

Representative Gage Froerer proposes the following substitute bill:

DIVISION OF REAL ESTATE AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: Daniel Hemmert

LONG TITLE

General Description:

This bill amends provisions related to reporting and licensing requirements under the jurisdiction of the Division of Real Estate.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ changes the citation period following the occurrence of a violation;
- ▶ exempts a loan processor or loan underwriter who is not a mortgage loan originator

when employed by, and acting on behalf of, a person or entity licensed under this chapter;

- ▶ modifies quarterly reporting requirements;

§→ [~~permits the division to interview a witness;~~] **←§**

- ▶ permits the commission of powers and duties under certain circumstances;
- ▶ provides licensing standards and practice requirements for a branch broker, property management sales agent, and dual broker; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

1st Sub. H.B. 196



894 (a) (i) a licensee;
 895 (ii) a person required to be licensed under this chapter; or
 896 (iii) the following with respect to an entity that is a licensee or an entity required to be
 897 licensed under this chapter:

- 898 (A) a manager;
- 899 (B) a managing partner;
- 900 (C) a director;
- 901 (D) an executive officer; or
- 902 (E) an individual who performs a function similar to an individual listed in this
 903 Subsection (1)(a)(iii);

904 (b) (i) an applicant for licensure or renewal of licensure under this chapter; or
 905 (ii) the following with respect to an entity that has applied for a license or renewal of
 906 licensure under this chapter:

- 907 (A) a manager;
- 908 (B) a managing partner;
- 909 (C) a director;
- 910 (D) an executive officer; or
- 911 (E) an individual who performs a function similar to an individual listed in this
 912 Subsection (1)(b)(ii); or

913 (c) a person who transacts the business of residential mortgage loans within this state.

914 (2) In conducting investigations, records inspections, and adjudicative proceedings, the
 915 division may:

- 916 (a) administer an oath or affirmation;
- 917 (b) issue a subpoena that requires:
 - 918 (i) the attendance and testimony of a witness; or
 - 919 (ii) the production of evidence;
- 920 (c) take evidence;

921 ~~§~~ → [(d) ~~interview a witness;~~

922 — [f] (d) [(e)] ← ~~§~~ require the production of a record or information relevant to an
 922a investigation;

923 and

924 ~~§~~ → [f] (e) [(f)] ← ~~§~~ serve a subpoena by certified mail.

1080 (a) provide additional information about the basis for a valuation; or

1081 (b) correct an objective factual error in an appraisal report.

1082 Section 11. Section **61-2e-401** is amended to read:

1083 **61-2e-401. Division authority -- Immunity.**

1084 (1) (a) In addition to a power or duty expressly provided in this chapter, the division
1085 may:

1086 (i) receive and act on a complaint including:

1087 (A) taking action designed to obtain voluntary compliance with this chapter, including
1088 the issuance of a cease and desist order if the person against whom the order is given
1089 the right to petition the board for review of the order; or

1090 (B) commencing an administrative or judicial proceeding on the division's own
1091 initiative;

1092 (ii) ~~[investigate]~~ conduct a public or private investigation of an entity required to be
1093 registered under this chapter, regardless of whether the entity is located in Utah;

1094 (iii) employ one or more investigators, clerks, or other employees or agents if:

1095 (A) approved by the executive director; and

1096 (B) within the budget of the division; ~~§~~→ [f] and [f] ←~~§~~

1097 (iv) issue a subpoena that requires:

1098 (A) the attendance and testimony of a witness; or

1099 (B) the production of evidence ~~§~~→ [f] . [f]; ~~and~~

1100 ~~——— (v) interview a witness.~~ ←~~§~~

1101 (b) (i) A court of competent jurisdiction shall enforce, according to the practice and
1102 procedure of the court, a subpoena issued by the division.

1103 (ii) The division shall pay any witness fee, travel expense, mileage, or any other fee
1104 required by the service statutes of the state where the witness or evidence is located.

1105 (c) A failure to respond to a request by the division in an investigation under this
1106 chapter is considered to be a separate violation of this chapter, including:

1107 (i) failing to respond to a subpoena;

1108 (ii) withholding evidence; or

1109 (iii) failing to produce a document or record.

1110 (2) (a) If a person is found to have violated this chapter or a rule made under this

1266 (b) licensed under this chapter as a sales agent.

1267 Section 13. Section **61-2f-202** is amended to read:

1268 **61-2f-202. Exempt persons and transactions.**

1269 (1) (a) Except as provided in Subsection (1)(b), a license under this chapter is not
 1270 required for:

1271 (i) ~~H~~→ [an individual] a person ←~~H~~ who as owner or lessor performs an act described in
 1271a Subsection

1272 **61-2f-102**(18) with reference to real estate owned or leased by that ~~H~~→ [individual] person ←~~H~~ ;

1273 (ii) a regular salaried employee of the owner or lessor of real estate who, with reference
 1274 to nonresidential real estate owned or leased by the employer, performs an act described in
 1275 Subsection **61-2f-102**(18)(b) or (c);

1276 (iii) a regular salaried employee of the owner of real estate who performs property
 1277 management services with reference to real estate owned by the employer, except that the
 1278 employee may only manage real estate for one employer;

1279 (iv) an individual who performs property management services for the apartments at
 1280 which that individual resides in exchange for free or reduced rent on that individual's
 1281 apartment;

1282 (v) a regular salaried employee of a condominium homeowners' association who
 1283 manages real estate subject to the declaration of condominium that established the
 1284 condominium homeowners' association, except that the employee may only manage real estate
 1285 for one condominium homeowners' association; and

1286 (vi) a regular salaried employee of a licensed property management company or real
 1287 estate brokerage who performs support services, as prescribed by rule, for the property
 1288 management company or real estate brokerage.

1289 (b) Subsection (1)(a) does not exempt from licensing:

1290 (i) an employee engaged in the sale of real estate regulated under:

1291 (A) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act; or

1292 (B) Title 57, Chapter 19, Timeshare and Camp Resort Act;

1293 (ii) an employee engaged in the sale of cooperative interests regulated under Title 57,
 1294 Chapter 23, Real Estate Cooperative Marketing Act; or

1295 (iii) an individual whose interest as an owner or lessor is obtained by that individual or
 1296 transferred to that individual for the purpose of evading the application of this chapter, and not

1576 ~~§~~ → [(d) interview a witness;

1577 ——— [l] (d) [(e)] ← § require the production of a book, paper, contract, record, other document,
1577a or

1578 information relevant to the investigation; and

1579 ~~§~~ → [f] (e) [(f)] ← § serve a subpoena by certified mail.

1580 (4) (a) A court of competent jurisdiction shall enforce, according to the practice and
1581 procedure of the court, a subpoena issued by the division.

1582 (b) The division shall pay any witness fee, travel expense, mileage, or any other fee
1583 required by the service statutes of the state where the witness or evidence is located.

1584 (5) (a) If a person is found to have violated this chapter or a rule made under this
1585 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,
1586 document, or record required under this chapter, including the costs incurred to copy an
1587 electronic book, paper, contract, document, or record in a universally readable format.

1588 (b) If a person fails to pay the costs described in Subsection (5)(a) when due, the
1589 person's license, certification, or registration is automatically suspended:

1590 (i) beginning the day on which the payment of costs is due; and

1591 (ii) ending the day on which the costs are paid.

1592 (6) (a) Except as provided in Subsection (6)(b), the division shall commence a
1593 disciplinary action under this chapter no later than the earlier of the following:

1594 (i) four years after the day on which the violation is reported to the division; or

1595 (ii) 10 years after the day on which the violation occurred.

1596 (b) The division may commence a disciplinary action under this chapter after the time
1597 period described in Subsection (6)(a) expires if:

1598 (i) (A) the disciplinary action is in response to a civil or criminal judgment or
1599 settlement; and

1600 (B) the division initiates the disciplinary action no later than one year after the day on
1601 which the judgment is issued or the settlement is final; or

1602 (ii) the division and the person subject to a disciplinary action enter into a written
1603 stipulation to extend the time period described in Subsection (6)(a).

1604 Section 18. Section ~~61-2f-403~~ is amended to read:

1605 **61-2f-403. Mishandling of trust money.**

1606 (1) The division may audit principal brokers' trust accounts or other accounts in which

1638 (b) (i) The division shall, at the division's discretion, mail or email a holder of a
 1639 license, certification, or registration notice of its expiration to the last mailing or email address
 1640 stated on the division's records as the holder's current mailing or email address.

1641 (ii) To be mailed or emailed a notice under this Subsection (3)(b), a holder of a license,
 1642 certification, or registration shall provide to the division in writing the holder's current mailing
 1643 or email address.

1644 (iii) A holder's license, certification, or registration expires if not renewed by the holder
 1645 notwithstanding whether the holder receives a notice of its expiration by the division under this
 1646 Subsection (3)(b).

1647 Section 20. Section **61-2g-501** is amended to read:

1648 **61-2g-501. Enforcement -- Investigation -- Orders -- Hearings.**

1649 (1) (a) The division may [~~investigate~~] conduct a public or private investigation of the
 1650 actions of:

1651 (i) a person registered, licensed, or certified under this chapter;

1652 (ii) an applicant for registration, licensure, or certification;

1653 (iii) an applicant for renewal of registration, licensure, or certification; or

1654 (iv) a person required to be registered, licensed, or certified under this chapter.

1655 (b) The division may initiate an agency action against a person described in Subsection
 1656 (1)(a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to:

1657 (i) impose disciplinary action;

1658 (ii) deny issuance to an applicant of:

1659 (A) an original registration, license, or certification; or

1660 (B) a renewal of a registration, license, or certification; or

1661 (iii) issue a cease and desist order as provided in Subsection (3).

1662 (2) (a) The division may:

1663 (i) administer an oath or affirmation;

1664 (ii) issue a subpoena that requires:

1665 (A) the attendance and testimony of a witness; or

1666 (B) the production of evidence;

1667 (iii) take evidence; ~~§~~→ [f] and [f]

1668 ~~———(iv) interview a witness, and]~~Ⓢ

1669 ⊕[f] (iv) [~~f(v)~~] ←§ require the production of a book, paper, contract, record, document,
1670 information, or evidence relevant to the investigation described in Subsection (1).

1671 (b) The division may serve a subpoena by certified mail.

1672 (c) A failure to respond to a request by the division in an investigation authorized
1673 under this chapter is considered to be a separate violation of this chapter, including:

1674 (i) failing to respond to a subpoena as a witness;

1675 (ii) withholding evidence; or

1676 (iii) failing to produce a book, paper, contract, document, information, or record.

1677 (d) (i) A court of competent jurisdiction shall enforce, according to the practice and
1678 procedure of the court, a subpoena issued by the division.

1679 (ii) The division shall pay any witness fee, travel expense, mileage, or any other fee
1680 required by the service statutes of the state where the witness or evidence is located.

1681 (e) (i) If a person is found to have violated this chapter or a rule made under this
1682 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,
1683 document, information, or record required under this chapter, including the costs incurred to
1684 copy an electronic book, paper, contract, document, information, or record in a universally
1685 readable format.

1686 (ii) If a person fails to pay the costs described in Subsection (2)(e)(i) when due, the
1687 person's license, certification, or registration is automatically suspended:

1688 (A) beginning the day on which the payment of costs is due; and

1689 (B) ending the day on which the costs are paid.

1690 (3) (a) The director shall issue and serve upon a person an order directing that person to
1691 cease and desist from an act if:

1692 (i) the director has reason to believe that the person has been engaging, is about to
1693 engage, or is engaging in the act constituting a violation of this chapter; and

1694 (ii) it appears to the director that it would be in the public interest to stop the act.

1695 (b) Within 10 days after receiving the order, the person upon whom the order is served
1696 may request a hearing.

1697 (c) Pending a hearing requested under Subsection (3)(b), a cease and desist order shall
1698 remain in effect.

1699 (d) If a request for hearing is made, the division shall follow the procedures and