

HB0191S01 compared with HB0191

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
- 57-19-8, as last amended by Laws of Utah 1991, Chapter 165
- 57-19-12, as enacted by Laws of Utah 1987, Chapter 73
- 57-19-13, as enacted by Laws of Utah 1987, Chapter 73
- 57-19-26, as enacted by Laws of Utah 1987, Chapter 73
- 61-2c-102, as last amended by Laws of Utah 2011, Chapter 289
- 61-2c-103, as last amended by Laws of Utah 2011, Chapter 289
- 61-2c-106, as last amended by Laws of Utah 2010, Chapter 379
- 61-2c-203, as last amended by Laws of Utah 2011, Chapter 289
- 61-2c-204.1, as last amended by Laws of Utah 2010, Chapter 379
- 61-2c-205, as last amended by Laws of Utah 2011, Chapter 289
- 61-2c-206, as last amended by Laws of Utah 2010, Chapter 379
- 61-2c-209, as enacted by Laws of Utah 2010, Chapter 379
- 61-2c-301, as last amended by Laws of Utah 2011, Chapter 289
- 61-2c-302, as last amended by Laws of Utah 2011, Chapter 289
- 61-2c-404, as last amended by Laws of Utah 2010, Chapter 379
- 61-2e-104, as enacted by Laws of Utah 2009, Chapter 269
- 61-2e-201, as enacted by Laws of Utah 2009, Chapter 269
- 61-2e-204, as last amended by Laws of Utah 2011, Chapter 289
- 61-2e-307, as last amended by Laws of Utah 2011, Chapter 289
- 61-2e-401, as last amended by Laws of Utah 2011, Chapter 289
- 61-2f-102, as last amended by Laws of Utah 2011, Chapter 289
- 61-2f-203, as last amended by Laws of Utah 2011, Chapter 289
- 61-2f-301, as last amended by Laws of Utah 2011, Chapter 289

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61-2f-401 (Superseded 07/01/12), as last amended by Laws of Utah 2011, Chapter 289

61-2f-401 (Effective 07/01/12), as last amended by Laws of Utah 2011, Chapters 289
and 353

61-2g-102, as renumbered and amended by Laws of Utah 2011, Chapter 289

61-2g-103 (Superseded 07/01/12), as renumbered and amended by Laws of Utah 2011,
Chapter 289

61-2g-103 (Effective 07/01/12), as last amended by Laws of Utah 2011, Chapter 353
and renumbered and amended by Laws of Utah 2011, Chapter 289

61-2g-201, as renumbered and amended by Laws of Utah 2011, Chapter 289

61-2g-301, as renumbered and amended by Laws of Utah 2011, Chapter 289

61-2g-304, as renumbered and amended by Laws of Utah 2011, Chapter 289

61-2g-306, as renumbered and amended by Laws of Utah 2011, Chapter 289

61-2g-308, as renumbered and amended by Laws of Utah 2011, Chapter 289

61-2g-312, as renumbered and amended by Laws of Utah 2011, Chapter 289

61-2g-315, as renumbered and amended by Laws of Utah 2011, Chapter 289

61-2g-402, as renumbered and amended by Laws of Utah 2011, Chapter 289

61-2g-403, as renumbered and amended by Laws of Utah 2011, Chapter 289

61-2g-502, as renumbered and amended by Laws of Utah 2011, Chapter 289

61-2g-503, as renumbered and amended by Laws of Utah 2011, Chapter 289

REPEALS:

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

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

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

57-8-3. Definitions.

As used in this chapter:

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

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

(b) an amount that an association of unit owners assesses to a unit owner under
Subsection 57-8-43(9)(h).

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

- (a) acting as a group in accordance with the declaration and bylaws; or
- (b) organized as a legal entity in accordance with the declaration.

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

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

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

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

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

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

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

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

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

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

(5) "Common expenses" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

57-8-27. Separate taxation.

(1) Each unit and its percentage of undivided interest in the common or community areas and facilities shall be considered to be a parcel and shall be subject to separate

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assessment and taxation by each assessing unit, local district, and special service district for all types of taxes authorized by law, including ad valorem levies and special assessments. Neither the building or buildings, the property, nor any of the common areas and facilities may be considered a parcel.

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

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

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

(5) Timeshare interests and timeshare estates, as defined in Subsection 57-19-2[(17)](19), may not be separately taxed but shall be valued, assessed, and taxed at the unit level. The value of timeshare interests and timeshare estates, for purposes of ad valorem taxation, shall be determined by valuing the real property interest associated with the timeshare interest or timeshare estate, exclusive of the value of any intangible property and rights associated with the acquisition, operation, ownership, and use of the timeshare interest or

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

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

57-19-2. Definitions.

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

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

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

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

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

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

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

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

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

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

or

(b) engages one or more other persons to establish, promote, or operate a timeshare

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development or camp resort on the person's behalf.

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

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

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

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

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

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

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

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

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

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

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

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

57-19-6. Effective date of application.

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

- (a) an order denying the application pursuant to Section 57-19-13 is in effect;
- (b) a prior effective date has been ordered by the director; or
- (c) the director has, prior to that date, notified the applicant of a defect in the

registration application.

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

(3) (a) Notwithstanding Section 57-19-4, the division may grant a temporary permit allowing the developer to begin a sales and marketing program while the registration is in process.

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

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

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

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

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

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

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

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

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

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

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

(i) the division approves the project registration; and

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

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

57-19-8. Filing proposed documents.

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

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

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

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

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

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

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

(5) (a) [In] If any suit by or against {the developer involving camp resorts or timeshare developments}; [the] a developer [involving] of a camp [resorts] resort or timeshare [developments] development results in a court finding that the developer engaged in fraud,

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deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in a real estate transaction, the developer [~~promptly~~] shall promptly furnish the division [~~notice of the suit and copies of all pleadings. Failure to provide notice~~] a copy of the final order, settlement agreement, consent agreement, or other document evidencing resolution of the case at the trial level, whether or not an appeal is anticipated.

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

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

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

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

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

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

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

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

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

"PURCHASER'S RIGHT TO CANCEL: YOU MAY CANCEL THIS AGREEMENT WITHOUT ANY CANCELLATION FEE OR OTHER PENALTY BY HAND DELIVERING OR SENDING BY CERTIFIED MAIL WRITTEN NOTICE OF CANCELLATION TO: (NAME AND ADDRESS OF DEVELOPER). THE NOTICE MUST BE DELIVERED OR POSTMARKED BY MIDNIGHT OF THE FIFTH [~~CALENDAR~~] BUSINESS DAY FOLLOWING THE DAY ON WHICH THE AGREEMENT IS SIGNED. IN COMPUTING THE NUMBER OF [~~CALENDAR~~] BUSINESS DAYS, THE DAY ON WHICH THE

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CONTRACT IS SIGNED [~~AND LEGAL HOLIDAYS ARE~~] IS NOT INCLUDED."

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

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

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

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

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

(c) the developer has failed to comply with any provision of this chapter or the rules adopted under this chapter that materially affect or would affect the rights of purchasers or prospective purchasers of an interest in a project, or that materially affect the administration of this chapter;

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

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

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

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

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

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

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

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

(i) the developer has disposed of, concealed, or diverted any funds or assets so as to

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defeat the rights of purchasers; [or]

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

(k) the developer, the developer's successor in interest, or a managing association ~~disseminates~~ discloses a purchaser's name, address, or email address to an unaffiliated entity without first obtaining written consent from the purchaser, unless the ~~dissemination is required by law~~ disclosure is in response to a subpoena or an order of a court or administrative tribunal.

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

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

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

57-19-26. Exemptions.

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

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

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

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

(c) the resale of an interest that is:

(i) acquired:

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

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

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

and

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

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

(a) investigate a complaint regarding the resale; and

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

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

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

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

61-2c-102. Definitions.

(1) As used in this chapter:

(a) "Affiliation" means that a mortgage loan originator is associated with a principal lending manager in accordance with Section 61-2c-209.

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

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

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

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

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

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

(i) licensed as a lending manager; and

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

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

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

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

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(iii) that operates under:

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

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

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

(i) a Saturday;

(ii) a Sunday; or

(iii) a federal or state holiday.

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

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

(B) make or originate a residential mortgage loan;

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

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

(I) preparing a loan package;

(II) communicating with the borrower or lender; ~~or~~

(III) advising on a loan term; or

(IV) acting as a loan processor without being employed by a licensed entity; or

(E) engage in loan modification assistance.

(ii) "Business of residential mortgage loans" does not include:

(A) if working as an employee under the direction of and subject to the supervision and instruction of a person licensed under this chapter, the performance of a clerical or support duty such as:

(I) the receipt, collection, or distribution of information common for the processing or underwriting of a loan in the mortgage industry other than taking an application;

(II) communicating with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan;

(III) word processing;

(IV) sending correspondence; ~~or~~

(V) assembling files; or

(VI) acting as a loan processor;

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(B) ownership of an entity that engages in the business of residential mortgage loans if the owner does not personally perform the acts listed in Subsection (1)~~(g)~~(h)(i); or

(C) except if an individual will engage in an activity as a mortgage loan originator, acting in one or more of the following capacities:

- (I) a loan wholesaler;
- (II) an account executive for a loan wholesaler;
- (III) a loan underwriter;
- (IV) a loan closer; or
- (V) funding a loan; or

(D) if employed by a person who owns or services an existing residential mortgage loan, the direct negotiation with the borrower for the purpose of loan modification.

~~(h)~~ (i) "Certified education provider" means a person who is certified under Section 61-2c-204.1 to provide one or more of the following:

- (i) Utah-specific prelicensing education; or
- (ii) Utah-specific continuing education.

~~(+)~~ (j) "Closed-end" means a loan:

- (i) with a fixed amount borrowed; and
- (ii) that does not permit additional borrowing secured by the same collateral.

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

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

- (i) services;
- (ii) personal or real property; or
- (iii) another thing of value.

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

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

~~(+)~~ (o) "Control," as used in Subsection 61-2c-105(2)(f), means the power to directly

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or indirectly:

(i) direct or exercise a controlling interest over:

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

(B) the election of a majority of the directors, officers, managers, or managing partners

of an entity;

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

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

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

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

(A) a manager;

(B) a managing partner;

(C) a director;

(D) an executive officer; or

(E) an individual who performs a function similar to an individual listed in this

Subsection (1)~~(p)~~(p)(ii).

~~(p)~~ (q) "Depository institution" is as defined in Section 7-1-103.

~~(p)~~ (r) "Director" means the director of the division.

~~(p)~~ (s) "Division" means the Division of Real Estate.

~~(p)~~ (t) "Dwelling" means a residential structure attached to real property that contains one to four units including any of the following if used as a residence:

(i) a condominium unit;

(ii) a cooperative unit;

(iii) a manufactured home; or

(iv) a house.

(u) "Employee":

(i) means an individual:

(A) whose manner and means of work performance are subject to the right of control of, or are controlled by, another person; and

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(B) whose compensation for federal income tax purposes is reported, or is required to be reported, on a W-2 form issued by the controlling person; and

(ii) does not include an independent contractor who performs duties other than at the direction of, and subject to the supervision and instruction of, another person.

~~(t)~~ (v) "Entity" means:

- (i) a corporation;
- (ii) a limited liability company;
- (iii) a partnership;
- (iv) a company;
- (v) an association;
- (vi) a joint venture;
- (vii) a business trust;
- (viii) a trust; or
- (ix) another organization.

~~(t)~~ (w) "Executive director" means the executive director of the Department of Commerce.

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

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

- (i) engage, or offer to engage, in an act that:
 - (A) the person represents will assist a borrower in preventing a foreclosure; and
 - (B) relates to a transaction involving the transfer of title to residential real property; or
- (ii) as an employee or agent of another person:
 - (A) solicit, or offer that the other person will engage in an act described in Subsection (1)~~(w)~~(y)(i); or
 - (B) negotiate terms in relationship to an act described in Subsection (1)~~(w)~~(y)(i).

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

(aa) "Lending manager" means an individual licensed as a lending manager under

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Section 61-2c-206 to transact the business of residential mortgage loans.

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

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

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

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

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

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

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

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

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

(V) an addition of collateral;

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

(VII) an addition of a cosigner; or

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

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

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

(A) solicit, or offer that the other person will engage in an act described in Subsection (1)~~[(aa)]~~(dd)(i); or

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

~~[(bb)]~~ (ee) (i) Except as provided in Subsection (1)~~[(bb)]~~(ee)(ii), "mortgage loan originator" means an individual who for compensation or in expectation of compensation:

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

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

(Aa) a purchase;

(Bb) a refinance;

(Cc) a loan modification assistance; or

(Dd) a foreclosure rescue; and

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

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

(A) is described in Subsection (1)~~(bb)~~(ee)(i), but who performs exclusively administrative or clerical tasks as described in Subsection (1)~~(g)~~(h)(ii)(A);

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

(II) performs only real estate brokerage activities; and

(III) receives no compensation from:

(Aa) a lender;

(Bb) a ~~[principal]~~ lending manager; or

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

(C) is solely involved in extension of credit relating to a timeshare plan, as defined in 11 U.S.C. Sec. 101(53D).

~~(cc)~~ (ff) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry, authorized under federal licensing requirements.

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

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

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

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

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

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

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

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

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

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

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

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(II) in a perceivable and reproducible form.

(II) "Referral fee":

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

(ii) does not mean a payment made:

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

(B) under a contractual incentive program; and

(C) according to rules made by the division in accordance with Title 63G, Chapter 3,

Utah Administrative Rulemaking Act.

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

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

(A) mortgage;

(B) deed of trust; or

(C) consensual security interest;

(ii) the mortgage, deed of trust, or consensual security interest described in Subsection

(1)~~[(ii)]~~(mm)(i):

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

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

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

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

~~[(kk)]~~ (oo) "State" means:

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

(ii) the District of Columbia; or

(iii) the Commonwealth of Puerto Rico.

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

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

(2) (a) If a term not defined in this section is defined by rule, the term shall have the meaning established by the division by rule made in accordance with Title 63G, Chapter 3,

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Utah Administrative Rulemaking Act.

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

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

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

(1) The division shall administer this chapter.

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

(a) receive and act on a complaint including:

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

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

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

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

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

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

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

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

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

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

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

(a) licensure procedures for:

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

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

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

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

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- (d) certification procedures for certifying an education provider; and
- (e) standards of conduct for a licensee or certified education provider.

(4) The division may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, require as a condition of maintaining a license or certification under this chapter that a person comply with a requirement of the nationwide database if:

- (a) required for uniformity amongst states; and
- (b) not inconsistent with this chapter.

(5) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide a process under which an individual may challenge information contained in the nationwide database.

(6) The division shall annually:

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

- (i) the division;
- (ii) a licensee under this chapter;
- (iii) a certified education provider; or
- (iv) an approved examination provider; and

(b) after the review required by Subsection (6)(a):

(i) report to the Business and Labor Interim Committee the impact of the requirements on the implementation by the division of this chapter; and

(ii) recommend legislation, if any, to the Business and Labor Interim Committee related to how the division should coordinate with the nationwide database.

(7) The division may enter into a relationship or contract with the nationwide database or another entity designated by the nationwide database to do the following related to a licensee or other person subject to this chapter:

- (a) collect or maintain a record; and
- (b) process a transaction fee or other fee.

(8) The division shall regularly report the following to the nationwide database:

- (a) a violation of this chapter;
- (b) licensing or disciplinary action under this chapter; and
- (c) other information relevant to this chapter.

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

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

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

(c) the person's license, certification, or registration is automatically suspended:

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

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

Section 11. Section **61-2c-106** is amended to read:

61-2c-106. Addresses provided the division.

(1) (a) A person shall provide a physical location or street address when the person provides the nationwide database an address required by the division.

(b) The following when provided under this chapter is public information:

(i) a business address; or

(ii) a mailing address.

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

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

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

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

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

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

(a) financial responsibility;

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

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

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of this chapter.

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

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

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

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

61-2c-204.1. Education providers -- Education requirements -- Examination requirements.

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

or

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(ii) approve:

(A) Utah-specific prelicensing education; or

(B) Utah-specific continuing education courses.

(3) (a) The division may not:

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

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

(B) in the number of hours, not to exceed 90 hours, required by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

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

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

(A) in the number of hours required by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(B) that includes the continuing education required by federal licensing regulations; or

(iii) license an individual under this chapter as a [principal] lending manager who has not completed the prelicensing education required by Section 61-2c-206 before taking the licensing examination required by Section 61-2c-206.

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

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

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

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

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

(c) The commission may appoint a committee to make recommendations to the commission concerning approval of prelicensing education and continuing education courses, except that the commission shall appoint at least one member to the committee to represent

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each association that represents a significant number of individuals licensed under this chapter.

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

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

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

(ii) meet the minimum federal licensing requirements; and

(iii) are administered by an approved examination provider.

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

(i) a licensing examination that at least:

(A) meets the minimum federal licensing requirements; and

(B) tests knowledge of the:

(I) fundamentals of the English language;

(II) arithmetic;

(III) provisions of this chapter;

(IV) rules adopted under this chapter;

(V) basic residential mortgage principles and practices; and

(VI) any other aspect of Utah law the commission determines is appropriate; and

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

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

(B) tests knowledge of the:

(I) advanced residential mortgage principles and practices; and

(II) other aspects of Utah law the commission, with the concurrence of the division, determines appropriate.

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

(5) When reasonably practicable, the commission and the division shall make the

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Utah-specific education requirements described in this section available electronically through one or more distance education methods approved by the commission and division.

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

- (i) for a period not to exceed four years; and
- (ii) upon a finding of reasonable cause.

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

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

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

(1) (a) A license issued under this chapter expires as follows:

(i) for the calendar year the license is issued:

(A) if the license is issued on or before October 31, the license expires on December 31 of the same calendar year; and

(B) if the license is issued on or after November 1, the license expires on December 31 of the following calendar year; and

(ii) after the December 31 on which a license expires under Subsection (1)(a)(i), a license expires annually on December 31.

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

(2) To renew a license, no later than the date the license expires, a licensee shall in a manner provided by the division by rule:

(a) file a renewal statement;

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

(c) renew the licensee's registration with the nationwide database, including the payment of a fee required by the nationwide database;

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(d) pay a fee to the division established by the division in accordance with Section 63J-1-504; and

(e) if the licensee is an individual [~~and the individual's license is in active status at the time of application for renewal~~], submit proof of having completed [~~during the year before application~~] the continuing education required under Section 61-2c-204.1, according to the deadline the division establishes by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) (a) A licensee under this chapter shall notify the division in a manner provided by the division by rule within 10 days of the date on which there is a change in:

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

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

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

(iii) the principal lending manager of the entity;

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

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

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

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

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

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

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

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

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

[(C) (ii) the potential resolution of a felony[~~, class A misdemeanor,~~] or [class B] of a

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misdemeanor described in Subsection (4)(a)(i)(B) by a diversion agreement, or any other agreement under which a criminal charge is held in suspense for a period of time;

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

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

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

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

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

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

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

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

(i) requesting reinstatement;

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

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

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

61-2c-206. Lending manager licenses.

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

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

(b) successfully complete the following education:

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

(ii) 40 hours of Utah-specific prelicensing education for a [~~principal~~] lending manager

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that is approved by the division under Section 61-2c-204.1;

(c) successfully complete the following examinations:

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

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

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

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

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

(g) if the individual is not registered in the nationwide database as a mortgage loan originator at the time of application, submit to the criminal background check required by Subsection 61-2c-202(1)(b); and

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

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

(a) engage in the business of residential mortgage loans on behalf of more than one entity at the same time; [~~or~~]

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

(c) act simultaneously as the principal lending manager and branch lending manager for the individual's sponsoring entity, if the entity operates from more than one office located within the state.

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

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

(b) be designated within the nationwide database to act for the individual's sponsoring entity as the principal lending manager, an associate lending manager, or a branch lending manager.

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

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

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

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

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

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

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

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

(i) sponsors a principal lending manager;

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

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

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

(i) the mortgage loan originator is not sponsored by an entity licensed under this chapter;

(ii) the license of the entity with which the mortgage loan originator is sponsored becomes inactive or terminates;

(iii) the mortgage loan originator is not affiliated with a principal lending manager; or

(iv) the license of the principal lending manager with whom the mortgage loan originator is affiliated becomes inactive or terminates.

(b) A [principal] lending manager's license automatically becomes inactive the day on which:

(i) the [principal] lending manager is not sponsored by an entity licensed under this chapter; or

(ii) the license of the entity with which the [principal] lending manager is sponsored becomes inactive or terminates.

(c) A entity licensed under this chapter automatically becomes inactive the day on which the entity's sponsorship with its principal lending manager terminates.

(3) (a) A person whose license is inactive may not transact the business of residential mortgage loans.

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(b) To activate an inactive mortgage loan originator license, an individual shall:

(i) provide evidence that the individual:

(A) is sponsored by an entity that holds an active license under this chapter; and

(B) is affiliated with a principal lending manager who holds an active license under this chapter; and

(ii) pay a fee to the division set in accordance with Section 63J-1-504.

(c) To activate an inactive [~~principal~~] lending manager license, an individual shall:

(i) provide evidence that the individual is sponsored by an entity that holds an active license under this chapter; and

(ii) pay a fee to the division set in accordance with Section 63J-1-504.

(d) To activate an inactive license held by an entity, an entity shall:

(i) provide evidence of the entity's sponsorship of a principal lending manager; and

(ii) pay a fee to the division set in accordance with Section 63J-1-504.

(4) (a) A mortgage loan originator shall conduct the business of residential mortgage loans only:

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

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

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

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

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

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

(A) an entity licensed under this chapter; and

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

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

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

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

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

(A) licensed under this chapter; or

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

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

(a) define what constitutes:

(i) affiliation; or

(ii) sponsorship; and

(b) provide procedures by which:

(i) an individual who is licensed under this chapter may provide evidence of sponsorship by an entity that is licensed under this chapter;

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

(iii) an entity licensed under this chapter may:

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

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

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

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

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

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

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

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

(i) that is excessive; or

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

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

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

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

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

(i) make a false statement or representation;

(ii) cause false documents to be generated; or

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

(e) give or receive compensation or anything of value, or withhold or threaten to withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in reaching a value conclusion in a residential mortgage loan transaction, except that it is not a violation of this section for a licensee to withhold payment because of a bona fide dispute regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards of Professional Appraisal Practice;

(f) violate or not comply with:

(i) this chapter;

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

(iii) a rule made by the division;

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

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

(ii) a request for information from the division;

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

(i) for a residential mortgage loan transaction beginning on or after January 1, 2004,

engage in the business of residential mortgage loans with respect to the transaction if the person also acts in any of the following capacities with respect to the same residential mortgage loan transaction:

(i) appraiser;

(ii) escrow agent;

(iii) real estate agent;

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- (iv) general contractor; or
- (v) title insurance producer;
- (j) order a title insurance report or hold a title insurance policy unless the person provides to the title insurer a copy of a valid, current license under this chapter;
- (k) engage in unprofessional conduct as defined by rule;
- (l) engage in an act or omission in transacting the business of residential mortgage loans that constitutes dishonesty, fraud, or misrepresentation;
- (m) engage in false or misleading advertising;
- (n) (i) fail to account for money received in connection with a residential mortgage loan;
- (ii) use money for a different purpose from the purpose for which the money is received; or
- (iii) except as provided in Subsection (4), retain money paid for services if the services are not performed;
- (o) fail, within 90 calendar days of a request from a borrower who has paid for an appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;
- (p) engage in an act that is performed to:
 - (i) evade this chapter; or
 - (ii) assist another person to evade this chapter;
- (q) recommend or encourage default, delinquency, or continuation of an existing default or delinquency, by a mortgage applicant on an existing indebtedness before the closing of a residential mortgage loan that will refinance all or part of the indebtedness;
- (r) in the case of the [principal] lending manager of an entity or a branch office of an entity, fail to exercise reasonable supervision over the activities of:
 - (i) unlicensed staff; and
 - (ii) a mortgage loan originator who is affiliated with the [principal] lending manager;
- (s) pay or offer to pay an individual who does not hold a license under this chapter for work that requires the individual to hold a license under this chapter;
- (t) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
 - (i) provide a title insurance product or service without the approval required by Section 31A-2-405; or

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

(u) represent to the public that the person can or will perform any act of a mortgage loan originator if that person is not licensed under this chapter because the person is exempt under Subsection 61-2c-102(1)[~~(g)~~](h)(ii)(A), including through:

- (i) advertising;
- (ii) a business card;
- (iii) stationery;
- (iv) a brochure;
- (v) a sign;
- (vi) a rate list; or
- (vii) other promotional item; or

(v) (i) engage in an act of loan modification assistance without being licensed under this chapter;

(ii) engage in an act of foreclosure rescue that requires licensure as a real estate agent or real estate broker under Chapter 2, Division of Real Estate, without being licensed under that chapter;

(iii) engage in an act of loan modification assistance without entering into a written agreement specifying which one or more acts of loan modification assistance will be completed;

(iv) request or require a person to pay a fee before obtaining:

- (A) a written offer for a loan modification from the person's lender or servicer; and
- (B) the person's written acceptance of the offer from the lender or servicer;

(v) induce a person seeking a loan modification to hire the licensee to engage in an act of loan modification assistance by:

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

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

- (I) a government agency;
- (II) the person's lender or loan servicer; or
- (III) a nonprofit or charitable institution;

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(vi) recommend or participate in a loan modification that requires a person to:

(A) transfer title to real property to the licensee or to a third-party with whom the licensee has a business relationship or financial interest;

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

(C) refrain from contacting the person's:

(I) lender;

(II) loan servicer;

(III) attorney;

(IV) credit counselor; or

(V) housing counselor; or

(vii) for an agreement for loan modification assistance entered into on or after May 11, 2010, engage in an act of loan modification assistance without offering in writing to the person entering into the agreement for loan modification assistance a right to cancel the agreement within three business days after the day on which the person enters the agreement.

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

(a) be convicted;

(b) plead guilty or nolo contendere;

(c) enter a plea in abeyance; or

(d) be subjected to a criminal disposition similar to the ones described in Subsections

(2)(a) through (c).

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

(a) in contravention of the [principal] lending manager's written policies and instructions, an affiliated licensee of the [principal] lending manager violates:

(i) this chapter; or

(ii) rules made by the division under this chapter;

(b) the [principal] lending manager established and followed reasonable procedures to ensure that affiliated licensees receive adequate supervision;

(c) upon learning of a violation by an affiliated licensee, the [principal] lending manager attempted to prevent or mitigate the damage;

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(d) the ~~[principal]~~ lending manager did not participate in or ratify the violation by an affiliated licensee; and

(e) the ~~[principal]~~ lending manager did not attempt to avoid learning of the violation.

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

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

61-2c-302. Record requirements.

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

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

(a) the final entry on a residential mortgage loan is made by that licensee;

(b) if the residential mortgage loan is serviced by the licensee:

(i) the residential mortgage loan is paid in full; or

(ii) the licensee ceases to service the residential mortgage loan; or

(c) if the residential mortgage loan is not serviced by the licensee, the residential mortgage loan is closed.

(3) A licensee shall upon the division's request:

(a) make available to the division for inspection and copying during normal business hours all records required to be maintained under this chapter; and

(b) ~~[upon reasonable notice from the division to a licensee,]~~ produce all records described in Subsection (3)(a) that are related to an investigation being conducted by the division at the division office for inspection and copying by the division.

(4) A licensee who is an entity shall maintain and produce for inspection by the division a current list of all individuals whose licenses are sponsored by the entity.

(5) (a) A ~~[licensee who engages in an activity as a mortgage loan originator]~~ licensed entity shall:

(i) create, for each quarter of the fiscal year, a report of condition identifying all lending activities, including all loans closed by the entity's sponsored mortgage loan originators during the quarter;

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(ii) provide each quarterly report of condition to the nationwide database; and

(iii) maintain [a] each report of condition submitted to the nationwide database as required by 12 U.S.C. Sec. 5104(e) for at least four years from the day on which the licensee submits the report of condition to the nationwide database.

(b) Upon request by the division, a mortgage loan originator shall produce a report of condition for inspection by the division.

Section 19. Section **61-2c-404** is amended to read:

61-2c-404. Civil actions.

(1) (a) A person who violates this chapter is liable for an additional penalty, as determined by the court, of at least the amount the person received in consequence of a violation of this chapter as:

- (i) commission;
- (ii) compensation; or
- (iii) profit.

(b) A person aggrieved by a violation of this chapter may:

- (i) bring an action for a penalty described in Subsection (1)(a); and
- (ii) use a penalty obtained under Subsection (1)(a) for the person's own use and benefit.

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

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

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

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

(4) A principal lending manager who transacts the business of residential mortgage loans on the principal lending manager's own behalf may sue in the principal lending manager's

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own name for the recovery of a fee, commission, or compensation for transacting the business of residential mortgage loans.

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

61-2e-104. Exemption.

This chapter does not apply to:

(1) an entity that:

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

[and]

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

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

(2) an individual who:

(a) is an appraiser; and

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

(i) competency;

(ii) work load;

(iii) schedule; or

(iv) geographic location; or

(3) an individual who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) is a controlling person;

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

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

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

(a) "appraisal management company";

(b) "mortgage technology company"; or

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(c) another name.

Section 22. Section 61-2e-204 is amended to read:

61-2e-204. Renewal of a registration.

(1) (a) A registration under this chapter expires two years from the day on which the registration is filed.

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

(2) To renew a registration under this chapter, before the day on which the registration expires, an appraisal management company shall:

(a) file with the division a renewal registration application on a form prescribed by the division; [and]

(b) pay to the division a fee determined in accordance with Section 63J-1-504~~[-]~~; and

(c) file with the division a certificate evidencing that the appraisal management company has secured and will maintain a surety bond with one or more corporate sureties authorized to do business in the state in the amount of at least \$25,000, as the division provides by rule.

(3) A renewal registration application shall include substantially similar information to the information required under Section 61-2e-202, except that for an individual described in Subsection 61-2e-202(2)(e) or (g), the entity is required to report whether the individual has had:

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

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

(iii) the potential resolution of a criminal case by:

(A) a diversion agreement; or

(B) another agreement under which a criminal charge is held in suspense for a period of time;

(b) a filing of personal bankruptcy or bankruptcy of a business that transacts the appraisal management services;

(c) the suspension, revocation, surrender, cancellation, or denial of a professional license or certification, whether the license or registration is issued by this state or another

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jurisdiction; or

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

(i) against the individual by a court or government agency; and

(ii) on the basis of:

(A) conduct or a practice involving the business of appraisal management services; or

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

(4) A registration expires if it is not renewed on or before its expiration date, except that for a period of 30 days after the expiration date, the registration may be reinstated upon compliance with this section, including payment of a renewal fee and a late fee determined by the division and the board.

(5) Notwithstanding Subsection (4), the division may extend the term of a license that would expire under Subsection (4) except for the extension if:

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

(ii) the renewal application remains pending at the time of the extension; or

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

Section ~~22~~23. Section **61-2e-307** is amended to read:

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

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

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

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

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

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

(i) the appraisal report having a predetermined analysis, opinion, or conclusion;

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(ii) the analysis, opinion, conclusion, or valuation reached in an appraisal report; or

(iii) the consequences resulting from the appraisal assignment;

(e) require an appraiser to indemnify the appraisal management company against liability except liability for errors and omissions by the appraiser; or

(f) alter, modify, or otherwise change a completed appraisal report submitted by an appraiser.

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

- (a) coercion;
- (b) extortion;
- (c) collusion;
- (d) compensation;
- (e) instruction;
- (f) inducement;
- (g) intimidation;
- (h) bribery; or
- (i) any other manner that would constitute undue influence.

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

(a) withholding or threatening to withhold timely payment for an appraisal;

(b) withholding or threatening to withhold future business for an appraiser;

(c) taking adverse action or threatening to take adverse action against an appraiser regarding use of the appraiser for a real estate appraisal activity;

(d) expressly or by implication promising future business or increased compensation for an appraiser;

(e) conditioning one or more of the following on the opinion, conclusion, or valuation to be reached, or on a preliminary estimate or opinion requested from an appraiser:

- (i) a request for a real estate appraisal activity; or
- (ii) the payment of consideration;

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(f) requesting that an appraiser provide at any time before the appraiser's completion of a real estate appraisal activity:

(i) an estimated, predetermined, or desired valuation in an appraisal report; or

(ii) an estimated value or comparable sale;

(g) except for a copy of a sales contract for a purchase transaction, providing to an appraiser:

(i) an anticipated, estimated, encouraged, or desired value for a subject property; or

(ii) a proposed or target amount to be loaned to the borrower;

(h) providing to an appraiser, or an individual related to the appraiser, stock or other financial or non-financial benefits;

(i) allowing the removal of an appraiser from an appraiser panel, without prior written notice to the appraiser as required by Section 61-2e-306;

(j) obtaining, using, or paying for a subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction unless:

(i) (A) there is a reasonable basis to believe that the initial appraisal does not meet applicable appraisal standards; and

(B) the reasonable basis is noted in the loan file; or

(ii) the subsequent appraisal or automated valuation model is done pursuant to a pre- or post-funding appraisal review or quality control process in accordance with applicable appraisal standards; or

~~[(k) compensating an appraiser in a manner that the person should reasonably have known would result in the appraiser not conducting a real estate appraisal activity in a manner consistent with applicable appraisal standards;]~~

~~[(l) engaging in the business of an appraisal management company under an assumed or fictitious name not properly registered in this state;]~~

~~[(m) accepting a contingent fee for performing an appraisal management service if the fee is contingent on:]~~

~~[(i) the appraiser report having a predetermined analysis, opinion, or conclusion;]~~

~~[(ii) the analysis, opinion, conclusion, or valuation reached in an appraisal report; or]~~

~~[(iii) the consequences resulting from the appraisal assignment; or]~~

~~[(n)]~~ (k) engaging in any other act or practice that impairs or attempts to impair an

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appraiser's independence, objectivity, or impartiality.

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

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

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

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

Section ~~{23}~~24. Section **61-2e-401** is amended to read:

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

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

(i) receive and act on a complaint including:

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

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

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

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

- (A) approved by the executive director; and
- (B) within the budget of the division.

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

- (i) failing to respond to a subpoena;
- (ii) withholding evidence; or

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(iii) failing to produce a document or record.

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

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

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

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

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

(a) without malicious intent; and

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

Section ~~{24}~~25. Section **61-2f-102** is amended to read:

61-2f-102. Definitions.

As used in this chapter:

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

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

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

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

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

(a) a Saturday;

(b) a Sunday; or

(c) a federal or state holiday.

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

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

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

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

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

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

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

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

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

(12) "Entity" means:

(a) a corporation;

(b) a partnership;

(c) a limited liability company;

(d) a company;

(e) an association;

(f) a joint venture;

(g) a business trust;

(h) a trust; or

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

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

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

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

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

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

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

(i) solicit, or offer that the other person will engage in an act described in Subsection (14)(a); or

(ii) negotiate terms in relationship to an act described in Subsection (14)(a).

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(15) "Loan modification assistance" means, for compensation or with the expectation of receiving valuable consideration, to:

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

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

(A) an increase or decrease in an interest rate;

(B) a change to the type of interest rate;

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

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

(E) an addition of collateral;

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

(G) an addition of a cosigner; or

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

(ii) substitute a new residential mortgage loan for an existing residential mortgage loan;

or

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

(i) solicit, or offer that the other person will engage in an act described in Subsection (15)(a); or

(ii) negotiate terms in relationship to an act described in Subsection (15)(a).

(16) "Main office" means the address which a principal broker designates with the division as the principal broker's primary brokerage office.

(17) "Person" means an individual or entity.

(18) "Principal broker" means an individual who is licensed as a principal broker under this chapter and who:

(a) (i) sells or lists for sale real estate, including real estate being sold as part of a foreclosure rescue, or a business opportunity [~~for sale~~] with the expectation of receiving valuable consideration;

(ii) buys, exchanges, or auctions real estate, an option on real estate, a business opportunity, or an improvement on real estate with the expectation of receiving valuable consideration; or

(iii) advertises, offers, attempts, or otherwise holds the individual out to be engaged in

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the business described in Subsection (18)(a)(i) or (ii);

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

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

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

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

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

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

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

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

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

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

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

(b) "Property management" does not include:

(i) hotel or motel management;

(ii) rental of tourist accommodations, including hotels, motels, tourist homes, condominiums, condominium hotels, mobile home park accommodations, campgrounds, or similar public accommodations for a period of less than 30 consecutive days, and the

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management activities associated with these rentals; or

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

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

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

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

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

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

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

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

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

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

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

(i) a tenancy in common; or

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

(A) a fee estate;

(B) a life estate; or

(C) other long-term estate.

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

Section ~~25~~26. Section **61-2f-203** is amended to read:

61-2f-203. Licensing requirements.

(1) (a) (i) The division shall determine whether an applicant with a criminal history

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qualifies for licensure.

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

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

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

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

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

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

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

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

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

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

- (i) the fundamentals of:
 - (A) the English language;
 - (B) arithmetic;
 - (C) bookkeeping; and

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(D) real estate principles and practices;

(ii) this chapter;

(iii) the rules established by the commission; and

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

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

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

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

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

(3) (a) An individual who is not a resident of this state may be licensed in this state if the person complies with this chapter.

(b) An individual who is not a resident of this state may be licensed as an associate broker or sales agent in this state by:

(i) complying with this chapter; and

(ii) being employed or engaged as an independent contractor by or on behalf of a principal broker who is licensed in this state, regardless of whether the principal broker is a resident of this state.

(4) (a) The division and commission shall treat an application to be relicensed of an applicant whose real estate license is revoked as an original application.

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

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

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

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

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

Section ~~26~~27. Section **61-2f-301** is amended to read:

61-2f-301. Reporting requirements.

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

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

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

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

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

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

~~(A)~~ (i) a diversion agreement; or

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

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

~~(c)~~ (d) the suspension, revocation, surrender, cancellation, or denial of a license or registration of the licensee that is necessary to engage in an occupation or profession, regardless of whether the license or registration is issued by this state or another jurisdiction; or

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~~[(d)]~~ (e) the entry of a cease and desist order or a temporary or permanent injunction:

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

(ii) on the basis of:

(A) conduct or a practice involving the business of real estate; or

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

(2) The commission, with the concurrence of the director, shall enforce the reporting requirement under this section pursuant to Section 61-2f-404.

Section ~~{27}~~28. Section **61-2f-401 (Superseded 07/01/12)** is amended to read:

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

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

(1) (a) making a substantial misrepresentation;

(b) making an intentional misrepresentation;

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

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

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

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

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

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

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

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

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

(c) diverting money described in Subsection (4)(a) from the purpose for which the

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money is received;

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

- (a) with a principal broker of another jurisdiction; or
- (b) as provided under:
 - (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;
 - (ii) Title 16, Chapter 11, Professional Corporation Act; or
 - (iii) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act;

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

(7) failing to voluntarily furnish a copy of a document to the parties before and after the execution of a document;

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

- (a) the names of buyers and sellers or lessees and lessors;
- (b) the identification of real estate;
- (c) the sale or rental price;
- (d) money received in trust;
- (e) agreements or instructions from buyers and sellers or lessees and lessors; and
- (f) any other information required by rule;

(9) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether the purchase, sale, or rental is made for that person or for an undisclosed principal;

(10) being convicted of a criminal offense involving moral turpitude within five years of the most recent application:

- (a) regardless of whether the criminal offense is related to real estate; and
- (b) including:
 - (i) a conviction based upon a plea of nolo contendere; or
 - (ii) a plea held in abeyance to a criminal offense involving moral turpitude;

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

(12) in the case of a principal broker or a licensee who is a branch manager, failing to

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exercise reasonable supervision over the activities of the principal broker's or branch manager's licensed or unlicensed staff;

(13) violating or disregarding:

(a) this chapter;

(b) an order of the commission; or

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

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

(15) any other conduct which constitutes dishonest dealing;

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

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

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

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

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

(a) failing to respond to a subpoena;

(b) withholding evidence; or

(c) failing to produce documents or records;

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

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

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

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

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

~~[(b)]~~ (21) (a) engaging in an act of loan modification assistance that requires licensure as a mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing

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Act, without being licensed under that chapter;

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

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

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

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

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

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

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

(A) a government agency;

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

(C) a nonprofit or charitable institution; or

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

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

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

(iii) refrain from contacting the person's:

(A) lender;

(B) loan servicer;

(C) attorney;

(D) credit counselor; or

(E) housing counselor[; or].

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

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Section ~~28~~29. Section **61-2f-401 (Effective 07/01/12)** is amended to read:

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

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

- (1) (a) making a substantial misrepresentation;
- (b) making an intentional misrepresentation;
- (c) pursuing a continued and flagrant course of misrepresentation;
- (d) making a false representation or promise through an agent, sales agent, advertising, or otherwise; or
- (e) making a false representation or promise of a character likely to influence, persuade, or induce;
- (2) acting for more than one party in a transaction without the informed consent of the parties;
- (3) (a) acting as an associate broker or sales agent while not affiliated with a principal broker;
- (b) representing or attempting to represent a principal broker other than the principal broker with whom the person is affiliated; or
- (c) representing as sales agent or having a contractual relationship similar to that of sales agent with a person other than a principal broker;
- (4) (a) failing, within a reasonable time, to account for or to remit money that belongs to another and comes into the person's possession;
- (b) commingling money described in Subsection (4)(a) with the person's own money; or
- (c) diverting money described in Subsection (4)(a) from the purpose for which the money is received;
- (5) paying or offering to pay valuable consideration, as defined by the commission, to a person not licensed under this chapter, except that valuable consideration may be shared:
 - (a) with a principal broker of another jurisdiction; or
 - (b) as provided under:
 - (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;
 - (ii) Title 16, Chapter 11, Professional Corporation Act; or

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(iii) Title 48, Chapter 3, Utah Revised Uniform Limited Liability Company Act;

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

(7) failing to voluntarily furnish a copy of a document to the parties before and after the execution of a document;

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

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

(b) the identification of real estate;

(c) the sale or rental price;

(d) money received in trust;

(e) agreements or instructions from buyers and sellers or lessees and lessors; and

(f) any other information required by rule;

(9) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether the purchase, sale, or rental is made for that person or for an undisclosed principal;

(10) being convicted of a criminal offense involving moral turpitude within five years of the most recent application:

(a) regardless of whether the criminal offense is related to real estate; and

(b) including:

(i) a conviction based upon a plea of nolo contendere; or

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

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

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

(13) violating or disregarding:

(a) this chapter;

(b) an order of the commission; or

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

(14) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real

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estate transaction;

(15) any other conduct which constitutes dishonest dealing;

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

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

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

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

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

(a) failing to respond to a subpoena;

(b) withholding evidence; or

(c) failing to produce documents or records;

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

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

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

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

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

~~[(b)]~~ (21)(a) engaging in an act of loan modification assistance that requires licensure as a mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing Act, without being licensed under that chapter;

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

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

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

~~[(ii) by which title to the residential real estate at risk of foreclosure will be~~

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~~transferred;~~]

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

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

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

(A) a government agency;

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

(C) a nonprofit or charitable institution; or

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

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

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

(iii) refrain from contacting the person's:

(A) lender;

(B) loan servicer;

(C) attorney;

(D) credit counselor; or

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

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

Section ~~29~~30. Section **61-2g-102** is amended to read:

61-2g-102. Definitions.

(1) As used in this chapter:

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

(ii) An appraisal is classified by the nature of the assignment as a valuation appraisal,

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an analysis assignment, or a review assignment in accordance with the following definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) a state-licensed appraiser; or

(ii) a state-certified appraiser.

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

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

(n) "Real estate related transaction" means:

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

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

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

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

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

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

(r) "State-licensed appraiser" means a person who holds a current, valid license as a

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state-licensed appraiser issued under this chapter.

(s) "Trainee" means an individual who:

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

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

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

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

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

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

Section ~~30~~31. Section **61-2g-103 (Superseded 07/01/12)** is amended to read:

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

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

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

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

Section ~~31~~32. Section **61-2g-103 (Effective 07/01/12)** is amended to read:

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

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

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

(2) Title 48, Chapter 3, Utah Revised Uniform Limited Liability Company Act.

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Section ~~32~~33. Section 61-2g-201 is amended to read:

61-2g-201. Duties and powers of division in general.

- (1) The division shall administer and enforce this chapter.
- (2) The division has the following powers and duties:
 - (a) The division shall:
 - (i) receive an application for licensing, certification, or registration;
 - (ii) establish appropriate administrative procedures for the processing of an application for licensure, certification, or registration;
 - (iii) issue a license or certification to a qualified applicant pursuant to this chapter; and
 - (iv) register an individual who applies and qualifies for registration as a trainee under this chapter.
 - (b) The division shall hold public hearings under the direction of the board.
 - (c) The division may:
 - (i) solicit bids and enter into contracts with one or more educational testing services or organizations for the preparation of a bank of questions and answers; and
 - (ii) administer or contract for the administration of licensing and certification examinations as may be required to carry out the division's responsibilities under this chapter.
 - (d) The division shall provide administrative assistance to the board by providing to the board the facilities, equipment, supplies, and personnel that are required to enable the board to carry out the board's responsibilities under this chapter.
 - (e) The division shall assist the board in improving the quality of the continuing education available to a person licensed, certified, or registered under this chapter.
 - (f) The division shall assist the board with respect to the proper interpretation or explanation of the Uniform Standards of Professional Appraisal Practice as required by Section 61-2g-403 when an interpretation or explanation becomes necessary in the enforcement of this chapter.
 - (g) The division may:
 - (i) promote research and conduct studies relating to the profession of real estate appraising; and
 - (ii) sponsor real estate appraisal educational activities.
 - (h) The division shall adopt, with the concurrence of the board, rules for the

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administration of this chapter pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that are not inconsistent with this chapter or the constitution and laws of this state or of the United States.

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

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

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

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

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

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

(i) without malicious intent; and

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

Section ~~33~~34. Section **61-2g-301** is amended to read:

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

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

(2) This section does not apply to:

(a) a principal broker, associate broker, or sales agent as defined by Section 61-2f-102 licensed by this state who, in the ordinary course of the broker's or sales agent's business, gives

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an opinion:

- (i) regarding the value of real estate;
 - (ii) to a potential seller or third-party recommending a listing price of real estate; or
 - (iii) to a potential buyer or third-party recommending a purchase price of real estate;
 - (b) an employee of a company who states an opinion of value or prepares a report containing value conclusions relating to real estate or real property solely for the company's use;
 - (c) an official or employee of a government agency while acting solely within the scope of the official's or employee's duties, unless otherwise required by Utah law;
 - (d) an auditor or accountant who states an opinion of value or prepares a report containing value conclusions relating to real estate or real property while performing an audit;
 - (e) an individual, except an individual who is required to be licensed or certified under this chapter, who states an opinion about the value of property in which the person has an ownership interest;
 - (f) an individual who states an opinion of value if no consideration is paid or agreed to be paid for the opinion and no other party is reasonably expected to rely on the individual's appraisal expertise;
 - (g) an individual, such as a researcher or a secretary, who does not render significant professional assistance, as defined by the board, in arriving at a real estate appraisal analysis, opinion, or conclusion; or
 - (h) an attorney authorized to practice law in [this] any state who, in the course of the attorney's practice or tax appeal services, uses an appraisal report governed by this chapter or who states an opinion of the value of real estate.
- (3) An opinion of value or report containing value conclusions exempt under Subsection (2) may not be referred to as an appraisal.
- (4) Except as provided in Subsection (2) and Section 61-2g-303, to prepare or cause to be prepared in this state an appraisal, an appraisal report, or a certified appraisal report an individual shall:
- (a) apply in writing for licensure or certification as provided in this chapter in the form as the division may prescribe; and
 - (b) become licensed or certified under this chapter.

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Section ~~{34}~~35. Section **61-2g-304** is amended to read:

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

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

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

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

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

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

(a) sign a pledge to comply with the Uniform Standards of Professional Appraisal Practice and the ethical rules to be observed by an appraiser that are established under Section 61-2g-403 for:

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

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

Section ~~{35}~~36. Section **61-2g-306** is amended to read:

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

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

- (a) an application for renewal;
- (b) a fee established by the division and the board, in accordance with Section

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63J-1-504; and

(c) evidence in the form prescribed by the division of having completed the continuing education requirements for renewal specified in this chapter.

(2) (a) A license, certification, or registration expires if it is not renewed on or before its expiration date.

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

(i) payment of a renewal fee and a late fee determined through the concurrence of the division and the board; and

(ii) satisfying the continuing education requirements specified in Section 61-2g-307.

(c) After the 30-day period described in Subsection (2)(b), and until six months after the expiration date, a license, certification, or registration may be reinstated by:

(i) paying a renewal fee and a reinstatement fee determined through the concurrence of the division and the board; and

(ii) satisfying the continuing education requirements specified in Section 61-2g-307.

(d) After the six-month period described in Subsection (2)(c), and until one year after the expiration date, a license, certification, or registration may be reinstated by:

(i) paying a renewal fee and a reinstatement fee determined through the concurrence of the division and the board in accordance with Section 63J-1-504;

(ii) providing proof acceptable to the division, with the concurrence of the board, of the person having satisfied the continuing education requirements of Section 61-2g-307; and

(iii) providing proof acceptable to the division, with the concurrence of the board, of the person completing 24 hours of continuing education:

(A) in addition to the requirements in Section 61-2g-307; and

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

(e) The division shall relicense, recertify, or reregister a person who does not renew that person's license, certification, or registration within one year after the expiration date as prescribed for an original application.

(f) Notwithstanding Subsection (2)(a), the division may extend the term of a license, certification, or registration that would expire under Subsection (2)(a) except for the extension

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if:

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

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

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

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

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

~~(i) a felony; or~~

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

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

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

~~[(A) felony;]~~

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

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

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

~~[(iii)]~~ (b) the potential resolution of a felony~~[-class A]~~ or of a misdemeanor~~[-or class B misdemeanor]~~ described in Subsection (3)(a)(ii) by:

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

~~[(B)]~~ (ii) any other agreement under which a criminal charge is suspended for a period of time;

~~[(b) filing a personal bankruptcy or business bankruptcy;]~~

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

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

(i) against the person by a court or administrative agency; and

(ii) on the basis of:

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(A) conduct or a practice involving an act regulated by this chapter; or

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

(4) The board, with the concurrence of the division, shall enforce the reporting requirement of Subsection (3) pursuant to Section 61-2g-502.

Section ~~36~~37. Section **61-2g-308** is amended to read:

61-2g-308. Licensing, certification, or registration requirements for nonresidents -- Temporary license or certificate -- Revocation.

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

(2) A nonresident of this state who complies with Subsection (1) may obtain [~~approval as an expert witness;~~] a license, a certification, or a registration in this state by complying with this chapter relating to [~~approval as an expert witness;~~] licensure, certification, or registration.

(3) (a) A nonresident of this state who complies with Subsection (1) may obtain a temporary permit for a license or certification to perform a contract relating to the appraisal of real estate or real property in this state.

(b) To qualify for the issuance of a temporary permit for a license or certification, an applicant [~~must~~] shall:

[~~(a)~~] (i) submit an application on a form approved by the division;

[~~(b)~~] (ii) submit evidence that the applicant is licensed or certified in the state in which the applicant primarily conducts business;

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

[~~(d)~~] (iv) pay an application fee in an amount established by the division with the concurrence of the board.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

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division, with the concurrence of the board, shall make rules establishing:

- (a) the duration of a temporary permit; and
- (b) procedures for renewal of a temporary permit.

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

(6) A person whose temporary permit for a license or certification is revoked under Subsection (5) is entitled to a postrevocation hearing to challenge the revocation. The hearing shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

Section ~~37~~38. Section **61-2g-312** is amended to read:

61-2g-312. State-certified appraisers -- Authority.

(1) A state-certified residential appraiser is authorized to appraise the types of real estate which a state-licensed appraiser is authorized to appraise.

(2) A state-certified residential appraiser is also authorized to appraise 1-4 unit residential real estate without regard to transaction value or complexity.

(3) A state-certified residential appraiser is not authorized to appraise subdivisions for which a development analysis/appraisal is necessary.

(4) A state-certified general appraiser is authorized to appraise ~~the~~ all types of real estate and real property.

Section ~~38~~39. Section **61-2g-315** is amended to read:

61-2g-315. Licensing, certification, and registration documents -- Assigned number to be used on contracts -- Surrender of documents upon suspension.

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

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

(b) specifying the expiration date of a license or certification.

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

(b) An assigned number shall be used in a statement of qualification, a contract, or

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another instrument used by the holder of the [approval,] license, certificate, or registration when reference is made to the holder's status as being [approved,] licensed, certified, or registered under this chapter.

(3) (a) [~~An approval,~~] A license, certification, or registration document is the property of the state.

(b) Upon a suspension or revocation of a license, certification, or registration under this chapter, the individual holding the applicable document shall immediately return the document to the division.

Section ~~{39}~~40. Section **61-2g-402** is amended to read:

61-2g-402. Principal place of business -- Display of documents -- Notify of changes -- Nonresidents.

(1) A person licensed or certified under this chapter shall:

- (a) designate and maintain a principal place of business; and
- (b) conspicuously display the person's license or certification.

(2) [~~(a)~~] Upon a change of a person's principal business location or home address, a person licensed or certified under this chapter shall promptly send the division a signed statement notifying the division of the change within 10 business days of the change.

~~[(b) Upon a change of an expert witness's address listed on the expert witness's application for approval, the expert witness shall send the division a signed statement notifying the division of the change within 10 business days of the change.]~~

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

Section ~~{40}~~41. Section **61-2g-403** is amended to read:

61-2g-403. Professional conduct -- Uniform standards.

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

- (i) generally accepted standards of professional appraisal practice; and
- (ii) generally accepted ethical rules to be observed by a real estate appraiser.

(b) Subject to the other provisions of this Subsection (1), generally accepted standards of professional appraisal practice are evidenced by the Uniform Standards of Professional

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Appraisal Practice promulgated by the Appraisal Foundation.

(c) After a public hearing held in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board, with the concurrence of the division:

(i) shall adopt and may make modifications of or additions to the Uniform Standards of Professional Appraisal Practice as the board considers appropriate to comply with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; or

(ii) may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, exempt a person licensed, certified, or registered~~[, or approved as an expert witness]~~ from complying with a provision of the Uniform Standards of Professional Appraisal Practice for an activity that the person engages in on behalf of a governmental entity.

(d) When an individual is a state-licensed appraiser or state-certified appraiser and also holds a license issued under Chapter 2f, Real Estate Licensing and Practices Act, the individual may provide an opinion of price of real estate without complying with the Uniform Standards of Professional Appraisal Practice if the individual provides the opinion of price as a licensee under Chapter 2f, Real Estate Licensing and Practices Act.

(e) A state-licensed or state-certified appraiser who also holds a license issued under Chapter 2c, Utah Residential Mortgage Practices and Licensing Act, or Chapter 2f, Real Estate Licensing and Practices Act, may not act under more than one license in a single transaction.

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

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

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

(A) a residential real estate appraiser; or

(B) a general real estate appraiser; or

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

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

(3) If, after the notice and public hearing described in Subsection (2), the board finds

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that a modified or supplemental standard or the ethical rule issued by the Appraisal Standards Board of the Appraisal Foundation is appropriate for a person licensed, certified, or registered~~]; or approved as an expert witness]~~ under this chapter, the board shall recommend a rule requiring a person licensed, certified, or registered~~]; or approved as an expert witness]~~ under this chapter to observe the modified or supplemental standard or the ethical rule.

Section ~~{41}~~42. Section **61-2g-502** is amended to read:

61-2g-502. Disciplinary action -- Grounds.

(1) (a) The board may order disciplinary action, with the concurrence of the division, against a person:

- (i) registered, licensed, or certified under this chapter; or
- (ii) required to be registered, licensed, or certified under this chapter.

(b) On the basis of a ground listed in Subsection (2) for disciplinary action, board action may include:

- (i) revoking, suspending, or placing a person's registration, license, or certification on probation;
- (ii) denying a person's original registration, license, or certification;
- (iii) denying a person's renewal license, certification, or registration;
- (iv) in the case of denial or revocation of a registration, license, or certification, setting a waiting period for an applicant to apply for a registration, license, or certification under this chapter;
- (v) ordering remedial education;
- (vi) imposing a civil penalty upon a person not to exceed the greater of:
 - (A) \$5,000 for each violation; or
 - (B) the amount of any gain or economic benefit from a violation;
- (vii) issuing a cease and desist order;
- (viii) modifying an action described in Subsections (1)(b)(i) through (vii) if the board, with the concurrence of the division, finds that the person complies with court ordered restitution; or
- (ix) doing any combination of Subsections (1)(b)(i) through (viii).

(c) (i) If the board or division issues an order that orders a fine or educational requirements as part of the disciplinary action against a person, including a stipulation and

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order, the board or division shall state in the order the deadline by which the person shall comply with the fine or educational requirements.

(ii) If a person fails to comply with a stated deadline:

(A) the person's license, certificate, or registration is automatically suspended:

(I) beginning on the day specified in the order as the deadline for compliance; and

(II) ending the day on which the person complies in full with the order; and

(B) if the person fails to pay a fine required by an order, the division may begin a collection process:

(I) established by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(II) subject to Title 63A, Chapter [8] 3, Part 5, Office of State Debt Collection.

(2) The following are grounds for disciplinary action under this section:

(a) procuring or attempting to procure a registration, license, or certification under this chapter:

(i) by fraud; or

(ii) by making a false statement, submitting false information, or making a material misrepresentation in an application filed with the division;

(b) paying money or attempting to pay money other than a fee provided for by this chapter to a member or employee of the division to procure a registration, license, or certification under this chapter;

(c) an act or omission in the practice of real estate appraising that constitutes dishonesty, fraud, or misrepresentation;

(d) entry of a judgment against a registrant, licensee, or certificate holder on grounds of fraud, misrepresentation, or deceit in the making of an appraisal of real estate;

(e) a guilty plea to a criminal offense involving moral turpitude that is held in abeyance, or a conviction, including a conviction based upon a plea of guilty or nolo contendere, of a criminal offense involving moral turpitude;

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

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

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(h) making a false or misleading statement in:

(i) that portion of a written appraisal report that deals with professional qualifications;

or

(ii) testimony concerning professional qualifications;

(i) violating or disregarding:

(i) this chapter;

(ii) an order of:

(A) the board; or

(B) the division, in a case when the board delegates to the division the authority to make a decision on behalf of the board; or

(iii) a rule issued under this chapter;

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

(k) accepting a contingent fee for performing an appraisal if in fact the fee is or was contingent upon:

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

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

(iii) the consequences resulting from the appraisal assignment;

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

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

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

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

(n) other conduct that constitutes dishonest dealing.

Section ~~42~~43. Section **61-2g-503** is amended to read:

61-2g-503. Reinstatement of license, certification, and registration.

(1) An individual whose license, certification, or registration~~[, or approval]~~ is revoked under this chapter:

(a) may not apply for renewal or reinstatement of that license, certification, or

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registration~~[, or approval]~~; and

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

(2) An applicant for licensure, certification, or registration~~[, or approval as an expert witness]~~ under Subsection (1) is not entitled to credit for experience gained before the date of revocation in determining whether the applicant meets the experience requirement for licensure, certification, or registration~~[, or approval]~~.

Section ~~{43}~~44. **Repealer.**

This bill repeals:

Section **61-2g-303, Approval of an expert.**

Section ~~{44}~~45. **Effective dates.**

(1) Except as provided in Subsection (2), this bill takes effect May 8, 2012.

(2) Section 61-2f-401 (Effective 07/01/12) and Section 61-2g-103 (Effective 07/01/12) take effect July 1, 2012.

†

Legislative Review Note

~~as of 2-2-12 11:58 AM~~

~~Office of Legislative Research and General Counsel}~~