

1 **DIVISION OF REAL ESTATE AMENDMENTS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gage Froerer**

5 Senate Sponsor: Daniel Hemmert

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ changes the citation period following the occurrence of a violation;
- 15 ▶ exempts a loan processor or loan underwriter who is not a mortgage loan originator
16 when employed by, and acting on behalf of, a person or entity licensed under this
17 chapter;
- 18 ▶ modifies quarterly reporting requirements;
- 19 ▶ permits the division to interview a witness;
- 20 ▶ permits the commission of powers and duties under certain circumstances;
- 21 ▶ provides licensing standards and practice requirements for a branch broker, property
22 management sales agent, and dual broker; and
- 23 ▶ makes technical changes.

24 **Money Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 None



28 **Utah Code Sections Affected:**

29 AMENDS:

- 30 **61-2-203**, as last amended by Laws of Utah 2016, Chapter 384
- 31 **61-2c-102**, as last amended by Laws of Utah 2016, Chapter 384
- 32 **61-2c-105**, as last amended by Laws of Utah 2015, Chapters 226 and 262
- 33 **61-2c-204.1**, as last amended by Laws of Utah 2015, Chapter 262
- 34 **61-2c-206**, as last amended by Laws of Utah 2015, Chapter 262
- 35 **61-2c-301**, as last amended by Laws of Utah 2016, Chapter 384
- 36 **61-2c-302**, as last amended by Laws of Utah 2012, Chapter 166
- 37 **61-2c-401**, as last amended by Laws of Utah 2016, Chapter 384
- 38 **61-2e-201**, as last amended by Laws of Utah 2012, Chapter 166
- 39 **61-2e-307**, as last amended by Laws of Utah 2016, Chapter 384
- 40 **61-2e-401**, as last amended by Laws of Utah 2016, Chapter 384
- 41 **61-2f-102**, as last amended by Laws of Utah 2016, Chapters 381 and 384
- 42 **61-2f-202**, as last amended by Laws of Utah 2016, Chapter 384
- 43 **61-2f-206**, as last amended by Laws of Utah 2016, Chapter 25
- 44 **61-2f-304**, as renumbered and amended by Laws of Utah 2010, Chapter 379
- 45 **61-2f-401**, as last amended by Laws of Utah 2016, Chapter 384
- 46 **61-2f-402**, as last amended by Laws of Utah 2016, Chapter 384
- 47 **61-2f-403**, as renumbered and amended by Laws of Utah 2010, Chapter 379
- 48 **61-2g-305**, as renumbered and amended by Laws of Utah 2011, Chapter 289
- 49 **61-2g-501**, as last amended by Laws of Utah 2016, Chapter 384

50

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

52 Section 1. Section **61-2-203** is amended to read:

53 **61-2-203. Adjudicative proceedings -- Citation authority.**

54 (1) The division shall comply with Title 63G, Chapter 4, Administrative Procedures
55 Act, in an adjudicative proceeding under a chapter the division administers.

56 (2) The division may initiate an adjudicative proceeding through:

- 57 (a) a citation, pursuant to Subsection (3);
- 58 (b) a notice of agency action; or

- 59 (c) a notice of formal or informal proceeding.
- 60 (3) In addition to any other statutory penalty for a violation related to an occupation or
61 profession regulated under this title, the division may issue a citation to a person who, upon
62 inspection or investigation, the division concludes to have violated:
- 63 (a) Subsection 61-2c-201(1), which requires licensure;
- 64 (b) Subsection 61-2c-201(4), which requires entity licensure;
- 65 (c) Subsection 61-2c-205(3), which requires notification of a change in specified
66 information regarding a licensee;
- 67 (d) Subsection 61-2c-205(4), which requires notification of specified legal actions;
- 68 (e) Subsection 61-2c-301(1)(g), which prohibits failing to respond to the division
69 within the required time period;
- 70 (f) Subsection 61-2c-301(1)(h), which prohibits making a false representation to the
71 division;
- 72 (g) Subsection 61-2c-301(1)(i), which prohibits taking a dual role in a transaction;
- 73 (h) Subsection 61-2c-301(1)(l), which prohibits engaging in false or misleading
74 advertising;
- 75 (i) Subsection 61-2c-301(1)(t), which prohibits advertising the ability to do licensed
76 work if unlicensed;
- 77 (j) Subsection 61-2c-302(5), which requires a mortgage entity to create and file a
78 quarterly report of condition;
- 79 [~~j~~] (k) Subsection 61-2e-201(1), which requires registration;
- 80 [~~k~~] (l) Subsection 61-2e-203(4), which requires a notification of a change in
81 ownership;
- 82 [~~l~~] (m) Subsection 61-2e-307(1)(c), which prohibits use of an unregistered fictitious
83 name;
- 84 [~~m~~] (n) Subsection 61-2e-401(1)(b), which prohibits failure to respond to a request by
85 the division;
- 86 [~~n~~] (o) Subsection 61-2f-201(1), which requires licensure;
- 87 [~~o~~] (p) Subsection 61-2f-206(1), which requires entity registration;
- 88 [~~p~~] (q) Subsection 61-2f-301(1), which requires notification of a specified legal
89 action;

- 90 ~~(q)~~ (r) Subsection 61-2f-401(1)(a), which prohibits making a substantial
- 91 misrepresentation;
- 92 ~~(r)~~ (s) Subsection 61-2f-401(3), which prohibits undertaking real estate while not
- 93 affiliated with a principal broker;
- 94 ~~(s)~~ (t) Subsection 61-2f-401(9), which prohibits failing to keep specified records for
- 95 inspection by the division;
- 96 ~~(t)~~ (u) Subsection 61-2f-401(13), which prohibits false, misleading, or deceptive
- 97 advertising;
- 98 ~~(u)~~ (v) Subsection 61-2f-401(20), which prohibits failing to respond to a division
- 99 request;
- 100 ~~(v)~~ (w) Subsection 61-2g-301(1), which requires licensure;
- 101 ~~(w)~~ (x) Subsection 61-2g-405(3), which requires making records required to be
- 102 maintained available to the division;
- 103 ~~(x)~~ (y) Subsection 61-2g-502(2)(f), which prohibits using a nonregistered fictitious
- 104 name;
- 105 ~~(y)~~ (z) a rule made pursuant to any Subsection listed in this Subsection (3);
- 106 ~~(z)~~ (aa) an order of the division; or
- 107 ~~(aa)~~ (bb) an order of the commission or board that oversees the person's profession.
- 108 (4) (a) In accordance with Subsection (9), the division may assess a fine against a
- 109 person for a violation of a provision listed in Subsection (3), as evidenced by:
- 110 (i) an uncontested citation;
- 111 (ii) a stipulated settlement; or
- 112 (iii) a finding of a violation in an adjudicative proceeding.
- 113 (b) The division may, in addition to or in lieu of a fine under Subsection (4)(a), order
- 114 the person to cease and desist from an activity that violates a provision listed in Subsection (3).
- 115 (5) Except as provided in Subsection (7)(d), the division may not use a citation to
- 116 effect a license:
- 117 (a) denial;
- 118 (b) probation;
- 119 (c) suspension; or
- 120 (d) revocation.

- 121 (6) (a) A citation issued by the division shall:
- 122 (i) be in writing;
- 123 (ii) describe with particularity the nature of the violation, including a reference to the
- 124 provision of the statute, rule, or order alleged to have been violated;
- 125 (iii) clearly state that the recipient must notify the division in writing within 20
- 126 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing
- 127 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and
- 128 (iv) clearly explain the consequences of failure to timely contest the citation or to make
- 129 payment of a fine assessed by the citation within the time period specified in the citation.
- 130 (b) The division may issue a notice in lieu of a citation.
- 131 (7) (a) A citation becomes final:
- 132 (i) if within 20 calendar days from the service of the citation, the person to whom the
- 133 citation was issued fails to request a hearing to contest the citation; or
- 134 (ii) if the director or the director's designee conducts a hearing pursuant to a timely
- 135 request for a hearing and issues an order finding that a violation has occurred.
- 136 (b) The 20-day period to contest a citation may be extended by the division for cause.
- 137 (c) A citation that becomes the final order of the division due to a person's failure to
- 138 timely request a hearing is not subject to further agency review.
- 139 (d) (i) The division may refuse to issue, refuse to renew, suspend, revoke, or place on
- 140 probation the license of a licensee who fails to comply with a citation after the citation
- 141 becomes final.
- 142 (ii) The failure of a license applicant to comply with a citation after the citation
- 143 becomes final is a ground for denial of the license application.
- 144 (8) (a) The division may not issue a citation under this section after the expiration of
- 145 [~~six months~~] one year following the occurrence of a violation.
- 146 (b) The division may issue a notice to address a violation that is outside of the
- 147 [~~six-month~~] one-year citation period.
- 148 (9) The director or the director's designee shall assess a fine with a citation in an
- 149 amount that is no more than:
- 150 (a) for a first offense, \$1,000;
- 151 (b) for a second offense, \$2,000; and

152 (c) for each offense subsequent to a second offense, \$2,000 for each day of continued
153 offense.

154 (10) (a) An action for a first or second offense for which the division has not issued
155 final order does not preclude the division from initiating a subsequent action for a second or
156 subsequent offense while the preceding action is pending.

157 (b) The final order on a subsequent action is considered a second or subsequent
158 offense, respectively, provided the preceding action resulted in a first or second offense,
159 respectively.

160 (11) (a) If a person does not pay a penalty, the director may collect the unpaid penalty
161 by:

- 162 (i) referring the matter to a collection agency; or
- 163 (ii) bringing an action in the district court of the county:
 - 164 (A) where the person resides; or
 - 165 (B) where the office of the director is located.

166 (b) A county attorney or the attorney general of the state shall provide legal services to
167 the director in an action to collect the penalty.

168 (c) A court may award reasonable attorney fees and costs to the division in an action
169 brought by the division to enforce the provisions of this section.

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

171 **61-2c-102. Definitions.**

172 (1) As used in this chapter:

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

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

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

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

- 179 (i) qualifies under this chapter as a principal lending manager; and
- 180 (ii) works by or on behalf of another principal lending manager in transacting the
181 business of residential mortgage loans.

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

- 183 (i) licensed as a lending manager; and
- 184 (ii) designated in the nationwide database by the individual's sponsoring entity as being
185 responsible to work from a branch office and to supervise the business of residential mortgage
186 loans that is conducted at the branch office.
- 187 (f) "Branch office" means a licensed entity's office:
 - 188 (i) for the transaction of the business of residential mortgage loans regulated under this
189 chapter;
 - 190 (ii) other than the main office of the licensed entity; and
 - 191 (iii) that operates under:
 - 192 (A) the same business name as the licensed entity; or
 - 193 (B) another trade name that is registered with the division under the entity license.
- 194 (g) "Business day" means a day other than:
 - 195 (i) a Saturday;
 - 196 (ii) a Sunday; or
 - 197 (iii) a federal or state holiday.
- 198 (h) (i) "Business of residential mortgage loans" means for compensation or in the
199 expectation of compensation to:
 - 200 (A) engage in an act that makes an individual a mortgage loan originator;
 - 201 (B) make or originate a residential mortgage loan;
 - 202 (C) directly or indirectly solicit a residential mortgage loan for another;
 - 203 (D) unless exempt under Section 61-2c-105 or excluded under Subsection (1)(h)(ii),
204 render services related to the origination of a residential mortgage loan including:
 - 205 (I) preparing a loan package;
 - 206 (II) communicating with the borrower or lender;
 - 207 (III) advising on a loan term;
 - 208 ~~[(IV) acting as a loan processor or loan underwriter without being employed by a~~
209 ~~licensed entity; or]~~
 - 210 ~~[(V) except as provided in Subsection (1)(h)(ii)(B) or (C), acting as a loan underwriter;~~
211 ~~or]~~
 - 212 (IV) receiving, collecting, or distributing information common for the processing or
213 underwriting of a loan in the mortgage industry; or

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

216 (E) engage in loan modification assistance.

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

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

221 [~~(F) the receipt, collection, or distribution of information common for the processing or~~
222 ~~underwriting of a loan in the mortgage industry other than taking an application;]~~

223 [~~(H) communicating with a consumer to obtain information necessary for the~~
224 ~~processing or underwriting of a residential mortgage loan;]~~

225 [~~(HH) word processing;]~~

226 [~~(IV) sending correspondence;]~~

227 [~~(V) assembling files; or]~~

228 [~~(VI) acting as a loan processor or loan underwriter;]~~

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

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

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

235 [~~(E) except if an individual will engage in an activity as a mortgage loan originator;]~~

236 (B) acting in one or more of the following capacities:

237 (I) a loan wholesaler;

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

239 [~~(HH) a loan underwriter;]~~

240 [~~(IV)~~] (III) a loan closer; or

241 [~~(V)~~] (IV) funding a loan; or

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

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

245 61-2c-204.1 to provide one or more of the following:

246 (i) Utah-specific prelicensing education; or

247 (ii) Utah-specific continuing education.

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

249 (i) with a fixed amount borrowed; and

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

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

252 Section 61-2c-104.

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

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

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

257 (i) services;

258 (ii) personal or real property; or

259 (iii) another thing of value.

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

262 (o) "Continuing education" means education taken by an individual licensed under this

263 chapter in order to meet the education requirements imposed by Sections 61-2c-204.1 and

264 61-2c-205 to renew a license under this chapter.

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

267 (i) direct or exercise a controlling interest over:

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

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

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

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

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

275 (ii) "Control person" may include one of the following who is identified as provided in

276 Subsection (1)(q)(i):

277 (A) a manager;

278 (B) a managing partner;

279 (C) a director;

280 (D) an executive officer; or

281 (E) an individual who performs a function similar to an individual listed in this

282 Subsection (1)(q)(ii).

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

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

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

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

288 (i) a condominium unit;

289 (ii) a cooperative unit;

290 (iii) a manufactured home; or

291 (iv) a house.

292 (v) "Employee":

293 (i) means an individual:

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

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

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

300 (w) "Entity" means:

301 (i) a corporation;

302 (ii) a limited liability company;

303 (iii) a partnership;

304 (iv) a company;

305 (v) an association;

306 (vi) a joint venture;

- 307 (vii) a business trust;
- 308 (viii) a trust; or
- 309 (ix) another organization.
- 310 (x) "Executive director" means the executive director of the Department of Commerce.
- 311 (y) "Federal licensing requirements" means Secure and Fair Enforcement for Mortgage
- 312 Licensing, 12 U.S.C. Sec. 5101 et seq.
- 313 (z) "Foreclosure rescue" means, for compensation or with the expectation of receiving
- 314 valuable consideration, to:
- 315 (i) engage, or offer to engage, in an act that:
- 316 (A) the person represents will assist a borrower in preventing a foreclosure; and
- 317 (B) relates to a transaction involving the transfer of title to residential real property; or
- 318 (ii) as an employee or agent of another person:
- 319 (A) solicit, or offer that the other person will engage in an act described in Subsection
- 320 (1)(z)(i); or
- 321 (B) negotiate terms in relationship to an act described in Subsection (1)(z)(i).
- 322 (aa) "Inactive status" means a dormant status into which an unexpired license is placed
- 323 when the holder of the license is not currently engaging in the business of residential mortgage
- 324 loans.
- 325 (bb) "Lending manager" means an individual licensed as a lending manager under
- 326 Section [61-2c-206](#) to transact the business of residential mortgage loans.
- 327 (cc) "Licensee" means a person licensed with the division under this chapter.
- 328 (dd) "Licensing examination" means the examination required by Section [61-2c-204.1](#)
- 329 or [61-2c-206](#) for an individual to obtain a license under this chapter.
- 330 (ee) "Loan modification assistance" means, for compensation or with the expectation
- 331 of receiving valuable consideration, to:
- 332 (i) act, or offer to act, on behalf of a person to:
- 333 (A) obtain a loan term of a residential mortgage loan that is different from an existing
- 334 loan term including:
- 335 (I) an increase or decrease in an interest rate;
- 336 (II) a change to the type of interest rate;
- 337 (III) an increase or decrease in the principal amount of the residential mortgage loan;

- 338 (IV) a change in the number of required period payments;
- 339 (V) an addition of collateral;
- 340 (VI) a change to, or addition of, a prepayment penalty;
- 341 (VII) an addition of a cosigner; or
- 342 (VIII) a change in persons obligated under the existing residential mortgage loan; or
- 343 (B) substitute a new residential mortgage loan for an existing residential mortgage
- 344 loan; or
- 345 (ii) as an employee or agent of another person:
- 346 (A) solicit, or offer that the other person will engage in an act described in Subsection
- 347 (1)(ee)(i); or
- 348 (B) negotiate terms in relationship to an act described in Subsection (1)(ee)(i).
- 349 (ff) (i) "Mortgage loan originator" means an individual who, for compensation or in
- 350 expectation of compensation:
- 351 (A) (I) takes a residential mortgage loan application;
- 352 (II) offers or negotiates terms of a residential mortgage loan for the purpose of:
- 353 (Aa) a purchase;
- 354 (Bb) a refinance;
- 355 (Cc) a loan modification assistance; or
- 356 (Dd) a foreclosure rescue; or
- 357 (III) directly or indirectly solicits a residential mortgage loan for another person; and
- 358 (B) is licensed as a mortgage loan originator in accordance with this chapter.
- 359 (ii) "Mortgage loan originator" does not include a person who:
- 360 (A) is described in Subsection (1)(ff)(i), but who performs exclusively administrative
- 361 or clerical tasks as described in Subsection (1)(h)(ii)(A);
- 362 (B) (I) is licensed under Chapter 2f, Real Estate Licensing and Practices Act;
- 363 (II) performs only real estate brokerage activities; and
- 364 (III) receives no compensation from:
- 365 (Aa) a lender;
- 366 (Bb) a lending manager; or
- 367 (Cc) an agent of a lender or lending manager; or
- 368 (C) is solely involved in extension of credit relating to a timeshare plan, as defined in

369 11 U.S.C. Sec. 101(53D).

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

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

374 (ii) "Person" means an individual or entity.

375 (jj) "Prelicensing education" means education taken by an individual seeking to be
376 licensed under this chapter in order to meet the education requirements imposed by Section
377 [61-2c-204.1](#) or [61-2c-206](#) for an individual to obtain a license under this chapter.

378 (kk) "Principal lending manager" means an individual:

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

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

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

384 (mm) "Record" means information that is:

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

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

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

388 (II) in a perceivable and reproducible form.

389 (nn) "Referral fee":

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

393 (ii) does not include:

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

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

400 otherwise incur.

401 (oo) "Residential mortgage loan" means an extension of credit, if:

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

403 (A) mortgage;

404 (B) deed of trust; or

405 (C) consensual security interest; and

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

407 (1)(oo)(i):

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

409 (B) is created with the consent of the owner of the residential real property.

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

411 (i) the borrower and, if applicable, the seller sign and deliver to each other or to the

412 escrow or closing office each document required by:

413 (A) the real estate purchase contract;

414 (B) the lender;

415 (C) the title insurance company;

416 (D) the escrow or closing office;

417 (E) the written escrow instructions; or

418 (F) applicable law;

419 (ii) the borrower delivers to the seller, if applicable, or to the escrow or closing office

420 any money, except for the proceeds of any new loan, that the borrower is required to pay; and

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

422 money that the seller is required to pay.

423 (qq) "Settlement services" means a service provided in connection with a real estate

424 settlement, including a title search, a title examination, the provision of a title certificate,

425 services related to title insurance, services rendered by an attorney, preparing documents, a

426 property survey, rendering a credit report or appraisal, a pest or fungus inspection, services

427 rendered by a real estate agent or broker, the origination of a federally related mortgage loan,

428 and the processing of a federally related mortgage.

429 (rr) "Sponsorship" means an association in accordance with Section [61-2c-209](#) between

430 an individual licensed under this chapter and an entity licensed under this chapter.

431 (ss) "State" means:

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

433 (ii) the District of Columbia; or

434 (iii) the Commonwealth of Puerto Rico.

435 (tt) "Uniform state test" means the uniform state content section of the qualified written
436 test developed by the nationwide database.

437 [~~tt~~] (uu) "Unique identifier" means the same as that term is defined in 12 U.S.C. Sec.
438 5102.

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

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

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

446 Section 3. Section **61-2c-105** is amended to read:

447 **61-2c-105. Scope of chapter -- Exemptions.**

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

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

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

454 (a) the federal government;

455 (b) a state;

456 (c) a political subdivision of a state;

457 (d) an agency of or entity created by a governmental entity described in Subsections
458 (2)(a) through (c) including:

459 (i) the Utah Housing Corporation created in Section [63H-8-201](#);

460 (ii) the Federal National Mortgage Corporation;

461 (iii) the Federal Home Loan Mortgage Corporation;

- 462 (iv) the Federal Deposit Insurance Corporation;
- 463 (v) the Resolution Trust Corporation;
- 464 (vi) the Government National Mortgage Association;
- 465 (vii) the Federal Housing Administration;
- 466 (viii) the National Credit Union Administration;
- 467 (ix) the Farmers Home Administration; and
- 468 (x) the United States Department of Veterans Affairs;
- 469 (e) a depository institution;
- 470 (f) an entity that controls, is controlled by, or is under common control with a
- 471 depository institution;
- 472 (g) an employee or agent of an entity described in Subsections (2)(a) through (f):
- 473 (i) when that person acts on behalf of the entity described in Subsections (2)(a) through
- 474 (f); and
- 475 (ii) including an employee of:
- 476 (A) a depository institution;
- 477 (B) a subsidiary of a depository institution that is:
- 478 (I) owned and controlled by the depository institution; and
- 479 (II) regulated by a federal banking agency, as defined in 12 U.S.C. Sec. 5102; or
- 480 (C) an institution regulated by the Farm Credit Administration;
- 481 (h) except as provided in Subsection (3), a person who:
- 482 (i) makes a loan:
- 483 (A) secured by an interest in real property;
- 484 (B) with the person's own money; and
- 485 (C) for the person's own investment; and
- 486 (ii) that does not engage in the business of making loans secured by an interest in real
- 487 property;
- 488 (i) except as provided in Subsection (3), a person who receives a mortgage, deed of
- 489 trust, or consensual security interest on real property if the individual or entity:
- 490 (i) is the seller of real property; and
- 491 (ii) receives the mortgage, deed of trust, or consensual security interest on real property
- 492 as security for a separate money obligation;

493 (j) a person who receives a mortgage, deed of trust, or consensual security interest on
494 real property if:

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

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

500 (iii) the mortgage, deed of trust, or consensual security interest is created without the
501 consent of the owner of the real property that is the subject of the mortgage, deed of trust, or
502 consensual security interest;

503 (k) a nonprofit corporation that:

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

505 (B) is certified by the United States Small Business Administration as a small business
506 investment company;

507 (C) is organized to promote economic development in this state; and

508 (D) has as its primary activity providing financing for business expansion; or

509 (ii) is a community development financial institution;

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

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

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

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

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

520 (4) (a) A loan processor or loan underwriter who is not a mortgage loan originator is
521 not required to obtain a license under this chapter when the loan processor or loan underwriter
522 is:

523 (i) employed by, and acting on behalf of, a person or entity licensed under this chapter;

524 and

525 (ii) under the direction of and subject to the supervision of a person licensed under this
526 chapter.

527 (b) A loan processor or loan underwriter who is an independent contractor is not
528 exempt under Subsection (4)(a).

529 [~~4~~] (5) (a) Notwithstanding Subsection (2)(m), an attorney exempt from this chapter
530 may not engage in conduct described in Section 61-2c-301 when transacting business of
531 residential mortgage loans.

532 (b) If an attorney exempt from this chapter violates Subsection [~~4~~] (5)(a), the
533 attorney:

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

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

537 (c) If the division receives a complaint alleging an attorney exempt from this chapter is
538 in violation of Subsection [~~4~~] (5)(a) or that an attorney subject to this chapter has violated this
539 chapter, the division shall forward the complaint to the Utah State Bar for disciplinary action.

540 [~~5~~] (6) (a) An individual who is exempt under Subsection (2) [~~or~~], (3), or (4) may
541 voluntarily obtain a license under this chapter by complying with Part 2, Licensure.

542 (b) An individual who voluntarily obtains a license under this Subsection [~~5~~] (6) shall
543 comply with all the provisions of this chapter.

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

545 **61-2c-204.1. Education providers -- Education requirements -- Examination**
546 **requirements.**

547 (1) As used in this section:

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

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

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

554 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

555 division shall make rules establishing:

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

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

558 (c) In accordance with the rules described in Subsection (2)(b), the division shall

559 certify a person to provide the education described in Subsection (2)(a).

560 (d) (i) Upon request, the division shall make available to the public a list of the names

561 and addresses of certified education providers either directly or through a third party.

562 (ii) A person who requests a list under this Subsection (2)(d) shall pay the costs

563 incurred by the division to make the list available.

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

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

566 or

567 (ii) approve:

568 (A) Utah-specific prelicensing education; or

569 (B) Utah-specific continuing education courses.

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

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

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

574 (B) in the number of hours, not to exceed 90 hours, required by rule made by the

575 division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

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

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

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

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

582 (iii) license an individual under this chapter as a lending manager who has not

583 completed the prelicensing education required by Section 61-2c-206 before taking the licensing
584 examination required by Section 61-2c-206.

585 (b) Subject to Subsection (3)(a) and with the concurrence of the division, the

586 commission shall determine:

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

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

591 (iii) the appropriate number of hours of continuing education required to renew a
592 license, including additional continuing education required for a new loan originator; and

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

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

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

602 (4) (a) The division may not license an individual under this chapter unless that
603 individual first passes the ~~[one or more licensing examinations]~~ qualified written national test
604 developed by the nationwide database that includes the uniform state test content that:

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

607 ~~[(ii) meet]~~ (i) meets the minimum federal licensing requirements; and

608 ~~[(iii) are]~~ (ii) is administered by an approved examination provider.

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

611 ~~[(i) a licensing examination that at least:]~~

612 ~~[(A) meets the minimum federal licensing requirements; and]~~

613 ~~[(B) tests knowledge of the:]~~

614 ~~[(F) fundamentals of the English language;]~~

615 ~~[(H) arithmetic;]~~

616 ~~[(H) provisions of this chapter;]~~

617 ~~[(IV) rules adopted under this chapter;]~~
 618 ~~[(V) basic residential mortgage principles and practices; and]~~
 619 ~~[(VI) any other aspect of Utah law the commission determines is appropriate; and]~~
 620 ~~[(ii) a (i) the lending manager licensing examination required under Section~~
 621 ~~61-2c-206 that tests the applicant's knowledge of:~~
 622 ~~[(A) meets the requirements of Subsection (4)(b)(i); and]~~
 623 ~~[(B) tests knowledge of the:]~~
 624 (A) fundamentals of the English language;
 625 (B) arithmetic;
 626 (C) provisions of this chapter;
 627 ~~[(F) (D) advanced residential mortgage principles and practices; and]~~
 628 ~~[(H) (E) other aspects of Utah law the commission, with the concurrence of the~~
 629 ~~division, determines appropriate.~~

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

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

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

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

641 (ii) upon a finding of reasonable cause.

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

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

647 **61-2c-206. Lending manager licenses.**

- 648 (1) To qualify for licensure as a lending manager under this chapter, an individual
649 shall:
- 650 (a) meet the standards in Section [61-2c-203](#);
- 651 (b) successfully complete the following education:
- 652 (i) mortgage loan originator prelicensing education as required by federal licensing
653 regulations; and
- 654 (ii) 40 hours of Utah-specific prelicensing education for a lending manager that is
655 approved by the division under Section [61-2c-204.1](#);
- 656 (c) successfully complete the following examinations:
- 657 (i) the mortgage loan originator licensing examination, including the national and [state
658 components] uniform state test content, as approved by the nationwide database; and
- 659 (ii) the lending manager licensing examination approved by the commission under
660 Section [61-2c-204.1](#);
- 661 (d) submit proof, on a form approved by the division, of three years of full-time active
662 experience as a mortgage loan originator licensed in any state in the five years preceding the
663 day on which the application is submitted, or equivalent experience as approved by the
664 commission pursuant to rule that the division makes in accordance with Title 63G, Chapter 3,
665 Utah Administrative Rulemaking Act;
- 666 (e) submit an application in a manner established by the division by rule;
- 667 (f) establish sponsorship with an entity licensed under this chapter;
- 668 (g) submit to the criminal background check required by Subsection [61-2c-202\(1\)\(b\)](#);
- 669 and
- 670 (h) pay a fee determined by the division under Section [63J-1-504](#).
- 671 (2) A lending manager may not:
- 672 (a) engage in the business of residential mortgage loans on behalf of more than one
673 entity at the same time;
- 674 (b) be sponsored by more than one entity at the same time; or
- 675 (c) act simultaneously as the principal lending manager and branch lending manager
676 for the individual's sponsoring entity, unless:
- 677 (i) the sponsoring entity does not originate Utah residential mortgage loans from the
678 sponsoring entity's location; and

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

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

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

683 and

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

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

688 **61-2c-301. Prohibited conduct -- Violations of the chapter.**

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

691 (a) give or receive a referral fee;

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

693 (i) that is excessive; or

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

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

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

699 (c) act incompetently in the transaction of the business of residential mortgage loans
700 such that the person fails to:

701 (i) safeguard the interests of the public; or

702 (ii) conform to acceptable standards of the residential mortgage loan industry;

703 (d) do any of the following as part of a residential mortgage loan transaction, regardless
704 of whether the residential mortgage loan closes:

705 (i) make a false statement or representation;

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

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

708 (e) give or receive compensation or anything of value, or withhold or threaten to

709 withhold payment of an appraiser fee, to influence the independent judgment of an appraiser in

710 reaching a value conclusion in a residential mortgage loan transaction, except that it is not a
711 violation of this section for a licensee to withhold payment because of a bona fide dispute
712 regarding a failure of the appraiser to comply with the licensing law or the Uniform Standards
713 of Professional Appraisal Practice;

714 (f) violate or not comply with:

715 (i) this chapter;

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

717 (iii) a rule made by the division;

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

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

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

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

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

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

724 person also acts in any of the following capacities with respect to the same residential mortgage

725 loan transaction:

726 (i) appraiser;

727 (ii) escrow agent;

728 (iii) real estate agent;

729 (iv) general contractor; or

730 (v) title insurance producer;

731 (j) engage in unprofessional conduct as defined by rule;

732 (k) engage in an act or omission in transacting the business of residential mortgage

733 loans that constitutes dishonesty, fraud, or misrepresentation;

734 (l) engage in false or misleading advertising;

735 (m) (i) fail to account for money received in connection with a residential mortgage

736 loan;

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

738 received; or

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

740 are not performed;

- 741 (n) fail to provide a prospective borrower a copy of each appraisal and any other
742 written valuation developed in connection with an application for credit that is to be secured by
743 a first lien on a dwelling in accordance with Subsection (5);
- 744 (o) engage in an act that is performed to:
- 745 (i) evade this chapter; or
- 746 (ii) assist another person to evade this chapter;
- 747 (p) recommend or encourage default, delinquency, or continuation of an existing
748 default or delinquency, by a mortgage applicant on an existing indebtedness before the closing
749 of a residential mortgage loan that will refinance all or part of the indebtedness;
- 750 (q) in the case of the lending manager of an entity or a branch office of an entity, fail to
751 exercise reasonable supervision over the activities of:
- 752 (i) unlicensed staff; or
- 753 (ii) a mortgage loan originator who is affiliated with the lending manager;
- 754 (r) pay or offer to pay an individual who does not hold a license under this chapter for
755 work that requires the individual to hold a license under this chapter;
- 756 (s) in the case of a dual licensed title licensee as defined in Section [31A-2-402](#):
- 757 (i) provide a title insurance product or service without the approval required by Section
758 [31A-2-405](#); or
- 759 (ii) knowingly provide false or misleading information in the statement required by
760 Subsection [31A-2-405\(2\)](#);
- 761 (t) represent to the public that the person can or will perform any act of a mortgage
762 loan originator if that person is not licensed under this chapter because the person is exempt
763 under Subsection [~~61-2c-102(1)(h)(ii)(A)~~] [61-2c-105\(4\)](#), including through:
- 764 (i) advertising;
- 765 (ii) a business card;
- 766 (iii) stationery;
- 767 (iv) a brochure;
- 768 (v) a sign;
- 769 (vi) a rate list; or
- 770 (vii) other promotional item;
- 771 (u) (i) engage in an act of loan modification assistance without being licensed under

772 this chapter;

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

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

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

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

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

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

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

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

787 (I) a government agency;

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

789 (III) a nonprofit or charitable institution;

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

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

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

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

795 (I) lender;

796 (II) loan servicer;

797 (III) attorney;

798 (IV) credit counselor; or

799 (V) housing counselor; or

800 (vii) for an agreement for loan modification assistance entered into on or after May 11,
801 2010, engage in an act of loan modification assistance without offering in writing to the person
802 entering into the agreement for loan modification assistance a right to cancel the agreement

- 803 within three business days after the day on which the person enters the agreement;
- 804 (v) sign or initial a document on behalf of another person, except for in a circumstance
805 allowed by the division by rule, with the concurrence of the commission, made in accordance
806 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; [or]
- 807 (w) violate or fail to comply with a provision of Title 57, Chapter 28, Utah Reverse
808 Mortgage Act[-]; or
- 809 (x) engage in any act or practice that violates appraisal independence as defined in 15
810 U.S.C. Sec. 1639e or in the policies and procedures of:
- 811 (i) the Federal Home Loan Mortgage Corporation; or
812 (ii) the Federal National Mortgage Association.
- 813 (2) Whether or not the crime is related to the business of residential mortgage loans, it
814 is a violation of this chapter for a licensee or a person who is a certified education provider to
815 do any of the following with respect to a criminal offense that involves moral turpitude:
- 816 (a) be convicted;
- 817 (b) plead guilty or nolo contendere;
- 818 (c) enter a plea in abeyance; or
- 819 (d) be subjected to a criminal disposition similar to the ones described in Subsections
820 (2)(a) through (c).
- 821 (3) A lending manager does not violate Subsection (1)(q) if:
- 822 (a) in contravention of the lending manager's written policies and instructions, an
823 affiliated licensee of the lending manager violates:
- 824 (i) this chapter; or
825 (ii) rules made by the division under this chapter;
- 826 (b) the lending manager established and followed reasonable procedures to ensure that
827 affiliated licensees receive adequate supervision;
- 828 (c) upon learning of a violation by an affiliated licensee, the lending manager
829 attempted to prevent or mitigate the damage;
- 830 (d) the lending manager did not participate in or ratify the violation by an affiliated
831 licensee; and
- 832 (e) the lending manager did not attempt to avoid learning of the violation.
- 833 (4) Notwithstanding Subsection (1)(m)(iii), a licensee may, upon compliance with

834 Section 70D-2-305, charge a reasonable cancellation fee for work done originating a mortgage
835 if the mortgage is not closed.

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

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

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

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

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

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

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

859 Section 7. Section 61-2c-302 is amended to read:

860 **61-2c-302. Record requirements.**

861 (1) For the time period specified in Subsection (2), a licensee shall make or possess any
862 record required for that licensee by a rule made by the division.

863 (2) A licensee shall maintain and safeguard in its possession a record described in
864 Subsection (1) for four years from the last to occur of the following:

- 865 (a) the final entry on a residential mortgage loan is made by that licensee;
866 (b) if the residential mortgage loan is serviced by the licensee:
867 (i) the residential mortgage loan is paid in full; or
868 (ii) the licensee ceases to service the residential mortgage loan; or
869 (c) if the residential mortgage loan is not serviced by the licensee, the residential
870 mortgage loan is closed.

871 (3) A licensee shall, upon the division's request:

872 (a) make available to the division for inspection and copying during normal business
873 hours all records required to be maintained under this chapter; and

874 (b) produce all records described in Subsection (3)(a) that are related to an
875 investigation being conducted by the division at the division office for inspection and copying
876 by the division.

877 (4) A licensee who is an entity shall maintain and produce for inspection by the
878 division a current list of all individuals whose licenses are sponsored by the entity.

879 (5) (a) A licensed entity shall:

880 (i) create, for each quarter of the fiscal year, a report of condition identifying all
881 lending activities, including all loans closed by the entity's sponsored mortgage loan originators
882 during the quarter;

883 (ii) provide each quarterly report of condition to the nationwide database no later than
884 75 days after the last day of the reporting quarter; and

885 (iii) maintain each report of condition submitted to the nationwide database as required
886 by 12 U.S.C. Sec. 5104(e) for at least four years from the day on which the licensee submits the
887 report of condition to the nationwide database.

888 (b) Upon request by the division, a mortgage loan originator shall produce a report of
889 condition for inspection by the division.

890 Section 8. Section **61-2c-401** is amended to read:

891 **61-2c-401. Investigations.**

892 (1) The division may, either publicly or privately, investigate or cause to be
893 investigated the actions of:

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

923 and

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

925 (3) (a) A court of competent jurisdiction shall enforce, according to the practice and
926 procedure of the court, a subpoena issued by the division.

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

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

931 (a) failing to respond to a subpoena;

932 (b) withholding evidence; or

933 (c) failing to produce a record.

934 (5) The division may inspect and copy a record related to the business of residential
935 mortgage loans by a licensee under this chapter, regardless of whether the record is maintained
936 at a business location in Utah, in conducting:

937 (a) investigations of complaints; or

938 (b) inspections of the record required to be maintained under:

939 (i) this chapter; or

940 (ii) rules adopted by the division under this chapter.

941 (6) (a) If a licensee maintains a record required by this chapter and the rules adopted by
942 the division under this chapter outside Utah, the licensee is responsible for all reasonable costs,
943 including reasonable travel costs, incurred by the division in inspecting the record.

944 (b) Upon receipt of notification from the division that a record maintained outside Utah
945 is to be examined in connection with an investigation or an examination, the licensee shall
946 deposit with the division a deposit of \$500 to cover the division's expenses in connection with
947 the examination of the record.

948 (c) If the deposit described in Subsection (6)(b) is insufficient to meet the estimated
949 costs and expenses of examination of the record, the licensee shall make an additional deposit
950 to cover the estimated costs and expenses of the division.

951 (d) (i) A deposit under this Subsection (6) shall be deposited in the General Fund as a
952 dedicated credit to be used by the division under Subsection (6)(a).

953 (ii) The division, with the concurrence of the executive director, may use a deposit as a
954 dedicated credit for the records inspection costs under Subsection (6)(a).

955 (iii) A deposit under this Subsection (6) shall be refunded to the licensee to the extent it
956 is not used, together with an itemized statement from the division of all amounts it has used.

957 (7) Failure to deposit with the division a deposit required to cover the costs of

958 examination of a record that is maintained outside Utah shall result in automatic suspension of
959 a license until the deposit is made.

960 (8) (a) If a person is found to have violated this chapter or a rule made under this
961 chapter, the person shall pay the costs incurred by the division to copy a record required under
962 this chapter, including the costs incurred to copy an electronic record in a universally readable
963 format.

964 (b) If a person fails to pay the costs described in Subsection (8)(a) when due, the
965 person's license or certification is automatically suspended:

- 966 (i) beginning the day on which the payment of costs is due; and
- 967 (ii) ending the day on which the costs are paid.

968 Section 9. Section **61-2e-201** is amended to read:

969 **61-2e-201. Registration required -- Qualification for registration.**

970 (1) Unless exempted under Section **61-2e-104**, an appraisal management company is
971 required to register under this chapter if the company:

972 (a) contracts with one or more appraisers for the performance of 10 or more appraisals
973 in the state in a calendar year; or

974 (b) oversees a network or panel of more than 15 appraisers certified or licensed in the
975 state.

976 (2) Unless registered under this chapter or exempt under Section **61-2e-104**, an entity
977 may not with regard to a real estate appraisal activity for real estate located in this state:

978 (a) directly or indirectly engage or attempt to engage in business as an appraisal
979 management company;

980 (b) directly or indirectly engage or attempt to perform an appraisal management
981 service; or

982 (c) advertise or hold itself out as engaging in or conducting business as an appraisal
983 management company.

984 (3) To qualify to be registered as an appraisal management company under this
985 chapter:

986 (a) the appraisal management company may not have had a license or registration
987 revoked by a government regulatory body at any time, unless the revocation is subsequently
988 vacated or converted;

989 ~~[(a)]~~ (b) each individual who owns, directly or indirectly, more than 10% of the
990 appraisal management company shall:

991 (i) be of good moral character, as determined by the board; and

992 (ii) not have had a license or certificate to engage in an act related to a real estate or
993 mortgage transaction refused, denied, canceled, or revoked in this state or in another state; and

994 ~~[(b)]~~ (c) the appraisal management company shall designate a main contact for
995 communication between the appraisal management company and either the board or division
996 who:

997 (i) is a controlling person;

998 (ii) is of good moral character, as determined by the board; and

999 (iii) has not had a license or certificate to engage in an act related to a real estate or
1000 mortgage transaction refused, denied, canceled, or revoked in this state or in another state.

1001 (4) This section applies without regard to whether the entity uses the term:

1002 (a) "appraisal management company";

1003 (b) "mortgage technology company"; or

1004 (c) another name.

1005 Section 10. Section **61-2e-307** is amended to read:

1006 **61-2e-307. Prohibited acts -- Exclusions.**

1007 (1) An appraisal management company required to be registered under this chapter and
1008 a controlling person, employee, or agent of the appraisal management company may not:

1009 (a) engage in an act of coercion, extortion, intimidation, or bribery for any purpose
1010 related to an appraisal;

1011 (b) compensate an appraiser in a manner that the person should reasonably know
1012 would result in the appraiser not conducting a real estate appraisal activity in a manner
1013 consistent with applicable appraisal standards;

1014 (c) engage in the business of an appraisal management company under an assumed or
1015 fictitious name not properly registered in the state;

1016 (d) accept a contingent fee for performing an appraisal management service if the fee is
1017 contingent on:

1018 (i) the appraisal report having a predetermined analysis, opinion, or conclusion;

1019 (ii) the analysis, opinion, conclusion, or valuation reached in an appraisal report; or

1020 (iii) the consequences resulting from the appraisal assignment;

1021 (e) require an appraiser to indemnify the appraisal management company against

1022 liability except liability for errors and omissions by the appraiser; [~~or~~]

1023 (f) alter, modify, or otherwise change a completed appraisal report submitted by an

1024 appraiser[~~;~~]; or

1025 (g) engage in any act or practice that violates appraisal independence as defined in 15

1026 U.S.C. Sec. 1639e or in the policies and procedures of:

1027 (i) the Federal Home Loan Mortgage Corporation; or

1028 (ii) the Federal National Mortgage Association.

1029 (2) An appraisal management company required to be registered under this chapter, or

1030 a controlling person, employee, or agent of the appraisal management company may not

1031 influence or attempt to influence the development, reporting, or review of an appraisal through:

1032 (a) coercion;

1033 (b) extortion;

1034 (c) collusion;

1035 (d) compensation;

1036 (e) instruction;

1037 (f) inducement;

1038 (g) intimidation;

1039 (h) bribery; or

1040 (i) any other manner that would constitute undue influence.

1041 (3) A violation of Subsection (2) includes doing one or more of the following for a

1042 purpose listed in Subsection (2):

1043 (a) withholding or threatening to withhold timely payment for an appraisal;

1044 (b) withholding or threatening to withhold future business for an appraiser;

1045 (c) taking adverse action or threatening to take adverse action against an appraiser

1046 regarding use of the appraiser for a real estate appraisal activity;

1047 (d) expressly or by implication promising future business or increased compensation

1048 for an appraiser;

1049 (e) conditioning one or more of the following on the opinion, conclusion, or valuation

1050 to be reached, or on a preliminary estimate or opinion requested from an appraiser:

- 1051 (i) a request for a real estate appraisal activity; or
1052 (ii) the payment of consideration;
- 1053 (f) requesting that an appraiser provide at any time before the appraiser's completion of
1054 a real estate appraisal activity:
- 1055 (i) an estimated, predetermined, or desired valuation in an appraisal report; or
1056 (ii) an estimated value or comparable sale;
- 1057 (g) except for a copy of a sales contract for a purchase transaction, providing to an
1058 appraiser:
- 1059 (i) an anticipated, estimated, encouraged, or desired value for a subject property; or
1060 (ii) a proposed or target amount to be loaned to the borrower;
- 1061 (h) providing to an appraiser, or an individual related to the appraiser, stock or other
1062 financial or non-financial benefits;
- 1063 (i) allowing the removal of an appraiser from an appraiser panel, without prior written
1064 notice to the appraiser as required by Section [61-2e-306](#);
- 1065 (j) obtaining, using, or paying for a subsequent appraisal or ordering an automated
1066 valuation model in connection with a mortgage financing transaction unless:
- 1067 (i) (A) there is a reasonable basis to believe that the initial appraisal does not meet
1068 applicable appraisal standards; and
- 1069 (B) the reasonable basis is noted in the loan file; or
- 1070 (ii) the subsequent appraisal or automated valuation model is done pursuant to a pre- or
1071 post-funding appraisal review or quality control process in accordance with applicable
1072 appraisal standards;
- 1073 (k) removing or threatening to remove an appraiser from the appraiser panel if an
1074 appraiser requires a reasonable extension of the completion date for an appraisal assignment in
1075 order to complete a credible appraisal report; or
- 1076 (l) engaging in any other act or practice that impairs or attempts to impair an appraiser's
1077 independence, objectivity, or impartiality.
- 1078 (4) This section may not be construed to prohibit an appraisal management company
1079 from requesting that an appraiser:
- 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 issued 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; ~~and~~

1097 (iv) issue a subpoena that requires:

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

1099 (B) the production of evidence~~[-];~~ and

1100 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
1111 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,
1112 document, or record required under this chapter, including the costs incurred to copy an

1113 electronic book, paper, contract, document, or record in a universally readable format.

1114 (b) If a person fails to pay the costs described in Subsection (2)(a) when due, the
1115 person's registration is automatically suspended:

1116 (i) beginning the day on which the payment of costs is due; and

1117 (ii) ending the day on which the costs are paid.

1118 (3) The division is immune from a civil action or criminal prosecution for initiating or
1119 assisting in a lawful investigation of an act or participating in a disciplinary proceeding under
1120 this chapter if the division takes the action:

1121 (a) without malicious intent; and

1122 (b) in the reasonable belief that the action is taken pursuant to the powers and duties
1123 vested in the division under this chapter.

1124 Section 12. Section **61-2f-102** is amended to read:

1125 **61-2f-102. Definitions.**

1126 As used in this chapter:

1127 (1) "Associate broker" means an individual who is:

1128 (a) employed or engaged as an independent contractor by or on behalf of a principal
1129 broker to perform an act [~~set out~~] described in Subsection [~~(18)~~] (20) for valuable
1130 consideration; and

1131 (b) licensed under this chapter as an associate broker.

1132 (2) "Branch broker" means an associate broker who manages a principal broker's
1133 branch office under the supervision of the principal broker.

1134 [~~(2)~~] (3) "Branch office" means a principal broker's real estate brokerage office that is
1135 not the principal broker's main office.

1136 [~~(3)~~] (4) "Business day" means a day other than:

1137 (a) a Saturday;

1138 (b) a Sunday; or

1139 (c) a federal or state holiday.

1140 [~~(4)~~] (5) "Business opportunity" means the sale, lease, or exchange of any business that
1141 includes an interest in real estate.

1142 [~~(5)~~] (6) "Commission" means the Real Estate Commission established under this
1143 chapter.

1144 ~~[(6)]~~ (7) "Concurrence" means the entities given a concurring role must jointly agree
1145 for action to be taken.

1146 ~~[(7)]~~ (8) "Condominium homeowners' association" means the condominium unit
1147 owners acting as a group in accordance with declarations and bylaws.

1148 ~~[(8)]~~ (9) (a) "Condominium hotel" means one or more condominium units that are
1149 operated as a hotel.

1150 (b) "Condominium hotel" does not mean a hotel consisting of condominium units, all
1151 of which are owned by a single entity.

1152 ~~[(9)]~~ (10) "Condominium unit" means the same as that term is defined in Section
1153 [57-8-3](#).

1154 ~~[(10)]~~ (11) "Director" means the director of the Division of Real Estate.

1155 ~~[(11)]~~ (12) "Division" means the Division of Real Estate.

1156 (13) "Dual broker" means a principal broker of a real estate sales brokerage who
1157 obtains from the division a dual broker license in order to function as the principal broker of a
1158 property management company that is a separate entity from the real estate sales brokerage.

1159 ~~[(12)]~~ (14) "Entity" means:

1160 (a) a corporation;

1161 (b) a partnership;

1162 (c) a limited liability company;

1163 (d) a company;

1164 (e) an association;

1165 (f) a joint venture;

1166 (g) a business trust;

1167 (h) a trust; or

1168 (i) any organization similar to an entity described in Subsections ~~[(12)]~~ (14)(a) through
1169 (h).

1170 ~~[(13)]~~ (15) "Executive director" means the director of the Department of Commerce.

1171 ~~[(14)]~~ (16) "Foreclosure rescue" means, for compensation or with the expectation of
1172 receiving valuable consideration, to:

1173 (a) engage, or offer to engage, in an act that:

1174 (i) the person represents will assist a borrower in preventing a foreclosure; and

1175 (ii) relates to a transaction involving the transfer of title to residential real property; or
1176 (b) as an employee or agent of another person:
1177 (i) solicit, or offer that the other person will engage in an act described in Subsection
1178 ~~[(14)]~~ (16)(a); or
1179 (ii) negotiate terms in relationship to an act described in Subsection ~~[(14)]~~ (16)(a).
1180 ~~[(15)]~~ (17) "Loan modification assistance" means, for compensation or with the
1181 expectation of receiving valuable consideration, to:
1182 (a) act, or offer to act, on behalf of a person to:
1183 (i) obtain a loan term of a residential mortgage loan that is different from an existing
1184 loan term including:
1185 (A) an increase or decrease in an interest rate;
1186 (B) a change to the type of interest rate;
1187 (C) an increase or decrease in the principal amount of the residential mortgage loan;
1188 (D) a change in the number of required period payments;
1189 (E) an addition of collateral;
1190 (F) a change to, or addition of, a prepayment penalty;
1191 (G) an addition of a cosigner; or
1192 (H) a change in persons obligated under the existing residential mortgage loan; or
1193 (ii) substitute a new residential mortgage loan for an existing residential mortgage loan;
1194 or
1195 (b) as an employee or agent of another person:
1196 (i) solicit, or offer that the other person will engage in an act described in Subsection
1197 ~~[(15)]~~ (17)(a); or
1198 (ii) negotiate terms in relationship to an act described in Subsection ~~[(15)]~~ (17)(a).
1199 ~~[(16)]~~ (18) "Main office" means the address which a principal broker designates with
1200 the division as the principal broker's primary brokerage office.
1201 ~~[(17)]~~ (19) "Person" means an individual or entity.
1202 ~~[(18)]~~ (20) "Principal broker" means an individual who is licensed or required to be
1203 licensed as a principal broker under this chapter who:
1204 (a) sells or lists for sale real estate, including real estate being sold as part of a
1205 foreclosure rescue, or a business opportunity with the expectation of receiving valuable

1206 consideration;

1207 (b) buys, exchanges, or auctions real estate, an option on real estate, a business
1208 opportunity, or an improvement on real estate with the expectation of receiving valuable
1209 consideration;

1210 (c) advertises, offers, attempts, or otherwise holds the individual out to be engaged in
1211 the business described in Subsection [~~(18)~~] (20)(a) or (b);

1212 (d) is employed by or on behalf of the owner of real estate or by a prospective
1213 purchaser of real estate and performs an act described in Subsection [~~(18)~~] (20)(a), whether the
1214 individual's compensation is at a stated salary, a commission basis, upon a salary and
1215 commission basis, or otherwise;

1216 (e) with the expectation of receiving valuable consideration, manages property owned
1217 by another person;

1218 (f) advertises or otherwise holds the individual out to be engaged in property
1219 management;

1220 (g) with the expectation of receiving valuable consideration, assists or directs in the
1221 procurement of prospects for or the negotiation of a transaction listed in Subsections [~~(18)~~]
1222 (20)(a) and (e);

1223 (h) except for a mortgage lender, title insurance producer, or an employee of a
1224 mortgage lender or title insurance producer, assists or directs in the closing of a real estate
1225 transaction with the expectation of receiving valuable consideration;

1226 (i) engages in foreclosure rescue; or

1227 (j) advertises, offers, attempts, or otherwise holds the person out as being engaged in
1228 foreclosure rescue.

1229 [~~(19)~~] (21) (a) "Property management" means engaging in, with the expectation of
1230 receiving valuable consideration, the management of real estate owned by another person or
1231 advertising or otherwise claiming to be engaged in property management by:

1232 (i) advertising for, arranging, negotiating, offering, or otherwise attempting or
1233 participating in a transaction calculated to secure the rental or leasing of real estate;

1234 (ii) collecting, agreeing, offering, or otherwise attempting to collect rent for the real
1235 estate and accounting for and disbursing the money collected; or

1236 (iii) authorizing expenditures for repairs to the real estate.

- 1237 (b) "Property management" does not include:
- 1238 (i) hotel or motel management;
- 1239 (ii) rental of tourist accommodations, including hotels, motels, tourist homes,
- 1240 condominiums, condominium hotels, mobile home park accommodations, campgrounds, or
- 1241 similar public accommodations for a period of less than 30 consecutive days, and the
- 1242 management activities associated with these rentals; or
- 1243 (iii) the leasing or management of surface or subsurface minerals or oil and gas
- 1244 interests, if the leasing or management is separate from a sale or lease of the surface estate.
- 1245 (22) "Property management sales agent" means a sales agent who:
- 1246 (a) is affiliated with a dual broker through the dual broker's property management
- 1247 company; and
- 1248 (b) is designated by the dual broker as a property management sales agent.
- 1249 [~~(20)~~] (23) "Real estate" includes leaseholds and business opportunities involving real
- 1250 property.
- 1251 [~~(21)~~] (24) (a) "Regular salaried employee" means an individual who performs a
- 1252 service for wages or other remuneration, whose employer withholds federal employment taxes
- 1253 under a contract of hire, written or oral, express or implied.
- 1254 (b) "Regular salaried employee" does not include an individual who performs services
- 1255 on a project-by-project basis or on a commission basis.
- 1256 [~~(22)~~] (25) "Reinstatement" means restoring a license that has expired or has been
- 1257 suspended.
- 1258 [~~(23)~~] (26) "Reissuance" means the process by which a licensee may obtain a license
- 1259 following revocation of the license.
- 1260 [~~(24)~~] (27) "Renewal" means extending a license for an additional licensing period on
- 1261 or before the date the license expires.
- 1262 [~~(25)~~] (28) "Sales agent" means an individual who is:
- 1263 (a) affiliated with a principal broker, either as an independent contractor or an
- 1264 employee as provided in Section [61-2f-303](#), to perform for valuable consideration an act
- 1265 described in Subsection [~~(18)~~] (20); and
- 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) an individual who as owner or lessor performs an act described in Subsection
1272 61-2f-102(18) with reference to real estate owned or leased by that individual;

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
1297 for another legitimate business reason.

1298 (2) A license under this chapter is not required for:

- 1299 (a) an isolated transaction or service by an individual holding an unsolicited, duly
1300 executed power of attorney from a property owner;
- 1301 (b) services rendered by an attorney admitted to practice law in this state in performing
1302 the attorney's duties as an attorney;
- 1303 (c) a receiver, trustee in bankruptcy, administrator, executor, or an individual acting
1304 under order of a court;
- 1305 (d) a trustee or employee of a trustee under a deed of trust or a will;
- 1306 (e) a public utility, officer of a public utility, or regular salaried employee of a public
1307 utility, unless performance of an act described in Subsection 61-2f-102(18) is in connection
1308 with the sale, purchase, lease, or other disposition of real estate or investment in real estate
1309 unrelated to the principal business activity of that public utility;
- 1310 (f) a regular salaried employee or authorized agent working under the oversight of the
1311 Department of Transportation when performing an act on behalf of the Department of
1312 Transportation in connection with one or more of the following:
- 1313 (i) the acquisition of real estate pursuant to Section 72-5-103;
- 1314 (ii) the disposal of real estate pursuant to Section 72-5-111;
- 1315 (iii) services that constitute property management; or
- 1316 (iv) the leasing of real estate; and
- 1317 (g) a regular salaried employee of a county, city, or town when performing an act on
1318 behalf of the county, city, or town:
- 1319 (i) in accordance with:
- 1320 (A) if a regular salaried employee of a city or town:
- 1321 (I) Title 10, Utah Municipal Code; or
- 1322 (II) Title 11, Cities, Counties, and Local Taxing Units; and
- 1323 (B) if a regular salaried employee of a county:
- 1324 (I) Title 11, Cities, Counties, and Local Taxing Units; and
- 1325 (II) Title 17, Counties; and
- 1326 (ii) in connection with one or more of the following:
- 1327 (A) the acquisition of real estate, including by eminent domain;
- 1328 (B) the disposal of real estate;
- 1329 (C) services that constitute property management; or

- 1330 (D) the leasing of real estate.
- 1331 (3) A license under this chapter is not required for an individual registered to act as a
1332 broker-dealer, agent, or investment adviser under the Utah and federal securities laws in the
1333 sale or the offer for sale of real estate if:
- 1334 (a) (i) the real estate is a necessary element of a "security" as that term is defined by the
1335 Securities Act of 1933 and the Securities Exchange Act of 1934; and
- 1336 (ii) the security is registered for sale in accordance with:
- 1337 (A) the Securities Act of 1933; or
- 1338 (B) Title 61, Chapter 1, Utah Uniform Securities Act; or
- 1339 (b) (i) it is a transaction in a security for which a Form D, described in 17 C.F.R. Sec.
1340 239.500, has been filed with the Securities and Exchange Commission pursuant to Regulation
1341 D, Rule 506, 17 C.F.R. Sec. 230.506; and
- 1342 (ii) the selling agent and the purchaser are not residents of this state.
- 1343 (4) As used in this section, "owner" does not include:
- 1344 (a) a person who holds an option to purchase real property;
- 1345 (b) a mortgagee;
- 1346 (c) a beneficiary under a deed of trust;
- 1347 (d) a trustee under a deed of trust; or
- 1348 (e) a person who owns or holds a claim that encumbers any real property or an
1349 improvement to the real property.
- 1350 (5) The commission, with the concurrence of the division, may develop criteria, by rule
1351 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for a
1352 person or transaction to be exempt under this section.
- 1353 Section 14. Section **61-2f-206** is amended to read:
- 1354 **61-2f-206. Registration of entity or branch office -- Certification of education**
1355 **providers and courses -- Specialized licenses.**
- 1356 (1) (a) An entity may not engage in an activity described in Section **61-2f-201**, unless it
1357 is registered with the division.
- 1358 (b) To register with the division under this Subsection (1), an entity shall submit to the
1359 division:
- 1360 (i) an application in a form required by the division;

- 1361 (ii) evidence of an affiliation with a principal broker;
- 1362 (iii) evidence that the entity is registered and in good standing with the Division of
1363 Corporations and Commercial Code; and
- 1364 (iv) a registration fee established by the commission with the concurrence of the
1365 division under Section 63J-1-504.
- 1366 (c) The division may terminate an entity's registration if:
- 1367 (i) the entity's registration with the Division of Corporations and Commercial Code has
1368 been expired for at least three years; and
- 1369 (ii) the entity's license with the division has been inactive for at least three years.
- 1370 (2) (a) A principal broker shall register with the division each of the principal broker's
1371 branch offices.
- 1372 (b) To register a branch office with the division under this Subsection (2), a principal
1373 broker shall submit to the division:
- 1374 (i) an application in a form required by the division; and
- 1375 (ii) a registration fee established by the commission with the concurrence of the
1376 division under Section 63J-1-504.
- 1377 (3) (a) In accordance with rules made by the commission with the concurrence of the
1378 division, the division shall certify:
- 1379 (i) a real estate school;
- 1380 (ii) a course provider; or
- 1381 (iii) an instructor.
- 1382 (b) In accordance with rules made by the commission, subject to concurrence by the
1383 division, the division shall certify a continuing education course that is required under this
1384 chapter.
- 1385 (4) ~~(a)~~ Except as provided by rule, a principal broker may not be responsible for more
1386 than one registered entity at the same time.
- 1387 (5) A branch broker may simultaneously supervise up to three branch offices.
- 1388 ~~(b)-(i)~~ (6) (a) In addition to issuing a principal broker license, associate broker
1389 license, or sales agent license authorizing the performance of an act set forth in Section
1390 61-2f-201, the division may issue a specialized sales license or specialized property
1391 management license with the scope of practice limited to the specialty.

1392 ~~[(i)]~~ (b) An individual may hold a specialized license in addition to a license as a
 1393 principal broker, associate broker, or a sales agent.

1394 (c) A sales agent who is affiliated with a dual broker may act as a property
 1395 management sales agent if:

1396 (i) the dual broker designates the sales agent as a property management sales agent; and

1397 (ii) the sales agent pays to the division a property management sales agent designation
 1398 fee in an amount determined by the division in accordance with Section [63J-1-504](#).

1399 (d) A property management sales agent may simultaneously provide both property
 1400 management services and real estate sales services under the supervision of a dual broker as
 1401 provided by the commission with the concurrence of the division by rule made in accordance
 1402 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1403 ~~[(iii)]~~ (7) The commission may ~~[adopt rules pursuant to]~~ determine, by rule made in
 1404 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, subject to
 1405 concurrence by the division, ~~[for the administration of this Subsection (4)]~~ licensing
 1406 requirements related to this section for a principal broker, associate broker, sales agent, dual
 1407 broker, property management sales agent, or for a specialized license described in Subsection
 1408 (6), including:

1409 ~~[(A)]~~ (a) prelicensing and postlicensing education requirements;

1410 ~~[(B)]~~ (b) examination requirements;

1411 ~~[(C)]~~ (c) affiliation with real estate brokerages or property management companies;

1412 [and]

1413 (d) property management sales agent:

1414 (i) designation procedures;

1415 (ii) allowable scope of practice; and

1416 (iii) division fees;

1417 (e) what constitutes reasonable supervision for:

1418 (i) a principal broker when supervising a branch broker or sales agent; and

1419 (ii) a branch broker when supervising a sales agent; and

1420 ~~[(D)]~~ (f) other licensing procedures.

1421 Section 15. Section **61-2f-304** is amended to read:

1422 **61-2f-304. Termination of associate broker or sales agent by principal broker --**

1423 **Notice.**

1424 (1) If a principal broker terminates an associate broker or sales agent, the principal
1425 broker shall ~~[by no later than three days from the day on which the principal broker terminates~~
1426 ~~the associate broker or sales agent:]~~ notify the division and the associate broker or sales agent
1427 of the termination in a manner prescribed by rule made in accordance with Title 63G, Chapter
1428 3, Utah Administrative Rulemaking Act, by the commission with the concurrence of the
1429 division.

1430 ~~[(a) provide the division a signed statement notifying the division of the termination;~~
1431 ~~and]~~

1432 ~~[(b) send to the last-known residence address of that associate broker or sales agent~~
1433 ~~notice that the principal broker has notified the division of the termination of the associate~~
1434 ~~broker or sales agent.]~~

1435 (2) An associate broker or sales agent may not perform any act under this chapter,
1436 directly or indirectly, from and after the effective date ~~[of receipt]~~ of the termination notice ~~[by~~
1437 ~~the division]~~ until the day on which the associate broker or sales agent is affiliated with a
1438 principal broker.

1439 Section 16. Section **61-2f-401** is amended to read:

1440 **61-2f-401. Grounds for disciplinary action.**

1441 The following acts are unlawful for a person licensed or required to be licensed under
1442 this chapter:

1443 (1) (a) making a substantial misrepresentation, including in a licensure statement;

1444 (b) making an intentional misrepresentation;

1445 (c) pursuing a continued and flagrant course of misrepresentation;

1446 (d) making a false representation or promise through an agent, sales agent, advertising,
1447 or otherwise; or

1448 (e) making a false representation or promise of a character likely to influence,
1449 persuade, or induce;

1450 (2) acting for more than one party in a transaction without the informed consent of the
1451 parties;

1452 (3) (a) acting as an associate broker or sales agent while not affiliated with a principal
1453 broker;

- 1454 (b) representing or attempting to represent a principal broker other than the principal
- 1455 broker with whom the person is affiliated; or
- 1456 (c) representing as sales agent or having a contractual relationship similar to that of
- 1457 sales agent with a person other than a principal broker;
- 1458 (4) (a) failing, within a reasonable time, to account for or to remit money that belongs
- 1459 to another and comes into the person's possession;
- 1460 (b) commingling money described in Subsection (4)(a) with the person's own money;
- 1461 or
- 1462 (c) diverting money described in Subsection (4)(a) from the purpose for which the
- 1463 money is received;
- 1464 (5) paying or offering to pay valuable consideration, as defined by the commission, to a
- 1465 person not licensed under this chapter, except that valuable consideration may be shared:
- 1466 (a) with a principal broker of another jurisdiction; or
- 1467 (b) as provided under:
- 1468 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;
- 1469 (ii) Title 16, Chapter 11, Professional Corporation Act; or
- 1470 (iii) Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as
- 1471 appropriate pursuant to Section [48-3a-1405](#);
- 1472 (6) for a principal broker, paying or offering to pay a sales agent or associate broker
- 1473 who is not affiliated with the principal broker at the time the sales agent or associate broker
- 1474 earned the compensation;
- 1475 (7) being incompetent to act as a principal broker, associate broker, or sales agent in
- 1476 such manner as to safeguard the interests of the public;
- 1477 (8) failing to voluntarily furnish a copy of a document to the parties before and after the
- 1478 execution of a document;
- 1479 (9) failing to keep and make available for inspection by the division a record of each
- 1480 transaction, including:
- 1481 (a) the names of buyers and sellers or lessees and lessors;
- 1482 (b) the identification of real estate;
- 1483 (c) the sale or rental price;
- 1484 (d) money received in trust;

- 1485 (e) agreements or instructions from buyers and sellers or lessees and lessors; and
1486 (f) any other information required by rule;
- 1487 (10) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether
1488 the purchase, sale, or rental is made for that person or for an undisclosed principal;
- 1489 (11) being convicted, within five years of the most recent application for licensure, of a
1490 criminal offense involving moral turpitude regardless of whether:
- 1491 (a) the criminal offense is related to real estate; or
1492 (b) the conviction is based upon a plea of nolo contendere;
- 1493 (12) having, within five years of the most recent application for a license under this
1494 chapter, entered any of the following related to a criminal offense involving moral turpitude:
- 1495 (a) a plea in abeyance agreement;
1496 (b) a diversion agreement;
1497 (c) a withheld judgment; or
1498 (d) an agreement in which a charge was held in suspense during a period of time when
1499 the licensee was on probation or was obligated to comply with conditions outlined by a court;
- 1500 (13) advertising the availability of real estate or the services of a licensee in a false,
1501 misleading, or deceptive manner;
- 1502 (14) in the case of a principal broker [~~or a licensee who is a branch manager~~] or a
1503 branch broker, failing to exercise reasonable supervision over the activities of the principal
1504 broker's or branch [~~manager's~~] broker's licensed or unlicensed staff;
- 1505 (15) violating or disregarding:
- 1506 (a) this chapter;
1507 (b) an order of the commission; or
1508 (c) the rules adopted by the commission and the division;
- 1509 (16) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real
1510 estate transaction;
- 1511 (17) any other conduct which constitutes dishonest dealing;
- 1512 (18) unprofessional conduct as defined by statute or rule;
- 1513 (19) having one of the following suspended, revoked, surrendered, or cancelled on the
1514 basis of misconduct in a professional capacity that relates to character, honesty, integrity, or
1515 truthfulness:

- 1516 (a) a real estate license, registration, or certificate issued by another jurisdiction; or
- 1517 (b) another license, registration, or certificate to engage in an occupation or profession
- 1518 issued by this state or another jurisdiction;
- 1519 (20) failing to respond to a request by the division in an investigation authorized under
- 1520 this chapter, including:
 - 1521 (a) failing to respond to a subpoena;
 - 1522 (b) withholding evidence; or
 - 1523 (c) failing to produce documents or records;
- 1524 (21) in the case of a dual licensed title licensee as defined in Section [31A-2-402](#):
- 1525 (a) providing a title insurance product or service without the approval required by
- 1526 Section [31A-2-405](#); or
- 1527 (b) knowingly providing false or misleading information in the statement required by
- 1528 Subsection [31A-2-405\(2\)](#);
- 1529 (22) violating an independent contractor agreement between a principal broker and a
- 1530 sales agent or associate broker as evidenced by a final judgment of a court;
- 1531 (23) (a) engaging in an act of loan modification assistance that requires licensure as a
- 1532 mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing Act,
- 1533 without being licensed under that chapter;
- 1534 (b) engaging in an act of foreclosure rescue without entering into a written agreement
- 1535 specifying what one or more acts of foreclosure rescue will be completed;
- 1536 (c) inducing a person who is at risk of foreclosure to hire the licensee to engage in an
- 1537 act of foreclosure rescue by:
 - 1538 (i) suggesting to the person that the licensee has a special relationship with the person's
 - 1539 lender or loan servicer; or
 - 1540 (ii) falsely representing or advertising that the licensee is acting on behalf of:
 - 1541 (A) a government agency;
 - 1542 (B) the person's lender or loan servicer; or
 - 1543 (C) a nonprofit or charitable institution; or
 - 1544 (d) recommending or participating in a foreclosure rescue that requires a person to:
 - 1545 (i) transfer title to real estate to the licensee or to a third-party with whom the licensee
 - 1546 has a business relationship or financial interest;

- 1547 (ii) make a mortgage payment to a person other than the person's loan servicer; or
 1548 (iii) refrain from contacting the person's:
 1549 (A) lender;
 1550 (B) loan servicer;
 1551 (C) attorney;
 1552 (D) credit counselor; or
 1553 (E) housing counselor;
 1554 (24) as a principal broker, placing a lien on real property, unless authorized by law; or
 1555 (25) as a sales agent or associate broker, placing a lien on real property for an unpaid
 1556 commission or other compensation related to real estate brokerage services.

1557 Section 17. Section **61-2f-402** is amended to read:

1558 **61-2f-402. Investigations.**

1559 (1) The division may ~~[make an]~~ conduct a public or private investigation within or
 1560 outside of this state as the division considers necessary to determine whether a person has
 1561 violated, is violating, or is about to violate this chapter or any rule or order under this chapter.

1562 (2) To aid in the enforcement of this chapter or in the prescribing of rules and forms
 1563 under this chapter, the division may require or permit a person to file a statement in writing,
 1564 under oath or otherwise as to the facts and circumstances concerning the matter to be
 1565 investigated.

1566 (3) For the purpose of the investigation described in Subsection (1), the division or an
 1567 employee designated by the division may:

1568 (a) administer an oath or affirmation;

1569 (b) issue a subpoena that requires:

1570 (i) the attendance and testimony of a witness; or

1571 (ii) the production of evidence;

1572 (c) take evidence;

1573 (d) interview a witness;

1574 ~~[(d)]~~ (e) require the production of a book, paper, contract, record, other document, or
 1575 information relevant to the investigation; and

1576 ~~[(e)]~~ (f) serve a subpoena by certified mail.

1577 (4) (a) A court of competent jurisdiction shall enforce, according to the practice and

1578 procedure of the court, a subpoena issued by the division.

1579 (b) The division shall pay any witness fee, travel expense, mileage, or any other fee
1580 required by the service statutes of the state where the witness or evidence is located.

1581 (5) (a) If a person is found to have violated this chapter or a rule made under this
1582 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,
1583 document, or record required under this chapter, including the costs incurred to copy an
1584 electronic book, paper, contract, document, or record in a universally readable format.

1585 (b) If a person fails to pay the costs described in Subsection (5)(a) when due, the
1586 person's license, certification, or registration is automatically suspended:

1587 (i) beginning the day on which the payment of costs is due; and

1588 (ii) ending the day on which the costs are paid.

1589 (6) (a) Except as provided in Subsection (6)(b), the division shall commence a
1590 disciplinary action under this chapter no later than the earlier of the following:

1591 (i) four years after the day on which the violation is reported to the division; or

1592 (ii) 10 years after the day on which the violation occurred.

1593 (b) The division may commence a disciplinary action under this chapter after the time
1594 period described in Subsection (6)(a) expires if:

1595 (i) (A) the disciplinary action is in response to a civil or criminal judgment or
1596 settlement; and

1597 (B) the division initiates the disciplinary action no later than one year after the day on
1598 which the judgment is issued or the settlement is final; or

1599 (ii) the division and the person subject to a disciplinary action enter into a written
1600 stipulation to extend the time period described in Subsection (6)(a).

1601 Section 18. Section **61-2f-403** is amended to read:

1602 **61-2f-403. Mishandling of trust money.**

1603 (1) The division may audit principal brokers' trust accounts or other accounts in which
1604 a licensee maintains trust money under this chapter. If the division's audit shows, in the
1605 opinion of the division, gross mismanagement, commingling, or misuse of money, the division,
1606 with the concurrence of the commission, may order at the division's expense a complete audit
1607 of the account by a certified public accountant [~~at the licensee's expense~~], or take other action
1608 in accordance with Section **61-2f-404**.

1609 (2) If the commission finds under Subsection (1) that gross mismanagement,
1610 comingling, or misuse of money occurred, the commission, with concurrence of the division,
1611 may then order the licensee to reimburse the division for the cost of the audit described in
1612 Subsection (1).

1613 ~~[(2)]~~ (3) The licensee may obtain agency review by the executive director or judicial
1614 review of any division order.

1615 ~~[(3)]~~ (4) (a) If it appears that a person has grossly mismanaged, commingled, or
1616 otherwise misused trust money, the division, with or without prior administrative proceedings,
1617 may bring an action:

1618 (i) in the district court of the district where:

1619 (A) the person resides;

1620 (B) the person maintains a place of business; or

1621 (C) the act or practice occurred or is about to occur; and

1622 (ii) to enjoin the act or practice and to enforce compliance with this chapter or any rule
1623 or order under this chapter.

1624 (b) Upon a proper showing, a court shall grant injunctive relief or a temporary
1625 restraining order, and may appoint a receiver or conservator. The division is not required to
1626 post a bond in any court proceeding.

1627 Section 19. Section **61-2g-305** is amended to read:

1628 **61-2g-305. Expiration of license, certification, or registration.**

1629 (1) An initial license, certification, or registration issued under this chapter expires on
1630 the expiration date indicated on the license, certificate, or registration.

1631 (2) A renewal license, certification, or registration issued under this chapter expires
1632 two years from the date of issuance.

1633 (3) (a) The scheduled expiration date of a license, certification, or registration shall
1634 appear on the license, certification, or registration document.

1635 (b) (i) The division shall, at the division's discretion, mail or email a holder of a
1636 license, certification, or registration notice of its expiration to the last mailing or email address
1637 stated on the division's records as the holder's current mailing or email address.

1638 (ii) To be mailed or emailed a notice under this Subsection (3)(b), a holder of a license,
1639 certification, or registration shall provide to the division in writing the holder's current mailing

1640 or email address.

1641 (iii) A holder's license, certification, or registration expires if not renewed by the holder
1642 notwithstanding whether the holder receives a notice of its expiration by the division under this
1643 Subsection (3)(b).

1644 Section 20. Section **61-2g-501** is amended to read:

1645 **61-2g-501. Enforcement -- Investigation -- Orders -- Hearings.**

1646 (1) (a) The division may [~~investigate~~] conduct a public or private investigation of the
1647 actions of:

1648 (i) a person registered, licensed, or certified under this chapter;

1649 (ii) an applicant for registration, licensure, or certification;

1650 (iii) an applicant for renewal of registration, licensure, or certification; or

1651 (iv) a person required to be registered, licensed, or certified under this chapter.

1652 (b) The division may initiate an agency action against a person described in Subsection
1653 (1)(a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to:

1654 (i) impose disciplinary action;

1655 (ii) deny issuance to an applicant of:

1656 (A) an original registration, license, or certification; or

1657 (B) a renewal of a registration, license, or certification; or

1658 (iii) issue a cease and desist order as provided in Subsection (3).

1659 (2) (a) The division may:

1660 (i) administer an oath or affirmation;

1661 (ii) issue a subpoena that requires:

1662 (A) the attendance and testimony of a witness; or

1663 (B) the production of evidence;

1664 (iii) take evidence; [~~and~~]

1665 (iv) interview a witness; and

1666 [~~(iv)] (v) require the production of a book, paper, contract, record, document,
1667 information, or evidence relevant to the investigation described in Subsection (1).~~

1668 (b) The division may serve a subpoena by certified mail.

1669 (c) A failure to respond to a request by the division in an investigation authorized
1670 under this chapter is considered to be a separate violation of this chapter, including:

- 1671 (i) failing to respond to a subpoena as a witness;
1672 (ii) withholding evidence; or
1673 (iii) failing to produce a book, paper, contract, document, information, or record.
- 1674 (d) (i) A court of competent jurisdiction shall enforce, according to the practice and
1675 procedure of the court, a subpoena issued by the division.
- 1676 (ii) The division shall pay any witness fee, travel expense, mileage, or any other fee
1677 required by the service statutes of the state where the witness or evidence is located.
- 1678 (e) (i) If a person is found to have violated this chapter or a rule made under this
1679 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,
1680 document, information, or record required under this chapter, including the costs incurred to
1681 copy an electronic book, paper, contract, document, information, or record in a universally
1682 readable format.
- 1683 (ii) If a person fails to pay the costs described in Subsection (2)(e)(i) when due, the
1684 person's license, certification, or registration is automatically suspended:
- 1685 (A) beginning the day on which the payment of costs is due; and
1686 (B) ending the day on which the costs are paid.
- 1687 (3) (a) The director shall issue and serve upon a person an order directing that person to
1688 cease and desist from an act if:
- 1689 (i) the director has reason to believe that the person has been engaging, is about to
1690 engage, or is engaging in the act constituting a violation of this chapter; and
1691 (ii) it appears to the director that it would be in the public interest to stop the act.
- 1692 (b) Within 10 days after receiving the order, the person upon whom the order is served
1693 may request a hearing.
- 1694 (c) Pending a hearing requested under Subsection (3)(b), a cease and desist order shall
1695 remain in effect.
- 1696 (d) If a request for hearing is made, the division shall follow the procedures and
1697 requirements of Title 63G, Chapter 4, Administrative Procedures Act.
- 1698 (4) (a) After a hearing requested under Subsection (3), if the board and division concur
1699 that an act of the person violates this chapter, the board, with the concurrence of the division:
- 1700 (i) shall issue an order making the cease and desist order permanent; and
1701 (ii) may impose another disciplinary action under Section [61-2g-502](#).

1702 (b) The director shall commence an action in the name of the Department of
1703 Commerce and Division of Real Estate, in the district court in the county in which an act
1704 described in Subsection (3) occurs or where the individual resides or carries on business, to
1705 enjoin and restrain the individual from violating this chapter if:

- 1706 (i) (A) a hearing is not requested under Subsection (3); and
- 1707 (B) the individual fails to cease the act described in Subsection (3); or
- 1708 (ii) after discontinuing the act described in Subsection (3), the individual again
1709 commences the act.

1710 (5) A remedy or action provided in this section does not limit, interfere with, or prevent
1711 the prosecution of another remedy or action, including a criminal proceeding.

1712 (6) (a) Except as provided in Subsection (6)(b), the division shall commence a
1713 disciplinary action under this chapter no later than the earlier of the following:

- 1714 (i) four years after the day on which the violation is reported to the division; or
- 1715 (ii) 10 years after the day on which the violation occurred.

1716 (b) The division may commence a disciplinary action under this chapter after the time
1717 period described in Subsection (6)(a) expires if:

1718 (i) (A) the disciplinary action is in response to a civil or criminal judgment or
1719 settlement; and

1720 (B) the division initiates the disciplinary action no later than one year after the day on
1721 which the judgment is issued or the settlement is final; or

1722 (ii) the division and the individual subject to a disciplinary action enter into a written
1723 stipulation to extend the time period described in Subsection (6)(a).