a change in:
922 (i) a name under which the licensee transacts the business of residential mortgage loans
923 in this state;
924 (ii) (A) if the licensee is an entity, the business location of the licensee; or
925 (B) if the licensee is an individual, the home and business addresses of the individual;
926 (iii) the principal lending manager of the entity;

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

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

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

932 (c) The division may charge a fee established in accordance with Section 63J-1-504 for
 933 processing a change that a licensee is required to report to the division under Subsection (3)(a).

934 (4) (a) A licensee shall notify the division by sending the division a signed statement
 935 within 10 business days of:

936 (i) ~~[(A)]~~ a conviction of, or the entry of a plea in abeyance to:

937 (A) a felony[, class A misdemeanor, or class B misdemeanor]; or

938 ~~[(B) the entry of a plea in abeyance to a felony, class A misdemeanor, or class B~~
 939 ~~misdemeanor; or]~~

940 (B) a misdemeanor involving financial services or a financial services-related business,
 941 fraud, a false statement or omission, theft or wrongful taking of property, bribery, perjury,
 942 forgery, counterfeiting, or extortion;

943 ~~[(C)]~~ (ii) the potential resolution of a felony[, class A misdemeanor,] or [class B] of a
 944 misdemeanor described in Subsection (4)(a)(i)(B) by a diversion agreement, or any other
 945 agreement under which a criminal charge is held in suspense for a period of time;

946 ~~[(ii)]~~ (iii) filing a personal bankruptcy or bankruptcy of a business that transacts the
 947 business of residential mortgage loans;

948 ~~[(iii)]~~ (iv) the suspension, revocation, surrender, cancellation, or denial of a
 949 professional license or professional registration of the licensee, whether the license or
 950 registration is issued by this state or another jurisdiction; or

951 ~~[(iv)]~~ (v) the entry of a cease and desist order or a temporary or permanent injunction:

952 (A) against the licensee by a court or licensing agency; and

953 (B) based on conduct or a practice involving the business of residential mortgage loans,
 954 or conduct involving fraud, misrepresentation, or deceit.

955 (b) The commission, with the concurrence of the division, shall enforce the reporting
 956 requirement under this Subsection (4) pursuant to Section 61-2c-402.

957 (5) (a) A license under this chapter expires if the licensee does not apply to renew the

958 license on or before the expiration date of the license.

959 (b) A licensee whose license has expired may apply to reinstate the expired license, in
960 a manner provided by the division by rule by:

961 (i) requesting reinstatement;

962 (ii) paying to the division a renewal fee and a late fee determined by the division under
963 Section 63J-1-504; and

964 (iii) reinstating the licensee's registration with the nationwide database, including the
965 payment of a fee required by the nationwide database.

966 Section 15. Section **61-2c-206** is amended to read:

967 **61-2c-206. Lending manager licenses.**

968 (1) To qualify for licensure as a [~~principal~~] lending manager under this chapter, an
969 individual shall:

970 (a) meet the standards in Section 61-2c-203;

971 (b) successfully complete the following education:

972 (i) mortgage loan originator prelicensing education as required by federal licensing
973 regulations; and

974 (ii) 40 hours of Utah-specific prelicensing education for a [~~principal~~] lending manager
975 that is approved by the division under Section 61-2c-204.1;

976 (c) successfully complete the following examinations:

977 (i) the mortgage loan originator licensing examination as approved by the nationwide
978 database; and

979 (ii) the [~~principal~~] lending manager licensing examination approved by the commission
980 under Section 61-2c-204.1;

981 (d) submit proof₂ on a form approved by the division₂ of three years of full-time active
982 experience as a mortgage loan originator licensed in any state in the five years preceding the
983 day on which the application is submitted, or equivalent experience as approved by the
984 commission;

985 (e) submit an application in a manner established by the division by rule;

986 (f) establish sponsorship with an entity licensed under this chapter;

987 (g) if the individual is not registered in the nationwide database as a mortgage loan
988 originator at the time of application, submit to the criminal background check required by

989 Subsection 61-2c-202(1)(b); and

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

991 (2) A [~~principal~~] lending manager may not:

992 (a) engage in the business of residential mortgage loans on behalf of more than one

993 entity at the same time; [~~or~~]

994 (b) be sponsored by more than one entity at the same time[~~;~~]; or

995 (c) act simultaneously as the principal lending manager and branch lending manager

996 for the individual's sponsoring entity, if the entity operates from more than one office located

997 within the state.

998 (3) An individual who is a lending manager may:

999 (a) transact the business of residential mortgage loans as a mortgage loan originator;

1000 and

1001 (b) be designated within the nationwide database to act for the individual's sponsoring

1002 entity as the principal lending manager, an associate lending manager, or a branch lending

1003 manager.

1004 Section 16. Section **61-2c-209** is amended to read:

1005 **61-2c-209. Sponsorship -- Affiliation.**

1006 (1) (a) The division may not license an individual, and an individual licensed under this
1007 chapter may not conduct the business of residential mortgage loans unless:

1008 (i) if licensed as a mortgage loan originator, the individual:

1009 (A) is sponsored by an entity licensed under this chapter; and

1010 (B) is affiliated with [~~a~~] the sponsoring entity's principal lending manager; or

1011 (ii) if licensed as a [~~principal~~] lending manager, the individual is sponsored by an entity
1012 licensed under this chapter.

1013 (b) The division may not license any entity and an entity licensed under this chapter
1014 may not conduct the business of residential mortgage loans unless the entity:

1015 (i) sponsors a principal lending manager;

1016 (ii) identifies at least one control person for the entity; and

1017 (iii) provides a list of the mortgage loan originators sponsored by the entity.

1018 (2) (a) A mortgage loan originator's license automatically becomes inactive the day on

1019 which:

- 1020 (i) the mortgage loan originator is not sponsored by an entity licensed under this
1021 chapter;
- 1022 (ii) the license of the entity with which the mortgage loan originator is sponsored
1023 becomes inactive or terminates;
- 1024 (iii) the mortgage loan originator is not affiliated with a principal lending manager; or
1025 (iv) the license of the principal lending manager with whom the mortgage loan
1026 originator is affiliated becomes inactive or terminates.
- 1027 (b) A [~~principal~~] lending manager's license automatically becomes inactive the day on
1028 which:
- 1029 (i) the [~~principal~~] lending manager is not sponsored by an entity licensed under this
1030 chapter; or
- 1031 (ii) the license of the entity with which the [~~principal~~] lending manager is sponsored
1032 becomes inactive or terminates.
- 1033 (c) A entity licensed under this chapter automatically becomes inactive the day on
1034 which the entity's sponsorship with its principal lending manager terminates.
- 1035 (3) (a) A person whose license is inactive may not transact the business of residential
1036 mortgage loans.
- 1037 (b) To activate an inactive mortgage loan originator license, an individual shall:
- 1038 (i) provide evidence that the individual:
- 1039 (A) is sponsored by an entity that holds an active license under this chapter; and
1040 (B) is affiliated with a principal lending manager who holds an active license under this
1041 chapter; and
- 1042 (ii) pay a fee to the division set in accordance with Section 63J-1-504.
- 1043 (c) To activate an inactive [~~principal~~] lending manager license, an individual shall:
- 1044 (i) provide evidence that the individual is sponsored by an entity that holds an active
1045 license under this chapter; and
- 1046 (ii) pay a fee to the division set in accordance with Section 63J-1-504.
- 1047 (d) To activate an inactive license held by an entity, an entity shall:
- 1048 (i) provide evidence of the entity's sponsorship of a principal lending manager; and
1049 (ii) pay a fee to the division set in accordance with Section 63J-1-504.
- 1050 (4) (a) A mortgage loan originator shall conduct the business of residential mortgage

1051 loans only:

1052 (i) through the [~~principal lending manager with whom~~] entity by which the individual
1053 is [~~affiliated~~] sponsored; and

1054 (ii) in the business name under which the sponsoring entity's principal lending manager
1055 is authorized by the division to do business.

1056 (b) An individual licensed under this chapter may not:

1057 (i) engage in the business of residential mortgage loans on behalf of more than one
1058 entity at the same time;

1059 (ii) be sponsored by more than one entity at the same time;

1060 (iii) transact the business of residential mortgage loans for the following at the same
1061 time:

1062 (A) an entity licensed under this chapter; and

1063 (B) an entity that is exempt from licensure under Section 61-2c-105; or

1064 (iv) if the individual is a mortgage loan originator, receive consideration for transacting
1065 the business of residential mortgage loans from any person except the principal lending
1066 manager [~~with whom the mortgage loan originator is affiliated~~] of the mortgage loan
1067 originator's sponsoring entity.

1068 (c) This Subsection (4) does not restrict the number of:

1069 (i) different lenders a person may use as a funding source for a residential mortgage
1070 loan; or

1071 (ii) entities in which an individual may have an ownership interest, regardless of
1072 whether the entities are:

1073 (A) licensed under this chapter; or

1074 (B) exempt under Section 61-2c-105.

1075 (5) The division by rule made in accordance with Title 63G, Chapter 3, Utah
1076 Administrative Rulemaking Act, may make rules that:

1077 (a) define what constitutes:

1078 (i) affiliation; or

1079 (ii) sponsorship; and

1080 (b) provide procedures by which:

1081 (i) an individual who is licensed under this chapter may provide evidence of

1082 sponsorship by an entity that is licensed under this chapter;

1083 (ii) a mortgage loan originator may provide evidence of affiliation with a principal
1084 lending manager; and

1085 (iii) an entity licensed under this chapter may:

1086 (A) provide evidence of its sponsorship of a principal lending manager;

1087 (B) identify at least one control person for the entity; and

1088 (C) provide a list of the one or more mortgage loan originators that the entity sponsors.

1089 Section 17. Section **61-2c-301** is amended to read:

1090 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

1091 (1) A person transacting the business of residential mortgage loans in this state may
1092 not:

1093 (a) give or receive a referral fee, other compensation, or anything of value in exchange
1094 for a referral of residential mortgage loan business;

1095 (b) charge a fee in connection with a residential mortgage loan transaction:

1096 (i) that is excessive; or

1097 (ii) without providing to the loan applicant a written statement signed by the loan
1098 applicant:

1099 (A) stating whether or not the fee or deposit is refundable; and

1100 (B) describing the conditions, if any, under which all or a portion of the fee or deposit
1101 will be refunded to the applicant;

1102 (c) give or receive compensation or anything of value in exchange for a referral of
1103 settlement or loan closing services related to a residential mortgage loan transaction;

1104 (d) do any of the following to induce a lender to extend credit as part of a residential
1105 mortgage loan transaction:

1106 (i) make a false statement or representation;

1107 (ii) cause false documents to be generated; or

1108 (iii) knowingly permit false information to be submitted by any party;

1109 (e) give or receive compensation or anything of value, or withhold or threaten to
1110 withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in
1111 reaching a value conclusion in a residential mortgage loan transaction, except that it is not a
1112 violation of this section for a licensee to withhold payment because of a bona fide dispute

1113 regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards
1114 of Professional Appraisal Practice;

1115 (f) violate or not comply with:

1116 (i) this chapter;

1117 (ii) an order of the commission or division; or

1118 (iii) a rule made by the division;

1119 (g) fail to respond within the required time period to:

1120 (i) a notice or complaint of the division; or

1121 (ii) a request for information from the division;

1122 (h) make false representations to the division, including in a licensure statement;

1123 (i) for a residential mortgage loan transaction beginning on or after January 1, 2004,
1124 engage in the business of residential mortgage loans with respect to the transaction if the
1125 person also acts in any of the following capacities with respect to the same residential mortgage
1126 loan transaction:

1127 (i) appraiser;

1128 (ii) escrow agent;

1129 (iii) real estate agent;

1130 (iv) general contractor; or

1131 (v) title insurance producer;

1132 (j) order a title insurance report or hold a title insurance policy unless the person
1133 provides to the title insurer a copy of a valid, current license under this chapter;

1134 (k) engage in unprofessional conduct as defined by rule;

1135 (l) engage in an act or omission in transacting the business of residential mortgage
1136 loans that constitutes dishonesty, fraud, or misrepresentation;

1137 (m) engage in false or misleading advertising;

1138 (n) (i) fail to account for money received in connection with a residential mortgage
1139 loan;

1140 (ii) use money for a different purpose from the purpose for which the money is
1141 received; or

1142 (iii) except as provided in Subsection (4), retain money paid for services if the services
1143 are not performed;

1144 (o) fail, within 90 calendar days of a request from a borrower who has paid for an
1145 appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;
1146 (p) engage in an act that is performed to:
1147 (i) evade this chapter; or
1148 (ii) assist another person to evade this chapter;
1149 (q) recommend or encourage default, delinquency, or continuation of an existing
1150 default or delinquency, by a mortgage applicant on an existing indebtedness before the closing
1151 of a residential mortgage loan that will refinance all or part of the indebtedness;
1152 (r) in the case of the [principal] lending manager of an entity or a branch office of an
1153 entity, fail to exercise reasonable supervision over the activities of:
1154 (i) unlicensed staff; and
1155 (ii) a mortgage loan originator who is affiliated with the [principal] lending manager;
1156 (s) pay or offer to pay an individual who does not hold a license under this chapter for
1157 work that requires the individual to hold a license under this chapter;
1158 (t) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
1159 (i) provide a title insurance product or service without the approval required by Section
1160 31A-2-405; or
1161 (ii) knowingly provide false or misleading information in the statement required by
1162 Subsection 31A-2-405(2);
1163 (u) represent to the public that the person can or will perform any act of a mortgage
1164 loan originator if that person is not licensed under this chapter because the person is exempt
1165 under Subsection 61-2c-102(1)[(g)](h)(ii)(A), including through:
1166 (i) advertising;
1167 (ii) a business card;
1168 (iii) stationery;
1169 (iv) a brochure;
1170 (v) a sign;
1171 (vi) a rate list; or
1172 (vii) other promotional item; or
1173 (v) (i) engage in an act of loan modification assistance without being licensed under
1174 this chapter;

- 1175 (ii) engage in an act of foreclosure rescue that requires licensure as a real estate agent
1176 or real estate broker under Chapter 2, Division of Real Estate, without being licensed under
1177 that chapter;
- 1178 (iii) engage in an act of loan modification assistance without entering into a written
1179 agreement specifying which one or more acts of loan modification assistance will be
1180 completed;
- 1181 (iv) request or require a person to pay a fee before obtaining:
- 1182 (A) a written offer for a loan modification from the person's lender or servicer; and
1183 (B) the person's written acceptance of the offer from the lender or servicer;
- 1184 (v) induce a person seeking a loan modification to hire the licensee to engage in an act
1185 of loan modification assistance by:
- 1186 (A) suggesting to the person that the licensee has a special relationship with the
1187 person's lender or loan servicer; or
- 1188 (B) falsely representing or advertising that the licensee is acting on behalf of:
- 1189 (I) a government agency;
1190 (II) the person's lender or loan servicer; or
1191 (III) a nonprofit or charitable institution;
- 1192 (vi) recommend or participate in a loan modification that requires a person to:
- 1193 (A) transfer title to real property to the licensee or to a third-party with whom the
1194 licensee has a business relationship or financial interest;
- 1195 (B) make a mortgage payment to a person other than the person's loan servicer; or
1196 (C) refrain from contacting the person's:
- 1197 (I) lender;
1198 (II) loan servicer;
1199 (III) attorney;
1200 (IV) credit counselor; or
1201 (V) housing counselor; or
- 1202 (vii) for an agreement for loan modification assistance entered into on or after May 11,
1203 2010, engage in an act of loan modification assistance without offering in writing to the person
1204 entering into the agreement for loan modification assistance a right to cancel the agreement
1205 within three business days after the day on which the person enters the agreement.

1206 (2) Whether or not the crime is related to the business of residential mortgage loans, it
1207 is a violation of this chapter for a licensee or a person who is a certified education provider to
1208 do any of the following with respect to a criminal offense that involves moral turpitude:

- 1209 (a) be convicted;
- 1210 (b) plead guilty or nolo contendere;
- 1211 (c) enter a plea in abeyance; or
- 1212 (d) be subjected to a criminal disposition similar to the ones described in Subsections
1213 (2)(a) through (c).

1214 (3) A [principal] lending manager does not violate Subsection (1)(r) if:

- 1215 (a) in contravention of the [principal] lending manager's written policies and
1216 instructions, an affiliated licensee of the [principal] lending manager violates:
 - 1217 (i) this chapter; or
 - 1218 (ii) rules made by the division under this chapter;
- 1219 (b) the [principal] lending manager established and followed reasonable procedures to
1220 ensure that affiliated licensees receive adequate supervision;
- 1221 (c) upon learning of a violation by an affiliated licensee, the [principal] lending
1222 manager attempted to prevent or mitigate the damage;
- 1223 (d) the [principal] lending manager did not participate in or ratify the violation by an
1224 affiliated licensee; and
- 1225 (e) the [principal] lending manager did not attempt to avoid learning of the violation.

1226 (4) Notwithstanding Subsection (1)(n)(iii), a licensee may, upon compliance with
1227 Section 70D-2-305, charge a reasonable cancellation fee for work done originating a mortgage
1228 if the mortgage is not closed.

1229 Section 18. Section **61-2c-302** is amended to read:

1230 **61-2c-302. Record requirements.**

1231 (1) For the time period specified in Subsection (2), a licensee shall make or possess any
1232 record required for that licensee by a rule made by the division.

1233 (2) A licensee shall maintain and safeguard in its possession a record described in
1234 Subsection (1) for four years from the last to occur of the following:

- 1235 (a) the final entry on a residential mortgage loan is made by that licensee;
- 1236 (b) if the residential mortgage loan is serviced by the licensee:

- 1237 (i) the residential mortgage loan is paid in full; or
1238 (ii) the licensee ceases to service the residential mortgage loan; or
1239 (c) if the residential mortgage loan is not serviced by the licensee, the residential
1240 mortgage loan is closed.
- 1241 (3) A licensee shall, upon the division's request:
1242 (a) make available to the division for inspection and copying during normal business
1243 hours all records required to be maintained under this chapter; and
1244 (b) [~~upon reasonable notice from the division to a licensee,~~] produce all records
1245 described in Subsection (3)(a) that are related to an investigation being conducted by the
1246 division at the division office for inspection and copying by the division.
- 1247 (4) A licensee who is an entity shall maintain and produce for inspection by the
1248 division a current list of all individuals whose licenses are sponsored by the entity.
- 1249 (5) (a) A [~~licensee who engages in an activity as a mortgage loan originator~~] licensed
1250 entity shall:
1251 (i) create, for each quarter of the fiscal year, a report of condition identifying all
1252 lending activities, including all loans closed by the entity's sponsored mortgage loan originators
1253 during the quarter;
1254 (ii) provide each quarterly report of condition to the nationwide database; and
1255 (iii) maintain [a] each report of condition submitted to the nationwide database as
1256 required by 12 U.S.C. Sec. 5104(e) for at least four years from the day on which the licensee
1257 submits the report of condition to the nationwide database.
- 1258 (b) Upon request by the division, a mortgage loan originator shall produce a report of
1259 condition for inspection by the division.
- 1260 Section 19. Section **61-2c-404** is amended to read:
1261 **61-2c-404. Civil actions.**
1262 (1) (a) A person who violates this chapter is liable for an additional penalty, as
1263 determined by the court, of at least the amount the person received in consequence of a
1264 violation of this chapter as:
1265 (i) commission;
1266 (ii) compensation; or
1267 (iii) profit.

1268 (b) A person aggrieved by a violation of this chapter may:
1269 (i) bring an action for a penalty described in Subsection (1)(a); and
1270 (ii) use a penalty obtained under Subsection (1)(a) for the person's own use and benefit.

1271 (2) A person who is not licensed under this chapter at the time of an act or service that
1272 requires a license under this chapter may not bring an action in court for the recovery of a
1273 commission, fee, or compensation for that act or service.

1274 (3) (a) A mortgage loan originator may not bring an action in the mortgage loan
1275 originator's own name for the recovery of a fee, commission, or compensation for transacting
1276 the business of residential mortgage loans unless the action is brought against the [~~principal~~
1277 ~~lending manager with whom~~] entity by which the mortgage loan originator is [~~licensed~~
1278 sponsored] at the time of the act or service that is the subject of the action.

1279 (b) An action by an entity for the recovery of a fee, commission, or other compensation
1280 shall be brought by:

1281 (i) an entity; or
1282 (ii) the principal lending manager of an entity on behalf of the entity.

1283 (4) A principal lending manager who transacts the business of residential mortgage
1284 loans on the principal lending manager's own behalf may sue in the principal lending manager's
1285 own name for the recovery of a fee, commission, or compensation for transacting the business
1286 of residential mortgage loans.

1287 Section 20. Section **61-2e-104** is amended to read:

1288 **61-2e-104. Exemption.**

1289 This chapter does not apply to:

1290 (1) an entity that:

1291 (a) exclusively employs an individual on an employer-employee basis for the
1292 performance of a real estate appraisal activity in the normal course of the entity's business;
1293 [~~and~~]

1294 (b) is responsible for ensuring that the real estate appraisal activity being performed by
1295 an employee is performed in accordance with applicable appraisal standards; and

1296 (c) is an appraisal management company that is a subsidiary owned and controlled by a
1297 financial institution regulated by a federal financial institution regulatory agency;

1298 (2) an individual who:

1299 (a) is an appraiser; and

1300 (b) in the normal course of business enters into an agreement, whether written or
1301 otherwise, with another appraiser for the performance of a real estate appraisal activity that the
1302 individual cannot complete for any reason, including:

1303 (i) competency;

1304 (ii) work load;

1305 (iii) schedule; or

1306 (iv) geographic location; or

1307 (3) an individual who:

1308 (a) in the normal course of business enters into an agreement, whether written or
1309 otherwise, with an appraiser for the performance of a real estate appraisal activity; and

1310 (b) under the agreement, cosigns the report of the appraiser performing the real estate
1311 appraisal activity upon the completion of the real estate appraisal activity[~~;~~ or].

1312 [~~(4) an appraisal management company that contracts with one or more appraisers for
1313 the performance of fewer than 10 appraisals in this state in a calendar year.~~]

1314 Section 21. Section **61-2e-201** is amended to read:

1315 **61-2e-201. Registration required -- Qualification for registration.**

1316 (1) Unless exempted under Section 61-2e-104, an appraisal management company is
1317 required to register under this chapter if the company:

1318 (a) contracts with one or more appraisers for the performance of 10 or more appraisals
1319 in the state in a calendar year; or

1320 (b) oversees a network or panel of more than 15 appraisers certified or licensed in the
1321 state.

1322 [~~(1)~~] (2) Unless registered under this chapter or exempt under Section 61-2e-104, an
1323 entity may not with regard to a real estate appraisal activity for real estate located in this state:

1324 (a) directly or indirectly engage or attempt to engage in business as an appraisal
1325 management company;

1326 (b) directly or indirectly engage or attempt to perform an appraisal management
1327 service; or

1328 (c) advertise or hold itself out as engaging in or conducting business as an appraisal
1329 management company.

1330 ~~[(2)]~~ (3) To qualify to be registered as an appraisal management company under this
1331 chapter:

1332 (a) each individual who owns, directly or indirectly, more than 10% of the appraisal
1333 management company shall:

1334 (i) be of good moral character, as determined by the board; and

1335 (ii) not have had a license or certificate to engage in an act related to a real estate or
1336 mortgage transaction refused, denied, canceled, or revoked in this state or in another state; and

1337 (b) the appraisal management company shall designate a main contact for
1338 communication between the appraisal management company and either the board or division
1339 who:

1340 (i) is a controlling person;

1341 (ii) is of good moral character, as determined by the board; and

1342 (iii) has not had a license or certificate to engage in an act related to a real estate or
1343 mortgage transaction refused, denied, canceled, or revoked in this state or in another state.

1344 ~~[(3)]~~ (4) This section applies without regard to whether the entity uses the term:

1345 (a) "appraisal management company";

1346 (b) "mortgage technology company"; or

1347 (c) another name.

1348 Section 22. Section **61-2e-307** is amended to read:

1349 **61-2e-307. Prohibited acts -- Exclusions.**

1350 (1) An appraisal management company required to be registered under this chapter and
1351 a controlling person, employee, or agent of the appraisal management company may not:

1352 (a) engage in an act of coercion, extortion, intimidation, or bribery for any purpose
1353 related to an appraisal;

1354 (b) compensate an appraiser in a manner that the person should reasonably know
1355 would result in the appraiser not conducting a real estate appraisal activity in a manner
1356 consistent with applicable appraisal standards;

1357 (c) engage in the business of an appraisal management company under an assumed or
1358 fictitious name not properly registered in the state;

1359 (d) accept a contingent fee for performing an appraisal management service if the fee is
1360 contingent on;

- 1361 (i) the appraisal report having a predetermined analysis, opinion, or conclusion;
- 1362 (ii) the analysis, opinion, conclusion, or valuation reached in an appraisal report; or
- 1363 (iii) the consequences resulting from the appraisal assignment;
- 1364 (e) require an appraiser to indemnify the appraisal management company against
- 1365 liability except liability for errors and omissions by the appraiser; or
- 1366 (f) alter, modify, or otherwise change a completed appraisal report submitted by an
- 1367 appraiser.

1368 ~~(+)~~ (2) An appraisal management company required to be registered under this
1369 chapter, or a controlling person, employee, or agent of the appraisal management company may
1370 not influence or attempt to influence the development, reporting, or review of an appraisal
1371 through:

- 1372 (a) coercion;
- 1373 (b) extortion;
- 1374 (c) collusion;
- 1375 (d) compensation;
- 1376 (e) instruction;
- 1377 (f) inducement;
- 1378 (g) intimidation;
- 1379 (h) bribery; or
- 1380 (i) any other manner that would constitute undue influence.

1381 ~~(2)~~ (3) A violation of Subsection ~~(+)~~ (2) includes doing one or more of the
1382 following for a purpose listed in Subsection ~~(+)~~ (2):

- 1383 (a) withholding or threatening to withhold timely payment for an appraisal;
- 1384 (b) withholding or threatening to withhold future business for an appraiser;
- 1385 (c) taking adverse action or threatening to take adverse action against an appraiser
1386 regarding use of the appraiser for a real estate appraisal activity;
- 1387 (d) expressly or by implication promising future business or increased compensation
1388 for an appraiser;
- 1389 (e) conditioning one or more of the following on the opinion, conclusion, or valuation
1390 to be reached, or on a preliminary estimate or opinion requested from an appraiser:
- 1391 (i) a request for a real estate appraisal activity; or

- 1392 (ii) the payment of consideration;
- 1393 (f) requesting that an appraiser provide at any time before the appraiser's completion of
- 1394 a real estate appraisal activity:
- 1395 (i) an estimated, predetermined, or desired valuation in an appraisal report; or
- 1396 (ii) an estimated value or comparable sale;
- 1397 (g) except for a copy of a sales contract for a purchase transaction, providing to an
- 1398 appraiser:
- 1399 (i) an anticipated, estimated, encouraged, or desired value for a subject property; or
- 1400 (ii) a proposed or target amount to be loaned to the borrower;
- 1401 (h) providing to an appraiser, or an individual related to the appraiser, stock or other
- 1402 financial or non-financial benefits;
- 1403 (i) allowing the removal of an appraiser from an appraiser panel, without prior written
- 1404 notice to the appraiser as required by Section 61-2e-306;
- 1405 (j) obtaining, using, or paying for a subsequent appraisal or ordering an automated
- 1406 valuation model in connection with a mortgage financing transaction unless:
- 1407 (i) (A) there is a reasonable basis to believe that the initial appraisal does not meet
- 1408 applicable appraisal standards; and
- 1409 (B) the reasonable basis is noted in the loan file; or
- 1410 (ii) the subsequent appraisal or automated valuation model is done pursuant to a pre- or
- 1411 post-funding appraisal review or quality control process in accordance with applicable
- 1412 appraisal standards; or
- 1413 ~~[(k) compensating an appraiser in a manner that the person should reasonably have~~
- 1414 ~~known would result in the appraiser not conducting a real estate appraisal activity in a manner~~
- 1415 ~~consistent with applicable appraisal standards;]~~
- 1416 ~~[(l) engaging in the business of an appraisal management company under an assumed~~
- 1417 ~~or fictitious name not properly registered in this state;]~~
- 1418 ~~[(m) accepting a contingent fee for performing an appraisal management service if the~~
- 1419 ~~fee is contingent on:]~~
- 1420 ~~[(i) the appraiser report having a predetermined analysis, opinion, or conclusion;]~~
- 1421 ~~[(ii) the analysis, opinion, conclusion, or valuation reached in an appraisal report; or]~~
- 1422 ~~[(iii) the consequences resulting from the appraisal assignment; or]~~

1423 ~~[(n)]~~ (k) engaging in any other act or practice that impairs or attempts to impair an
1424 appraiser's independence, objectivity, or impartiality.

1425 ~~[(3) An appraisal management company required to be registered under this chapter, or~~
1426 ~~a controlling person, employee, or agent of the appraisal management company, may not~~
1427 ~~require an appraiser to indemnify the appraisal management company against liability except~~
1428 ~~liability for errors and omissions by the appraiser.]~~

1429 (4) This section may not be construed to prohibit an appraisal management company
1430 from requesting that an appraiser:

- 1431 (a) provide additional information about the basis for a valuation; or
1432 (b) correct an objective factual error in an appraisal report.

1433 ~~[(5) An appraisal management company required to be registered under this chapter, or~~
1434 ~~a controlling person, employee, or agent of the appraisal management company may not alter,~~
1435 ~~modify, or otherwise change a completed appraisal report submitted by an appraiser.]~~

1436 Section 23. Section **61-2e-401** is amended to read:

1437 **61-2e-401. Division authority -- Immunity.**

1438 (1) (a) In addition to a power or duty expressly provided in this chapter, the division
1439 may:

1440 (i) receive and act on a complaint including:

1441 (A) taking action designed to obtain voluntary compliance with this chapter, including
1442 the issuance of a cease and desist order if the person against whom the order is issued is given
1443 the right to petition the board for review of the order; or

1444 (B) commencing an administrative or judicial proceeding on the division's own
1445 initiative;

1446 (ii) investigate an entity required to be registered under this chapter, regardless of
1447 whether the entity is located in Utah; and

1448 (iii) employ one or more investigators, clerks, or other employees or agents if:

1449 (A) approved by the executive director; and

1450 (B) within the budget of the division.

1451 (b) A failure to respond to a request by the division in an investigation under this
1452 chapter is considered to be a separate violation of this chapter, including:

1453 (i) failing to respond to a subpoena;

1454 (ii) withholding evidence; or

1455 (iii) failing to produce a document or record.

1456 (2) (a) If a person is found to have violated this chapter or a rule made under this
1457 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,
1458 document, or record required under this chapter, including the costs incurred to copy an
1459 electronic book, paper, contract, document, or record in a universally readable format.

1460 (b) If a person fails to pay the costs described in Subsection (2)(a) when due, the
1461 person's registration is automatically suspended:

1462 (i) beginning the day on which the payment of costs is due; and

1463 (ii) ending the day on which the costs are paid.

1464 (3) The division is immune from a civil action or criminal prosecution for initiating or
1465 assisting in a lawful investigation of an act or participating in a disciplinary proceeding under
1466 this chapter if the division takes the action:

1467 (a) without malicious intent; and

1468 (b) in the reasonable belief that the action is taken pursuant to the powers and duties
1469 vested in the division under this chapter.

1470 Section 24. Section **61-2f-102** is amended to read:

1471 **61-2f-102. Definitions.**

1472 As used in this chapter:

1473 (1) "Associate broker" means an individual who is:

1474 (a) employed or engaged as an independent contractor by or on behalf of a principal
1475 broker to perform an act set out in Subsection (18) for valuable consideration; and

1476 (b) licensed under this chapter as an associate broker.

1477 (2) "Branch office" means a principal broker's real estate brokerage office that is not
1478 the principal broker's main office.

1479 (3) "Business day" means a day other than:

1480 (a) a Saturday;

1481 (b) a Sunday; or

1482 (c) a federal or state holiday.

1483 (4) "Business opportunity" means the sale, lease, or exchange of any business that
1484 includes an interest in real estate.

1485 (5) "Commission" means the Real Estate Commission established under this chapter.

1486 (6) "Concurrence" means the entities given a concurring role must jointly agree for
1487 action to be taken.

1488 (7) "Condominium unit" is as defined in Section 57-8-3.

1489 (8) "Condominium homeowners' association" means the condominium unit owners
1490 acting as a group in accordance with declarations and bylaws.

1491 (9) (a) "Condominium hotel" means one or more condominium units that are operated
1492 as a hotel.

1493 (b) "Condominium hotel" does not mean a hotel consisting of condominium units, all
1494 of which are owned by a single entity.

1495 (10) "Director" means the director of the Division of Real Estate.

1496 (11) "Division" means the Division of Real Estate.

1497 (12) "Entity" means:

1498 (a) a corporation;

1499 (b) a partnership;

1500 (c) a limited liability company;

1501 (d) a company;

1502 (e) an association;

1503 (f) a joint venture;

1504 (g) a business trust;

1505 (h) a trust; or

1506 (i) any organization similar to an entity described in Subsections (12)(a) through (h).

1507 (13) "Executive director" means the director of the Department of Commerce.

1508 (14) "Foreclosure rescue" means, for compensation or with the expectation of receiving
1509 valuable consideration, to:

1510 (a) engage, or offer to engage, in an act that:

1511 (i) the person represents will assist a borrower in preventing a foreclosure; and

1512 (ii) relates to a transaction involving the transfer of title to residential real property; or

1513 (b) as an employee or agent of another person:

1514 (i) solicit, or offer that the other person will engage in an act described in Subsection

1515 (14)(a); or

- 1516 (ii) negotiate terms in relationship to an act described in Subsection (14)(a).
1517 (15) "Loan modification assistance" means, for compensation or with the expectation
1518 of receiving valuable consideration, to:
- 1519 (a) act, or offer to act, on behalf of a person to:
- 1520 (i) obtain a loan term of a residential mortgage loan that is different from an existing
1521 loan term including:
- 1522 (A) an increase or decrease in an interest rate;
1523 (B) a change to the type of interest rate;
1524 (C) an increase or decrease in the principal amount of the residential mortgage loan;
1525 (D) a change in the number of required period payments;
1526 (E) an addition of collateral;
1527 (F) a change to, or addition of, a prepayment penalty;
1528 (G) an addition of a cosigner; or
1529 (H) a change in persons obligated under the existing residential mortgage loan; or
1530 (ii) substitute a new residential mortgage loan for an existing residential mortgage loan;
1531 or
- 1532 (b) as an employee or agent of another person:
- 1533 (i) solicit, or offer that the other person will engage in an act described in Subsection
1534 (15)(a); or
1535 (ii) negotiate terms in relationship to an act described in Subsection (15)(a).
- 1536 (16) "Main office" means the address which a principal broker designates with the
1537 division as the principal broker's primary brokerage office.
- 1538 (17) "Person" means an individual or entity.
- 1539 (18) "Principal broker" means an individual who is licensed as a principal broker under
1540 this chapter and who:
- 1541 (a) (i) sells or lists for sale real estate, including real estate being sold as part of a
1542 foreclosure rescue, or a business opportunity [~~for sale~~] with the expectation of receiving
1543 valuable consideration;
- 1544 (ii) buys, exchanges, or auctions real estate, an option on real estate, a business
1545 opportunity, or an improvement on real estate with the expectation of receiving valuable
1546 consideration; or

1547 (iii) advertises, offers, attempts, or otherwise holds the individual out to be engaged in
1548 the business described in Subsection (18)(a)(i) or (ii);

1549 (b) is employed by or on behalf of the owner of real estate or by a prospective
1550 purchaser of real estate and performs an act described in Subsection (18)(a), whether the
1551 individual's compensation is at a stated salary, a commission basis, upon a salary and
1552 commission basis, or otherwise;

1553 (c) (i) with the expectation of receiving valuable consideration, manages property
1554 owned by another person; or

1555 (ii) advertises or otherwise holds the individual out to be engaged in property
1556 management;

1557 (d) with the expectation of receiving valuable consideration, assists or directs in the
1558 procurement of prospects for or the negotiation of a transaction listed in Subsections (18)(a)
1559 and (c);

1560 (e) except for a mortgage lender, title insurance producer, or an employee of a
1561 mortgage lender or title insurance producer, assists or directs in the closing of a real estate
1562 transaction with the expectation of receiving valuable consideration; or

1563 (f) (i) engages in foreclosure rescue; or

1564 (ii) advertises, offers, attempts, or otherwise holds the person out as being engaged in
1565 foreclosure rescue.

1566 (19) (a) "Property management" means engaging in, with the expectation of receiving
1567 valuable consideration, the management of real estate owned by another person or advertising
1568 or otherwise claiming to be engaged in property management by:

1569 (i) advertising for, arranging, negotiating, offering, or otherwise attempting or
1570 participating in a transaction calculated to secure the rental or leasing of real estate;

1571 (ii) collecting, agreeing, offering, or otherwise attempting to collect rent for the real
1572 estate and accounting for and disbursing the money collected; or

1573 (iii) authorizing expenditures for repairs to the real estate.

1574 (b) "Property management" does not include:

1575 (i) hotel or motel management;

1576 (ii) rental of tourist accommodations, including hotels, motels, tourist homes,
1577 condominiums, condominium hotels, mobile home park accommodations, campgrounds, or

1578 similar public accommodations for a period of less than 30 consecutive days, and the
1579 management activities associated with these rentals; or

1580 (iii) the leasing or management of surface or subsurface minerals or oil and gas
1581 interests, if the leasing or management is separate from a sale or lease of the surface estate.

1582 (20) "Real estate" includes leaseholds and business opportunities involving real
1583 property.

1584 (21) (a) "Regular salaried employee" means an individual who performs a service for
1585 wages or other remuneration, whose employer withholds federal employment taxes under a
1586 contract of hire, written or oral, express or implied.

1587 (b) "Regular salaried employee" does not include an individual who performs services
1588 on a project-by-project basis or on a commission basis.

1589 (22) "Reinstatement" means restoring a license that has expired or has been suspended.

1590 (23) "Reissuance" means the process by which a licensee may obtain a license
1591 following revocation of the license.

1592 (24) "Renewal" means extending a license for an additional licensing period on or
1593 before the date the license expires.

1594 (25) "Sales agent" means an individual who is:

1595 (a) affiliated with a principal broker, either as an independent contractor or an
1596 employee as provided in Section 61-2f-303, to perform for valuable consideration an act
1597 described in Subsection (18); and

1598 (b) licensed under this chapter as a sales agent.

1599 (26) (a) "Undivided fractionalized long-term estate" means an ownership interest in
1600 real property by two or more persons that is:

1601 (i) a tenancy in common; or

1602 (ii) any other legal form of undivided estate in real property including:

1603 (A) a fee estate;

1604 (B) a life estate; or

1605 (C) other long-term estate.

1606 (b) "Undivided fractionalized long-term estate" does not include a joint tenancy.

1607 Section 25. Section **61-2f-203** is amended to read:

1608 **61-2f-203. Licensing requirements.**

1609 (1) (a) (i) The division shall determine whether an applicant with a criminal history
1610 qualifies for licensure.

1611 (ii) If the division, acting under Subsection (1)(a)(i), denies or restricts a license or
1612 places a license on probation, the applicant may petition the commission for de novo review of
1613 the application.

1614 ~~[(1)(a)]~~ (b) Except as provided in Subsection (5), the commission shall determine ~~[the]~~
1615 all other qualifications and requirements of an applicant for:

- 1616 (i) a principal broker license;
1617 (ii) an associate broker license; or
1618 (iii) a sales agent license.

1619 ~~[(b)]~~ (c) The division, with the concurrence of the commission, shall require and pass
1620 upon proof necessary to determine the honesty, integrity, truthfulness, reputation, and
1621 competency of each applicant for an initial license or for renewal of an existing license.

1622 ~~[(c)]~~ (d) (i) The division, with the concurrence of the commission, shall require an
1623 applicant for:

1624 (A) a sales agent license to complete an approved educational program consisting of
1625 the number of hours designated by rule made by the commission with the concurrence of the
1626 division, except that the rule may not require less than 120 hours; and

1627 (B) an associate broker or a principal broker license to complete an approved
1628 educational program consisting of the number of hours designated by rule made by the
1629 commission with the concurrence of the division, except that the rule may not require less than
1630 120 hours.

1631 (ii) An hour required by this section means 50 minutes of instruction in each 60
1632 minutes.

1633 (iii) The maximum number of program hours available to an individual is eight hours
1634 per day.

1635 ~~[(d)]~~ (e) The division, with the concurrence of the commission, shall require the
1636 applicant to pass an examination approved by the commission covering:

- 1637 (i) the fundamentals of:
1638 (A) the English language;
1639 (B) arithmetic;

- 1640 (C) bookkeeping; and
- 1641 (D) real estate principles and practices;
- 1642 (ii) this chapter;
- 1643 (iii) the rules established by the commission; and
- 1644 (iv) any other aspect of Utah real estate license law considered appropriate.
- 1645 ~~[(e)]~~ (f) (i) Three years' full-time experience as a sales agent or its equivalent is
- 1646 required before an applicant may apply for, and secure a principal broker or associate broker
- 1647 license in this state.
- 1648 (ii) The commission shall establish by rule, made in accordance with Title 63G,
- 1649 Chapter 3, Utah Administrative Rulemaking Act, the criteria by which the commission will
- 1650 accept experience or special education in similar fields of business in lieu of the three years'
- 1651 experience.
- 1652 (2) (a) The division, with the concurrence of the commission, may require an applicant
- 1653 to furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's
- 1654 reputation and competency as set forth by rule.
- 1655 (b) The division shall require an applicant to provide the applicant's Social Security
- 1656 number, which is a private record under Subsection 63G-2-302(1)(h).
- 1657 (3) (a) An individual who is not a resident of this state may be licensed in this state if
- 1658 the person complies with this chapter.
- 1659 (b) An individual who is not a resident of this state may be licensed as an associate
- 1660 broker or sales agent in this state by:
- 1661 (i) complying with this chapter; and
- 1662 (ii) being employed or engaged as an independent contractor by or on behalf of a
- 1663 principal broker who is licensed in this state, regardless of whether the principal broker is a
- 1664 resident of this state.
- 1665 (4) (a) The division and commission shall treat an application to be relicensed of an
- 1666 applicant whose real estate license is revoked as an original application.
- 1667 (b) In the case of an applicant for a new license as a principal broker or associate
- 1668 broker, the applicant is not entitled to credit for experience gained before the revocation of a
- 1669 real estate license.
- 1670 (5) (a) Notwithstanding Subsection (1)(b), the commission may delegate to the division

1671 the authority to:

- 1672 (i) review a class or category of applications for initial or renewed licenses;
 1673 (ii) determine whether an applicant meets the licensing criteria in Subsection (1); and
 1674 (iii) approve or deny a license application without concurrence by the commission.

1675 (b) (i) If the commission delegates to the division the authority to approve or deny an
 1676 application without concurrence by the commission and the division denies an application for
 1677 licensure, the applicant who is denied licensure may petition the commission for de novo
 1678 review of the application.

1679 (ii) An applicant who is denied licensure pursuant to this Subsection (5) may seek
 1680 agency review by the executive director only after the commission has reviewed the division's
 1681 denial of the applicant's application.

1682 Section 26. Section **61-2f-301** is amended to read:

1683 **61-2f-301. Reporting requirements.**

1684 (1) A licensee shall notify the division of the following by sending the division a
 1685 signed statement within 10 business days of:

1686 (a) ~~[(i)]~~ a conviction of, or the entry of a plea in abeyance to:

1687 (i) a felony[, class A misdemeanor, or class B misdemeanor]; or

1688 (ii) a misdemeanor involving financial services or a financial services-related business,
 1689 fraud, a false statement or omission, theft or wrongful taking of property, bribery, perjury,
 1690 forgery, counterfeiting, or extortion;

1691 ~~[(ii) the entry of a plea in abeyance to a felony, class A misdemeanor, or class B~~
 1692 ~~misdemeanor; or]~~

1693 ~~[(iii)]~~ (b) the potential resolution of a felony[, class A] or of a misdemeanor[, or class B
 1694 misdemeanor] described in Subsection (1)(a)(ii) by:

1695 ~~[(A)]~~ (i) a diversion agreement; or

1696 ~~[(B)]~~ (ii) another agreement under which a criminal charge is held in suspense for a
 1697 period of time;

1698 ~~[(b)]~~ (c) the filing of a personal or brokerage bankruptcy, if the licensee is a principal
 1699 broker;

1700 ~~[(c)]~~ (d) the suspension, revocation, surrender, cancellation, or denial of a license or
 1701 registration of the licensee that is necessary to engage in an occupation or profession,

1702 regardless of whether the license or registration is issued by this state or another jurisdiction; or
1703 [~~(d)~~] (e) the entry of a cease and desist order or a temporary or permanent injunction:
1704 (i) against the licensee by a court or administrative agency; and
1705 (ii) on the basis of:
1706 (A) conduct or a practice involving the business of real estate; or
1707 (B) conduct involving fraud, misrepresentation, or deceit.
1708 (2) The commission, with the concurrence of the director, shall enforce the reporting
1709 requirement under this section pursuant to Section 61-2f-404.

1710 Section 27. Section **61-2f-401 (Superseded 07/01/12)** is amended to read:

1711 **61-2f-401 (Superseded 07/01/12). Grounds for disciplinary action.**

1712 The following acts are unlawful for a person licensed or required to be licensed under
1713 this chapter:

- 1714 (1) (a) making a substantial misrepresentation;
- 1715 (b) making an intentional misrepresentation;
- 1716 (c) pursuing a continued and flagrant course of misrepresentation;
- 1717 (d) making a false representation or promise through an agent, sales agent, advertising,
1718 or otherwise; or
- 1719 (e) making a false representation or promise of a character likely to influence,
1720 persuade, or induce;
- 1721 (2) acting for more than one party in a transaction without the informed consent of the
1722 parties;
- 1723 (3) (a) acting as an associate broker or sales agent while not affiliated with a principal
1724 broker;
- 1725 (b) representing or attempting to represent a principal broker other than the principal
1726 broker with whom the person is affiliated; or
- 1727 (c) representing as sales agent or having a contractual relationship similar to that of
1728 sales agent with a person other than a principal broker;
- 1729 (4) (a) failing, within a reasonable time, to account for or to remit money that belongs
1730 to another and comes into the person's possession;
- 1731 (b) commingling money described in Subsection (4)(a) with the person's own money;
- 1732 or

- 1733 (c) diverting money described in Subsection (4)(a) from the purpose for which the
1734 money is received;
- 1735 (5) paying or offering to pay valuable consideration, as defined by the commission, to a
1736 person not licensed under this chapter, except that valuable consideration may be shared:
- 1737 (a) with a principal broker of another jurisdiction; or
1738 (b) as provided under:
- 1739 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;
1740 (ii) Title 16, Chapter 11, Professional Corporation Act; or
1741 (iii) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act;
- 1742 (6) being incompetent to act as a principal broker, associate broker, or sales agent in
1743 such manner as to safeguard the interests of the public;
- 1744 (7) failing to voluntarily furnish a copy of a document to the parties before and after the
1745 execution of a document;
- 1746 (8) failing to keep and make available for inspection by the division a record of each
1747 transaction, including:
- 1748 (a) the names of buyers and sellers or lessees and lessors;
1749 (b) the identification of real estate;
1750 (c) the sale or rental price;
1751 (d) money received in trust;
1752 (e) agreements or instructions from buyers and sellers or lessees and lessors; and
1753 (f) any other information required by rule;
- 1754 (9) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether
1755 the purchase, sale, or rental is made for that person or for an undisclosed principal;
- 1756 (10) being convicted of a criminal offense involving moral turpitude within five years
1757 of the most recent application:
- 1758 (a) regardless of whether the criminal offense is related to real estate; and
1759 (b) including:
- 1760 (i) a conviction based upon a plea of nolo contendere; or
1761 (ii) a plea held in abeyance to a criminal offense involving moral turpitude;
- 1762 (11) advertising the availability of real estate or the services of a licensee in a false,
1763 misleading, or deceptive manner;

1764 (12) in the case of a principal broker or a licensee who is a branch manager, failing to
1765 exercise reasonable supervision over the activities of the principal broker's or branch manager's
1766 licensed or unlicensed staff;

1767 (13) violating or disregarding:

1768 (a) this chapter;

1769 (b) an order of the commission; or

1770 (c) the rules adopted by the commission and the division;

1771 (14) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real
1772 estate transaction;

1773 (15) any other conduct which constitutes dishonest dealing;

1774 (16) unprofessional conduct as defined by statute or rule;

1775 (17) having one of the following suspended, revoked, surrendered, or cancelled on the
1776 basis of misconduct in a professional capacity that relates to character, honesty, integrity, or
1777 truthfulness:

1778 (a) a real estate license, registration, or certificate issued by another jurisdiction; or

1779 (b) another license, registration, or certificate to engage in an occupation or profession
1780 issued by this state or another jurisdiction;

1781 (18) failing to respond to a request by the division in an investigation authorized under
1782 this chapter, including:

1783 (a) failing to respond to a subpoena;

1784 (b) withholding evidence; or

1785 (c) failing to produce documents or records;

1786 (19) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

1787 (a) providing a title insurance product or service without the approval required by
1788 Section 31A-2-405; or

1789 (b) knowingly providing false or misleading information in the statement required by
1790 Subsection 31A-2-405(2);

1791 (20) violating an independent contractor agreement between a principal broker and a
1792 sales agent or associate broker as evidenced by a final judgment of a court; or

1793 [~~(21) (a) engaging in a foreclosure rescue if not licensed under this chapter;~~]

1794 [~~(b)~~] (21) (a) engaging in an act of loan modification assistance that requires licensure

1795 as a mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing
 1796 Act, without being licensed under that chapter;

1797 ~~[(e)]~~ (b) engaging in an act of foreclosure rescue without entering into a written
 1798 agreement specifying what one or more acts of foreclosure rescue will be completed;

1799 ~~[(d)]~~ requesting or requiring a person to pay a fee for a foreclosure rescue service before
 1800 obtaining a written agreement;]

1801 ~~[(i)]~~ between the person and the person's lender or servicer; and]

1802 ~~[(ii)]~~ by which title to the residential real estate at risk of foreclosure will be
 1803 transferred;]

1804 ~~[(e)]~~ (c) inducing a person who is at risk of foreclosure to hire the licensee to engage in
 1805 an act of foreclosure rescue by:

1806 (i) suggesting to the person that the licensee has a special relationship with the person's
 1807 lender or loan servicer; or

1808 (ii) falsely representing or advertising that the licensee is acting on behalf of:

1809 (A) a government agency;

1810 (B) the person's lender or loan servicer; or

1811 (C) a nonprofit or charitable institution; or

1812 ~~[(f)]~~ (d) recommending or participating in a foreclosure rescue that requires a person
 1813 to:

1814 (i) transfer title to real estate to the licensee or to a third-party with whom the licensee
 1815 has a business relationship or financial interest;

1816 (ii) make a mortgage payment to a person other than the person's loan servicer; or

1817 (iii) refrain from contacting the person's:

1818 (A) lender;

1819 (B) loan servicer;

1820 (C) attorney;

1821 (D) credit counselor; or

1822 (E) housing counselor~~[, or]~~.

1823 ~~[(22)]~~ for an agreement for foreclosure rescue entered into on or after May 11, 2010,
 1824 engaging in an act of foreclosure rescue without offering in writing to the person entering into
 1825 the agreement for foreclosure rescue a right to cancel the agreement within three business days

1826 ~~after the day on which the person enters the agreement.]~~

1827 Section 28. Section **61-2f-401 (Effective 07/01/12)** is amended to read:

1828 **61-2f-401 (Effective 07/01/12). Grounds for disciplinary action.**

1829 The following acts are unlawful for a person licensed or required to be licensed under
1830 this chapter:

1831 (1) (a) making a substantial misrepresentation;

1832 (b) making an intentional misrepresentation;

1833 (c) pursuing a continued and flagrant course of misrepresentation;

1834 (d) making a false representation or promise through an agent, sales agent, advertising,
1835 or otherwise; or

1836 (e) making a false representation or promise of a character likely to influence,
1837 persuade, or induce;

1838 (2) acting for more than one party in a transaction without the informed consent of the
1839 parties;

1840 (3) (a) acting as an associate broker or sales agent while not affiliated with a principal
1841 broker;

1842 (b) representing or attempting to represent a principal broker other than the principal
1843 broker with whom the person is affiliated; or

1844 (c) representing as sales agent or having a contractual relationship similar to that of
1845 sales agent with a person other than a principal broker;

1846 (4) (a) failing, within a reasonable time, to account for or to remit money that belongs
1847 to another and comes into the person's possession;

1848 (b) commingling money described in Subsection (4)(a) with the person's own money;
1849 or

1850 (c) diverting money described in Subsection (4)(a) from the purpose for which the
1851 money is received;

1852 (5) paying or offering to pay valuable consideration, as defined by the commission, to a
1853 person not licensed under this chapter, except that valuable consideration may be shared:

1854 (a) with a principal broker of another jurisdiction; or

1855 (b) as provided under:

1856 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;

- 1857 (ii) Title 16, Chapter 11, Professional Corporation Act; or
- 1858 (iii) Title 48, Chapter 3, Utah Revised Uniform Limited Liability Company Act;
- 1859 (6) being incompetent to act as a principal broker, associate broker, or sales agent in
- 1860 such manner as to safeguard the interests of the public;
- 1861 (7) failing to voluntarily furnish a copy of a document to the parties before and after the
- 1862 execution of a document;
- 1863 (8) failing to keep and make available for inspection by the division a record of each
- 1864 transaction, including:
 - 1865 (a) the names of buyers and sellers or lessees and lessors;
 - 1866 (b) the identification of real estate;
 - 1867 (c) the sale or rental price;
 - 1868 (d) money received in trust;
 - 1869 (e) agreements or instructions from buyers and sellers or lessees and lessors; and
 - 1870 (f) any other information required by rule;
- 1871 (9) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether
- 1872 the purchase, sale, or rental is made for that person or for an undisclosed principal;
- 1873 (10) being convicted of a criminal offense involving moral turpitude within five years
- 1874 of the most recent application:
 - 1875 (a) regardless of whether the criminal offense is related to real estate; and
 - 1876 (b) including:
 - 1877 (i) a conviction based upon a plea of nolo contendere; or
 - 1878 (ii) a plea held in abeyance to a criminal offense involving moral turpitude;
- 1879 (11) advertising the availability of real estate or the services of a licensee in a false,
- 1880 misleading, or deceptive manner;
- 1881 (12) in the case of a principal broker or a licensee who is a branch manager, failing to
- 1882 exercise reasonable supervision over the activities of the principal broker's or branch manager's
- 1883 licensed or unlicensed staff;
- 1884 (13) violating or disregarding:
 - 1885 (a) this chapter;
 - 1886 (b) an order of the commission; or
 - 1887 (c) the rules adopted by the commission and the division;

- 1888 (14) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real
1889 estate transaction;
- 1890 (15) any other conduct which constitutes dishonest dealing;
- 1891 (16) unprofessional conduct as defined by statute or rule;
- 1892 (17) having one of the following suspended, revoked, surrendered, or cancelled on the
1893 basis of misconduct in a professional capacity that relates to character, honesty, integrity, or
1894 truthfulness:
- 1895 (a) a real estate license, registration, or certificate issued by another jurisdiction; or
1896 (b) another license, registration, or certificate to engage in an occupation or profession
1897 issued by this state or another jurisdiction;
- 1898 (18) failing to respond to a request by the division in an investigation authorized under
1899 this chapter, including:
- 1900 (a) failing to respond to a subpoena;
- 1901 (b) withholding evidence; or
- 1902 (c) failing to produce documents or records;
- 1903 (19) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
- 1904 (a) providing a title insurance product or service without the approval required by
1905 Section 31A-2-405; or
- 1906 (b) knowingly providing false or misleading information in the statement required by
1907 Subsection 31A-2-405(2);
- 1908 (20) violating an independent contractor agreement between a principal broker and a
1909 sales agent or associate broker as evidenced by a final judgment of a court; or
- 1910 ~~[(21) (a) engaging in a foreclosure rescue if not licensed under this chapter;]~~
- 1911 ~~[(b)]~~ (21) (a) engaging in an act of loan modification assistance that requires licensure
1912 as a mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing
1913 Act, without being licensed under that chapter;
- 1914 ~~[(c)]~~ (b) engaging in an act of foreclosure rescue without entering into a written
1915 agreement specifying what one or more acts of foreclosure rescue will be completed;
- 1916 ~~[(d) requesting or requiring a person to pay a fee for a foreclosure rescue service before~~
1917 ~~obtaining a written agreement:]~~
- 1918 ~~[(i) between the person and the person's lender or servicer; and]~~

1919 ~~[(ii) by which title to the residential real estate at risk of foreclosure will be~~
 1920 ~~transferred;]~~

1921 ~~[(e)] (c)~~ inducing a person who is at risk of foreclosure to hire the licensee to engage in
 1922 an act of foreclosure rescue by:

1923 (i) suggesting to the person that the licensee has a special relationship with the person's
 1924 lender or loan servicer; or

1925 (ii) falsely representing or advertising that the licensee is acting on behalf of:

1926 (A) a government agency;

1927 (B) the person's lender or loan servicer; or

1928 (C) a nonprofit or charitable institution; or

1929 ~~[(f)] (d)~~ recommending or participating in a foreclosure rescue that requires a person
 1930 to:

1931 (i) transfer title to real estate to the licensee or to a third-party with whom the licensee
 1932 has a business relationship or financial interest;

1933 (ii) make a mortgage payment to a person other than the person's loan servicer; or

1934 (iii) refrain from contacting the person's:

1935 (A) lender;

1936 (B) loan servicer;

1937 (C) attorney;

1938 (D) credit counselor; or

1939 (E) housing counselor~~[- or]~~.

1940 ~~[(22) for an agreement for foreclosure rescue entered into on or after May 11, 2010,~~
 1941 ~~engaging in an act of foreclosure rescue without offering in writing to the person entering into~~
 1942 ~~the agreement for foreclosure rescue a right to cancel the agreement within three business days~~
 1943 ~~after the day on which the person enters the agreement.]~~

1944 Section 29. Section **61-2g-102** is amended to read:

1945 **61-2g-102. Definitions.**

1946 (1) As used in this chapter:

1947 (a) (i) "Appraisal" means an ~~[unbiased]~~ analysis, opinion, or conclusion relating to the
 1948 nature, quality, value, or utility of a specified interest in, or aspect of, identified real estate or
 1949 identified real property.

1950 (ii) An appraisal is classified by the nature of the assignment as a valuation appraisal,
1951 an analysis assignment, or a review assignment in accordance with the following definitions:

1952 (A) "Analysis assignment" means an unbiased analysis, opinion, or conclusion that
1953 relates to the nature, quality, or utility of identified real estate or identified real property.

1954 (B) "Review assignment" means an unbiased analysis, opinion, or conclusion that
1955 forms an opinion as to the adequacy and appropriateness of a valuation appraisal or an analysis
1956 assignment.

1957 (C) "Valuation appraisal" means an unbiased analysis, opinion, or conclusion that
1958 estimates the value of an identified parcel of real estate or identified real property at a particular
1959 point in time.

1960 (b) "Appraisal Foundation" means the Appraisal Foundation that was incorporated as
1961 an Illinois not-for-profit corporation on November 30, 1987.

1962 (c) (i) "Appraisal report" means a communication, written or oral, of an appraisal.

1963 (ii) An appraisal report is classified by the nature of the assignment as a valuation
1964 report, analysis report, or review report in accordance with the definitions provided in
1965 Subsection (1)(a)(ii).

1966 (iii) The testimony of a person relating to the person's analyses, conclusions, or
1967 opinions concerning identified real estate or identified real property is considered to be an oral
1968 appraisal report.

1969 (d) "Appraisal Qualification Board" means the Appraisal Qualification Board of the
1970 Appraisal Foundation.

1971 (e) "Board" means the Real Estate Appraiser Licensing and Certification Board that is
1972 established in Section 61-2g-204.

1973 (f) "Certified appraisal report" means a written or oral appraisal report that is certified
1974 by a state-certified general appraiser or state-certified residential appraiser.

1975 (g) "Concurrence" means that the entities that are given a concurring role jointly agree
1976 to an action.

1977 (h) (i) (A) "Consultation service" means an engagement to provide a real estate
1978 valuation service analysis, opinion, conclusion, or other service that does not fall within the
1979 definition of appraisal.

1980 (B) "Consultation service" does not mean a valuation appraisal, analysis assignment, or

1981 review assignment.

1982 (ii) Regardless of the intention of the client or employer, if a person prepares an
1983 unbiased analysis, opinion, or conclusion, the analysis, opinion, or conclusion is considered to
1984 be an appraisal and not a consultation service.

1985 (i) "Contingent fee" means a fee or other form of compensation, payment of which is
1986 dependent on or conditioned by:

1987 (i) the reporting of a predetermined analysis, opinion, or conclusion by the person
1988 performing the analysis, opinion, or conclusion; or

1989 (ii) achieving a result specified by the person requesting the analysis, opinion, or
1990 conclusion.

1991 (j) "Division" means the Division of Real Estate of the Department of Commerce.

1992 (k) "Federally related transaction" means a real estate related transaction that is
1993 required by federal law or by federal regulation to be supported by an appraisal prepared by:

1994 (i) a state-licensed appraiser; or

1995 (ii) a state-certified appraiser.

1996 (l) "Real estate" means an identified parcel or tract of land including improvements if
1997 any.

1998 (m) "Real estate appraisal activity" means the act or process of making an appraisal of
1999 real estate or real property and preparing an appraisal report.

2000 (n) "Real estate related transaction" means:

2001 (i) the sale, lease, purchase, investment in, or exchange of real property or an interest in
2002 real property, or the financing of such a transaction;

2003 (ii) the refinancing of real property or an interest in real property; or

2004 (iii) the use of real property or an interest in real property as security for a loan or
2005 investment, including mortgage-backed securities.

2006 (o) "Real property" means one or more defined interests, benefits, or rights inherent in
2007 the ownership of real estate.

2008 (p) "State-certified general appraiser" means a person who holds a current, valid
2009 certification as a state-certified general appraiser issued under this chapter.

2010 (q) "State-certified residential appraiser" means a person who holds a current, valid
2011 certification as a state-certified residential real estate appraiser issued under this chapter.

2012 (r) "State-licensed appraiser" means a person who holds a current, valid license as a
2013 state-licensed appraiser issued under this chapter.

2014 (s) "Trainee" means an individual who:

2015 (i) does not hold an appraiser license or appraiser certification issued under this
2016 chapter;

2017 (ii) works under the direct supervision of a state-certified appraiser to earn experience
2018 for licensure; and

2019 (iii) is registered as a trainee under this chapter.

2020 (t) "Unbiased analysis, opinion, or conclusion" means an analysis, opinion, or
2021 conclusion relating to the nature, quality, value, or utility of identified real estate or identified
2022 real property that is prepared by a person who is employed or retained to act, or would be
2023 perceived by third parties or the public as acting, as a disinterested third-party in rendering the
2024 analysis, opinion, or conclusion.

2025 (2) (a) If a term not defined in this section is defined by rule, the term shall have the
2026 meaning established by the division by rule made in accordance with Title 63G, Chapter 3,
2027 Utah Administrative Rulemaking Act.

2028 (b) If a term not defined in this section is not defined by rule, the term shall have the
2029 meaning commonly accepted in the business community.

2030 Section 30. Section **61-2g-103 (Superseded 07/01/12)** is amended to read:

2031 **61-2g-103 (Superseded 07/01/12). Other law unaffected.**

2032 This chapter may not be considered to prohibit a person [~~approved,~~] licensed, certified,
2033 or registered under this chapter from engaging in the practice of real estate appraising as a
2034 professional corporation or a limited liability company in accordance with:

2035 (1) Title 16, Chapter 11, Professional Corporation Act; or

2036 (2) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act.

2037 Section 31. Section **61-2g-103 (Effective 07/01/12)** is amended to read:

2038 **61-2g-103 (Effective 07/01/12). Other law unaffected.**

2039 This chapter may not be considered to prohibit a person [~~approved,~~] licensed, certified,
2040 or registered under this chapter from engaging in the practice of real estate appraising as a
2041 professional corporation or a limited liability company in accordance with:

2042 (1) Title 16, Chapter 11, Professional Corporation Act; or

- 2043 (2) Title 48, Chapter 3, Utah Revised Uniform Limited Liability Company Act.
2044 Section 32. Section **61-2g-201** is amended to read:
2045 **61-2g-201. Duties and powers of division in general.**
2046 (1) The division shall administer and enforce this chapter.
2047 (2) The division has the following powers and duties:
2048 (a) The division shall:
2049 (i) receive an application for licensing, certification, or registration;
2050 (ii) establish appropriate administrative procedures for the processing of an application
2051 for licensure, certification, or registration;
2052 (iii) issue a license or certification to a qualified applicant pursuant to this chapter; and
2053 (iv) register an individual who applies and qualifies for registration as a trainee under
2054 this chapter.
2055 (b) The division shall hold public hearings under the direction of the board.
2056 (c) The division may:
2057 (i) solicit bids and enter into contracts with one or more educational testing services or
2058 organizations for the preparation of a bank of questions and answers; and
2059 (ii) administer or contract for the administration of licensing and certification
2060 examinations as may be required to carry out the division's responsibilities under this chapter.
2061 (d) The division shall provide administrative assistance to the board by providing to the
2062 board the facilities, equipment, supplies, and personnel that are required to enable the board to
2063 carry out the board's responsibilities under this chapter.
2064 (e) The division shall assist the board in improving the quality of the continuing
2065 education available to a person licensed, certified, or registered under this chapter.
2066 (f) The division shall assist the board with respect to the proper interpretation or
2067 explanation of the Uniform Standards of Professional Appraisal Practice as required by Section
2068 61-2g-403 when an interpretation or explanation becomes necessary in the enforcement of this
2069 chapter.
2070 (g) The division may:
2071 (i) promote research and conduct studies relating to the profession of real estate
2072 appraising; and
2073 (ii) sponsor real estate appraisal educational activities.

2074 (h) The division shall adopt, with the concurrence of the board, rules for the
2075 administration of this chapter pursuant to Title 63G, Chapter 3, Utah Administrative
2076 Rulemaking Act, that are not inconsistent with this chapter or the constitution and laws of this
2077 state or of the United States.

2078 (i) The division shall employ an appropriate staff to investigate allegations that a
2079 person required to be licensed, certified, or registered under this chapter fails to comply with
2080 this chapter.

2081 (j) The division may employ other professional, clerical, and technical staff as may be
2082 necessary to properly administer the work of the division under this chapter.

2083 (k) (i) Upon request, the division shall make available, either directly or through a
2084 third-party, a list of the names and addresses of the persons licensed, registered, or certified by
2085 the division under this chapter.

2086 (ii) A person who requests a list under this Subsection (2)(k) shall pay the costs
2087 incurred by the division to make the list available.

2088 (3) (a) If the conditions of Subsection (3)(b) are met, the division is immune from any
2089 civil action or criminal prosecution for initiating or assisting in a lawful investigation of an act
2090 of, or participating in a disciplinary proceeding concerning[~~-(i)~~] a person required to be
2091 licensed, certified, or registered pursuant to this chapter[~~;- or (ii) a person approved as an expert~~
2092 ~~witness pursuant to this chapter].~~

2093 (b) This Subsection (3) applies if the division takes the action:

2094 (i) without malicious intent; and

2095 (ii) in the reasonable belief that the action is taken pursuant to the powers and duties
2096 vested in the division under this chapter.

2097 Section 33. Section **61-2g-301** is amended to read:

2098 **61-2g-301. License or certification required.**

2099 (1) Except as provided in Subsection (2) [~~and in Section 61-2g-303~~], it is unlawful for
2100 a person to prepare, for valuable consideration, an appraisal, an appraisal report, a certified
2101 appraisal report, or perform a consultation service relating to real estate or real property in this
2102 state without first being licensed or certified in accordance with this chapter.

2103 (2) This section does not apply to:

2104 (a) a principal broker, associate broker, or sales agent as defined by Section 61-2f-102

2105 licensed by this state who, in the ordinary course of the broker's or sales agent's business, gives
2106 an opinion:

2107 (i) regarding the value of real estate;

2108 (ii) to a potential seller or third-party recommending a listing price of real estate; or

2109 (iii) to a potential buyer or third-party recommending a purchase price of real estate;

2110 (b) an employee of a company who states an opinion of value or prepares a report
2111 containing value conclusions relating to real estate or real property solely for the company's
2112 use;

2113 (c) an official or employee of a government agency while acting solely within the scope
2114 of the official's or employee's duties, unless otherwise required by Utah law;

2115 (d) an auditor or accountant who states an opinion of value or prepares a report
2116 containing value conclusions relating to real estate or real property while performing an audit;

2117 (e) an individual, except an individual who is required to be licensed or certified under
2118 this chapter, who states an opinion about the value of property in which the person has an
2119 ownership interest;

2120 (f) an individual who states an opinion of value if no consideration is paid or agreed to
2121 be paid for the opinion and no other party is reasonably expected to rely on the individual's
2122 appraisal expertise;

2123 (g) an individual, such as a researcher or a secretary, who does not render significant
2124 professional assistance, as defined by the board, in arriving at a real estate appraisal analysis,
2125 opinion, or conclusion; or

2126 (h) an attorney authorized to practice law in this state who, in the course of the
2127 attorney's practice, uses an appraisal report governed by this chapter or who states an opinion
2128 of the value of real estate.

2129 (3) An opinion of value or report containing value conclusions exempt under
2130 Subsection (2) may not be referred to as an appraisal.

2131 (4) Except as provided in Subsection (2) and Section 61-2g-303, to prepare or cause to
2132 be prepared in this state an appraisal, an appraisal report, or a certified appraisal report an
2133 individual shall:

2134 (a) apply in writing for licensure or certification as provided in this chapter in the form
2135 as the division may prescribe; and

2136 (b) become licensed or certified under this chapter.

2137 Section 34. Section **61-2g-304** is amended to read:

2138 **61-2g-304. Application for licensure, certification, or registration.**

2139 (1) An application for the following shall be sent to the division on a form approved by
2140 the division:

2141 (a) original certification, licensure, or registration; and

2142 [~~(b) approval as an expert witness; and~~]

2143 [~~(c)~~] (b) renewal of certification, licensure, or registration.

2144 (2) The payment of the appropriate fee, as established by the division, with the
2145 concurrence of the board, in accordance with Section 63J-1-504, must accompany an
2146 application for:

2147 [~~(a) approval as an expert witness;~~]

2148 [~~(b)~~] (a) original certification, licensure, or registration; and

2149 [~~(c)~~] (b) renewal of certification, licensure, or registration.

2150 (3) At the time of filing an application described in Subsection (1), an applicant shall:

2151 (a) sign a pledge to comply with the Uniform Standards of Professional Appraisal

2152 Practice and the ethical rules to be observed by an appraiser that are established under Section
2153 61-2g-403 for:

2154 (i) a certified or licensed appraiser; or

2155 (ii) a trainee; [~~or~~] and

2156 [~~(iii) an expert witness approved under this chapter; and~~]

2157 (b) certify that the applicant understands the types of misconduct, as set forth in this
2158 chapter, for which a disciplinary proceeding may be initiated against a person certified,
2159 licensed, or registered under this chapter.

2160 Section 35. Section **61-2g-306** is amended to read:

2161 **61-2g-306. Renewal of license, certification, or registration.**

2162 (1) To renew a license, certification, or registration, before the license, certification, or
2163 registration expires, the holder of the license, certification, or registration shall submit to the
2164 division in compliance with procedures set through the concurrence of the division and the
2165 board:

2166 (a) an application for renewal;

- 2167 (b) a fee established by the division and the board, in accordance with Section
- 2168 63J-1-504; and
- 2169 (c) evidence in the form prescribed by the division of having completed the continuing
- 2170 education requirements for renewal specified in this chapter.
- 2171 (2) (a) A license, certification, or registration expires if it is not renewed on or before
- 2172 its expiration date.
- 2173 (b) For a period of 30 days after the expiration date, a license, certification, or
- 2174 registration may be reinstated upon:
- 2175 (i) payment of a renewal fee and a late fee determined through the concurrence of the
- 2176 division and the board; and
- 2177 (ii) satisfying the continuing education requirements specified in Section 61-2g-307.
- 2178 (c) After the 30-day period described in Subsection (2)(b), and until six months after
- 2179 the expiration date, a license, certification, or registration may be reinstated by:
- 2180 (i) paying a renewal fee and a reinstatement fee determined through the concurrence of
- 2181 the division and the board; and
- 2182 (ii) satisfying the continuing education requirements specified in Section 61-2g-307.
- 2183 (d) After the six-month period described in Subsection (2)(c), and until one year after
- 2184 the expiration date, a license, certification, or registration may be reinstated by:
- 2185 (i) paying a renewal fee and a reinstatement fee determined through the concurrence of
- 2186 the division and the board in accordance with Section 63J-1-504;
- 2187 (ii) providing proof acceptable to the division, with the concurrence of the board, of the
- 2188 person having satisfied the continuing education requirements of Section 61-2g-307; and
- 2189 (iii) providing proof acceptable to the division, with the concurrence of the board, of
- 2190 the person completing 24 hours of continuing education:
- 2191 (A) in addition to the requirements in Section 61-2g-307; and
- 2192 (B) on a subject determined by the division by rule made in accordance with Title 63G,
- 2193 Chapter 3, Utah Administrative Rulemaking Act.
- 2194 (e) The division shall relicense, recertify, or reregister a person who does not renew
- 2195 that person's license, certification, or registration within one year after the expiration date as
- 2196 prescribed for an original application.
- 2197 (f) Notwithstanding Subsection (2)(a), the division may extend the term of a license,

2198 certification, or registration that would expire under Subsection (2)(a) except for the extension
2199 if:

2200 (i) (A) the person complies with the requirements of this section to renew the license,
2201 certification, or registration; and

2202 (B) the application for renewal remains pending at the time of the extension; or

2203 (ii) at the time of the extension, there is pending under this chapter a disciplinary
2204 action.

2205 (3) A person who is licensed, certified, or registered under this chapter shall notify the
2206 division of the following by sending the division a signed statement within 10 business days of:

2207 (a) ~~[(i)]~~ a conviction of ~~[a: (A)]~~, or the entry of a plea in abeyance to:

2208 (i) a felony; or

2209 ~~[(B) class A misdemeanor; or]~~

2210 ~~[(C) class B misdemeanor;]~~

2211 ~~[(ii) the entry of a plea in abeyance to a:]~~

2212 ~~[(A) felony;]~~

2213 ~~[(B) class A misdemeanor; or]~~

2214 ~~[(C) class B misdemeanor; or]~~

2215 (ii) a misdemeanor involving financial services or a financial services-related business,
2216 fraud, a false statement or omission, theft or wrongful taking of property, bribery, perjury,
2217 forgery, counterfeiting, or extortion;

2218 ~~[(iii)]~~ (b) the potential resolution of a felony~~[, class A]~~ or of a misdemeanor~~[, or class B~~
2219 misdemeanor] described in Subsection (3)(a)(ii) by:

2220 ~~[(A)]~~ (i) a diversion agreement; or

2221 ~~[(B)]~~ (ii) any other agreement under which a criminal charge is suspended for a period
2222 of time;

2223 ~~[(b) filing a personal bankruptcy or business bankruptcy;]~~

2224 (c) the suspension, revocation, surrender, cancellation, or denial of a professional
2225 license, certification, or registration of the person, whether the license, certification, or
2226 registration is issued by this state or another jurisdiction; or

2227 (d) the entry of a cease and desist order or a temporary or permanent injunction:

2228 (i) against the person by a court or administrative agency; and

2229 (ii) on the basis of:

2230 (A) conduct or a practice involving an act regulated by this chapter; or

2231 (B) conduct involving fraud, misrepresentation, or deceit.

2232 (4) The board, with the concurrence of the division, shall enforce the reporting

2233 requirement of Subsection (3) pursuant to Section 61-2g-502.

2234 Section 36. Section **61-2g-308** is amended to read:

2235 **61-2g-308. Licensing, certification, or registration requirements for nonresidents**

2236 **-- Temporary license or certificate -- Revocation.**

2237 (1) An individual applicant for [~~one of the following~~] licensure, certification, or

2238 registration under this chapter who is not a resident of this state shall submit with the

2239 applicant's application an irrevocable consent that service of process upon the applicant may be

2240 made by delivery of the process to the director of the division if, in an action against the

2241 applicant in a court of this state arising out of the applicant's activities governed by this chapter

2242 in this state, the plaintiff cannot, in the exercise of due diligence, obtain personal service upon

2243 the applicant[~~:(a) approval as an expert witness, or (b) licensure, certification, or registration~~

2244 ~~under this chapter~~].

2245 (2) A nonresident of this state who complies with Subsection (1) may obtain [~~approval~~

2246 ~~as an expert witness,~~] a license, a certification, or a registration in this state by complying with

2247 this chapter relating to [~~approval as an expert witness,~~] licensure, certification, or registration.

2248 (3) (a) A nonresident of this state who complies with Subsection (1) may obtain a

2249 temporary permit for a license or certification to perform a contract relating to the appraisal of

2250 real estate or real property in this state.

2251 (b) To qualify for the issuance of a temporary permit for a license or certification, an

2252 applicant [~~must~~] shall:

2253 [~~(a)~~] (i) submit an application on a form approved by the division;

2254 [~~(b)~~] (ii) submit evidence that the applicant is licensed or certified in the state in which

2255 the applicant primarily conducts business;

2256 [~~(c)~~] (iii) certify that no formal charges alleging violation of state appraisal licensing or

2257 certification laws have been filed against the applicant by the applicant's state of domicile; and

2258 [~~(d)~~] (iv) pay an application fee in an amount established by the division with the

2259 concurrence of the board.

2260 (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2261 division, with the concurrence of the board, shall make rules establishing:

2262 (a) the duration of a temporary permit; and

2263 (b) procedures for renewal of a temporary permit.

2264 (5) A temporary permit issued under this section shall be immediately and
2265 automatically revoked if the appraiser's license or certification is suspended or revoked in the
2266 appraiser's state of domicile.

2267 (6) A person whose temporary permit for a license or certification is revoked under
2268 Subsection (5) is entitled to a postrevocation hearing to challenge the revocation. The hearing
2269 shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

2270 Section 37. Section **61-2g-312** is amended to read:

2271 **61-2g-312. State-certified appraisers -- Authority.**

2272 (1) A state-certified residential appraiser is authorized to appraise the types of real
2273 estate which a state-licensed appraiser is authorized to appraise.

2274 (2) A state-certified residential appraiser is also authorized to appraise 1-4 unit
2275 residential real estate without regard to transaction value or complexity.

2276 (3) A state-certified residential appraiser is not authorized to appraise subdivisions for
2277 which a development analysis/appraisal is necessary.

2278 (4) A state-certified general appraiser is authorized to appraise ~~[the]~~ all types of real
2279 estate and real property.

2280 Section 38. Section **61-2g-315** is amended to read:

2281 **61-2g-315. Licensing, certification, and registration documents -- Assigned
2282 number to be used on contracts -- Surrender of documents upon suspension.**

2283 (1) The division shall issue to a person ~~[approved as an expert witness,]~~ licensed,
2284 certified, or registered under this chapter a document:

2285 (a) stating that the person is ~~[approved as an expert witness,]~~ licensed, certified, or
2286 registered under this chapter; and

2287 (b) specifying the expiration date of a license or certification.

2288 (2) (a) ~~[An approval as an expert witness, a]~~ A license, a certification, or a registration
2289 document issued under this chapter shall bear ~~[an approval,]~~ a license, certification, or
2290 registration number assigned by the division.

2291 (b) An assigned number shall be used in a statement of qualification, a contract, or
 2292 another instrument used by the holder of the ~~[approval,]~~ license, certificate, or registration
 2293 when reference is made to the holder's status as being ~~[approved,]~~ licensed, certified, or
 2294 registered under this chapter.

2295 (3) (a) ~~[An approval,]~~ A license, certification, or registration document is the property
 2296 of the state.

2297 (b) Upon a suspension or revocation of a license, certification, or registration under this
 2298 chapter, the individual holding the applicable document shall immediately return the document
 2299 to the division.

2300 Section 39. Section **61-2g-402** is amended to read:

2301 **61-2g-402. Principal place of business -- Display of documents -- Notify of**
 2302 **changes -- Nonresidents.**

2303 (1) A person licensed or certified under this chapter shall:

2304 (a) designate and maintain a principal place of business; and

2305 (b) conspicuously display the person's license or certification.

2306 (2) ~~[(a)]~~ Upon a change of a person's principal business location or home address, a
 2307 person licensed or certified under this chapter shall promptly send the division a signed
 2308 statement notifying the division of the change within 10 business days of the change.

2309 ~~[(b) Upon a change of an expert witness's address listed on the expert witness's~~
 2310 ~~application for approval, the expert witness shall send the division a signed statement notifying~~
 2311 ~~the division of the change within 10 business days of the change.]~~

2312 (3) A nonresident licensee or certificate holder~~[-, or a nonresident approved as an expert~~
 2313 ~~witness]~~ is not required to maintain a place of business in this state if the nonresident maintains
 2314 an active place of business in the nonresident's state of domicile.

2315 Section 40. Section **61-2g-403** is amended to read:

2316 **61-2g-403. Professional conduct -- Uniform standards.**

2317 (1) (a) A person licensed, certified, or registered~~[-, or approved as an expert witness]~~
 2318 under this chapter shall comply with:

2319 (i) generally accepted standards of professional appraisal practice; and

2320 (ii) generally accepted ethical rules to be observed by a real estate appraiser.

2321 (b) Subject to the other provisions of this Subsection (1), generally accepted standards

2322 of professional appraisal practice are evidenced by the Uniform Standards of Professional
2323 Appraisal Practice promulgated by the Appraisal Foundation.

2324 (c) After a public hearing held in accordance with Title 63G, Chapter 3, Utah
2325 Administrative Rulemaking Act, the board, with the concurrence of the division:

2326 (i) shall adopt and may make modifications of or additions to the Uniform Standards of
2327 Professional Appraisal Practice as the board considers appropriate to comply with the Financial
2328 Institutions Reform, Recovery, and Enforcement Act of 1989; or

2329 (ii) may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
2330 Rulemaking Act, exempt a person licensed, certified, or registered[, ~~or approved as an expert~~
2331 ~~witness~~] from complying with a provision of the Uniform Standards of Professional Appraisal
2332 Practice for an activity that the person engages in on behalf of a governmental entity.

2333 (d) When an individual is a state-licensed appraiser or state-certified appraiser and also
2334 holds a license issued under Chapter 2f, Real Estate Licensing and Practices Act, the individual
2335 may provide an opinion of price of real estate without complying with the Uniform Standards
2336 of Professional Appraisal Practice if the individual provides the opinion of price as a licensee
2337 under Chapter 2f, Real Estate Licensing and Practices Act.

2338 (e) A state-licensed or state-certified appraiser who also holds a license issued under
2339 Chapter 2c, Utah Residential Mortgage Practices and Licensing Act, or Chapter 2f, Real Estate
2340 Licensing and Practices Act, may not act under more than one license in a single transaction.

2341 (2) When instructed by the board, the division shall schedule a public hearing pursuant
2342 to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the purpose of deciding
2343 whether or not the board should require a modified or supplemental standard or the ethical rule
2344 to be observed by a person licensed, certified, or registered[, ~~or approved as an expert witness~~]
2345 under this chapter if the Appraisal Standards Board of the Appraisal Foundation:

2346 (a) (i) modifies the Uniform Standards of Professional Appraisal Practice;

2347 (ii) issues a supplemental appraisal standard which it considers appropriate for:

2348 (A) a residential real estate appraiser; or

2349 (B) a general real estate appraiser; or

2350 (iii) issues an ethical rule to be observed by a real estate appraiser; and

2351 (b) requests the board to consider the adoption of the modified or supplemental
2352 standard or ethical rule.

2353 (3) If, after the notice and public hearing described in Subsection (2), the board finds
2354 that a modified or supplemental standard or the ethical rule issued by the Appraisal Standards
2355 Board of the Appraisal Foundation is appropriate for a person licensed, certified, or registered[;
2356 ~~or approved as an expert witness~~] under this chapter, the board shall recommend a rule
2357 requiring a person licensed, certified, or registered[~~, or approved as an expert witness~~] under
2358 this chapter to observe the modified or supplemental standard or the ethical rule.

2359 Section 41. Section **61-2g-502** is amended to read:

2360 **61-2g-502. Disciplinary action -- Grounds.**

2361 (1) (a) The board may order disciplinary action, with the concurrence of the division,
2362 against a person:

2363 (i) registered, licensed, or certified under this chapter; or

2364 (ii) required to be registered, licensed, or certified under this chapter.

2365 (b) On the basis of a ground listed in Subsection (2) for disciplinary action, board
2366 action may include:

2367 (i) revoking, suspending, or placing a person's registration, license, or certification on
2368 probation;

2369 (ii) denying a person's original registration, license, or certification;

2370 (iii) denying a person's renewal license, certification, or registration;

2371 (iv) in the case of denial or revocation of a registration, license, or certification, setting
2372 a waiting period for an applicant to apply for a registration, license, or certification under this
2373 chapter;

2374 (v) ordering remedial education;

2375 (vi) imposing a civil penalty upon a person not to exceed the greater of:

2376 (A) \$5,000 for each violation; or

2377 (B) the amount of any gain or economic benefit from a violation;

2378 (vii) issuing a cease and desist order;

2379 (viii) modifying an action described in Subsections (1)(b)(i) through (vii) if the board,
2380 with the concurrence of the division, finds that the person complies with court ordered
2381 restitution; or

2382 (ix) doing any combination of Subsections (1)(b)(i) through (viii).

2383 (c) (i) If the board or division issues an order that orders a fine or educational

2384 requirements as part of the disciplinary action against a person, including a stipulation and
2385 order, the board or division shall state in the order the deadline by which the person shall
2386 comply with the fine or educational requirements.

2387 (ii) If a person fails to comply with a stated deadline:

2388 (A) the person's license, certificate, or registration is automatically suspended:

2389 (I) beginning on the day specified in the order as the deadline for compliance; and

2390 (II) ending the day on which the person complies in full with the order; and

2391 (B) if the person fails to pay a fine required by an order, the division may begin a

2392 collection process:

2393 (I) established by the division by rule made in accordance with Title 63G, Chapter 3,

2394 Utah Administrative Rulemaking Act; and

2395 (II) subject to Title 63A, Chapter [8] 3, Part 5, Office of State Debt Collection.

2396 (2) The following are grounds for disciplinary action under this section:

2397 (a) procuring or attempting to procure a registration, license, or certification under this

2398 chapter:

2399 (i) by fraud; or

2400 (ii) by making a false statement, submitting false information, or making a material
2401 misrepresentation in an application filed with the division;

2402 (b) paying money or attempting to pay money other than a fee provided for by this

2403 chapter to a member or employee of the division to procure a registration, license, or

2404 certification under this chapter;

2405 (c) an act or omission in the practice of real estate appraising that constitutes

2406 dishonesty, fraud, or misrepresentation;

2407 (d) entry of a judgment against a registrant, licensee, or certificate holder on grounds of

2408 fraud, misrepresentation, or deceit in the making of an appraisal of real estate;

2409 (e) a guilty plea to a criminal offense involving moral turpitude that is held in

2410 abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo

2411 contendere, of a criminal offense involving moral turpitude;

2412 (f) engaging in the business of real estate appraising under an assumed or fictitious

2413 name not properly registered in this state;

2414 (g) paying a finder's fee or a referral fee to a person not licensed or certified under this

2415 chapter in connection with an appraisal of real estate or real property in this state;

2416 (h) making a false or misleading statement in:

2417 (i) that portion of a written appraisal report that deals with professional qualifications;

2418 or

2419 (ii) testimony concerning professional qualifications;

2420 (i) violating or disregarding:

2421 (i) this chapter;

2422 (ii) an order of:

2423 (A) the board; or

2424 (B) the division, in a case when the board delegates to the division the authority to

2425 make a decision on behalf of the board; or

2426 (iii) a rule issued under this chapter;

2427 (j) violating the confidential nature of governmental records to which a person

2428 registered, licensed, or certified[, ~~or approved as an expert~~] under this chapter gained access

2429 through employment or engagement as an appraiser by a governmental agency;

2430 (k) accepting a contingent fee for performing an appraisal if in fact the fee is or was

2431 contingent upon:

2432 (i) the appraiser reporting a predetermined analysis, opinion, or conclusion;

2433 (ii) the analysis, opinion, conclusion, or valuation reached; or

2434 (iii) the consequences resulting from the appraisal assignment;

2435 (l) unprofessional conduct as defined by statute or rule;

2436 (m) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

2437 (i) providing a title insurance product or service without the approval required by

2438 Section 31A-2-405; or

2439 (ii) knowingly providing false or misleading information in the statement required by

2440 Subsection 31A-2-405(2); or

2441 (n) other conduct that constitutes dishonest dealing.

2442 Section 42. Section **61-2g-503** is amended to read:

2443 **61-2g-503. Reinstatement of license, certification, and registration.**

2444 (1) An individual whose license, certification, or registration[, ~~or approval~~] is revoked

2445 under this chapter:

2446 (a) may not apply for renewal or reinstatement of that license, certification, or
2447 registration~~[, or approval]~~; and

2448 (b) may apply for licensure, certification, or registration~~[, or approval]~~ as prescribed for
2449 an original license, certification, or registration~~[, or approval]~~ subject to the limitations in
2450 Subsection (2).

2451 (2) An applicant for licensure, certification, or registration~~[, or approval as an expert~~
2452 ~~witness]~~ under Subsection (1) is not entitled to credit for experience gained before the date of
2453 revocation in determining whether the applicant meets the experience requirement for
2454 licensure, certification, or registration~~[, or approval]~~.

2455 **Section 43. Repealer.**

2456 This bill repeals:

2457 **Section 61-2g-303, Approval of an expert.**

2458 **Section 44. Effective dates.**

2459 (1) Except as provided in Subsection (2), this bill takes effect May 8, 2012.

2460 (2) Section 61-2f-401 (Effective 07/01/12) and Section 61-2g-103 (Effective 07/01/12)
2461 take effect July 1, 2012.

Legislative Review Note
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