

HB0196S01 compared with HB0196

~~deleted text~~ shows text that was in HB0196 but was deleted in HB0196S01.

Inserted text shows text that was not in HB0196 but was inserted into HB0196S01.

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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: _____

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;

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- ▶ 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

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

61-2-203, as last amended by Laws of Utah 2016, Chapter 384

61-2c-102, as last amended by Laws of Utah 2016, Chapter 384

61-2c-105, as last amended by Laws of Utah 2015, Chapters 226 and 262

61-2c-204.1, as last amended by Laws of Utah 2015, Chapter 262

61-2c-206, as last amended by Laws of Utah 2015, Chapter 262

61-2c-301, as last amended by Laws of Utah 2016, Chapter 384

61-2c-302, as last amended by Laws of Utah 2012, Chapter 166

61-2c-401, as last amended by Laws of Utah 2016, Chapter 384

61-2e-201, as last amended by Laws of Utah 2012, Chapter 166

61-2e-307, as last amended by Laws of Utah 2016, Chapter 384

61-2e-401, as last amended by Laws of Utah 2016, Chapter 384

61-2f-102, as last amended by Laws of Utah 2016, Chapters 381 and 384

61-2f-202, as last amended by Laws of Utah 2016, Chapter 384

61-2f-206, as last amended by Laws of Utah 2016, Chapter 25

61-2f-304, as renumbered and amended by Laws of Utah 2010, Chapter 379

61-2f-401, as last amended by Laws of Utah 2016, Chapter 384

61-2f-402, as last amended by Laws of Utah 2016, Chapter 384

61-2f-403, as renumbered and amended by Laws of Utah 2010, Chapter 379

61-2g-305, as renumbered and amended by Laws of Utah 2011, Chapter 289

61-2g-501, as last amended by Laws of Utah 2016, Chapter 384

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

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

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

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

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

- (a) a citation, pursuant to Subsection (3);
- (b) a notice of agency action; or
- (c) a notice of formal or informal proceeding.

(3) In addition to any other statutory penalty for a violation related to an occupation or profession regulated under this title, the division may issue a citation to a person who, upon inspection or investigation, the division concludes to have violated:

- (a) Subsection 61-2c-201(1), which requires licensure;
- (b) Subsection 61-2c-201(4), which requires entity licensure;
- (c) Subsection 61-2c-205(3), which requires notification of a change in specified information regarding a licensee;
- (d) Subsection 61-2c-205(4), which requires notification of specified legal actions;
- (e) Subsection 61-2c-301(1)(g), which prohibits failing to respond to the division within the required time period;
- (f) Subsection 61-2c-301(1)(h), which prohibits making a false representation to the division;
- (g) Subsection 61-2c-301(1)(i), which prohibits taking a dual role in a transaction;
- (h) Subsection 61-2c-301(1)(l), which prohibits engaging in false or misleading advertising;
- (i) Subsection 61-2c-301(1)(t), which prohibits advertising the ability to do licensed work if unlicensed;
- (j) Subsection 61-2c-302(5), which requires a mortgage entity to create and file a quarterly report of condition;

~~(f)~~ (k) Subsection 61-2e-201(1), which requires registration;

~~(k)~~ (l) Subsection 61-2e-203(4), which requires a notification of a change in ownership;

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~~(m)~~ (m) Subsection 61-2e-307(1)(c), which prohibits use of an unregistered fictitious name;

~~(n)~~ (n) Subsection 61-2e-401(1)(b), which prohibits failure to respond to a request by the division;

~~(o)~~ (o) Subsection 61-2f-201(1), which requires licensure;

~~(p)~~ (p) Subsection 61-2f-206(1), which requires entity registration;

~~(q)~~ (q) Subsection 61-2f-301(1), which requires notification of a specified legal action;

~~(r)~~ (r) Subsection 61-2f-401(1)(a), which prohibits making a substantial misrepresentation;

~~(s)~~ (s) Subsection 61-2f-401(3), which prohibits undertaking real estate while not affiliated with a principal broker;

~~(t)~~ (t) Subsection 61-2f-401(9), which prohibits failing to keep specified records for inspection by the division;

~~(u)~~ (u) Subsection 61-2f-401(13), which prohibits false, misleading, or deceptive advertising;

~~(v)~~ (v) Subsection 61-2f-401(20), which prohibits failing to respond to a division request;

~~(w)~~ (w) Subsection 61-2g-301(1), which requires licensure;

~~(x)~~ (x) Subsection 61-2g-405(3), which requires making records required to be maintained available to the division;

~~(y)~~ (y) Subsection 61-2g-502(2)(f), which prohibits using a nonregistered fictitious name;

~~(z)~~ (z) a rule made pursuant to any Subsection listed in this Subsection (3);

~~(aa)~~ (aa) an order of the division; or

~~(bb)~~ (bb) an order of the commission or board that oversees the person's profession.

(4) (a) In accordance with Subsection (9), the division may assess a fine against a person for a violation of a provision listed in Subsection (3), as evidenced by:

(i) an uncontested citation;

(ii) a stipulated settlement; or

(iii) a finding of a violation in an adjudicative proceeding.

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(b) The division may, in addition to or in lieu of a fine under Subsection (4)(a), order the person to cease and desist from an activity that violates a provision listed in Subsection (3).

(5) Except as provided in Subsection (7)(d), the division may not use a citation to effect a license:

- (a) denial;
- (b) probation;
- (c) suspension; or
- (d) revocation.

(6) (a) A citation issued by the division shall:

- (i) be in writing;
- (ii) describe with particularity the nature of the violation, including a reference to the provision of the statute, rule, or order alleged to have been violated;
- (iii) clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and
- (iv) clearly explain the consequences of failure to timely contest the citation or to make payment of a fine assessed by the citation within the time period specified in the citation.

(b) The division may issue a notice in lieu of a citation.

(7) (a) A citation becomes final:

- (i) if within 20 calendar days from the service of the citation, the person to whom the citation was issued fails to request a hearing to contest the citation; or
- (ii) if the director or the director's designee conducts a hearing pursuant to a timely request for a hearing and issues an order finding that a violation has occurred.

(b) The 20-day period to contest a citation may be extended by the division for cause.

(c) A citation that becomes the final order of the division due to a person's failure to timely request a hearing is not subject to further agency review.

(d) (i) The division may refuse to issue, refuse to renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after the citation becomes final.

(ii) The failure of a license applicant to comply with a citation after the citation becomes final is a ground for denial of the license application.

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(8) (a) The division may not issue a citation under this section after the expiration of [~~six months~~] one year following the occurrence of a violation.

(b) The division may issue a notice to address a violation that is outside of the [~~six-month~~] one-year citation period.

(9) The director or the director's designee shall assess a fine with a citation in an amount that is no more than:

(a) for a first offense, \$1,000;

(b) for a second offense, \$2,000; and

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

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

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

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

(i) referring the matter to a collection agency; or

(ii) bringing an action in the district court of the county:

(A) where the person resides; or

(B) where the office of the director is located.

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

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

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

61-2c-102. Definitions.

(1) As used in this chapter:

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

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

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

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

(i) qualifies under this chapter as a principal lending manager; and

(ii) works by or on behalf of another principal lending manager in transacting the business of residential mortgage loans.

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

(i) licensed as a lending manager; and

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

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

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

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

(iii) that operates under:

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

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

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

(i) a Saturday;

(ii) a Sunday; or

(iii) a federal or state holiday.

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

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

(B) make or originate a residential mortgage loan;

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

(D) unless exempt under Section 61-2c-105 or excluded under Subsection (1)(h)(ii),

render services related to the origination of a residential mortgage loan including:

(I) preparing a loan package;

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(II) communicating with the borrower or lender;

(III) advising on a loan term;

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

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

(IV) receiving, collecting, or distributing information common for the processing or underwriting of a loan in the mortgage industry; or

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

(E) engage in loan modification assistance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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- (I) a loan wholesaler;
- (II) an account executive for a loan wholesaler;

~~[(III) a loan underwriter;]~~

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

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

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

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

(i) Utah-specific prelicensing education; or

(ii) Utah-specific continuing education.

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

(i) with a fixed amount borrowed; and

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

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

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

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

(i) services;

(ii) personal or real property; or

(iii) another thing of value.

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

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

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

(i) direct or exercise a controlling interest over:

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

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

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

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

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

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

(A) a manager;

(B) a managing partner;

(C) a director;

(D) an executive officer; or

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

Subsection (1)(q)(ii).

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

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

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

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

(i) a condominium unit;

(ii) a cooperative unit;

(iii) a manufactured home; or

(iv) a house.

(v) "Employee":

(i) means an individual:

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

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

(ii) does not include an independent contractor who performs duties other than at the

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direction of, and subject to the supervision and instruction of, another person.

(w) "Entity" means:

(i) a corporation;

(ii) a limited liability company;

(iii) a partnership;

(iv) a company;

(v) an association;

(vi) a joint venture;

(vii) a business trust;

(viii) a trust; or

(ix) another organization.

(x) "Executive director" means the executive director of the Department of Commerce.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(III) an increase or decrease in the principal amount of the residential mortgage loan;

(IV) a change in the number of required period payments;

(V) an addition of collateral;

(VI) a change to, or addition of, a prepayment penalty;

(VII) an addition of a cosigner; or

(VIII) a change in persons obligated under the existing residential mortgage loan; or

(B) substitute a new residential mortgage loan for an existing residential mortgage loan; or

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

(A) solicit, or offer that the other person will engage in an act described in Subsection (1)(ee)(i); or

(B) negotiate terms in relationship to an act described in Subsection (1)(ee)(i).

(ff) (i) "Mortgage loan originator" means an individual who, for compensation or in expectation of compensation:

(A) (I) takes a residential mortgage loan application;

(II) offers or negotiates terms of a residential mortgage loan for the purpose of:

(Aa) a purchase;

(Bb) a refinance;

(Cc) a loan modification assistance; or

(Dd) a foreclosure rescue; or

(III) directly or indirectly solicits a residential mortgage loan for another person; and

(B) is licensed as a mortgage loan originator in accordance with this chapter.

(ii) "Mortgage loan originator" does not include a person who:

(A) is described in Subsection (1)(ff)(i), but who performs exclusively administrative

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or clerical tasks as described in Subsection (1)(h)(ii)(A);

(B) (I) is licensed under Chapter 2f, Real Estate Licensing and Practices Act;

(II) performs only real estate brokerage activities; and

(III) receives no compensation from:

(Aa) a lender;

(Bb) a lending manager; or

(Cc) an agent of a lender or lending manager; or

(C) is solely involved in extension of credit relating to a timeshare plan, as defined in 11 U.S.C. Sec. 101(53D).

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

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

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

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

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

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

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

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

(mm) "Record" means information that is:

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

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

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

(II) in a perceivable and reproducible form.

(nn) "Referral fee":

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

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and

(ii) does not include:

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

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

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

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

(A) mortgage;

(B) deed of trust; or

(C) consensual security interest; and

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

(1)(oo)(i):

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

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

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

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

(A) the real estate purchase contract;

(B) the lender;

(C) the title insurance company;

(D) the escrow or closing office;

(E) the written escrow instructions; or

(F) applicable law;

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

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

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

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

(ss) "State" means:

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

(ii) the District of Columbia; or

(iii) the Commonwealth of Puerto Rico.

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

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

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

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

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

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

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

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

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

(2) The following are exempt from this chapter:

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- (a) the federal government;
- (b) a state;
- (c) a political subdivision of a state;
- (d) an agency of or entity created by a governmental entity described in Subsections

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

- (i) the Utah Housing Corporation created in Section 63H-8-201;
- (ii) the Federal National Mortgage Corporation;
- (iii) the Federal Home Loan Mortgage Corporation;
- (iv) the Federal Deposit Insurance Corporation;
- (v) the Resolution Trust Corporation;
- (vi) the Government National Mortgage Association;
- (vii) the Federal Housing Administration;
- (viii) the National Credit Union Administration;
- (ix) the Farmers Home Administration; and
- (x) the United States Department of Veterans Affairs;

(e) a depository institution;

(f) an entity that controls, is controlled by, or is under common control with a depository institution;

(g) an employee or agent of an entity described in Subsections (2)(a) through (f):

(i) when that person acts on behalf of the entity described in Subsections (2)(a) through

(f); and

(ii) including an employee of:

(A) a depository institution;

(B) a subsidiary of a depository institution that is:

(I) owned and controlled by the depository institution; and

(II) regulated by a federal banking agency, as defined in 12 U.S.C. Sec. 5102; or

(C) an institution regulated by the Farm Credit Administration;

(h) except as provided in Subsection (3), a person who:

(i) makes a loan:

(A) secured by an interest in real property;

(B) with the person's own money; and

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

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attorney's practice as an attorney.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

or

(ii) approve:

(A) Utah-specific prelicensing education; or

(B) Utah-specific continuing education courses.

(3) (a) The division may not:

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

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

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

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

(ii) subject to Subsection (6), renew a license of an individual who has not completed

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the continuing education required by this section and Section 61-2c-205:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- ~~[(i) a licensing examination that at least:]~~
- ~~[(A) meets the minimum federal licensing requirements; and]~~
- ~~[(B) tests knowledge of the:]~~
- ~~[(F) fundamentals of the English language;]~~
- ~~[(H) arithmetic;]~~
- ~~[(HH) provisions of this chapter;]~~
- ~~[(IV) rules adopted under this chapter;]~~
- ~~[(V) basic residential mortgage principles and practices; and]~~
- ~~[(VI) any other aspect of Utah law the commission determines is appropriate; and]~~
- ~~[(ii) a]~~ (i) the lending manager licensing examination required under Section

61-2c-206 that tests the applicant's knowledge of:

- ~~[(A) meets the requirements of Subsection (4)(b)(i); and]~~
- ~~[(B) tests knowledge of the:]~~
- (A) fundamentals of the English language;
- (B) arithmetic;
- (C) provisions of this chapter;
- ~~[(H)]~~ (D) advanced residential mortgage principles and practices; and
- ~~[(HH)]~~ (E) other aspects of Utah law the commission, with the concurrence of the

division, determines appropriate.

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

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

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

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- (i) for a period not to exceed four years; and
- (ii) upon a finding of reasonable cause.

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

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

61-2c-206. Lending manager licenses.

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

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

(b) successfully complete the following education:

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

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

(c) successfully complete the following examinations:

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

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

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

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

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

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

and

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

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(2) A lending manager may not:

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

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

(c) act simultaneously as the principal lending manager and branch lending manager for the individual's sponsoring entity, unless:

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

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

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

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

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

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

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

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

(a) give or receive a referral fee;

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

(i) that is excessive; or

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

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

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

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

(i) safeguard the interests of the public; or

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

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

(i) make a false statement or representation;

(ii) cause false documents to be generated; or

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

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

(f) violate or not comply with:

(i) this chapter;

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

(iii) a rule made by the division;

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

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

(ii) a request for information from the division;

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

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

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

(i) appraiser;

(ii) escrow agent;

(iii) real estate agent;

(iv) general contractor; or

(v) title insurance producer;

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

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

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loans that constitutes dishonesty, fraud, or misrepresentation;

(l) engage in false or misleading advertising;

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

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

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

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

(o) engage in an act that is performed to:

(i) evade this chapter; or

(ii) assist another person to evade this chapter;

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

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

(i) unlicensed staff; or

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

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

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

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

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

(t) represent to the public that the person can or will perform any act of a mortgage loan originator if that person is not licensed under this chapter because the person is exempt under Subsection [~~61-2c-102(1)(h)(ii)(A)~~] 61-2c-105(4), including through:

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- (i) advertising;
- (ii) a business card;
- (iii) stationery;
- (iv) a brochure;
- (v) a sign;
- (vi) a rate list; or
- (vii) other promotional item;
- (u) (i) engage in an act of loan modification assistance without being licensed under this chapter;
- (ii) engage in an act of foreclosure rescue that requires licensure as a real estate agent or real estate broker under Chapter 2, Division of Real Estate, without being licensed under that chapter;
- (iii) engage in an act of loan modification assistance without entering into a written agreement specifying which one or more acts of loan modification assistance will be completed;
- (iv) request or require a person to pay a fee before obtaining:
 - (A) a written offer for a loan modification from the person's lender or servicer; and
 - (B) the person's written acceptance of the offer from the lender or servicer;
- (v) induce a person seeking a loan modification to hire the licensee to engage in an act of loan modification assistance by:
 - (A) suggesting to the person that the licensee has a special relationship with the person's lender or loan servicer; or
 - (B) falsely representing or advertising that the licensee is acting on behalf of:
 - (I) a government agency;
 - (II) the person's lender or loan servicer; or
 - (III) a nonprofit or charitable institution;
- (vi) recommend or participate in a loan modification that requires a person to:
 - (A) transfer title to real property to the licensee or to a third-party with whom the licensee has a business relationship or financial interest;
 - (B) make a mortgage payment to a person other than the person's loan servicer; or
 - (C) refrain from contacting the person's:

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(I) lender;

(II) loan servicer;

(III) attorney;

(IV) credit counselor; or

(V) housing counselor; or

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

(v) sign or initial a document on behalf of another person, except for in a circumstance allowed by the division by rule, with the concurrence of the commission, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; ~~or~~

(w) violate or fail to comply with a provision of Title 57, Chapter 28, Utah Reverse Mortgage Act~~[-];~~ or

(x) engage in any act or practice that violates appraisal independence as defined in 15 U.S.C. Sec. 1639e or in the policies and procedures of:

(i) the Federal Home Loan Mortgage Corporation; or

(ii) the Federal National Mortgage Association.

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

(a) be convicted;

(b) plead guilty or nolo contendere;

(c) enter a plea in abeyance; or

(d) be subjected to a criminal disposition similar to the ones described in Subsections

(2)(a) through (c).

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

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

(i) this chapter; or

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

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

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

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

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

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

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

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

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

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

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

(ii) at the settlement.

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

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

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

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

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

61-2c-302. Record requirements.

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

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

(a) the final entry on a residential mortgage loan is made by that licensee;

(b) if the residential mortgage loan is serviced by the licensee:

(i) the residential mortgage loan is paid in full; or

(ii) the licensee ceases to service the residential mortgage loan; or

(c) if the residential mortgage loan is not serviced by the licensee, the residential mortgage loan is closed.

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

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

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

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

(5) (a) A licensed entity shall:

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

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

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

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

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

61-2c-401. Investigations.

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

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

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

Subsection (1)(a)(iii);

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

licensure under this chapter:

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

Subsection (1)(b)(ii); or

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

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

- (a) administer an oath or affirmation;
- (b) issue a subpoena that requires:
 - (i) the attendance and testimony of a witness; or

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(ii) the production of evidence;

(c) take evidence;

(d) interview a witness;

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

and

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

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

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

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

(a) failing to respond to a subpoena;

(b) withholding evidence; or

(c) failing to produce a record.

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

(a) investigations of complaints; or

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

(i) this chapter; or

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

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

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

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

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to cover the estimated costs and expenses of the division.

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

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

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

(7) Failure to deposit with the division a deposit required to cover the costs of examination of a record that is maintained outside Utah shall result in automatic suspension of a license until the deposit is made.

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

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

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

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

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

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

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

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

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

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

(b) directly or indirectly engage or attempt to perform an appraisal management

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service; or

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

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

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

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

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

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

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

(i) is a controlling person;

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

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

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

(a) "appraisal management company";

(b) "mortgage technology company"; or

(c) another name.

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

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

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

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

(b) compensate an appraiser in a manner that the person should reasonably know

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would result in the appraiser not conducting a real estate appraisal activity in a manner consistent with applicable appraisal standards;

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

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

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

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

(iii) the consequences resulting from the appraisal assignment;

(e) require an appraiser to indemnify the appraisal management company against liability except liability for errors and omissions by the appraiser; ~~or~~

(f) alter, modify, or otherwise change a completed appraisal report submitted by an appraiser~~[-];~~ or

(g) engage in any act or practice that violates appraisal independence as defined in 15 U.S.C. Sec. 1639e or in the policies and procedures of:

(i) the Federal Home Loan Mortgage Corporation; or

(ii) the Federal National Mortgage Association.

(2) An appraisal management company required to be registered under this chapter, or a controlling person, employee, or agent of the appraisal management company may not influence or attempt to influence the development, reporting, or review of an appraisal through:

(a) coercion;

(b) extortion;

(c) collusion;

(d) compensation;

(e) instruction;

(f) inducement;

(g) intimidation;

(h) bribery; or

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

(3) A violation of Subsection (2) includes doing one or more of the following for a purpose listed in Subsection (2):

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- (a) withholding or threatening to withhold timely payment for an appraisal;
- (b) withholding or threatening to withhold future business for an appraiser;
- (c) taking adverse action or threatening to take adverse action against an appraiser regarding use of the appraiser for a real estate appraisal activity;
- (d) expressly or by implication promising future business or increased compensation for an appraiser;
- (e) conditioning one or more of the following on the opinion, conclusion, or valuation to be reached, or on a preliminary estimate or opinion requested from an appraiser:
 - (i) a request for a real estate appraisal activity; or
 - (ii) the payment of consideration;
- (f) requesting that an appraiser provide at any time before the appraiser's completion of a real estate appraisal activity:
 - (i) an estimated, predetermined, or desired valuation in an appraisal report; or
 - (ii) an estimated value or comparable sale;
- (g) except for a copy of a sales contract for a purchase transaction, providing to an appraiser:
 - (i) an anticipated, estimated, encouraged, or desired value for a subject property; or
 - (ii) a proposed or target amount to be loaned to the borrower;
- (h) providing to an appraiser, or an individual related to the appraiser, stock or other financial or non-financial benefits;
- (i) allowing the removal of an appraiser from an appraiser panel, without prior written notice to the appraiser as required by Section 61-2e-306;
- (j) obtaining, using, or paying for a subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction unless:
 - (i) (A) there is a reasonable basis to believe that the initial appraisal does not meet applicable appraisal standards; and
 - (B) the reasonable basis is noted in the loan file; or
 - (ii) the subsequent appraisal or automated valuation model is done pursuant to a pre- or post-funding appraisal review or quality control process in accordance with applicable appraisal standards;
- (k) removing or threatening to remove an appraiser from the appraiser panel if an

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appraiser requires a reasonable extension of the completion date for an appraisal assignment in order to complete a credible appraisal report; or

(l) engaging in any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality.

(4) This section may not be construed to prohibit an appraisal management company from requesting that an appraiser:

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

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

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

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

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

(i) receive and act on a complaint including:

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

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

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

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

(A) approved by the executive director; and

(B) within the budget of the division; ~~and~~

(iv) issue a subpoena that requires:

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

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

(v) interview a witness.

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

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

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

- (i) failing to respond to a subpoena;
- (ii) withholding evidence; or
- (iii) failing to produce a document or record.

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

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

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

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

- (a) without malicious intent; and
- (b) in the reasonable belief that the action is taken pursuant to the powers and duties vested in the division under this chapter.

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

61-2f-102. Definitions.

As used in this chapter:

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

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

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

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

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

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

- (a) a Saturday;
- (b) a Sunday; or
- (c) a federal or state holiday.

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

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

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

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

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

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

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

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

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

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

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

- (a) a corporation;
- (b) a partnership;
- (c) a limited liability company;
- (d) a company;
- (e) an association;
- (f) a joint venture;
- (g) a business trust;

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(h) a trust; or

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

(h).

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

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

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

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

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

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

(i) solicit, or offer that the other person will engage in an act described in Subsection ~~[(14)]~~ (16)(a); or

(ii) negotiate terms in relationship to an act described in Subsection ~~[(14)]~~ (16)(a).

~~[(15)]~~ (17) "Loan modification assistance" means, for compensation or with the expectation of receiving valuable consideration, to:

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

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

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

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

(C) an increase or decrease in the principal amount of the residential mortgage loan;

(D) a change in the number of required period payments;

(E) an addition of collateral;

(F) a change to, or addition of, a prepayment penalty;

(G) an addition of a cosigner; or

(H) a change in persons obligated under the existing residential mortgage loan; or

(ii) substitute a new residential mortgage loan for an existing residential mortgage loan;

or

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

(i) solicit, or offer that the other person will engage in an act described in Subsection ~~[(15)]~~ (17)(a); or

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(ii) negotiate terms in relationship to an act described in Subsection [~~(15)~~] (17)(a).

[~~(16)~~] (18) "Main office" means the address which a principal broker designates with the division as the principal broker's primary brokerage office.

[~~(17)~~] (19) "Person" means an individual or entity.

[~~(18)~~] (20) "Principal broker" means an individual who is licensed or required to be licensed as a principal broker under this chapter who:

(a) sells or lists for sale real estate, including real estate being sold as part of a foreclosure rescue, or a business opportunity with the expectation of receiving valuable consideration;

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

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

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

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

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

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

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

(i) engages in foreclosure rescue; or

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

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

- (i) advertising for, arranging, negotiating, offering, or otherwise attempting or participating in a transaction calculated to secure the rental or leasing of real estate;
- (ii) collecting, agreeing, offering, or otherwise attempting to collect rent for the real estate and accounting for and disbursing the money collected; or
- (iii) authorizing expenditures for repairs to the real estate.

(b) "Property management" does not include:

- (i) hotel or motel management;
- (ii) rental of tourist accommodations, including hotels, motels, tourist homes, condominiums, condominium hotels, mobile home park accommodations, campgrounds, or similar public accommodations for a period of less than 30 consecutive days, and the management activities associated with these rentals; or
- (iii) the leasing or management of surface or subsurface minerals or oil and gas interests, if the leasing or management is separate from a sale or lease of the surface estate.

(22) "Property management sales agent" means a sales agent who:

- (a) is affiliated with a dual broker through the dual broker's property management company; and
- (b) is designated by the dual broker as a property management sales agent.

~~[(20)]~~ (23) "Real estate" includes leaseholds and business opportunities involving real property.

~~[(21)]~~ (24) (a) "Regular salaried employee" means an individual who performs a service for wages or other remuneration, whose employer withholds federal employment taxes under a contract of hire, written or oral, express or implied.

(b) "Regular salaried employee" does not include an individual who performs services on a project-by-project basis or on a commission basis.

~~[(22)]~~ (25) "Reinstatement" means restoring a license that has expired or has been suspended.

~~[(23)]~~ (26) "Reissuance" means the process by which a licensee may obtain a license following revocation of the license.

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~~[(24)]~~ (27) "Renewal" means extending a license for an additional licensing period on or before the date the license expires.

~~[(25)]~~ (28) "Sales agent" means an individual who is:

(a) affiliated with a principal broker, either as an independent contractor or an employee as provided in Section 61-2f-303, to perform for valuable consideration an act described in Subsection ~~[(18)]~~ (20); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) services that constitute property management; or

(iv) the leasing of real estate; and

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

(i) in accordance with:

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

(I) Title 10, Utah Municipal Code; or

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

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

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

(II) Title 17, Counties; and

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

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

(B) the disposal of real estate;

(C) services that constitute property management; or

(D) the leasing of real estate.

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

(a) (i) the real estate is a necessary element of a "security" as that term is defined by the Securities Act of 1933 and the Securities Exchange Act of 1934; and

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

(A) the Securities Act of 1933; or

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

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

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

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

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

(b) a mortgagee;

(c) a beneficiary under a deed of trust;

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

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

(5) The commission, with the concurrence of the division, may ~~develop~~ ~~criteria~~ provide, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, ~~for~~ the circumstances under which a person or transaction ~~to be exempt~~

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~~under~~ qualifies for an exemption that is described in this section.

Section 14. Section **61-2f-206** is amended to read:

61-2f-206. Registration of entity or branch office -- Certification of education providers and courses -- Specialized licenses.

(1) (a) An entity may not engage in an activity described in Section 61-2f-201, unless it is registered with the division.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) a real estate school;

(ii) a course provider; or

(iii) an instructor.

(b) In accordance with rules made by the commission, subject to concurrence by the

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division, the division shall certify a continuing education course that is required under this chapter.

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

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

~~(5)6~~ A branch broker may simultaneously supervise up to three branch offices.

~~[(b)(i)]~~ ~~(6)7~~ (a) In addition to issuing a principal broker license, associate broker license, or sales agent license authorizing the performance of an act set forth in Section 61-2f-201, the division may issue a specialized sales license or specialized property management license with the scope of practice limited to the specialty.

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

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

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

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

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

~~[(iii)]~~ ~~(7)8~~ The commission may ~~[adopt rules pursuant to]~~ determine, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, subject to concurrence by the division, ~~[for the administration of this Subsection (4)]~~ licensing requirements related to this section for a principal broker, associate broker, sales agent, dual broker, property management sales agent, or for a specialized license described in Subsection ~~(6)7~~, including:

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

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

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

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[and]

(d) property management sales agent:

(i) designation procedures;

(ii) allowable scope of practice; and

(iii) division fees;

(e) what constitutes reasonable supervision for:

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

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

~~(f)~~ (f) other licensing procedures.

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

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

Notice.

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

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

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

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

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

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

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

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

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earned the compensation;

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

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

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

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

(b) the identification of real estate;

(c) the sale or rental price;

(d) money received in trust;

(e) agreements or instructions from buyers and sellers or lessees and lessors; and

(f) any other information required by rule;

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

(11) being convicted, within five years of the most recent application for licensure, of a criminal offense involving moral turpitude regardless of whether:

(a) the criminal offense is related to real estate; or

(b) the conviction is based upon a plea of nolo contendere;

(12) having, within five years of the most recent application for a license under this chapter, entered any of the following related to a criminal offense involving moral turpitude:

(a) a plea in abeyance agreement;

(b) a diversion agreement;

(c) a withheld judgment; or

(d) an agreement in which a charge was held in suspense during a period of time when the licensee was on probation or was obligated to comply with conditions outlined by a court;

(13) advertising the availability of real estate or the services of a licensee in a false, misleading, or deceptive manner;

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

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- (15) violating or disregarding:
 - (a) this chapter;
 - (b) an order of the commission; or
 - (c) the rules adopted by the commission and the division;
- (16) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real estate transaction;
- (17) any other conduct which constitutes dishonest dealing;
- (18) unprofessional conduct as defined by statute or rule;
- (19) having one of the following suspended, revoked, surrendered, or cancelled on the basis of misconduct in a professional capacity that relates to character, honesty, integrity, or truthfulness:
 - (a) a real estate license, registration, or certificate issued by another jurisdiction; or
 - (b) another license, registration, or certificate to engage in an occupation or profession issued by this state or another jurisdiction;
- (20) failing to respond to a request by the division in an investigation authorized under this chapter, including:
 - (a) failing to respond to a subpoena;
 - (b) withholding evidence; or
 - (c) failing to produce documents or records;
- (21) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
 - (a) providing a title insurance product or service without the approval required by Section 31A-2-405; or
 - (b) knowingly providing false or misleading information in the statement required by Subsection 31A-2-405(2);
- (22) violating an independent contractor agreement between a principal broker and a sales agent or associate broker as evidenced by a final judgment of a court;
- (23) (a) engaging in an act of loan modification assistance that requires licensure as a mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing Act, without being licensed under that chapter;
 - (b) engaging in an act of foreclosure rescue without entering into a written agreement specifying what one or more acts of foreclosure rescue will be completed;

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

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

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

(A) a government agency;

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

(C) a nonprofit or charitable institution; or

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

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

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

(iii) refrain from contacting the person's:

(A) lender;

(B) loan servicer;

(C) attorney;

(D) credit counselor; or

(E) housing counselor;

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

(25) as a sales agent or associate broker, placing a lien on real property for an unpaid commission or other compensation related to real estate brokerage services.

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

61-2f-402. Investigations.

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

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

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

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employee designated by the division may:

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

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

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

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

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

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

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

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

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

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

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

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

- (B) the division initiates the disciplinary action no later than one year after the day on

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which the judgment is issued or the settlement is final; or

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

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

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

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

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

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

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

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

(A) the person resides;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) a person registered, licensed, or certified under this chapter;
- (ii) an applicant for registration, licensure, or certification;
- (iii) an applicant for renewal of registration, licensure, or certification; or
- (iv) a person required to be registered, licensed, or certified under this chapter.

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

- (i) impose disciplinary action;
- (ii) deny issuance to an applicant of:
 - (A) an original registration, license, or certification; or
 - (B) a renewal of a registration, license, or certification; or
- (iii) issue a cease and desist order as provided in Subsection (3).

(2) (a) The division may:

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- (i) administer an oath or affirmation;
- (ii) issue a subpoena that requires:
 - (A) the attendance and testimony of a witness; or
 - (B) the production of evidence;
- (iii) take evidence; [~~and~~]
- (iv) interview a witness; and
- ~~(iv)~~ (v) require the production of a book, paper, contract, record, document, information, or evidence relevant to the investigation described in Subsection (1).
 - (b) The division may serve a subpoena by certified mail.
 - (c) A failure to respond to a request by the division in an investigation authorized under this chapter is considered to be a separate violation of this chapter, including:
 - (i) failing to respond to a subpoena as a witness;
 - (ii) withholding evidence; or
 - (iii) failing to produce a book, paper, contract, document, information, or record.
 - (d) (i) A court of competent jurisdiction shall enforce, according to the practice and procedure of the court, a subpoena issued by the division.
 - (ii) The division shall pay any witness fee, travel expense, mileage, or any other fee required by the service statutes of the state where the witness or evidence is located.
 - (e) (i) If a person is found to have violated this chapter or a rule made under this chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract, document, information, or record required under this chapter, including the costs incurred to copy an electronic book, paper, contract, document, information, or record in a universally readable format.
 - (ii) If a person fails to pay the costs described in Subsection (2)(e)(i) when due, the person's license, certification, or registration is automatically suspended:
 - (A) beginning the day on which the payment of costs is due; and
 - (B) ending the day on which the costs are paid.
- (3) (a) The director shall issue and serve upon a person an order directing that person to cease and desist from an act if:
 - (i) the director has reason to believe that the person has been engaging, is about to engage, or is engaging in the act constituting a violation of this chapter; and

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

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

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

(d) If a request for hearing is made, the division shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Legislative Review Note

Office of Legislative Research and General Counsel†