

Representative Gage Froerer proposes the following substitute bill:

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:



26 AMENDS:

- 27 **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

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 ~~(t)~~ (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 ~~(n)~~ (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 ~~[(it)]~~ (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 a payment made]~~ include:
261 ~~[(A) by a licensed entity to an individual employed by the entity;]~~
262 ~~[(B) under a contractual incentive program; and]~~
263 ~~[(C) according to rules made by the division in accordance with Title 63G, Chapter 3,~~
264 ~~Utah Administrative Rulemaking Act.]~~

265 (A) a payment made by a licensed entity to an individual employed by the entity under
266 a contractual incentive program according to rules made by the division in accordance with
267 Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

268 (B) a payment made for reasonable promotional and educational activities that is not
269 conditioned on the referral of business and is not used to pay expenses that a person in a
270 position to refer settlement services or business related to the settlement services would
271 otherwise incur.

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

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

- 274 (A) mortgage;
- 275 (B) deed of trust; or
- 276 (C) consensual security interest;
- 277 (ii) the mortgage, deed of trust, or consensual security interest described in Subsection

278 (1)~~(mm)~~(oo)(i):

- 279 (A) is on a dwelling located in the state; and
- 280 (B) is created with the consent of the owner of the residential real property; and
- 281 (iii) solely for the purposes of defining "mortgage loan originator," the extension of
- 282 credit is primarily for personal, family, or household use.

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

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

286 (A) the real estate purchase contract;

287 (B) the lender;

288 (C) the title insurance company;

289 (D) the escrow or closing office;

290 (E) the written escrow instructions; or

291 (F) applicable law;

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

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

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

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

304 ~~(oo)~~ (ss) "State" means:

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

306 (ii) the District of Columbia; or

307 (iii) the Commonwealth of Puerto Rico.

308 ~~[(pp)]~~ (tt) "Unique identifier" ~~[is as]~~ means the same as that term is defined in 12

309 U.S.C. Sec. 5102.

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

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

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

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

318 **61-2c-105. Scope of chapter -- Exemptions.**

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

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

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

325 (a) the federal government;

326 (b) a state;

327 (c) a political subdivision of a state;

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

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

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

332 (ii) the Federal National Mortgage Corporation;

333 (iii) the Federal Home Loan Mortgage Corporation;

334 (iv) the Federal Deposit Insurance Corporation;

335 (v) the Resolution Trust Corporation;

- 336 (vi) the Government National Mortgage Association;
- 337 (vii) the Federal Housing Administration;
- 338 (viii) the National Credit Union Administration;
- 339 (ix) the Farmers Home Administration; and
- 340 (x) the United States Department of Veterans Affairs;
- 341 (e) a depository institution;
- 342 (f) an entity that controls, is controlled by, or is under common control with a
- 343 depository institution;
- 344 (g) an employee or agent of an entity described in Subsections (2)(a) through (f):
- 345 (i) when that person acts on behalf of the entity described in Subsections (2)(a) through
- 346 (f); and
- 347 (ii) including an employee of:
- 348 (A) a depository institution;
- 349 (B) a subsidiary of a depository institution that is:
- 350 (I) owned and controlled by the depository institution; and
- 351 (II) regulated by a federal banking agency, as defined in 12 U.S.C. Sec. 5102; or
- 352 (C) an institution regulated by the Farm Credit Administration;
- 353 (h) except as provided in Subsection (3), a person who:
- 354 (i) makes a loan:
- 355 (A) secured by an interest in real property;
- 356 (B) with the person's own money; and
- 357 (C) for the person's own investment; and
- 358 (ii) that does not engage in the business of making loans secured by an interest in real
- 359 property;
- 360 (i) except as provided in Subsection (3), a person who receives a mortgage, deed of
- 361 trust, or consensual security interest on real property if the individual or entity:
- 362 (i) is the seller of real property; and
- 363 (ii) receives the mortgage, deed of trust, or consensual security interest on real property
- 364 as security for a separate money obligation;
- 365 (j) a person who receives a mortgage, deed of trust, or consensual security interest on
- 366 real property if:

367 (i) the person receives the mortgage, deed of trust, or consensual security interest as
368 security for an obligation payable on an installment or deferred payment basis;

369 (ii) the obligation described in Subsection (2)(j)(i) arises from a person providing
370 materials or services used in the improvement of the real property that is the subject of the
371 mortgage, deed of trust, or consensual security interest; and

372 (iii) the mortgage, deed of trust, or consensual security interest is created without the
373 consent of the owner of the real property that is the subject of the mortgage, deed of trust, or
374 consensual security interest;

375 (k) a nonprofit corporation that:

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

377 ~~[(iv)]~~ (B) is certified by the United States Small Business Administration as a small
378 business investment company;

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

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

381 (ii) is a community development financial institution;

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

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

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

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

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

392 (4) (a) Notwithstanding Subsection (2)(m), an attorney exempt from this chapter may
393 not engage in conduct described in Section 61-2c-301 when transacting business of residential
394 mortgage loans.

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

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

397 (ii) may be subject to disciplinary action generally applicable to an attorney admitted to

398 practice law in this state.

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

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

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

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

407 **61-2c-202. Licensure procedures.**

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

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

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

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

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

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

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

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

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

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

421 ~~[(A) the entity, or]~~

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

423 ~~[(viii) discloses any history of criminal proceedings involving any control person for
424 the entity, and]~~

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

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

428 (E) discloses any adverse administrative action taken by an administrative agency

429 against the entity or a control person for the entity; and
430 (F) discloses any history of criminal proceedings that involves a control person of the
431 entity; and
432 (ii) a notarized letter to the division that:
433 (A) is on the entity's letterhead;
434 (B) is signed by the entity's owner, director, or president;
435 (C) authorizes the principal lending manager to do business under the entity's name and
436 under each of the entity's licensed trade names, if any; and
437 [(ix)] (D) includes any information required by the division by rule;
438 (b) if the applicant is an individual:
439 (i) submit a licensure statement that identifies the entity with which the applicant is
440 sponsored;
441 (ii) authorize periodic criminal background checks through the nationwide database, at
442 times provided by rule that the division makes in accordance with Title 63G, Chapter 3, Utah
443 Administrative Rulemaking Act, accessing:
444 (A) the Utah Bureau of Criminal Identification, if the nationwide database is able to
445 obtain information from the Utah Bureau of Criminal Identification; and
446 (B) the Federal Bureau of Investigation;
447 (iii) submit evidence using a method approved by the division by rule of having
448 successfully completed approved prelicensing education in accordance with Section
449 [61-2c-204.1](#);
450 (iv) submit evidence using a method approved by the division by rule of having
451 successfully passed any required licensing examination in accordance with Section
452 [61-2c-204.1](#);
453 (v) submit evidence using a method approved by the division by rule of having
454 successfully registered in the nationwide database, including paying a fee required by the
455 nationwide database; and
456 (vi) authorize the division to obtain independent credit reports:
457 (A) through a consumer reporting agency described in Section 603(p) of the Fair Credit
458 Reporting Act, 15 U.S.C. Sec. 1681a; and
459 (B) at times provided by rule that the division makes in accordance with Title 63G,

460 Chapter 3, Utah Administrative Rulemaking Act; and

461 (c) pay to the division:

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

463 and

464 (ii) the reasonable expenses incurred by the division in processing the application for
465 licensure.

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

468 (i) meets the qualifications for licensure; and

469 (ii) complies with this section.

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

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

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

478 (ii) issue a conditional license:

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

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

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

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

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

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

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

488 (b) If the commission delegates to the division the authority to approve or deny an
489 application without concurrence by the commission and the division denies an application for
490 licensure, the applicant who is denied licensure may petition the commission for a de novo

491 review of the application.

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

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

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

500 **61-2c-204.1. Education providers -- Education requirements -- Examination**
501 **requirements.**

502 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

521 or

- 522 (ii) approve:
- 523 (A) Utah-specific prelicensing education; or
- 524 (B) Utah-specific continuing education courses.
- 525 (3) (a) The division may not:
- 526 (i) license an individual under this chapter as a mortgage loan originator who has not
- 527 completed the prelicensing education required by this section:
- 528 (A) before taking the one or more licensing examinations required by Subsection (4);
- 529 (B) in the number of hours, not to exceed 90 hours, required by rule made by the
- 530 division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
- 531 (C) that includes the prelicensing education required by federal licensing regulations;
- 532 (ii) subject to Subsection (6), renew a license of an individual who has not completed
- 533 the continuing education required by this section and Section 61-2c-205:
- 534 (A) in the number of hours required by rule made by the division in accordance with
- 535 Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
- 536 (B) that includes the continuing education required by federal licensing regulations; or
- 537 (iii) license an individual under this chapter as a lending manager who has not
- 538 completed the prelicensing education required by Section 61-2c-206 before taking the licensing
- 539 examination required by Section 61-2c-206.
- 540 (b) Subject to Subsection (3)(a) and with the concurrence of the division, the
- 541 commission shall determine:
- 542 (i) except as provided in Subsection 61-2c-206(1)(b), the appropriate number of hours
- 543 of prelicensing education required to obtain a license;
- 544 (ii) the subject matters of the prelicensing education required under this section and
- 545 Section 61-2c-206, including online education or distance learning options;
- 546 (iii) the appropriate number of hours of continuing education required to renew a
- 547 license; and
- 548 (iv) the subject matter of courses the division may accept for continuing education
- 549 purposes.
- 550 (c) The commission may appoint a committee to make recommendations to the
- 551 commission concerning approval of prelicensing education and continuing education courses,
- 552 except that the commission shall appoint at least one member to the committee to represent

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

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

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

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

561 (ii) meet the minimum federal licensing requirements; and

562 (iii) are administered by an approved examination provider.

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

565 (i) a licensing examination that at least:

566 (A) meets the minimum federal licensing requirements; and

567 (B) tests knowledge of the:

568 (I) fundamentals of the English language;

569 (II) arithmetic;

570 (III) provisions of this chapter;

571 (IV) rules adopted under this chapter;

572 (V) basic residential mortgage principles and practices; and

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

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

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

576 (B) tests knowledge of the:

577 (I) advanced residential mortgage principles and practices; and

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

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

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

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

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

590 (i) for a period not to exceed four years; and

591 (ii) upon a finding of reasonable cause.

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

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

597 **61-2c-206. Lending manager licenses.**

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

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

601 (b) successfully complete the following education:

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

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

606 (c) successfully complete the following examinations:

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

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

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

615 Utah Administrative Rulemaking Act;

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

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

618 (g) submit to the criminal background check required by Subsection 61-2c-202(1)(b);

619 and

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

621 (2) A lending manager may not:

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

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

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

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

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

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

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

633 and

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

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

638 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

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

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

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

644 (i) that is excessive; or

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

646 applicant:

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

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

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

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

654 (i) make a false statement or representation;

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

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

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

663 (f) violate or not comply with:

664 (i) this chapter;

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

666 (iii) a rule made by the division;

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

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

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

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

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

672 engage in the business of residential mortgage loans with respect to the transaction if the

673 person also acts in any of the following capacities with respect to the same residential mortgage
674 loan transaction:

675 (i) appraiser;

676 (ii) escrow agent;

677 (iii) real estate agent;

678 (iv) general contractor; or

679 (v) title insurance producer;

680 ~~[(j) order a title insurance report or hold a title insurance policy unless the person~~

681 ~~provides to the title insurer a copy of a valid, current license under this chapter;]~~

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

683 ~~[(h)]~~ (k) engage in an act or omission in transacting the business of residential mortgage

684 loans that constitutes dishonesty, fraud, or misrepresentation;

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

686 ~~[(n)]~~ (m) (i) fail to account for money received in connection with a residential

687 mortgage loan;

688 (ii) use money for a different purpose from the purpose for which the money is

689 received; or

690 (iii) except as provided in Subsection (4), retain money paid for services if the services

691 are not performed;

692 ~~[(o) fail, within 90 calendar days of a request from a borrower who has paid for an~~

693 ~~appraisal, to give a copy of an appraisal ordered and used for a transaction to the borrower;]~~

694 (n) fail to provide a prospective borrower a copy of each appraisal and any other

695 written valuation developed in connection with an application for credit that is to be secured by

696 a first lien on a dwelling in accordance with Subsection (5);

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

698 (i) evade this chapter; or

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

700 ~~[(q)]~~ (p) recommend or encourage default, delinquency, or continuation of an existing

701 default or delinquency, by a mortgage applicant on an existing indebtedness before the closing

702 of a residential mortgage loan that will refinance all or part of the indebtedness;

703 ~~[(r)]~~ (q) in the case of the lending manager of an entity or a branch office of an entity,

704 fail to exercise reasonable supervision over the activities of:

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

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

707 ~~[(s)]~~ (r) pay or offer to pay an individual who does not hold a license under this chapter

708 for work that requires the individual to hold a license under this chapter;

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

710 (i) provide a title insurance product or service without the approval required by Section

711 31A-2-405; or

712 (ii) knowingly provide false or misleading information in the statement required by

713 Subsection 31A-2-405(2);

714 ~~[(t)]~~ (t) represent to the public that the person can or will perform any act of a

715 mortgage loan originator if that person is not licensed under this chapter because the person is

716 exempt under Subsection 61-2c-102(1)(h)(ii)(A), including through:

717 (i) advertising;

718 (ii) a business card;

719 (iii) stationery;

720 (iv) a brochure;

721 (v) a sign;

722 (vi) a rate list; or

723 (vii) other promotional item; or

724 ~~[(v)]~~ (u) (i) engage in an act of loan modification assistance without being licensed

725 under this chapter;

726 (ii) engage in an act of foreclosure rescue that requires licensure as a real estate agent

727 or real estate broker under Chapter 2, Division of Real Estate, without being licensed under

728 that chapter;

729 (iii) engage in an act of loan modification assistance without entering into a written

730 agreement specifying which one or more acts of loan modification assistance will be

731 completed;

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

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

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

735 (v) induce a person seeking a loan modification to hire the licensee to engage in an act

736 of loan modification assistance by:

737 (A) suggesting to the person that the licensee has a special relationship with the

738 person's lender or loan servicer; or

- 739 (B) falsely representing or advertising that the licensee is acting on behalf of:
740 (I) a government agency;
741 (II) the person's lender or loan servicer; or
742 (III) a nonprofit or charitable institution;
743 (vi) recommend or participate in a loan modification that requires a person to:
744 (A) transfer title to real property to the licensee or to a third-party with whom the
745 licensee has a business relationship or financial interest;
746 (B) make a mortgage payment to a person other than the person's loan servicer; or
747 (C) refrain from contacting the person's:
748 (I) lender;
749 (II) loan servicer;
750 (III) attorney;
751 (IV) credit counselor; or
752 (V) housing counselor; or
753 (vii) for an agreement for loan modification assistance entered into on or after May 11,
754 2010, engage in an act of loan modification assistance without offering in writing to the person
755 entering into the agreement for loan modification assistance a right to cancel the agreement
756 within three business days after the day on which the person enters the agreement.
- 757 (2) Whether or not the crime is related to the business of residential mortgage loans, it
758 is a violation of this chapter for a licensee or a person who is a certified education provider to
759 do any of the following with respect to a criminal offense that involves moral turpitude:
760 (a) be convicted;
761 (b) plead guilty or nolo contendere;
762 (c) enter a plea in abeyance; or
763 (d) be subjected to a criminal disposition similar to the ones described in Subsections
764 (2)(a) through (c).
- 765 (3) A lending manager does not violate Subsection (1)~~(r)~~(q) if:
766 (a) in contravention of the lending manager's written policies and instructions, an
767 affiliated licensee of the lending manager violates:
768 (i) this chapter; or
769 (ii) rules made by the division under this chapter;

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

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

774 (d) the lending manager did not participate in or ratify the violation by an affiliated
775 licensee; and

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

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

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

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

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

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

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

790 (ii) at the settlement.

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

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

799 (d) If a prospective borrower submits a waiver described in Subsection (5)(b) and the
800 transaction never completes, the person transacting the business of residential mortgage loans

801 shall provide a copy of each appraisal or any other written valuation to the applicant no later
802 than 30 days after the day on which the person knows the transaction will not complete.

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

804 **61-2e-204. Renewal of a registration.**

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

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

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

812 (a) file with the division a renewal registration application on a form prescribed by the
813 division;

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

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

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

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

823 (ii) the appraisal management company fails to obtain or reinstate a surety bond within
824 30 days after the day on which the surety bond lapses or is cancelled.

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

828 ~~(3)~~ (4) A renewal registration application shall include substantially similar
829 information to the information required under Section [61-2e-202](#), except that for an individual
830 described in Subsection [61-2e-202](#)(2)(e) or (g), the entity is required to report whether the
831 individual has had:

832 (a) (i) a conviction of a criminal offense;
833 (ii) the entry of a plea in abeyance to a criminal offense; or
834 (iii) the potential resolution of a criminal case by:
835 (A) a diversion agreement; or
836 (B) another agreement under which a criminal charge is held in suspense for a period
837 of time;

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

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

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

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

845 (ii) on the basis of:

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

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

848 ~~[(4)]~~ (5) A registration expires if it is not renewed on or before its expiration date,
849 except that for a period of one year after the expiration date, the registration may be reinstated
850 upon compliance with this section, including payment of a renewal fee and a late fee
851 determined by the division and the board.

852 ~~[(5)]~~ (6) Notwithstanding Subsection ~~[(4)]~~ (5), the division may extend the term of a
853 license that would expire under Subsection ~~[(4)]~~ (5) except for the extension if:

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

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

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

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

860 **61-2e-303. Recordkeeping.**

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

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

865 [(a)] (i) a real estate appraisal activity request that the appraisal management company
866 receives; and

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

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

872 (i) the appraisal;

873 (ii) any documentation of the review; and

874 (iii) any correspondence that relates to the review.

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

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

879 **61-2f-202. Exempt persons and transactions.**

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

882 (i) an individual who as owner or lessor performs an act described in Subsection
883 61-2f-102(18) with reference to real estate owned or leased by that individual;

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

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

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

893 (v) a regular salaried employee of a condominium homeowners' association who

894 manages real estate subject to the declaration of condominium that established the
895 condominium homeowners' association, except that the employee may only manage real estate
896 for one condominium homeowners' association; and

897 (vi) a regular salaried employee of a licensed property management company or real
898 estate brokerage who performs support services, as prescribed by rule, for the property
899 management company or real estate brokerage.

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

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

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

903 (B) Title 57, Chapter 19, Timeshare and Camp Resort Act;

904 (ii) an employee engaged in the sale of cooperative interests regulated under Title 57,
905 Chapter 23, Real Estate Cooperative Marketing Act; or

906 (iii) an individual whose interest as an owner or lessor is obtained by that individual or
907 transferred to that individual for the purpose of evading the application of this chapter, and not
908 for another legitimate business reason.

909 (2) A license under this chapter is not required for:

910 (a) an isolated transaction or service by an individual holding a duly executed power of
911 attorney from a property owner;

912 (b) services rendered by an attorney admitted to practice law in this state in performing
913 the attorney's duties as an attorney;

914 (c) a receiver, trustee in bankruptcy, administrator, executor, or an individual acting
915 under order of a court;

916 (d) a trustee or employee of a trustee under a deed of trust or a will;

917 (e) a public utility, officer of a public utility, or regular salaried employee of a public
918 utility, unless performance of an act described in Subsection 61-2f-102(18) is in connection
919 with the sale, purchase, lease, or other disposition of real estate or investment in real estate
920 unrelated to the principal business activity of that public utility;

921 (f) a regular salaried employee or authorized agent working under the oversight of the
922 Department of Transportation when performing an act on behalf of the Department of
923 Transportation in connection with one or more of the following:

924 (i) the acquisition of real estate pursuant to Section 72-5-103;

- 925 (ii) the disposal of real estate pursuant to Section 72-5-111;
- 926 (iii) services that constitute property management; or
- 927 (iv) the leasing of real estate; and
- 928 (g) a regular salaried employee of a county, city, or town when performing an act on
- 929 behalf of the county, city, or town:
- 930 (i) in accordance with:
- 931 (A) if a regular salaried employee of a city or town:
- 932 (I) Title 10, Utah Municipal Code; or
- 933 (II) Title 11, Cities, Counties, and Local Taxing Units; and
- 934 (B) if a regular salaried employee of a county:
- 935 (I) Title 11, Cities, Counties, and Local Taxing Units; and
- 936 (II) Title 17, Counties; and
- 937 (ii) in connection with one or more of the following:
- 938 (A) the acquisition of real estate, including by eminent domain;
- 939 (B) the disposal of real estate;
- 940 (C) services that constitute property management; or
- 941 (D) the leasing of real estate.
- 942 (3) A license under this chapter is not required for an individual registered to act as a
- 943 broker-dealer, agent, or investment adviser under the Utah and federal securities laws in the
- 944 sale or the offer for sale of real estate if:
- 945 (a) (i) the real estate is a necessary element of a "security" as that term is defined by the
- 946 Securities Act of 1933 and the Securities Exchange Act of 1934; and
- 947 (ii) the security is registered for sale in accordance with:
- 948 (A) the Securities Act of 1933; or
- 949 (B) Title 61, Chapter 1, Utah Uniform Securities Act; or
- 950 (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec.
- 951 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation
- 952 D, Rule 506, 17 C.F.R. Sec. 230.506; and
- 953 (ii) the selling agent and the purchaser are not residents of this state.
- 954 (4) As used in this section, "owner" does not include:
- 955 (a) a person who holds an option to purchase real property;

- 956 (b) a mortgagee;
- 957 (c) a beneficiary under a deed of trust;
- 958 (d) a trustee under a deed of trust; or
- 959 (e) a person who owns or holds a claim that encumbers any real property or an
- 960 improvement to the real property.

961 Section 10. Section **61-2f-303** is amended to read:

962 **61-2f-303. Sale agents or associate broker -- Affiliated with principal broker as**
963 **independent contractors or employees -- Presumption.**

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

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

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

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

974 **61-2f-401. Grounds for disciplinary action.**

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

- 977 (1) (a) making a substantial misrepresentation;
- 978 (b) making an intentional misrepresentation;
- 979 (c) pursuing a continued and flagrant course of misrepresentation;
- 980 (d) making a false representation or promise through an agent, sales agent, advertising,
981 or otherwise; or
- 982 (e) making a false representation or promise of a character likely to influence,
983 persuade, or induce;
- 984 (2) acting for more than one party in a transaction without the informed consent of the
985 parties;
- 986 (3) (a) acting as an associate broker or sales agent while not affiliated with a principal

987 broker;

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

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

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

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

995 or

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

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

1000 (a) with a principal broker of another jurisdiction; or

1001 (b) as provided under:

1002 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;

1003 (ii) Title 16, Chapter 11, Professional Corporation Act; or

1004 (iii) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, or Title 48,
1005 Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to
1006 Section [48-3a-1405](#);

1007 (6) for a principal broker, paying or offering to pay a sales agent or associate broker
1008 who is not affiliated with the principal broker at the time the sales agent or associate broker
1009 earned the compensation;

1010 [~~6~~] (7) being incompetent to act as a principal broker, associate broker, or sales agent
1011 in such manner as to safeguard the interests of the public;

1012 [~~7~~] (8) failing to voluntarily furnish a copy of a document to the parties before and
1013 after the execution of a document;

1014 [~~8~~] (9) failing to keep and make available for inspection by the division a record of
1015 each transaction, including:

1016 (a) the names of buyers and sellers or lessees and lessors;

1017 (b) the identification of real estate;

- 1018 (c) the sale or rental price;
- 1019 (d) money received in trust;
- 1020 (e) agreements or instructions from buyers and sellers or lessees and lessors; and
- 1021 (f) any other information required by rule;
- 1022 [~~(9)~~] (10) failing to disclose, in writing, in the purchase, sale, or rental of real estate,
- 1023 whether the purchase, sale, or rental is made for that person or for an undisclosed principal;
- 1024 [~~(10)~~] (11) being convicted of a criminal offense involving moral turpitude within five
- 1025 years of the most recent application:
 - 1026 (a) regardless of whether the criminal offense is related to real estate; and
 - 1027 (b) including:
 - 1028 (i) a conviction based upon a plea of nolo contendere; or
 - 1029 (ii) a plea held in abeyance to a criminal offense involving moral turpitude;
 - 1030 [~~(11)~~] (12) advertising the availability of real estate or the services of a licensee in a
 - 1031 false, misleading, or deceptive manner;
 - 1032 [~~(12)~~] (13) in the case of a principal broker or a licensee who is a branch manager,
 - 1033 failing to exercise reasonable supervision over the activities of the principal broker's or branch
 - 1034 manager's licensed or unlicensed staff;
 - 1035 [~~(13)~~] (14) violating or disregarding:
 - 1036 (a) this chapter;
 - 1037 (b) an order of the commission; or
 - 1038 (c) the rules adopted by the commission and the division;
 - 1039 [~~(14)~~] (15) breaching a fiduciary duty owed by a licensee to the licensee's principal in a
 - 1040 real estate transaction;
 - 1041 [~~(15)~~] (16) any other conduct which constitutes dishonest dealing;
 - 1042 [~~(16)~~] (17) unprofessional conduct as defined by statute or rule;
 - 1043 [~~(17)~~] (18) having one of the following suspended, revoked, surrendered, or cancelled
 - 1044 on the basis of misconduct in a professional capacity that relates to character, honesty,
 - 1045 integrity, or truthfulness:
 - 1046 (a) a real estate license, registration, or certificate issued by another jurisdiction; or
 - 1047 (b) another license, registration, or certificate to engage in an occupation or profession
 - 1048 issued by this state or another jurisdiction;

1049 [~~(18)~~] (19) failing to respond to a request by the division in an investigation authorized
1050 under this chapter, including:

- 1051 (a) failing to respond to a subpoena;
- 1052 (b) withholding evidence; or
- 1053 (c) failing to produce documents or records;

1054 [~~(19)~~] (20) in the case of a dual licensed title licensee as defined in Section 31A-2-402:

1055 (a) providing a title insurance product or service without the approval required by
1056 Section 31A-2-405; or

1057 (b) knowingly providing false or misleading information in the statement required by
1058 Subsection 31A-2-405(2);

1059 [~~(20)~~] (21) violating an independent contractor agreement between a principal broker
1060 and a sales agent or associate broker as evidenced by a final judgment of a court; [~~or~~]

1061 [~~(21)~~] (22) (a) engaging in an act of loan modification assistance that requires licensure
1062 as a mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing
1063 Act, without being licensed under that chapter;

1064 (b) engaging in an act of foreclosure rescue without entering into a written agreement
1065 specifying what one or more acts of foreclosure rescue will be completed;

1066 (c) inducing a person who is at risk of foreclosure to hire the licensee to engage in an
1067 act of foreclosure rescue by:

1068 (i) suggesting to the person that the licensee has a special relationship with the person's
1069 lender or loan servicer; or

1070 (ii) falsely representing or advertising that the licensee is acting on behalf of:

- 1071 (A) a government agency;
- 1072 (B) the person's lender or loan servicer; or
- 1073 (C) a nonprofit or charitable institution; or

1074 (d) recommending or participating in a foreclosure rescue that requires a person to:

1075 (i) transfer title to real estate to the licensee or to a third-party with whom the licensee
1076 has a business relationship or financial interest;

1077 (ii) make a mortgage payment to a person other than the person's loan servicer; or

1078 (iii) refrain from contacting the person's:

1079 (A) lender;

- 1080 (B) loan servicer;
- 1081 (C) attorney;
- 1082 (D) credit counselor; or
- 1083 (E) housing counselor[-];
- 1084 (23) as a principal broker, placing a lien on real property, unless authorized by law; or
- 1085 (24) as a sales agent or associate broker, placing a lien on real property for an unpaid
- 1086 commission or other compensation related to real estate brokerage services.