

**Representative Gage Froerer** proposes the following substitute bill:

**DIVISION OF REAL ESTATE AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gage Froerer**

Senate Sponsor: Daniel Hemmert

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

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

**Money Appropriated in this Bill:**

None



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

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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 [~~(H) 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 [~~(H) a loan underwriter;]~~  
240 [~~(FV)]~~ (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 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 (v) interview a witness.

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

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

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

1107 (i) failing to respond to a subpoena;

1108 (ii) withholding evidence; or

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

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

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 provide, by rule made
- 1351 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1352 circumstances under which a person or transaction qualifies for an exemption that is described
- 1353 in this section.
- 1354 Section 14. Section **61-2f-206** is amended to read:
- 1355 **61-2f-206. Registration of entity or branch office -- Certification of education**
- 1356 **providers and courses -- Specialized licenses.**
- 1357 (1) (a) An entity may not engage in an activity described in Section **61-2f-201**, unless it
- 1358 is registered with the division.

1359 (b) To register with the division under this Subsection (1), an entity shall submit to the  
1360 division:

1361 (i) an application in a form required by the division;

1362 (ii) evidence of an affiliation with a principal broker;

1363 (iii) evidence that the entity is registered and in good standing with the Division of  
1364 Corporations and Commercial Code; and

1365 (iv) a registration fee established by the commission with the concurrence of the  
1366 division under Section 63J-1-504.

1367 (c) The division may terminate an entity's registration if:

1368 (i) the entity's registration with the Division of Corporations and Commercial Code has  
1369 been expired for at least three years; and

1370 (ii) the entity's license with the division has been inactive for at least three years.

1371 (2) (a) A principal broker shall register with the division each of the principal broker's  
1372 branch offices.

1373 (b) To register a branch office with the division under this Subsection (2), a principal  
1374 broker shall submit to the division:

1375 (i) an application in a form required by the division; and

1376 (ii) a registration fee established by the commission with the concurrence of the  
1377 division under Section 63J-1-504.

1378 (3) (a) In accordance with rules made by the commission with the concurrence of the  
1379 division, the division shall certify:

1380 (i) a real estate school;

1381 (ii) a course provider; or

1382 (iii) an instructor.

1383 (b) In accordance with rules made by the commission, subject to concurrence by the  
1384 division, the division shall certify a continuing education course that is required under this  
1385 chapter.

1386 (4) [~~a~~] Except as provided by rule, a principal broker may not be responsible for more  
1387 than one registered entity at the same time.

1388 (5) A principal broker may simultaneously supervise one main office and up to two  
1389 additional branch offices.

1390           (6) A branch broker may simultaneously supervise up to three branch offices.  
1391           ~~[(b)-(i)]~~ (7) (a) In addition to issuing a principal broker license, associate broker  
1392 license, or sales agent license authorizing the performance of an act set forth in Section  
1393 61-2f-201, the division may issue a specialized sales license or specialized property  
1394 management license with the scope of practice limited to the specialty.  
1395           ~~[(ii)]~~ (b) An individual may hold a specialized license in addition to a license as a  
1396 principal broker, associate broker, or a sales agent.  
1397           (c) A sales agent who is affiliated with a dual broker may act as a property  
1398 management sales agent if:  
1399           (i) the dual broker designates the sales agent as a property management sales agent; and  
1400           (ii) the sales agent pays to the division a property management sales agent designation  
1401 fee in an amount determined by the division in accordance with Section 63J-1-504.  
1402           (d) A property management sales agent may simultaneously provide both property  
1403 management services and real estate sales services under the supervision of a dual broker as  
1404 provided by the commission with the concurrence of the division by rule made in accordance  
1405 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.  
1406           ~~[(iii)]~~ (8) The commission may ~~adopt rules pursuant to~~ determine, by rule made in  
1407 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, subject to  
1408 concurrence by the division, ~~[for the administration of this Subsection (4)]~~ licensing  
1409 requirements related to this section for a principal broker, associate broker, sales agent, dual  
1410 broker, property management sales agent, or for a specialized license described in Subsection  
1411 (7), including:  
1412           ~~[(A)]~~ (a) prelicensing and postlicensing education requirements;  
1413           ~~[(B)]~~ (b) examination requirements;  
1414           ~~[(C)]~~ (c) affiliation with real estate brokerages or property management companies;  
1415 [and]  
1416           (d) property management sales agent:  
1417           (i) designation procedures;  
1418           (ii) allowable scope of practice; and  
1419           (iii) division fees;  
1420           (e) what constitutes reasonable supervision for:

1421 (i) a principal broker when supervising a branch broker or sales agent; and

1422 (ii) a branch broker when supervising a sales agent; and

1423 ~~[(D)]~~ (f) other licensing procedures.

1424 Section 15. Section **61-2f-304** is amended to read:

1425 **61-2f-304. Termination of associate broker or sales agent by principal broker --**  
1426 **Notice.**

1427 (1) If a principal broker terminates an associate broker or sales agent, the principal  
1428 broker shall ~~[by no later than three days from the day on which the principal broker terminates~~  
1429 ~~the associate broker or sales agent:]~~ notify the division and the associate broker or sales agent  
1430 of the termination in a manner prescribed by rule made in accordance with Title 63G, Chapter  
1431 3, Utah Administrative Rulemaking Act, by the commission with the concurrence of the  
1432 division.

1433 ~~[(a) provide the division a signed statement notifying the division of the termination;~~  
1434 ~~and]~~

1435 ~~[(b) send to the last-known residence address of that associate broker or sales agent~~  
1436 ~~notice that the principal broker has notified the division of the termination of the associate~~  
1437 ~~broker or sales agent.]~~

1438 (2) An associate broker or sales agent may not perform any act under this chapter,  
1439 directly or indirectly, from and after the effective date ~~[of receipt]~~ of the termination notice ~~[by~~  
1440 ~~the division]~~ until the day on which the associate broker or sales agent is affiliated with a  
1441 principal broker.

1442 Section 16. Section **61-2f-401** is amended to read:

1443 **61-2f-401. Grounds for disciplinary action.**

1444 The following acts are unlawful for a person licensed or required to be licensed under  
1445 this chapter:

1446 (1) (a) making a substantial misrepresentation, including in a licensure statement;

1447 (b) making an intentional misrepresentation;

1448 (c) pursuing a continued and flagrant course of misrepresentation;

1449 (d) making a false representation or promise through an agent, sales agent, advertising,  
1450 or otherwise; or

1451 (e) making a false representation or promise of a character likely to influence,

- 1452 persuade, or induce;
- 1453       (2) acting for more than one party in a transaction without the informed consent of the
- 1454 parties;
- 1455       (3) (a) acting as an associate broker or sales agent while not affiliated with a principal
- 1456 broker;
- 1457       (b) representing or attempting to represent a principal broker other than the principal
- 1458 broker with whom the person is affiliated; or
- 1459       (c) representing as sales agent or having a contractual relationship similar to that of
- 1460 sales agent with a person other than a principal broker;
- 1461       (4) (a) failing, within a reasonable time, to account for or to remit money that belongs
- 1462 to another and comes into the person's possession;
- 1463       (b) commingling money described in Subsection (4)(a) with the person's own money;
- 1464 or
- 1465       (c) diverting money described in Subsection (4)(a) from the purpose for which the
- 1466 money is received;
- 1467       (5) paying or offering to pay valuable consideration, as defined by the commission, to a
- 1468 person not licensed under this chapter, except that valuable consideration may be shared:
- 1469       (a) with a principal broker of another jurisdiction; or
- 1470       (b) as provided under:
- 1471       (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;
- 1472       (ii) Title 16, Chapter 11, Professional Corporation Act; or
- 1473       (iii) Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as
- 1474 appropriate pursuant to Section [48-3a-1405](#);
- 1475       (6) for a principal broker, paying or offering to pay a sales agent or associate broker
- 1476 who is not affiliated with the principal broker at the time the sales agent or associate broker
- 1477 earned the compensation;
- 1478       (7) being incompetent to act as a principal broker, associate broker, or sales agent in
- 1479 such manner as to safeguard the interests of the public;
- 1480       (8) failing to voluntarily furnish a copy of a document to the parties before and after the
- 1481 execution of a document;
- 1482       (9) failing to keep and make available for inspection by the division a record of each



- 1483 transaction, including:
- 1484 (a) the names of buyers and sellers or lessees and lessors;
- 1485 (b) the identification of real estate;
- 1486 (c) the sale or rental price;
- 1487 (d) money received in trust;
- 1488 (e) agreements or instructions from buyers and sellers or lessees and lessors; and
- 1489 (f) any other information required by rule;
- 1490 (10) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether
- 1491 the purchase, sale, or rental is made for that person or for an undisclosed principal;
- 1492 (11) being convicted, within five years of the most recent application for licensure, of a
- 1493 criminal offense involving moral turpitude regardless of whether:
- 1494 (a) the criminal offense is related to real estate; or
- 1495 (b) the conviction is based upon a plea of nolo contendere;
- 1496 (12) having, within five years of the most recent application for a license under this
- 1497 chapter, entered any of the following related to a criminal offense involving moral turpitude:
- 1498 (a) a plea in abeyance agreement;
- 1499 (b) a diversion agreement;
- 1500 (c) a withheld judgment; or
- 1501 (d) an agreement in which a charge was held in suspense during a period of time when
- 1502 the licensee was on probation or was obligated to comply with conditions outlined by a court;
- 1503 (13) advertising the availability of real estate or the services of a licensee in a false,
- 1504 misleading, or deceptive manner;
- 1505 (14) in the case of a principal broker [~~or a licensee who is a branch manager~~] or a
- 1506 branch broker, failing to exercise reasonable supervision over the activities of the principal
- 1507 broker's or branch [~~manager's~~] broker's licensed or unlicensed staff;
- 1508 (15) violating or disregarding:
- 1509 (a) this chapter;
- 1510 (b) an order of the commission; or
- 1511 (c) the rules adopted by the commission and the division;
- 1512 (16) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real
- 1513 estate transaction;

- 1514 (17) any other conduct which constitutes dishonest dealing;
- 1515 (18) unprofessional conduct as defined by statute or rule;
- 1516 (19) having one of the following suspended, revoked, surrendered, or cancelled on the
- 1517 basis of misconduct in a professional capacity that relates to character, honesty, integrity, or
- 1518 truthfulness:
  - 1519 (a) a real estate license, registration, or certificate issued by another jurisdiction; or
  - 1520 (b) another license, registration, or certificate to engage in an occupation or profession
  - 1521 issued by this state or another jurisdiction;
- 1522 (20) failing to respond to a request by the division in an investigation authorized under
- 1523 this chapter, including:
  - 1524 (a) failing to respond to a subpoena;
  - 1525 (b) withholding evidence; or
  - 1526 (c) failing to produce documents or records;
- 1527 (21) in the case of a dual licensed title licensee as defined in Section [31A-2-402](#):
- 1528 (a) providing a title insurance product or service without the approval required by
- 1529 Section [31A-2-405](#); or
- 1530 (b) knowingly providing false or misleading information in the statement required by
- 1531 Subsection [31A-2-405\(2\)](#);
- 1532 (22) violating an independent contractor agreement between a principal broker and a
- 1533 sales agent or associate broker as evidenced by a final judgment of a court;
- 1534 (23) (a) engaging in an act of loan modification assistance that requires licensure as a
- 1535 mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing Act,
- 1536 without being licensed under that chapter;
- 1537 (b) engaging in an act of foreclosure rescue without entering into a written agreement
- 1538 specifying what one or more acts of foreclosure rescue will be completed;
- 1539 (c) inducing a person who is at risk of foreclosure to hire the licensee to engage in an
- 1540 act of foreclosure rescue by:
  - 1541 (i) suggesting to the person that the licensee has a special relationship with the person's
  - 1542 lender or loan servicer; or
  - 1543 (ii) falsely representing or advertising that the licensee is acting on behalf of:
  - 1544 (A) a government agency;

- 1545 (B) the person's lender or loan servicer; or
- 1546 (C) a nonprofit or charitable institution; or
- 1547 (d) recommending or participating in a foreclosure rescue that requires a person to:
- 1548 (i) transfer title to real estate to the licensee or to a third-party with whom the licensee
- 1549 has a business relationship or financial interest;
- 1550 (ii) make a mortgage payment to a person other than the person's loan servicer; or
- 1551 (iii) refrain from contacting the person's:
- 1552 (A) lender;
- 1553 (B) loan servicer;
- 1554 (C) attorney;
- 1555 (D) credit counselor; or
- 1556 (E) housing counselor;
- 1557 (24) as a principal broker, placing a lien on real property, unless authorized by law; or
- 1558 (25) as a sales agent or associate broker, placing a lien on real property for an unpaid
- 1559 commission or other compensation related to real estate brokerage services.

1560 Section 17. Section **61-2f-402** is amended to read:

1561 **61-2f-402. Investigations.**

1562 (1) The division may ~~make an~~ conduct a public or private investigation within or

1563 outside of this state as the division considers necessary to determine whether a person has

1564 violated, is violating, or is about to violate this chapter or any rule or order under this chapter.

1565 (2) To aid in the enforcement of this chapter or in the prescribing of rules and forms

1566 under this chapter, the division may require or permit a person to file a statement in writing,

1567 under oath or otherwise as to the facts and circumstances concerning the matter to be

1568 investigated.

1569 (3) For the purpose of the investigation described in Subsection (1), the division or an

1570 employee designated by the division may:

- 1571 (a) administer an oath or affirmation;
- 1572 (b) issue a subpoena that requires:
  - 1573 (i) the attendance and testimony of a witness; or
  - 1574 (ii) the production of evidence;
- 1575 (c) take evidence;

1576            (d) interview a witness;  
1577            [~~(d)~~] (e) require the production of a book, paper, contract, record, other document, or  
1578 information relevant to the investigation; and  
1579            [~~(e)~~] (f) serve a subpoena by certified mail.  
1580            (4) (a) A court of competent jurisdiction shall enforce, according to the practice and  
1581 procedure of the court, a subpoena issued by the division.  
1582            (b) The division shall pay any witness fee, travel expense, mileage, or any other fee  
1583 required by the service statutes of the state where the witness or evidence is located.  
1584            (5) (a) If a person is found to have violated this chapter or a rule made under this  
1585 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,  
1586 document, or record required under this chapter, including the costs incurred to copy an  
1587 electronic book, paper, contract, document, or record in a universally readable format.  
1588            (b) If a person fails to pay the costs described in Subsection (5)(a) when due, the  
1589 person's license, certification, or registration is automatically suspended:  
1590            (i) beginning the day on which the payment of costs is due; and  
1591            (ii) ending the day on which the costs are paid.  
1592            (6) (a) Except as provided in Subsection (6)(b), the division shall commence a  
1593 disciplinary action under this chapter no later than the earlier of the following:  
1594            (i) four years after the day on which the violation is reported to the division; or  
1595            (ii) 10 years after the day on which the violation occurred.  
1596            (b) The division may commence a disciplinary action under this chapter after the time  
1597 period described in Subsection (6)(a) expires if:  
1598            (i) (A) the disciplinary action is in response to a civil or criminal judgment or  
1599 settlement; and  
1600            (B) the division initiates the disciplinary action no later than one year after the day on  
1601 which the judgment is issued or the settlement is final; or  
1602            (ii) the division and the person subject to a disciplinary action enter into a written  
1603 stipulation to extend the time period described in Subsection (6)(a).  
1604            Section 18. Section **61-2f-403** is amended to read:  
1605            **61-2f-403. Mishandling of trust money.**  
1606            (1) The division may audit principal brokers' trust accounts or other accounts in which

1607 a licensee maintains trust money under this chapter. If the division's audit shows, in the  
1608 opinion of the division, gross mismanagement, commingling, or misuse of money, the division,  
1609 with the concurrence of the commission, may order at the division's expense a complete audit  
1610 of the account by a certified public accountant [~~at the licensee's expense~~], or take other action  
1611 in accordance with Section [61-2f-404](#).

1612 (2) If the commission finds under Subsection (1) that gross mismanagement,  
1613 comingling, or misuse of money occurred, the commission, with concurrence of the division,  
1614 may then order the licensee to reimburse the division for the cost of the audit described in  
1615 Subsection (1).

1616 [~~(2)~~] (3) The licensee may obtain agency review by the executive director or judicial  
1617 review of any division order.

1618 [~~(3)~~] (4) (a) If it appears that a person has grossly mismanaged, commingled, or  
1619 otherwise misused trust money, the division, with or without prior administrative proceedings,  
1620 may bring an action:

1621 (i) in the district court of the district where:

1622 (A) the person resides;

1623 (B) the person maintains a place of business; or

1624 (C) the act or practice occurred or is about to occur; and

1625 (ii) to enjoin the act or practice and to enforce compliance with this chapter or any rule  
1626 or order under this chapter.

1627 (b) Upon a proper showing, a court shall grant injunctive relief or a temporary  
1628 restraining order, and may appoint a receiver or conservator. The division is not required to  
1629 post a bond in any court proceeding.

1630 Section 19. Section **61-2g-305** is amended to read:

1631 **61-2g-305. Expiration of license, certification, or registration.**

1632 (1) An initial license, certification, or registration issued under this chapter expires on  
1633 the expiration date indicated on the license, certificate, or registration.

1634 (2) A renewal license, certification, or registration issued under this chapter expires  
1635 two years from the date of issuance.

1636 (3) (a) The scheduled expiration date of a license, certification, or registration shall  
1637 appear on the license, certification, or registration document.

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

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

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

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

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

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

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

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

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

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

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

1657 (i) impose disciplinary action;

1658 (ii) deny issuance to an applicant of:

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

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

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

1662 (2) (a) The division may:

1663 (i) administer an oath or affirmation;

1664 (ii) issue a subpoena that requires:

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

1666 (B) the production of evidence;

1667 (iii) take evidence; [~~and~~]

1668 (iv) interview a witness; and

- 1669            [(iv)] (v) require the production of a book, paper, contract, record, document,  
1670 information, or evidence relevant to the investigation described in Subsection (1).
- 1671            (b) The division may serve a subpoena by certified mail.
- 1672            (c) A failure to respond to a request by the division in an investigation authorized  
1673 under this chapter is considered to be a separate violation of this chapter, including:
- 1674            (i) failing to respond to a subpoena as a witness;  
1675            (ii) withholding evidence; or  
1676            (iii) failing to produce a book, paper, contract, document, information, or record.
- 1677            (d) (i) A court of competent jurisdiction shall enforce, according to the practice and  
1678 procedure of the court, a subpoena issued by the division.
- 1679            (ii) The division shall pay any witness fee, travel expense, mileage, or any other fee  
1680 required by the service statutes of the state where the witness or evidence is located.
- 1681            (e) (i) If a person is found to have violated this chapter or a rule made under this  
1682 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,  
1683 document, information, or record required under this chapter, including the costs incurred to  
1684 copy an electronic book, paper, contract, document, information, or record in a universally  
1685 readable format.
- 1686            (ii) If a person fails to pay the costs described in Subsection (2)(e)(i) when due, the  
1687 person's license, certification, or registration is automatically suspended:
- 1688            (A) beginning the day on which the payment of costs is due; and  
1689            (B) ending the day on which the costs are paid.
- 1690            (3) (a) The director shall issue and serve upon a person an order directing that person to  
1691 cease and desist from an act if:
- 1692            (i) the director has reason to believe that the person has been engaging, is about to  
1693 engage, or is engaging in the act constituting a violation of this chapter; and  
1694            (ii) it appears to the director that it would be in the public interest to stop the act.
- 1695            (b) Within 10 days after receiving the order, the person upon whom the order is served  
1696 may request a hearing.
- 1697            (c) Pending a hearing requested under Subsection (3)(b), a cease and desist order shall  
1698 remain in effect.
- 1699            (d) If a request for hearing is made, the division shall follow the procedures and

1700 requirements of Title 63G, Chapter 4, Administrative Procedures Act.

1701 (4) (a) After a hearing requested under Subsection (3), if the board and division concur  
1702 that an act of the person violates this chapter, the board, with the concurrence of the division:

1703 (i) shall issue an order making the cease and desist order permanent; and

1704 (ii) may impose another disciplinary action under Section 61-2g-502.

1705 (b) The director shall commence an action in the name of the Department of  
1706 Commerce and Division of Real Estate, in the district court in the county in which an act  
1707 described in Subsection (3) occurs or where the individual resides or carries on business, to  
1708 enjoin and restrain the individual from violating this chapter if:

1709 (i) (A) a hearing is not requested under Subsection (3); and

1710 (B) the individual fails to cease the act described in Subsection (3); or

1711 (ii) after discontinuing the act described in Subsection (3), the individual again  
1712 commences the act.

1713 (5) A remedy or action provided in this section does not limit, interfere with, or prevent  
1714 the prosecution of another remedy or action, including a criminal proceeding.

1715 (6) (a) Except as provided in Subsection (6)(b), the division shall commence a  
1716 disciplinary action under this chapter no later than the earlier of the following:

1717 (i) four years after the day on which the violation is reported to the division; or

1718 (ii) 10 years after the day on which the violation occurred.

1719 (b) The division may commence a disciplinary action under this chapter after the time  
1720 period described in Subsection (6)(a) expires if:

1721 (i) (A) the disciplinary action is in response to a civil or criminal judgment or  
1722 settlement; and

1723 (B) the division initiates the disciplinary action no later than one year after the day on  
1724 which the judgment is issued or the settlement is final; or

1725 (ii) the division and the individual subject to a disciplinary action enter into a written  
1726 stipulation to extend the time period described in Subsection (6)(a).