

REAL ESTATE AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill amends provisions relating to real estate.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the licensure requirements and prohibited conduct for a person engaged in the business of residential mortgage loans;
- ▶ amends the qualifications for a lending manager license;
- ▶ addresses the lapse or cancellation of a management company's surety bond;
- ▶ modifies the recordkeeping requirements for an appraisal management company;
- ▶ clarifies and amends provisions relating to licensure requirements and unlawful conduct under the Real Estate Licensing and Practices Act; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

61-2c-102, as last amended by Laws of Utah 2014, Chapter 350



- 28 [61-2c-105](#), as last amended by Laws of Utah 2012, Chapter 212
 - 29 [61-2c-202](#), as last amended by Laws of Utah 2013, Chapter 292
 - 30 [61-2c-204.1](#), as last amended by Laws of Utah 2012, Chapter 166
 - 31 [61-2c-206](#), as last amended by Laws of Utah 2013, Chapter 292
 - 32 [61-2c-301](#), as last amended by Laws of Utah 2012, Chapter 166
 - 33 [61-2e-204](#), as last amended by Laws of Utah 2013, Chapter 292
 - 34 [61-2e-303](#), as enacted by Laws of Utah 2009, Chapter 269
 - 35 [61-2f-202](#), as last amended by Laws of Utah 2013, Chapter 292
 - 36 [61-2f-303](#), as renumbered and amended by Laws of Utah 2010, Chapter 379
 - 37 [61-2f-401](#), as last amended by Laws of Utah 2013, Chapter 412
-
-

38

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

40 Section 1. Section **61-2c-102** is amended to read:

41 **61-2c-102. Definitions.**

42 (1) As used in this chapter:

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

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

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

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

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

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

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

53 (i) licensed as a lending manager; and

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

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

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

- 59 chapter;
- 60 (ii) other than the main office of the licensed entity; and
- 61 (iii) that operates under:
- 62 (A) the same business name as the licensed entity; or
- 63 (B) another trade name that is registered with the division under the entity license.
- 64 (g) "Business day" means a day other than:
- 65 (i) a Saturday;
- 66 (ii) a Sunday; or
- 67 (iii) a federal or state holiday.
- 68 (h) (i) "Business of residential mortgage loans" means for compensation or in the
- 69 expectation of compensation to:
- 70 (A) engage in an act that makes an individual a mortgage loan originator;
- 71 (B) make or originate a residential mortgage loan;
- 72 (C) directly or indirectly solicit a residential mortgage loan for another;
- 73 (D) unless excluded under Subsection (1)(h)(ii), render services related to the
- 74 origination of a residential mortgage loan including:
- 75 (I) preparing a loan package;
- 76 (II) communicating with the borrower or lender;
- 77 (III) advising on a loan term;
- 78 (IV) acting as a loan processor or loan underwriter without being employed by a
- 79 licensed entity; or
- 80 (V) except as provided in Subsection (1)(h)(ii)(B) or (C), acting as a loan underwriter;
- 81 or
- 82 (E) engage in loan modification assistance.
- 83 (ii) "Business of residential mortgage loans" does not include:
- 84 (A) if working as an employee under the direction of and subject to the supervision and
- 85 instruction of a person licensed under this chapter, the performance of a clerical or support
- 86 duty, including:
- 87 (I) the receipt, collection, or distribution of information common for the processing or
- 88 underwriting of a loan in the mortgage industry other than taking an application;
- 89 (II) communicating with a consumer to obtain information necessary for the processing

90 or underwriting of a residential mortgage loan;

91 (III) word processing;

92 (IV) sending correspondence;

93 (V) assembling files; or

94 (VI) acting as a loan processor or loan underwriter;

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

96 licensed under this chapter;

97 (C) acting as a loan underwriter, as an employee of a depository institution, exclusively

98 in the capacity of the depository institution's employee;

99 (D) ownership of an entity that engages in the business of residential mortgage loans if

100 the owner does not personally perform the acts listed in Subsection (1)(h)(i);

101 (E) except if an individual will engage in an activity as a mortgage loan originator,

102 acting in one or more of the following capacities:

103 (I) a loan wholesaler;

104 (II) an account executive for a loan wholesaler;

105 (III) a loan underwriter;

106 (IV) a loan closer; or

107 (V) funding a loan; or

108 (F) if employed by a person who owns or services an existing residential mortgage

109 loan, the direct negotiation with the borrower for the purpose of loan modification.

110 (i) "Certified education provider" means a person who is certified under Section

111 [61-2c-204.1](#) to provide one or more of the following:

112 (i) Utah-specific prelicensing education; or

113 (ii) Utah-specific continuing education.

114 (j) "Closed-end" means a loan:

115 (i) with a fixed amount borrowed; and

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

117 (k) "Commission" means the Residential Mortgage Regulatory Commission created in

118 Section [61-2c-104](#).

119 (l) "Community development financial institution" means the same as that term is

120 defined in 12 U.S.C. Sec. 4702.

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

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

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

128 ~~(m)~~ (o) "Continuing education" means education taken by an individual licensed
129 under this chapter in order to meet the education requirements imposed by Sections
130 [61-2c-204.1](#) and [61-2c-205](#) to renew a license under this chapter.

131 ~~(o)~~ (p) "Control," as used in Subsection [61-2c-105\(2\)\(f\)](#), means the power to directly
132 or indirectly:

- 133 (i) direct or exercise a controlling interest over:
134 (A) the management or policies of an entity; or
135 (B) the election of a majority of the directors, officers, managers, or managing partners
136 of an entity;
137 (ii) vote 20% or more of a class of voting securities of an entity by an individual; or
138 (iii) vote more than 5% of a class of voting securities of an entity by another entity.

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

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

- 144 (A) a manager;
145 (B) a managing partner;
146 (C) a director;
147 (D) an executive officer; or
148 (E) an individual who performs a function similar to an individual listed in this
149 Subsection (1)~~(p)~~(q)(ii).

150 ~~(q)~~ (r) "Depository institution" ~~is as~~ means the same as that term is defined in
151 Section [7-1-103](#).

152 ~~[(r)]~~ (s) "Director" means the director of the division.
153 ~~[(s)]~~ (t) "Division" means the Division of Real Estate.
154 ~~[(t)]~~ (u) "Dwelling" means a residential structure attached to real property that contains
155 one to four units including any of the following if used as a residence:
156 (i) a condominium unit;
157 (ii) a cooperative unit;
158 (iii) a manufactured home; or
159 (iv) a house.
160 ~~[(u)]~~ (v) "Employee":
161 (i) means an individual:
162 (A) whose manner and means of work performance are subject to the right of control
163 of, or are controlled by, another person; and
164 (B) whose compensation for federal income tax purposes is reported, or is required to
165 be reported, on a W-2 form issued by the controlling person; and
166 (ii) does not include an independent contractor who performs duties other than at the
167 direction of, and subject to the supervision and instruction of, another person.
168 ~~[(v)]~~ (w) "Entity" means:
169 (i) a corporation;
170 (ii) a limited liability company;
171 (iii) a partnership;
172 (iv) a company;
173 (v) an association;
174 (vi) a joint venture;
175 (vii) a business trust;
176 (viii) a trust; or
177 (ix) another organization.
178 ~~[(w)]~~ (x) "Executive director" means the executive director of the Department of
179 Commerce.
180 ~~[(x)]~~ (y) "Federal licensing requirements" means Secure and Fair Enforcement for
181 Mortgage Licensing, 12 U.S.C. Sec. 5101 et seq.
182 ~~[(y)]~~ (z) "Foreclosure rescue" means, for compensation or with the expectation of

183 receiving valuable consideration, to:

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

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

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

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

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

189 (1)~~(y)~~(z)(i); or

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

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

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

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

197 ~~(cc)~~ (dd) "Licensing examination" means the examination required by Section
198 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

199 ~~(dd)~~ (ee) "Loan modification assistance" means, for compensation or with the
200 expectation of receiving valuable consideration, to:

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

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

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

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

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

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

208 (V) an addition of collateral;

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

210 (VII) an addition of a cosigner; or

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

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

214 (ii) as an employee or agent of another person:
215 (A) solicit, or offer that the other person will engage in an act described in Subsection
216 (1)~~(dd)~~(ee)(i); or
217 (B) negotiate terms in relationship to an act described in Subsection (1)~~(dd)~~(ee)(i).
218 ~~(ee)~~ (ff) (i) Except as provided in Subsection (1)~~(ee)~~(ff)(ii), "mortgage loan
219 originator" means an individual who for compensation or in expectation of compensation:
220 (A) (I) takes a residential mortgage loan application; or
221 (II) offers or negotiates terms of a residential mortgage loan for the purpose of:
222 (Aa) a purchase;
223 (Bb) a refinance;
224 (Cc) a loan modification assistance; or
225 (Dd) a foreclosure rescue; and
226 (B) is licensed as a mortgage loan originator in accordance with this chapter.
227 (ii) "Mortgage loan originator" does not include a person who:
228 (A) is described in Subsection (1)~~(ee)~~(ff)(i), but who performs exclusively
229 administrative or clerical tasks as described in Subsection (1)(h)(ii)(A);
230 (B) (I) is licensed under Chapter 2f, Real Estate Licensing and Practices Act;
231 (II) performs only real estate brokerage activities; and
232 (III) receives no compensation from:
233 (Aa) a lender;
234 (Bb) a lending manager; or
235 (Cc) an agent of a lender or lending manager; or
236 (C) is solely involved in extension of credit relating to a timeshare plan, as defined in
237 11 U.S.C. Sec. 101(53D).
238 ~~(ff)~~ (gg) "Nationwide database" means the Nationwide Mortgage Licensing System
239 and Registry, authorized under federal licensing requirements.
240 ~~(gg)~~ (hh) "Nontraditional mortgage product" means a mortgage product other than a
241 30-year fixed rate mortgage.
242 ~~(hh)~~ (ii) "Person" means an individual or entity.
243 ~~(ii)~~ (jj) "Prelicensing education" means education taken by an individual seeking to
244 be licensed under this chapter in order to meet the education requirements imposed by Section

245 [61-2c-204.1](#) or [61-2c-206](#) for an individual to obtain a license under this chapter.

246 ~~[(jj)]~~ (kk) "Principal lending manager" means an individual:

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

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

250 (ll) "Prospective borrower" means a person applying for a mortgage from a person who
251 is required to be licensed under this chapter.

252 ~~[(kk)]~~ (mm) "Record" means information that is:

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

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

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

256 (II) in a perceivable and reproducible form.

257 ~~[(H)]~~ (nn) "Referral fee":

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

260 (ii) does not ~~[mean]~~ include a payment made:

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

262 (B) under a contractual incentive program; ~~[and]~~

263 (C) for reasonable promotional and educational activities that is not conditioned on the
264 referral of business and is not used to pay expenses that a person in a position to refer

265 settlement services or business related to the settlement services would otherwise incur; and

266 ~~[(E)]~~ (D) according to rules made by the division in accordance with Title 63G,

267 Chapter 3, Utah Administrative Rulemaking Act.

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

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

270 (A) mortgage;

271 (B) deed of trust; or

272 (C) consensual security interest;

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

274 (1)~~[(mm)]~~(oo)(i):

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

276 (B) is created with the consent of the owner of the residential real property; and
277 (iii) solely for the purposes of defining "mortgage loan originator," the extension of
278 credit is primarily for personal, family, or household use.

279 (pp) "Settlement" means the time at which each of the following is complete:

280 (i) the borrower and, if applicable, the seller sign and deliver to each other or to the
281 escrow or closing office each document required by:

282 (A) the real estate purchase contract;

283 (B) the lender;

284 (C) the title insurance company;

285 (D) the escrow or closing office;

286 (E) the written escrow instructions; or

287 (F) applicable law;

288 (ii) the borrower delivers to the seller, if applicable, or to the escrow or closing office
289 any money, except for the proceeds of any new loan, that the borrower is required to pay; and

290 (iii) if applicable, the seller delivers to the buyer or to the escrow or closing office any
291 money that the seller is required to pay.

292 (qq) "Settlement services" means a service provided in connection with a real estate
293 settlement, including a title search, a title examination, the provision of a title certificate,
294 services related to title insurance, services rendered by an attorney, preparing documents, a
295 property survey, rendering a credit report or appraisal, a pest or fungus inspection, services
296 rendered by a real estate agent or broker, the origination of a federally related mortgage loan,
297 and the processing of a federally related mortgage.

298 ~~(rm)~~ (rr) "Sponsorship" means an association in accordance with Section 61-2c-209
299 between an individual licensed under this chapter and an entity licensed under this chapter.

300 ~~(so)~~ (ss) "State" means:

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

302 (ii) the District of Columbia; or

303 (iii) the Commonwealth of Puerto Rico.

304 ~~(pp)~~ (tt) "Unique identifier" ~~is as~~ means the same as that term is defined in 12
305 U.S.C. Sec. 5102.

306 ~~(qq)~~ (uu) "Utah-specific" means an educational or examination requirement under

307 this chapter that relates specifically to Utah.

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

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

313 Section 2. Section **61-2c-105** is amended to read:

314 **61-2c-105. Scope of chapter -- Exemptions.**

315 (1) (a) Except as to an individual who will engage in an activity as a mortgage loan
316 originator, this chapter applies to a closed-end residential mortgage loan secured by a first lien
317 or equivalent security interest on a dwelling.

318 (b) This chapter does not apply to a transaction covered by Title 70C, Utah Consumer
319 Credit Code.

320 (2) The following are exempt from this chapter:

321 (a) the federal government;

322 (b) a state;

323 (c) a political subdivision of a state;

324 (d) an agency of or entity created by a governmental entity described in Subsections

325 (2)(a) through (c) including:

326 (i) the Utah Housing Corporation created in Title 35A, Chapter 8, Part 7, Utah Housing
327 Corporation Act;

328 (ii) the Federal National Mortgage Corporation;

329 (iii) the Federal Home Loan Mortgage Corporation;

330 (iv) the Federal Deposit Insurance Corporation;

331 (v) the Resolution Trust Corporation;

332 (vi) the Government National Mortgage Association;

333 (vii) the Federal Housing Administration;

334 (viii) the National Credit Union Administration;

335 (ix) the Farmers Home Administration; and

336 (x) the United States Department of Veterans Affairs;

337 (e) a depository institution;

- 338 (f) an entity that controls, is controlled by, or is under common control with a
- 339 depository institution;
- 340 (g) an employee or agent of an entity described in Subsections (2)(a) through (f):
- 341 (i) when that person acts on behalf of the entity described in Subsections (2)(a) through
- 342 (f); and
- 343 (ii) including an employee of:
- 344 (A) a depository institution;
- 345 (B) a subsidiary of a depository institution that is:
- 346 (I) owned and controlled by the depository institution; and
- 347 (II) regulated by a federal banking agency, as defined in 12 U.S.C. Sec. 5102; or
- 348 (C) an institution regulated by the Farm Credit Administration;
- 349 (h) except as provided in Subsection (3), a person who:
- 350 (i) makes a loan:
- 351 (A) secured by an interest in real property;
- 352 (B) with the person's own money; and
- 353 (C) for the person's own investment; and
- 354 (ii) that does not engage in the business of making loans secured by an interest in real
- 355 property;
- 356 (i) except as provided in Subsection (3), a person who receives a mortgage, deed of
- 357 trust, or consensual security interest on real property if the individual or entity:
- 358 (i) is the seller of real property; and
- 359 (ii) receives the mortgage, deed of trust, or consensual security interest on real property
- 360 as security for a separate money obligation;
- 361 (j) a person who receives a mortgage, deed of trust, or consensual security interest on
- 362 real property if:
- 363 (i) the person receives the mortgage, deed of trust, or consensual security interest as
- 364 security for an obligation payable on an installment or deferred payment basis;
- 365 (ii) the obligation described in Subsection (2)(j)(i) arises from a person providing
- 366 materials or services used in the improvement of the real property that is the subject of the
- 367 mortgage, deed of trust, or consensual security interest; and
- 368 (iii) the mortgage, deed of trust, or consensual security interest is created without the

369 consent of the owner of the real property that is the subject of the mortgage, deed of trust, or
370 consensual security interest;

371 (k) a nonprofit corporation that:

372 (i) (A) is exempt from paying federal income taxes;

373 ~~[(ii)]~~ (B) is certified by the United States Small Business Administration as a small
374 business investment company;

375 ~~[(iii)]~~ (C) is organized to promote economic development in this state; and

376 ~~[(iv)]~~ (D) has as its primary activity providing financing for business expansion; or

377 (ii) is a community development financial institution;

378 (l) except as provided in Subsection (3), a court appointed fiduciary; or

379 (m) an attorney admitted to practice law in this state:

380 (i) if the attorney is not principally engaged in the business of negotiating residential
381 mortgage loans when considering the attorney's ordinary practice as a whole for all the
382 attorney's clients; and

383 (ii) when the attorney engages in loan modification assistance in the course of the
384 attorney's practice as an attorney.

385 (3) An individual who will engage in an activity as a mortgage loan originator is
386 exempt from this chapter only if the individual is an employee or agent exempt under
387 Subsection (2)(g).

388 (4) (a) Notwithstanding Subsection (2)(m), an attorney exempt from this chapter may
389 not engage in conduct described in Section [61-2c-301](#) when transacting business of residential
390 mortgage loans.

391 (b) If an attorney exempt from this chapter violates Subsection (4)(a), the attorney:

392 (i) is not subject to enforcement by the division under Part 4, Enforcement; and

393 (ii) may be subject to disciplinary action generally applicable to an attorney admitted to
394 practice law in this state.

395 (c) If the division receives a complaint alleging an attorney exempt from this chapter is
396 in violation of Subsection (4)(a) or that an attorney subject to this chapter has violated this
397 chapter, the division shall forward the complaint to the Utah State Bar for disciplinary action.

398 (5) (a) An individual who is exempt under Subsection (2) or (3) may voluntarily obtain
399 a license under this chapter by complying with Part 2, Licensure.

400 (b) An individual who voluntarily obtains a license pursuant to this Subsection (5)
401 shall comply with all the provisions of this chapter.

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

403 **61-2c-202. Licensure procedures.**

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

406 (a) if the applicant is an entity, submit:

407 (i) through the nationwide database, a licensure statement that:

408 ~~[(i)] (A) lists any name under which the entity will transact business in this state;~~

409 ~~[(ii)] (B) lists the address of the principal business location of the entity;~~

410 ~~[(iii) identifies the principal lending manager of the entity;]~~

411 ~~[(iv) contains the signature of the principal lending manager;]~~

412 ~~[(v) identifies the one or more control persons for the entity;]~~

413 ~~[(vi) identifies the jurisdictions in which the entity is registered, licensed, or otherwise
414 regulated in the business of residential mortgage loans;]~~

415 ~~[(vii) discloses any adverse administrative action taken by an administrative agency
416 against:]~~

417 ~~[(A) the entity; or]~~

418 ~~[(B) any control person for the entity;]~~

419 ~~[(viii) discloses any history of criminal proceedings involving any control person for
420 the entity; and]~~

421 (C) identifies each control person for the entity;

422 (D) identifies each jurisdiction in which the entity is registered, licensed, or otherwise
423 regulated in the business of residential mortgage loans;

424 (E) discloses any adverse administrative action taken by an administrative agency
425 against the entity or a control person for the entity; and

426 (F) discloses any history of criminal proceedings that involves a control person of the
427 entity; and

428 (ii) a notarized letter to the division that:

429 (A) is on the entity's letterhead;

430 (B) is signed by the entity's owner, director, or president;

431 (C) authorizes the principal lending manager to do business under the entity's name and
432 under each of the entity's licensed trade names, if any; and

433 [~~(ix)~~] (D) includes any information required by the division by rule;

434 (b) if the applicant is an individual:

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

437 (ii) authorize periodic criminal background checks through the nationwide database, at
438 times provided by rule that the division makes in accordance with Title 63G, Chapter 3, Utah
439 Administrative Rulemaking Act, accessing:

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

442 (B) the Federal Bureau of Investigation;

443 (iii) submit evidence using a method approved by the division by rule of having
444 successfully completed approved prelicensing education in accordance with Section
445 [61-2c-204.1](#);

446 (iv) submit evidence using a method approved by the division by rule of having
447 successfully passed any required licensing examination in accordance with Section
448 [61-2c-204.1](#);

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

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

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

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

457 (c) pay to the division:

458 (i) an application fee established by the division in accordance with Section [63J-1-504](#);
459 and

460 (ii) the reasonable expenses incurred by the division in processing the application for
461 licensure.

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

- 464 (i) meets the qualifications for licensure; and
- 465 (ii) complies with this section.

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

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

- 472 (i) hold the application pending further information about an applicant's criminal
473 background or history related to adverse administrative action in any jurisdiction; or
- 474 (ii) issue a conditional license:
 - 475 (A) pending the completion of a criminal background check; and
 - 476 (B) subject to probation, suspension, or revocation if the criminal background check
477 reveals that the applicant did not truthfully or accurately disclose on the licensing application a
478 criminal history or other history related to adverse administrative action.

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

- 480 (i) review a class or category of application for an initial or renewed license;
- 481 (ii) determine whether an applicant meets the qualifications for licensure;
- 482 (iii) conduct a necessary hearing on an application; and
- 483 (iv) approve or deny a license application without concurrence by the commission.

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

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

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

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

495 Section 4. Section **61-2c-204.1** is amended to read:

496 **61-2c-204.1. Education providers -- Education requirements -- Examination**
497 **requirements.**

498 (1) As used in this section:

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

501 (b) "Approved prelicensing education course" means a course of prelicensing education
502 that is approved by the nationwide database or by the division.

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

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

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

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

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

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

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

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

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

517 or

518 (ii) approve:

519 (A) Utah-specific prelicensing education; or

520 (B) Utah-specific continuing education courses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

557 (ii) meet the minimum federal licensing requirements; and
558 (iii) are administered by an approved examination provider.

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

561 (i) a licensing examination that at least:

562 (A) meets the minimum federal licensing requirements; and
563 (B) tests knowledge of the:

564 (I) fundamentals of the English language;
565 (II) arithmetic;
566 (III) provisions of this chapter;
567 (IV) rules adopted under this chapter;
568 (V) basic residential mortgage principles and practices; and
569 (VI) any other aspect of Utah law the commission determines is appropriate; and

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

571 (A) meets the requirements of Subsection (4)(b)(i); and
572 (B) tests knowledge of the:

573 (I) advanced residential mortgage principles and practices; and
574 (II) other aspects of Utah law the commission, with the concurrence of the division,
575 determines appropriate.

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

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

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

- 586 (i) for a period not to exceed four years; and
587 (ii) upon a finding of reasonable cause.
- 588 (b) An individual who engages in an activity as a mortgage loan originator may not
589 under this Subsection (6) be exempted from the minimum continuing education required under
590 federal licensing regulations for an individual who engages in an activity as a mortgage loan
591 originator.

592 Section 5. Section **61-2c-206** is amended to read:

593 **61-2c-206. Lending manager licenses.**

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

596 (a) meet the standards in Section [61-2c-203](#);

597 (b) successfully complete the following education:

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

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

602 (c) successfully complete the following examinations:

603 (i) the mortgage loan originator licensing examination, including the national and state
604 components, as approved by the nationwide database; and

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

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

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

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

614 (g) submit to the criminal background check required by Subsection [61-2c-202\(1\)\(b\)](#);

615 and

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

617 (2) A lending manager may not:

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

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

621 (c) act simultaneously as the principal lending manager and branch lending manager
622 for the individual's sponsoring entity, [~~if the entity operates from more than one office.~~] unless:

623 (i) the sponsoring entity does not originate Utah residential mortgage loans from the
624 sponsoring entity's location; and

625 (ii) the sponsoring entity originates Utah residential mortgage loans from no more than
626 one branch location.

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

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

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

633 Section 6. Section **61-2c-301** is amended to read:

634 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

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

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

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

640 (i) that is excessive; or

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

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

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

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

648 (d) do any of the following [~~to induce a lender to extend credit~~] as part of a residential
649 mortgage loan transaction, regardless of whether the residential mortgage loan closes:

650 (i) make a false statement or representation;

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

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

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

659 (f) violate or not comply with:

660 (i) this chapter;

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

662 (iii) a rule made by the division;

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

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

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

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

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

671 (i) appraiser;

672 (ii) escrow agent;

673 (iii) real estate agent;

674 (iv) general contractor; or

675 (v) title insurance producer;

676 [~~(j) order a title insurance report or hold a title insurance policy unless the person~~
677 ~~provides to the title insurer a copy of a valid, current license under this chapter;~~]

678 [~~(k)~~] (j) engage in unprofessional conduct as defined by rule;

679 ~~[(t)]~~ (k) engage in an act or omission in transacting the business of residential mortgage
 680 loans that constitutes dishonesty, fraud, or misrepresentation;

681 ~~[(m)]~~ (l) engage in false or misleading advertising;

682 ~~[(n)]~~ (m) (i) fail to account for money received in connection with a residential
 683 mortgage loan;

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

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

688 ~~[(o) fail, within 90 calendar days of a request from a borrower who has paid for an
 689 appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower,]~~

690 (n) fail to provide a prospective borrower a copy of each appraisal and any other
 691 written valuation developed in connection with an application for credit that is to be secured by
 692 a first lien on a dwelling in accordance with Subsection (5);

693 ~~[(p)]~~ (o) engage in an act that is performed to:

694 (i) evade this chapter; or

695 (ii) assist another person to evade this chapter;

696 ~~[(q)]~~ (p) recommend or encourage default, delinquency, or continuation of an existing
 697 default or delinquency, by a mortgage applicant on an existing indebtedness before the closing
 698 of a residential mortgage loan that will refinance all or part of the indebtedness;

699 ~~[(r)]~~ (q) in the case of the lending manager of an entity or a branch office of an entity,
 700 fail to exercise reasonable supervision over the activities of:

701 (i) unlicensed staff; ~~[and]~~ or

702 (ii) a mortgage loan originator who is affiliated with the lending manager;

703 ~~[(s)]~~ (r) pay or offer to pay an individual who does not hold a license under this chapter
 704 for work that requires the individual to hold a license under this chapter;

705 ~~[(t)]~~ (s) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

706 (i) provide a title insurance product or service without the approval required by Section
 707 31A-2-405; or

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

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

- 713 (i) advertising;
- 714 (ii) a business card;
- 715 (iii) stationery;
- 716 (iv) a brochure;
- 717 (v) a sign;
- 718 (vi) a rate list; or
- 719 (vii) other promotional item; or

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

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

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

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

729 (A) a written offer for a loan modification from the person's lender or servicer; and

730 (B) the person's written acceptance of the offer from the lender or servicer;

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

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

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

736 (I) a government agency;

737 (II) the person's lender or loan servicer; or

738 (III) a nonprofit or charitable institution;

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

740 (A) transfer title to real property to the licensee or to a third-party with whom the

741 licensee has a business relationship or financial interest;

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

743 (C) refrain from contacting the person's:

744 (I) lender;

745 (II) loan servicer;

746 (III) attorney;

747 (IV) credit counselor; or

748 (V) housing counselor; or

749 (vii) for an agreement for loan modification assistance entered into on or after May 11,

750 2010, engage in an act of loan modification assistance without offering in writing to the person

751 entering into the agreement for loan modification assistance a right to cancel the agreement

752 within three business days after the day on which the person enters the agreement.

753 (2) Whether or not the crime is related to the business of residential mortgage loans, it

754 is a violation of this chapter for a licensee or a person who is a certified education provider to

755 do any of the following with respect to a criminal offense that involves moral turpitude:

756 (a) be convicted;

757 (b) plead guilty or nolo contendere;

758 (c) enter a plea in abeyance; or

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

760 (2)(a) through (c).

761 (3) A lending manager does not violate Subsection (1)~~(r)~~(q) if:

762 (a) in contravention of the lending manager's written policies and instructions, an

763 affiliated licensee of the lending manager violates:

764 (i) this chapter; or

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

766 (b) the lending manager established and followed reasonable procedures to ensure that

767 affiliated licensees receive adequate supervision;

768 (c) upon learning of a violation by an affiliated licensee, the lending manager

769 attempted to prevent or mitigate the damage;

770 (d) the lending manager did not participate in or ratify the violation by an affiliated

771 licensee; and

772 (e) the lending manager did not attempt to avoid learning of the violation.

773 (4) Notwithstanding Subsection (1)~~(m)~~(m)(iii), a licensee may, upon compliance with
774 Section [70D-2-305](#), charge a reasonable cancellation fee for work done originating a mortgage
775 if the mortgage is not closed.

776 (5) (a) Except as provided in Subsection (5)(b), a person transacting the business of
777 residential mortgage loans in this state shall provide a prospective borrower a copy of each
778 appraisal and any other written valuation developed in connection with an application for credit
779 that is to be secured by a first lien on a dwelling on or before the earlier of:

780 (i) as soon as reasonably possible after the appraisal or other valuation is complete; or

781 (ii) three business days before the day of the settlement.

782 (b) Subject to Subsection (5)(c), unless otherwise prohibited by law, a prospective
783 borrower may waive the timing requirement described in Subsection (5)(a) and agree to receive
784 each appraisal and any other written valuation:

785 (i) less than three business days before the day of the settlement; or

786 (ii) at the settlement.

787 (c) (i) Except as provided in Subsection (5)(c)(ii), a prospective borrower shall submit
788 a waiver described in Subsection (5)(b) at least three business days before the day of the
789 settlement.

790 (ii) Subsection (5)(b) does not apply if the waiver only pertains to a copy of an
791 appraisal or other written valuation that contains only clerical changes from a previous version
792 of the appraisal or other written valuation and the prospective borrower received a copy of the
793 original appraisal or other written valuation at least three business days before the day of the
794 settlement.

795 (d) If a prospective borrower submits a waiver described in Subsection (5)(b) and the
796 transaction never completes, the person transacting the business of residential mortgage loans
797 shall provide a copy of each appraisal or any other written valuation to the applicant no later
798 than 30 days after the day on which the person knows the transaction will not complete.

799 Section 7. Section **61-2e-204** is amended to read:

800 **61-2e-204. Renewal of a registration.**

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

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

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

808 (a) file with the division a renewal registration application on a form prescribed by the
809 division;

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

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

815 (3) (a) An appraisal management company's registration is immediately and
816 automatically suspended if:

817 (i) the appraisal management company's surety bond lapses or is cancelled during the
818 time period described in Subsection (1); and

819 (ii) the appraisal management company fails to obtain or reinstate a surety bond within
820 30 days after the day on which the surety bond lapses or is cancelled.

821 (b) To reinstate a registration suspended under Subsection (3)(a), the appraisal
822 company shall provide evidence to the division that the appraisal company is in compliance
823 with the surety bond requirement described in this section.

824 ~~[(3)]~~ (4) A renewal registration application shall include substantially similar
825 information to the information required under Section 61-2e-202, except that for an individual
826 described in Subsection 61-2e-202(2)(e) or (g), the entity is required to report whether the
827 individual has had:

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

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

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

831 (A) a diversion agreement; or

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

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

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

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

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

841 (ii) on the basis of:

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

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

844 ~~[(4)]~~ (5) A registration expires if it is not renewed on or before its expiration date,
845 except that for a period of one year after the expiration date, the registration may be reinstated
846 upon compliance with this section, including payment of a renewal fee and a late fee
847 determined by the division and the board.

848 ~~[(5)]~~ (6) Notwithstanding Subsection ~~[(4)]~~ (5), the division may extend the term of a
849 license that would expire under Subsection ~~[(4)]~~ (5) except for the extension if:

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

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

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

855 Section 8. Section **61-2e-303** is amended to read:

856 **61-2e-303. Recordkeeping.**

857 (1) An appraisal management company required to be registered under this chapter
858 shall:

859 (a) maintain a detailed record of the following for the same time period an appraiser is
860 required to maintain an appraisal record for the same real estate appraisal activity:

861 ~~[(a)]~~ (i) a real estate appraisal activity request that the appraisal management company
862 receives; and

863 ~~[(b)]~~ (ii) the appraiser that performs the real estate appraisal activity described in
864 Subsection (1) for the appraisal management company~~[-];~~ and

865 (b) retain for at least five years any file reviewed by the appraisal management
866 company in accordance with Section 61-2e-302 and any documents that relate to the review,
867 including:

- 868 (i) the appraisal;
869 (ii) any documentation of the review; and
870 (iii) any correspondence that relates to the review.

871 (2) As part of the registration process under Part 2, Registration, an appraisal
872 management company shall biennially provide an explanation of its recordkeeping described in
873 Subsection (1) in the form prescribed by the division.

874 Section 9. Section **61-2f-202** is amended to read:

875 **61-2f-202. Exempt persons and transactions.**

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

- 878 (i) an individual who as owner or lessor performs an act described in Subsection
879 61-2f-102(18) with reference to real estate owned or leased by that individual;
- 880 (ii) a regular salaried employee of the owner or lessor of real estate who, with reference
881 to nonresidential real estate owned or leased by the employer, performs an act described in
882 Subsection 61-2f-102(18)(a) or (b);
- 883 (iii) a regular salaried employee of the owner of real estate who performs property
884 management services with reference to real estate owned by the employer, except that the
885 employee may only manage real estate for one employer;
- 886 (iv) an individual who performs property management services for the apartments at
887 which that individual resides in exchange for free or reduced rent on that individual's
888 apartment;
- 889 (v) a regular salaried employee of a condominium homeowners' association who
890 manages real estate subject to the declaration of condominium that established the
891 condominium homeowners' association, except that the employee may only manage real estate
892 for one condominium homeowners' association; and
- 893 (vi) a regular salaried employee of a licensed property management company or real
894 estate brokerage who performs support services, as prescribed by rule, for the property
895 management company or real estate brokerage.

- 896 (b) Subsection (1)(a) does not exempt from licensing:
- 897 (i) an employee engaged in the sale of real estate regulated under:
- 898 (A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; or
- 899 (B) Title 57, Chapter 19, Timeshare and Camp Resort Act;
- 900 (ii) an employee engaged in the sale of cooperative interests regulated under Title 57,
- 901 Chapter 23, Real Estate Cooperative Marketing Act; or
- 902 (iii) an individual whose interest as an owner or lessor is obtained by that individual or
- 903 transferred to that individual for the purpose of evading the application of this chapter, and not
- 904 for another legitimate business reason.
- 905 (2) A license under this chapter is not required for:
- 906 (a) an isolated transaction or service by an individual holding a duly executed power of
- 907 attorney from a property owner;
- 908 (b) services rendered by an attorney admitted to practice law in this state in performing
- 909 the attorney's duties as an attorney;
- 910 (c) a receiver, trustee in bankruptcy, administrator, executor, or an individual acting
- 911 under order of a court;
- 912 (d) a trustee or employee of a trustee under a deed of trust or a will;
- 913 (e) a public utility, officer of a public utility, or regular salaried employee of a public
- 914 utility, unless performance of an act described in Subsection [61-2f-102](#)(18) is in connection
- 915 with the sale, purchase, lease, or other disposition of real estate or investment in real estate
- 916 unrelated to the principal business activity of that public utility;
- 917 (f) a regular salaried employee or authorized agent working under the oversight of the
- 918 Department of Transportation when performing an act on behalf of the Department of
- 919 Transportation in connection with one or more of the following:
- 920 (i) the acquisition of real estate pursuant to Section [72-5-103](#);
- 921 (ii) the disposal of real estate pursuant to Section [72-5-111](#);
- 922 (iii) services that constitute property management; or
- 923 (iv) the leasing of real estate; and
- 924 (g) a regular salaried employee of a county, city, or town when performing an act on
- 925 behalf of the county, city, or town:
- 926 (i) in accordance with:

- 927 (A) if a regular salaried employee of a city or town:
- 928 (I) Title 10, Utah Municipal Code; or
- 929 (II) Title 11, Cities, Counties, and Local Taxing Units; and
- 930 (B) if a regular salaried employee of a county:
- 931 (I) Title 11, Cities, Counties, and Local Taxing Units; and
- 932 (II) Title 17, Counties; and
- 933 (ii) in connection with one or more of the following:
- 934 (A) the acquisition of real estate, including by eminent domain;
- 935 (B) the disposal of real estate;
- 936 (C) services that constitute property management; or
- 937 (D) the leasing of real estate.
- 938 (3) A license under this chapter is not required for an individual registered to act as a
- 939 broker-dealer, agent, or investment adviser under the Utah and federal securities laws in the
- 940 sale or the offer for sale of real estate if:
- 941 (a) (i) the real estate is a necessary element of a "security" as that term is defined by the
- 942 Securities Act of 1933 and the Securities Exchange Act of 1934; and
- 943 (ii) the security is registered for sale in accordance with:
- 944 (A) the Securities Act of 1933; or
- 945 (B) Title 61, Chapter 1, Utah Uniform Securities Act; or
- 946 (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec.
- 947 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation
- 948 D, Rule 506, 17 C.F.R. Sec. 230.506; and
- 949 (ii) the selling agent and the purchaser are not residents of this state.
- 950 (4) As used in this section, "owner" does not include:
- 951 (a) a person who holds an option to purchase real property;
- 952 (b) a mortgagee;
- 953 (c) a beneficiary under a deed of trust;
- 954 (d) a trustee under a deed of trust; or
- 955 (e) a person who owns or holds a claim that encumbers any real property or an
- 956 improvement to the real property.
- 957 Section 10. Section **61-2f-303** is amended to read:

958 **61-2f-303. Sale agents or associate broker -- Affiliated with principal broker as**
959 **independent contractors or employees -- Presumption.**

960 (1) (a) A sales agent or associate broker may be affiliated with a principal broker either
961 as an independent contractor or as an employee.

962 (b) The relationship between sales agent or associate broker and principal broker is
963 presumed to be an independent contractor relationship unless there is clear and convincing
964 evidence that the relationship was intended by the parties to be an employer employee
965 relationship.

966 (2) The presumption of an independent contractor relationship extends to all of the
967 duties and services that the sales agent or associate broker performs, including the preparation
968 and receipt of payment for a broker price opinion.

969 Section 11. Section **61-2f-401** is amended to read:

970 **61-2f-401. Grounds for disciplinary action.**

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

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

974 (b) making an intentional misrepresentation;

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

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

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

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

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

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

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

988 (4) (a) failing, within a reasonable time, to account for or to remit money that belongs

989 to another and comes into the person's possession;

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

991 or

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

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

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

997 (b) as provided under:

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

999 (ii) Title 16, Chapter 11, Professional Corporation Act; or

1000 (iii) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, or Title 48,
1001 Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to
1002 Section [48-3a-1405](#);

1003 (6) for a principal broker, paying or offering to pay a sales agent or associate broker
1004 who is not affiliated with the principal broker at the time the sales agent or associate broker
1005 earned the compensation;

1006 [~~6~~] (7) being incompetent to act as a principal broker, associate broker, or sales agent
1007 in such manner as to safeguard the interests of the public;

1008 [~~7~~] (8) failing to voluntarily furnish a copy of a document to the parties before and
1009 after the execution of a document;

1010 [~~8~~] (9) failing to keep and make available for inspection by the division a record of
1011 each transaction, including:

1012 (a) the names of buyers and sellers or lessees and lessors;

1013 (b) the identification of real estate;

1014 (c) the sale or rental price;

1015 (d) money received in trust;

1016 (e) agreements or instructions from buyers and sellers or lessees and lessors; and

1017 (f) any other information required by rule;

1018 [~~9~~] (10) failing to disclose, in writing, in the purchase, sale, or rental of real estate,
1019 whether the purchase, sale, or rental is made for that person or for an undisclosed principal;

1020 [~~(10)~~] (11) being convicted of a criminal offense involving moral turpitude within five
1021 years of the most recent application:

1022 (a) regardless of whether the criminal offense is related to real estate; and

1023 (b) including:

1024 (i) a conviction based upon a plea of nolo contendere; or

1025 (ii) a plea held in abeyance to a criminal offense involving moral turpitude;

1026 [~~(11)~~] (12) advertising the availability of real estate or the services of a licensee in a
1027 false, misleading, or deceptive manner;

1028 [~~(12)~~] (13) in the case of a principal broker or a licensee who is a branch manager,
1029 failing to exercise reasonable supervision over the activities of the principal broker's or branch
1030 manager's licensed or unlicensed staff;

1031 [~~(13)~~] (14) violating or disregarding:

1032 (a) this chapter;

1033 (b) an order of the commission; or

1034 (c) the rules adopted by the commission and the division;

1035 [~~(14)~~] (15) breaching a fiduciary duty owed by a licensee to the licensee's principal in a
1036 real estate transaction;

1037 [~~(15)~~] (16) any other conduct which constitutes dishonest dealing;

1038 [~~(16)~~] (17) unprofessional conduct as defined by statute or rule;

1039 [~~(17)~~] (18) having one of the following suspended, revoked, surrendered, or cancelled
1040 on the basis of misconduct in a professional capacity that relates to character, honesty,
1041 integrity, or truthfulness:

1042 (a) a real estate license, registration, or certificate issued by another jurisdiction; or

1043 (b) another license, registration, or certificate to engage in an occupation or profession
1044 issued by this state or another jurisdiction;

1045 [~~(18)~~] (19) failing to respond to a request by the division in an investigation authorized
1046 under this chapter, including:

1047 (a) failing to respond to a subpoena;

1048 (b) withholding evidence; or

1049 (c) failing to produce documents or records;

1050 [~~(19)~~] (20) in the case of a dual licensed title licensee as defined in Section [31A-2-402](#):

- 1051 (a) providing a title insurance product or service without the approval required by
1052 Section 31A-2-405; or
- 1053 (b) knowingly providing false or misleading information in the statement required by
1054 Subsection 31A-2-405(2);
- 1055 [~~(20)~~] (21) violating an independent contractor agreement between a principal broker
1056 and a sales agent or associate broker as evidenced by a final judgment of a court; [~~or~~]
- 1057 [~~(21)~~] (22) (a) engaging in an act of loan modification assistance that requires licensure
1058 as a mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing
1059 Act, without being licensed under that chapter;
- 1060 (b) engaging in an act of foreclosure rescue without entering into a written agreement
1061 specifying what one or more acts of foreclosure rescue will be completed;
- 1062 (c) inducing a person who is at risk of foreclosure to hire the licensee to engage in an
1063 act of foreclosure rescue by:
- 1064 (i) suggesting to the person that the licensee has a special relationship with the person's
1065 lender or loan servicer; or
- 1066 (ii) falsely representing or advertising that the licensee is acting on behalf of:
- 1067 (A) a government agency;
- 1068 (B) the person's lender or loan servicer; or
- 1069 (C) a nonprofit or charitable institution; or
- 1070 (d) recommending or participating in a foreclosure rescue that requires a person to:
- 1071 (i) transfer title to real estate to the licensee or to a third-party with whom the licensee
1072 has a business relationship or financial interest;
- 1073 (ii) make a mortgage payment to a person other than the person's loan servicer; or
- 1074 (iii) refrain from contacting the person's:
- 1075 (A) lender;
- 1076 (B) loan servicer;
- 1077 (C) attorney;
- 1078 (D) credit counselor; or
- 1079 (E) housing counselor[?];
- 1080 (23) as a principal broker, placing a lien on real property, unless authorized by law; or
- 1081 (24) as a sales agent or associate broker, placing a lien on real property for an unpaid

1082 commission or other compensation related to real estate brokerage services.

Legislative Review Note
as of 1-30-15 2:59 PM

Office of Legislative Research and General Counsel