

HB0227S01 compared with HB0227

~~text~~ shows text that was in HB0227 but was deleted in HB0227S01.

text shows text that was not in HB0227 but was inserted into HB0227S01.

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Representative Gage Froerer proposes the following substitute bill:

REAL ESTATE AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: _____

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

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- ▶ 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
- 61-2c-105**, as last amended by Laws of Utah 2012, Chapter 212
- 61-2c-202**, as last amended by Laws of Utah 2013, Chapter 292
- 61-2c-204.1**, as last amended by Laws of Utah 2012, Chapter 166
- 61-2c-206**, as last amended by Laws of Utah 2013, Chapter 292
- 61-2c-301**, as last amended by Laws of Utah 2012, Chapter 166
- 61-2e-204**, as last amended by Laws of Utah 2013, Chapter 292
- 61-2e-303**, as enacted by Laws of Utah 2009, Chapter 269
- 61-2f-202**, as last amended by Laws of Utah 2013, Chapter 292
- 61-2f-303**, as renumbered and amended by Laws of Utah 2010, Chapter 379
- 61-2f-401**, as last amended by Laws of Utah 2013, Chapter 412

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

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

61-2c-102. Definitions.

- (1) As used in this chapter:
 - (a) "Affiliation" means that a mortgage loan originator is associated with a principal lending manager in accordance with Section 61-2c-209.
 - (b) "Applicant" means a person applying for a license under this chapter.
 - (c) "Approved examination provider" means a person approved by the nationwide database or by the division as an approved test provider.
 - (d) "Associate lending manager" means an individual who:
 - (i) qualifies under this chapter as a principal lending manager; and
 - (ii) works by or on behalf of another principal lending manager in transacting the

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business of residential mortgage loans.

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

(i) licensed as a lending manager; and

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

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

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

(ii) other than the main office of the licensed entity; and

(iii) that operates under:

(A) the same business name as the licensed entity; or

(B) another trade name that is registered with the division under the entity license.

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

(i) a Saturday;

(ii) a Sunday; or

(iii) a federal or state holiday.

(h) (i) "Business of residential mortgage loans" means for compensation or in the expectation of compensation to:

(A) engage in an act that makes an individual a mortgage loan originator;

(B) make or originate a residential mortgage loan;

(C) directly or indirectly solicit a residential mortgage loan for another;

(D) unless excluded under Subsection (1)(h)(ii), render services related to the origination of a residential mortgage loan including:

(I) preparing a loan package;

(II) communicating with the borrower or lender;

(III) advising on a loan term;

(IV) acting as a loan processor or loan underwriter without being employed by a licensed entity; or

(V) except as provided in Subsection (1)(h)(ii)(B) or (C), acting as a loan underwriter;

or

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(E) engage in loan modification assistance.

(ii) "Business of residential mortgage loans" does not include:

(A) if working as an employee under the direction of and subject to the supervision and instruction of a person licensed under this chapter, the performance of a clerical or support duty, including:

(I) the receipt, collection, or distribution of information common for the processing or underwriting of a loan in the mortgage industry other than taking an application;

(II) communicating with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan;

(III) word processing;

(IV) sending correspondence;

(V) assembling files; or

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

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

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

(D) ownership of an entity that engages in the business of residential mortgage loans if the owner does not personally perform the acts listed in Subsection (1)(h)(i);

(E) except if an individual will engage in an activity as a mortgage loan originator, acting in one or more of the following capacities:

(I) a loan wholesaler;

(II) an account executive for a loan wholesaler;

(III) a loan underwriter;

(IV) a loan closer; or

(V) funding a loan; or

(F) if employed by a person who owns or services an existing residential mortgage loan, the direct negotiation with the borrower for the purpose of loan modification.

(i) "Certified education provider" means a person who is certified under Section 61-2c-204.1 to provide one or more of the following:

(i) Utah-specific prelicensing education; or

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(ii) Utah-specific continuing education.

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

(i) with a fixed amount borrowed; and

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

(k) "Commission" means the Residential Mortgage Regulatory Commission created in Section 61-2c-104.

(l) "Community development financial institution" means the same as that term is defined in 12 U.S.C. Sec. 4702.

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

(i) services;

(ii) personal or real property; or

(iii) another thing of value.

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

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

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

(i) direct or exercise a controlling interest over:

(A) the management or policies of an entity; or

(B) the election of a majority of the directors, officers, managers, or managing partners of an entity;

(ii) vote 20% or more of a class of voting securities of an entity by an individual; or

(iii) vote more than 5% of a class of voting securities of an entity by another entity.

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

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

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- (A) a manager;
- (B) a managing partner;
- (C) a director;
- (D) an executive officer; or
- (E) an individual who performs a function similar to an individual listed in this

Subsection (1)~~(p)~~(q)(ii).

~~(r)~~ (r) "Depository institution" ~~is as~~ means the same as that term is defined in Section 7-1-103.

~~(s)~~ (s) "Director" means the director of the division.

~~(t)~~ (t) "Division" means the Division of Real Estate.

~~(u)~~ (u) "Dwelling" means a residential structure attached to real property that contains one to four units including any of the following if used as a residence:

- (i) a condominium unit;
- (ii) a cooperative unit;
- (iii) a manufactured home; or
- (iv) a house.

~~(v)~~ (v) "Employee":

(i) means an individual:

(A) whose manner and means of work performance are subject to the right of control of, or are controlled by, another person; and

(B) whose compensation for federal income tax purposes is reported, or is required to be reported, on a W-2 form issued by the controlling person; and

(ii) does not include an independent contractor who performs duties other than at the direction of, and subject to the supervision and instruction of, another person.

~~(w)~~ (w) "Entity" means:

- (i) a corporation;
- (ii) a limited liability company;
- (iii) a partnership;
- (iv) a company;
- (v) an association;
- (vi) a joint venture;

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(vii) a business trust;

(viii) a trust; or

(ix) another organization.

~~[(w)]~~ (x) "Executive director" means the executive director of the Department of Commerce.

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

~~[(y)]~~ (z) "Foreclosure rescue" means, for compensation or with the expectation of receiving valuable consideration, to:

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

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

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

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

(A) solicit, or offer that the other person will engage in an act described in Subsection (1)~~[(y)]~~(z)(i); or

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

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

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

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

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

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

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

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

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

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

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- (III) an increase or decrease in the principal amount of the residential mortgage loan;
 - (IV) a change in the number of required period payments;
 - (V) an addition of collateral;
 - (VI) a change to, or addition of, a prepayment penalty;
 - (VII) an addition of a cosigner; or
 - (VIII) a change in persons obligated under the existing residential mortgage loan; or
 - (B) substitute a new residential mortgage loan for an existing residential mortgage loan; or
 - (ii) as an employee or agent of another person:
 - (A) solicit, or offer that the other person will engage in an act described in Subsection (1)[~~(dd)~~](ee)(i); or
 - (B) negotiate terms in relationship to an act described in Subsection (1)[~~(dd)~~](ee)(i).
- [~~(ee)~~] (ff) (i) Except as provided in Subsection (1)[~~(ee)~~](ff)(ii), "mortgage loan originator" means an individual who for compensation or in expectation of compensation:
- (A) (I) takes a residential mortgage loan application; or
 - (II) offers or negotiates terms of a residential mortgage loan for the purpose of:
 - (Aa) a purchase;
 - (Bb) a refinance;
 - (Cc) a loan modification assistance; or
 - (Dd) a foreclosure rescue; and
 - (B) is licensed as a mortgage loan originator in accordance with this chapter.
- (ii) "Mortgage loan originator" does not include a person who:
- (A) is described in Subsection (1)[~~(ee)~~](ff)(i), but who performs exclusively administrative or clerical tasks as described in Subsection (1)(h)(ii)(A);
 - (B) (I) is licensed under Chapter 2f, Real Estate Licensing and Practices Act;
 - (II) performs only real estate brokerage activities; and
 - (III) receives no compensation from:
 - (Aa) a lender;
 - (Bb) a lending manager; or
 - (Cc) an agent of a lender or lending manager; or
 - (C) is solely involved in extension of credit relating to a timeshare plan, as defined in

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11 U.S.C. Sec. 101(53D).

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

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

~~[(hh)]~~ (ii) "Person" means an individual or entity.

~~[(ii)]~~ (jj) "Prelicensing education" means education taken by an individual seeking to be licensed under this chapter in order to meet the education requirements imposed by Section 61-2c-204.1 or 61-2c-206 for an individual to obtain a license under this chapter.

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

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

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

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

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

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

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

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

(II) in a perceivable and reproducible form.

~~[(mm)]~~ (nn) "Referral fee":

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

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

~~[(A) by a licensed entity to an individual employed by the entity;]~~

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

~~[(C) for reasonable promotional and educational activities that is not conditioned on the referral of business and is not used to pay expenses that a person in a position to refer settlement services or business related to the settlement services would otherwise incur; and]~~

~~[(C)]~~ (D) and

~~[(C) according to rules made by the division in accordance with Title 63G, Chapter 3;~~

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~~Utah Administrative Rulemaking Act.]~~

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

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

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

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

(A) mortgage;

(B) deed of trust; or

(C) consensual security interest;

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

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

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

(B) is created with the consent of the owner of the residential real property; and

(iii) solely for the purposes of defining "mortgage loan originator," the extension of credit is primarily for personal, family, or household use.

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

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

(A) the real estate purchase contract;

(B) the lender;

(C) the title insurance company;

(D) the escrow or closing office;

(E) the written escrow instructions; or

(F) applicable law;

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

(iii) if applicable, the seller delivers to the buyer or to the escrow or closing office any

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money that the seller is required to pay.

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

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

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

- (i) a state, territory, or possession of the United States;
- (ii) the District of Columbia; or
- (iii) the Commonwealth of Puerto Rico.

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

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

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

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

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

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

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

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

(2) The following are exempt from this chapter:

- (a) the federal government;

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- (b) a state;
- (c) a political subdivision of a state;
- (d) an agency of or entity created by a governmental entity described in Subsections (2)(a) through (c) including:
 - (i) the Utah Housing Corporation created in Title 35A, Chapter 8, Part 7, Utah Housing Corporation Act;
 - (ii) the Federal National Mortgage Corporation;
 - (iii) the Federal Home Loan Mortgage Corporation;
 - (iv) the Federal Deposit Insurance Corporation;
 - (v) the Resolution Trust Corporation;
 - (vi) the Government National Mortgage Association;
 - (vii) the Federal Housing Administration;
 - (viii) the National Credit Union Administration;
 - (ix) the Farmers Home Administration; and
 - (x) the United States Department of Veterans Affairs;
- (e) a depository institution;
- (f) an entity that controls, is controlled by, or is under common control with a depository institution;
 - (g) an employee or agent of an entity described in Subsections (2)(a) through (f):
 - (i) when that person acts on behalf of the entity described in Subsections (2)(a) through (f); and
 - (ii) including an employee of:
 - (A) a depository institution;
 - (B) a subsidiary of a depository institution that is:
 - (I) owned and controlled by the depository institution; and
 - (II) regulated by a federal banking agency, as defined in 12 U.S.C. Sec. 5102; or
 - (C) an institution regulated by the Farm Credit Administration;
 - (h) except as provided in Subsection (3), a person who:
 - (i) makes a loan:
 - (A) secured by an interest in real property;
 - (B) with the person's own money; and

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- (C) for the person's own investment; and
- (ii) that does not engage in the business of making loans secured by an interest in real property;
 - (i) except as provided in Subsection (3), a person who receives a mortgage, deed of trust, or consensual security interest on real property if the individual or entity:
 - (i) is the seller of real property; and
 - (ii) receives the mortgage, deed of trust, or consensual security interest on real property as security for a separate money obligation;
 - (j) a person who receives a mortgage, deed of trust, or consensual security interest on real property if:
 - (i) the person receives the mortgage, deed of trust, or consensual security interest as security for an obligation payable on an installment or deferred payment basis;
 - (ii) the obligation described in Subsection (2)(j)(i) arises from a person providing materials or services used in the improvement of the real property that is the subject of the mortgage, deed of trust, or consensual security interest; and
 - (iii) the mortgage, deed of trust, or consensual security interest is created without the consent of the owner of the real property that is the subject of the mortgage, deed of trust, or consensual security interest;
 - (k) a nonprofit corporation that:
 - (i) ~~(A)~~ is exempt from paying federal income taxes;
 - ~~[(ii)]~~ (B) is certified by the United States Small Business Administration as a small business investment company;
 - ~~[(iii)]~~ (C) is organized to promote economic development in this state; and
 - ~~[(iv)]~~ (D) has as its primary activity providing financing for business expansion; or
 - (ii) is a community development financial institution;
 - (l) except as provided in Subsection (3), a court appointed fiduciary; or
 - (m) an attorney admitted to practice law in this state:
 - (i) if the attorney is not principally engaged in the business of negotiating residential mortgage loans when considering the attorney's ordinary practice as a whole for all the attorney's clients; and
 - (ii) when the attorney engages in loan modification assistance in the course of the

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attorney's practice as an attorney.

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

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

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

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

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

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

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

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

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

61-2c-202. Licensure procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) identifies each control person for the entity;

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

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

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

(ii) a notarized letter to the division that:

(A) is on the entity's letterhead;

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

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

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

(b) if the applicant is an individual:

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

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

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

(B) the Federal Bureau of Investigation;

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

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

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

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

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

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

(c) pay to the division:

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

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

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

(i) meets the qualifications for licensure; and

(ii) complies with this section.

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

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

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

(ii) issue a conditional license:

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

(B) subject to probation, suspension, or revocation if the criminal background check

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reveals that the applicant did not truthfully or accurately disclose on the licensing application a criminal history or other history related to adverse administrative action.

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

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

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

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

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

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

61-2c-204.1. Education providers -- Education requirements -- Examination requirements.

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

or

(ii) approve:

(A) Utah-specific prelicensing education; or

(B) Utah-specific continuing education courses.

(3) (a) The division may not:

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

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

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

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

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

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

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

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

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

(i) except as provided in Subsection 61-2c-206(1)(b), the appropriate number of hours

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of prelicensing education required to obtain a license;

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

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

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

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

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

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

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

(ii) meet the minimum federal licensing requirements; and

(iii) are administered by an approved examination provider.

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

(i) a licensing examination that at least:

(A) meets the minimum federal licensing requirements; and

(B) tests knowledge of the:

(I) fundamentals of the English language;

(II) arithmetic;

(III) provisions of this chapter;

(IV) rules adopted under this chapter;

(V) basic residential mortgage principles and practices; and

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

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

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

(B) tests knowledge of the:

(I) advanced residential mortgage principles and practices; and

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

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

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

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

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

(ii) upon a finding of reasonable cause.

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

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

61-2c-206. Lending manager licenses.

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

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

(b) successfully complete the following education:

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

(ii) 40 hours of Utah-specific prelicensing education for a lending manager that is

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approved by the division under Section 61-2c-204.1;

(c) successfully complete the following examinations:

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

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

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

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

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

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

and

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

(2) A lending manager may not:

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

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

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

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

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

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

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

and

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

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manager.

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

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

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

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

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

(i) that is excessive; or

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

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

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

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

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

(i) make a false statement or representation;

(ii) cause false documents to be generated; or

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

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

(f) violate or not comply with:

(i) this chapter;

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

(iii) a rule made by the division;

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- (g) fail to respond within the required time period to:
- (i) a notice or complaint of the division; or
- (ii) a request for information from the division;
- (h) make false representations to the division, including in a licensure statement;
- (i) for a residential mortgage loan transaction beginning on or after January 1, 2004,

engage in the business of residential mortgage loans with respect to the transaction if the person also acts in any of the following capacities with respect to the same residential mortgage loan transaction:

- (i) appraiser;
- (ii) escrow agent;
- (iii) real estate agent;
- (iv) general contractor; or
- (v) title insurance producer;

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

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

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

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

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

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

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

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

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

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

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(i) evade this chapter; or

(ii) assist another person to evade this chapter;

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

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

(i) unlicensed staff; ~~and~~ or

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

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

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

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

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

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

(i) advertising;

(ii) a business card;

(iii) stationery;

(iv) a brochure;

(v) a sign;

(vi) a rate list; or

(vii) other promotional item; or

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

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

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

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

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

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

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

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

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

(I) a government agency;

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

(III) a nonprofit or charitable institution;

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

(A) transfer title to real property to the licensee or to a third-party with whom the licensee has a business relationship or financial interest;

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

(C) refrain from contacting the person's:

(I) lender;

(II) loan servicer;

(III) attorney;

(IV) credit counselor; or

(V) housing counselor; or

(vii) for an agreement for loan modification assistance entered into on or after May 11, 2010, engage in an act of loan modification assistance without offering in writing to the person entering into the agreement for loan modification assistance a right to cancel the agreement within three business days after the day on which the person enters the agreement.

(2) Whether or not the crime is related to the business of residential mortgage loans, it is a violation of this chapter for a licensee or a person who is a certified education provider to do any of the following with respect to a criminal offense that involves moral turpitude:

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- (a) be convicted;
- (b) plead guilty or nolo contendere;
- (c) enter a plea in abeyance; or
- (d) be subjected to a criminal disposition similar to the ones described in Subsections (2)(a) through (c).

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

(a) in contravention of the lending manager's written policies and instructions, an affiliated licensee of the lending manager violates:

- (i) this chapter; or
- (ii) rules made by the division under this chapter;

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

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

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

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

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

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

- (i) as soon as reasonably possible after the appraisal or other valuation is complete; or
- (ii) three business days before the day of the settlement.

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

- (i) less than three business days before the day of the settlement; or
- (ii) at the settlement.

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

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

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

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

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

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

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

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

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

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

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

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

(i) the appraisal management company's surety bond lapses or is cancelled during the

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time period described in Subsection (1); and

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

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

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

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

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

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

(A) a diversion agreement; or

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

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

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

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

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

(ii) on the basis of:

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

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

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

~~[(5)]~~ (6) Notwithstanding Subsection ~~[(4)]~~ (5), the division may extend the term of a

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license that would expire under Subsection [~~(4)~~] (5) except for the extension if:

- (a) (i) the person complies with the requirements of this section to renew the registration; and
- (ii) the renewal application remains pending at the time of the extension; or
- (b) at the time of the extension, there is pending under this chapter a disciplinary action.

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

61-2e-303. Recordkeeping.

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

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

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

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

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

(i) the appraisal;

(ii) any documentation of the review; and

(iii) any correspondence that relates to the review.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) a receiver, trustee in bankruptcy, administrator, executor, or an individual acting

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under order of a court;

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

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

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

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

(ii) the disposal of real estate pursuant to Section 72-5-111;

(iii) services that constitute property management; or

(iv) the leasing of real estate; and

(g) a regular salaried employee of a county, city, or town when performing an act on behalf of the county, city, or town:

(i) in accordance with:

(A) if a regular salaried employee of a city or town:

(I) Title 10, Utah Municipal Code; or

(II) Title 11, Cities, Counties, and Local Taxing Units; and

(B) if a regular salaried employee of a county:

(I) Title 11, Cities, Counties, and Local Taxing Units; and

(II) Title 17, Counties; and

(ii) in connection with one or more of the following:

(A) the acquisition of real estate, including by eminent domain;

(B) the disposal of real estate;

(C) services that constitute property management; or

(D) the leasing of real estate.

(3) A license under this chapter is not required for an individual registered to act as a broker-dealer, agent, or investment adviser under the Utah and federal securities laws in the sale or the offer for sale of real estate if:

(a) (i) the real estate is a necessary element of a "security" as that term is defined by the

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Securities Act of 1933 and the Securities Exchange Act of 1934; and

(ii) the security is registered for sale in accordance with:

(A) the Securities Act of 1933; or

(B) Title 61, Chapter 1, Utah Uniform Securities Act; or

(b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec. 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation D, Rule 506, 17 C.F.R. Sec. 230.506; and

(ii) the selling agent and the purchaser are not residents of this state.

(4) As used in this section, "owner" does not include:

(a) a person who holds an option to purchase real property;

(b) a mortgagee;

(c) a beneficiary under a deed of trust;

(d) a trustee under a deed of trust; or

(e) a person who owns or holds a claim that encumbers any real property or an improvement to the real property.

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

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

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

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

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

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

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

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

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- (1) (a) making a substantial misrepresentation;
 - (b) making an intentional misrepresentation;
 - (c) pursuing a continued and flagrant course of misrepresentation;
 - (d) making a false representation or promise through an agent, sales agent, advertising, or otherwise; or
 - (e) making a false representation or promise of a character likely to influence, persuade, or induce;
- (2) acting for more than one party in a transaction without the informed consent of the parties;
- (3) (a) acting as an associate broker or sales agent while not affiliated with a principal broker;
 - (b) representing or attempting to represent a principal broker other than the principal broker with whom the person is affiliated; or
 - (c) representing as sales agent or having a contractual relationship similar to that of sales agent with a person other than a principal broker;
- (4) (a) failing, within a reasonable time, to account for or to remit money that belongs to another and comes into the person's possession;
- (b) commingling money described in Subsection (4)(a) with the person's own money;
- or
- (c) diverting money described in Subsection (4)(a) from the purpose for which the money is received;
- (5) paying or offering to pay valuable consideration, as defined by the commission, to a person not licensed under this chapter, except that valuable consideration may be shared:
- (a) with a principal broker of another jurisdiction; or
 - (b) as provided under:
 - (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;
 - (ii) Title 16, Chapter 11, Professional Corporation Act; or
 - (iii) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405;
- (6) for a principal broker, paying or offering to pay a sales agent or associate broker

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who is not affiliated with the principal broker at the time the sales agent or associate broker earned the compensation:

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

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

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

- (a) the names of buyers and sellers or lessees and lessors;
- (b) the identification of real estate;
- (c) the sale or rental price;
- (d) money received in trust;
- (e) agreements or instructions from buyers and sellers or lessees and lessors; and
- (f) any other information required by rule;

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

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

- (a) regardless of whether the criminal offense is related to real estate; and
- (b) including:
 - (i) a conviction based upon a plea of nolo contendere; or
 - (ii) a plea held in abeyance to a criminal offense involving moral turpitude;

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

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

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

- (a) this chapter;
- (b) an order of the commission; or
- (c) the rules adopted by the commission and the division;

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

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

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

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

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

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

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

(a) failing to respond to a subpoena;

(b) withholding evidence; or

(c) failing to produce documents or records;

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

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

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

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

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

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

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

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

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

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

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

(i) transfer title to real estate to the licensee or to a third-party with whom the licensee

has a business relationship or financial interest;

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

(iii) refrain from contacting the person's:

- (A) lender;
- (B) loan servicer;
- (C) attorney;
- (D) credit counselor; or
- (E) housing counselor[-];

(23) as a principal broker, placing a lien on real property, unless authorized by law; or

(24) as a sales agent or associate broker, placing a lien on real property for an unpaid

commission or other compensation related to real estate brokerage services.

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Legislative Review Note

~~as of 1-30-15 2:59 PM~~

~~Office of Legislative Research and General Counsel~~