

HB0332S01 compared with HB0332

~~text~~ shows text that was in HB0332 but was deleted in HB0332S01.

text shows text that was not in HB0332 but was inserted into HB0332S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Gage Froerer proposes the following substitute bill:

REAL ESTATE AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of Title 61, Securities Division - Real Estate Division.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the scope of the business of residential mortgage loans;
- ▶ establishes a procedure for the voluntary surrender of a license issued under Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act; Title 61, Chapter 2f, Real Estate Licensing and Practices Act; and Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act;
- ▶ requires certain state agencies to obtain the concurrence of the Real Estate Commission before the agency makes a rule that changes the rights, duties, or

HB0332S01 compared with HB0332

obligations of buyers, sellers, or persons licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, in relation to a real estate transaction between private parties;

- ▶ clarifies the procedure for renewal of an expired license under Title 61, Chapter 2f, Real Estate Licensing and Practices Act;
- ▶ provides that the division may send a license issued under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, by mail or by email;
- ▶ clarifies the circumstances under which a buyer's principal broker may directly contact a seller who is represented by a principal broker;
- ▶ provides a statute of limitations for ~~{a}~~certain disciplinary ~~{action under Title 61, Chapter 2f, Real Estate Licensing and Practices Act}~~actions;
- ▶ clarifies the effect of the expiration, revocation, or suspension of a license issued under Title 61, Chapter 2f, Real Estate Licensing and Practices Act;
- ▶ provides that the education and experience requirements for a licensee under Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act, must meet or exceed the requirements established by the Appraisal Qualification Board;
- ▶ provides that the Real Estate Appraiser Licensing and Certification Board may delegate certain duties to the Division of Real Estate;
- ▶ establishes procedures to request the review of certain decisions relating to licensure, certification, and registration under Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act;
- ▶ broadens the applicability of the background check requirements described in Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act;
- ▶ clarifies the standards for reciprocal licensure under Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

HB0332S01 compared with HB0332

AMENDS:

- 61-2c-102, as last amended by Laws of Utah 2012, Chapter 166
- 61-2c-402.1, as last amended by Laws of Utah 2009, Chapter 372
- 61-2f-103, as last amended by Laws of Utah 2010, Chapter 286 and renumbered and amended by Laws of Utah 2010, Chapter 379
- 61-2f-204, as last amended by Laws of Utah 2013, Chapter 292
- 61-2f-205, as renumbered and amended by Laws of Utah 2010, Chapter 379
- 61-2f-308, as renumbered and amended by Laws of Utah 2010, Chapter 379
- 61-2f-402, as renumbered and amended by Laws of Utah 2010, Chapter 379
- 61-2f-406, as renumbered and amended by Laws of Utah 2010, Chapter 379
- 61-2g-102, as last amended by Laws of Utah 2012, Chapter 166
- 61-2g-205, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 61-2g-302, as enacted by Laws of Utah 2011, Chapter 289
- 61-2g-310, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 61-2g-311, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 61-2g-312, as last amended by Laws of Utah 2012, Chapter 166
- 61-2g-313, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 61-2g-314, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 61-2g-501, as renumbered and amended by Laws of Utah 2011, Chapter 289

ENACTS:

- 61-2c-210, Utah Code Annotated 1953
- 61-2f-208, Utah Code Annotated 1953
- 61-2f-410, Utah Code Annotated 1953
- 61-2g-304.5, Utah Code Annotated 1953
- 61-2g-316, Utah Code Annotated 1953

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

Section 1. 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

HB0332S01 compared with HB0332

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.

(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

(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.

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

(i) a Saturday;

(ii) a Sunday; or

(iii) a federal or state holiday.

(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)(h)(ii), render services related to the origination of a residential mortgage loan including:

HB0332S01 compared with HB0332

- (I) preparing a loan package;
- (II) communicating with the borrower or lender;
- (III) advising on a loan term; ~~or~~
- (IV) acting as a loan processor without being employed by a licensed entity; or
- (V) except as provided in Subsection (1)(h)(ii)(B) or (C), acting as a loan underwriter;

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]~~, including:

(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;
- (V) assembling files; or
- (VI) acting as a loan processor;

(B) acting as a loan underwriter under the direction and control of an employer

licensed under this chapter;

(C) acting as a loan underwriter, as an employee of a depository institution, exclusively in the capacity of the depository institution's employee;

~~[(B)]~~ (D) 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)(h)(i); ~~or~~

~~[(C)]~~ (E) 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

HB0332S01 compared with HB0332

(V) funding a loan; or

~~(D)~~ (E) 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.

(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 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) (i) "Control person" means an individual identified by an entity registered with the

HB0332S01 compared with HB0332

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)(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)(ii).

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

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

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

(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

(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.

(v) "Entity" means:

- (i) a corporation;
- (ii) a limited liability company;
- (iii) a partnership;
- (iv) a company;

HB0332S01 compared with HB0332

(v) an association;

(vi) a joint venture;

(vii) a business trust;

(viii) a trust; or

(ix) another organization.

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

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

(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)(y)(i); or

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

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

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

(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.

(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;

HB0332S01 compared with HB0332

- (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)(dd)(i); or
 - (B) negotiate terms in relationship to an act described in Subsection (1)(dd)(i).
- (ee) (i) Except as provided in Subsection (1)(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
 - (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)(ee)(i), but who performs exclusively administrative or clerical tasks as described in Subsection (1)(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 lending manager; or
 - (Cc) an agent of a lender or lending manager; or

HB0332S01 compared with HB0332

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

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

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

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

(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.

(jj) "Principal lending manager" means an individual:

(i) licensed as a lending manager under Section 61-2c-206; and

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

(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

(II) in a perceivable and reproducible form.

(ll) "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.

(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

HB0332S01 compared with HB0332

(C) consensual security interest;

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

(1)(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.

(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.

(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.

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

(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, 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 2. Section **61-2c-210** is enacted to read:

61-2c-210. Surrender of license.

(1) The division may, by written agreement, accept the voluntary surrender of a license issued under this chapter.

(2) Tender and acceptance of a voluntary surrender of a license under Subsection (1):

(a) does not prevent the division from pursuing additional action, including disciplinary action, that relates to the surrendered license and is authorized by this chapter or by rules made under this chapter; and

(b) terminates all rights and privileges associated with the license.

(3) A person may restore the rights and privileges described in Subsection (2)(b) only if

HB0332S01 compared with HB0332

the person reapplies for, and is granted, licensure in accordance with the requirements described in this chapter.

(4) Any documentation relating to the tender and acceptance of a voluntary surrender is a public record.

Section 3. Section 61-2c-402.1 is amended to read:

61-2c-402.1. Adjudicative proceedings -- Review.

(1) (a) Before an action described in Section 61-2c-402 may be taken, the division shall:

- (i) give notice to the person against whom the action is brought; and
- (ii) commence an adjudicative proceeding.

(b) If after the adjudicative proceeding is commenced under Subsection (1)(a) the presiding officer determines that a person required to be licensed under this chapter has violated this chapter, the division may take an action described in Section 61-2c-402 by written order.

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

(3) If a person prevails in a judicial appeal and the court finds that the state action was undertaken without substantial justification, the court may award reasonable litigation expenses to that individual or entity as provided under Title 78B, Chapter 8, Part 5, Small Business Equal Access to Justice Act.

(4) (a) An order issued under this section takes effect 30 days after the service of the order unless otherwise provided in the order.

(b) If an appeal of an order issued under this section is taken by a person, the division may stay enforcement of the order in accordance with Section 63G-4-405.

(5) If ordered by the court of competent jurisdiction, the division shall promptly take an action described in Section 61-2c-402 against a license granted under this chapter.

(6) (a) Except as provided in Subsection (6)(b), the division, shall commence a disciplinary action under this chapter no later than the earlier of the following:

- (i) four years after the day on which the violation is reported to the division; or
- (ii) 10 years after the day on which the violation occurred.

HB0332S01 compared with HB0332

(b) The division may commence a disciplinary action under this chapter after the time period described in Subsection (6)(a) expires if:

(i) (A) the disciplinary action is in response to a civil or criminal judgment or settlement; and

(B) the division initiates the disciplinary action no later than one year after the day on which the judgment is issued or the settlement is final; or

(ii) the division and the person subject to a disciplinary action enter into a written stipulation to extend the time period described in Subsection (6)(a).

Section ~~3~~4. Section **61-2f-103** is amended to read:

61-2f-103. Real Estate Commission.

(1) There is created within the division a Real Estate Commission. The commission shall:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules for the administration of this chapter that are not inconsistent with this chapter, including:

(i) licensing of:

(A) a principal broker;

(B) an associate broker; and

(C) a sales agent;

(ii) registration of:

(A) an entity; and

(B) a branch office;

(iii) prelicensing and postlicensing education curricula;

(iv) examination procedures;

(v) the certification and conduct of:

(A) a real estate school;

(B) a course provider; or

(C) an instructor;

(vi) proper handling of money received by a licensee under this chapter;

(vii) brokerage office procedures and recordkeeping requirements;

(viii) property management;

HB0332S01 compared with HB0332

- (ix) standards of conduct for a licensee under this chapter;
 - (x) a rule made under Section 61-2f-307 regarding an undivided fractionalized long-term estate; and
 - (xi) if the commission determines necessary, a rule as provided in Subsection 61-2f-306(3) regarding a legal form;
 - (b) establish, with the concurrence of the division, a fee provided for in this chapter, except a fee imposed under Part 5, Real Estate Education, Research, and Recovery Fund Act;
 - (c) conduct an administrative hearing not delegated by the commission to an administrative law judge or the division relating to the:
 - (i) licensing of an applicant;
 - (ii) conduct of a licensee;
 - (iii) the certification or conduct of a real estate school, course provider, or instructor regulated under this chapter; or
 - (iv) violation of this chapter by any person;
 - (d) with the concurrence of the director, impose a sanction as provided in Section 61-2f-404;
 - (e) advise the director on the administration and enforcement of a matter affecting the division and the real estate sales and property management industries;
 - (f) advise the director on matters affecting the division budget;
 - (g) advise and assist the director in conducting real estate seminars; and
 - (h) perform other duties as provided by this chapter.
- (2) (a) Except as provided in Subsection (2)(b), a state entity may not, without the concurrence of the commission, make a rule that changes the rights, duties, or obligations of buyers, sellers, or persons licensed under this chapter in relation to a real estate transaction between private parties.
- (b) Subsection (2)(a) does not apply to a rule made:
 - (i) under Title 31A, Insurance Code, or Title 7, Financial Institutions Act; or
 - (ii) by the Department of Commerce or any division or other rulemaking body within the Department of Commerce.
- ~~[(2)]~~ (3) (a) The commission shall be comprised of five members appointed by the governor and approved by the Senate.

HB0332S01 compared with HB0332

(b) Four of the commission members shall:

(i) have at least five years' experience in the real estate business; and

(ii) hold an active principal broker, associate broker, or sales agent license.

(c) One commission member shall be a member of the general public.

(d) The governor may not appoint a commission member described in Subsection [~~(2)~~] (3)(b) who, at the time of appointment, resides in the same county in the state as another commission member.

(e) At least one commission member described in Subsection [~~(2)~~] (3)(b) shall at the time of an appointment reside in a county that is not a county of the first or second class.

[~~(3)~~] (4) (a) Except as required by Subsection [~~(3)~~] (4)(b), as terms of current commission members expire, the governor shall appoint each new member or reappointed member to a four-year term ending June 30.

(b) Notwithstanding the requirements of Subsection [~~(3)~~] (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.

(c) Upon the expiration of the term of a member of the commission, the member of the commission shall continue to hold office until a successor is appointed and qualified.

(d) A commission member may not serve more than two consecutive terms.

(e) Members of the commission shall annually select one member to serve as chair.

[~~(4)~~] (5) When a vacancy occurs in the membership for any reason, the governor, with the consent of the Senate, shall appoint a replacement for the unexpired term.

[~~(5)~~] (6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

[~~(6)~~] (7) (a) The commission shall meet at least monthly.

(b) The director may call additional meetings:

(i) at the director's discretion;

HB0332S01 compared with HB0332

- (ii) upon the request of the chair; or
- (iii) upon the written request of three or more commission members.

~~[(7)]~~ (8) Three members of the commission constitute a quorum for the transaction of business.

Section ~~(4)~~5. Section **61-2f-204** is amended to read:

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

(1) (a) Upon filing an application for an examination for a license under this chapter, the applicant shall pay a nonrefundable fee established in accordance with Section 63J-1-504 for admission to the examination.

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

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

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

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

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

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

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

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

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

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

(e) (i) A license issued under Subsection (1)(d) is conditional, pending completion of

HB0332S01 compared with HB0332

the criminal background check.

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

(A) the real estate industry; or

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

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

(A) shall review the application; and

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

(I) place a condition on a license;

(II) place a restriction on a license;

(III) revoke a license; or

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

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

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

(A) the division; or

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

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

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

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

(I) did not occur; or

(II) is the criminal history of another person;

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

HB0332S01 compared with HB0332

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

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

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

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

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

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

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

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

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

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

(A) military service; or

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

(b) For a period of 30 days after [~~the expiration date of~~] the day on which a license expires, the license may be reinstated [~~upon~~]:

(i) if the applicant's license was inactive on the day on which the applicant's license expired, upon payment of a renewal fee and a late fee determined by the commission with the

HB0332S01 compared with HB0332

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

(ii) if the applicant's license was active on the day on which the applicant's license expired, upon [(+)] payment of a renewal fee and a late fee determined by the commission with the concurrence of the division under Section 63J-1-504[;], and [(+)] providing proof acceptable to the division and the commission of the licensee having:

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

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

(c) After the 30-day period described in Subsection (2)(b), and until six months after the [~~expiration date~~] day on which an active or inactive license expires, the license may be reinstated by:

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

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

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

(B) on a subject determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

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

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

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

(d) After the six-month period described in Subsection (2)(c), and until one year after the [~~expiration date~~] day on which an active or inactive license expires, the license may be reinstated by:

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

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

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

(B) on a subject determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

HB0332S01 compared with HB0332

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

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

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

(e) The division shall relicense a person who does not renew that person's license within one year as prescribed for an original application.

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

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

and

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

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

chapter.

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

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

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

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

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

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

Section ~~5~~6. Section **61-2f-205** is amended to read:

61-2f-205. Form of license -- Display of license.

(1) The division shall issue to a licensee a wall license that contains:

(a) the name and address of the licensee;

(b) the seal of the state; and

(c) any other matter prescribed by the division.

HB0332S01 compared with HB0332

(2) The division shall send, by mail or email, the license described in Subsection (1) to the licensee at the mailing address or email address furnished by the licensee.

(3) A principal broker shall keep the license of the principal broker and the license of any associate broker or sales agent affiliated with the principal broker in the office in which the licensee works to be made available on request.

Section ~~61-2f-7~~7. Section **61-2f-208** is enacted to read:

61-2f-208. Surrender of license.

(1) The division may, by written agreement, accept the voluntary surrender of a license issued under this chapter.

(2) Tender and acceptance of a voluntary surrender of a license under Subsection (1):

(a) does not prevent the division from pursuing additional action, including disciplinary action, that relates to the surrendered license and is authorized by this chapter or by rules made under this chapter; and

(b) terminates all rights and privileges associated with the license.

(3) A person may restore the rights and privileges described in Subsection (2)(b) only if the person reapplies for, and is granted, licensure in accordance with the requirements described in this chapter.

(4) Any documentation relating to the tender and acceptance of a voluntary surrender is a public record.

Section ~~61-2f-8~~8. Section **61-2f-308** is amended to read:

61-2f-308. Brokerage agreements.

(1) As used in this section:

(a) "Brokerage agreement" means a written agreement between a client and a principal broker:

(i) (A) to list for sale, lease, or exchange, real estate, an option on real estate, or an improvement on real estate; or

(B) for representation in the purchase, lease, or exchange of real estate, an option on real estate, or an improvement on real estate; and

(ii) that gives the principal broker the expectation of receiving valuable consideration in exchange for the principal broker's services.

~~(a)~~ (b) "Client" means a person who makes an exclusive brokerage agreement with a

HB0332S01 compared with HB0332

principal broker under Subsection (1)~~(e)~~(d).

~~(b)~~ (c) "Closed" means that:

(i) the documents required to be executed under the contract are executed;

(ii) the money required to be paid by either party under the contract is paid in the form of collected or cleared funds;

(iii) the proceeds of any new loan are delivered by the lender to the seller; and

(iv) the applicable documents are recorded in the office of the county recorder for the county in which the real estate is located.

~~(e)~~ (d) "Exclusive brokerage agreement" means a ~~[written agreement between a client and a principal broker: (i) (A) to list for sale, lease, or exchange: (I) real estate; (II) an option on real estate; or (III) an improvement on real estate; or (B) for representation in the purchase, lease, or exchange of: (I) real estate; (II) an option on real estate; or (III) an improvement on real estate; (ii)]~~ brokerage agreement that gives the principal broker the sole right to act as the agent or representative of the client for the purchase, sale, lease, or exchange of~~[:]~~ real estate, an option on real estate, or an improvement on real estate.

~~[(A) real estate;]~~

~~[(B) an option on real estate; or]~~

~~[(C) an improvement on real estate; and]~~

~~[(iii) that gives the principal broker the expectation of receiving valuable consideration in exchange for the principal broker's services.]~~

(2) (a) Except as provided in Subsection (2)(b), a principal broker subject to an exclusive brokerage agreement shall:

(i) accept delivery of and present to the client offers and counteroffers to buy, lease, or exchange the client's real estate;

(ii) assist the client in developing, communicating, and presenting offers, counteroffers, and notices; and

(iii) answer any question the client has concerning:

(A) an offer;

(B) a counteroffer;

(C) a notice; and

(D) a contingency.

HB0332S01 compared with HB0332

(b) A principal broker subject to an exclusive brokerage agreement need not comply with Subsection (2)(a) after:

(i) (A) an agreement for the sale, lease, or exchange of the real estate, option on real estate, or improvement on real estate is signed;

(B) the contingencies related to the sale, lease, or exchange are satisfied or waived; and

(C) the sale, lease, or exchange is closed; or

(ii) the exclusive brokerage agreement expires or terminates.

(3) A principal broker who violates this section is subject to Sections 61-2f-404 and 61-2f-405.

(4) (a) Subject to Subsection (4)(b), a principal broker who represents a buyer may directly contact a seller who is subject to a brokerage agreement or an exclusive brokerage agreement if:

(i) the seller's principal broker gives the buyer's principal broker written authorization;

or

(ii) subject to Subsection (4)(c), the seller gives the buyer's principal broker written authorization.

(b) If a buyer's principal broker obtains a written authorization described in Subsection (4)(a), the buyer's principal broker may contact the seller directly to:

(i) discuss items related to a real estate transaction between the buyer and the seller;

(ii) provide the seller with blank state-approved forms; and

(iii) negotiate the terms of a real estate transaction between the buyer and the seller.

(c) A buyer's principal broker may not solicit from a seller a written authorization described in Subsection (4)(a)(ii).

(5) A principal broker who, in accordance with Subsection (4), engages in the conduct described in Subsection (4)(b) is not, by that conduct, representing that the principal broker is acting on behalf of both the buyer and the seller.

Section ~~8~~9. Section **61-2f-402** is amended to read:

61-2f-402. Investigations.

(1) The division may make an investigation within or outside of this state as the division considers necessary to determine whether a person has violated, is violating, or is about to violate this chapter or any rule or order under this chapter.

HB0332S01 compared with HB0332

(2) To aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter, the division may require or permit a person to file a statement in writing, under oath or otherwise as to the facts and circumstances concerning the matter to be investigated.

(3) For the purpose of the investigation described in Subsection (1), the division or an employee designated by the division may:

(a) administer an oath or affirmation;

(b) subpoena witnesses and evidence;

(c) take evidence;

(d) require the production of a book, paper, contract, record, other document, or information relevant to the investigation; and

(e) serve a subpoena by certified mail.

(4) (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 (4)(a) when due, the person's license, certification, or 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.

(5) (a) Except as provided in Subsection (5)(b), the division shall commence a disciplinary action under this chapter no later than the earlier of the following:

(i) four years after the day on which the ~~unprofessional or unlawful conduct~~ violation is reported to the division; or

(ii) 10 years after the day on which the ~~unprofessional or unlawful conduct~~ violation occurred.

(b) The division may commence a disciplinary action ~~under this chapter~~ after the time period described in Subsection (5)(a) expires if:

(i) (A) the disciplinary action is in response to a civil or criminal judgment or settlement; and

(B) the division initiates the disciplinary action no later than one year after the day on

HB0332S01 compared with HB0332

which the judgment is issued or the settlement is final; or

(ii) the division and the person subject to a disciplinary action enter into a written stipulation to extend the time period described in Subsection (5)(a).

Section ~~9~~10. Section **61-2f-406** is amended to read:

61-2f-406. Grounds for revocation of principal broker's license.

(1) ~~[(a)]~~ An unlawful act or violation of this chapter committed by a person listed in Subsection ~~[(1)(b)]~~ (2) is cause for:

~~[(i)]~~ (a) the revocation, suspension, or probation of a principal broker's license; or

~~[(ii)]~~ (b) the imposition of a fine against the principal broker in an amount not to exceed \$5,000 per violation.

~~[(b)]~~ (2) Subsection (1)~~[(a)]~~ applies to an act or violation by any of the following:

~~[(i)]~~ (a) a sales agent or associate broker employed by a principal broker;

~~[(ii)]~~ (b) a sales agent or associate broker engaged as an independent contractor by or on behalf of a principal broker; or

~~[(iii)]~~ (c) an employee, officer, or member of a principal broker.

~~[(2)(a)]~~ The revocation or suspension of a principal broker license automatically inactivates an associate broker or sales agent license granted to an individual by reason of that individual's affiliation with the principal broker whose license is revoked or suspended, pending a change of principal broker affiliation.]

~~[(b)]~~ A principal broker shall, before the effective date of a suspension or revocation of the principal broker's license, notify in writing every licensee affiliated with the principal broker of the revocation or suspension of the principal broker license.]

Section ~~10~~11. Section **61-2f-410** is enacted to read:

61-2f-410. Effect of expiration, revocation, or suspension -- Notice required.

(1) (a) The revocation or suspension of a principal broker license automatically inactivates an associate broker license or a sales agent license that was issued based upon the licensee's affiliation with the principal broker whose license is revoked or suspended, pending a change of principal broker affiliation.

(b) If an individual's associate broker license or sales agent license becomes inactive under Subsection (1)(a), the individual may affiliate with another principal broker licensed under this chapter.

HB0332S01 compared with HB0332

(2) Before the day on which a suspension or revocation of a principal broker's license is effective, the principal broker shall notify, in writing, each licensee affiliated with the principal broker:

- (a) that the principal broker's license will be revoked or suspended;
- (b) of the day on which the revocation or suspension is effective; and
- (c) that the licensee's license will be inactive beginning on the day on which the principal broker's license is revoked or suspended.

(3) If a principal broker fails to timely renew the principal broker's license in accordance with this chapter, on the day on which the principal broker's license expires, the principal broker shall notify, in writing, each licensee affiliated with the principal broker:

- (a) that the principal broker's license is expired;
- (b) of the day on which the principal broker's license expired; and
- (c) that the licensee's license is inactive beginning on the day on which the principal broker's license expired.

Section ~~411~~12. Section **61-2g-102** is amended to read:

61-2g-102. Definitions.

(1) As used in this chapter:

(a) (i) "Appraisal" means an 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, 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

HB0332S01 compared with HB0332

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.

(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) "Credential" means a state-issued registration, license, or certification that allows an

HB0332S01 compared with HB0332

individual to perform any act or service that requires licensure or certification under this chapter.

~~[(f)]~~ ~~(k)~~ "Division" means the Division of Real Estate of the Department of Commerce.

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

~~[(k)]~~ ~~(m)~~ "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.

~~[(f)]~~ ~~(n)~~ "Real estate" means an identified parcel or tract of land including improvements if any.

~~[(m)]~~ ~~(o)~~ "Real estate appraisal activity" means the act or process of making an appraisal of real estate or real property and preparing an appraisal report.

~~[(m)]~~ ~~(p)~~ "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)]~~ ~~(q)~~ "Real property" means one or more defined interests, benefits, or rights inherent in the ownership of real estate.

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

~~[(q)]~~ ~~(s)~~ "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)]~~ ~~(t)~~ "State-licensed appraiser" means a person who holds a current, valid license as a state-licensed appraiser issued under this chapter.

~~[(s)]~~ ~~(u)~~ "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

HB0332S01 compared with HB0332

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

~~[(t)]~~ (v) "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 ~~{12}~~ 13. Section **61-2g-205** is amended to read:

61-2g-205. Duties of board.

(1) (a) The board shall provide technical assistance to the division relating to real estate appraisal standards and real estate appraiser qualifications.

(b) The board has the powers and duties listed in this section.

(2) The board shall:

(a) determine the experience and education requirements appropriate for a person licensed under this chapter;

(b) determine the experience and education requirements appropriate for a person certified under this chapter:

(i) in compliance with the minimum requirements of Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

(ii) consistent with the intent of this chapter;

(c) determine the appraisal related acts that may be performed by:

(i) a trainee on the basis of the trainee's education and experience;

(ii) clerical staff; and

(iii) a person who:

(A) does not hold a license or certification; and

(B) assists an appraiser licensed or certified under this chapter in providing appraisal services or consultation services;

HB0332S01 compared with HB0332

(d) determine the procedures for a trainee to register and to renew a registration with the division; and

(e) develop one or more programs to upgrade and improve the experience, education, and examinations as required under this chapter.

(3) ~~[(a)]~~ The experience and education requirements ~~[established]~~ determined by the board for a person licensed or certified under this chapter shall ~~[be]~~ meet or exceed the minimum criteria established by the Appraisal Qualification Board ~~[, unless, after notice and a public hearing held in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board finds that the minimum criteria are not appropriate for a state-licensed appraiser or a state-certified appraiser in this state].~~

~~[(b) If under Subsection (3)(a) the board makes a finding that the minimum criteria are not appropriate, the board shall recommend appropriate criteria to the Legislature.]~~

(4) The board shall:

(a) determine the continuing education requirements appropriate for the renewal of a license, certification, or registration issued under this chapter ~~[:]~~ ~~[except that the continuing education requirements established by the board shall at least]~~ that meet or exceed the minimum criteria established by the Appraisal Qualification Board;

(b) develop one or more programs to upgrade and improve continuing education; and

(c) recommend to the division one or more available continuing education courses that meet the requirements of this chapter.

(5) (a) The board shall consider the proper interpretation or explanation of the Uniform Standards of Professional Appraisal Practice as required by Section 61-2g-403 when:

(i) an interpretation or explanation is necessary in the enforcement of this chapter; and

(ii) the Appraisal Standards Board of the Appraisal Foundation has not issued an interpretation or explanation.

(b) If the conditions of Subsection (5)(a) are met, the board shall recommend to the division the appropriate interpretation or explanation that the division should adopt as a rule under this chapter.

(c) The board may by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and Section 61-2g-403, and with the concurrence of the division, provide for an exemption from a provision of the Uniform Standards of Professional

HB0332S01 compared with HB0332

Appraisal Practice for an activity engaged in on behalf of a governmental entity.

(6) (a) The board shall conduct an administrative hearing, not delegated by the board to an administrative law judge, in connection with a disciplinary proceeding under Section 61-2g-504 concerning:

(i) a person required to be licensed, certified, or registered under this chapter; and
(ii) the person's failure to comply with this chapter and the Uniform Standards of Professional Appraisal Practice as adopted under Section 61-2g-403.

(b) The board, with the concurrence of the division, shall issue in an administrative hearing a decision that contains findings of fact and conclusions of law.

(c) When a determination is made that a person required to be licensed, certified, or registered under this chapter has violated this chapter, the division shall implement disciplinary action determined through concurrence of the board and the division.

(7) A member of the board is immune from a civil action or criminal prosecution for a disciplinary proceeding concerning a person required to be registered, licensed, certified, or approved as an expert under this chapter if the action is taken without malicious intent and in the reasonable belief that the action taken was taken pursuant to the powers and duties vested in a member of the board under this chapter.

(8) (a) The board shall require and pass upon proof necessary to determine the honesty, competency, integrity, ~~and~~ truthfulness, and general fitness to command the confidence of the community of an applicant for:

~~(a)~~ (i) original licensure, certification, or registration; and

~~(b)~~ (ii) renewal licensure, certification, or registration.

(b) The board may delegate to the division the authority to:

(i) review a class or category of applications for an original or renewed license, certification, or registration;

(ii) determine whether an applicant meets the qualifications for licensure, certification, or registration;

(iii) conduct any necessary hearing on an application for an original or renewed license, certification, or registration; and

(iv) approve or deny an application for an original or renewed license, certification, or registration.

HB0332S01 compared with HB0332

(c) Except as provided in Subsections (8)(d) and (e), and in accordance with Title 63G, Chapter 4, Administrative Procedures Act, an applicant who is denied licensure, certification, or registration under this chapter may submit a request for agency review to the executive director of the division within 30 days after the day on which the board issues the order denying the applicant's application.

(d) If the board delegates to the division the authority to approve or deny an application without the concurrence of the board under Subsection (8)(b), and the division denies an application for licensure, certification, or registration, the applicant may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, petition the board for a de novo review of the application within 30 days after the day on which the division issues the order denying the applicant's application.

(e) If the board denies an applicant's application for licensure, certification, or registration after a de novo review under Subsection (8)(c), the applicant may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, petition the executive director for review of the board's denial within 30 days after the day on which the board issues the order denying the applicant's application.

Section ~~{13}~~14. Section **61-2g-302** is amended to read:

61-2g-302. Registration as trainee.

(1) ~~[(a)]~~ An individual ~~[is required to]~~ shall register with the division as a trainee before the individual acts in the capacity of a trainee ~~[earning]~~ or earns experience for licensure.

~~[(b)]~~ (2) Subject to Subsection (2), the board, with the concurrence of the division, shall ~~[adopt]~~ make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for:

~~[(+)]~~ (a) the trainee registration required ~~[by this]~~ under Subsection (1); and

~~[(ii)]~~ (b) renewal of ~~[the]~~ a trainee registration ~~[required by this Subsection (1)].~~

~~[(2)(a) An individual applying to register as a trainee under this chapter shall:]~~

~~[(i) submit a fingerprint card in a form acceptable to the division at the time of applying for registration; and]~~

~~[(ii) consent to a criminal background check by:]~~

~~[(A) the Utah Bureau of Criminal Identification; and]~~

HB0332S01 compared with HB0332

~~[(B) the Federal Bureau of Investigation.]~~

~~[(b) The division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for an applicant through a national criminal history system.]~~

~~[(c) The applicant shall pay the cost of:]~~

~~[(i) the fingerprinting required by this section; and]~~

~~[(ii) the criminal background check required by this section.]~~

~~[(d) (i) A registration as a trainee under this chapter is conditional pending completion of the criminal background check required by this Subsection (2).]~~

~~[(ii) A registration is immediately and automatically revoked if a criminal background check discloses that the applicant fails to accurately disclose a criminal history involving:]~~

~~[(A) the appraisal industry; or]~~

~~[(B) a felony conviction on the basis of an allegation of fraud, misrepresentation, or deceit.]~~

~~[(iii) If a criminal background check discloses that an applicant fails to accurately disclose a criminal history other than one described in Subsection (2)(d)(ii), the division shall review the application, and in accordance with rules made by the division pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may:]~~

~~[(A) place one or more conditions on a registration;]~~

~~[(B) place one or more restrictions on a registration;]~~

~~[(C) revoke a registration; or]~~

~~[(D) refer the application to the board for a decision.]~~

~~[(iv) An individual whose conditional registration is automatically revoked under Subsection (2)(d)(ii) or whose registration is conditioned, restricted, or revoked under Subsection (2)(d)(iii) may appeal the action in a hearing conducted by the board:]~~

~~[(A) after the action is taken; and]~~

~~[(B) in accordance with Title 63G, Chapter 4, Administrative Procedures Act.]~~

~~[(v) The board may delegate to the division or an administrative law judge the authority to conduct a hearing described in Subsection (2)(d)(iv).]~~

~~[(vi) Relief from an automatic revocation under Subsection (2)(d)(ii) may be granted only if:]~~

HB0332S01 compared with HB0332

~~[(A) the criminal history upon which the division bases the revocation did not occur or is the criminal history of another person;]~~

~~[(B) the revocation is based on a failure to accurately disclose a criminal history, and the applicant has a reasonable good faith belief at the time of application that there was no criminal history to be disclosed; or]~~

~~[(C) the division fails to follow the prescribed procedure for the revocation.]~~

~~[(e) If a registration is revoked or a revocation is upheld after a hearing described in Subsection (2)(d)(iv), the individual may not apply for a new registration for a period of 12 months after the day on which the registration is revoked.]~~

~~[(f) The board may delegate to the division the authority to make a decision on whether relief from a revocation should be granted.]~~

~~[(g) Money paid by an applicant for the cost of the criminal background check is nonlapsing.]~~

Section ~~{14}~~15. Section **61-2g-304.5** is enacted to read:

61-2g-304.5. Background checks.

(1) (a) An individual applying for licensure, certification, or registration under this chapter shall:

(i) submit, with the individual's application, a fingerprint card in a form acceptable to the division; and

(ii) consent to a criminal background check by:

(A) the Utah Bureau of Criminal Identification; and

(B) the Federal Bureau of Investigation.

(b) The division shall request that the Department of Public Safety complete a Federal Bureau of Investigation criminal background check for each applicant through the national criminal history system or any system that succeeds the national criminal history system.

(c) The applicant shall pay the cost of:

(i) the fingerprint card described in Subsection (1)(a)(i); and

(ii) a criminal background check.

(d) (i) A license, certification, or registration issued under this chapter is conditional pending completion of a criminal background check.

(ii) A license, certification, or registration issued under this chapter is immediately and

HB0332S01 compared with HB0332

automatically revoked if a criminal background check reveals that the applicant failed to accurately disclose a criminal history that:

(A) relates to the appraisal industry; or

(B) includes a felony conviction based on fraud, misrepresentation, or deceit.

(iii) If a criminal background check reveals that an applicant failed to accurately disclose a criminal history other than a type described in Subsection (2)(d)(ii), the division shall review the application and, in accordance with rules made by the division pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, may:

(A) place one or more conditions on the license, certification, or registration;

(B) place one or more restrictions on the license, certification, or registration;

(C) revoke the license, certification, or registration; or

(D) refer the application to the board for a decision.

(iv) An individual whose conditional license, certification, or registration is automatically revoked under Subsection (1)(d)(ii) or whose license, certification, or registration is conditioned, restricted, or revoked under Subsection (1)(d)(iii) may appeal the action in a hearing conducted by the board in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(v) The board may delegate to the division or an administrative law judge the authority to conduct a hearing described in Subsection (1)(d)(iv).

(vi) The board, the division, or an administrative law judge may reverse an automatic revocation under Subsection (1)(d)(ii) only if:

(A) the criminal history upon which the revocation was based did not occur or is the criminal history of another individual;

(B) at the time the applicant disclosed the applicant's criminal history, the applicant had a reasonable good faith belief that there was no criminal history to be disclosed; or

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

(e) (i) If an individual's conditional license, certification, or registration is revoked under Subsection (1)(d) and the individual does not appeal the revocation in accordance with Subsection (1)(d)(iv), the individual may not apply for a new certification, license, or registration under this chapter for a period of 12 months after the day on which the conditional license, certification, or registration is revoked.

HB0332S01 compared with HB0332

(ii) If an individual's conditional license, certification, or registration is revoked, the individual appeals that revocation in accordance with Subsection (1)(d)(iv), and the revocation is upheld, the individual may not apply for a new license, certification, or registration under this chapter for a period of 12 months after the day on which the decision from the appeal is issued.

(f) The board may delegate to the division the authority to make a decision on whether relief from a revocation should be granted.

(g) Money an applicant pays for the cost of the criminal background check is nonlapsing.

Section ~~15~~16. Section **61-2g-310** is amended to read:

61-2g-310. Reciprocal licensure.

(1) An applicant for licensure or certification in this state who is [~~licensed or certified~~] ~~credentialed~~ under the laws of any other state, territory, or district may obtain a [~~license or certification~~] reciprocal credential in this state [~~upon the terms and conditions determined by the division and the board, if, in the determination of the division and the board~~] if:

~~[(1) the state, territory, or the District of Columbia is considered to have substantially equivalent licensing laws for real estate appraisers;]~~

~~[(2) the laws of that state, territory, or the District of Columbia accord substantially equal reciprocal rights to a person licensed or certified and in good standing in this state; and]~~

~~[(3) 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.]~~

(a) the individual holds a current, valid credential issued by a state that, on the day on which the individual submits an application, is in compliance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as determined by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council; and

(b) the credentialing requirements of that state, that are in force on the day on which the individual submits an application, meet or exceed the credentialing requirements described in this chapter and the rules made under this chapter.

(2) An individual who holds a reciprocal credential described in Subsection (1) shall comply with all statutes and rules that govern the appraisal industry in this state, including requirements relating to:

HB0332S01 compared with HB0332

(a) the payment of fees; and

(b) continuing education.

Section ~~16~~17. Section 61-2g-311 is amended to read:

61-2g-311. State-licensed appraiser -- Authority and qualifications.

(1) A state-licensed appraiser is authorized to appraise complex and noncomplex 1-4 family residential units in this state having a transaction value permitted under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations.

(2) A state-licensed appraiser is authorized to appraise vacant or unimproved land having a transaction value permitted under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and related federal regulations that is utilized for 1-4 family purposes or for which the highest and best use is 1-4 family purposes and subdivisions for which a development analysis/appraisal is not necessary.

(3) A state-licensed appraiser may not issue a certified appraisal report.

(4) To qualify as a state-licensed appraiser, an applicant must:

(a) be of good moral character;

(b) demonstrate honesty, competency, integrity, ~~and~~ truthfulness, and general fitness to command the confidence of the community;

(c) pass the licensing examination with a satisfactory score as determined by the Appraisal Qualification Board;

(d) successfully complete ~~[not less than 150 classroom hours in courses of study that relate to:]~~ the educational requirements established by rule in accordance with Subsection (5);
and

~~[(i) real estate appraisal;]~~

~~[(ii) the Uniform Standards of Professional Appraisal Practice; and]~~

~~[(iii) ethical rules to be observed by a real estate appraiser as required by Section 61-2g-403; and]~~

(e) possess ~~[the minimum number of hours of]~~ the experience in real property appraisal ~~[as]~~ established by rule in accordance with Subsection (5).

~~[(5) The courses of study under Subsection (4)(d) shall be conducted by:]~~

~~[(a) a college or university;]~~

~~[(b) a community or junior college;]~~

HB0332S01 compared with HB0332

~~[(c) a real estate appraisal or real estate related organization;]~~

~~[(d) a state or federal agency or commission;]~~

~~[(e) a proprietary school;]~~

~~[(f) a provider approved by a state certification and licensing agency; or]~~

~~[(g) the Appraisal Foundation or its boards.]~~

(5) (a) The division shall, with the concurrence of the board, make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish:

(i) the educational requirements described in Subsection (4)(d); and

(ii) the experience in real property appraisal described in Subsection (4)(e).

(b) The educational and experience requirements established under Subsection (5)(a) shall meet or exceed the educational requirements and the hourly experience requirements adopted by the Appraisal Qualification Board.

Section ~~{17}~~18. Section **61-2g-312** is amended to read:

61-2g-312. State-certified appraisers -- Authority.

(1) A state-certified residential appraiser:

(a) is authorized to appraise the types of real estate [which] that a state-licensed appraiser is authorized to appraise[-];

~~[(2) A state-certified residential appraiser is also]~~

(b) is authorized to appraise 1-4 unit residential real estate without regard to transaction value or complexity[-]; and

~~[(3) A state-certified residential appraiser]~~

(c) is not authorized to appraise subdivisions for which a development analysis/appraisal is necessary.

~~[(4)] (2) A state-certified general appraiser is authorized to appraise all types of real estate and real property.~~

(3) A state-certified appraiser who satisfies all requirements described in this chapter and in rule made under this chapter may supervise trainees as allowed by rule.

Section ~~{18}~~19. Section **61-2g-313** is amended to read:

61-2g-313. State-certified residential appraiser -- Authority and qualifications.

(1) An applicant for certification as a residential appraiser shall provide to the division evidence of:

HB0332S01 compared with HB0332

(a) the applicant's good moral character, honesty, competency, integrity, ~~[and]~~ truthfulness, and general fitness to command the confidence of the community;

(b) completion of the certification examination with a satisfactory score as determined by the Appraisal Qualification Board;

~~[(c) (i) an associate degree or higher degree from an accredited:]~~

~~[(A) college;]~~

~~[(B) junior college;]~~

~~[(C) community college; or]~~

~~[(D) university; or]~~

~~[(ii) successfully passing a curriculum determined by rule of collegiate level subject matter courses from an accredited:]~~

~~[(A) college;]~~

~~[(B) junior college;]~~

~~[(C) community college; or]~~

~~[(D) university;]~~

~~[(d) satisfactory completion of not less than 200 classroom hours in a curriculum:]~~

~~[(i) of specific appraisal education determined by rule made by the board, with the concurrence of the division; and]~~

~~[(ii) that includes a course in the Uniform Standards of Professional Practice or its equivalent that is approved by the Appraisal Qualification Board;]~~

(c) completion of the educational requirements established by rule in accordance with Subsection (3); and

~~[(e)]~~ (d) ~~[the minimum number of hours of]~~ experience in real property appraisal as established by rule~~;~~ and in accordance with Subsection (3).

~~[(f) acquiring the experience required under Subsection (1)(e) within a reasonable period, as determined by rule, immediately preceding the filing of the application for certification.]~~

(2) Upon request by the division, an applicant shall make available to the division for examination:

(a) a detailed listing of the real estate appraisal reports or file memoranda ~~[for each year]~~ for which experience is claimed; and

HB0332S01 compared with HB0332

(b) a sample selected by the division of appraisal reports that the applicant has prepared in the course of the applicant's appraisal practice.

~~[(3) The classroom hours required by Subsection (1)(d) shall be provided by:]~~

~~[(a) a college or university;]~~

~~[(b) a community or junior college;]~~

~~[(c) a real estate appraisal or real estate related organization;]~~

~~[(d) a state or federal agency or commission;]~~

~~[(e) a proprietary school;]~~

~~[(f) a provider approved by a state certification and licensing agency; or]~~

~~[(g) the Appraisal Foundation or its boards.]~~

(3) (a) The division shall, with the concurrence of the board, make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish:

(i) the educational requirements described in Subsection (1)(c); and

(ii) the experience in real property appraisal described in Subsection (1)(d).

(b) The educational and experience requirements established under Subsection (3)(a) shall meet or exceed the educational requirements and the hourly experience requirements adopted by the Appraisal Qualification Board.

Section ~~{19}~~20. Section **61-2g-314** is amended to read:

61-2g-314. State-certified general appraiser -- Application -- Qualifications.

(1) An applicant for certification as a general appraiser shall provide to the division evidence of:

(a) the applicant's good moral character, honesty, competency, integrity, ~~[and]~~ truthfulness, and general fitness to command the confidence of the community;

(b) completion of the certification examination with a satisfactory score as determined by the Appraisal Qualification Board;

~~[(c) (i) a bachelors degree or higher degree from an accredited college or university; or]~~

~~[(ii) successfully passing a curriculum determined by rule of collegiate level subject matter courses from an accredited:]~~

~~[(A) college;]~~

~~[(B) junior college;]~~

~~[(C) community college; or]~~

HB0332S01 compared with HB0332

~~[(D) university;]~~

~~[(d) satisfactory completion of not less than 300 classroom hours in a curriculum;]~~

~~[(i) of specific appraisal education determined by rule; and]~~

~~[(ii) that includes a course in the Uniform Standards of Professional Practice or its equivalent that has been approved by the Appraisal Qualification Board;]~~

(c) completion of the educational requirements established by rule in accordance with Subsection (3); and

~~[(e)]~~ (d) ~~[the minimum number of hours of]~~ experience in real property appraisal as established by rule~~[-and]~~ in accordance with Subsection (3).

~~[(f) acquiring the experience required under Subsection (1)(e) within a reasonable period, as determined by rule, immediately preceding the filing of the application for certification.]~~

(2) Upon request by the division, an applicant shall make available to the division for examination:

(a) a detailed listing of the real estate appraisal reports or file memoranda ~~[for each year]~~ for which experience is claimed; and

(b) a sample selected by the division of appraisal reports that the applicant has prepared in the course of the applicant's appraisal practice.

~~[(3) The classroom hours required by Subsection (1)(d) shall be provided by:]~~

~~[(a) a college or university;]~~

~~[(b) a community or junior college;]~~

~~[(c) a real estate appraisal or real estate related organization;]~~

~~[(d) a state or federal agency or commission;]~~

~~[(e) a proprietary school;]~~

~~[(f) a provider approved by a state certification and licensing agency; or]~~

~~[(g) the Appraisal Foundation or its boards.]~~

(3) (a) The division shall, with the concurrence of the board, make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish:

(i) the educational requirements described in Subsection (1)(c); and

(ii) the experience in real property appraisal described in Subsection (1)(d).

(b) The educational and experience requirements established under Subsection (3)(a)

HB0332S01 compared with HB0332

shall meet or exceed the educational requirements and the hourly experience requirements adopted by the Appraisal Qualification Board.

Section ~~{20}~~21. Section **61-2g-316** is enacted to read:

61-2g-316. Surrender of license.

(1) The division may, by written agreement, accept the voluntary surrender of a license issued under this chapter.

(2) Tender and acceptance of a voluntary surrender of a license under Subsection (1):

(a) does not prevent the division from pursuing additional action, including disciplinary action, that relates to the surrendered license and is authorized by this chapter or by rules made under this chapter; and

(b) terminates all rights and privileges associated with the license.

(3) A person may restore the rights and privileges described in Subsection (2)(b) only if the person reapplies for, and is granted, licensure in accordance with the requirements described in this chapter.

(4) Any documentation relating to the tender and acceptance of a voluntary surrender is a public record.

†

Legislative Review Note

~~as of 2-3-14 8:08 AM~~

~~Office of Legislative Research and General Counsel;~~ Section 22. Section 61-2g-501 is amended to read:

61-2g-501. Enforcement -- Investigation -- Orders -- Hearings.

(1) (a) The division may investigate the actions of:

(i) a person registered, licensed, or certified under this chapter;

(ii) an applicant for registration, licensure, or certification;

(iii) an applicant for renewal of registration, licensure, or certification; or

(iv) a person required to be registered, licensed, or certified under this chapter.

HB0332S01 compared with HB0332

(b) The division may initiate an agency action against a person described in Subsection (1)(a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to:

(i) impose disciplinary action;

(ii) deny issuance to an applicant of:

(A) an original registration, license, or certification; or

(B) a renewal of a registration, license, or certification; or

(iii) issue a cease and desist order as provided in Subsection (3).

(2) (a) The division may:

(i) administer an oath or affirmation;

(ii) subpoena a witness or evidence;

(iii) take evidence; and

(iv) require the production of a book, paper, contract, record, document, information, or evidence relevant to the investigation described in Subsection (1).

(b) The division may serve a subpoena by certified mail.

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

(i) failing to respond to a subpoena as a witness;

(ii) withholding evidence; or

(iii) failing to produce a book, paper, contract, document, information, or record.

(d) (i) 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, information, or record required under this chapter, including the costs incurred to copy an electronic book, paper, contract, document, information, or record in a universally readable format.

(ii) If a person fails to pay the costs described in Subsection (2)(d)(i) when due, the person's license, certification, or registration is automatically suspended:

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

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

(3) (a) The director shall issue and serve upon a person an order directing that person to cease and desist from an act if:

(i) the director has reason to believe that the person has been engaging, is about to

HB0332S01 compared with HB0332

engage, or is engaging in the act constituting a violation of this chapter; and

(i) it appears to the director that it would be in the public interest to stop the act.

(b) Within 10 days after receiving the order, the person upon whom the order is served may request a hearing.

(c) Pending a hearing requested under Subsection (3)(b), a cease and desist order shall remain in effect.

(d) If a request for hearing is made, the division shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(4) (a) After a hearing requested under Subsection (3), if the board and division concur that an act of the person violates this chapter, the board, with the concurrence of the division:

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

(ii) may impose another disciplinary action under Section 61-2g-502.

(b) The director shall commence an action in the name of the Department of Commerce and Division of Real Estate, in the district court in the county in which an act described in Subsection (3) occurs or where the person resides or carries on business, to enjoin and restrain the person from violating this chapter if:

(i) (A) a hearing is not requested under Subsection (3); and

(B) the person fails to cease the act described in Subsection (3); or

(ii) after discontinuing the act described in Subsection (3), the person again commences the act.

(5) A remedy or action provided in this section does not limit, interfere with, or prevent the prosecution of another remedy or action, including a criminal proceeding.

(6) (a) Except as provided in Subsection (6)(b), the division, shall commence a disciplinary action under this chapter no later than the earlier of the following:

(i) four years after the day on which the violation is reported to the division; or

(ii) 10 years after the day on which the violation occurred.

(b) The division may commence a disciplinary action under this chapter after the time period described in Subsection (6)(a) expires if:

(i) (A) the disciplinary action is in response to a civil or criminal judgment or settlement; and

(B) the division initiates the disciplinary action no later than one year after the day on

HB0332S01 compared with HB0332

which the judgment is issued or the settlement is final; or

(ii) the division and the person subject to a disciplinary action enter into a written stipulation to extend the time period described in Subsection (6)(a).