

**DIVISION OF REAL ESTATE AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gage Froerer**

Senate Sponsor: J. Stuart Adams

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to real estate.

**Highlighted Provisions:**

This bill:

- ▶ modifies the entity with which a subdivider files an effective statement of record, in accordance with federal law;

- ▶ modifies a provision regarding addresses provided to the Division of Real Estate;

- ▶ modifies a provision relating to criminal background checks of applicants for a license to transact the business of residential mortgage loans;

- ▶ modifies lending manager licensing provisions;

- ▶ increases the period of reinstatement of an expired registration;

- ▶ exempts from the licensing requirements described in Title 61, Chapter 2f, Real Estate Licensing and Practices Act an individual who engages in isolated real estate services, if the individual holds a duly executed power of attorney from a property owner;

- ▶ modifies a provision relating to the determination of a license examination fee;

- ▶ authorizes the Division of Real Estate to terminate the registration of an entity if the entity's registration with the Division of Corporations and Commercial Code has been expired for a specified period and the entity's license has been inactive for a specified period; and

- ▶ permits an entity that is affiliated with a principal broker to maintain an action for the recovery of a commission or fee, or for compensation for any act done or service

30 rendered in accordance with the Real Estate Licensing and Practices Act.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 The amendments in this bill to Section 61-2f-409 have retrospective operation to May  
35 11, 2010.

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **57-11-4**, as last amended by Laws of Utah 2009, Chapter 352

39 **61-2c-106**, as last amended by Laws of Utah 2012, Chapter 166

40 **61-2c-202**, as last amended by Laws of Utah 2011, Chapter 289

41 **61-2c-206**, as last amended by Laws of Utah 2012, Chapter 166

42 **61-2e-204**, as last amended by Laws of Utah 2012, Chapter 166

43 **61-2f-202**, as last amended by Laws of Utah 2011, Chapters 289 and 398

44 **61-2f-204**, as last amended by Laws of Utah 2011, Chapter 289

45 **61-2f-206**, as last amended by Laws of Utah 2011, Chapter 289

46 **61-2f-409**, as renumbered and amended by Laws of Utah 2010, Chapter 379



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

49 Section 1. Section **57-11-4** is amended to read:

50 **57-11-4. Exemptions.**

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

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

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

57 (ii) on a unit of which there is a legal obligation on the part of the seller to complete

58 construction of a residential, commercial, or industrial building within two years from date of  
59 disposition;

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

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

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

69 (d) pursuant to court order;

70 (e) by a government or government agency;

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

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

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

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

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

79 (g) in an industrial park;

80 (h) as cemetery lots; or

81 (i) if the interest is offered as part of a camp resort as defined in Section 57-19-2 or a  
82 timeshare development as defined in Section 57-19-2.

83 (2) Unless the method of disposition is adopted for the purpose of evasion of this  
84 chapter or the provisions of the federal act, this chapter, except as specifically designated, does  
85 not apply to an offer or disposition of:

- 86 (a) indebtedness secured by a mortgage or deed of trust on real estate;
- 87 (b) a security or unit of interest issued by a real estate investment trust regulated under  
88 any state or federal statute;
- 89 (c) subject to Subsection (5), subdivided lands registered under the federal act and  
90 which the division finds to be in the public interest to exempt from the registration  
91 requirements of this chapter;
- 92 (d) a security currently registered with the Division of Securities; or
- 93 (e) an interest in oil, gas, or other minerals or a royalty interest in these assets if the  
94 offer or disposition of the interest is regulated as a security by the federal government or by the  
95 Division of Securities.
- 96 (3) (a) Notwithstanding the exemptions in Subsections (1) and (2), a person making an  
97 offer or disposition of an interest in land that is located in Utah shall apply to the division for  
98 an exemption before the offer or disposition is made if:
- 99 (i) the person is representing, in connection with the offer or disposition, the  
100 availability of culinary water service to or on the subdivided land; and
- 101 (ii) the culinary water service is provided by a water corporation as defined in Section  
102 54-2-1.
- 103 (b) A subdivider seeking to qualify under this exemption shall file with the division a  
104 filing fee of \$50 and an application containing:
- 105 (i) information required by the division to show that the offer or disposition is exempt  
106 under this section;
- 107 (ii) a statement as to what entity will be providing culinary water service and the nature  
108 of that entity; and
- 109 (iii) (A) a copy of the entity's certificate of convenience and necessity issued by the  
110 Public Service Commission; or
- 111 (B) evidence that the entity providing water service is exempt from the jurisdiction of  
112 the Public Service Commission.
- 113 (4) (a) The director may by rule or order exempt a person from a requirement of this

114 chapter if the director finds that the offering of an interest in a subdivision is essentially  
115 noncommercial.

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

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

121 (i) a copy of an effective statement of record filed with the [~~secretary of the~~  
122 ~~Department of Housing and Urban Development~~] Consumer Financial Protection Bureau; and

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

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

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

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

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

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

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

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

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

135 **61-2c-106. Addresses provided the division.**

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

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

140 (i) a business address; or

141 (ii) a mailing address other than a home address, unless the person provides no other

142 address.

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

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

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

148 Section 3. Section **61-2c-202** is amended to read:

149 **61-2c-202. Licensure procedures.**

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

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

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

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

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

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

157 (v) identifies the one or more control persons for the entity;

158 (vi) identifies the jurisdictions in which the entity is registered, licensed, or otherwise  
159 regulated in the business of residential mortgage loans;

160 (vii) discloses any adverse administrative action taken by an administrative agency  
161 against:

162 (A) the entity; or

163 (B) any control person for the entity;

164 (viii) discloses any history of criminal proceedings involving any control person for the  
165 entity; and

166 (ix) includes any information required by the division by rule;

167 (b) if the applicant is an individual:

168 (i) submit a licensure statement that identifies the entity with which the applicant is  
169 sponsored;

170 (ii) authorize [a] periodic criminal background [~~check~~] checks through the nationwide  
171 database, at times provided by rule that the division makes in accordance with Title 63G,  
172 Chapter 3, Utah Administrative Rulemaking Act, accessing:

173 (A) the Utah Bureau of Criminal Identification, if the nationwide database is able to  
174 obtain information from the Utah Bureau of Criminal Identification; and

175 (B) the Federal Bureau of Investigation;

176 (iii) submit evidence using a method approved by the division by rule of having  
177 successfully completed approved prelicensing education in accordance with Section  
178 61-2c-204.1;

179 (iv) submit evidence using a method approved by the division by rule of having  
180 successfully passed any required licensing examination in accordance with Section  
181 61-2c-204.1; [~~and~~]

182 (v) submit evidence using a method approved by the division by rule of having  
183 successfully registered in the nationwide database, including paying a fee required by the  
184 nationwide database; and

185 (vi) authorize the division to obtain independent credit reports:

186 (A) through a consumer reporting agency described in Section 603(p) of the Fair Credit  
187 Reporting Act, 15 U.S.C. Sec. 1681a; and

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

190 (c) pay to the division:

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

193 (ii) the reasonable expenses incurred by the division in processing the application for  
194 licensure.

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

197 (i) meets the qualifications for licensure; and

198 (ii) complies with this section.

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

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

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

207 (ii) issue a conditional license:

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

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

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

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

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

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

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

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

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

224 (d) Subject to Subsection (3)(c) and in accordance with Title 63G, Chapter 4,  
225 Administrative Procedures Act, an applicant who is denied licensure under this chapter may



226 submit a request for agency review to the executive director within 30 days following the day  
227 on which the commission order denying the licensure is issued.

228 Section 4. Section **61-2c-206** is amended to read:

229 **61-2c-206. Lending manager licenses.**

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

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

233 (b) successfully complete the following education:

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

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

238 (c) successfully complete the following examinations:

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

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

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

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

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

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

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

254 (2) A lending manager may not:  
255 (a) engage in the business of residential mortgage loans on behalf of more than one  
256 entity at the same time;  
257 (b) be sponsored by more than one entity at the same time; or  
258 (c) act simultaneously as the principal lending manager and branch lending manager  
259 for the individual's sponsoring entity, if the entity operates from more than one office [~~located~~  
260 ~~within the state~~].

261 (3) An individual who is a lending manager may:  
262 (a) transact the business of residential mortgage loans as a mortgage loan originator;  
263 and  
264 (b) be designated within the nationwide database to act for the individual's sponsoring  
265 entity as the principal lending manager, an associate lending manager, or a branch lending  
266 manager.

267 Section 5. Section **61-2e-204** is amended to read:

268 **61-2e-204. Renewal of a registration.**

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

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

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

276 (a) file with the division a renewal registration application on a form prescribed by the  
277 division;

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

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

282 by rule.

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

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

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

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

290 (A) a diversion agreement; or

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

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

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

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

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

300 (ii) on the basis of:

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

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

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

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

309 (a) (i) the person complies with the requirements of this section to renew the

310 registration; and

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

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

313 action.

314 Section 6. Section **61-2f-202** is amended to read:

315 **61-2f-202. Exempt persons and transactions.**

316 (1) (a) Except as provided in Subsection (1)(b), a license under this chapter is not  
317 required for:

318 (i) an individual who as owner or lessor performs an act described in Subsection  
319 61-2f-102(18) with reference to real estate owned or leased by that individual;

320 (ii) a regular salaried employee of the owner or lessor of real estate who, with reference  
321 to nonresidential real estate owned or leased by the employer, performs an act described in  
322 Subsection 61-2f-102(18)(a) or (b);

323 (iii) a regular salaried employee of the owner of real estate who performs property  
324 management services with reference to real estate owned by the employer, except that the  
325 employee may only manage real estate for one employer;

326 (iv) an individual who performs property management services for the apartments at  
327 which that individual resides in exchange for free or reduced rent on that individual's  
328 apartment;

329 (v) a regular salaried employee of a condominium homeowners' association who  
330 manages real estate subject to the declaration of condominium that established the  
331 condominium homeowners' association, except that the employee may only manage real estate  
332 for one condominium homeowners' association; and

333 (vi) a regular salaried employee of a licensed property management company who  
334 performs support services, as prescribed by rule, for the property management company.

335 (b) Subsection (1)(a) does not exempt from licensing:

336 (i) an employee engaged in the sale of real estate regulated under:

337 (A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; or

- 338 (B) Title 57, Chapter 19, Timeshare and Camp Resort Act;
- 339 (ii) an employee engaged in the sale of cooperative interests regulated under Title 57,
- 340 Chapter 23, Real Estate Cooperative Marketing Act; or
- 341 (iii) an individual whose interest as an owner or lessor is obtained by that individual or
- 342 transferred to that individual for the purpose of evading the application of this chapter, and not
- 343 for another legitimate business reason.
- 344 (2) A license under this chapter is not required for:
- 345 (a) an isolated transaction or service by an individual holding a duly executed power of
- 346 attorney from [~~an~~] a property owner;
- 347 (b) services rendered by an attorney admitted to practice law in this state in performing
- 348 the attorney's duties as an attorney;
- 349 (c) a receiver, trustee in bankruptcy, administrator, executor, or an individual acting
- 350 under order of a court;
- 351 (d) a trustee or employee of a trustee under a deed of trust or a will;
- 352 (e) a public utility, officer of a public utility, or regular salaried employee of a public
- 353 utility, unless performance of an act described in Subsection 61-2f-102(18) is in connection
- 354 with the sale, purchase, lease, or other disposition of real estate or investment in real estate
- 355 unrelated to the principal business activity of that public utility;
- 356 (f) a regular salaried employee or authorized agent working under the oversight of the
- 357 Department of Transportation when performing an act on behalf of the Department of
- 358 Transportation in connection with one or more of the following:
- 359 (i) the acquisition of real estate pursuant to Section 72-5-103;
- 360 (ii) the disposal of real estate pursuant to Section 72-5-111;
- 361 (iii) services that constitute property management; or
- 362 (iv) the leasing of real estate; and
- 363 (g) a regular salaried employee of a county, city, or town when performing an act on
- 364 behalf of the county, city, or town:
- 365 (i) in accordance with:

366 (A) if a regular salaried employee of a city or town:  
367 (I) Title 10, Utah Municipal Code; or  
368 (II) Title 11, Cities, Counties, and Local Taxing Units; and  
369 (B) if a regular salaried employee of a county:  
370 (I) Title 11, Cities, Counties, and Local Taxing Units; and  
371 (II) Title 17, Counties; and  
372 (ii) in connection with one or more of the following:  
373 (A) the acquisition of real estate, including by eminent domain;  
374 (B) the disposal of real estate;  
375 (C) services that constitute property management; or  
376 (D) the leasing of real estate.  
377 (3) A license under this chapter is not required for an individual registered to act as a  
378 broker-dealer, agent, or investment adviser under the Utah and federal securities laws in the  
379 sale or the offer for sale of real estate if:  
380 (a) (i) the real estate is a necessary element of a "security" as that term is defined by the  
381 Securities Act of 1933 and the Securities Exchange Act of 1934; and  
382 (ii) the security is registered for sale in accordance with:  
383 (A) the Securities Act of 1933; or  
384 (B) Title 61, Chapter 1, Utah Uniform Securities Act; or  
385 (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec.  
386 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation  
387 D, Rule 506, 17 C.F.R. Sec. 230.506; and  
388 (ii) the selling agent and the purchaser are not residents of this state.  
389 Section 7. Section **61-2f-204** is amended to read:  
390 **61-2f-204. Licensing fees and procedures -- Renewal fees and procedures.**  
391 (1) (a) Upon filing an application for an examination for a license under this chapter,  
392 the applicant shall pay a nonrefundable fee [~~as determined by the commission with the~~  
393 ~~concurrence of the division under~~] established in accordance with Section 63J-1-504 for

394 admission to the examination.

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

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

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

- 401 (A) a new sales agent applicant;
- 402 (B) a principal broker applicant; or
- 403 (C) an associate broker applicant.

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

- 405 (A) submit fingerprint cards in a form acceptable to the division at the time the license  
406 application is filed; and
- 407 (B) consent to a criminal background check by the Utah Bureau of Criminal  
408 Identification and the Federal Bureau of Investigation regarding the application.

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

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

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

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

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

- 420 (A) the real estate industry; or
- 421 (B) a felony conviction on the basis of an allegation of fraud, misrepresentation, or

422 deceit.

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

425 (A) shall review the application; and

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

428 (I) place a condition on a license;

429 (II) place a restriction on a license;

430 (III) revoke a license; or

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

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

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

438 (A) the division; or

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

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

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

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

445 (I) did not occur; or

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

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

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



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

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

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

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

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

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

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

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

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

470 (A) military service; or

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

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

477 (i) payment of a renewal fee and a late fee determined by the commission with the

478 concurrence of the division under Section 63J-1-504; and  
479 (ii) providing proof acceptable to the division and the commission of the licensee  
480 having:  
481 (A) completed the hours of education required by Subsection (2)(a); or  
482 (B) demonstrated competence as required under Subsection (2)(a).  
483 (c) After the 30-day period described in Subsection (2)(b), and until six months after  
484 the expiration date, the license may be reinstated by:  
485 (i) paying a renewal fee and a late fee determined by the commission with the  
486 concurrence of the division under Section 63J-1-504;  
487 (ii) providing to the division proof of satisfactory completion of six hours of continuing  
488 education:  
489 (A) in addition to the requirements for a timely renewal; and  
490 (B) on a subject determined by the commission by rule made in accordance with Title  
491 63G, Chapter 3, Utah Administrative Rulemaking Act; and  
492 (iii) providing proof acceptable to the division and the commission of the licensee  
493 having:  
494 (A) completed the hours of education required under Subsection (2)(a); or  
495 (B) demonstrated competence as required under Subsection (2)(a).  
496 (d) After the six-month period described in Subsection (2)(c), and until one year after  
497 the expiration date, the license may be reinstated by:  
498 (i) paying a renewal fee and a late fee determined by the commission with the  
499 concurrence of the division under Section 63J-1-504;  
500 (ii) providing to the division proof of satisfactory completion of 24 hours of continuing  
501 education:  
502 (A) in addition to the requirements for a timely renewal; and  
503 (B) on a subject determined by the commission by rule made in accordance with Title  
504 63G, Chapter 3, Utah Administrative Rulemaking Act; and  
505 (iii) providing proof acceptable to the division and the commission of the licensee

506 having:

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

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

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

510 within one year as prescribed for an original application.

511 (f) Notwithstanding Subsection (2)(a), the division may extend the term of a license

512 that would expire under Subsection (2)(a) except for the extension if:

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

514 and

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

516 (ii) at the time of the extension, there is pending a disciplinary action under this

517 chapter.

518 (3) (a) As a condition for the activation of an inactive license that was in an inactive

519 status at the time of the licensee's most recent renewal, the licensee shall supply the division

520 with proof of:

521 (i) successful completion of the respective sales agent or principal broker licensing

522 examination within six months before applying to activate the license; or

523 (ii) the successful completion of the hours of continuing education that the licensee

524 would have been required to complete under Subsection (2)(a) if the license had been on active

525 status at the time of the licensee's most recent renewal.

526 (b) The commission may, in accordance with Title 63G, Chapter 3, Utah

527 Administrative Rulemaking Act, establish by rule:

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

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

530 Section 8. Section **61-2f-206** is amended to read:

531 **61-2f-206. Registration of entity or branch office -- Certification of education**

532 **providers and courses -- Specialized licenses.**

533 (1) (a) An entity may not engage in an activity described in Section 61-2f-201, unless it

534 is registered with the division.

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

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

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

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

541 (iv) a registration fee established by the commission with the concurrence of the  
542 division under Section 63J-1-504.

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

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

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

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

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

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

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

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

555 (i) a real estate school;

556 (ii) a course provider; or

557 (iii) an instructor.

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

561 (4) (a) Except as provided by rule, a principal broker may not be responsible for more

562 than one registered entity at the same time.

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

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

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

- 571 (A) prelicensing and postlicensing education requirements;
- 572 (B) examination requirements;
- 573 (C) affiliation with real estate brokerages or property management companies; and
- 574 (D) other licensing procedures.

575 Section 9. Section **61-2f-409** is amended to read:

576 **61-2f-409. Actions for recovery of compensation restricted.**

577 (1) (a) A person may not bring or maintain an action in any court of this state for the  
578 recovery of a commission, fee, or compensation, for any act done or service rendered [~~which~~] if  
579 the act or service is prohibited under this chapter [to other than principal brokers, unless the  
580 person was licensed as a principal broker at the time of the doing of the act or rendering the  
581 service].

582 (b) Except as provided in Subsection (1)(a), a person may bring or maintain an action  
583 in any court of this state for the recovery of a commission, fee, or compensation if the person  
584 is:

- 585 (i) a principal broker;
- 586 (ii) an individual that was licensed as a principal broker at the time the act or service  
587 that is the subject of the lawsuit was performed; or
- 588 (iii) an entity that, under the records of the Division of Real Estate, is affiliated with a  
589 principal broker.

590           (2) (a) A sales agent or associate broker may not sue in that individual's own name for  
591 the recovery of a fee, commission, or compensation for services as a sales agent or associate  
592 broker unless the action is against the principal broker with whom the sales agent or associate  
593 broker is or was affiliated.

594           (b) An action for the recovery of a fee, commission, or other compensation may only  
595 be instituted and brought by the principal broker with whom a sales agent or associate broker is  
596 affiliated.

597           Section 10. **Retrospective operation.**

598           The amendments in this bill to Section 61-2f-409 have retrospective operation to May  
599 11, 2010.