

1 **DIVISION OF REAL ESTATE AMENDMENTS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gage Froerer**

5 Senate Sponsor: J. Stuart Adams

6

LONG TITLE

7 **General Description:**

8 This bill modifies provisions relating to real estate.

9 **Highlighted Provisions:**

10 This bill:

- 11
- 12 ▶ modifies a provision regarding addresses provided to the Division of Real Estate;
 - 13 ▶ modifies a provision relating to criminal background checks of applicants for a
 - 14 license to transact the business of residential mortgage loans;
 - 15 ▶ modifies lending manager licensing provisions;
 - 16 ▶ increases the period of reinstatement of an expired registration;
 - 17 ▶ modifies a provision relating to the determination of a license examination fee; and
 - 18 ▶ authorizes the Division of Real Estate to terminate the registration of an entity if the
 - 19 entity's registration with the Division of Corporations and Commercial Code has
 - 20 been expired for a specified period and the entity's license has been inactive for a
 - 21 specified period.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:



- 28 **61-2c-106**, as last amended by Laws of Utah 2012, Chapter 166
- 29 **61-2c-202**, as last amended by Laws of Utah 2011, Chapter 289
- 30 **61-2c-206**, as last amended by Laws of Utah 2012, Chapter 166
- 31 **61-2e-204**, as last amended by Laws of Utah 2012, Chapter 166
- 32 **61-2f-204**, as last amended by Laws of Utah 2011, Chapter 289
- 33 **61-2f-206**, as last amended by Laws of Utah 2011, Chapter 289

34

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

36 Section 1. Section **61-2c-106** is amended to read:

37 **61-2c-106. Addresses provided the division.**

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

40 (b) The following when provided to and maintained within the division under this
41 chapter is public information:

42 (i) a business address; or

43 (ii) a mailing address other than a home address, unless the person provides no other
44 address.

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

47 (a) the individual, if the licensee is an individual; or

48 (b) the lending manager who is designated within the nationwide database to act as the
49 principal lending manager for the entity, if the licensee is an entity.

50 Section 2. Section **61-2c-202** is amended to read:

51 **61-2c-202. Licensure procedures.**

52 (1) To apply for licensure under this chapter an applicant shall in a manner provided by
53 the division by rule:

54 (a) if the applicant is an entity, submit a licensure statement that:

55 (i) lists any name under which the entity will transact business in this state;

56 (ii) lists the address of the principal business location of the entity;

57 (iii) identifies the principal lending manager of the entity;

58 (iv) contains the signature of the principal lending manager;

- 59 (v) identifies the one or more control persons for the entity;
- 60 (vi) identifies the jurisdictions in which the entity is registered, licensed, or otherwise
61 regulated in the business of residential mortgage loans;
- 62 (vii) discloses any adverse administrative action taken by an administrative agency
63 against:
- 64 (A) the entity; or
- 65 (B) any control person for the entity;
- 66 (viii) discloses any history of criminal proceedings involving any control person for the
67 entity; and
- 68 (ix) includes any information required by the division by rule;
- 69 (b) if the applicant is an individual:
- 70 (i) submit a licensure statement that identifies the entity with which the applicant is
71 sponsored;
- 72 (ii) authorize [a] periodic criminal background [~~check~~] checks through the nationwide
73 database, at times provided by rule that the division makes in accordance with Title 63G,
74 Chapter 3, Utah Administrative Rulemaking Act, accessing:
- 75 (A) the Utah Bureau of Criminal Identification, if the nationwide database is able to
76 obtain information from the Utah Bureau of Criminal Identification; and
- 77 (B) the Federal Bureau of Investigation;
- 78 (iii) submit evidence using a method approved by the division by rule of having
79 successfully completed approved prelicensing education in accordance with Section
80 61-2c-204.1;
- 81 (iv) submit evidence using a method approved by the division by rule of having
82 successfully passed any required licensing examination in accordance with Section
83 61-2c-204.1; [~~and~~]
- 84 (v) submit evidence using a method approved by the division by rule of having
85 successfully registered in the nationwide database, including paying a fee required by the
86 nationwide database; and
- 87 (vi) authorize the division to obtain independent credit reports:
- 88 (A) through a consumer reporting agency described in Section 603(p) of the Fair Credit
89 Reporting Act, 15 U.S.C. Sec. 1681a; and

90 (B) at times provided by rule that the division makes in accordance with Title 63G,
91 Chapter 3, Utah Administrative Rulemaking Act; and

92 (c) pay to the division:

93 (i) an application fee established by the division in accordance with Section 63J-1-504;

94 and

95 (ii) the reasonable expenses incurred by the division in processing the application for
96 licensure.

97 (2) (a) Upon receiving an application, the division, with the concurrence of the
98 commission, shall determine whether the applicant:

99 (i) meets the qualifications for licensure; and

100 (ii) complies with this section.

101 (b) If the division, with the concurrence of the commission, determines that an
102 applicant meets the qualifications for licensure and complies with this section, the division
103 shall issue the applicant a license.

104 (c) If the division, with the concurrence of the commission, determines that the
105 division requires more information to make a determination under Subsection (2)(a), the
106 division may:

107 (i) hold the application pending further information about an applicant's criminal
108 background or history related to adverse administrative action in any jurisdiction; or

109 (ii) issue a conditional license:

110 (A) pending the completion of a criminal background check; and

111 (B) subject to probation, suspension, or revocation if the criminal background check
112 reveals that the applicant did not truthfully or accurately disclose on the licensing application a
113 criminal history or other history related to adverse administrative action.

114 (3) (a) The commission may delegate to the division the authority to:

115 (i) review a class or category of application for an initial or renewed license;

116 (ii) determine whether an applicant meets the qualifications for licensure;

117 (iii) conduct a necessary hearing on an application; and

118 (iv) approve or deny a license application without concurrence by the commission.

119 (b) If the commission delegates to the division the authority to approve or deny an
120 application without concurrence by the commission and the division denies an application for

121 licensure, the applicant who is denied licensure may petition the commission for a de novo
122 review of the application.

123 (c) An applicant who is denied licensure under Subsection (3)(b) may seek agency
124 review by the executive director only after the commission reviews the division's denial of the
125 applicant's application.

126 (d) Subject to Subsection (3)(c) and in accordance with Title 63G, Chapter 4,
127 Administrative Procedures Act, an applicant who is denied licensure under this chapter may
128 submit a request for agency review to the executive director within 30 days following the day
129 on which the commission order denying the licensure is issued.

130 Section 3. Section **61-2c-206** is amended to read:

131 **61-2c-206. Lending manager licenses.**

132 (1) To qualify for licensure as a lending manager under this chapter, an individual
133 shall:

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

135 (b) successfully complete the following education:

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

138 (ii) 40 hours of Utah-specific prelicensing education for a lending manager that is
139 approved by the division under Section 61-2c-204.1;

140 (c) successfully complete the following examinations:

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

143 (ii) the lending manager licensing examination approved by the commission under
144 Section 61-2c-204.1;

145 (d) submit proof, on a form approved by the division, of three years of full-time active
146 experience as a mortgage loan originator licensed in any state in the five years preceding the
147 day on which the application is submitted, or equivalent experience as approved by the
148 commission pursuant to rule that the division makes in accordance with Title 63G, Chapter 3,
149 Utah Administrative Rulemaking Act;

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

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

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

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

156 (2) A lending manager may not:

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

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

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

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

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

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

169 Section 4. Section **61-2e-204** is amended to read:

170 **61-2e-204. Renewal of a registration.**

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

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

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

178 (a) file with the division a renewal registration application on a form prescribed by the
179 division;

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

181 (c) file with the division a certificate evidencing that the appraisal management
182 company has secured and will maintain a surety bond with one or more corporate sureties

183 authorized to do business in the state in the amount of at least \$25,000, as the division provides
184 by rule.

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

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

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

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

192 (A) a diversion agreement; or

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

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

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

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

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

202 (ii) on the basis of:

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

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

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

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

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

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

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

216 Section 5. Section **61-2f-204** is amended to read:

217 **61-2f-204. Licensing fees and procedures -- Renewal fees and procedures.**

218 (1) (a) Upon filing an application for an examination for a license under this chapter,
219 the applicant shall pay a nonrefundable fee [~~as determined by the commission with the~~
220 ~~concurrence of the division under~~] established in accordance with Section 63J-1-504 for
221 admission to the examination.

222 (b) An applicant for a principal broker, associate broker, or sales agent license shall
223 pay a nonrefundable fee as determined by the commission with the concurrence of the division
224 under Section 63J-1-504 for issuance of an initial license or license renewal.

225 (c) A license issued under this Subsection (1) shall be issued for a period of not less
226 than two years as determined by the division with the concurrence of the commission.

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

228 (A) a new sales agent applicant;

229 (B) a principal broker applicant; or

230 (C) an associate broker applicant.

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

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

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

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

239 (iv) The applicant shall pay the cost of the criminal background check and the
240 fingerprinting.

241 (v) Money paid to the division by an applicant for the cost of the criminal background
242 check is nonlapsing.

243 (e) (i) A license issued under Subsection (1)(d) is conditional, pending completion of
244 the criminal background check.

245 (ii) A license is immediately and automatically revoked if the criminal background
246 check discloses the applicant fails to accurately disclose a criminal history involving:

247 (A) the real estate industry; or

248 (B) a felony conviction on the basis of an allegation of fraud, misrepresentation, or
249 deceit.

250 (iii) If a criminal background check discloses that an applicant fails to accurately
251 disclose a criminal history other than one described in Subsection (1)(e)(ii), the division:

252 (A) shall review the application; and

253 (B) in accordance with rules made by the division pursuant to Title 63G, Chapter 3,
254 Utah Administrative Rulemaking Act, may:

255 (I) place a condition on a license;

256 (II) place a restriction on a license;

257 (III) revoke a license; or

258 (IV) refer the application to the commission for a decision.

259 (iv) A person whose conditional license is automatically revoked under Subsection
260 (1)(e)(ii) or whose license is conditioned, restricted, or revoked under Subsection (1)(e)(iii)
261 may have a hearing after the action is taken to challenge the action. The hearing shall be
262 conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

263 (v) The director shall designate one of the following to act as the presiding officer in a
264 hearing described in Subsection (1)(e)(iv):

265 (A) the division; or

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

267 (vi) The decision on whether relief from an action under this Subsection (1)(e) will be
268 granted shall be made by the presiding officer.

269 (vii) Relief from an automatic revocation under Subsection (1)(e)(ii) may be granted
270 only if:

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

272 (I) did not occur; or

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

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

275 (II) the applicant has a reasonable good faith belief at the time of application that there

276 was no criminal history to be disclosed; or

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

278 (viii) If a license is revoked or a revocation under this Subsection (1)(e) is upheld after
279 a hearing, the individual may not apply for a new license until at least 12 months after the day
280 on which the license is revoked.

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

282 (ii) As a condition of renewal, an active licensee shall demonstrate competence by
283 completing 18 hours of continuing education within a two-year renewal period subject to rules
284 made by the commission, with the concurrence of the division.

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

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

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

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

294 (iv) The division may award credit to a licensee for a continuing education requirement
295 of this Subsection (2)(a) for a reasonable period of time upon a finding of reasonable cause,
296 including:

297 (A) military service; or

298 (B) if an individual is elected or appointed to government service, the individual's
299 government service during which the individual spends a substantial time addressing real estate
300 issues subject to conditions established by rule made in accordance with Title 63G, Chapter 3,
301 Utah Administrative Rulemaking Act.

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

304 (i) payment of a renewal fee and a late fee determined by the commission with the
305 concurrence of the division under Section 63J-1-504; and

306 (ii) providing proof acceptable to the division and the commission of the licensee

307 having:

308 (A) completed the hours of education required by Subsection (2)(a); or

309 (B) demonstrated competence as required under Subsection (2)(a).

310 (c) After the 30-day period described in Subsection (2)(b), and until six months after

311 the expiration date, the license may be reinstated by:

312 (i) paying a renewal fee and a late fee determined by the commission with the

313 concurrence of the division under Section 63J-1-504;

314 (ii) providing to the division proof of satisfactory completion of six hours of continuing

315 education:

316 (A) in addition to the requirements for a timely renewal; and

317 (B) on a subject determined by the commission by rule made in accordance with Title

318 63G, Chapter 3, Utah Administrative Rulemaking Act; and

319 (iii) providing proof acceptable to the division and the commission of the licensee

320 having:

321 (A) completed the hours of education required under Subsection (2)(a); or

322 (B) demonstrated competence as required under Subsection (2)(a).

323 (d) After the six-month period described in Subsection (2)(c), and until one year after

324 the expiration date, the license may be reinstated by:

325 (i) paying a renewal fee and a late fee determined by the commission with the

326 concurrence of the division under Section 63J-1-504;

327 (ii) providing to the division proof of satisfactory completion of 24 hours of continuing

328 education:

329 (A) in addition to the requirements for a timely renewal; and

330 (B) on a subject determined by the commission by rule made in accordance with Title

331 63G, Chapter 3, Utah Administrative Rulemaking Act; and

332 (iii) providing proof acceptable to the division and the commission of the licensee

333 having:

334 (A) completed the hours of education required by Subsection (2)(a); or

335 (B) demonstrated competence as required under Subsection (2)(a).

336 (e) The division shall relicense a person who does not renew that person's license

337 within one year as prescribed for an original application.

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

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

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

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

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

348 (i) successful completion of the respective sales agent or principal broker licensing
349 examination within six months before applying to activate the license; or

350 (ii) the successful completion of the hours of continuing education that the licensee
351 would have been required to complete under Subsection (2)(a) if the license had been on active
352 status at the time of the licensee's most recent renewal.

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

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

356 (ii) how long before reactivation the continuing education must be completed.

357 Section 6. Section **61-2f-206** is amended to read:

358 **61-2f-206. Registration of entity or branch office -- Certification of education**
359 **providers and courses -- Specialized licenses.**

360 (1) (a) An entity may not engage in an activity described in Section 61-2f-201, unless it
361 is registered with the division.

362 (b) To register with the division under this Subsection (1), an entity shall submit to the
363 division:

364 (i) an application in a form required by the division;

365 (ii) evidence of an affiliation with a principal broker;

366 (iii) evidence that the entity is registered and in good standing with the Division of
367 Corporations and Commercial Code; and

368 (iv) a registration fee established by the commission with the concurrence of the

369 division under Section 63J-1-504.

370 (c) The division may terminate an entity's registration if:

371 (i) the entity's registration with the Division of Corporations and Commercial Code has
372 been expired for at least three years; and

373 (ii) the entity's license with the division has been inactive for at least three years.

374 (2) (a) A principal broker shall register with the division each of the principal broker's
375 branch offices.

376 (b) To register a branch office with the division under this Subsection (2), a principal
377 broker shall submit to the division:

378 (i) an application in a form required by the division; and

379 (ii) a registration fee established by the commission with the concurrence of the
380 division under Section 63J-1-504.

381 (3) (a) In accordance with rules made by the commission, the division shall certify:

382 (i) a real estate school;

383 (ii) a course provider; or

384 (iii) an instructor.

385 (b) In accordance with rules made by the commission, and with the concurrence of the
386 commission, the division shall certify a continuing education course that is required under this
387 chapter.

388 (4) (a) Except as provided by rule, a principal broker may not be responsible for more
389 than one registered entity at the same time.

390 (b) (i) In addition to issuing a principal broker license, associate broker license, or sales
391 agent license authorizing the performance of an act set forth in Section 61-2f-201, the division
392 may issue a specialized sales license or specialized property management license with the
393 scope of practice limited to the specialty.

394 (ii) An individual may hold a specialized license in addition to a license as a principal
395 broker, associate broker, or a sales agent.

396 (iii) The commission may adopt rules pursuant to Title 63G, Chapter 3, Utah
397 Administrative Rulemaking Act, for the administration of this Subsection (4), including:

398 (A) prelicensing and postlicensing education requirements;

399 (B) examination requirements;

- 400 (C) affiliation with real estate brokerages or property management companies; and
- 401 (D) other licensing procedures.

Legislative Review Note
as of 1-25-13 11:26 AM

Office of Legislative Research and General Counsel